

15.49 hrs.

HIGH COURT JUDGES (CONDITIONS OF SERVICE) BILL

The Minister of State in the Ministry of Home Affairs (Shri Datar): I beg to move:*

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

Sir, you are aware that before the Constitution we had an order passed by the then British Government in 1937 which governs the conditions of service of the High Court judges. Thereafter, the Constitution was passed and under the Constitution certain rules were framed and laid down in the Constitution itself. When we first made provision with regard to Part A States, naturally some provision was made also for Part B States. Thereafter, an order was issued regarding Part B States also in 1953. In 1954, a detailed enactment was passed by Parliament. It was then known as High Court Judges (Part A States) Act.

That governed only the High Courts in the Part A States until the Part A States remained as such. Thereafter as the House is aware the States Re-organisation Act was passed and all the distinctions between Part A States and Part B States were removed. By an adaptation, this Act, viz., the Act of 1954, governed all the High Courts on and from 1st November, 1956. Thereafter it was considered that certain amendments should be made specially so far as the judges in the former Part B States were concerned inasmuch as the order passed in 1953 had lapsed on the 1st November, 1956, because Part B States themselves ceased to exist. Therefore, certain changes had to be made in the law and that is one of the main purposes for which the present

amending Bill has been brought forward.

One more point in this connection may be noted and that is that this Act would come into force as from the 1st November, 1956. So far as Part B States High Court judges are concerned, a very large number of them were appointed to the new High Courts because under the States Re-organisation Act, the former Part B High Courts were technically abolished and the new High Courts were established in these States. Now in all the 14 States we have got High Courts of the same category which are now governed by the Act of 1954.

15.52 hrs.

[SHRI BARMAN in the Chair]

But some difficulties remained especially so far as the conditions of service and question of pension were concerned in respect of the judges who were formerly judges of Part B States High Courts and who continued to be judges in the various High Courts after the States' Re-organisation. As I pointed out, they had certain leave to their credit under the old rules. The question of pension also was to be considered and, as I pointed out, the Part A States High Court Judges Act of 1954 could not apply to them. Therefore, certain changes had to be made and that is one of the principal objects for which this particular Bill has been brought forward.

As I stated the question of their pension had to be taken into account and while the question of pension was being taken into account their service in the former Part B States High Courts had to be considered as to whether the whole period was to be included or whether something else should be done. Similarly, there was a certain amount of leave to their credit. What was to happen to that leave after they became judges of the present High Courts in the various

*Moved with the recommendation of the President.

States? These were the two principal questions which we had to consider.

Then, incidentally, other difficulties were also felt. For example, under the Constitution, as it existed before the change came over on the 1st November, 1956, there were *ad hoc* judges also but now under the Constitution, as it is amended, we have got acting judges and we have got additional judges. So, with regard to them also certain provisions have got to be made. Therefore, all these questions were considered and the present Bill has been brought forward.

So far as the first question is concerned, *viz.*, the question of leave and pension, regarding both these points Government took into account whatever had happened and after full consideration they came to the conclusion that in the case of those High Court judges who are now in the High Courts in the various States but who were formerly in a Part B State High Court all the actual service that they had rendered should be taken into account and should be added on to the actual service that they have been rendering since the 1st November, 1956. So, this is the first thing that has been provided for in this Bill so that there would be a continuity and all the amount of their service could be taken into account for pension or the former period of service could be added on to the latter period of service so as to qualify them for pension whenever they retire from service.

Secondly, as I have pointed out, provision has also been made so far as the unexpired or the unenjoyed period of leave is concerned, as, it might be noted, certain principles had been laid down in the principal Act of 1954 according to which the High Court judges are entitled to a certain period of leave. Now that also has to be added on, *i.e.*, whatever leave accrued to them by putting in certain periods of service will be taken into account, as in the High Court Judges Act of 1954 a provision had been made for calculating the total amount of leave

to which they would be entitled or which they would earn and the amount of leave that they would take. In other words, as I pointed out yesterday, in this Act a provision has been made for having, what is known as, a leave account and in the leave account on the credit side will be mentioned that period according to the principles laid down, which I mentioned only yesterday because they have been taken from the principal Act of 1954. All the amount of leave that would be to their credit will be reckoned in terms of half allowances leave. That is what has been laid down. Then they would be entitled to separate periods of leave.

Now, the leave would be of three kinds. One would be leave on medical certificate. Naturally that also has to be provided for. Then there would be leave other than on medical certificate. So far as these two kinds of leave are concerned, they are entitled to take or enjoy periods of leave subject to the credit that they have in the leave account. Now, in this case, there is also extraordinary leave that they are entitled to. In respect of all these periods of leave, which have been prescribed, the maximum amount of leave that could be taken was laid down, *viz.*, six months. Now, the question was whether the six months' leave could be taken all at once or whether it could be taken in smaller periods subject to the maximum of six months. That was the question which required some consideration.

Under the Act of 1954, the whole leave had to be taken once and the maximum amount of leave was six months. That was considered a hardship because sometimes a particular High Court judge who wants to go on leave may not like to have the whole leave at one time as his need might be for a shorter period. Therefore, it has been considered and a similar provision has been included in the Supreme Court Judges Act, *i.e.*, in respect of these periods of leave when the maximum has been laid down as

[Shri Datar]

six months, it is open to the judges to take leave for a shorter period, but subject to the principle that the aggregate amount of leave would be only six months and not more. So, that also has been made clear.

