

A HIGH COURT OF JUDICATURE AT BOMBAY THROUGH
REGISTRAR AND ANR.

v.

BRIJ. MOHAN GUPTA (DEAD) THROUGH LRS. AND ANR.

JANUARY 23, 2003

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[V.N. KHARE, CJI., S.B. SINHA AND DR. AR. LAKSHMANAN, JJ.]

Service Law:

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Judiciary—Higher Judicial Service—Continuing of an H.J.S. Officer in service upto 60 years of age—Maharashtra Higher Judiciary Service—Officer not completing 10 years' qualifying service at the age of superannuation—Consideration for continuing the officer in service till 60 years—Committee constituted by High Court as per Judge's Case-II after scrutinising service record of the officer recommending his retirement at 58 years—Order of retirement issued—Writ petition by officer—High Court allowing the claim of officer that under r.10(3)(c) he was entitled to continue till completion of 10 years' qualifying service in order to get benefit of r.53—Held, by virtue of Judges Case-I and Judges Case-II, r.10(3)(c) stood subrogated—Only in the event the age of superannuation of judicial officers is 60 years under the service Rules, the question of review of his performance on attaining the age of 58 years would not arise—But when under the relevant service Rules the age of superannuation is 58 years or below, the officer would be entitled to the benefit of judgment in Judges Case-II in which event the limitations of applicability thereof would also squarely apply—Recommendation of the committee and administrative order passed by High Court were strictly in terms of Judges Case-I and Judges Case-II—Judgment of High Court set aside—However, in view of peculiar facts and circumstances of the case, officer held to have retired on completion of 10 years, service and retiral benefits would be payable accordingly—Maharashtra Civil Services (Pension) Rules, 1982—rr.10(3) (c) and 53..

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All India Judges' Association and Ors, v. Union of India and Ors., [1993] 4 SCC 288 (Judges Case-II) and All India Judges' Association and Ors. v. Union of India and Ors., [1992] 1 SCC 119 (Judges Case-I), relied on.

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Maharashtra Civil Services (Pension) Rules, 1982—rr.10(3)(c) and 53— A
In view of Judges Case-I and Judges case-II, r.10(3)(c) stood subrogated.

All India Judges' Association and Ors. v. Union of India and Ors.
 [1992] 1 SCC 119 and *All India Judges' Association and Ors. v. Union of*
India and Ors., [1993] 4 SCC 288, referred to. B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 137/1999.

From the Judgment and Order dated 30.4.98 of the High Court of
 Bombay in WP 1210/97.

U.U. Lalit, S.S. Shinde, V.N. Raghupathy, K.B.S. Rajan, Anil Kumar C
 Sinha, P. Narasimhan and Naresh Kumar for the appearing parties.

The Judgment of the Court was delivered by

C.A. No. 137/1999

The respondent herein Brij Mohan Gupta was born on 2nd July, 1939. D
 He was directly appointed from the Bar as a Judge of City Civil & Sessions
 Court, Bombay (Maharashtra Higher Judicial Service). He assumed charge
 on 4th November, 1988. In normal course, the respondent would have
 completed 10 years of service on 4th November, 1998. He would have attained
 the age of 58 years on 2nd July, 1997 and the age of 60 years on 2nd July. E
 1999.

The High Court of Bombay, in view of the decision of this Court in *All*
India Judges' Association and Ors. v. Union of India and Ors., [1993] 4 SCC
 288 (hereinafter referred to as "Judges Case-II"), appointed a Committee to
 review the case of the respondent for giving him the benefit of continuity in
 service till the age of 60 years. The Committee made an adverse report
 against the respondent and recommended that he may be made to retire on
 attaining the age of 58 years. The High Court, in view of the recommendation
 of the Committee, issued an order on 30th July, 1997, retiring the respondent
 from service w.e.f. 31st July, 1997. Aggrieved, the respondent filed a petition
 under Article 226 of the Constitution before the Bombay High Court. G

The case of the respondent before the High Court was that under Rule
 10(3)(c) of the Maharashtra Civil Services (Pension) Rules, 1982, he was
 entitled to continue till completion of 10 years' qualifying service which was
 necessary to entitle him to get the benefit of Rule 53 of the Rules. The High H

A Court accepted the said argument and held that the respondent would be entitled to continue in service until 4th November, 1998 on which date he would have completed 10 years in service and as a result the respondent would be liable to retire from service when he actually would complete 59 years, 4 months and 2 days. In that view of the matter, the writ petition was allowed and the impugned order stood modified.

