

All India Judges' Association

Vs

Union of India and Others

Writ Petition (Civil) No. 1022 of 1989

(A. M. Ahmadi, P. B. Sawant JJ)

13.11.1991

JUDGMENT

RANGANATH, MISRA, C.J. –

1. This application under Article 32 of the Constitution is by the All India Judges' Association and its working President for reliefs through directions for setting up of an All India Judicial Service and for bringing about uniform conditions of service for members of the subordinate judiciary throughout the country.

2. Rule having been granted, notice was issued to the Union of India and all the States and Union territories. Most of them have responded by making returns to the rule. A few of the States have taken the stand that they would accept whatever this Court ultimately decides while others have placed their viewpoints and yet some others have objected to the reliefs claimed.

3. Mr. Sriramulu, Chairman of the All India Judges' Association personally appeared at the hearing. Mr. Raju Ramchandran on our request appeared to support the petition as amicus curiae. At the hearing the standing counsel for the several States and Union territories have also been heard.

4. The plea for setting up of All India Judicial Service was not seriously pressed and reliefs on the following heads were claimed :

- (1) Uniformity in the Judicial cadres in the different States and Union territories;
- (2) An appropriate enhanced uniform age of retirement for the Judicial Officers throughout the country;
- (3) Uniform pay scales as far as possible to be fixed;
- (4) Residential accommodation to be provided to every Judicial Officer.
- (5) Transport facility to be made available and conveyance allowance provided.
- (6) Adequate perks by way of Library Allowance, Residential Office Allowance, and Sumptuary Allowance to be provided.
- (7) Provision for in service training to be made.

5. Administration of justice and organisation of courts was a provincial subject under the

Government of India Act, 1935. The Constitution adopted the same scheme by providing in Entry 3 of List II of the Seventh Schedule the subject of administration of justice, constitution and organisation of all courts excepting the Supreme Court and the High Courts as a State subject. It was only under the forty-second Amendment in 1977 that Entry 3 from List II was deleted and the subject as such was taken as Entry 11-A in the Concurrent List. This had become necessary on account of the recommendation of the Law Commission that an All India Judicial Service should be set up.

6. Prior to independence, the District Judge used to be invariably a Member of the Indian Civil Service and his position in the district was superior to that of the District Magistrate. This position continued until the Indian Civil Service came to be abolished around 1946-47. This long association of the Civil Service with the judicial manning had led to service conditions of both to be tied up. Criminal justice at that time was handled by Magistrates who belonged to the executive.

7. Under the Constitution, the concept of Rule of Law came to be accepted and developed. Article 50 prescribed the guideline of separating "the judiciary from the executive in the public services of the State". This position is the outcome of recognition of the fact that the judiciary is a class separate from the executive.

8. The control over the subordinate judiciary has been vested in the High Court and the administrative control has been construed to be complete and exclusive. Yet, in certain aspects, and particularly in regard to service conditions, the distinction has not been maintained. That is why very often when any specific aspect relating to conditions of service is taken up or benefits for judicial service is considered, comparative basis between the two is adopted for review. It is high time that this aspect is appreciated and the administrative authorities remain alive to it.

I

9. We shall first deal with the plea for setting up of an All India Judicial Service. The Law Commission of India in its Fourteenth Report in the year 1958 said :

"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 persons. 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.

Such a scheme, it was urged, would result in bringing into the subordinate judiciary capable young men who now prefer to obtain immediate remunerative employment in the executive branch of government and in private commercial firms. The scheme, it was pointed out, would bring to the higher subordinate judiciary the best talent available in the country as a whole, whereas the lower subordinate judiciary would be drawn from the best talent available in the State."

The Commission proceeded to further state :

"Recruitment to the higher judiciary at the all-India level in the manner suggested

would be a powerful unifying influence and serve to counteract the existing growing regional tendencies. In this connection, attention may be drawn to the observations made by the States Reorganisation Commission in regard to the creation of the All India Services as a major compelling necessity for the nation.

The Commission observed : The *raison d'etre* of creating All India Services, individually or in groups, is that officers on whom the brunt of responsibility of administration will inevitably fall, may develop a wide and all-India outlook. The present emphasis on regional languages in the Universities will inevitable lead to the growth of parochial attitude, which will only be corrected by a system of training which emphasises the all-India point of view'... It has not been very easy for us to balance these considerations, but we are definitely of the view that proportion of the higher judiciary should be recruited by competitive examination at the all-India level so as to attract the best of our young graduates to the judicial service. This measure will enlarge the field of selection and bring into the higher judicial service a leaven of brilliant young men who will set a higher tone and level to the subordinate judiciary as a whole. The personnel so recruited will be subjected to an intensive training. The rest of the higher judiciary should, in our view, be recruited in part directly from senior members of the bar, and partly by promotion from the lower subordinate judiciary."