Then, as I have pointed out, other points have also been made clear in this case and it has been pointed out that so far as pension is concerned, the same principles have to be taken into account.

Now, one question also arises. There were Chief Justices of former Part B States High Courts. We have laid it down that the amount of leave that they have to their credit or the amount of actual service that they put in should be taken into account when, for example, they come under the new Act, subject to the rule that naturally they would be governed by the provisions of the present Bill. That also has been laid down here.

In respect of vacations, there is a provision here though the exact term or period or periods of vacation need not be incorporated in the Act itself. In keeping with the dignity of the High Court, it would be better if, for example, provisions are made regarding the exact amount of vacation in the Rules. Naturally, these rules have to come into force only after the President has expressed his approval. Therefore, provision has been made to that effect also.

16 hrs.

These are the main provisions. It will be seen that this is only an amending Act, not an Act containing all the necessary provisions so far as Judges are concerned. We have got the principal Act of 1954. We have made only such changes as are absolutely essential. I, therefore, feel that the provisions are of such non-controversial nature and they will appeal to the hon. Members of this House.

Mr. Chairman: Motion moved:

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

Shri Nath Pai (Rajapur): Sir, this morning, I availed myself of the opportunity to express some of the anxieties that have been exercising our mind. We then thought that the Home Ministry, loaded as it is with two eminent jurists of the country, would really give serious consideration to the fears that we are led to entertain in the light of certain developments in the country. We did not find that we had succeeded in producing such an effect upon them. Whereas one would not like to quarrel with the provisions of the Act to which he has just now referred, I without wanting in any way to inflict for a second time, the views to which I gave expression this morning, at this stage again, would very earnestly like to plead with the Government that, even if they cannot incorporate in the body of the amending Act, at least in practice, they should try to follow the principles which I think, on other occasions, they themselves try to uphold.

These principles have been, I beg leave of the House for appearing to repeat slightly, that the executive shall do everything in its power to refrain from using such honours as it can confer in the exercise of its executive power, from bestowing them upon the members of the judiciary. The patent plea that they have raised times without number is that we did not have qualified personnel except the Judge whom they happened to promote. No one is going to accept this plea as a serious defence of their act. I am not going to attribute motives to the act of the Government. But, the Home Minister said that we were challenging the integrity of the Judges. Nothing is farther from our minds than to challenge it.

An Hon. Member: From their mind too.

Shri Nath Pai: I am very happy to have that assurance. I wish it came from the Treasury Benches.

But, I am afraid, while they are protesting like this, the steps they are taking may lead to that integrity, perhaps indirectly, perhaps unconsciously, perhaps inadvertently, but definitely being undermined. We have instances of the executive showing a tendency to confer favours of an executive nature upon members of the judiciary. We will never tire of making our strongest protest against this tendency. They should be the one people who should not have the possibility of rising to a post which comes to them by way of a favour conferred by the executive. The only post to which a Judge should expect to rise as a matter of his own right, based on his merit, is a higher post in the judiciary, a quasi judicial post, on a judicial commission, but no other post, as is the growing tendency. I should have liked to hear from him to allay our fears by way of clarification, a statement showing how many such posts have been filled during the past ten years at the instance or at the behest of our executive. I should still like him in his reply to tell us how many Judges of the High Courts have been promoted to posts of Governors, to ambassadorial posts and to other executive posts. If, in the case of the Union Public Service Commission, the Constitution lays it down categorically that after being a member of the Union Public Service Commission, they will be not eligible for certain posts within the purview and bounty of the executive, why are we not extending it to the judiciary? I know the House has rejected an amendment which has sought to be made applicable to Judges of the Supreme Court. I am pleading that, whatever be the law,—we may not be able to incorporate into the Act today—at least the executive shall zealously guard this principle in practice and see to it that this bounty is not exercised in this form.

This morning, I made two references to the appointment of Judges as Ambassadors, appointment of Judges as Governors. This practice, it seems, the Government is intent on following. Whatever the motive in doing this, the only patent argument that the Government has put forward, when challenged by the press and the public in justification of it, the only excuse that the Government has raised so far is the excuse that the person concerned was eminently suited. Is there such a dearth of competent persons in this country that we are to look for the jobs of Governors only to the Bench? Are we just so niggard in the production of talent in this country that the executive has, times without number, to depend entirely for replenishing our diplomatic corps through the supply that the Bench can make? Now and then, the reply given is, this was an exceptional case. I should very humbly plead with him, it is the exception that is very important. Once you make this little loophole, we do not know, the sinister camel of general practice may find its way. It is against this that once again, at this late stage, I would like to plead with the Minister who will be piloting the Bill, that he gives a categorical assurance to the House that the executive shall not use such honours as it has in its bounty to confer them on the members of the judiciary, that Judges shall not, in any case, be appointed as Ambassadors. Not because they are not qualified. Many of them are qualified. Justice Chagla is most eminently qualified. I now mention it because we are dealing with High Court Judges this time. I repeat, so far as his qualifications are concerned, so far as his deserving the job is concerned, I think there cannot be two opinions in this country, either this side or that. He is eminently suited for discharging the duties which he is called upon as our envoy to the United States. But, what about other people who may be tempted, and then, how do we know what has qualified them? One does not know, a Judge may be tempted. He may be one. But how

[Shri Nath Pai]

much harm will be done to our whole system? One may be tempted, if only I behave, I may get such an honour. I am not accusing the particular Judge who has been appointed. He has a flawless record of great and distinguished service in our judiciary. But, if Judges begin to note that they can be promoted like that, we do not know what course justice may take in our courts. I, therefore, plead with him that neither the post of a Governor, nor the post of an Ambassador nor any such executive post within his bounty shall be available to a Judge. Make any liberal provisions as you are seeking to make today regarding leave. No one will quarrel with that. That, I repeat, is the safest investment we have. Therefore, I sought the indulgence of the House to slightly appear repetitive because it is our earnest hope that jurists as they are, they would also share our concern to maintain the independence of our judiciary.

