

IN THE HIGH COURT OF UTTRAKHAND AT NAINITAL

WRIT PETITION (Public Interest Litigation) No. _____ of 2019

(Under Article 226 of the Constitution of India)

(DISTRICT: NAINITAL)

In the matter of:

1- Youth Bar Association of India
Through its Hony. Secretary
Mr. Saurabh Pandey, Advocate

2- Sanpreet Singh Ajmani, Advocate
National President-YBAI

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...Petitioners

Versus

1. Union of India
Through Secretary, Law and Justice
New Delhi.

2. Ministry of Law and Justice, Through Secretary
Government of India, New Delhi

...Respondents

To,

The Hon'ble Chief Judge and other companion Judges of this Hon'ble High Court.

The humble petition on behalf of the above named petitioner most respectfully showeth as under:-

1. **About Petitioner-Youth Bar Association of India (in short 'YBAI'):-**

Petitioner No. 1 is an association of young and vigilant Advocates practicing law throughout the nation. The said Association is registered under the Society Registration Act, 1860 having registration no. 24/2013-2014 and its registered office is at ██████████

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Petitioner No. 2 is National President of YBAI.

The aim and object of the Petitioner-Association in nutshell, is to organize law debates, law seminars, to promote legal awareness

among the general public, to provide free legal aid to the poor litigants and also to fight for the legal cause on *pro bono* basis.

The Petitioners undertake that it has no vested or personal interest (whatsoever) in the present matter. The matter pertains to good governance and public welfare.

2. That by means of instant Petition, the Petitioner has been again constrained to seek indulgence of this Hon'ble Court in respect of most emergent and urgent issue *vis-à-vis* raising the upper age limit of the Judges of the Hon'ble High Courts at par with the Judges of the Hon'ble Supreme Court of India, in the larger public interest.
3. That this is the first Writ-Petition being filed by the petitioner assailing the letter dated 23.04.2018, so far it does not prescribe any time frame for taking considering the urgent necessity to bring amendment in the Constitution of India with regard to raising of upper age limit of the High Court Judges. The Petitioners undertake no other Writ-Petition has been filed by it before this Hon'ble Court arising out of same or similar cause of action.

It may be mentioned here that earlier the petitioners filed Writ Petition (P.I.L.) No. 152 of 2017 before this Hon'ble Court, *inter alia* mainly seeking that the upper age limit of the Judges of the Hon'ble High Courts be raised at par with the Judges of the Hon'ble Supreme Court i.e. from 62 years to 65 years. However, this Hon'ble Court vide order dated 18.12.2017 was pleased to dismiss the said writ petition as withdrawn without prejudice to approaching any appropriate forum. True copy of order dated 18.12.2017 passed by this Hon'ble Court & Writ Petition (P.I.L.) No. 152/17 is annexed herewith as **Annexure No. 1.**

4. That instant petition raises following question of law which as per the best of knowledge of the petitioner are still *res integra* viz. **"Whether the upper age limit of the Judges of the Hon'ble High Court should be at par with the Judges of The Hon'ble Supreme Court and other Government Officials?"**

5. That by means of present Public Interest Litigation, the petitioners are seeking writ of mandamus commanding the respondents to decide the representation dated 27.12.2017 submitted by the Petitioners by a well-reasoned and speaking order and it is further prayed that the letter dated 23.04.2018, may very kindly be quashed, so far it does not prescribe any time frame for taking considering the urgent necessity to bring amendment in the Constitution of India with regard to raising of upper age limit of the High Court Judges.
6. That the relevant facts, giving use to the present Public Interest Litigation in brief, are as under: -
 - (A) The attention of this Hon'ble Court is drawn to the important and urgent issue, which has been bothering the higher judiciary from the day of enactment of the Constitution of India i.e. **Article 217 of the Constitution of India** reads as follows:

217. (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and [shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of [sixty two years]]:

Provided that – (a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;
 - (B) That there is common consensus among the Judiciary, Executive and Legislature as well as various stakeholders that this provision in the Constitution of India requires urgent amendment and upper age limit of High Court Judges should be raised to the age of 65 years at par with the age of holding offices by the Judges of the Hon'ble Supreme Court.

