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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Decided on: 06.01.2016

+ W.P.(C) No. 3512/2005

URMILA RANI

..... Petitioner

Through: None.

versus

LT. GOVERNOR OF DELHI AND ORS. Respondents

Through: Mr Chetan Lokur for Mr V.R.

Datar, Adv. for R-2/DHC

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. This petition was in the regular hearing list. There is no appearance for the petitioner.

2. The petitioner is aggrieved by the order dated 29.09.2004, whereby the Lieutenant Governor accepted the recommendations of the High Court which led to her retirement with effect from 30.09.2004. The petitioner joined the Delhi Judicial Service after being duly selected in 1973. She was promoted to the cadre of Delhi Higher Judicial Service with effect from 30.05.1991. It is stated that by the seniority list circulated on 14.10.1999, the petitioner was placed at serial No. 29 and the date of retirement in her case was 30.09.2006. Later in the subsequent seniority list dated 12.08.2002, she was placed at serial No. 18. The petitioner adverts to certain facts. Her application for appointment as Member (Judicial), Railways Claims Tribunal was forwarded by the High Court/Respondent No.2

in 2003. She was called for interview and later was offered the post of Member (Secretary), Delhi Legal Services Authority on deputation in August, 2004. While so, the impugned order was made. The petition prays through a two-fold channel—firstly against the order directing superannuation and secondly to Rule 26B of the Delhi Higher Judicial Service Rules which empowers the Competent Authority to discontinue with the services of a Member of the said cadre in the event a determination is so made at the time the said officer completes 58 years. The petitioner urges in these proceedings that the circumstances which led to the introduction of Rule 26B no longer exist and adverts to the fact that the age of retirement of Central Government service was increased to 60 years. This ordinarily would have led to an increased age of retirement of the Members of Higher Judicial Service. The petitioner relies upon Rule 27 of the Delhi Higher Judicial Rules which by reference incorporates all conditions applicable to Members of the All India Services, within which no specific provision is made in such rules. It is, therefore, stated that with the increased age of retirement not only the Central Government servants, but even Delhi Higher Judicial Service Officers acquire the right to continue in employment till the age of 60 years.

3. The petitioner relies upon certain decisions of the Supreme Court notably the *State of Uttar Pradesh vs. Madan Mohan Nagar AIR 1967 SCC 1*; *All India Judges Association vs. Union of India & Ors. AIR 1993 SC 2493* and *High Court of Judicature at Bombay through Registrar vs. Brij Mohan Gupta 2003 (2) SCC 390*. It is submitted that consequently the question of appraisal of service of an

officer upon her attainment of 58 years would not be relevant given the changed circumstances.

4. The respondent, i.e., the High Court in the counter-affidavit refutes the petitioner's submission with respect to the validity of Rule 26B and relies upon the decision in the ***All India Judges Association vs. Union of India*** (1993) 4 SCC 288. It is stated that the Supreme Court had envisioned three circumstances in connection with the continuance or otherwise of an officer beyond the age of 58 years. These are as follows:-

“(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 bona fide, may compulsorily retire him forthwith. The latter 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 constituted 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.”
(emphasis supplied)

5. The respondents also rely upon the judgment of the Supreme Court in ***Ramesh Chand Acharya vs. Registrar, High Court of Orissa*** 2000 (6) SCC 332.

6. The respondents in para 10(j) and 10(k) also referred to the circumstances that led to the downgrading of the Annual Confidential Report of the petitioner which was duly communicated to her as well as certain administrative actions which were taken. It is submitted that having regard to the totality of the circumstances and her overall record, the decision not to permit her to continue in the service after completion of 58 years was taken.

7. The Court, at the outset, notices that the essential challenge to the rule in the present case is that the petitioner's increased age of retirement needs to be upheld, and continued advertence to Rule 26B is arbitrary. This submission, in the opinion of this Court, cannot be accepted. Quite apart from considerations which prevailed with the administrative authority in deciding whether to continue with the service of the employee in terms of Rule 56(j) of the Fundamental Rules, i.e., premature retirement, provisions such as Rule 26B should also be considered in the larger public interest. The said provision pertains to a situation where the official having completed a certain number of years in regular service, a decision as to whether he/she is to be continued for an extended period of service is to be taken. This power, in the Court's opinion, is quite different from the power to prematurely retire of an officer. In the later circumstance, the public

servant may or may not be in a position to enjoy full pension. However, in the former circumstance ordinarily the public servant would be recipient of full pensionary benefits. The provision also facilitates and ensures that rank work shirkers or non-performers or those who are functioning indifferently are not afforded the opportunity of continuing for the tenure up to 60 years. This Court also notices that the provision has two ends, i.e., (i) enabling the administration to let go of employees who are not deemed efficient; (ii) equally enabling those who wish to separate themselves from the public service, at a certain stage, but before attaining the 58 years at the end of 57th year, to give notice and opt for appointment without seeking extension. There could be circumstances where a judicial officer may not choose to continue even after 58 years or may seek retirement under second proviso to Rule 26B. For these reasons and keeping in mind the fact that in the *All India Judges Association vs. Union of India and Ors.* (1993) 4 SCC 288 (*supra*), the Supreme Court commended the formulation of provisions similar to Rule 26B. It is for these reasons that the petitioner's challenge to the provision has to fail.

8. So far as the challenge to the retirement order is concerned, this Court is of the opinion that the petitioner has neither urged lack of bona fides nor established procedural irregularity or unfairness on the part of the respondents while appraising her record. On the other hand, the respondents state that the position of her annual confidential

report and other materials were such that a decision had been taken to downgrade her gradings. The decision was made known, further administrative measures were also taken to keep a close watch on her functioning. These circumstances, in our opinion, justify the issuance of the impugned order, which resulted in the discontinuance of the petitioner's service at the completion of her 58 years of age.

9. For the above reasons, the Court finds no merit in the petition and the same is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

**JANUARY 06, 2016
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