

[2011] 15 (ADDL.) S.C.R. 51

HIGH COURT OF JUDICATURE, PATNA

v.

SHIVESHWAR NARAYAN AND ANR.

(Civil Appeal No. 6103 of 2005)

SEPTEMBER 22, 2011

[R.M. LODHA AND JAGDISH SINGH KHEHAR, JJ.]

Constitution of India, 1950 – Article 226 – Judicial review – Scope of – Benefit of increase of retirement age from 58 years to 60 years – Denied to Judicial Officer ‘S’ on basis of report of Evaluation Committee (constituted by the High Court) as accepted and approved by the Full Court of the High Court – ‘S’ filed writ petition – Division Bench of High Court allowed the same and directed the High Court on its administrative side to re-evaluate the case of ‘S’ for extension of service upto 60 years – Whether the Division Bench of the High Court was justified in its power of judicial review under Article 226 of the Constitution to interfere with the unanimous administrative decision of the Full Court – Held: The Division Bench of the High Court considered the matter as if it was sitting in appeal over the decision of the High Court on administrative side which was not permissible – The Division Bench failed to keep in mind the distinction between judicial review and merit review and, thereby committed a serious error in examining the merits of the decision of the Full Court – Even if, some other view was possible on the material that was considered by the Evaluation Committee and the Full Court to evaluate the case of ‘S’ for extension of superannuation age to 60 years, that did not justify interference in the decision of the Full Court which was founded on material and relevant considerations – There was not even an iota of allegation of bias or mala fides- nor it could have been- against the decision making authority – The Division Bench of the High Court was, thus, clearly in error in interfering with the decision of the High Court on

A *administrative side in not extending the benefit of enhancement of retirement age of the Judicial Officer from 58 to 60 years – Judicial Service.*

Judicial Service – Benefit of increase in retirement age of Judicial Officer from 58 years to 60 years – Grant of –
 B *Considerations of continued usefulness in service – Held: A Judicial Officer may have a service record not tainted by many adverse remarks; he may have got promotion from time to time but still he may be found to be lacking in potential for continued useful service – In assessing potential*
 C *for continued useful service, the entire record of service, character rolls, quality of judgments are of considerable importance – At the same time, over-all reputation of a Judge in the entire period of service, his judicial conduct, objective and impartial performance throughout his career are the*
 D *relevant factors which also have to be kept in mind.*

'S', a Judicial officer prayed for extension of his retirement age from 58 years to 60 years. In light of the decision in *All India Judges' Association* case, the Chief Justice of the Patna High Court constituted an Evaluation
 E **Committee for assessment and evaluation of the service records of sixteen judicial officers including 'S', to find out whether they had potential for continued useful service upto 60 years. The Evaluation Committee finally resolved that 'S' did not have the potential for continued**
 F **useful service after attaining the age of 58 years. The report of the Evaluation Committee was unanimously accepted by the Full Court of the High Court and thus 'S' was denied the benefit of increase in retirement age. 'S' filed writ petition before a Division Bench of the High**
 G **Court which allowed the same and directed the High Court on its administrative side to re-evaluate his case for extension of service from 58 to 60 years.**

The question which arose for consideration in the instant appeal was whether the Division Bench of the
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High Court was justified in its power of judicial review under Article 226 of the Constitution of India to interfere with the unanimous administrative decision of the Full Court.

Allowing the appeal filed by High Court of Judicature, Patna and dismissing the appeal filed by Judicial officer 'S', the Court

HELD: 1. The primary consideration for the High Court in extending benefit of increase in the retirement age of the Judicial Officer is his continued usefulness in the service based on entire service record, quality of judgments, his conduct, integrity and all other relevant factors. A Judicial Officer may have a service record not tainted by many adverse remarks; he may have got promotion from time to time but still he may be found to be lacking in potential for continued useful service. In assessing potential for continued useful service, the entire record of service, character rolls, quality of judgments are of considerable importance. At the same time, over-all reputation of a Judge in the entire period of service, his judicial conduct, objective and impartial performance throughout his career are the relevant factors which also have to be kept in mind. [Para 11] [60-A-E]

All India Judges' Association and Ors. vs. Union of India and Ors. (1993) 4 SCC 288: 1993 (1) Suppl. SCR 749 – referred to.