- (C) That the previous Government which agreed to seek necessary amendment in the Constitution of India giving due weightage to the crucial issue and in fact presented **The Constitution (One Hundred and Fourteenth (Amendment) Bill, 2010** in the Lok Sabha on August 25, 2010 through the then Minister of Law and Justice, Shri M. Veerappa Moily which sought amendment in **Articles 217 and 224 of the Constitution of India** relating to raising of upper age limit of the judges of the High Court.

The statement of object and reasons of the said bill reads as under:

STATEMENT OF OBJECTS AND REASONS

Clause (1) of article 217 of the Constitution of India allows every Judge of a High Court to hold office until he attains the age of sixty-two years. Clause (3) of article 224 of the Constitution provides that no person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of sixty-two years. The age of retirement of High Court Judges, which was fixed at sixty years in the beginning, was enhanced to sixty-two years by the Constitution (Fifteenth Amendment) Act, 1963. Since then, no revision has taken place in this regard.

2. *The Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, in its 39th Report dated the 29th April, 2010, has recommended to raise the retirement age of the Judges of the High Courts from sixty-two to sixty-five to be at par with the retirement age of the Judges of the Supreme Court. Further, most of the reasons adduced by the Fifth Central Pay Commission in support of its recommendation for increasing the age of retirement of the Central Government employees, such as global practices, increase in life expectancy, improved health standards, need for utilisation of experience and wisdom of senior employees, etc., would also apply to the Judges.*

3. *In view of the present state of vacancies of Judges in High Courts, it is extremely difficult to clear the heavy pendency of cases in the High Courts. Increasing the age of retirement by three more years would restrict occurrence of new vacancies on account of superannuation for the next three years during which time the existing backlog in vacancies could be cleared. This would have a clear impact on reduction of pendency of cases in the High Courts.*

4. *It is, therefore, proposed to increase the age of retirement of Judges and additional or acting Judges of High Courts from sixty-two years to sixty-five years.*
5. *The Constitution (One Hundred and Fourteenth Amendment) Bill, 2010 seeks to achieve the aforesaid objectives.*

Further the bill sought amendment in the provisions of the Constitution in following words:

1. (1) *This Act may be called the Constitution (One Hundred and Fourteenth Amendment) Act, 2010.*
(2) *It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.*
2. *In article 217 of the Constitution, in clause (1), for the words "sixty-two years", the words "sixty-five years" shall be substituted.*
3. *In article 224 of the Constitution, in clause (3), for the words "sixty-two years", the words "sixty-five years" shall be substituted.*

Copy of Bill is annexed herewith as Annexure No. 2

- (D) That however, it's painful that above-said bill lapsed due to inactive attitude of the previous Government and no further progress was made in this regard.
- (E) That after the change of the Government in Centre with having full majority, The Hon'ble Prime Minister and the present Govt. has time and again retreated its stand for judicial reforms and even the Hon'ble Supreme Court was also informed by the Attorney General of India in November 2015 that Government is willing to raise the upper age limit of the High Court Judges to 65 years from current age limit of 62 years. However, even after expiry pretty long period of more than two years, no measures have been taken so far.
- (F) The raising the upper age limit of the High Court Judges from 62 years to 65 years is the need of hour, for achieving following goals: -
1. There is backlog of cases in Hon'ble High Courts around the country which are getting increased day by day due to vacancy

of judges. One of the various reasons for vacancy is/was retirement of Judges of the Hon'ble High Court at the age of 62 years.

