

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :02.08.2018

PRONOUNCED ON : 10.09.2018

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL

And

THE HON'BLE Mr. JUSTICE M.NIRMAL KUMAR

W.P.No.10328 of 2014

S.Murugadoss

.. Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by the Principal Secretary to Government,
Home [Courts-I] Department,
Fort St. George, Chennai - 600 009.

2.The Registrar General,
High Court of Madras,
Chennai - 600 104.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the entire records pertaining to the impugned proceedings of the 1st Respondent in G.O.(2D).No.310, Home (Courts-I) Department dated 05.09.2011 and the Order passed in the Review Petition in G.O.Ms.No.219, Home (Courts-I) Department, dated 06.03.2014 and the consequential proceedings in Notification No.211/2011 in R.O.C.23/2009/Con-B.1 dated 01.11.2011 and the file of the 2nd Respondent and quash the said proceedings and direct the Respondents to reinstate the Petitioner in Service with all consequential and attendant benefits including continuity of service, seniority, promotion, backwages etc., to expunge the adverse remarks in the Annual Confidential Reports of the Petitioner.

For Petitioner : Mr.G.Masilamani
Senior Counsel
For Mr.M.Sriram

For 1st Respondent : Mr.S.N.Parthasarathy
Government Advocate

For 2nd Respondent : Mr.C.T.Mohan

O R D E R

M.VENUGOPAL, J.

The Petitioner has preferred the instant Writ Petition seeking to call for the entire records relating to the impugned proceedings of the 1st Respondent in G.O.(2D).No.310, Home (Courts-I) Department, dated 05.09.2011 and the Order passed in the Review Petition in G.O.Ms.No.219, Home (Courts-I) Department, dated 06.03.2014 and the consequential proceedings in Notification No. 211/2011 in R.O.C.23/2009/Con-B.1 dated 01.11.2011 on the file of the 2nd Respondent and to quash the said proceedings and direct the Respondents to reinstate him in Service with all consequential and attendant benefits including continuity of service, seniority, promotion, back wages etc., to expunge the adverse remarks in the Annual Confidential Reports of the Petitioner.

2.The Germane Writ Facts:

2.1.The Petitioner joined the Tamil Nadu State Judicial Service as Civil Judge (Junior Division) on 27.11.1995 and he was promoted as Civil Judge (Senior Division) on 08.08.2007 and lastly served as IV Assistant Judge, City Civil Court, Chennai. His entire service records were uniformly good. However, the 1st Respondent, in G.O.(2D).No.310 Home (Courts-I) Department, dated 05.09.2011 compulsorily retired him from service. During the said period, he was suffering from renal transplantation under post operative treatment. He was very much shock to receive the said order. In fact, the grounds, on which the decision to compulsorily retire him was taken, were not informed to him either in the order or in any of the proceedings of this Court by the 2nd Respondent.

2.2.The Petitioner was served with the order of Compulsory Retirement on 01.11.2011 and that he was relieved on the same day. He had submitted his Review Petition on 27.11.2011 to the 1st Respondent by submitting the entire grounds. As seen from the impugned order of Compulsory Retirement made against him, a Review under F.R.56(2) was made in the month of May, 2009. The Hon'ble Administrative Committee of this Court in its Meeting held on 23.04.2009 decided to retire him compulsorily. Furthermore, the Hon'ble Full Court as early as on 29.04.2009 deferred taking any decision till the representations sent by him as against the adverse entries made for the periods from 01.01.2004 to 31.12.2004 and from 01.01.2006 to 30.04.2006 were disposed of. From the impugned order only, it was made known that the representations were rejected on 18.01.2010, but the orders were not communicated to him.

2.3.The Hon'ble Full Court on 11.03.2010 approved the decision of the Administrative Committee dated 23.04.2009 and that the Petitioner, after coming to know that some adverse decision was taken against him, submitted a representation for reconsideration and although he had not received any communication, he was permitted to continue in service. During September, 2010, he fell sick of Renal Failure and was under 'Dialysis Treatment' and he submitted a notice under Fundamental Rules 56(3) on 28.01.2010, through proper channel marking an advance copy to the 1st Respondent, seeking permission to retire voluntarily and the Respondents had failed to consider the same properly and to pass a separate order as visualised in F.R.56 (3). The decision of the Hon'ble High Court on its Administrative Side to retire him compulsorily, was taken on its face value by the 1st Respondent, issued the impugned order without going into the relevant materials including the Petitioner's Service Register and without considering the relevant factors and further he had not faced any disciplinary proceedings.

2.4.As a matter of fact, the Order in G.O.(2D).No.310, Home (Courts-I) Department, dated 05.09.2011 and the consequent Notification No.211/2011 in R.O.C.No.23/ 2009/Con.B-1 dated 01.11.2011 of the 2nd Respondent and the further order of the 1st Respondent in G.O.Ms.No.219, Home (Courts-I) Department, dated 06.03.2014, rejecting his Review Petition are all contrary to Law, amounting to arbitrary exercise of jurisdiction resulting in grave injustice and are liable to be set aside. Hence, the Petitioner has filed the present Writ Petition.

3.Gist of the Counter of the 1st Respondent:

3.1.During March 2010, the 2nd Respondent had stated that the cases of Judicial Officers [including the Petitioner's case] were ripe for Review under F.R.56(2) during the month of May 2009, were placed before the Hon'ble Administrative Committee of the High Court. Further, the Hon'ble Administrative Committee of this Court in its meeting that took place on 23.04.2009 had considered and resolved to compulsorily retire the Petitioner. The matter was placed before the meeting of the Hon'ble Full Court which had deferred the matter and resolved that the matter would be taken up after decision of his pending representation to expunge the adverse remarks for the period from 01.01.2004 to 31.12.2004 and for the period from 01.01.2006 to 30.04.2006.

3.2.In fact, the representation of the Petitioner was considered and rejected and that the matter was placed before the Hon'ble Full Court in its Meeting of the Hon'ble Administrative Committee held on 11.03.2010 and the Hon'ble Full Court had resolved to approve the Minutes of Meeting of the Hon'ble Administrative Committee held on 23.04.2009 and to

retire the Petitioner compulsorily under Fundamental Rules 56(2) on completion of the age of 50 years, in public interest. Hence, the 2nd Respondent requested to issue orders retiring the Petitioner, who functioned as IV Assistant Judge, City Civil Court, Chennai, compulsorily from service under F.R. 56(2) in public interest.

3.3.To place the proposal for consideration of His Excellency of Tamil Nadu, the Registrar General of High Court was requested to send a gist of the relevant grounds and materials on the basis which it was proposed to retire the Petitioner compulsorily. However, the Registrar General of this Court in the letter dated 11.07.2011 had stated that in the light of the decision of the Hon'ble Supreme Court of India, the Government have no right to sit over the Hon'ble Full Court and rejected the request to send the records pertaining to the decision of 'Compulsory Retirement' of the Petitioner.

3.4.Accordingly, the Government issued orders in G.O.(2D). No.310, Home (Courts-I) Department, dated 05.09.2011 retiring the Petitioner S.Murugadoss (Senior Division) of Tamil Nadu State Judicial Service compulsorily from service under F.R.56(2) in public interest and he was relieved from the Judicial Service with effect from 01.11.2011.

3.5.The Petitioner, aggrieved against the aforesaid order dated 05.09.2011, submitted a Review Petition dated 27.11.2011 which was received by the Government on 29.11.2011. The Registrar General of High Court, Madras was requested to offer specific remarks on the Review Petition of the Petitioner dated 27.11.2011. After a lapse of two years, the Registrar General of this Court in D.O. Letter dated 20.12.2013 had stated that the Review Petition preferred by the Petitioner was placed before the Hon'ble Full Court and the Hon'ble Full Court after consideration had rejected the same, which was informed to him.

3.6.The Government, after accepting the recommendations of the Hon'ble Full Court of this Court, issued orders in G.O.Ms.No.219, Home (Courts-I) Department, dated 06.03.2014 rejecting the Review Petition of the Petitioner. The action of the Government in accepting the recommendation of the Hon'ble Full Court of this Court and passing orders on the 'Compulsory Retirement' of the Petitioner and rejecting his Review Petition dated 27.11.2011 is in accordance with Law. As such, the Writ Petition is without merits.

4.Contents of Counter of the 2nd Respondent:

4.1.The Petitioner, after the receipt of the order of 'Compulsory Retirement' on 01.11.2011, had submitted a Review

Petition on 27.11.2011 without opting to challenge the order of Compulsory Retirement, even while simultaneously electing to pursue his pension proposal consequent upon his Compulsory Retirement, which was forwarded by this Court to the Principal Accountant General (A&E) for authorising pension and other terminal benefits payable to him through Letter in R.O.C.No. 1152/ 2012 dated 17.04.2012.

4.2.The Petitioner, on receipt of 'Authorisation' from the Principal Accountant General (A&E) in Letter No.PO2/10208071/4/PPO No.R0208071/JUD dated 29.6.2012, had elected to accept the DCRG amount of Rs.6,06,848/- on 27.09.2012 and also received the differential amount in pay and allowance in lieu of three months notice on 28.11.2012 consequent upon the revision of scale of pay of the Petitioner, by means of G.O.Ms.No.647, Home (Courts-I) Department, dated 19.07.2010 with effect from 01.11.2006.

4.3.The Petitioner had addressed a Letter to the Principal Accountant General (A&E) Tamil Nadu (forwarded through the 2nd Respondent) on 10.07.2012, the tenor of which reveals that the Petitioner has acquiesced the order of Compulsory Retirement and submitted his pension proposal on 25.02.2012 opting for 50% commutation. Moreover, coming to know that the authorisation for pension by the Principal Accountant General (A&E) dated 29.06.2012 was issued without commutation, the Petitioner had sought for commutation and that he was informed through letter in R.O.C.No.1152/2012/B1 dated 17.12.2012 issued by the 2nd Respondent to appear before the Medical Board for examination for the purpose of determining the eligibility of commuted value of pension and that he appeared before the said Board.

4.4.The request of the Petitioner dated 10.07.2012 was forwarded by the 2nd Respondent through Letter in R.O.C.No.1152/2012/B1 dated 18.02.2013 for commutation of pension and the medical report issued by the Regional Medical Board, Government Kilpauk Medical College & Hospital along with the Service Register for authorising commutation of pension whereupon the Principal Accountant General (A&E), through his Letter dated 26.02.2013, had issued authorisation for the commuted pension value of Rs.10,05,215/- to the District Treasury Officer, Theni for payment to the Petitioner. As on date, the Petitioner is a pensioner with his retirement having become final.

4.5.The Petitioner, after taking advantage of the order of 'Compulsory Retirement' as on 26.02.2013 which had in effect precluded him questioning the validity of the said order, had belatedly filed the Writ Petition in W.P.No.10361 of 2013 on 09.04.2013 praying for disposal of his Review Petition dated 27.11.2011 pending with the 1st Respondent in an attempt to reopen and revive the challenge to the order of 'Compulsory

Retirement' and actually made through filing of the subsequent W.P.No.10328 of 2014.

4.6.The Petitioner cannot approbate and reprobate by electing to accept without demur the consequential terminal benefits pursuant to the order of 'Compulsory Retirement' on the one hand and also by challenging the order of Compulsory Retirement belatedly on the strength of rejection of the pending Review Petition on the other. Therefore, the Writ Petition is liable to be rejected at the threshold and even otherwise on the ground of 'Delay and Latches'.

5.Petitioner's Reply (To the Counter of R2):

5.1.The Petitioner filed a Statutory Review on 27.11.2011 challenging the punishment imposed before the Government, immediately on receipt of the impugned order and submitted his pension proposal on 25.02.2012 and thereafter filed his request for commutation of pension only on 10.07.2012. The 2nd Respondent had belatedly forwarded his pension proposal and unnecessarily subjected him to Medical Examination by the Board for determination of commuted value of pension causing loss of interest on his GPF Account and much hardships. He had commuted the value of pension during the pendency of his 'Review Petition' against the impugned order of 'Compulsory Retirement' which had not yet reached its finality. In case, the order of Compulsory Retirement is set aside by this Court, he is ready to redeposit the amount as per Pension Rules. Further, the Authorisation of Pension, terminal benefits, commuted value of pension will not preclude him in any way assailing the impugned order of Compulsory Retirement.

5.2.The Petitioner filed a 'Review' before the Government and when there was a delay, he projected W.P.No.10361 of 2013 praying for a Writ of Mandamus in directing the Government to dispose of the Review Petition. The 2nd Respondent had not responded to the request of the 1st Respondent to furnish remarks on his Review Petition despite several reminders and that the Respondents had erred in Law in rejecting the Review Petition after two years. On receipt of an order rejecting his Review Petition, the Petitioner had filed immediately the Writ Petition. The Petitioner is diligently pursuing the remedies available without any 'Delay', 'Latches' or 'Acquiescence' on his part, in assailing the impugned order of 'Compulsory Retirement'.

5.3.The procedure envisaged in Tamil Nadu State Judicial Service (Confidential Records) Rules, 1995, for making any adverse entries in the 'Confidential Record' has not been followed in Petitioner's case. All the adverse remarks referred

to in para 4 of the Counter Affidavit of the 2nd Respondent were made only by a particular 'Hon'ble Judge' and the approach is purely a discriminatory, besides being an arbitrary, unreasonable and motivated one. None of the Principal District Judges (Unit Heads), under whom the Petitioner had worked all these years made any 'Adverse Entries' or 'Adverse Report' and the said adverse remarks which were not based on any materials and lack any support from the respective Principal District Judges cannot be considered as 'Overall View', as the views of the Principal District Judges, who had the opportunity to watch his performance from close quarters had not been considered at all.

5.4.The purported overall consideration of Petitioner's case, which was based on the Annual Confidential Reports upto the year 2006 and that of the subsequent years, viz., 2007, 2008 and 2009 (till evaluation) were not considered at all and consequently, the Counter Affidavit does not speak of taking into consideration of the service records of these years. Therefore, it is admitted that the entire service records were not placed before the Administrative Committee, which is clearly contrary to the decision of the Hon'ble Supreme Court in Nand Kumar Verma V. State of Jharkhand and Others, (2012) 3 SCC 580 at para 34. Moreover, even in the Judgment referred to in the Counter, it is categorically pointed out that the service record of the immediate past period will have to be given due credence and weightage. But, in his case, only the selfsame materials, were taken for consideration at the time of his promotion as Civil Judge (Senior Division), were placed for consideration.

5.5.The claim that promotion and premature retirement are considered on different parameters for altogether different purposes is not correct and as per Rule 5 of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 the Petitioner's promotion to the cadre of Civil Judge (Senior Division) is on the basis of the principle of merit - cum - seniority and the High Court has assessed the merit and suitability under the heads, (i) Entries in the ACRs inclusive of Vigilance Reports, if any; (ii) Evaluation of the judgments rendered in the preceding five years; and (iii) Work done statement for preceding five years, and found fit and suitable to be promoted.

5.6.When there was no element of 'Public Interest' involved in 'Compulsorily Retiring' him from service and in the absence of any significant complaints in regard to the conduct of Court proceedings, deficiencies noticed in the inspection and there was no new material in regard to the integrity, it cannot be concluded that he is outlived his utility or become a deadwood to be chopped off. The complaints and warning pertain to some

procedural irregularities prior to his promotion and the same could not form the basis for the decision of 'Compulsory Retirement'.

5.7. In case of Judicial Officers, F.R.56(2) can be invoked at the age of 50 years, 55 years and every year thereafter till superannuation. Therefore, once the efficiency bar at the age of 50 years has been crossed, the next review can only be at the age of 55 years. In Petitioner's case, his service was curtailed at the age of 52, which is contrary to Fundamental Rules 56(2) there were no exceptional circumstances or new materials warning this deviation in his cases and thus the entire action on the part of the Respondents is a discriminatory and an arbitrary one and also in violation of the fundamental rights under Articles 14, 16 and 21 of the Constitution of India.

5.8. The Government, being the 'Appointing Authority', is entitled to know and consider the reasons and basis, while accepting the recommendation and the 2nd Respondent purposely avoided sending of the records by stating that the Government cannot sit over the decision of the High Court. Therefore, by coercing the Appointing Authority, the impugned order came to be passed in violation of the principles laid down by the Hon'ble Apex Court. He is suffering from Chronic Kidney Disease (CKD) from September, 2010 and was advised for Renal Transplantation after six months there from. He submitted a notice under F.R. 56 (3) on 28.01.2011 which is a matter of record. In any event, the proceedings under F.R.56(2) would not be a bar for granting permission under F.R.56(3) within the prescribed time the Respondents had failed to consider the relevant materials also in proper perspective.

6. The 2nd Respondent's Rejoinder:

6.1. The Review Petition filed by the Petitioner on 27.11.2011 is not a 'Statutory Review'. The further reference to the order of Compulsory Retirement as punishment imposed by the Government is also legally incorrect. There is no right of 'Appeal' or 'Review' provided under the Rules framed by His Excellency under Article 309 of the Constitution applicable to the Petitioner. The only remedy available is under extraordinary jurisdiction of this Court, which is only a discretionary remedy. The Petitioner voluntarily availed and accepted the 'Terminal Benefits' consequent upon the order of Compulsory Retirement, and hence, the challenge made against the said order under the Review Petition filed by him, even assuming it to be a 'Statutory Review', stood waived.

6.2. The Petitioner on earlier occasion filed a Review Petition before this Court on 23.03.2010 prior to issuance of order of compulsory retirement on 05.09.2010 and after the

Hon'ble Full Court had approved the minutes of the Administrative Committee and recommended to the Government for passing the formal order of Compulsory Retirement on 11.03.2010. The Review Petition was considered by this Court was rejected by the Hon'ble Full Court on 20.09.2010 and the same was forwarded to the Government on 26.10.2010. A second Review Petition filed by the Petitioner, after issuance of compulsory retirement once again on the same grounds, could not be maintained. The acceptance of the terminal benefits with full effect rendered the order of Compulsory Retirement final for all purposes and thus worked itself out leaving no scope for further challenge.

6.3.The Hon'ble Administrative Judge, while taking into consideration the opinion recorded by the Principal District Judge (Unit Heads) in the Annual Confidential Report, need not necessarily endorse the views of the Principal District Judge, but is otherwise empowered to record his independent assessment of the Judicial Officer. In the present case, an adverse remarks recorded by the Administrative Judge for the year 2002 emanated from the opinion formed on the basis of the complaint and the representation made by the Petitioner to expunge the adverse remarks have rejected only on the basis of vigilance surveillance and report. In respect of the adverse remarks recorded for the period 01.01.2003 to 05.05.2003 and 01.01.2004 to 31.12.2004 representations to expunge the adverse remarks were also rejected in the same manner on the basis of the vigilance report and duly served on the Petitioner.

6.4.In regard to the averment that the Judge, who had recorded the adverse remarks for the year 2004, was not the portfolio Judge and that while the record was pending consideration, the Hon'ble Judge was elevated and thereafter on the order by the Hon'ble Chief Justice, the record was placed before the Administrative Judge of the concerned District, who recorded his opinion as found in the ACR. As such, the procedure followed in preparation of the ACR for the said year was in accordance with the Tamil Nadu State Judicial Service (Confidential Records) Rules.

6.5.The order dated 18.01.2010 rejecting the representation of the Petitioner submitted for expunging the adverse remarks recorded for the period 01.01.2006 to 30.04.2006 was sent to the Petitioner officially in a name cover on 20.01.2010 through a special messenger attached to the Despatch Section of this Court, as he was then serving as Judicial Officer in the City Civil Court, Chennai. It is ascertained from that Court that they used to handover the Tapal received in a name cover directly to the Judicial Officer, to whom it is addressed. In respect of three complaints during the year 2002, separate vigilance enquiry was ordered, one complaint in the year 2004,

five complaints in 2006 out of which, two complaints involved corruption and immoral activities. The Hon'ble Supreme Court in the decision reported in 2011 (10) SCC 1 [Rajendra Singh Verma (Dead) Through LRs. And others V. Lieutenant Governor (NCT Of Delhi) and others] has held that complaints even if unsupported by tangible evidence, the same cannot be excluded from consideration while assessing the overall performance of the Judicial Officer for the purpose of continuance in service since the general reputation especially in the case of the Judicial Officer should be unblemished.

