

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Civil Writ Petition No.19071 of 2013

Date of decision: 26.8.2015

Trilok Nath Passey

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Vikas Kuthiala, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl., AG., Punjab.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.

1. The petitioner was a member of the Punjab Civil Services (Executive Branch). The Chief Secretary to Government, Punjab has passed the impugned order dated 19th August, 2013 prematurely retiring the petitioner from service under Rule 3 of the Punjab Civil Services (Premature Retirement) Rules, 1975. He had served for about 20 years when the impugned order was passed. The main point to be considered in this petition is whether the impugned order is stigmatic in nature. In the impugned order the Chief Secretary, Punjab has used the expression that the petitioner is “unsuitable for further continuation in public service,” Is this stigmatic and thus punitive and therefore legally and factually bad?

2. The facts in brief are that the petitioner was proceeded against departmentally for imposition of major penalty under Rule 8 of the Punjab

Civil Services (Punishment & Appeal) Rules, 1970 on the charge that he misused his powers while posted as Sub Divisional Magistrate, Khadur Sahib-cum-Registering Authority under the Motor Vehicles Act, 1988. In the inquiry the charge was proven. The petitioner was imposed a major penalty of withholding of 4 annual increments with cumulative effect at the end of the departmental proceedings. In addition thereto, recovery of ₹ 3,64,842/- was fastened on him for causing financial loss to the State. The charge was serious in nature. The petitioner held a superior post and was expected to perform his public duties with utmost honesty, probity and fairness. The enquiry report is dated 19th February, 2013. The petitioner made a request for review of the order which was rejected by the competent authority on 2nd July, 2013. The petitioner would normally have retired on attaining the age of superannuation on 31st May, 2016 since his date of birth is 4th May, 1958.

3. Earlier also the petitioner was charge sheeted for committing irregularities in the issuance of licenses while he served as Sub Divisional Magistrate, Khadur Sahib from 13th December, 1996 to 29th September, 1998. That charge sheet was dated 31st May, 1999. The Inquiry Officer submitted a report on 10th September, 2001. The disciplinary authority disagreed with the conclusions of the first inquiry officer and remanded the inquiry to another Inquiry Officer under Rule 9(1) of the Punjab Civil Services (Punishment & Appeal) Rules, 1970.

4. Against the second enquiry report, the petitioner filed CWP No.7107 of 2005 in which the further proceedings have been stayed on 6th May, 2005 and the matter admitted and is pending before this Court.

5. It may be noted that there is a third charge sheet pending and no final orders have been passed as yet thereon. He complains that because of the charge sheets, his juniors have been promoted to the Indian Administrative Services vide notification dated 10th January, 2013 and have stolen a march over him. He belongs to 1991 batch of PCS (EB) officers.

6. In pursuance to the punishment imposed and the recovery order, the petitioner has deposited the amount of recovery in the State Treasury on 13th August, 2013 under protest. The petitioner submits that other than the two disciplinary proceedings his service record is clean and his annual confidential reports do not support the conclusion that he has outlived his utility to serve. Besides, nothing adverse has been communicated to the petitioner so far and there is nothing adverse against him other than the presence of the first and second enquiry. The petitioner is one of the three PCS Officers who have been prematurely retired under Rule 3(1)(a) of the 1975 rules by a common order. The three officers who have been prematurely retired have not been simultaneously paid pay and allowances for the notice period of 3 months on the date of passing of the adverse order but they have been held entitled to claim the equivalent amount under Rule 3(1)(b) of the Rules.

7. In order to understand whether the argument raised by the petitioner is sustainable on the point that the words “unsuitable for further continuation in public service” are stigmatic in nature would best be read in the setting of the entire text of the order which is reproduced hereunder: -

“The Govt. of India vide letter dated 28.6.2012 gave detailed guidelines for intensive review of records under rule 16(3) of All India Services (Death-cum-Retirement

Benefits) Rules, 1958. The purpose of this review of the entire service record is to adjudge the suitability of the officer for further continuation in service. On similar lines, the Govt. of Punjab issued instructions dated 28.8.2012 to review the service record of its employees on completion of 15, 20, 25, 30 and 35 age of qualifying service. These instructions were issued u/r 3(1)(a) of the Punjab Civil Services (Premature Retirement) Rules, 1975 and the guidelines thereof dated 26th Sep., 1975.

