SUNIL SAMDARIA

v.

UNION OF INDIA THROUGH ITS SECRETARY, MINISTRY OF LAW AND JUSTICE AND OTHERS

(Writ Petition (C) No. 835 of 2017)

FEBRUARY 23, 2018

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Constitution of India – Arts. 217 and 224 – Appointment of Additional Judges of High Court – Petitioner challenged appointment of respondent nos.2 and 3 as Additional Judges of High Court on two grounds – Firstly, both the appointments having been made for a period of less than two years violates Art.224 and secondly, both respondents were retired members of judicial service of the State and notification was issued when both were not holding a judicial office, hence they were not eligible for appointment as Additional Judges of the High Court u/Art. 217(2) – Held: Respondent Nos.2 and 3 retired from the post of District Judge respectively on 30.09.2016 and 31.07.2016 after attaining the age of superannuation of 60 years – Notification appointing respondent Nos.2 and 3 was issued on 12.05.2017 by which appointment of respondent no.2 was made till 01.09.2018 whereas the appointment of respondent no.3 was made till 02.07.2018 – The question as to when remaining tenure of a person to be appointed as Additional Judge is less than two years, whether such appointment is in conformity with Art.224 or not, was neither gone into nor any opinion was expressed by the Supreme Court in the case of S.P .Gupta whereas an observation was made therein which supports the view that in case where Additional Judge has been appointed for a period of two years, he would cease to be Judge if he attains the age of 62 years prior to the expiration of his term of two years – This clearly supports that the tenure of appointment of Additional Judges who have less than two years to retire is not contrary to Art.224 – Insofar as second ground is concerned, a plain reading of eligibility as provided u/Art.217(2)(a) does not make the respondent nos.2 and 3 ineligible for appointment as Additional Judge of the High Court – Art.217(2)(a) does not indicate that qualification is also meant

A *that apart from holding 10 years a judicial office, the incumbent should also be holding judicial office at the time notification u/ Art.224 is issued.*

Constitution of India – Art.224 – Purpose and object – Held: Appointment of Additional Judges was envisaged as appointment B *to cope with the increased work load of cases in different High Courts – The temporary increase in the business of the High Court or by reason of arrears of work therein was a reason for appointment or reason for invoking power u/Art.224 – But to cope with the increase in business of the High Court and the arrears of cases* C *emergent steps are needed by all to fulfill the object and purpose for which constitutional provision was brought in place, enormous delay in appointment of Judges of the High Courts not only frustrate the purpose and object for which Art.224(1) was brought into the Constitution but belies the hope and trust of litigant who comes to the High Courts seeking justice and early disposal of their cases –* D *It is, therefore, in the interest of all the stakeholders, including the judiciary, that definite timelines are drawn for each stage of the process, so that process of appointment is accomplished within a time bound manner.*

Constitution of India – Art.217(2)(a) – Qualification for E *appointment of a Judge of the High Court – Use of word 'held' in Art.217(2)(a) – Words and Phrases.*

Dismissing the writ petition, the Court

HELD: 1.1 Article 224 of the Constitution of India provides for appointment of Additional and Acting Judges. The period for F **appointment of Additional Judges of the High Court as mentioned in Article 224(1) is "for such period not exceeding two years". The Constitution Bench in *S.P. Gupta* case has considered in detail Article 224 of the Constitution, its purpose and object. [Para 8] [296-D-E]**

G **1.2 The observations were made by the Constitution Bench in the *S.P. Gupta* case that when although three Additional Judges were initially appointed for a period of two years but they were further appointed only for a period of three months and after that only one was continued for a period of one year. The Constitution** H **Bench having noticed the purposes of Article 224 has observed**

that when arrears of pending cases are such that they cannot possibly be disposed of then the purpose and object of appointment of Additional Judges is that appointment should be given for two years and no less. But the above observation of the Constitution Bench has to be read in reference to the context in which it was made. Before the Constitution Bench, the question as to when remaining tenure of a person to be appointed as Additional Judge is less than two years, whether such appointment is in conformity with Article 224 or not, was neither gone into nor any opinion was expressed whereas an observation was made in the Judgment which supports the view that in a case where Additional Judge has been appointed for a period of two years, he would cease to be a Judge if he attains the age of 62 years prior to the expiration of his term of two years. This clearly supports that the tenure of appointment of Additional Judges who have less than two years to retire is not contrary to Article 224. The observations of the Constitution Bench in *S.P. Gupta* case do not support the submission of the petitioner that appointment of Additional Judges for a period of less than two years when they are attaining the age of superannuation before two years is contrary to Article 224. [Paras 14 and 15] [301-E-H; 302-A-B, C]

