

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC  
&  
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

**FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936**

**WA.No. 1585 of 2013 () IN WP(C).33094/2010**  
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**AGAINST THE ORDER/JUDGMENT IN WP(C) 33094/2010 of HIGH COURT OF KERALA  
DATED 23-08-2013**

**APPELLANT(S)/RESPONDENT NOS.1 AND 2 IN THE WRIT PETITION (C):**  
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- 1. THE HIGH COURT OF KERALA  
REPRESENTED BY ITS REGISTRAR (GENERAL)  
HIGH COURT OF KERALA, COCHIN - 682 031.**
- 2. REGISTRAR (SUBORDINATE JUDICIARY)  
HIGH COURT OF KERALA, COCHIN - 682 031.**

**BY ADV. SRI.B.UNNIKRISHNA KAIMAL**

**RESPONDENT(S)/PETITIONER & 3RD RESPONDENT IN THE WRIT PETITION (C)::**  
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- 1. K.A.AUGUSTINE  
S/O.AUGUSTY KARIMATTATHIL, KANIYAMATTATHIL HOUSE  
P.O.VENGAPPARA, (VIA) KODUVALLY, KOZHIKODE  
(RETIRED ADDITIONAL DISTRICT JUDGE)**
- 2. GOVERNMENT OF KERALA,  
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT  
THIRUVANANTHAPURAM - 695 001.**

**R2 BY ADV. SR GOVERNMENT PLEADER SRI.C.S.MANILAL  
R1 BY ADV. SRI.V.T.RAGHUNATH  
R1 BY SRI. S.MANU**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 4-11-2014, ALONG  
WITH WA. 1586/2013, WA. 1587/2013, WA. 1606/2013, WA. 1610/2013, WA. 1633/2013 &  
WA. 1954/2013, THE COURT ON 16/01/2015 DELIVERED THE FOLLOWING:**

**“C.R.”**

**ANTONY DOMINIC & ALEXANDER THOMAS, JJ.**

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**Writ Appeal Nos. 1585, 1586, 1587,  
1606, 1610, 1633 & 1954 of 2013**

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**Dated this the 16<sup>th</sup> day of January, 2015**

## **J U D G M E N T**

Antony Dominic, J.

Writ Appeal Nos. 1633, 1606 and 1954 of 2013 are filed by the petitioners in Writ Petition Nos.26162, 30427 and 33094 of 2010. Writ Appeal Nos.1586, 1610 & 1585 of 2013 are filed mainly by the High Court of Kerala, aggrieved by the judgment in the writ petitions mentioned above. WA No.1587/13 is filed by the petitioner in WP(C) No.8680/12.

2. The appellant in W.A.No.1633 of 2013 had filed W.P.(C)No.26162 of 2010. He was working as Additional District Judge (Fast Track), Manjeri. He attained the age of 55 on 27.11.2009. The appellant in W.A.No.1606 of 2013 was working as Special Judge (NDPS Act cases)/ Addl. District Judge, Thodupuzha and was due to attain 55 years on 26.10.2010. Similarly, the appellant in W.A.No.1954 of 2013 was also working as Addl. District & Sessions Judge (Adhoc) II, Thodupuzha and had attained the age of 55 years on 01.11.2009.

3. While so, the appellants in W.A.Nos.1586 & 1954 of 2013 were issued order dated 30.07.2010, whereby the Registrar (Subordinate Judiciary) of the High Court conveyed to them that in accordance with the observations of the Supreme Court in the All India Judges' Association case and in terms of the

provisions contained in Rule 60 (aa) of Part I KSR and Rule 7A of the Kerala State Higher Judicial Service Rules, 1961 (hereinafter referred to as 'the Special Rules' for short), the committee headed by the Hon'ble the Chief Justice has on the basis of the record of service and performance, assessed and evaluated their suitability for continuance in service and that on such evaluation formed the opinion that they are not fit to render continued useful services. It was also stated that the High Court considered the opinion of the said committee with reference to the work and conduct of the appellants and was of the view that the aforesaid officers were not fit and eligible to continue in service beyond the age of 55 years. Accordingly, the High Court ordered that the appellants were not fit and eligible to continue in service beyond the age of 55 years and that they would be compulsorily retired in public interest on the afternoon of 31.07.2010.

4. Similarly, in so far as the appellant in W.A.No.1606 of 2013 is concerned, he was also issued order dated 22.09.2010, stating that he was due to attain 55 years of age on 26.10.2010 and that the High Court had assessed and evaluated his suitability for continuance for judicial service beyond the age of 55 years and formed the opinion that he was not fit to render continued useful service beyond 55 years. He was further informed that therefore the High Court had decided that he be compulsorily retired in

public interest on the afternoon of 31.10.2010. In this order, it was also stated that the decision of the High Court has already been communicated to the Government.

5. Subsequently, G.O.(Rt) No.2993/2011/Home, dated 11.10.2011 was issued by the Government of Kerala informing that the Government had examined the matter in detail and found that the compulsory retirement of the judicial officers ordered by the High Court are in accordance with Rule 7A of the Special Rules. Accordingly, the Government ordered that the action of the High Court in having made the judicial officers to compulsorily retire from the Kerala Higher Judicial Service invoking the power conferred by Article 235 of the Constitution of India and also under the special rules is approved. It was also clarified that the said order had the approval of his Excellency the Governor of Kerala.

6. It was challenging the above proceedings that the appellants had filed the three writ petitions mentioned above. The writ petitions were disposed of by a common judgment rendered on 23<sup>rd</sup> August 2013. In this judgment, the learned Single Judge accepted the contention that the Governor of the State being the appointing authority alone could have compulsorily retired the appellants and on that basis quashed the orders issued by the High Court on the administrative side. Thereafter, taking note of the order issued

by the Government on 11.10.2011, the learned Single Judge held that since the Governor had already approved the decision of the High Court compulsorily retiring the appellants, the order of compulsory retirement would come into effect only on 11.10.2011. On that basis it was declared that the compulsory retirement of the appellants shall take effect only w.e.f. 11.10.2011 and it was directed that the appellants shall be entitled to all benefits as if they continued in service till 11.10.2011. It is aggrieved by this judgment, the appellants and the High Court of Kerala have preferred these writ appeals.

7. We heard the learned senior counsel for the appellant in W.A.No.1633 of 2013, Sri.V.T. Reghunath, who appeared as party-in-person in W.A.Nos.1606 & 1610 of 2013, and the learned counsel appearing for the High Court and the learned Government Pleader.

8. The main issue that was raised before the learned Single Judge and reiterated before us was regarding the competence of the High Court to have compulsorily retired the appellants from service. A related contention that was urged was regarding the validity of the order dated 11.10.2011 issued by the Government of Kerala conveying the approval of the Governor of the State to the compulsory retirement of the appellants from service.

9. Before we deal with the relevant factual aspects, we shall briefly make reference to the relevant constitutional provisions and the statutory

rules. Article 233 (1) of the Constitution provides that appointments of persons to be, and the posting and promotion of, District Judges, in any State shall be made by the Governor of the State in consultation with the jurisdictional High Court. Clause (2) thereof provides that a person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge if he has been for not less than 7 years an Advocate or a Pleader and is recommended by the High Court for appointment. Article 235 provides that the control over District Courts and Courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court. It is also provided that nothing in Article 235 shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

10. In its judgment in ***All India Judges' Association (I) v. Union of India and Others*** [(1992) 1 SCC 119], the Supreme Court directed that appropriate alterations shall be made in the rules obtained in the State and Union Territories in respect of judicial service so as to fix the age of

retirement at 60 years with effect from 31.12.1992. Thereafter in the ***All India Judges' Association (2) and Others v. Union of India and Others*** [(1993) 4 SCC 288], the Supreme Court ordered that the benefit of increase of the retirement age to 60 years, shall not be available automatically to all judicial officers irrespective of their past record of service and evidence of their continued utility to the judicial system. It was ordered that the benefit will be available only to those who, in the opinion of the respective high courts, have a potential for continued useful service and is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. These directions are contained in paragraphs 30, 31, 32 & 52(b) of the judgment, which, being relevant, are extracted below for reference;

*“30. There is, however, one aspect we should emphasise here. To that extent the direction contained in the main judgment under review shall stand modified. The benefit of the increase of the retirement age to 60 years, shall not be available automatically to all judicial officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit will be available to those who, in the opinion of the respective High Courts, have a potential for continued useful service. It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. The potential for continued utility shall be assessed and evaluated by appropriate Committees of Judges of the respective High Courts constituted and headed by the Chief Justices of the High Courts and the evaluation shall be made on the basis of the judicial officer's past record of service, character rolls, quality of judgments and other relevant matters.*

