

SUPREME COURT OF INDIA

Common Cause, A Registered Society

Vs.

Union of India

(S.P.Bharucha CJI., S.S.M.Quadri, N.Santosh Hedge, S.N.Variava and Shivaraj V.Patil JJ.)

22.11.2001

JUDGMENT

Bharucha, CJI.

1. The Salaries and Allowances of *Members of Parliament Act, 1954* was amended by the Salaries and Allowances of *Members of Parliament (Amendment) Act, 1976*; thereby the principal Act was renamed the Salaries. Allowances and Pension of Members of Parliament Act and Section 8A was introduced giving to Members of Parliament pensions on their satisfying certain conditions stated therein. The said Section 8A has been amended from time to time and the rates of pension originally indicated have been increased.

2. These writ petitions challenge the constitutional validity of the said Section 8A and they have been directed to be heard by a Constitution Bench.

3. Our attention is drawn by Mr. Prashant Bhushan learned counsel for the petitioner in W.P.(C) No. 984/1991, to the provisions of Articles 106 and 195 of the Constitution. Article 106 reads as under:

"106. Salaries and allowances of members. -- Member of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly of the Dominion of India."

4. Article 195 makes similar provision in respect of the Members of Legislative Assemblies and Legislative Councils of the States. It is pointed out by Mr. Prashant Bhushan that whereas legislators are thereby entitled to salaries and allowances, there is no provision in regard to the payment of pension to them. The provisions of these Articles are contrasted by learned counsel to the provisions of Articles 125 and 221. Article 125(2) says that Judges of the Supreme Court shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined. There is a similar provision in regard to High Court Judges in Article 221. Our attention is also drawn

to Article 148 which makes reference to the pension of a Comptroller and Auditor General. Learned counsel's argument is that where pension is to be paid to a constitutional functionary, the Constitution makes specific provision and that therefore, in not making such specific provision in regard to Members of Parliament under Article 106, it must be assumed that they are not entitled to receive pension.

5. Learned counsel drew our attention to the judgment of this Court in *D.S. Nakara and Ors. v. Union of India*¹: where it has been said that pension is a term applied to periodic money payments to a person who retires at a certain age, considered the age of disability, and it usually continues for the rest of the natural life of the recipient. In the case of Members of Parliament, it is submitted by learned counsel, they do not retire and they are not retire and they are not always of an age of disability when they demit office.

6. Reference was made by the petitioner in W.P.(C) No. 246/1993, appearing in person, to the provisions of article 14 and it was submitted that there was discrimination in favour of Members of Parliament by giving them pension when, unlike Judges, they were not subject to the process of impeachment.

7. The learned Attorney General, appearing for the respondents drew our attention to Entries 73 and 97 of List I of the Seventh Schedule to the Constitution. Entry 73 empowers Parliament to legislate in respect of the salaries and allowances of Members of Parliament Entry 97 empowers Parliament to legislate in respect of any matter not enumerated in List II or List III, That is, in the State and Concurrent Lists. The learned Attorney General submitted that the payments empowered under the said Section 8A were covered by the words 'salaries and allowances' under Entry 73 and that, in any event, they were covered by the residuary Entry 97 of List I. He also submitted that Article 106 was an enabling provision and could not be read as imposing a bar upon the receipt of pensions by Members of Parliament.

8. The issue before us is squarely one of competence, namely, competence of Parliament to enact the said Section 8A. We need not go into Entry 73 of List I for we are in no doubt that such competence is conferred upon Parliament by the residuary Entry 97 of List I, and there is no provision in Article 106 or elsewhere that bars the payment of pension to Members of Parliament.

9. In our view, therefore, the writ petitions are devoid of merit and must be dismissed.

10. No order as to costs.

¹(1983) *ILLJ* 104 *SC*