2.1 The word 'held' as used in Article 217(2)(a) indicates that what is prescribed is qualification for appointment of a Judge of the High Court is that a person has for at least 10 years held a judicial office in the territory of India. Use of word 'held' in the above clause does not indicate that qualification is also meant that apart from holding 10 years a judicial office, the incumbent should also be holding the judicial office at the time notification under Article 224 is issued. [Para 24] [306-G-H]

2.2 The above conclusion is also supported by taking into consideration the Explanation (a) and (aa) to Article 217(2). When Explanation (a) provides that in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an Advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law. [Para 25] [307-A-B]

A **2.3 A plain reading of eligibility as provided under Article 217(2)(a) does not make the respondent Nos.2 and 3 ineligible for appointment as Additional Judges of the Rajasthan High Court. [Para 26] [307-B-C]**

3. The purpose and object for which Article 224 of the B **Constitution was substituted by the Constitution Seventh Amendment of 1956 needs to be seen. Appointment of Additional Judges was envisaged as appointment to cope with the increased work load of cases in different High Courts. The temporary increase in the business of the High Court or by reason of arrears** C **of work therein was a reason for appointment or reason for invoking power under Article 224, although as noted by Constitution Bench in *S.P. Gupta's case* by lapse of time the use of Article 224 has been substantially changed. But there is no denying that to cope with the increase in business of the High Court and the arrears of cases emergent steps are needed by all** D **to fulfil the object and purpose for which constitutional provision was brought in place, enormous delay in appointment of Judges of the High Courts not only frustrate the purpose and object for which Article 224(1) was brought into the Constitution but belies the hope and trust of litigant who comes to the High Courts seeking justice and early disposal of their cases. [Para 27] [307-** E **D-F]**

S.P. Gupta v. Union of India and Ors., **(1981) Suppl. SCC 87 : [1982] 2 SCR 365**; *Shri Kumar Padma Prasad v. Union of India others* **(1992) 2 SCC 428 : [1992] 2 SCR 109**; *Chandra Mohan v. State of U.P.* **AIR 1966 SC 1987**; *Supreme Court Advocates-on-Record Association and Others v. Union of India* **(1993) 4 SCC** F **441 : [1993] 2 Suppl. SCR 659; – referred to.**

Case Law Reference

G **[1982] 2 SCR 365**	**referred to**	**Para 3**
[1992] 2 SCR 109	**referred to**	**Para 3**
AIR 1966 SC 1987	**referred to**	**Para 17**
[1993] 2 Suppl. SCR 659	**referred to**	**Para 28**

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 835 of 2017.

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Under Article 32 of the Constitution of India

Sunil Samdaria (Petitioner-in-Person).

Maninder Singh, ASG, Ms. Madhavi Divan, R. Balasubramanian, Prabhas Bajaj, Akshay Amrianshu, Ms. Aarti Sharma, Mukesh Kumar Maroria, Advs. for the Respondents.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. 1. This writ petition under Article 32 of the Constitution of India has been filed by the petitioner, a practicing Advocate of Rajasthan High Court, questioning the Notification dated 12.05.2017 appointing respondent Nos.2 and 3 as Additional Judges of Rajasthan High Court. This Court on 03.10.2017 had issued notice to respondent No.1 only. A counter-affidavit has been filed by the Union of India- respondent No.1.

2. We have heard the petitioner, appearing in-person and Shri Maninder Singh, learned Additional Solicitor General of India for the respondent.

3. The petitioner appearing in-person challenging the appointment of respondent Nos.2 and 3 as Additional Judges of Rajasthan High Court makes following two submissions:

(1) The appointment of respondent Nos.2 and 3 has been made as Additional Judges of the Rajasthan High Court under Article 224 of the Constitution of India. The appointment of respondent No.2 has been made till Ist September, 2018 whereas the appointment of respondent No.3 has been made till 2nd July, 2018, both the appointments having been made for a period of less than two years violates Article 224 of the Constitution of India. It is submitted that appointment of Additional Judges should not be made for a period of less than two years, hence the appointments are non-est and void.

