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Brown v. General Services Administration

425 U.S. 820 (1976)

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 28, 1975

MEMORANDUM TO THE CONFERENCE:

Re: Petition for Rehearing in No. 74-116, Place v. Weinberger

Yesterday we granted certiorari in No. 74-768, Brown v. General Services Administration. At last Friday's conference I asked to have the pending petition for rehearing in No. 74-116, Place v. Weinberger, relist so that I could give further consideration to the question whether Place als should be granted.

Brown presents two basic issues: (1) whether the new § 717(c) of Title VII preempts all other federal remedies for federal employment discrimination, and, if not, (2) whether Brown sufficiently exhausted his administrative remedies with respect to his non-Title VII claims. The CA 2 affirmed the dismissal of Brown's complaint, holding that § 717(c) was both retroactive and preemptive and that, in any event, Brown had failed to exhaust. Place v. Weinberger does not present a preemption problem. Instead, Place presents the question whether § 717(c) can be applied retroactively to claims of discrimination that arose before the March 24, 1972, effective date of the amendment of the Act but were still pending in administrative proceedings on that date.

The question was raised whether we should also grant Place because Brown might be decided without disposing of the retroactivity issue. On reflection, I agree that there are two ways we could decide Brown without passing on the retroactivity question. First, we could completely bypass Brown's arguments against preemption and affirm on the ground that he failed to exhaust. Second, we could hold that, regardless of whether § 717(c) is retroactive, it is not preemptive. Nevertheless I do not presently feel that either of these possibilities justifies a grant of plenary review in Place.

As I understood the mood of the Conference, the prime reason for granting Brown was to consider the preemption claim. Therefore, I do not believe it is likely that the Court will bypass preemption and go off on

exhaustion. Moreover, since the SG has abandoned the position that § 717(c) is non-retroactive -- at least where a timely claim was pending on the effective date of the Act -- a grant of plenary review in Place on the retroactivity issue would not add anything to the adverseness of the parties before the Court on that question. Although I do not object to taking Place, I shall vote, for the moment, to hold Place for Brown.

H.A.B.