

(1994) 05 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 925 of 1994

Syed Iqbal Ali Imam Raza

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 18-05-1994

Acts Referred:

Citation : (1994) 05 PAT CK 0014

Judgement

S.N. Jha, J.—The Supreme Court by its judgment in All India Judges' Association and Others Vs. Union of India and Others, has raised the superannuation age of subordinate Judicial Officers to 60 years subject to assessment and evaluation by the respective High Courts as to the potential of the officer for continued useful service. The petitioner, then posted as District and Sessions Judge, Katihar, has been denied the benefit of the increased age of superannuation. A communication to the above effect was sent by the Registrar Patna High Court, on 23rd November 1993. He challenged the said decision in the Supreme Court in Writ Petition (Civil) No. 5 of 1994 which was permitted to be withdrawn on 7th January 1994 with liberty to move the High Court. Accordingly, the petitioner has filed this writ petition under Articles 226 and 227 of the Constitution. Copy of the said letter of the Registrar has been marked Annexure-12 to the writ petition.

2. The facts of the case lie in a narrow compass. Shortly stated, the petitioner was appointed as an Additional District and Sessions Judge in the Bihar Superior Judicial Service in 1980. He was confirmed on the said post in 1981. He served as Wakf Commissioner and Special Officer, Bihar State Sunni Wakf Board on deputation from April 1983 to Sept. 1985. During the aforesaid tenure of his service some allegations were made regarding certain appointments as having been made by him without observing the usual norms and certain other omissions and commissions for his own benefits. The Secretary, Law Department, Government of Bihar, informed the Registrar, Patna High Court, about the on going enquiry with respect to the said allegations by his letter dated 23rd October, 1984. After enquiry by the Vigilance Department and the Law Department, however, the petitioner was given a clean chit. A communication to

this effect was sent by the Secretary, Law Department to the Registrar on 24th April, 1986 stating that the matter may be treated as dropped. The Registrar, Patna High Court, however, wrote to the Secretary, Law Department to furnish the materials collected against the petitioner during his tenure as Wakf Commissioner. The petitioner has asserted that the Law Department forwarded the entire materials to the High Court. The Standing Committee of the High Court examined the matter and came to the conclusion that the allegations were without any substance and the matter was, accordingly, treated as finally closed by the High Court as well the petitioner was posted as Additional District and Sessions Judge at Aurangabad and then as District & Sessions Judge at Madhubani, Bhagalpur and Dhan-bad and finally Katihar. In the meantime, he was granted selection grade in the Bihar Superior Judicial service with effect from 1 st February, 1988.

3. The petitioner has asserted that he has had an above average record of service and no adverse entry was ever communicated to him. In the year 1992 the position of the petitioner was third or fourth in order of seniority in the superior Judicial Service. At that time there were several vacancies in the High Court and as per the prevalent convention of appointing 1 / 3rd Judges from the Judicial Service he was well within the zone of consideration for his elevation as a High Court Judge. The petitioner has alleged that some persons junior to him in the service at this juncture manoeuvred to rake up the issue of so-called irregular appointment. The joint Secretary, Personnel & Administrative Reforms Department requested the High Court to initiate departmental proceeding with respect to the charges already framed by the Law Department. On 14th October 1991 a departmental proceeding was, in fact, initiated by the High Court. According to the petitioner, the proceeding relates to the same charge which had already been enquired into and dropped earlier. He submitted his show cause. He also made a request to the Registrar of the High Court to bring certain facts before the Court on 24th January, 1992 and 10th February, 1992. However, no action was taken. The enquiry remained pending, 2nd September 1993 the petitioner was asked to exercise his option in the matter of his continuance in the service in the light of the judgment of the Supreme Court in All India Judges' Association case (supra). The petitioner opted to continue in the judicial service till his attaining the age of 60 years. The "Evaluation Committee", however, in its meeting held on 12th Nov. 1993 decided not to extend the benefit of the increased retirement age. The decision was communicated to the petitioner on 23rd Nov. 1993 by Annexure-12.

