

[2014] 12 S.C.R. 465

S. SESHACHALAM & ORS. ETC.

v.

CHAIRMAN, BAR COUNCIL OF TAMIL NADU & ORS.
(Civil Appeal Nos. 11454-11459 of 2014)

DECEMBER 16, 2014

[M.Y. EQBAL AND R. BANUMATHI, JJ.]

Tamil Nadu Advocates' Welfare Fund Act, 1987 – s. 16 Explanation II (5) Proviso – Payment of amount on cessation of practice – Advocates Welfare Fund – Classification of advocates – Lawyers joining straight after their enrolment and lawyers who enroll themselves after their retirement from government services and continue to receive pension and other terminal benefits – Denial of payment of two lakh rupees to the kin of advocates receiving pension or gratuity or other terminal benefits from any State or Central Government organization – Challenge to – Held: Classification of lawyers into these two categories is a reasonable classification having a nexus with the object of the Act – Retired officials who joined legal profession constitute a separate class and the disentitlement of the benefit of lump sum welfare fund to this group of advocates cannot be said to be unreasonable – Bihar State Advocates' Welfare Fund Act, 1983 – s. 1(3) – Advocates' Welfare Fund Act, 1987 – Kerala Advocates Welfare Fund Act – s. 15 – Orissa Advocates Welfare Fund Act – s. 15 – Rajasthan Advocates Welfare Fund Act – s. 16.

Dismissing the appeals, the Court

HELD: 1.1 The lawyers, straight after their enrolment, who join the legal profession with high hopes and expectations and dedicate their whole lives to the professions are the real deservers for lump sum welfare fund under the Act. Lawyers who enrol themselves after their retirement from government services and continue

A to receive pension and other terminal benefits, who
 basically join this field in search of greener pastures in
 the evening of their lives cannot and should not be
 equated with those who have devoted their whole lives
 to the profession. For these retired persons, some
 B amount of financial stability is ensured in view of the
 pension and terminal benefits and making them eligible
 for lump sum welfare fund under the Act would actually
 amount to double benefits. Therefore, the classification
 of lawyers into these two categories is a reasonable
 C classification having a nexus with the object of the Act.
 The retired officials who joined legal profession constitute
 a separate class and the disentitlement of the benefit of
 lump sum welfare fund to this group of advocates cannot
 be said to be unreasonable. [Para 28, 31] [484-G-H; 485-
 A-B; 486-D]
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1.2. *The object of the Act is to provide for the
 constitution of a Welfare Fund for the benefit of advocates
 on cessation of practice. As per Section 3 (2) (d) any grant
 made by the Government to the welfare fund is one of
 E the source of the Advocates' Welfare Fund. The retired
 employees are already in receipt of pension from the
 Government or other employer and to make them get
 another retiral benefit from the Advocates' Welfare Fund
 would amount to double benefit and they are rightly
 F excluded from the benefit of the lump sum amount of
 welfare fund. [Para 29] [485-C-E]*

1.3. Section 28 of the Central legislation-Advocates'
 Welfare Fund Act 2001 provides that no senior advocate
 or a person in receipt of pension from the Central
 G Government or State Government shall be entitled to ex-
 gratia grant under Sections 19, 21 and 24 of the said Act.
 Thus, the Central Act as well as the State Act does make
 a distinction amongst the advocates on the premise that
 a group of advocates receive certain financial assistance
 H from the State Government or the Central Government or

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some other employer in the form of terminal benefits and pension etc. Corresponding Acts of various States namely Kerala Advocates Welfare Fund Act (Section 15), Orissa Advocates Welfare Fund Act (Section 15) and Rajasthan Advocates Welfare Fund Act (Section 16), Bihar State Advocates' Welfare Fund Act (Section 1(3) contain similar provisions making differentiation between advocates who enrolled themselves as advocates after demitting their office and the other class of advocates who enrolled as advocates straight from the law college and set up the practice. It cannot be said the distinction amongst the two class of advocates is unreasonable or irrational. [Para 30] [485-F-H; 486-A-B]

