Nawal Singh vs State Of U.P. & Another on 23 September, 2003

Equivalent citations: AIR 2003 SUPREME COURT 4303, 2003 (8) SCC 117, 2003 AIR SCW 4963, 2003 LAB. I. C. 3445, 2003 ALL. L. J. 2491, 2004 (1) SERVLJ 489 SC, 2003 (4) LRI 266, 2003 (8) ACE 689, (2004) 1 SERVLJ 489, 2003 (10) SRJ 288, 2003 (5) SLT 574, (2003) 12 ALLINDCAS 289 (SC), 2004 (1) UJ (SC) 361, (2003) 99 FACLR 416, (2004) 1 SERVLR 3, (2003) 4 SCT 413, (2003) 10 INDLD 372, (2003) 3 CURLR 616, (2003) 4 ALL WC 3312, (2003) 4 LAB LN 431, (2004) 1 ESC 82, (2003) 8 SCALE 55, (2003) 7 SUPREME 179, (2003) 3 UPLBEC 2688, 2003 SCC (L&S) 1212

Bench: M.B. Shah, Ar. Lakshmanan

CASE NO.:
Appeal (civil) 2898 of 2001
Appeal (civil) 2920 of 2001
Appeal (civil) 7342 of 2001

PETITIONER:
Nawal Singh
Chander Pal Singh
Bharthari Prasad

RESPONDENT:
State of U.P. & Another
State of U.P. & Another
State of U.P. & Another

DATE OF JUDGMENT: 23/09/2003

BENCH:
M.B. SHAH & Dr. AR. LAKSHMANAN.

JUDGMENT:

J U D G M E N T Shah, J.

Challenge in these appeals is to the orders of compulsory retirement of Judicial Officers, who were working in the State of U.P. At the outset, it is to be reiterated that the judicial service is not a service in the sense of an employment. Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. Further nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility. If such evaluation is done by the Committee of the High Court Judges and is affirmed in the writ petition, except in very exceptional circumstances, this Court would not interfere with the same,

particularly because order of compulsory retirement is based on the subjective satisfaction of the Authority.

On the basis of the aforesaid principles these appeals against the judgments and orders dated 19.4.1999, 27.3.1999 and 15.2.2000 passed by the High Court of Allahabad in CMWP No.14831 of 1999, CMWP No.28664 of 1998 and CMWP No.1312 of 1999, challenging their compulsory retirement at the age of 58 years, are required to be decided.

I. At the time of hearing, firstly, it is submitted by the learned counsel for the appellants that:– ? In view of the Rule increasing the retirement age from 58 years to 60 years, Rule 56 of U.P. Fundamental Rules would stand repealed.

For this purpose, learned counsel for the appellants relied upon the Rules regulating the retirement on superannuation of the Judicial Officers framed by the State of U.P. vide Notification dated 20th October, 1992, published in the U.P. Gazette Part 1(ka) dated 3rd April, 1993, p. 930, SI. No.14. The said Rules read as under:—

1. Short title and commencement.— (1) These rules may be called the Uttar Pradesh Judicial Officers (Retirement on Superannuation) Rules, 1992.

(2) They shall come into force with effect from the date of their publication in the Gazette.

2. Overriding effect.— The provisions of these rules shall have effect notwithstanding anything to the contrary contained in Rule 56 of the Uttar Pradesh Fundamental Rules, contained in the Financial Handbook, Volume II, Parts II to IV or any other rules made by the Governor under the proviso to Article 309 of the Constitution or orders, for the time being in force.

3. ....

4. Retirement.— A Judicial Officer shall retire from service on superannuation in the afternoon of the last day of the month in which he attains the age of sixty years."

Before appreciating the contentions of the learned counsel for the parties, we would refer to Rule 56 of the U.P. Fundamental Rules, which reads thus:— "56. (a) Except as otherwise provided in this Rule, every Government servant other than a Government servant in inferior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years. He may be retained in service after the date of compulsory retirement with the sanction of the Government on public grounds which must be recorded in writing, but he must not be retained after the age of 60 years except in very special circumstances.

(b) A Government servant in inferior service shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years. He must not be retained in service after that date, except in very special circumstances and with sanction of the Government.

