

**(2014) 09 SC CK 0158**  
**In the Supreme Court Of India**  
**Case No : Reference No. 1 of 2007**  
**In Re: Shivbalak Choudhary**

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**Date of Decision :** 16-09-2014

**Acts Referred:**

Constitution of India, 1950 — Article 316, 316(2), 317, 317(1), 318

**Citation :** (2014) 09 SC CK 0158

**Hon'ble Judges :** R.M. Lodha, C.J.; Rohinton Fali Nariman, J; Kurian Joseph, J

**Bench :** Full Bench

**Final Decision :** Allowed

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## Judgement

1. At the outset, Mr. Ranjit Kumar, learned Solicitor General, invited our attention to the order dated 28.07.2008 which records that since Respondent No. 1 had filed an affidavit to the effect that he has given up the claim of seeking any retiral benefits as Chairman of Bihar Public Service Commission and his term has also come to an end, the Reference insofar as Respondent No. 1 is concerned has become infructuous. As regards Respondent Nos. 2 and 3, the order records that proceedings of Reference may continue. Mr. Ranjit Kumar, learned Solicitor General, submits that the term of Respondent Nos. 2 and 3 has also come to end somewhere in 2008 and, therefore, the Reference against them has also become infructuous.

2. Mr. Anshuman Sinha, learned Counsel for the Respondent Nos. 2 and 3, however, submits that the Reference has not become infructuous and is alive as against these Respondents because the question of retiral benefits and emoluments during the suspension period would be dependent on the report that may be sent by this Court to the President.

3. In Special Reference No. 1 of 1983 (1990) 4 SCC 262 Under Article 317(1) of the Constitution of India decided on August 3, 1990, a 2-Judge Bench of this Court in para. 8 of the Report (pages 267 to 269) observed as follows:-

"8. Sri R.N. Mittal next contended that the reference must be treated to have become infructuous and need not be answered. As provided in Article 316(2), the

tenure of office of a Member of a Public Service Commission is six years (subject to reduction of the period in case of the Member reaching the age of superannuation earlier, which is not the case here). The term of office of Sri Saini was to expire in May, 1986. The contention of Sri Mittal is that since his tenure expired in 1986, Sri Saini cannot now be removed from his office and it is, therefore, futile to examine the evidence recorded in the case in pursuance of the earlier order of this Court, and to record a finding on the correctness or otherwise of the allegations made against him. Referring to the provisions of Article 316, dealing with the appointment and term of office of Members, the learned Counsel emphasised the fact that the period of six years has been rigidly fixed making it clear that the period cannot be extended and the Member on the expiration of his term would be ineligible for re-appointment. Reliance was placed on several decisions dealing with disciplinary proceedings against the government servants, and it was argued that the same principle should be applicable to Members of the Public Service Commissions. Reference was made to the decisions in *R.T. Rangachari vs. Secretary of State*, AIR 1937 27 (Privy Council) ; *State of Assam and Others Vs. Padma Ram Borah*, ; *Dinesh Chandra Sangma Vs. State of Assam and Others*, ; *B.J. Shelat Vs. State of Gujarat and Others*, and *C.L. Verma Vs. State of M.P. and another*, . An examination of these decisions would show that the cases depended on the interpretation and effect of the relevant service rules dealing with the conditions of service including provisions in regard to retirement and compulsory retirement. So far the present case is concerned, the conduct of a Member of the Public Service Commission is in question which has been considered important enough to be directly dealt with by the Constitution itself. The efficiency and purity of administration are greatly dependent on the right choice of the candidates to be entrusted with official duty; and to ensure that suitable persons, in whom the public may have full faith are selected, it was considered necessary to have a body with members of integrity, sincerity, and practical wisdom capable of commanding the confidence of the people for examining the merits of the candidates and make available to the appointing authorities their conclusion. Taking into account the possibility of their being subject to pressure, they were given special protection by the Constitution Under Article 317 providing that they - except in cases covered by Clause (3) - can be removed from their office only by an order of the President on the ground of misbehavior after an inquiry by the Supreme Court in this regard. The fact that the apex Court of the country was entrusted with such a duty indicates the great importance which has been attached to the office of the Member of the Commission. Under Clause (2) of Article 317, authority to suspend the Chairman or Member of the Commission pending an inquiry by the Supreme Court has been vested with the Governor in the case of a State Commission. If the position is examined in this background it is difficult to suggest that the conduct of a member of the Commission under scrutiny of this Court in a reference made by the President can be ignored on account of the tenure being over. The Regulations framed Under Article 318 by the Governor do not and cannot deal with removal and suspension of a Member of the

