

(2015) 07 RAJ CK 0057
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3053 of 2003

S.K. Bansal

APPELLANT

Vs

The Rajasthan High Court and Others

RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

Constitution of India, 1950 — Article 235

Citation : (2015) 07 RAJ CK 0057

Hon'ble Judges : Ajit Singh, J;Anupinder Singh Grewal, J

Bench : Division Bench

Advocate : Suresh Goyal, for the Appellant; N.K. Maloo, Senior Counsel and Ajit Maloo, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anupinder Singh Grewal, J.—The petitioner has sought quashing of the decision taken by the respondents to retire him at the age of 58 years with a further direction that he be allowed to continue in service till the age of 60 years.

2. The petitioner had joined the Rajasthan Judicial Services on 21.09.1967. He was promoted to the post of Chief Judicial Magistrate on 09.05.1975. He was thereafter, promoted to the post of Additional District and Sessions Judge in the cadre of Rajasthan Higher Judicial Service on the basis of selection made by the High Court on 17.03.1979. A Committee of the High Court, comprising 7 Judges after consideration of his record, decided to retire the petitioner at the age of 58 years. This recommendation of the Committee of 7 Judges was considered and approved by the Full Court of the High Court. This decision is impugned in the instant petition.

3. The learned counsel for the petitioner has contended that the service record of the petitioner was satisfactory and hence, there was no basis to deny him continuation in office till the age of 60 years. He has relied upon the judgment of the Supreme Court in the case of All India Judges' Association and Others Vs.

Union of India and Others, AIR 1993 SC 2493 : (1993) 4 JT 618 : (1993) LabIC 2321 : (1993) 2 LLJ 776 : (1993) 1 SCALE 26 : (1993) 4 SCC 288 : (1993) 1 SCR 749 Supp : (1994) WritLR 110 and Nand Kumar Verma Vs. State of Jharkhand and Others, (2012) 133 FLR 13 : (2012) 2 SCALE 663 : (2012) 3 SCC 592 : (2012) 3 SCC 580 : (2012) 2 SLJ 6 : (2012) AIRSCW 1791 .

4. Per contra, the learned counsel for the respondents submitted that the entire service record of the petitioner was taken into consideration by the Committee of 7 Judges of the High Court which recommended his retirement at the age of 58 years. This recommendation was approved by the Full Court of the High Court, and hence it could not be said that there was any arbitrariness or illegality in the decision taken to retire the petitioner at the age of 58 years.

5. We have heard learned counsel for the parties and perused the material on record.

6. At the outset, it is apposite to refer to the judgment of the Hon''ble Supreme Court in the case of All India Judges'' Association and Others v. Union of India and Ors. (supra) wherein while issuing several directions including streamlining selection and service conditions of Judicial Officers, it was also directed that age of superannuation of subordinate Judicial Officer shall stand extended upto 60 years. It was further directed that the High Court shall assess and evaluate the record of Judicial Officer for his continued utility to extend him the benefit of enhanced superannuation age from 58 to 60 years only if he is fit and eligible to continue in service. In case he is not found fit and eligible, he should be compulsorily retired on attaining the age of 58 years. It was also directed that evaluation of the eligibility to continue in service beyond the age of 58 years is in addition to and independent of the assessment for compulsory retirement that may have to be undertaken at an earlier stage. It is apparent that in terms of this direction of the Hon''ble Supreme Court, Rule 56A was introduced in the Rajasthan Service Rules vide a notification dated 28.12.1998 effective from 31.03.1999. Rule 56A is reproduced herein:--

"56-A.(1). Notwithstanding anything contained in Rule 56, the date of compulsory retirement of a Government Servant other than a Government servant of Class IV, is the afternoon of the last day of the month in which he attains the age of fifty eight years. He may be retained in service after the date of compulsory retirement with the sanction of the Government on public grounds which must be recorded in writing but he must not be retained after the age of 60 years except in very special circumstances

Provided that the period for which a person has been retained in service after the date of compulsory retirement may be altered by the Government any time by an order recorded in writing:

Provided further that the provisions of age of compulsory retirement as contained in this sub rule shall not be applicable in the case of Government servants who are in service after attaining the age of compulsory retirement either on re-

employment or on extension in service.

"Exception"

The retirement age of officers of Rajasthan Judicial Services and Rajasthan Higher Judicial Services who are considered to have a potential for continued useful purpose by the Committee of Judges of the Rajasthan High Court and headed by the Chief Justice would be 60 years while for others it would be 58 years."

Article 235 of the Constitution of India confers control of the High Court over the district Courts and the Courts subordinate thereto. The control referred to in this article has been interpreted to include general superintendence of the working of the courts, disciplinary control of the Presiding Officers of the Subordinate Courts, recommendation of imposition of punishment including suspension for the purpose of disciplinary inquiry, transfer, confirmation and promotion. The disciplinary control means not merely supervision but award of punishment for misconduct and also the power to determine whether record of the Members of the Judicial Officer is satisfactory so as to entitle him to continue in service for full term.

