

# **All India Judges Association V. Union Of India & Others – Case Analysis**

**Appellants:** All India Judges' Association and Ors.

**Respondent:** Union of India (UOI) and Ors.

**Decided on:** 13.11.1991

Citation:

## **Hon'ble Judges:**

Ranganath Misra, C.J., A.M. Ahmadi and P.B. Sawant, JJ.

## **ARTICLES/ACTS:**

Article 32, 50,312,233,234,235,236 (The Constitution of India 1950), Government of India Act 1935, All India Services Act 1951, Court Fees Act 1870.

## **MAIN ISSUES:**

I.)Whether setting up of an All Indian Judicial Service would affect the constitution scheme of the control of the High Court over the subordinate judiciary under article 235?

II.) Whether the pay scales for judicial officers be better handled when the pay commissions or committees in the states are set up to review the position?

III.) Whether formation of All India Judicial services, bring about improvement in the positioning of the subordinate judiciary?

## **ARGUMENTS AND COURT'S DIRECTIONS: -**

A writ petition by All Indian Judges association was filed under article 32 seeking directions for the following: -

I.) Setting up of All Indian Judicial Service and for about uniform conditions of services for members of subordinate judiciary throughout the country.

**Article 312** deals with the All-India services. Prior Forty-second Amendment Act, 1976 to the Constitution, it did not specifically refer to an All-India Judicial Service. It was however brought in along with Clauses (3) and (4) by the Constitution Amendment Act. Article 312 reads as thus:

Article 312 "All-India services-

Clause (1) Notwithstanding anything in [Chapter VI of Part VI or Part XI], if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law

provide for the creation of one or more all-India services [(including an all-India judicial service)] common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.

(2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

<sup>1</sup>[(3) The all-India judicial service referred to in clause (1) shall not include any post inferior to that of a district judge as defined in article 236.

- The Law providing for the creation of the all-India judicial service aforesaid may contain such provisions for the amendment of Chapter VI of Part VI as may be necessary for giving effect to the provisions of that law and no such law shall be deemed to be an amendment of this Constitution for the purposes of Article 368.”<sup>2</sup>

The petitioners referred to the Law Commission report<sup>3</sup> which suggested for the creation of the All India Judicial Service –

“If we are to improve the personnel of the subordinate judiciary, we must first take measures to extend or widen our field of selection so that we can draw from it really capable person. A radical measure suggested to us was to recruit the judicial service entirely by a competitive test or examination. It was suggested that the higher judiciary could

be drawn from such competitive tests at the all-India level and the lower judiciary can be recruited by similar tests held at State level. Those eligible for these tests would be graduates who have taken a law degree and the requirement of practice at the Bar should be done away with”

The main objection against implementation of the recommendation of the Law Commission relating to the setting up of the All India Judicial Service was founded upon the basis that control contemplated under **Article 235** of the Constitution would be affected if an All India Judicial Service on the pattern of All India Services Act, 1951, is created.

The court has thus directed the central government and other authorities concerned to take appropriate steps to set up an All India Judicial Service. The court is of the view that the Law Commission's recommendation should not have been dropped lightly. There is considerable force and merit in the view expressed by the Law Commission. An All India Judicial Service essentially for manning the higher services in the subordinate judiciary is very much necessary. Since the setting up of such a service might require amendment of the relevant Articles of the Constitution and might even require alteration of the Service Rules operating in the different States and Union Territories, the court do not intend to give any particular direction on this score when the point was not seriously pressed but we would commend to the Union of India to undertake appropriate exercise quickly so that the feasibility of implementation of the recommendations of the Law Commission may be examined expeditiously and implemented as early as possible. It is in the interest of the health of the judiciary throughout the country that this should be done.

- Steps should be taken to bring about uniformity in designation of officers both in civil and criminal
  
- The Law Commission in the 14th Report also referred to the various designations provided for judicial officers working in the different States and Union Territories. It observed:

– In view of the more or less uniform functions performed by the judicial officers so variously designated, it would, be advisable to aim at a uniformity of designation. There is, however, a fundamental difference in the general scheme of distribution of judicial business between the lower grade of officers (munsifs) on the one hand, and the higher grade of officers (subordinate judges) on the other. The first has limited pecuniary jurisdiction while the second, generally speaking, has unlimited pecuniary jurisdiction. Therefore the Law Commission suggested that the State Judicial Service-Class II should consist of civil judges who should be designated as civil judges of the senior and junior divisions. Officers corresponding to munsifs would be designated as civil judges (junior division) and those corresponding to subordinate judges would be designated as civil judges (senior division).

