

COMMON CAUSE, A REGISTERED SOCIETY

A

v.

UNION OF INDIA

NOVEMBER 22, 2001

[S.P. BHARUCHA, CJ., SYED SHAH MOHAMMED QUADRI,
N. SANTOSH HEGDE, S.N. VARIAVA AND SHIVARAJ V. PATIL, JJ.]

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Salaries, Allowances and Pension of Members of Parliament Act, 1954:

Section 8A—Constitutional validity of.

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Members of Parliament—Pension for—Provision contained in Section 8A—Legislative competence—Held such competence is conferred on Parliament by Entry 97 of List I to the Seven Schedule of Constitution—There is no provision in Article 106 or elsewhere that bars the payment of pension to Members of Parliament—Constitution of India, Art. 106.

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The constitutional validity of Section 8A of the Salaries, Allowances and Pension of Members of Parliament Act, 1954 has been challenged in these petitions. The said Section was introduced in 1976 giving to Members of Parliament pension on their satisfying certain conditions stated therein. It was contended that (i) Where pension is to be paid to a constitutional functionary, the Constitution makes specific provision; (ii) Members of Parliament are not entitled to receive pension because Article 106 of the Constitution provides for payment of salaries and allowances to them and that it does not contain provision with regard to payment of pension. On behalf of Union of India it was contended that (i) Section 8A was covered by Entries 73 and 97 of List I of the Seventh Schedule to the Constitution; (ii) Article 106 is an enabling provision and does not impose a bar upon receipt of pension by Members of Parliament.

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Dismissing the petitions, the Court

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HELD : The issue involved in this case is squarely one of competence, namely the competence of Parliament to enact Section 8A of the Salaries, Allowances and Pension of Members of Parliament Act, 1954. Such competence is conferred upon Parliament by the residuary Entry 97 of List I, and there is no provision in Article 106 or else-where that bars the

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A payment of pension to Members of Parliament. [326-B]

D.S. Nakara and Ors. v. Union of India, [1983] 1 SCC 305, referred on.

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 984 of 1991.

B Under Article 32 of the Constitution of India.

WITH

W.P. (C) No. 246 of 1993.

C Soli J. Sorabjee, Attorney General, Prashant Bhushan, Sanjeev Kapoor, Ram Saran Sharma-in-person in W.P. No. 246/93, Manish Singhvi, S.N. Terdol for P. Parmeswaran for the appearing parties.

The Judgment of the Court was delivered by

D BHARUCHA, CJ. The Salaries and Allowances of Members of Parliament Act, 1954 was amended by the Salaries and Allowances of Members of Parliament (Amendment) Act, 1976; thereby the principal Act was renamed the Salaries, Allowances and Pension of Members of Parliament Act and Section 8A was introduced giving to Members of Parliament pensions on their satisfying certain conditions stated therein. The said Section 8A has been amended from time to time and the rates of pension originally indicated have been increased.**E These writ petitions challenge the constitutional validity of the said Section 8A and they have been directed to be heard by a Constitution Bench.****F Our attention is drawn by Mr. Prashant Bhushan, learned counsel for the petitioner in W.P.(C) No. 984/1991, to the provisions of Articles 106 and 195 of the Constitution. Article 106 reads as under :****G "106. Salaries and allowances of members.—** Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly of the Dominion of India."**H**

Article 195 makes similar provision in respect of the Members of Legislative Assemblies and Legislative Councils of the States. It is pointed out by Mr. Prashant Bhushan that whereas legislators are thereby entitled to salaries and allowances, there is no provision in regard to the payment of pension to them. The provisions of these Articles are contrasted by learned counsel to the provisions of Articles 125 and 221. Article 125(2) says that Judges of the Supreme Court shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined. There is a similar provision in regard to High Court Judges in Article 221. Our attention is also drawn to Article 148 which makes reference to the pension of a Comptroller and Auditor General. Learned counsel's argument is that where pension is to be paid to a constitutional functionary, the Constitution makes specific provision and that, therefore, in not making such specific provision in regard to Members of Parliament under Article 106, it must be assumed that they are not entitled to receive pension.

Learned counsel drew our attention to the judgment of this Court in *D.S. Nakara and Ors. v. Union of India*, [1983] 1 SCC 305 where it has been said that pension is a term applied to periodic money payments to a person who retires at a certain age, considered the age of disability, and it usually continues for the rest of the natural life of the recipient. In the case of Members of Parliament, it is submitted by learned counsel, they do not retire and they are not always of an age of disability when they demit office.

Reference was made by the petitioner in W.P.(C) No. 246/1993, appearing in person, to the provisions of Article 14 and it was submitted that there was discrimination in favour of Members of Parliament by giving them pension when, unlike Judges, they were not subject to the process of impeachment.

The learned Attorney General, appearing for the respondents, drew our attention to Entries 73 and 97 of List I of the Seventh Schedule to the Constitution. Entry 73 empowers Parliament to legislate in respect of the salaries and allowances of Members of Parliament. Entry 97 empowers Parliament to legislate in respect of any matter not enumerated in List II or List III, that is, in the State and Concurrent Lists. The learned Attorney General submitted that the payments empowered under the said Section 8A were covered by the words 'salaries and allowances' under Entry 73 and that, in any event, they were covered by the residuary Entry 97 of List I. He also submitted that Article 106 was an enabling provision and could not be read as imposing a bar upon the

A receipt of pensions by Members of Parliament.

The issue before us is squarely one of competence, namely, the competence of Parliament to enact the said Section 8A. We need not go into Entry 73 of List I for we are in no doubt that such competence is conferred upon Parliament by the residuary Entry 97 of List I, and there is no provision in Article 106 or elsewhere that bars the payment of pension to Members of Parliament.

In our view, therefore, the writ petitions are devoid of merit and must be dismissed.

C No order as to costs.

T.N.A.

Writ Petitions dismissed.