Shri Vasudevan Nair (Thiruvella):
 Sir, I too agree that it is a non-controversial Bill. This Bill mainly deals with the conditions of service of High Court Judges, especially those who were taken into the High Courts after the reorganisation of the States. I will come to that point because I think, there is a patent injustice done to the Judges selected from the old Part B State High Courts to the reorganised High Courts of our States today. But, before taking up that point, let me make some general observations.

I was very careful in listening to some of the speeches made on the occasion of the debate on the Supreme Court Judges (Conditions of Service) Bill. Now, I was listening to my hon. friend Shri Nath Pai. I am afraid, we are talking too much about remuneration, conditions of service etc. I am quite sure nobody will blame us, blame the Treasury Benches too, that our Judges are not getting a good salary, that their service conditions

are not good. Nobody can blame the Government for that, that is my view. The hon. Minister has made that very clear in his reply to the previous debate. Our High Court Judges, our Supreme Court Judges and our Judges in the lower courts are, according to me, getting substantially good salaries. Their service conditions are tolerably good. I cannot agree with my hon. friend Shri Anthony that we are not able to get eminent people as Judges because in the bar they are getting huge amounts and if they take up the post of a Judge they are deprived of that privilege of earning money. That is another question. We should view the entire question from a different angle. I feel the approach to this question made by Shri Anthony and some other hon. Members is basically fallacious. You cannot satisfy anybody by paying him a fabulous amount. Man cannot be satisfied like that. If you do not view the task of a Judge from a different angle, as one of service to humanity, as one of service to the country, then we cannot have a judiciary, we cannot have courts which can do justice to our people, to our country.

Our Supreme Court Judges are getting something like Rs. 60,000 per year apart from the allowances, apart from other amenities, apart from free housing etc. Compare it with the most advanced country in the world. Take the U.S.A. I hear the Judges in that country get something like Rs. 1,25,000. Of course, it is almost double the amount that our Judges are getting, but look at the difference in the per capita income between India and the U.S.A. It is something like 1:200. I believe, taking into consideration our difficulties, the backwardness of the country and the low pay given to large numbers of our employees, we are paying a substantially good salary to our Judges, and I believe you can never satisfy people like that by paying and paying.

There is a mad race after money. I am not blaming our Judges, but in our society today there is almost a mad race after money, and I am afraid it is seen too much in the higher circles than in the lower circles. That has become a disease in society today. I am not boasting, but we should consider the fact that in this very country today there are Ministers who are satisfied with Rs. 350 a month. If a Chief Minister can carry on his duties with dignity on Rs. 350 a month, I cannot understand why people talk so much about raising the salaries of Judges who draw salaries ranging from Rs. 3,000 to Rs. 5,000. A Minister may get Rs. 350, but I do not think any harm is done to the dignity of his office, to his integrity; nothing happens.

So, it should be approached as a question of service to the country, service to the people. The judiciary should be seen as part and parcel of our society. We are immersed in a big job; that consciousness should be injected into the judiciary too. That is my point.

In the speeches that were made in this House unfortunately that approach was not made, and I should say in the selection of Judges that approach is not made by the Government too. Of course, we are running after legal pundits. I do not object to that. Our Judges should be very good at law, but they should be human beings I should say. They should have an understanding of what is going on in this country today, the momentous changes that are taking place in this country, the different phase that we are passing through. That kind of understanding should be in them. I am afraid that is not seen today.

I can substantiate that by the functioning of many of our High Courts,—I am not speaking about any particular High Court—and by the functioning of the Supreme Court also to a certain extent. For example, in this very House several times we have

drawn attention to the fact that in the cases relating to labour disputes the Supreme Court is very often taking a stand which people consider to be reactionary. They fail to understand the new spirit that has come to stay in the country. I do not want to deal with that point very much now. So, the point is that in the selection of Judges, this attitude or this approach should be there, and we should try to inspire our Judges too with the new ideals that are before us, with the new task which is before us.

Now I wish to dilate on another point. In this Bill there are some provisions with regard to the conditions of service of additional Judges and acting Judges. The number of Judges in our High Courts has increased. Of late, in almost every High Court more Judges have been appointed. Still what is the position with regard to the disposal of cases? I am afraid in almost all the High Courts there are a number of cases sleeping in the files. It takes not months but years for the High Courts to dispose of very urgent, very important cases. Stay orders are issued, but the case is not disposed of for two or three years. I know of cases like that.

Shri V. P. Nayar (Quilon): Five or six.

Shri Vasudevan Nair: Even for five or six years. The stay is there for years together. Why this delay? I believe in the Law Ministers' Conference held last year the main discussion centred round this topic of delay in the disposal of cases. I would like the hon. Minister to explain what steps have been taken after the Law Ministers' Conference to expedite the disposal of cases, what concrete suggestions were sent out to the High Courts by the Law Ministry or the Home Ministry to expedite the disposal of cases. It is really a deplorable situation that exists in almost every High Court.

