

## Age of Superannuation of Judicial Officers

In All India Judges' Association Vs Union of India (1992) 1 SCC 119 conveniently referred to hereinafter as the Judges' case 1992 the Supreme Court directed as follows :-

“ We accordingly direct that appropriate alterations shall be made in the Rules obtaining in the States and the Union territories in respect of judicial service so as to fix the age of retirement at 60 years with effect from December 31, 1992. We have given a long period so that appropriate amendments may be made in the meantime.”

The Union of India sought a review of the directions including the one quoted above in the Judges' case 1992 and the resultant Judgement of the Supreme Court is All India Judges' Association Vs Union of India (1993)4 SCC 288 referred hereinafter as the Judges' case 1993. In para 25 to 34 at pages 303 to 307 of the report of the Judgement contain a detailed discussion of the question of Superannuation Age of Judicial Officers. The direction as to age of retirement quoted above from Judges' case 1992 was modified in the Judges' case 1993 virtually making the extension of age of retirement to 60 years a benefit to be given to officers found eligible on an assessment made by the High Court and not a right as directed in the Judges' case 1992. Pursuant thereto some of the States and the High Courts verbatim reproduced the modifications / guidelines of the Supreme Court in the service Rules. Pursuant to the guidelines Assam / Gauhati High Court also framed the Assam Judicial Officers (Retirement) on Superannuation Rules 1995. The guidelines of the Supreme Court gave rise to a spate of litigation on the part of the Judicial Officers who were not given the benefit of the extended age of retirement.

Rajat Baroan Roy (1999)4 SCC 235. Sarnam Singh (2000)2 SCC 339, Ramesh Chandra Acharya (2000)6 SCC 332 and Biswanath Prasad Singh (2001)2 SCC 305 are cases dealing with the nature, scope and implications of the modification made by the Judges' case 1993 regarding age of retirement. The Judges' case 1993 also directed the Government of India to constitute an independent Commission to recommend Service condition of Judicial Officers. On 21.3.1996 the Government of India pursuant to the said direction constituted the first National Judicial Pay Commission under the Chairmanship of Mr. K.J. Shetty ( hereinafter referred to as the shetty Commission). The three Volume Report of the Shetty Commission submitted on 11<sup>th</sup> Nov. 1999 contains a detailed considerations of the question of age of retirement. The discussions on the question are in Vol. I, chapter 4 entitled “The trial Judge is really “on trial” at page 350-392. In the Volume Section V specifically deals with the modification made by the Supreme Court with regard to age of retirement in

Judges' case 1993. After detailed discussion the recommendation at para 4.47 and 4.48 are the followings :

“ 4.47 – Many of the High Courts have incorporated the directions of the Supreme Court in thr respective Service Rules, including the provision for compulsory retirement at the page of 58 years, although the retirement age has benn fixed at 60.”

“ 4.48 – We recommend to the High Courts to Supersede such Rules and to frame a Rule specifying only age of retirement. When such a rule is framed without any further conditions, the directions of the Supreme Court to review the cases at 58 will not be applicable, as observed by the Supreme Court in RAJAT BARAN ROY..... etc.

Commission considered only Rajat Baran (1999)4 SCC 235 others like Biswanath Prasad could not be considered because the Report was of 1999 while Biswanath and others were of 2000 and 2001.

In Vol.III of the Shetty Commission Report chapter 21 at pages 1108-1132 deals with Superannuation Age of Judicial Officers. Modification made by the Supreme Court in Judges case 1993 was again considered and recommendation quoted above were reiterated. Recommendation at para 21.59 page 1130 is as follows :

“ 21.59 – After considering various aspects of the matter, we recommend an increase in the age of retirement for all Judicial Officers from 60 to 62 years for the following reasons.....”

The summary of the recommendation in the Annexure I to Vol. III item 21 at page 58 to 63 also contains the same recommendation as to age of retirement. Lastly the Draft Judicial Service Rules at Appendix / Annexure Vol. II of the Report at page 18 the Specific Rule namely Rule 18 is as follows – “ The age of Superannuation of the member of the Service shall be sixty two years.” The Shetty Commission Report came up for consideration by the Supreme Court in March 2002 and in All India Judges' Association Vs Union of India (2002) 4 SCC 247 decided on 21.3.2002 ( hereinafter referred to as Judges' case 2002) the Supreme Court finally accepted the recommendation of the Shetty Commission with certain modification. Para 9 of the Judgement lists the recommendations of the Shetty Commission. Topping the list is the following (1) The High Courts were required to frame the Rules specifying particular age of retirement..... Etc. At item (12) of the list is the recommendation as to increase of the age of retirement from 60 to 62 years.

While the Supreme Court founds it unnecessary to make any alteration in the item (1) above as regards item (12) at para 26 of the judgement at para 269 of the report of the case said that “..... age of retirement of Supreme Court

Judge is 65 years of a High Court Judge is 62 years and logically the age of retirement of the Judicial Officer is 60 years. This difference is appropriate and has to be maintained.” Then the Supreme Court directed the High Court to amend the Rules to make provision for reemployment in certain circumstances.

Para 37 of the Judgement says as follows ;

“ Subject to the various modifications in this judgement, all other recommendations of the Shetty Commission are accepted”

Upshot of all the above is that conclusion seems inescapable that the Supreme Court has mandated the age of retirement of all Judicial Officers to be 60 years without the baggage contained in Judge’s case 1993.

Biswanath Prasad (2001) 2 SCC 305 cannot rule the matter of age of retirement after Judges’ case 2002. The draft Assam Judicial Service Rules 2002 being largely based on the draft Judicial Service Rules in Volume II of the Shetty Commission Report seems to have missed. Rule 18 thereof, Rule 19 of the draft Judicial Service Rules either may only be a one liner like Rule 18 of the draft in volume II with the difference that instead of 62 years it has to be 60 years or may be redrafted as follows :-

“ Every Judicial Officer shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years

Provided that a Judicial Officer who is born on the first day of a month shall retire from service on the afternoon of the last day of the preceding month on the attaining 60 years”.

The necessity and anxiety to weed out the dead wood from the Service is well taken care of by the Rule 20 that is retirement in public interest. Procedure for granting the benefit as directed in Judges’ case 1993 can now be adopted in granting reemployment after 60 years which is Rule 21 of the draft Rules.

The draft Rule 19 is nothing but resurrection of guidelines in Judges’ case 1993 discarded by Judges, case 2002 on accepting the recommendation of the Shetty Commission recounted herein above.

Consequent on the redrafting of Rule 19 as a one liner on the model of the Shetty Commission or otherwise the draft Rule 26 dealing with repeal and Savings also will need redrafting to include not only the Assam Judicial Service Rules, 1967, but also the Assam Judicial Officers ( Retirement). On superannuation Rules 1995 extant since 1.1.1993 framed pursuant to the guidelines in Judges case 1993.