

(2001) 04 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 2943 of 2000

Sushree Sumitra Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-04-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 151
Constitution of India, 1950 — Article 226, 227, 311
Criminal Procedure Code, 1973 (CrPC) — Section 197

Citation : (2001) 2 PLJR 459

Hon'ble Judges : R.N. Prasad, J; M.L. Visa, J

Bench : Division Bench

Advocate : S.N. Jha and Ram Nandan Pd, for the Appellant; S. Nayer Hussain and Abbas Haider for the Respondent No. 3 and Mr. S.B.N. Singh for State, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—By this writ petition under Articles 226 & 227 of the Constitution of India the petitioner, who was a member of Subordinate Judicial Service and posted as Subordinate Judge, Ranchi, prayed for quashing the order contained in letter no. 19542 dated 6/7.12.1999 whereby she was not allowed the benefit of retirement at the age of 60 years rather to retire at the age of 58 years, Annexure-5, the order contained in letter no. 2458 dated 19.2.2000 whereby her representation dated 4.1.2000 to allow her benefit to retire at the age of 60 years has been rejected, Annexure-7, and also the adverse remarks recorded on 11.10.1999 by the Inspecting Judge imparted to her vide letter dated 6.12.1999 Annexure-3. The petitioner has challenged the communication, Annexure-5 not allowing the benefit of enhancement of retirement age from 58 to 60 years on the ground; firstly, that in view of the decision of the Apex Court, the retirement age of Judicial Officer stood increased to 60 years, before attaining the age of 60 years the petitioner cannot be made to retire at the age of 58 years except by following procedure for compulsory retirement, the order,

Annexure-5, in reality is a camouflage for an order of punishment as dismissal/ compulsory retirement without complying with the requirement of natural justice and is violative of Article 311 of the Constitution of India; secondly, that the petitioner has been made to retire at the age of 58 years without considering the entire service records of the petitioner and only on the basis of adverse remarks recorded by the Inspecting Judge, Annexure-3, though there was no occasion to record such adverse remarks and as such the impugned order, Annexure-5, is arbitrary based on no material hence is vitiated.

2. The resume of the case is that the petitioner entered in judicial service as Judicial Magistrate on 31.3.1975. She was confirmed in due course. She was appointed as Sub-divisional Judicial Magistrate. On 30.5.1996 she was promoted as Subordinate Judge. On 23.7.1997 she was conferred power of Assistant Sessions Judge. On 8.1.1998 she was selected for Additional Chief Judicial Magistrate but she made representation to forgo the post of Additional Chief Judicial Magistrate and to stay at Patna which was allowed. On 9.4.1999 her consent was obtained for appointment on the post of Legal Advisor-cum-Deputy Secretary, Bihar State Electricity Board at Patna on deputation. She worked with full sincerity, integrity and efficiency to the satisfaction of her superiors. There were no adverse remarks except Annexure-3. She was transferred from Patna to Ranchi as Subordinate Judge. She joined there on 1.6.1999. In Execution case no. 1/83 A, the order dated 24.7.1999 for effecting delivery of possession was obtained committing fraud by the Bench Clerk. She came to know about fraud on 16.8.1999 when the judgment-debtor filed an application u/s 151/144 of the CPC for restitution of the suit land. After hearing the parties the order dated 24.7.1999 was recalled on 23.8.1999 and the Nazir was directed to restore status quo ante over the suit land, Annexure-1. Civil Revision No. 354/99 (R) was filed against the order, Annexure-1, which was disposed of on 16.2.2000 without interfering with the order, Annexure-2. The decree-holder filed a petition before the Hon"ble Acting Chief Justice making false and imaginary allegation against her. On 11.10.1999 the Inspecting Judge called her in the chambers of the Judicial Commissioner of Chotanagpur at Ranchi with record of Execution Case no. 1/83 A. She explained the circumstances and reason for passing the order dated 23.8.1999 but the Inspecting Judge was not satisfied with the explanation given by the petitioner. Vide letter dated 6.12.1999, the confidential report containing adverse remarks in columns 5, 6 & 8 with regard to efficiency, integrity and performance of judicial work, Annexure-3, was communicated to the petitioner. The petitioner was at Ranchi for four months. There was no basis for recording adverse remarks as the Inspecting Judge had never been in any of the previous posting of the petitioner, the Inspecting Judge of the concerned judgship and had no occasion to observe and learn about the judicial work and reputation of the petitioner. The petitioner was served a copy of the letter dated 6/7.12.1999 by the Registrar General, Patna High Court stating that the Court having assessed and evaluated her service record have been pleased not to allow the benefit of enhancement of retirement age from 58 to 60 years, Annexure-5.

