

Reserved

Neutral Citation No. - 2025:AHC-LKO:23110-DB

Court No. - 1

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 334 of 2025

Petitioner :- Vikash Chaturvedi

Respondent :- Union Of Bharat Thru. Secy. For Law And Justice
Shashi Bhawan New Delhi And Another

Counsel for Petitioner :- Asok Pande

Counsel for Respondent :- A.S.G.I., Gaurav Mehrotra

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Ajai Kumar Srivastava - I, J.

[Per Attau Rahman Masoodi, J.]

- (1) Sri Asok Pande, learned counsel for the petitioner, Sri S. B. Pandey, learned Deputy Solicitor General of India assisted by Sri Anand Dwivedi, learned counsel for the Union of India and Sri Gaurav Mehrotra, learned counsel for the respondent No.2 are present.
- (2) This writ petition filed in public interest on behalf of a practicing lawyer of this Court seeks the reliefs as under:-

"(1) Issue a writ of prohibition thereby prohibiting/restraining the Chief Justice of the High Court of Uttar Pradesh from administering the oath of office to Sri Yashwant Varma as a judge of this High Court.

(2) Issue a writ of certiorari to quash the notification dated 28/03/2025 issued by respondent union thereby notifying the transfer of Sri Yaswant Verma from the office of judge of Delhi High Court to the High Court of Uttar Pradesh (wrongly mentioned as Allahabad High Court).

(3) Pass any other order(s) as may be deemed fit and proper in the interest of justice and effective functioning of the judiciary."

- (3) The tenure and transfer of a Judge of the High Court both are the matters governed under the respective provisions of the

Constitution of India. The tenure of a High Court Judge is fundamentally protected under Article 124 (4) read with 217 (1) (b) of the Constitution of India which postulate a democratic decision making process on the basis of prescribed strength of public representatives in each house of the Indian Parliament, and; transfer of a High Court Judge is regulated as per the procedure prescribed under Article 222 of the Constitution of India.

- (4) The relief in this petition to the extent of seeking a writ of prohibition for administering the Oath of Office is dependent upon the grant of second relief, prayed for, in the writ petition wherein notification dated 28.03.2025 has been assailed and prayed to be quashed.
- (5) The notification dated 28.03.2025, in effect, is a notification of transfer of the Hon'ble High Court Judge in exercise of the powers vested by virtue of Article 222 of the Constitution of India which, for a ready reference, reads as under:-

“222. Transfer of a Judge from one High Court to another

(1) The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court.

(2) When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix.”

- (6) On consideration of the entire material placed on record and the grounds urged before us, we do not gather any procedural irregularity or illegality on account of which the action sought

to be assailed may fall as untenable in the eye of law even at the instance of the party aggrieved.

- (7) That apart, all such decisions taken after following due procedure under law are non-justiciable once the tenure of a High Court Judge is protected under Article 124 (4) read with Article 217 (1) (b) of the Constitution of India.
- (8) Transfer, administration of Oath and functioning of a Judge are the concomitants of tenure protected under Article 124 (4) read with Article 217 (1) (b) of the Constitution of India. Once the notification impugned in the writ petition holds good in the eye of law, challenge to the concomitant part is equally protected provided the procedure is followed. The protection to tenure is a part and parcel of independence of judiciary as an organ of the State, therefore, invoking writ jurisdiction of this Court against the impugned action is virtually nothing but to question the tenure regarding which the proceedings on the floor of the two houses of the Parliament remain decisive but nothing has been brought to our notice attracting justiciability. The Court may hasten to add that the privilege of discussion lies within the precincts of the two houses of the Parliament and not beyond.
- (9) For the reasons stated above, we do not find that any of the grounds urged before us is made out, more so when the issue raised before this Court is non-justiciable.
- (10) The P.I.L., bereft of any merit, is accordingly **rejected**.

[Ajai Kumar Srivastava-I, J.][Attai Rahman Masoodi, J.]

Order Date :- 23.04.2025

lakshman