SUPREME COURT OF INDIA

BISHWANATH PRASAD SINGH

Vs.

STATE OF BIHAR & ORS.

15/12/2000

(R.C.Lahoti, Shivaraj V Patil)

Writ Petition (civil) 419 2000

JUDGMENT

R.C. Lahoti, J.

By this petition under Article 32 of the Constitution of India the petitioner, who is a member of Bihar Superior Judicial Service and posted as District & Session Judge, Giridih, seeks issuance of writ in the nature of mandamus directing the State of Bihar to frame rules for enhancement of age of superannuation of the judicial officers of the State as per directions of the Supreme Court issued in the case of All India Judges Association case, (1992) 1 SCC 119 and also for a writ or direction quashing the communication contained in the letter dated 17th May, 2000 of the Registrar General of the Patna High Court informing the petitioner that having assessed and evaluated the services of the petitioner in the light of the decision of this court in All India Judges Association & Ors. Vs. Union of India & Ors., (1993) 4 SCC 288, the High Court has been pleased to decide not to allow him the benefit of enhancement of the retirement age from 58 years to 60 years and that the petitioner shall cease to be a member of the judicial service of the State on completion of the age of 58 years in October, 2000.

The facts are jejune. Bishwanath Prasad Singh, the petitioner, was born on 10th October, 1942. He entered Bihar Administrative Service (Judicial Branch) on 4.4.1974 as a Munsif. He was promoted as Assistant Subordinate Judge in April, 1985. In May, 1987, he was promoted in Bihar Superior Judicial Service and confirmed on 5.3.1998 w.e.f. 1.9.1991. On 17.2.2000, selection grade was released to the petitioner w.e.f. 1.8.1997. On 17.5.2000 the impugned communication, as abovesaid, was issued by the High Court of Patna through its Registrar General.

The impugned communication of the High Court has been challenged by the petitioner mainly on three grounds: firstly, that in view of the decision of the Supreme Court, the retirement age of judicial officers stood increased to 60 years and before attaining such age of retirement, the petitioner could not have been made to retire at the age of 58 years except by following the procedure applicable to compulsory retirement; secondly, that the petitioner holds a civil post under the State of Bihar. The order of retirement can be passed only by the Governor of Bihar; the jurisdiction of the High Court being only advisory. As the State of Bihar/Governor of Bihar has not passed any order of retirement, the petitioner cannot be made to retire by the High Court acting on

its own; thirdly, that the impugned order is arbitrary, based on no material and hence is vitiated. We will deal with each of the pleas so raised seriatim.

We note with concern the volume of litigation in which judicial officers belonging to State judicial services are being forced to indulge into because of the inaction on the part of the State Governments in framing/amending service rules governing the age of retirement of the members of State judiciary in spite of two directions made by this court respectively on November 13, 1991 and August 24, 1993. Many High Courts of the States have also failed to take requisite initiative to persuade the respective State Governments to act in response to the directions of this court. We have noticed several writ petitions being filed in the High Courts, travelling up in appeals by either side to this court and petitions under Article 32 of the Constitution also being filed in this court __ all avoidable litigation.

In All India Judges Association Vs. Union of India & Ors. (1992) 1 SCC 119 (hereinafter referred to as 1992 case), the landmark decision taking care of betterment of service conditions of subordinate judiciary one of the directions given in the judgment was to raise the retirement age of judicial officers to 60 years uniformly throughout the country and appropriate steps in that regard being taken by December 31, 1992. The court was at pains in demonstrating how the members of judicial services stand on pedastal different from other civil services and, therefore, deserve to be dealt with by ameliorating service conditions so as to provide initiative for attracting better persons in judicial services and which would tend to raise the tone and morale of the judicial services as a whole, the services being essential bulwark of democracy. The executives of the Union of India and various States, far from complying with the directions, chose to prefer several review petitions which were heard and disposed of by this court by its judgment dated August 24, 1993, reported as All India Judges Association & Anr. Vs. Union of India & Ors., (1993) 4 SCC 288 (hereinafter, 1993 case). Feeling anguished by inaction on the part of the executive, this court issued very many directions in continuation of and also in modification of those made in 1992 case. In the matter of the superannuation age the direction given vide clause (b) of para 52 was as under :- (b) The direction with regard to the enhancement of the superannuation age is modified as follows:

While the superannuation age of every subordinate judicial officer shall stand extended up to 60 years, the respective High Courts should, as stated above, assess and evaluate the record of the judicial officer for his continued utility well within time before he attains the age of 58 years by following the procedure for the compulsory retirement under the Service rules applicable to him and give him the benefit of the extended superannuation age from 58 to 60 years only if he is found fit and eligible to continue in service. In case he is not found fit and eligible, he should be compulsorily retired on his attaining the age of 58 years.

The assessment in question should be done before the attainment of the age of 58 years even in cases where the earlier superannuation age was less than 58 years.

The assessment directed here is for evaluating the eligibility to continue in service beyond 58 years of age and is in addition to and independent of the assessment for compulsory retirement that may have to be undertaken under the relevant Service rules, at the earlier stage/s.

Since the service conditions with regard to superannuation age of the existing judicial officers is hereby changed, those judicial officers who are not desirous of availing of the benefit of the enhanced superannuation age with the condition for compulsory retirement at the age of 58 years, have the option to retire at the age of 58 years. They should exercise this option in writing before

they attain the age of 57 years. Those who do not exercise the said option before they attain the age of 57 years, would be deemed to have opted for continuing in service till the enhanced superannuation age of 60 years with the liability to compulsory retirement at the age of 58 years.

Those who have crossed the age of 57 years and those who cross the age of 58 years soon after the date of this decision will exercise their option within one month from the date of this decision. If they do not do so, they will be deemed to have opted for continuing in service till the age of 60 years. In that case, they will also be subjected to the review for compulsory retirement, if any, notwithstanding the fact that there was not enough time to undertake such review before they attained the age of 58 years. However in this case, the review should be undertaken within two months from the date of the expiry of the period given to them above for exercising their option, and if found unfit, they should be retired compulsorily according to the procedure for compulsory retirement under the Rules.

Those judicial officers who have already crossed the age of 58 years, will not be subjected to the review for compulsory retirement and will continue in service up to the extended superannuation age of 60 years since they have had no opportunity to exercise their option and no review for compulsory retirement could be undertaken in their case before they reached the age of 58 years.

[emphasis supplied]

We have underlined a few passages while reproducing, as above, the direction made in 1993 case as during the course of hearing much emphasis was laid by Shri R.K. Jain the learned senior counsel for the petitioner on such passages in support of his submission that the direction made by the Supreme Court has the effect of amending the service rules and extending by its own force, the age of retirement of judicial officers to 60 years. The learned senior counsel maintained that without regard to the fact whether the existing service rules were amended or not by the State Governments so as to be brought in conformity with the direction of the Supreme Court, the judicial officers were entitled to remain in service upto the completion of the age of 60 years and retirement at the age of 58 years or at any time before attaining the age of 60 years was not permissible ever since August 24, 1993 (the in 1993 case) except by following the procedure applicable to compulsory retirement under the relevant service rules of the State. We have given our anxious consideration to the plea so forcefully advanced but we find ourselves not persuaded to agree with the same.

The directions made in para 52 (b) are to be read in the light of the detailed discussion on the aspect of enhancement of superannuation age contained in paragraphs 25 to 34 of the judgment in 1993 case. To find out what was intended by this court, we hereby extract and reproduce a few other passages therefrom as under:-

. . . . . .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 or 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.