Reliance has been placed on Constitution Bench judgment of this Court in ***S.P. Gupta vs. Union of India and another, 1981 Supp SCC 87.***

(2) Respondent Nos. 2 and 3 were members of Judicial Service of the State of Rajasthan who retired from the post of District Judge respectively on 30.09.2016 and 31.07.2016 after attaining

the age of superannuation of 60 years. On the day when the notification was issued appointing respondent Nos.2 and 3, i.e., 12.05.2017, both being not holding a Judicial Office they were not eligible for appointment as Additional Judges of the High Court. The eligibility of a person to be appointed as a Judge of the High Court as provided under Article 217(2)(a) is that he should be a member of the Judicial Service of the State. Respondent Nos.2 and 3, having long retired from Judicial Service, do not possess eligibility for appointment as Additional Judges of the High Court hence on this ground also the appointments of respondent Nos.2 and 3 are liable to be declared as non-est and void. Petitioner placed reliance on the judgment of this Court in ***Shri Kumar Padma Prasad vs. Union of India others, 1992 (2) SCC 428 (paragraphs 25, 35, 41).***

4. Shri Maninder Singh, learned Additional Solicitor General of India refuting the submission of the petitioner contends that appointments of respondent Nos.2 and 3 are fully in accordance with Article 217(2) and Article 224 of the Constitution of India. Respondent Nos.2 and 3 having held Judicial Office for a period of 10 years were fully eligible to be appointed as Additional Judges of the Rajasthan High Court. The maximum period of appointment of Additional Judge of the High Court under Article 224 clause (1) being two years, respondent Nos.2 and 3 who were attaining the age of superannuation of 62 years before expiry of a period of two years, there is no illegality in their appointment upto the age of superannuation which falls on 01.09.2018 and 02.07.2018 respectively. The judgment of this Court in ***Shri Kumar Padma Prasad (supra)*** is not applicable nor the Constitution Bench judgment in ***S.P. Gupta (supra)*** supports the contention advanced by the petitioner in the present case.

5. We have considered the submissions of the petitioner in-person and learned Additional Solicitor General for the Union of India and perused the record.

6. The relevant facts pertaining to the Judicial Service, the process of appointment as Additional Judges of the Rajasthan High Court and the period of their tenure are not in dispute. Both respondent Nos.2 and 3 were members of Judicial Service of the State when their names were recommended by the Acting Chief Justice of Rajasthan High Court by

letter dated 18.02.2016. On the date their names were recommended, they were fully in the zone of consideration, they being within the prescribed age limit of 58 ½ years on the date of occurrence of vacancy against which their names were recommended. The Acting Chief Justice while processing the recommendation followed Memorandum of Procedure as laid down by letter dated 24.09.2004 of Minister of Law and Justice. The Government of India, Ministry of Law and Justice, after processing the recommendation forwarded the same for consideration of Chief Justice of India on 22.07.2016. The Supreme Court Collegium vide its Minutes dated 01.08.2016 recommended the names of respondent Nos.2 and 3 as from the service stream. The Government of India after receiving the recommendation of Supreme Court Collegium and after obtaining the approval of Hon'ble President of India notified the appointment on 12.05.2017. The entire process consumed a period of one year and three months. The notification dated 12.05.2017 which was issued for appointment of respondent Nos.2 and 3 as Additional Judges in exercise of power under Article 224(1) mentioned their appointment with effect from the date they took charge till 01.09.2018 and 02.07.2018 respectively. The dates 01.09.2018 and 02.07.2018 which are mentioned in the notification are obviously the dates when they shall attain the age of superannuation as Judges of the High Court, i.e., 62 years. It is relevant to note that along with respondent Nos.2 and 3 three more persons were appointed as Additional Judges for a period of two years and with regard to their tenure the period of two years was mentioned. It is relevant to extract notification dated 12.05.2017 which is to the following effect:

A B C D E

*"**NOTIFICATION***

In exercise of the powers conferred by Clause(1) of Article 224 of the Constitution of India, the President is pleased to appoint S/Shri(i) Ashok Kumar Gaur, (ii) Manoj Kumar Garg, (iii) Inderjeet Singh, (iv) Dr.Virendra Kumar Mathur, and (V) Shri Ramchandra Singh Jhala, to be Additional Judges of Rajasthan High Court, in that order of seniority.

The appointment of S/Shri Ashok Kumar Gaur, Manoj Kumar Garg, Inderjeet Singh, would be for a period of 2 years with effect from the date they assume charge of their respective offices. However, period of appointment in respect of Dr.

