

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINGAR**

**Reserved on 05.06.2025
Pronounced on 04.09.2025**

Case: SWP No. 132/2014

Muzaffar Iqbal Qureshi ...Petitioner(s)/Appellant(s)

Through: Mr. Z. A. Qureshi, Sr. Advocate with
Ms. Rehana Fayaz, Advocate

v/s

State of J&K and Anr. Respondent(s)

Through: Mr. Aatir Javid Kawoosa, Advocate

**CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE**

JUDGMENT

Per Oswal-J

1. Through the medium of this writ petition, the petitioner has impugned the Government Order No. 08-LD(A) of 2014 dated 01.01.2014 issued by the respondent No. 1, whereby sanction to the compulsory retirement of the petitioner was accorded on the recommendations made by the respondent No. 2 vide communication No. 3271/GS dated 11.06.2013, when the petitioner (Member of Higher Judicial Service) had already completed 59 years and 10 months in judicial service. The petitioner has also impugned the recommendation made by the respondent No. 2 for compulsory retirement of the petitioner.

2. It is stated that the petitioner came to be selected as "Munsiff" (Judicial Magistrate 1st Class) in the year 1983, and was promoted as Sub-Judge

in the year 1995. In the year 2001, the petitioner was promoted to the post of District Judge and vide order dated 19.05.2010, he was placed in the Selection Grade of the J&K Higher Judicial Service with effect from 01.02.2009.

3. The grievance of the petitioner is that the process undertaken by the respondent No. 2 for compulsory retirement of the petitioner right from its very inception to its culmination is beyond the scope of Rule 24 of the J&K Higher Judicial Service Rules, 2009 (for short, "the Rules of 2009") and Clause 4 of fourth proviso to the Regulation 226 of Civil Service Regularizations, 1956. Precisely, the stand of the petitioner is that the recommendation made by the respondent No. 2 for compulsory retirement of the petitioner is not only contrary to the rules but also in violation of the mandate of judgment of Hon'ble Supreme Court of India in '**All India Judges Association vs. Union of India and ors.**', **AIR 1993 SC 2493**, as the exercise undertaken by the respondent No. 2 for compulsory retirement of the petitioner was undertaken by the respondent No. 2 when the petitioner had already crossed the age of 58 years, more precisely, just before eight months of his attaining the age of superannuation.
4. The respondent No. 1 has filed the response stating therein that in terms of Rules 21 & 24 of the Rules of 2009, the High Court of Jammu and Kashmir is required to assess the judicial officers for their continued utility in service beyond the age of 50, 55, 58 years. The Hon'ble Full

Court in its meeting held on 03.06.2013, assessed the performance of Shri Muzaffar Iqbal (petitioner herein), Sh. Brij Mohan Gupta and Shakti Kumar Gupta, District and Sessions Judges for their continued utility in service on their attaining age of 58 and 55 years respectively. The Hon'ble Full Court after evaluating the past record, ACRs, work done statements and other matters/record of these three officers, recommended that these three District Judges be retired compulsorily in the public interest as they have lost their continued utility in service beyond the age of 58 years in case of Sh. Muzaffar Iqbal Qureshi (petitioner) and Shri Brij Mohan Gupta and beyond the age of 55 years in case of Sh. Shakti Kumar Gupta. Accordingly, the Registrar General vide communication No. 3271/GS dated 11.06.2013 requested that the order retiring Sh. Muzaffar Iqbal Qureshi, Sh. Brij Mohan Gupta and Sh. Shakti Kumar Gupta, District Judges compulsorily in the public interest be issued. The recommendation of the High Court regarding compulsory retirement of aforesaid judicial officers was accordingly submitted before the Cabinet and the Cabinet vide its decision dated 29.09.2013 approved the same. In terms of Section 109 of the Constitution of erstwhile State of Jammu and Kashmir, the Governor was the competent authority for sanctioning the compulsory retirement of judicial officers on the recommendation made by the High Court. The Governor of Jammu and Kashmir accorded sanction for compulsory retirement of the District Judges as mentioned above. In nutshell the stand of the respondent No. 1 is that sanction has been granted by the respondent No. 1 on the basis of the recommendations

made by the Full Court, which have binding effect and accordingly, formal order of compulsory retirement was issued by the respondent No. 1.