2. A Judicial Officer is not an ordinary government servant; he exercises sovereign judicial power. Like Caesar's wife; he must be above suspicion. The personality of an honest judicial officer is ultimate guarantee to justice. The judicial officers hold office of great trust and responsibility and their judicial conduct must not be beyond the pale. A slightest dishonesty (monetary, intellectual or institutional) by a judicial officer

A may have disastrous effect. The repeated complaints of
 judicial impropriety and questionable integrity against a
 judicial officer – although not proved to the hilt – may be
 sufficient basis to disentitle such judicial officer the
 benefit of extension of retirement age to 60 years. [Para
 B 11] [60-F-G]

3.1. From the material on record, it is apparent that
 in the course of service, ten complaints were received
 against 'S' from time to time. In the complaints, there were
 C allegations that he decided cases on considerations
 other than judicial; he indulged in mis-behaviour and use
 of unparliamentary language while conducting court
 proceedings; he granted bail in a triple murder case
 where the High Court had rejected the bail thrice; he
 committed irregularities in the judicial proceedings etc. In
 D relation to some of the complaints, inquiries were
 instituted. In one of the inquiries relating to grant of bail
 orders, it was found that the bail orders, passed by the
 Judicial Officer, were not sound but the inquiry was
 dropped as there was delay in making a complaint. In yet
 E another complaint relating to grant of bail orders,
 although it was found that the bail orders were not sound
 but no action was taken on the administrative side as it
 was opined that the merits of these orders would be seen
 on judicial side. In respect of his mis-behaviour with a
 F member of the Bar, in inquiry, the District & Sessions
 Judge did find that unpleasant words were used by the
 Judicial Officer but the advocate was also found to have
 used unpleasant words and, therefore, no action was
 taken. He was also found lazy in the confidential roll of
 G the year 1982-1983. In a service span of almost 30 years,
 most of the time, the Judicial Officer was adjudged as an
 "average officer". It is true that entry "below average
 officer" was expunged but the fact of the matter is that
 he was never adjudged an "outstanding" or "very good
 H officer". [Para 16] [62-A-F]

3.2. In the backdrop of the material as abovesaid, if the Evaluation Committee formed an opinion that Judicial Officer did not have potential for continued service and that decision has been accepted and approved by the Full Court unanimously, it cannot be said that the decision of the Full Court in not extending benefit of increase of retirement age to 60 years is based on irrelevant considerations or no material. The use of the expression by the Evaluation Committee in its resolution viz; 'further continuance in service will not be in public interest' has to be read in the context of the subsequent expression immediately following i.e. 'as he does not have the potential for continued useful service'. The Evaluation Committee evaluated and assessed the case of the Judicial Officer with a primary object to find out as to whether Judicial Officer has potential for continued useful service and having regard to the entire service record, character rolls, quality of judgments and other relevant factors, concluded that he does not have potential for continued useful service. The Full Court unanimously accepted and approved the view of the Evaluation Committee. The decision making process is, thus, not at all flawed. The Division Bench considered the matter as if it was sitting in appeal over the decision of the High Court on administrative side which was not permissible. The consideration of the matter by the Division Bench shows that it went into the correctness of the decision itself taken by the High Court on the administrative side and not the correctness of the decision making process. The Division Bench of the High Court failed to keep in mind the distinction between judicial review and merit review and, thereby committed a serious error in examining the merits of the decision of the Full Court. [Paras 17, 18] [62-G-H; 63-A-F]

3.3. To find out the potentiality of a Judicial Officer for continuation in service beyond the age of 58 years

A following the decision of this Court in *All India Judges' Association*, the entire record of service, character rolls, quality of judgments and other relevant circumstances like general reputation, integrity, efficiency, performance, conduct etc. do form the basis but at the same time, it is not 'proved dishonesty' or 'proved mis-conduct' that is determinative but doubtful integrity or suspicious judicial conduct may be sufficient to deny a judicial officer benefit of enhancement of superannuation age to 60 years. It is in totality of the circumstances available from the entire service record and all other relevant circumstances that an opinion has to be formed whether or not the Judicial Officer deserves to be given benefit of increase of superannuation age to 60 years. [Para 19] [63-G-H; 64-A-B]

D 3.4. The present case is a case where the Division Bench embarked upon exercise of examining each complaint and material against the Judicial Officer to find out the correctness of the decision of the Full Court which was legally not permissible. The weight of the material is not capable of re-assessment while sitting in judicial review over such decision. Even if, some other view is possible on the material that was considered by the Evaluation Committee and the Full Court to evaluate the case of 'S' for extension of superannuation age to 60 years, that did not justify interference in the decision of the Full Court which was founded on material and relevant considerations. [Para 20] [64-C-D]

G *State of U.P. and Ors. vs. Maharaja Dharamander Prasad Singh and Ors.* (1989) 2 SCC 505: 1999 (1) SCR 37 and *Centre for PIL and Anr. vs Union of India and Anr.* (2011) 4 SCC 1 – referred to.

