

PETITIONER:
RAMESH CHANDRA ACHARYA

Vs.

RESPONDENT:
REGISTRAR, HIGH COURT OF ORISSA & ANR.

DATE OF JUDGMENT: 26/06/2000

BENCH:
M.B.Shah, K.T.Thomas

JUDGMENT:

Shah, J.

Question involved in this petition is Can, for any reason, it be held that Service Rule which provides that an officer who has no potential for continued useful service beyond a particular age, is invalid? Now will be the obvious answer for various reasons. Further, 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. The question which requires consideration by the authorities is Have we not reached a stage where services of government or semi-government employees should be regulated in such a way that only such persons who can render useful service be continued and not the indolent, infirm and those of doubtful integrity, reputation or utility? Periodical exercise of reviewing or evaluating the utility is required for better administration and for removal of dead wood or persons having doubtful integrity and reputation.

Petitioners case is that he was appointed on 14th January, 1981 by the High Court of Orissa as a temporary Munsif and he was confirmed in the said post on 21st December, 1985; he was promoted as a Civil Judge (Senior Division) in 1993 and was in service since then. It is his further case that in 1998 High Court of Orissa conducted review in respect of the petitioner as per Rule 71(a) of the Orissa Service Code and allowed him to remain in service up to the date of completion of the age of 58 years. On 28th January, 2000, he received a copy of the confidential letter from the Registrar (Administration), High Court of Orissa addressed to the Secretary, Law Department, Government of Orissa conveying the decision of the High Court of Orissa that as per Rule 71(a-1) of the Orissa Service Code, petitioner should be retired from Government service on attaining the age of 58 years i.e. on 30th June, 2000. It is his say that on receipt of the said confidential letter, he submitted a representation by letter dated 3.4.2000 to the High Court seeking reconsideration of his case by pointing out that this Court has enhanced the age of superannuation of judicial officers to 60 years and pointed

out the decision of this Court in Rajat Baran Roy and others v. State of W.B and others, [(1999) 4 SCC 235]. But there was no response. It is his contention that he has a clean record qua integrity and efficiency and there is no adverse entry or remark ever made in his confidential record. Thereafter, the petitioner received a notification dated 11.5.2000 from the Law Department of Government of Orissa notifying the State Governments decision to retire him from the Government service on attaining the age of 58 years. Hence, he has approached this Court by filing writ petition under Article 32 of the Constitution.

At the time of hearing this petition, Mr. A.S. Nambiar, learned senior counsel submitted that the Rule 71(a-1) is against the decision rendered by this Court in All India Judges Association v. Union of India and others, [(1992) 1 SCC 119] and a subsequent clarification given by this Court in review application in All India Judges Association and others v. Union of India and others, [(1993) 4 SCC 288].

For appreciating the contention raised by the learned senior counsel, we would first refer to relevant part of Rule 71(a) of the Orissa Service Code. 71.(a) Except as otherwise provided in the other clauses of this rule the date of compulsory retirement of a Government servant, except a ministerial servant who was in Government service on the 31st March, 1939 and Class IV Government servant, is the date on which he or she attains the age of 58 years subject to the condition that a review shall be conducted in respect of the Government servant in the 55th year of age in order to determine whether he/she should be allowed to remain in service up to the date of completion of the age of 58 years or retired on completing the age of 55 years in public interest:

Provided. (a-1). Notwithstanding anything contained in sub-rule (a) of rule 71, Judicial Officer belonging to State Judicial Services, who, in the opinion of the High Court of Orissa, have a potential for continued useful service, shall be retained in service up to the age of 60 years.

[NoteThe potential for continued utility shall be assessed and evaluated by appropriate Committee of Judges of the High Court, constituted and headed by the Chief Justice and the valuation shall be made on the basis of the Officers past record of service, Character Roll, quality of judgments and other relevant matters. The High Court should undertake and complete the exercise in case of an officer about to attain the age of 58 years well within time by following the procedure for 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 shall be compulsorily retired on his attaining the age of 58 years. This exercise should be undertaken well in advance before an officer attains the age of 58 years.]