The petitioner filed representation on 4.1.2000 for expunging adverse remarks, Annexure-4, and also for allowing benefit of enhancement of retirement age from 58 to 60 years, Annexure-6. The Registrar General Incharge Patna High Court vide letter dated 19.2.2000 communicated to the petitioner that her representation dated 4.1.2000 has been rejected without assigning any reason, Annexure-7.

3. A counter-affidavit has been filed on behalf of respondent no. 3 annexing the entire confidential remarks recorded by the District Judges and the Inspecting Judges including enquiry report dated 5.11.1999 made by the Inspecting Judge and stating that upon consideration of the confidential remarks as annexed and the enquiry report, the Evaluation Committee in the meeting held on 11.11.1999 unanimously decided that her further continuance in service will not be in public interest as she does not have potential for continued useful service. The Full Court in its meeting on 20.11.1999 upon consideration of the service records of the petitioner accepted and approved the proposal of the Evaluation committee not allowing the benefit of enhancement or retirement age from 58 to 60 years. In the counter-affidavit it has further been stated that from perusal of the overall character rolls of the petitioner it is evident that her service record was not found satisfactory. She did not maintain reputation for honesty and impartiality. She was not found an efficient officer. Her judgments were not found to be satisfactory. The quality of work was also found not to be above average. She was found to be slow and whispering of partiality. She was found to be shirker. Her output was found to be poor. The District Judges suggested to improve her efficiency. Many times files were opened on the complaints received. The petitioner while posted at Hajipur a file was opened on the basis of letter received from the Joint Secretary, Department of Law indicating therein the letter addressed to the Chief Secretary, Government of Bihar by one Mahendra Singh wherein he had prayed for sanction of prosecution u/s 197 of the Code of Criminal Procedure. The matter was placed before the Standing committee and it was referred to the District Judge, Vaishali for consideration of the matter on administrative side for taking appropriate action. The petitioner was posted as Sub-divisional Judicial Magistrate in the cadre of Munsif. The selection for conferring power of Assistant Sessions Judge and Additional Chief Judicial Magistrate (Subordinate Judge-I) is made on the basis of seniority. Similarly for appointment to the deputation post consent of officers is obtained according to seniority. The petitioner and others refused to give consent for the said post. Therefore, the aforesaid aspect will not improve the case of the petitioner.

4. Initially in the case of All India Judges' Association Vs. Union of India and others, , the Apex Court held that members of the Judicial Services stand on pedestal different from the other civil services and OS such direction was given to raise retirement age of the judicial officers to 60 years informally throughout the country by 31.12.1992. The Union of India and several State filed several review petitions for review the judgment aforesaid. The Apex Court closed off the review petitions by its judgment and order dated 24.8.1993 reported as All India

Judges" Association and Others Vs. Union of India and Others, with modification in the direction given in the earlier judgment of 1992 S.C. 165. With regard to superannuation age direction was given in para 10(b) which is as follows :

The direction with regard to enhancement of superannuation age is modified as follows : While the superannuation age of every subordinate judicial officer shall stand extended up to 60 years, the respective High Court should, as stated above, assess and evaluate the record of the judicial officer for his continued utility well within time before he attains the age of 58 years by following the procedure for the compulsory retirement under the Service rules applicable to him and give him the benefit of the extended superannuation age from 58 to 60 years only if he is found fit and eligible to continue in service. In case he is not found fit and eligible, he should be compulsory retired on his attaining the age of 58 years.

The assessment in question should be done before the attainment of the age of 58 years even in cases where the earlier superannuation age was less than 58 years.