Chief Constable of the North Wales Police vs. Evans (1982) 3 All ER HL 141 – referred to.

H 4. There is not even an iota of allegation of bias or

mala fides- nor it could have been- against the decision making authority. The Division Bench of the High Court was, thus, clearly in error in interfering with the decision of the High Court on administrative side in not extending the benefit of enhancement of retirement age of 'S' from 58 to 60 years. [Paras 21, 22] [64-E-F]

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Case Law Reference:

1993 (1) Suppl. SCR 749 Referred to. Para 4

1982 (3) All ER HL 141 Referred to. Para 13

1999 (1) SCR 37 Referred to. Para 14

(2011) 4 SCC 1 Referred to. Para 15

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 6103 of 2005.

From the Judgment and Order dated 20.05.2005 of the Division Bench of the High Court of Judicature at Patna in Writ Petition being Civil Writ Jurisdiction Case No. 9325 of 2003.

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WITH

Civil Appeal No. 7372 of 2005

P.H. Parekh and Sunil Kumar, Ajay Kr. Jha, Vishal Prasad, Kshatrshal Raj (for Parekh & Co.) Parkash Sinha, S. Chandra Shekhar, Sarla Chandra for the appearing parties.

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The Judgment of the Court was delivered by

R.M. LODHA, J. These two appeals, by special leave, are from the judgment dated May 20, 2005 of the High Court of judicature at Patna (for short "the High Court") whereby the Division Bench of that court allowed the Writ Petition filed by Shri Shiveshwar Narayan (for short "Judicial Officer") and quashed the communication dated July 30, 2003 and directed the High Court on its administrative side to re evaluate the case of the Judicial Officer (petitioner therein) for extension of service upto the age of 60 years.

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2: One appeal has been filed by the High Court through its Registrar General and the other by the Judicial Officer.

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A 3. In appeal filed by the High Court, challenge is to the
 judgment dated May 20, 2005 whereby its communication on
 the administrative side dated July 30, 2003 refusing extension
 of service to the Judicial Officer beyond the age of 58 years
 has been quashed. In the other appeal, the grievance of the
 B Judicial Officer is that on allowing the Writ Petition, the Division
 Bench was not justified in directing the High Court on its
 administrative side to reevaluate the case of Judicial Officer
 for extension of service for two years.

C 4. In *All India Judges' Association and others vs. Union*
*of India and others*¹, this Court directed the enhancement of
 the superannuation age of the judicial officers to 60 years. While
 directing so, this Court made it clear that the benefit of
 increased age to 60 years shall not be available automatically
 to all the judicial officers and the benefit will be available to
 D those who, in the opinion of the respective High Courts, have
 a potential for continued useful service.

E 5. In light of the decision in *All India Judges' Association*¹,
 the Chief Justice of the High Court constituted the Evaluation
 Committee for assessment and evaluation of service record
 concerning sixteen judicial officers, the present Judicial Officer
 being one of them, to find out whether they have potential for
 continued useful service upto 60 years. The case of the present
 Judicial Officer was required to be considered for extension of
 service as he was attaining the age of 58 years on July 15,
 F 2003 and by virtue of the State Government's decision dated
 September 29, 1973 he was entitled to work till the last date
 of July, 2003 only. The Evaluation Committee on consideration
 of the present Judicial Officer's entire service record and also
 having considered the quality of judgments, character rolls and
 G other relevant material including general reputation, efficiency,
 integrity and honesty, finally resolved on July 10, 2003 that he
 was not fit for further continuance in service in public interest
 as he does not have the potential for continued useful service.