6.6. With regard to the averment that the Annual Confidential Report for the years 2007, 2008 and 2009 were not placed before the Administrative Committee and taken into consideration, it is submitted that the Annual Confidential Reports for the said years were under process of recording of opinion by the Administrative Judge and the Hon'ble Chief Justice and therefore, did not form part of the records at the time of consideration. Therefore, the full-fledged ACRs available for the five preceding years from 2002 to 2006 were placed for consideration. At any rate, the performance and conduct of the Petitioner during the years 2002 to 2006 was uniformly assessed only as satisfactory by the concerned Principal District Judge (Unit Heads). It is evident from the records that there was no track record of noteworthy improvement in performance for securing an appreciable evaluation as good/very good/excellent and as such, the Petitioner outlived his utility as a Judicial Officer in addition to doubtful integrity and poor reputation. Therefore, the order of 'Compulsory Retirement' was based on other materials also forming part of the service record and considered in totality and not based on any solitary record or material.

6.7. It is settled Law that the power to order premature retirement under disciplinary and administrative jurisdiction of the High Court can be exercised at any stage of the service if the circumstances warrant such consideration and exercise of such power. The Hon'ble Supreme Court in the decision Pyare Mohan Lal V. State of Jharkand and others reported in AIR 2010 SC 3753 had held that a single adverse entry touching upon integrity even of the remote past is sufficient to order 'Compulsory Retirement'. The plea that the adverse entries were not made in a bona fide manner and as per the circulars etc. cannot be countenanced in the absence of any relief seeking for quashing of the adverse entries which in the present case had attained finality.

7. Petitioner's Contentions:

7.1. The Learned Senior Counsel for the Petitioner submits that the impugned order is an arbitrary and an unreasonable one

based on a total non-application of mind and as such, liable to be set aside.

7.2.The Learned Senior Counsel for the Petitioner contends that the Petitioner was not issued with any charge memo and had not faced any Disciplinary Proceedings or personal enquiry and therefore, the decision to retire him compulsorily is an arbitrary and capricious one and also against the ingredients of Fundamental Rule 56(2).

7.3.The Learned Senior Counsel for the Petitioner proceeds to point out that although the impugned order is a non speaking one in regard to the grounds on which the decision to retire the Petitioner compulsorily was made, based on the information obtained under the Right to Information Act, 2005, it is learnt that the Adverse Remarks in the 'Annual Confidential Reports' formed the basis.

7.4.The Learned Senior Counsel for the Petitioner contends that the adverse remarks in the Annual Confidential Report in respect of the Petitioner for the period from 01.01.2002 to 31.12.2002 was communicated to the Officer on 21.01.2004 and that the representation was submitted by the Petitioner dated 12.02.2004 seeking to expunge the remarks and that this Court, after considering the said representation, rejected the same. Likewise, the adverse remarks in respect of the Petitioner for the period from 01.01.2003 to 05.05.2003 recorded in the Annual Confidential Report was communicated on 23.09.2005 for which a representation was submitted by the Petitioner to expunge the remarks on 24.10.2005 and the same was rejected by the Hon'ble High Court.

7.5.The Learned Senior Counsel for the Petitioner contends that the Adverse Remarks in respect of the Petitioner for the period from 01.01.2004 to 31.12.2004 were communicated to the Petitioner on 02.09.2006 long after considerable delay. Further, it is represented on behalf of the Petitioner that the Petitioner was promoted as Sub Judge (Senior Division) on 08.08.2007 notwithstanding the aforestated adverse remarks.

7.6.The Learned Senior Counsel for the Petitioner submits that in respect of the Petitioner, the adverse remarks recorded by the Hon'ble High Court for the period 01.01.2006 to 30.04.2006 a representation was submitted on 05.09.2007 to expunge the adverse remarks made against him and the same was rejected by this Court.

7.7.The Learned Senior Counsel for the Petitioner forcefully projects an argument that the adverse remarks in ACR in respect

of the Petitioner recorded by the Hon'ble High Court was not in accordance with the Tamil Nadu State Judicial Service (Confidential Record) Rules, 1995 and therefore, the same is flawed, because of the fact that for the adverse remarks recorded against the Petitioner, there were no supporting materials.

7.8.The Learned Senior Counsel for the Petitioner comes out with a plea that all the adverse remarks in respect of an officer, subjective satisfaction of the superior in an objective manner and that the R.T.I. information furnished to the Petitioner shows that there were no supporting materials to arrive at such a conclusion.

7.9.The Learned Senior Counsel for the Petitioner points out that the 2nd Respondent in R.O.C.No.2869/2012/RTI dated 04.05.2013 had informed the Petitioner that the service records for the period from 01.01.2002 to 30.04.2006 were considered and the adverse entries recorded for the said periods were taken into account for the purpose of issuing the Compulsory Retirement order. Further, the Learned Senior Counsel for the Petitioner takes a stand that no disciplinary proceedings were pending against the Petitioner.

7.10.The Learned Senior Counsel for the Petitioner draws the attention of this Court to the effect that in respect of the period from 01.01.2002 to 30.04.2006, only one complaint dated 07.10.2002 was received and that the 2nd Respondent/High Court, after considering the explanation of the Petitioner, cautioned him that in future, he should study the entire records more carefully before disposing of the matter.

7.11.Furthermore, the Learned Senior Counsel for the Petitioner submits that in regard to the query relating to any enquiry ordered by this Court, it was mentioned in the aforesaid R.O.C.No.2869/2012/RTI dated 04.05.2013 of the High Court that 'no enquiry' was ordered except discreet enquiry and that the Hon'ble Chief Justice of this Court had observed 'No action'. Therefore, the Learned Senior Counsel for the Petitioner puts forward an argument that the Petitioner had not faced any 'Enquiry' or 'Disciplinary Proceedings' during the relevant period.

7.12.The Learned Senior Counsel for the Petitioner refers to the information furnished by the 2nd Respondent under Right To Information Act in respect of the Petitioner to the effect that 'no adverse remarks were recorded by the District Judges concerned on his Annual Confidential Reports during the periods from 01.01.2002 to 31.12.2002, from 01.01.2003 to 05.05.2003, from 01.01.2004 to 31.12.2004, from 01.01.2006 to 30.04.2006'.

7.13. In this connection, the Learned Senior Counsel for the Petitioner refers to Rule 3 of the Tamil Nadu State Judicial Service (Confidential Records) Rules, 1995 under the caption 'Confidential Record' and Rule 5 deals with 'Preparation and transmission of records in respect of members of the Tamil Nadu State Judicial Service other than District and Sessions Judge'.

7.14. The Learned Senior Counsel for the Petitioner points out that as per Rule 7 of the Tamil Nadu State Judicial Service (Confidential Records) Rules, 1995, the communication of adverse remarks must be done within three months from the date of which the confidential record is completed. However, according to the Petitioner, the communications were transmitted belatedly.

7.15. Moreover, it is represented on behalf of the Petitioner that when the Petitioner sent his representation within the month's time to expunge the adverse remarks, but the same was not considered in accordance with Rule 8 of the Tamil Nadu State Judicial Service (Confidential Records) Rules, 1995. That apart, the result of the Petitioner's representation was also communicated in a belated fashion. In short, the stand of the Petitioner is that the whole procedure adopted by the 2nd Respondent/High Court, Madras is contrary to the rules.

7.16. The Learned Senior Counsel for the Petitioner brings it to the notice of this Court that the Petitioner on 28.01.2011 had submitted an application dated 28.01.2011 addressed to the Secretary to Government, Home Department, Government of Tamil Nadu, Chennai - 600 009 (through proper channel) stating that he was suffering from 'Anti GBM Disease with Crescentia GN and Acute Renal Failure' and was taking treatment in the Appollo Hospital, Chennai. Further, in the said letter, he had stated that as per Doctor's advise, he in turn to retire from service voluntarily and made a request that he may be permitted to retire on the expiry of three months [as per F.R.56(3)] from the date of receipt of this communication. He also sent an advance copy of his communication dated 28.01.2011 to the Government of Tamil Nadu.

7.17. The Learned Senior Counsel for the Petitioner contends that though the Petitioner submitted a letter on 28.01.2011 (through proper channel) expressing his intention to retire from service voluntarily (the copy of the said representation was sent through RPAD to the Government), yet, no orders were passed within a period of three months and therefore, the Petitioner, in Law, shall be deemed to have retired voluntarily from service at the expiry of the period of notice.

7.18. Besides this, it is represented that the Petitioner was not facing any disciplinary proceedings or was under suspension

and therefore, it is the plea of the Petitioner, in emphatic term, that he is deemed to have retired on 28.04.2011. Viewed in that perspective, the plea of the Petitioner is that the impugned G.O.(2D) No.310, Home (Courts-I) Department, dated 05.09.2011 placing the Petitioner under 'Compulsory Retirement' is not maintainable, since the Petitioner was deemed to have retired on 01.11.2011.

7.19.The Learned Senior Counsel for the Petitioner submits that for both 'Compulsory Retirement' and 'Voluntary Retirement', the papers to be signed and to be submitted are one and the same. Further, it is contended on behalf of the Petitioner that as per the information furnished under Right To Information Act, the service records of the Petitioner for the period from 2001 to 2006 alone were considered and if overall performance of the Petitioner [including the subsequent years 2006 - 2011] was considered, then, the Petitioner would have been in a better position. Unfortunately, the Petitioner's performance relating to the period from 2006 - 2011 was not taken into account by the Respondents, for which, no explanation is offered on their side.

7.20.The Learned Senior Counsel for the Petitioner takes a stand that the Petitioner, who had submitted an application for 'Voluntary Retirement', was under the bona fide impression that his case would be considered and he would be permitted to retire voluntarily. Moreover, merely because he had signed the pension papers and commutation application, they do not mean that he had accepted the 'Compulsory Retirement Proceedings'. In fact, he had received the cheque "without prejudice to his right to assail the same before the appropriate forum" and as such, there is no question of 'Estoppel' in the instant case.

7.21.In so far as the aspect of 'Latches' is concerned, the Petitioner was compulsorily retired as per G.O.(2D)No.310, Home (Courts-I) Department, dated 01.11.2011 and he was relieved, it is to be pointed out that in November, 2011 the Petitioner filed a 'Review Petition' to the State Government and the Review Petition was rejected on 06.03.2014. The Petitioner filed the present Writ Petition on 30.03.2014 and therefore, the plea of latches cannot be attributed to the Petitioner and furthermore, there is no delay in filing the present Writ Petition before this Court.

7.22.The Learned Senior Counsel for the Petitioner contends that the 'Fundamental Rule' is a statutory one and the Hon'ble High Court had not passed orders on the application of the Petitioner seeking 'Voluntary Retirement' and in this regard, the failure of the High Court to perform a statutory duty as per Fundamental Rules amounts to an illegality in Law. Furthermore,

the 2nd Respondent/ High Court on its failure to perform a statutory duty affects the judicial remedy of the Petitioner. Further, the order of 'Compulsory Retirement' in respect of the Petitioner is to deprive him of his judicial remedy and also in violation of Article 14 of the Constitution of India.

7.23.The Learned Senior Counsel for the Petitioner points out that 'Voluntary Retirement' is something like submitting one's resignation and when the Petitioner had expressed his intention through his application dated 28.01.2011 to proceed 'Voluntary Retirement' permitting him to retire peacefully is a right thing, although the 'Compulsory Retirement' is not a stigma.

7.24.That apart, the Learned Senior Counsel for the Petitioner submits that a Judicial Officer cannot be retired secretly and the order of compulsory retirement issued in G.O. (2D)No.310, Home (Courts-I) Department, dated 05.09.2011 causes agony and disrespect to him.

7.25.The Learned Senior Counsel for the Petitioner contends that the object of 'Compulsory Retirement' is to remove a 'Dead Wood' in service and also to get rid of an inefficient or a person, who is of no utility value to the Organisation. Also that, it is the stand of the Petitioner that not accepting his 'Voluntary Retirement' and imposing 'Compulsory Retirement' upon him is 'Malice in Law'.

7.26.The Learned Senior Counsel for the Petitioner points out that every order shall be communicated based on representation of an individual and further that, any 'Administrative Order' must be communicated. If an order is not communicated, the same is a laconic one.

7.27.The Learned Senior Counsel for the Petitioner contends that if a Law requires a particular thing is to be done in a certain manner, it should be done in the manner.

7.28.The Learned Senior Counsel for the Petitioner submits that the Petitioner in May 2009 was to complete 50 years of age and that in September/October 2010 the Petitioner suffered from a Renal failure and that on 28.01.2011 he submitted his application seeking Voluntary Retirement and after nine months of his submission of an application seeking to proceed on voluntary retirement, the Petitioner was retired compulsorily on 05.09.2011.

7.29.The Learned Senior Counsel for the Petitioner submits that the High Court should have passed an order on the application of the Petitioner dated 28.01.2011 seeking Voluntary

Retirement from service and in Law, the 2nd Respondent/High Court cannot keep the said application dated 28.01.2011 (seeking Voluntary Retirement from service) in cold storage.

7.30.The Learned Senior Counsel for the Petitioner points out that the 2nd Respondent/High Court, Madras, in the Official Memorandum dated 21.01.2004 (vide R.O.C.No.1/2003-Con.B2), while recording the Annual Confidential Reports of the Petitioner for the period from 01.01.2002 to 31.12.2002, had observed the following:

"Reputation as to:-

- a. Honesty
- b. Integrity } "Not satisfactory"
- c. Impartiality

7.31.The Learned Senior Counsel for the Petitioner contends that the adverse remarks in respect of the Petitioner for the period from 01.01.2002 should have been made by the District Judge and further that, the Administrative Judge and the Hon'ble Chief Justice of the High Court do not constitute the High Court. In fact, under Article 216 of the Constitution of India, the High Court means the entire body of the Judges appointed to the High Court.

7.32.To lend support to this contention, the Learned Senior Counsel for the Petitioner relies on the decision of this Court in T.S.Sankaranarayanan V. The High Court of Judicature at Madras reported in 1996 (Vol.2) L.L.J. 1159 at special page 1167, wherein at paragraph 23, it is observed as under:

"23.It would be apparent from the aforesaid clear and categorical findings of the Division Bench, that before initiating disciplinary proceedings against a Judicial Officer for misconduct, the Full Court should deliberate over the same and decide whether there is a case to be proceeded with by conducting an enquiry or whether to drop the same at that stage itself. Therefore, only after the Full Court has come to a decision to proceed with the enquiry as aforesaid, the initiation of disciplinary proceeding could be made either by the Full Court or by a smaller Committee of Judges constituted by the Full Court therefor. The aforesaid procedural requirement delineated by the Division Bench is imperative and binding on the administrative side of the High Court."

7.33.The Learned Senior Counsel for the Petitioner refers to Article 214 of the Constitution of India which speaks of 'High Courts for States' and further, he adverts to Section 216 of the

Constitution of India which states that 'Constitution of High Courts - Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint'.

7.34.The Learned Senior Counsel for the Petitioner contends that the Petitioner sought informations under the Right to Information Act, 2005, by raising a query about the details of complaints, if any, against him on his Conduct and Dignity inside and outside the Court and Reputation as to Integrity, Honesty & Impartiality received by the High Court, during the periods from 01.01.2002 to 31.12.2002, from 01.01.2003 to 05.05.2003, from 01.01.2004 to 31.12.2004 and 01.01.2006 to 30.04.2006 and the information furnished by the 2nd Respondent/High Court in it's R.O.C.No.2869/2012/RTI dated 04.05.2013 mentions that 'One complaint dated 07.10.2002 was received from Thiru D.Manoharan of Nilakottai Taluk, Dindigul District against the officer and further that, the High Court on considering the explanation as called for, cautioned the officer that in future he should study the entire records more carefully before disposing of the matter'.

7.35.The Learned Senior Counsel for the Petitioner submits that the 2nd Respondent, in respect of the Query in Serial No.I (ii) 'Details of Enquiry (Vigilance or otherwise), if any, ordered by the Hon'ble High Court on any such complaints, mentioned supra, had given a reply stating that in Roc.No.523/2002/VC, the Hon'ble Chief Justice had ordered a Discreet Enquiry on 28.01.2003 and on perusal of the enquiry report, the then Hon'ble Chief Justice had ordered as "No Action".

7.36.In so far as the Query in Serial No.I(iii), Whether any act of misconducts on the part of the Applicant is made out in any such enquiry, mentioned above, the High Court had sent a reply that in Roc.No.771/2002/VC, the then Hon'ble Chief Justice had ordered as 'No Action' on 26.12.2002. As regards Serial No.I (iv) If yes, whether any action, either departmental or otherwise, has been taken against the applicant, the High Court in Roc.No.743/2004/VC, the then Hon'ble Chief Justice had ordered Discreet Enquiry and on perusal of the enquiry report, the then Hon'ble Chief Justice had ordered as 'No Action' dated 19.04.2007.

7.37.In respect of the Query in Serial No.I(v), in Roc.Nos. 114/2006/VC, 179/2006/VC, 167/2006/VC, the 2nd Respondent/Registrar General of High Court had given a reply in R.O.C.No.2869/ 2012/RTI dated 04.05.2013, whereby and whereunder, the Hon'ble Administrative Committee minuted as "Officer Warned, Dropped further Action." Further, the

R.O.C.No.235/2006/VC, the Hon'ble then Chief Justice of High Court had ordered as "File Closed" dated 13.04.2006.

7.38.The Learned Senior Counsel for the Petitioner draws the attention of this Court to the effect that the 2nd Respondent in R.O.C.No.2869/2012/RTI dated 04.05.2013, had furnished a reply stating that except the file as mentioned in Sl.No.4 [viz., Roc.Nos. 114/2006/VC, 179/2006/VC, 167/2006/VC, the Hon'ble Administrative Committee minuted as "Officer Warned, Dropped further Action], the other files pertaining to the period from 1989 to 2007 were destroyed as per the order of the then Hon'ble Chief Justice.

7.39.The Learned Senior Counsel for the Petitioner points out that the 2nd Respondent/High Court in R.O.C.No.2869/2012/RTI dated 04.05.2013 had given a reply to the Petitioner stating that 'No Adverse Remarks were recorded by the District Judges concerned in respect of the Applicant on his Annual Confidential Reports during the periods from 01.01.2002 to 31.12.2002, from 01.01.2003 to 05.05.2003, from 01.01.2004 to 31.12.2004 and 01.01.2006 to 30.04.2006'.

7.40.The Learned Senior Counsel for the Petitioner contends that the 'District Judges' had not recorded any adverse remarks against the Petitioner for the period from 01.01.2002 to 30.04.2006 and when the District Judge of the Petitioner has not recorded any adverse remarks in his Annual Confidential Reports, then, the Hon'ble High Court should not have been dragged into the picture and further that, the Petitioner made a representation dated 12.02.2004 addressed to the 2nd Respondent to expunge the remarks for the period from 01.01.2002 to 31.12.2002, the Hon'ble High Court gave a reply in R.O.C.No.1/2003 - Con.B2 dated 27.09.2004 stating that it found no scope to expunge the adverse remarks. In short, the said order of the High Court dated 27.09.2004 is a non speaking one, besides the same being laconic.

7.41.The Learned Senior Counsel for the Petitioner submits that the order of the 2nd Respondent/High Court in R.O.C.No.1/2003-Con.B2 dated 27.09.2004 cannot be countenanced in the eye of Law, because of the reason that the Petitioner's District Judge had not found anything against him.

7.42.The Learned Senior Counsel for the Petitioner contends that the Official Memorandum of the 2nd Respondent in R.O.C.No.1/2004-Con.B2 dated 23.09.2005 refers to the observation made in the Annual Confidential Reports of the Petitioner as Judicial Magistrate No.II, Dindigul for the period from 01.01.2003 to 05.05.2003 which runs as under:

"I) Conduct and Dignity :-
-Outside Court : "Poor"
II) Reputation as to:-
a) Honesty !
b) Integrity ! "Doubtful"
c) Impartiality !
III) Overall view : "Poor"
The same is not in proper format.

7.43.The Learned Senior Counsel for the Petitioner submits that in respect of a Conduct and Dignity - Outside Court, there must be some complaint against the Petitioner and if the District Judge of the Petitioner write something in the absence of materials, then, no subordinate Judicial Officer can function independently.