The assessment directed here is for evaluating the eligibility to continue in service beyond 58 years of age and is in addition to and independent of the assessment for compulsory retirement that may have to be undertaken under the relevant service rules, at the earlier stage/s. Since the service conditions with regard to superannuation age of the existing judicial officers is hereby changed, those judicial officers who are not desirous of availing of the benefit of the enhanced superannuation age with the condition for compulsory retirement at the age of 58 years have the option to retire at the age of 58 years. They should exercise this option in writing before they attain the age of 57 years. Those who do not exercise the said option before they attain the age of 57 years would be deemed to have opted for continuing in service till the enhanced superannuation age of 60 years with the liability to compulsory retirement at the age of 58 years.

Those who have crossed the age of 57 years and those who cross the age of 58 years soon after the date of this decision will exercise their option within one month from the date of this decision. If they do not do so, they will be deemed to have opted for continuing in service till the age of 60 years, in that case, they will also be subjected to review for compulsory retirement, if any, notwithstanding the fact that there was not enough time to undertake such review before they attained the age of 58 years. However in their case, the review should be undertaken within two months from the date of the expiry of the period given to them for exercising their option, and if found unfit, they should be retired compulsorily according to the procedure for compulsory retirement under the Rules.

Those judicial officers who have already crossed the age of 58 years will not be subjected to the review for compulsory retirement and will continue in service up

to the extended superannuation age of 60 years since they have had no opportunity to exercise their option and no review for compulsory retirement could be undertaken in their case before they reached the age of 58 years.

5. Learned counsel for the petitioner during course of hearing relying upon a few lines of the quoted passage argued with vehemence that superannuation age of judicial officers has been extended by the Apex Court to 60 years even though existing rules have not been amended by the State Government. The judicial officers by virtue of the judgment of the Apex Court acquired right to remain in service up to the age of 60 years. They cannot be made to retire prior to attainment of 60 years except by following the procedure for compulsory retirement under the Service Rules of the State. In support of his submission he also relied upon a decision in the case of Rajat Baran Roy and Others Vs. State of W.B. and Others, .

6. To resolve the question raised by learned counsel for the petitioner it is necessary to consider the discussion made on the subject of enhancement of retirement age and the law laid down by the Apex Court. The Apex Court has held in para 7(iii) of the judgment as follows :

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 Court, 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 or service character rolls, quality of judgments and other relevant matters. The High Court should ascertain: 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.

7. It is admitted position that in spite of the direction given by the Apex Court the rule with respect to superannuation of the judicial officer has not been

amended and the age of retirement of judicial officer is 58 years under the Rules. By virtue of judgment of the Supreme Court the benefit of extended age of superannuation to 60 years has been allowed to the judicial officers and for which procedure has been provided in the judgment itself. Till the rules with regard to superannuation age are not amended as directed by the Apex Court, the judgment of the Apex Court reported in All India Judges' Association and Others Vs. Union of India and Others, would be binding and the benefit of extended retirement age to the Judicial Officers has to be allowed as contemplated in the aforesaid judgment. After amendment of the rules with respect to superannuation age an officer of u'diciary will acquire the right to remain in service till 60 years but in absence of the amendment of rules the judicial officer cannot claim as right to remain in service till the age v. 60 years. Benefit of extended age of superannuation to 60 years in view of the Apex Court judgment would not be available automatically to all judicial officers rather it would be available to only those who in the opinion of the High Court have potential for continued useful service. Such evaluation by the High Court is independent of the assessment undertaken for compulsory retirement in public interest which could be undertaken prior to attainment of retirement age made in the Service Rules.

8. In the case of Rajat Baran Roy and Others Vs. State of W.B. and Others, relied upon by the learned counsel for the petitioner the Government of West Bengal vide notification dated 20.6.1992 the members of the Judicial officers were treated at par with members of the Indian Administrative Service. The Government of India on 13.5.1998 fixed the retirement age of the members of the Indian Administrative Service at 60 years. The State Government itself issued order dated 15.5.1998 raising the retirement age of its employees to 60 years and accordingly modified the relevant Rules, therefore, automatically the retirement age of the members of the West Bengal Judicial services also got enhanced to 60 years and as such the Apex Court has held that the superannuation age of judicial officer stood extended from 58 to 60 years and the judicial officers acquired right to continue in service till 60 years by virtue of West Bengal government notification dated 20.6.1992 and 15.5.1998 and not by virtue of judgment of the Supreme Court. The directions issued by the Apex Court cases to operate after amendment of Rules as per direction of the Apex Court but before framing of the rule by virtue of the judgment of the Supreme Court the benefit of increased age shall not be available automatically to all judicial officers irrespective of their past record service and evidence of their continued utility to the judicial services. The benefit according to the Apex Court was available to those who in the opinion of the respective High Courts have potential for continued useful service.