Dealing with the same subject from a different angle, the Commission proceeded to say :

"The great advantage that the Indian civilian had, was the intensive and varied course of training which he had to undergo. At the time of his first entry into service, his training was confined to matters pertaining to the revenue and criminal administration alone, but when he was taken over to the judicial side, generally an equally intensive training in civil law was given to him for a period of not less than eighteen months. There can be no doubt that a similar intensive judicial training given to a judicial officer who possesses a law degree can be of the greatest value Indeed, it can be claimed that a planned and systematic training such as is contemplated by us for the judicial officer selected for the Indian Judicial Service may be more effective than the uncertain and spasmodic training which may be received during the course of a few years practice at the bar. These and the other considerations referred to earlier have led us to the conclusion that in the interests of the efficiency of the subordinate judiciary, it is necessary that an All India Service called the Indian Judicial Service should be established. This will need action being taken in the manner provided by Article 312 of the Constitution."

The Law Commission has reiterated this view in subsequent reports. It took nearly 20 years for the government to take follow up action on the basis of the recommendation and that led to the amendment of the legislative entries as already referred to.

10. This proposal of the Law Commission and the follow up governmental action led to consultation and dialogue in the Conference of Chief Justices of the High Courts but many of the High Courts were of the view that setting up of an All India Judicial Service would affect the constitutional scheme of control of the High Courts over the subordinate judiciary and in particular Article 235 of the Constitution. Article 233 makes provision for appointment of District Judges and requires that appointment to such posts has to be made by the Governor of the State in consultation with the

appropriate High Court. Article 234 provides for recruitment of persons other than District Judges to judicial service by prescribing that appointments shall be made by the Governor of the State in accordance with the Rules made by him in that behalf after consulting the State Public Service Commission and the High Court exercising the jurisdiction in relation to such State. The post of District Judge has ordinarily been equated with the senior scale status in the All India Services. It was perhaps not contemplated by the Law Commission that on appointment members of the proposed All India Judicial Service were to hold the post of District Judge. Like all other All India Services the initial recruitment could be to a lower rank equal to civil judge after serving in such post for a reasonable time appointment to the post of District Judge could be made. Since the Law Commission itself was of the view that a percentage should be filled up by direct recruitment from the bar, the scheme envisaged by the Law Commission would not require amendment of Article 233. It is to be examined whether any alterations in Article 234 would be necessary or recruitment to All India Service could be made by appropriate amendment of the State Rules contemplated under that article.

11. Control over the subordinate courts under the constitutional mechanism is vested in the High Court. Under Article 235, the provision is that the control over District Courts and courts subordinate thereto vests in the High Court. 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. We are 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. The reasons advanced by the Law Commission for recommending the setting up of an All India Judicial Service appeal to us.

12. 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, we do not intend to give any particular direction on this score particularly 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.

II

13. The Law Commission in the Fourteenth 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, we think, 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. We would, therefore, suggest 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)."

14. If reference is made to Article 236 of the Constitution, it would be noticed that the expression "District Judge" has been defined to include Judge of a City Civil Court, Additional District Judge, Joint District Judge, Assistant District Judge, Chief Judge of a Small Causes Court, Chief Presidency Magistrate, Additional Chief Presidency Magistrate, Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge. This definition in Article 236 covers the higher section of the State Judicial Service both in the civil and criminal sides. The definition is only inclusive and in implementing the recommendations of the Law Commission to simplify the designations by saying that the hierarchy of subordinate judicial officers would be District Judge or Additional District Judge, below him Civil Judge (Senior Division) and below him Civil Judge (Junior Division) does not go against the constitutional scheme nor does it require any amendment of the Constitution. If there be any laws operating in the States, perhaps the same have to be appropriately modified or altered if the uniformity recommended by the Law Commission has to work out.

15. We are 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 Code of Criminal Procedure. 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. We direct 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.

III

16. One of the issues debated at the hearing related to the age of retirement. The Constitution has fixed the age of retirement of Judges in the High Courts and the Supreme Court at 62 and 65 years respectively. There is no constitutional prescription of the age of retirement of the members of the subordinate judiciary and in India that is controlled by the relevant rules obtaining in the different States and Union territories and it is 58 years at present excepting in the State of Kerala where the age of superannuation is 55 years for all State Government employees including the members of the State Judicial Service.