(c) Notwithstanding anything contained in clause (a) or clause (b), the appointing authority may, at any time by notice to any Government servant (whether permanent or temporary), without assigning any reason, require him to retire after he attains the age of fifty years or such Government servant may by notice to the appointing authority voluntarily retire at any time after attaining the age of forty five years or after he has completed qualifying service of twenty years.

(d) The period of such notice shall be three months:

Provided that...

(e) A retiring pension shall be payable and other retirement benefits, if any shall be available in accordance with and subject to the provisions of the relevant Rules to every Government servant who retires or is required or allowed to retire under this Rule.

Provided that..... Explanation: (1) The decision of ..... public interest.

(2) In order to be satisfied whether it will be in the public interest to require a Government servant to retire under clause (c) the appointing authority may take into consideration any material relating to the Government servant and nothing herein contained shall be construed to exclude from consideration—

(a) any entries relating to any period before such Government servant was allowed to cross any efficiency bar or before he was promoted to any post in an officiating or substantive capacity or on an ad hoc basis;

or

(b) any entry against which a representation is pending, provided that the representation is also taken into consideration along with the entry; or

(c) any report of the Vigilance Establishment constituted under the Uttar Pradesh Vigilance Establishment Act, 1965.

(2-A) Every such decision shall be deemed to have been taken in the public interest.

(3)—(4) ... "

The title of the aforesaid 1992 Rules makes it clear that the Rules only pertain to U.P. Judicial Officers' Retirement on Superannuation and provide that a judicial officer shall retire from service on superannuation when he attains the age of sixty years.

Learned counsel for the appellants submitted that Rule 2 would have overriding effect and Rule 56 as a whole would not be applicable to the Judicial Officers. This

submission is without any substance. Rule 2 only provides that notwithstanding anything to the contrary contained in Rule 56 of the U.P. Fundamental Rules, a Judicial Officer shall retire from service on superannuation when he attains the age of 60 years. Under Rule 56 (a), the retirement age is 58 years and that part of the Rule would not be applicable as it is contrary to Rule 4 of the 1992 Rules.

Further, from the Rules quoted above, it is apparent that the 1992 Rules regulating the retirement on superannuation of the Judicial Officers deal only with the extension of retirement age from 58 to 60 and by giving overriding effect Rule 56 (a) of the Fundamental Rules is substituted for judicial officers of the State of U.P. From this, by no stretch of imagination, it can be said that Rule 56 (b) to (e) and the Explanations (1), (2) or (3) are, in any way, altered, amended or substituted. If the contention of the learned counsel for the appellant is accepted, the other rules which provide for giving such employee retirement benefits as provided in Rule 56 (e), issuance of notice by considering the material relating to government servants for compulsory retirement would be redundant. Such contention is apparently without any basis. Hence, it does not require further elaboration. However, we would refer to the decision in A.G. Varadarajulu and Another v. State of T.N. and Others [(1998) 4 SCC 231] which was relied upon by the learned senior counsel Mr. Dwivedi, wherein [in para 16] this Court held as under:-

"16. It is well settled that while dealing with a non obstante clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision. Such intention of the legislature in this behalf is to be gathered from the enacting part of the section. In Aswini Kumar Ghose v. Arabinda Bosee AIR 1952 SC 369, Patanjali Sastri, J. observed"

"The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously."

In Madhav Rao Scindia v. Union of India (1971) 1 SCC 85 at page 139, Hidaytullah, C.J. observed that the non obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but "for that reason alone we must determine the scope" of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. "A search has, therefore, to be made with a view to determining which provision answers the description and which does not."

II. The learned counsel next submitted that as per the Allahabad High Court Rules, before recommending compulsory retirement of the appellants, the Full Court was required to pass such orders and as the Full Court has not passed any resolution, compulsory retirement is bad.

