

2023 LiveLaw (SC) 5

IN THE SUPREME COURT OF INDIA
SANJAY KISHAN KAUL; J., ABHAY S. OKA; J.
Writ Petition(s)(Civil) No(s). 823/2022; 02-01-2023
ASHOK PANDEY *versus* UNION OF INDIA & ORS.

Constitution of India, 1950; Article 217 - Appointment and conditions of the office of a Judge of a High Court - Method of recommendation envisages that Collegium of the High Court consisting Chief Justice and two senior most judges recommends names; Government provides inputs; IB report is obtained; Supreme Court Collegium of three senior most judges takes a call.

Constitution of India, 1950; Article 217(2) - the Supreme Court refused to accept the interpretation that a person who may have been enrolled with a State Bar Council and subsequently shifted practice in the Supreme Court is ineligible to be appointed as High Court judges - because at the end of the day every lawyer is enrolled with the Bar Council of a particular State.

Constitution of India, 1950 - the Constitution does not prohibit lawyers practicing in the Supreme Court to be appointed as a Judge of the High Court - in fact, the Supreme Court has given imprimatur to the principle that in suitable cases Advocates practicing in the Supreme Court can be considered for appointment to the High Court.

For Petitioner(s) Mr. Ashok Pandey, in-person

ORDER

Application for permission to appear and argue in person is allowed.

The petitioner is an Advocate and thus is supposed to be well versed in law. He seeks to contend that as per his interpretation of Article 217 of the Constitution, a person who may have been enrolled with a State Bar Council and subsequently shifted practice in the Supreme Court is ineligible to be appointed as a Judge of that Court. It is his say that four names have been recommended in the list of recommendation from the Allahabad High Court of lawyers practicing in the Supreme Court. He further states that in last three years, six such persons have been appointed. He refers to some letters released by the President of the Supreme Court Bar Association seeking out a case for appointment of lawyers practicing in the Supreme Court to different High Courts and seeks to contend that this has an imprimatur of this Court. He further seeks to contend that this Court has given some cognizance to the fact that the lawyers practicing in this Court may be better than the lawyers practicing in the High Court.

In the end he also contends that by reason of the interpretation he sought to make of Article 217(2) of the Constitution the current matter ought to have been posted before a Constitution Bench.

We have given the full say to the petitioner though on a bare reading of the petition it is meritless and complete wastage of judicial time. The reading sought to be put to Article 217(2) of the Constitution would amount to saying that the Supreme Court is not one of the Courts from which lawyers can be appointed to the High Court. The method of recommendation envisages the Collegium of the High Court to recommend the name consisting of the Chief Justice and the two senior most Judges, whereafter the Government inputs, including the IB obtained and the Supreme Court

Collegium of the first three Judges after obtaining inputs from the consulting Judges takes a call. There is nothing in the Constitution which provides the prohibition for lawyers practicing in the Supreme Court to be appointed as a Judge of the High Court. In fact every lawyer is enrolled with the Bar Council of a particular State.

As to what the President of the Bar may say would be his views and this Court has not given any imprimatur to any aspect for the same other than the larger principle that in suitable cases Advocate practicing in this Court can be considered for appointment to the High Court.

It is not as if mere filing of the petition by the petitioner would entitle him for consideration before a Constitution bench of this Court.

Looking to the nature of matter and the judicial time and the fact that the petitioner ought to have known better the law, we dismiss the petition with costs of Rs. 50,000/- to be deposited within four weeks in the Supreme Court Mediation and Conciliation Project Committee (MCPC).

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