4. The case was placed for hearing before a Division Bench. In view of the importance of the case involving the interpretation of the judgment of the Supreme Court in the All India Judges' Association's case (supra) in the context and background of Article 235 of the Constitution, the case was referred to a larger Bench. That is how the case was listed before this Bench.

5. Mr. Asfar Hasan, learned counsel for the petitioner, submitted that the

initiation of the departmental proceeding against the petitioner in 1991 with respect to state charges which had already been enquired into and dropped was improper and unjustified. As regards the impugned decision he urged that there was no proper evaluation and assessment by the Committee. The central theme of his argument, however, was that in view of the judgment of the Supreme Court and also having regard to the provisions of Article 235 of the Constitution, it is the High Court as a whole and not the Chief Justice or the members of a Committee which is competent to take the final decision in the matter. Counsel also contended that the procedure prescribed under Rule 74(b)(ii) of the Bihar service Code having not been followed, the impugned decision cannot be said to be in conformity with the judgment of the Supreme Court and in the absence of the formal order of the Governor, the same cannot have any legal effect. The petitioner will, therefore, be deemed to have continued in service.

6. Mr. Basudeva Prasad, learned counsel appearing on behalf of the High Court, submitted that although the superannuation age of Judicial officers has been raised to 60 years, the retention in service beyond 58 years is subject to assessment and evaluation and is not automatic. He pointed out that a new concept of compulsory retirement has been evolved to weed out the indolent, the infirm and those of doubtful integrity, reputation and utility when they are about to cross the normal age of superannuation of 58 years, in addition to the compulsory retirement at the earlier age of service under the service Rules. Counsel took us through the Judgment of the Supreme Court in the All India Judges' Association Vs. Union of India and others, (hereinafter referred to as "the main judgment") and submitted that having regard to the underlying idea in giving the primacy to the Judiciary in matters relating to the service conditions of the subordinate Judiciary, the Governor of the State should be kept out of the field and the decision of the High Court to retain a judicial officer in service beyond 58 years of age or to compulsorily retire him at that age must be treated as final. Counsel, accordingly, Contended that Rule 74(b)(ii) of the Bihar Service Code has no application. Counsel also submitted that if the said rule is held to be applicable, the scheme envisaged in the judgment will become unworkable. On the question of legality of Annexure-12, learned counsel, however, very fairly, if I may say so, stated that the impugned decision not being the decision of the High Court as a whole, the same cannot be sustained in law.

7. On the question of binding effect of the opinion of the High Court Mr. Azfar Hasan conceded that the opinion of the High Court was binding on the Governor. His only objection, however, in this regard was that unless the Governor issues formal consequential order of retirement, the decision of the High Court cannot be said to come into effect and, consequently, the petitioner must be deemed to have continued in service throughout.

8. On the pleadings on submissions made on behalf of the parties, the questions that arise for consideration are (i) Whether the Evaluation Committee or the High Court in the light of the judgment of the Supreme Court was competent to take

final decision in the matter of retirement of the Judicial Officers at the age of 58 years? (ii) whether the decision can take effect without observing the procedure prescribed for effectuating the same? (iii) Whether order of the Governor is necessary to make the decision effective? (iv) Whether the decision of the Committee refusing to extend the benefit of increased age of superannuation to the petitioner is correct? and (v) What consequential reliefs, if any, the petitioner is entitled to?

9. Rule 73 of the Bihar Service Code, which is also applicable to the subordinate judicial officers of the State, has fixed the age of superannuation (called compulsory retirement" in the said rule) of the Government servant at 57 years. In the main judgment the Supreme Court took the view, on consideration of the various factors and materials mentioned therein that the age of retirement of Judicial Officers should be 60 years and directed that "appropriate alteration shall be made in the rules obtaining in the States and the Union territories in respect of Judicial service so as to fix the age of retirement as 60 years with effect from December 31, 1992". In the review judgment (All India Judges" Association and Others Vs. Union of India and Others,) the Court held that the Superannuation age of every subordinate Judicial Officer shall stand extended upto 60 years, the extension however, not being automatic, and subject to assessment and evaluation of the service record of the judicial officer with regard to his potential for continued useful service. Those not found fit for the benefit of the increased retirement age after such assessment and evaluation are to be compulsorily retired at the age of 58 by following the procedure prescribed for compulsory retirement in the service Rules.