7.44.The Learned Senior Counsel for the Petitioner refers to the Official Memorandum of the 2nd Respondent/High Court in R.O.C.No.1/2005-Con.B2 dated 02.09.2006 wherein in respect of the Petitioner, the Annual Confidential Reports for the period from 01.01.2004 to 31.12.2004, the following was recorded:

I) Conduct and Dignity:
II)a)Inside Court
b)Outside Court : "Bad"
III)Reputation as to:-
IV)a)Honesty
b)Integrity
c)Impartiality : "Poor"
V) Overall view : "Poor"

and that the Petitioner preferred a representation dated 05.09.2007 addressed to the 2nd Respondent seeking to expunge the remarks made against him for the period from 01.01.2006 to 30.04.2006 and another representation dated 23.11.2007 addressed to the 2nd Respondent praying for expunging the remarks from 01.01.2004 to 31.12.2004 and the Hon'ble High Court in the Official Memorandum in R.O.C.No.1/2005-Con.B2, R.O.C.No.1/2007-Con.B2, at paragraph 3, had observed the following:

"3)The High Court considered the representations under references fifth and seventh and eighth cited and observed as follows:

"Perused and refused"

and contends that such a non speaking order cannot be passed and the same is not sustainable in Law.

7.45.The Learned Senior Counsel for the Petitioner refers to the Minutes of the Meeting of the Hon'ble Administrative

Committee that took place on 23.04.2009 at 2.30 p.m. and points out that it was resolved to compulsorily retire the Petitioner, in public interest, subject to ratification by the Full Court.

7.46.Also, the Learned Senior Counsel for the Petitioner adverts to the Minutes of the Meeting of the Hon'ble Judges (Full

Court) held on 29.04.2009 at 5.00 p.m. wherein it was mentioned as under:

"It is resolved to defer the review of the case of Thiru.S.Murugadoss, XIV Assistant Judge, City Civil Court, Chennai, for the present. It will be taken up in the Full Court after the decision on his pending representation. As far as xxxxx, xxxxx, xxxxx, is concerned, it is resolved to proceed against him departmentally."

7.47.The Learned Senior Counsel for the Petitioner points out that the Minutes of the Meeting of the Hon'ble Judges (Full Court) that took place on 11.03.2010 at 5.15 p.m. under Subject No.6, had resolved to approve the Minutes of the Administrative Committee dated 23.04.2009 and to permit the Judicial Officer concerned to retire compulsorily under F.R.56(2) on completion of the age of 50 years, in public interest and comes out with a plea that the Minutes of the Full Court is a non speaking one.

7.48.The Learned Senior Counsel for the Petitioner submits that the Petitioner on 28.01.2011 had addressed a communication to the Secretary to the Government, Home Department, Government of Tamil Nadu, Chennai through the Principal Judge, City Civil Court, Chennai and the Registrar General, High Court, Madras, where he had expressed his desire to retire from the service voluntarily and further made a request to retire on the expiry of 3 months from the date of receipt of this notice.

7.49.The Learned Senior Counsel for the Petitioner points out that the Letter of the Public Information Officer/Under Secretary to Government, Home (Courts-I) Department, Secretariat, Chennai 600 009 in Ref.No.85041/Cts-I/2011-3 dated 19.12.2011 addressed to the Petitioner wherein the following information, as required was furnished:

(i)	Whether any decision has been taken on the notice under FR 56(3) dated 28.01.2011 sent by the Applicant	Only an advance copy of your letter dated 28.01.2011 was received by the Government, and hence no decision was taken.
(ii)	If so, whether the decision has been communicated to the Applicant	Does not arise
(iii)	When a proceeding under F.R.56(2) i.e. compulsory retirement, is not a disciplinary proceeding for the imposition of a major penalty, will it have any bearing in taking a decision on a notice under FR.56(3)	It is not an information as per Section 2(f) of RTI Act, 2005

7.50.The Learned Senior Counsel for the Petitioner contends that in respect of the Petitioner, the adverse remarks for certain periods recorded by the High Court, representations were made and the same were rejected without application of mind and not assigning necessary reasons. Therefore, it is a stand of the Petitioner that the adverse remarks recorded against him cannot be taken into account for the reason that his representations were not considered.

7.51.The Learned Senior Counsel for the Petitioner submits that the Petitioner had opted for 'Voluntary Retirement' because of the fact that he suffered a Renal failure and also that he underwent a kidney transplantation and in fact, his application for Voluntary Retirement was retained and normally the said application ought to be sent to the Government. Furthermore, there is no question of withholding his application seeking for Voluntary Retirement and in this regard, the 2nd Respondent/High Court had failed to perform a statutory duty in not forwarding the said application to the Government.

7.52.The Learned Senior Counsel for the Petitioner points out that pending Compulsory Retirement Proceedings, the Petitioner filed an Application seeking Voluntary Retirement from service and by accepting his Voluntary Retirement of the Petitioner in financial implication would arise. Apart from that, it is projected on the side of the Petitioner that pending Voluntary Retirement Proceedings is not a bar for Voluntary Retirement and added further, if a person is retired on VRS or if he is compulsorily retired, the net result is the same.

7.53.The Learned Senior Counsel for the Petitioner takes a stand that it would have been much easier for the 2nd Respondent/ High Court to accept the Voluntary Retirement of the Petitioner and the State Government is the Appointing Authority in so far as VRS is concerned. Moreover, the 'Compulsory Retirement' is to weed out a deadwood and to dispense with the services of a person, who is of no use to office or his services are no longer required.

7.54.The Learned Senior Counsel for the Petitioner contends that if the Petitioner's Application dated 28.01.2011 seeking Voluntary Retirement had been forwarded to the State Government, then, the Petitioner would have got the benefits.

7.55.The Learned Senior Counsel for the Petitioner submits that the adverse remarks recorded against the Petitioner cannot be considered for the purpose of 'Compulsory Retirement'.

7.56.The Learned Senior Counsel for the Petitioner takes a plea that the Official Memorandum in R.O.C.No.1/2003-Con.B2 dated 14.07.2005 of the 2nd Respondent informing the Petitioner that his further representation dated 01.11.2004 was rejected by the High Court, cannot stand a judicial scrutiny because of the reason that the said order is an 'unreasoned one' and furthermore, every Administrative Order passed by the Appropriate Authority ought to be informed by reasoning.

7.57.The Learned Senior Counsel for the Petitioner contends that no adverse remarks against the Petitioner were recorded by the District Judge in respect of the period from 01.01.2002 to 31.12.2002, from 01.01.2003 to 05.05.2003 from 01.01.2004 to 31.04.2004 and 01.01.2006 to 30.04.2006 and only when materials are available, action can be taken against the officer concerned.

7.58.The Learned Senior Counsel for the Petitioner comes out with an argument that every representation of the Petitioner was rejected on the ground that there was no reason to interfere and further that, the 2nd Respondent/High Court had not spelt out the reasons for rejection. Moreover, it is represented on behalf of the Petitioner that there is nothing on record to show that there was an 'application of mind' by the High Court while rejecting the representation(s) of the Petitioner.

7.59.The Learned Senior Counsel for the Petitioner contends that when the representation of the Petitioner dated 28.01.2011 expressing his intention to proceed on Voluntary Retirement from service is pending and when no orders were passed by the 2nd Respondent/High Court within three months time from the date of serving notice by the Petitioner, as required Section 56(2) of the Fundamental Rules and the said representations of the

Petitioner in Law is deemed to be pending. The further representation of the Petitioner to reconsider the matter, by means of rejection order by the High Court dated 14.07.2005, the representation of the Petitioner dated 24.10.2005 to reconsider the adverse remarks recorded in respect of Petitioner's Annual Confidential Reports for the period from 01.01.2003 to 05.05.2003 to expunge the same and the order of rejection by the High Court in R.O.C.No.1/2004-Con/B2 dated 12.12.2006 stating that there was no scope to expunge the remarks and the representation of the Petitioner dated 29.09.2006 to expunge the adverse remarks for the period from 01.01.2004 to 31.12.2004 in respect of the Petitioner in the Annual Confidential Reports and the rejection order dated 24.10.2007 of the 2nd Respondent/High Court without assigning reasons and the rejection order dated 18.01.2010 and 27.11.2007 in regard to the representations of the Petitioner dated 05.09.2007 and 28.11.2007 to expunge the adverse remarks recorded by the High Court, stating that 'Perused and refused' are all a non speaking and that the non speaking orders are 'Antithesis of Rule of Law' and therefore, the said orders are non est in the eye of Law.

7.60.The Learned Senior Counsel for the Petitioner submits that in respect of a complaint dated 07.10.2002 received from D.Manoharan of Nilakottai Taluk, Dindigul District against the Petitioner, the High Court, on considering the explanation of the Petitioner, cautioned him that in future he should study the entire records more carefully before disposing of the matter, is nothing to do with the Petitioner's Dignity inside and outside the Court and the Reputation as to - 'Integrity' 'Honesty' and 'Impartiality' in respect of the Petitioner, there is no complaint after the year 2002 and when no adverse remarks were recorded by the District Judge for the period of 01.01.2002 to 31.12.2002, from 01.01.2003 to 05.05.2003, from 01.01.2004 to 31.12.2004 and 01.01.2006 to 30.04.2006, then the compulsory retirement order passed by the Government dated 05.09.2011 vide G.O.(2D)No.310, Home (Courts-I) Department, is not a correct one.

7.61.The Learned Senior Counsel for the Petitioner submits that the Petitioner had submitted his application dated 28.01.2011 through the Principal Judge, City Civil Court, Chennai and the Registrar General, High Court, Madras to the Secretary to the Government, Home Department, Government of Tamil Nadu, Chennai and when the period of three months had expired on 03.05.2011, the High Court had not passed orders on the application dated 28.01.2011, then, it is deemed that his application seeking voluntary retirement dated 28.01.2011 was deemed to have been accepted by the High Court, by means of Operation of Law.

7.62.The Learned Senior Counsel for the Petitioner submits that the Petitioner had submitted his application dated 28.01.2011 seeking voluntary retirement from service and the same was prior to his acceptance of his Compulsory Retirement by the State Government.

7.63.The Learned Senior Counsel for the Petitioner contends that the Petitioner was relieved on 01.11.2011 and although the Petitioner continued as Sub Judge from 03.05.2011 to 01.11.2011, he was mostly on Leave and during his continuance, he had worked and earned Salary.

7.64.The Learned Senior Counsel for the Petitioner forcefully takes a plea that 'Compulsory Retirement' is not a 'Bypass Surgery' and when the Petitioner wants to die honourably on account of Renal failure, what the 2nd Respondent/High Court can achieve in retiring the Petitioner compulsorily and not accepting his application dated 28.01.2011 seeking to proceed on 'Voluntary Retirement'.

7.65.The Learned Senior Counsel for the Petitioner cites the decision of the Hon'ble Supreme Court in State of Punjab V. Bandeep Singh and others, (2016) 1 SCC 724 wherein it is held as under:

"Every decision of an administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official taking decision to arrive at his conclusion. It is beyond cavil that any authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

7.66.The Learned Senior Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court in Union of India and others V. Sayed Muzaffar Mir reported in AIR 1995 SC 176, wherein at paragraphs 5 & 6, it is observed as follows:

"5.The second aspect of the matter is that it has been held by a three-Judge Bench of this Court in Dinesh Chandra Sangma V. State of Assam [(1977) 4 SCC 441], which has dealt with a pari materia provision finding place in Rule 56(c) of the Fundamental Rules, that where the government servant seeks premature retirement the same does not require any acceptance and comes into effect on the completion of the notice period. This decision was followed by another three-Judge Bench in B.J.Shelat V. State of Gujarat [(1978) 2 SCC 202].

6.The period of notice in the present case having expired on 21.10.1985, and the first order of removal having been passed on 04.11.1985, we hold that the Tribunal had rightly come to the conclusion that the order of removal was non est in the eye of law."

7.67.The Learned Senior Counsel for the Petitioner refers to the decision of the Hon'ble Supreme Court in Dinesh Chandra Sangma V. State of Assam and others, (1977) 4 SCC 441, wherein at paragraphs 13 to 18, it is observed and held as follows:

"13. F.R. 56 is one of the statutory rules which binds the Government as well as the Government servant. The condition of service which is envisaged in rule 56(c) giving an option in absolute terms to a Government servant to voluntarily retire with three months' previous notice after he reaches 50 years of age or has completed 25 years of service cannot therefore be equated with a contract of employment as envisaged in Explanation 2 to rule 119.

14. The field occupied by F. R. 56 is left untrammelled by Explanation to rule 119. The words "his contract of employment" in Explanation are clinching on the point.

15. It is a cardinal rule of construction that no words should be considered redundant or surplus in interpreting the provisions of a statute or a rule. Explanation 2 does not say an express or implied term of employment, but refers to "an express or implied term of his contract of, employment". If the language in Explanation 2 were different, namely, an

express or implied term of employment, instead of "contract of employment", the position would have been different. Explanation 2 in Rule 119, albeit, a penal rule, takes care to use the words "contract of employment" and necessarily excludes the two categories of employment" and necessarily excludes the two categories of employment, namely, the one under the Central Government and the other under the State Government. Explanation 2 only takes in its sweep the third category of employment where the relationship between the employer and the employee is one governed by a contract of employment. Since F. R. 56 is a statutory condition of service, which operates in law, without reference to a contract of employment, there is nothing inconsistent between rule 119 and F.R. 56.

16. The appellant has voluntarily retired by three months' notice, not in accordance with an express or implied term of his contract of employment, but in pursuance of a statutory rule. Explanation 2 to rule 119 makes no mention of retirement under a statutory rule and hence the same is clearly out of the way. The submission that rule 119 is super-imposed on F.R. 56 has no force in this case.

17. The High Court committed an error on law in holding that consent of the Government was necessary to give legal effect to the voluntary retirement of the appellant under F.R. 56(c). Since the conditions of F.R. 56(c) are fulfilled in the instant case, the appellant must be held to have lawfully retired as notified by him with effect from 2nd August, 1976.

18. In this view of the matter the permission accorded by the Government to retire and its subsequent order of July 28, 1976, revoking the permission, are ineffectual in law and are therefore null and void. Since the appellant voluntarily retired in accordance with F.R. 56(c), the High Court's order of July 31, 1976, on the administrative side, transferring him to

Dhubri is invalid and is hereby quashed. In the result the judgment and order of the High Court of March 4, 1977, are set aside and the Writ Petition is allowed. The appeal is allowed with costs in this Court as well as in the High Court."

8. The 2nd Respondent's Submissions:

8.1.The Learned Counsel for the 2nd Respondent submits that the Petitioner while serving as XIV Assistant Judge, City Civil Court, Chennai, his case along with other Judicial Officers case in the cadre of Civil Judge, Senior Civil Judge and District Judge in the Tamil Nadu State Judicial Service, who were completing/crossing the age of 50 years during the month of May and June 2009 were taken up for Performance Review under F.R.56 (2) by the Hon'ble Administrative Committee in the Meeting held on 18.04.2009 and it was resolved to have permitted 12 officers to continue in service beyond the age of 50 years and that the cases of S.Murugadoss, XIV Assistant Judge, City Civil Court, Chennai (Petitioner) and S.Elangovan, Judicial Magistrate - II, were deferred and directed to be placed in the next Administrative Committee Meeting.

8.2.The Learned Counsel for the 2nd Respondent brings it to the notice of this Court that in the next Meeting that took place on 23.04.2009, it was resolved to retire the Petitioner from the Tamil Nadu State Judicial Service, compulsorily under F.R.56(2) in public interest subject to ratification of the Full Court. Moreover, the Hon'ble Full Court in its Meeting that took place on 29.04.2009 had resolved to defer the case of the Petitioner since the representation submitted by the Petitioner praying to expunge the adverse remarks recorded against him for the period from 01.01.2004 to 31.12.2004 and for the period from 01.01.2006 to 30.04.2006 were pending at that point of time. That apart, the Petitioner's representations dated 05.09.2007 and 28.11.2007 were considered and rejected by this Court and that the Petitioner was informed through Official Memorandum in R.O.C.No.1/2005/Con.B2 and R.O.C.No.1/2007/ Con.B2 dated 18.01.2010. Subsequently, the matter was placed before the Hon'ble Full Court in its Meeting that took place on 11.03.2010 in which the Hon'ble Full Court had approved the Minutes of the Meeting of the Hon'ble Administrative Committee held on 23.04.2009 permitting the Petitioner to retire compulsorily under F.R.56(2) in public interest.

8.3.The Learned Counsel for the 2nd Respondent points out that in terms of the directions issued by the Hon'ble Full Court, the Government was addressed to issue necessary orders compulsorily retiring the Petitioner from service under F.R.56 (2) in public interest through Letter in R.O.C.No.23/2009 Con.B1 dated 19.03.2010.

8.4. According to the Learned Counsel for the 2nd Respondent, when the recommendation of the Compulsory Retirement of the Petitioner was pending for issuance of orders by His Excellency viz., the Hon'ble Governor of Tamil Nadu/Appointing Authority, the Petitioner projected a Petition on 23.03.2010 seeking to reconsider the decision of the Hon'ble Full Court. As directed by the Hon'ble Chief Justice, the matter was placed before the Administrative Committee in the Meeting held on 20.09.2010 wherein it was resolved to reject the said request for reconsideration and the same was communicated to the Government on 26.10.2010. In fact, the Government through Letter No.22531/Cts.I/2010-I dated 14.02.2011 had requested to send the gist of relevant grounds and materials on the basis of which the decision to compulsorily retire the Petitioner was taken and when the matter was placed before the Administrative Committee Meeting that took place on 17.06.2011, in which, it was resolved as under:

"Discussed. In the light of the decisions of the Supreme Court, the Government has no right to sit over the decision of the Full Court. It is, therefore, resolved to inform the Government that there is no need to send the records relating to the decision compulsory retiring Thiru S.Murugadoss, Civil Judge (Senior Division), functioning as IV Assistant Judge, City Civil Court, Chennai, from service, in public interest, to the Government."

and accordingly, the Government were informed through Letter of this Court dated 11.07.2011.

8.5. The Learned Counsel for the 2nd Respondent submits that the 1st Respondent/Government issued orders compulsorily retiring the Petitioner (then serving as IV Assistant Judge, City Civil Court, Chennai), in public interest under F.R.56(2) in G.O.2(D) 310, Home (Courts-I) Department, dated 05.09.2011 because of the reason that the Petitioner was on leave till 30.10.2011 and joined duty on 31.10.2011 forenoon, the copy of the order compulsorily retiring him dated 05.09.2011, the High Court's Notification No.211/2011 in R.O.C.No.23/2009/Con.B1 dated 01.11.2011, the High Court's Official Memorandum dated 01.11.2011, the cheque bearing No.630657 dated 22.09.2007 for a sum of Rs.1,48,443/- being three months pay and allowances in lieu of three months notice was served on the Petitioner on 01.11.2011 afternoon, which was acknowledged by him under protest and without prejudice to his rights and contentions in assailing the order of Compulsory Retirement before the appropriate/competent forum.

8.6.The Learned Counsel for the 2nd Respondent contends that the Petitioner submitted a Review Petition dated 27.11.2011 addressed to the 1st Respondent/Government of Tamil Nadu to review the order of Compulsory Retirement and reinstate him into service with all attendant benefits. In turn, the Government forwarded the Review Petition to the High Court, Madras and requested to offer specific remarks through Letter No.89211/(Cts.I)2011-I, dated 2.12.2011. Further, it is represented on behalf of the 2nd Respondent that when the Review Petition was under consideration, the Petitioner filed W.P.No.10361 of 2013 on 09.04.2013 praying for passing of an order in directing the Respondents to dispose of the Review Petition dated 27.11.2011. In the meanwhile, the matter was placed before the Hon'ble Administrative Committee in the Meeting held on 05.09.2011 and the Hon'ble Administrative Committee had resolved as under:

"Discussed. It is resolved to put up this matter for consideration before the Full Court."

8.7.Besides these, the matter was placed before the Hon'ble Full Court in the Meeting that took place on 22.09.2013 and it was resolved as under:

"Deferred for the time being. Registry is hereby directed to place before the Full Court in its next meeting all the relevant particulars relating to the review application filed by Thiru.S.Murugadoss, formerly Senior Civil Judge, functioned as IV Assistant Judge, City Civil Court, Chennai (compulsorily retired from service on 01.11.2011), including the Work Done Statement, Annual Confidential Reports, Vigilance particulars, representation made by the Officer for expunging the adverse remarks, if any, against him, any orders passed expunging such adverse remarks, along with any other material referred to by the Officer in his review application."

