

[Mr. Chairman]

The question is :

"That Clauses 2 and 3 and Schedule stand part of the Bill."

Clause 2 and 3 and Schedule were added to the Bill.

MR. CHAIRMAN : The question is ;

"That Clause 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI MADHAVRAO SCINCIA : I beg to move :

"That the Bill be passed."

MR. CHAIRMAN : The question is :

"That the Bill be passed."

The motion was adopted.

16.58 hrs.

HIGH COURT AND SUPREME COURT JUDGES (CONDITIONS OF SERVICE) AMENDMENT BILL

[English]

THE MINISTER OF STATE IN THE
MINISTRY OF LAW AND JUSTICE
(SHRI H.R. BHARDWAJ) : I beg to
move :*

"That the Bill further to amend
the High Court Judges (Conditions of
Service) Act, 1954 and the Supreme
Court Judges (Conditions of Service)
Act, 1958 respectively be taken into
consideration."

As you are aware, during the year
1986, substantial improvements in the
Service Conditions of the Judges the High
Courts and the Supreme Court have been
made. The present Bill is also a result of
our concern to bring further improvements
in the Service Conditions of Judges. In the
Bill passed by the Lok Sabha on 8-8-1986,

enhanced pensionary benefits, enhanced
sumptuary allowances and conveyance
facilities were extended to the Judges with
effect from 1-11-1986.

Those Judges who retired prior to
1-11-1986 were not entitled to the enhanced
rates and scales of pensionary benefits.
However, in the intervening period few
Hon'ble Judges have approached the
Government as well as the Supreme Court
of India. Though, the matter was receiving
the attention of the Government, the
Supreme Court of India delivered its verdict
that the Judges including Chief Justices
who retired prior to 1-11-1986 were
also entitled to the rates and scales of pensionary
benefits as applicable to the Judges
including Chief Justices who retired on or
after 1-11-1986. Keeping in view, the
Judgement of the Supreme Court, the
Government have decided that Judges including
Chief Justices who retired prior to
1-11-1986, may also be given the similar
benefits.

The enhanced conveyance facilities
included provision of Staff Car and driver
also in lieu of a fixed amount as Conveyance
Allowance. However, later on it was found
that the value of conveyance facilities and
sumptuary allowance paid to the Judges
were being computed for the purpose of
income-tax paid by the Judges under the
head 'Salaries.' The computation of income-
tax under the head 'Salaries on' the enhanced
conveyance facilities and sumptuary
allowances resulted in the erosion of the
benefits extended to the Judges in this
regard with effect from 1-11-1986. Now, it is
proposed to exempt the value of conveyance
facilities and sumptuary allowance payable/
paid to the Judges from the purview of
income-tax.

It is also proposed to raise the amount
of DCRG admissible to Judges who have
not held a pensionable post from the present
figures of Rs. 50,000. The DCRG payable
to such Judges is regulated by the rules
applicable to Central Government Group A
employees, who are now entitled to a maximum
of DCRG of Rs. 1,00,000 with effect
from 1-1-1986. The Supreme Court have
decided that such Judges should be given
this benefit from the same date. The

*Moved with the recommendation of the President.

Government has accordingly decided to remove the present ceiling of Rs. 50,000.

In view of the above, the present Bill has been introduced. I hope this will meet with wholehearted support from all members of the House.

MR. CHAIRMAN : Motion moved :

"That the Bill further to amend the High Court Judges (Conditions of Service) Act, 1954 and the Supreme Court Judges (Conditions of Service) Act, 1958, be taken into consideration."

17.00 hrs.

SHRI SOMNATH CHATTERJEE (Bolpur) : Sir, I congratulate the hon. Minister for securing his nomination again for Rajya Sabha in spite of the total atrophy in the Ministry over which he presides. This Bill is the result of the general stagnation in the country and the inflation that is going on because money value is getting reduced every day. Therefore, the income in real terms is going down. We wanted that all the wage-earners should get living wages. Well, I do not mind at all. So far as this increase is concerned, it is really due to the judgement of the Supreme Court. But, Sir, certain things, I cannot avoid making comments. The Minister wants to take the credit for the Central Government. That shows that the Central Government has great concern for the judges. One concern is because of the mandate of the Supreme Court and the second concern can be easily shown because the bulk of the liabilities goes to the State Governments. The Centre is only to provide for the Supreme Court Judges and the Delhi High Court judges...

AN. HON. MEMBER : That also, they share. (*Interruptions*)

SHRI SOMNATH CHATTERJEE : As far as Delhi High Court is concerned, they share with regard to the pension so far as those who are promoted from the High Court Judgeship. Now, the Centre and the State both share. Indeed, their contribution—I mean the Centre's contribution will be Rs. 10 lakhs. The additional expenditure is about Rs. 10 lakhs. You show concern for the judges—by whom you

swear—when the judgements are in your favour and whom you abuse when the judgements are against you. They will be spending about Rs. 10 lakhs per year. Therefore, what I demand as a question of principle and policy is that the increase which is being given to the judges of the High Courts, the extra expenditure should be borne by the Centre because it is due to the Centre's policy that this situation is coming up. It is no good of the Centre taking an attitude, a disturbing attitude and showing great concern for the judges when they do not want to bring out money from their own till. In all fairness, and consistent with the so-called concern, please get this money from your till and pay to the State Governments. They will be very happily giving it and it and more, as much as you can give. Since the law-making authority is in the Parliament, therefore the Minister can take up a grand gesture of taking a favourable attitude and showing the so-called respect to the judges. But in their mind, I know how the judiciary is being treated. This is my demand.