10. Since the controversy centres round the interpretation of the review judgment it would be in the fitness of things to quote the relevant passages thereof as hereunder at page of AIR 2509 SCC 305) :--

"There is, however, one aspect we should emphasise here. So what 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 Justice of High Courts and the evaluation shall be made on the basis of the judicial officers" past record of service, character rolls, quality of judgments and other relevant matters.

The High Court should, undertake and complete the exercise in cases 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 stages under the respective service Rules."

11. In view of the stand of the High Court, perhaps, strictly speaking, in indepth examination of the question whether the Committee constituted to assess and evaluate the potential of the officer was competent to take the final decision or the decision lay with the High Court as a whole, may not be necessary, nevertheless, it has to be seen whether the concession is in accordance with law.

12. There can be no doubt that the right of the subordinate judicial officers to continue in service beyond the age of 58 years flows from the review judgment and, therefore, it is necessary to see what the judgment lays down. The relevant portion of the judgment has been quoted above. It would appear that while "the potential for continued utility shall be assessed and evaluated by appropriate committees of Judges," the benefit is to be made available to those who "in the opinion of the respective High Courts" have the potential. It is not possible to read the two terms "appropriate Committee" and "the High Court" as interchangeable expressions. Such a reading would not be in consonance with the provisions of Article 235 of the Constitution. Even if two interpretations were possible, the one which is in accord with the constitutional provisions should be preferred to the other. Even before the Constitution came into being, the Judicial Committee in AIR 1943 202 (Privy Council) had observed "the administrative control of the subordinate courts of the province whatever it is, is exercisable not by the Chief Justice, but by the Court over which he presides." The same view was re-iterated by the Supreme Court in *Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another*, . The declaration in the main judgment, *All India Judges' Association Vs. Union of India and others*, , was more explicit :--

"The Constitution has vested the control of the subordinate judiciary under Article 235 in the High Court as a whole."

13. Mr. Azfar Hasan drew our attention to the Rule 3(x) of Chapter 1 of the Patna High Court Rules. Rule 3 enumerates the powers which standing committee may exercise without reference to other Judges. Clause (x) which was added by amendment on 1st April 1975 reads:--

"The standing committee shall have power, without reference to the Judges

generally.

xxxxx (x) To make recommendation to the State Government for compulsory retirement of any Judicial Officer of any rank.

Provided that a notice of the decision of the Standing Committee shall be circulated to the Full Court within three days from the date of the decision and if any member of the Full Court desires, within ten days of the decision, the matter to be discussed at a meeting of the Full Court, then no action will be taken till the decision at such a meeting."

The argument of Mr. Azfar Hasan was that the High Court having laid down the procedure for effectuating the decision in regard to compulsory retirement of the Judicial Officer by framing specific rule to that effect, the powers should have been exercised in that manner alone. The stand of Mr. Basudeva Prasad, on the other hand, was that the impugned decision being a decision of the Evaluation Committee, constituted in the light of the judgment of the Supreme Court, and not the standing committee constituted under the Patna High Court Rules, Rule 3(x), in terms has no application. He also reiterated his contention that the decision of the High Court in the matter being final it was not necessary to make recommendation to the State Government. Dr. Prasad, however, fairly enough, if I may say so again, stated that Having regard to the provisions of Article 235, whether Rule 3(x) in terms is applicable or not, the procedure in so far as it relates to the circulation of the decision of the Committee, should have been followed. In other words, according to the counsel the decision of the Evaluation Committee should have been circulated amongst the Judges of the Court so that in case any Judge had so desired, the matter could be referred to the Full Court. In that event, till the Full Court could take a decision the matter would have remained under suspended animation.