Dealing with Allahabad High Court Rules, in State of Uttar Pradesh v. Batuk Deo Pati Tripathi & Another [(1978) 2 SCC 102], 7-Judge Bench of this Court considered similar contention and negatived the same by holding that it was misconception that control over the Subordinate Judiciary which is vested by Article 235 in the High Courts must be exercised by the whole body of the Judges. The Court negatived the contention that the High Court cannot delegate its function or power to a Judge or smaller body of Judges of the Court; it is no exaggeration to say that the control will be better and more effectively exercised if a smaller committee of Judges has the authority of the court to consider the manifold matters falling within the purview of Article 235. Such an authorisation effectuates the purpose of Article 235. After elaborate discussion, the Court upheld the minority judgment of the Full Bench that Rule 1 of Chapter III of the 1952 Rules framed by the Allahabad High Court is within the framework of Article 235 and the recommendation made by the Administrative Committee that the Judicial Officer should be compulsorily retired cannot be said to suffer from any legal or constitutional infirmity. The aforesaid decision is repeatedly followed by this Court. Finally, in Chandra Singh and Others v. State of Rajasthan and Another [(2003) 6 SCC 545] the Court observed as under:— "40. Article 235 of the Constitution of India enables the High Court to assess the performance of any judicial officer at any time with a view to discipline the black sheep or weed out the deadwood. This constitutional power of the High Court cannot be circumscribed by any rule or order. ...

47. In the instant case, we are dealing with the higher judicial officers. We have already noticed the observations made by the Committee of three Judges. The nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility."

Similarly, in High Court of Judicature for Rajasthan v. P.P. Singh [(2003) 4 SCC 239], the Court held that:— "19. It is also true that the powers of the Chief Justice under Articles 235 and 229 of the Constitution of India are different and distinct. Whereas control over the subordinate courts vests in the High Court as a whole, the control over the High Court vests in the Chief Justices only. (See All India Judges' Association's case). However, the same does not mean that a Full Court cannot authorize the Chief Justice in respect of any matter whatsoever. In relation to certain matters keeping the rest of it in itself by the Full Court, authorization to act on its behalf in favour of the Chief Justice on a Committee of Judges is permissible in law. How far and to what extent such power has been or can be delegated would be discernible only from the Rules. Such a power by the Full Court can also be exercised from time to time."

III. The learned counsel for the appellants thirdly submitted that in view of the decision rendered by this Court in High Court of Judicature at Allahabad through Registrar v. Sarnam Singh & Another [(2000) 2 SCC 339] the orders passed by the High Court compulsory retiring the appellants on the basis of the directions issued by this Court in All India Judges' Association v. Union of India & Others [(1992) 1 SCC 119] cannot be justified.

Learned Counsel submitted that in similar set of circumstances for the rules framed by the State of U.P. extending the age limit from 58 years to 60 years, this Court has held that for all Judicial Officers working in the subordinate courts, retirement age would be 60 years and thus, the age

having been raised from 58 years to 60 years, all Judicial Officers in the State would retire on attaining the age of 60 years and not earlier.

In the aforesaid case, the Court held that in view of the aforesaid rule which had overriding effect, the directions given by this Court [in All India Judges' Association case (supra)] for scrutiny of the service records before allowing the Judges to continue in service beyond 58 years, being of a transitory character, yielded place to the new rules made by the State Government under Article 309 of the Constitution and, therefore, it was no longer incumbent upon the High Court to resort to the procedure of scrutiny of the service records of all the Judicial Officers before allowing them the benefit of extension in the age of retirement. The Court held that the directions issued by this Court in the Review Petition in All India Judges' Association case, for scrutiny of service record would not be applicable as the judicial officers by virtue of new rule would continue up to the age of superannuation fixed under the new rule.

Firstly, it is to be stated that in the case of Sarnam Singh (supra), the High Court on judicial side has set aside the order of compulsory retirement passed on the report of the Scrutiny Committee, as it was based on no material in support of such order. That order was challenged before this Court by the High Court of Allahabad. In that set of circumstances, the Court arrived at the conclusion that once the retirement age of judicial officers was extended to 60 years, the direction issued in All India Judges' Association Case for scrutiny of service records before allowing the judges to continue in service beyond 58 years would not survive and, therefore, there was no question of passing order of compulsory retirement. The only reason recorded in the said judgment for confirming the order passed by the High Court was that compulsory retirement was bad as the judicial officer was entitled to continue up to the age of 60 years in view of the amended Rules framed under Article 309 of the Constitution.