7. A conjoint reading of the Article 235 of the Constitution and Rule 56(A) of the Rajasthan Services Rules reveals that the Full Court of the High Court is empowered to consider whether a Member of the Judicial service has a potential for continuous judicial service and his services are required to be extended beyond 58 years or not.

8. It is trite that the continuation of the judicial Officer beyond the age of 58 years is neither automatic nor it can be claimed as a matter of right. It is subject to scrutiny of his entire service record. It was held by the Supreme Court in *All India Judges' Association and Others v. Union of India and Ors.* (supra) that this benefit shall be available to only those Judicial Officers, who in the opinion of the High Court, have a potential for continuous useful service. It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility.

9. We have perused the service record of the petitioner which has been provided to us by the counsel for the respondents during the course of hearing. Upon perusal of the service record of the petitioner, it is evident that out of the last 6 ACR"s which have been recorded for the years 1998 till 2002, four are "average" while one each is "good" and "very good". An Officer whose 4 out of the last 6 ACR"s are "average" cannot claim that his continuance in the Office will serve useful purpose. It is also borne out from the service record of the petitioner that selection grade was denied to him in the year 2002 on the ground that he did not have 5 "good" ACR"s out of the 7 ACR"s which had to be considered for this purpose. We are not referring to the adverse remarks recorded against the petitioner in the ACR"s in the year 1980, 1981, 1982 and 1983 as they were either expunged or quashed by the of the High Court. It is also borne out that

the entire service record of the petitioner was considered by the Committee of 7 Judges of the High Court and on examination thereof including confidential records, character roll, both favourable and adverse, and the public interest and its assessment and evaluation of the potential of the Officer, it had been resolved that the petitioner alongwith two other Officers was not found suitable for extension beyond the age of 58 years. The recommendation was approved by the Full Court. The judgment in the case of Nand Kumar Verma v. State of Jharkhand and Ors. (supra) relied upon by the learned counsel for the petitioner is distinguishable on facts and not applicable to the instant case. In that case the disciplinary proceedings had again been initiated against the judicial officer even though his explanation had been accepted by the Full Court. It was held that there was no justification for conducting the second inquiry and the Hon"ble Court evaluated the service record of the petitioner which was found to be satisfactory specially when District Judge who had closely watched his performance had reported favourably regarding his overall performance. In the case of the petitioner, as discussed in the foregoing paragraph, the service record was such that it could not be said that his continuance in service would serve any useful purpose.

10. We are also conscious of the fact that scope for judicial review in such matters is extremely limited and confined to cases where there is no material to sustain the decision to retire the petitioner at the age of 58 years. This Court cannot go into the sufficiency or adequacy of material and only in case the decision arrived is wholly arbitrary or in violation of the statutory rules can this Court interfere while exercising writ jurisdiction. We draw support from the judgment of the Supreme Court in the cases of Chandra Singh Vs. State of Rajasthan and Another, AIR 2003 SC 2889 : (2003) 6 JT 20 : (2003) 5 SCALE 361 : (2003) 6 SCC 545 : (2003) SCC(L&S) 951 : (2003) 1 SCR 674 Supp : (2004) 1 SLJ 401 : (2003) 2 UJ 1325 : (2003) AIRSCW 3518 : (2003) 5 Supreme 128 wherein it has been held as under:--

"39. Article 235 of the Constitution of India enables the High Court to assess the performance of any judicial officer at any time with a view to discipline the blacksheep or weed out the deadwood. This constitutional power of the High Court cannot be circumscribed by any rule or order. We can usefully refer to some of the leading cases on Article 235.

1. State of Assam v. Ranga Mohammed (5 Judges)
2. Shamsher v. State of Punjab (7 Judges)
3. High Court of Judicature at Bombay v. Shirish Kumar Rangrao Patil.

43. We have been taken through the annual confidential reports as against the appellants. Having gone through the same, we are of the opinion that it is not a fit case where this Court should exercise its discretionary jurisdiction in favour of the appellant. This Court in Brij Mohan Gupta's case (supra) has also refused to exercise its discretionary jurisdiction in favour of the appellant although the order

of the High Court was found liable to be set aside being not in accordance with law.

46. In the instant case, we are dealing with the higher judicial officers. We have already noticed the observations made by the committee of three Judges. The nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility.

47. In the instant case, the appellants, so retired, do not lose any part of their benefit that they have earned during their service and it involves no penal consequence and in our view the retirement is not considered prima facie and per se as punishment."

(emphasis supplied)

11. In view of the above, we do not find any infirmity in the decision to retire the petitioner at the age of 58 years. As a matter of fact, there appears to be adequate material on record to sustain the decision not to extend the service of the petitioner beyond the age of 58 years.

12. Resultantly, the instant petition is dismissed with no order as to costs.