17. 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 inasmuch as 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 many of the States and the Union territories, for recruitment to the post in the judicial service a basic period of experience at the bar is a prerequisite. Thus, while for the civil service the age of recruitment varies between 25 and 28 years, for judicial service at the basic level most of the States permit entry upto the age of 32. In some of the States where direct recruitment of judicial officers for an in between stage is permitted, the age of entry is even up to 35 years. Article 233(2) of the Constitution provides :

"233. (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

18. Keeping this constitutional requirement in view in respect of direct recruitment for District Judge, entrance is permitted up to a later age in many States. Thus at the point of entry into service there is a marked distinction between civil service and the judicial service.

19. Notwithstanding these special features the history of the service would show that no distinction has been maintained in regard to the age of retirement between of the civil service and the officers of the judicial service and over the years the same rule has been applied to both. This Court in *Moti Ram Deka v. General Manager, North East Frontier Railways, Pandu* ((1964) 5 SCR 683 : AIR 1964 SC 600) pointed out : (SCR p. 706)

"In regard to the age of superannuation, it may be said prima facie that rules of superannuation which are prescribed in respect of public services in all modern States are based on considerations of life expectation, mental capacity of the civil servants having regard to the climatic conditions under which they work, and the nature of the work they do. They are not fixed on any ad hoc basis and do not involve the exercise of any discretion. They apply uniformly to all public servants falling under the category in respect of which they are framed."

Nature of work is thus one of the considerations relevant to fixing the age of retirement.

20. 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 movement. 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.

21. As already indicated, retirement age for High Court Judges is 62 years. A sizable portion of the manning in the High Court is done by elevating District Judges and those who are elevated continue up to the age of 62 years like directly elevated members of the bar to the High Court.

22. There are certain services in the States where retirement is fixed at the age of 60 years taking into account the special type of work the officers are called upon to perform. For instance, throughout the country teachers of universities are allowed to serve up to 60 years of age. Employees under some of the corporations also go up to the age of 60. Scientific Research Officers are also allowed in many cases the benefit of 60 years age of retirement.

23. Mr. Moti for the State of Kerala raised serious objection to raising the age of retirement of judicial officers to a common level of 58 years by contending that this would lead to unrest in the other services of the State and everyone would press for the age of retirement being enhanced to 58. In fact, Kerala had once experimented with the enhanced age for all and has reverted back to the age of 55. The main ground raised by Mr. Poti to resist the proposal of enhancement is that in the State of Kerala the level of literacy is high and unemployment is acute. If the age of retirement is

enhanced the scope of the unemployed to get employment would be adversely affected. We are not impressed by the submission of Mr. Poti on this score. The total number of judicial officers of every category in the State may not exceed 3000 or so. This certainly is not such a big number that might create unemployment problem in the event of the age of superannuation being brought to the all India level of 58 or even enhanced to a higher limit.

24. The law Commission in its Fourteenth Report dealt with this aspect page 213 of the Report and said :

"There is yet another reason why the question of the age of retirement of the subordinates judiciary should be treated differently from that in other State Services. As noticed earlier a judicial officer enters service at a comparatively higher age than a recruit to the executive or administrative services. It would, therefore, be proper that the retirement age of a judicial officer should, so as to enable him to serve for the full number of years if he retains his fitness and capacity of work till he reaches such higher age.

We, therefore, recommended that the retirement age of the subordinate judiciary in all States should be raised to 58 years. Such a measure will tend to raise the tone and morale of the judicial service as a whole. It will also be consistent with our recommendation to raise the age of retirement of High Court Judges to 65 years".

25. The recommendation that superannuation should be fixed at 58 for judicial officers was made at a time when in public services retirement has prescribed at the age of 55. Considering the enhancement of the longevity of human life and taking all other relevant considerations into account, all the States and all the Union territories have now enhanced the age of retirement to 58 years excepting, as already pointed out, in the case of the State of Kerala. We are the view that on the logic which was adopted by the Law Commission and for the reason which we have indicated the age of retirement of judicial officers should be 60 years. We accordingly direct 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, 1992. We have given a long period so that appropriate amendments may be made in the meantime.

IV

26. We shall now deal with the claim for appropriate pay scales and on, as nearly as possible, uniform basis. The Fourteenth Report of the Law Commission dealt with this matter at page 163 of the Report and said :

"In the matter of scales of pay and remuneration the judiciary compares unfavourably with the executive branches of the government. It is true that, generally speaking, the scales of pay of the judicial officers and the corresponding executive officers are identical in many of the States. However, it has to be remembered that the executive officers are, by and large, recruited at a much younger age than the judicial officers. The entrant to the judicial service 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, sufficient. 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 service starts with a lower remuneration than what he would have received if he had entered the executive service 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."