Special Courts Bill, 1979 (2) SCR 476: (1979) 1 SCC 380; National Council for Teacher Education vs. Shri Shyam Shiksha Prashikshan Sansthan 2011 (2) SCR 291 : (2011) 3 SCC 238; Union of India & Anr. vs. Parameswaran Match Works & Ors. 1975 (2) SCR 573: (1975) 1 SCC 305; Dr. Sushma Sharma & Ors. vs. State of Rajasthan & Ors. 1985 SCR 243 : (1985) Supp. SCC 45; University Grants Commission vs. Sadhana Chaudhary & Ors. 1996 (6) Suppl. SCR 392: (1996) 10 SCC 536; Ramrao & Ors. vs. All India Backward Class Bank Employees Welfare Association & Ors. 2004 (1) SCR 19 : (2004) 2 SCC 76; State of Punjab & Ors. vs. Amar Nath Goyal & Ors. 2005 (2) Suppl. SCR 549:(2005) 6 SCC 754; Dr. Subramanian Swamy vs. Director, CBI & Anr. (2014) 8 SCC 682; Kedar Nath Tiwari v. State of Bihar 2011 (2) PLJR 401 – referred to.

Case Law Reference:

1979 (2) SCR 476	Referred to	Para 23	G
2011 (2) SCR 291	Referred to	Para 23	
1975 (2) SCR 573	Referred to	Para 23	
1985 SCR 243.	Referred to	Para 23	H

A	1996 (6) Suppl. SCR 392 Referred to	Para 23
	2004 (1) SCR 19 Referred to	Para 23
	2005 (2) Suppl. SCR 549 Referred to	Para 23
B	(2014) 8 SCC 682 Referred to	Para 24
	2011 (2) PLJR 401 Referred to	Para 32

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11454-11459 of 2014.

C From the Judgment & Order dated 17.07.2009 of the High Court of Judicature at Madras in Writ Petition Nos. 823., 824, 826 and 830 to 832 of 2007.

WITH

D C.A. No. 11460 of 2014.

Pramod Swarup, Harish Beeran, Nishe Rajen Shonker, Braj Kishore Mishra, Aparna Jha, Faraz Maqbool for the Appellant.

E L. Nageshwara Rao, ASG, Subramonium Prasad, AAG, B. Balaji, R. Rakesh Sharma, Satya Mitra Garg, Rudreshwar Singh, Samir Ali Khan, Yogesh Kanna, Janani for the Respondents.

F The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

G 2. Whether proviso to Section 16 Explanation II (5) of Tamil Nadu Advocates' Welfare Fund Act, 1987 denying the payment of two lakh rupees to the kin of advocates receiving pension or gratuity or other terminal benefits would be violative of Article 14 of the Constitution of India and whether distinguishing this class of advocates from other law graduates enrolling in the Bar

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straight after their law degree did not have any rational basis are the points falling for consideration in these appeals. A

3. Similar challenge is made to Section 1(3) of the Bihar State Advocates' Welfare Fund Act 1983 which excludes the persons who have retired from service and are in receipt of retiral benefits from their employers from the purview of the Bihar State Advocates' Welfare Fund Act. For convenience, appeals challenging the provisions of Tamil Nadu Advocates' Welfare Fund Act are taken as lead case. B

4. The appellants are retired employees either from government service or other organisations qualified with law degree who have enrolled themselves as advocates after retiring from their respective services and now are said to be practising in courts. Challenging the impugned provision and Explanation II (5) of Section 16 of the Tamil Nadu Advocates' Welfare Fund Act, the appellants filed writ petitions contending that the benefit of Welfare Fund Act is denied to the kin of advocates who are in receipt of pension or gratuity or other terminal benefits from any State or Central Government or organization is arbitrary, unreasonable and violative of Article 14 of the Constitution of India. C
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5. Learned single Judge of the Madras High Court allowed the batch of writ petitions filed by the retired officials who had enrolled themselves as advocates after their retirement. Learned single Judge struck down impugned proviso to Explanation II (5) of Section 16 holding that the same is violative of Article 14 of the Constitution of India. Aggrieved, Bar Council of Tamil Nadu and the Government preferred appeals before the Division Bench which allowed the appeals and set aside the order of the learned single Judge. The Division Bench held ".....that the distinction made between the member advocates who enrolled and professed law profession from the beginning, and the advocates who joined law profession after retirement, viz., after completion of nearly 58 years of their life, for the purpose of conferring lump sum benefit...." is a reasonable F
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A classification and the said classification has a nexus to the objects sought to be achieved and it cannot be held to be arbitrary or violative of Article 14 of the Constitution of India. Challenging the same, the appellants have preferred these appeals by way of special leave.