[Shri Vasudevan Nair]

I know a particular High Court where the Judges decided to work for more hours a day. Instead of from 11 A.M. to 5 P.M. they decided to work from 10-30 A.M. to 5 P.M. The poor clerks and other officers in the High Court had naturally to come to the Court at least by 10-15 A.M. If the Judges are coming at 10.30 then naturally the office should function at 10.15 at least. Till now the Judges have not begun to function at 10.30. The order is there on paper, and the officers and the clerks and other people are coming at 10.15 or 10 in the morning, but the Judges still come at 11. This change in the working hours was made in order to expedite the disposal of cases. Still, the position remains as before. I feel there is no use in appointing Judges after judges and spending money on additional judges, acting judges and what not, if the position is to remain the same as before. There should be some substantial improvement. I hope the Ministers would not wait for the coming conference again to make speeches on this issue. We are hearing so many speeches. Our Prime Minister himself spoke in that conference, and he said that our judges were living in ivory towers, divorced from practical life, practical experience etc. There is no use making speeches like that, unless you are able to turn the corner, unless you are able to do something concrete. I would like the Minister to explain the present position as to what steps they have taken.

The third point to which I wish to refer is the question of the judges who were taken into the reorganised High Courts, on the reorganisation of the States. As a matter of fact, I think the most important provision in this Bill is on that question. Government will be doing an injustice to a large number of judges, if they are pressing the clause as it is put down in this Bill.

There was the High Court of the Travancore-Cochin State, which was a part B State. Now, we have got the

High Court of Kerala which is a Part A State, or rather, which is now on a par with the former Part A States. Almost all the judges in the Part B State High Court have now been taken in into the Kerala High Court. But certain other judges have come from Madras High Court. I would like to know what the position is with regard to the service of those judges who were serving in the erstwhile Travancore-Cochin High Court *vis-à-vis* the service of those judges who have come from Madras. In some cases, the judges from the former Part B State of Travancore-Cochin might have put in more service than the judges coming from the Madras High Court. But according to the provision in this Bill, I am afraid those judges will be junior to those who have come from the Madras High Court.

Similarly, there is the former Part B State of Hyderabad where also there was a High Court. As a result of integration, there is now the High Court of Andhra Pradesh. There too, this question has arisen, I learn, in an acute form. If the Minister is going to push forward this Bill as it is, I am quite sure he is doing injustice to those judges. After all, what is the difference between the judgment pronounced by a previous Part B State High Court and that pronounced by a Part A State High Court? I believe we are giving the same value to the interpretation of law by the High Court of a previous Part B State as to that by the High Court of a Part A State. Or, I would like to know whether there is any difference in weight attached to the interpretation of law or the judgments pronounced by the Part B State High Court and those by the Part A State High Courts. Or else, why is there this difference in the calculation of the service of the judges who served in the old Part B State High Courts and those who served in the Part A State High Courts. I would like the Minister to remedy this situation and to take away that part of the provision, and

allow the judges of the previous Part B State High Courts also to count their previous service on the question of promotion, if any, or transfer to other States. I hope the Minister will give consideration to this aspect.

Shri Heda (Nizamabad): So far as the general problem, namely the salary and other conditions of service of the High Court Judges, is concerned, there is general agreement in the House that the salary should be adequate, and they should be able to live comfortably. Of course, a dissenting note was struck by the previous speaker, who said that the present salaries were quite fat ones, and he made a comparison with an altogether different category, namely Ministers and said that there were people who lived quite well with Rs. 350 p.m. I think the comparison was uncalled for. The two categories live in entirely different worlds, and the motive forces for these two categories are quite different. I do not know to what State the hon. Member was referring to . . .

Shri Vasudevan Nair: The Kerala State.

Shri Heda: It may be that a particular category might have taken this step for some other purposes, not that more than Rs. 350 is a big sum or a fat salary; it might be to gather public sentiment or to win what is generally termed as popularity.

The point is that so far as Ministers are concerned, the salary forms a very small part, because there are other amenities that they get, such as travelling allowance and other things. I have no firsthand knowledge of the State which the hon. Member was naming now.

Shri Vasudevan Nair: I am giving facts.

Shri Heda: I think there is no particular difference. Ministers from other States have visited my State, and I do not find any difference either in their dress or in their way of life,

or in their place of habitation, and so on; I do not find any difference also between these Ministers and even the Central Ministers who come to my State. So, a little difference in salary might not go very far, and, therefore, let us not bank upon it.

The other point that was referred to was that in other countries, the salaries might be a little more; but the *per capita* income is also much more. Therefore, the salaries that we are paying are more than adequate. It is true that the *per capita* income in our country is much less; we belong to a poor country, and poverty itself has its own demands. When somebody is in a good position, he gets quite a lot of his nephews, nieces and in-laws, and so on, and because of our traditional joint family system or natural affection many times we have to support our near relations who are not so well-placed. However, that is a small point.

Besides, there are also the general welfare activities undertaken by other countries in the West. And however much we may like such activities to be undertaken by Government in our country, there is great disparity still, in regard to medical aid, general housing condition, communication facilities, facilities for education and so on. There are so many things which make a vital difference. If we take into consideration all these things, I think the salaries that we are paying are quite adequate and not fat.

