
(1996) 05 AHC CK 0044
In the Allahabad High Court
Case No : C.M.W.P. No. 14253 of 1996

Bhagwati Prasad Bairagi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-05-1996

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 4D(2)
Constitution of India, 1950 — Article 141, 235, 311
Uttar Pradesh Fundamental Rules — Rule 56A
Uttar Pradesh Judicial Officers (Retirement on Superannuation) Rules, 1992 — Rule 4

Citation : (1996) 05 AHC CK 0044

Hon'ble Judges : M. Katju, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : H.M. Srivastava and R.N. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The Petitioner was a member of U.P. Judicial Service and was posted as Chief Judicial Magistrate, Jalaun at Orai and his case was considered for further extension of two years under the observations made by the Hon"ble Supreme Court in All India Judges" Association and Others Vs. Union of India and Others, . (hereinafter called the All India Judges Second Case), few months prior to completing the age of 58 years and could not find favour with the Evaluation Committee of this court and was recommended compulsory retirement which was communicated to the Petitioner vide letter dated 6.4.96, Annexure 6 to the writ petition. The State Government accepted the said recommendation and passed the impugned order dated 8.4.96 contained in Annexure 8 to the writ petition by which the Petitioner was informed that he would retire on 30th April, 1996. The Petitioner has challenged the impugned order dated 8.4.1996 on various grounds.

2. We have heard Shri R. N. Singh and Shri H. M. Srivastava, learned counsel for the Petitioner and learned Standing Counsel for the State.

3. The first contention raised on behalf of the Petitioner is that the Petitioner has wrongly been compulsorily retired as Rule 4 of the U.P. Judicial Officers (Retirement on Superannuation) Rules, 1992 (hereinafter called the Rules) reads as under:

A judicial officer shall retire from service on superannuation on the after-noon of the last day of the month in which he attains the age of sixty years.

4. The submission is that under the said rule, the Petitioner has a right to work till he attains the age of sixty years. The submission made by the learned counsel for the Petitioner seems to be totally misconceived. Admittedly, prior to the delivery of judgment in the case of All India Judges' Association Vs. Union of India and others, , (hereinafter called the All India Judges Ist case), the age of superannuation had always been 58 years. The said Rules of 1992 came into existence only as a consequence of the said judgment wherein the Supreme Court has directed to enhance the age of judicial officers from 58 to 60 years. The said judgment was further reviewed by the Supreme Court in Review Petition No. 249 of 1992, i.e., in All India Judges second case and the Supreme Court has observed as under:

There is, however, one aspect we should emphasise here. To that extent the direction contained in the main judgment under review shall stand modified. The benefit of the increase of the retirement age to 60 years shall not be available automatically to all judicial officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit will be available to those who, in the opinion of the respective High Courts, have a potential for continued useful service. It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. The potential for continued utility shall be assessed and evaluated by appropriate committees of judges of the respective High Courts constituted and headed by the Chief justices of the High Courts and the evaluation shall be made on the basis of the judicial officers' past record of service, character rolls, quality of judgments and other relevant matters.

The High Court shall undertake and complete the exercise in case of officers about to attain the age of 58 years well within time by following the procedure for compulsory retirement as laid down in the respective service rules applicable to the Judicial officers. Those who will not be found fit and eligible by this standard should not be given the benefit of the higher retirement age and should be compulsorily retired at the age of 58 years by following the said procedure for compulsory retirement. The exercise should be undertaken before the attainment of the age of 58 years even in cases where earlier the age of superannuation was less than 58 years. It is necessary to make it clear that this assessment is for the purpose of finding out the suitability of the concerned officers for the entitlement of the benefit of the increased age of superannuation from 58 years to 60 years. It is in addition to assessment to be undertaken for compulsory retirement and the compulsory retirement at the earlier stage/s under the respective service

Rules.