9. In the case of High Court of Judicature at Allahabad Through Registrar Vs. Sarnam Singh and Another, , the State of U.P. enhanced the retirement age to 60 years by framing statutory rules within the time limit 31.12.1992 as directed in All India Judges' Association Vs. Union of India and others, and as such the Apex

Court held that judicial officer entitled to enhanced retirement age without his work and conduct being assessed in terms of All India Judges' Association and Others Vs. Union of India and Others, , the procedure evolved in the aforesaid case was temporary measure and was not to be adopted as permanent feature.

10. In the case of Ramesh Chandra Acharya vs. Registrar, High Court of Orissa and ors., 2000 (4) P.L.J.R. (S.C) 74 the petitioner was made to retire at the age of 58 years. He contended that age of superannuation has stood extended to 60 years by virtue of the judgment of the Apex Court in All India Judges' Association and Others Vs. Union of India and Others, . The Apex Court held that in absence of specific rules made by the State, no judicial officer has right to continue beyond the age of 58 years. The extension of retirement age to 60 years is admissible only when the High Court after reviewing all aspects of service including past record of the concerned officer, makes a positive recommendation in his favour for such continuation in service to 60 years. The right to remain in extended age of superannuation till 60 years would arise only in the case the specific rule is made by the State Government.

11. Thus on consideration, as discussed above, it is obvious that the direction in the case, All India Judges' Association and Others Vs. Union of India and Others, enhancing the age of retirement from 58 to 60 years is not automatic enhancement of age of superannuation to all the judicial officers. The enhancement of retirement age from 58 to 60 years is a benefit and not right of the judicial officers. It is conditional and the benefit would be available to the judicial officers subject to evaluation by the High Court as to their continued utility to the judicial services before attaining the age of 58 years, formation of an opinion as to their potential for their continued useful service. The direction in All India Judges' Association and Others Vs. Union of India and Others, allowing the benefit of retirement age is conditional and ad hoc arrangement till the rules with regard to retirement age are amended as per the direction of the Apex Court.

12. The other limb of the argument of the learned counsel for the petitioner is that the order, Annexure-5 is an order of punishment as dismissal/compulsory retirement without complying with the requirement of natural justice, is violative of Article 311 of the Constitution of India. Compulsory retirement is of two types. In one case disciplinary proceeding is initiated on the basis of the charges. In such proceeding Article 311 of the Constitution of India is attracted and the delinquent acquires right to be heard and punishment awarded in such proceeding is stigma. In such case if opportunity of hearing is not given to the delinquent then it becomes violative of Article 311 of the Constitution of India. In other type of compulsory retirement the Government or the appropriate authority has absolute right to retire a Government servant in public interest. In such type of compulsory retirement after attaining particular age or on his having completed certain number of years of service the Government/appropriate authority forms an opinion on the basis of entire service record, the adverse

remark communicated or not communicated that in the public interest it is necessary to compulsorily retire a Government employee. The object behind it is to weed out inefficient, corrupt and dishonest or dead wood from the Government service. In such cases principles of natural justice does not apply. It does not cast any stigma and the Government servant shall be entitled to pension and other retiral benefits. In the case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, , the Apex Court has held that in case of compulsory retirement uncommunicated adverse remarks can be taken into consideration, the principle of natural justice does not apply in such cases. The Government or the authority concerned has to consider the entire record of service before taking decision and has to form an opinion for the said purpose. The opinion would be subjective satisfaction of the Government/authority and it does not cast any stigma.

