

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

+ Writ Petition Nos.16336, 18272 and 25280 of 2016

% 20 -4-2018

Bathina Venkata Prasad, S/o Late Atchi Raju,
Age: 58 years, Occ: Retired District and Sessions Judge,
G1, Judges' Quarters, Konda Reddy Street,
West Maredpally, Secunderabad
... Petitioner in WP 16336/2016

K.Surya Koteswara Rao, S/o K.Peppa Narasanna,
Aged 58 years, Occ: Senior Civil Judge (Retd.),
R/o. Judicial Officers' Quarters, Court Complex,
Naralasettivaripalem, Bapatla, Guntur District
... Petitioner in WP 18272/2016

Vangavolu Nageswara Rao, S/o V.N.B. Achary,
Aged: 58 years, Occ: Dt Judge (Retired),
I.G. Bunblow Road, Nagaram Palem,
Guntur, Guntur District
... Petitioner in WP 25280/2016

Vs.

\$ 1. The State of Telangana, Rep. by the Secretary,
Dept. of Legal Affairs, Legislative Affairs & Justice,
T-Secretariat, Hyderabad; and 2 others
... Respondents in WP 16336/2016

1. State of Andhra Pradesh, Rep. by its Secretary,
Home Department; and another
... Respondents in WP 18272/2016

1. The State of A.P., Rep. by the Secretary,
Dept. of Legal Affairs, Legislative Affairs & Justice,
Hyderabad; and 2 others
... Respondents in WP 25280/2016

! Counsel for Petitioner in WP 16336/2016:

Mr. D.V. Seetharam Murthy,
Senior Counsel, representing
Mr. N.Ashwani Kumar

Counsel for Petitioners in WPs 18272 & 25280/2016:

Mr. G.Vidya Sagar,
Senior Counsel, representing
Ms. K.Udaya Sri

Counsel for Respondents: Mr. P.Ravi Prasad,
Standing Counsel for High Court

< Gist:

> Head Note:

? Cases referred:

1. (1980) 4 SCC 321
2. (1992) 1 SCC 119
3. (1993) 4 SCC 288
4. (1999) 4 SCC 235
5. 2008 (5) ALD 372
6. (2012) 3 SCC 580
7. 136 (2007) DLT 119
8. (1992) 1 SCC 119
9. (1993) 4 SCC 288
10. (1999) 4 SCC 235
11. 136 (2007) DLT 119
12. 1999 (2) SCR 834
13. 2006 205 CTR (SC) 53
14. (1979) 2 SCC 34
15. (1980) 4 SCC 321
16. AIR 1988 SC 1388
17. (1996) 5 SCC 103
18. (1998) 4 SCC 92
19. (1998) 7 SCC 310
20. (2001) 3 SCC 314
21. (2002) 9 SCC 704
22. (2003) 8 SCC 117
23. (2003) 9 SCC 592
24. 2006 (5) ALD 566
25. (2010) 10 SCC 693
26. (2012) 3 SCC 580
27. (2013) 3 SCC 514
28. (2013) 9 SCC 566
29. (2014) 4 SCC 773
30. (2015) 13 SCC 156



**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI**

Writ Petition Nos.16336, 18272 and 25280 of 2016

Common Order: *(per V.Ramasubramanian, J.)*

The petitioners in these writ petitions have come up with a challenge to the orders passed by the Government on the recommendations of the Full Court of this Court, retiring the petitioners from service as Judicial Officers on attaining the age of 58 years and not allowing them to continue up to the age of 60 years.

2. We have heard Mr. G.Vidya Sagar and Mr. D.V. Seetharam Murthy, learned Senior Counsel appearing for the petitioners and Mr. P.Ravi Prasad, learned Standing Counsel appearing for the Registry.

3. Except that all the petitioners herein were judicial officers and that they have been issued marching orders upon attaining the age of 58 years, there are no other connections between the cases on hand. But since the grounds on which the impugned orders of compulsory retirement are challenged, are almost the same, we have taken up all the three writ petitions together for disposal.

4. For the purpose of completion of narration, let us give a brief background of the service particulars of the petitioners in each of these cases, before we proceed to deal with the contentions raised.