There is one other point which the previous speaker has touched, and which I also would like to touch. He comes from Travancore or Cochin. Similarly, I also happen to come from a former Part B State, the Hyderabad State, which was the biggest Part B State. It was provided in the States Reorganisation Bill that consequent on reorganisation of States, the High Courts of the Part B States would be abolished. And there were reasons for it, and we could appreciate the reasons. There were so many Part

[Shri Heda]

B States, and there was such a big variety, small ones and big ones, States with very good administrative standards, and States with very low standards and so on. There was such a big disparity between a judge in a big disparity between a judge in another Part B State, varying in general standards, and with varying salaries and so on. Therefore, it was not possible, nor was it desirable, to accept all the judges of the Part B States on a par with or equal to the judges in what were at that time the Part A States. But I think the Government were wise and they made a judicious provision. The provision was that though the High Courts of Part B States were abolished under section 50(1) of the States Reorganisation Act, under sub-section (3) of the same section, the President was empowered to appoint as Judges or continue as Judges of the successor High Courts such of the Judges whom he chooses and who are recommended by the Supreme Court. This was a very judicious provision and at least so far as the former Hyderabad State was concerned—I do not know about other States—this was used. In fact, it delighted our hearts, because the High Court of the former Hyderabad State was well known for the merit of the Judges, the standard that it maintained and the quality of work it produced. So when before the abolition of the Hyderabad High Court, the Judges of that Court were appointed as Judges of the High Courts of either Andhra Pradesh or Bombay or Mysore, we felt that justice was done. But then a lacuna arose in calculating their service or seniority. I do not know what constitutional provision or what intelligent interpretation of any rule was made use of. I have tried to understand this problem and, unless one says that what I say is incorrect, no rules provide that, once the service of a Judge is a continuing service and he has been appointed as a Judge before the High Court to which he belonged was abolished, it is a fresh appointment. It is not a fresh appointment; it is not a re-appointment.

Therefore, his seniority should have been calculated from the date of his appointment in the High Court of the former 'B' State. This has not been done, and I think it is a grave injustice.

I am raising this not because I know most of the Judges but because most of the Judges—rather all of them—had been held in great respect. Even in those black days when a communal army was ruling over Hyderabad State, the behaviour of the Judges, irrespective of their caste, was exemplary. They tried to help the establishment of liberties and tried to uphold the dignity and impartiality of the High Court.

Therefore, I would ask the Minister why this departure was made in the case of certain Part B States, how the appointment of Judges of these Courts in the successor High Courts before the abolition of the former High Courts was taken as fresh appointment or reappointment, and why their seniority has been moved down as if they were appointed yesterday. Justice demands that they should be dealt with on par with others. I hope that this aspect would be sympathetically considered by the hon Minister

श्री० रणवीर सिंह (रोहतक) : सभापति महोदय, मैं इस बिल का समर्थन करने के लिये खड़ा हुआ हूँ। मैं समझता हूँ कि बिल बहुत मीठा मादा है और इसमें कोई आपत्ति वाली बात नहीं है।

आज सभी आदमी और सभी माननीय सदस्य यह मानते हैं कि हाई कोर्ट्स में काम काफ़ी बढ़ गया है और इमालिये और अधिक जजेज के लगाने की ज़रूरत होती है और जब उनको लगाने की आवश्यकता है तो उनकी जो सविस्तर हैं, वह क्यों न गिनी जाय और जिस तरह मेहेडा साहब ने कहा कि श्री० क्लास स्टेट्स के जो जजेज थे, उनकी भी नौकरी या उनका जो पीरियड

है वह गिनती न किया जाय, मैं तो ऐसा न करने के लिये कोई कारण नहीं देखता।

जहाँ तक इस बिल का वास्ता है वह बड़ा सादा और साफ़ है लेकिन कई एक बातें इसमें कही गई या पिछले विधेयक के सम्बन्ध में कही गई। मैं समझता हूँ कि उसके अन्दर बहुत सारी बातें तो ऐसी हैं जिन पर कि बहुत ज्यादा ध्यान नहीं देना चाहिये।

श्री ब्रजराज सिंह ने जिक्र किया और गो कि उन्होंने उस जज का नाम नहीं लिया लेकिन जिस जज की तरफ़ यह इशारा करना चाहते थे उसको मैं समझ गया। मैं उनको बताना चाहता हूँ कि जो एपायन्टमेंट हुई है वह भी वही हुई है जो कि एन्वनी साहब का संशोधन था

Shri Satyendra Narayan Sinha (Aurangabad-Bihar): Is he speaking on the previous Bill?

Sh. Ranbir Singh: I am speaking on this Bill and I have an absolute right to refer to any other provision which is relevant to this Bill.

तो मैं निवेदन कर रहा था कि मैंने उस वक्त बतलाने की कोशिश की थी कि वह एक ऐसी बात कही गई जो कि ठीक बात नहीं थी और मैं समझता हूँ कि मैं उस बात का यहां पर जिक्र कर दूँ कि जो उनका रेफ़रेंस था वह सही नहीं है क्योंकि अगर किसी जज को लगाया भी था या लगाया गया होगा तो वह गालिबन् उस चीज़ के लिये लगाया गया जिसको कि उनका संशोधन भी मानता था यानी ऐसी जगह पर जहाँ कि एक जुडिशियल या सैमी जुडिशियल एपायन्टमेंट हो वह किया जा सकता है। अब जहाँ तक गवर्नमेंट में या किसी दूसरी जगह उनको लगाने पर पाबन्दी रखने का सवाल है, मैं समझता हूँ कि बहुत सारे भाई ऐसे भी होंगे जो कि