This Court in Sarnam Singh's case (supra) was not required and has not dealt with exercise of powers by the High Court under Rule 56(c).

In these matters, the High Court has exercised its jurisdiction not only on the basis of the directions issued by this Court in All India Judges' Association Case but also in exercise of its powers under Rule 56 (c) which empowers it to pass an order of compulsory retirement after an employee attains the age of 50 years. In All India Judges' Association and others v. Union of India and others [(1993) 4 SCC 288 – (Review Petition)], this Court has made it clear that the direction issued by the Court for continuing judicial officers in service by considering their suitability for the entitlement of the benefit of increased age of superannuation from 58 to 60 years was in addition to the assessment to be undertaken for the compulsory retirement and the compulsory retirement at the early stage/s under the respective Services Rules.

Therefore, there is no embargo on the competent authority to exercise its power of compulsory retirement under Rule 56 of Fundamental Rules. As stated above, we have arrived at the conclusion that because of the increase in retirement age, rest of the Rules providing for compulsory retirement would not be nugatory and are not repealed. Hence, it was open to the High Court to follow the procedure for exercising the power under Rule 56 (c) and the procedure prescribed in Explanation

(2-A) requires that such order should be in public interest and the appointing authority may take into consideration any material relating to such officer. It inter alia provides that any entry in service record against which a representation is pending can be taken into consideration provided that the representation against such entry is also taken into consideration along with the entry and to consider any report of the Vigilance Establishment. This power was exercised by the High Court. No doubt, the Committees were constituted on the basis of the directions issued by this Court in First All India Judges' Association case, but at the same time, before passing the order of compulsory retirement, the High Court exercised its powers under Fundamental Rules and that is specifically mentioned in the orders.

IV. It was finally contended by the learned counsel for the appellants that there was no justifiable reason for passing the order of compulsory retirement.

This contention is required to be appreciated on the basis of settled law on the subject of compulsory retirement. In Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another [(1992) 2 SCC 299], this Court considered Fundamental Rule 56(j) and rule corresponding to it and observed that the object and purposes for exercise of these powers are well stated in Union of India v. J.N. Sinha [(1970) 2 SCC 458] and other decisions referred to by the Court and held thus:— "34. The following principles emerge from the above discussion:

> (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
>
> (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
>
> (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary — in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.
>
> (iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter — of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

In J.N. Sinha's case (supra), the Court specifically held that the rule embodies one of the facts of the pleasure doctrine embodied in Article 310 of the Constitution and that the rule holds the balance between the rights of the individual government servant and the interest of the public; the rule is intended to enable the government to energise its machinery and to make it efficient by compulsorily retiring those who in its opinion should not be there in public interest.

Further, it is to be reiterated that the object of compulsory retirement is to weed out the dead wood in order to maintain high standard of efficiency and honesty to keep judicial service unpolluted. It empowers the authority to retire officers of doubtful integrity which depends upon overall impression gathered by the higher officers and it is impossible to prove by positive evidence that a particular officer is dishonest. This aspect is dealt with in Union of India v. M.E. Reddy and another [(1980) 2 SCC 15] wherein the Court (in para 17) held thus:— "Mr. Krishnamurty Iyer appearing for Reddy submitted that the order impugned is passed on materials which are non-existent inasmuch as there are no adverse remarks against Reddy who had a spotless career throughout and if such remarks would have been made in his confidential reports they should have been communicated to him under the rules. This argument, in our opinion, appears to be based on a serious misconception. In the first place, under the various rules on the subject it is not every adverse entry or remark that has to be communicated to the officer concerned. The superior officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. Some of these remarks may be purely innocuous, or may be connected with general reputation of honesty or integrity that a particular officer enjoys. It will indeed be difficult if not impossible to prove by positive evidence that a particular officer is dishonest but those who have had the opportunity to watch the performance of the said officer from close quarters are in a position to know the nature and character not only of his performance but also of the reputation that he enjoys."