- The Court is inclined to adopt the view of the Law Commission. On the civil side, the State Judicial Service, therefore, should be classified as District or Additional District Judge, Civil Judge (senior division) and Civil Judge (junior division). On the criminal side, there should be a Sessions Judge or Additional Sessions Judge and below him there should be the Chief Judicial Magistrate and Magistrates provided for in the

Appropriate adjustments, if any, may be made of existing posts by indicating their equivalence with any of these categories. The process of bringing about such uniformity would require some time and perhaps some monitoring. The court directed that the Ministry of Law and Justice of the Union Government would carry on the monitoring activity and all the States and Union Territories would follow the pattern indicated above by March 31, 1993.

- Retirement age of the judicial officers should be raised to 60
- It is the claim of the petitioners that the age of retirement of the officers of the subordinate judiciary should be fixed at 60 years. The reasons laid down by them were that the basic qualification for recruitment to the service requires every officer to have in the minimum a bachelor's degree in law which is acquirable after becoming a graduate; thus, while for normal civil service a graduate is eligible, for recruitment to the judicial service a minimum further period of three years becomes necessary to acquire the basic qualification. In furtherance of the argument they said that there is a marked distinction between the nature of work which executive officers and judicial officers are called upon to discharge. The work of the judicial officers is usually sedentary while that of the executive officers involves a lot of physical. This is particularly so in the lower cadres of both the services. In view of this feature physical fitness is more important for an executive officer than in case of a judicial officer while in case of judicial officers, there is thus necessarily more of a mental activity than physical. Experience is an indispensable factor and subject to the basic physical fitness with growing age experience grows.
- Considering the enhancement of the longevity of human life and taking all other relevant considerations into

account, the court thus adopted the logic which was given by the Law Commission for the reasons which the indicated the age of retirement of judicial officers should be 60 years. The court accordingly directed that appropriate alterations shall be made in the Rules obtaining in the States and Union Territories in respect of judicial service so as to fix the age of retirement at 60 years with effect from December 31,

- As and when pay commissions/committees are set up in the states and union territories, the question of appropriate pay scale of judicial officers be specifically referred and on the question of pay scales for the judiciary, the court has said that "the judiciary compares unfavorably with the executive branches of the "<sup>4</sup>
- It is the matter of scales of pay and remuneration, the judiciary compares unfavorably with the executive branches of the Government. The scales of pay of the judicial officers and the corresponding executive officers are identical in many of the States. The executive officers are, by and large, recruited at a much younger age than the judicial officers. The entrant to the judicial services is required to be a graduate in law and in most of the States it is also necessary that he should have practiced for a certain number of years at the Bar. On the other hand, for recruitment to the executive branches of Government service, a degree in arts or science is, generally speaking, In the result, a person entering the judicial service does so when he is about 26 or 27 years of age and at a time when his contemporaries who have entered the executive service of the Government have already acquired a certain seniority in the service and have come to draw a higher salary. It will thus be seen that a person joining the judicial service starts with a lower remuneration than what he would have received if he had entered the executive

service for a few years earlier. It has also to be noted that owing to the lesser proportion of superior posts in the judicial service promotions come less quickly to the judicial officers, and a person who has entered the service as a munsif, assuming that he is fit and fully qualified, takes much longer time to become a district judge than would an equally competent deputy collector to reach the position of a collector. Again the judicial officer, having started at a later age, has a shorter span of service than the executive officer and this affects his pension and other retirement benefits.

- There is wide violence in the pay structure prevailing in the various States and Union Territories and for the same nature of work performed by the judicial officers they are remunerated. For these reasons, the court did not propose to finally examine the propriety of the existing pay scales nor directed any pay scales to be fixed.
- The court on the aspect of Pay Commissions as so suggested by the law commission directed that as and when such commissions or committees are set up in the States and UTs, they will separately examine and review the pay structure of the judicial
- Every district judge and chief judicial magistrate should have a State vehicle, Judicial of 5 should have a pool vehicle and other lower rank officers would be entitled to suitable loans to acquire two wheeler automobiles within different time limits as
- A working library at the residence of every judicial officers has to be provided and Provisions for sumptuary allowances , residential accommodation including other essentials and maintenance of library at the constitution residence should also be taken into consideration
- Residential accommodation to every judicial officer has to be provided and until state accommodation is available, government should provide requisitioned



accommodation for them and also availability of office should be kept in view.