W.P.No.16336 of 2016:

5. The petitioner was appointed as a District Munsif on 20-7-1992. He was promoted as Senior Civil Judge on 18-10-2004. He was promoted as District and Sessions Judge on 06-9-2010. On the date on which the petitioner was to complete 58 years of age, namely, 29-02-2016, he was served with a Government Order in G.O.Ms.No.17, Law Department, dated 25-02-2016, retiring him from service on the ground that on an assessment of his overall performance by the High Court, in terms of the first proviso to Section 3(1A) of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984, and as per Rule 23 of the Telangana State Judicial Service Rules, 2007, he was not found fit to be continued in service up to the age of 60 years.

W.P.No.18272 of 2016:

6. The petitioner was appointed as a Civil Judge Junior Division, on 23-5-1999. He was promoted as Senior Civil Judge on 12-3-2014 and when he was due to complete 58 years of age on 29-02-2016, he was served with an order in G.O.Ms. No.17, Home Department, dated 26-02-2016, retiring him with effect from 29-02-2016, in exercise of the powers conferred under Section 3(1A) of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 read with Rule 23 of the Andhra Pradesh State Judicial Service Rules, 2007.

W.P.No.25280 of 2016:

7. The petitioner was appointed as District Munsif on 01-5-1989 and was promoted as Senior Civil Judge in July, 2002. He was overlooked for promotion to the post of District Judge in the year 2009, forcing him to file a writ petition in W.P.No. 2012 of 2009. In the said writ petition, the High Court filed a counter pointing out that there was an adverse remark against the petitioner in his Annual Confidential Report for the year 2005. Contending that the said remark was never communicated to him and that he came to know about it only through the counter filed in the said writ petition, the petitioner gave a representation for expunging the adverse remark. The High Court allowed the request and thereafter the petitioner was promoted as Additional District Judge in the year 2013. His original seniority was also restored later. However, by G.O.Ms.No.43, dated 25-6-2016, the petitioner was retired with effect from 30-6-2016 on attaining the age of 58 years.

8. Having taken note of career particulars of the writ petitioners, let us now move on to the next stage of the narrative. For the purpose of easy appreciation, we shall divide our judgment into three parts, the first containing the reasons for the compulsory retirement of the petitioners, the second containing the contentions which are common to all the writ petitions and the third dealing with the details of the career of each of these petitioners and the contentions arising out of the same which may be specific to each individual case.

Part-I (Reasons for compulsory retirement):

9. In G.O.Ms.No.17, Law Department, dated 25-02-2016, issued by the Government of Telangana, the petitioner in W.P. No.16336 of 2016 was ordered to retire on the afternoon of 29-02-2016 on the ground that he was not found fit to be continued in service up to the age of 60 years, on an assessment of his overall performance by the High Court, in terms of the first proviso to Section 3(1A) of the Act 1 of 1984 and Rule 23 of the Telangana State Judicial Service Rules, 2007.

10. Similarly, by G.O.Ms.No.17, Home Department, dated 26-02-2016, issued by the Government of Andhra Pradesh, the petitioner in W.P.No.18272 of 2016 was ordered to retire in exercise of the powers conferred under Section 3(1A) of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984, read with Rule 23 of the Andhra Pradesh State Judicial Service Rules, 2007.

11. Likewise, the petitioner in W.P.No.25280 of 2016 was by G.O.Ms.No.43, Law Department, dated 25-6-2016, of the Government of Andhra Pradesh, directed to retire in the afternoon of 30-6-2016 as he was found on an assessment of his overall performance, not fit and eligible to be continued in service, and not of continued utility by the High Court in terms of the first proviso to Section 3(1A) of the Andhra Pradesh Public Employment (Regulation of Age of

Superannuation) Act, 1984, read with Rule 23 of the Andhra Pradesh State Judicial Service Rules, 2007.

12. In all the Government Orders by which the petitioners in these three writ petitions were directed to be retired, there was a clause containing an authorization to the District and Sessions Judge of the concerned District to draw and pay three months' Pay and Allowances to the petitioners. This clause is required to be taken note of, in view of the fact that it is only under Rule 23 of the State Judicial Service Rules that such a payment is necessitated.

13. All the Government Orders by which the petitioners were directed to be retired on attaining the age of 58 years, were admittedly and obviously based upon the recommendations made by the High Court. The recommendations made by the High Court in each one of these cases stated, though parrot like, (i) that the track record, the quality of orders/judgments, the overall performance and the general conduct and reputation of the officer were reviewed, (ii) that as a result of the review, the High Court came to the conclusion that the officer was not of continued utility and (iii) that the officer was not fit to be continued in service beyond the age of 58 years.