*31. 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. Those who will not be found fit and eligible by this standard should not be given the benefit of the higher retirement age and should be compulsorily retired at the age of 58 by following the said procedure for compulsory retirement. The exercise should be undertaken before the attainment of the age of 58 years even in cases where earlier the age of superannuation was less than 58 years. It is necessary to make it clear that this assessment is for the purpose of finding out the suitability of the concerned officers for the entitlement of the benefit of the increased age of superannuation from 58 years to 60 years. It is in addition to the assessment to be undertaken for compulsory retirement and the compulsory retirement at the earlier stage/s under the respective Service Rules.*

**32.** *The enhancement of the superannuation age to 60 years coupled with the provision for compulsory retirement at the age of 58 years does introduce a change in the service condition of the existing personnel. There may be judicial officers who are not desirous of availing of the benefit of the enhanced superannuation age with the condition of compulsory retirement and may like to opt for retirement at the age of 58 years. In such cases, the concerned officers should intimate in writing their desire to retire at the age of 58 years well in advance and in any case before they attain the age of 57 years. Those who do not do so will be deemed to have exercised their option to continue in service till they attain 60 years of age subject to the liability of being retired compulsorily at the age of 58 years according to the procedure for compulsory retirement laid down in the Service Rules.*

**52 (a)** .....

*(b) The direction with regard to the enhancement of the superannuation age is modified as follows:*

*While the superannuation age of every subordinate judicial officer shall stand extended up to 60 years, the respective High Courts should, as stated above, assess and evaluate the record of the judicial officer for his continued utility well within time before he attains the age of 58 years by following the procedure for the compulsory retirement under the Service rules applicable to him and give him the benefit of the extended superannuation age from 58 to 60 years only if he is found fit and eligible to continue in service. In case he is not found fit and*

*eligible, he should be compulsorily retired on his attaining the age of 58 years.*

*The assessment in question should be done before the attainment of the age of 58 years even in cases where the earlier superannuation age was less than 58 years.*

*The assessment directed here is for evaluating the eligibility to continue in service beyond 58 years of age and is in addition to and independent of the assessment for compulsory retirement that may have to be undertaken under the relevant Service rules, at the earlier stage/s.*

*Since the service conditions with regard to superannuation age of the existing judicial officers is hereby changed, those judicial officers who are not desirous of availing of the benefit of the enhanced superannuation age with the condition for compulsory retirement at the age of 58 years, have the option to retire at the age of 58 years. They should exercise this option in writing before they attain the age of 57 years. Those who do not exercise the said option before they attain the age of 57 years, would be deemed to have opted for continuing in service till the enhanced superannuation age of 60 years with the liability to compulsory retirement at the age of 58 years.*

*Those who have crossed the age of 57 years and those who cross the age of 58 years soon after the date of this decision will exercise their option within one month from the date of this decision. If they do not do so, they will be deemed to have opted for continuing in service till the age of 60 years. In that case, they will also be subjected to the review for compulsory retirement, if any, notwithstanding the fact that there was not enough time to undertake such review before they attained the age of 58 years. However in their case, the review should be undertaken within two months from the date of the expiry of the period given to them above for exercising their option, and if found unfit, they should be retired compulsorily according to the procedure for compulsory retirement under the Rules.*

*Those judicial officers who have already crossed the age of 58 years, will not be subjected to the review for compulsory retirement and will continue in service up to the extended superannuation age of 60 years since they have had no opportunity to exercise their option and no review for compulsory retirement could be undertaken in their case before they reached the age of 58 years."*

11. In compliance with the directions of the Supreme Court, by GO (P) No.457/95/Fin. dated 28/7/1995, Rule 60 (aa) of Part I KSR was introduced with effect from 31/12/1992, providing that an officer in the Kerala Judicial Services Rules or the Kerala State Higher Judicial Service Rules shall ordinarily retire when he attains the age of 60 years but he shall have the option to retire when he attains the age of 58 years. It was also provided that his continuance in service beyond the age of 58 years shall be subject to review by the High Court as per the provisions of the Kerala Judicial Services Rules and the Kerala State Higher Judicial Service Rules.

12. In so far as the Kerala State Higher Judicial Service Rules, 1961 (Special Rules) are concerned, by Government order dated 17.12.1997, Rule 7A was inserted with effect from 31.12.1992. This provision provided that without prejudice to the generality to the provisions contained in the KSR, if the High Court on an assessment and evaluation of the records of an officer, is not satisfied about the continued utility of the services of that officer and is of the view that such officer is not fit and eligible to continue in service beyond the age of 58 years, such officer may be compulsorily retired on the afternoon of the last day of the month in which he attains the age of 58 years or on the last date of any later month when such opinion is formed in accordance with the procedure for compulsorily retirement as provided

under Rule 60 (aa) of Part I, KSR.

13. While matters stood thus, the First National Judicial Pay Commission (Shetty Commission), which was appointed pursuant to the directions of the Apex Court, submitted its report in which it was recommended that review of all judicial officers at the age of 50, 55 and 58 years for compulsory retirement as per the procedure prescribed in the respective service rules should be undertaken regularly and that there should be a continuing committee of Senior Judges of the High Court headed by the Chief Justice for the purpose of review. Relevant paragraphs of the Report are extracted in para 5 of the counter affidavit filed by the High Court. The observations in the preface to the report (Vol. I) and paragraph 21.39 of Vol. III of the Report are extracted below for reference:

*"The review of all the Judicial Officers at the age of 50, 55 and 60 years for compulsory retirement by the procedure prescribed by the respective Service Rules should be undertaken regularly. There should be continuing Committee of Senior Judges of the High Court headed by the Chief Justice for this purpose of review."*

*"The review of cases for compulsory retirement under the relevant Service Rules should be independently taken up by the High Court, and it should not be linked with the consideration for giving the benefit of service from 58 to 60 years. Therein, we have emphasized and also in our "Preface" to this Report that the cases of Judicial Officers must be periodically reviewed for compulsory retirement once in every five years, that is, at about 50, 55 and 60 years under the respective Service Rules made for the purpose. Such a review must be made by a Committee of*

*Judges of the High Court headed by the Chief Justice. Those who come clear from such review should only be allowed to continue in service till they attain the age of superannuation."*

14. The Supreme Court considered this report and in its judgment in ***All India Judges' Association v. Union of India*** [(2002) 4 SCC 247] accepted the recommendation of the commission and ordered its implementation. Accordingly, States were directed to implement the recommendations in the report and submit compliance report.

15. In compliance with the directions in this judgment, by SRO No.610/2008 amendments were carried out to the special rules. As part of this amendment, Rule 7A was substituted and the substituted Rule 7A reads as follows:

*"7-A. Special provision regarding compulsory retirement in public interest.- (1) Notwithstanding anything contained in these rules and without prejudice to the generality of the provisions contained in the Kerala Service Rules an officer borne in this service who has attained the age of 50 years, 55 years and 58 years may compulsorily be retired in public interest by giving him notice of not less than one month in writing or one month pay and allowances in lieu of such notice, if the High Court on an assessment and evaluation of the records of such officer is of the view that such officer is not fit and eligible to continue in service beyond the age of 50 years, 55 years and 58 years, as the case may be.*

*(2) Whether a member of the service should be retired in public interest under sub-rule (1) shall be considered at least three times, that is when he is about to attain the age of 50 years, 55 years and 58 years:*

*Provided that nothing in sub rule (2) shall be construed as preventing such consideration by the High Court of a member of the service at any time other, than those mentioned therein”.*

16. Having noticed the statutory provisions necessitating the periodical review of the performance of the judicial officers, who are governed by the special rules, we shall now make reference to the principles laid down by the Apex Court which govern the issue of compulsory retirement with particular reference to the cases of judicial officers, and also the scope of interference thereof in a proceedings for judicial review.

17. In ***Union of India v. Sinha and another*** [AIR 1971 SC 40], Supreme Court dealt with the validity of an order of compulsory retirement under Rule 56 (j) of the Fundamental Rules. In this judgment the Apex Court held that the right conferred on the appropriate authority to compulsorily retire an employee is an absolute one and that one of the conditions for exercising that power is that the concerned authority must be of the opinion that it is in public interest to do so and that if that authority bonafide forms such an opinion, the correctness of that opinion cannot be challenged before courts. However, it was clarified that it would be open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. The Apex Court also held that compulsory retirement does not involve civil consequences.

18. ***Baradakanta Mishra v. High Court of Orissa and another*** [(1976) 3 SCC 327] was a case where the appellant was an Additional District Judge in the State of Orissa. In disciplinary proceedings that were initiated against him, the High Court initially reduced him in rank and later dismissed him from service. The questions which arose before the Supreme Court for determination were whether the High Court was competent either to reduce the appellant in rank and whether order dismissing him from service could be passed by the High Court. In this judgment, the Apex Court held that within the power and control vested under Article 235, the High Court could hold disciplinary proceedings against the appellant and could recommend the imposition of punishment of reduction in rank. It was also held that the actual power of imposition of punishment is exercisable by the Governor, who is the appointing authority. For the same reason, the Supreme Court also held that, the order of dismissal being unconstitutional, the order cannot have any legal force.