B 6. Learned counsel for the appellants Mr. Harish Beeran contended that the denial of lump sum benefit based on a classification of advocates is violative of Article 14 of the Constitution of India. It was submitted that the differentiation between persons who enrolled as advocates after demitting office from the govt. service/organization and who enrolled as advocates and set up practice straight from the law college, is discriminatory as there is no such distinction made in the Act while defining the term 'advocate' under Section 2(a) of the Act. C It was further submitted that the pension and other benefits D received are the statutory amounts paid to them for the services rendered to the previous employer and it is an earned benefit, and that cannot form the basis for denial of lump sum benefits. The appellants argued that the impugned proviso is repugnant and contradictory to Section 2(i) of the Act, which defines the E term 'member of Fund' and is liable to be struck down as ultra vires Article 14 of the Constitution of India.

F 7. Mr. Pramod Swarup learned Senior Counsel for the appellants (Civil Appeal arising out of SLP (C) No.34326/2012) submitted that as per Section 1(3) of the Bihar State Advocates' Welfare Fund Act, the persons who enrol themselves as advocates after retirement and are in receipt of G retiral benefits are not permitted to take membership under the Act. It was contended that the artificial classification made amongst homogeneous group of advocates and disentitling retired employees - advocates from becoming member of the welfare fund is discriminatory and unconstitutional.

H 8. Mr. L. Nageshwara Rao, learned ASG appearing for the State of Tamil Nadu contended that the object of Welfare Fund Act is to provide welfare or social security benefits to the

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advocates who are fully committed to the profession of law and in the event of their death, their legal heirs will be entitled to receive the lump sum welfare amount. The learned senior counsel contended that the distinction made between the advocates amounts to a reasonable classification and is founded on an intelligible differentia which is having a rational nexus with the objects sought to be achieved by the Act in question.

9. Mr. Rudreshwar Singh, learned counsel appearing for the State of Bihar submitted that the Welfare Fund Scheme is intended only for those young advocates who struggle from inception of their profession and not intended for the retired employees enrolled as advocates who receive pension and other terminal benefits from their previous employers. Taking us through the Central legislation—Advocates' Welfare Fund Act 2001 and the provisions of the Welfare Fund Act of other States, learned counsel submitted that those legislations do make a distinction amongst the advocates receiving pensionary benefits from their employers and those who set up the practice straight after completing the law degree.

10. We have carefully considered the submissions and gone through the impugned judgments and perused the materials on record.

11. STATEMENT OF OBJECTS AND REASONS - THE ADVOCATES' WELFARE FUND ACT, 2001: The Advocates' Welfare Fund Act, 2001 enacted by the Parliament enjoins the appropriate Government to constitute a fund to be called the "Advocates' Welfare Fund" with the object of providing social security in the form of financial assistance to junior lawyers and welfare scheme for indigent or disabled advocates. The statement and objects read as under:-

"Social security in the form of financial assistance to junior lawyers and welfare schemes for indigent or disabled advocates, has long been a matter of concern for the legal

A fraternity. Clause (a) of sub-section (2) of section 6 and clause (a) of sub-section (2) of section 7 of the Advocates Act, 1961, confer powers on State Bar Councils as well as the Bar Council of India, *inter alia*, to constitute through their rules one or more funds for the purpose of "giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates". Sub-section (3) of Section 6 and sub-section (3) of section 7 of the Advocates Act further provide that a State Bar Council may receive grants, donations, gifts or benefactions for the said purpose which shall be credited to the appropriate fund or funds constituted under sub-section (2). Welfare schemes have accordingly been introduced in some States. Most of the States have enacted legislations on the subject. However, there is neither any uniformity nor the said provisions are considered adequate. Moreover, the Advocates Act does not authorise levy of any welfare fund stamp on vakalatnama. There has, therefore, been felt a need for a Central legislation applicable to the Union territories and the States which do not have their own enactments on the subject, for constitution of "Advocates' Welfare Fund" by the appropriate Government. The Fund will, *inter alia*, be composed of contributions made by a State Bar Council, any voluntary donation or contribution by the Bar Council of India, advocates' associations, other associations or institutions or persons, any grant made by the appropriate Government, sums collected by way of sale of "Advocates' Welfare Fund Stamps".

