

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8955 OF 2011

Tusharkant Maniklal Mantri,
R/o.Jalaram Society No.3, Behind AIR,
Shastrinagar, Akola Tahsil,
District Akola

Petitioner

versus

1. High Court of Judicature at Bombay,
through Registrar General, at Mumbai.

2. The State of Maharashtra
through Secretary, Department of Industries,
Energy and Labour, Mantralaya,
Mumbai-400 032.

3. The Accountant General-II,
Civil Lines, Nagpur.

Respondents

Mr.K.M.Naik, Senior Advocate, for Petitioner.
Mr.P.S.Dani, Senior Advocate, for Respondent no.1.

CORAM : SC.DHARMADHIKARI AND
P.D.NAIK, JJ.

DATE : 16th April 2016

PC :

1. The Petitioner has invoked the writ jurisdiction of this court under Articles 226 and 227 of the Constitution of India.

The Petitioner has sought to challenge the decision dated 01 December 2009 taken by Special Review Committee of the First Respondent (High Court of Judicature at Bombay) as well as impugned decision dated 24 December 2009 issued by the Second Respondent (State Government). The Petitioner is also seeking issuance of a direction to the Third Respondent (Accountant General-II, M.S.) to finalize the pension and other retiral benefits of the Petitioner as per calculations of Industrial Court, Mumbai.

2. The facts in nutshell, as incorporated in the petition, are as follows :

(a) The Petitioner joined the judicial services as a Member, Industrial Court, on 27 November 1995 after about 17 years of practice as an advocate;

(b) All through out, the record of the Petitioner is clean and unblemished. His disposal rate all along has been noteworthy, as assessed by the Bombay High Court. Even the High Court was pleased to confer selection grade scale to him since January-2001 vide order dated 02 February 2009;

(c) The Petitioner has discharged his duties as an Acting/In-charge President, Industrial Court, Mumbai on some occasions. At the time of regular review of 55 years in August-

2008, there was an unanimous decision by the Review Committee to continue his services in the meeting held on 13 August 2007;

(d) The annual confidential reports of the Petitioner show that the Petitioner has excellent service record and the remarks therein have been 'good/very good'. The record also shows that in the entire tenure of his service, his integrity has been found as 'good/very good/doubtless' etc;

(e) By the general transfer order dated 12 May 2007, the Petitioner was transferred from Mumbai to Nagpur and accordingly he resumed the duties on 4 June 2007 on the re-opening day after summer vacation. Vide his application dated 04 August 2007, the Petitioner claimed Transfer Travelling Allowance ('TTA') along with reimbursement of railway fare of Rs.12,318/- for journey allegedly undertaken by him as well as his family members for joining the transferred post at Nagpur from Mumbai. The Petitioner had claimed TTA of Rs.2,033/- for coming to Nagpur from Mumbai on 3 June 2007 by showing travel by AC First Class. He also enclosed two separate railway journey-cum- reservation tickets bearing PNR Nos.850-2164933 and 843-4977902 dated 15 May 2007 and 17 July 2007 respectively for the journey allegedly undertaken on 3 June 2007 and 22 July 2007 respectively. The Petitioner claimed Rs.10,285/- against these two railway tickets along with TTA.

In fact, the railway journey ticket dated 15 May 2007 under which the Petitioner was to travel on 3 June 2007 from Dadar to Nagpur, was cancelled on 24 May 2007. Similarly, the railway journey ticket dated 17 July 2007 under which the Petitioner was to travel on 22 July 2007, was cancelled on 19 July 2007. Thus, the Petitioner initially purchased railway journey tickets of AC First Class for the journey to be undertaken on 3 June 2007 and 22 July 2007 for him and his family members just to claim transfer travelling allowance consequent upon his transfer from Mumbai to Nagpur and after cancellation of those tickets, the Petitioner received the refunds. In the mean time, the Petitioner claimed reimbursement of the cancelled railway tickets of AC First Class and had in fact received the amount from the State Chequer;

(f) The Petitioner while working at Nagpur was served with a Memorandum dated 31 March 2009 along with charge sheet in which it was stated that the Petitioner has initially purchased railway journey-cum-reservation tickets of A.C. First Class dated 15 May 2007 and 17 July 2007 respectively just to claim TTA and subsequently he cancelled those tickets and obtained refunds against them. It is further stated in the charge sheet that Petitioner has been paid the amounts towards TTA and railway journey-cum-reservation tickets of A.C. First Class thereby causing wrongful loss to the State Exchequer;

(g) The Petitioner submitted his detailed reply dated 9 April 2009 narrating the facts and compelling circumstances in which the railway tickets were required to be cancelled in view of urgency and the mode of journey he undertook then. According to the Petitioner, he incurred more expenses than claimed against TTA and railway tickets and his entitlement;