इस बात से सहमत होंगे कि इस तरह की उन पर पाबन्दी लगाना ग़लत होगा।

आज केवल एक स्टेट है उसके अन्दर अमतीर पर कुछ ऐसा देखा गया कि वहाँ पर जो पार्टी पोजीशन है उसमें केवल एक प्राब का ही फ़र्क रहना है और अगर वहाँ केवल केवल अन्दर किसी जज को गवर्नमेंट लगाया जाय तो मैं समझता हूँ कि जो बज्ज-रत के मूखालिफ़ होंगे वे भी यह मानेंगे कि यह सही है। अब अगर हमको ऐसी जगह कहीं किसी जज को लगाने की जरूरत महसूस हो या कुछ ऐसी वजूहात हो सकती है जिनकी कि वजह से जज को लगाया जाना जरूरी हो तो फिर उसके ऊपर यह पाबन्दी क्यों लगाई जाय? इस तरीके से खुद उन्होंने माना और नाथ पाई साहब ने इसको माना कि द्यागला साहब का वहाँ पर लगाना बहुत सही बात है लेकिन फिर भी वह चाहते हैं कि इस किस्म की पाबन्दी जरूर लगा दी जाय। अब अगर ऐसे मौकों पर लगाना सही है तो पाबन्दी लगाने में उनकी क्या मंशा है? मैं समझता हूँ कि जहाँ तक मुर्माकिन हो सरकार यह कोशिश करे कि जजों को जुडिशियल और सैमी जुडिशियल जगहों के अलावा अन्य जगहों पर रिटायर होने के बाद न लगाया जाय, लेकिन मेरी समझ में पाबन्दी लगाना सही बात नहीं है।

मेरे कई दोस्तों का यह सवाल है कि तन-ख्वाह के साथ एक व्यक्ति के काम करने की शक्ति के ऊपर असर पड़ता है या उसकी इंटेंसिटी पर असर पड़ता है। यह बात ठीक नहीं है। यह बात तो बिल्कुल साफ़ है कि हम को जज लगाते वक्त इस बात का ध्यान रखना होगा कि देश की कैसी हालत है, देश के बदले हुए हालात को मद्देनजर रखते हुए जजेज को लगाने में देश का भला

[ची० रणवीर सिंह]

होगा। इस बारे में मैं किसी जज के ऊपर या किसी अदालत के बारे में कोई खास जिक्र नहीं करना चाहता और न ही मेरी मंशा कोई डाउट करने की है। लेकिन मैं इस सदन को याद दिलाना चाहता हूँ कि इस देश के अन्दर जब संविधान बना और जब विधान की उन धाराओं पर जो कि अदालतों, हाई-कोर्ट्स और सुप्रीम कोर्ट से सम्बन्धित थीं, विचार चल रहा था तो उस समय उनके बारे में जो रायजरी की गई वह बहुत एक दूसरे से मुस्तलिफ थी। एक तरफ तो हमारे ला मिनिस्टर साहब थे और दूसरे जो बड़े बड़े कानूनी विशेषज्ञ वहाँ पर थे, उन्होंने राय देकर कुछ कानून बनवाये। मेरा मतलब लैंड रिफॉर्म कानून से है। हमने देखा कि इस लैंड रिफॉर्म के कानून को एफैक्टिव बनाने के लिए उनको इसको कांस्टीट्यूशन का हिस्सा बनाना पड़ा। वह ठीक है कि वह लोग बहुत बड़े वकील हैं और अदालतों में रैबी करके कई कई हजार रुपया कमाते हैं और वे शायद कानून के विशेषज्ञ भी हैं, यह बात ठीक है लेकिन यहाँ पर तो सवाल सिर्फ इतना है कि वे कानूनी विशेषज्ञ अपनी योग्यता का इस्तेमाल देश के बनाने के लिए इस्तेमाल करना चाहते हैं या देश की तरक्की की राह में कुछ रोक लगाने के लिए इस्तेमाल करना चाहते हैं ?

मैं हेडा साहब से कुछ थोड़ा सा तो मुत्ताफिक हों सकता हूँ कि शायद एक चीफ मिनिस्टर और एक जज के फ्रक है लेकिन मैं आपको बतलाना चाहता हूँ कि हम अपने देश के राष्ट्रपति को जब वह रिटायर होतो उसको १८ हजार देते हैं लेकिन हम एक जज को रिटायर होने पर राष्ट्रपति से भी ज्यादा देना चाहते हैं और ऐसा करना कहा तक उचित होगा ? हमको अपने देश की जैसी उसकी वर्तमान हालत और आर्थिक दशा है उसके अनुसार हमें उनकी पेंशन निश्चित करनी होगी और यह बात भी याद

रहनी चाहिये कि आज पब्लिक सेक्टर के जमाने में कोई बहुत बड़ी चढ़ी रकम रखना अनुचित होगा।

अब आखिर सदन के मेम्बर्स जिनको कि केवल ४०० रुपये तनखाह मिलती है और जिनको कि रिटायर होने के बाद में कोई पेंशन नहीं मिलेगी आखिर वे भी तो इस देश के अन्दर रह कर गुजर करेंगे और कोई गुजर का अपने लिए रास्ता निकालेंगे। मेरी तो समझ में यह नहीं आया कि कोई एक खास तनखाह या एक खास पेंशन की व्यवस्था करने से किसी आदमी की एफिशिएंसी या उसकी इंटेंसिटी में कोई खास फर्क पड़ता है।

