

(2004) 05 AHC CK 0149

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16166 of 1998

Kapoor Chand

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 21-05-2004

Acts Referred:

Uttar Pradesh Judicial Officers (Retirement on Superannuation) Rules, 1992 — Rule 4

Citation : (2004) 4 AWC 3466 : (2004) 102 FLR 143 : (2004) 2 UPLBEC 1644

Hon'ble Judges : S.P. Srivastava, J;R.K. Agrawal, J;A.K. Yog, J

Bench : Full Bench

Advocate : R.N. Singh, G.K. Singh and A.P. Sahi, for the Appellant; Sudir Agrawal, A.A.G. and C.S.C., for the Respondent

Final Decision : Disposed Of

Judgement

S.P. Srivastava, J.—Heard Sri R.N. Singh, Senior Advocate assisted by Sri G.K. Singh, Advocate,

2. Shri Sudhir Agrawal, the Additional Advocate General representing the contesting respondent has also been heard.

3. Perused the record.

4. In Civil Misc. Writ Petition No. 16166 of 1998, Kapoor Chand v. State of U.P. and Ors., a question had arisen regarding the implications arising under the provisions of the U.P. Judicial Officers (Retirement on Superannuation) Rules, 1992 and the implications arising under the provisions contained in Rule 56 of the Fundamental Rules.

5. It had been urged for the petitioner that under the provisions of U.P. Judicial Officers (Retirement on Superannuation) Rules 1992, he was entitled to continue until he attained the age of 60 years and since the provisions contained in the aforesaid Rules did not provide for any pre-retirement assessment, he could not be retired prior to his attaining the age of superannuation on the basis of any

such assessment. In other words it had been contended that the aforesaid Rules of 1992 provided a security of tenure which could not be curtailed in any manner either on account of pre-retirement assessment under the provisions contained in Rule 56 of the Fundamental Rules or otherwise on the basis of any independent assessment. The Division Bench which was seized of the aforesaid writ petition while noticing that successive Division Benches of this Court had already taken the view that the pre-retirement assessment of the Judicial Officers should be done and on the basis of such assessment a Judicial Officer could be retired even before his attaining the age of superannuation found it expedient and necessary in the ends of justice that this controversy may be decided by a Larger Bench so that there may be an authoritative pronouncement. The Division Bench, accordingly, made a reference to a Larger Bench for deciding the aforesaid controversy. Accepting the reference. Hon''ble the Chief Justice vide the order dated 10th August, 1999 has referred the controversy to be decided by a Full Bench.

6. This is how this matter has come up before this Full Bench constituted vide the order of Hon''ble the Chief Justice dated 23rd September, 2003.

7. The controversy, referred to herein above, had come up for consideration before Hon''ble the Apex Court in the case of Nawal Singh Vs. State of U.P. and Another, . The Hon''ble Supreme Court in its aforesaid decision had indicated that the Rule increasing the retirement age from 58 to 60 years did not have the effect of repealing Rule 56 of the U.P. Fundamental Rules as a whole. In this connection it was observed that the 1992 Rules regulating the retirement on superannuation of the Judicial Officers on their attaining the age of 60 years dealt with only the extension of retirement age from 58 to 60 years and to this limited extent had to be taken to be overriding the Rule 56(a) of the Fundamental Rules for the Judicial Officers of the State of Uttar Pradesh, From this, however, by no stretch of imagination, it can be said that Rules 56(b) to (e) and Explanations (1), (2) or (3) are, in any way, altered, amended or substituted. It was clarified that the part of Rule 56(a) of the Fundamental Rules providing for the retirement age to be 58 years was not be applicable to the Judicial Officers as this part of the Rule was contrary to Rule 4 of the Rules of 1992.

8. The Apex Court had approved of the curtailment of the tenure fixed under the Rules of 1992 on a pre retirement assessment made in exercise of the powers envisaged under Rule 56(c) of the Fundamental Rules after the Judicial Officer attained the age of 50 years. In the aforesaid connection it was also indicated by the Apex Court that it had already issued a direction vide its decision in the case of All India Judges' Association and Others Vs. Union of India and Others, , for continuing the Judicial Officers in service by considering their suitability for entitlement to the benefit of increase of the age of superannuation from 58 to 60 years which direction was in addition to the assessment to be undertaken for the compulsory retirement at the early stage(s) under the respective Service Rules.

9. It may be noticed at this stage that in its decision in the case of All India Judges' Association and Others Vs. Union of India and Others, , the Apex Court had observed as follows :

"There is, however, one aspect we should emphasize 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 Officer's past record of service, character rolls, quality of judgments and other relevant matters.

The High Court should 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 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 the assessment to be undertaken for compulsory retirement and the compulsory retirement at the earlier stage/s under the respective Service Rules."

10. A perusal of the decision of the Apex Court referred to herein before makes it abundantly clear that there does not exist any embargo on the competent authority to exercise its power of compulsory retirement under Rule 56 of the Fundamental Rules and it is open to the High Court while exercising the power under Rule 56(c) to follow the procedure prescribed in Explanation (2-A) which requires that such order should be in public interest and the appointing authority may take into consideration any material relating to such officer. The aforesaid provisions also makes it possible to take into account any entry of service record against which a representation is pending provided that the representation against such entry is also taken into consideration along with the entry and to consider any report of the vigilance establishment. The authority of the High Court to compulsorily retire a particular judicial officer on an independent pre-retirement assessment had been found to be in addition to the assessment to be

undertaken for compulsory retirement and the compulsory retirement at the earlier stage under the respective Service Rules.

11. The Apex Court had reiterated its earlier view that for keeping the stream of justice unpolluted, repeated scrutiny of service records of Judicial Officers after a specified age/completion of specified years of service provided under the Rules is a must by each and every High Court as the lower judiciary is foundation of the judicial system.

12. It was also reiterated that the object of compulsory retirement is to weed out the dead wood in order to maintain the high standard of efficiency and honesty to keep the judicial service unpolluted and the competent authority is sufficiently empowered to retire officers of doubtful integrity on an over all impression gathered by the Higher Officers as it is impossible to prove by positive evidence that a particular officer is dishonest.

13. Since the Hon''ble Supreme Court has already given an authoritative pronouncement which conclusively settles the controversy there is nothing left to be added as every aspect has been considered by the Apex Court in its decision in the case of Nawal Singh (supra).

14. This reference is answered accordingly.

15. Let this answer be, placed before the Division Bench seized with the case which shall, however, proceed to decide the writ petition on merit taking into account what has been indicated herein before.