

has been pressurised or somebody has done something *quid pro quo*.

**SHRI SHAMBHU NATH CHATURVEDI:** Is it one of the points in the show cause notice that the souvenir for which advertisements were given, was published or not?

**SHRI SHANTI BHUSHAN:** So far as the publication of the souvenir is concerned, we will try to collect the facts whether those souvenirs have been published.

#### Principle of Seniority of Judges in Appointments to Supreme Court

+

\*24. **SHRI G. S. REDDI:**

**SHRI BAPUSAHEB PARULKAR:**

Will the Minister of LAW, JUSTICE AND COMPANY AFFAIRS be pleased to state:

(a) whether recent appointments to the Supreme Court have been made adhering to the principle of seniority of judges; and

(b) if not, the reasons thereof?

**THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN):** (a) and (b). Recently two appointments have been made to the Supreme Court. These appointments were made on the recommendation of the Chief Justice of India and in accordance with the provisions of Article 124(2) of the Constitution. Appointments of Puisne Judges of the Supreme Court are selection appointments and such appointments do not depend on the seniority of judges of High Courts.

**SHRI G. S. REDDI:** What is the number of cases in which seniority has been overlooked. (*Interruptions*)

**MR. SPEAKER:** Kindly don't drag me in.

**SHRI SHANTI BHUSHAN:** Unlike the appointment of a Chief Justice

either in the Supreme Court or in the High Court where seniority plays and has played a very important part in the appointment of a Chief Justice, so far as the appointments to the Supreme Court from amongst the judges of the High Courts are concerned, the seniority has never played a part in them, at least not an important part, because it has always been felt by everybody that these appointments to a higher court must go on the basis of merit and suitability of each judge. That is why throughout, from the very beginning, in a very large number of cases, the judges of the High Courts have been appointed to the Supreme Court irrespective of their seniority in the all-India list. Even when their position in their own High Courts was 4th, 5th, 6th or 7th, in a large number of cases, very eminent people have been appointed as judges to the Supreme Court. On that basis, even Justice Shastri when he was appointed to the Federal Court, his position in his own High Court was 4th and in the case of Justice Bhushan Kumar Mukherjee, his position in his own High Court was 3rd.....

**MR. SPEAKER:** His question was as to in how many cases junior judges have been appointed to the Supreme Court. If you have got the information, you give it.

**SHRI SHANTI BHUSHAN:** Out of 59 appointments made to the Supreme Court, before this, in as many as 29 cases the persons who were not even the senior most in their own High Courts were appointed as the judges to the Supreme Court. In two cases, direct appointments were made from the Bar.

**SHRI G. S. REDDI:** In view of the executive interference and the independence of the judiciary being affected by counting only the merit, is it not pos-

sible for the Government to take the seniority as well as the merit into consideration?

**SHRI SHANTI BHUSHAN:** I am happy that the matter of independence of judiciary has been referred to. It is precisely for this reason that the appointment has been made in the manner in which it was done, namely, according to the views of the Chief Justice and the two senior most judges of the Supreme Court. Obviously, if the Government acts on their advice and makes the appointment, then it means that the independence of the judiciary is respected and, if the Government arrogates to itself the power to override the views of the Supreme Court, then only the independence of the judiciary will be affected.

**SHRI BAPUSAHEB PARULEKAR:** The hon. Minister has said that the appointment of judges is made on selection basis and the seniority does not count much. However, I remember to have read the statement given by the hon. Minister to the Press wherein he has stated that outstanding ability independence and high integrity are the criteria for the selection of this particular post. I believe the hon. Minister remembers the qualities of the present Chief Justice of Gujarat. The present Chief Justice of Gujarat High Court was transferred during emergency from his State probably because he possessed these qualities. During the emergency, he was transferred from Gujarat to some other State. May I know, therefore, from the hon. Minister the reasons as to why the two judges of the Gujarat High Court, though senior to Justice Desai, were not given this high office? Was it because they were lacking in the qualities which he has mentioned in the Press note?

**MR. SPEAKER:** He has mentioned that he has gone by the recommendations of the Supreme Court.

**SHRI BAPUSAHEB PARULEKAR:** He has mentioned in the Press note that these are the qualities which the Law Ministry has taken into consideration for the appointment.

**MR. SPEAKER:** What the Minister said was that he was guided by the advice by the Chief Justice and two other judges of the Supreme Court. He did not go into that aspect. He accepted their recommendations. That is what the Minister said.

**SHRI BAPUSAHEB PARULEKAR:** My question is while considering the question of seniority, the question of merit and seniority both are being taken into consideration. Therefore, my question is whether these two judges were not found competent to assume this particular office. I want to know the reasons for this.