H 6. The report of the Evaluation Committee came up for
 1. (1993) 4 SCC 288.

consideration before the Full Court of the High Court on July 26, 2003 and the Full Court unanimously, on that day, accepted and approved the decision of the Evaluation Committee denying the benefit of increase of retirement age to the present Judicial Officer.

7. On July 30, 2003, Judicial Officer received a communication from the Registrar General of the High Court informing him that he was not being given the benefit of enhancement of retirement age from 58 to 60 years.

8. The Judicial Officer challenged the Communication dated July 30, 2003 in a Writ Petition before the High Court and the Division Bench of that Court, as indicated above, by its judgment dated May 20, 2005, quashed the communication dated July 30, 2003 and further directed the High Court on its administrative side to re-evaluate his case for extension from 58 to 60 years.

9. In para 30 of the *All India Judges' Association*¹, this Court stated as follows:

“.....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 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, quality of judgments and other relevant matters.”

10. The direction for increase of retirement age to 60 years by this Court on consideration of the factors as indicated therein was basically of transitory nature until the statutory rules were

1. (1993) 4 SCC 288.

A put in place by respective State governments. However, no
 statutory rules were framed nor the rules governing
 superannuation were amended in the State of Bihar until 2003
 and, therefore, the case of the present Judicial Officer for
 increase of retirement age to 60 years had to be considered
 B in accordance with the judgment of this Court in *All India
 Judges' Association*¹.

11. The primary consideration for the High Court in
 extending benefit of increase in the retirement age of the
 C Judicial Officer is his continued usefulness in the service based
 on entire service record, quality of judgments, his conduct,
 integrity and all other relevant factors. A Judicial Officer may
 have a service record not tainted by many adverse remarks;
 he may have got promotion from time to time but still he may
 be found to be lacking in potential for continued useful service.
 D In assessing potential for continued useful service, obviously
 entire record of service, character rolls, quality of judgments are
 of considerable importance. At the same time, overall
 reputation of a Judge in the entire period of service, his judicial
 conduct, objective and impartial performance throughout his
 E career are the relevant factors which also have to be kept in
 mind. A Judicial Officer is not an ordinary government servant;
 he exercises sovereign judicial power. Like Caesar's wife; he
 must be above suspicion. The personality of an honest judicial
 officer is ultimate guarantee to justice. The judicial officers hold
 F office of great trust and responsibility and their judicial conduct
 must not be beyond the pale. A slightest dishonesty (monetary,
 intellectual or institutional) by a judicial officer may have
 disastrous effect. The repeated complaints of judicial
 G – although not proved to the hilt – may be sufficient basis to
 disentitle such judicial officer the benefit of extension of
 retirement age to 60 years.

12. The Evaluation Committee comprising of eight Judges

H ¹. (1993) 4 SCC 288.

including the Chief Justice on examination of the past service record, character rolls, quality of judgments and matters like general reputation, efficiency, integrity and honesty did not consider the present Judicial Officer fit for continued useful service after attaining the age of 58 years. The Full Court unanimously accepted and approved the decision of the Evaluation Committee. The question to be considered by us, is whether the Division Bench was justified in its power of judicial review under Article 226 of the Constitution of India to interfere with the unanimous administrative decision of the Full Court?

13. Lord Hailsham in *Chief Constable of the North Wales Police vs. Evans*² made the following statement:

“.....The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court.”

14. In *State of U.P. and others vs. Maharaja Dharamander Prasad Singh and others*³, it was held by this Court that judicial review is directed, not against the decision, but is confined to the examination of the decision-making process.

15. Recently, in the case of *Centre for PIL and another vs Union of India and another*⁴, a three Judge Bench of this Court stated that a difference between judicial review and merit review has to be kept in mind.

16. The present Judicial Officer joined the judicial service on April 8, 1974 as a Munsif and over the years got promotion. He was promoted to the post of Additional District & Sessions

2. (1982) 3 ALL ER HL 141.

3. (1989) 2 SCC 505.

4. (2011) 4 SCC 1.