19. In ***State of Haryana v. Inder Prakash Anand H.C.S. and Others*** [(1976) 2 SCC 977], the Supreme Court considered a case where the State of Haryana referred the case of a Senior Subordinate Judge to the High Court for its recommendation whether he should be retired at the age of 55 years or allowed to be retained till the prescribed age of 58 years. The High Court

recommended his reversion and though the State ordered him to be reverted, it again sought High Court's recommendation on his retirement. The High Court recommended against his compulsory retirement and disagreeing with the High Court, the State retired the respondent compulsorily from service. On a writ petition filed by the respondent, the High Court quashed the Government Order.

20. In the appeal, the Supreme Court held that the control vested in the High Court under Article 235 is that if the High Court is of opinion that a particular judicial officer is not fit to be retained in service, the High Court will communicate that opinion to the Governor because the Governor is the authority to dismiss, remove, reduce in rank or terminate the appointment and that in such cases, it is the contemplation in the Constitution that the Governor, as the head of the State, will act in harmony with the recommendation of the High Court. The court held that if the recommendation of the High Court is not held to be binding on the State, consequences will be unfortunate and that it is in public interest that the State will accept the recommendation of the High Court. According to the Court, the vesting of complete control over the subordinate judiciary in the High Court leads to the conclusion that the decision of the High Court in matters

within its jurisdiction will bind the State and the Government will act on the recommendation of the High Court which is the broad basis of Article 235.

21. ***Baldev Raj Chadha v. Union of India and Others*** [AIR (1981) SC 70] was a case involving the compulsory retirement of an Accounts Officer. In this judgment the Apex Court held that when an order is challenged and its validity depends on its being supported by public interest, the State must disclose the material so that the court may be satisfied that the order is not bad for any want of material whatever, which to a reasonable man reasonably instructed in the law, is sufficient to sustain the grounds of public interest justifying forced retirement of the public servant.

22. ***Registrar, High Court of Madras v. R. Rajiah*** [(1988) 3 SCC 211] was a case where the High Court issued orders compulsorily retiring two District Munsiffs from service. The principal contention before the High Court was that it had no power to compulsorily retire the members for the Tamil Nadu State Judicial Service and that such an order could be passed only by the State Governor, who was the appointing authority. The writ petitions were allowed and in the appeal filed, the Apex Court held in paras 10, 18 & 20 thus:

*“10. It is now necessary to consider the provision of Article 235 of the Constitution and its impact on Rule 56 (d) of the Fundamental Rules as to the absolute right of the State Government to retire a member of the subordinate judicial service. Article 235 vests in the High Court the control over District Courts and courts*

*subordinate thereto. The vesting of such control is consistent with the ideal of preservation of the independence of the judiciary. The power of control comprises within it various matters in respect of subordinate judiciary including those relating to appointment, promotion and imposition of punishment, both major and minor. If any authority other than the High Court is conferred with the absolute right to take action against a member of the subordinate judicial service, such conferment of power will impinge upon the power of control that is vested in the High Court under Article 235 of the Constitution.*

**18.** *The control of the High Court, as understood, will also be applicable in the case of compulsory retirement in that the High Court will, upon an enquiry, come to a conclusion whether a member of the subordinate judicial service should be retired prematurely or not. If the High Court comes to the conclusion that such a member should be prematurely retired, it will make a recommendation in that regard to the Governor inasmuch as the Governor is the appointing authority. The Governor will make a formal order of compulsory retirement in accordance with the recommendation of the High Court.*

**20.** *But however formal it is, the compulsory retirement of the member concerned will take effect after the order is passed by the Governor. ....*  
*....."*

23. In ***Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another*** [(1992) 2 SCC 299], the Supreme Court considered the question whether it was permissible for the Government to order compulsory retirement of a government servant on the basis of material which includes uncommunicated adverse remarks. In this judgment,

the Supreme Court disapproved the principles laid down in **Brij Mohan Singh Chopra v. State of Punjab** [(1987) 2 SCC 188] and **Baidyanath Mahapatra v. State of Orissa** [(1989) 4 SCC 664] and preferred the principles laid down in **Union of India v. M.E. Reddy** [(1980) 2 SCC 15]. The principles laid down in this judgment, were summarized 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.*

*Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above."*

24. The issue of compulsory retirement of a Reader came up for consideration for Apex Court in its judgment in **S. Ramachandra Raju v. State of Orissa** [1994 Supp (3) SCC 424]. In this judgment, the Apex Court reiterated the principle that if the competent authority bonafide forms the opinion that it is in public interest to compulsorily retire an officer, the correctness of that opinion cannot be challenged before courts. It was also held that;

**"4.** .....  
*While exercising the power various considerations would weigh with the appropriate authority. In some cases the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding the office is not inefficient but the appropriate authority may prefer to have a more efficient officer or in certain key posts public interest may require that a person of undoubted integrity and ability should be there. "There is no denying the fact that in all organizations and more so in Government organizations, there is good deal of dead wood. It is in public interest to chop .off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual government servant and the interest of the public. While a minimum service is guaranteed to the government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest .....*  
 ....."

25. In the context of an officer in the Indian Revenue Service who

was compulsorily retired, the scope of judicial review of such an order was considered in the case of ***M.S. Bindra v. Union of India*** [(1998) 7 SCC 310] and the Apex Court laid down the following principles:

*“11. Therefore, judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or mala fide or if it is based on no evidence. The observation that principles of natural justice have no place in the context of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion, the same can be obviated on the assumption that other materials alone need be looked into.”*

26. ***Madan Mohan Choudhary v. State of Bihar and others*** [(1999) 3 SCC 396] was a case where an Additional District and Sessions Judge was compulsorily retired from service. In this judgment, referring to its earlier judgment in ***Baikuntha Nath Das v. District Medical Officer*** [(1992) 2 SCC 299], the Apex Court reiterated that uncommunicated adverse remarks can be relied on by the competent authority while considering the issue of compulsory retirement and that the pendency of representation against adverse remarks or non disposal of such a representation would not prevent the action for compulsory retirement being taken.

27. ***Registrar (Admn.), High Court of Orissa v. Sisir Kanta Satapathy*** [(1999) 7 SCC 725] is yet another case where a Chief Judicial Magistrate in the Orissa Superior Judicial Service (Junior Branch) and an

officer officiating in Class I were compulsorily retired by notifications issued by the High Court. The notifications were challenged mainly on the ground that the High Court was not vested with the power to make an order of compulsory retirement and that there was no material against them to issue the impugned orders. In this judgment, after referring to all relevant precedents, a constitution bench of the Supreme Court held thus:

*“15. On going through the judgments of this Court right from Shyamlal v. State of U.P. down to High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal one cannot but reach one conclusion regarding the power of the High Court in the matter of ordering compulsory retirement. That conclusion is that the High Courts are vested with the disciplinary control as well as administrative control over the members of the judicial service exclusively, but that does not mean that they can also pass orders of dismissal, removal, reduction in rank or termination from service while exercising administrative and disciplinary control over the members of the judicial service. Undoubtedly, the High Courts alone are entitled to initiate, to hold enquiry and to take a decision in respect of dismissal, removal, reduction in rank or termination from service, but the formal order to give effect to such a decision has to be passed only by the State Governor on the recommendation of the High Court. It is well settled again by a catena of decisions of this Court that the recommendation of the High Court is binding on the State Government/Governor (vide para 18 in Inder Prakash Anand case).*

*16. We are clearly of the view that while the High Court retains the power of disciplinary control over the subordinate judiciary, including the power to initiate disciplinary proceedings, suspend them pending enquiries and impose punishment on them but when it comes to the question of dismissal, removal, reduction in rank or termination of the services of the judicial officer,*

*on any count whatsoever, the High Court becomes only the recommending authority and cannot itself pass such an order (vide Inder Prakash Anand case and Rajiah case)."*

28. In ***State of Gujarat v. Umedbhai M. Patel*** [(2001) 3 SCC 314] an Executive Engineer in the Narmada Development Department of the State of Gujarat was suspended pending departmental enquiry. However, before the completion of enquiry, the State Government passed an order compulsorily retiring him from service. This order was set aside by the High Court and in the appeal that was filed, the Supreme Court summarized the law relating to the compulsory retirement thus:

*"11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:*

*(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.*

*(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.*

*(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.*

*(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.*

*(v) Even uncommunicated entries in the confidential record can also be taken into consideration.*

*(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.*

*(vii) If the officer was given a promotion despite adverse*

*entries made in the confidential record, that is a fact in favour of the officer.*

*(viii) Compulsory retirement shall not be imposed as a punitive measure."*

29. Scope of judicial review of an order of compulsory retirement came up for the consideration of the Apex Court in its judgment **Nawal Singh v. State of U.P and another** [(2003) 8 SCC 117], where the court held thus:

*"2. 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, 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. 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 the order of compulsory retirement is based on the subjective satisfaction of the authority."*

30. These principles were again reiterated by the Apex Court in **Syed T.A. Naqshbandi v. State of J&K** [(2003) 9 SCC 592] where it was *inter-alia* held thus:

**10.** ..... Neither the High Court nor this Court, in exercise of its powers of judicial review, could or would at any rate substitute themselves in the place of the Committee/Full Court of the High Court concerned, to make an independent reassessment of the same, as if sitting on an appeal. On a careful consideration of the entire materials brought to our notice by learned counsel on either side, we are satisfied that the evaluation made by the Committee/Full Court

*forming their unanimous opinion is neither so arbitrary or capricious nor can be said to be so irrational as to shock the conscience of the Court to warrant or justify any interference. In cases of such assessment, evaluation and formulation of opinions, a vast range of multiple factors play a vital and important role and no one factor should be allowed to be overblown out of proportion either to decry or deify an issue to be resolved or claims sought to be considered or asserted. In the very nature of things it would be difficult, nearing almost an impossibility to subject such exercise undertaken by the Full Court, to judicial review except in an extraordinary case when the Court is convinced that some monstrous thing which ought not to have taken place has really happened and not merely because there could be another possible view or someone has some grievance about the exercise undertaken by the Committee/Full Court. Viewed thus, and considered in the background of the factual details and materials on record, there is absolutely no need or justification for this Court to interfere in the matter, with the impugned proceedings.”*

31. We shall also refer to ***Rajendra Singh Verma v. Lt. Governor (NCT of Delhi)*** [(2011) 10 SCC 1], where, in paragraphs 100, 143 and 183, it was held thus;

*“100. While the High Court retains the power of disciplinary control over the subordinate judiciary including power to initiate disciplinary proceedings, suspend them during enquiries and impose punishment on them, but when it comes to the question of dismissal, removal or reduction in rank or termination of services of judicial officers on any count whatsoever, the High Court becomes the recommending authority and cannot itself pass the orders. The formal order to give effect to such a decision has to be passed by the State Governor on the recommendations of the High Court. In disciplinary proceedings if an action is taken by the High Court against the judicial officer the recommendations made by the High Court bind the Governor and he is left with no*

*discretion except to act according to the recommendations. The Governor, under the scheme of Articles 233, 234 and 235 of the Constitution cannot refuse to act in terms of the recommendations made by the High Court on the ground that he is not aided and advised by the Council of Ministers and this is the true import of total control of the High Court over the subordinate judiciary.*

**143.** *Compulsory retirement from service is not considered to be a punishment. Under the relevant rules, an order of dismissal is a punishment laid on a government servant when it is found that he has been guilty of misconduct or the like. It is penal in character because it involves loss of pension which under the rules has accrued in respect of the service already put in. An order of removal also stands on the same footing as an order of dismissal and involves the same consequences, the only difference between them being that while a servant who is dismissed is not eligible for reappointment, one who is removed is. A compulsory retirement is neither dismissal nor removal and differs from both of them, in that it is not a form of punishment prescribed by the rules and involves no penal consequences, inasmuch as the person retired is entitled to pension and other retiral benefits, proportionate to the period of service standing to his credit.*

**183.** *It is well settled by a catena of decisions of this Court that while considering the case of an officer as to whether he should be continued in service or compulsorily retired, his entire service record up to that date on which consideration is made has to be taken into account. What weight should be attached to earlier entries as compared to recent entries is a matter of evaluation, but there is no manner of doubt that consideration has to be of the entire service record. The fact that an officer, after an earlier adverse entry, was promoted does not wipe out earlier adverse entry at all. It would be wrong to contend that merely for the reason that after an earlier adverse entry an officer was promoted that by itself would preclude the authority from considering the earlier adverse entry.*

*When the law says that the entire service record has to be taken into consideration, the earlier adverse entry, which forms a part of the service record, would also be relevant irrespective of the fact whether the officer concerned was promoted to higher position or whether he was granted certain benefits like increments, etc."*

32. In this context, we may also state that ***Rajasthan SRTC v. Babu***

***Lal Jangir*** [(2013) 10 SCC 551] contains the following principles;

*"22. It clearly follows from the above that the clarification given by a two-Judge Bench judgment in Badrinath is not correct and the observations of this Court in Gurdas Singh to the effect that the adverse entries prior to the promotion or crossing of efficiency bar or picking up higher rank are not wiped off and can be taken into account while considering the overall performance of the employee when it comes to the consideration of case of that employee for premature retirement.*

*23. The principle of law which is clarified and stands crystallised after the judgment in Pyare Mohan Lal v. State of Jharkhand is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this "washed-off theory" will have no application when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on "entire service record", there is no question of not taking into consideration the earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a*

*person then that may be sufficient to justify the order of premature retirement of the government servant.*

*24. Having taken note of the correct principles which need to be applied, we can safely conclude that the order of the High Court based solely on the judgment in Brij Mohan Singh Chopra was not correct. The High Court could not have set aside the order merely on the ground that service record pertaining to the period 1978–1990 being old and stale could not be taken into consideration at all. As per the law laid down in the aforesaid judgments, it is clear that entire service record is relevant for deciding as to whether the government servant needs to be eased out prematurely. Of course, at the same time, subsequent record is also relevant, and immediate past record, preceding the date on which decision is to be taken would be of more value, qualitatively. What is to be examined is the “overall performance” on the basis of “entire service record” to come to the conclusion as to whether the employee concerned has become a deadwood and it is in public interest to retire him compulsorily. The authority must consider and examine the overall effect of the entries of the officer concerned and not an isolated entry, as it may well be in some cases that in spite of satisfactory performance, the authority may desire to compulsorily retire an employee in public interest, as in the opinion of the said authority, the post has to be manned by a more efficient and dynamic person and if there is sufficient material on record to show that the employee “rendered himself a liability to the institution”, there is no occasion for the court to interfere in the exercise of its limited power of judicial review.”*

33. The Supreme Court had occasion to consider the validity of the order of the Registrar General of the Patna High Court compulsorily retiring a judicial officer, in ***High Court of Judicature of Patna, through Registrar General v. Shyam Deo Singh and Others*** [(2014) 4 SCC 773]. Referring to ***Syed T.A. Naqshbandi v. State of J&K*** [(2003) 9 SCC 592], the limited judicial

review that is permissible has been reiterated in para 8 of the judgment

where it was held thus:

*“8. The importance of the issue can hardly be gainsaid. The evaluation of the service record of a judicial officer for the purpose of formation of an opinion as to his/her potential for continued useful service is required to be made by the High Court which obviously means the Full Court on the administrative side. In all High Courts such evaluation, in the first instance, is made by a committee of senior Judges. The decision of the Committee is placed before the Full Court to decide whether the recommendation of the Committee should be accepted or not. The ultimate decision is always preceded by an elaborate consideration of the matter by the Hon’ble Judges of the High Court who are familiar with the qualities and attributes of the judicial officer under consideration. This is also what had happened in the present case. The very process by which the decision is eventually arrived at, in our view, should permit a limited judicial review and it is only in a rare case where the decision taken is unsupported by any material or the same reflects a conclusion which, on the face of it, cannot be sustained that judicial review would be permissible.”*

34. It is also relevant to extract para 10 of this judgment which reads

thus:

*“10. In the light of the above, we may now advert to the facts of the present case. It is not in dispute that the adverse remarks/comments dated 15-12-1995 had not been communicated to the respondent. It is also clear from the materials on record that the Standing Committee of the High Court in its meeting held on 3-1-1997 had decided to close the matter instead of proceeding any further. The subsequent ACRs of the respondent for the years 1997–1998 and 2000–2001 are sufficiently positive and depicts the respondent as an efficient judicial officer with a good reputation for honesty and impartiality. The respondent was promoted to the post of District and*

*Sessions Judge on 5-9-1998. By Notification dated 17-2-2000 he was promoted to the selection grade of the Bihar Superior Judicial Service with effect from 1-1-1997. Therefore, not only the adverse remark dated 15-12-1995 was not acted upon but subsequent thereto promotion to the highest level in the district judiciary as well as selection grade in the said cadre was granted to the respondent. Promotion to the higher post of District Judge and placement in the selection grade is on an assessment of positive merit and ability. The said promotion(s), therefore, would have the effect of wiping out the adverse remark dated 15-12-1995. Such a view has in fact been expressed in *Brij Mohan Singh Chopra v. State of Punjab* (para 10)."*

35. What is relevant to notice in this context is that the Supreme Court has followed ***Brij Mohan Singh Chopra v. State of Punjab*** [AIR (1987) SCC 948]. However, the attention of the court was not invited to the principles laid down by the constitution bench in ***Baikuntha Nath Das v. District Medical Officer*** [(1992) 2 SCC 299] where these principles were disapproved by the court. Reference was also not made to ***Madan Mohan Choudhary*** (*supra*), ***Rajasthan SRTC*** (*supra*) and ***Rajendra Singh Verma*** (*supra*).

