
(2005) 08 JH CK 0042

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4409 of 2001

Sri Azad Chandra Shekher Prasad Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-08-2005

Acts Referred:

Jharkhand Service Code, 2001 — Rule 74

Citation : (2005) 3 JCR 532

Hon'ble Judges : Altamas Kabir, C.J.;R.K. Merathia, J

Bench : Division Bench

Advocate : Chandra Shekhar, Rana Randhir Singh and Yashraj Bardhan, for the Appellant; R.S. Majumdar and A.R. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

Altamas Kabir, C.J.—This writ petition is one of several matters, which have been referred to the Division Bench for hearing and disposal inasmuch as it involves a question regarding invocation of Rule 74(b)(ii) of the Jharkhand Service Code by the Jharkhand High Court in recommending compulsory retirement of the writ petitioner.

2. As will appear from the case made out in the writ petition, the writ petitioner was appointed as a Munsif in the Bihar Judicial Service and he joined the said post on 9th June, 1975. According to him, he performed his duties and functions to the entire satisfaction of the authorities concerned and was lastly promoted to the post of Subordinate Judge in the year 1992 when he was posted as a Sub-divisional Judicial Magistrate at Jamtara. According to the writ petitioner, he was transferred to Ranchi in December, 1992 as a Subordinate Judge and continued in the said post till January, 1996. While working in the said post, the petitioner was served with a show cause notice regarding transfer petitions filed in respect of cases pending in the petitioner's Court. In January, 1996 the petitioner was transferred to Jamui as Subordinate Judge where again he was served with a similar show cause notice and the reply filed by him was summarily rejected.

3. While at Jamui, the petitioner was served with another show cause notice in connection with his leaving the station without prior permission of the authority. His reply to the said show cause also summarily rejected.

4. In June, 1998, the writ petitioner was transferred to Buxar where also he was served with a letter regarding his poor disposal of case. In September, 1999, on his own request, the writ petitioner was transferred to Gaya and while at Gaya, he attained the age of 58 years, which was the normal age of retirement. Thereafter, in keeping with the direction given by the Hon'ble Supreme Court in the case of All India Judges' Association and Others Vs. Union of India and Others, , the case of the writ petitioner was taken up for consideration as to whether his service should stand extended till 60 years. As will appear from Annexure 5 to the writ petition, the writ petitioner was informed by the Registrar General of the Patna High Court by his communication dated 9th December, 1999 that pursuant to the judgment and orders of the Supreme Court, the Court having assessed and evaluated the services of the Judicial Officers who are to complete 58 years by 30th June, 2000 had been pleased to allow the writ petitioner the benefit of enhancement of his retirement age from 58 years to 60 years. Soon thereafter, the State of Bihar was bifurcated on 15th November, 2000 and under the provisions of the Bihar Reorganisation Act, 2000, the petitioner was posted in the State of Jharkhand and was transferred from Gaya (in Bihar) to Chatra in the State of Jharkhand to similar capacity.

5. While working at Chatra, the writ petitioner was served with a communication in April, 2001 stating that he was not a tactful Judicial Officer. According to the writ petitioner, the said observation and/or remark was made on the basis of a confidential report sent to the learned District Judge, Gaya. Thereafter on 17th July, 2001, the petitioner was informed by the Deputy Secretary, Department of Personnel and Administrative Reforms, Government of Jharkhand, that, a decision had been taken to compulsorily retire him. Aggrieved thereby, the writ petitioner has filed the instant writ application.

6. Appearing on behalf of the writ petitioner, Mr. Chandra Shekhar, learned Senior Advocate, urged that the writ petitioner had served for about 26 years as a Judicial Officer during which period there had been no remarks and/or adverse report regarding his integrity, nor was there any adverse report regarding his ability as a Judicial Officer. Mr. Chandra Shekhar submitted that the only communication received by the writ petitioner after his service was extended from 58 year to 60 years is the communication received by him in April, 2001 informing him that he was not very tactful. Mr. Chandra Shekhar submitted that such a remark could not be taken to be an adverse comment or report, which could result in the provisions of Rule 74(b)(ii) of the Jharkhand Service Code being invoked.

7. Mr. Chandra Shekhar also submitted that even if there was anything adverse against the petitioner prior to the extension granted to him, all such adverse reports and/or remarks stood obliterated or extinguished by reasons of grant of

such extension of service from 58 years to 60 years upon an evaluation of the writ petitioner's performance during his complete tenure in office. Mr. Chandra Shekhar submitted that apart from the communication regarding lack of tact of the writ petitioner, there was no other material before the High Court, which could have caused the High Court to take the decision to recommend that the writ petitioner be compulsorily retired.

