

Rajat Baran Roy

Vs

State of West Bengal

Writ Petition (C) No. 578 of 1998

(S. P. Bharucha, R.C. Lahoti, N. Santosh Hegde JJ)

13.04.1999

JUDGMENT

N. Santosh Hegde, J.

1. The above writ petitions are admitted for final hearing. Notice having been served on the respondents, they have put in their appearance and filed their response. Since the questions involved in these writ petitions are common, they are being disposed of by a common judgment.
2. In W.P. No. 578/98, the petitioner was holding the post in the rank of a District Judge, who was compulsorily retired by an order of the Governor of West Bengal dated 23.10.1998 w.e.f. the date on which he attained the age of 58 years, i.e. 31.10.1998.
3. In W.P. No. 601/98, the petitioner was also holding a post equivalent to that of a District Judge and was similarly retired by an order of the Governor of the State of West Bengal dated 26.10.1998 on his attaining the age of 58 years which also happened to be 31.10.1998.
4. In W.P. No. 638/98, the petitioner was posted as a District Judge and was also compulsorily retired on his attaining the age of 58 years w.e.f. 30.11.1998 by an order of the Governor of West Bengal dated 2.11.1998. Admittedly, the retirements of the petitioners are not on disciplinary ground but on the ground that the High Court of Calcutta had recommended the retirement of these judicial officers on their having attained the age of 58 years.
5. The grievance of the petitioners in these petitions is that as per the service rules applicable to them, their retirement from service can take place only on their attaining the age of 60 years; whereas the respondents by the impugned orders have prematurely retired them at the age of 58 years purportedly on the basis of a review of the petitioners' service record, performance, efficiency, integrity, utility etc. by a Review Committee of the High Court which, according to the petitioners, is not permissible in law. The respondents in their pleadings urged that it is open to the High Court to make a pre-retirement assessment of a member of the Higher Judicial Service in the State of West Bengal on or about the time such member attains the age of 58 years, and if the High Court is not satisfied with the performance of the officer concerned, it could recommend to the Governor of the State to compulsorily retire the concerned officer at the age of 58 years. For this proposition, the respondents relied upon the directions given by this Court in *All India Judges' Association and others v. Union of India and others*, 1993(4) SCC 288 : 1993(4) SCT 248. The respondents further contend that even otherwise in view of the power vested in them under Clause (aa) of Rule 75 of the West Bengal Service Rules, Part-I, which applies in respect of officers of the West Bengal Civil Service (Judicial) and the West Bengal Higher Judicial Service, they have the authority to retire the

petitioners prematurely.

6. We have heard learned counsel for the parties.

7. It is an admitted fact by both sides that the retirement age of the judicial officers, at present, is 60 years. The petitioners contend that by virtue of the Notification of the Government of West Bengal No. 14136-J dated 20.6.1992, the members of the West Bengal Higher Judicial Service are treated at par with the members of the Indian Administrative Service in all matters. Therefore, when the Government of India on 31.1.1998 fixed the retirement age of the members of the Indian Administrative Service at 60 years, automatically the retirement age of members of the West Bengal Higher Judicial Service also got enhanced to 60 years. Hence, it is contended by the petitioners that their retirement age is enhanced by the provisions of the statutory rules. Per contra, the respondents contended that the petitioners' retirement age is extended to 60 years by virtue of the directions issued by this Court on 20.8.1993 in the case of All India Judges' Association case (supra) and not by any statutory rules. This difference in the source of retirement age has a direct bearing on the validity of the impugned orders.

8. To decide this controversy, it is necessary to briefly refer to the directions issued in two cases of All India Judges' Association. In the first case of All India Judges' Association reported in (1992) 1 SCC 119 (hereinafter referred to as 'the 1992 case'), this Court issued the following direction :-

"(iii) Retirement age of judicial officers be raised to 60 years and appropriate steps are to be taken by December 31, 1992."

