A S.D. SINGH

v.

JHARKHAND HIGH COURT, THROUGH R.G. AND ORS.

DECEMBER 7, 2005

B [MRS. RUMA PAL AND DR. AR. LAKSHMANAN, JJ.]

Service Law:

Judicial service—Judicial Officer in State of Jharkhand—
C *Superannuation—Benefit of enhancement of retirement age from 58 to 60 years—Not given to the petitioner—Held, the High Court of Jharkhand did not frame any rules in terms of the directions given by this Court in the second* **All India Judges Association*** *case—The decision in the third All* **India Judges Association** *case** *did not interfere with or modify the directions*
D *given in 1993—It would follow that the directions as formulated in 1993 in the second All India Judges Association case would continue to prevail as far as the Jharkhand High Court was concerned—The High Court, therefore, was required to consider the writ petitioner's case and after asking for his consent when he neared the age of 58 years to continue in service, take a decision whether to continue him in* **such** *service on the basis of his service*
E *record—on facts An Evaluation Committee was set up by the High Court—The Committee considered the service record of the petitioner and recommended that he should not be continued in service beyond the age of 58 years—The matter was placed before the Full Court which approved the recommendations of the Evaluation Committee—Writ Petition dismissed.*

F **All India Judges' Association* **v.** *Union of India,* **[1993] 4 SCC 288, relied on.**

All India Judges Association **v.** *Union of India,* **[1992] 1 SCC 127;** *Syed T.A. Naqshbandhi* **v.** *State of J & K,* **[2003] 9 SCC 592 and** *Rajat Burman Rai*
G **v.** *State of West Bengal,* **[1999] 4 SCC 235, relied on.**

***All India Judges Association* **v.** *Union of India,* **[2000] 2 SCC 247 and** *High Court of Judicature at Allahabad* **v.** *Sarnam Singh,* **[2000] 2 SCC 339, referred to.**

H

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 393 of 2003. A

(Under Article 32 of the Constitution of India).

Anurag Kumar, Sudama Ojha and Dr. Maya Rao for the Petitioner.

Ashok Mathur for the Respondents. B

The Order of the Court was delivered :

The question is whether the petitioner could have been asked to retire at the age of 58 years and his service not extended to the age of 60 years. The petitioner was an Additional District Judge. In 2003 he was served with C an order dated 14th May, 2003 stating that the Court having assessed and evaluated the petitioner's services had taken a decision not to allow the petitioner the benefit of enhancement of the retirement age from 58 to 60 years. Consequently, the petitioner would have to retire on completion of the age of 58 years on superannuation on 31st December, 2003.

D

The order has ben impugned under Article 32 of the Constitution of India on the ground that the decision relied upon in the impugned order, namely, *All India Judges' Association* v. *Union of India,* reported in [1993] 4 SCC 288 did not apply to the petitioner's case. It is also submitted that the grounds for not extending the petitioner's services as disclosed in the counter E affidavits filed by the respondents in answer to the writ petition, were unsustainable in fact and in law.

In *All India Judges Association* v. *Union of India,* [1992] 1 SCC 127 this Court had, on an application by the Judges Association under Article 32 of the Constitution *inter alia* directed that appropriate rules should be framed F or the extant ruled must be amended in all the States and the Union Territories in respect of judicial services so as to fix the age of retirement at 60 years with effect from December 31, 1992. This and other directions were reconsidered by this Court in 1993 on an application for review filed by the Union of India and various States in *All India Judges Association* v. *Union of India,* [1993] 4 SCC 288 (referred to as the second All India Judges Association Case). G While disposing of the review application, it was stated that "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 potential H

A 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 of service, character rolls, B quality of judgment and other relevant matters. The High Court should undertake 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 as eligible by this standard C should not be given the benefit of the higher retirement age and should be compulsory 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 D the entitlement 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".

E Before giving the aforesaid directions the Court made it clear that "the directions issued mere aids and incidental to and supplemental of the main direction and intended as a transitional measure till a comprehensive national policy is evolved. These directions, to the extent they go, are both reasonable and necessary."

F There is no national policy evolved nor have any rules been framed by the High Court at Jharkhand for changing the date of retirement as prescribed by this Court in its decision on the review application.

The State of Uttar Pradesh, however, framed rules enhancing the retirement age to 60 years. The question whether these rules would prevail G over the directions issued in the second All India Judges Association case was considered again in the case of *High Court of Judicature at Allahabad* v. *Sarnam Singh,* [2002] 2 SCC 339 where it has been held that once rules have been framed, the directions given by the Court would not apply. Therefore, where necessary serviced rules had been framed extending the age of retirement, the procedure prescribed in the second *All India Judges Association* case H

would be inapplicable and the concerned officers would continue in service in accordance with the service rules. However, it was made clear that if there were no ruled framed, then the Judicial Officers were to continue in service till the age of 60 years in accordance with the directions of this Court in the earlier case, provided the Officers, on a scrutiny of their service records in accordance with the directions issued in the second *All India Judges Association* case were found suitable for the benefit of extended service.