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It is against the said judgment of the High Court, the appellants are before us in appeal.

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Mr. U. U. Lalit, learned counsel appearing for the appellants contends that in terms of *Judges Case-I* [1992] 1 SCC 119 and *Judges Case-II* [1993] 4 SCC 288. Rule 10(3)(c) stood subrogated therein and the High Court was justified in taking a decision on completion of the age of 58 years of the respondent to find out whether he would be allowed to continue till the age of 58 years. We find merit in his contention.

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In *Judges Case-I*, a direction was issued by this Court to all the States and the Union Territories, including the State of Maharashtra, to fix the age of retirement at 60 years w.e.f. 31st December, 1992 in respect of members of the Judicial Service. In *Judges Case-II* again this Court held that where there is no Rule providing for the age of superannuation at the age of 60 years, a Committee of the High Court should undertake and complete the

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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 respective Service Rules applicable to Judicial Officers; that 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

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58 years by following the said procedure for compulsory retirement; and that the exercise should be undertaken before the attainment of the age of 58 years even in case where earlier the age of superannuation was less than 58 years.

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In terms of these directions, the Chief Justices of the respective High Courts were required to set up appropriate Committees of five Hon'ble Judges to look into the service records of the concerned Judicial Officer, so as to consider as to whether he should be allowed to continue upto the age of 60 years. The said procedure was followed in the instant case.

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The five-Judges Committee looked into the records of the respondent and opined:

“The Committee has considered the annual Confidential Reports of Shri Gupta for the last 5 years i.e. since 1992. He lacks integrity. He does not enjoy good reputation. His behaviour with the members of Bar and public is unsatisfactory. He is rated as a poor Judge. The S.I.D. record shows that in File No. SID/BY/34/93, the Disciplinary Committee has, on 29th March issued a warning informing him that he should be more careful while passing order in future.

Considering the material placed before the Committee and the overall performance of Shri Gupta, the Committee is of the opinion that he is not suitable to be continued, his performance is not upto the mark and therefore, he does not deserve grant of benefit of increase of retirement age of 60 years.”

In view of the said report, the respondent was made to retire on attaining the age of 58 years i.e. 30.7.1997.

Rule 10(3)(c) of the Maharashtra Civil Service (Pension) Rule, 1982 is applicable only to the direct appointees from the Bar. By reason thereof, the benefit of pension has been extended to them so as to enable them to complete the minimum qualifying service of ten years subject to the outer limit of 60 years of age. The normal age of superannuation of such an officer would either be completion of ten years of service or 55 years whichever is earlier. In that view of the matter, the respondent would have reached the age of superannuation on attaining the age of 55 years. He, however, in view of the benefit conferred in terms of the Judges’ Case, as referred to hereinbefore, was to retire at the age of 60 years but such benefit was subject to the conditions laid down therein. Only in the event the age of superannuation of the judicial officers is 60 years under the Service Rules, the question of review of his performance on attaining the age of 58 years would not arise; but when under the Service Rules applicable to the judicial officers the age of superannuation is 58 years or below, he would be entitled to the benefit of the judgment, in which event the limitations of applicability thereof would also squarely apply.

In our view, the exercise of setting up a Committee by the Chief Justice, the recommendation made by the Committee and also finally the administrative order passed by the High Court, were strictly in terms of the Judges Case-I and Judges Case-II. In fact, by virtue of Judges Case-I and Judges Case-II, Rule 10(3)(c) stood subordinated. We are, therefore, of the view that the judgment under challenge is not in conformity with the aforesaid decisions

A and is liable to be set aside.

However, in the peculiar facts and circumstances of the case and particularly in view of the fact that the original respondent has expired on 17.3.2001, we direct that he may be held to have retired on completion of 10 years of service and in that view of the matter, all retiral benefits would be payable in accordance with law. We have taken this view as in the event, the respondent was allowed to complete ten years of his service, he would have retired at the age of 58 years six months only.

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C In that view of the matter, we are not inclined to interfere in the matter. The appeal is disposed of with the aforementioned observations and directions.

C.A.No.138/1999

Learned counsel appearing for the appellant states that the appeal is rendered infructuous. It is dismissed as such.

D R.P.

Appeal disposed of.