27. We had called for the prevailing pay scales of the different judicial cadres in the States and the Union Territories and the same have been made available to us. We found that there is wide variance in the pay structure prevailing in the various States and Union territories and for the same nature of work performed by the judicial officers that are remunerated differently. It is difficult for us on the data now placed to get into the exercise of fixing the appropriate pay scales. We suffer a handicap in the absence of full details necessary for fixing the appropriate pay scales on comparative basis. Again, we are apprehensive that if we enter into the matter and say something in a final way, it is possible that in some States benefits which are now available may be taken away or adversely effect some officers. For these reason, we do now available may be taken propose to finally examine the property of the existing pay scales nor do we direct any pay scales to be fixed.

28. A pay Commission for the Central Government employees was appointed about 8 years back and on the basis of its Report the revised benefits have been given effect to from January 1, 1986. Following that pattern, most of the States have either given the Central scales or appointed their own commissions or committees and given the revised benefit to their officers. It appears that with an interval of 10 years or so such a commission is being appointed and pay scales are being reviewed. Such an exercise is likely to be undertaken within less than three of our years. We are of the view that the claim on this score can be better handled when the pay commission or committees in the States are set up to review the position. We direct that as and when such commission or separately examine and review the pay structure of judicial officers keeping in view all relevant aspects.

V

29. Under this head, however we would like to deal with the claim foe various allowances. Unlike the administrative officer, the judicial officer is obliged to work for long hours at home. When he reserves a judgment he has usually to prepare the same at his residence. For that purpose, he has to read the records as also the judicial precedents cited by counsel for the adversaries. Even otherwise with a view to keeping himself up to date about the legal position he has to read judgment of his own High Court, other High Courts and of the Supreme Court. He has also to read legal journals. The judicial officer very often has to provision of an office at his residence. Unless a reasonable allowance is provided for maintaining an office, it becomes very difficult for him to undertake the various aspects of the exercise referred to above. We are of the view that a residential office. The same for the Civil Judge (Junior Division) and the Civil Judge (Senior Division) be fixed at the rate of Rs 250 per month and for officers of the higher category the monthly allowance should be Rs 300.

30. Law books, law reports and legal journals are indispensable to a judicial officer. They are in fact his tools and in case a junior officer has to discharge his duties satisfactorily he has to get acquainted with these. His ability to perform his duty to a considerable extent depends upon his reading habit and devoting a sizeable working time to reading all this literature. Reading habit is indispensable to a judicial officer and possession of a small library of one's own helps generation of the proper reading habit. Law books and law journals have in particular become very costly these days. One standard law journal for the decisions of the High Court, another for the decisions of this Court and one or two standard law journals on the average would cost about Rs 200 a month.

31. There is no existing system of providing law books journals to the officer of the law judiciary. Many of the judicial officers in the lower ranks have their working places away from the district headquarters where the seat of the District Judge is located. There is perhaps at every district headquarters a small library but the number of books is small and more than one copy of many of the books would not be available. Therefore, whether it is at the district headquarters or in areas away therefrom effective library facility is not available. We are of the view that a uniform pattern of small library should be provided to every judicial officer. We accordingly direct that such a library shall be made available by June 30, 1992 to every judicial officer and the District Judge should have provision made in his budget for the said residential library for every judicial officer under his control. The High Court should monitor this aspect effectively so that without loss of time, a handy library may be at the disposal of every judicial officer.

32. The District Judge is the principle judicial officer of the district. Ordinarily every revenue district has a District Judge and his seat is located at the headquarters. In heavy stations, the District Judge has a team of Additional District Judges to assist him. There would also be a number of judicial officer of lower categories working at the headquarters. It is the obligation of the District Judge to operate as the captain of the team both under his direct supervision at the headquarters and in respect of the officers located in different areas within his district. Of late, lower or subordinate courts are being established in the outlying and rural interior. It is the obligation of the District Judge tempo and temper of functioning in his district and be responsible for the efficient running of the system.

33. In many of the States the prevailing practice is that the District Judge takes a monthly meeting with the Collector and District Magistrate and the Superintendent of Police. He also meets the members of the bar. Now and then he meets his judicial officers - those at the headquarters as also the others who are in the interior. It is desirable that the District Judge devotes some time as frequently as possible and at least once a week to meet the judicial officers beyond the working hours, discusses working problems of his officers and forms his own opinion about how the work is being done. A weekly assessment of such performance generates even temper of judicial activity and upholds the tempo being maintained at the appropriate level. There is not yet any definite system of judicial training in most of the States and Union territories. A judicial officer with his first posting or until he acquires adequate experience requires guidance. It should ultimately be the obligation of the District Judge to provide the same. We are of the view that to the post of District Judge a monthly allowance of Rs. 300 by way of sumptuary allowance should be available to enable him to extend small countries at such meetings. The Chief Judicial Magistrate does some of these activities in respect of the Magistrates handling criminal work. In our opinion he should be entitled to a sum of Rs. 200 per month by way of sumptuary allowance. We are aware of the fact that under the Constitutions of Service Act of High Court Judges, a sumptuary allowance of Rs. 300 is payable to them every month. Now that we have directed that Rs. 300 should be fixed for the District Judges, we amend that the sumptuary allowance fixed for the High Court Judges may be enhanced

suitably. These allowances shall be payable from April 1, 1992. We would like to add that this allowance is intended for utilisation to the full extent for entertaining judicial officers in connection with performance of duty and would not be considered as a perk for being included in the hands of the recipient as his income.