F G H

A *Virendra Kumar Mathur, and Sh. Ramchandra Singh Jhala are with effect from the date they assume charge of their respective offices till 1st September, 2018 and 2nd July, 2018 respectively.*

Sd/-

B

(S.C. BARMMA)
Joint Secretary to the Government of India
Tele:23072142"

C 7. The first submission which has been pressed by the petitioner is that appointment of respondent Nos.2 and 3 being for a period of less than two years is contrary to Article 224 of the Constitution of India and in the teeth of law laid down by ***S.P. Gupta (supra).***

8. Article 224 of the Constitution of India provides for appointment
D of Additional and Acting Judges. The period for appointment of Additional Judges of the High Court as mentioned in Article 224(1) is "for such period not exceeding two years". The Constitution Bench in ***S.P. Gupta (supra)*** has considered in detail Article 224 of the Constitution, its purpose and object. Article 224 as it existed in the original constitution contained
E the heading "***Attendance of retired Judges at sittings of High Court"*** which was to the following effect:

> **"Article 224. Attendance of retired Judges at sittings of High Court.-** *Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any*
F *time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowance as the President may by order determine and have all the*
G *jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court:*
>
> *Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do."*

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9. Article 224 as originally contained in the Constitution did not work well and neither found adequate nor satisfactory. The Parliament to combat mounting arrears of the cases in the High Courts amended Article 224 by substituting existing Article 224 by a new Article providing for appointment of Additional Judges. Article 224 as amended by the Constitution (Seventh Amendment) Act, 1956 is as follows:

> ***"Article 224. Appointment of additional and acting Judges.-*** *(1).- If by reason of any temporary increase in the business of High Court or by reason of arrears of work therein, it appears to the President that the number of the Judges of that Court should be for the time being increased, the President may appoint duly qualified persons to be additional Judges of the Court for such period not exceeding two years as he may specify.*
>
> *(2). When any Judge of a High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the President may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties.*
>
> *(3). No person appointed as an additional or acting Judge of a High Court shall hold office after attaining the age of sixty two years."*

10. Deliberating the object and purpose of Article 224 as provided by the Constitution Seventh Amendment, the Constitution Bench in ***S.P. Gupta (supra)*** made the following observation:

> *"37...The power to appoint an Additional Judge cannot therefore be exercised by the President unless there is either temporary increase in the business of the High Court or there is accumulation of arrears of work in the High Court and even when one of these two conditions exists, it is necessary that the President must be further satisfied that it is necessary to make a temporary increase in the number of Judges of that High Court. The words "for the time being" clearly indicate that the increase in the number of judges which the President may make by appointing Additional Judges would be*

A *temporary with a view to dealing with the temporary increase in the business of the High Court or the arrears of work in the High Court. Article 224, Clause (1) did not contemplate that the increase in the number of Judges should be for an indefinite duration. The object clearly was that Additional Judge should be appointed for a short period in order to*
B *dispose of the temporary increase in the business of the High Court and/or to clear off the arrears of pending cases. There is sufficient indication in Clause (1) of Article 224 that the appointments of Additional Judges were intended to be of short duration and Parliament expected that sufficient number*
C *of Additional Judges would be appointed so as to dispose of the temporary increase in the work or the arrears of pending cases within a period of two years or thereabouts. That is why Clause (1) of Article 224 provided that Additional Judges may be appointed for a period not exceeding two years. The*
D *underlying idea was that there should be an adequate strength of permanent Judges in each High Court to deal with its normal institutions and so far as the temporary increase in the work or the arrears of pending cases were concerned, Additional Judges appointed for a period not exceeding two years should assist in disposing of such work...."*

E 11. The Constitution Bench, however, noticed and observed that true intention and purpose of clause (1) of Article 224 was never carried into effect, what practically Article 224 was utilised has been categorically stated in paragraph 38 of the Constitution Bench judgment in the following words:

F *"38...The entire object and purpose of the introduction of Clause (1) of Article 224 was perverted and Additional Judges were appointed under this Article not as temporary Judges for a short period who would go back on the expiration of their term as soon as the arrears are cleared off, but as*
G *Judges whose tenure, though limited to a period not exceeding two years at the time of each appointment as an Additional Judge, would be renewed from time to time until a berth was found for them in the cadre of permanent Judges. By and large, every person entered the High Court judiciary as an Additional Judge in the clear expectation that as soon as a*
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vacancy in the post of a permanent Judge became available to him in the High Court he would be confirmed as a permanent Judge and if no such vacancy became available to him until the expiration of his term of office, he would be re-appointed as an Additional Judge for a further term in the same High Court, Therefore, far from being aware that on the expiration of their term, they would have to go back because they were appointed only as temporary Judges for a short period in order to clear off the arrears — which would have been the position if Clause (1) of Article 224 had been implemented according to its true intendment and purpose — the Additional Judges entered the High Court judiciary with a legitimate expectation that they would not have to go back on the expiration of their term but they would be either reappointed as Additional Judges for a further term or if in the meanwhile, a vacancy in the post of a permanent Judge became available, they would be confirmed as permanent Judges. This expectation which was generated in the minds of Additional Judges by reason of the peculiar manner in which Clause (1) of Article 224 was operated, cannot now be ignored by the Government and the Government cannot be permitted to say that when the term of an Additional Judge expires, the Government can drop him at its sweet will. By reason of the expectation raised in his mind through a practice followed for almost over a quarter of a century, an Additional Judge is entitled to be considered for appointment as an Additional Judge for a further term on the expiration of his original term and if in the meanwhile, a vacancy in the post of a permanent Judge becomes available to him on the basis of seniority amongst Additional Judges, he has a right to be considered for appointment as a permanent Judge in his High Court."

12. The ratio laid down by the Constitution Bench in ***S.P. Gupta(supra)*** as relied by the petitioner needs to be considered in the light of what has been said above by the Constitution Bench itself. Now, the background facts which led the Constitution Bench to make certain observations in paragraph 44 need to be noted. The writ petition in which the question of tenure of Additional Judges came to be considered was

A filed in the Delhi High Court which was transferred to this Court as Transferred Case No.20 of 1981. In the said writ petition apart from challenging the circular dated 18.03.1981 issued by the Union Law Minister, a complaint was made regarding short-term appointments of three Additional Judges of Delhi High Court, namely, Shri O.N. Vohra, Shri S.N. Kumar and Shri S.B. Wad. The above Additional Judges had
B originally been appointed as Additional Judges for a period of two years and whose term was expiring on the midnight of 06.03.1981. They were further appointed as Additional Judges for a period of three months only from 07.03.1981. In the writ petition complaint was made of such short-term appointment. It was contended that such short-term appointments
C were unjustified by the terms of Article 224 and were in any event subversive of the independence of the judiciary. The Central Government subsequently did not extend the term of S/Shri O.N. Vohra and S.N. Kumar, whereas Shri S.B. Wad was continued as an Additional Judge for a period of one year from 07.06.1981. S/Shri O.N. Vohra and S.N. Kumar were not continued for a further term.
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13. The petitioner has heavily relied on what the Constitution Bench has said in paragraph 44, where in the above context, it had observed that when the arrears of pending cases are such that they cannot possibly be disposed of within a period of less than two years, Additional Judges must be appointed for a term of two years and no less. The observations
E made by the Constitution Bench in paragraph 44 are to the following effect:

> *"44. One last argument now remains, when an additional Judge is appointed, what should be the term for which his appointment is made. Clause (1) of Article 224 provides that*
F *an Additional Judge may be appointed for a period not exceeding two years. That is the outside limit prescribed by Article 224Clause (1) and it was therefore, contended by the learned Attorney General that appointment of an Additional Judge can be made for any term, howsoever short it be, so*
G *long as it does not exceed two years. The appointments of O.N. Vohra, S.N. Kumar and S.B. Wad for three months and the appointments of some other Additional Judges for six months were thus defended by the learned Attorney General as being within the scope and ambit of Clause (1) of Article 224. We cannot accept this argument. It is no doubt true that*
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Clause (1) of (the) Article fixes the outer limit for the term for which an Additional Judge may be appointed, but that has been done because there may be cases where the temporary increase in the business or the arrears of pending cases are so small that it may be possible to dispose them of by appointing Additional Judges for a term less than two years. If the temporary increase in the business or the arrears of pending cases can be disposed of within a shorter time, why should Additional Judges be appointed for the full period of two years. That is why Parliament provided that an Additional Judge may be appointed for a term not exceeding two years. But when arrears of pending cases are so large that it would not be possible to dispose them of even within a period of ten years — and when we say ten years, we are making a very conservative estimate — what justification there can be for appointing Additional Judges for a period of less than two years. That would be plainly outside the scope of the power conferred under Clause (1) of Article 224. When the arrears of pending cases are such that they cannot possibly be disposed of within a period of less than two years, Additional Judges must be appointed for a term of two years and no less...."

