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**(2011) 07 PAT CK 0292**

**Patna High Court**

**Case No:** CWJC No. 2396 of 2002

Umesh Chandra Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** July 21, 2011

**Hon'ble Judges:** Vikash Jain, J; S.K. Katriar, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

S.K. Katriar, J.

This writ petition has been preferred with the prayer to quash the order dated 5.1.2002 (Annexure-10), issued under the signature of the Registrar General of the Patna High Court, and the consequential order dated 8.1.2002 (Annexure-10/1), issued under the signature of the District and Sessions Judge, Bhagalpur, communicating the said order marked Annexure-10 to the Petitioner that he has not been given the benefit of extension of service from 58 years to 60 years of age. Respondent Nos. 2 and 3 have placed on record their counter affidavit. A brief statement of facts essential for the disposal of this writ petition may be indicated. The Petitioner joined the Bihar Subordinate Judicial Service on 3.4.1975 as a Munsif Magistrate. He was confirmed in due course, and was promoted to the post of Subordinate Judge-1-cum-Additional Chief Judicial Magistrate. He was thereafter placed under suspension and was subjected to a departmental proceeding. The enquiry report exonerated him of the charges which was accepted by the High Court, and he was warned to be careful in future. He was reinstated in service on the post of Subordinate Judge. The warning was, however, expunged by this Court.

1.1. The Petitioner was due to superannuate on 28.2.2002, on completion of 58 years of age. In view of the judgment of the Supreme Court in the case of [All India Judges' Association and Others Vs. Union of India and Others](#), his case was considered whether or not he should be given the benefit of extension of service up to 60 years of age. The Committee comprising of eight Judges of this Court including

Hon"ble the Chief Justice evaluated the entire service record of the Petitioner and placed on record its report. On a consideration of the entire materials on record, the Full Court on the administrative side took the decision not to give the benefit of extension of service to the Petitioner and was communicated to him by the impugned orders. Hence, this writ petition.

2. While assailing the validity of the impugned action, Learned Counsel for the Petitioner submits that there is no material in the service record of the Petitioner which can be treated to be adverse and, therefore, there was no sound basis for the High Court to deny to him the benefit of extension of service. He submits in the same vein that the order of suspension, the departmental proceeding, and the subsequent show-cause notice had all ended in favour of the Petitioner. He relies on the following reported judgments:-

(i) The judgment of the Supreme Court in [All India Judges" Association and Others Vs. Union of India and Others](#), (at page 2509)];

(ii) Division Bench judgment of this Court in [Nawal Kishore Prasad Vs. State of Bihar and Others](#), ;

(iii) Judgment of the Supreme Court in Nawal Kishore Prasad v. State of Bihar and Others [2001 (3) PLJR (SC)165].

3. Mr. Piyush Lal, Learned Counsel for Respondent Nos. 2 and 3, has supported the impugned action. He submits that a case of extension of service beyond the prescribed age of superannuation has to be viewed in contradistinction to a case of compulsory retirement. He further submits that the entire service record of the Petitioner has to be considered in the light of the directions of the Supreme Court in All India Judges" Association v. Union of India (supra). Learned Counsel for Respondent Nos. 2 and 3 relies on the following reported judgments:-

(i) Division Bench judgment of this Court in [Satya Narayan Singh Vs. The State of Bihar and Others](#) .

(ii) Division Bench judgment of this Court in Laxman Ram v. The Hon"ble High Court of Judicature at Patna and Others 2010 (4) BBCJ 161 : 2010(3) PLJR 363.

3.1. Mr. Harsh Singh, Learned Counsel appearing for Respondent Nos. 2 and 3, has in his supplemental submissions supported the impugned action. He submits that the entire service record of the Petitioner has to be considered in the light of the directions of the Supreme Court in All India Judges" Association v. Union of India (supra), and the expected utility of the judicial officer beyond 58 years of age is a subjective satisfaction based on objective materials. He further submits that the Petitioner has not alleged that the High Court did not take into account the entire service record of the Petitioner. He submits in the same vein that the Petitioner has not alleged mala fides against the High Court or against any individual. He relies on the judgment of the Supreme Court in Bishwanath Prasad Singh v. State of Bihar

and Others (2001) 2 SCC 305, paragraphs 14, 15, 18, 25 and 26].