VI

34. Provision of an official residence for every judicial officer should be made mandatory. A judicial officer to work in a manner expected of him has to free himself from undue obligations of others, particularly owners of buildings within his jurisdiction who ordinarily may have litigations before him. This is mostly the case in rural areas where outstation judicial courts are located. We are aware of cases where a rural court is located in the building belonging to a lawyer or a client. Even the residential accommodation of the judicial officer belongs to people of that category. Such a situation often gives occasion to personal embarrassment to the judicial officer and it has to be avoided.

35. Expenditure on residential accommodation in a family budget is not ordinarily to exceed 15 per cent of the monthly income; otherwise it becomes difficult for the person concerned to make his two ends meet. A judicial officer who is not provided residential accommodation is obliged to go in for rented accommodation. In view of the prevailing rate of rent, the smallest accommodation that can be taken may often cost 75 per cent to 100 per cent of the monthly salary, a situation which cannot be countenanced by any logic. It is absolutely necessary that appropriate conditions should be provided for the judicial officer and he should have reasonable mental peace in order that he may perform his duties satisfactorily. Rendering justice is a difficult job. It is actually a divine act. Unless the judicial officer has a reasonably worry free mental condition, it would be difficult to expect unsoiled justice from his hands.

36. Very often building projects are undertaken for providing residential accommodation to public officers but the requirement of the judicial officer is not taken into account for one reason or the other. Control of the State purse is in the hands of the executive. As appropriate share of construction expenses is not being provided towards accommodation of judicial officers, they do not have any quota in the building projects. As a result of this over the years at several places throughout the country residential accommodation for judicial officers has turned out to be scanty. Many judicial officers dread postings in metropolitan towns as residential accommodation is not available and the rental would be exorbitant in respect of private accommodation. The cost of living also becomes heavy.

37. We take judicial notice of the fact that the Planning Commission of the Central government is considering acceptance of the subordinate judiciary as a plan subject. Providing adequate residential accommodation should be considered as a priority. Until adequate governmental accommodation is available, it should be the obligation of the State at the instance of the High Court to provide requisitioned accommodation for every judicial officer according to his entitlement and recovery of not more than 12 1/2 per cent of salary of the officer towards rent should be made and the balance should be met by the State exchequer. We would emphasise the need of provision of a separate and exclusive office room as an indispensable component of every such official residence and the accommodation should take into account this feature. As a long term measure, government accommodation should be constructed to meet the need of the judicial officers at their respective stations. This should be a matter for the Planning Commission to review and the State Government to cooperate and undertake construction activity. The governments of the States and the Union

territories would take some time to implement this part of the direction. In case for some reason, the Planning Commission does not come forward to take up the matter before January 1992, the Chief Justice of every High Court should set up a committee with him as Chairman where two senior Judges of the Court and the Secretaries of Finance, Law and Works should be members and annual planning of construction of residences should be made. We accordingly fix the outer limit of December 31, 1992 when this part of the direction would become fully operative. VII 38. We shall now deal with the claim for transport. In most of the States the District Judge has been provided a motor car and in some of the States the Chief Judicial Magistrate is also provided with such transport, be it a car or a jeep. There are still some States like Rajasthan, Haryana and Madhya Pradesh where provision of a car for every District Judge has not yet been made. We direct that every District Judge should be provided with a car by March 31, 1992, and it shall be the obligation of the other States where such facility has not been provided to ensure the same within the time-limit.

39. The Chief Judicial Magistrate is a touring officer apart from doing trial work as a Magistrate. Mandate of the Code of Criminal Procedure requires him to undertake some touring. The quality of criminal justice administration would very much depend upon the mobility of the Chief Judicial Magistrate. We, therefore, direct that in such states and Union territories where provision of independent transport for the Chief Judicial Magistrate has not been made, the same should be done by September 30, 1992. We are further of the view that in stations with more than four judicial officers a common transport should be provided for the purpose of taking them from the residence to the court and back and meeting their other official purposes and such vehicle should be placed under the control of the senior most officer in the pool. The arrangement should be that for every officers, there should be a vehicle. Provision for this aspect should be made by March 31, 1993, This direction has become necessary as judicial officers should not be forced to travel along with litigants and lawyers. In many sensitive cases, records are carried by them. Often judgments to be pronounced are also taken by them. In some disturbed areas, instances of harassment to judicial officers taking advantage of their using common transport have come to light. We direct that every State and Union territory would file a compliance report in the Registry of this Court in respect of these three aspects within one month from the expiry of the outer limit indicated for each of them.