8.8.The Learned Counsel for the 2nd Respondent contends that all the particulars, relevant materials (including additional grounds to the Review Petition) and papers already placed before the Hon'ble Full Court in the Meeting held on 22.09.2013 were placed before the Hon'ble Full Court in its Meeting held on 08.12.2013 and it was resolved to reject the request of the Petitioner seeking review of the order of Compulsory Retirement issued on 01.11.2011 and that the Registry was directed to communicate the decision of the Hon'ble High Court, Madras to the State Government.

8.9.The Learned Counsel for the 2nd Respondent submits that the decision of the Hon'ble High Court, Madras was informed through Letter No.23/2009/Con.B1 dated 20.12.2013 to the Government stating that the Review Petition submitted by the Petitioner was rejected. Based on the recommendations of the 2nd Respondent/High Court, the 1st Respondent/Government had issued orders rejecting the Review Petition preferred by the Petitioner under G.O.Ms.No.219, Home (Courts-I) Department, dated 06.03.2013, which was communicated to the Petitioner in R.O.C.No.23/2009/Con.B1, dated 11.03.2014.

8.10.The Learned Counsel for the 2nd Respondent forcefully contends that overall performance of the Petitioner was assessed on the basis of entire service records including Annual Confidential Reports, Work Done Statements, Vigilance Reports and a subjective satisfaction arrived at by the Administrative Committee of this Court in the first instance and thereafter by the Hon'ble Full Court. In reality, in matters concerning Compulsory Retirement, all the particulars found in the entire service records go into consideration and were indeed considered by this Court in the case of Petitioner.

8.11.The Learned Counsel for the 2nd Respondent submits that the Petitioner has not assailed the orders based on his representations, which were communicated to him in R.O.C.1/2005/Con-B2 and R.O.C.1/2007/Con B-2 dated 18.01.2010 by RPAD and apart from that, he was also subsequently provided with the information about the communication of the said order on 03.08.2012 under the Right to Information Act. Therefore, having not challenged the orders passed on his representations, the Petitioner is legally precluded from assailing the order of Compulsory Retirement dated 05.09.2011 on the basis of the correctness or incorrectness of the adverse entries, which had attained finality.

8.12.The Learned Counsel for the 2nd Respondent takes a plea that there is neither any procedural requirement nor any mandate under Law to the effect that the records which formed the basis for arriving at the decision of Compulsory Retirement by the 2nd Respondent/High Court should have been placed for consideration by His Excellency viz., the Hon'ble Governor of Tamil Nadu/Appointing Authority.

8.13.In this connection, the Learned Counsel for the 2nd Respondent refers to the Letter D.O.No.23/2009/Con-B1 dated 11.07.2011 wherein the Government was informed that it cannot sit over the decision of the Hon'ble Full Court and that there was no necessity for sending the records pertaining to the decisions of the Compulsory Retirement.

8.14.Also, it is the plea of the 2nd Respondent that promotion and premature retirement are considered on different parameters for altogether different purposes. In fact, the promotion is 'based on limited considerations of seniority leaving officers subjected to disciplinary actions of any kind at the relevant point of time, whereas the 'premature retirement' is concerned with appreciation of entire service records to assess the overall efficiency and utility of the concerned officer to continue in service as a Judicial Officer during the progressive course of his carrier.

8.15.The Learned Counsel for the 2nd Respondent contends that the Petitioner was permitted to continue in service beyond the age of 50 years cannot be taken to his advantage because a Judicial Officer will continue to render service till his 'continued in service', is curtailed by the 2nd Respondent/High Court.

8.16.At this stage, the Learned Counsel for the 2nd Respondent proceeds to point out that on numerous occasions, the 'Honesty', 'Integrity' and 'Impartiality' of the Petitioner was found as 'Not satisfactory' and as 'Poor' and on three earlier occasions, the representation submitted by the Petitioner for expunging the adverse remarks were rejected, communicated and accepted. Also that, the Petitioner was subjected to vigilance enquiry because of several complaints received against him and in respect of three complaints in ROC.Nos.114/2016/VC, 179/2006/VC and 167/2006/ VC, the Petitioner was issued with a warning and further action was dropped as per the orders of the Hon'ble Administrative Committee of this Court.

8.17.The Learned Counsel for the 2nd Respondent puts forth an argument that on a complaint received on 07.10.2002 and after considering his explanation submitted by the Petitioner, he was cautioned that in future, he should study the entire records more carefully before disposing of the matter and as such, the entire past service record of the Petitioner up to the period of evaluation was subjected to an overall consideration by the Hon'ble High Court. Apart from that, in regard to the premature retirement, no stigma is attached to construe it as a punishment.

8.18.Further, it is the stand of the 2nd Respondent that even though the Petitioner applied on 28.01.2011 seeking permission to retire voluntarily in the midst of the decision already taken by the High Court on 11.03.2010 recommending for his compulsory retirement and in fact, an earlier representation submitted by the Petitioner dated 23.03.2010 seeking for reconsideration of the decision of compulsory retirement taken by the Hon'ble Full Court was rejected by the Administrative

Committee on 20.09.2010 and informed to the Government on 26.10.2010.

8.19. Continuing further, it is the contention of the Learned Counsel for the 2nd Respondent that the Petitioner, taking advantage of the delay on the part of the 1st Respondent/Government in implementing the recommendation made by the Hon'ble High Court for Compulsory Retirement, the Petitioner had submitted a letter dated 28.01.2011 in a pre-emptive manner.

8.20. The Learned Counsel for the 2nd Respondent contends that the 2nd Respondent forwarded the Petitioner's letter seeking for commutation of pension, Medical Report issued by the Board, along with the Service Register to the Principal Accountant General (A&E) who had in turn issued authorisation for payment of commuted pension for Rs.10,05,215/- to the District Treasury office by means of letter dated 26.02.2013.

8.21. The Learned Counsel for the 2nd Respondent vehemently takes a stand that the impugned proceeding of Compulsory Retirement dated 05.09.2011 as well as the order rejecting the Review Petition issued against the Petitioner is not vitiated by perversity, mala fides, collateral purpose or in any manner as alleged by the Petitioner and in fact, they are consonance with the well settled principles enunciated by the Hon'ble Supreme Court of India in the decision in Rajendra Singh Verma (Dead) through LRs. and others V. Lieutenant Governor (NCT OF DELHI) and others reported in (2011) 10 SCC 1.

8.22. The Learned Counsel for the 2nd Respondent adverts to the Service Details of the Petitioner, which runs as under:

Judicial Magistrate IV	Tiruchirapalli	27/11/1995	18/03/1997
Judicial Magistrate I	Tiruchirapalli	18/03/1997	29/05/1998
District Munsif cum Judicial Magistrate	Palladam	01/06/1998	21/07/2000
Judicial Magistrate-II	Dindigul	26/07/2000	05/05/2003
Judicial Magistrate-I	Karur	07/05/2003	30/04/2006
Judicial Magistrate	Solingar	03/05/2006	09/08/2007
Sub Judge	Paramakudi	10/08/2007	30/04/2008
XII Asst. Judge City Civil Court	Chennai	05/05/2008	30/06/2008
XV Asst. Judge City Civil Court	Chennai	30/06/2008	05/02/2009
XIV Asst. Judge City Civil Court	Chennai	05/02/2009	14/09/2009

Judicial Magistrate IV	Tiruchirapalli	27/11/1995	18/03/1997
IX Asst Judge City Civil Court	Chennai	14/09/2009	08/10/2009
X Asst Judge City Civil Court	Chennai	08/10/2009	30/04/2010
VIII Asst Judge City Civil Court	Chennai	30/04/2010	31/05/2010
VII Asst Judge City Civil Court	Chennai	31/05/2010	19/01/2011
IV Asst Judge City Civil Court	Chennai	19/01/2011	01/11/2011

8.23.The Learned Counsel for the 2nd Respondent refers to he adverse remarks recorded by the Hon'ble High Court relating to the Petitioner in his Confidential Report for the following periods and the same is extracted hereunder:

"01.01.2002 to 31.12.2002

Reputation as to

- | | | |
|------------------|---|------------------|
| (a) Honesty | } | |
| (b) Integrity | } | Not satisfactory |
| (c) Impartiality | } | |

8.24.The Learned Counsel for the 2nd Respondent points out that the Petitioner's representation dated 12.02.2004 to expunge the adverse remarks recorded by the High Court (for the period from 01.01.2002 to 31.12.2002) was rejected by the Hon'ble High Court, which was communicated to the Petitioner. Likewise, the Petitioner's representation dated 24.10.2005 [to expunge the Petitioner's remarks for the period from 01.01.2003 to 05.05.2003 recorded by the Hon'ble High Court in the Annual Confidential Report] was rejected by this Court. Similarly, a representation dated 27.09.2006 [to expunge the adverse remarks for the period 01.01.2004 to 31.12.2004 recorded by the Hon'ble High Court in the Annual Confidential Report] was rejected by this Court. Moreover, a representation of the Petitioner dated 05.09.2007 to expunge the adverse remarks recorded against him for the period from 01.01.2006 to 30.04.2006 recorded by the Hon'ble High Court in the Annual Confidential Report was rejected by this Court.

8.25.The Learned Counsel for the 2nd Respondent that the 'Washed of Theory' will have no application when the case of an Employee/Government Servant is being assessed to determine whether he is to be retained in service or to be compulsorily retired and hence, the Petitioner cannot be heard to say that adverse remarks had lost its significance.

8.26.The Learned Counsel for the 2nd Respondent contends that the answers furnished by the 2nd Respondent/Registrar General of High Court in R.O.C.No.2869/2012/RTI dated 04.05.2013 (under the Right to Information Act) to the Petitioner would reveal that in R.O.C.No.523/2002 VC dated 28.1.2003, R.O.C.771/2002/VC dated 26.12.2002, R.O.C.743/2004/VC dated 19.4.2007, R.O.C.Nos.114 /2006/VC - 179/2006/VC and 167/2006/VC, R.O.C.No.235/2006/ VC dated 13.4.2006, R.O.C.No.240/2006/VC dated 29.06.2006, some action was taken against the Petitioner and although no action was ordered by the Hon'ble Chief Justice of this Court and these Vigilance enquiries had added to the decisions of 'Compulsory Retirement' against the Petitioner.

8.27.The Learned Counsel for the 2nd Respondent submits that the Petitioner after being fully aware that orders were awaited from the Government as regards the Compulsory Retirement as early as on 26.10.2010 had opted to address a letter dated 28.01.2011 to the Secretary to Government, Home Department, Government of Tamil Nadu, Chennai [through the Principal Judge, City Civil Court, Chennai and the Registrar General, High Court, Chennai] seeking 'Voluntary Retirement' only with a view to negate the decision taken by the Hon'ble Administrative Committee of this Court and the Full Court.

8.28.The Learned Counsel for the 2nd Respondent contends that the Petitioner is not entitled to submit a Petition in F.R.56(3) [for Voluntary Retirement] as the same is hit by the Principles of 'Estoppel', where the Petitioner cannot chose the benefit under one order, but, at the same time, opt to challenge the same which in reality amounts to 'Approbation' and 'Reprobation' which is impermissible in the eye of Law.

8.29.The Learned Counsel for the 2nd Respondent points out that Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1995 contends that 'Compulsory Retirement' is a major penalty, but in Explanation II of the said Rule, it is mentioned that Compulsory Retirement shall not amount to penalty within the meaning of this Rule. Further, according to the 2nd Respondent, the Hon'ble Supreme Court had held that 'Compulsory Retirement' is not a punishment. Moreover, the aspect of 'Estoppel' and 'Approbation' and 'Reprobation' do stand in the way of the Petitioner's claim that he is deemed to have retired under F.R.56(3).

8.30.The Learned Counsel for the 2nd Respondent strenuously projects an argument that the Petitioner is estopped from seeking Voluntary Retirement under F.R.56(3) more particularly when the process of evaluation for 'Compulsory Retirement' was completed and it was only awaiting the orders of the State Government in this regard.

8.31.The Learned Counsel for the 2nd Respondent submits that the decision of the Hon'ble Supreme Court in R.C.Chandel V. High Court of M.P. And another, AIR 2012 SC 2692 speaks about the 'Judicial Review', whereby and whereunder, it is observed that 'The order of Compulsory Retirement, the Court cannot go into adequacy or sufficiency of material on which the order is based'. Furthermore, under Article 235 of the Constitution, the 'Judge' holds an office of trust and qualities expected of 'Judge' are different from the ordinary Employees.

8.32.The Learned Counsel for the 2nd Respondent cites the decision of the Hon'ble Supreme Court in Pyare Mohan Lal V. State of Jharkhand and others, AIR 2010 SC 3753 wherein at paragraph 29, it is observed and held that '... The case of a Judicial Officer is considered by a Committee of Judges of the High Court duly constituted by Hon'ble Chief Justice and then the report of the Committee is placed before the Full Court. A decision taken by the Full Court after due deliberation on the matter' and contends that there is hardly any scope to make the allegations of non-application of mind or mala fide.

8.33.The Learned Counsel for the 2nd Respondent points out that an order of compulsory retirement is not a punishment and it does not imply any stigma unless such an order is passed to impose a punishment for a proved misconduct.
9.Respondents Citations:

9.1.The Learned Counsel for the 2nd Respondent/High Court, Madras cites the decision of the Hon'ble Supreme Court in R.N.Gosain V. Yashpal Dhir 683 at Special Page 687 reported in 1992 (4) SCC 683 wherein at paragraph No.10, it is observed as under:

"10.Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage". [See: Verschures Creameries Ltd. V. Hull and Netherlands Steamship Co. Ltd., (1921) 2 KB 608, 612 (CA) Scrutton, L.J.]. According to Halsbury's Laws of England, 4th Edn., Vol.16, "after taking an advantage under an order [for example for

the payment of costs] a party may be precluded from saying that it is invalid and asking to set it aside'.

9.2.The Learned Counsel for the 2nd Respondent relies on the decision of the Hon'ble Supreme Court in Prashant Ramachandra Deshpande V. Maruti Balaram Haibatti, 1995 Supp (2) SCC 539 at special page 541, wherein at paragraph No.4, it is held as follows:

"4.Even the equitable principle of "approbate and reprobate" cannot be applied. Taking time to vacate is appealing to the court to protect him so that he may make arrangements in the meantime. At the worst the intention might be to gain time to approach the higher court. Grant of time in either case is in the discretion of the court. Its violation may amount to disobedience of the order of court and the person may be proceeded against in contempt. But no other fetter arises. Otherwise in the system prevalent the tenant may be on the road by the time he is able to approach this Court. This would be rendering the tenant remediless. The equitable principle of estoppel thus cannot act inequitably against tenant."

9.3.The Learned Counsel for the 2nd Respondent refers to the decision of the Hon'ble Supreme Court in P.R.Deshpande V. Maruti Balaram Haibatti, (1998) 6 SCC 507 at special page 511, wherein at paragraph No.8, it is laid down as follows:

"8.The doctrine of election is based on the rule of estoppel - the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel) which is a rule in equity. By that rule, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. [vide Black's Law Dictionary, 5th Edn.)

9.4.The Learned Counsel for the 2nd Respondent draws the attention of this Court to the decision of the Hon'ble Supreme Court in Krishna Bahadur V. Purna Theatre and Others reported in (2004) 8 SCC 229 at special page 233, wherein at paragraph Nos.9 and 10 it is observed as under:

"9. The principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that whereas estoppel is not a cause of action, it is a rule of evidence; waiver is contractual and may constitute a cause of action, it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration.

10. A right can be waived by the party for whose benefit certain requirements or conditions had been provided or by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct."

9.5. The Learned Counsel for the 2nd Respondent seeks in aid of the decision of the Hon'ble Supreme Court in Mumbai International Airport Private Limited V. Golden Chariot Airport and Another reported in (2010) 10 SCC 422 at special pages 435 & 436, wherein at Paragraph Nos.45 to 48 and 53, it is observed as under:

45. The common law doctrine prohibiting approbation and reprobation is a facet of the law of estoppel and well established in our jurisprudence also. The doctrine of election was discussed by Lord Blackburn in the decision of the House of Lords in Benjamin Scarf vs. Alfred George Jardine [(1882) 7 Appeal Cases 345], wherein the learned Lord formulated:[AC p.361)

"...a party in his own mind has thought that he would choose one of two remedies, even though he has written it down on a memorandum or has indicated it in some other way, that alone will not bind him; but so soon as he has not only determined to follow one of his remedies but has communicated it to the other side in such a way as to lead the opposite party to believe that he has made that choice, he has completed his election and can go no further; and whether he intended it or not, if he has done an unequivocal act...the fact of his having

done that unequivocal act to the knowledge of the persons concerned is an election."

46. In *Tinkler vs. Hilder* (1849) 4 Exch 187, Parke, B., stated that where a party had received a benefit under an Order, it could not claim that it was valid for one purpose and invalid for another. (See page 190).

47. In *Clough vs. London and North Western Rail Co.* [(1861-73) All ER, Reprint, 646] the Court referred to All ER p.651 to Comyn's Digest, wherein it has been stated:-

"If a man once determines his election, it shall be determined forever." In the said case, the question was whether in a contract of fraud, whether the person on whom the fraud was practiced had elected to avoid the contract or not. The Court held that as long as such party made no election, it retained the right to determine it either way, subject to the fact that an innocent third party must not have acquired an interest in the property while the former party is deliberating. If a third party has acquired such an interest, the party who was deliberating will lose its right to rescind the contract. Once such party makes its election, it is bound to its election forever. (See page 652)

48. In *Harrison vs. Wells*, (1967) 1 QB 263, Salmon LJ, in the Court of Appeal, observed that the rule of estoppel was founded on the well-known principle that one cannot approbate and reprobate. The doctrine was further explained by Lord Justice Salmon by holding : (QB p.277G)

"It is founded also on this consideration, that it would be unjust to allow the man who has taken full advantage of a lease to come forward and seek to evade his obligations under the lease by denying that the purported landlord was the landlord". (See page 530)

53. This Court in *C. Beepathuma* case AIR 1965 SC 241 at AIR P. 246, Para 17 also took note of the principle stated in *White &*

Tudor's Leading Case in Equity, Vol.18th Edn.
At P.444, wherein it is stated:

"Election is the obligation imposed upon a party by courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one that he should not enjoy both... That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument."

9.6.The Learned Counsel for the 2nd Respondent cites the decision of the Hon'ble Supreme Court in Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and Others V. Director General of Civil Aviation and Others, (2011) 5 SC 435 at special page 443, wherein at paragraph No.12, it is held as follows:

"12.The doctrine of election is based on the rule of estoppel - the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel) which is a rule in equity. By that rule, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily [vide Babu Ram V. Indra Pal Singh (1998) 6 SCC 358, P.R.Deshpande V.Maruti Balaram Haibatti (1998) 6 SCC 507 and Mumbai International Airport (P) Ltd., V. Golden Chariot Airport (2010 10 SCC 422.

9.7.The Learned Counsel for the 2nd Respondent refers to the decision of the Hon'ble Supreme Court in Chandrasekaran V. Administrative Officer reported in 2012 5 Madras Law Weekly 724 at special page 737, wherein at paragraph No.29, it is observed as under:

"29.In Cauvery Coffee Traders, Mangalore v. Hornor Resources (International) Company Limited, (2011) 10 SCC 420, this Court considered a large number of judgments on the issue of estoppels and held as under:

"A party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience....

.....The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had."

9.8.The Learned Counsel for the 2nd Respondent refers to the Judgment of the Allahabad High Court in W.P.C.T.No.1433 of 2001 dated 26.05.2006, between Dinesh Chandra Jain V. Syndicate Bank [vide LAWS(ALL)-2006-5-206], wherein it is, among other things, mentioned that 'It would appear that the petitioner not only accepted but has also acted upon the order of compulsory retirement. There is now no going back'.