2. There is no rationale behind keeping the upper limit of age of 62 years for holding office of the High Court Judge while same is 65 of the Hon'ble Supreme Court. In-fact Hon'ble Supreme Court has time and again reiterated that High Court is not inferior to it in administration of justice. Therefore, the ceiling on the upper age limit of 62 years is irrational, arbitrary and deserves to be reviewed.
3. One of the factors deterring a competent lawyer from accepting judgeship is the retiring age at 62, increasing it to 65 may induce competent lawyers to seek appointment as judges of the High Court.
4. With a larger tenure, judges may acquire more maturity and with retirement at 65, a judge may be less anxious about looking for employment after retirement, by way of an appointment to a Tribunal or Commission by governments.
5. The Chief Justices and most senior judges of the High Courts, nearing their retirement at 62 years, sometimes aspire unbecomingly to being selected judges of the Supreme Court not only for the prestige of the post but also to obtain another three-year stint in the Supreme Court. If the retirement age is increased to 65 at par with that of Supreme Court judges, senior judges may be content with remaining in their own High Court rather than to seek an additional three-year stint, in the Supreme Court.
6. That in others countries such as in the High Court of Australia (which is the apex court there) retiring age is 70 years, in the Supreme Court of Canada its 75 years, in the Supreme Court of

Ireland its 70 years, in the Supreme Court of Israel its 70 years, in the Supreme Court of New Zealand its 68 years, in the Constitutional Court of South Africa its 70 years or after 12 years of service, and in the U.K. Supreme Court 75.

- (G) The Petitioner has already sent a representation to the Ministry of Law & Justice, Government of India *inter alia* making following prayer: -

“It is therefore humbly prayed that issues raised in the present representation, may be considered and a fresh bill for the above-said purpose may be presented by the Govt. as early as possible, as was placed in the year 2010.”

Copy of Representation dated 07.12.2017 is annexed herewith as Annexure No. 3.

- (H) That the Petitioners also wishes to draw attention of this Hon'ble Court to another very important provision in our Constitution.

Article 224 A. Appointment of retired Judges at sittings of High Courts.- *Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court:*

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do.

- (J) That the Petitioner also relies upon an Article/Report published by LiveLaw - <http://www.livelaw.in/article-224a-need-hour/>

“The role of the judiciary has always been of great significance in the functioning of the Indian democracy and it plays a pivotal role as one of the organs of the state in upholding the values and objectives of the Constitution.....

But in a country which has one of the least Judges-to-people ratio, which is around 15.5 Judges for every 10 lakh people and the fact this

position has not changed since 2013, only makes matters worse as more than 170 names for appointment of High Court Judges have been put on hold by the Government. This is in light of the alarming levels of backlog and arrears of cases pending before Courts throughout India (31,367,915 in 2013). Therefore, taking into consideration the impasse between the government and the judiciary, the logical question one would raise is how long should the litigants of this country have to suffer without having the right to approach the Courts and have their cases disposed of in a timely manner? The adage **“Justice delayed is Justice Denied”** is very appropriate to quote at this point to demonstrate the plight of the litigants if both the Government and Judiciary do not put aside their differences and focus on what needs to be done. Fortunately, the framers of the Constitution of India have had the foresight to perceive such a situation and have, therefore, introduced Articles 128 and 224 A respectively, both of which deal with the appointment of retired Judges at the Supreme Court and High Courts, and the implementation of these Articles, more so Article 224 A at this juncture, will greatly benefit the dispensation of Justice.

Article 224 A: Scope & Application

The language adopted by the framers of the Constitution for Articles 224 A and 128 respectively are very similar, but for the difference in the marginal note, which in Article 128 relates to the attendance of retired Judges at the sittings of the Supreme Court. Article 224 A was in fact very much part of the original text of the Constitution but was at that time numbered as Article 224.

The language adopted in this Article was identical but its marginal note during that period read as “Attendance of Retired Judges at Sittings of High Court”. Article 224 A was inserted and introduced by the Constitution (Fifteenth Amendment) Act, 1963 and the marginal note of the Article eventually became “Appointment of Retired Judges at Sittings of the High Court.” Articles 128 and 224 A, have both been derived and coined from Section 8 of the Supreme Court of Judicature (Consolidation) Act, 1925, which relates to the Supreme Court of Judicature in England. Under the Act, Section 8 reads as follows:

“The Lord Chancellor may at any time, subject to the provisions of this section, request any person who has held the office of the Judge of the Court of Appeal or of a Judge of the High Court to sit and act as a Judge of the Court of Appeal, and every such person so requested shall, while so sitting and acting have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be a Judge of the Court of Appeal.