It was made clear that the directions given in second *All India Judges Association* case yielded the new rules and therefore it was no longer incumbent upon the High Court to resort to the procedure on scrutiny of the service records of all judicial officers before allowing them the benefit of extension in the age of retirement. The Court in giving this decision followed the larger bench decision of this Court to the same effect in *Rajat Burman Rai* v. *State of West Bengal,* [1999] 4 SCC 235.

The issue pertaining to the working conditions of the members of the subordinate judiciary was again raised in *All India Judges Association* v. *Union of India,* [2000] 2 SCC 247 (referred to as the third *All India Judges Association* case). The writ petition which was disposed of by that judgment was filed having regard to the final report of the Justice Shetty Commission that there shall be an increase in retirement age of the subordinate judiciary from 60 to 62 years. The recommendation was negatived (vide paragraph 26 of the judgment) since it was felt that it was inappropriate to provide for the identical age of retirement for the subordinate judiciary service as well as for the High Court. This Court, however, recommended that the State Governments should formulate the appropriate rules for re-employment of the judicial officers till the age of 62 years if there were vacancies in the cadre of the District Judge. Other directions which are not relevant for the purpose of this appeal were also given. The Court then required the States as well as the Union of India to submit their compliance report by 30.9.2002.

It is unclear whether this time frame was for extending the age from 58 to 60 years or for providing for re-employment once the extension up to the age of 60 years had already been provided for statutorily. Be that as it may, as we have stated earlier the High Court of Jharkhand did not frame any rules in terms of the directions given by this Court in the second *All India Judges Association* case. The decision in the third *All India Judges Association* case did not interfere with or modify the directions given in 1993. It would follow, in our opinion, that the directions as formulated in 1993 in the second All

A India Judges Association case would continue to prevail as far as the Jharkhand High Court was concerned.

The High Court, therefore, was required to consider the writ petitioner's case and after asking for his consent when he neared the age of 58 years to continue him in such service on the basis of the service record of the B petitioner.

It appears that an Evaluation Committee was set up by the High Court. The Evaluation Committee considered the service records of the petitioner and recommended that the petitioner and two others should not be continued in service beyond the age of 58 years. The matter was placed before the Full C Court which approved the recommendations of the Evaluation Committee. The impugned letter dated 14.5.03 was written to the petitioner in the aforesaid circumstances.

The petitioner's contention is that he was a very good officer as his D records would show. Reliance has been placed particularly on an order dated 27.9.1999 by which the petitioner along with others superseded several senior officers to be posted as an Additional District Judge. Reference has also been made to various remarks in the petitioner's Annual Confidential Reports (ACRs) that the petitioner was a good officer.

E It may be noted, at the outset, that the petitioner has not urged any grounds of *malafides*. In the counter affidavit it has been stated that the Evaluation Committee had taken into consideration the petitioner's ACRs from 1976 to 1977, many of which showed that the petitioner was an average immediately preceding the petitioner's achieving the age of 58 years. Additionally, it was noted that a vigilance proceeding had been initiated F against the petitioner on the basis of several allegations made against him including a report made by the inspecting judge who had made an inspection and had reported that the petitioner did not have a good reputation. However, it was also noted that as far as the allegation of the inspecting judge was concerned the matter was placed in the Standing Committee meeting and was G ultimately dropped. Although the petitioner has denied the allegations on merits, he has not denied in response to the counter affidavit that such a vigilance case was in fact pending. In the circumstances, it cannot be said that there was no material on the basis on which the Evaluation Committee and subsequently the Full Court of the High Court formed the opinion that the petitioner was not suitable for continuing in service beyond the age of H 58 years. The petitioner's reliance upon an order of promotion supersending

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. It has been held by this Court in *Syed T.A. Nagshbandhi* v. *State of J and K,* reported in [2003] 9 SCC 592;

> "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. On a careful consideration of the entire material brought to our notice by learned counsel on either side, we are satisfied that the evaluation made by the Committee/Full Court forming their unanimous opinion is neither so arbitrary or capricious nor can be said to be so irrational as to shock the conscience of the Court to warrant or justify any interference. In cases of such assessment, evaluation and formulation of opinions, a vast range of multiple factors play a vital and important role and no one factor should be allowed to be overblown out of proportion either to decry or deify an issue to be resolved or claim sought to be considered or asserted. 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."

We respectfully adopt the view. The writ petition is, therefore dismissed but without any order as to costs.

R.P. Writ petition dismissed.