8. In support of his aforesaid submissions, Mr. Chandra Shekhar referred to and relied on the above mentioned decision of the Hon''ble Supreme Court in the All India Judges'' Association case (supra) and in particular, paragraphs 30 and 31 thereof wherein it was mentioned by the Hon''ble Supreme Court that the extension of service would not be available automatically to all judicial officers irrespective of their past record of service and evidence of continued utility to the judicial system. It was further observed that the benefit would be available to those who, in the opinion of the respective High Courts, had a potential for continued useful service. It was not intended as a windfall for indolent, infirm and those of doubtful integrity, reputation and utility. The Hon''ble Supreme Court pointed out that the High Court should undertake and complete the exercise in case of officers about to attain 58 years well within time by following the procedure for compulsory retirement as laid down in the respective service rules applicable to judicial officers. Mr. Chandra Shekhar urged that in the instant case, such an evaluation had been made with regard to the continued utility and usefulness of the writ petitioner by the High Court, and, therefore, the subsequent decision taken to invoke the provisions of Rule 74(b)(ii) of the Jharkhand Service Code in the petitioner's case appears to be perverse. Mr. Chandra Shekhar submitted that the impugned order of compulsory retirement passed by the State Government on the recommendation of the High Court was erroneous and was liable to be quashed, with all consequential benefits to the writ petitioner.

9. Opposing the writ application, Mr. R.S. Majumdar submitted that it was, no doubt, true that the writ petitioner had been granted extension of his service from 58 years, but the same should not be taken as the only yardstick for deciding as to whether a correct decision has been taken by the High Court in deciding to invoke the provisions of Rule 74(b)(ii) of the aforesaid Code in the case of the writ petitioner. Mr. Majumdar submitted that the object of Rule 74(b)(ii) was not to punish an officer, but to identify and weed out officers who, in the opinion of the High Court, had outlived their utility and whose continued employment was not in the public interest.

Mr. Majumdar also continued that in matters relating to compulsory retirement, it is the subjective satisfaction of the High Court which is important and unless it could be shown that the decision taken was arbitrary and without any basis whatever, such decision was not liable to be inferred with.

10. Referring to paragraph 8 of the counter affidavit filed on behalf of the High Court, Mr. Majumdar pointed out that the same showed the writ petitioner to be

a judicial officer of average merit and there was even a hint of doubt regarding his integrity. Mr. Majumdar submitted that on an overall assessment of the merits and demerits of the writ petitioner, the High Court was of the view that the continuance of the writ petitioner in Judicial Service would not be in the interest of the public.

11. Mr. Majumdar submitted that the decision taken to discontinue the service of the writ petitioner was taken on the basis of the guidelines indicated by the Hon''ble Supreme Court in the All India Judges Association case (supra) and did not call for any interference in the writ petition.

12. Having regard to the fact that the writ petitioner had been granted extension of service from 58 years to 60 years, we have taken particular care to consider the submissions made on behalf of the respective parties. Ordinarily, such a decision would indicate that any previous faults and/or inefficiency of a candidate stand extinguished. While the said view would be very relevant in a case involving disciplinary proceedings, the same view in all its rigidity cannot be applied in a case where a discretion is left to the authority on a total evaluation of a person's performance to make an assessment as to whether it would be in the public interest to continue with the service of such an officer. In our view, in order to prevent the stream of justice from being polluted, it is essential that there should be no doubt as to the integrity of a judicial officer and his performance as far as his work is concerned. That, in our view, is precisely the message given by the Supreme Court in the All India Judges Association case (supra). We cannot lose sight of the fact that the extension given to the writ petitioner of his service from 58 to 60 years was on the basis of an evaluation made by Judges of a different High Court. The decision to recommend that the petitioner should be compulsorily retired was not taken by the same High Court, but by a different High Court by a different set of Judges who also had an opportunity to consider the petitioner's case on evaluating the totality of his continued usefulness as a judicial officer.

13. As has been observed by the Supreme Court in the case of Nawal Singh Vs. State of U.P. and Another, and in various other cases, the order of compulsory retirement based on an evaluation by a Committee of the High Court as to the integrity and utility of continuance in service of a judicial officer would not, except in very special circumstances, be interfered with, as such order was based on a subjective satisfaction of the authorities. Having regard to the contents of paragraph 8 of the counter affidavit filed on behalf of the High Court, it cannot be said that in the instant case, there was no material before the High Court to arrive at the decision to recommend that the writ petitioner be compulsorily retired despite his services having been extended from 58 years to 60 years.

14. For the reasons aforesaid, the writ petition must fail and is dismissed, but there will be no order as to costs.