36. Having thus noticed the statutory provisions and the principles laid down by the Apex Court in the matter of compulsory retirement, it is appropriate to refer to the proceedings of the Administrative Committee and the full court of the High Court that preceded the orders that were issued by the Registrar (Subordinate Judiciary), which were challenged in the writ petitions. The files made available by the Registry of the High Court would show that in the

meeting held on 18.09.2009, the Administrative Committee passed the following:

*“The Committee considered the extract of the Annual Confidential Reports of the officers in the realm of consideration. The Committee is of the firm view that it is only just and proper to collect more details regarding their merit and suitability for continued service with special reference to their performance in the court, disposal of cases and their integrity.*

*Hence, resolved that the Registrar (Vigilance) be directed to collect confidentially the aforesaid details of the officers in the field of choice and to submit report at the earliest. Further resolved that the opinion of the Honourable Judges concerned in administrative charge regarding the merit and suitability of the said officers also be obtained and the report of the Registrar (Vigilance) along with the opinion of the administrative Judges concerned be placed before the Committee for consideration”.*

37. Based on the resolution of the Administrative Committee, the Registrar (Subordinate Judiciary) issued letter dated 25.09.2009 requesting the Registrar (Vigilance) to make a report with the details of the judicial officers concerned in order to ascertain their merit and suitability to continue in service. Accordingly, after a detailed enquiry, the Registrar (Vigilance) submitted his report, which will be referred to in greater detail later. The confidential records, the report of the Registrar (Vigilance) and the remarks of the Administrative Judges and all other relevant records concerning the officers were placed before the Administrative Committee. In so far as the appellants in W.A.Nos.1606 and 1954 of 2003 are concerned, the Administrative Judges opined that the consideration of their suitability was required to be deferred on account of the

disciplinary proceedings against them. However, in so far as the appellant in W.A.No.1633 of 2003 is concerned, the Administrative Judge had opined that he was fit to continue in service beyond 55 years.

38. The Administrative Committee considered the matter in its meeting held on 08.04.2010 and resolved thus;

*“Committee is of the firm view that Shri A.A. Vijayan, Additional District Judge Ad hoc-II, Manjeri (Sl. No.11), Shri. K.A. Augustine, Addl. District Judge (Ad hoc)-II, Thodupuzha (Sl.No.13), Shri.V.T. Reghunath, Special Judge (NDPS)/ Additional District Judge, Thodupuzha (Sl.No.16), and Shri. A. Moosa, Sub Judge (under suspension) (Sl.No.17) are not fit and eligible for continuance in service beyond the age of 55 years. Hence, resolved to recommend t5that in exercise of powers conferred by Sec.7A of the Kerala Higher Judicial Service Rules, 1961, and Rule 13A of the Kerala Judicial Service Rules, 1991, Shri.A.A. Vijayan, Additional District Judge (Ad hoc)-II, Manjeri (Sl.No.11), Shri.K.A. Augustine, Addl. District Judge (Ad hoc)-II, Thodupuzha (Sl. No.13), and Shri. A. Moosa, Sub Judge (under suspension) (Sl.No.17) be compulsorily retired from service on the afternoon of 31.05.2010, as they have already crossed the age of 55 years as on 30.11.2009, 30.11.2009 and 31.10.2009 respectively, and Shri. V.T. Reghunath, Special Judge (NDPS)/ Additional District Judge, Thodupuzha (Sl.No.16) on the last day of the month in which he attains the age of 55 years, i.e., on 31.10.2010.”*

39. The Full Court considered the matter in its meeting held on 29.07.2010 and the Full Court approved the decision of the Administrative Committee. The relevant part of the Resolution of the Full Court, reads thus;

*“The Full Court considered the resolution of the Evaluation Committee recommending the compulsory retirement of Shri. A.A. Vijayan, Additional District and Sessions Judge (Ad*

*hoc)-II, Manjeri, and Shri. K.A. Augustine, Additional District and Sessions Judge (Ad hoc)-II, Thodupuzha, on the afternoon of 31.05.2010, as they have crossed the age of 55 years on 31.11.2009, by giving them one month's pay and allowances in lieu of notice, in exercise of powers conferred under Rule 7A of the Kerala State Higher Judicial Service Rules, 1961. On a consideration of all the materials on which the Committee based its recommendation, and the fact that the officers have already crossed the age of 55 years, resolved that the above said officers be compulsorily retired in public interest, from the Kerala State Higher Judicial Service with effect from the afternoon of 31.07.2010, by giving them one month's pay and allowances in lieu of notice, in exercise of the powers conferred under Rule 7A of the Kerala State Higher Judicial Service Rules, 1961.*

*The Full Court, the Honourable Mr.Justice Thottathil B.Radhakrishnan and Honourable Mr.Justice P.Bhavadasan abstaining, also considered the resolution of the Evaluation Committee recommending the compulsory retirement of Shri V.T.Reghunath, Special Judge (NDPS Act Cases)/ Additional District and Sessions Judge, Thodupuzha, on the last day of the month in which he attains the age of 55 years, i.e., on 31.10.2010, in exercise of powers conferred under Rule 7A of the Kerala State Higher Judicial Service Rules, 1961. Considering all the materials on which the Committee based its recommendation, resolved that the above recommendation be accepted, and Shri V.T.Reghunath be compulsorily retired in public interest, on the afternoon of 31.10.2010, i.e. the last day of the month in which he attains the age of 55 years, after giving him one month's notice."*

40. It was accordingly that the Registrar (Subordinate Judiciary) issued communications dated 30.07.2010 and 22.09.2010 informing that the appellants in W.A.Nos.1633 and 1694 of 2003 would be compulsorily retired from service, in public interest on the afternoon on 31.07.2010 and that the appellant in W.A.No.1606 of 2003 would be compulsorily retired from service on the

afternoon on 31.10.2010. As we have already mentioned, subsequently by G.O. (Rt)No.2993/2011/Home, dated 11.10.2011, the Government conveyed approval of the action of the High Court in having made the aforementioned judicial officers compulsorily retire from Kerala Higher Judicial Service invoking the powers under Article 235 of the Constitution of India and the Special Rules. This order clarified that it was issued with the approval of His Excellency of the Governor of Kerala. The order also shows that by endorsement made on 11.11.2011, the Assistant Registrar of the High Court has communicated the order dated 11.10.2011 to the officers concerned including the appellants in these appeals.

41. In so far as the issue relating to the competence of the High Court to order compulsory retirement of an officer who is governed by the Special Rules is concerned, in view of Articles 233 and 235 of the Constitution and the principles laid down by the Apex Court, it is the Governor of the State, who is competent to make appointments to the post of District Judges. Though control over the District Courts and the Courts Subordinate thereto, has been conferred on the High Court, the manner in which the said control is exercised has been explained by the Supreme Court in the judgments referred to in the earlier part of this judgment and it needs no further elucidation. In terms of the principles thus laid down, it is entirely within the domain of the High Court in exercise of its

power under Article 235 of the Constitution of India to consider the fitness and suitability of judicial officers for continuance in service beyond 50, 55 and 58 years. On such consideration, if the High Court forms an opinion that the officer is not fit and suitable to render continued service as a judicial officer and that in public interest, he should be compulsorily retired from service, the High Court should make a recommendation to that effect to the Governor of the State, who is the appointing authority, who has the power to dismiss, remove or reduce him in service. As explained by the Apex Court, such formation of the opinion by the High Court cannot be challenged before a court of law except on the grounds on malafides or absence of materials, arbitrariness etc,. It is also settled that a recommendation made by the High Court is binding on the Governor.

42. As far as these cases are concerned, admittedly, the appellants are members of the State Higher Judicial Service and were governed by the Special Rules. Prior to attaining the age of 55 years, in terms of the provisions contained in the Special Rules, their cases were reviewed by the High Court, duly advertent to the up-to-date confidential records, report of the Registrar (Vigilance) and the remarks of the Administrative Judge. On such consideration, the Administrative Committee resolved that they are not fit and suitable for continued service and that therefore they should be compulsorily retired. This resolution of the Administrative Committee was confirmed by the High Court in the

administrative side. It was thereafter that communications were issued by the Registrar (Subordinate Judiciary) informing the appellants that in view of the opinion formed by the High Court, they will stand compulsorily retired from service with effect from the dates indicated by the orders issued.