Sir, it gives us an opportunity to make certain observations because of the state or the situation that is prevailing, a situation of near anarchy in the judiciary today. There is a near anarchy and there is complete confusion. We have not only asked in this House but throughout the country. People are talking about mounting arrears and like a parrot—I have had the fortune or misfortune—I do not know—of being here and listening to all the precessors and now the present Minister saying : "we are looking into the matter, we take all steps and we shall appoint judges and all that." We are seeing how the arrears can be contained. But it is increasing in geometrical proportions. It has been eating into the vitals of the judicial system. Committees have been appointed galore. Reports are legion. But the result is that the judicial system should not be really for lawyers, although we are participants and beneficiaries of the system as lawyers. But the real object of the judicial system in any civilized country should be the litigents, the people who need justice.

Sir, all sorts of talks, all sorts of Committees and all sorts of reports take

[Shri Somnath Chatterjee]

place. But this is never being really attended to. I know that. I can almost anticipate his reply—my good friend's reply—and what he can do also. But really, I think the time has not only come but the time is overdue that some sort of a very very serious thinking is made.

Now one thing. The other day, one of the Hon. Judges of the Supreme Court—I found in one of the seminars—has reminded the Government of its obligation to fill up the vacancies, that vacancies should be filled up as early as possible. One thing is certain. Unless there is a premature death, when a judge is going to retire is known from the date of his appointment. Unless there are very rare exceptions, that a judge remembers subsequently his correct date of birth. Therefore, it is known.

17.06 hrs.

[MR. DEPUTY SPEAKER in the Chair]

Now, how many vacancies are there? Why are they not filled up? I know the Hon. Minister will say: here, there is Central Government, here there is State Government, here there is Chief Justice of India, here there is Chief Justice of India, here there is Chief Justice of the State—Oh, Hon. Members, it takes a long process in consultations, discussions and so on and so forth. But what about the people? How are they concerned about your consultations—lengthy consultations? If your consultations, discussions, deliberations, dissertations, political influence, considerations take such a long time their it should start well ahead of the retirement of the judges when vacancies occur. But this has become almost like a coner in our judicial system. In one side, you find mounting arrears and on the other side, you find mounting vacancies. Now even in cases, where on consideration of the necessity and public interest, the strength of the high court or the Supreme Court should be increased, the Parliament has given the sanction. But even those posts are not filled up. What is the good of creating new posts of judges when even the original quota is not filled up by timely appointment?

I know, I am not going into the nature of the appointment that has been made. I believe, I have a suspicion that the Ministers do not pull on together in this matter. They don't pull on also with the Chief Justice's recommendations. There are all sorts of considerations given. I do not wish to bring in that. I believe, I know in some cases, how things have been organised—which Ministry has recommended whom and who has scuttled whom. Well, many of them are known to us, not in all cases. Hon. Minister is aware of it.

But today, as I said, there is a total atrophy in the functioning of this Ministry. What is happening in the capital of India for so many weeks now? High court is not functioning, subordinate courts are not functioning, Supreme Court did not function for so many days. What has been done? Is there a Law Ministry in this country?

SHRI SAIFUDDIN CHOWDHARY
(Katwa) : No. (Interruptions)

SHRI VAKKOM PURUSHOTHAMAN
(Alleppy) : ...by small group against the majority.

SHRI SAIFUDDIN CHOWDHARY :
Anything. (Interruptions)

SHRI SOMNATH CHATTERJEE :
Majority or minority. People are not concerned. People are concerned that the courts should be opened. Has this Government any responsibility for that?

SHRI H.R. BHARDWAJ : Are you prepared to say that you are not supporting the striking lawyers?

SHRI SAIFUDDIN CHOWDHARY :
You meet their demand. (Interruptions)

SHRI H.R. BHARDWAJ : What responsibility you have? (Interruptions)

SHRI SOMNATH CHATTERJEE : I shall come to it later. But has this Government any responsibility? I am not in power. (Interruptions) There are Ministers, Secretaries, such and such—such a huge outfit is there. The Cabinet is there. But the high court is not functioning in the capital of India. He doesn't feel ashamed and is trying to put the ball in my court.

SHRI H.R. BHARDWAJ : Why are you also speaking ? (*Interruptions*) They are putting fuel to the fire. They are politically using the issue of judiciary and the lawyers. (*Interruptions*)

SHRI SOMNATH CHATTERJEE : I hope that there are large number of lawyers in Delhi atleast belonging to my political affiliation—I would have been very happy—who can cripple the functioning of the high court.

SHRI H.R. BHARDWAJ : Today, everybody knows who is doing what to the bar and what to the bench. You people are the people who are doing...(*Interruptions*)

SHRI SOMNATH CHATTERJEE : Give the names. I shall be very happy. (*Interruptions*)

SHRI H.R. BHARDWAJ : You talk to me. I will give you the names.