9.9.The Learned Counsel for the 2nd Respondent points out the decision in Amar Singh V. Perhlad and Others reported in AIR 1989 Punjab and Haryana 229 at special pages 233 & 234, wherein at paragraph No.5, it is observed as under:

"5.In the present case, the petitioner having accepted costs awarded in the order while allowing amendment of the plaint further mentioned that he was accepting the amount under protest. This was a unilateral act on the part of the petitioner. Even if he had not accepted the costs, the same would have been deposited in the Court by the plaintiff. If the petitioner had withdrawn the costs from the court unilaterally stating that the withdrawal would be under protest, he could not approbate and reprobate, that is accepting benefit of the order and at the same time objecting to the passing of the order. He had to accept the order as a whole. What he did was that, he accepted the costs and thereby acquiesced in the correctness of the

order passed. Although at the time of acceptance of the costs the petitioner stated that he was doing so under protest, that will not make any difference as the opposite party had not consented to the statement of the petitioner in this respect. If in fact the petitioner wanted to challenge the order of amendment of the plaint, there was no compulsion for him to accept the costs. The costs would have remained deposited in the Court. The right of the petitioner to the costs imposed by the Court on the plaintiff while allowing amendment of the plaint was not based on any right of the petitioner in the suit. The costs were ordered by the Court to compensate the petitioner for the inconvenience caused during the pendency of the suit till the plaint was amended. Such an order regarding costs was made on terms or condition for amendment of the plaint in view of O.6, R.17, Civil Procedure Code. Such an order could not be accepted in part by either of the party while denouncing the other part. The plaintiff could not file amended plaint stating that he could pay costs at the time of final decision of the suit. Likewise the defendant could not say while accepting the costs that he would challenge the order in appeal or revision or that he would return the costs withdrawn if the order of amendment of plaint is set aside. The crux of the matter to be seen is as to what the petitioner did and not what he said. By acceptance of costs, he accepted the order as correct. He has taken benefit of the order. He cannot now turn around and say he will also challenge the order would amount to nullifying the effect of acceptance of costs. In such circumstances, he cannot approbate and reprobate. His own act would estop him. At the most it can be said that the petitioner had two options one to accept the costs and to treat the order as correct, the other not to accept the costs and to challenge the same in revision. He having elected to accept the costs, he exercised his choice in accepting the order as correct. His lodging the protest in such circumstances is

meaningless reference here may be made to the decision of Madras High Court in R.Samudra Vijayam Chettiar V.Srinivasa Alwar, AIR 1956 Mad 301 [at p.304], laying down the following principle:

Where a man is entitled to one of two inconsistent rights and he has with full knowledge done an unequivocal act indicating his choice of the one he cannot afterwards pursue the other which after the first choice is by reason of the inconsistency no longer open to him. Such cases do not require detriment to the other party as foundation for their application. Similar view was taken by the Madras High Court in K.Shanmugham Pillai V. S.Shanmugham Pillai, AIR 1968 Mad 207. The view expressed by the Madras High Court in Ramaswami Chettiar V. Chidambaram Chettiar's Case [AIR 1927 Mad 1009 (2)] appears to be correct. The said High Court reiterated the view subsequently in H.G.Krishna Reddy V. M.M.Thimmiah's case (AIR 1983 Mad 169). The view expressed in Randhir Singh V. Kamlesh's Case [AIR 1980 Punj and Har 70] thus, cannot be accepted."

9.10.The Learned Counsel for the 2nd Respondent points out the decision of the Hon'ble Supreme Court in Baikuntha Nath Das and Another V. Chief District Medical Officer, Baripada and Another 299 at special pages 315 & 316 wherein at paragraph Nos.33 & 34, it is observed as under:

"33. At this stage, we think it appropriate to append a note of clarification. What is normally required to be communicated is adverse remarks - not every remark, comment or observation made in the confidential rolls. There may be any number of remarks, observations and comments, which do not constitute adverse remarks, but are yet relevant for the purpose of F.R. 56(j) or a Rule corresponding to it. The object and purposes for which this power is to be exercised are well-stated in J.N. Sinha and other decisions referred supra.

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 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 interfere.

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

9.11.The Learned Counsel for the 2nd Respondent points out the decision of the Hon'ble Supreme Court in Union of India and Others V. Dulal Dutt, 1993(2) SCC 179 at special page 184, wherein at paragraph No.18, it is observed and held as under:

"An order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order. The Government had, before it, the report of the Review Committee yet it thought it fit of compulsorily retiring the respondent. The order cannot be called either malafide or arbitrary in law. Therefore, the Tribunal was not justified in allowing application under Section 19 of the Administrative Tribunals Act challenging the order of compulsory retirement."

9.12.The Learned Counsel for the 2nd Respondent cites the decision of the Hon'ble Supreme Court (Three Judges Bench) in State of Orissa and Others V. Ram Chandra Das, (1996) 5 Supreme Court Cases 331 at page 332, wherein it is observed as follows:

"The Government is empowered and would be entitled to compulsorily retire a government servant in public interest with a view to improve efficiency of the administration or to weed out the people who are of doubtful integrity or are corrupt but sufficient evidence was not available to take disciplinary action in accordance with the rules so as to inculcate a sense of discipline in the service. But the Government, before taking the decision to retire a government employee compulsorily from service, has to consider the entire record of the government servant including the latest reports. Compulsory retirement is not a punishment. The employee compulsorily retired is entitled to all the pensionary benefits."

In the instant case the adverse remarks made are after promotion. Even otherwise, the remarks form part of service record and character roll. The record of the pending enquiry on conduct also would be material. Though minor penalty may be imposed on given facts and circumstances for the act of misconduct, nevertheless it remains part of the record for overall consideration to retire a government servant compulsorily. The object always is public interest. The material question is whether the entire record of service was considered or not? It is not for the court / tribunal to see whether the decision of the Government to compulsorily retire the government servant is justified or not. It is for the Government to consider the same and take a proper decision in that behalf. What would be relevant is whether upon that state of record as a reasonable prudent man would reach that decision. Although the selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service."

9.13. The Learned Counsel for the 2nd Respondent relies on the decision of the Hon'ble Supreme Court in State of Punjab V. Gurdas Singh, (1998) 4 SCC 92 wherein it is held as follows:

"Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any uncommunicated adverse entries as well."

9.14. The Learned Counsel for the 2nd Respondent places reliance on the decision of the Hon'ble Supreme Court in State of Gujarat and Another V. Suryakant Chunilal Shah, (1999) 1 Supreme Court Cases 529 at special pages 530 & 531, wherein it is observed and held as follows:

"Public interest in relation to public administration means that only honest and efficient persons are to be retained in service while services of dishonest or corrupt or those who are almost dead wood, are to be dispensed with.

In order to find out whether any government servant has outlived his utility and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of overall performance of that government servant has to be taken.

Performance of a government servant is reflected in annual character roll entries and, therefore, one of the methods of discerning efficiency, honesty or integrity of a government servant is to look to his character roll entries for the whole tenure from inception to the date on which decision for his compulsory retirement is taken. If character roll is studded with adverse entries or overall categorisation of employee is poor and there is material also to cast doubts upon his integrity, such government servant cannot be said to be efficient. Efficiency is a bundle of sticks of personal assets, thickest of which is the stick of "integrity". If this is missing, whole bundle would disperse. A government servant has, therefore, to keep his bet right.

Purpose of adverse entries is primarily to forewarn a government servant to mend his ways and to improve his performance. Adverse entries are required to be communicated so that the government servant, to whom adverse entry is given, may have either opportunity to explain his conduct so as to show that adverse entry is wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry to improve his performance."

9.15. The Learned Counsel for the 2nd Respondent cites the decision of the Hon'ble Supreme Court in State of U.P. and Others V. Vijay Kumar Jain, (2002) 3 SCC 641, at special pages 648, 649, wherein at paragraph Nos.15 to 17, it is held as follows:

"15. The aforesaid decisions unmistakably lay down that the entire service record of a government servant could be considered by the Government while exercising the power under FR 56(c) of the Rules with emphasis on the later entries. FR 56(c) of the Rules read with Explanation (2), empowers the State government with an absolute right to retire an employee on attaining the age of 50 years. It cannot be disputed that the dead wood need to be removed to maintain efficiency in the service. Integrity of a government employee is foremost consideration in public service. If a conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the Government has an absolute right to compulsorily retire such an employee in public interest. The Government's right to compulsorily retire such an employee in public interest. The Government's right to compulsorily retire an employee in public interest. The Government's right to compulsorily retire an employee is a method to ensure efficiency in public service and while doing so the Government is entitled under Fundamental Rule 56 to take into account the entire service record, character roll or confidential report with emphasis on the later entries in the character roll of an employee. In fact, entire service record, character roll or confidential report furnishes the materials to the Screening committee or the State Government, as the case may be, to find out whether a government servant has outlived his utility in service. It is on consideration of totality of the materials with emphasis on the later entries in the character roll, the Government is expected to form its opinion whether an employee is to be compulsorily retired or not.

16. Withholding of integrity of a government employee is a serious matter. In the present case, what we find is that the integrity of the respondent was withheld by an order dated 13.6.1997 and the said entry in the character roll of the respondent was well within ten years of passing of the

order of compulsory retirement. During pendency of the writ petition in the High Court, the U.P. Services Tribunal on a claim petition filed by the respondent shifted the entry from 1997-98 to 1983-84. Shifting of the said entry to a different period or entry going beyond ten years of passing of the order of compulsory retirement does not mean that vigour and sting of the adverse entry is lost. Vigour or sting of an adverse entry is not wiped out, merely it is relatable to 11th or 12th year of passing of the order of compulsory retirement. The aforesaid adverse entry which could have been taken into account while considering the case of the respondent for his compulsory retirement from service, was duly considered by the State Government and the said single adverse entry in itself was sufficient to compulsorily retire the respondent from service. We are, therefore, of the view that entire service record or confidential report with emphasis on the later entries in the character roll can be taken into account by the Government while considering a case for compulsory retirement of a government servant.

17. It was not urged before us that the order compulsorily retiring the respondent was malafide or was not in the public interest, and in the absence of such a case, we do not find any infirmity in the order compulsorily retiring the respondent from service."

9.16. The Learned Counsel for the 2nd Respondent relies on the decision of the Hon'ble Supreme Court in Rajendra Singh Verma V. Lieutenant Governor [NCT of Delhi] and others, (2011) 10 SCC 1 at special pages 43, 44, 74 & 75, wherein at paragraph Nos.81 to 83 and 182 & 183, it is laid down as follows:

"81. Judicial service is not a service in the sense of an employment as is commonly understood. 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. 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 their utility.

82. As explained by this Court in Chanra Singh V. State of Rajasthan (2003) 6 SCC 545 the power of compulsory retirement can be exercised at any time and that the power under Article 235 in this regard is not in any manner circumscribed by any rule or order. What is explained in the said decision by this Court is that Article 235 of the Constitution of India enables the High Court to assess the performance of any judicial officer at any time with a view to discipline the High Court cannot be circumscribed by any rule or order.

83. Moreover, while upholding the orders of compulsory retirement of judicial officers who were working in the State of U.P., following weighty observations have been made by this Court in para 13 of the decision in Nawal Singh V. State of U.P. [2003] 8 SCC 117 [SCC P.130].

"13. It is to be reiterated that for keeping the stream of justice unpolluted, repeated scrutiny of service records of judicial officers after a specified age / completion of specified years of service provided under the Rules is a must by each and every High Court as the lower judiciary is the foundation of the judicial system. We hope that the High Courts would take appropriate steps regularly for weeding out the dead wood or the persons polluting the justice delivery system."

182. On consideration of the rival submissions, this Court finds that there is no manner of doubt that the nature of judicial service is such that the High Court cannot afford to suffer continuance in service of persons of doubtful integrity. Therefore, in High Court of Judicature of Bombay V. Shirishkumar Rangrao Patil [1997] 6 SCC 339 this Court emphasised that it is necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection.

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.,"

9.17. The Learned Counsel for the 2nd Respondent refers to the decision of the Hon'ble Supreme Court in Nand Kumar Verma V. State of Jharkhand and Others, (2012) 3 SCC 580 at special pages 587 to 589, wherein at paragraph Nos.28 to 40, it is observed and held as follows:

"28. We now proceed to consider the second order passed by the High Court for recommending the case of the appellant to the State Government to accept and issue appropriate notification to compulsorily retire the appellant from Judicial Service. It is now well settled that the object of compulsory retirement from service is to weed out the dead wood in order to maintain a high standard of efficiency and honesty and to keep the judicial service unpolluted. Keeping this object in view, the contention of the appellant has to be appreciated on the basis of the settled law on the subject of Compulsory retirement.

29. In Baikuntha Nath Das v. Chief District Medical Officer, (1992) 2 SCC 299, three Judge Bench of this Court has laid

down the principles regarding the Order of Compulsory retirement in public interest :

"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.

30. "28. In *Madan Mohan Choudhary v. State of Bihar*, (1999) 3 SCC 396, this Court was considering the order of compulsory retirement of the appellant, who was a Member of the Superior Judicial Service in the State of Bihar. On a writ petition filed by the appellant in the High Court, challenging his order of compulsory retirement by the Full Court of the High Court, the High Court on the judicial side refused to interfere and dismissed the petition. The appellant came in appeal before this Court. This Court found that while on various earlier occasions remarks were given by the High Court but there were no entries in the character roll of the appellant for the years 1991-92, 1992-93 and 1993-94. The entries for these years were recorded at one time simultaneously and the appellant was categorized as 'C' Grade officer. The date on which these entries were made was not indicated either in the original record or in the counter-affidavit filed by the respondent. These were communicated to the appellant on 29-11-1996 and were considered by the Full Court on 30-11-1996. It was clear that these entries were recorded at a stage when the Standing Committee had already made up its mind to compulsorily retire the appellant from service as it had directed the office on 6-11-1996 to put up a note for compulsory retirement of the appellant. This Court held that it was a case where there was no material on the basis of which an opinion could have been reasonably formed that it would be in the public interest to retire the appellant from service prematurely. This Court was of the opinion that the entries recorded "at one go" for three years,

namely, 1991-92, 1992-93 and 1993-94 could hardly have been taken into consideration. The Court then referred to its earlier decision in Registrar, High Court of Madras v. R. Rajiah, (1988) 3 SCC 211, where this Court said that the High Court in its administrative jurisdiction has the power to recommend compulsory retirement of the Member of the judicial service in accordance with the rules framed in that regard but it cannot act arbitrarily and there has to be material to come to a decision to compulsorily retire the officer. In that case it was also pointed out that the High Court while exercising its power of control over the subordinate judiciary is under a constitutional obligation to guide and protect judicial officers from being harassed or annoyed by trifling complaints relating to judicial orders so that the officers may discharge their duties honestly and independently; unconcerned by the ill-conceived or motivated complaints made by unscrupulous lawyers and litigants."

31. We are conscious of the fact that there is very limited scope of judicial review of an order of premature retirement from service. As observed by this Court in Rajiah's case 5 (1988) 3 SCC 211 that :

"21.....when the High Court takes the view that an order of compulsory retirement should be made against a member of the Judicial Service, the adequacy or sufficiency of such materials cannot be questioned, unless the materials are absolutely irrelevant to the purpose of compulsory retirement."

32. We also add that when an order of compulsory retirement is challenged in a court of law, the Court has the right to examine whether some ground or material germane to the issue exists or not. Although, the Court is not interested in the sufficiency of the material upon which the order of compulsory retirement rests.

33. This Court in High Court of Punjab & Haryana v. Ishwar Chand Jain, (1999) 4 SCC

579, has discussed the purpose, importance and effect of the remarks made during inspection which ultimately become the part of the ACR of the concerned Judicial officer. This Court has observed thus:

"32. Since late this Court is watching the spectre of either judicial officers or the High Courts coming to this Court when there is an order prematurely retiring a judicial officer. Under Article 235 of the Constitution the High Court exercises complete control over subordinate courts which include District Courts. Inspection of the subordinate courts is one of the most important functions which the High Court performs for control over the subordinate courts. The object of such inspection is for the purpose of assessment of the work performed by the Subordinate Judge, his capability, integrity and competency. Since Judges are human beings and also prone to all the human failings inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the working of the subordinate court, remedied. Inspection should act as a catalyst in inspiring Subordinate Judges to give the best results. They should feel a sense of achievement. They need encouragement. They work under great stress and man the courts while working under great discomfort and hardship. A satisfactory judicial system depends largely on the satisfactory functioning of courts at the grass-roots level. Remarks recorded by the Inspecting Judge are normally endorsed by the Full Court and become part of the annual confidential reports and are foundations on which the career of a judicial officer is made or marred. Inspection of a subordinate court is thus of vital importance. It has to be both effective and productive. It can be so only if it is well regulated and is workman-like. Inspection of subordinate courts is not a one-day or an hour or a few minutes' affair. It has to go on all the year round by monitoring the work of the court by the Inspecting Judge. A casual inspection can

hardly be beneficial to a judicial system. It does more harm than good."

34. It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the concerned authority but such satisfaction must be based on a valid material. It is permissible for the Courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based. In the present matter, what we see is that the High Court, while holding that the track record and service record of the appellant was unsatisfactory, has selectively taken into consideration the service record for certain years only while making extracts of those contents of the ACR's. There appears to be some discrepancy. We say so for the reason that the appellant has produced the copies of the ACR's which were obtained by him from the High Court under the Right to Information Act, 2005 and a comparison of these two would positively indicate that the High Court has not faithfully extracted the contents of the ACRs.

35. The High Court has taken the decision on the basis of selective service record which includes the summarized ACR's, as quoted in the impugned judgment, for the selected years. The ACR for the initial years: 1975-76 and 1976-77 remarks him as capable of improvement against quality of work, the ACR's for the years 1982-83, 1983-84 points that his work is unsatisfactory, the ACR's for the year 1984-85, 1987-88 remark his work performance as unsatisfactory with bad reputation and quarrelsome attitude, and the ACR for the later years: 1993-94 & 1994-95 refers to some private complaints and remark that his powers were divested by the High Court and the ACR's for the recent years: 1997-98 & 1998-99 points that no defect in judicial work but disposal of cases is poor. Whereas, the appellant furnished certain Service records which includes: the ACR recorded by

inspecting Judge in the year 1985 which evaluate the appellant as 'B'-Satisfactory against the entry "Net result", further the ACR prepared by the District and Sessions Judge, Samastipur for the year 1997-98 assessed him as an officer of average merit, maintaining good relationship with bar, staffs and colleagues but poor disposal, and the ACR prepared by the District and Sessions Judge, Muzaffarpur for the year 1998-99 assessed him as a good officer but poor disposal. However, his poor disposal during this period is justified up to certain extent in the background of his involvement in the continuous and unnecessary disciplinary proceedings which was based on the charges of granting of bail indiscriminately, even after, the fact that he had been exonerated of these charges long back in the year 1995 by the High Court at Patna.

36. The material on which the decision of the Compulsory retirement was based, as extracted by the High Court in the impugned judgment, and material furnished by the appellant would reflect that totality of relevant materials were not considered or completely ignored by the High Court. This leads to only one conclusion that the subjective satisfaction of the High Court was not based on the sufficient or relevant material. In this view of the matter, we cannot say that the service record of the appellant was unsatisfactory which would warrant premature retirement from service. Therefore, there was no justification to retire the appellant compulsorily from service.

37. In Swami Saran Saksena v. State of U.P., (1980) 1 SCC 12, this Court has quashed the order of Compulsory retirement of the appellant, therein, in the public interest, which was found to be in sharp contradiction with his recent service performance and record. This Court observed:

"3..... Ordinarily, the Court does not interfere with the judgment of the relevant authority on the point whether it is in the public interest to compulsorily retire a

government servant. And we have been even more reluctant to reach the conclusion we have, when the impugned order of compulsory retirement was made on the recommendation of the High Court itself. But on the material before us we are unable to reconcile the apparent contradiction that although for the purpose of crossing the second efficiency bar the appellant was considered to have worked with distinct ability and with integrity beyond question, yet within a few months thereafter he was found so unfit as to deserve compulsory retirement. The entries in between in the records pertaining to the appellant need to be examined and appraised in that context. There is no evidence to show that suddenly there was such deterioration in the quality of the appellant's work or integrity that he deserved to be compulsorily retired. For all these reasons, we are of opinion that the order of compulsory retirement should be quashed. The appellant will be deemed to have continued in service on the date of the impugned order."

38. Moreover, the District and Sessions Judge have the opportunity to watch the functioning of the appellant from close quarters, who have reported favourably regarding the appellant's overall performance except about his disposal, in the appellant's recent ACR for the year 1997-98 and 1998-99. In view of this, the greater importance is to be given to the opinion or remarks made by the immediate superior officer as to the functioning of the concerned judicial officer for the purpose of his compulsory retirement. The immediate superior is better placed to observe, analyse, scrutinize from close quarters and then, to comment upon his working, overall efficiency, and reputation.