2. The rule of premature retirement in public interest has been upheld by the Hon'ble Supreme Court (AIR 1980 SCC 563) and (CA No.1561 of 2001, 3 SCC 320) with the following observations : -

a) To object of the rule is to weed out the deadwood in order to maintain a high standard of efficiency and initiative in the State Services.

b) 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.

c) Compulsory retirement shall not be imposed as a punitive measure.

3. The Govt. of Punjab constituted a 5 members committee headed by the Chief Secretary under rule 3(1) (a) of the Punjab Civil Services (Premature Retirement) Rules, 1975 to review the service record of the PCS (Executive) Officers. The committee met on 26.10.12 and subsequently on 24.4.13 for the first such review. Keeping in view the criteria specified in the instructions of the State Govt. letter dated 26.9.75, 29.9.80, 22.6.81 and the Govt. of India guidelines dated 28.6.12 and the views of the Hon'ble Supreme Court in this matter, the Review Committee carried out in depth analysis of the service record of the PCS (Executive) Officers that inter alia included performance appraisal by seniors in the past, disciplinary proceedings and other legal/criminal proceedings and the general repute of the officers. The Committee recommended premature retirement of Sh.Jaipal Singh, Ms.Kiran Rosy and Sh.Tirlok Nath Passey since they found these officers who have completed 20 years of service, **unsuitable for**

further continuation in public service. The recommendations of the Committee were accepted by the Competent Authority. Accordingly, the Governor of Punjab is pleased to order premature retirement of the following officers, with immediate effect under rule 3(1)(a) of the Punjab Civil Services (Premature Retirement) Rules, 1975:

1. Sh.Jaipal Singh, PCS
2. Ms.Kiran Rosy, PCS
3. Sh.Tirlok Nath Passey, PCS

4. It is clarified that these orders are not punitive in nature and the above mentioned officers shall be entitled to claim a sum equivalent to the amount of their pay and allowances, at the rates they were drawing immediately before the date of retirement, for a period of three months as permissible under rule 3(1)(b) of Punjab Civil Services (Premature Retirement) Rules, 1975.

Dated, Chandigarh
the 14th August, 2013

RAKESH SINGH
Chief Secretary, Govt.
of Punjab.

8. In order to substantiate his case that the order is unsustainable for being stigmatic, he relies *inter alia* on the two decision of the Supreme Court in **Amar Kant Choudhary v. State of Bihar and others**; AIR 1984 SC 531 and **State of Gujarat v. Umedbhai M. Patel**; 2001 (3) SCC 314.

9. In **Baikuntha Nath Dass and another v. Chief District Medical Officer, Baripada & another**; (1992) 2 SCC 299, the Supreme Court have culled out the following principles attaching to compulsory retirement of a government servant:-

“(i) An order of compulsory retirement is not a punishment. It implies no stigma or 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. The circumstance by itself cannot be a basis for interference.”

10. In ***Baikuntha Nath Dass***, the Supreme Court refined its earlier dicta in ***Union of India v. J.N.Sinha***; (1970) 2 SCC 458.

11. In ***Umedbhai M. Patel*** case *supra*, the Court further refined its search for legal propositions involved on the subject matter and indicated the law in the following terms : -

“The law relating to *compulsory retirement* has now crystallized 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 *deadwood*, 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.”

12. The predominant test explained in **Baikuntha Nath Dass** is that the High Court would not examine the matter as an appellate court and interference is called for only if the Court is satisfied that the order was passed in a malafide manner; if it is based on no evidence and 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. In **Umedbhai M. Patel**, the Supreme Court held that the compulsory retirement shall not be imposed as a punitive measure.