[emphasis supplied]

It is clear that this court intended to confer a benefit on the judicial officers by the force of the judgment of this court and to provide a mechanism for availing the benefit during the period until the concerned State amended the service rules governing the age of superannuation of judicial officers. Once rules are amended, the age of superannuation would be governed by the service rules. But so long as that was not done, the judgment of this court in 1993 case was intended to govern the age of superannuation. Under the service rules, if amended, the right to hold the judicial office shall be a statutory right subject to satisfying the requirements, if any, contemplated by the rules. Till then, the extended age of superannuation to 60 years shall be a benefit available to judicial officers subject to their satisfying the test of suitability at the evaluation or assessment to be made by the High Courts in accordance with the judgment of the Supreme Court. Such evaluation is independent of and other than an assessment undertaken for compulsory retirement in public interest which could be resorted to earlier or later also. The abovesaid view finds support from a number of decisions rendered by this court which may be referred to briefly.

In Rajat Baran Roy & Ors. Vs. State of W.B. & Ors., (1999) 4 SCC 235, the State of West Bengal did not frame or amend the service rules for the purpose of conferring the benefit of enhanced age of superannuation on judicial officers as directed by this court. However, on 31.1.1998, the Government of India fixed the retirement age of the members of the Indian Administrative Service at 60 years. Vide a pre-existing notification dated 20.6.1992 of the Government of West Bengal, the members of the higher judicial services are treated on par with the members of the Indian Administrative Service in all matters and, therefore, automatically the retirement age of members of the West Bengal Higher Judicial Service also got enhanced to 60 years. A 3-Judges Bench of this court held that in view of the age of superannuation of the judicial officers having stood extended statutorily from 58 years to 60 years, the right of the petitioners to continue in service till the age of 60 years was not derived from the 1993 case. 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 and de-hors the directions of this court. The need for pre-retirement assessment, as directed by this court, shall cease to exist once the appropriate rule governing the age of superannuation is amended unless such pre-retirement assessment is specifically provided under the rules. Vide para 10, this court held that the direction enhancing the retirement age of the members of the subordinate judiciary in India to 60 years made in 1993 case was subject to the rider that this benefit of increased 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 the potential for continued useful service.

The same view was taken by the 2-Judges Bench of this court in High Court of Judicature at Allahabad through Registrar Vs. Sarnam Singh & Anr., (2000) 2 SCC 339. Vide para 13, the Court said that the procedure evolved in 1993 case was a temporary measure and was not to be adopted as a permanent feature.

In Ramesh Chandra Acharya Vs. Registrar, High Court of Orissa & Anr., (2000) 6 SCC 332, Orissa Service Code governing the age of retirement of the petitioner was not amended. The petitioner, retired at the age of 58 years, filed a petition under Article 32 contending that the age of superannuation had stood extended to 60 years by 1993 case. A 2-Judges Bench of this court held:-

There can be no right of an employee to continue in service de-hors statutory or administrative rule prescribing superannuation age and continuation in service could be only subject to the conditions provided."

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... in the absence of a specific rule made by the State no judicial officer has a right as such to continue beyond the age of 58. It is only when the High Court, after reviewing all aspects of service including the past record of the officer concerned, specifically orders that in the interest of the judicial service of the State it is necessary to retain the particular officer beyond that age-limit and allow him to superannuate at the age of 60. In other words, continuation beyond 58 years is permissible only when the High Court makes a positive recommendation in favour of that officer for such continuation. Otherwise the judicial officer has to retire at the age of 58. This can be departed from only when the State makes a specific rule otherwise.

The use of the words compulsory retirement for the judicial officers allowed to superannuate at the age of 58 years and the expressions such as compulsory retirement on attaining the age of 58 years according to the procedure for compulsory retirement under the rules have emboldened the petitioner to raise the plea that subsequent to the judgment of this court in 1993 case, the retirement of a judicial officer at the age of 58 years is not retirement in ordinary course but compulsory retirement and therefore the procedure for compulsory retirement has to be followed. In our opinion such a submission cannot be entertained on an overall reading of the judgment of this court in 1993 case.

