

**(2010) 10 JH CK 0005**

**Jharkhand High Court**

**Case No:** Writ Petition (S) No. 332 of 2009

Kumar Satish Chandra Sinha

APPELLANT

Vs

The Hon'ble High Court of  
Jharkhand and Others

RESPONDENT

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**Date of Decision:** Oct. 6, 2010

**Acts Referred:**

- Constitution of India, 1950 - Article 136, 142, 226, 235, 32
- Jharkhand Service Code, 2001 - Section 74

**Hon'ble Judges:** Bhagwati Prasad, C.J; J.C.S. Rawat, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

1. Heard the learned Counsel for the parties.

2. The present writ petition has been filed by the Petitioner challenging the order as contained in Annexure 3 to the writ petition dated 17.7.2008 issued by the Respondent No. 4 whereby the Petitioner has been compulsorily retired from Subordinate Judicial Service prematurely upon completion of 50 years of age u/s 74(b)(2) of the Jharkhand Service Code.

3. The Petitioner was appointed as a Probationer Munsif at Civil Court Hajipur (Vaishali). The Petitioner had been working at Latehar as ACJM at the time when he was compulsorily retired from service. Learned Counsel has contended that the powers under Rule 74(b)(ii) of the Jharkhand Service Code does not confer any unfettered or unbridled right upon the appointing authority to prematurely retire an. employee/officer on the ground that he has completed 50 years of age. It was further contended that to conclude that the Petitioner is liable to be retired prematurely in public interest would mean that his continuance or retention in service is not in public interest. Learned Counsel further contended that the character role of the Petitioner is unblemished and he has got adverse entries in his

service record. So he is not liable to be singled out to suffer premature retirement.

4. Learned Counsel appearing on behalf of the Respondents, on the other hand, contended that several allegations of different nature were levelled against the Petitioner at different places and he was also transferred in mid term. He was given chance to emend his conduct and improve his efficiency; in the entire service period, a series of allegations of different natures with regard to different cases of extraneous considerations forming caucus with certain lawyers as well as allegations of moral turpitude had been received against the Petitioner in Patna High Court as well as this Court and upon evaluation of an overall performance of the Petitioner, after attaining the age of 50 years the Petitioner was retired compulsorily and prematurely.

5. It is a settled position of law as has been held in the case of [Union of India \(UOI\) Vs. Col. J.N. Sinha and Another](#), that the appropriate authority has the absolute right to retire a Government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. Compulsory retirement involves no civil consequences. Various considerations would weigh with the appropriate authority while exercising powers vested in the appropriate authority. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that an officer who is holding the post is not inefficient, but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organizations and more so in Government organizations, there is a good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 74(b) holds the balance between the rights of the individual government servant and the interests of the public. Government is given power to energize its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.

6. Counter affidavits have been filed on behalf of the Respondents stating therein that since Petitioner's induction into judicial service several allegations against him had been made at different places and he was transferred in mid term also and steps were taken by giving him chance to amend his conduct and improve his efficiency. Several complaints were made to High Court of Patna and this Court of different nature against the Petitioner. A series of allegations of different nature

were made against the Petitioner with respect to disposal of the cases on extraneous consideration and forming caucus with certain lawyers. There was also a complaint by one Prayag Singh, ex Principal of Patna Law College, Patna that he attempted to commit his murder. The enquiry ended due to the death of the allegation writer.

7. The confidential reports from 1987 to 2007 have been filed on behalf of the Petitioner along with the rejoinder to the counter affidavit wherein the remarks made are as under:

Year	Name of Judgment	Reporting Officer/ Hon'ble	Knowledge	Promptness in Disposal	Quality of Judgment
1987-88	Hajipur	Mr. Ram Avtar Singh	Ordinary	Yes	...
1988-89	Hajipur	Mr. C.S. Lal	Satisfactory	Yes	...
1989-90	Hajipur	Mr. C.S. Lal	average	average	
1990-91	Dhanbad	Mr. S.K.P. Verma	average	Good	...
1991-92	Dhanbad	Mr. S.I.A.I. Raza			...
*Poor knowledge of law and procedure, not industrious, does not fit for exercise. His integrity is also not on board (Expunged vide file No. XXXV/95/92)					
1992-93	Dhanbad	Mr. G.S. Chobey	Satisfactory	Yes	
1993-94	Dhanbad	Mr. G.S. Chobey	Satisfactory	Yes	
1994-95	Dhanbad	Mr. G.S. Choubey	Satisfactory	Yes	

