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KULDIP SINGH

v.

UNION OF INDIA

APRIL 29, 2002

B

[B.N. KIRPAL, ARIJIT PASAYAT AND H.K. SEMA, JJ.]

*Pension—Judges of Supreme Court and High Courts—Appointment directly from the Bar—Pension—Held, before 4.12.1993 by way of practice 66-2/3% of vacancies of High Court Judges filled amongst members of Bar and 33-1/3% from Judicial Services—In Chief Justices and Chief Ministers Conference of 4.12.1993 it was decided that number of vacancies to be filled up from Judicial Officers “might go upto 40%—This cannot mean that number of Judges from services have to be 40%—In the Chief Justices’ Conference held in 1999 it was unanimously resolved that the quota should normally be 66-2/3% and 33-1/3% and it is on this basis the Government should determine the likely number of Bar Judges and then consider whether the High Court Judges who are appointed from amongst the members of the Bar should not be given the same weightage as is now sought to be given to the members of the Bar who are appointed to Supreme Court as far as pension is concerned.*

C

**CIVIL ORIGINAL JURISDICTION : Writ Petition No. (C) No. 410 of 2001.**

(Under Article 32 of Constitution of India)

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F.S. Nariman, P.H. Parekh, Rohit Mammen Alex, Subhash C. Sharma

and Sameer Parekh for Petitioner.

Soli J. Sorabjee, Attorney General for India, Dhruv Mehta, Manish Singhvi and P. Parmeswaran for the Respondents.

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The following Order of the Court was delivered

In this writ petition, the question which arises for consideration relates to pension which is payable to a Judge who retires from this Court after having been appointed directly from the Bar. Similar question also arises with regard to Bar appointees to the High Courts.

H

Experience has shown that the Bar appointees especially, if they are appointed at the age of 50 years and above get lesser pension than the Service Judge appointees. It is to be seen that as far as the Constitution of India is concerned, it stipulates the manner of appointment of the Judges and provides what may be termed as the qualification required for their appointment. The Constitution contemplates appointment to the High Courts from amongst members of the Bar as well as from amongst the Judicial Officers. The Constitution does not provide for any specific quota. Till a few years ago in practice 66-2/3% of vacancies were filled from amongst members of the Bar and 33-1-1/3% from the Judicial Services. It is only in the Conference of 4th December, 1993, of the Chief Ministers and the Chief Justices that it was decided that the number of vacancies from amongst the judicial Officers "might go up to 40%." The decision of 4th December, 1993, cannot mean that the number of Judges from the Services have to be 40%. The normal practice which has been followed was 2/3rd and 1/3rd from amongst members of the Bar and Judicial Services respectively and it is only on a rare occasion that the Chief Justice of a High Court can propose more service Judges being appointed if suitable members of the Bar are not available. But this cannot be more than 40% in any case. It may here also be noted that in the Chief Justices' Conference held in 1999 it was unanimously resolved that the quota should normally be 66-2/3% and 33-1/3% and it is on this basis the Government should determine the likely number of Bar Judges and then consider whether the High Court Judges who are appointed from amongst the members of the Bar should not be given the same weightage as is now sought to be given to the members of the Bar who are appointed to this Court as far as pension is concerned.

To come up for further orders after the ensuing summer vacation.

R.P.

Matter is pending.