SUPREME COURT OF INDIA

High Court of Judicature at Patna, Through R.G.

Vs

Shyam Deo Singh

C.A.No.2529 of 2002

(P. Sathasivam CJI., Ranjan Gogoi and N.V.Ramana JJ.)

28.03.2014

JUDGMENT

RANJAN GOGOI, J.

1. By a communication dated 17.5.2000 issued by the Registrar General of the Patna High Court the respondent herein was informed that he would retire from the service on completion of 58 years of age. The said communication of the Registrar General was, inter alia, based on a decision of the High Court on the administrative side taken in a meeting of the Full Court held on 6.5.2000 wherein the decision of its Evaluation Committee dated 2.5.2000 not to extend the service of the respondent beyond the age of 58 years was approved. All the aforesaid decisions being challenged, were set aside by the High Court by its order dated 20.2.2001 and the matter was directed to be reconsidered. Aggrieved, the High Court is in appeal before us.

2. A perusal of the order under challenge goes to show that two reasons, in the main, had prevailed upon the High Court to arrive at the impugned conclusion.

> The first is that the negative remarks/adverse comments recorded in the Annual Confidential Report (ACR) of the respondent on 15.12.1995 were not communicated to the respondent and the foundational facts for the said remarks are wholly unsubstantiated. It was also found by the High Court that the standing committee of the High Court on 03.01.1997 had decided not to pursue

the matter but to treat the same as closed. The High Court also took the view that notwithstanding the said remarks the respondent was subsequently promoted to the post of District & Sessions Judge and also granted the selection grade. The aforesaid facts, according to the High Court, had the effect of wiping out the adverse remarks dated 15.12.1995. The High Court, in the impugned order, also took note of the fact that the ACRs of the respondent for the subsequent years indicated that the respondent, over all, is a good officer with nothing adverse as to his integrity and reputation.

The other reason for which the High Court had come to the impugned conclusion is that while extension of service was refused to the respondent, one Mr. Udai Kant Thakur whose ACRs were decidedly inferior to that of the respondent was granted continuation after 58 years. It is on the aforesaid twin basis that the High Court had concluded that the denial of extension to the respondent necessitated interference in exercise of power of judicial review under Article 226 of the Constitution.

3. We have heard Shri P.H. Parekh, learned senior counsel for the appellant and Mr. Ambhoj Kumar Sinha, learned counsel appearing for the respondent No.1.

4. It is convenient to deal, at the first instance, with the second ground that had prevailed upon the High Court to set aside the orders passed by it on the administrative side. Having considered the matter, we do not think it is necessary for us to go into the said question inasmuch as the entitlement to continuation/extension of service of a judicial officer beyond the age of 58 has to be determined on the basis of the service record of the particular officer under consideration and not on a comparative assessment with the record of other officers. Therefore, even if we hold that the ACRs of Shri Udai Kant Thakur were decidedly inferior to those of the respondent, the same, at best, may have relevance to the grant of extension to the aforesaid officer without conferring any right or entitlement to the respondent for a similar extension. It is, therefore, the first ground that had weighed with the High Court to grant relief to respondent which really needs to be examined by us.

5. The adverse remarks dated 15.12.1995 being the center of focus may be conveniently set out hereunder:

"Of late I have heard quite disturbing reports about the integrity of Sri S.D. Singh, A.D.J., Dhanbad. I had a talk with the District Judge there and he also expressed his dissatisfaction about the working of Sri Singh in the discharge of his duties as a Judicial Officer. Recently, I heard about a criminal case lodged by C.B.I. (in which one Sri Modi and Sri Gandhi figure as accused) where the conduct of Sri Singh is not beyond reproach."

6. In Bishwanath Prasad Singh Vs. State of Bihar & Ors.[1] which coincidently arises out of the same resolution of the Full Court as in the present case, this Court had the occasion to consider whether continuance in service beyond 58 years is a right or a benefit conferred and also the norms that should govern the decision to grant or refuse such continuance. The aforesaid consideration by this Court was necessitated by the different interpretations that seem to have emerged from the directions in All India Judges' Association & Ors. Vs. Union of India & Ors.[2]. In paragraph 18 of the report in Bishwanath Prasad Singh (supra) the conclusions of this Court were summed up as follows:

"1. Direction with regard to the enhancement of superannuation age of judicial officers given in All India Judges Assn. v. Union of India 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 case2. 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. It is in the light of the above propositions laid down in Bishwanath Prasad Singh (supra) that the entitlement of the respondent as claimed and the decision of the High Court on the administrative side to the contrary will have to be examined, particularly, in the context of the extent of the power of judicial review that would be available to examine the impugned refusal made by the High Court.