2. All practicing advocates shall become members of the Fund on payment of an application fee and annual subscription. The Fund shall vest in and be held and applied by the Trustee Committee established by the appropriate Government. The Fund will, *inter alia*, be used for making *ex gratia* grant to a member of the Fund in case of a serious health problem, payment to a fixed amount on cessation of practice and in case of death of a member,

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to his nominee or legal heir, medical and educational facilities for the members and their dependents, purchase of books and for common facilities for advocates. The income accrued to the Fund, profits and gains shall be exempted from income tax.

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3. The Bill seeks to achieve the above object.”

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12. It is with the same objects and purpose Tamil Nadu Advocates' Welfare Fund Act 1987 (for short 'Welfare Fund Act') was also enacted. Some of the provisions of the Welfare Fund Act are relevant to be noted. Section 2(a) defines "Advocate" as under:-

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"2(a) "Advocate" means a person whose name has been entered in the roll of advocates prepared and maintained by the Bar Council under section 17 of the Advocates Act, 1961 (Central Act 25 of 1961) and who is a member of a Bar Association or an Advocates Association."

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Section 2(i) defines member of the Fund as under:-

"2(i) "member of the Fund" means an advocate admitted to the benefits of the Fund and continuing to be a member thereof under the provisions of this Act."

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Cessation of practice is defined in Section 2(e) which reads as under:-

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"2(e) "cessation of practice" means removal of the name of an advocate from the State roll under section 26-A of the Advocates Act, 1961 (Central Act 25 of 1961)."

13. Section 3 of the Welfare Fund Act states that the Government shall constitute a fund called the Tamil Nadu Advocates' Welfare Fund. Section 3 reads as under:-

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"3. Advocates Welfare Fund

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- A (1) The Government shall constitute a fund called the Tamil Nadu Advocates Welfare Fund.
- (2) There shall be credited to the Fund-
- B (a) all amounts paid by the Bar Council under section 12;
- (b) any other contribution made by the Bar Council;
- C (c) any voluntary donation or contribution made to the Fund by the Bar Council of India, any Bar Association, any Advocates Association; or other association or institution, or any advocate or other person;
- D (d) any grant made by the Government to the Fund;
- (e) any sum borrowed under Section 10;
- E (f) all sums collected under Section 15;
- (g) all sums received from the Life Insurance Corporation of India on the death of an advocate under a Group Insurance Policy;
- F (h) any profit or dividend or refund received from the Life Insurance Corporation of India in respect of policies of Group Insurance of the members of the Fund;
- G (i) any interest or dividend or other return on any investment made of any part of the Fund; and
- (j) all sums collected by way of sale of stamps under Section 22.
- H (3) The sums specified in sub-section (2) shall be paid

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to, or collected by, such agencies, at such intervals and in such manner, and the accounts of the Fund shall be maintained in such manner, as may be prescribed.”

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Advocates' Welfare Fund is administered by a Trustee Committee. As per the provisions of the Welfare Fund Act, the fund shall vest in and be held and administered by the Trustee Committee established under Section 4 of the Act. The functions of the Trustee Committee is enumerated in Section 9 of the Welfare Fund Act.

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14. Section 16 of the Welfare Fund Act which is relevant for these appeals deals with the payment of amount on cessation of practice. After 2001 amendment, Section 16 reads as under:-

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“16. Payment of amount on cessation of practice

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- (1) Every advocate who has been a member of the Fund for a period of not less than five years shall, on his cessation of practice, be paid an amount at the rate specified in the Schedule:

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(IA) “Notwithstanding anything contained in sub-section (1), every member of the Fund who has completed or completes twenty five years of practice as an advocate on the date coming into force of the Tamil Nadu Advocates Welfare Fund (Amendment) Act, 2000 shall, on completion of five years as a member of the Fund and on his cessation of practice, be paid a lump sum amount of one lakh rupees. (w.e.f. 1.2.2001)

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Provided that where the Trustee Committee is satisfied that a member of the Fund ceases to practice within a period of five years from the date of his admission as a member of Fund as a result of “any permanent physical or mental disability”, the Trustee Committee may pay the member of

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A the Fund an amount at the rate specified in the Schedule:

B Explanation I: For the purposes of calculating the number of years standing of a member of the Fund for the purpose of this sub-section, every four years of practice as an advocate before the admission of a member to the Fund shall be counted as one year's standing and every year of practice over and above four years before such admission shall be counted equivalent to three months' standing and the total number of years of standing so counted shall be added to the number of years of practice.