13. The impugned order, Annexure-5, is follow up action of decision/direction of judgment of the Apex Court in All India Judges" Association and Others Vs. Union of India and Others, . It is in addition of compulsory retirement. The normal age of retirement of an employee under the Rules is completion of 58 years of age. By virtue of judgment/direction of the Supreme Court the Judicial Officers are not retired prematurely i.e. before completing the age of 58 years the normal age of retirement. In fact their length of service is neither extended nor taken away by implementing the judgment of the Apex Court. The employees are allowed to retire on completing normal age of retirement as provided in the Service rules. The judgment of Apex Court only provides the mechanism for allowing benefits of extended age of two years i.e. upto 60 years only to such employee who an evaluation by the High Court is found to have potential for continued utility in service. The employees who are not allowed benefit of extended age of 2 years in such a situation cannot claim as a matter of right of hearing before passing the order as it is not a punishment and does not cast any stigma. Thus on consideration, as discussed above, the question raised by the learned counsel for the petitioner has no leg to stand.

14. Learned counsel for the ptitioner next contended that order, An- nexure-5, has been passed without considering the entire service record of the petitioner and only on the basis of adverse remark recorded by the Inspecting Judge, Annexure-3. In this regard it would be pertinent to mention herein that in the counter-affidavit filed on behalf of respondent no. 3 it has been stated that entire service record of the petitioner was placed before the "Evaluation Committee" in the meeting held on 11.11.1999 and on consideration unanimously resolved not to allow the benefit of extension of retirement age to the petitioner. The Full Court in the meeting held on 20.11.1999 on consideration of the service records approved the resolution of the "Evaluation Committee". For better appreciation the character rolls recorded by the different District Judges and the inspecting Judges are quoted here in below:

1975-76 : Judicial work satisfactory.

1976-77 : Well behaved, meak and gentle, Writes good judgments.

1977-78 : Well behaved. Her judgments are satisfactory.1978-79 : xx xx xx

1979-80 : All round an average officer.

1980-81 : Her judicial work was average. Rate of disposal was average. Relation with Bar fair.

1981-82 : Her judicial work was satisfactory.

1982-83 : Her judicial work was satisfactory and she had very good reputation with members of the Bar.

1983-84 : An officer of average merit possessing undisputed integrity.

1984-85 : Average. Slow. Should improve her efficiency. Whispers of occasional partiality. Should treat all parties, counsel with impartiality. Appears to be a shirker. Outturn varied from poor to fair quality of work not above average. Well mannered and quiet.

1985-86 : xx xx xx

District and Sessions Judge, Vaishali has reported that she was a very weak officer. There was also a feeling that she was under the grip of the B.C. and he used to take advantage of it

Seems to be an officer of average merit.

1986-87 : She possess poor knowledge of law and procedure. Not very industrious and her disposal during the year 1986 has been found to be very very poor. She has no control over her office and has no efficiency to get work from the staff. May prove to be a good officer if she exercises control over her office. He has maintained a reputation for honesty and impartiality. No defect was brought to my notice.

She is an officer of average merit.

1987-88 : Poor knowledge of law and procedure. Is she industrious and prompt in the disposal of cases? Not at all. Is she an efficient officer? No. Has he maintained a reputation for honesty and impartiality-No. She is not fit for the exercise of any enhanced power? A shirker, always remains on leave. She does not take interest. Not good.

1988-89 : Adequate knowledge of law and procedure. She is industrious and prompt in the disposal of cases. She is a capable officer. She has maintained a reputation for honesty and impartiality during the period. Defect nothing found.

Smart and labourious officer. Intelligent and well-behaved too. Judicial work on the whole satisfactory.

1989-90 Possesses a fair knowledge of law and procedure. She is industrious, an efficient officer and prompt in disposal of cases. She maintains a good reputation

for honesty and impartiality. A fairly fair officer.

1990-91 : She possesses a fair knowledge of law and procedure. She is industrious but not prompt in the disposal of cases. During the relevant period her outturn was poor or capable of improvement. She is an efficient officer. Nothing was heard against her honesty and impartiality. Defects-No. Fair.

1991-92 : Knowledge of law and procedure-Good. Industrious, outturn not upto the mark. Is she an efficient officer? -Yes. She maintains a good reputation for honesty and impartiality. No defect.

Sober, a good officer but a bit slow in work.

1992-93 : Knowledge of law and procedure-Average. Industrious. She has improved herself in disposal of cases comparatively. Is she an efficient officer? - Yes. Her integrity is unquestionable. No defect.

Meak good officer though an officer of average merit and intelligence.

1993-94 : C.R. not received.