39. In *Nawal Singh v. State of U.P.*, (2003) 8 SCC 117, this Court has observed thus:

12. ... In the present-day system, reliance is required to be placed on the opinion of the higher officer who had the

opportunity to watch the performance of the officer concerned from close quarters and formation of his opinion with regard to the overall reputation enjoyed by the officer concerned would be the basis.

40. In view of the above discussion, we are of the opinion that the High Court was not justified in sustaining the orders passed by the Full Court of the same High Court. Accordingly, we allow this appeal, set aside the orders passed by the High Court."

9.18. The Learned Counsel for the 2nd Respondent seeks in aid of the decision of the Hon'ble Supreme Court in *Rajasthan State Road Transport Corp. and Others V. Babu Lal Jangir*, AIR 2014 Supreme Court 142, wherein it is observed as under:

"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' has no application when 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 assessment for compulsory retirement has to be based on "entire service record". As such there is no question of not taking into consideration an earlier old adverse entries or record of the old period. However 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. If in a given case as against some very old adverse entries the immediate past record shows 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."

9.19. The Learned Counsel for the 2nd Respondent refers to the Order dated 06.06.2013 in W.P.No.25995 of 2011 [between

S.Nagarajan V. State of Tamil Nadu, represented by the Chief Secretary to Government, Public (Special A) Department, Fort ST. George and the Registrar General, High Court Buildings, Chennai], wherein at paragraph Nos.19 to 24, it is observed and held as follows:

"19 As far as the case in hand is concerned, the stand of the learned Senior Counsel appearing for the petitioner is that in the cadre of District Judge, no disciplinary action was initiated as against the petitioner, except in a case relating to theft of case properties and no adverse entries have been communicated to the petitioner and the petitioner had also reached the norms; as such, there cannot be any material to arrive at subjective satisfaction of the opinion to pass an order of compulsory retirement as against the petitioner.

20 But, even as per the above argument of the learned Senior Counsel appearing for the petitioner also, in the cadre of District Judge, with regard to theft of case properties, disciplinary action has been initiated as against the petitioner. Further, as per the stand in the counter affidavit filed by the second respondent, adverse entries were recorded and also informed to the petitioner and his efforts for getting the same expunged, did not end in success and even with regard to theft of the case properties, warning was administered to the petitioner. In addition to this, when the petitioner's case was under review, enquiry in respect of two complaints was in progress and the enquiry was conducted by the Vigilance Cell and some other complaints were also pending on the date of consideration of the petitioner's case. As such, the stand of the learned Senior Counsel appearing for the petitioner that in the cadre of District Judge, no disciplinary action was initiated as against the petitioner and he had not come to the adverse notice of the second respondent in any aspect necessitating to pass the impugned order, is totally devoid of merits. Besides, as per paragraph no.22 of the

judgment reported in (2010) 10 SCC 693, Pyare Mohan Lal vs. State of Jharkhand and Others, even a single adverse entry of integrity of a Government servant is sufficient to compulsorily retire him. Further, as per paragraph no.148 of the judgment reported in (2011) 10 SCC 1, Rajendra Singh Verma (dead) through LRs and Others vs. Lieutenant Governor (NCT of Delhi) and Others, even un-communicated adverse remarks can be taken note of while arriving at subjective satisfaction with regard to passing an order of compulsory retirement.

21 As far as the stand of the learned Senior Counsel appearing for the petitioner that though certain adverse entries have been recorded in the Annual Confidential Report of the petitioner, on his promotion to a higher post, all those entries will lose their significance and those adverse entries cannot be taken note of while considering the continuation of service beyond 55 years is concerned, it is quite pertinent to point out that at paragraph no.34(iv) of the judgment reported in (1992) 2 SCC 299, Baikuntha Nath Das and another vs. Chief District Medical Officer, Baripada and another, the Hon'ble Apex Court has categorically held as under:

"(iv) The Government 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 the performance during the later years."

Besides, at paragraph nos.21 and 22 of the judgment reported in (2010) 10 SCC 693, Pyare Mohan Lal vs. State of Jharkhand and Others, it has been categorically held by the Hon'ble Apex Court as under:

"21. However, a three-Judge Bench of this Court in State of Orissa v. Ram Chandra Das had taken a different view as it had been held therein that such entries still remain part of the record for overall consideration to retire a government servant compulsorily. The object always is public interest. Therefore, such entries do not

lose significance, even if the employee has subsequently been promoted. The Court held as under: (SCC pp. 333-34, para 7)

"7. ... Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note that compulsory retirement of the government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service after he attained the required length of service or qualified period of service for pension."

(emphasis added)

This judgment has been approved and followed by this Court in State of Gujarat v. Umedbhai M. Patel, emphasising that the "entire record" of the government servant is to be examined.

22. In Vijay Kumar Jain this Court held that the vigour or sting of an entry does not get wiped out, particularly, while considering the case of employee for giving him compulsory retirement, as it requires the examination of the entire service records, including character rolls and confidential reports. "Vigour or sting of an adverse entry is not wiped out", merely it relates to the remote past. There may be a single adverse entry of integrity which may be sufficient to compulsorily retire the government servant."

As far as the case of the petitioner is concerned, certainly, adverse entries have been recorded. But, the stand of the petitioner is that on his promotion to higher cadre, all those entries lose their significance. But, as per the above said judgment, adverse entries do not lose their

significance even if an employee has subsequently been promoted and such entries still remain part of the record for overall consideration to retire a government servant compulsorily. As such, there is no embargo in compulsorily retiring a Government servant merely because of the fact that he has been promoted after the adverse entries were made. Hence, the stand of the learned Senior Counsel appearing for the petitioner that on the petitioner's promotion to a higher post, adverse entries against him will lose their significance, does not have legs to stand.

22 The other stand of the learned Senior Counsel appearing for the petitioner is that based on un-communicated adverse entries, no decision can be taken and in the case of the petitioner, exactly, what has happened is that based on un-communicated report, such decision has been arrived at. But, in view of paragraph no.148 of the judgment reported in (2011) 10 SCC 1, Rajendra Singh Verma (dead) through LRs and Others vs. Lieutenant Governor (NCT of Delhi) and Others, even un-communicated adverse entries can be taken note of while arriving at subjective satisfaction as to whether to compulsorily retire a Government employee or not. Further, as rightly submitted by the learned Senior Counsel appearing for the second respondent, subjective satisfaction has to be arrived at, not only based on the Annual Confidential Report, but also, based on work done statement, quality of judgments, past service records, overall performance and Vigilance report. As far as the case of the petitioner is concerned, subjective satisfaction has been arrived at based on all these aspects only. Consequently, it cannot be held that the subjective satisfaction arrived at, is without any material or the opinion formed is perverse. That apart, it is to be noted that the petitioner had not raised the ground of mala fides also. As per the settled proposition, an order of compulsory retirement can be subjected to judicial scrutiny only if the

same has been passed based on mala fides or without any material or if it is arbitrary. As far as the case in hand is concerned, as stated above, the petitioner had not taken the plea of mala fides. However, a plea has been taken to the effect that without any material, the order of compulsory retirement has been passed. But, for the reasons discussed above, the said stand cannot be allowed to stand. When subjective satisfaction has been arrived at based on certain materials, it cannot be said to be arbitrary. In the absence of mala fides or lack of material or arbitrariness, as per the settled proposition, the Court cannot interfere with the order of compulsory retirement under Article 226 of the Constitution of India.

23 Moreover, even in the words of the Hon'ble Apex Court in the judgment reported in (2011) 10 SCC 1, *Rajendra Singh Verma (dead) through LRs and Others vs. Lieutenant Governor (NCT of Delhi) and Others* also, judicial service is not a service in the sense of an employment as is commonly understood; 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. Besides, as per the said judgment, 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 an evaluation is done by a committee of the Hon'ble Judges of the High Court, the Court cannot interfere with the same. As far as the case of the petitioner is concerned, based on materials, the Hon'ble Administrative Committee had arrived at subjective satisfaction in the meeting held on 10.12.2010 with regard to compulsorily retiring the petitioner and that has been approved by a majority of the Full Court of the High Court. As such, the stand of the petitioner that the order of compulsory retirement has been passed

without any material and without application of mind, has to fall to ground.

24 Furthermore, in the words of the Hon'ble Apex Court in the judgment reported in 1994 Supp. (3) SCC 593, State of Uttar Pradesh and another vs. Bihari Lal, if the general reputation of an employee is not good, though there may not be any tangible material against him, he may be given compulsory retirement in public interest and judicial review of such order is permissible only on limited grounds. At paragraph no.4 of the judgment referred to above, the Hon'ble Apex Court has further held that what is needed to be looked into is the bona fide decision taken in public interest to augment efficiency in public service. Under such circumstances, we do not find any merit in the argument of the learned Senior Counsel appearing for the petitioner. In addition to the aforesaid judgment, the Hon'ble Apex Court, in the judgment reported in (2011) 10 SCC 1, Rajendra Singh Verma (dead) through LRs and Others vs. Lieutenant Governor (NCT of Delhi) and Others also, had held that if the general reputation of an employee is not good, though there may not be any tangible material against him, he may be compulsorily retired in public interest and the relevant portion of the said judgment reads as under:

"192. . . . Sometimes, if the general reputation of an employee is not good though there may not be any tangible material against him, he may be compulsorily retired in public interest. The duty conferred on the appropriate authority to consider the question of continuance of a judicial officer beyond a particular age is an absolute one. If that authority bona fide forms an opinion that the integrity of a particular officer is doubtful, the correctness of that opinion cannot be challenged before courts. . . ."

But, as far as the case in hand is concerned, when the case of the petitioner was under review, even Vigilance enquiry was conducted. Under such circumstances, it

cannot be said that subjective satisfaction has been arrived at without any material or the subjective satisfaction arrived at is perverse or it is without due application of mind. When the decision to compulsorily retire the petitioner has been taken based on material and keeping in mind, the fact that the petitioner is a judicial officer and when as per Article 235 of the Constitution of India, at any time, an order of compulsory retirement can be passed and since the same is passed based on material and when the same has been approved by the majority of the Hon'ble Full Court, the grounds on which the impugned order of compulsory retirement is challenged, viz., lack of material and non-application of mind, cannot be allowed to stand."

9.20. The Learned Counsel for the 2nd Respondent draws the attention of this Court to the decision of the Hon'ble Supreme Court in Chennai Metropolitan Water Supply and Sewerage Board and Others V. T.T.Murali Babu, A.I.R. 2014 SC 1141, wherein at paragraph Nos.15 & 16, it is held as under:

"15. In State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc. [9] the Court observed that it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. It has been further stated therein that if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court

should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

10. Discussions:

Compulsory Retirement:

10.1. The term 'Compulsory Retirement' means retiring a person against his will. This right is to be exercised only when it is in 'public interest' to dispense with the further services of a civil servant, as per decision of the Hon'ble Supreme Court in The State of Bombay V. Saubhagchand M. Doshi reported in A.I.R. 1957 SC 892.

10.2. Furthermore, the 'Compulsory Retirement' means retiring a Government Servant after he had completed a fixed period of Employment, but before his age of superannuation, thus, if there are ample, sufficient, good and cogent reasons and all the more,

when the prescribed procedure under the Rules were followed. The 'Government' empowered to pass an order of 'Compulsory Retirement'. However, where the exercise of power in regard to any matter relating to the service of the Government Servant concerned is a mala fide one, the order cannot be sustained as per decision of the Hon'ble Supreme Court in S.Partap Singh V. State of Punjab reported in A.I.R. 1964 SC 72.

10.3. In the decision of the Hon'ble Supreme Court in State of U.P. and another V. Bihari Lal, 1994 Suppl. (3) SCC at page 593, it is held that 'Before the exercise of the power, the authority has to take into consideration the overall record even including some of the adverse remarks, though for technical reasons might be expunged on appeal or revision'.

10.4. Moreover, in the decision of the Hon'ble Supreme Court in Posts and Telegraphs Board and others V. C.S.N.Murthy, (1992) 2 SCC 317, it is held that an un-communicated Adverse Remarks, it cannot be taken into account at the time of passing the order of 'Compulsory Retirement'.

10.5. It is to be noted that the Principles of Natural Justice 'have no role to play' in the context of an order of Compulsory Retirement. However, one has to bear in mind that if an order of 'Compulsory Retirement' is passed in a mala fide manner or based on no evidence, or if it is perverse and an arbitrary one, the same can be interfered with.

10.6. Also that, in the decision of the Hon'ble Supreme Court in Rajendra Singh Verma (Dead) Through LRs. and others V. Lieutenant Governor (NCT of Delhi) and others reported in 2011 (10) SCC 1, it is held that '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 on merit selection and not on seniority'.

10.7. It is remembered that it is not necessary that 'an opportunity of being heard' before recording adverse entry should be afforded to the officer concerned, as per decision R.L.Butail V. Union of India, 1970 (2) SCC 876.

10.8. In this connection, it is not out of place for this Court to make a relevant mention that in the decision of the Hon'ble Supreme Court in Union of India V. Inderjit Rajput reported in 1990 (Supp) SCC 796 it is observed that 'Adverse record for a block of four years and several other years was taken note of and an order of compulsory retirement was passed and held that an opinion formed on such record is not subject to judicial interference merely on account of a solitary good entry for the year at the end of the said period'.

10.9. Added further, in the decision of the Hon'ble Supreme Court in H.G.Venkarachalah Setty V. Union of India and others reported in (1997) 11 SCC 366 at special page 367 & 368, wherein at paragraph 4, it is observed as follows:

"4. It has been further urged by Shri Sundaravardan that the order of compulsory retirement could not be passed on the basis of a solitary adverse entry contained in the annual confidential report because the earlier record of the appellant was clean. Merely because till his promotion to the post of Deputy Chief Mechanical Engineer on 20.11.1974, there was nothing adverse in the service record of the appellant, does not mean that the action for compulsory retirement of the appellant could not be taken after such promotion if it is found that after such promotion there has been deterioration in his performance and an adverse remark about his integrity has been made. The contention of Shri Sundaravardan that an order for compulsory retirement cannot be passed on the basis of a solitary adverse entry in the service record cannot be accepted. The question whether action for compulsory retirement should be taken on the basis of a solitary adverse entry has to be considered in the facts of each case. Having regard to the facts of the present case, it cannot be said that action for compulsory retirement could not be taken against the appellant."

10.10. Apart from that, it cannot be ignored that 'Compulsory Retirement' in public interest is neither 'punitive' nor 'stigmatory'.

10.11. It cannot be lost sight of that the term 'Compulsory Retirement' in the arena of service jurisprudence has two meanings. Ordinarily, in the disciplinary rules, Compulsory Retirement is one of the penalties imposed on a Deviant/Delinquent Government Servant /Employee based on a resultant finding on guilty being recorded in disciplinary proceedings. Only then, such a penalty involves stigma and cannot be imposed except by following the procedure enunciated under the specified rules or persistently and consistently with the Principles of Natural Justice in case for imposing such penalty, which is not occupied by any rules.

Voluntary Retirement:

10.12.The term 'Voluntary Retirement' is a condition of service, which is a creation of a statutory provision and comes into an effect only on acceptance by an Employer. As a matter of fact, no enforceable right accrued to the Employee to claim Simple Voluntary Retirement, as per decision of the Hon'ble Supreme Court in New India Assurance Company Limited V. Raghuvir Singh Narang, JT 2010 (3) SC 645.

10.13.It is an axiomatic principle in Law that unless an Employee is relieved of the duty after acceptance of 'Voluntary Retirement' or 'Resignation', jural relationship of an Employee and the Employer does not come to an end. It is to be mentioned that the proposal of an Employee when accepted by the Employer, an enforceable contract is concluded.

10.14.In regard to the difference between the 'Fundamental Rules' and the 'Pension Rules', it is to be pointed out that in respect of 'Fundamental Rules', they are on the basis of age, in the case of 'Pension Rules' they are on the basis of qualifying service for pensionary benefits.

10.15.In so far as the 'Voluntary Retirement' is concerned, it is the discretion of Management either to accept or reject keeping in view of larger interest of the Organisation. Besides this, the relationship of 'Master' and 'Servant' continues after the period specified in the notice till the acceptance of his communication.

10.16.One cannot brush aside the observations made in the decision of the Hon'ble Supreme Court in Dinesh Chandra Sangma V. State of Assam and others reported in A.I.R. 1978 SC 17 at special pages 19 & 20, wherein at paragraph 8, it is mentioned as under:

"8.As is well known Government servants hold office during the pleasure of the President or the Governor, as the case may be, under Article 310 of the Constitution. However, the pleasure doctrine under Article 310 is limited by Article 311 (2). It is clear that the services of a permanent Government servant cannot be terminated except in accordance with the rules made under Article 309 subject to Article 311(2) of the Constitution and the Fundamental Rights. It is also well-settled that even a temporary Government servant or a probationer cannot be dismissed or removed or reduced in rank except in accordance with Article 311(2). The above doctrine of

pleasure is invoked by the Government in the public interest after a Government servant attains the age of 50 years or has completed 25 years of service. This is constitutionally permissible as compulsory termination of service under F.R. 56(b) does not amount to removal or dismissal by way of punishment. While the Government reserves its right to compulsorily retire a Government servant, even against his wish, there is a corresponding right of the Government servant under F. R. 56(c) to voluntarily retire from service by giving the Government three months' notice in writing. There is no question of acceptance of the request for voluntary retirement by the Government when the Government servant exercises his right under F. R. 56(c). Mr. Niren De is therefore right in conceding this position."

10.17. Continuing further, this Court aptly points out the decision of the Hon'ble Supreme Court in H.P.M.C. V. Suman Behari Sharma, AIR 1996 SC 4353 wherein at paragraph 8, it is held as follows:

"8. Clause (2) of the Bye-law inter-alia provides for voluntary retirement from service of HPMC on completion of 25 years service or on attaining the age of 50 years whichever is earlier. The employee, however, has a right to make a request in that behalf and his request would become effective only if he is 'permitted' to retire. The words "may be.....permitted" at his request" clearly indicate that the said clause does not confer on the employee a right to retire on completion of either 25 years service or on attaining the age of 50 years. It confers on the employee a right to make a request to permit him to retire. Obviously, if request is not accepted and permission is not granted the employee will not be able to retire as desired by him. Para (5) of the Bye-law is in the nature of an exception to para (2) and permits the employee who has not completed 25 years service or has attained 50 years of age to seek retirement if he has completed 20 years satisfactory service. He can do so by giving three months' notice in writing. The contention of the learned

counsel for HPMC was that though Para 5 of the Bye-law relaxes the conditions prescribed by Para 5 of the Bye-law relaxes the conditions prescribed by Para 2, the relaxation is only with respect to the period of service and attainment of age of 50 years and it cannot be read to mean that the requirement of permission is dispensed with. On the other hand, the learned counsel for the respondent submitted that as Para 5 opens with the words "Notwithstanding the provision under para 2" and the words "may be permitted at his request" are absent that would mean that the employee has a right to retire after giving three months' notice and no acceptance of such a request is necessary. We cannot agree with the interpretation canvassed by learned counsel or the respondent. The Bye-law had to be read as a whole. Para 2 thereof confers a right on the employee to request for voluntary retirement on completion of 25 years service or on attaining the age of 50 years, but his desire would materialize only if he is permitted to retire and not otherwise. Ordinarily, in a matter like this an employee who has put in less number of years of service would not be on a better footing than the employee who has put in longer service. It could not have been the intention of the rule-making authority while framing para 5 of the Bye-law to confer on such an employee a better and a larger right to retire after giving three months' notice in writing. The words "seek retirement" in para 5 indicate that the right which is conferred by it is not the right to retire but a right to ask for retirement. The word "seek" implies a request by the employee and corresponding acceptance or permission by HPMC. Therefore, there cannot be automatic retirement or shaping of service relationship on expiry of three months period."