40. There are several outlying courts where the number of officers would not be more than five. We do not intend to provide any independent transport for them but such officer who ask for loan for purchase of a two wheeler automobile should immediately be provided the same Appropriate funds should be made available for such purpose. A pool car should have 60 litres of petrol per month and a judicial officer owning a scooter would be entitled to an allowance of Rs 200 per month.

41. We are alive to the fact that our directions involve a burden on the State exchequer. Perhaps some justification as to why these expenses should not be grudged must now be indicated. Professor Pannick in his book entitled Judges has observed :

"Judges do not have an easy job. They repeatedly do what the rest of us seek to avoid; make decisions."

He further added :

"Judges are mere mortals but they are asked to perform a function that is utterly divine."

Professor Harold Laski once wrote to Justice Oliver Holmes that "he wished that people could be

persuaded to realise that judges are human beings; it would be a real help to jurisprudence".

42 The trial judge is the kingpin in the hierarchical system of administration of justice. He directly comes in contact with the litigant during the proceedings in court. On him lies the responsibility of building up of the case appropriately and on his understanding of the matter the cause of justice is first answered. The personality, knowledge, judicial restraint, capacity to maintain dignity are the additional aspects which go into making the Court's functioning successful.

43. Krishna Iyer, J. described the scene very graphically thus : "Law is a means to an end and justice is that end. But in actually, Law and Justice are distant neighbours; sometimes even strange hostiles. If law shoots down justice, the people shoot down law and lawlessness paralyses development, disrupts order and retards progress. This is the current scene."

It calls for serious introspection.

44. The commission in its Fourteenth Report said :

"If the public is to give profound respect to the judges the judges should by their conduct try and observe it; not by word or deed should they give cause for the people that they do not deserve the pedestal on which we expect the public to place them. It appears to us that not only for the performance of his duties but outside the court as well a judge has to maintain an aloofness amounting almost to self-imposed isolation."

The Commission quoted Sir Winston Churchill who said :

"A form of life and conduct far more severe and restricted than that of ordinary people is required from judges and through unwritten has been most strictly observed. They are at once privileged and restricted; they have to present a continuous aspect of dignity and conduct."

45. These prescriptions for a Judicial Officer, Therefore, result in a restricted life. Austerity is a quality to be practiced by every Judge - personally as also in his public functioning. This necessarily gives rise to a situation where the Judge must have patience, Perseverance and pains taking habits. In order that a Judge may be able to put in these aspects into his public functioning it is absolutely necessary that the Judge enjoys freedom from Personal Worries. A reasonable Salary, appropriate allowances and manageable living conditions are, therefore, required to be provided.

46 For quite a few years the conditions of service of Judges of the superior Courts and those of the public officers in the executive side had been put at par excepting such provisions as were contained in the Government of India Act, 1935 or under the Constitution. For the first time it was accepted that separate Conditions of Service should be provided and Conditions of Service Acts for the High Court and Supreme Court Judges were Separately enacted in 1954. Those statutes and the Schedules therein even now contain provision to the effect that matters for which provisions have not been made by the statutes are to continue to be the same as provided for the officers in the executive wing as named. In a democratic polity the role of the judiciary is indispensable. The efficient Functioning of the rule of law under the aegis of which our democratic society can thrive requires an efficient, strong and enlightened judiciary. And to have it that way the Nation as to pay the price. There was a time when a Judge enjoyed a high status in society. Very often a successful member of the bar earning a high income favourably responded to the invitation of the Chief Justice to accept

judgeship. That no more is the position. The sense of professional obligation has died down for reasons more than one; but perhaps the most eloquent one is loss of social status of the Judge. The effect of this position in respect of the higher judiciary has its impact on the subordinate judiciary too. Half a century back a Judicial Officer even of the lowest category enjoyed great social status. He was looked upon with a sense of reverence. He led a life in tune with the recommendations of the Law Commission in its Fourteenth Report. He had the training of limiting his wants and managed to live a contented life by making his two ends meet with limited resources of small salary. That philosophy of life has vanished or is fast vanishing. A great social change has overtaken today's society. Life has become competitive; demands of life have increased; and attitudes have changed. Therefore, today a judicial officer always looks at life in a comparative way with administrative officers of his age. Professional income at the bar has tremendously swelled up. Very often counsel's fee per day equals to the salary of judicial officers for full month or even a longer period. This great disparity affects peace and equilibrium in the judicial operation.

