

Topic: Qualifications For A High Court Judge Under Article 217

Name of the Case: Kumar Padma Prasad v. UOI, AIR 1992 SC 1213

Bench: Justice Kuldeep Singh, Justice P.B. Sawant and Justice N.M. Kasliwal

Fact of the Case: Sri K.N. Srivastava, Secretary to Law and Justice, Mizoram Government, was appointed as High Court Judge. The appointment was challenged by petitioner through the writ petition in Gauhati High Court. The Gauhati High Court granted a stay on the warrant of appointment. Sri Srivastava then moved the Supreme Court against the High Court order from High Court to the Supreme Court.

Judgment: Referring to Article 217, the Supreme Court pointed out that the question was whether Sri Srivastava had held a judicial office for 10 years. The term judicial office has not been defined in the Constitution, according to the Court, holder of the judicial office under Article 217 means a person who exercises only judicial function and renders decisions in a judicial capacity. He must belong to a judicial service which in a class is free from executive control and is disciplined to hold the dignity, integrity and independence of judiciary.

The Supreme Court ruled that Sri Srivastava was not qualified to be appointed as High Court judge as he had held no judicial office in the judicial service. The court ruled that the office of Legal Remembrancer-cum-Secretary (Law and Judicial) of the State Government headed by him was a non-judicial office under the control of executive. All other offices held by him were neither judicial nor part of any judicial service. He also did not complete 10 years as a member of the state judicial service.

Thus, the Supreme Court made it clear that ordinarily the domain in such matters play wholly with the constitutional authorities like the present, where the incumbent did not fulfil the qualification prescribed for the office, it became the court's duty to see that no ineligible or unqualified person was appointed to a high constitutional office of High Court judges.