10.18. At the outset, in regard to the plea taken on behalf of the Petitioner was not issued with any charge memo and further that, had not faced any disciplinary proceedings or personal enquiry and therefore, the 'Decision to retire compulsorily is an arbitrary, capricious one', besides the same

being against the methodology to be followed in the matter of Fundamental Rules 56(2), it is to be pointed out that the Compulsory Retirement of the Petitioner does not amount to 'Dismissal or Removal of Service'. Also that, the 'Compulsory Retirement' of the Petitioner does not involved civil consequences and as such, the Government Servant is not required to be given an opportunity to show cause notice against his Compulsory Retirement, as per decision of the Hon'ble Supreme Court in E.Venkateswararao Naidu V. Union of India reported in A.I.R. 1973 SC 698.

10.19.As a matter of fact, only as a major penalty if a Compulsory Retirement is ordered, then, it amounts to removal from service within the meaning of Article 311 of the Constitution of India as per decision of the Hon'ble Supreme Court in Union of India V. Tulsiram Patel, (1985) 3 SCC 398.

10.20.In fact, a 'Compulsory Retirement' simpliciter, in accordance with the terms and conditions of service, does not amount to dismissal or removal or a reduction in rank under Article 311 of the Constitution of India or under the Service Rules because the Government servant does not lose the terminal benefits already earned by him, as per decision of the Hon'ble Supreme Court in Chief Justice of A.P. V. L.V.A. Dikshitulu, AIR 1979 SC 193.

10.21.In this connection, this Court pertinently points out that the object and purpose of premature of Compulsory Retirement of the Government Servant is to weed out the insufficiency, corrupt, deadwood or dishonest employees from the Government service, it is a well established right of the Government which it exercises in accordance with the Rules specified for the purpose, the purview and application of the rules in regard to the exercise of the right of the Government is absolute but subject to the provisions of the Constitution as per decision of the Hon'ble Supreme Court in Union of India V. M.E.Reddy reported in 1998 SC 563.

10.22.In the matter of 'Compulsory Retirement' not an entry, here and there, which is to be taken into account by the Government. However, the overall picture of the concerned officer during his long years of service is to be considered from the aspect of achieving higher standard of efficiency and the dedication was to be retained even after the officer had rendered the requisite number of years of service.

Conduct of a Judicial Officer:

11.It is to be pointed out that the prime requirement of a Judicial Officer's official and personal conduct is to be free from 'Impropriety'. Further, it must keep in tune with the

highest standard of propriety and probity. Even in Private life, a Judicial Officer/Judge is to follow the high standards or 'probity' and 'propriety' much higher than those deemed acceptable for others. To put it succinctly, a conduct of a Judicial Officer/Judge ought to be above the Homo-Sapiens in Society. In the words of Francis Bacon, 'Judges ought to be more Learned than witty, more revered than plausible and more advised than confident'.

12. It is to be remembered that duty to act judicially will, therefore, arise from the very narrow of the function intended to be performed. Also that, an administrative or quasi judicial must be free from arbitrariness, of course, arbitrariness vitiates decisions. Moreover, the abuse of discretionary powers, mala fides etc. can be assailed with necessary proof.

13. Under our Constitutional Scheme of Things, the Judiciary is empowered to examine and intervene only in cases where there is complete lack of reasons or complete absence of application of mind, as opined by this Court.

14. In so far as the word 'Malice' is concerned, it means 'Ill Will' 'Spite' or 'Malevolence' and this can be assailed on the footing of factual issues, the term 'Malice in Law' has a wider meaning viz., recklessness or wrongful intention and also a bad motive. Further, the exercise of discretion without just cause or excuse is malice, as per decision in the S.R.Venkataraman V. Union of India reported in AIR 1979 SC 49. However, 'Malice in Law' is a subjective attitude which is to be presumed from the attendant facts and circumstances of a given case. The proof of mala fide is to be supported by facts and a Court of Law can come to its own conclusion after scanning the facts pleaded by a party, as per decision Prabodh Sagar V. Punjab Electricity Board, (2000) 5 SCC 630.

15. It is to be noted that an Administrative Order/Executive Order passed by an Authority must be a reasoned/speaking order. It cannot be gainsaid that an 'unreasoned order' may be just and valid one from the point of view of the concerned authority who passes/passes the said order. But that order may not appear to be so from the mind set of an 'Affected/Aggrieved person'. Significantly, a reasoned order undoubtedly will have an 'Appearance of Justice'.

16. As a matter of fact, 'Mala fide' means want of 'Good Faith', 'Personal Bias', 'Grudge', 'Oblique' or 'Improper Motive' or 'Ulterior Purpose'. Moreover, the determination of the plea of 'Mala fide' relates to (a) whether there is a 'Personal Bias' or 'Oblique Motive'. In regard to an allegation of 'Mala fide', sufficient particulars are required or

otherwise, a Court of Law will not embark upon any enquiry in this regard, as per decision of the Hon'ble Supreme Court in E.P.Royappa V. State of Tamil Nadu reported in AIR 1974 SC 555.

Power of Judicial Review:

17.The Powers of Judicial Review are to be exercised to ensure that an individual receives a fair treatment and not to ensure that the decision which the authority reaches is necessarily correct in the eye of Law.

18.It is to be remembered that 'Judicial Review' is maintainable, among other things, on the grounds (i) the employer is an Authority under the State (ii) the action of such authorities should pass the test of Article 14 (iii) a right of an Employee to continue in employment under Article 21 of the Constitution of India is not to be taken away except in accordance with Law, as per decision of the Hon'ble Supreme Court in Bank of India V. O.P.Swaranakar, AIR 2003 SC 858.

19.It may not be out of place for this Court to make a significant mention that in the decision of the Hon'ble Supreme Court O.P.Gupta V. Union of India, AIR 1987 SC 2257, it is held that 'There is no presumption that the Government always act in a manner which is just and fair. Equally there is no presumption that administrative functions are always just and fair'.

20.At this stage, this Court worth recalls and recollects the decision in United States V. Martin Wanderlish, 342 US 98:96 L Ed 113 (1951), it is observed that 'Law has reached its finest moments when it has freed men from unlimited discretion of some ruler, some civil or military official, some bureaucrat ..., absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other 'inventions'.

Analysis:

21.In the Annual Confidential Report of the Petitioner for the period from 01.01.2002 to 31.12.2002 (while he was serving as Judicial Magistrate II, Dindigul), the Portfolio Judge, in respect of Serial No.IX - Reputation as to - (a) Honesty (b) Integrity (c) Impartiality, had recorded 'Not satisfactory' on 30.11.2003 and that the Hon'ble Chief Justice had endorsed as 'Seen' on 22.09.2004. In fact, the Administrative Judge had rejected the representation of the Petitioner dated 12.02.2004 to expunge the adverse remarks recorded against him, on 27.09.2004.

22.In fact, the Hon'ble Portfolio Judge, while dealing with the representation of the Petitioner dated 28.01.2011, had inter alia observed that '.. he came across about an unanimous

complaint wherein there was an allegation against the Petitioner and hence, he caused an enquiry through Vigilance Cell'. The Registrar (Vigilance) had forwarded a report of the Inspector of Police (Vigilance), Trichy dated 26.08.2004 which was self-explanatory [speaks of Malevolent conduct of the Petitioner] and further opined that there was no scope to expunge the adverse remarks and stated that the conduct of the Petitioner called for a serious action against him. When the Petitioner's matter was placed before the Full Court of this Court on 30.05.2005, the Administrative Committee had resolved to reject the representation of the Petitioner.

23. In so far as the period commencing from 01.01.2003 to 05.05.2003 pertaining to the Petitioner (while working as Judicial Magistrate, Dindigul), the Hon'ble Portfolio Judge, in respect of Serial No. IX - Reputation as to - (a) Honesty (b) Integrity (c) Impartiality, had recorded as 'Doubtful' and recorded as 'Poor' in respect of Overall View on 07.09.2005 which was seen by the then Hon'ble Chief Justice on 14.09.2005. Further, while making adverse remarks against the Petitioner for the aforesaid period, the Portfolio Judge had also proceeded to observe that in the past, there were certain proceedings pending and that was also directed to be looked into. The Petitioner submitted a Mercy Petition on 24.10.2005 to expunge the adverse remarks recorded against him for the period from 01.01.2003 to 05.05.2003, which was rejected on 12.02.2006.

24. For the period from 01.01.2004 to 31.12.2004 relating to the Petitioner for Serial No. IX - Reputation as to - (a) Honesty (b) Integrity (c) Impartiality, the Hon'ble Portfolio Judge had recorded as 'Poor'. In respect of Conduct and Dignity (a) Inside Court and Outside Court, the same was recorded as 'Poor' by the Hon'ble Portfolio Judge on 28.08.2006 and further that, the second Portfolio Judge had affixed their signature. Moreover, the Hon'ble Chief Justice had observed 'Seen'. Further, the Petitioner addressed a letter on 29.09.2006 to the Registrar General of this Court seeking to expunge the adverse remarks and the Hon'ble Portfolio Judge on 08.04.2007, in the light of the request of the Registrar (Vigilance), had observed that there was no scope to expunge the remarks which was endorsed by the then Hon'ble Chief Justice on 10.10.2007.

25. In regard to the period from 01.01.2006 to 30.04.2006 the Hon'ble Portfolio Judge as regards the 'Conduct and Dignity and Outside Court' recorded as 'Not Satisfactory' and in respect of the Reputation as to - (a) Honesty (b) Integrity (c) Impartiality recorded as 'Not Satisfactory' on 20.07.2007 which was signed by the then Chief Justice on 24.07.2007. The Petitioner addressed a letter dated 05.09.2007 to the Registrar General to expunge the remarks and on 08.10.2007 the Hon'ble Portfolio Judge had

observed that since the Officer wanted a personal hearing, he may be asked to meet, after getting date and time fixed with the Personal Assistant. The Officer was informed to appear before the Portfolio Judge at his residence at Madurai Bench on 08.02.2007 at 10.00 a.m. without fail. Further, the Portfolio Judge had orally directed the Office of the Registry to circulate the Petitioner's file at the time of case Review under F.R.56(2). His representation was rejected on 01.04.2009.

26.As a matter of fact, the Petitioner, with reference to his explanation (for the complaint dated 07.02.2002 received from one D.Manoharan of Nilakottai Taluk, Dindigul District against him), was cautioned that in future he should study the entire records more carefully before disposing of the matter and in respect of R.O.C.No.114/2006/VC, 179/2006/VC, 167/2006/VC, the Administrative Committee had minuted as 'Officer Warned, Dropped further Action'.

27.One has to bear in mind an important fact that the impugned order of Compulsory Retirement relating to the Petitioner in G.O.(2D)No.310, Home (Courts-I) Department, dated 05.09.2011 speaks of 'the cases of Judicial Officers (including the case of the Petitioner) Civil Judge (Senior Division) of the Tamil Nadu State Judicial Service which are ripe for 'Review' under F.R.56(2) during the month of May 2009 were placed before the Hon'ble Administrative Committee of the High Court and that the Hon'ble Administrative Committee of the High Court in its Meeting held on 23.04.2009 had considered and resolved to compulsorily retire the Petitioner. In fact, the impugned order dated 05.09.2011 also points out that the Petitioner's matter was placed before the Hon'ble Full Court Meeting that took place on 29.04.2009 and that the Hon'ble Full Court had deferred the matter and resolved to take up the matter after the decision on the Petitioner's representation to expunge the remarks for the period from 01.01.2004 to 31.12.2004 and for the period from 01.01.2006 to 30.04.2006. Later, the representation of the Petitioner was considered and rejected and that the matter was placed before the Full Court in the meeting that took place on 11.03.2010 and the Hon'ble Full Court had resolved to approve the minutes of the Meeting of the Administrative Committee that took place on 29.04.2009 and to retire the Petitioner compulsorily under F.R.56(2) on completion of the age of 50 years, in public interest. Furthermore, the 2nd Respondent/Registrar General of High Court had requested the Government that the Petitioner, functioning as IV Assistant Judge, City Civil Court, Chennai may be compulsorily retired from service under F.R.56(2) in public interest.

28.To put it precisely, the Governor of Tamil Nadu, after carefully and independently examining the case with the Review

Report and the Minutes of the Meeting of the Hon'ble Administrative Committee of the High Court, Minutes of the meeting of the Hon'ble Full Court of the High Court and all other relevant material and also accepted the recommendation of the High Court, had passed the order of Compulsory Retirement of the Petitioner from service in public interest and also directed three months pay and allowances be paid to the Petitioner in lieu of three months notice.

29. A careful scrutiny of the aforesaid ingredients of G.O. (2D) No. 310, Home (Courts-I) Department, dated 05.09.2011, whereby and whereunder, the Compulsory Retirement of the Petitioner was ordered, indicates that there was no charge or imputation framed against the Petitioner. Therefore, the impugned Order of Compulsory Retirement dated 05.09.2011 in G.O. (2D) No. 310, Home (Courts-I) Department, in respect of the Petitioner, in public interest under Rule 56(2) of the Fundamental Rules, cannot be characterised as an order of punishment in Law, in the considered opinion of this Court.

30. In the present case, the overall performance of the Petitioner was assessed on the basis of entire service records including his Annual Confidential Reports, Work Done Statements, Vigilance Reports and the subjective opinion was arrived at by the Administrative Committee and later by the Hon'ble Full Court.

31. Be it noted that by virtue of the Order of Compulsory Retirement dated 05.09.2011 (vide G.O. (2D) No. 310] relating to the Petitioner, there is no loss of retiral benefits nor the order is a punishment. In fact, the opinion forming the basis of the order for Compulsory Retirement and public interest is arrived at bona fide and as such, the said opinion cannot be interfered with, as opined by this Court. Moreover, the impugned order of Compulsory Retirement dated 05.09.2011 passed by the 1st Respondent is not a mala fide one, based on materials or collateral reasons.

32. To put it succinctly, in the present case relating to the Petitioner, there are good and sufficient reasons and that the prescribed procedure and the Rules were followed and accordingly, the 1st Respondent/State Government issued the order of Compulsory Retirement upon the Petitioner. In fact, the exercise of right by the 1st Respondent/Government of Tamil Nadu ordering the Compulsory Retirement of the Petitioner vide G.O. (2D) No. 310, Home (Courts-I) Department, dated 05.09.2011 is an absolute one. Further, to secure efficiency in public service and to preserve honesty and integrity among the serving Judicial Officers, the inefficient/deadwood or dishonest person can be retired compulsorily.

33.As far as the present case is concerned, the Petitioner was compulsorily retired under F.R.56(2), by means of an order dated 05.09.2011 passed by the 1st Respondent/Government, after considering the Petitioner's case based on sufficient materials and on good reasons. In Compulsory Retirement, no stigma or implication on misbehaviour is intended and punishment is not the objective. That apart, when the performance of an Employee is insufficient or his service is unsatisfactory, it is detrimental or prejudicial to the interest of the Institution and is of no utility to an Employer, an order of Compulsory Retirement can be resorted to.

34.In the instant case on hand, even though the Petitioner has taken a plea that he was not issued with any charge memo and as such, the decision to retire him compulsorily is an arbitrary, capricious one, this Court is of the considered view that the overall performance of the Petitioner was assessed on the basis of his entire carrier/service records [including the Annual Confidential Reports, Work Done Statements, vigilance Reports] and that the Administrative Committee at the initial stage and later on the Hon'ble Full Court arrived at a conclusion to retire the Petitioner compulsorily in 'public interest'. Apart from that, all the adverse remarks entered into the Annual Confidential Reports were duly communicated to the Petitioner and ultimately, the 1st Respondent had passed the order of Compulsory Retirement of the Petitioner dated 05.09.2011 through G.O.(2D)No.310, Home (Courts-I) Department, which cannot be termed as an arbitrary, capricious and mala fide one.

35.Even the Petitioner's request seeking to review the order of Compulsory Retirement (by way of his Review Petition dated 27.11.2011 addressed to the Government to review of the order and to reinstate him into service with all attendant benefits) issued on 01.11.2011, was placed before the Administrative Committee Meeting on 05.09.2013 and after discussion, the matter was directed to be placed before the Full Court for its consideration and the Full Court on 22.09.2013 directed the Registry to place before the Full Court at its next meeting all relevant particulars pertaining to the Review of the Petitioner including Work Done Statement, Annual Confidential Reports, Vigilance particulars, representation made by the officer to expunge the adverse remarks etc. and when the particulars were placed before the Full Court in the Meeting that took place on 08.12.2013, it was resolved to reject the Petitioner's request seeking to review the order of Compulsory Retirement. In fact, the decision of the Hon'ble Full Court to reject the request of the Petitioner seeking to review the order of the Compulsory Retirement issued on 01.11.2011 was communicated to the 1st Respondent/State Government on

20.12.2013. The 1st Respondent/ Government had issued orders rejecting the Review Petition under G.O.Ms.No.219, Home (Courts-I) Department, dated 06.03.2014, which was also informed to the Petitioner on 11.03.2014.

36.It is to be remembered that the Petitioner was not issued with any charge memo and had not faced with any disciplinary proceedings. Furthermore, no personal enquiry was conducted against him, he was only ordered to be retired as per G.O.(2D) No.310, Home (Courts-I) Department, dated 05.09.2011 passed by the 1st Respondent/Principal Secretary to Government based on sufficient materials and for good reasons. Therefore, the said order of Compulsory punishment imposed upon the Petitioner is neither an order of removal from service nor an order of dismissal from service. Furthermore, the Compulsory Retirement of the Petitioner was based mainly on resting upon assessment being made on his whole service records [including Annual Confidential Reports, Work Done Statements, Vigilance Reports, character role etc.] and as such, the said order, in stricto sense of the term, is not a punishment, yet, it is legally tenable one.

37.Coming to the aspect of Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, Rule 8(vi) speaks of 'Compulsory Retirement' as a major penalty. However, Explanation II to Rule 8(vi) which refers to 'Compulsory Retirement of a Government Servant in accordance with the provisions relating to superannuation or retirement' and points out that the same shall not amount to a penalty.

38.As regards the 'Estoppel' is concerned, it is a complete legal notion involving the statement to be acted upon, action on the faith of it and resulting detriment to the actor as per decision in Canada and Dominion Sugar Co. Ltd. V. Canadian National (West Indies) Steamships, Ltd., A.I.R. (34) 1947 Privy Council 40. Further, during the course of litigation a party is not ordinarily permitted to assume inconsistent and contradictory position and this is called 'Judicial Estoppel'. Apart from that, the plea of Waiver or 'Approbation' and 'Reprobation' lies at the root of conduct productive of change of activation and this principle is quite similar to rule of constructive res judicata as per Explanation IV of Section 11 C.P.C.

39.In regard to the filing of the present Writ Petition by the Writ Petitioner is concerned, it is to be pointed out by this Court that the Petitioner has come out with a plea that the impugned order of Compulsory Retirement passed by the 1st Respondent/Government in G.O.(2D)No.310, Home (Courts-I) Department, dated 05.09.2011 is an arbitrary, unreasonable and

based on non-application of mind and that the Petitioner has pleaded in the Writ Petition that the Respondents are treated the Compulsory Retirement of the Petitioner only is a punishment measure before and after the issuance of the impugned order of Compulsory Retirement dated 05.09.2011 and further that, their approach is not proper etc., this Court is of the considered view that the filing of the present Writ Petition by the Petitioner based on 'Judicial Review' cannot be thrown out at the threshold, because of the reason that the grounds raised in the Writ Petition require detailed consideration/rumination in the hands of this Court.

40. Further, in the present case, the Petitioner in his Writ Petition has taken a plea that the impugned order of Compulsory Retirement was passed based on total non-application of mind, on account of mala fides, arbitrariness and based on no materials. Also that, the Petitioner has taken a stand in the Writ Petition that irrelevant materials were taken into consideration and further that, the facts were not appreciated in a correct manner. Viewed in that perspective, even though the Petitioner, after his order of Compulsory Retirement dated 05.09.2011, had received the benefits and is now receiving his pension, yet, in the considered opinion of this Court, the present Writ Petition filed by him is maintainable seeking Judicial Review of the order dated 05.09.2011 passed by the 1st Respondent/Government compulsorily retiring him, of course, based on the recommendation of the High Court. As such, the plea of 'Estoppel' or 'Waiver' will not apply in the present case.