43. Having regard to the the law laid down by the Apex Court as detailed above, only the Governor could have ordered compulsorily retirement of the appellants. Therefore, the compulsory retirement of the appellants could not have been ordered by the High Court through the Registrar (Subordinate Judiciary). As held in ***R.Rajiah's case*** (supra), the compulsory retirement will take effect after the order is passed by the Governor. That being the law, compulsory retirement of the appellants could take effect only with effect from 11.10.2011, when the Government of Kerala conveyed the approval of the Governor, the appointing authority. It was in such circumstances, that the learned Single Judge set aside the orders issued by the Registrar (Subordinate Judiciary) and declared that the appellants shall be deemed to continue in service till 11.10.2011 when the Governor approved the action of the High Court. In other words, though the contention of the appellants that the High Court could not have compulsorily retired them has been rightly accepted, the learned Single Judge upheld the compulsory retirement of the appellants and ordered it to be

effective from 11.10.2011, in view of the Government Order dated 11.10.2011, conveying the approval of the Governor.

44. In view of the admitted legal position that the Governor, being the appointing authority, alone could have ordered the compulsorily retirement of the appellants, the conclusion of the learned Single Judge that the High Court could not have passed such an order cannot be said to be illegal. As we have already stated, once the High Court formed its opinion that a judicial officer is liable for compulsory retirement, the procedure to be adopted is that a recommendation to that effect should be made to the Governor, who is to issue an order in terms of the recommendation of the High Court. In so far as these cases are concerned, proceedings of the Administrative Committee and the full court of the High Court unambiguously disclose that, on the basis of the materials before it, the High Court formed the opinion that the appellants are not fit for continued service beyond the age of 55 years. Orders issued by the Registrar (Subordinate Judiciary), which were challenged in the writ petition, show that the opinion so formed by the High Court was communicated to the Governor. It was acting on that communication containing the binding recommendation of the High Court, the Governor approved the action taken by the High Court and communicated the same by its order dated 11.10.2011. In

other words, with the said order, Governor has formally issued order as contemplated under Article 235 of the Constitution of India.

45. If the argument of the appellants is accepted, the resultant position would be that despite the High Court in exercise of its powers under Article 235 and the Special Rules, forming its opinion that the appellants are not fit and eligible to be retained in service beyond 55 years, they would still have continued in service till formal order is issued by the Governor in terms of Article 235 of the Constitution of India. The consequence of such a conclusion would be that in spite of the finality and binding nature of the opinion formed by the High Court on the unfitness and ineligibility of the appellants to continue in service, they would have still continued to discharge judicial duties till 11.10.2011, when the Government Order mentioned above was issued. In our view, such a situation cannot be in the interest of the justice delivery system and would be defeating the purpose and object of compulsory retirement, which has been explained by the Apex Court in ***Ramachandra Raju's case*** (supra) thus;

*“6. The whole purpose of the rule is to weed out the worthless without the punitive extremes covered by Article 311 of the Constitution. After all, Administration, to be efficient, must not be manned by drones, do nothings, incompetents and unworthies. They may not be delinquent who must be punished but may be a burden on the Administration if by insensitive, insouciant, unintelligent or dubious conduct impede the flow or promote stagnation. In a country where speed, sensitivity, probity, and non-irritative public relations and enthusiastic creativity are*

*urgently needed, paper-logged processes and callous cadres are the besetting sin of the Administration. It is in public interest to retire a never-do-well, but to juggle with confidential reports when a man's career is at stake is a confidence trick contrary to public interest. Moreover, confidential reports are often subjective, impressionistic and must receive sedulous checking as basis for decision-making. The appropriate authority, not the court, makes the decision, but even so, a caveat is necessary, to avoid misuse."*

46. As explained by the Apex Court, 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 and it should be reflected in their overall reputation. It is also held that the nature of judicial service is such that it cannot suffer continuance in service of persons of doubtful integrity or who have lost their utility [vide **Nawal Singh v. State of U.P.** ((2003) 8 SCC 117)]. There is no manner of doubt that 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 utility [vide **Rajendra Singh Verma v. Lt. Governor (NCT of Delhi)** [(2011) 10 SCC 1]. Therefore, once on a proper evaluation the High Court has formed an opinion against the continued retention of the appellants, it is neither proper nor desirable to permit them to still continue to discharge judicial functions. In such a situation, they are bound to be kept away from discharging judicial duties till the Governor issues the formal order as provided under Article 235 of the

Constitution of India. The aforesaid constitutional provisions concede that power to the High Court, which is vested with control of judiciary. This precisely is the effect of the conclusion of the learned single Judge.

47. One another contention urged by the appellants was regarding the invalidity of Rule 7A of the Special Rules. We have already extracted Rule 7A in para 15 of this judgment. According to the appellant, in terms of the directions of the Apex Court in the judgment in ***All India Judge's Associations' case*** ((1992) 1 SCC 119), the retirement age was enhanced from 58 to 60 years. Accordingly, Rule 60 (aa) was inserted in the KSR. Subsequently, when compulsory retirement at the age of 50, 55 and 58 years was introduced in Rule 7A of the Special Rules, corresponding amendment was not made in Rule 60 (aa) of the KSR. Therefore, according to him, there was an anomaly between Rule 7A and 60(aa) of the KSR. It was also contended that in the recommendations of the Shetty Commission which were accepted by the Supreme Court in its judgment in ***All India Judge's Associations' case*** (supra), scrutiny at the age of 50 and 55 alone was recommended and that therefore there cannot be compulsory retirement at 50 or 55 years. According to the appellants, what is intended at 50 and 55 years is not retirement and the purpose of the review is that the officers who are found weak in the valuation process are given opportunities to improve

and even after opportunities, if they do not improve, to retire them at the age of 58 by disallowing extension. This contention according to counsel is substantiated by the requirement in Rule 7A (2) that there shall be review at least three times, that is when an officer is about to attain the age of 50, 55 and 58 years. Further, they also contended that since Rule 7A of the Special Rules do not prescribe minimum period of service for invoking compulsory retirement, the Rule is illegal. Support to this contention was sought to be drawn from the principles laid down by the Apex Court in ***Moti Ram Deka and Others v. General Manager, North East Frontier Railway*** [AIR 1964 SC 600].

48. We have already extracted from the counter affidavit filed by the High Court the recommendations of the Shetty Commission. Those recommendations itself show that the review of the judicial officers at the age of 50 and 55 years is for compulsory retirement. Therefore it is factually erroneous to contend that neither Shetty Commission Report nor the Apex Court judgments accepting the same, did not contemplate compulsory retirement at the ages of 50 and 55. The expression “at least three times” occurring in Rule 7A (2) of the Special Rules refers to the review at 50, 55 and 58 and this does not mean that before compulsory retirement, the case of

each officer should be evaluated at least thrice, as sought to be made out by the appellant.

49. In so far as the contention regarding the absence of minimum period of service prescribed in Rule 7A of the Special Rules is concerned, it is true that in ***Moti Ram Deka and Others v. General Manager, North East Frontier Railway*** [AIR 1964 SC 600], it has been reiterated that if compulsory retirement is permitted by any service rule without fixing a minimum period of service after which the Rule can be invoked, the termination of the services of a permanent civil servant by the application of such a rule would be dismissal or removal under Article 311(2) of the Constitution of India. However, that observation of the Apex Court, which was made initially in the judgment in ***State of Bombay v. Saubhagchand M. Doshi*** [AIR 1957 SC 892], was not made in the context of judicial service. We have already referred to judgments of the Apex Court which lays down that judicial service is not a service as understood in the common parlance and is a unique one in all respects. Therefore, the principle which is laid down in the context of a railway employee, as in the case of **Moti Ram (supra)** or a civil servant cannot be called in aid in the case of a judicial officer.

50. Even otherwise, as is evident from para 50 of ***Moti Ram*** (supra) itself, this contention should be appreciated in the context of the combined

operation of the various provisions of the Special Rules. Higher Judicial Service consists of three categories and appointment to category Nos.1 & 2 is to be made by promotion. Category No.3 is District and Sessions Judges including Additional District Judges and appointment to category No.3 shall be made in the manner as provided in Rule 2(c). As per this Rule, 50% of the posts shall be filled up by appointment by transfer from Subordinate Judges/Chief Judicial Magistrate in the Kerala State Judicial Service on the basis of merit and ability. 25% of the posts shall be filled up by appointment by transfer based on a limited competitive examination and viva voce and on the basis of merit and ability from those in the above categories, with not less than 5 years of substantive service. The remaining 25% shall be filled up by direct recruitment.

51. The post of Subordinate Judges and Chief Judicial Magistrates are governed by the Kerala Judicial Service Rules, 1991. As per the said Rule, the posts of Subordinate Judges/Chief Judicial Magistrate (Category No.1) are to be filled up by promotion from Category 2 viz., Munsiff - Magistrate. Rule 10 (c) prescribing qualifications for the post of Munsiff - Magistrates provides that a candidate for appointment under direct recruitment shall not have completed 35 years of age on the 1<sup>st</sup> day of January of the year in which application for appointment is invited. As per the proviso to this clause,

relaxation admissible to members of scheduled caste/ scheduled tribes/ OBC shall be applicable.