(h) A Departmental Inquiry commenced against the Petitioner. The said inquiry continued till December-2009 and was closed for submission of the report to the disciplinary authority;

(i) The Petitioner was served with Government Order dated 24 December 2009 on 31 December 2009 through special messenger in which it was stated that as per the recommendations of the High Court, the Petitioner is retired with effect from 31 December 2009 on attaining the age of 58 years in public interest;

(j) At the end of March-2011, the Petitioner received communication dated 15 March 2011 from the office of Respondent no.3 showing the details of computation of pension and other terminal benefits receivable by him. The Petitioner claims that the amounts shown as receivable by him towards monthly pension and other retiral benefits are substantially less. The Petitioner made inquiries with the office of Respondent

no.3. However, there was no response from the department. The Industrial Court, Mumbai had forwarded Form No.7 as per Maharashtra Civil Services (Pension) Rules, 1982 (*`Pension Rules, 1982'*) along with statement of calculations of retiral benefits receivable by the Petitioner. The calculations made by the office of Industrial Court, Mumbai are based on the weightage given by them to the ten years of practice of the Petitioner as an advocate before joining the judicial service, as laid down in Rule 53 of Pension Rules, 1982;

(k) After receiving the pension payment order, which showed the amounts receivable by the Petitioner towards pension and other retiral benefits much less, than the amount calculated by the office of Industrial Court, Mumbai, the Petitioner made inquiries in the office of Respondent no.3. After regular follow up, he could not receive proper details and therefore, he submitted an application under the provisions of Right to Information Act, 2005 (*`RTI Act'*) on 12 May 2011. The Petitioner had sought the particulars and reasons for the difference in calculations of figures of gratuity, pension and commuted pension made by the office of Industrial Court, Mumbai and as shown in the communication dated 8 December 2010;

(l) The Deputy Accountant General and Central Public Information Officer vide communication dated 26 May 2011,

intimated that the office of Industrial Court, Mumbai has considered the retirement of the Petitioner as retirement on superannuation, but Form no.6 submitted along with the proposal shows the type of pension as "retiring pension" (Rule 65 of Pension Rules);

(m) The Petitioner made an application under RTI Act to the Master and Assistant Prothonotary and Public Information Officer, Bombay High Court on 22 March 2011. The Petitioner received part of the information sought, such as, an extract of the minutes of the meeting of Special Review Committee held on 01 December 2009;

(n) The Petitioner also received copy of communication issued by the Registrar General, High Court, Bombay to the Second Respondent dated 7 December 2009 in which it is stated that directions are issued by Hon'ble the Chief Justice and Hon'ble Judges that according to Rules 17 and 19 of Maharashtra Judicial Service Rules, 2008 ('Judicial Service Rules, 2008') and Rule 10(4) of the Pension Rules, 1982, the Review Committee has considered the case of the Petitioner and they have decided that the Petitioner should be retired in view of public interest;

(o) The Petitioner thereafter submitted his application to the Public Information Officer, Bombay High Court on 29

April 2011 seeking the information in that regard. Although part of the information was supplied to him, he could not get the requisite information. The Petitioner, therefore, preferred an appeal under RTI Act before the Registrar, Inspection-I (Appellate Authority). As per order dated 24 December 2009 issued by the Second Respondent, the Petitioner is retired with effect from 31 December 2009. He was paid three months pay and allowances in lieu of notice.

3. In view of the aforesaid circumstances, the Petitioner has preferred present petition challenging the above referred decision and order.

4. The learned Senior Advocate Mr.K.M.Naik appearing for the Petitioner made following submissions in support of his petition :

(i) The decision of the Review Committee of the First Respondent and the order issued by the Second Respondent dated 24 December 2009 are arbitrary, illegal and in breach of principles of natural justice. The said decisions are also violative of Article 14 of the Constitution of India;

(ii) The fixation of pension and other terminal benefits payable to the Petitioner by the office of third Respondent is illegal and not in conformity with the Rules;

(iii) The Petitioner had clean and unblemished record to his credit. A vexatious complaint was made against him under the name of some advocate whose signature was forged and on that basis the departmental inquiry was initiated against him;

(iv) There is no inquiry report submitted in pursuance of the departmental inquiry initiated against the Petitioner;

(v) The decision taken by the Review Committee on 01 December 2009 is unsustainable in law inasmuch as at that stage, the departmental inquiry was in progress;

(vi) The Petitioner cannot be deprived of his legitimate claim of continuation in service till the age of retirement as per Rules;

(vii) The clean and unblemished service record of the Petitioner has been ignored;

(viii) The rulings of the Apex Court as well as High Court have not been taken into consideration while passing the impugned order/decision;