14. Thus, the above observations were made by the Constitution Bench in the background when although three Additional Judges were initially appointed for a period of two years but they were further appointed only for a period of three months and after that only one was continued for a period of one year. The Constitution Bench having noticed the purposes of Article 224 has observed that when arrears of pending cases are such that they cannot possibly be disposed of then the purpose and object of appointment of Additional Judges is that appointment should be given for two years and no less. But the above observation of the Constitution Bench has to be read in reference to the context in which it was made. Before the Constitution Bench, the question as to when remaining tenure of a person to be appointed as Additional Judge is less than two years, whether such appointment is in conformity with Article 224 or not, was neither gone into nor any opinion was expressed whereas an observation was made in paragraph 32 which supports the view that in a case where Additional Judge has been appointed for a period of two years, he would cease to be a Judge if he attains the age of 62 years

prior to the expiration of his term of two years. This clearly supports that the tenure of appointment of Additional Judges who have less than two years to retire is not contrary to Article 224. In paragraph 32 following observations have been made by the Constitution Bench:

> "32...*Clause(3) of Article 224 provides inter alia that no person appointed as an Additional Judge shall hold office after attaining the age of 62 years. Therefore even if an Additional Judge has been appointed for a period of two years, he would cease to be a Judge if he attains the age of 62 years prior to the expiration of his term of two years."*

15. The observations of the Constitution Bench in ***S.P. Gupta (supra),*** as noticed above, clearly do not support the submission of the petitioner that appointment of Additional Judges for a period of less than two years when they are attaining the age of superannuation before two years is contrary to Article 224. We thus do not find any merit in the first submission of the petitioner.

16. Now we come to the second submission of the petitioner. Petitioner submits that although on the date when recommendations were made for names of respondent Nos.2 and 3 by the High Court for appointment as Additional Judges they were members of the Judicial Service of the State but the day they were issued appointment under Article 224, they had already retired from Judicial Service, hence were not eligible for appointment as Additional Judges.

17. Petitioner has relied on the judgment of this Court in ***Shri Kumar Padma Prasad (supra)*** in support of the submission that who is not a member of Judicial Service is ineligible for appointment as Additional Judge. The case of ***Shri Kumar Padma Prasad (supra)*** was a case where petitioner has challenged the appointment of Shri K.N. Srivastava as a Judge of Gauhati High Court on the ground that he does not fulfil the eligibility for appointment as contained in Article 217 of the Constitution of India. Name of Shri K.N. Srivastava was recommended on the ground that he held Judicial Office for at least 10 years. The challenge in the writ petition was that Shri K.N. Srivastava does not fall within the expression Judicial Office as defined under Article 217(2)(a). This Court after referring to judgment of this Court in ***Chandra Mohan v. State of U.P., AIR 1966 SC 1987,*** held that Judicial Office as used in Article 217(2)(a) must be a part of Judicial Service of the State. In paragraph 25 following was held:

"25. It is thus, clear that the expression "judicial office" under Article 217(2)(a) of the Constitution has to be interpreted in consonance with the scheme of Chapters V and VI of Part VI of the Constitution. We, therefore, hold that expression "judicial office" under Article 217(2)(a) of the Constitution means a "judicial office" which belongs to the judicial service as defined under Article 236(b) of the Constitution of India. In order to qualify for appointment as a Judge of a High Court under Article 217(2)(a) a person must hold a "judicial office" which must be a part of the judicial service of the State."

18. After holding that Judicial Office must be the part of Judicial Service of the State, position held by Shri K.N. Srivastava was detailed and this Court came to the conclusion that the office held by Shri K.N. Srivastava was not a Judicial Office and he was not qualified as Judge of the High Court. In paragraph 36 following was held by this Court:

"36. We have already held that "judicial office" in Article 217(2)(a) means an office as a part of the judicial service as defined under Article 236(b) *of the Constitution of India. The office of the Assistant to Deputy Commissioner held by Srivastava for a period of about six months under the notification reproduced above, was neither a judicial office nor was it part of a judicial service as defined under Article 236(b) of the Constitution of India. We, therefore, accept the second contention advanced by Mr. Anil Diwan and Ram Jethmalani and hold that Srivastava was not qualified for appointment as a Judge of a High Court under Article 217(2)(a) of the Constitution of India."*

19. Petitioner has placed reliance on paragraphs 25, 35 and 41 of the judgment of ***Shri Kumar Padma Prasad (supra) Kumar Padma Prasad (supra)*** which are to the following effect:

"25. It is thus, clear that the expression "judicial office" under Article 217(2)(a) of the Constitution has to be interpreted in consonance with the scheme of Chapters V and VI of Part VI of the Constitution. We, therefore, hold that expression "judicial office" under Article 217(2)(a) of the Constitution means a "judicial office" which belongs to the judicial service as defined under Article 236(b) of the Constitution of India.