Compulsory retirement in service jurisprudence has two meanings. Under the various disciplinary rules, compulsory retirement is one of the penalties inflicted on a delinquent government servant consequent upon a finding of guilt being recorded in disciplinary proceedings. Such penalty involves stigma and cannot be inflicted except by following procedure prescribed by the relevant rules or consistently with the principles of natural justice if the field for inflicting such penalty be not occupied by any rules. Such compulsory retirement in the case of a government servant must also withstand the scrutiny of Article 311 of the Constitution. Then there are service rules, such as Rule 56(j) of Fundamental Rules, which confer on the Government or the appropriate authority, an absolute (but not arbitrary) right to retire a government servant on his attaining a particular age or on his having completed a certain number of years of service on formation of an opinion that in public interest it is necessary to compulsorily retire a government servant. In that case, it is neither a punishment nor a penalty with loss of retiral benefits. (See Shyamlal Vs. State of U.P. (1955) 1 SCR

26; Brijmohansingh Chopra Vs. State of Punjab (1987) 2 SCC 188; Ramchandra Raju Vs. State of Orissa (1994) Supple 3 SCC 424; BaikunthNath Das & Anr. Vs. Chief District Medical Officer, Baripada & Anr. (1992) 2 SCC 299). More appropriately it is like premature retirement. It does not cast any stigma. The government servant shall be entitled to the pension actually earned and other retiral benefits. So long as the opinion forming basis of the order for compulsory retirement in public interest is formed bonafide, the opinion cannot be ordinarily interfered with by a judicial forum. Such an order may be subjected to judicial review on very limited grounds such as the order being malafide, based on no material or on collateral grounds or having been passed by an authority not competent to do so. The object of such compulsory retirement is not to punish or penalise the government servant but to weed out the worthless who have lost their utility for the administration by their insensitive, unintelligent or dubious conduct impeding the flow of administration or promoting stagnation. The country needs speed, sensitivity, probity, non-irritative public relation and enthusiastic creativity which can be achieved by eliminating the dead wood, the paper-logged and callous (see S. Ram Chandra Raju Vs. State of Orissa (1994) Supp.3 SCC 424. We may with advantage quote the following passage from this decision :

Though the order of compulsory retirement is not a punishment and the Government servant on being compulsorily retired is entitled to draw all retiral benefits, including pension, the Government must exercise its power in the public interest to effectuate the efficiency of service. The dead wood needs to be removed to augment efficiency. Integrity of public service needs to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but act as a check and reasonable measure to ensure efficiency in service, and free from corruption and incompetence. The officer would go by reputation built around him. In appropriate case, there may not be sufficient evidence to take punitive act of removal from service. But his conduct and reputation is such that his continuance in service would be a menace in public service and injurious to public interest.

We would like to state, even at the risk of repetition, that 1993 case is not intended to operate as a piece of legislation and certainly it could not have been so. It is only on account of inaction of the executive to carry out the directions of this court made in the 1992 case that persuaded this court into issuing suitable directions, ad-hoc in nature, to remain in operation for the period for which the field was not occupied by statutory rules by amendment made to bring the rules in conformity with the directions in 1993 case. The direction in 1993 case, enhancing the age of retirement from 58 to 60 years is a benefit and not a right. The availability of benefit is conditional upon the exercise of evaluation undertaken by the High Court and the individual judicial officer having satisfied the test of continued utility to the judicial system in the opinion of the High Court. Extension of service is neither automatic nor a windfall.

In 1993 case this court mandated that the exercise of evaluation for the purpose of finding out the suitability of the concerned officer 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 upto 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 bonafide, may compulsorily retire him forthwith. The later 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 upto 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.

In the first case, the only follow-up action required by the High Court is to inform the Government of its decision so that the Government knows that the officer which, according to its records, was going to retire on completing the age of 58 years would be continuing upto the age of 60 years. The officer concerned may also be informed so as to feel assured that he has to serve upto the age of 60 years and also feel encouraged that his performance in office, honesty, uprightness and hard work have earned him the benefit of holding the post for another two years beyond the normal age of superannuation; the judicial system acknowledges his utility for continuing the association ahead. In the second case, the High Court, having followed the statutory procedure applicable to compulsory retirement in public interest, shall communicate its finding by way of recommendation to the State Government and the State Government shall act on the recommendation as required by Article 235 of the Constitution and pass the consequential order of compulsory retirement whereupon the compulsory retirement shall take effect. In the third case, no order is required to be passed or communicated either to the State Government or to the officer concerned. The officer would be retiring on his reaching the normal superannuation age. The State Government and the officer both know as soon as the officer enters the service as to what his date of retirement is. However, for the sake of convenience and by way of courtesy, the High Court may inform the officer that he was not being given the benefit of extended age of superannuation under the 1993 case.

