

Monday, August 3, 1998

A curious case on HC judges in apex court

EXPRESS NEWS SERVICE

<http://www.expressindia.com/ie/daily/19980803/21550784.html>

NEW DELHI, Aug 2: A curious interlocutory application seeking to advance the hearing of the writ petition urging the Supreme Court to direct the Union Government to appoint and transfer judges on the recommendations of the Chief Justice of India (CJI) is to come up before a Division Bench of Justice S Saghir Ahmad and Justice K T Thomas tomorrow.

The application for advancing the hearing moved by Mohan Lal Gupta, an advocate, is seen as the latest salvo in the ongoing tussle between Chief Justice M M Punchhi and the Government on the interpretation of the law regarding the appointment and transfer of judges.

The date for the hearing of the writ petition was fixed for September 14 by the Division Bench after it took note of the Presidential Reference.

Not only does the application seek to advance the date of the hearing but it also seeks direction (Mandamus) to the Union government for the appointment of 11 judges to the Punjab and Haryana High Court "whose names have been cleared by the Chief Justice of India."

The Presidential Reference had been made following a deadlock between the Executive and the Judiciary over the issue of appointments with the Government sending back the recommendations of the Chief Justice for "reconsideration."

Since the issues in Gupta's writ petition are covered by the questions raised in President K R Narayanan in his reference last week, the application is perceived in some quarters as a move to pre-empt the Presidential Reference.

In his application Gupta has also sought relief from the court in the immediate appointment of the 11 judges, whose names Gupta believes the CJI has already cleared and recommended.

Gupta's contention is that the question of reference relates basically to the appointment of Supreme Court judges, chief justices of High Courts, transfer of chief justices and judges of the High Courts and "justifiability" of transfers. He feels that there is no bar in the Presidential Reference that restricts the appointments of the Punjab and Haryana High Court judges.

Differences between the Chief Justice and the Union Government arose after the Government asked the CJI to reconsider some of his proposals on the appointment of Supreme Court judges and transfers of High Court judges. Chief Justice Punchhi declined to reconsider the issue, maintaining that he had followed the due procedure as laid down in the 1993 judgement in the case of SC Advocates on Record Association versus the Union of India.

Shortly afterwards two writ petitions were filed before the Supreme Court urging that the Law Ministry act on the recommendations of the Chief Justice without further delay. (Chief Justice Punchhi is to retire in October.) The petition was referred to the Division Bench of Justices Ahmad and Thomas.

Last Monday Attorney-General Soli Sorabjee made a Presidential Reference to the SC on the interpretation of the law on the subject. The Chief Justice directed the reference to a nine-member Constitutional Bench which includes Justice Ahmad to examine various questions concerning the issue of appointment and transfer of judges.

Copyright © 1998 Indian Express Newspapers (Bombay) Ltd.