

ï»¿CASE NO.:
Special Leave Petition (civil) 19326 of 2000

PETITIONER:
B.S. SHARMA

RESPONDENT:
STATE OF HARYANA AND ANR.

DATE OF JUDGMENT: 17/11/2000

BENCH:
M. JAGANKADHA RAO & K.G. BALAKRISHNAN

JUDGMENT:
JUDGMENT

2000 Supp(4) SCR 722

The following Order of the Court was delivered : Delay condoned.

The petitioner was appointed in the Judicial Service of the State of Haryana as a Sub Judge-cum-Judicial Magistrate in September, 1975 and was appointed as an Addl. District Judge in May, 1988. Pursuant to a request of the Government, the Registrar of the High Court issued proceedings dated 26.7.97 relating to 'transfers and postings' of officers, as per the decision of the Full Court. The petitioner was shown as transferred and posted as 'Presiding Officer, Industrial Tribunal-cum-Labour Court, in the place of another officer "who was recalled to the present cadre". A notification was thereafter issued by the Government on 16.9.97 under Section 8 of the Industrial Disputes Act, 1947 appointing petitioner as Presiding Officer, as stated above.

The petitioner now contends that even if he reaches the age of superannuation in the Judicial Service (i.e. 60 years), he can still continue as Presiding Officer till he completes 67 years. He relies on Section 7-C of the Industrial Disputes Act, 1947.

The provisions of Section 7-C of the Act read as follows:

"Section 7-C: Disqualifications for the Presiding Officer of Labour Courts, Tribunals and National Tribunals. No person shall be appointed to, or continue in, the office of the Presiding Officer of a Labour Court, Tribunal or National Tribunal, if:

- (a) He is not an independent person; or
- (b) He has attained the age of sixty five years." Later, the words '65 years' were substituted as ' 67 years'.

The writ petition filed by the petitioner was dismissed by the High Court by a well-reasoned order. The High Court adverted to Rule 19 of the Punjab Superior Judicial Service Rules, 1963 as adopted in the State of Haryana initially, and as amended on 24.3.1998 and as finally amended on 11.11.1999 and held that having regard to the control of the High Court under Article 235 of the Constitution of India, Rule 19 as it originally stood and as amended on 24.3.1998 was not in conformity with Article 235 of the Constitution of India. Hence, the rule as it stood before 11.11.99 could not be relied upon.

The rule as it stands after amendment on 11.11.99 is in conformity with Article 235 of the Constitution. The amended rule keeps the control of the officers entirely with the High Court.

The High Court held that the petitioner continued to belong to the parent

department in the Judicial Service and his age of superannuation would be 60 years as per the said rules and his name continued to be shown in the seniority lists of the Judiciary even after his posting as Presiding Officer. The petitioner could not state how he ceased to be in the Judicial Service. The High Court held:

"The narration of the factual position in respect of the petitioner extracted above reveals that it was the High Court itself which initiated the case of the petitioner's transfer as Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, while examining annual transfers and postings for the year 1997-98. Only after the petitioner's transfer was determined by the High Court, the same was recommended to the State Government which also had the right/authority to pass orders in that behalf under Section 8 of the Industrial Disputes Act, 1947. The recommendation was accepted and only after the High Court issues orders of the petitioner's transfer, the Government issued a formal notification giving effect to the decision of the High Court. The procedure was thus in consonance with the Constitutional mandate.

The petitioner has not placed on record any order showing how and when he severed his relationship from the Haryana Superior Judicial Service and his service records does not show that the High Court or the Haryana Government ever terminated his lien from the cadre of the Haryana Superior Judicial Service. He never tendered his resignation from the Haryana Superior Judicial Service. In fact, even after he had commenced to discharge his duties as Presiding Officer, Industrial Tribunal-cum-Labour Court, his name continued to be reflected in the gradation list of members of the Haryana Superior Judicial Service. One such list corrected upto 1.7.1999 has been appended by the petitioner himself as Annexure P- 3. In the writ petition, it was never the case of the petitioner that he ever terminated his lien with the Haryana Superior Judicial Service and ceased to be a member thereof."

We are in entire agreement with the above conclusion of the High Court. We may add that the petitioner did not sever his relationship in the Judicial Service and that he remained under the control of the High Court under Article 235 of the Constitution and was never absorbed in any service which had a superannuation age of 67 years.

Finally, we may state that Section 7-C merely states that no person shall be appointed or continued as Presiding Officer if he has crossed 67 years. The said rule does not prescribe any age of superannuation. It only prescribes a condition for appointment or continuance. If the person is governed by separate service rules regarding superannuation which permit continuance only upto 60 years, Section 7-C cannot help him to continue beyond 60 years or upto 67 years.

We, therefore, dismiss the special leave petition.