(Emphasis added)

5. The issue of conflict between the Rules and the Second All India Judges case was considered by this court in Writ Petition No. 29414 of 1995 Lakshman Prasad Misra v. The High Court of Judicature at Allahabad through Us Registrar and Anr. decided on 20th March, 1996 to which one of us (Hon''ble Dr. B. S. Chauhan. J.) was the member, and reached the conclusion that as the Rules had been framed in pursuance of the directions issued by the Hon''ble Supreme Court in the All India Judges first case, the same have to be read and interpreted in the light of the All India Judges second case, The Rules cannot be read in isolation completely ignoring the review judgment. The review judgment being subsequent decision on the same point is binding upon us as mandatorily required under Article 141 of the Constitution and while construing the rules harmoniously alongwith the observations made in the review judgment, any interpretation which contravene or which is in direct conflict with the said review judgment has to be avoided and ignored. While explaining the scope of Article 141 of the Constitution of India, the Apex Court in Nand Kishore Vs. State of Punjab, , has held that the judgment of the Apex Court must be read as having binding force as a statute of any competent Legislature or any delegate of such Legislature which is competent to enact the law.

6. Thus, in view of the above, the submission that the rule which provides for superannuation age at 60 years is to be ignored. We are of the view that the superannuation age remains 58 years unless the extension is granted by the State Government on the recommendation of the Evaluation Committee of the High Court. The period of extension of two years cannot be claimed by any judicial officer as a matter of right as the Hon''ble Supreme Court itself has observed in the All India Judges Second case that the extension cannot be a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility.

7. The second submission of Shri R. N. Singh is that the matter should have been referred to the Full Court as mandatorily required by Chapter III, Rule 4D(2) of the Allahabad High Court Rules, 1952 and the Evaluation Committee was not competent to decide the issue as the Allahabad High Court Rules provide that if a judicial officer is given premature retirement, the matter is to be placed before the Full Court. The contention gets support from the Constitution Bench judgment of the Patna High Court in Syed Iqbal Ali Imam Raza Vs. State of Bihar and Another , wherein it has been held that recommendation of the Evaluation Committee of the High Court whether giving extension or refusing extension after attaining the age of 58 years should be referred and dealt with by the Full Court. The same is not the case here. The Full Court of the Allahabad High Court in its meeting held on 16.4.1995 passed the following resolution:

It is further resolved to delegate the powers to consider and decide the continued

utility of any judicial officer in service in the light of the judgment of the Supreme Court in *All India Judges' Association and Ors. v. Union of India and Ors.* JT 1993 (4) 618, to the committee headed by and consisting of the Hon'ble Chief Justice and two Judges nominated by him.

Thus, it is apparent that the Full Court has delegated the power to consider the matter relating to the continuity of the judicial officers in service beyond the age of 58 years to the Evaluation Committee and hence there is no force in this contention of the learned counsel for the Petitioner.

8. The Supreme Court in its judgment in *All India Judges second case* itself has directed to constitute the Evaluation Committee under the chairmanship of the Hon'ble the Chief Justice. In pursuance of the said directions of the Hon'ble Supreme Court and the resolution dated 16.4.1995 of the Full Court of Allahabad High Court, the decision taken by the Evaluation Committee does not require to be referred to the Full Court as it would be explained later on that the instant case is not of a compulsory retirement as the Petitioner has no right to continue in service after attaining the age of 58 years.

9. In *State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another*, , the Apex Court has categorically held that even in a matter of compulsory retirement, it is not necessary that the matter be referred to the Full Court. The relevant observations made in the said judgment are as under:

A construction which will frustrate the very object of the salient provisions contained in Article 235 ought, in so far as possible, to be avoided. The control vested in the High Courts by that Article comprehends, according to our decisions, a large variety of matters like transfer, subsequent posting, leave, promotion other than penalties which do not fall within Article 311, decisions regarding compulsory retirements, recommendations for imposition of major penalties which fall within Article 311, entries in character rolls and so forth. If every Judge is to be associated personally and directly with the decision on every one of these matters, several important matters pertaining to the High Courts' administrative affairs will pile into arrears like court arrears. In fact, it is no exaggeration to say that the control will be better and more effectively exercised if a smaller committee of Judges has the authority of the court to consider the manifold matters falling within the purview of Article 235. Bearing in mind, therefore, the nature of the power which that Article confers on the High Courts, we are of the opinion that it is wrong to characterise as "delegation" the process whereby the entire High Court authorises a Judge or some of the Judges of the Court to act on behalf of the whole court. Such an authorisation effectuates the purpose of Article 235 and indeed without it, the control vested in the High Courts over the subordinate courts will tend gradually to become lax and ineffective. Administrative functions are only a part, though an Important part, of the High Court's constitutional functions. Judicial functions ought to occupy and do in fact consume the best part of a Judge's time. For balancing these two-fold functions, it is inevitable that the administrative duties should be left to be

discharged by some on behalf of all the Judges. Judicial functions brook no such sharing of responsibilities by an instrumentality.