SHRI SOMNATH CHATTERJEE : Why should I talk to you ?

SHRI H.R. BHARDWAJ : You are using this forum for your petty politics. (*Interruptions*)

SHRI SOMNATH CHATTERJEE : What is political there ? (*Interruptions*) The Minister is disturbed, that shows that I was right...(*Interruptions*)

SHRI H.R. BHARDWAJ : And petty minded.

SHRI SOMNATH CHATTERJEE : Mr. Deputy Speaker Sir, I charge this Government with total inefficiency, total incompetence and they are in league with the forces of disintegration of this country. If he says I am petty minded, I say that this Minister is not fit to remain in his post for half a minute...(*Interruptions*)...If this Government is giving an explanation that some of my people...(*Interruptions*)

SHRI RAM SINGH YADAV (Alwar) : There is no need for a certificate from any Member of the House that the Minister is fit or not. Therefore these words would be expunged. These are derogatory to the prestige of the Minister.

SHRI SOMNATH CHATTERJEE : He said I am petty minded.

SHRI H.R. BHARDWAJ : It is your party alone which is doing all this and which is reprehensible.

SHRI RAM SINGH YADAV : What do you say, Mr. Deputy Speaker ?

MR. DEPUTY SPEAKER : If it is unparliamentary or objectionable, I will see.

SHRI SOMNATH CHATTERJEE : What happened in the Tis Hazari court in February ?

SHRI H.A. BHARDWAJ : In your State judges were beaten up in the courts. Can you deny this ?

SHRI SOMNATH CHATTERJEE : **

SHRI H.R. BHARDWAJ : **

SHRI SOMNATH CHATTERJEE : **

MR. DEPUTY SPEAKER : That won't go on record.

SHRI SOMNATH CHATTERJEE : He is being unnecessarily personal. He does not know how to behave. I am in this Parliament much longer than he is.

SHRI H.R. BHARDWAJ : Don't shout at me.

SHRI SOMNATH CHATTERJEE : I have not shouted at you. You are too small for my shouting...(*Interruptions*)...I am addressing the Parliament of India. I am addressing the Lok Sabha. I am not addressing an ordinary Minister of State.

(*Interruptions*)

MR. DEPUTY SPEAKER : No dialogue here.

SHRI A. CHARLES (Trivandrum) : To say that, ** is unparliamentary. It should be expunged. A Member has no business to say that,

MR. DEPUTY SPEAKER : If it is unparliamentary, I will expunge it. Mr. Charles, you take your seat.

SHRI SOMNATH CHATTERJEE : Why does not he follow the rule of the debate ? Why does he interrupt me every minute ? Why does not he answer ?... (Interruptions)...He has not taken your permission. He must know the rules of the debate. He cannot go on interrupting me like this. Is there any wonder why there is lawlessness in this country when the Minister of Law cannot behave ? This is the type of Minister we have.

I charge that this Government has totally failed to tackle a situation which has affected a very large number of people in the capital of this country... (Interruptions) Is it my turn to speak or his turn ? I don't know. Have you permitted him to speak.

MR. DEPUTY SPEAKER : I have only permitted you.

SHRI SOMNATH CHATTERJEE : Then why is he interrupting me ?

MR. DEPUTY SPEAKER : You address the Chair.

(Interruptions)

SHRI SOMNATH CHATTERJEE : It is a matter of shame. Of course, this Government has no sense of shame either. The courts are not functioning for weeks and months. If anybody from my party, as the Minister alleges, is responsible, take action against him. Why does this Government not take action if anybody is indulging in hooliganism ? But what happened in Tis Hazari courts on 17th February ? Hordes of people went there and beat up the lawyers.

AN HON. MEMBER : Congress (I) people.

SHRI SOMNATH CHATTERJEE : Nobody has denied that. Even it appeared in the newspapers that one of the Congress activist was there and action supposedly would be taken against him. (Interruptions) What Happened : The lawyers are beaten up inside the court building and in their offices in Tis Hazari campus. Lawyers are beaten up in the Supreme Court corridors and the Government is only watching here. (Interruptions).

Sir, therefore, I am saying that the matter is very serious and, I think, the Cabinet Minister should have been present. He should have come here when there is a non-functioning judicial system in this country as a result of the total mal-functioning of the Ministry and the hon. Minister who has got a promotion or a demotion, I do not know, is conspicuous by his absence. (Interruptions).

MR. DEPUTY SPEAKER : Order. Order. Please do not interrupt.

SHRI SOMNATH CHATTERJEE : After considerable protestation the Government took action. As the hon. Supreme Court has said in Delhi the Lt. Governor thinks he is the President of India. These are not my words. An executive order was made appointing two judge to go into the matter. Then some lawyers had to apply to the Supreme Court and the Supreme Court has directed it should be under the Commission of Enquiry Act. How long it took for the Government to do it : Why no action was taken ? Why lawyers were not taken into confidence ? I would like to know what initiative Government took in the matter ? As if it has no responsibility. In a prepared speech the Minister says we have great concern for the judges. (Interruptions). We have seen Congress Politicians fight amongst themselves. Probably it is becoming contagious.