The word compulsory retirement is not a very appropriate expression to be employed in the cases covered by category (iii) because the officer has neither been given the benefit of extended age of superannuation nor was being retired prematurely nor was being compulsorily retired in the sense the expression is known to service jurisprudence but was being allowed to retire simplicitor at the age of superannuation appointed by the service rules governing him. His length of service was neither being extended nor snapped mid-way. In this third category of cases, the employment of words compulsory retirement denotes only this much that the High Court having undertaken the exercise of evaluation in the terms of 1993 case and having formed the opinion that the officer was not entitled to benefit of extension, there was no other option left available except to allow the officer concerned to retire at the normal age of his superannuation. Even assuming, without conceding that the retirement at the normal age of superannuation, viz. 58 years, has been consciously called compulsory retirement in the 1993 case, the same would at the most be a compulsory retirement in public interest and certainly not by way of penalty casting any stigma. But in any case other than the exercise of evaluation undertaken by the High Court, an order of so called compulsory retirement would not need to be passed by the State Government in as much as such retirement was not under the service rules but only in terms of the judgment of the Supreme Court which judgment does not require an order by the State Government to be passed for its validity or efficacy. Thus, there is no scope for raising the pleas sought to be raised by the petitioner herein.

The observation of the Supreme Court contained in clause (b) of para 52 - since the service conditions with regard to superannuation age of the existing judicial officers is hereby changed read in the context where it occurs is intended to mean this much and nothing more than that the judicial officers not desirous of availing the benefit of the enhanced superannuation age have to give an option failing which they will be subjected to the exercise of evaluation by the High Court (in terms of the Supreme Court directions) to consider their suitability for allowing the benefit of extended superannuation age. The observation are required to be construed in the context in which they appear and not de-hors the same.

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 & Ors. Vs. Union of India & Ors. - (1993) 4 SCC 288 does not result in automatic enhancement of the age of superannuation. By force of the judgement a judicial officer does not acquire a right to continue in service upto 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 of extended age of superannuation, would stand retired at the normal age or date of superannuation.

The next ground of challenge submitted by the learned senior counsel for the petitioners is that the impugned order refusing the benefit of extension of superannuation age to the petitioner is arbitrary, based on no material and hence is liable to be struck down on that ground. It will be necessary to notice a few relevant facts in this regard.

Vide proceedings of the meeting of the Standing Committee of the High Court held on 28th and 29th of June, 1996 the following resolution was passed :

Agenda

To consider the proposal for granting first level and second level of promotion to the Officers of the rank of Munsif and Sub Judge as on 1.1.96 on the need based posts.

Decision

Having considered the proposal of the Office the same be and is hereby accepted and approved with a modification that the benefit of granting first level and second level promotion to the officers of the rank of Munsif and Sub Judge be allowed to all the officers according to seniority also including the officers who have been retired compulsorily.

However, it is made clear that the grant of aforesaid benefit will not confer any right upon the officers concerned for making any further claim on this account.

This decision applied to the petitioners also. It is pointed out by the respondents that the decision was need based and more by way of compassion so as to give some monetary benefit to the beneficiary judicial officers but the same did not confer any right upon the officers concerned as the resolution itself speaks. It was not a promotion based on merits which would have the effect of washing away unsatisfactory records anterior to the date. The service record of the petitioner Bishwanath Prasad Singh (as av ailable on the record) is as under : August, 1987 :@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ C - Integrity doubtful. C Grade. He is a Judicial Officer with doubtful integrity.

I had already submitted a note to Honble C.J. Details have been mentioned in my inspection notes as well.