47 As early as 1958 the Law Commission said :

"As we shall point out later, the problem has since 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 witness before us. It is thus obvious that no scheme of review of judicial administration will be effective or worthwhile unless the basic problem of providing a trained and capable judicial personnel is satisfactorily solved."

48. This was adequate and timely notice to the government and its people. Instead of attending to the problem then, 33 long years have been allowed to roll by and what was then said as growing in dimension has grown to devalue the system. Its resurrection has, therefore, become more costly.

49. It is perhaps useful to recall here the prophetic warning sounded by Robert Ingersoll :

"A government founded on anything except liberty and justice cannot stand. All the wrecks on either side of the stream of time, all the wrecks of the great cities, and all the nations that have passed away - all are a warning that no nation founded upon injustice can stand. From the sand enshrouded Egypt, from the marble wilderness of Athens, and from every fallen or crumbling stone of the once mighty Rome, comes a wail as it were, the cry that no nation founded on injustice can permanently stand."

50. Society, therefore, must understand the problem. Solution to the problem would depend upon realisation of the fact that the more capable people at the bar are not willing to accept offers of judicial appointments. The plea that the other wings in the States would demand improvement in their scales of pay is not a relevant feature at all when the problem is viewed from this angle. We hope and trust that society would generate the appropriate understanding of the matter and no government would come forward to take the stand that if the pay scales and perks of the Judicial Officers are improved similar demands would come from other wings of government.

51. Even in the existing system there are some posts which carry special pay that is on account of the fact that there is more of basic equipment demanded and the nature of work is different and judicial service satisfies both and, therefore, government can always prescribe a higher pay scale for Judicial Officers.

52. In 1986 there was a Conference of the Chief Justices of the High Courts, Chief Ministers and the Law Ministers of the States called by the then learned Chief Justice of India and the Ministry of Law and Justice. The then Chief Justice of India and the Law Minister of the Central Government tried their best to make the State Governments and the Union territories understand the basic problem. While some improvements came as a result of the Conference for the higher judiciary, the claim of the subordinate judiciary remained unattended.

53. We would like to point out that dispensation of justice is an inevitable feature in any civilised society. Maintenance of law and order requires the presence of an efficient system of administration of criminal justice. Under the civil code, court fee is realised under the Court Fees Act. For some time demand to abolish it has been made but the states have abandoned the idea on account of the demand by the States of compensation from the Centre in case of abolition of court fee. Court fee is not a tax and is a fee as has been held by a Constitution Bench of this court in *Secretary, Government of Madras, Home Department v. Zenith Lamp and Electrical Limited*. ((1973) 1 SCC 162 : 1973 SCC (Tax) 203 : AIR 1973 SC 724) In paragraph 29 of this judgment Sikri, C.J. speaking for this court pointed out : (SCC pp. 169-70, paras 29 and 30)

"It seems to us that the separate mention of 'fees taken in court' in the entries referred to above has no other significance than that they logically come under entries dealing with administration of justice and courts. The draftsman has followed the scheme designed in the Court Fees Act, 1870 of dealing with fees taken in court at one place. If it was the intention to distinguish them from fees in List II, Entry 66, surely some indication would have been given by the language employed. If these words had not been separately mentioned in List I, Entry 77 and List II ...

It seems plain that 'fees taken in court' are not taxes, for if it were so, the word 'tax' would have been used or some other indication given. It seems to us that this conclusion is strengthened by two considerations. First, taxes that can be levied by the union are mentioned in List I from Entry 82; in List II taxes that can be imposed start from entry 45. Secondly, the very use of the words 'not including fees taken in any court' in Entry 96 List I, and Entry 66 List II, shows that they would otherwise have fallen within these entries. It follows that 'fees taken in court' cannot be equated to 'taxes'. If this is so, is there any essential difference between fees taken in court and other fees ? We are unable to appreciate why the word 'fees' bears a different meaning in Entry 77 List I and Entry 96 List I or Entry 3 List II and entry 66 List II. All these relevant cases on the nature of fees were reviewed in *Indian Mica Micanite Industries Ltd. v. State of Bihar* ((1971) 2 SCC 236 : AIR 1971 SC 1182 : 1971 Supp SCR 319), by Hegde J. and he observed : (SCC p. 241, para 11)

'From the above discussion, it is clear that before a levy can be upheld as a fee, it must be shown that the levy has a reasonable co-relationship with the services rendered by the Government. In other words, the levy must be proved to be a quid pro quo for the services rendered. But in this matter it will be impossible to have an exact co-relationship. The co-relationship expected in one of the general character and not as of arithmetical exactitude.