- Every district judge and chief judicial magistrate should have a state vehicle, judicial officers in sets of five should have a pool vehicle and others would be entitled to suitable loans to acquire two wheelers automobiles within different time
- In Service Training institutes for the judicial officers should be set up for the within one year at Central and State Level or Union Territory

In-service Institute should be set up within one year at the Central and State or Union territory level. In this respect the court is in the view that in-service institutes are indispensable for the upkeep of the efficiency of the judicial service , so it was directed that an All India Institute of In-service Training for higher officers of the judiciary within each of the States and UTs or common institutes for more than one States.

The court pointed out that the problem has grown in dimension because there is unmistakable testimony that the standards of the judicial officers recruited from the Bar and other sources have during recent years fallen in a substantial degree for various reasons. This has been almost the unique view expressed by the petitioners before the court. It is thus obvious that no scheme of review of judicial administration will be effective or worthwhile unless the basic problem of providing trained and capable judicial personnel is satisfactorily solved.

THE INDIAN JUDICIARY:

JUDICIARY

Judiciary of India as of today is the continuation of the British Legal system established by the English in the mid-19th century. Before the arrival of the Europeans in India, it was governed by laws based on The Arthashastra, dating from the 400 BC, and the Manusmriti from 100 AD.

The Judiciary of India is an independent body and is separate from the Executive and Legislative bodies of the Indian Government. The judicial system of India is stratified into various levels. At the apex is the Supreme Court, which is followed by High Courts at the state level, District Courts at the district level and Lok Adalats at the Village and Panchayat Level. The judiciary of India takes care of maintenance of law and order in the country along with solving problems related to civil and criminal offences.

## **SUPREME COURTS OF INDIA:**

The Supreme Court is the highest judicial body in India. The Supreme Court came into power on 28th January 1950; just two days after the Constitution of India came to effect. The Chief Justice of India and 25 other judges make up the Supreme Court of India. The appointments are done directly by the President of India. There are certain criteria that have to be fulfilled by the advocates to become a judge of the Supreme Court. Being a citizen of India is one of the most important criteria. The Judges of the Supreme Court are free to exercise their power as and when required. The process of removal of the Supreme Court judges is quite an interesting but lengthy process. An order from the President is mandatory in case of removal of the judges. A two-thirds majority has to be obtained from both

the houses for the removal of the judges.

## **HIGH COURTS OF INDIA:**

There are High Courts in almost all the states of India and the Union Territories. The High Court's work under the Supreme Court in the country. These courts are vested with lot of power. They decide on both civil as well as criminal cases. The judges of the High Courts are appointed by the President of India, in consultation with the Chief justice of India and the Governor of the state. The Chief Justice heads each of the High Courts in India. Calcutta High Court is the oldest court in India.

## **DISTRICT COURTS OF INDIA:**

The District Courts in India take care of judicial matters at the district level. Headed by a judge, these courts are administratively and judicially controlled by the High Courts of the respective states. The Chief Judicial Magistrate is endowed with the responsibility of deciding critical cases. He or she has the power of punishing the accused by imprisonment for a maximum of 7 years.

## **TRIBUNALS:**

There are also various tribunals that have been set up in India that look into various matters of grave concern. The tribunals that need a special mention are as follows:

Income Tax Appellate Tribunal

Central Administrative Tribunal

Intellectual Property Appellate Tribunal

Railways Claims Tribunal

Intellectual Property Appellate Tribunal

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**Footnotes:**

<sup>1</sup> Subs. By the Constitution (42<sup>nd</sup> Amendment) Act, 1976, sec. 45, for "PART XI" ( w.e.f. 3-1-1977).

<sup>2</sup> Bakshi PM, The Constitution of India, Universal Law Publication, 9<sup>th</sup> edition

<sup>3</sup> 14<sup>th</sup> Law commission report 1953

<sup>4</sup> Prof. M.P. Jain, Indian Constitutional Law, Wadhwa and Company Nagpur, 5<sup>th</sup> edition 2008