13. In **State of U.P. v. Madan Mohan Nagar**; AIR 1967 SC 1260, the Supreme Court considered the expression “outlived his utility”

mentioned in the order of retirement. Such an order was held as casting stigma and would amount to punishment and is to be treated as one of removal from service. Therefore, holding of an enquiry under Article 311 (2) is necessary before such an order can be passed. Outliving ones utility is a form of incapacity which term has the same effect as the word misbehaviour as explained in **Shyam Lal v. State of Uttar Pradesh**; 1955 1 SCR 26, a decision relied on by the Supreme Court in **Madan Mohan Nagar's** case.

14. There is no gainsaying that, by and large, an order of compulsory or premature retirement should not cast an aspersion on efficiency and honesty of an officer otherwise it may qualify as being punitive in character. The significant fact is of the use of the words on the face of the order that would indicate the foundation of premature retirement, the motive notwithstanding. The judgments never precedent that expression like found undesirable to be retained in Government service or terming a person to be provisionally incompetent to be its officer, inefficient, corrupt, not well behaved would all cast stigma on the face of the public servant as they would affect the future life and career of the person. Even when such order is faulted by the Court, liberty should be granted to proceed with a fresh re-consideration of the case in accordance with law.

15. In these circumstances, the dispute in the present case is to be confined to understanding the true nature of the words used in the impugned order which are the causa causans of action taken under rule 3(1)(a) of the 1975 rules, i.e., unsuitable for further continuance in public service. This Court is called upon to understand what is meant by the expression, “under review” and does it fall foul of the matters to be considered or excluded in

terms of the definitive principles crystallized in **Baikuntha Nath Dass** and **Umedbhai M. Patel** chain of cases with special reference to a compulsory retirement order not being punishment in disguise but the Courts have accepted that chopping off the deadwood, the inefficient and the drones who have outlived productive service is within the subjective satisfaction of the competent authority.

16. In understanding the legal position from the stand point of the respondent State in the written statement other than the face of the impugned order, the respondent State defends its action on various pleas stating that a Review Committee headed by the Chief Secretary, Punjab and consisting of three members, two of whom are of the level of Financial/Principal Secretary to be nominated by the Chief Secretary and the Principal Secretary, Department of Welfare of SCs/BCs and the Secretary Personnel examined the issue of retention in service. The Committee held its meeting on 26th October, 2012 and 24th April, 2013 for the first review exercise. The service record of the officer “was analyzed in depth” including the performance appraisal by seniors in the past, disciplinary proceedings and other legal/criminal proceedings, general repute and conduct of the officers which are all mentioned in the impugned order. The Committee recommended premature retirement on finding the petitioner unsuitable for further continuation in public service. The recommendations of the Committee were considered and accepted by the Competent Authority where after orders of premature retirement were passed under Rule 3(1)(a) of the Rules prematurely retiring him three years before the age of superannuation. The order records that the same is not in punitive in nature. However, the Court understands that this line written in

the order is not at all determinative of its true nature and will not be swayed by mere recitation of words in the order that it is punitive or not since it is open to the Court while judicially reviewing the administrative action to lift the veil and see whether the order is punitive in nature or not and mere incantation of words and phrases would not confer immunity to the State from judicial review to understand the true scope of the expression and whether it amounts to inflicting punishment without inquiry into the serious nature of the charges which undoubtedly are the motive behind the order to dispense with the services via the authorizing rules.

17. The State submits that in spite of satisfactory performance by an employee, the authority may still decide to compulsorily retire an employee in public interest if in its opinion the post is required to be manned by a more efficient and dynamic person since there is no denying the fact that in all organizations including in the departments of Government there are a large number of inefficient officers whose working needs to be periodically reviewed and all such inefficient officers deserve to be removed from the rolls of the Government to maintain the purity and efficiency in governance. The action has to be taken keeping in view the public interest at large and in making this decision, the Government acts in subjective satisfaction based on objective criteria. This is part of manpower planning to run the Government efficiently to achieve its goals and welfare programmes for the common good.