As per the above direction, it became the duty of all the States and the Union of India to make suitable provisions in the concerned Rules to enhance the retirement age of the judicial officers to 60 years by 31.12.1992. Instead of complying with the directions of this Court in the 1992 case, the Union of India and some of the States filed review petitions before this Court on various grounds. The stand taken by the review petitioners was rejected by this Court by an order which is reported in *All India Judges' Association and others v. Union of India and others, 1993(4) SCC 288* (hereinafter referred to as 'the 1993 case'). By this order, this Court while directing that the retirement age of the members of subordinate judiciary in India should be 60 years, added a rider to the increase in the retirement age by holding that this benefit of increase in retirement age 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, according to this Court, was available to those who, in the opinion of the respective High Courts, have a potential for continued useful service. The Court further said that 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 was directed to be assessed and evaluated by appropriate Committee of Judges of the respective High Courts constituted and headed by the Chief Justices of the High Courts. This direction in regard to the retirement age and other directions given in regard to the members of the Higher Judicial Service in India in the 1993 case, came to be issued because of the failure on the part of the Governments concerned to perform their obligatory duties. If as per the 1992 directions, the Governments concerned had acted diligently then there would not have been any cause for issuing the 1993 directions and, consequently, the rider that was included in the 1993 directions, would not have been there at all. That apart, in the 1993 directions, this Court in unequivocal terms said : "*The directions issued are mere aids and incidental to and supplemental of the main direction and intended as a transitional measure till a comprehensive national policy is evolved.*" (emphasis supplied). In view of this observation, it is clear that the direction issued as above, would cease to exist when

appropriate rule enhancing the retirement age of the judicial officers to 60 years is made. Consequently, the rider to the direction issued by the Court also ceases to operate, being co-terminus with the direction. After the directions in the 1993 case, in the case of such States which had framed rules consequent upon which the members of the subordinate judiciary in those States became entitled to continue in service till the age of 60 years, it will have to be held that the enhancement has come into force by virtue of such rules framed. In other words, the enhancement of retirement age in those States will be *de hors* the directions of this Court and will be subject only to the terms of the rules applicable. In such cases, in our opinion, the pre-retirement assessment will not be applicable unless the same is specifically provided under the Rules.

9. In the State of West Bengal, it is to be noted that by virtue of the Government Order dated 20.6.1992, the members of the West Bengal Higher Judicial Service were treated at par with members of the Indian Administrative Service in all matters. From this order, it flows that any change that is brought about in the service conditions of the members of the Indian Administrative Service would *ipso facto* become applicable to the members of the West Bengal Higher Judicial Service also. Consequent upon the recommendations made by the 5th Central Pay Commission, it is seen from records that the Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training), Government of India, by an Office Memorandum dated 13.5.1998, informed the State of West Bengal that "the President is pleased to direct that : (a) Except as otherwise provided specifically, every Government servant whose age of retirement is currently 58 years shall now retire from service on the afternoon of the last day of the month in which he/she attains the age of sixty years. However, Government servants whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years;". The Government of West Bengal by a separate order dated 15.5.1998 implemented the aforesaid Office Memorandum of the Government of India in the following terms :

"The terms of reference of the 4th Pay Commission include *inter alia*, the issues relating to retirement benefits. The Pay Commission has submitted a report for enhancement of age of retirement from fifty-eight years to sixty years. After careful consideration of the recommendation, the Government is pleased to order in partial modification of Rule 75(a) of W.B.S.R. Pt. I, that the Government employees of Group-A, Group-B and Group-C service shall retire from service compulsorily with effect from the afternoon of the last day of the month in which they attain the age of sixty years. This will take immediate effect."

10. By virtue of the Government Order of the State of West Bengal dated 20.6.1992 when the State Government applied the change in service conditions as per the Office Memorandum dated 15.5.1998 to the members of its services automatically the said change in the age of retirement became applicable to the members of the West Bengal Higher Judicial Service also. In other words, when the retirement age of the officers of the Indian Administrative Service stood extended from 58 years to 60 years, the retirement age of the members of the West Bengal Judicial Service also automatically got extended from 58 years to 60 years. Therefore on and from the above date, the age of superannuation of a member of the West Bengal Higher Judicial Service came to be governed by the above rules. Consequently, the directions including the rider thereon issued by this court in the 1993 case ceases to operate. Therefore, in our opinion, the contention of the respondents that the right of the petitioners to continue in service till the age of 60 years is derived from the directions issued by this Court in the 1993 case, cannot be accepted, and we hold that so far as the members of the West Bengal Higher Judicial Service are concerned, their age of superannuation is 60 years, as contemplated in the Official Memorandum of the Government of West Bengal dated 15.5.1998 as

made applicable to the Higher Judicial Service of West Bengal in its order dated 20.6.1992 and the said Office Memorandum and the Government Order having not fixed any pre-retirement assessment at the age of 58, it was not open to the High Court to have recommended the compulsory retirement of the petitioners, following directions of this court which had ceased to exist.