5. Respondent No. 2 has filed the counter affidavit stating therein that as per Full Court Resolution dated 16.03.2013, read with High Court guidelines bearing No. 178 dated 11.06.2013, the ACRs of the Judicial Officers for the relevant period were required to be recorded by the Administrative Judge under whose administrative control the officers were working during that year. Where the Administrative Judge was not available for writing the ACRs for any particular year, for any reason, in that case, the ACRs of the previous year were taken as ACRs for the said year. It is stated that as the ACRs of the petitioner could not be recorded by the concerned Administrative Judge for the year 2011 and 2012, it can safely be construed on the basis of the ACRs of the previous year that the petitioner has obtained average rating for the year 2011 and 2012 as well. Further, the assessment of the judicial officers for their continued utility in service at the age of 50, 55 and 58 including the petitioner was put up in the Full Court meeting held on 28.03.2012. In the said meeting, two judicial officers were found fit for the continued utility in service after the age of 58 years but the decision in respect of rest of the judicial officers including the petitioner was deferred. The assessment of the judicial officers including the petitioner could not be considered by the Hon'ble Administrative Committee due to one reason or the other. The Administrative Committee in its

meeting held on 21st and 29th May, 2013 considered the cases of the judicial officers including the petitioner and Administrative Committee after evaluation of the available past service record, ACRs, work done statements and other relevant matters/ record of the petitioner and Mr. Brij Mohan Gupta recommended their compulsory retirement. It is further stated that in the next Full Court meeting held on 03.06.2013, it was resolved that the ACRs wherever have not been approved earlier by the Full Court, would be deemed to be approved for the years concerned. It is further stated that on the recommendations made by the High Court, the Government issued order bearing No. 08-LD(A) of 2014 dated 01.01.2014 for the compulsory retirement of the three judicial officers including the petitioner herein. The service record of the petitioner reflects the performance of the petitioner average in 2005, average in 2006, good in 2007, outstanding in 2008, outstanding in 2009 and average in 2010.

6. Mr. Z. A. Qureshi, learned Senior Counsel for the petitioner has argued that exercise to determine the utility of the petitioner as judicial officer to continue in the service was required to be undertaken by the High Court before the petitioner attained the age of 58 years as per the requisite standard prescribed for assessing the utility of the member of the judicial service for continuing in the service beyond 58 years. So far as the petitioner is concerned, the said exercise was undertaken by the respondent No. 2 when only eight months were left for the petitioner to attain age of superannuation and in fact, the petitioner has been

compulsorily retired just before less than two months of his superannuation. He has further argued that the petitioner was granted selection grade only in the year 2010 on the basis of merit and efficiency and for the years 2008 and 2009, the performance of the petitioner was outstanding but simply by placing the reliance on the performance for the year 2010 and considering the same performance for the two subsequent years, when the ACRs were not recorded by the concerned Administrative Judge, the petitioner could not have been compulsorily retired. Mr. Qureshi, learned senior counsel further tried to demonstrate before this Court that the petitioner had submitted work done statements for year 2011 and 2012 but for none of his fault, the ACRs were not recorded by the Administrative Judge, as such, the petitioner cannot be penalized for the same. He has relied upon the judgment of Hon'ble Supreme Court of India in case titled "**All India Judges Association vs. Union of India and ors**", AIR 1993 SC 2493.

7. *Per contra*, Mr. Aatir Javid Kawoosa, learned counsel for the respondent No. 2 has argued that as the ACRs of the petitioner for the year 2011 and 2012 could not be prepared, ACRs for the year 2010, where the petitioner had obtained averaging rating, were considered for the years 2011 and 2012 as well, as per the mandate of Resolution of the Full Court and High Court guidelines, which have not been challenged by the petitioner. He has further argued that other Judicial Officer, who was also ordered to be retired prematurely along with the petitioner, had challenged the order of his compulsory

retirement, but the Hon'ble Supreme Court upheld the same in case titled, "**Shakti Kumar Gupta vs. State of J&K**".