बात सच यह है कि इसमें लाखों रुपये की बात आती है। कई दफा आदमी करोड़ों की बात सोचता है और कितने ही आदमी इस देश के अन्दर ऐसे हैं जो कि दस साल के अन्दर करोड़पति बन गये हैं। अब यह तो जाहिर है कि कोई जज करोड़पति नहीं बन सकता और क्या वह उस करोड़पति का मुकाबला कर सकेगा अगर हम उसको लाखों भी दें ? क्या उस हालत में उसकी इंटेंसिटी में और ईमानदारी में कोई फर्क आयेगा ? हमको मानना होगा कि रुपये के साथ ईमानदारी नहीं चलती है। ईमानदारी, ईमानदारी की जगह है चाहे आप तनखाह कम दीजिये या फालतू दीजिये, भत्ता कम दीजिये या ज्यादा दीजिये, पेंशन कम दीजिये या ज्यादा दीजिये। ईमानदारी की माप इन चीजों के साथ नहीं चल सकती। ईमानदारी की माप तो उसके अपने दिल से और आत्मा से होती है। वह तो एक आत्मा की चीज है और वह आत्मा के विश्वास से चलती है या देश के हालात से चलती है। इसलिये मैं समझता हूँ कि यहाँ पर इस वर्तमान बिल के सम्बन्ध में और पिछले विधेयक के सम्बन्ध में जो जजों की तनखाहों, भत्तों और पेंशन की रकमों को अधिक करने का

सुझाव दिया गया है, वह सही नहीं है और आज इस देवा की जैसी आर्थिक व्यवस्था है उसमें अगर इनको बढ़ाने के बजाय कुछ घटाने की बात की जाय, तो मैं समझता हूँ कि वह ज्यादा माकूल और सही होगा।

Mr. Chairman: Shri Achar. The hon. Member may be brief and need not repeat what others have said.

Shri Achar (Mangalore): Sir, I will be very brief.

Mr. Chairman: What I say is this. Only two hours have been allotted to this Bill. At least the consideration motion should be passed today.

Shri Achar: Sir, I welcome this measure so far as it concerns questions regarding the problems relating to the reorganisation of States. Before the reorganisation of the States we had several High Courts and the salary and pension conditions were different and several problems had arisen on account of that. I find that the provisions in this Bill are quite satisfactory. And, so far as that is concerned, I welcome this measure.

But I have grave doubts as to the adequacy of the conditions and the remuneration that is provided for the High Court judges. Of course, before we, arguments were addressed stating that we are in a socialistic State and generally, pay must be reduced and so, why not the pay of the High Court Judges also? Not only that. I find from the Kerala State one hon. Member even went to the extent of stating that the Chief Minister is getting only Rs. 350/- or so. I do not know what exactly his suggestion is—whether he wants the salaries of these Judges must also be reduced like that. I am afraid the comparison is rather odious. The position of the Minister or other politicians stands on an entirely different footing. It may be that a particular party is more anxious to get popular and it may be willing to work without any remuneration. In a neighbouring State, though the salary of the Minister is only Rs. 350, I am reliably informed that the remuneration the

Ministers got in other methods is much more than the salary. In fact one of the papers published facts stating that the present Ministers who are getting only Rs. 350/- as salary get, as a matter of fact, much more than what the previous Ministers of the other parties were getting. (An Hon. Member: How?) I was saying that the Ministers and the Judges could not be put on the same footing . . . (Interruptions.)

An Hon. Member: There is nobody there; that bench is empty.

Shri Achar: I am sorry that nobody is there. I thought they were there then I will leave the point there. My grave doubt is with regard to the adequacy of even the remuneration as provided in the Bill. It is not merely from the point of view of comparison with the remuneration of the others that we should view this. We have to consider it from the point of view of efficiency. Are we getting the best men from the profession? In fact, in the course of the debate today it was argued, quite correctly, that our best men, our best lawyers who are practising there are unwilling to accept the jobs on the remuneration offered to them. We know the best of them are not coming forward. It is very good to say that you must make sacrifice and serve the country. But are we a nation of *sanyasis* as Shri Anthony put it? Who is prepared to be a *sanyasi*? If we want the best of men in the legal profession, we must offer them sufficient remuneration. That is the point to be considered more than anything else.

From my neighbouring State, from the Communist Party, we hear that there is a lot of delay. I know there is a lot of delay. Many suggestions were given. But we know that the addition of Judges does not improve matters very much. Whatever may be the position in the original courts, whether it is the munsif court, sub-court or district court, there is the excuse . . .

Mr. Chairman: That point is not covered in this Bill and those points

[Mr. Chairman]

which were raised were already referred to by him.

Shri Achar: I will finish in some three minutes or so. I was submitting that expeditious disposal of cases depends upon the efficiency of the persons appointed. Efficient members of the bar know how they can dispose of the cases. An efficient man is able to dispose of ten or fifteen cases. It is not enough to have more Judges. It depends upon the efficiency also. From the point of view of the efficiency of the judiciary, it is necessary to attract the best men in the profession. Now, what is the position? Let us take the income. What is the income of the people at the top and compare it with what we are offering. It is not even one-fourth. The salary of a High Court Judge is not even one-fourth of the earning of a top man in the bar.

Shri Harish Chandra Mathur (Pali): What should be the salary? What do you suggest?

Shri Achar: That point is not here; I would certainly say that elsewhere. So far as the High Court Judges are concerned, it is not merely the salary that we have to take into consideration; there is also the question of prestige and there may also be people who are at their old age and who may be willing to come forward. All the same, we should not grudge paying them an adequate salary. I wanted to point out this aspect of the question, especially when it was pointed out that Ministers of a particular State were getting only Rs. 350. It may be that we may not be able to pay adequate probably, it may not be necessary also as some men may be coming forward because of the status given to High Court Judges and may be willing to work on a salary much less than what the people at the top are getting. All the same, if we grudge to pay them a proper salary and give them proper conditions of service, I am afraid efficient men will not be coming forward. From that point of view also I felt that the provisions in the Bill may not be quite adequate.

