The Burger Court Opinion Writing Database

Brown v. GSA

425 U.S. 820 (1976)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

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

CHAMBERS OF
THE CHIEF JUSTICE

May 24, 1976

Re: 74-768 - Brown v. GSA

Dear Potter:

I join your May 6 proposed opinion.

Regards,

WEB

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 21, 1976

RE: No. 74-768 Brown v. General Services Administration

Dear John:

Please join me in your dissenting opinion in the above.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

corrections see p. 12

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: MAY 6 1976

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-768

Clarence Brown, Petitioner, v. General Services Administration et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[April —, 1976]

MR. JUSTICE STEWART delivered the opinion of the Court.

The principal question presented by this case is whether § 717 of the Civil Rights Act of 1964 provides the exclusive judicial remedy for claims of discrimination in federal employment.

The petitioner, Clarence Brown, is a Negro who has been employed by the General Services Administration since 1957.[1] He is currently classified in grade GS-7 and has not been promoted since 1966. In December 1970 Brown was referred, along with two white colleagues, for promotion to grade GS-9 by his supervisors. All three were rated "highly qualified," and the promotion was given to one of the white candidates for the position. Brown filed a complaint with the GSA Equal Employment Opportunity Office alleging that racial discrimination had biased the selection process. That complaint was withdrawn when Brown was told that other GS-9 positions would soon be available.

[1] After the petition for writ of certiorari was filed, the petitioner was laterally transferred to another Government agency. That transfer does not affect his claim for backpay or for equitable relief. The petitioner is still classified as a GS-7 and still wants the specific GS-9 position in the GSA for which he applied in 1971.

— √
pp 7, 8, 12, 14

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: _____

Recirculated: 24 May 1976

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–768

Clarence Brown, Petitioner, *v.* General Services Administration et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[April —, 1976]

MR. JUSTICE STEWART delivered the opinion of the Court.

The principal question presented by this case is whether § 717 of the Civil Rights Act of 1964 provides the exclusive judicial remedy for claims of discrimination in federal employment.

The petitioner, Clarence Brown, is a Negro who has been employed by the General Services Administration since 1957.[1] He is currently classified in grade GS–7 and has not been promoted since 1966. In December 1970 Brown was referred, along with two white colleagues, for promotion to grade GS–9 by his supervisors. All three were rated "highly qualified," and the promotion was given to one of the white candidates for the position. Brown filed a complaint with the GSA Equal Employment Opportunity Office alleging that racial discrimination had biased the selection process. That complaint was withdrawn when Brown was told that other GS–9 positions would soon be available.

[1] After the petition for writ of certiorari was filed, the petitioner was laterally transferred to another Government agency. That transfer does not affect his claim for backpay or for equitable relief. The petitioner is still classified as a GS–7 and still wants the specific GS–9 position in the GSA for which he applied in 1971.

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 8, 1976

MEMORANDUM TO THE CONFERENCE:

Re: Holds for No. 74-768 - Brown v. GSA

1. Petition for Rehearing, No. 74-116, Place v. Weinberger.

This case presents the question of whether the Equal Employment Opportunity Act of 1972 is retroactively available to any employee whose administrative complaint was pending at the time the Act became effective on March 24, 1972. The petitioner, alleging that she had been discriminated against solely because of her sex in matters of promotion and job-related training, filed an administrative complaint. During the pendency of that complaint in the Civil Service Commission Board of Appeals and Review, the Equal Employment Opportunity Act became effective. The Board of Appeals and Review denied relief on August 15, 1972. Within 30 days the petitioner filed suit under the Act.

The Court of Appeals for the Sixth Circuit held that the suit was barred because the Act was not retroactively available for discrimination claims that arose prior to passage of the Act. 497 F.2d 412. We denied certiorari. 419 U.S. 1040. Justices Douglas, Stewart, and White would

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 14, 1976

Re: No. 74-768 - Brown v. General Services Administration

Dear Potter:

Please join me.

Sincerely,

Byron

Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 6, 1976

Re: No. 74-768 -- Brown v. GSA

Dear Potter:

Please show me as not participating in this one.

Sincerely,

T. M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 21, 1976

Re: No. 74-768 - Brown v. General Services Administration

Dear Potter:

Please join me.

Sincerely,

Harry

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 10, 1976

No. 74-768 Brown v. GSA

Dear Potter:

Please join me.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 14, 1976

Re: No. 74-768 - Brown v. General Services Administration

Dear Potter:

Please join me.

Sincerely,

WHR

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 7, 1976

Re: 74-768 - Brown v. General Services Admin., et al.

Dear Potter:

In due course I will circulate a dissent.

Sincerely,

JPS

Mr. Justice Stewart

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: 5/21/76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–768

Clarence Brown, Petitioner, *v.* General Services Administration et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[May —, 1976]

MR. JUSTICE STEVENS, dissenting.

Prior to the enactment of the Civil Rights Act of 1964 there was uncertainty as to what federal judicial remedies, if any, were available to persons injured by racially discriminatory employment practices in the private sector.[1] Against that background of uncertainty, Congress enacted a comprehensive remedial statute which did not expressly state whether it was exclusive of, or supplementary to, whatever other remedies might exist.

In 1972 when Congress amended the statute to cover federal employees, there was similar uncertainty about what remedies were available to such employees. Since both the 1964 statute and the 1972 amendment were enacted in comparable settings, and since both pieces of legislation implement precisely the same important national interests, it is reasonable to infer that Congress intended to resolve the question of exclusivity in the same way at both times.

As the legislative history discussed in *Chandler* v. *Roudebush*, — U. S. —, demonstrates, Congress intended federal employees to have the same rights available to remedy racial discrimination as employees in the

[1] *Alexander* v. *Gardner-Denver Co.*, 415 U. S. 36, and *Johnson* v. *Railway Express Agency*, 421 U. S. 454, were not decided until 1974 and 1975 respectively.