14. It would appear broadly speaking, that two interpretations of the matter are possible. According to general or broad interpretation, the decision of the Evaluation Committee was subject to ratification by Full Court inasmuch as not only in terms of the express words used in the review judgment but also in view of the interpretation of Article 235 of the Constitution the control over Subordinate judicial officers vests in the High Court as a whole and not in the Committee. According to narrow interpretation, even if it is held that the Evaluation Committee was competent to finally decide the suitability of the Judicial officers for his retention in service beyond the age of 58 years, in view of the procedure prescribed under Rule 3(x) of the High Court Rules laying down the manner in which the decision to compulsory retire a judicial officer is to be effectuated, the matter had to be circulated amongst the Judges and in the event of dissent or otherwise the same had to be referred to Full Court for discussion and decision.

15. In State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another, , the Administrative Committee of the Allahabad High Court decided to compulsorily

retire the Officer. On judicial side, the majority took the view that Officer could not be compulsorily retired on the basis of the opinion of the Administrative Committee constituted under the rules of the Court. The Supreme Court accepted the minority view and held that although the control over subordinate courts under Article 235 is vested institutionally in the High Courts, it is open to the High Courts to prescribe the manner in which that control may in practice be exercised. It, accordingly, held that the High Court is competent under Article 235 itself to frame rules for regulating the manner in which the control vested in it may be exercised. In the instant case, in view of the admitted position that the decision of the Committee was not circulated amongst the Judges and is a result whereof, the other Judges of the Court did not have occasion to consider the matter it has to be held that the impugned communication (Annexure-12) directing that the petitioner had ceased to be a member of the Judicial service of the State on his attaining the age of 58 years on the basis of the decision of the Committee is not in accordance with law.

16. Mr. Azfar Hasan, however, sought to challenge the decision of the Evaluation Committee as incorporated in the minutes of the proceeding, copy whereof has been marked Annexure D to the counter affidavit on behalf of the High Court. He submitted that the record did not disclose that the committee was duly constituted. He also submitted that there was no proper evaluation and assessment as would be evident from the fact that the Committee on one day considered the cases of as many as 16 officers 8 of whom were declared to be unfit for being retained in service beyond the age of 58 years. Counsel, in fact, went to the extent of suggesting that the whole decision being vitiated this Court should reopen the cases of even those judicial officers, who had been allowed the benefit of increased age of superannuation.

17. In terms of the review judgment the Chief Justice was directed to constitute the Committee of Judges headed by himself for the purpose of evaluation and assessment. The minutes of proceeding of the Standing Committee held on 2nd Nov. 1993, marked Annexure-C to the counter affidavit, shows that the Standing Committee which was designated as the Evaluation Committee discussed the matter regarding taking follow up steps in the light of the directions of the Supreme Court in the review judgment. The relevant part of minutes of the proceeding dated 12th Nov. 1993 (Annexure D) reads as follows:--

"This Committee was constituted by Hon'ble Chief Justice, Patna High Court, pursuant to the judgment/order of the Supreme Court for assessment and evaluation of the service of the concerned Judicial officers, (referred to as the "Evaluation Committee").

xxxxx Having considered the records of services, character rolls, quality of judgment and other relevant matters including the general reputation regarding efficiency, integrity and honesty of the judicial officers concerned, as ascertained by the members of the Committee, who are also, at the present moment, the Standing Committee of the High Court and upon evaluation made of the same. It

is resolved that"

