

---

**(2016) 03 JH CK 0026**  
**In the Jharkhand High Court**  
**Case No : W.P.(S) No. 5775 of 2012**

Syed Mohammad Wasim

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

---

**Date of Decision :** 03-03-2016

**Acts Referred:**

Constitution of India, 1950 — Article 235

**Citation :** (2016) 2 JCR 511

**Hon'ble Judges :** Virender Singh, C.J. and S. Chandrashekhar, J.

**Bench :** Division Bench

**Advocate :** Rajendra Krishna, Advocate, for the Appellant;

**Final Decision :** Dismissed

---

## Judgement

1. Aggrieved by order dated 29.05.2012 whereby, the petitioner has been retired compulsorily w.e.f. 31.05.2012, the present writ petition has been filed.

2. The brief facts of the case are that, the petitioner was appointed as Munsif vide notification dated 28.10.1986 and he joined as probationer Munsif on 26.11.1986. After completion of probation period, the petitioner was confirmed on the post of Munsif. Subsequently, he was promoted to the cadre of Subordinate Judge and he was posted as Sub-Judge-1V, Dumka. Additionally, vide notification dated 30.08.2002 he was conferred power of the Court of Sessions. In October, 2002, he was transferred to Jamtara as Sub Judge-1-cum-A.C.J.M.-cum-Assistant Sessions Judge, Jamtara. While posted at Jamtara, the petitioner was put under suspension on 21.11.2003 however, the order of suspension was revoked on 16.12.2004 and a departmental proceeding was initiated against him by serving Memorandum of Charge dated 17.02.2005. The petitioner was awarded punishment of stoppage of three annual increments with cumulative effect vide order dated 13.11.2006. Against the said order the petitioner made representation on 28.11.2006 however, the High Court rejected his representation and the decision of the High Court was communicated to him by the Registrar General vide letter dated 24.04.2007. Though, the petitioner

during the period 2009-2012 achieved significant disposal of contested matters and while working as in-charge, Secretary, District Legal Services Authority at Godda, disposed of five cases however, notification dated 29.05.2012 was issued whereby, he has been compulsorily retired from service under Rule 74(b)(ii) of the Jharkhand Service Code, 2001.

3. Heard the learned counsel for the parties and perused the documents on record.

4. Mr. Rajendra Krishna, the learned counsel for the petitioner submits that order dated 29.05.2012 under Rule 74(b)(ii) of Jharkhand Service Code, 2001 has been issued only on the basis of two adverse remarks pertaining to the year, 2008-09 during which the disposal of cases by the petitioner was not upto mark. It is contended that the entire service record of the petitioner was not looked into and there was no objective material before the High Court to make recommendation for compulsory retirement of the petitioner under Rule 74 (b) (ii) of the Jharkhand Service Code, 2001.

5. Per-contra Mr. Ananda Sen, the learned counsel for the High Court referring to the Annual Confidential Reports of the petitioner submits that the petitioner has rendered himself as an ineffective officer who has rightly been compulsorily retired in "public interest" under Rule 74(b)(ii). It is contended that the entire service record of the petitioner has been assessed by the Screening Committee as well as the Standing Committee of the High Court and therefore, no interference is warranted with the impugned order dated 29.05.2012.

6. Before examining the rival contentions, it needs to be re-emphasized that 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 weed out the dead wood. In tune with the above proposition, in "All India Judges" Association and others v. Union of India and others" reported in , (1993) 4 SCC 288, the Hon"ble Supreme Court has emphasized that the benefit of increase in retirement age to 60 years is not available to all judicial officers automatically rather, the benefit is available to only those who, in the opinion of the respective High Court, have a potential for continued useful service.