8. Heard learned counsel for the parties and perused the record.
9. In order to determine the controversy at hand, it would be proper to extract Rules 21 and 24 of Rules of 2009, having material bearing in the case, which are as under:

" J&K Higher Judicial Service Rules, 2009

Rule 21: Age of superannuation:

A member of the service shall retire from service in the afternoon of the last day of the month in which he attains the age of sixty years.

Rule 24: Premature retirement:

The High Court shall assess and evaluate the record of the members of the service for his/her continued utility before he/she attains the age of 50 years, 55 years and 58 years by following the procedure for compulsory retirement under the service rules applicable to him/her and if he/she is not found fit and eligible he/she will compulsorily retire on his/her attaining the age of 50 year, 55 years and 58 years as the same may be."

10. Sub-Clause 2 to fourth proviso to Regulation 226 of J&K Civil Service

Regulations 1956 is also relevant, the same is also extracted as under:

"The High Court shall assess and evaluate the record of the of the judicial officer for his continued utility before he, attains the age of 58 years by following the procedure for compulsory retirement under the service rules applicable to him and if he is not found fit and eligible he will compulsorily retire on his attaining the age of 58 years.

This shall be deemed to have come into effect from 31.12.1992."

11. The age of superannuation of a member of Higher Judicial Service has been fixed 60 years, but in terms Rule 24 of the Rules of 2009 and

proviso the Regulation 226 (supra), the High Court has to evaluate the service record of the member of the service before he attains the age of 50, 55 and 58 years for determining the continued utility of such member beyond the three different spans of his life, and if he is not found fit and eligible, he can be retired prematurely but of course, after following the procedure prescribed for compulsory retirement under the relevant service rules. The intent behind the rules is that the unfit and inefficient members of the service, who are no longer able to meet the parameters laid down to determine the continued utility in the service, are weeded out of the service at the age of 50, 55 and 58 years. The High Court has to draw a subjective satisfaction in respect of utility of the member of service and the continuance of such member in service is always contingent upon the subjective satisfaction so derived by the High Court. Further, the expression “shall” and “before” employed in Rule 24 of the J&K Higher Judicial Services Rules and Sub-Clause 2 to fourth proviso to Regulation 226 of J&K Civil Service Regulations 1956, leaves no doubt that the exercise to determine the continued utility of member of service has to be completed before the member attains the age of 58 years. If such exercise is not completed within the time prescribed under the Rules/Regulations, the whole purpose behind incorporating the same shall stand defeated.

12. In terms of Resolution dated 03.06.2013, the following guidelines/criteria/norms were laid by the High Court to determine the

continued utility in service of the judicial officers beyond 50, 55 and 8 years of age:

A. Assessment Standards:

Following are the factors to be taken into consideration individually/collectively to assess the officer:

1. Over all past service record of the officer shall be examined and considered with emphasis on the last 5 years record to assess his potential for continued utility in the service beyond 50, 55 and 58 years.
2. The quality of the judgments delivered by the officer, whether or not assailed before the High Court, in Suits, Appeals, Sessions cases, Revisions and other proceedings during the past ten years of his service tenure. The quality of judgments will be determined by its contents, the legal acumen it reveals, the nature of approach adopted, the language employed and the results achieved etc. etc.
3. The rate of disposal of the case by the officer in the light of the separate criteria prescribed by the High Court for this purpose.
4. Material reflecting the character of the officer, including the complaints, enquiries and vigilance reports lodged against him. The fact that the officer was superseded in the last promotion shall also be taken into consideration.

B. Annual Confidential Reports (A.C.Rs)

1. General

- a) The ACRs for the last five years should be taken into account.
- b) If the other record of the officer is at variance with ACRs duly prepared under rules and approved by the High Court for a particular year, the entry in the ACR for that particular year may be given due importance.

Provided, however that if the ACR of the officer for a particular year has not been recorded or approved by the High Court, as can be the situation in case of a deputationist, the other record of the officer for that year would be considered for rating him.