1994-95 : Fair knowledge of law and procedure. Is she industrious and prompt in disposal of cases? -Needs improvement. Is she an efficient officer? -Fair. She has maintained a reputation for honesty and impartiality. Defects-Nil. Fair Officer.

1995-96 : Average knowledge of law and procedure. She should exert more in disposal of cases. By mere labour she can be efficient. Has she maintained a reputation for honesty and impartiality? -Yes. Is she fit for the exercise of any enhanced power? -When time comes. Defect -Labour is required from her. She is a good officer. But she has to do more labour.

1996-97 : Knowledge of law and procedure-average. Is she industrious and prompt in the disposal of cases? -Average. Is she an efficient officer? Satisfactory. Has she maintained a reputation for honesty and impartiality?-No complaint has been received against her. Is she fit for the exercise of any enhanced power? Yes-as the Hon''ble Court thinks fit and proper. Defects nothing-Satisfactory.

1997-98 : Knowledge of law and procedure-average. Is she industrious and prompt in the disposal of cases? - Yes. Is she is an efficient officer? Yes. Has she maintained a reputation for honesty and impartiality?-Yes. Is she fit for the exercise of any enhanced power?-Yes.-as the Hon''ble Court thinks fit and proper. Defects- No. She is an officer of average merit. Her work found to be satisfactory. She should improve her outturn.

1998-99 : Knowledge of law and procedure-Average. Is she industrious and prompt in disposal of cases? - Yes. Is she an efficient officer? Yes. Has she maintained a reputation for honesty and impartiality?-Yes. Is she fit for the exercise of any enhanced power? -Yes. If the Hon''ble Court thinks fit and proper. Defects-Nothing. She is an officer of average merit. Her relationship with

members of Bar and colleague is cordial.

Confidential remarks recorded by Hon"ble Inspecting Judge. 4th December, 1989.

1. Knowledge of law and procedure-Satisfactory.
2. Is she industrious and prompt in the disposal of cases and has she coped effectually with heavy work? Yes.
3. Are his judgments and orders well written and clearly expressed? Yes. (Category in which the judgments are to be placed, viz. A Plus. Outstanding. A Very good. B-Plus (Good) B. Average/satisfactory, C-Below Average) "B Plus"
4. In his supervision of the distribution of business amongst and his control on the Subordinate Courts good? X (For District & Sessions Judges and Senior Subordinate Judges/Chief Judicial Magistrates).
5. Is she an efficient Judicial Officer? Yes.
6. Has she maintained Judicial reputation for honesty and impartiality? Yes.
7. Remarks about his attitude towards his superiors, Subordinate and colleagues. Good.
8. Behaviour towards members of the Bar and the public. Good.
9. Net result. "B Plus"11th October, 1999.

1. Knowledge of law and procedure-Poor.
2. Is she industrious and prompt in the disposal of cases and has shecoped effectually with heavy work? Considering that she has joined Ranchi Judgship only on 1.6.99, cannot definitely say.
3. Are her judgments and orders well written and clearly expressed? (Category in which the judgments are to be placed, viz. A Plus-Outstanding. A-Very Good. B + -Good. B - Satisfactory. B- Average, C - Below Average). Average (B)
4. Is her supervision of the distribution of business amongst and his control on the Subordinate Courts Good (For District and Sessions Judges and Senior Subordinate Judges/Chief Judicial Magistrates). Not applicable.
5. Is she an efficient Judicial Officer? I do not think so.
6. Has she maintained Judicial reputation for honesty and impartiality? Doubtful.
7. Remarks about her attitude towards his Superiors, subordinates and colleagues.

Heard no complaints.

8. Behaviour towards members of the Bar and the public Received complaints regarding judicial work.

9. Net result.

C (Below average)

15. From the service record quoted above it is evident that petitioner was found in most of the years of average merit, shirker, weak officer, remains under the grip of Bench clerk, poor/average knowledge of law, poor outturn and slow in work. In 1984-85 and 1987-88 her integrity was doubted. In 1989 the Inspecting Judge has graded the petitioner under the category of "B+" but subsequently in the years 1990-91 and 1991-92 her out turn was found to be poor and is slow in work. In 1992-93 remarks was made that petitioner was meak and an officer of average merit. In 1994-95 petitioner needs improvement. In 1995-96 petitioner was found to be an officer of average knowledge of law and procedure. She should exert more in disposal of cases, labour is required. In 1996-97, 1997-98 & 1998-99 similar remarks have been made. Therefore, it is obvious that the petitioner in most of the years of her ser vice career was not found an officer of above average merit, her outturn was not satisfactory, weak officer and sometimes her integrity was doubted.