I would now like to make comments on the policy of transfer of judges. Some have been appointed Chief Justices from outside the State. I would like to know whether it has helped in better functioning of the High Court judicially. On principle it is alright to talk of integration of this country through the medium of appointing Chief Justices from outside but the experience of this experiment is that in the name of national integration it is causing dis-integration of the judiciary itself. That is why one hon. Judge who was against his wishes on the day he was appointed Chief Justice of one high Court on that very day was transferred without even prior knowledge or an inkling of the intention of the Government that he would be transferred the next day to another High Court. Now he has been forced to

resign four years before his term was to end because it is difficult for him to stay there. He has got problem.

PROF. N.G. RANGA (Guntur) : Why ?

SHRI SOMNATH CHATTERJEE : You ask the Minister please.

SHRI H.R. BHARDWAJ : You want to listen ?

SHRI SOMNATH CHATTERJEE : You give your reply in time.

SHRI H.R. BHARDWAJ : Because your Government did not care for him. He was given no facilities there.

SHRI SOMNATH CHATTERJEE : Very well. (Interruptions)

SHRI H.R. BHARDWAJ : He has given in writing.

SHRI SOMNATH CHATTERJEE : Put it on record. Already you have it on record. You will see.

SHRI H.R. BHARDWAJ : I have put it. (Interruptions)

SHRI SOMNATH CHATTERJEE : Therefore, Sir, not only that, Chief Justice Chandrakar has said that also. Now, your Tamil Nadu (MGR) Government gave him all the facilities. Then, what has he said? What all the Judges are saying? The question is that it has become an imposition on the Judges. It is becoming an imposition on the Judges. That's why unwilling people are being sent. They are unable to adjust themselves. Some have only 15 months, 14 months, 13 months to retire and they are uprooted. They suddenly find in circumstances where he takes months and years to adjust oneself. He goes to a court, he does not know. Lawyers, he doesn't know.

The greatest importance is, as you are aware that the Chief Justice of High Court initiates the proposal for appointment of new Judges. Unless the Chief Justice knows the lawyers themselves personally in the sense of those who appear before him or he gets information from others, how can he go and make re-

commendations for appointment of new Judges. Soon after his arrival here, he is hardly having an occasion to know and assess the performance of the lawyers whom he can recommend for appointment as Judges.

Then how does he know? Without knowing, he has to make recommendations for appointment. Then he has to refer to external sources, ask this man, that man, so on and so forth, A, B, C, D that who can be appointed as Judges. Then all sorts of formulas are being followed. Therefore, time has come. You may abuse me. That is your habit. Your abuse will not affect me at all, I know, because on your abuse or your praise does not depend my acceptability or otherwise to the people. You can go on abusing me and my party. But the question is why the Judges themselves are insulated? Why there is an objection from the Judges themselves? Are you blaming them as CPI (M) people? Therefore, is it to be ignored? Serious thought has to be given to this by the Government that why this objection is coming up. What are the difficulties they are facing? Whether there can be proper implementation even if the policy is good? Ask the Judges.

PROF. N.G. RANGA : Are they not asked ?

SHRI SOMNATH CHATTERJEE : No Rangaji. He has said that openly. He has written to the Chief Justice of India. The Chief Justice, I was referring to, has written to the President of India, I take it, in his letter of resignation or in some other communication. Is this the way to be done? You treat Judges as occupying positions in which he has to function or otherwise at your sweetwill only. Has the location of court any importance or not ?

Sir, I have been one of the strongest supporters in this House. I supported the principle of transfer of Judges, appointment of Chief Justices from outside. I have had occasion to meet some of them, I find that we have had Chief Justices in Calcutta High Court where I have the privilege generally to be associated in my practice. When we have to decide

[Shri Somnath Chatterjee]

Chief Justices, what difficulties they are facing? It is not only physical comforts or physical amenities. It is a question of adjustment to a situation, to a surrounding, to an atmosphere also. If you put somebody against his wishes, he shows no concern, shows no interest in the work as we have our experience in Calcutta. And also a gentleman who tries to do something says that it is impossible. My family cannot adjust it. He had personal bereavements. He says that his wife cannot adjust here. These are the problems and he says that the time has come when the policy of this Government of appointment of Chief Justices from outside should be very seriously considered. I am requesting, I am urging upon the Government, I am not saying as I have myself said, I have strongly advocated and supported this but the actual way the system is being worked is causing or creating misgivings in the minds of the people. Two Chief Justices are retiring. They are not accepting transfer. They are expressing their objection to it. Therefore, a policy should be implemented in a manner where there is ready acceptability by the judges themselves and that will help in the proper functioning of the judiciary itself. The affairs of the functioning of the High Court is bound to be affected very seriously if the judge of a High Court is dissatisfied, if he has got very serious reservations in the matter of his functioning. Therefore, I would urge upon the Government not to take the matter on party lines and this is not a question of party lines. There is no question of it. Don't bring politics into it. I am saying that although on principle you need not do but you have to do it with circumspection with consideration of the judges concerned, with human approach in the matter. Then and then only, it will be acceptable and only then, it will bring out the results which are desired. It is felt by the Government that concession in the matter of some monetary benefits will alone satisfy the judiciary. If there is no proper approach in the matter, when there are arrears mounting please read the speech of one of the judges of the Supreme Court in a Guwahati conference which he had delivered the other day. Those are matters of

very great importance. I have not said that. If you are allergic to me as you are, read the speeches of the Supreme Court judges. What is the answer of the Government to those complaints and charges by the judges themselves? Just because an hon. judge of the High Court makes an observation which you don't like, you are prone to ask somebody to criticise him but thereby you cannot solve the problem. Time has come for this serious matter to be looked into. Let the Law Ministry be not a mere ornament, let it be a functioning Ministry. That is what I demand.