[Sd/- Inspecting Judge]

May, 1988 : B

On the whole satisfactory since he had recently joined, it is difficult to express any opinion on these points, in respect of cols. 6,7, & 8 relating to reputation for honesty and impartiality, attitude towards his superiors, subordinates and colleagues and behaviour towards members of the Bar and Public.

May, 1989 - B - (Satisfactory)

Jan, 1996 - B Plus, Good

April, 1997 - (Satisfactory)

November, 1997 - B in respect of Col.No.3, i.e. regarding quality of order and judgments. No comments in respect of Col.No.10.

The Evaluation Committee consisting of 8 judges and presided over by Honble the Chief Justice held its meeting on 2nd May, 2000. Cases of 27 officers came up for consideration. As to 19 the

Evaluation Committee resolved to give them the benefit of increase in the retirement age from 58 to 60 years. As to 8 officers, including the petitioner, the Evaluation Committee formed an unanimous opinion that their further continuance in service will not be in public interest as they do not have potential for continued useful service.

Bishwanath Prasad Singh was posted as Additional Judicial Commissioner between 28.5.1997 and 23.3.2000 at Lohardagga. Then he was transferred on promotion as District & Sessions Judge, Giridih. Periodical inspections of the work and conduct of the petitioner at Lohardagga were not carried out and therefore the High Court directed a special inspection to be made and entrusted the same to a Judge of the High Court. Intimation of the proposed inspection was given to the petitioner so that if he so liked he could remain present at Lohardagga at the time of inspection. Though the petitioner did not come to Lohardagga but the inspecting judge came to know that he had sent messages to his contacts including lawyers and judicial officers that nothing should leak out. Some of them on condition of anonymity disclosed to the inspecting judge having received calls in this regard from Giridih. The inspecting judge also learnt that the petitioner had accepted illegal gratifications on a large scale. Files of all the bail applications disposed of by the petitioner and all the criminal cases decided by him during the last six months of his posting at the station were called for and inspected. The inspecting judge formed an opinion that the bail orders passed by the petitioner suffered from inconsistency in judicial approach and also to some extent exposed perversity apart from the fact that the disposal of some of the applications was delayed while some were disposed of expeditiously. He also found the judgments suffering from injudicious approach of the officer. The inspecting report in conclusion said in overall view of the matter considering in particular the reputation which the officer has left behind, I do not think he deserves the benefit of the extended age of superannuation.

The petitioner has not alleged any bias much less any mala fides against the High Court. No such allegation could have been made either, obviously because the evaluation as directed by the 1993 case having been undertaken by an Evaluation Committee consisting of 9 judges including Honble the Chief Justice. It cannot, therefore, be said that there was no material available with the High Court whereon the finding arrived at by it could be based. The High Court took an extra care to carry out a special inspection by sending a judge of the High Court on the spot. The reliability of information collected by the judge and placed on record cannot be doubted. An overall view of the service record, with requisite emphasis on recent performance, was taken into consideration. We do not think the opinion formed by the High Court is either arbitrary or based on no material or is vitiated for any other reason.

As we have already held no right much less any fundamental right inhers in the petitioner to continue in service beyond the age of 58 years which is the age of retirement of judicial officers in the State of Bihar under the existing Rules applicable to the petitioner. The question of granting any relief to the petitioner in exercise of the jurisdiction conferred on this Court under Article 32 of the Constitution does not arise. We find the petitioner not entitled to any relief and the petition filed by him liable to be dismissed. It is dismissed accordingly. We make no order as to costs.

W.P. (C) No.505 of 2000 - Swaroop Lal Vs. State of Bihar & Ors.

Swaroop Lal, the petitioner in Writ Petition (C) No.505 of 2000, born on September 4, 1942 entered the Bihar Administrative Service (Judicial Branch) on 15.3.1974 as a Munsif. On 14.6.1982 the petitioner was promoted and appointed as Additional Subordinate Judge. On 3.4.1985 powers of Chief Judicial Magistrate were conferred on the petitioner. There were further promotions and on

19.3.1994 the petitioner acting as Additional District & Sessions Judge was confirmed in the cadre of Bihar Subordinate Judicial Service. On 23.8.1995 senior selection grade was released to the petitioner with effect from 20.8.1986. On 5.9.1998 the petitioner was appointed and posted as District & Sessions Judge, Madhubani.