The said minutes of the proceedings is signed not only by the then Chief Justice but also other six Senior Judges who were members of the Standing Committee, describing themselves as members of the Evaluation Committee. There is no pleading by the petitioner that the Committee which considered the case of the petitioner or others had not been constituted by the Chief Justice. Such a plea was made during course of hearing in view of the statement of the counsel for the High Court that the order by which the Committee was constituted was not available. I do not think that the non-availability of the actual order by which the Committee was constituted would have any material bearing on the competency of the Committee. The Committee admittedly had to be constituted by the Chief Justice. As noticed above the very opening of the minutes states that the Committee was constituted by the then Chief Justice. I do not see any reason or justification to go behind the minutes to hold that the same was not correctly recorded. A presumption of correctness must be attached to the minutes specially when it is signed by high dignitaries and no reason has been indicated or suggested that they would make an incorrect declaration of the facts stated therein. The Chief Justice constituted the Standing Committee as the "Evaluation Committee", the decision taken by it for all intents and purposes must be deemed to be the decision of the Standing Committee as contemplated by Rule 3(x) of the High Court Rules. The label "Standing, Committee" or "Evaluation Committee" does not make any difference in this case. This aspect of the matter is not open to any doubt

18. I do not want to go into the other submission that no correct and proper evaluation was made by the Committee. In view of the discussions made in the foregoing paragraphs it is obvious that the matter has to be considered by the Full Court and any decision on the point on the judicial side may tantamount to pre-empting the Full Court from considering and deciding the same. Such a course would be neither legal nor justified or warranted.

19. The last limb of submission of Mr. Hasan in regard to Annexure D that the whole matter including giving benefit of the increased age of superannuation age of other judicial officers should be re-opened has been noticed only to be rejected. The concerned officers are not parties to the instant proceeding. Neither there is any pleading nor any relief has been claimed against them.

20. Now, I shall consider the argument of Mr. Basudeva Prasad that the provisions of Rule 74(b)(ii) of the Bihar Service Code or Rule 3(x) of Chapter 1 of Patna High Court Rules, in so far as it provides for making recommendation to the State Government, are not required to be followed. Contention of Mr. Basudeva Prasad in this connection was two-fold. According to him, the whole idea underlying the two judgments in the All India Judges' Association's case is to give primacy to the judiciary in matters relating to control over Judicial officers and their service conditions. The State Government or the Governor has no role to play. According to him further, if the provisions as contained in Rule 74(b)(ii)

or 3(x) are required to be followed, the review judgment may become unworkable. It was pointed out that the evaluation and assessment has to be made of officers" about to attain the age of 58 years within two months from the date of expiry of the period of one month given to the Judicial officers who have already attained the age of 57 years for exercising their option. It was suggested that if a recommendation has to be made to the State Government/Governor and the procedure under Rule 74(b)(ii) has to be followed it may well be that the particular officer may, in the meantime, attain the age of 58 years and, thus, automatically get the benefit of deemed extension of service upto 60 years.

21. The order retiring a judicial officer at the age of 58 years after assessment and evaluation of his potential for continued useful service is, no doubt, a new concept or, put differently, a specific of the concept of compulsory retirement simpliciter. However, so far as the procedural part is concerned, the review judgment in unmistakable terms and more than once, says the exercise should be undertaken and completed "by following the procedure for compulsory retirement as laid down in the respective Service Rules applicable to the Judicial Officers" and those not found fit and eligible should be compulsorily retired at the age of 58 "by following the said procedure of compulsory retirement."

22. I do not find any justification for the proposition that compliance of the provisions of Rule 74 of the Service Code or Rule 3(x) of the Patna High Court Rules (so far as it provide for making recommendation to the State Government) would impinge upon Article 235 of the Constitution or would be inconsistent with the review judgment. The scope of Article 235 of the Constitution is too well settled by catena of decisions. "The vesting of complete control over Subordinate Judiciary in the High Court leads to this that the decision of the High Court in matter within its jurisdiction will bind the State". The Governor will act on the recommendation of the High Court. (See *Samsher Singh Vs. State of Punjab and Another*, *The High Court of Punjab and Haryana and Others Vs. The State of Haryana and Others*, *State of Haryana Vs. Inder Prakash Anand H.C.S. and Others*, *Baradakanta Mishra Vs. High Court of Orissa and Another*, . Dealing with the case of dismissal of District Judge in the *The State of West Bengal Vs. Nripendra Nath Bagchi*, , a Constitution Bench of the Apex Court held that the fact the Governor appoints District Judges and can alone dismiss or remove them does not impinge upon the control of the High Court. Even the provisions of Article 311 of the Constitution do not oust or take away the jurisdiction of the High Court conferred it by Article 235.