8. The importance of the issue can hardly be gainsaid. The evaluation of the service record of a judicial officer for the purpose of formation of an opinion as to his/her potential for continued useful service is required to be made by the High Court which obviously means the Full Court on the administrative side. In all High Courts such evaluation, in the first instance, is made by a committee of senior Judges. The decision of the Committee is placed before the Full Court to decide whether the recommendation of the Committee should be accepted or not. The ultimate decision is always preceded by an elaborate consideration of the matter by Hon'ble Judges of the High Court who are familiar with the qualities and attributes of the judicial officer under consideration. This is also what had happened in the present case. The very

process by which the decision is eventually arrived at, in our view, should permit a limited judicial review and it is only in a rare case where the decision taken is unsupported by any material or the same reflects a conclusion which, on the face of it, cannot be sustained that judicial review would be permissible. An enumeration of the extent of permissible judicial review has been made by this Court in Syed T.A. Naqshbandi Vs. State of J&K[3]. Paragraph 10 of the report which highlights the above position may be specifically noticed:-

> "Neither the High Court nor this Court, in exercise of its powers of judicial review, could or would at any rate substitute themselves in the place of the Committee/Full Court of the High Court concerned, to make an independent reassessment of the same, as if sitting on an appeal. On a careful consideration of the entire materials brought to our notice by learned counsel on either side, we are satisfied that the evaluation made by the Committee/Full Court forming their unanimous opinion is neither so arbitrary or capricious nor can be said to be so irrational as to shock the conscience of the Court to warrant or justify any interference. In cases of such assessment, evaluation and formulation of opinions, a vast range of multiple factors play a vital and important role and no one factor should be allowed to be overblown out of proportion either to decry or deify an issue to be resolved or claims sought to be considered or asserted. In the very nature of things it would be difficult, nearing almost an impossibility to subject such exercise undertaken by the Full Court, to judicial review except in an extraordinary case when the Court is convinced that some monstrous thing which ought not to have taken place has really happened and not merely because there could be another possible view or someone has some grievance about the exercise undertaken by the Committee/Full Court."
> (Emphasis is ours)

9. In the light of the above, we may now advert to the facts of the present case.

> It is not in dispute that the adverse remarks/comments dated 15.12.1995 had not been communicated to the respondent. It is also clear from the materials on record that the standing committee of the High Court in its meeting held on 3.1.1997 had decided to close the matter instead of proceeding any further. The subsequent ACRs of the respondent for the years 1997-1998 and 2000-2001 are sufficiently positive and depicts the respondent as an efficient judicial officer

with a good reputation for honesty and impartiality. The respondent was promoted to the post of District and Sessions Judge on 5.9.1998. By Notification dated 17.2.2000 he was promoted to the selection grade of the Bihar Superior Judicial Service with effect from 1.1.1997. Therefore, not only the adverse remark dated 15.12.1995 was not acted upon but subsequent thereto promotion to the highest level in the district judiciary as well as selection grade in the said cadre was granted to the respondent. Promotion to the higher post of District Judge and placement in the selection grade is on an assessment of positive merit and ability. The said promotion(s), therefore, would have the effect of wiping out the adverse remark dated 15.12.1995. Such a view has in fact been expressed in Brij Mohan Singh Chopra Vs. State of Punjab[4] (Para 10). In the light of the above facts, we do not see how the High Court, on the administrative side, can be found to be justified in refusing to continue with the service of the respondent beyond the age of 58 years. The order dated 20.2.2001 passed by the High Court setting aside the said decision, therefore, will have to be affirmed and the present appeal dismissed. We order accordingly.

10. What should be the consequential relief that ought to be granted? A period of nearly 14 years has elapsed in the meantime. It will be highly inequitable to request the High Court to redo the exercise at this belated stage. Besides such a course of action will also be unnecessary, particularly, when the entire service record of the respondent had been placed before us, details whereof is also available in the impugned judgment of the High Court. Having considered the same, we deem it fit to order that the respondent be treated to have retired from service on completion of 60 years of age and all consequential benefits, including pay and pension on that basis, be made available to him forthwith and without any delay.

[1] (2001) 2 SCC 305
[2] (1993) 4 SCC 288
[3] (2003) 9 SCC 592
[4] AIR 1987 SC 948