Moreover, the Supreme Court in the All India Judges first case has also made the similar observations which are as under:

The High Court must take greater interest in the proper functioning of the subordinate judiciary. Inspection should not be a matter of casual attention. The Constitution has vested the control of the subordinate Judiciary under Article 235 in the High Court as a whole and not its Chief Justice alone. Every Judge should, therefore, take adequate interest in the institutions which is placed under the control of the High Court.

10. The compulsory retirement involved in this case is not compulsory retirement in strict legal sense. The procedure for giving real compulsory retirement has been provided under Rule 56A of the U.P. Fundamental Rules, Clause (c) of the said Rules provides that a person can be given compulsory retirement after he attains the age of 58 years without assigning any reason. The case of compulsory retirement has been considered by the Apex Court in various recent judgments, e.g., Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, ; Post and Telegraphs Board and Ors. v. C.S.N. Murthy AIR 1992 SC 368 ; S. Ramachandra Raju Vs. State of Orissa, ; State of U.P. and Another Vs. Abhai Kishore Masta, ; Chief General Manager, State Bank of India, Bhubaneswar and others Vs. Suresh Chandra Behera, and Narasingh Patnaik Vs. State of Orissa, , wherein a consistent view has been taken by the Hon'ble Supreme Court that compulsory retirement is not a punishment and can be passed on forming the opinion that it is in the public interest to pass such an order, but there has to be subjective satisfaction of the authority for passing such an order. Unless the order of compulsory retirement has been passed on mala fide or is arbitrary, the High Court should not have a judicial review of the same as an appellate court. An officer may not be a man of doubtful integrity or he may be average but the authority may not find him efficient enough to accord the extension as he may not be a man of potentiality or having any further utility to the service.

11. This Court in Lakshman Prasad Misra (supra) has observed that the benefit of extension is not to be given to just an average officer having average performance even though his integrity may be above board, but only to those who not only have clean record of service but also by their good and efficient work prove useful and are assets to the judicial service.

12. The grievance of the Petitioner Is that he has been given one adverse remark against which the representation is pending and the order could not have been passed before considering the said representation. The said awarded remark being as under:

progress of execution cases is not satisfactory as no such effort was made.

13. In Daikunth Nath Das (supra) and other mentioned cases, the Supreme Court has taken the view that the Evaluation Committee must consider the entire record of service before taking a decision in the matter and the retirement order is not liable to be quashed by the court merely on the ground that while passing such order, the Evaluation Committee has considered certain uncommunicated remarks. Thus, the submission made by Sri R. N. Singh, learned counsel for the Petitioner in this behalf is untenable.

14. The aforesaid conclusion is also fortified by the observations made by the Hon"ble Supreme Court in State of U.P. v. Bihari Lal 1994 Suppl. 3 SCC 593. wherein the Supreme Court has observed as under:

It is not necessary that adverse remarks should be communicated or every remark, which may sometimes be categorised as adverse, be communicated. It is on an overall assessment of the record, the authority would reach a decision whether the Government servant should be compulsorily retired in public interest. In an appropriate case, there may not be tangible material but the reputation of officer built around him could be such that his further continuance would imperil the efficiency of the public service and would breed indiscipline among other public servants. Therefore, the Government could legitimately exercise their power to compulsorily retire a Government servant. The court has to see whether before the exercise of the power, the authority has taken into consideration the overall record even including some of the adverse remarks, though for technical reasons might be expunged on appeal or revision. What is needed to be looked into is the bona fide decision taken in the public interest to augment efficiency in the public service. In the absence of any mala fide exercise of power or arbitrary exercise of power, a possible different conclusion would not be a ground for interference by the court/tribunal in exercise of its judicial review.

15. There is no allegation of mala fide. The only averment in the writ petition is that the decision of the Evaluation Committee is arbitrary though the same averment has not been substantiated at all nor it has been pressed by the learned counsel for the Petitioner at the time of argument.

16. No other point was argued.

17. The writ petition is devoid of any merit and hence dismissed summarily at the admission stage itself.