4. Learned Counsel for Respondent No. 1 has supported the impugned action.

5. We have perused the materials on record and considered the submissions of Learned Counsel for the parties. At the relevant point of time, the age of superannuation of an employee of the Bihar Government was 58 years of age. In view of the diverse factors adverted to by the Supreme Court in *All India Judges' Association v. Union of India* (supra), it was directed that the High Court shall consider the case of every judicial officer before he attains 58 years of age whether or not the benefit of extension of service beyond 58 years up to 60 years has to be granted. The Supreme Court had prescribed the yardstick as follows in page 2509 of the report:-

There is, however, one aspect we should emphasise here. To what extent the direction contained in the main judgment under review shall stand modified. 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 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 officers' past record of service, character rolls, quality of judgments 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 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 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 the entitlement of the benefit 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.

6. The same was considered and further elucidated by the Supreme Court in *Bishwanath Prasad Singh v. State of Bihar* (supra). Paragraph 18 of the judgment sums up the conclusions and is reproduced hereinbelow:

18. We may sum up our conclusions- on this aspect as under:

1. Direction with regard to the enhancement of superannuation age of judicial officers given in [All India Judges" Association and Others Vs. Union of India and Others](#), does not result in automatic enhancement of the age of superannuation. By force of the judgment, a judicial officer does not acquire a right to continue in service up to the extended age of 60 years. It is only a benefit conferred on the judicial officers subject to an evaluation as to their continued utility to the judicial system to be carried out by the respective High Courts before attaining the age of 58 years and formation of an opinion as to their potential for their continued useful service. Else the judicial officers retire at the superannuation age appointed in the service rules governing conditions of services of the judicial officers.

2. The direction given in 1993 case is by way of ad hoc arrangement so as to operate in the interregnum, commencing the date of judgment and until an appropriate amendment is made in the service rules by the State Government. Once the service rules governing superannuation age have been amended, the direction ceases to operate.

3. The High Court may, before or after the normal age of superannuation, compulsorily retire a judicial officer subject to formation of an opinion that compulsory retirement in public interest was needed. The decision to compulsorily retire must be in accordance with relevant service rules independent of the exercise for evaluation of judicial officer made pursuant to 1993 case. Recommendation for compulsory retirement shall have to be sent to State Government which would pass and deliver the necessary orders.

4. If the High Court finds a judicial officer not entitled to the benefit of extension in superannuation age he would retire at the age of superannuation appointed by the service rules. No specific order or communication in that regard is called for either by the High Court or by the Governor of the State. Such retirement is not "compulsory retirement" in the sense of its being by way of penalty in disciplinary proceedings or even by way of "compulsory retirement in public interest". No right of the judicial officer is taken away. Where the High Court may choose to make any communication in this regard, it would be better advised not to use therein the expression "compulsory retirement". It creates confusion. It would suffice to communicate, if at all, that the officer concerned, having been found not fit for being given the benefit or extended age of superannuation, would stand retired at the normal age or date of superannuation.

7. The combined effect of the two judgments of the Supreme Court is that the benefit of extension of service is not automatic. It cannot be automatic because, at the time of entry into service, he was assured of continuance in service up to 58 years of age and, therefore, any enforceable right if at all accrued to the Petitioner only for continuance till the age of 58 years. Allowing a judicial officer to continue beyond 58 years of age shall be on the basis of past record of service, character rolls, quality of judgment and other relevant matters of the judicial officer to

determine his potential for continued utility in the judicial system. The Supreme Court has also observed that this extension is entirely for the benefit of the judicial system, and should not be taken to be a windfall for the indolent, inefficient and corrupt. Mr. Harsh Singh, Learned Counsel appearing for Respondent Nos. 2 and 3 is right in his submission that the assessment by its very nature is subjective satisfaction based on objective considerations. Once it is conceded that such is the parameter, the power of the High Court in exercise of discretionary, prerogative writ jurisdiction is substantially restricted because it is not with respect to an enforceable right. Once we are satisfied that the High Court on the administrative side, while taking the decision, was not arbitrary or irrational, then this Court should be extremely reluctant to interfere with the exercise of such discretion. As stated hereinabove, the Petitioner has neither levelled allegations of arbitrariness against the High Court, nor has he alleged that his entire service record was not taken into account when the decision was taken.