7. In the counter-affidavit, the High Court has taken a stand that in view of letter dated 14.10.2008 of the Hon"ble Chief Justice of India in the matter of evaluation of judicial officers on the basis of their service records, quality of judgment etc., a list of 10 judicial officers including, the petitioner was placed before the Hon"ble Chief Justice and the Hon"ble Chief Justice was pleased to refer the matter to the Screening Committee of the High Court. The entire service record, overall performance and the vigilance report of all those officers were considered by the Screening Committee and, it was resolved by Minutes dated 11.04.2012 that the petitioner and other 9 judicial officers are not required to be continued in service and accordingly, they may be compulsorily retired from service under Rule 74(b)(ii) of the Jharkhand Service Code, 2001. The

recommendation of the Screening Committee was again placed before the Hon"ble Chief Justice and upon the direction of the Hon"ble Chief Justice the matter was placed before the Standing Committee of the High Court. It has been asserted by the High Court that vide Minutes dated 09.05.2012, the Standing Committee resolved to accept the recommendation of the Screening Committee and accordingly, the recommendation was forwarded to the Government for compulsory retirement of the petitioner and other 9 judicial officers under Rule 74(b)(ii) of the Jharkhand Service Code, 2001. In the aforesaid facts, the contention that the petitioner"s entire service record was not considered by the High Court must be rejected.

8. The Annual Confidential Reports of the petitioner reveal that the petitioner has been assessed as an average officer. The best remark for the petitioner was recorded in the first year of his service when he was assessed as "a capable officer". Other remarks, in the year 1997-98 as "well behaved" and for the year 1998-99 as "good officer", do not seem to advance the case of the petitioner when the assessment of his knowledge for different years is noticed. For consecutive three years the petitioner has been assessed as a "tolerable", "workable" and "not prompt" officer. Again for the assessment year, 2005-06 it has been found that in the whole of the year he disposed of only 35 cases, out of which only 17 cases were contested. The Annual Confidential Reports for the year, 2006-07 and 2007-08 again record "capable of improvement". After about 30 years of service when a remark is given in the ACR that the petitioner needs more training for improvement/specialization in judgment writing and he is lagging behind in dedication in work, the same speak volumes of the utility and continuance of the petitioner in service. It would not be out of context to notice that on serious charge of negligence, dereliction of duty etc. for granting bail in cases exclusively triable by the Court of Sessions and the Special Court, the petitioner has been awarded penalty of stoppage of three annual increments with cumulative effect.

9. The plea of promotion taken by the petitioner to contend that his merit and utility have been accepted by High Court is liable to be rejected. Promotions are granted on different considerations and subject to adverse entry in ACR, vigilance enquiry etc. generally length of service is the guiding factor whereas, overall profile of a judicial officer is the main consideration for a decision to compulsorily retire the officer under Rule 74(b)(ii). In "S.D. Singh v. Jharkhand High Court through R.G. and others" reported in , (2005) 13 SCC 737, the judicial officer was granted promotions superseding several senior officers and the adverse proceeding against him was dropped, still approving the decision of the High Court to compulsorily retire the judicial officer, the Hon"ble Supreme Court held that, "the petitioner"s reliance upon an order of promotion superseding others is misplaced since it merely shows that the petitioner was better than those who were superseded but does not establish that the petitioner was fit to continue in service".

10. From the materials brought on record, it is apparent that the High Court was careful enough to examine the entire service record of the petitioner before forwarding the recommendation for his compulsory retirement under Rule 74(b) (ii). The matter was examined by the Screening Committee and thereafter, by the Standing Committee of the High Court. Nothing has been brought to our notice by the petitioner to even indicate that the impugned order dated 29.05.2012 under Rule 74(b)(ii) of the Jharkhand Service Code, 2001 is not based on objective examination of the entire service record of the petitioner by the High Court. In "Syed T.A. Naqshbandi and others v. State of Jammu & Kashmir and others, reported in , (2003) 9 SCC 592, the Hon"ble Supreme Court has held as under :

10. ".....Neither the High Court nor this Court, in exercise of its powers of judicial review, could or would at any rate substitute themselves in the place of the Committee/Full Court of the High Court concerned, to make an independent reassessment of the same, as if sitting on an appeal..... In the very nature of things it would be difficult, nearing almost an impossibility to subject such exercise undertaken by the Full Court, to judicial review except in an extraordinary case when the Court is convinced that some monstrous thing which ought not to have taken place has really happened and not merely because there could be another possible view or someone has some grievance about the exercise undertaken by the Committee/Full Court..... "

11. Considering the facts noticed hereinabove, what follows is that, no interference is required with the impugned order dated 29.05.2012 and, resultantly, the writ petition fails and accordingly, dismissed.