Provided that nothing in this section shall be deemed to require any such person as aforesaid to sit and act as a Judge of the Court of Appeal unless he consents so to do."

Having briefly explained the minute difference between Articles 224 A and 128, it would be appropriate to restrict the scope of this piece only to Article 224 A, as its application would greatly benefit the High Courts of the State, more so than the Supreme Court, keeping in mind that more than 80% of the vacancies have already been filled at present at the Supreme Court.

Article 224 A as it is found at present, starts with the non-obstante clause and provides that notwithstanding anything contained in Chapter V of Part VI of the Constitution, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or any other High Court to sit and act as a Judge of the High Court for that State. The Article further provides that every such person so requested shall, while so sitting and acting be entitled to such allowances as the President may by Order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be a Judge of that High Court.

According to the proviso to the Article, no person would be required to sit and act as a Judge of the High Court unless he consents to do so. The Article further makes it clear that the person while so sitting and acting shall have all the jurisdiction, powers and privileges of a Judge of the High Court, but shall not otherwise be deemed to be a Judge of that Court.

*The Supreme Court of India has had an opportunity to extensively analyze the objective and purpose behind introducing Article 224 A of the Constitution in **Krishan Gopal vs Shri Prakash Chandra & Ors., (1974) 1 SCC 128**. According to the Court, as per Article 224 A, the words "while so sitting and acting" demonstrate that the person requested not merely has the jurisdiction, powers and privileges of a Judge of the High Court, but he also sits and acts as a Judge of that Court. This thereby mean that these words do not contemplate that the person so requested has the powers, privileges and jurisdiction only when he sits in Court during Court hours, but in fact implies that during the period a person assumes the position of a Judge at a High Court, at that point of time, s/he has the jurisdiction, privileges and powers of a sitting Judge of that Court. At this point it is imperative to question the significance of the words "but shall not otherwise be deemed to be a Judge of that Court".*

According to the Supreme Court, these words indicate that in matters not relating to jurisdiction, powers and privileges the person so requested shall not be deemed to be a Judge of that Court. The term "otherwise", which means "in other ways or circumstances", would, therefore, by necessary implication, accentuate and highlight the fact that for purposes of jurisdiction, powers and privileges the person requested under Article 224 A is a Judge of the concerned High Court. This means that for any purpose other than those of jurisdiction, powers and privileges, the person so requested shall not be deemed to be a Judge of that Court. In fact, the introduction of the word "deemed" only goes to demonstrate further that the person who sits and acts as a Judge of the High Court under Article 224 A is a Judge of the said High Court only for the purposes relating to jurisdiction, powers and privileges, and not to be considered as a Judge of the Court by a legal fiction otherwise. Therefore, the basic distinction between a person who has been appointed as a Judge as per Articles 217(1) or 224(1) and Article 224 A is that as per Article 224 A, a person would not be permitted to be transferred to another Court as per Article 222 of the Constitution or; being a retired Judge s/he would obviously be the senior most member of that High Court, yet s/he would not be entitled to any seniority in the order of Judges or; the fact that a retired Judge appointed will only be entitled to such allowance as the President may by order determine or; that the provisions of the High Court Judges (Conditions of Service) Act, 1954 also would not be applicable to them or; that there is no fixed tenure for such appointment and it would continue for such period as may be fixed by the President in his order of consent.

To succinctly summarize what has been stated in the above paragraphs, firstly, while the appointment of permanent Judges under Article 217(1) or of Additional and Acting Judges under Article 224 (1) are made by the President under his warrant, under Article 224 A, the Chief Justice of a High Court can directly appoint a retired Judge of that High Court or any other High Court in consultation and approval of the President of India. This point demonstrates that unlike the appointment of Judges under Articles 217 or 224 of the Constitution, wherein the Chief Justice of a particular state is consulted by the collegium of the Supreme Court to decide upon the elevation of a Judge, under Article 224 A, the framers of the Constitution have thought it fit to provide adequate independence and discretion to the Chief Justice of a particular High Court in direct consultation with the President to make the appointment of a retired Judge. This in fact is more advantageous, considering the present stalemate as appointments of retired Judges can be made expeditiously without unnecessarily consulting or involving the Supreme Court thus, serving the immediate purpose of filling the huge void of the lack of High Court Judges throughout the country.