C Explanation II- (1) The period during which a member of the Fund remained under suspension shall not be considered for the purpose of counting the years of standing.

D (2) Where a member of the Fund dies before receiving the amount payable under sub-section (1), his nominees or legal heir, as the case may be, shall be paid the amount payable to the deceased member of the Fund.

E (3) Any person removed from the membership in the Fund under sub-section (5) of Section 15 and re-admitted to the Fund under sub-section (6) of that section shall not be entitled to payment of any amount from the Fund under this Act during the period between the date of his removal from the membership in the Fund and the date of re-admission.

F (4) Any member who is suspended by the Bar Council for misconduct under the Advocates Act 1961 (Central Act 25 of 1961) shall not be entitled to payment of any amount from the Fund under this Act, for the period of such suspension.

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- (5) Where a member of the Fund dies, his nominee or legal heir, as the case may be, shall be paid an amount of two lakh rupees;

Provided that if such member who, before his death, was in receipt of pension, gratuity or other terminal benefits from any State Government or Central Government or other authority or employer, his nominee or legal heir, as the case may be, shall not be entitled for the payment of the amount of two lakh rupees under this sub-section. (w.e.f. 1.2.2001).

- (6) Every member or his nominee or legal heir, as the case may be, shall apply, for payment out of the Fund, to the Trustee Committee, in such form, as may be prescribed.

- (7) Where a person, who has been paid an amount under sub-section (1) or (1-A) has been admitted as an advocate again under section 24 of the Advocates Act, 1961 (Central Act 25 of 1961), desires to be re-admitted to the Fund shall, on an application made in the same manner as specified in sections (1) or (1-A) as the case may be with interest calculated at the rate of twelve per cent per annum, be re-admitted to the Fund. He shall not be entitled to payment of any amount from the Fund under this Act, during the period between the date of his cessation of practice and the date of re-admission w.e.f. 15.1.1996."

15. Explanation II (5) of Section 16 prior to Amendment 2001 stood as under:-

Explanation II (5) "Where a member of the Fund dies within five years of his admission to the Fund, his nominee or legal heir, as the case may be, shall be paid an amount

A at the rate of one thousand rupees for each year of practice by the member of the Fund.”

B 16. By a careful reading of Section 16, it is evident that prior to 2001 amendment, Explanation II (5) of Section 16 of the Welfare Fund Act contemplated that on the death of a member of the Fund within five years from the date of his admission to the Fund, his nominee or legal heirs was/were eligible for payment at the rate of one thousand rupees for each year of his practice. That was because under Section 16(1) of the Welfare Fund Act, the schedule payment is possible only if as an advocate he has completed five years as a member of the Fund. Explanation II (5) to Section 16 of the Welfare Fund Act stood amended with effect from 1.2.2001 as extracted above, as per which lump sum amount of two lakh rupees is payable on the death of a member of the Fund irrespective of the years of membership of the Fund. After GO. Ms. 688 dated 19.9.2012, the above financial assistance of two lakh rupees payable to the nominee/legal heirs of the deceased advocates in terms of Section 16 Explanation II (5) has been enhanced to five lakh and twenty five thousand rupees. This lump sum of two lakh rupees (as per Amendment 2001) is denied to a member of a Fund who has enrolled himself after retirement from government service or any other organization who was in receipt of pension or other terminal benefits.

F 17. Contention of the appellants is that as per definition of “advocate” in Section 2 (a) of the Welfare Fund Act, there cannot be a differentiation between the advocates. Reliance was placed upon Section 2(i) of the Welfare Fund Act which defines the term “member of the Fund” and it was submitted that when once the retired employees like the appellants have been admitted as members of the Fund, they should be treated equally with others and there cannot be an artificial classification made amongst one homogeneous group of advocates and such classification is violative of Article 14 of the Constitution of India.