**SHRI SHANTI BHUSHAN:** I am happy to say that in the high Indian judiciary, namely, consisting of judges of the various High Courts in India, there are a very large number of judges who are very able, every independent and therefore possess all the qualities which have to be possessed by judges of the high judiciary. But, at the same time, when a question of selecting a person to the Supreme Court arises, it is not enough that one judge possesses these qualities in an admirable way. There can be other judges who possess those qualities and then a selection has to be made by taking into consideration all these things. If the Chief Justice and the two senior most judges felt, after taking into consideration the independence, the ability of all these judges—that Justice Desai and Justice Tulzapurkar had to be selected for the Supreme Court, there was no reason to doubt either their ability or their independence for any reason. In that case, that recommendation has to be accepted.

**SHRI SHYAMNANDAN MISHRA:** Sir, the hon. Minister has said that the appointment to the Bench is governed by Article 124. That is precisely the position. But what the House would like to know is whether the required consultation under Article 124 has actually taken place. The hon. Minister has said that the consultation has

taken place with the Chief Justice and some of the Judges of the Supreme Court. But the Article requires that the consultation will take place also with such judges of the High Courts in their own States as the President deems necessary. Now the two questions that arise for an answer are: (i) whether the hon. Minister consulted the same Judges of the Supreme Court as were consulted by the Chief Justice; and if that was done that was clearly redundant; secondly, whether the Government also consulted the judges in the High Courts in their States. If this consultation has not taken place then clearly the consultation required under Article 124 has not taken place. Secondly, as a part of this....

MR. SPEAKER: You cannot make a part of this.

SHRI SHANTI BHUSHAN: Art. 124(2) gives discretion to the President to consult such Judges of the Supreme Court and such Judges of the High Court as he may consider appropriate; and of course, the Chief Justice of India has to be consulted. Now I, as Law Minister, had decided that it would be appropriate to extend the field of consultation beyond the Chief Justice of India and it was therefore decided by me that the two senior-most Judges of the Supreme Court should also be consulted.

SHRI SHYAMNANDAN MISHRA: The same Judges as were consulted by the Chief Justice?

SHRI SHANTI BHUSHAN: I thereupon consulted the two senior-most Judges of the Supreme Court, saying that, with reference to Art. 124 (2), Government would like to have their views. It appears that these two seniormost Judges and the Chief Justice got together and jointly sent this recommendation.

SHRI SHYAMNANDAN MISHRA: My question has not been answered.

Mr. SPEAKER: He has asked why you did not consult the High Court Judges.

SHRI SHANTI BHUSHAN: While it is permissible for the Government and the President to consult Judges of the High Court also....

SHRI SHYAMNANDAN MISHRA: It is not only permissible but it is obligatory.

SHRI SHANTI BHUSHAN: It is my submission that while it is permissible, it is not obligatory to consult High Court Judges. In no case had a High Court Judge been consulted earlier.

SHRI SHYAMNANDAN MISHRA: Acceptance of their advice is not obligatory but consultation is obligatory.

SHRI SHANTI BHUSHAN: The views of the former Prime Minister Shri Jawaharlal Nehru on this point are on record: he said that it would not even be appropriate to consult High Court Judges. I can well imagine the reason: High Court Judges being in the field of choice themselves, normally it would not be appropriate to consult High Court Judges on a question of selection.

SHRI SHYAMNANDAN MISHRA: Then why does the Article say it should be done? He is questioning the propriety of Art. 124.

MR. SPEAKER: He says that it has not been done in the past.

SHRI SHYAMNANDAN MISHRA: It might not have been done, but the requirement has to be carried out.

SHRI JAGANNATH RAO: I am glad that the Government is not considering seniority as a principle. This controversy arose in 1973 when some Judges were not selected on the basis of seniority. So, I am glad that the Government is not accepting seniority as the basis, but I would like to know whether the Government also takes into consideration the maximum period a Judge can serve in the High Court or Supreme Court. What is the minimum period required in the matter of selection to serve on the Bench

**SHRI SHANTI BHUSHAN:** First I would like to point out that when a person is appointed as Chief Justice of a High Court, the position is quite different from that of a person being appointed as Chief Justice of the Supreme Court. Government draws a distinction between the two cases. There is no parallel between the two cases of a Judge being appointed Chief Justice in the same court and of a Judge being appointed to a superior court. So far as the appointment of the Chief Justice of the Supreme Court is concerned, prior to 1973 invariably, in every case, the senior-most Judge of the Supreme Court had been appointed the Chief Justice. But this has not been the position in the matter of appointing a High Court Judge to the Supreme Court. So, there is a distinction between the two cases.

So far as the question of minimum period is concerned, I am aware of the fact that the Law Commission had made a recommendation to the effect that normally, when a Judge of a High Court is appointed to the Supreme Court, one of the factors to be taken into consideration should be that he should have put in a substantial period of service so as to leave an impact on the Supreme Court. This is one of the factors, and all factors are taken into consideration by the Chief Justice and other Judges who are consulted before making their recommendations.

**SHRI HITENDRA DESAI:** The Law Minister had quoted a judgment delivered by Shri Desai against the former Government. I would like to know whether the attitude of the concerned Judge against the former Government is also a qualification.