Shri Satyendra Narayan Sinha: Sir, the limited objects of the Bill are two-fold—one is to include the service rendered by the acting Judges and additional Judges in the service rendered by them as High Court Judges for calculating their pensions, and, secondly, to take into consideration the service of Part B State Judges for computing their pensions as High Court Judges. These are the two objects of the Bill, and I am not going to take up the general question which has been raised by many hon. friends because it is not germane to the issue under consideration.

A point has been raised by my hon. friend there from Kerala and also by my hon. friend, Shri Heda, that when you are going to consider the Judges of Part B States as full-fledged Judges of the new reorganised High Court and you are going to treat them as continuing Judges, the question of seniority assumes a serious proportion and you cannot lightly ignore it. If you are going to treat them as continuing Judges, the service rendered by them as Part B State Judges has got to be taken into consideration in determining their seniority as Judges of this High Court. This becomes, therefore, very important from that point of view.

My own feeling is that Government is wrong here in treating the service rendered by them as Judges of Part B States equal to the service rendered by them as Judges of the present High Court for purposes of calculation of their pension, as also length of service as Judges of this High Court, because as Judges of Part B States they would not have been getting more than Rs. 2000 at the most, and more or less they were holding posts almost equal to District Judges in Part A States. I am not disparaging them; that is not my intention. My only point is that they were almost on par with District Judges in Part A States, and when on the reorganisation of High Courts in those States their position was suddenly elevated to the judgeship of full-fledged Part A

states, to that extent it should be considered as a promotion in their cases.

Shri Achar: These Courts became very much bigger when more areas were added to their States.

Shri Satyendra Narayan Sinha: I am coming to that. When District Judges, Munsiffs and others are elevated to the Bench their previous service is not counted towards seniority as High Court Judges or towards their pension. In the same way, service rendered as Judges of Part B States should not be treated as on par with the service rendered as judges of the Part A States. They could have been given credit for the service rendered as judges of Part B States on the basis of, say, 50.50. Their length of service there divided by two should be considered to be the service rendered by them as Judges of the present High Courts in order to determine their pension. Perhaps that will remove the serious anomaly that has arisen today. I hope the hon. Minister will take this into consideration while replying to the debate, and I believe he will move an amendment to this effect, so that this anomaly is removed. That is all I have to say.

Mr. Chairman: I just want to ascertain whether the House is going to sit longer?

Some Hon. Members: No, no.

Mr. Chairman: In that case, I will call the hon. Minister.

Shri Harish Chandra Mathur: I would like to speak and take about ten minutes.

Mr. Chairman: But that would be past the time.

Shri Harish Chandra Mathur: We have got another half an hour the day after tomorrow for this Bill. I think a point has been raised which affects us directly.

Mr. Chairman: Very well. Shri Harish Chandra Mathur.

Shri Harish Chandra Mathur: I think the hon. Member who has just spoken before I rose has done less than justice to the Judges from Part B States. I think by no criterion and by no standard that such an attitude could be adopted. If the suggestion as made by the hon. Member were to be accepted, I think you will create such an anomaly which will be almost ridiculous.

In the first instance, I do not think that we should mix up the question of seniority with the question of reckoning the period for the sake of pension and leave. Even in respect of the question of seniority, I think the Government will have to give it proper consideration and reach a decision. I am absolutely one with the two hon. Members who had already spoken and made a grievance and had made a complaint that the Judges of Part B States have not been fairly treated. The argument advanced by my hon. friends that these honourable Judges were not getting the salary which their brothers elsewhere were getting is absolutely not relevant to the issue, and I cannot understand how, if they are found fit to be on the Bench of the High Court of a Part A State, they should be considered as having been promoted. I would like to know from the hon. Minister, and would like him to explain to us whether he considers the appointment of these Judges as a new appointment and as an appointment on promotion.

So far as I know it was not taken or accepted that all the Judges who were in Part B States and functioning as such were to be taken over to the Bench of Part A States irrespective of their merit. If I am not wrongly informed, the Chief Justice of the Supreme Court went round almost all the States, discussing with the Chief Justices of the High Courts of the various States, and there was almost a screening which was done, and it

[Shri Harish Chandra Mathur]

was only after that screening that they came to a definite conclusion that a particular gentleman sitting on the Bench was absolutely worthy of that seat and that he could be taken over. Even after putting the honourable judges to that position, and even after the scrutiny and the screening, if you want just to differentiate between a judge and a judge, I do not know where we stand. I think it was a very uncharitable view which has been taken.

I think my hon. friend should have stopped there. But he goes a step further and suggests that certain modifications should be made even in reckoning the privileges for leave, services and all that. I see no justification for such a view, and I hope the hon. Minister when speaks on this point will give a reassuring answer and will not give any credence to a

solitary view which has been expressed on the floor of the House.

17 hrs.

Apart from this, I may also be permitted to make another submission.

Mr. Chairman: How much time does the hon. Member require?

Shri Harish Chandra Mathur:
Another 5 or 7 minutes.

Mr. Chairman: The hon. Member may continue on the next day. The House will stand adjourned till Saturday.

17.0½ hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Saturday, the 27th September, 1958.