Secondly, the Chief Justice of a High Court while considering the appointment of a retired Judge of a High Court need not restrict himself/herself to a particular state but can do so from any retired Judge throughout the country and this thereby gives a lot of flexibility for the Chief Justice while making a choice.

Thirdly, the retired Judge who is appointed, will be equated to a sitting Judge of the High Court only for the purpose of jurisdiction, powers and privileges but not otherwise.

Lastly and most importantly, the Judge who is to be appointed must provide his/her consent. It is evident from this that the request made by the Chief Justice to the person who has held the office of a Judge of that Court or any other High Court is to sit and act as a Judge of the High Court for that State and this must be duly accepted by the retired Judge. In fact, the reason why consent of the retired Judge to accept an offer of appointment is required is that after having retired from service, he is not bound by the conditions of service of a High Court Judge. **(Union of India v. Sankalchand Himatlal Sheth, (1977) 4 SCC 193).**

Alarming Judges Strength/Pending Cases Throughout The Country

The Law Minister, Mr. Sadananda Gowda has some time back expressed his anxiety over the large vacancies of Judges in the High Courts throughout the country and has blamed the collegium system for contributing to it. Although the Law Minister is partially right in holding the collegium system accountable, there are many other reasons and factors that have contributed to this situation, such as lack of infrastructure, funds for salary and technological up gradation, etc., to be sanctioned by the legislature and implemented by the Executive. In fact, prior to the recent conference of the Chief Justices with Chief Ministers, it was decided amicably that no new appointments would be done until and unless proper infrastructure is created for the smooth functioning of the system. But the reason for the vacancies is not the focus of this piece and can be a subject of another debate. The fact of the matter is that the Judges-to-people ratio is woefully low in India, which as mentioned above is around 15.5 per 10 lakh Indians. Besides this, the institution of cases in Courts far exceeds their disposal. In fact, the average disposal per Judge comes to around 2,370 cases in High Courts and 1,346 in Subordinate Courts calculated on the basis of disposals and Judge strength in December 2010. There is a requirement of about 1,539 High Court Judges and 18,479 subordinate Judges to clear the backlog. As per a recent Statement showing the Approved Strength, Working Strength and Vacancies of Judges in the Supreme Court of India and the High Courts uploaded by the Department of Justice in its website on 1.06.2015, against a sanctioned strength of 1017 Judges in 24 High Courts, there are only 646 Judges at present, with almost 371 posts or

nearly 36% vacant. The Allahabad High Court shockingly has the highest vacancies with 81 as against a sanctioned strength of 160 Judges. In fact, as per the recent statement by the Law Minister, there are about 3.2 crore cases pending throughout all Courts in the country out of which the High Courts have contributed more than 44 lakhs to this number.

The following pictorial figures will demonstrate the worrying state of affairs of the Judicial System in this country, and it is the litigants who have to face the brunt of the indecisiveness and lackadaisical attitude demonstrated by the various pillars of our democracy

| Problem of Pendency | | | | |
|---------------------|----------|---------|----------|-----------------|
| High Court | Strength | Working | Vacancy* | Case Pendency** |
| Allahabad | 160 | 79 | 81 | 10,14,146 |
| Karnataka | 62 | 34 | 28 | 2,14,120 |
| Bombay | 94 | 65 | 29 | 3,64,576 |
| Punjab & Haryana | 85 | 55 | 30 | 2,79,699 |
| Gujarat | 52 | 29 | 23 | 95,302 |
| Delhi | 60 | 41 | 19 | 66,989 |
| Rajasthan | 50 | 29 | 21 | 2,28,353 |

*As on June 2015 ** As on Dec 2014

The Right Time To Act Is Now!