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18. As per the scheme of the Welfare Fund Act, every advocate who has enrolled with the State Bar Council as per the Advocates Act 1961 would not automatically become a member of the Advocates' Welfare Fund and it is only those advocates who applied to the Trustee Committee, can become member of the Advocates' Welfare Fund. As per Section 15 of the Welfare Fund Act, only those who applied on payment of membership of Rs.200/- towards application shall be admitted as a member of the Fund. It is thus not in dispute, not only the advocates who have enrolled with the Bar Council immediately after completion of their law degree, but also those who enrolled as advocates after their retirement from other employment may become the members of the Advocates' Welfare Fund. It is only those advocates who have become the members of the Advocates' Welfare Fund, are eligible for the benefits under the Welfare Fund Act which may be the payment of schedule amount on cessation of practice in terms of Section 16 (1) and payment of lump sum amount as per the impugned proviso. As per Section 16 (1) of the Act, every advocate who has been a member of the Fund for a period of not less than five years, on his cessation of practice, be paid an amount at the rate specified in the schedule. The proviso to sub-section (1) of Section 16 enables the Trustee Committee to pay an amount to a member of the Fund who ceases to practice within a period of five years from the date of his admission as a member. Thus, the persons who enrolled as advocates after their retirement even though they are denied the benefit of lump sum payment under the impugned proviso, on cessation of their practice, they shall be entitled to the Welfare Fund at the rate specified in the schedule. The differentiation of the retired employee-advocates who have set up practice as advocates after demitting their office, who are in receipt of pension or other terminal benefits and the advocates who set up practice straight from the law college, in our considered view, appears to be rational and reasonable. The said classification, in our view, has a nexus with the object sought to be achieved.

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A 19. Statement of Objects and Reasons of the Tamil Nadu Welfare Fund Act clearly states that the Welfare Fund is intended to provide welfare to the advocates and to provide them retirement benefits. The Objects and Reasons of Tamil Nadu Advocates' Welfare fund Act reads as under:-

B STATEMENT OF OBJECTS AND REASONS

Tamil Nadu Advocates Welfare Fund Act, 1987 (Tamil Nadu Act 49 of 1987)

C "The constitution of a Welfare Fund for the payment of retirement benefits to the advocates in the State of Tamil Nadu and for conferring on them the benefits connected therewith or incidental thereto has been engaging the attention of this Government for quite some time. The Government have decided to constitute a Fund called the Tamil Nadu Advocates Welfare Fund in the State to provide for payment of retirement benefits to the advocates in the State and for conferring on them the benefits connected therewith or incidental thereto."
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 E (Underlining added)

20. The main point falling for consideration is whether there is nexus between the object of the Act and denial of benefits of lump sum welfare fund to retired employees enrolled as advocates after their retirement under explanation II (5) of Section 16 of the Act. As noticed earlier, on cessation of practice, the members of the Welfare Fund are entitled to the benefits as available in the schedule to the Welfare Fund Act based on the years of service and what is denied is just a lump sum amount. It is an established principle that mere hardship caused to a group should not be a ground to strike down a law.
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21. Article 14 of the Constitution of India states that *"The State shall not deny to any person equality before the law of the equal protection of the laws within the territory of India"*.
 H Article 14 forbids class-legislation but it does not forbid

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reasonable classification. The classification however must not be "arbitrary, artificial or evasive" but must be based on some real and substantial bearing, a just and reasonable relation to the object sought to be achieved by the legislation. Article 14 applies where equals are treated differently without any reasonable basis. But where equals and unequals are treated differently, Article 14 does not apply. Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted and between those on whom the privilege is conferred whom and the persons not so favoured, no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.

22. While Article 14 forbids class legislation, it does not forbid reasonable classification of persons, objects, and transactions by the legislature for the purpose of achieving specific ends. But classification must not be "arbitrary, artificial or evasive". It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation. Classification to be reasonable must fulfil the following two conditions:- Firstly, the classification must be founded on the intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. Secondly, the differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are two distinct things. What is necessary is that there must be nexus between the basis of classification and the object of the Act. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory.