SHRI SOMNATH RATH (Aska) : Sir, I rise to support this Bill. This Bill provide increase in facilities and allowances of Judges of Supreme Court and High Courts well known lawyers are refusing to be appointed and occupy the Bench for want of remuneration and extra facilities. We, in our country, have the second biggest legal practitioners in the world. Yet, cases are concentrated in the hands of a few lawyers and that is the very reason why the leading lawyers are not coming forward. My learned friend Shri Somnath Chatterjee has said that the vacancies should be filled up. I agree with it but my feeling is that by this alone the problem cannot be solved.
(Interruptions)

MR. DEPUTY SPEAKER : We will finish this item today, and sit a little late, if required.

SHRI SOMNATH CHATTERJEE : Not beyond six.

MR. DEPUTY SPEAKER : It has already been agreed to in the House that the House will sit upto 7 O'clock; if required.

SHRI BASUDEB ACHARIA (Bankura) : That is only in respect of Budget; not for Bills like this.

MR. DEPUTY SPEAKER : The allotted time for this Bill is one hour. I want to finish it within that time. Please continue.

SHRI SOMNATH RATH : What is needed is not only filling up of the vacancies, but appointment of quality judges, and not mere quantity. As on 31.12.1987, the number of cases pending in the Supreme

Court was 1,75,748 and those in the High Courts 14,39,491. It can well be imagined how many years it will take to wipe out this pendency.

There is need for progrestive reforms of judicial procedures and improvement of legal education, so that it can be made more practical. Undue elaborate arguments and the cases being adjourned for a long time are responsible for the pendency of these cases. What is needed is cooperation between the bench and the bar. The write petitions are admitted with readiness and interim stays are granted very easily. These are some of the reasons for pendency of cases. The Government should think very seriously how best this problem can be solved in a progressive manner. The Government should also think of the courts, beginning the First Class Magistrates, Munsifs up to the High Courts and the Supreme Court, because the judgements of the First Class Magistrates and Munsifs also come up to the Supreme Court. This cannot be lost sight of.

My friend, Shri Somnath Chatterjee, has also referred to one matter and said that we in the ruling party only appreciate such judges whose judgements are in favour of us and criticise others, whose judgements are against us. But, I submit reverse is true. Take for example the observations of the two Supreme Court judges in the matter of Fairfax, and also the Misra Commission. Who were criticising its findings? It is the opposition. Some High Courts have given findings against some Chief Ministers. Are those Chief Ministers stepping down? They are not. Who is not respecting the judgements of the judiciary? It is the opposition. They appreciate those findings if they suit their political purposes; they condemn if those which are against them. While residing in a glass house, they should not belt stones at others.

When we think of these facilities, the State Governments should also come in a big way. There are certain States in which the residential quarters are not earmarked or are not provided to the judges in a befitting manner. So, there should be some provision. The Centre should take up with the States and see that some residential

quarters are earmarked for the High Court judges and they must be given to them and them alone. I am asking to give some more facilities and not merely to increase the amount. Why not provide a free car and fuel for its consumption and also some other facilities so that the judges can work in a better manner? Since the policy of our Government is to deliver justice at the door of the poor and common man, I would submit at this juncture, that the Hon. Law Minister should take steps, persuade the Orissa Government to have a Circuit Court of the High Court of Orissa at Berhampur at present and make it permanent later on.

[Translation]

SHRI V. TULSIRAM (Nagarkurnool) : Mr. Deputy Speaker, Sir, I was just now listening the speech of our friend, Shri Chatterji. I was also witnessing the sharp exchanges between the hon. Minister and him... (Interruptions) How can I start in such interruptions. It is the ruling party which creates legal complications and forces us. Our legal experts, who were allotted this subject, are not present here. After listening to sharp exchanges, I felt that I should also mention a couple of points. The facilities which the Central Government is providing to judges are alright. We are not against them. But the State Government will also have to provide all these facilities to the High Court judges which the Central Government have given to the Supreme Court judges. The State Governments will have to incur extra expenditure for this. Why the Central Government do not think about the lower grade judges. Our hon. friends were just now telling about the procedure of appointments of judges and chief justices. I do not think that partiality is not done in this procedure. The partiality is very much there. We have seen this partiality, for example a junior iudges from Delhi was recently promoted as Chief Justice of Andhra Pradesh High Court in place of a senior judge, who was acting Chief Justice. Is it not an injustice? The justice should be done in courts but instead of this injustice is being done. All this is happening because of Central Government because they make a mess of everything sitting over here. Our hon. friend has