(ix) The impugned decision is punitive in nature so also casts a stigma on the Petitioner. The decision refers to the misbehaviour as a basis for arriving at the said decision. The

decision is, therefore, violative of the protection guaranteed under Article 311(2) of the Constitution of India, as also violative of the guarantee enshrined under Article 14 of the Constitution of India;

(x) The communication issued by the Registrar General of the first Respondent states that the action is taken according to the provisions of Rules 17 and 19 of the Judicial Services Rules, 2008. The decision to retire any member of judicial service when he attains the age of either 50 or 55 or 58 years, is to be taken by the Governor of Maharashtra. The provisions of Rule 19 of the Judicial Services Rules, 2008 states that the Governor of Maharashtra has the absolute power to retire any member of judicial service when he/she attains either of the above age. The Government of Maharashtra had no authority to take such a decision;

(xi) The impugned order has been passed mechanically. It is not based on subjective satisfaction of the authority. The action of the second Respondent is not in accordance with the provisions of Rule 10(4)(a)(ii) of the Pension Rules, 1982;

(xii) The office of the Industrial Court has calculated the amount of pension and other terminal benefits receivable by the Petitioner by giving him benefit of Rule 53 of the Pension Rules, 1982 by giving weightage of 10 years practice as an advocate

and then calculated the benefits of qualifying service. The calculations made by the office of third Respondent are erroneous;

(xiii) The Petitioner was appointed as a Member, Industrial Court, Mumbai on 27 November 1995 and at that time, according to the service conditions, the age of superannuation of the Petitioner was 58 years. The Maharashtra Judicial Officers of the Courts of Enquiry, Labour Courts and Industrial Courts under the Bombay Industrial Relations Act, 1946 (XI of 1947) (Recruitment, Appointment and Disciplinary Action) Rules, 1999 ('the Rules of 1999') and Judicial Service Rules, 2008 were not in force and cannot have any adverse effect on the service conditions of the Petitioner;

(xiv) The entitlement of the Petitioner for receiving the pension treating the age of superannuation of the Petitioner as 58 years based on the service Rules in effect at the time of his appointment in the year 1995, is precipitated by the proviso below clause (1) of Rule 6 of Pension Rules, 1982. The Petitioner, therefore, cannot be deprived of his legitimate claim of receiving full pension considering the age of superannuation of the Petitioner as 58 years;

(xv) The Petitioner was under the bona fide impression that since the Petitioner was not informed about the result of

the departmental inquiry till the retirement of the Petitioner on 31 December 2009, there was nothing adverse against him.

5. Learned counsel for the Petitioner placed reliance upon compilation of documents consisting of annual confidential reports from November-1995 till April-2008 as well as Government Notification dated 04 December 1999. Learned counsel for the Petitioner also placed reliance upon several decisions, the compilation of which was placed on record.

6. Respondent no.1 has filed affidavit-in-reply dated 30 January 2013. In the said affidavit, the contentions of the Petitioner are dealt with and the same are controverted. Learned Senior Advocate Mr.PS.Dani appeared for the first Respondent. The submissions advanced by him emanating from the affidavit-in-reply are as follows :

(a) There are no legal and/or constitutional and/or vested right which has been breached as far as present Petitioner is concerned;

(b) The contention of the Petitioner that he ought to have been continued even after the age of 58 years, is the contention which is not based on any legal right and as such enforcement thereof under Article 226 of the Constitution of India is not maintainable;

(c) As far as judicial officers in the State of Maharashtra is concerned, the first Respondent has been given complete and absolute discretion to continue or otherwise the services of such judicial officers after the age of 58 years. There is no vested right in such judicial officers to insist that they must be continued in service up to the age of 60 years. The discretion which is vested in the first Respondent does not correspond to any legal and/or constitutional right in the occupants of the posts to be continued even after the age of 58 years and in absence of any accrued right, the petition is not maintainable;

(d) The contention of the Petitioner that he has excellent service record and that because of his annual confidential remarks all through out being good/very good and/or his integrity has been good/very good/undoubtful or that his character has been found good, does not merit the contention of the Petitioner that he has a right to continue after the age of 58 years;

(e) The inquiry report did indicate the Petitioner to be guilty of some of the charges mentioned in the charge sheet and the report was under consideration of the Disciplinary Authority as required by law. However, at that point of time, since the Petitioner had attained the age of 58 years and as there was a statutory review of the services of the Petitioner wherein it was

found that the services of the Petitioner would not be continued at the discretion of the first Respondent after the age of 58 years, it was found that it was not necessary to continue with the inquiry committee report being tabled before the Disciplinary Authority for taking further action in pursuance thereof;