23. In *Special Courts Bill, 1978* (1979) 1 SCC 380, this Court referred to large number of decisions involving

- A interpretation of Article 14 of the Constitution of India and summarized the principles. In the case of *National Council for Teacher Education vs. Shri Shyam Shiksha Prashikshan Sansthan*, (2011) 3 SCC 238, Justice Singhvi has elaborated the concept of 'Right to Equality' by referring to chain of
- B judgments delivered by this Court and established principles viz. *Union of India & Anr. vs. Parameswaran Match Works & Ors.*, (1975) 1 SCC 305, *Dr. Sushma Sharma & Ors. vs. State of Rajasthan & Ors.*, (1985) Supp. SCC 45, *University Grants Commission vs. Sadhana Chaudhary & Ors.*, (1996) 10 SCC
- C 536, *Ramrao & Ors. vs. All India Backward Class Bank Employees Welfare Association & Ors.*, (2004) 2 SCC 76 and *State of Punjab & Ors. vs. Amar Nath Goyal & Ors.*, (2005) 6 SCC 754 etc.

- D 24. Recently, in the case of *Dr. Subramanian Swamy vs. Director, CBI & Anr.*, (2014) 8 SCC 682, this Court considered the process of classification and what should be regarded as a class for purposes of legislation held in paras (58) and (70) as under:-

- E "58. The Constitution permits the State to determine, by the process of classification, what should be regarded as a class for purposes of legislation and in relation to law enacted on a particular subject. There is bound to be some degree of inequality when there is segregation of one class
- F from the other. However, such segregation must be rational and not artificial or evasive. In other words, the classification must not only be based on some qualities or characteristics, which are to be found in all persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable
- G relation to the object of the legislation. Differentia which is the basis of classification must be sound and must have reasonable relation to the object of the legislation. If the object itself is discriminatory, then explanation that classification is reasonable having rational relation to the
- H object sought to be achieved is immaterial.

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70. Undoubtedly, every differentiation is not a discrimination but at the same time, differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. A simple physical grouping which separates one category from the other without any rational basis is not a sound or intelligible differentia. The separation or segregation must have a systematic relation and rational basis and the object of such segregation must not be discriminatory. Every public servant against whom there is reasonable suspicion of commission of crime or there are allegations of an offence under the PC Act, 1988 has to be treated equally and similarly under the law. Any distinction made between them on the basis of their status or position in service for the purposes of inquiry/investigation is nothing but an artificial one and offends Article 14."

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25. In the light of the well-settled principles of interpretation of Article 14, it is to be seen whether there is intelligible differentia between the classification of advocates who had set up practice straight after enrolment and other advocates who start their practice after demitting the office and are in receipt of pension and other benefits and whether the differentia has a nexus with the object of the Act.

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26. The profession of law is a noble calling. The legal fraternity toils day and night to be successful in the profession. Although it is true that slowly working one's way up is the norm in any profession, including law, but initially young advocates have to remain in the queue for a prolonged period of time and struggle through greater hardships. Despite being extremely talented, a number of young lawyers hardly get proper opportunity or exposure in their profession. New entrants to the profession in the initial stages of the profession suffer with the meagre stipend which young lawyers may receive during their initial years, coupled with the absence of a legislation concerning this, they struggle to manage their food, lodging,

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A transportation and other needs. Despite their valiant efforts, they are unable to march ahead in their profession. It is only after years of hard work and slogging that some of the fortunate lawyers are able to make a name for themselves and achieve success in the profession. For the majority of the legal fraternity, everyday is a challenge. Despite the difficult times, the lawyer who sets up practice straight after enrolment, struggles to settle down himself in the profession. Some of the lawyers remain struggling throughout their lives yet choose to remain in the profession. It is something like *“riding a bicycle uphill with the wind against one”*.

27. Contrariwise, the retired employees like the appellants who are law graduates did not withstand the difficult times in the profession. They opted for some other lucrative job during their prime time of their life and lived a secured life. Others found some job and positioned themselves in a comfortable place of employment, chose to join evening college or attended part time classes and obtained law degree and having retired with comfortable retiral benefits, further securing their future, they enrol themselves as an advocate to practice. The retired employees have the substantial retiral benefits, gratuity apart from receiving pension. The availability of lump sum retiral benefits with pension makes a retired employee better placed than their counter part lawyers who struggle through difficult times.