[Shri V. Tulsiram]

recently put everything before you but you were getting annoyed and angry. This is not a personal matter between you and Mr. Chatterjee, but it is a policy matter. He was not saying personally to you but was talking about your Government policies, partiality done by the Government and about your party and Government who is encouraging injustice instead of justice. The opposition wants that the feeding machinery of the Government i.e. the officers should be honest and hard working so that the Government may function properly. I have said earlier and also reiterate that if the Government does any work for the welfare, progress and integrity of the country and to help the general public then, the opposition will always be with them and we shall not utter a single word against the Government. Why the Government thinks that we are here just to criticise them. But when the Government strays only then the opposition says that they are not moving in the right direction. I do not think there is anything in it to become angry. The Government should improve to functioning. To say, that the Government should move in the right direction is in the interest of the Government. If you move in the right direction, then, you as well as your Government will work properly. Our hon. friend has wished a second term of Ministership for you and you can become the Minister again but instead of trying to improve yourself you are trying to quarrel. It will not ruin us but will spoil your prospects and your Government. Therefore, I would like to say once again that you should run the Government properly. With these words, I conclude.

17.41 hrs

[English]

SHRI THAMPAN THOMAS (Mavelikara) : The present situation requires a second look at our judicial system. I have no doubt in believing that the Government have failed to look into the overall aspects of the judiciary in this country. They have not come forward with any proposal yet for reformation. The recent strike by the advocates, the stand taken by the Govern-

ment on this issue and various other things that are happening in the whole judicial system do reveal that the Government is quite unconcerned about the judicial system which happens to be one of the most important pillars of our democracy. Our judicial system is being affected very adversely and judiciary which is equal to legislature and executive is given scant respect by the Government. I request that the Government should take proper steps and see that our judicial system is reformed. When we look at this Bill itself, on the whole I feel that the Government has not really looked into all the aspects concerning the judiciary.

Now, something is provided for the judges in this Bill and I welcome it. I agree that some benefits should be given to the judges and their position should be safeguarded properly. When a judge retires, he can be paid upto rupees one lakh as pension in the same way as a Class I officer is entitled to get. But may I ask you one question? If a Class I officer retires and if he gets his pension, is there a rule by which he can get more than what he was getting earlier? Even if he accepts an appointment after retirement, his salary should be rounded off to what he was getting. Therefore, I say that the same rule should apply in the case of the judges too.

Secondly, what are you doing in the case of retiring judges? You appoint them to conduct inquiries. Will the Government take a stand not to appoint any retired judge for the purpose of conducting an inquiry? I say this because people who are appointed in this manner are at the back and call of the Government and they write their reports in a way that is suitable to the Government.

PROF. N. G. RANGA (Guntur) : You are casting aspersions;

SHRI THAMPAN THOMAS : No Sir, I am not. I am only stating about a general thing which can be seen now. That is why I am asking this question. Now that this Bill as being brought forward, is the Government prepared to accept that no judge will be permitted to get more than the amount that he was receiving while in

service, as is the rule applicable in the case of the Class I officers ? (*Interruptions*)

I am saying all this to show your approach on this issue. You do all these things because you want these people at your beck and call.

Secondly, you are permitting the retired judges to practise in various courts.

PROF. N. G. RANGA : What is there ? In the Supreme Court, they get twice or thrice more income than what they gets salaries.

SHRI THAMPAN THOMAS : That is why I say that this practice must be banned. One of the High Court judges who retired has told me about this. This whole thing is just to ridicule the judicial system itself. I say that the judiciary should be given the respect that it deserves. When you permit a retired judge to practice in the Supreme Court, it is nothing but ridiculing the judicial system itself. While practising in the Supreme Court, there may be opportunities for him to take up the Appeals decided by himself in his capacity as a High Court Judge. One of the Judges who retired from the Kerala High Court as a Chief Justice told me about an incident where a Supreme Court Judge who retires opens an office for Consultancy in Bombay and gets the clients and discuss the matters over which he had a say in the past. Will it no look like ridiculing the judicial system itself ? Is the Government prepared to look into this and provide guidelines for that by banning the retired judges from practising ?

I agree with the enhancement. But I say that this should be done after bringing a Code of Conduct for the judges. After retirement they should not be allowed to practise. They should be given a proper way of life. They should be above certain things. They should be above influence. They should keep the decorum and dignity of the high profession of this country. They should not go and mix with the advocates and deal with the same case which they have decided.

You see their income. They are charging Rs. 5,000 or Rs. 10,000 per hour. They

can get this much amount as professionals. How does the society view this whole picture ? Now it is proposed to increase their salary and make certain things tax free.

May I ask one question ? Is this Government prepared to lay down the same principles to the other officers of this country ?

One Deputy Secretary, who is working in this Parliament House itself, told me that recently we got something out of the Pay Commission. We welcome it. But what happened ? There is no revision in the Income Tax. The Income Tax slab remains the same as Rs. 18,000. So he said that the Government gave me Rs. 6,000 but took back from me Rs. 7,000 as Income Tax. This was in fact told to me by a person working in this Secretariat. More than what was paid to him is being recovered from him. Here you are going to give the Judges certain tax free benefits I am agreeable to it. The Income Tax relief should be given to the Judges. My only contention is that the same law should apply to all the workers. It should be on the basis of Cost of Living Index. What you are paying as D. A. should be exempted from tax.