(f) The Petitioner has been retired from service in pursuance of the order dated 24 December 2009 which demonstrates that he stands retired from judicial service on not having been continued after the age of 58 years and stands retired from the end of the month concerned. Such retirement is neither stigmatic nor in any manner unlawful as against the Petitioner;

(g) The Petitioner is not entitled to the benefit of ten years of practice as an advocate, as laid down in Rule 53 of the Pension Rules, 1982. In view of the fact that the Petitioner stands retired under Rules 17 and 19 of the Judicial Services Rules, 2008 read with Rule 8(a) of Rules of 1999, the Petitioner is not entitled to the benefit of 10 years practice while computing the qualifying service;

(h) The decision is in pursuance of Rules 17 and 19 of the Judicial Services Rules, 2008 read with Rule 8(a) of the Rules of 1999 which empowers the first Respondent to

determine and have periodic review of all judicial officers who have attained the age of either 52 years or 55 years or 58 years. The validity of the said Rules has been upheld and hence, the decision taken by the Review Committee not to grant extension of service to the Petitioner, cannot be faulted. The Petitioner cannot claim eligibility as a legal right to continue in services till the age of 60 years as claimed by him. The continuation of services of a judicial officer beyond the age of 58 years is not a matter of right but it is the discretion of the Disciplinary Authority i.e. the first Respondent. The said authority under the service Rules has to consider the question of continuation or otherwise of judicial officers' services who have attained the age of either 52 years or 55 years or 58 years, after taking into consideration the totality of the circumstances, and if it is found that services of such officers are not required, then there is no inherent right in such judicial officers to have service even beyond the age of 58 years. There is no legal or vested right in any judicial officer to be continued after attaining the age of 58 years. The Review Committee has to take into consideration the totality of the circumstances and thereafter has to decide as to whether a particular judicial officer's services are required to be continued by giving extension in service after the age of 58 years or otherwise;

(i) The retirement of the Petitioner on attaining the age of 58 years does not amount to any stigma and does not punitive in nature;

(j) The termination of services of the Petitioner is akin to compulsory retirement and in view thereof, the Petitioner would not be entitled to claim benefits of Rule 53 of the Pension Rules, 1982. The calculations of the pension and other retiral benefits made by the Industrial Court, Mumbai cannot be said to be proper and no fault can be found with the calculations made by the third Respondent. The Petitioner is governed by Judicial Services Rules, 2008 and as such, the claim made by him on the basis of other Rules is not correct.

7. Learned counsel for the first Respondent has also placed reliance upon several decisions of the Apex Court as well as of this Court, the compilation of which is placed on record.

8. We have considered the rival submissions advanced by both sides. We have perused the documents annexed to the petition as well as documents submitted before the Court during the course of arguments. We find that the petition is devoid of any merit and the Petitioner is not entitled for any reliefs as prayed for in this petition. We have given anxious consideration to the submissions made by learned Senior Advocate for the Petitioner, however, we are not in agreement with the said submissions. Learned Senior Advocate appearing for the first Respondent has supported the impugned decisions and has rightly pointed out that the same does not require any

interference in exercise of powers under Article 226 and 227 of the Constitution of India. The submissions made by learned counsel for the first Respondent are well founded and deserve to be accepted.

9. It is pertinent to note that the decision of the Review Committee dated 01 December 2009 cannot be quashed and set aside. The said decision is rendered in exercise of provisions of Rules 17 and 19 of the Judicial Services Rules, 2008 read with Rule 8(a) of the Rules of 1999, which empower the first Respondent to determine and have periodic review of the services of all the judicial officers who have attained the age of either 52 years or 55 years or 58 years. The decision of the Review Committee not to grant extension of service to the Petitioner, cannot be questioned as it is taken in accordance with law. The Petitioner cannot claim eligibility as legal right to continue in service till the age of 60 years. The continuation of service of judicial officer beyond the age of 58 years is not as of right but is at the discretion of the Disciplinary Authority i.e. first Respondent. The said authority is required to consider the question of continuation or otherwise of judicial officers' services who have attained the age of either 52 years or 55 years or 58 years, after taking into consideration the totality of the circumstances and if it is found that services of such officers are not required, then there is no inherent right in such officers to continue in services beyond the age of either 52 years or 55

years or 58 years. The Review Committee has to take totality of the circumstances and the entire service record into account and thereafter has to decide as to whether a particular judicial officer's services are required to be continued by giving extension in service after the age of 58 years. The contention of the Petitioner that he has unblemished service record and because of his past annual confidential reports he has vested right to get extension in service, has no basis. The contention that the decision is punitive in nature and also a stigma on the Petitioner, is also devoid of any merit. It may be noted that retiring the Petitioner on attaining the age of 58 years, does not amount to any stigma or the action retiring him cannot be termed as punitive in nature.