14. Thus, we find three aspects which are borne out of the orders impugned in these writ petitions. They are: (i) that all the orders were passed in exercise of the powers conferred by Section 3(1A) of the Andhra Pradesh Public Employment

(Regulation of Age of Superannuation) Act, 1984 (hereinafter referred to as “the Act”), read with Rule 23 of the State Judicial Service Rules, 2007 (hereinafter referred to as “the Rules”), (ii) that the petitioners were packed off with three months’ Pay and Allowances as contemplated by Rule 23 and (iii) that the orders were passed on the recommendation of the High Court, made after reviewing the track record, the quality of orders/ judgments, the overall performance and the general conduct and reputation of the officer.

Part-II (Common contentions):

15. Mr. G.Vidya Sagar, learned Senior Counsel appearing for the petitioners in the second and third writ petitions, contended

(i) that a retirement in terms of the first proviso to Section 3(1-A) of the Act, could be ordered only by following the procedure for compulsory retirement under the Rules applicable to the officer;

(ii) that the power under the first proviso to Section 3(1-A) of the Act was available, only till Statutory Rules were framed, in accordance with the decision of the Supreme Court in *All India Judges’ Association Case (III)*;

(iii) that Rule 23 of the 2007 Rules prescribes a procedure for compulsory retirement upon attaining the age of 50, 55 or 58 years, as per which the recommendation of the High Court should contain the reasons in writing;

(iv) that neither the order of the Government nor the recommendation made by the High Court contained any reasons, except repeating the requirements of the statutory provisions;

(v) that the track record of the officer, as reflected in the Annual Confidential Reports did not show anything adverse;

(vi) that though there was one adverse remark, it was later set aside by the High Court and the officer in the third writ petition was given seniority and promotion; and

(vii) that insofar as one adverse remark entered in the year 2014 is concerned, the procedure prescribed by the relevant Statutory Rules for making the remark was not followed and hence the petitioner in the third writ petition has also come up with an additional prayer for expunging the adverse remark.

16. In support of his above contentions, Mr. G.Vidya Sagar, learned Senior Counsel, relied upon the following decisions:

- (i) *Baldev Raj Chadha v. Union of India*¹,
- (ii) *All India Judges' Assn. v. Union of India*²,
- (iii) *All India Judges' Assn. v. Union of India*³,
- (iv) *Rajat Baran Roy v. State of W.B.*⁴,
- (v) *K.Veera Chary v. The Hon'ble High Court of A.P.*⁵,
- (vi) *Nand Kumar Verma v. State of Jharkhand*⁶.

¹ (1980) 4 SCC 321

² (1992) 1 SCC 119

³ (1993) 4 SCC 288

⁴ (1999) 4 SCC 235

⁵ 2008 (5) ALD 372

17. Mr. D.V. Seetharam Murthy, learned Senior Counsel appearing for the petitioner in W.P.No.16336 of 2016, contended

(i) that the recommendations made by the High Court in his case, did not even contain any reference to “doubtful integrity of the petitioner”,

(ii) that all the Annual Confidential Reports from the year 1993 up to the year 2014 uniformly showed that the petitioner in W.P.No.16336 of 2016 was a man of action and good reputation;

(iii) that the Annual Confidential Reports of the petitioner for the year 2014-15 were only in circulation at the time when the recommendation was made;

(iv) that it was only in December, 2015, that the Inspecting Judge paid encomium to the petitioner in writing and hence the order passed within two months thereafter was a shocker (if not a Yorker) to the petitioner;

(v) that in the meeting of the Administrative Committee where a decision was taken to axe the petitioner (a good wood) on the ground that it was a dead wood, the Portfolio Judge was not present;

(vi) that the role of Inspecting/Portfolio Judges need to be hardly emphasized, since the law is well settled by a decision

⁶ (2012) 3 SCC 580

of the Delhi High Court in *Barkha Gupta v. High Court of Delhi*⁷, which was also upheld by the Supreme Court;

(vii) that insofar as the petitioner in W.P.No.16336 of 2016 is concerned, there is also no whisper about any discreet enquiry and

(viii) that the issue of marching orders on the morning of the day on which the officer was to attain the age of 58 years, tantamounted to taking an officer who has rendered more than two decades of unblemished service, by surprise and that therefore the impugned orders were liable to be set aside.

