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IN THE SUPREME COURT OF INDIA
SANJAY KISHAN KAUL; J., ABHAY S. OKA; J.
CONMT. PET. (C) No. 867/2021 in T.P.(C) No. 2419/2019; 06-01-2023
THE ADVOCATES ASSOCIATION BENGALURU versus BARUN MITRA & ANR.

Constitution of India, 1950; Article 222- Constitution of India- Supreme Court criticises the Centre for delay in notifying transfer of High Court judges as per collegium recommendations- Delay in the same not only affects the administration of justice but creates an impression as if there are third party sources interfering on behalf of these Judges with the Government.

Constitution of India, 1950; Article 222 - Transferred judges do not carry label of 'bar judge' or 'service judge' - If a Judge is transferred from a Court, it is not as if a replacement can be provided from the Bar or the Service Judges of that Court as the total strength of the Court is specified. When the Judge is transferred to another Court, he is a transferred Judge neither categorized from the Bar nor from the Service. In the Court where he is transferred, he occupies a physical position in the strength of that Court and unless correspondingly Judges are transferred from that Court, there will be lesser person appointed in that Court from the Bar/Services as the total strength of the Court to which transfer is made cannot be exceeded. The transferred Judge does not carry the label of a Bar or a Service Judge and it is up to the Chief Justice where to he is transferred to reduce the inflow in the Court of transfer, i.e., from the Bar or Service. Similarly, if from the Court where to Judges are transferred, in turn Judges from either category are transferred to other Courts they in turn will carry the label of a transferred Judge and not from the Bar or the Service. This aspect has been clarified as there 5 appears to be some doubts expressed about how the system of transfer will operate.

For Petitioner(s) Mr. Pai Amit, AOR IN CP 867/2021 Ms. Pankhuri Bhardwaj, Adv. Ms. Ranu Purohit, Adv. Ms. Bhavana Duhoon, Adv. Mr. Abhiyudaya Vats, Adv. Ms. Sonali Suryawanshi, Adv. IN WP 895/2018 Mr. Prashant Bhushan, AOR Ms. Cheryl Dsouza, Adv.

For Respondent(s) Mr. R. Venkataramani, LD. Attorney General Mr. Kanu Agrawal, Adv. Ms. Swati Ghildiyal, Adv. Mr. Mayank Pandey, Adv. Mr. Chitvan Singhal, Adv. Ms. Sonali Jain, Adv. Mr. Abhishek Kumar Pandey, Adv. Ms. Mansi Sood, Adv. Mr. Arvind Kumar Sharma, AOR SCBA Mr. Vikas Singh, Sr. Adv. Ms. Deepeika Kalia, Adv. Mr. Aditya Kaul, Adv. HC Orissa Mr. Sibho Sankar Mishra, AOR

ORDER

Learned Attorney General submits that he has instructions that the Government will adhere to the timelines as provided in the judgment.

It is towards that objective that he submits that out of the 104 recommendations made by the Collegiums of the High Courts pending with the Government, 44 are likely to be processed and sent to the Supreme Court by the week end.

On a Court query about the recommendations of the Collegium already pending with the Government numbering 10, learned Attorney General submits that they are being processed shortly and he is personally looking into the matter.

We may note that 8 of these recommendations were sent by the Collegium on 25.11.2022 but two of them are quite old of October,2021.

Insofar as pending 5 recommendations for elevation to this Court are concerned, learned Attorney General requests for a deferment as he says he is looking into the matter.

Insofar as the recommendations of four Chief Justices and transfer of one Chief Justice are concerned, learned AG assures this Court that he is looking into it personally. We have impressed upon the learned AG that there will be vacancies of Chief Justices which will arise on account of elevations to the Supreme Court and those cannot be processed till the elevation takes place which is a matter of concern.

The last aspect which we want to deal with and currently is of considerable importance is recommendations made for transfer of High Court Judges sent by the Collegium numbering 10. Two of them were sent by the end of September, 2022 and 8 were sent in end of November, 2022. The transfer of High Court Judges is done in the interest of administration of justice and exception apart there is no reason for any delay on the part of the Government in implementing the same. The Collegium discusses and seeks opinion of consultee Judges as also the Chief Justices from where transfer is being made and where to transfer is being made. Comments of the Judges concerned are also obtained. At times at the request of the Judge concerned, alternative Court is also assigned for transfer looking to the exigency of the situation. This process is completed before recommendation is made for transfer of Judge to the Government.

Delay in the same not only affects the administration of justice but creates an impression as if there are third party sources interfering on behalf of these Judges with the Government.

It should be appreciated that in every High Court there is sanctioned strength of Judges. 2/3rd of the Judges are from Bar and 1/3rd from the Service. If a Judge is transferred from a Court, it is not as if a replacement can be provided from the Bar or the Service Judges of that Court as the total strength of the Court is specified. When the Judge is transferred to another Court, he is a transferred Judge neither categorized from the Bar nor from the Service. In the Court where he is transferred he occupies a physical position in the strength of that Court and unless correspondingly Judges are transferred from that Court, there will be lesser person appointed in that Court from the Bar/Services as the total strength of the Court to which transfer is made cannot be exceeded. The transferred Judge does not carry the label of a Bar or a Service Judge and it is up to the Chief Justice where to he is transferred to reduce the inflow in the Court of transfer, i.e., from the Bar or Service. Similarly if from the Court where to Judges are transferred, in turn Judges from either category are transferred to other Courts they in turn will carry the label of a transferred Judge and not from the Bar or the Service. This aspect has been clarified as there appears to be some doubts expressed about how the system of transfer will operate.

We may say when recommendations for transfer are not implemented, the further recommendations consequent thereto or otherwise for transfer also get delayed.

At request of the learned A.G., list on 03.02.2023.

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