10. A reference can be made to Rules 17 and 19 of the Judicial Services Rules, 2008, which read thus :

"17. Age of Superannuation :- Every member of the Judicial Service shall retire by Superannuation on the afternoon of the last day of the month in which he attains the age of 60 years, subject to clearance by Special Review Committee constituted by the Chief Justice of the High Court for the purpose which Committee shall review the cases of all Judicial Officers by following the procedure prescribed for compulsory retirement under the Maharashtra Civil Service Rules applicable to them, on their attaining the age of 58 years;

Provided that, a Judicial Officer whose date of birth is 1st of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of 60 years.

Provided further that, the High Court may in suitable cases re-employ District Judges, subject to their physical fitness, upto the age of sixty-two years, according to exigencies of situation.

19. Retirement in public interest :-

(1) Notwithstanding anything contained in these Rules, the Governor shall, on the recommendation of the High Court, if he is of the opinion that it is in the Public Interest so to do, have the absolute right to retire any member of the service when he attains the age of 50 years, 55 years or 58 years by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice.

(2) Whether a member of the service should be retired in the 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 this Rule shall be construed as preventing consideration of a member of the service again at any time after attaining the age of 50 years or 55 years or 58 years, as the case may be, for the purpose of retiring him in the public interest despite such member was considered earlier as per sub-rule (2)."

On reading the aforesaid Rules, it is crystal clear that the authorities have the absolute right to retire any member in the judicial service when he attains the age of either 50 years or 55 years or 58 years, by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice, if the authority is of the opinion that it is in public interest to do so. In the present case, the impugned decision is taken on the recommendation of High Court. Learned counsel for the Petitioner had submitted with reference to Rule 19 of the

Judicial Service Rules, 2008 that the decision taken by the Government based on the recommendations of the first Respondent is without authority, as the same is required to be taken by the Governor of Maharashtra personally, as he has absolute right to do so. We find that this contention is ill-founded. It is well known that every decision of a Government made either in the name of Governor of the State or President of India, as the case may be, meaning thereby that such a decision has got approval of the Governor or the President, as the case may be.

11. It was submitted on behalf of the Petitioner that the decision not to grant extension to a particular judicial officer after attaining the age of 58 years, has to be a subjective decision. It is to be noted that after taking into consideration the totality of the circumstances that the first Respondent took the decision to retire the Petitioner in public interest. The said decision is based on Rules 17 and 19 of the Judicial Services Rules, 2008 read with Rule 8(a) of the Rules of 1999. The minutes of Review Committee held on 13 August 2007 are on record and marked as Annexure-II on page 23. The Review Committee unanimously decided to continue the services of Petitioner beyond the age of 55 years. Thereafter on 01 December 2009 the Review Committee again considered the Petitioner for his continuation in judicial service beyond the age of 58 years. Minutes of this meeting are on record and marked

Annexure-XI on page 68. A reading of these minutes will show that the Review Committee considered the entire service record of the Petitioner and also considered the fact of pendency of an inquiry against him. It also considered the cause of inquiry and allegations against the Petitioner. Thereafter the Review Committee reached the conclusion based upon which the impugned order is issued. Therefore, it cannot be said that the Review Committee did not reach subjective satisfaction before recommending not to continue in judicial service beyond 58 years of age.

12. The submission of learned counsel for the Petitioner qua interpretation of Rule 10(4)(a)(ii) as well as Rule 10(1) of Pension Rules, 1982 has no basis. The Petitioner has not taken into consideration the provisions of Rule 17 of Judicial Services Rules, 2008 read with Rule 8(a) of the Rules of 1999, which clearly empower the first Respondent to decide as to whether services of a particular judicial officer should be continued after the age of 58 years or not. The contention of the Petitioner that he has vested right under Rule 53 of the Pension Rules, 1982 to get benefit of 10 years practice as an advocate, cannot be considered. A reference can be made to Rule 8(a) of the Rules of 1999, which reads thus :

"8(a) - A person appointed to the post of the President, Member for the Judge shall retire on completing the age of 62 years, subject to assessment and evaluations of potential for

continued utility at the age of 58 years, by the Committee of Honourable Judges of the High Court constituted by the Honourable the Chief Justice. Such assessment and evaluation shall be in addition to the assessment for compulsory retirement or other assessment and evaluation that may have been undertaken under the relevant service rules at an earlier stage/s."