11. Alternatively, it is contended on behalf of the respondents that the impugned orders can also be justified by virtue of the power vested in them under Rule 75 (aa) of the West Bengal Service Rules, Part I. It is contended that in view of the said Rule, it is open to the respondents to retire a Government Servant in public interest. Before we go into the validity of this argument, it is necessary to examine whether, in fact, the respondents invoked this Rule for the purpose of issuing the impugned orders or not. A perusal of the affidavit filed on behalf of the High Court clearly shows that the respondents in exercise of the power vested in them by virtue of the directions given in the 1993 case, proceeded to pass the impugned orders. This is crystal clear from the following paragraphs extracted from the affidavit filed on behalf of the Registrar of the High Court of Calcutta :

"3.4 In terms of the aforementioned memorandum dated 13.9.1994, and this Hon'ble Court's judgment in the All India Judges case, Respondent No. 1, the Judicial Department, Govt. of West Bengal passed an order, Order No. 9509-J dated 23.10.1998 *inter alia* stating that the writ petitioner was to retire compulsorily from service on his attaining 58 years i.e. on 31.10.1998. The said order was passed on the recommendation of the High Court. The High Court reviewed the petitioner's service records, performance, efficiency, integrity, utility etc. and only after full assessment thereof the said decision by the Review Committee of the High Court to compulsorily retire the writ petitioner was taken and consequential orders passed."

x x x

"3.8 Primarily it appears from the contents of the various grounds taken by the writ petitioner that the petitioner is praying for continuance in judicial service till age of 60 without the required review procedure to be followed in terms of this Hon'ble Court's orders in All India Judges case basing his claim on the recommendation of the 4th Pay Commission of the State Government enhancing the age of superannuation of officers etc. of the West Bengal Civil Service which is in effect a consequential order issued after the 5th Pay Commission of the Central Government recommended the age of retirement at 60 years."

In view of the above pleadings, it is not possible for us to accept the alternate argument of the respondents that the impugned orders are *de hors* the directions issued by this Court in the 1993 case.

12. We will now examine the contention of the respondents that the impugned orders can be independently justified in view of the power vested in them by virtue of Rule 75 (a)(a) of the West Bengal

Service Rules, Part-I. The said Rule reads thus :

"Notwithstanding anything contained in this Rule the appointing authority shall, if it is of opinion that it is in the public interest so to do, have the absolute right to retire a

government employee by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice -

i. If he is in Group-A or Group-B (erstwhile gazetted) service of post and had entered government service before attaining the age of 35 years, if he has attained the age of 50 years; and

ii. In all other cases after he has attained the age of 55 years."

A perusal of this Rule shows that this Rule can be invoked for the purpose of retiring a Government servant in "public interest" on satisfying the conditions mentioned in sub-clauses (1) and (2) of that Rule. A careful perusal of the impugned orders nowhere shows that the said orders are being issued in "public interest" which is a condition precedent for invoking this Rule. Nor does it advert anywhere in the impugned orders in regard to the conditions specified in sub-paras (1) and (2) of the said Rule. If we have to examine the impugned orders in the light of this Rule then the same has to be held to be bad in law for non-application of mind and want of material particulars which are mandatory for invoking the said Rule. Therefore, the argument of the respondents seeking to justify the impugned orders based on Rule 75 (aa) of the said Rules also has to be rejected. In the said view of the matter, we do not find any force in the arguments advanced on behalf of the respondents to sustain the impugned orders.

13. For the reasons stated above, these writ petitions are allowed. The impugned orders Nos. 9509-J dated 23.10.1998, No. 9518-J dated 26.10.1998 and No. 9628-J dated 2.11.1998 issued in the name of the Governor of West Bengal by the Government of West Bengal are hereby quashed. No order as to costs.

Petitions allowed.