Commission since they are exclusively covered by Article 317. Part V of the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958, provides for the payment of pension with the proviso that a Member who has been removed from office shall not be entitled to the same. So far as the government servants are concerned, there are specific set of rules in regard to pension, inter alia dealing with cases in which government servants are found guilty of serious charges committed on the eve of their retirement. The rules governing many services also provide for extending the period of service of the government servant with a view to complete a pending disciplinary proceeding. In the case of a Member of the Commission, the Constitution, while dealing with the removal of a Member, does not provide for such contingencies. The issue, therefore, must be treated as a live one even after the expiry of a Member's tenure. The President of India has requested this Court to investigate into the conduct of a Member and this Court ought to convey its conclusions rather than refuse to answer the question. During the hearing of the case, we enquired from Sri Mittal, the learned Counsel for Sri Saini, whether, in the event of this proceeding being dropped as suggested on his behalf, he is ready to give up his claim for salary for the period he was under suspension and for pension, and Sri Mittal after taking instructions from Sri Saini, who was present in Court throughout the arguments, stated that the Respondent would not give up his claim and would demand arrears of his salary and pension."

4. In the above Reference, the 2-Judge Bench has thus held that Reference Under Article 317(1) of the Constitution of India does not become infructuous even if tenure of office of the Member/Chairman expires during the pendency of the Reference. In that case, the 2-Judge Bench was also guided by the Punjab State Public Service Commission (Conditions of Service) Regulations, 1958.

5. A 3-Judge Bench of this Court in Ravinder Pal Singh Sidhu, Chairman, Punjab Public Service Commissions, (Reference No. 1 of 2002) decided on January 13, 2003, held that in the event of the expiry of term of the Chairman of Public Service Commission and he relinquishing all claims of retiral benefits and the salaries for the suspension period, the Reference has become infructuous. The view of this Court in Ravinder Pal Singh Sidhu is founded on the statement made by Ravinder Pal Singh Sidhu, inter alia, that he gives up claims to the retiral benefits, including pension for the post of Chairman, Punjab Public Service Commission.

6. In para. 9 of the Report in In respect of Shri Ravinder Pal Singh Sidhu, Chairman, Punjab Public Service Commission, , the 3-Judge Bench distinguished the decision of the Court in Special Reference No. 1 of 1983<sup>1</sup> on the ground that in the case under consideration before them, the term of the incumbent in office has not only come to an end but he has also given up his claim to retiral benefits. The Court held in paras. 8 and 9 of the Report as under:-

"8. We should not ignore that the object of Article 317(1) of the Constitution is to give protection to a Chairman or other Member of the Public Service Commission

in the matter of removal on the ground of misbehavior and, therefore, the function of such determination is vested in this Court so that the Public Service Commission may be immune from political pressure.

9. In the present case, Shri Ravinder Pal Singh Sidhu is facing criminal prosecution on identical charges. Public interest will not suffer even if the proceeding does not continue. In this proceeding on proof of misbehavior of Shri Ravinder Pal Singh Sidhu, all that can happen is that the President can remove him from the office of the Chairman of the Public Service Commission but when he is already out of the office of the Chairman by reason of his tenure coming to an end, question of removing him from the said office would not arise at all. In Special Reference No. 1 of 1983 (1990) 4 SCC 262, when the incumbent in office wanted certain benefits to accrue to him even after ceasing to hold the office, it became necessary to examine the question arising in the case and, therefore, the issue was a live one. When tenure of an incumbent in office comes to an end and he gives up his claim to retiral benefit, the entire relationship between the State and the said incumbent in office will snap, in such an event, question of removal of such a person from his office would not arise at all."

7. Prima facie, as there is no statement made by Respondent Nos. 2 and 3 herein giving up their claim of retiral benefits and salary during the period of suspension, it appears to us that the Reference may have to be answered on merits.

8. Moreover, since the Reference is being considered by the 3-Judge Bench, the correctness of the view taken by this Court in Special Reference No. 1 of 1983<sup>1</sup> also deserves to be gone into. List the Reference on November 11, 2014.