What has been demonstrated until now is that there is nothing that has effectively been done to confront or curb the glaring vacancy of Judges throughout various Courts and the shocking pendency of cases, having at present crossed over 3 crores; it is time both the government and judiciary rise up to the occasion and tackle the same in an effective manner. With the collegium system now in place, it is imperative that something is done expeditiously to resolve this situation and not let the disease of ineptitude and inefficiency spread and affect innocent litigants of this country. The framers of the Constitution have envisioned such situations and have for this very purpose introduced Articles such as 224 A to be utilized intelligently and to assist in the speedy and effective dispensation of Justice. In fact, A Direct Taxes Enquiry Committee was set up by the Government of India in 1970, with Mr. K.N. Wanchoo a retired Chief Justice of the Supreme Court of India, as its Chairman, who suggested that Article 224 A be applied to clear the backlog of tax cases, which clearly demonstrates that this Article is needed to be applied at times of desperate need for the greater good of dispensation of Justice.

The recent statement made in the Chief Ministers and Chief Justices Conference that no new appointments would be made until and unless proper infrastructure is created for the smooth functioning of the system only make matters worse considering the present despairing situation the Judicial system of this country has put itself in. The Judiciary has in our democracy always been considered as a last ray of hope for desperate litigants and it is their rightful duty not to let down the citizens of this country. It is the right time for the respective Chief Justices, who are the Judicial leaders of a state, to inspire confidence in the people, especially considering the fact that they can do something about eradicating this problem and creating a minor dent in backlog of cases, at least in a small way, by applying Article 224 A. In fact, the High Courts that apply this Article will get veterans who have had ample experience and exposure in dealing with pressure situations and, additionally, the Chief Justices will also have the discretion of choosing a retired Judge based on his/her past performance, which in a way is much more effective for the dispensation of Justice than having a new Judge come in either through Articles 217 or 224. The respective High Courts must in fact formulate a policy wherein if at any point of time the judicial strength in a particular High Court drops to 80% or below, then under such a scenario, if there are not going to be any new appointment of Judges as per Articles 217 or 224, the Chief Justice of the respective High Court must automatically consider applying Article 224 A, which is available at his/her disposal. The Chief Justice can in fact also have a regular list of retired Judges and have it updated from time to time, to call upon them if the need occurs. But having said this, since Article 224 A requires the consent of these retired Judges, it is equally the responsibility of these people to stand up to the occasion and come forth and act in the interest of Justice, even if it be at the cost of their private practice as Senior Advocates or Arbitrators. The government in turn should also act reasonably and responsibly in ensuring that something effective is done in the near future to fill the gaping voidness that has been created collectively by both the organs of our State. The right time to act is, therefore, now and hopefully there will soon be "ache din" for the litigants of this country."

- (K) That in the light of Article 224A, the Petitioner made a representation before His Excellency the President of India, Hon'ble The Chief Justice of India and also addressed the same to all the Hon'ble Chief Justices of the High Courts, inter alia making following prayer: -

"In view of what has been stated herein above, it is most respectfully prayed that till the final decision is taken by the Government of India on the representation regarding enhancing the age of retirement of the Judges serving in the Hon'ble High Courts, the Judges who are not

*yet relieved on account of attaining the age of 62 years, may not be relieved invoking **Article 224A of the Constitution of India**, as our country is already facing huge crisis due to insufficient number of judges in Hon'ble High Court and growing pendency of cases. It's also pertinent to mention that the vacancy of the Judges in the High Courts has not been filled and eight (8) High Courts in our country are already functioning with Acting Chief Justices.*

The matter pertains to effective administration of justice and rule of law and would serve larger public interest."

Copy of Representation dated 07.12.2017 is annexed herewith as Annexure No. 4.