28. The various welfare fund schemes are in actuality intended for the benefit of those who are in the greatest need of them. The lawyers, straight after their enrolment, who join the legal profession with high hopes and expectations and dedicate their whole lives to the professions are the real deservers. Lawyers who enrol themselves after their retirement from government services and continue to receive pension and other terminal benefits, who basically join this field in search of greener pastures in the evening of their lives cannot and should not be equated with those who have devoted their whole lives

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to the profession. For these retired persons, some amount of financial stability is ensured in view of the pension and terminal benefits and making them eligible for lump sum welfare fund under the Act would actually amount to double benefits. Therefore, in our considered view, the classification of lawyers into these two categories is a reasonable classification having a nexus with the object of the Act.

29. Furthermore, it is also to be noted that in view of their being placed differently than the class of lawyers who chose this profession as the sole means of their livelihood, it can reasonably be discerned that the retired persons form a separate class. As noticed earlier, the *object of the Act is to provide for the constitution of a Welfare Fund for the benefit of advocates on cessation of practice*. As per Section 3 (2) (d) any grant made by the Government to the welfare fund is one of the source of the Advocates' Welfare Fund. The retired employees are already in receipt of pension from the Government or other employer and to make them get another retiral benefit from the Advocates' Welfare Fund would amount to double benefit and they are rightly excluded from the benefit of the lump sum amount of welfare fund.

30. Section 28 of the Central legislation-Advocates' Welfare Fund Act 2001 provides that no senior advocate or a person in receipt of pension from the Central Government or State Government shall be entitled to ex-gratia grant under Sections 19, 21 and 24 of the said Act. Thus, the Central Act as well as the State Act does make a distinction amongst the advocates on the premise that a group of advocates receive certain financial assistance from the State Government or the Central Government or some other employer in the form of terminal benefits and pension etc. Corresponding Acts of various States namely Kerala Advocates Welfare Fund Act (Section 15), Orissa Advocates Welfare Fund Act (Section 15) and Rajasthan Advocates Welfare Fund Act (Section 16) contain similar provisions making differentiation between

A advocates who enrolled themselves as advocates after demitting their office and the other class of advocates who enrolled as advocates straight from the law college and set up the practice. We are unable to agree with the learned counsel that the distinction amongst the two class of advocates is
B unreasonable or irrational.

C 31. The Division Bench of the Madras High Court made meticulous analysis of various provisions of the Welfare Fund Act and referred to various decisions of this Court dealing with interpretation of Article 14 of the Constitution of India and rightly
D concluded that there is reasonable classification between the advocates who had set up practice after demitting their office from the Central/State government/Organization and advocates who have set up practice straight from the law college. It would be right to say that the retired officials who joined legal profession constitute a separate class and the disentitlement of the benefit of lump sum welfare fund to this group of advocates cannot be said to be unreasonable. We do not find any infirmity in the impugned judgment of the Madras High Court and the appeals are liable to be dismissed accordingly.
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F 32. **Civil Appeal arising out of Special Leave Petition No. 34326/2012:** Sub-section (2) of Section 1 of the Bihar State Advocates' Welfare Fund Act makes it applicable over the whole of the State of Bihar. Sub-section (3) of Section 1 of the Bihar State Advocates' Welfare Fund Act excludes the persons who have enrolled themselves as advocates after their retirement and are in receipt of retiral benefits from the government or their employers from the purview of the Welfare Fund Act. Advocates Welfare Fund is enacted with the object
G of providing social security in the form of financial assistance to juniors and the welfare scheme for indigent or disabled advocates. As the appellants are already in receipt of pension from their employers, in our view, there is no arbitrariness in excluding them from the applicability of Bihar State Advocates' Welfare Fund Act 1983. The Division Bench of the Patna High
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Court applying its own decision in *Kedar Nath Tiwari v. State of Bihar*, 2011 (2) PLJR 401, rightly dismissed the writ petition and we do not find any infirmity in the impugned order and the appeal is liable to be dismissed.

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33. In the result, all the appeals are dismissed.

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Nidhi Jain

Appeals dismissed.