52. The appellants do not have a case that they entered service otherwise than through direct recruitment. They became members of the State Higher Judicial Service in terms of Rule 2(c) of the Special Rules. If that be so, they would have entered service as Munsiffs/Magistrates before completing 35 years of age. Rule 7A of the Special Rules contemplate review of an officer at the age of 50, 55 and 58 years. Therefore, any officer who has entered the higher judicial service by promotion, like the appellant in WA No.1606/2013, would have rendered a minimum service of 15, 20 and 23 years at the time when review is undertaken in terms of Rule 7A of the Special Rules. In other words, if the combined operation of the Rules is examined, it can be seen that a sufficiently longer minimum period of service is inbuilt in the Rules. This, therefore, shows that the contention of the appellant that for want of minimum period of service prescribed in the Rule, Rule 7A is illegal, is only to be rejected.

53. It was contented before us that the opinion formed by the High Court on the continued utility of the appellants to be retained in service is not proper and that it was not based on any materials. It was pointed out that there were no adverse remarks against the appellants. However, the absence

of adverse remarks in the confidential records of the appellants by itself would not suggest their fitness and the eligibility to be retained in service nor does it demonstrate their continued utility to be judicial officers. In the All ***India Judges' Association (2) and others*** (supra) and ***Nawal Singh*** (supra), the Supreme Court has indicated the relevant factors which are to be considered by the High Court while evaluating the judicial officers for their continued retention in service. Among the various factors indicated by the Court, consideration of the confidential records of the officer is only one of the factors and records show that these were also considered by the High Court.

54. It is relevant to state that in so far as the appellant in W.A.No.1633/2013 is concerned, pursuant to the resolution of the Administrative Committee in its meeting held on 18.09.2009, the Registrar (Vigilance) conducted an enquiry and submitted his report, which was also considered by the Committee and the Full Court while taking the impugned decision. This report, indicated that while working as Chief Judicial Magistrate, Kasaragod, he was maintaining close relationship with a person, against whom several cases were pending in his court. The report also indicated the details of his relationship with persons of doubtful integrity, his frequent trips to Mangalore in private vehicles provided by his close associates and his relationship with a lawyer of Kasaragod Bar. The report

even contained the details of the calls made by him and SMS that were sent from his mobile phone to the mobile phones of this lawyer. It is clarified that, to avoid embarrassment to the appellant also, we are making only a general reference to the contents of the vigilance report. Suffice it to say that all these materials were duly considered by the High Court, while taking the impugned decision.

55. In so far as the appellant in W.A.No. 1606 of 2013 is concerned, admittedly, disciplinary proceedings were already initiated against him. It is seen that memo of charges dated 29.09.2009 was issued against the appellant in W.A.No.1606 of 2013, with the following charges;

*"1) That you, Sri.V.T. Reghunath, Special judge, NDPS Act Cases, Thodupuzha while working as Sub Judge, Ernakulam produced fake rent receipts signed by you as Sri.I.S. Sreenivas, the landlord of the building bearing House No.34/2242-B of Corporation of Kochi, Deepam Lane, Mamangalam occupied by you during the period from 01.06.2005 to 31.01.2009, on a monthly rent of Rs.6,000/- for reimbursement of the rent.*

*2) That, towards payment of rent for the period from 05.06.2008 to 31.01.2009, you caused three demand drafts to be drawn in your name for a total amount of Rs.47,200/- without even producing the rent receipts of the landlord.*

*3) That, instead of drawing the DD towards rent in the name of Sri.I.S. Sreenivas, the landlord, you insisted of drawal of DD in your own name and got it done as insisted.*

*4) That you drew an amount of Rs.2,47,903/- towards payment of rent to the landlord, but produced counterfoils issued by the Bank for Rs.1,40,047/- only.*

*5) That you drew excess amount by producing the false receipts than the amount actually paid to the landlord/ remitted in the account of the landlord, Sri.I.S. Sreenivas.*

*6) That your above mentioned acts amount to serious misconduct and indiscipline which is unbecoming of a judicial officer."*

56. Further, the report of the Registrar (Vigilance), which was considered by the Administrative Committee and the Full Court, indicated about the complaints regarding the unsatisfactory manner in which he was discharging his duties as a Judicial Officer. The report also made reference to the allegations against him, which were the subject matter of the memo of charges and also the comments made against him by a Division Bench of this Court in the judgment in Criminal Appeal No.294/2009. (An enquiry was conducted into the charges and though it was after order dated 22.09.2010 was issued by the Registrar (Subordinate Judiciary), the Enquiry Officer submitted his report on 10.12.2010 finding that all charges were proved. The report of the enquiry officer was accepted by the High Court and in view of the fact that the appellant was already compulsorily retired from service, the High Court by its letter dated 02.09.2013 requested the appointing authority to proceed with the matter as contemplated under Rule 3 Part III of KSR and

to reduce 25% of the appellant's monthly pension. It would appear that on receipt of the request of the High Court, the appellant was issued a show cause notice and final orders in the matter are yet to be passed.)

57. In the case of the appellant in W.A.No.1954 of 2013, based on a complaint received from an Advocate raising allegations against him, an enquiry was conducted by the Registrar (Vigilance) and considering the *prima facie* case disclosed, the High Court issued Official Memorandum dated 06.03.2010 calling upon him to show cause why disciplinary action shall not be initiated against him. The relevant part of the Official Memorandum reads thus;

*“Advocate Sri.Tom Joseph practicing before Thodupuzha Courts filed a complaint before the High Court alleging that Sri.K.A. Augustine, IVth Additional District Judge (Ad-hoc -II), Thodupuzha took a hostile attitude towards him while he was defending the accused as Legal Aid Counsel/ State Brief in S.C. 537/08 chargesheeted under offences punishable under Sections 308 and 324 IPC. It was alleged that he had made every effort to produce documentary evidence to show that the accused had sustained injuries and was hospitalized but the Judge made personal allegations and behaved in an inimical manner. The complainant was denied opportunity to put relevant questions to the prosecution witnesses in cross examination. It was also alleged that when questions were put by him to the Investigating Officer to mark the contradictions brought out in evidence given by the other prosecution witnesses, Sri.K.A. Augustine did not allow those contradictions to be marked properly. The complainant alleged that the Judge was*

*behaving in a prejudiced and vindictive manner and had a pre-judgment to convict the accused in that case. It was alleged that there is a general opinion among the Advocates and the public that the Judge has been conducting / deciding cases in a most inappropriate manner in all other matters as well. The High Court on consideration of the complaint ordered a Vigilance enquiry to be conducted in the matter by the Registrar (Vigilance), High Court.*

*The enquiry report submitted by the Registrar (Vigilance), High Court revealed that the non-consideration of the defence case gives rise to a genuine doubt that Sri.K.A.Augustine had inclinations towards the defacto complainant in that case because of any other consideration or due to any other prejudice towards the accused or his counsel. The non-consideration of the defence case probabalise the complaint of the Advocate that Sri.K.A. Augustine took a hostile attitude towards the accused in the Sessions Case and his counsel."*

On receipt of the official memorandum, the appellant submitted his explanation vide his letter dated 30.03.2010. (However, while this was pending consideration of the High Court, since the appellant was compulsorily retired from service, the Administrative Committee resolved in its meeting held on 18.08.2011 that further action need not be taken in the matter.)

58. It is also relevant to state that pursuant to a complaint that was received in the High Court with allegations that the appellant had harassed women employees during his tenure as Chief Judicial Magistrate, Palakkad, an enquiry was conducted by the Registrar (Vigilance). In the Report that was submitted, for want of evidence though this allegation was reported to be not proved, the statements recorded by the Registrar indicated that the integrity

of the appellant was doubtful. It was also reported that he was not doing any serious judicial work during his tenure as C.J.M, Palakkad. In the report submitted by the Registrar (Vigilance) on the directions of the Administrative Committee, after referring to the previous Vigilance Report and also about the performance of the appellant, it was reported that his performance and reputation are not good. Here also, in the interest of the appellant, we are deliberately avoiding a more detailed reference to the Vigilance Report.

59. We have also referred to the resolutions of the Administrative Committee requiring enquiry by the Registrar (Vigilance) and the report to the Registrar (Vigilance) containing adverse remarks against the appellants. These and all other relevant materials were placed before the Administrative Committee and all the materials, along with the resolution of the Administrative Committee that the appellants be compulsorily retired from service, were again placed before the Full Court of the High Court. The matter was deliberated in detail and the Full Court approved the resolution of the Administrative Committee. It was on that basis the Registrar issued the communication and also conveyed the matter to the Governor, the appointing authority, leading to the Government order dated 11.10.2011. Such an evaluation initially by the Administrative Committee and later by the Full

Court cannot be said to be without materials nor can the said exercise be described as an improper one, as contented by the appellants.