41. Dealing with the issue pertaining to the Petitioner that he furnished an application dated 28.01.2011 seeking Voluntary Retirement under F.R.56(3) through proper channel and that no orders were passed within a period of three months period from the date of receipt of the notice by the Appointing Authority and therefore, he must be deemed to have retired as per clause (f) of F.R.56(3), it is to be pointed out that well before his application dated 28.01.2011 seeking Voluntary Retirement from service, the Administrative Committee of this Court on 23.04.2009 had decided to retire the Petitioner compulsorily from service; that the Hon'ble Full Court on 29.04.2009 decided to defer the decision of the Administrative Committee till the disposal of the Petitioner's representation against adverse remarks, in the meanwhile, the Petitioner was accorded ACP scale of pay and on 18.01.2010, the Petitioner's representation against adverse remarks was rejected by the High Court with an observation 'Perused and Refused' and ultimately, on 11.03.2010 the recommendation for Compulsory Retirement of the Petitioner by Administrative Committee dated 23.04.2009 was placed before the Full Court of High Court and the Minutes of the Administrative Committee were approved.

42. Therefore, it is crystalline clear that when orders were awaited by the 2nd Respondent from the Government regarding Compulsory Retirement of the Petitioner, he had opted to send a letter seeking for Voluntary Retirement obviously with a view to get over the decision arrived at by the Administrative Committee of this Court and later on by the Hon'ble Full Court. Even though there is no express time limit specified under the Fundamental Rules, if Government Servant/Employee to submit a Voluntary Retirement Application especially when the concerned authority had taken a decision to retire the said Government Servant/Employee compulsorily, yet, in the present case, the Petitioner's Application dated 28.01.2011 seeking Voluntary Retirement is to set at naught the decision taken by the Administrative Committee on 23.04.2009 recommending the Compulsory Retirement of the Petitioner and later on the same being approved by the Full Court on 11.03.2010.

43. Therefore, the projection of Application dated 28.01.2011 by the Petitioner seeking to retire voluntarily from service is nothing but a ruse to get over the predicament that he was in viz., when the orders were awaited from the 1st Respondent/Government regarding his Compulsory Retirement. Furthermore, on Petitioner's application dated 28.01.2011 seeking Voluntary Retirement, no positive orders relieving the Petitioner from duty was passed by the Competent Authority/Government. Therefore, the jural relationship of an Employee and Employer between the Petitioner had not come to an end. In fact, although 'Voluntary Retirement' is a condition of service it comes into operative play only on acceptance by an Employer and in this regard, no enforceable right accrues to an Employee. In the present case, the 2nd Respondent had not relieved the Petitioner on the duty. Also that, the 1st Respondent/ Government had not passed orders relieving the Petitioner of the duty after accepting his voluntary resignation.

44. In short, notwithstanding the fact that the Petitioner was not relieved of the duty because of the reason that no orders were passed on his application seeking Voluntary Retirement from service, yet, the non passing of the order is not fatal and the Petitioner cannot seek umbrage under the deeming proviso of Section 56(3) of the Fundamental Rules especially when he had submitted his application dated 28.01.2011 seeking to retire voluntarily from service long after a decision taken by the Administrative Committee of this Court dated 23.04.2009 recommending his case for Compulsory Retirement which was ratified by the Hon'ble Full Court on 11.03.2010 and apart from that, when the process evaluation for his Compulsory Retirement was completed and was only awaiting the nod of the Government in this regard.

45. In regard to the plea taken on behalf of the Petitioner that the procedure adopted for recording Annual Confidential Reports was in violation of the Tamil Nadu State Judicial Service (Confidential Records) Rules, 1995 and further that, there was no material either to form basis or to justify the entries of adverse remarks, it is to be pointed out that Article 235 of the Constitution of India confers tremendous powers of the High Court for administrating its subordinate Courts, as per the decision Madan Mohan Choudhary V. State of Bihar and others, A.I.R. 1999 SC 1018.

46. It cannot be gainsaid that the Constitution of India vests in the High Court administrative, judicial and disciplinary control over members of the judicial service as per decision of the Hon'ble Supreme Court in State of U.P. V. Batuk Deo Pati Tripathi reported in (1978) 2 SCC 102 (Para 12). Moreover, it is the duty of the High Court to maintain purity in subordinate judiciary.

47. It is to be mentioned that the Constitution of India has recognised the internal Administration of High Court and no other person except the Hon'ble Chief Justice should have domain. The High Court to run its administrative business of the Court have framed rules and there are Administrative Committees and Inspecting Judges in the High Court. Really speaking, the power to make such entries which will have the potential for shaping the career of a subordinate officer casts an obligation on the High Court to keep a watch and vigil over the performance of the members of the subordinate judiciary. Undoubtedly, the control of the High Court is 'comprehensive', 'exclusive' and 'effective' and it is to subserve the basic feature of the Constitution viz., Independence of Judiciary, as per decision Registrar (Admn.) High Court of Orissa V. Sisir Kanta Satapathy reported in A.I.R. 1999 SC 3265.

48. In regard to the administrative matters coming within Article 235 of the Constitution of India, the same cannot be exercised by the entire body of Judges sitting together, without affecting their judicial work. As a matter of fact, there is nothing wrong, if in exercise of High Court's Rule-Making Power, the High Court commits to a 'Committee of Judges' to consider and determine the administrative matters, which cannot be construed as a 'Delegation' of functions. Furthermore, the recommendations made by such Committee to the Government will be deemed to be a recommendation of the High Court and will be binding upon the member of the subordinate Judiciary, who may be affected by such recommendation, as per decision State of U.P. V. Batuk Deo Pati Tripathi, (1978) 2 SCC 102 (paras 15-18).

49.Indeed, definition 2(1) of the Tamil Nadu State Judicial Service (Confidential Records) Rules, 1995 enjoins as under:

"(1)"Administrative Judge" means a Judge of the High Court of judicature at Madras in charge of the administration of a District or Districts or the Metropolitan Area of Madras."

50.Moreover, Rule 2(2) of the Tamil Nadu State Judicial Service (Confidential Records) Rules, 1995 defines of "Chief Justice" meaning the Chief Justice of the High Court of Judicature at Madras. Rule 2(5) of the Rules, 1995 enjoins that "Member of the Tamil Nadu State Judicial Service" meaning a member of the Judicial Service of the State of Tamil Nadu consisting exclusively of persons intended to fill the post of District Judge and other Civil Judicial Post inferior to the post of District Judge, including those who are posted to work exclusively as Magistrates or appointed to any equivalent post on deputation or on other duty.

51.It is to be pointed out that Rule 3 of the Tamil Nadu State Judicial Service (Confidential Records) Rules, 1995 deals with "Confidential Record" in and by which, Rule 3(1) and (2) mentions as under:

(1)In respect of every member of the Tamil Nadu State Judicial Service, an annual Confidential Record shall be recorded in Form 'B'.

(2)The period for the purpose of recording annual Confidential Record shall be the year ending the 31st December:

Provided that in respect of a probationer, until he is confirmed or satisfactory completion of probation is declared a Confidential Record shall be prepared for every period of four months of Service:

Provided further that in respect of a member of the Tamil Nadu State Judicial Service, who has worked for more than three months in more than one District in any year, a Confidential Record for each period shall be prepared."

52.Apart from that, Rule 5 of the Tamil Nadu State Judicial Service (Confidential Records) Rules, 1995 speaks of 'Preparation and transmission of records in respect of members of the Tamil Nadu State Judicial Service other than District and Sessions Judge' which runs as under:

"(1)(a)The Confidential Record of every member of the Tamil Nadu State Judicial

Service other than District Judge or Additional District Judge or Principal City Civil Judge or Additional City Civil Judge of Chief Judge, Court of Small Causes or Chief Metropolitan Magistrate or a Presiding Officer of a Labour Court or Tribunal, working in a District or Metropolitan Area of Madras shall be prepared by the District Judge.

(b) The record, comprising of both Forms A and B shall be prepared and submitted to the High Court before the end of January of the year.

(c) The record shall thereafter be placed before the Administrative Judge who shall record his opinion.

(d) The record shall finally be placed before the Chief Justice who shall record his remarks.

(2) (a) When a member of the Tamil Nadu State Judicial Service is transferred within three months, after the commencement of the year to any other District, the District Judge of the District to which the member is transferred shall prepare the Confidential Record of the member for the year.

(b) If a member of the Tamil Nadu State Judicial Service has worked for more than three months in more than one District during a year all the District Judges concerned shall prepare and submit a Confidential Record in respect of such member covering such period in the same manner as prescribed in sub-rule(1).

(3) (a) Where a District Judge of a District retires during a year, he shall, before relinquishing his office, prepare and submit Confidential Records in respect of such members who have worked under his control for more than three months in that year in the same manner as prescribed in sub-rule(1).

(b) Where a member of the Tamil Nadu State Judicial Service retires during the year, the District Judge under whom he has worked for more than three months in that year, shall prepare and submit a Confidential Record in respect of such member covering such period in the same manner as prescribed in sub-rule(1)."

53.Also, in terms of Rule 4(2) of the Tamil Nadu State Judicial Service (Confidential Records) Rules, 1995, 'Every District Judge or Additional District Judge or Principal City Civil Judge or Additional City Civil Judge or Chief Judge, Court of Small Causes or Chief Metropolitan Magistrate or a Presiding Officer of a Labour Court or Tribunal shall submit a statement in Form 'A' so as to reach the High Court before the 10th January of the succeeding year covering information upto the 31st December of the preceding year.'

54.Further, Rule 6(4) of the Tamil Nadu State Judicial Service (Confidential Records) Rules, 1995 says that 'the confidential Record prepared by the Administrative Judge or any Judge under this rule shall be placed before the Chief Justice, who shall record his remarks'.

55.Furthermore, Rule 7 of the Rules deals with 'Communication of a adverse remarks',- All adverse remarks in a Confidential Record, annual or special made by the District Judge and not dissented from by the Administrative Judge or the Chief Judge and every adverse remarks made by the Administrative Judge or a Judge nominated by the Chief Justice and not dissented from by the Chief Justice, shall be communicated by the Registrar, High Court, Madras or any other officer authorised in this behalf by the Chief Justice to the member of the Tamil Nadu State Judicial Service concerned within three months from the date on which the Confidential Record is completed. Further, Rule 7(2) points out that the fact of communication of adverse remarks shall be recorded in the Confidential Record.

56.In fact, Rule 8 says that 'Representation against adverse remarks'.- (1) Every member of the Tamil Nadu State Judicial Service to whom the adverse remarks in a Confidential Record are communicated shall, within six weeks from the date of receipt by him of such communication, submit his representation, if any, against the said adverse remarks to the High Court and the same shall be placed immediately thereafter before the Administrative Judge or the Judge nominated by the Chief Justice or the Chief Justice, who had made or approved the adverse remarks, as the case may be, who may pass such orders are passed by the Administrative Judge or the Judge nominated by the Chief Justice, the same shall be placed before the Chief Justice for final orders. Also that, Rule 8(2), the decision taken on such representation shall be communicated to the member of the Tamil Nadu State Judicial Service concerned.

57.Even though a plea is put forth on the side of the Petitioner that there was no material either to form the basis

for the adverse remarks so recorded against the Petitioner or to justify the entries of adverse remarks, for the period from 01.01.2002 to 31.12.2002, from 01.01.2003 to 05.05.2003, from 01.01.2004 to 31.12.2004 and 01.01.2006 to 30.04.2006, it is to be pointed out that they are all based on the subjective opinion of the Hon'ble concerned Administrative Judge of the High Court, which was later on approved by the Hon'ble Chief Justice and communicated to the Petitioner. As such, a contra plea taken on behalf of the Petitioner that there was no material either to form basis or to justify the entries to the adverse remarks, is not accepted by this Court.

58. In so far as the Petitioner is concerned, in R.O.C. No.1/2005-B2 and R.O.C.No.1/2007-B2 dated 18.01.2010, the Petitioner's representations dated 05.09.2007, 23.11.2007 and 28.01.2011 praying for expunging the remarks made against him were considered by the High Court and this Court had perused the same and refused, which is a cryptic one, yet, the same cannot be taken advantage of by the Petitioner. Certainly, if the High Court had passed a detailed speaking order in the subject matter in issue, then, it would have been desirable and palatable one. Furthermore, the adverse remarks recorded against the Petitioner for certain periods as aforesaid and when the orders passed by the High Court based on his representations had become final and in the absence of the same being challenged, the Petitioner cannot find fault with the order of Compulsory Retirement dated 05.09.2011 passed against him by the 1st Respondent/Government.

59. In regard to the averment made by the Petitioner in his Writ Petition that the Learned Judge of this Court, who had recorded repeated entries of adverse remarks in the Annual Confidential Reports of the Petitioner, had taken part in the 'Decision Making Process' and also had participated in the Full Court Meeting held on 29.04.2009 and 11.03.2010 and therefore, the decision of the Administrative Committee to retire the Petitioner compulsorily is bad in Law, cannot be countenanced, because of the fact that the Administrative Committee Members, in unison, had resolved in the Meeting on 11.03.2010 and after due deliberation, had taken a decision to retire the Petitioner compulsorily based on sufficient materials on record.

60. One cannot brush aside an important fact that the Petitioner was served with the order of Compulsory Retirement on 01.11.2011, he had not assailed the same at the earliest point of time before this Court, but had filed the Review Petition dated 27.11.2011 addressed to the 1st Respondent/Government. Only based on the subjective satisfaction/opinion arrived at by the Hon'ble Judges of the Administrative Committee of this Court on 23.04.2009 and later the Judges of the Hon'ble Full Court, by their collective wisdom, while approving the Minutes of the

Administrative Committee Meeting, had permitted the Judicial Officer to retire compulsorily under F.R.56(2) on completion of the age of 50 years in public interest. For taking a decision under F.R.56(2), it is not necessary for the concerned Authority to go into the aspects of the concerned Officer whether he is fit enough or otherwise to continue in service.

61.As a matter of fact, the Petitioner, based on the order of Compulsory Retirement dated 05.09.2011, pursued his pension proposal and further that, the 2nd Respondent on 17.04.2012 had forwarded his request to the Principal Accountant General for authorising pension and other terminal benefits. He not only accepted his DCRG sum of Rs.6,06,848/- on 27.06.2012. But, in fact, the Principal Accountant General authorised his pension on 29.06.2012. He also received the difference sum in regard to pay and allowances in lieu of three months notice on 28.11.2012 and also addressed a letter to the Principal Accountant General which was forwarded by the 2nd Respondent on 10.07.2012 where he had opted for 50% commutation and ultimately, the Accountant General through letter dated 26.02.2013 issued authorisation for commuted pension amounting to Rs.1,05,215/- to the District Treasury Officer, Theni for making payment to the Petitioner. In short, the Petitioner, as on date, is a pensioner, receiving his pensionary benefits. Also that, the Review Petition of the Petitioner was rejected by the Government on 06.03.2014.

62.In short, the Petitioner cannot take advantage of the reply furnished by the Registrar General of High Court (as an Appellate Authority under R.T.I. Act) in R.O.C.No.2869/2012/RTI dated 04.05.2013 wherein it was stated that 'No adverse remarks were recorded by the District Judges concerned in respect of the Applicant on his Annual Confidential Reports during the periods from 01.01.2002 to 31.12.2002, from 01.10.2003 to 05.05.2003, from 01.01.2004 to 31.12.2004 and 01.01.2006 to 30.04.2006', because of the reason that in regard to the matter relating to the Compulsory Retirement of the Petitioner, the whole service records [including ACRs, Work Done Statements, Vigilance Reports] were taken into consideration by the Hon'ble High Court. Therefore, the contra plea taken on behalf of the Petitioner that the adverse remarks alone had formed the basis for the impugned order of Compulsory Retirement is an incorrect one. Also, one has to keep in mind that except the file in R.O.C.Nos.114/2006/VC, 179/2006/VC, 167/2006/VC, relating to the Petitioner, other files for the period from 1989 to 2007 were destroyed as per the order of the Hon'ble Chief Justice [vide information furnished by the Registrar General, High Court, Madras/Appellate Authority in R.O.C.No.2869/2012/RTI dated 04.05.2013].

63.The Petitioner has filed the present Writ Petition before this Court on 03.04.2014 nearly after a lapse of 2 years and 7 months from the date of his Compulsory Retirement from service i.e. on 05.09.2011. In the order of Compulsory Retirement, a Court of Law is not supposed to go into the adequacy or sufficiency of material on which the impugned order rests. In the present case, the Administrative Committee of Judges of this Court had taken a view on 23.04.2009 had resolved to retire the Petitioner compulsorily in public interest subject to ratification by the Full Court, which was later affirmed by the Hon'ble Judges of the Full Court in its Meeting held on 29.04.2009. Suffice it for this Court to make a relevant mention that the decision was taken by the Administrative Committee on 23.04.2009 after deliberation and also the Full Court, after deliberating the matter, approved the Minutes of the Administrative Committee Meeting dated 23.04.2009 and permitted the Officer/Petitioner to retire under F.R.56(2) on completion of the age of 50 years in public interest. Hence, the the recommendation of the Administrative Committee and the decision of the Full Court to retire the Petitioner compulsorily cannot be said to be one suffering from any 'Mala fides' or due to 'Non-Application Mind'.

64.Be that as it may, in view of the detailed qualitative and quantitative discussions and also on consideration of the entire facts and attendant circumstances of the case in an integral manner, this Court comes to an inevitable conclusion that the impugned order of Compulsory Retirement dated 05.09.2011 in G.O.(2D)No.310, Home (Courts-I) Department passed by the 1st Respondent, based on the recommendation of the 2nd Respondent, does not suffer from any material irregularities or patent illegalities in the eye of Law. Per contra, the same is free from any flaw. Resultantly, the Writ Petition fails.

Result:

65.In fine, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Principal Secretary to Government,
The State of Tamil Nadu,
Home [Courts-I] Department,
Fort St. George, Chennai - 600 009.

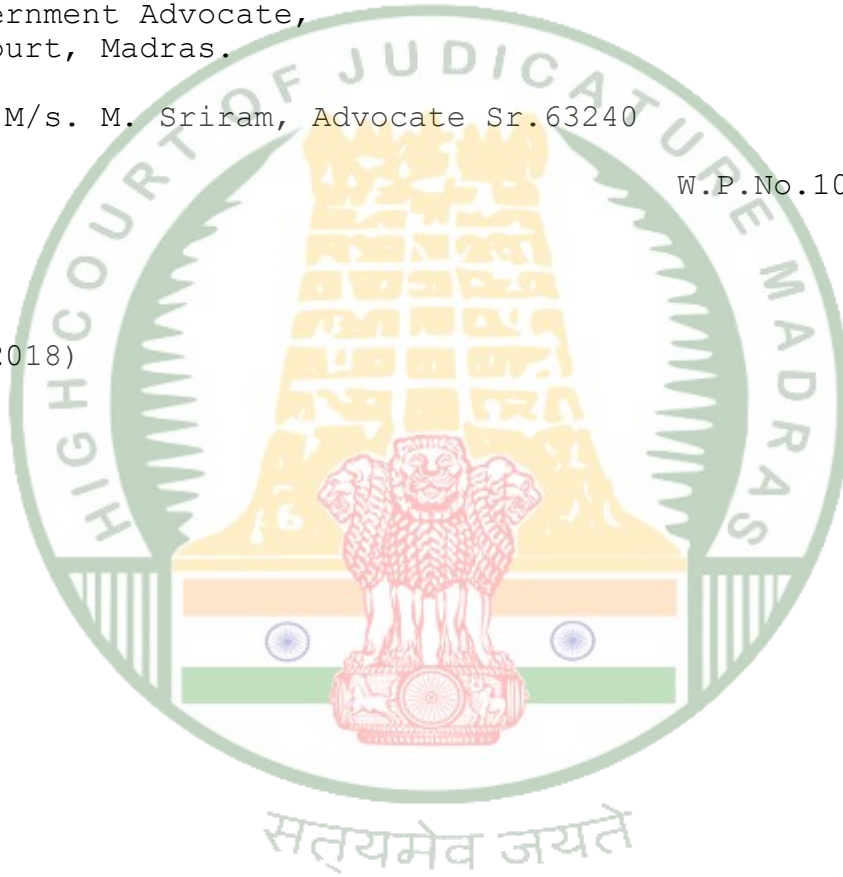
2.The Registrar General,
High Court of Madras,
Chennai - 600 104.

3.The Government Advocate,
High Court, Madras.

+ 1 cc to M/s. M. Sriram, Advocate Sr.63240

W.P.No.10328 of 2014

AD(CO)
EU(20/09/2018)



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