I have many points to say regarding the appointment of Judges. The appointments have become political. No doubt about it. The very people who are open to political influence are the people who decide the things. Will the Government consider to have a Judicial Service and to see that some system is brought in and very capable people who are acceptable to all who will do justice should occupy the highest post in this country ?

A proposal for a Judicial Service was very much there. It was examined. The Minister had answered several times that it is in our view. But still the appointments go in the very same fashion. The appointment of Judges is not in the benefit of the judicial system.

I would like to say on the whole, that a second look at these things is necessary. The Government should look into and should come forward with a reform of the Judicial Service.

DR. DATTA SAMANT (Bombay South Central) : The political pressure, corruption and influence is interfering with the judiciary. Even it is coming to the higher ranks. And that will be very serious for this country. The Government is mainly responsible for it because the judiciary should be totally independent. Even for the appointment of the judges, transfers and promotions, the Government should not interfere. But I am seeing for the last five years that how the transfers of High Court Judges are taking place. Mr. Chandurkar, a Judge of the Bombay High Court, who does not know the basics of the Tamil language has been transferred there as Chief Justice. The language is basically different. The policy of the State there is not to appoint a *Brahmin* as Chief Justice. Because of this policy, there is a dispute going on. You tell me, how are the people going to get justice.

The High Court Judge of West Bengal is transferred as a Chief Justice of Maharashtra. This is deliberately done by this Government to pressurise the Judges, that if you continue to behave in this fashion, we are definitely going to do something. If this is the motive, then the Government is responsible for it. Regarding the appointment of a principal Supreme Court Judge there is a delay of more than two years. Therefore, all these actions of the Government are definitely hampering the basic principles of judiciary. That is why I condemn this Government for such interference *i.e.* when reports favourable to the Government come, for example in the Fairfax case.

Coming to this Bill, I do not mind your giving some money and facilities to the Judges. They are doing work of a high quality, and they are intelligent. I appreciate it. But the benefits and pension which you are giving to people as on 1.11.86, you are going to give to all the Judges who retired before that date. I have never before seen such a thing. Why are you giving special facilities to these people? Somebody might have retired 10 or 15 years back. Which part are you going to fix? You are making a discrimination. Pension is always calculated on the salary

which a man gets when he retires. Suppose somebody retires in 1970 or 1975. We see what salary he got at that time, and on that basis pension is given.

I do not know law, and I am not a law graduate. But all these questions will arise when you are going to give pension to these people. So, this point should be considered.

In the case of the workers, the conveyance allowance and all other allowances which they get are taxable. Forest the Class I officers. The emoluments including salary and allowances of the workers; if they come more than to Rs. 1500 per month, are taxable. Amounts exceeding Rs. 18,000 per year taxable in this country. In Bombay, all my workers draw more than Rs. 3,000. You are taking them. Whatever minimal rise in allowances I got them, *e.g.* in house rent, travelling allowance; transport allowance or medical allowance, you are taxing every such amount. You are collecting Rs. 500 crores as tax from the salaried people of this country. Now you are discriminating against them. I do not know how you are going to explain these things to the people. Forget about Class I officers. In the case of people covered by this Bill, whatever allowance you are going to give them, you are going to make them income-tax free.

You can give them more salary and other concessions. As a principle, I am not opposed to it. But the provisions you are bringing in, I am afraid, are not the correct ones.

During the Budget estimates for the last three years, all the MPs from your side, only myself, have been asking you to raise the income taxation ceiling from Rs. 18,000 to Rs. 30,000. I thank everybody supported that demand. But you have refused to accede it. Now you are discriminating against such workers. This point is worth consideration.

Now you are raising the amount of gratuity and terminal benefits from Rs. 50,000 to Rs. 1 lakh. You are doing all these things at random, without considering the consequences. Workers get gratuity

and provident fund amounts after working for 30 years. For them, such amounts are taxed. Even after paying them such terminal benefits amounting to Rs. 1 lakh, you are collecting Rs. 20,000 or Rs. 30,000 from them. Now you are opening a new chapter, under the present Bill. I am not opposed to it, if you want to give them more money.

I appeal to the Government to stop all these political interferences, transfer of the Judges, promotion of Judges and such other things. We see what kind of reports we get from various Commissions. If any dispute arises in future, you are going to appoint some judges here and there. You favour them in one way, offer them temptation; and on the other hand, you go on pressurizing them, and bring the Judiciary under the hold of the Government. I want to warn the Government that this is a very dangerous thing.

However, I support the proposals giving some benefits to the judges.

MR. DEPUTY SPEAKER : Now the Minister.

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ) : I am very grateful to all the hon. Members who have spoken on the Bill, especially my friend... *(Interruptions)*

SHRI SYED MASUDAL HOSSAIN : (Murshidabad) : Sir, there is no quorum in the House.

MR. DEPUTY SPEAKER : Mr. Minister, please take your seat. Let the quorum bell be rung.

Now there is quorum. The Minister can continue his reply to the debate.