(b). .

(c). . .

In our view, the aforesaid rule is not only in conformity with the decision rendered by this Court in the aforesaid case but also in conformity with the requirement of service jurisprudence. The purpose of increasing the superannuation age for the judicial officers was with an intention to raise the tone and morale of the judicial services as a whole but not to continue the officers who have lost their utility in rendering service to the society. It needs no emphasis as it is accepted that the judicial officer is required to discharge much more greater responsibility to the Society. As observed in All India Judges Association case (Review) [Para 7], the judicial service is not service in the sense of employment. The Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. Hence, judicial officers must be fit in all respects for discharge of such onerous duties. In All India Judges Association case, the Court quoted the following observation of Professor Pannick from his book entitled Judges: Judges do not have an easy job. They repeatedly do what the rest of us seek to avoid; make decisions. After detailed discussions, the Court finally observed [in Para 61] thus:- The conduct of every judicial officer should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamour, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

Hence, for deciding whether the judicial officer has potential for continued useful service, the authority (the High Court) has to take into consideration all the aforesaid aspects and has to make overall evaluation.

This Court in the aforesaid case emphasised that 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 and, therefore, directed thus:- 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 Court thereafter clarified that the assessment at the age of 58 years is for the purpose of finding out 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.

It is apparent that aforesaid directions of this Court are faithfully incorporated in the aforequoted rule. Therefore, the High Court was fully justified in following the aforesaid rules in evaluating the record of the petitioner for his continued utility in the judicial service.

Further, the aforequoted rule does not straightway extend the age of superannuation at the age of 58 years but it only enables the High Court to retain in service a judicial officer belonging to the State Judicial Services up to the age of 60 years, if it is in the opinion that such judicial officer has potential to continue in useful service. For finding out whether he has potential for continue in useful service, assessment is to be made on the basis of past record of service, character rolls, quality of the judgments and other relevant matters, which may include over all assessment with regard to integrity, reputation and utility.

However, the learned counsel for the petitioner referred to the decision rendered by this Court in Rajat Baran Roy and others v. State of W.B. and others, [(1999) 4 SCC 235] and submitted that once the superannuation age is extended to 60 years, there is no question of reviewing it at the age of 58 years. In our view, this submission is without any substance because it is open to the competent authority to frame appropriate rules permitting it to assess the overall performance of the officer periodically to find out whether such officer has potential for continued utility in service. The aforesaid judgment only deals with the rule where there was no such specific provision of review at the age of 58 years and the Court referred to a Memo of Government of W.B. dated 15.5.1998 extending the superannuation age to 60 years and held that officers have right to continue till the age of 60 years. Further, the Court found that power vested under rule 75(aa) of the West Bengal Service Rules (Part I) were not exercised and in any case from the record it appeared that there was non-application of mind to the material particulars which were mandatory for invoking the said rule. The Court, therefore, held that there was no question of referring to the decision in case of All India Judges Association (Supra). In our view, the said decision in Rajat Baran Roy has no bearing in the present case because of specific Rule 71(a).

In this view of the matter, there is no substance in the contention that Rule 71(a-1) is ultra-virus, invalid or against the judgment rendered by this Court in All India Judges Association case. We reiterate that in the absence of 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 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 specific rule otherwise.

The learned counsel for the petitioner further referred to the decision in *M.S. Bindra v. Union of India and others* [(1998) 7 SCC 310] and *Madan Mohan Choudhary v. State of Bihar and others* [(1999) 3 SCC 396]. These two cases pertain to compulsory retirement of the officers on a pre-mature stage and considering facts and circumstances of the case, this Court observed that judicial scrutiny of any order imposing pre-mature compulsory retirement is permissible if the order is either arbitrary or mala fide or it is based on no evidence. However, in this writ petition under Article 32 it is not necessary for us to examine whether the recommendations made by the High Court on the basis of Rule 71(a-1) of the Orissa Service Code is in any way arbitrary or mala fide as it is open to the petitioner to approach the High Court for his grievances.

Hence, this petition under Article 32 is not required to be entertained and is dismissed.