60. It was contended that the learned Single Judge committed a very serious error in perusing the documents in the custody of the High Court which is a party to the case. We do not think that there is any substance in the contention for the reason that, first of all, when compulsory retirement is sought to be justified on the ground of public interest, as laid down by the Apex Court in ***Baldev Raj Chadha v. Union of India and Others*** [AIR (1981) SC 70], it was the duty of the High Court to disclose the material relied on to satisfy the learned Single Judge that the order was not bad for want of material. Secondly, in a petition with the prayer for a writ of certiorari, records are bound to be produced before the Court. We also noticed from para 26 of the judgment under appeal that, on production of the files, the learned Single Judge permitted the counsel for the parties to peruse the files. At that stage, nobody including the appellant herein took any objection to the production or perusal of the files. At any rate, the production of the file or its perusal has not caused any prejudice to the appellant to accept a contention of this nature raised before us.

61. It is also contended that the report of the Registrar (Vigilance), being a report which was unilaterally prepared without notice to the affected

parties, the contents thereof should not have been taken into account. In so far as this contention is concerned, we must at the outset take note of the fact that in the proceedings for compulsory retirement, there is no place for the principles of natural justice [see paragraph 34 of **Baikuntha Nath Das** (*supra*)]. As is evident from the resolution of the Administrative Committee held on 18.09.2009, the Committee wanted further materials to be gathered for enabling itself to form an opinion on the issue relating to the continued utility of the officers under consideration. It was in pursuance of this resolution of the committee that the Registrar (Vigilance) conducted discreet enquiries and submitted his report. Such being the factual background, there is no justification to argue that the report of the Registrar (Vigilance) should not have been taken into account.

62. Counsel referred to us the Apex Court judgment in **Marathawada University v. Seshrao Balwant Rao Chavan** [(1989) 3 SCC 132], where it is held thus;

*“25. By this resolution, we are told that the Executive Council has ratified the action taken by the Vice-Chancellor. Ratification is generally an act of principal with regard to a contract or an act done by his agent. In Friedman’s Law of Agency (5th Edn.) Chapter 5 at p. 73, the principle of ratification has been explained:*

*“What the ‘agent’ does on behalf of the ‘principal’ is done at a time when the relation of principal and agent does not exist: (hence the use in this sentence, but not in*

*subsequent ones, of inverted commas). The agent, in fact, has no authority to do what he does at the time he does it. Subsequently, however, the principal, on whose behalf, though without whose authority, the agent has acted, accepts the agent's act, and adopts it, just as if there had been a prior authorisation by the principal to do exactly what the agent has done. The interesting point, which has given rise to considerable difficulty and dispute, is that ratification by the principal does not merely give validity to the agent's unauthorised act as from the date of the ratification: it is antedated so as to take effect from the time of the agent's act. Hence the agent is treated as having been authorised from the outset to act as he did. Ratification is 'equivalent to an antecedent authority'."*

**26.** *In Bowstead on Agency (14th Edn.) at p. 39 it is stated:*

*"Every act whether lawful or unlawful, which is capable of being done by means of an agent (except an act which is in its inception void) is capable of ratification by the person in whose name or on whose behalf it is done.... The words 'lawful or unlawful', however, are included primarily to indicate that the doctrine can apply to torts. From them it would follow that a principal by ratification may retrospectively turn what was previously an act wrongful against the principle, e.g. an unauthorised sale, or against a third party, e.g. a wrongful distress, into a legitimate one; or become liable for the tort of another by ratifying."*

**27.** *These principles of ratification, apparently do not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is ab initio void and cannot be ratified.*

**28.** *The counsel for the appellant, however, invited our attention to the case of Parmeshwari Prasad Gupta v. Union of India. It was a case of termination of services of the Secretary of a Company. The Board of Directors decided to terminate the services of the Secretary. The Chairman of the Board of Directors in fact terminated his services. Subsequently, in the meeting of the Board of*

*Directors the action taken by the Chairman was confirmed. In the suit instituted by the Secretary challenging the termination of his services, the court upheld on the principle that the action of the Chairman even though it was invalid initially, could be validated by ratification in a regularly convened meeting of the Board of Directors. Mathew, J. while considering this aspect of the matter, observed: (SCC pp. 546-47, para 14 : SCR pp. 307-08)*

*“Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on 16-12-1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17-12-1953. The appellant was not entitled to the declaration prayed for by him and the trial court as well as the High Court was right in dismissing the claim.”*

**29.** *These principles of ratification governing transactions of a company where the general body is the repository of all powers cannot be extended to the present case. We were also referred to the decision of the Court of Appeal in Barnard v. National Dock Labour Board and in particular the observation of Denning, L.J.: (All ER 1118 and 1119)*

*“While an administrative function can often be delegated, a judicial function rarely can be. No judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication. In Local Government Board v.*

*Arlidge the power to delegate was given by necessary implication, but there is nothing in this scheme authorising the board to delegate this function and it cannot be implied. It was suggested that it would be impracticable for the board to sit as a board to decide all these cases, but I see nothing impracticable in that. They have only to fix their quorum at two members and arrange for two members, one from each side, employers and workers, to be responsible for one week at a time.*

*Next, it was suggested that, even if the board could not delegate their functions, at any rate they could ratify the actions of the port manager, but, if the board have no power to delegate their functions to the port manager, they can have no power to ratify what he has already done. The effect of ratification is to make it equal to a prior command, but as a prior command, in the shape of delegation, would be useless, so also is a ratification."*

**30.** *These observations again are of little assistance to us since we have already held that there was no prior delegation of power to the Vice-Chancellor to take disciplinary action against the respondent. There was no subsequent delegation either. Therefore, neither the action taken by the Vice-Chancellor, nor the ratification by the Executive Council could be sustained."*

Relying on these principles, counsel contended that since the order of the High Court is a void one, the action taken there under could not have been approved by the Governor.

63. In our opinion, the principles laid down herein above do not have any relevance in so far as these cases are concerned. First of all, as held in this judgment itself, the principles of ratification do not have any application with regard to exercise of statutory powers. Secondly, any act beyond the statutory power cannot be ratified. We have already found that formation of the opinion

on the continued utility or retention in service of a judicial officer, is the exclusive power of the High Court. On the basis of the opinion so formed, the recommendation made by the High Court is binding on the Governor. In these cases, the High Court formed its opinion and conveyed it to the Governor, and acting upon the recommendation so made, Government order dated 11/10/11 was issued. Such being the case, it cannot be equated with a case of ratification of a void act, as sought to be made out by the appellants.

64. It was contended before us by the appellant in W.A.No. 1606 of 2013 that the order dated 11.10.2011 was not communicated to him and that therefore, in so far as he is concerned, the order of compulsory retirement did not take effect. We are unable to accept this contention. Admittedly, the appellant did not argue such a case before the learned Single Judge. In fact, the order is under challenge in the connected matters. Even apart from that, we have also noticed that, the order contains an endorsement forwarding copy of the order to the appellant also. Appellant did not have a case that the address shown therein is not the address furnished by him to the High Court. In such factual circumstances, we cannot accept this contention.

65. Along with I.A.No.835 of 2014 in W.A.No.1606 of 2013, the appellant submitted notes of argument. Since the contentions raised therein

are already dealt with in the course of this judgment; it is unnecessary to refer or deal with the notes again.

66. In so far as the appellant in W.A.No.1587 of 2013 is concerned, he filed W.P.(C)No.8680 of 2012 seeking to quash Exts.P6 and P7, orders dated 30.07.2010 and 11.10.2011 respectively, issued by the Registrar (Subordinate Judiciary) and the Government of Kerala compulsorily retiring him from service in public interest on the afternoon of 31.07.2010. The appellant herein was a Sub Judge (under suspension). He attained the age of 55 on 10.10.2009. He was governed by the provisions of Kerala Judicial Service Rules 1991 and his case was reviewed in terms of Rule 13A of the said Rules. On such evaluation, the High Court formed the opinion that he was not fit and eligible to continue in service beyond the age of 55 years and in such circumstances he was compulsorily retired by Exts.P6 and P7.

67. Except that he was governed by Rule 13A of the Kerala Judicial Service Rules 1991, which is similar to Rule 7A of the Special Rules, the case of the appellant is similar in all respects to the case of the appellants in W.A.Nos.1633, 1606 and 1954 of 2013. Therefore, for the reasons we have already given in this judgment upholding the orders of compulsory retirement, the contentions raised by the appellant herein also have to be rejected and we do so.

68. The upshot of the above discussion is that the judgments of the learned single Judge do not suffer from any illegality.

Therefore, all these appeals filed by the writ petitioners and the High Court are to be dismissed and we do so. No costs.

Sd/-  
**ANTONY DOMINIC  
JUDGE**

Sd/-  
**ALEXANDER THOMAS  
JUDGE**

Rp