A *In order to qualify for appointment as a Judge of a High Court under Article 217(2)(a) a person must hold a "judicial office" which must be a part of the judicial service of the State.*

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B *35. The Word "office" has various meanings and we have to see which is appropriate meaning to be ascribed to this word in the context it appears in the Constitution. We are of the view that the framers of the Constitution did not and could not have meant by a "judicial office" which did not exist*

C *independently and the duties or part of the duties of which could be conferred on any person whether trained or not in the administration of justice. The word "judicial office" under Article 217(2)(a) in our view means a subsisting office with a substantive position which has an existence independent from its holder.*

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41. We allow transferred writ petition of Kumar Padma Prasad and declare that K.N. Srivastava, on the date of issue of warrant by the President of India, was not qualified to be

E *appointed as a Judge of the High Court. As a consequence, we quash his appointment as a judge of the Gauhati High Court. We direct the Union of India and other respondents present before us not to administer oath or affirmation under Article 219 of the Constitution of India to K.N. Srivastava. We further restrain K.N. Srivastava from making and*

F *subscribing an oath or affirmation in terms of Article 219 of the Constitution of India and assuming office of the Judge of the High Court. We direct the Registry to send a copy of this judgment to the President of India for his consideration and necessary action in terms of our judgment. There shall be no*

G *order as to costs."*

20. There cannot be any dispute to the proposition laid down by this Court in paragraph 25 that a person must hold Judicial Office which must be a part of Judicial Service of the State for appointment of a Judge of the High Court under Article 217(2)(a). Much emphasis is

H being given by the petitioner on the observation made in paragraph 35

that the word 'Judicial Office' under Article 217(2)(a) means a subsisting office with a substantive position which has an existence independent from its holder. The above observation has been made by this Court in reference to nature of the different offices held by Shri K.N. Srivastava in the State specially while dealing with the contention that Shri Srivastava having held the office of Deputy Commissioner by Rule 9 of the 1937 Rules whether he fulfilled the requirement under Article 217 read with (2)(a) explanation. The argument forcibly put in paragraph 31 was rejected in paragraph 32 which are to the following effect:

> *"31. Mr. Venugopal contended that the administration of justice both on civil and criminal side was being manned exclusively by the Deputy Commissioner and his Assistants under the 1937 Rules. No other courts were functioning. Apart from administering criminal and civil justice the total administration of the district known as the Lushai Hills was vested in the Governor of Assam , the Deputy Commissioner of Lushai Hill, and his Assistants. The Deputy Commissioner under the 1937 Rules was competent to pass sentence of death, transportation or imprisonment up to a maximum provided for the offence and fine up to any amount. The Assistants to the Deputy Commissioner were to exercise such powers as conferred by the Governor not exceeding those of a magistrate of the first class as defined under the Code of Criminal Procedure. An appeal lies to the Deputy Commissioner against any order passed by any of his Assistants. Similarly under Rule 15 the administration of civil justice was entrusted to the Deputy Commissioner and his Assistants. Srivastava exercised the powers of Assistant to the Deputy commissioner from June 23, 1979 to December 19, 1979. According to Mr. Venugopal the office of the Assistant to which Srivastava was appointed for a period of about six months was a judicial office. According to him period for which he held the judicial office and the quality of the said office are not relevant factors. He therefore, forcefully contended that Srivastava, having held the judicial office of Assistant to the Deputy Commissioner under the 1937 Rules he fulfills the qualification under Article 217(2)(a) read with (a) to the Explanation. According to him all the offices held by Srivastava after relinquishing the office of the Assistant to*

A *the Deputy Commissioner required special knowledge of law and as such whole of that period is liable to be included for counting 10 years during which he held a judicial office. Srivastava, according to him, is qualified for appointment as a judge of a High Court.*

B *32. We have given our thoughtful conside*ration to the argument advanced by Mr. Venugopal. We are not inclined to agree with him."

21. Thus, the observation in ***Shri Kumar Padma Prasad (supra),*** in paragraph 35 as extracted above was in the above context. This Court C was not concerned with the issue which is raised in the present writ petition as to whether the person should be holding a Judicial Office at the time of his appointment as Additional Judge of the High Court, although, he held a Judicial Office of the State when his name was recommended by the High Court for Additional Judge. Thus, the observations made by this Court in paragraphs 25, 35 and 41 do not D support the contentions which are sought to be raised by the petitioner.