23. In *Registrar, High Court of Madras Vs. R. Rajiah*, . the Apex Court while considering the provisions of Rule 56(d) of the Fundamental Rules, which is in pari materia the provisions of Rule 74 of the Bihar Service Code, held that Rule 56(d) under which a member of Subordinate Judicial Service can be compulsorily retired has to be read "subject to an inharmony with the power of control vested in the High Court under Article 235 of the Constitution." Dealing with a similar argument as advanced by Mr. Baisudeva Prasad that of the

Governor is to sign the impugned orders (of compulsory retirement), it would take away the control of the High Court as conferred on it by Article 235, the Court observed (at page 1391): --

"The test of control is not the passing of an order, against a member of the Subordinate Judicial Service, but the decision to take such action. It may be that so far as the members of Subordinate Judicial Service are concerned, it is the Governor, who being the appointing authority, has to pass an order of compulsory retirement or any order of ; punishment against such a member. But passing or signing of such orders by the Governor will not necessarily take away the control of the High Court vested in it under Art 235 of the Constitution. An action against any Government servant consists of two parts. Under the first part, a decision will have to be made whether an action will be taken against the Government servant. Under the second part, the decision will be carried out by a formal order. The power of control envisaged under Article 235 of the Constitution relates to the power of making a decision by the High Court against a member or the member of Subordinate Judicial Service. Such a decision is arrived at by holding an enquiry by the High Court against the member concerned. After the High Court comes to the conclusion that some action either in the nature of compulsory retirement by the imposition of a punishment, as the case may be, has to be taken against the member concerned, the High Court will make a recommendation in that regard to the Governor and the Governor will act in accordance with the decision of High Court. The Governor cannot take any action against any member of a subordinate judicial service without, and contrary to, the recommendation of the High Court..... The Governor will only act on the basis of recommendation and pass a formal order. But however formal it is, the compulsory retirement will take effect only after the order is passed by the Governor."

The above observations of the Apex Court are sufficient to allay any confusion or doubt that recourse to the provisions of Rule 74(b) of the Bihar Service would undermine the authority or jurisdiction of the High Court envisaged in the judgments which has emphasised more than once that action has to be taken as per the procedure applicable to compulsory retirement under the respective service Rules. It would not be out of place to refer to the observations in The High Court of Punjab and Haryana and Others Vs. The State of Haryana and Others, that "if as a result of any disciplinary proceedings any District Judge is to be removed from service or any punishment has to be imposed that will be in accordance with the conditions of service."

24. A perusal of the review judgment leaves no room for doubt that a judicial officer can continue beyond 58 years upon his being found fit by the High Court. Once the High Court decides after assessment and evaluation of his record of service etc. that he is not to be continued beyond the age of 58 years, the decision becomes effective from the date he attains the said age, no matter whether the actual formal order is issued later in point of time. To this extent and

in this sense the compulsory retirement of a judicial officer, as envisaged in the review judgment, is different from the concept of compulsory retirement simpliciter under the Service Rules. Thus, while compulsory retirement simpliciter of a judicial officer, in the words of M. M. Datta, J. in *R. Rajiah (supra)*, "will take effect after the order is passed by the Governor", the decision to compulsorily retire a judicial officer in terms of the review judgment will be effective from the date he attains the age of 58 years, which is the normal age of super annuation, under the Rules. Any other interpretation will make the judgment, as regards superannuation age, meaningless and superfluous. Therefore, even if some time may elapse before a formal order is issued by the Governor and in the meantime the officer crosses the age of 58 years it would not mean that he will continue in service beyond the said age merely because formal order was not issued by the Governor. In view of the judgment of the Apex Court in the cases of *Baldev Raj Guliani Vs. The Punjab and Haryana High Court and Others*, it is now too well settled that opinion or recommendation of the High Court in respect of discipline and control over judicial officers is binding on the Governor. As A.N. Ray, C.J. in *Inder Prakash Anand (supra)* said, "pre-mature retirement is made in exercise of administrative and disciplinary jurisdiction. It is administrative because it is decided in public interest to retire pre-maturely. It is disciplinary because the decision was taken that he does not deserve to continue in service up to the normal age of superannuation and that is in public interest to do so."