18. To test the scope of judicial review in such cases, the Court would necessarily have to enter into a discussion to see the foundation and motive of the order which orders are ultimately tested on these two principles. The relationship of motive and foundation in service

jurisprudence in the landscape of disciplinary action have been succinctly stated and explained by Justice V.K.Krishna Iyer in **Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha**; AIR 1980 SC 1896 that if two factors-motive and foundation of the order co-exist, an interference of punishment is reasonable though not inevitable. If the severance of service is effected, the first condition is fulfilled and if the foundation or causa causans of such severance is the servant's misconduct, the second is fulfilled. If the basis or foundation for the order of termination is clearly not turpitudes or stigmatic or rooted in misconduct or visited with evil pecuniary effects, then the inference of dismissal stands negated and vice versa. These canons run right through the disciplinary branch of master and servant jurisprudence, both under Article 311 and in other cases including workmen under management. The law cannot be stultified by verbal haberdashery because the Court will lift the mask and discover the true face. We may go on explaining with words and phrases or by paraphrasing in our own words the essence of the observations of Krishna Iyer, J. but there is can be no substitute for the very words in para. 171 which are best read in extenso for the clarity of the subject brought to bear in the inimitable style of His Lordship:-

“The anatomy of a dismissal order is not a mystery, once we agree that substance, not semblance, governs the decision. Legal criteria are not so slippery that verbal manipulations may outwit the court. Broadly stated, the face is the index to the mind and an order fair on its face may be taken at its face value. But there is more to it than that, because sometimes words are designed to conceal deeds by linguistic engineering. So it is beyond dispute that the form of the order or the language in which it is couched

is not conclusive. The court will lift the veil to see the true nature of the order.

Many situations arise where courts have been puzzled because the manifest language of the termination order is equivocal or misleading and dismissals have been dressed up as simple termination. And so, judges have dyed into distinctions between the motive and the foundation of the order and a variety of other variations to discover the true effect of an order of termination. Rulings are a maze on this question but, in sum, the conclusion is clear. If two factors coexist, an inference of punishment is reasonable though not inevitable. What are they? If the severance of service is effected, the first condition is fulfilled and if the foundation or causa causans of such severance is the servant's misconduct the second is fulfilled. If the basis or foundation for the order of termination is clearly not turpitudinous or stigmatic or rooted in misconduct or visited with evil pecuniary effects, then the inference of dismissal stands negated and vice versa. These canons run right through the disciplinary branch of master and servant jurisprudence, both under Article 311 and in other cases including workmen under managements. The law cannot be stultified by verbal haberdashery because the court will lift the mask and discover the true face. It is true that decisions of this Court and of the, High Courts since Dhingra's case (1958 SCR 828) have been at times obscure if cited de hors the full facts. In Samsher Singh's case the unsatisfactory state of the law was commented upon by one of us, per Krishna Iyer, J., quoting Dr. Tripathi for support:

"In some cases, the rule of guidance has been stated to be 'the substance of the matter' and the 'foundation' of the order. When does 'motive' trespass into 'foundation' ? When do we lift the veil of form to touch the 'substance' ? When the Court says so. These 'Freudian' frontiers obviously fail in the work-a-day world and Dr. Tripathi's observations in this context are not without force. He says: 'As already explained, in a situation where the order of termination purports to be a mere order of discharge without stating the stigmatizing results of the departmental enquiry a Search for the 'substance of the matter' will be

indistinguishable from a search for the motive (real, unrevealed object) of the order. Failure to appreciate this relationship between motive (the real, but unrevealed object) and from (the apparent, or officially revealed object) in the present context has led to an unreal interplay of words and phrases wherein symbols like 'motive', 'substance' 'form' or 'direct' parade in different combinations without communicating precise situations or entities in the world of facts.' The need, in this branch of jurisprudence, is not so much to reach perfect justice but to lay down a plain test which the administrator and civil servant can understand without subtlety and apply without difficulty. After all, between 'unsuitability' and 'misconduct' thin partitions do their bounds divide'. And over the years, in the rulings of this Court the accent has shifted, the canons have varied and predictability has proved difficult because the play of legal light and shade has been baffling. The learned Chief Justice has in his judgement, tackled this problem and explained the rule which must govern the determination of the question as to when termination of service of a probationer can be said to amount to discharge simpliciter and when it can be said to amount to punishment so as to attract the inhibition of Art 311."

Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinized, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a G punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order

or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal. even if full benefits as on simple termination, are given and non-injurious terminology is used.

On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here.

What is decisive is the plain reason for the discharge. not the strategy of a non-enquiry or clever avoidance of stigmatizing epithets. If the basis is not misconduct, the order is saved.” (underlined for emphasis)

19. Though the Supreme Court in **Gujarat Steel Tubes** was dealing with disciplinary action against striking workman in labour law setting but the principles of motive and foundation are universal in character and would apply to cases of compulsory or premature retirement only to be the handy tool to test the punitive nature of the order or whether it is stigmatic and leaves a sour taste in the mouth of the victim which precludes or prevents him from seeking employment elsewhere as a new employer may not hire such a person in its employment when he reads the order.

20. The function of the Court is to discover the nature of the order by attempting to ascertain as to what were the motivating considerations in

the mind of the authority that prompted the making of the order. The form of the order in which it couched is not conclusive of its true import as it might merely be a cloak and camouflage for an order founded on misconduct. It may be that an order which is innocuous on the face of it and does not contain any imputation of misconduct is a circumstance or a piece of evidence for finding whether it was made by way of punishment or in administrative routine. But the entirety of circumstances preceding or attendant on the impugned order must be examined and the overriding test will always be whether the misconduct is a mere motive or is the very foundation of the order see **State of Bihar v. Shiva Bhikshuk Mishra;** AIR 1971 1011 in a case dealing with reversion not containing express words that may cast a stigma. However, the basic principles remain permeating that an order of compulsory retirement is not a punishment. Ordinarily, it implies neither stigma nor any suggestion of misbehaviour. It is rather well settled that an order of compulsory retirement is not required to be a speaking order, see **Union of India v. Dulal Dutt;** 1993 (4) SCT 30 (SC).

21. The Chief Secretary, Punjab accepted the collective opinion formulated by the multi member review committee consisting of senior officers of Punjab Government, which he may have headed, unanimously agreeing that the petitioner was unsuitable for further continuation in public service. In the impugned order he spoke in future tense. He did not touch upon his unsuitability in the past but formed an opinion on a subjective satisfaction that the petitioner was unsuitable for further continuation in public service. He did not say that the petitioner was not fit for continuing

in any other service and limited his views that the Government which he served found him unsuitable for further retention in service beyond the age-based review stage at 55 years. The petitioner appears to be reading far too much than is involved in the impugned order.

22. The question really is whether the word “unsuitable” is a noxious word which reflects a bad trait character. The dictionary meaning of the word suitable and unsuitable would be of help. The Chambers Dictionary, 12th Edition defines “suitability *n*’ and ‘suitable *adj*’ found together to mean “that suits; fitting; agreeing; adequate.” The words ‘suitable’ or ‘suitability’ are not found after the prefix ‘un’ in this dictionary. Therefore, the antonyms would logically be ‘that does not suit’; ‘unbefitting’; ‘disagreeable’; ‘inadequate’. The Oxford Dictionary & Thesaurus-III, Sixth Impression 2006 defines ‘unsuitable’ as an adjective to be ‘not suitable’ and as a noun; ‘unsuitability’. It is when the word ‘unsuitable’ is used as an adverb it becomes ‘unsuitably’. When used as an adverb it has many shades of meanings and usages; “ill-chosen’, ill-judged, ill-timed, inapposite, inappropriate, incongruous, inept, irrelevant, unbefitting, unfitting, unhappy, unsatisfactory, unseasonable, unseemly, untimely.” P. Ramanatha Aiyer’s-The Law Lexicon, Reprint 2004, defines the term suitable as “The ordinary and general signification of “suitable” is “likely to suit,” “capable of suiting”, or “adopted”. This is by no means equivalent to “adequate.” That which is adequate must be suitable, but that which is suitable may not be adequate. According to the definitions in Webster’s and the Dictionaries, “suitable” means fitting, capable of suiting, or appropriate. The test of the suitability of an article for a certain purpose is, not whether it is

commonly used therefor, but whether it possesses actual, practical, commercial fitness for that purpose.” There seems to be no negativity in the words unsuitable or unsuitability touching upon the character and conduct of a person.