A Judge on July 2, 1987 and confirmed as such on March 1, 1991. He was further promoted to the post of District & Sessions Judge on May 1, 1998. From the material on record, it is apparent that in the course of his service, ten complaints were received against him from time to time. In the complaints, there were allegations that he decided cases on considerations other than judicial; he indulged in mis-behaviour and use of unparliamentary language while conducting court proceedings; he granted bail in a triple murder case where the High Court had rejected the bail thrice; he committed irregularities in the judicial proceedings etc. In relation to some of the complaints, inquiries were instituted. In one of the inquiries relating to grant of bail orders, it was found that the bail orders, passed by the Judicial Officer, were not sound but the inquiry was dropped as there was delay in making a complaint. In yet another complaint relating to grant of bail orders, although it was found that the bail orders were not sound but no action was taken on the administrative side as it was opined that the merits of these orders would be seen on judicial side. In respect of his mis-behaviour with a member of the Bar, in inquiry, the District & Sessions Judge, Sasaram did find that unpleasant words were used by the Judicial Officer but the advocate was also found to have used unpleasant words and, therefore, no action was taken. He was also found lazy in the confidential roll of the year 1982-1983. In a service span of almost 30 years, most of the time, the Judicial Officer has been adjudged as an "average officer". It is true that entry "below average officer" was expunged but the fact of the matter is that he has never been adjudged an "outstanding" or "very good officer".

17. In the backdrop of the above material, if the Evaluation Committee formed an opinion that Judicial Officer did not have potential for continued service and that decision has been accepted and approved by the Full Court unanimously, can it be said that the decision of the Full Court in not extending benefit of increase of retirement age to 60 years is based on irrelevant considerations or no material? In our view, the answer

has to be no. The use of the expression by the Evaluation Committee in its resolution viz; 'further continuance in service will not be in public interest' has to be read in the context of the subsequent expression immediately following i.e. 'as he does not have the potential for continued useful service'. The Evaluation Committee evaluated and assessed the case of the Judicial Officer with a primary object to find out as to whether Judicial Officer has potential for continued useful service and having regard to the entire service record, character rolls, quality of judgments and other relevant factors, concluded that he does not have potential for continued useful service. The Full Court unanimously accepted and approved the view of the Evaluation Committee. The decision making process is, thus, not at all flawed. Unfortunately, the Division Bench considered the matter as if it was sitting in appeal over the decision of the High Court on administrative side which, in our view, was not permissible. The consideration of the matter by the Division Bench shows that it has gone into the correctness of the decision itself taken by the High Court on the administrative side and not the correctness of the decision making process.

18. On a careful reading of the judgment of the High Court, we are of the view that the Division Bench failed to keep in mind the distinction between judicial review and merit review and, thereby committed a serious error in examining the merits of the decision of the Full Court.

19. To find out the potentiality of a Judicial Officer for continuation in service beyond the age of 58 years following the decision of this Court in *All India Judges' Association*¹, obviously, the entire record of service, character rolls, quality of judgments and other relevant circumstances like general reputation, integrity, efficiency, performance, conduct etc. do form the basis but at the same time, it is not 'proved dishonesty' or 'proved mis-conduct' that is determinative but doubtful integrity or suspicious judicial conduct may be sufficient to deny

1. (1993) 4 SCC 288.

A a judicial officer benefit of enhancement of superannuation age
to 60 years. It is in totality of the circumstances available from
the entire service record and all other relevant circumstances
that an opinion has to be formed whether or not the Judicial
Officer deserves to be given benefit of increase of
B superannuation age to 60 years.

20. The present case is a case where the Division Bench
embarked upon exercise of examining each complaint and
material against the Judicial Officer to find out the correctness
of the decision of the Full Court which was legally not
C permissible. The weight of the material is not capable of re-
assessment while sitting in judicial review over such decision.
Even if, some other view is possible on the material that was
considered by the Evaluation Committee and the Full Court to
evaluate Judicial Officer's case for extension of superannuation
D age to 60 years, in our opinion, that did not justify interference
in the decision of the Full Court which was founded on material
and relevant considerations.

21. We may observe that there is not even an iota of
E allegation of bias or mala fides-nor it could have been-against
the decision making authority.

22. The Division Bench of the High Court was, thus, clearly
in error in interfering with the decision of the High Court on
administrative side in not extending the benefit of enhancement
F of retirement age of the Judicial Officer from 58 to 60 years.
23 Consequently, Civil Appeal No. 6103 of 2005, High Court
of Judicature, Patna vs. Shiveshwar Narayan and another is
allowed and Civil Appeal No. 7372 of 2005, Shiveshwar
Narayan vs. High Court of Judicature at Patna and another is
G dismissed. Parties shall bear their own costs.

B.B.B.

Appeals disposed of.