25. The impugned communication (Annexure-2) having been held to be not in accordance with law the question is whether the petitioner is entitled to any consequential relief at this stage. I have already said above that irrespective of whether a broad or narrow interpretation of the review judgment is accepted, in either view, the matter has to be considered by the Full Court on reference or by circulation to all the Judges in accordance with the Rules. As in the instant case this was not done, the decision of the Evaluation Committee cannot be said to be final and has no legal effect. The matter has necessarily to be considered by the Full Court. It is in this view of the matter that I have not examined the argument that the decision of the Committee was not correct or proper. If the matter has to be considered by the Full Court it obviously follows that in the event the Full Court endorses or ratifies the decision of the Evaluation Committee, the same shall be deemed to be effective from the date when the petitioner attained the age of 58 years i.e. 31st January, 1994, even though the formal order of the Governor may be issued later. In this view, it is not possible to give any consequential relief to the petitioner at this stage. Learned counsel for the petitioner placed reliance on *Baradakanta Mishra Vs. High Court of Orissa and Another*. That was a case of reduction in rank. The Apex Court held that under the conditions of service, the High Court could not reduce in rank or dismiss a District Judge and, thus, the reduction (in rank) of the officer being without jurisdiction he would be deemed to continue as a District Judge. The aforesaid case, therefore, is of no help to the petitioner on the question of consequential relief.

26. In *Francis v. Municipal Councillors of Kuala Lumpur* 1962 3 All ER 633 Lord Morris held :--

"When there has been a purported termination of contract of service, a declaration to the effect that the contract of service still subsisted will rarely be made. This is a consequence of the general principle of law that the Courts will not grant specific performance of contracts of service. Special circumstances will be required before such a declaration is made and its making will normally be in the discretion of the Court."

Besides that, the instant case stands on a different footing from cases where a Government servant is dismissed, compulsorily retired or otherwise removed from service before expiry of his normal tenure of service, say, before reaching the age of superannuation. The age of superannuation of the judicial officers stands extended up to 60 years but is not automatic. The right to continue in service is not absolute. It is hedged in by the liability to be (compulsorily) retired at the age of 58 on assessment and evaluation, in addition to the compulsory retirement at the earlier stages under the Service Rules. The Evaluation Committee decided not to extend the benefit of the increased superannuation age to the petitioner. The decision of the Committee is subject to ratification/endorsement by the Full Court. If the Full Court ratifies/endorsees the decision of the Evaluation Committee it will necessarily relate back to 31st January, 1994 i.e. the date on which the petitioner attained the age of 58 years. Granting consequential relief by directing that the petitioner will be deemed to continue in service will result in an anomalous situation and will be contrary to the judgment of the Supreme Court. The petitioner cannot claim any right except these under the two judgments of the Supreme Court. Public interest and expediency should deter this Court from giving any such relief at this stage. I am satisfied that no consequential relief of any kind can be granted.

27. In the result, the impugned communication dated 23rd November, 1993 (Annexure 12) is quashed. The matter shall now proceed from the stage of Annexure-D in the light of the observations made above. The further proceeding shall be expedited. The writ application is, accordingly, allowed, but there will be no order as to costs.

K.S. Paripoornan, C.J.

28. I agree.

N.K. Sinha, J.

29. I agree.

A.K. Ganguly, J.

30. I agree.

Ashish N. Trivedi, J.

31. I agree.