22. Shri Maninder Singh, learned Additional Solicitor General submitted that Article 217(2)(a) uses the words 'held' a Judicial Office which means that a person who has held Judicial Office at least for a period of 10 years is eligible for appointment as Additional Judge.

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23. The word 'held' has been defined in Words and Phrases Permanent Edition, Volume 19 to the following effect:

"*Held has no primary or technical meaning and its meaning is determined largely by connection in which it is used. State v. Thomson, 449 P.2d 656, 659, 79 N.M. 748.*

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Perfect participle "held" has no connotation of time. Holman Transfer Co. v. City of Portland, 350 P.2d 929, 930, 196 Or. 551."

24. The word 'held' as used in Article 217(2)(a) indicates that G what is prescribed is qualification for appointment of a Judge of the High Court is that a person has for at least 10 years held a judicial office in the territory of India. Use of word 'held' in the above clause does not indicate that qualification is also meant that apart from holding 10 years a judicial office, the incumbent should also be holding the judicial office at the time notification under Article 224 is issued.

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25. The above conclusion is also supported by taking into consideration the Explanation (a) and (aa) to Article 217(2). When Explanation (a) provides that in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an Advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law.

26. A plain reading of eligibility as provided under Article 217(2)(a) does not make the respondent Nos.2 and 3 ineligible for appointment as Additional Judges of the Rajasthan High Court. This Court's judgment in ***Shri Kumar Padma Prasad (supra)*** does not support the submission which is pressed by the petitioners before us. We, thus, do not find force in the second submission of the petitioner.

27. Before parting with this case we need to remind ourselves the purpose and object for which Article 224 of the Constitution was substituted by the Constitution Seventh Amendment of 1956. Appointment of Additional Judges was envisaged as appointment to cope with the increased work load of cases in different High Courts. The temporary increase in the business of the High Court or by reason of arrears of work therein was a reason for appointment or reason for invoking power under Article 224, although as noted by Constitution Bench in ***S.P. Gupta's case (supra)*** by lapse of time the use of Article 224 has been substantially changed. But there is no denying that to cope with the increase in business of the High Court and the arrears of cases emergent steps are needed by all to fulfil the object and purpose for which constitutional provision was brought in place, enormous delay in appointment of Judges of the High Courts not only frustrate the purpose and object for which Article 224(1) was brought into the Constitution but belies the hope and trust of litigant who comes to the High Courts seeking justice and early disposal of their cases.

28. In ***Supreme Court Advocates-on-Record Association and Others*** v. ***Union of India***, ***(1993) 4 SCC 441,*** this Court expressed in categorical terms that the process of appointment must be initiated at least one month prior to the date of an anticipated vacancy. It was done to achieve an ideal situation, namely, to ensure that the post is filled up immediately after the occurrence of the vacancy so that no time is lost. Unfortunately, it still remains a far cry. In the first instance, names are

A not forwarded by the High Court in time. What to talk of sending the names one month before the occurrence of an anticipated vacancy, names are not forwarded even much after the vacancy has occurred. It is also seen that once the names are forwarded, they remain pending at the Executive level for unduly long time, before they are sent to the Collegium of the Supreme Court for approval along with the inputs of the Executive.
B Even after the clearance of the names by the Collegium, these remain pending at the level of the Executive. All this results in inordinate delay. Sometimes, it takes more than one year to complete the process from the date of forwarding the names till appointment. There are instances where time consumed is much more than one year even. In the case of
C judicial officers of subordinate judiciary, who are recommended for appointment to the High Court, this process of consuming so much time adversely affects their tenure. It is a matter of common knowledge that most of the judicial officers get a chance for elevation when only few years' service is left. Thus, when unduly long time is taken, even this lesser tenure gets further reduced. It also gives rise to the situation like
D the present one. Equally, members of the Bar, whose names are recommended for elevation to the High Court, undergo hardships of a different kind. It is unjust that the fate of such persons remains in limbo for indefinite periods and gives rise to unnecessary conjectural debates. It leads to unpleasant situations which can be avoided. It is, therefore, in
E the interest of all the stakeholders, including the judiciary, that definite timelines are drawn for each stage of the process, so that process of appointment is accomplished within a time bound manner. We need not say more. It is more so, to keep hope and aspiration of litigants alive and to fulfil the commitment of providing a speedy justice the process of
F appointment of Judges of the High Court needs more expedition at the hands of all who have to discharge the constitutional obligation entrusted by the Constitution of India. With these observations, we dismiss the writ petition.

Ankit Gyan Writ Petition dismissed.