2. Special consideration:

A Judicial officer shall be permitted to continue beyond 50, 55 and 58 years of age if he fulfills the following conditions:

- i) The Officer has on the basis of the prescribed criteria earned seventy five per cent or more ('A' Grading) of his total ACR entries in 'Very Good' or 'Good' gradings.
- ii) If the officer has not earned any adverse or average entry in his ACRs after his last promotion.

C. Other Relevant Factors:

Besides above standard and recording of ACR, following factors shall also be taken into account while evaluating all round potential of the officer:

- i) His integrity, honesty and judicial conduct shall be kept in view and utmost importance be attached;
- ii) His relations with the Bar and his administrative capacity should also be considered;
- iii) His dealing with the finance shall also be taken into account while evaluating the all round potential of the officer.
- iv) The ACRs shall not constitute the sole guiding factor but shall be given due weightage along with other equally relevant factors.
- v) The institutional integrity being in larger public interest is the uppermost and shall be preferred to individual interest.

These are guidelines for internal use of the High Court. However, it would not limit the power of the High Court vested by Article 235 of the Constitution of India read with Article 104 of the J&K Constitution."

13. So far as the present case is concerned, the date of birth of the petitioner is 05.02.1954 and in terms of Rule 24 of the Rules of 2009, his continued utility in service was required to be determined before 05.02.2012 but as per the response of the respondent No. 2, the Full Court in its meeting held on 28.03.2012, found two judicial officers fit for continued utility in service after the age of 58 years, but deferred the decision in respect of the other judicial officers including the petitioner. As already observed, the exercise to determine the continued utility of the petitioner in service was required to be undertaken before he attained the age of 58 years but the said exercise was undertaken after the petitioner attained the age of 58 years, i.e. there was delay of almost two months and still the decision was deferred. The action on the part of Full court in deferring the decision to determine the continued utility

of the petitioner in service is itself pointer to the fact that the Full Court could not form an opinion that it would not be expedient to continue with the petitioner in service because of having lost his utility. Even in the next Full Court meeting held on 09.08.2012, the respondent No. 2 was directed to place the record of the District Judges and Judicial Officers, who had crossed the age of 55 years and 58 years for their continuation in service beyond the age of 55 and 58 years in the next Full Court meeting. The petitioner remained in service with respondent No. 2 and it was only on 21st and 29th May, 2013, the Administrative Committee of the High Court recommended compulsory retirement of the petitioner along with two other District Judges (Selection Grade) and thereafter, on 03.06.2013, the Full Court recommended compulsory retirement of the petitioner. In the same meeting, the Full Court also resolved that ACRs, wherever have not been approved earlier by the Full Court, would be deemed to be approved for the year concerned and also changed the criteria for premature retirement adopted earlier in terms of Resolution dated 23.09.1994 in the form of annexure-A, as extracted above.

14. The exercise for premature retirement of the petitioner was required to be completed before his attaining the age of 58 years but the petitioner was allowed to continue as District Judge for about one year and four months, before the respondent no. 2 undertook the exercise to determine the continued utility of the petitioner in the service and was recommended for compulsory retirement on 03.06.2013. Not only this,

the petitioner was further allowed to remain in service till 01.01.2014, when the order of compulsory retirement of the petitioner was issued by the respondent No. 1. It is evident that the order of premature retirement of the petitioner was issued on the premise that the petitioner had lost his continued utility in service beyond the age of 58 years but by that time, the petitioner was having only two months left for attaining the age of superannuation. In this context, it would be appropriate to take note of para-7 of the judgment of Hon'ble Supreme Court of India in case titled '**All India Judges Association vs. Union of India and ors**'. (supra), which is reproduced as under:

" the High Court should undertake and complete the exercise in case of officers about to attain the age of 58 years well within time by following the procedure for compulsory retirement as laid down in the respective service Rules applicable to the judicial officers....."