His case was also before the Evaluation Committee on May 2, 2000 along with the case of Bishwanath Prasad Singh and several others. The same opinion was formed about this petitioner also by the High Court in accordance with the directions of Supreme Court in 1993 case. The grounds of challenge are the same as in Writ Petition (Civil) No.419/2000 and the same fate follows. The pleas raised by this petitioner are covered by the view of the law which we have taken hereinabove in the case of Bishwanath Prasad Singh. This petition too merits a dismissal. It is dismissed accordingly. No order as to the costs.

Before parting with this judgment, we wish to observe that these two writ petitions have brought certain disturbing features to our notice and we would be failing in our constitutional duty if we over look those. We would, therefore, like to highlight those features along with our observations.

The facts brought to light in the counter-affidavit filed by the High Court in the case of petitioner Bishwanath Prasad Singh go to show that for a long period of more than 6 years, between May 1989 and January 1996, apparently there was no inspection of the work and conduct of the petitioner and no timely entry was made in the confidential rolls. Again between 1997 and 2000 regular periodical inspections were not carried out and therefore a special inspection by a judge had to be arranged under the orders of the Honble Chief Justice so as to meaningfully carry out the task of evaluation ordained by Supreme Court in 1993 case.

Article 235 of the Constitution vests administrative and disciplinary control over the district judiciary including the subordinate judiciary in the High Court immunising them from the executive control of the State Government so as to protect judicial independence. Control over subordinate courts vested in the High Court is a trust and confidence reposed by the founding fathers of the Constitution in a high institution like the High Court. The trust has to be discharged with a great sense of responsibility. All the High Courts have framed rules dealing with executive and administrative business of the Court. There are administrative committees and inspecting judges in the High Court. Periodical inspections of subordinate courts have to be carried out regularly so as to keep a vigil and watch on the functioning of the subordinate judiciary, the importance and significance whereof needs no emphasis. In High Court of Punjab & Haryana Vs. Ishwar Chand Jain - (1999) 4 SCC 579 this Court observed :

The object of such inspection is for the purpose of assessment of the work performed by the Subordinate Judge, his capability, integrity and competency. Since Judges are human beings and also prone to all the human failings, inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the working of the subordinate court, remedied. Inspection should act as a catalyst in inspiring Subordinate Judges to give best results. They should feel a sense of achievement. They need encouragement. They work under great stress and man the courts while working under great discomfort and hardships. A satisfactory judicial system depends largely on the satisfactory functioning of courts at grass-roots level. Remarks recorded by the Inspecting Judge are normally endorsed by the Full Court and become part of the annual confidential reports and are foundations on which the career of a judicial officer is made or marred. Inspection of subordinate court is thus of vital importance. It has to be both effective and productive. It can be so only if it is well regulated and is workman-like. Inspection of subordinate

courts is not a one-day or an hour or a few minutes affair. It has to go on all the year round by monitoring the work of the court by the Inspecting Judge. The casual inspection can hardly be beneficial to a judicial system. It does more harm than good.

The abovesaid observations were reiterated by this Court in High Court of Judicature At Allahabad Through Registrar Vs. Sarnam Singh Ors. - (2000) 2 SCC 339 with a note that they indicated the attitude and objectivity to be adopted by the inspecting judges while objectively expected considering the work and conduct of the judicial officers who have to work under difficult and trying circumstances. Observation in R. Rajiahs case - (1988) 3 SCC 211 were also noticed cautioning against acting on ill-conceived or motivated complaints and rumour-mongering which may seriously jeopardise the efficient working of the subordinate courts.