**SHRI SHANTI BHUSHAN:** No, Sir. It is not a qualification by itself. May I make it clear as to why in my statement I had referred to it? I had to issue this statement because Mr. Chagla had made a statement in which he had referred to the fact that certain things affected the independence

of a person. Therefore, I had to show I had to say, that in the case of Chief Justice Desai who had been appointed to the Supreme Court, it could not be said by anybody that he was lacking in independence during the period of Emergency. The judge had the courage, during the period of Emergency, to give that judgment. It is not a question of giving it, in favour of this Party or that Party.

**SHRI SOMNATH CHATTERJEE:** During the Congress regime we had seen that several appointments were made in the Supreme Court and High Courts not judged on the basis of merit competent judges had been superseded. Judges had been appointed on extraneous considerations. Therefore, the people of this country had necessarily and for good reasons agitated when the question of supersession came. Therefore, when the last appointments were made, specially when Chief Justice Dewan was concerned, who had been a victim of Emergency, should not the Government have taken a little more care to remove the impression from the people's mind that Justice Dewan was continued to be made a victim of Emergency? When a judge was going to be appointed from the Gujarat High Court to the Supreme Court, should a little more discretion not have been exercised?

**SHRI SHANTI BHUSHAN:** I have not been able to understand the question of the hon. Member....

**SHRI SOMNATH CHATTERJEE:** I wanted to know whether this Government should not have made a real effort to remove the impression from people's mind that in this country judges are being appointed to the Supreme Court or High Court on the basis of considerations other than merit.

**SHRI SHANTI BHUSHAN:** Yes, Sir. That is why the statement that I

had issued in the context of Mr. Chagla's statement made it very clear that the appointment of judge to the supreme Court had been made on the basis of appraisalment of merit of individual judges. That had been made very clear in my statement.

**SHRI BASHIR AHMAD:** The salutary principle in respect of appointment of judges is seniority. So far as appointment of judges to the Supreme Court is concerned, all the High Court judges have equal merit. The old principle of appointment of judges on the basis of merit imports arbitrariness and should, therefore, be given up. The judges should be appointed only on the basis of seniority and guide lines in this behalf should be laid down by the present Government.

**Mr. SPEAKER:** He has already answered to this question.

**SHRI O. V. ALAGESAN:** It is a matter of common knowledge that the various constituents of the Janata Party, before they came together and formed the Government, were swearing by the principle of seniority. (Interruptions).

**Mr. SPEAKER:** Not in the appointment of Supreme Court Judges. (Interruptions). Now, the Question Hour is over.

**WRITTEN ANSWERS TO QUESTIONS**

**रेल कर्मचारियों को बोनस का भुगतान**

\* 25. श्री यादबेन्द्र दत्त :

**श्री उपप्रश्न :**

क्या रेल मंत्री यह बताने की कृपा करेंगे कि :

(क) क्या सरकार हाल ही में घोषित बोनस नीति के अनुसार कर्मचारियों को 8.33

प्रतिशत बोनस देने की व्यवस्था तुरन्त कर रही है और यदि नहीं, तो इसके क्या कारण हैं; और

(ख) क्या विभाग द्वारा कर्मचारियों को 8.33 प्रतिशत बोनस न दिये जाने के कारण उनमें घोर असन्तोष है और क्या हड़ताल हो जाने से जन-जीवन अस्त-व्यस्त हो जायेगा ?

**रेल मंत्री (श्री. मधु बंडवते):** (क) और (ख): हाल ही में सरकार ने एक अध्यादेश जारी कर आपातकाल से पूर्व के बोनस अधिनियम को बहाल कर दिया है। रेलवे जैसे सरकारी विभागीय उपक्रम को बोनस अधिनियम की परिधि से बाहर रखा गया है।

रेल कर्मचारियों को भी बोनस देने की मांग करने के बारे में अभ्यावेदन प्राप्त हुए हैं। सभी क्षेत्रों में वेतन, आय और मूल्यों के संबंध में एक राष्ट्रीय नीति तैयार करने के लिए सरकार ने हाल ही में एक अध्ययन दल नियुक्त किया है जिसकी रिपोर्ट मिल जाने पर व्यापक अध्ययन कर लेने के बाद ही इस प्रश्न पर विचार किया जायेगा।

बोनस के मामले पर रेल कर्मचारियों में बड़ी उत्तेजना है फिर भी, विभिन्न रेलवे यूनियनों के साथ अभी हाल में हुई बैठक के माँके पर रेल कर्मचारियों के प्रतिनिधियों को उपयुक्त स्थिति से अवगत करा दिया गया है।

**पेट्रोलियम की खोज का काम**

\* 26. श्री नवाब सिंह चौहान :

**श्री सगर गुह**

क्या पेट्रोलियम तथा रसायन एवं उर्जरक मंत्री यह बताने की कृपा करेंगे कि :

(क) देश में किन-किन स्थानों पर तटीय क्षेत्रों और समुद्र तट से दूरस्थ क्षेत्रों में पेट्रोलियम की खोज का कार्य चल रहा है ;

(ख) उन विदेशी कम्पनियों के नाम क्या हैं, जिन्हें देश में पेट्रोलियम की खोज करने के ठेके दिये गये हैं ;