1996-97	Jameshpur	Mr. D.N. Chakraborty	Good	Yes. O.T. fair	
1977-98	Jameshepur	Mr. Chakraborty		Yes fair	
1998-99	Jamshedpur	Mr. D.N. Chakraborty	Fair	Yes	
1999-2k	Doghar	Mr. V. Narayan	Fair	Yes	Good
2k-2k1	Doghar	Mr. V Narayan	Sound	Yes	Good
08/03/1991	Dhanbad	Hon''ble N.S. Rao,	Satisfactory	Satidfactory	Sa
30/08/97	Jamshedpur	Hon''ble P.K. Deo J.	Good	Yes	F
2001-	Dhanand	Mr. A.B. Stekher			
This Officer has joined in the Judgeship on Hon''ble Zonal Judge					
2002-2003	Dhanbad	Mr. A.B. Shekhar	Good	Yes	Sati
2003-2004	Saraikella	Mr. B.K.			
2004-2005	Saraikella	Mr. B.K. Pandey	Good	Yes	A
2004-2005	Saraikella	Mr. Tarkeshawr Prasad	Good	Yes	

Reputation: One ? plication in this regard was recelved from Vigaliance C  
 Allegatin regarding his integrity not proved

2005- 2006	Saraikella	Mr. Tarkeshwar Prashad			
2006- 2007	Latchar	Mr. S.K. Murari	Good	Yes	C
2006- 2007	Latechar	Mr. Bijay Kumar Pandit	Good	Yes	

8. The Hon<sup>ble</sup> Apex Court in the case of [Chandra Singh Vs. State of Rajasthan and Another](#), held 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 discipline the black sheep or weed out the dead wood. This Constitutional power of the High Court cannot be circumscribed by any rule or order. The observations made by the Hon<sup>ble</sup> Apex Court in Paragraph 43 and 44 of the judgment in this case are as under:

43. Issuance of a writ of certiorari is a discretionary remedy See [Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others](#), . The High Court and consequently this Court while exercising their extraordinary jurisdiction under Article 226 or 32 of the Constitution of India may not strike down an illegal order although it would be lawful to do so. In a given case, the High Court or this Court may refuse to extend the benefit of a discretionary relief to the applicant. Furthermore, this Court exercised its discretionary jurisdiction under Article 136 of the Constitution of India which need not be exercised in a case where the impugned judgment is found to be erroneous if by reason (hereof substantial justice is, being done. See SDS Shipping (P) Ltd v. Jay Container Services Co. (P) Ltd. (2003) 4 Supreme 44. Such a relief can be denied, inter alia, when it would be opposed to public policy or in a case where quashing of an illegal order would revive another illegal one. This Court also in exercise of its jurisdiction under Article 142 of the Constitution of India is entitled to pass such order which will be complete justice to the parties.

44. We have been taken through the annual confidential reports as against the Appellants. Having gone through the same; we are of the opinion that it is not a fit case where this Court should exercise its discretionary jurisdiction in favour of the Appellants: This Court in [High Court of Judicature at Bombay and Another Vs. Brij Mohan Gupta \(Dead\) through Lrs. and Another](#), has also refused to exercise its discretionary jurisdiction in favour of the Appellants although the order of the High Court was found liable to be set aside being not in accordance with law.

9. In the case in hand, it is evident from the foregoing confidential reports of the Petitioner that at one occasion, his integrity was withheld in the year 1991-92. One adverse remark was given which was expunged from the record. Thus, the above chart of his performance coupled with the other factors enumerated in the counter affidavit as stated above, reveals that the Petitioner had not improved himself during his service and his performance was not upto the mark. The Hon"ble Apex Court in a number of decisions has held that there is difference between judicial service and other services. The public at large has high expectation from the judiciary. If any deadwood remains in the judicial service, the entire Judiciary is blamed for the misconduct of the said deadwood. Keeping in view the rigours and the difficulties faced by the Judiciary in discharge of their duties, in the case of [All India Judges" Association Vs. Union of India and others](#), the Apex Court issued a direction to all the States and the Union Territories to enhance the age of superannuation of the Judicial Officers from 58 to 60 years. The Judiciary has been kept as a distinguishable Service by the State Government in view of the judgment of the Apex Court. Thus, it is also expected from the judicial officers that they should also rise to the occasion to come out to the expectation of the public at large. Hence the order passed by the Respondents retiring the Petitioner compulsorily does not require any interference by that Court. The decision to retire the Petitioner compulsorily was taken bona fide in public interest after evaluation of the overall performance of the Petitioner.

10. In view of the aforesaid facts and circumstances of the case, and the law laid down by the Hon"ble Apex Court, the order impugned in this writ petition does, not call for any interference and no relief can be granted to the Petitioner. This writ petition is devoid of any merit and is fit to be dismissed.

This Writ pwtition is accordingly dismissed.