- (L) That the Petitioners filed Writ Petition (P.I.L.) No. 152 of 2017 before this Hon'ble Court, *inter alia* mainly seeking that the upper age limit of the Judges of the Hon'ble High Courts be raised at par with the Judges of the Hon'ble Supreme Court i.e. from 62 years to 65 years. However, this Hon'ble Court vide order dated 18.12.2017 was pleased to dismiss the said writ petition as withdrawn without prejudice to approaching any appropriate forum.
- (M) That thereafter, the Petitioners submitted detailed representation before the second respondent in the light of aforesaid observations passed by this Hon'ble Court. **Copy of Representation dated 27.12.2017 is annexed herewith as Annexure No. 5.**
- (N) That however, vide letter dated 23.04.2018, the second respondent (Department of Justice) informed the Petitioners that **"Government will consider the matter further at an appropriate stage."** **Copy of letter dated 23.04.2018 is annexed herewith as Annexure No. 6.**
- (O) That vide letter dated 09.07.2018, the second respondent (Department of Legal Affairs) informed the Petitioners that the subject matter comes within the ambit of Department of Justice and as such the representation sent by the Petitioner is being transferred with a request for consideration and taking necessary action as deemed appropriate. **Copy of letter dated 09.07.2018 is annexed herewith as Annexure No. 7.**

7. That the respondents have taken the matter very casually and despite assurance that they will consider the matter at an appropriate stage, no steps have been taken so far even, to the best of the knowledge of the Petitioners and as such, the Petitioners are constrained to again knock the doors of this Hon'ble Court.
8. That it is imperative to note here, that the right to get speedy justice is a Fundamental Right of every citizen. Mounting of arrears of cases in the Courts, has been a cause of great concern, which is also affecting the administration of justice and by raising the upper age limit of the Judges of the High Courts at par with the Judges of Supreme Court, many problems would be solved.
9. That it is a fundamental right of every citizen to get speedy justice and speedy trial which also is the fundamental requirement of good judicial administration. Mounting of arrears of cases in courts, has therefore, been a cause of great concern for litigants as well as for the States but to deal with the said issues, no concrete steps are being taken by the Government. The Government has shown a very casual approach with regards to the issue in hand and as such its high time, the matter requires immediate indulgence of this Hon'ble Court.
10. That presently, there are about more than 43lakh cases pending in 24 High Courts of the country. Also, 399 posts i.e. 37% of the sanctioned judge strength is still vacant as on 01.06.2019 but the Government is not taking the issue very casually which is very unfortunate. So far, the issue of filling up, the vacancies are concerned, the Petitioners are approaching the Hon'ble Apex Court by invoking its writ jurisdiction under Article 32 of the Constitution.
11. Hence, the petitioner has no other equally efficacious alternative remedy but to invoke the jurisdiction of this Hon'ble Court under Article 226 of Constitution of India on the following amongst other grounds: -

GROUND

- A. Because the respondents have taken the matter very casually and despite assurance that they will consider the matter at an appropriate stage, no steps have been taken so far even, to the best of the knowledge of the Petitioners and as such, the Petitioners are constrained to again knock the doors of this Hon'ble Court.
- B. Because the right to get speedy justice is a Fundamental Right of every citizen. Mounting of arrears of cases in the Courts, has been a cause of great concern, which is also affecting the administration of justice and by raising the upper age limit of the Judges of the High Courts at par with the Judges of Supreme Court, many problems would be solved.
- C. Because it is a fundamental right of every citizen to get speedy justice and speedy trial which also is the fundamental requirement of good judicial administration. Mounting of arrears of cases in courts, has therefore, been a cause of great concern for litigants as well as for the States but to deal with the said issues, no concrete steps are being taken by the Government. The Government has shown a very casual approach with regards to the issue in hand and as such its high time, the matter requires immediate indulgence of this Hon'ble Court.
- D. Because presently, there are about more than 43lakh cases pending in 24 High Courts of the country. Also, 399 posts i.e. 37% of the sanctioned judge strength is still vacant as on 01.06.2019 but the Government is not taking the issue very casually which is very unfortunate. So far, the issue of filling up, the vacancies are concerned, the Petitioners are approaching the Hon'ble Apex Court by invoking its writ jurisdiction under Article 32 of the Constitution.
- E. Because in view of Article 224A of the Constitution of India, even the retired Judges can be appointed in High Courts and thus not raising the upper age limit of the Judges of the Hon'ble High Courts at par with the Judges of the Hon'ble Supreme Court, would be irrational, arbitrary, whimsical, discriminatory and violates Article 14 of the Constitution of India.