16. Learned counsel for the petitioner, however, gave much stress on the confidential remarks, Annexure-3 and pointed out that it was recorded on the complaint of decree holder, though there was no occasion for recording such adverse remarks against the petitioner. In this regard it would be pertinent to mention herein that the petitioner was posted at Patna. She was transferred to Ranchi. She joined at Ranchi on 1.6.1999. No periodical inspection was made and as such the High Court directed special inspection to be made by the High Court judge. The inspecting judge accordingly made inspection and submitted inspection report which has been annexed with the counter-affidavit filed on behalf of respondent no. 3. It would appear from the inspection report that several complaints regarding orders passed by the petitioner were made, the Inspecting Judge particularly referred the order with regard to recall of delivery of possession granted to the decree holder on the ground that judgment debtor had not been heard before issuing delivery of possession and on flimsy ground that original sale deed had not been handed over to the decree holder by the registration office. The Inspecting judge confronted the petitioner with the order and wanted to know as to what locus standi the judgment debtor had after the sale deed had been executed by the court itself on his behalf. The reply of the petitioner was that she could not appreciate the law. In the report it has been stated that even if it is condoned, the finding that the judgment debtor had not been heard is an error of record because there is clear statement in the order of delivery of possession that lawyer for the judgment debtor had also been heard. When the said fact was pointed out, petitioner's reply was that it was a mistake and the same may be condoned. The learned inspecting judge accordingly recorded confidential remarks and accordingly put the petitioner under the category of "C (below average)". The reliability of information collected as mentioned in the inquiry report and placed on the records cannot be doubted. In

the previous years also the petitioner was not found an officer of above average merit. Therefore, submission of the learned counsel for the petitioner that she was at Ranchi for four months only and as such the inspecting judge had no occasion to assess the petitioner with respect to performance of her judicial work has no substance. It would not be out of place to mention herein that the inspection was made by the Judge of the High Court and the Judges of the High Court have occasion to see the order of the judicial officer and to form an opinion.

17. The submission of the learned counsel for the petitioner that order recalling delivery of possession was not interfered by the High Court in Civil Revision has also no substance as delivery of possession effected to the decree holder was pursuant to the order passed by the petitioner but the same was recalled and on the direction of the petitioner the possession of the property was given to the judgments debtor. In such a situation Civil Revision was disposed of saying that the decree-holder shall be at liberty to take delivery of possession in accordance with law.

18. The petitioner has not alleged bias much less mala-fide against the High Court. In fact no such allegation could be made as evaluation is not made by a particular judge rather it is made by evaluation committee. More over, recommendation of the evaluation committee is placed before the Full Court and the Full Court takes decision either to approve the recommendation of the evaluation committee or not to approve the recommendation of the evaluation committee on the basis of character roll of the officer. The evaluation committee as well as Full Court has to take decision as per the direction of the Apex Court in the judgment All India Judges' Association and Others Vs. Union of India and Others, . The Apex Court has laid down the law that benefit of increase of 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. Benefit would 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. Potential of continued utility shall be assessed and evaluated on the basis of judicial officer's past service record, character roll, quality of judgment and other relevant matters. Thus on consideration it cannot be said that there was no material available to the High Court to a conclusion not to allow the benefit of extended service of retirement. On consideration of entire service record of the petitioner the opinion formed by the High Court cannot be said to be arbitrary or based on no material or vitiated for any other reason.

19. It has already been held that by virtue of judgment of All India Judges' Association and Others Vs. Union of India and Others, judicial officer/petitioner cannot claim a right to continue in service beyond 58 years, the normal age of retirement under the existing rules. By the aforesaid judgment a right has not been created to the judicial officer/petitioner rather benefit of extended age of

retirement has been allowed to only such officers, who in the opinion of the High Court have potential for continued useful service. Thus on consideration, as discussed above, I find no merit in the writ petition and accordingly it is dismissed but without cost.

M.L Visa, J.

I agree.