On reading the above Rule it is crystal clear that a person appointed for the post of President, Member for the Judge shall retire on completing the age of 62 years, subject to assessment and evaluation of potentiality for continued utility at the age of 58 years by the Committee of Hon'ble Judges of the High Court constituted by Hon'ble Chief Justice. It is also made clear that such assessment and evaluation shall be in addition to the assessment for compulsory retirement or other assessment and evaluation that may have been undertaken under the relevant service rules at an earlier stage. Such an exercise, as is impugned, does not result in a punishment or a stigma. The assessment by the Committee is in an over all manner. The evaluation of the record is to determine the potential for continued utility. The paramount consideration is whether public interest will be subserved by retention or continuation in service beyond 58 years. The process is not to be equated with any disciplinary proceeding resulting in infliction of penalty.

13. The submission of learned counsel for the Petitioner that the Petitioner has a right to get pension as quantified under Rule 53 of the Pension Rules, 1982, cannot be accepted. The

termination of service of the Petitioner is akin to compulsory retirement and in view thereof, the Petitioner would not be entitled to claim benefit of Rule 53 of the Pension Rules, 1982. The calculation of payment of pension and other terminal benefits made by the Industrial Court, Mumbai cannot be said to be proper and/or based on the Rules. The Petitioner cannot contend that he has right to receive the pension treating the age of superannuation as 58 years. Rule 8(a) of the Rules of 1999 stipulates that the President, Member for the Judge shall retire on completing the age of 62 years. This contingency will apply in toto subject to assessment and evaluations of potential for continued utility at the age of 58 years by the committee of Hon'ble Judges of High Court; and such assessment and evaluation shall be in addition to the assessment for compulsory retirement or other assessment and evaluation that may have been undertaken under the service rules. Therefore, once the Review Committee of Hon'ble Judges of High Court considered the totality of circumstances for continuation of Petitioner in judicial service beyond the age of 58 years, and as it found the Petitioner unfit to be continued further beyond the age of 58 years as a judicial officer, Rule 8(a) came into effect with full force. The effect of it is that Petitioner stood compulsorily retired and calculation of retiral benefits will take place in accordance therewith and not treating the Petitioner as superannuated after the age of 58 years, because Rule 8(a) of the Rules of 1999 stipulates age of superannuation as 62 years.

Hence, a judicial officer who superannuates at the age of 62 years, will be eligible to get full pension. If the contention of the Petitioner is accepted, then the Petitioner can, at any point of time, claim the first relief sought in this petition about continuation of service after attaining the age of 58 years.

14. The decisions which are under challenge do not violate the constitutional mandate under Article 14 or Article 311 of the Constitution of India. The Petitioner is retired because the Review Committee found his services not suitable for being continued after the age of 58 years. The fact that an inquiry was pending against him is one of the criteria for coming to that conclusion, but it is not the basis for termination of his services. Rule 17 of the Judicial Services Rules, 2008 read with Rule 8(a) of the Rules of 1999 empower the first Respondent to take any such decision, which is dealt with in great detail hereinabove.

15. In the decision of Review Committee comprising of Hon'ble the Chief Justice and other Hon'ble Judges of the High Court, it has been opined that it was decided not to grant benefit of extension of two years in superannuation age to the Petitioner and not to continue him in judicial service beyond 58 years of age. The registry was directed to take follow up action. In pursuance to that, the Registrar General of the first Respondent forwarded a communication dated 7 December 2009 to the Secretary to the Government of Maharashtra. In

the said communication it has been categorically mentioned that the Registrar General was directed by the Hon'ble Chief Justice and the Hon'ble Judges to state that according to Rules 17 and 19 of the Judicial Services Rules, 2008 and Rule 10(4) of the Pension Rules, 1982, the case of judicial officer was considered by the Review committee to review the question of his potentiality to continue in judicial service beyond the age of 50/55/58 years of age. Upon such review, for the reasons recorded therein, the Review Committee decided that the Petitioner should be retired in public interest under the rules. The intimation was, therefore, given to move the Government to issue appropriate order to retire the said judicial officer from judicial service at the earliest. In pursuance to that, the order dated 24 December 2009 was issued retiring the Petitioner from service. In the said order also, it has been categorically mentioned that the same has been issued in accordance with Rules 17 and 19 of the Judicial Services Rules, 2008 and Rule 8(a) of the Rules of 1999. In pursuance thereof, the President, Industrial Court, Mumbai, passed an order dated 29 December 2009 stating that the Petitioner stands retired from judicial service on attaining the age of 58 years w.e.f. 31 December 2009. The said order was passed on account of the Government order dated 24 December 2009. From the aforesaid documents, it is clear that the decisions were taken in accordance with the above referred Rules and no illegality can be found therein.