- F. Because after attaining the present age of retirement i.e. 62 years, the Judges of the Hon'ble High Courts are appointed to various Commissions like State Consumer Forums, Central Administrative Tribunals etc. and thus they cannot be said to unfit to serve the High Courts for further period at least 3 years, which would be at par with the Judges of the Hon'ble Supreme Court.
- G. Because there is common consensus among the Judiciary, Executive and Legislature as well as various stakeholders that this provision in the Constitution of India requires urgent amendment and upper age limit of High Court Judges should be raised to the age of 65 years at par with the age of holding offices by the Judges of the Hon'ble Supreme Court.
- H. Because the Government which agreed to seek necessary amendment in the Constitution of India giving due weightage to the crucial issue and in fact presented **The Constitution (One Hundred and Fourteenth (Amendment) Bill, 2010** in the Lok Sabha on August 25, 2010 through the then Minister of Law and Justice, Shri M. Veerappa Moily which sought amendment in **Articles 217 and 224 of the Constitution of India** relating to raising of upper age limit of the judges of the High Court.
- I. Because it's painful that above-said bill lapsed due to inactive attitude of the previous Government and no further progress was made in this regard.
- J. Because raising the upper age limit of the High Court Judges from 62 years to 65 years is the need of hour and would help to deal with the burning problem of pendency and mounting of the cases.
- K. Because there is backlog of cases in Hon'ble High Courts around the country which are getting increased day by day due to vacancy of judges. One of the various reasons for vacancy is/was retirement of Judges of the Hon'ble High Court at the age of 62 years.
- L. Because there is no rationale behind keeping the upper limit of age of 62 years for holding office of the High Court Judge while same is 65

of the Hon'ble Supreme Court. In-fact Hon'ble Supreme Court has time and again reiterated that High Court is not inferior to it in administration of justice. Therefore, the ceiling on the upper age limit of 62 years is irrational, arbitrary and deserves to be reviewed.

- M. Because one of the factors deterring a competent lawyer from accepting judgeship is the retiring age at 62, increasing it to 65 may induce competent lawyers to seek appointment as judges of the High Court.
- N. Because with a larger tenure, judges may acquire more maturity and with retirement at 65, a judge may be less anxious about looking for employment after retirement, by way of an appointment to a Tribunal or Commission by governments.
- O. Because the Chief Justices and most senior judges of the High Courts, nearing their retirement at 62 years, sometimes aspire unbecomingly to being selected judges of the Supreme Court not only for the prestige of the post but also to obtain another three-year stint in the Supreme Court. If the retirement age is increased to 65 at par with that of Supreme Court judges, senior judges may be content with remaining in their own High Court rather than to seek an additional three-year stint, in the Supreme Court.
- P. Because in others countries such as in the High Court of Australia (which is the apex court there) retiring age is 70 years, in the Supreme Court of Canada its 75 years, in the Supreme Court of Ireland its 70 years, in the Supreme Court of Israel its 70 years, in the Supreme Court of New Zealand its 68 years, in the Constitutional Court of South Africa its 70 years or after 12 years of service, and in the U.K. Supreme Court 75.
- Q. Because the Petitioner has already sent a representation to the Ministry of Law & Justice, Government of India which is pending disposal for a considerable long time.

PRAYER

In the above facts and circumstances, it is most respectfully prayed that the Hon'ble Court may be pleased to:

- a) Issue writ, order or direction, in the larger public interest, commanding the respondents to decide the representation dated 27.12.2017 submitted by the Petitioners by a well-reasoned and speaking order.
- b) Issue writ, order or direction, in the larger public interest, quashing the letter dated 23.04.2018, so far it does not prescribe any time frame for considering the urgent necessity to bring amendment in the Constitution of India with regard to raising of upper age limit of the High Court Judges at par with the Judges of the Hon'ble Supreme Court, in the interest of justice.
- c) To Issue an order, direction or writ to the respondents which this Hon'ble court deems fit and proper in the facts and circumstances of the case.

Dated: 29th June, 2019

S. Bhupendra Singh & Deepika Sharma
Advocates
Counsel of Petitioners