SHRI H.R. BHARDWAJ : I am grateful to the hon. members who have spoken on this small measures which entitles the judges to have conveyance facility free of tax and gratuity facility to the extent of Rs. 1 lakh. This was very limited measure, but off the cuff, some remarks were made by one hon. Member regarding law-

yers' strike. With great respect, I would like to submit that the lawyers' community is one of the most important communities in the country and we have tremendous respect for the legal profession. But I am very sad today when I said that some of the opposition parties, namely, Marxist Party and few other parties are joining the political fray in the matter of lawyers' strike; and it is shameful on their part to utilise this forum for their vested interest. We should condemn it with one voice. *(Interruptions)*

SOME HON. MEMBERS : Shame, Shame. *(Interruptions)*

SHRI SOMNATH CHATTERJEE : It is ridiculously false.

SHRI H.R. BHARDWAJ : I would like to put it on record that when I had a dialogue with all the senior members of the Supreme Court—I can name every one of them except he—he was never serious for the solution of the problem. *(Interruptions)*

SHRI SOMNATH CHATTERJEE : Did you ever call me ? I am not a regular practitioner. He is making personal allegations against me.

SHRI H.R. BHARDWAJ : You are never serious about this problem. *(Interruptions)*

SHRI SOMNATH CHATTERJEE : What is that I am never serious ? I strongly object to it. He is making serious allegations against me. I am not a regular practitioner of the Supreme Court. Nobody called me.

(Interruptions)

SHRI H.R. BHARDWAJ : You had said so many things. Now you must listen to me. *(Interruptions)*

SHRI SOMNATH CHATTERJEE : How does your Minister behave ? How can he blame me ? *(Interruptions)* How can he accuse me personally ? Did he ever call me ? I am not a regular practitioner. How can he blame me personally ? *(Interruptions)*

SHRI H.R. BHARDWAJ : With regard to the Chief Justices' transfer policy, I would like to submit that no Chief Justice is transferred without the consultation of the Chief Justice of India. None has been transferred. This is an accepted policy tested by the Supreme Court; and this is a policy which has been accepted in the country and it has served the interest of the country and the people; and if you want that policy will not continue, we are not going to go back on that policy.

Secondly, when the judges feel difficulty, it is always in Calcutta; and so far as that judge in Calcutta is concerned, he was appointed because he was senior most puisne judge, although there was already a judge sitting from the same High Court Justice P.C. Jain in Karnataka out of the seniority consideration of that Justice Dewtia was appointed as Chief Justice out of sheer consideration that he was senior most puisna judge. Otherwise, his term as Chief Justice had not come.

18.00 hrs.

With regard to the other things, we are for the independence of the judiciary and we have shown time and again that the independence of judiciary in this country is not interfered by anyone, Government apart, not even by the Opposition; the judiciary has remained independent and it will continue to remain independent. This, I want to say categorically. (Interruptions)

About the others, I would like to answer my hon. friend from Hyderabad, that the Chief Justice who has been sent to Hyderabad is senior to the senior most Judge of that High Court, Mr. Justice Raghuvira who is also being sent as Chief Justice to another High Court because his seniority is of 1975 and the Judge who has gone there is of 1974 seniority.

SHRI V. SOBHANADREESWARA RAO (Vijayawada) : Why do you disturb Mr. Justice Raghuvindra from Hyderabad ?

(Interruptions)

SHRI H.R. BHARDWAJ : Kindly listen. There is no discrimination. It is only in the imagination.

MR. DEPUTY SPEAKER : The question is :

"That the Bill further to amend the High Court Judges (Conditions of Service) Act, 1954 and the Supreme Court Judges (Conditions of Service) Act, 1958, be taken into consideration."

The motion was adopted.

MR. DEPUTY SPEAKER : We shall now take up Clause by Clause consideration of the Bill.

SHRI SOMNATH CHATTERJEE : The time is over. Without the consensus of the House you cannot extend the time.

MR. DEPUTY SPEAKER : It is only part of the procedure. In many cases we have done it. I do not know why are objecting. (Interruptions)

DR. DATTA SAMANT : We have raised several points. You pass these Bills in the Chamber. We have many points. None of them have been answered.

MR. DEPUTY SPEAKER : We will take up Clause by Clause consideration.

SHRI THAMPAN THOMAS : This is not the way. We will walk out.

18.03 hrs.

At this stage, Shri Thampan Thomas and some other hon. members left the House.

MR. DEPUTY SPEAKER : I think the House will accept that we should complete the Bill by sitting for five minutes more.

SEVERAL HON. MEMBERS : Yes.

MR. DEPUTY SPEAKER : The question is :

"That Clauses 2 and 3 stand part of the Bill."

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

MR. DEPUTY SPEAKER : Clause 4. There are amendments by Shri Somnath Rath.

SHRI SOMNATH RATH (Aska) : I am not moving them.

MR. DEPUTY SPEAKER : The question is :

"That Clause 2 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Clauses 5 and 6 were added to the Bill.

MR. DEPUTY SPEAKER : Clause 7. There is an amendment by Shri Somnath Rath.

SHRI SOMNATH RATH : I am not moving.

MR. DEPUTY SPEAKER : The question is :

"That Clause 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

Clause 1, the Enacting Formula and the title were added to the Bill.

SHRI H.R. BHARDWAJ : Sir, I beg to move :

"That the Bill be passed."

MR. DEPUTY SPEAKER : The question is :

"That the Bill be passed."

The motion was adopted.

18.04 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Tuesday, March 22, 1988/ Chaitra 2, 1910 (Saka)