16. Learned counsel for the Petitioner placed reliance upon following decisions, a compilation of which has been placed on record :

1	Baldev Raj Chadha Vs. Union of India (1980)4-SCC-321.
2	Brij Behari Lal Agarwal Vs. Hon'ble High Court of Madhya Pradesh - (1981)1-SCC-490
3	S.Ramachandra Raju Vs. State of Orissa 1994 Supple(3)-SCC-424
4	Sukhdeo Vs. Commissioner Amravati Division (1996)5-SCC-103
5	M.S.Bindra Vs. Union of India and others (1998)7-SCC-310
6	State of Gujarat & others Vs. Suryakant C. Shah (1999)1-SCC-520
7	H.C.Punjab & Haryana Vs. Ishwar Chand Jain (1994)4-SCC-579
8	State of Gujarat Vs. Umedbhai Patel AIR-2001-SC-1109
9	High Court of Judicature at Bombay Vs. Brij Mohan Gupta - (2003)2-SCC-390
10	Nandkumar Verma Vs. State of Jharkhand & others - (2012)3-SCC-580
11	High Court of Judicature at Patna Vs. Shyam Deo Singh and others - (2014)4-SCC-773
12	Masood Alam Khan Vs. State of Maharashtra 2009(6)-Bom.C.R.-7
13	Namdeo Surjuse Vs. State of Maharashtra 2009(6)-Bom.C.R.-779
14	Girish Bhushan Goyal Vs. BHEL and others (2014)1-SCC-82
15	High Court of Jammu & Kashmir SWP No.1397 of 2006 Parshottam Singh Vs. State

17. The decisions cited by the Petitioner are more particularly on the issue of scope of judicial review of order of compulsory retirement. In the case of **Baldev Raj Chadha Vs. Union of India reported in (1980)4-SCC-321**, it has been observed that exercise of power must be bona fide and to promote public interest. In the case of **S.Ramachandra Raju Vs. State of Orissa reported in 1994-Supp.(3)-SCC-424**, the Apex Court has observed that power of compulsory retirement should not be exercised arbitrarily. In the case of **Sukhdeo Vs. Commissioner Amravati Division reported in (1996)5-SCC-103**, the Apex Court has observed that power to compulsorily retire under Rule 65(1)(b) of the Maharashtra Civil Services (Pension) Rules, 1982 has not been exercised in public interest in that case. It was noticed that conclusion reached by the authorities was incorrect and not in public interest. In the case of **M.S.Bindra Vs. Union of India and others reported in (1998)7-SCC-310**, the Apex Court considered the scope of judicial review of the decision of compulsory retirement. It was observed that the conclusions arrived at by the authority in that case was not supported by material on record. In the decision of **State of Gujarat Vs. Umedbhai Patel reported in AIR-2001-SC-1109**, the Apex Court considered the scope of Article 311 of the Constitution of India vis-a-vis compulsory retirement and the principles governing the same. In a decision rendered by this Court in the case of **Namdeo Surjuse Vs. State of**

Maharashtra reported in 2009(6)-Bom.C.R.-779, this Court has considered the applicability of Maharashtra Civil Services (Pension) Rules, 1982 and Rule 65(1)(b) thereof. In the said decision, it was observed that compulsory retirement is not a punishment. It was observed that no case was made out to come to the conclusion that the order of compulsory retirement was illegal, arbitrary or unjustifiable.

A reference is not made to all the decisions relied upon by the learned counsel for the Petitioner. However, it is noted that the ratio laid down in the said decisions is about the scope of judicial review in considering the decision of compulsory retirement. However, it is noted that in none of these decisions, reference was made to Rules 17 and 19 of the Judicial Services Rules, 2008 and/or Rule 8(a) of the Rules of 1999. Therefore, the decisions referred by the learned counsel for the Petitioner are distinguishable and have no application at all. In any event, on the touchstone of the principles of judicial review of the present action, we find that it is neither arbitrary, mala fide or vitiated by any error of law apparent on the face of the record. Rather, an order of the nature impugned in this petition is not founded on any misconduct but is a product of an overall assessment and review of the services rendered by the Petitioner. It promotes public interest.

18. Learned Senior Advocate appearing for the first Respondent places reliance upon certain decisions of the Apex Court as well as this Court. In the case of **Rajendra Singh Verma (dead) through LRs and others Vs. Lieutenant Governor (NCT of Delhi) and others reported in (2011)10-SCC-1**, it has been observed that under Article 235 of the Constitution of India, the control over the subordinate judiciary is vested in the High Court which is exclusive in nature and comprehensive in extent and effective in operation and it is to subserve the basic feature of the Constitution, that is independence of judiciary. In paragraph 145 of the said decision it has been observed that there are no words in the order of compulsory retirement which throw any stigma against the appellant therein. It is not necessary for the Court to make an inquiry into the Government files to discover whether any remark amounting to stigma should be found in the files. The reason is that it is the order of compulsory retirement which alone is for examination and scrutiny. If the order itself does not contain any imputation or charge against the person, the fact that considerations of misconduct or misbehaviour weighed with the High Court in coming to its conclusion to retire them compulsorily, does not amount to any imputation or charge against them.

