

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.9829/2000

(From the judgement and order dated 10/03/2000 in CWJC 3401/97
of The HIGH COURT OF PATNA)

NAWAL KISHORE PRASAD

Petitioner (s)

VERSUS

STATE OF BIAHR & ORS.

Respondent (s)

(For Final Disposal)

Date : 20/04/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Petitioner (s) Mr. Sunil Kumar, adv.
Mr. Ratnesh Kumar, adv.
Mr. Praveen Chaturvedi, adv.
Mr. Anil Sinha, adv.
Ms. Mridula Ray Bharadwaj, adv.

For Respondent (s) Mr. Uma Nath Singh, adv.
Mr. Kumar Rajesh Singh, adv.
Mr. B.B. Singh, adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....J
.SP2

Leave granted.
The appeal is allowed in terms of the signed order.

.SP1

(Neena Verma)
Court Master

(Meena Trikha)
Asstt.Registrar

Signed order is placed o n the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2914 OF 2001@@
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(@ Special Leave Petition (C) No.9829/2000)

Nawal Kishore Prasad Appellant

Versus

State of Bihar & Ors. Respondents

O R D E R@@
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Leave granted.

Appellant had joined Bihar Administrative Services (Judicial Branch) as a Munsif in 1963. He came to be promoted as an Additional Sub-Judge in 1975 and was promoted as an Additional District & Sessions Judge in 1983. Taking note of his service record, he was confirmed in Bihar Superior Judicial Services with effect from 01.02.1987. The appellant was promoted as District & Sessions Judge in 1991 and was sent on deputation as Secretary, Bihar Legislative Council with effect from 9th December, 1994. On attaining the age of 58 years, the appellant was retired from service without being given the benefit of an extension of two years. According to the High Court the service record of the appellant had been seen and it was decided not to give him benefit of two years extension i.e. from the age of 58
...2/-

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years to the age of 60. The appellant questioned the refusal to grant him benefit of two years extension. The writ petition was resisted by the High Court. A Division Bench of the High Court took note of the fact that case of the appellant had been considered by a Review Committee constituted for reviewing cases for grant of extension which had not favoured grant of extension to the appellant and the Full Court had agreed with the Review Committee. The Bench also took note of the judgment in All India Judges' Association case and itself examined the entire service record of the appellant. The High Court opined :

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"Entire service record has been noticed in the judgment. It cannot be gainsaid that the petitioner has an exceptionally good

service record and he was never communicated any adverse remark throughout his judicial career. This naturally leads to a valid interference that the denial of the extension of service to the petitioner was founded on extraneous consideration which has not been disclosed by the High Court in the counter affidavit. I have no hesitation in coming to the conclusion that no reasonable body of persons would have held that the petitioner had outlived his utility for extension of service. The decision on the face of it is extremely arbitrary and violative of Articles 14 and 16 of the Constitution of India."

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After having come to the conclusion as aforesaid the Division Bench also found that the order of the High Court ...3/-

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passed on the administrative side not to grant extension to the appellant was an arbitrary order and was not sustainable. The High Court, however, declined to grant any relief to the appellant on the ground that during the pendency of his writ petition in the High Court he had, in any case, crossed the age of 60 years and in the opinion of the Division Bench, the matter could not be remanded to the Full Bench for consideration of grant of extension which was then not possible. In the words of the Division Bench:

.....L.....I.....T.....T.....J
.SP1

"The next question for consideration is whether in the facts and circumstances of the case the petitioner can be granted relief for which he has filed this writ application. This Court has no power under Article 226 of the Constitution of India to grant extension of service to the petitioner. We can only remit the matter to the Full Court for fresh decision. The petitioner has now crossed the age of 60 years hence it would be futile to request the Full Court to reconsider the case of the petitioner. I would, however, like to emphasize that the decision of the High Court not to grant extension to the petitioner is no reflection on the character, efficiency or integrity of the petitioner to debar the petitioner from re-employment in government service or elsewhere."

After hearing learned counsel for the parties and examining the record, we are of the opinion that after ...4/-

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having arrived at the conclusion that the denial of extension of service to the appellant from 58 to 60 was founded on 'extraneous consideration' and was an 'arbitrary order', the High Court ought not to have non-suited the appellant and it could have moulded the relief rather than refused to grant any relief to the appellant on the ground that during the pendency of the writ petition in the High Court, he had reached the age of 60. It is pertinent to notice here that the appellant had questioned the administrative order of the High Court dated 10.12.1996, refusing to grant him extension of two years, by promptly filing a writ petition in the High Court after filing a representation, on 3rd February, 1997. There was no delay on his part to approach the High Court. He cannot be made to suffer for the delay in disposal of his writ petition. The High Court had ample jurisdiction to mould the relief to be granted to the appellant since it had found that the appellant had been unjustly treated by refusal of benefit of two years extension to him. The least that the High Court could have done was, to grant the appellant benefit of salary for two years. After all, High Court while exercising its writ jurisdiction was exercising a jurisdiction in equity. It was required to do equity in this case remembering that equity reforms and moderates the ...5/-

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rigour hardness and edges of law and "is not past the age of child bearing." Exaggerated adherence to the 'rule' has resulted in injustice to the appellant. We are unable to appreciate the helplessness expressed by the Division Bench of the High Court. In our opinion, in the established facts and circumstances of the case, keeping in view the positive findings recorded by the Division Bench in favour of the appellant (supra), the impugned order of the Division Bench to the extent it has refused any relief to the appellant cannot be sustained and to that extent the impugned order is set aside.

As a result, this appeal succeeds and we direct that the appellant shall be paid his salary for two years together with all the allowances from the date he attained the age of 58 years to the date he attained the age of 60 years after deducting the amount, if any, paid by way of pension for those two years. The pension of the appellant shall also be refixed taking our order into consideration. We direct the High Court to settle the claim of arrears of salary of the appellant within eight weeks from the date a copy of the order is delivered to the High Court. In the

event the amount is not paid within the said period of eight weeks, the appellant shall be entitled to receive interest6/-

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on the amount of arrears @ 10% P.A. commencing from the date of this order. The appellant is also entitled to Rs.2,000/- as costs.

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.....CJI.

.....J.
(R.C. LAHOTI)

New Delhi,
April 20, 2001.

.....J.
(BRIJESH KUMAR)