8. We now proceed to consider whether or not assessment in the present case measures up to the yardstick prescribed by the Supreme Court. We have perused the entire service record of the Petitioner in original. We have stated hereinabove that the Petitioner was placed under suspension, and was subjected to a departmental proceeding. On a consideration of the entire materials, the High Court exonerated him and was let off with a warning. The warning was on his representation expunged in due course.. The District Judge has stated in his confidential character roll of the Petitioner for the period 8.10.1984 to 14.5.1986, as follows:

4. Is he an efficient officer.-His efficiency was that of an officer of average merit.

7. Final Assessment.-An officer of average merit. Maintaining cordial relations with lawyers and his colleagues. Out of four quarters of the period under Report, his disposal was capable of improvement in two quarters, "fair" in one quarter and satisfactory in one quarter.

For the period 22.2.1991 to 5.2.1992, District Judge recorded as follows in the Petitioner"s C.C.R.:

4. Is he an efficient officer.-An average officer.

9. Final Assessment.-He is an officer of average merit. His relation with the officers and members of the Bar was quite good. But his disposal is not up to the mark. He should devote more energy and time in disposal of cases.

For the period 14.2.1992 to 2.4.1993, the District Judge recorded as follows:

9. Final Assessment. He is an officer of average merit and under my observation.

The Inspecting Judge had recorded as follows on 17.11.1997:

1. Knowledge of law & procedure. Needs extensive study.

9 Net result.-Good officer but needs improvement.

It is thus evident that the Petitioner has on the whole been a controversial judicial officer. To this has to be added the subjective satisfaction of the High Court about his utility for continuance in Bihar Judicial Service after he has attained the age of superannuation. The High Court decided that he was not a fit candidate for the benefit. In other words, we get a very clear impression that the Petitioner has not been able to maintain a bright record of service. We agree with the view taken by the High Court.

9. While summarizing the ratio of the judgment in All India Judges' Association's case, the Supreme Court observed as follows in Bishwanath Prasad Singh v. State of Bihar

14. In [All India Judges' Association and Others Vs. Union of India and Others](#), this Court mandated that the exercise of evaluation for the purpose of finding out the suitability of the officer concerned for entitlement of the benefit of the increased age of superannuation has to be undertaken before the officer attains the age of 58 years. At such evaluation the High Court may arrive at one of the three conclusions with respective consequences as under:-

(i) The High Court may find the officer having the potential for rendering continued useful service whereupon the officer would be given an extension in the age of superannuation.

(ii) The High Court may find the officer not only not entitled for being conferred the benefit of extended age of superannuation but may also find that the officer is a burden on public exchequer with no utility for judicial service, intolerable even to be retained up to the age of 58 years, the normal superannuation age, then the High Court may undertake further exercise by following the procedure prescribed by the statutory rules governing compulsory retirement and, in the event of such an opinion being formed bona fide, may compulsorily retire him forthwith. The latter exercise can be undertaken before or after crossing the age of 58.

(iii) The High Court may form an opinion that the officer does not have utility for continued service so as to be retained beyond 58 years of age but at the same time he is not such a dead wood as cannot be tolerated even up to the normal age of superannuation, i.e. 58 years, as appointed by the statutory rules, then the High Court may simply observe silence and allow the officer concerned to retire at the normal age of superannuation.

The observations apply with full force to the present case.

10. Learned Counsel for Respondent Nos. 2 and 3 have rightly relied on the judgment of this Court in Satya Narayan Singh v. The State of Bihar (supra) and Laxman Ram v. The Hon'ble High Court of Judicature at Patna (supra).

11. In the result, this appeal is dismissed. In the circumstances of the case there shall be no order as to costs. In view of the valuable assistance rendered by Mr. Harsh Singh, Learned Counsel, let the High Court Legal Services Committee, Patna, pay to him a sum of Rs. 10,000/- (rupees ten thousand). Let a copy of this judgment be handed over to him.

Vikash Jain, J.

12. I agree.