

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

W.P.No.11881 of 2015

V.B.R.Menon

.. Petitioner

-vs-

The Union of India,
rep. by the Secretary,
Department of Law & Justice,
A-Wing, Shastri Bhawan,
New Delhi-110 001.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration declaring that limb of Sub Art.(1) of Art. 217 of the Constitution of India prescribing the retirement age of High Court Judges as 62 years to be against the basic structure and feature of the Constitution and therefore unenforceable and consequently to direct the respondent to formulate a new retirement policy for the High Court Judges based on a proper and comprehensive scientific study of all medical, psychological and other factors which are relevant to the performances of High Court Judges in discharges their functions and duties.

For Petitioner : Mr.V.B.R.Menon
Party-in-person

For Respondent : Mr.Su.Srinivasan
Asst. Solicitor General
Mr.B.Rabu Manohar, Sr.Central Government,
Panel counsel for the respondent*

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner seeks to raise an important issue of retirement age of the High Court Judges canvassing that it has been arbitrarily fixed at 62 years.

2. The petitioner appearing in person being an Advocate contends that the High Court Judges are retiring at the peak of their ability and without the vacancies being filled in, with the result that the administration of justice suffers. It is also his contention that

fixation of age is arbitrary in character, i.e. it is not based on intelligible differentia and thus violative of Articles 14 and 21 of the Constitution of India. While referring to the constitutional debates, he submits that it was a matter of perception whether a Judge should retire at 60 years. The medical facility available, the longevity and the mental state of affairs, he submits, is quite different today than it was when the constitutional debates took place. In fact, over a period of time, a review of the retirement age took place in 1963 and it was increased to 62 years. He further submits that thereafter, a Bill was introduced, proposing to increase the age to 65 years.

3. The submission of the petitioner is that a Judge should be allowed to function if he has the mental capacity to do so, and that cannot be fixed by the legislature, but it would depend on a case-to-case basis. This medical input, in any case, is submitted to be necessary before a particular Judge retires.

4. While appreciating the submissions of the petitioner that longevity and medical facilities available may require re-consideration of the parameters of age retirement, we are of the view that this is not a matter which can be adjudicated judicially. The provision is constitutional in character and it is for the legislature to debate, with relevant inputs being obtained as to whether the age of retirement of High Court Judges should or should not be increased.

5. We are unable to accept the plea that fixation of age is arbitrary or violative of Articles 14 and 21 of the Constitution of India for the reason that by its very nature, the age fixation required some cut off. Thus, if the plea of the petitioner was to be accepted, any age fixed would have an element of arbitrariness. This is coupled with the aspect of aspirations of people who are waiting in the wings.

6. The petitioner pointed out that there are a number of vacancies arising from this fixed age of retirement. If we may say so, the existence of vacancies is on account of many factors, i.e. non-availability of infrastructure and manpower to accommodate the increased strength of Judges, absence of financial independence for the judiciary even for allocation of funds, recommendations being delayed and affected on account of more aspirants, who agitate the issue to become a Judge etc. Thus, some vacancies are really on paper.

7. Be that as it may, endeavours are made to fill in the vacancies as soon as possible in the given exigency of the situation.

8. We cannot appreciate the submission that age of retirement should be different for different Judges, depending on their "mental state of affairs" at a specified age. This in turn would create a chaos, as what is being proposed is consultation with the

psychologists and Doctor's to determine the mental capacity of the Judge and thereafter, only to seek whether he should retire or not. In a way, this amounts to fixing no age of retirement to a Judge to continue either till he is alive or till his mental faculties permit him to do so. We are thus unable to accept the contention of the petitioner that fixation of age under Article 217 (1) of the Constitution of India is against the basic structure of the Constitution and therefore unenforceable.

9. The petitioner has also drawn our attention to the provision for having adhoc Judges on a case-to-case basis - Article 224-A of the Constitution of India. In so far as that is concerned, the provision exists and it is for the concerned authorities to look into this aspect.

10. We, thus, are of the view that the petition really is a suggestion which can be forwarded to the Law Commission as well as the Central Government for consideration, rather than seeking any judicial adjudication of the issue.

11. The writ petition is closed accordingly. No costs.

Sd/-
Asst. Registrar.(CS-V)
dt. 08.05.2015

Corrected as per letter dt.2.6.2015
/true copy/

Sd/-
Asst. Registrar.(CS-V)
dt. 15.06.2015

Sub Asst. Registrar.

bbr
To

1.The Secretary,Department of Law & Justice,
A-Wing, Shastri Bhawan,
New Delhi-110 001.

(with copy of writ petition and typed set of papers) To be substituted
to the order
already despatched
on 28.05.2015

2.The Member Secretary
Law Commissioner of India
14th Floor
HIndustan Times HUse
Kasturiba Gandhi Marg
New Delhi-11001

(with the copy of petition and affidavit and typed set of papers)

+1cc to Mr.V.B.R.Menon ,Advocate SR.No.22184
+1cc to Mr.Su.Srinivasan ,Advocate SR.No.22769
+1cc to Mr.B.Rabu Manohar, Advocate SR.No.22029

W.P.No.11881 of 2015

gj (co) pmk.11.5.2015
EU 16.06.15