A number of decisions dealing with the object and purpose of writing confidential reports and care and caution to be adopted while making entries in the confidential records of government officers have been referred to in the cases of Sarnam Singh (supra, vide para 31, 32) as also in the case of Ishwar Chand Jain (supra). We need not repeat the same. Suffice it to observe that the well-recognised and accepted practice of making annual entries in the confidential records of subordinate officials by superiors has a public policy and purposive requirement. It is one of the recognised and time-tested modes of exercising administrative and disciplinary control by a superior authority over its subordinates. The very power to make such entries as have potential for shaping the future career of a subordinate officer casts an obligation on the High Courts to keep a watch and vigil over the performance of the members of subordinate judiciary. An assessment of quality and quantity of performance and progress of the judicial officers should be an ongoing process continued round the year and then to make a record in an objective manner of the impressions formulated by such assessment. An annual entry is not an instrument to be wielded like a teachers cane or to be cracked like a whip. The High Court has to act and guide the subordinate officers like a guardian or elder in the judicial family. The entry in the confidential rolls should not be a reflection of personal whims, fancies or prejudices, likes or dislikes of a superior. The entry must reflect the result of an objective assessment coupled with an effort at guiding the judicial officers to secure an improvement in his performance where need be; to admonish him with the object of removing for future, the shortcoming found; and expressing an appreciation with an idea of toning up and maintaining the immitable qualities by affectionately patting on the back of meritorious and deserving. An entry consisting of a few words, or a sentence or two, is supposed to reflect the sum total of the impressions formulated by the inspecting judge who had the opportunity of forming those impressions in his mind by having an opportunity of watching the judicial officer round the period under review. In the very nature of things, the process is complex and the formulation of impressions is a result of multiple factors simultaneously playing in the mind. The perceptions may differ. In the very nature of things there is a difficulty nearing an impossibility in subjecting the entries in confidential rolls to judicial review. Entries either way have serious implications on the service career. Hence the need for fairness, justness and objectivity in performing the inspections and making the entries in the confidential rolls.

Rules - where they are, else the executive instructions, require that entries in confidential records are made within a specified time soon following the end of the period under review, generally within three months from the end of the year. Delay in carrying out inspections or making entries frustrates the very purpose sought to be achieved. The mental impressions may fade away or get embellished, not to be restored. Events of succeeding year may cast their shadow on assessment of previous years. Recording of entries for more than one period in one go must be avoided as it is pregnant with the risk of causing such harm as may never be remedied or granting undeserved benefits. We

trust and hope the High Courts would have regard to what we have said and streamline the procedure and practice of inspections and recording of entries in confidential rolls so as to achieve regularity, promptness and objectivity inspiring confidence of subordinate judiciary controlled by them. We can only emphasise upon the High Courts the need for vigilantly carrying out the annual inspections at regular intervals and making timely entries in the service records followed by prompt communications to the judicial officers so as to afford them a right of representation in the event of the entry being adverse. We leave the matter at that.

We are conscious of the fact that we are dealing with an administrative decision taken by a High Court occupying a place of supremacy under the Constitution. The High Court as an institution is administratively totally independent and is not subject to superintendence by any other institution. We hope our observations are read in the right spirit __ these are by way of suggestions and not intended in any way to be criticism of the working of the High Court.

We have already noted the failure on the part of some of the State Governments in amending the service rules governing the judicial officers in accordance with the directions of this court given on November 13, 1991 and August 24, 1993. More than 7 years have elapsed when 1993 case __ the second one - was decided. We request High Courts of such of the States as are still in default in carrying out the directions of this court to take up the matter with the respective State Governments and impress upon them the need to expedite amending of the rules. We are informed that some of the State Governments which have amended the rules have not kept the intent and purpose of the directions of this court in the 1993 case in view. A blanket extension in the age of superannuation is not what was intended by this Court nor is it going to serve the public interest and larger interest of the society. The rules need to be so framed or amended as to give benefit of extended superannuation age only to such judicial officers about whom the High Court feels satisfied of their continued utility to the judicial system, subject to evaluation of their potential by making an objective assessment of their work, conduct and integrity and also keeping in view the reputation acquired by them as judicial officers.