15. Proviso 4 was appended to Regulation 226(1) of J&K Civil Service Regulations, 1956 only in the year 1992, so as to comply with the judgment of Hon'ble Supreme Court of India. Similarly, Rules 21 and 24 of Rules of 2009, in fact, follow the mandate of judgment of Hon'ble Supreme Court of India in **All India Judges Association vs. Union of India and ors.** (supra). Thus, we find that there was an apparent breach on the part of respondent No. 2 in undertaking the exercise of assessment of continued utility of the petitioner in service beyond the age of 58 years, as the said exercise was required to be completed before attaining the age of 58 years in accordance with Rule 24 of Rules of 2009. The mandate of the Rules is required to be strictly

followed in its letter and spirit, as the belated compliance of the provisions would defeat the very purpose and intent behind the provisions. In this case, the mandate of Rules has been observed more in breach. The petitioner was allowed to remain in service for 1 year and 10 months even after attaining the age of 58 years. As such, the action of the respondent No. 2 in recommending the compulsory retirement of the petitioner and accord of sanction by the respondent No. 1 cannot be countenanced in law. Had there been a delay of few months in assessing the utility of the petitioner in service beyond the age of 58 years, we would not have shown indulgence but as there is a delay of 1 year and 4 months in assessing the continued utility of the petitioner in service and further retiring the petitioner prematurely, who was just short of two months before attaining the superannuation, this Court, in the peculiar facts and circumstances, has deemed it appropriate to show indulgence.

16. It was contended by Mr. Aatir Javid Kawoosa that in case of Shakti Kumar Gupta (*supra*), the order of compulsory retirement was upheld by the Hon'ble Supreme Court. We have examined the judgment rendered by the Hon'ble Supreme Court of India and we find that Hon'ble Supreme Court of India has not accepted the action of the High Court in rating the work of the petitioner as average for the years 2010, 2011 and 2012 on the basis of report of the year 2009, as the ACRs of said judicial officer for the year 2009 were not rightly prepared but has upheld the compulsory retirement of the said Judicial Officer after

taking into consideration the various complaints against him and his conduct. In Brij Mohan Gupta's case, exercise to determine the continued utility in service was undertaken and completed prior to his attaining the age of 58 years. Therefore, it cannot be said that the case of the petitioner is identical to that of Mr. Shakti Kumar Gupta, who too was retired prematurely along with the petitioner.

17. The record produced by the registry reveals that the petitioner had sent work done statements for the years 2011, 2012 and 2013 but without judgments and it appears that it was because of this reason; ACRs were not recorded by the Administrative Judge for those years. Be that as it may, this court in absence of assessment of the work performed by the petitioner by the concerned Administrative Judge, cannot comment upon the same and as such this ground cannot form the basis for showing indulgence. But equally true is that the resolution dated 03.06.2013 which formed the basis for grading the performance of petitioner for two subsequent years on the basis of ACR of previous year, was not in existence in the year 2012, when the continued utility of the petitioner beyond the age of 58 years was to be determined, before his attaining the age of 58 years.

18. After examining the record, we find that there are no allegations of corruption or otherwise against the petitioner and his integrity was never doubtful. A person of doubtful integrity can be shown the door at any time but after following the due process of law. So far as case of

the petitioner is concerned, this Court is of the considered view that the respondent No. 2 has not followed the mandate of Rules mentioned above while directing the premature retirement of the petitioner and the action of the respondents in retiring the petitioner just two months before his attaining the age of superannuation on the ground of loss of continued utility in service can't sustain the test of law and the same is liable to be set aside.

19. Viewed thus, for what has been said and discussed above, the writ petition is allowed, and the Government Order No. 08-LD(A) of 2014 dated 01.01.2014 issued by the respondent No. 1 as well as communication No. 3271/GS dated 11.06.2013 of the respondent No. 2, are set aside. As a necessary corollary, the petitioner shall be deemed to have been retired on attaining the age of 60 years.

20. Disposed of.

(WASIM SADIQ NARGAL)
JUDGE

(RAJNESH OSWAL)
JUDGE

Srinagar

04.09.2025

Karam Chand/Secy.

Whether the order is speaking: Yes

Whether the order is reportable: Yes