54. It is not our intention to raise a dispute on this aspect. We adverted to these authorities and the views of this Court to bring support for the view that what is collected as court fee at least be spent on the administration of justice instead of being utilised as a source of general revenue of the States. Undoubtedly the income from court fees is more than the expenditure on the administration of justice. This is conspicuously noticeable from the figures available in the publication in the Ministry of Law and Justice.

55. What we have said above should be adequate justification for making provision with the reviewed to making judicial functioning viable.

56. We would like to recall a part of the funeral oration on Mr. Justice Story delivered some 150 years back by Daniel Webster'

"Justice, Sir, is the greatest interest of men on earth. It is the ligament which holds civilised beings and civilised nations together. Wherever your temple stands, and so long as it is duly honoured, there is a foundation for social security, general happiness and the improvement and progress of our race. And whoever labours on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to rise its august dome still higher in the skies, contains himself in name and character with that which is and must be as durable as the frame of human society."

To those who control the purse what Webster should provide the direction.

VIII

57. One of the claims advanced before us was for provision of in service training of judicial officers. This we consider as a must. In fact, the Law Commission in one of its recent reports has advised that in service institute should be immediately set up. About a year back the Union Government has proposed the setting up of an All India in service institute but nothing more has been done about it. In some of the states like Uttar Pradesh and Andhra Pradesh, such in service institutes are functioning. We are of the view that in service institutes are indispensable for the upkeep of the efficiency of judicial service. We direct that an All India Institute of In-service Training for higher officers of the judiciary including the district judges and a state level institute for training of the other members of the subordinate judiciary within each of the states and union territories or one common institute for the more than one state or union territory should be set up within one year from now and at any rate not later than December 31, 1992. This has to be organised by the respective high Courts.

58. Before we part, we must indicate with all the emphasise at all our command that the system has to be saved as for a civilised society an enlightened independent judiciary is totally indispensable. The High Court must take greater interest in the proper functioning of the subordinate judiciary. Inspection should not be a matter of casual attention. The Constitution has vested the control of the subordinate judiciary under Article 235 in the High Court as a whole and not its Chief Justice alone. Every judge should, therefore, take adequate interest in the institution which is placed under the control of the High Court. We may point out that is what Lord Atkins said in *Debi Prasad Sharma v. King Emperor* (70 IA 216 : AIR 1943 PC 202 : 46 BLR 11). And it has been approved by a Constitution bench in *Baradakanta Mishra v. Registrar of Orissa High Court* ((1974) 1 SCC 374 : 1974 SCC (Cri) 128 : (1974) 2 scr 282). It should be remembered by all the judges of the High Court, viz., that the administrative control of the subordinate courts of the state vests not in the Chief Justice alone but in the court over which the Chief Justice presides.

59. Burger, C.J. of the American Supreme Court once said :

"A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and it is for the subordinate judiciary by its action and the

High Court by its appropriate control to ensure it."

It is useful to remember what President Lincoln often said :

"If you once forfeit the confidence of your fellow citizens you can never regain their respect and esteem."

60 It is time we mention about society's expectation from the judicial Officers. A judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn and be courageous enough to acknowledge his errors.

61. The conduct of every judicial officer should be above reproach. He should be conscientious, studies, thorough, courteous, patient, punctual, just, impartial, fearless of public glamour, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

62. We would like to part with the matter by recalling a statement of Edmund Burke :

"All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust, and that they are to account for their conduct in that trust to the one great Master, Author and Founder of Society"

63. We would now briefly indicate the directions we have given in the judgment :

(i) An All India Judicial Service should be set up and the Union of India should take appropriate steps in this regard.

(ii) Steps should be taken to bring about uniformity in designation of Officers both in civil and the criminal side by March 31, 1993.

(iii) Retirement age of judicial officers be raised to 60 years and appropriate steps are to be taken by December 31, 1992.

(iv) As and when the pay Commissions/Committees are set up in the states and union territories, the question of appropriate pay scales of judicial officers be specifically referred and considered.

(v) A working library at the residence of every judicial officers has to be provided by June 30, 1992. Provision for sumptuary allowance as stated has to be made.

Residential accommodation to every judicial officer has to be provided and until State accommodation is available, government should provide requisitioned accommodation for them in the manner indicated by December 31, 1992. In providing residential accommodation, availability of an office room should be kept in view.

(6) Every district Judge and Chief Judicial Magistrate should have a State vehicle, judicial officers in sets offensive should have a pool vehicle and others would be

entitled to suitable loans to acquire two wheeler automobiles within different time limits as specified.

(7) In-service Institute should be set up within one year at the Central and State or Union territory level.

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