In the case of **Pyare Mohan Lal Vs. State of Jharkhand and others reported in (2010)10-SCC-693**, the Apex Court

has observed that there is very limited scope of judicial review in case of compulsory retirement and it is permissible only on the ground of non application of mind, mala fides or for want of material particulars.. The power to retire compulsorily a Government servant in terms of service rules, is absolute, provided, the authority concerned forms a bona fide opinion that compulsory retirement is in public interest.

In the case of **R.C.Chandel Vs. High Court of Madhya Pradesh and another reported in (2012)8-SCC-58**, the Apex Court considered the scope of Article 235 of the Constitution of India qua control of High Court over the subordinate judiciary and the power to direct compulsory retirement of judicial officers. The Apex Court observed that credibility of the judicial system is dependent upon the Judges who man it and a Judge is like Ceasar's wife who must be above suspicion. It was further observed that it is not the scope of judicial review to go into the controversy or sufficiency of material based upon which the decision is taken.

Reliance was also placed by learned counsel for the first Respondent on the decision of this Court in case of **Shraddha Vinod Deo Vs. State of Maharashtra reported in 2015(1)-Mh.L.J.-62**. In the said decision it was observed that the office that a Judge holds is the office of public trust. High Court is

entitled to retire a judicial officer from service in public interest after considering individual case when he or she attains the age of either 50 years or 55 years or 58 years. It was further observed that the Review Committee while exercising the power conferred under the law has to take into consideration all aspects of the matter which is integral part of judicial service. This Court considered provisions of Rule 19 of the Judicial Services Rules, 2008 and declined to interfere in the decision of Review Committee retiring Petitioner therein in public interest.

19. In the light of the aforesaid decisions and the law laid down by the Apex Court as well as this Court, we are of the opinion that the impugned decisions are not contrary to the well established principles of law. The impugned decisions are not arbitrary or violative of Article 14 of the Constitution of India. In the decision of the Review Committee it was observed that the Committee has taken into consideration the totality of the service record of the Petitioner whereupon it was found that there is one complaint pending against him and departmental inquiry was already initiated against him. It is recorded in the minutes of Review Committee that the Petitioner lodged a bill reimbursement of the travel expenses for the journey said to have been undertaken by him from Mumbai to Nagpur on 3rd and 22nd July 2007. However, it was found that the Petitioner had cancelled the railway tickets, he got the refund of the same but claimed reimbursement of railway journey charges.

Therefore, the Review Committee was of the opinion that the Petitioner had lodged a false claim, which is an act unbecoming of a judicial officer and his integrity is found doubtful. The Review Committee recorded its decision not to grant the benefit of extension of two years in superannuation age to the Petitioner and not to continue him in the judicial service beyond 58 years of age. The Petitioner has not denied the fact that he has cancelled the railway tickets, obtained refunds and that he had claimed travel travelling allowance in respect to the journey dated 03 June 2007 and 22 July 2007 allegedly undertaken by him with his family members. The Petitioner has tried to explain that he was under bona fide belief that he was entitled for such a claim and has tried to further explain the circumstances in which he was required to travel by a different mode. The reply tendered by him before the Disciplinary Committee is annexed to the petition. Although it is not required to evaluate the merits of the contentions of the Petitioner, it is pertinent to note that there is no documentary evidence to support his claim that he has travelled by another mode of transport. Be that as it may, it is undisputed position that the Petitioner had cancelled the railway tickets, obtained refunds against them, lodged bills for reimbursement towards TTA and railway journey tickets and in fact he was paid over all those amounts. However, the charges or allegations in the disciplinary proceedings is not the sole basis or foundation for the impugned action. A mere reference to the charges does not

mean that the impugned decisions are founded only on the same. It is an evaluation of the full record to judge the potential for further continuation in service.

20. In view of the aforesaid circumstances, we find that the order dated 24 December 2009 issued in pursuance of the decision of Review Committee and the communication of Registrar General of the first Respondent dated 7 December 2009, was in accordance with Rules 17 and 19 of Maharashtra Judicial Service Rules, 2008 read with Rule 8(a) of Maharashtra Judicial Officers of Courts of Enquiry, Labour Courts and Industrial Court under the Bombay Industrial Relations Act, 1946 (Recruitment, Appointment and Disciplinary Action) Rules, 1999. We do not find any merit in the submissions made by learned counsel for the Petitioner and, therefore, it is not necessary to interfere in the impugned decisions which are under challenge in this petition. The Petitioner is not entitled for any reliefs as prayed in the petition. Hence, the petition is dismissed.

(PD.NAIK, J.)

(S.C.DHARMADHIKARI, J.)

MST