23. This all seems baffling at first flush if the Court gets bogged down by linguistics, semantics and word play. Etymology has no special place in law nor does the court [not necessarily the Judge] derive any pleasure to study the roots of words in carrying out everyday work in court and in chambers unless the word or collection of words themselves become the *raison d'être* on which the judgment may turn. The concern here is to the application of words used in common parlance in the administrator's office and what he meant and not in the English professor's classroom. Language practices in offices of Government are not to be pried open with dictionaries in hand. I do not find any profitable legalism in hair-splitting on the word “unsuitability” by losing sight of the object sought to be achieved by the 1975 rules which is to keep spokes unbroken that support the wheels of the agenda of government rolling on unhindered by its officers, officials and staff maintaining the highest degree of efficiency in administration to carry out its welfare schemes for the people. There are some who fall on the wayside by their own doings. These are the curative processes of nature.

24. To repeat the quote from *Gujarat Steel Tubes* (supra) “After all, between 'unsuitability' and 'misconduct' thin partitions do their bounds divide'. And over the years, in the rulings of this Court the accent has shifted, the canons have varied and predictability has proved difficult because the play of legal light and shade has been baffling.

25. I am of opinion that when the Chief Secretary, Punjab recorded the allegedly offensive words he meant no offence or an imputation of misconduct on the person. It may have been the motive behind the order but certainly not its foundation. While saying this I am not at all charmed by the words expressly penned down in the order which to my mind is not punitive in nature and saying that it will not be punitive alone will not by itself act as the blinding shield or the controlling value to determine “cause and consequence” of the order. I would not accept such an argument. Even if there is the slightest degree of ambiguity in using the phrase “unsuitable for further continuation in public service” I would lean towards an interpretation that the petitioner is found no longer suitable to continue beyond 55 years and that does not *per se* spell a stigma on character, conduct for the future in some other employment, which is the measuring rod to apply in such cases. No employee has a fundamental right to continue in service till superannuation and that is what Rule 3(1) (a) of the Punjab Civil Services (Premature Retirement) Rules, 1975 is designed for. Not to injure but to weed out those government finds no place in its scheme of things so long as power is exercised reasonably and in overriding public interest, the satisfaction remaining subjective to the pleasure of the Governor and the Government under Article 310 of the Constitution. Besides, malafides has not been alleged against the Government or the members of the Review Committee that the decision was coloured or in abuse of power to prematurely retire the petitioner from service. It also cannot be said that no reasonable person would have taken the decision to prematurely retire the petitioner on the materials on record and duly

considered. It is equally well settled that judicial review is not directed against the decision but the decision making process. There is no shimmer of irrationality or perversity in the impugned decision crying for judicial intervention. No fault on these three accounts could be pointed out from the case papers placed before me.

26. In the main, I conclude that premature retirement has not been imposed as a punitive measure in this case. This Court does not sit in appeal over the decision of the administrator which exercises primary review. The role of the court against administrative action is only in secondary review on principles of unreasonableness and proportionality in Article 14 of the Constitution based on Wednesbury standards of arbitrariness as explained by the Supreme Court in **Om Kumar v. Union of India**, (2001) 2 SCC 386 and **Union of India v. G. Ganayutham**; (1997) 7 SCC 463. The petitioner has not been deprived of his pension.

27. For the variety of reasons recorded above, I am unable to persuade myself to interfere in the matter. Accordingly, the petition is dismissed.

28. Nothing said in this order will effect the rights of the other two officers who have been prematurely retired by the common order and their cases, if filed or to be filed, will be decided on their own merits without being influenced by this order.

(RAJIV NARAIN RAINA)
JUDGE

August 26, 2015
Paritosh Kumar