In the backdrop of the settled law, the learned counsel for the parties have drawn our attention to the relevant material considered by the Committee appointed by the High Court. The Committee followed the procedure prescribed in Rule 56, as provided in explanation to the said Rule. The material on record reveals that the High Court has taken into consideration all the relevant facts. There is no allegation that the orders were arbitrary or mala fide. Still however, with regard to each case, we would refer in brief what has been stated in Confidential Reports of the appellants.

CIVIL APPEAL No.2898 OF 2001 Appellant Nawal Singh was appointed in 1972. In Confidential Reports for the year 1975-76, 1976-77, it has been mentioned that his judicial work needs improvement. For the year 1980-81, his judicial work was of average quality. For the year 1984-85, the District Judge has rated him as good officer. For the year 1986-87, there were complaints about his integrity. For this purpose, reference was made to cases wherein he had granted bail in serious offences. However, with regard to doubtful integrity, the representation of the appellant was

accepted and it was substituted by holding that no reason to doubt the integrity of the officer. Again, for the year 1990-91, it has been stated that with regard to the interim orders/injunctions, he was directed to be more scrupulous; it was stated that integrity was doubtful and over all assessment was poor. On his revision, adverse remarks with regard to his integrity were expunged by holding that the appellant was suspended during the relevant year pending the departmental enquiry touching his integrity but he was exonerated by the Administrative Committee. Again, there are instances indicating that various inquiries were held subsequently. It is not necessary to refer to the same. His application for revoking the suspension was also rejected. However, later on, order of suspension was revoked.

CIVIL APPEAL No.2920 OF 2001 Same is the position with regard to Chander Pal Singh. His confidential reports reveal that various allegations were made and various inquiries were held against him. Once he was charged with the offence of committing breach of guidelines prescribed by the High Court and also for committing an act of gross mis-conduct by misusing the authority of the District & Sessions Judge in violation of Rule 3 of U.P. Government Servants Conduct Rules, 1956. In one matter, the District Magistrate, Fatehpur made a complaint against him stating that he was entertaining revisions against orders passed by him under Section 3 of U.P. Control of Goondas Act, 1970. The matter was referred to the Administrative Committee for consideration.

CIVIL APPEAL No.7342 OF 2001 Case of Bharthari Prasad is also of the same nature. His confidential reports reveal that various allegations were made and various inquiries were held against him. In confidential report for the year 1975-76, the District Judge observed disposal of cases to be poor and judgment of average quality. For the years 1978-79 and 1980-81, the disposal was observed to be below standard. Once he was charged for the omission while delivering the judgment of conviction in the absence of the accused and also discharging the bail bonds and sureties, which was in violation of Section 353 of Cr.P.C. For this, he was asked to be careful in future. For the year 1994-95, District Judge remarked his integrity to be doubtful and overall assessment as poor. Representation of the appellant against these remarks was also rejected. For the year 1997-98, the District Judge awarded adverse remarks against him. The District Judge also requested for his transfer from Allahabad to another station. The appellant was later on transferred from Allahabad. It is also stated that the appellant did not comply the orders of transfer but even after receiving the orders of transfer, he continued to decide cases. The matter was later on considered by the Administrative Committee. Hence, it is apparent that the Screening Committee after examining the past records of service; character roll and other matters relating to the appellants opined that they were not suitable for continuing in service beyond the age of 58 years.

From the facts narrated above, even if we were to sit in appeal against the subjective satisfaction of the High Court, it cannot be said that the orders of compulsory retirement of the appellants are, in any way, erroneous or unjustified. Further, it is impossible to prove by positive evidence the basis for doubting integrity of the judicial officer. In the present day system, reliance is required to be placed on the opinion of the higher officer who had the opportunity to watch the performance of the concerned officer from close quarters and formation of his opinion with regard to overall reputation enjoyed by the concerned officer would be the basis.

It is to be reiterated that for keeping the stream of justice unpolluted, repeated scrutiny of service records of judicial officers after specified age/completion of specified years of service provided under the Rules is must by each and every High Court as the lower judiciary is the foundation of judicial system. We hope that the High Courts would take appropriate steps regularly for weeding out the dead-wood or the persons polluting justice delivery system.

In the result, the appeals are dismissed with costs, quantified at Rs.5000/- in each appeal.