18. All the above contentions of both the learned Senior Counsel, can be easily grouped together under 4 common questions revolving around (i) the continued applicability of the first proviso to Section 3(1-A) of the Act, (ii) the necessity to record reasons in terms of Rule 23 of the 2007 Rules, (iii) the absence or presence of the Portfolio/Inspecting Judge in the meeting of the Administrative Committee where the review of the performance of the officer is undertaken on the eve of attainment of 58 years of age and (iv) the value to be attached to the entries in the Annual Confidential Reports.

Applicability of the first proviso to Section 3(1A) of the Act:

19. Before considering the contention relating to applicability of the first proviso to Section 3(1-A) of the Act,

⁷ 136 (2007) DLT 119

it may be necessary to have an understanding of the history behind the Legislation. It is common knowledge that while persons working in the Central Civil Services comprise mostly of (i) persons appointed to the Central Civil Services and (ii) persons drawn on deputation from the State Civil Services, those employed in the State Civil Services of every State comprise of (i) holders of posts in All India Services allotted to that State, (ii) holders of posts in the State Services, (iii) holders of posts in State Subordinate Services, (iv) holders of posts in the State Ministerial Services and (v) holders of posts in the Last Grade Services of the State.

20. The original parent legislation under which posts in various services were regulated, was the Government of India Act, 1919. Though there were many enactments that preceded the Government of India Act, 1919, it was this 1919 Act that focused on persons appointed to posts in or services under the Government. The intent of this Act as spelt out in the Proclamation issued by the King Emperor, which reads as follows, would make it clear:

“The Acts of 1773 and 1784 were designed to establish a regular system of administration of justice under the East India Company. The Act of 1833 opened the door for Indians to public office and employment. The Act of 1858 transferred the administration from the Company to the Crown and laid the foundations of public life which exist in India today. The Act of 1861 sowed the seed of representative institutions and the seed was quickened into life by the Act of 1909. The Act (1919) which has now become Law entrusts the elected representative of the

people with a definite share in the Government and points the way to full responsible Government hereafter.”

21. Under Section 96-B(2) of the Government of India Act, 1919, the Secretary of State for India issued a set of Rules known as “Fundamental Rules”. They came into force on 01-01-1922. These Rules continued to be in force under the Government of India Act, 1935 and even thereafter, until the advent of the Constitution. Under Article 313 of the Constitution, all Laws in force immediately before the commencement of the Constitution and applicable to any public service or any post which continued to exist, as an All India Service or as Service or Post under the Union or a State were directed to continue in force so far as consistent with the provisions of the Constitution, until other provisions were made in this behalf under the Constitution.

22. Therefore, the Fundamental Rules as issued in the year 1922 continues to operate with certain additions, modifications or deletions, as ordered by the appropriate State or the Union. Rules 56 and 57 of the Fundamental Rules, 1922 contained detailed provisions with regard to (i) the age of superannuation, (ii) the power of re-employment, (iii) retirement before the age of superannuation and (iv) the procedure to be followed in case disciplinary action was pending or warranted on account of something that was done by the officer or which came to light on the eve of retirement of the officer concerned.

23. The Fundamental Rules as issued in the year 1922 were amended from time to time by notifications issued either by the President of India in relation to Central Services or by the Governors of States in relation to State Services.

24. Insofar as the State of Andhra Pradesh is concerned, Fundamental Rules 56 and 57, which were contained in Chapter-IX of the 1922 Fundamental Rules were omitted in entirety and replaced by an Act known as “The Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984”. Therefore, Chapter-IX in entirety of Fundamental Rules containing the provisions with regard to retirement, has no application to the State of Andhra Pradesh.

25. As we have mentioned earlier, the Fundamental Rules continued to have force after the advent of the Constitution, only by virtue of Article 313. Article 313 was only a transitional provision and hence the Laws in force immediately before the commencement of the Constitution were to be in force only until other provisions are made under the Constitution.

26. The substantive part of Article 309 of the Constitution empowered the appropriate Legislatures to pass Acts regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. The proviso to Article 309 empowered the President of India and the

Governors of States (as the case may be), to direct the making of Rules regulating the recruitment and conditions of service of persons appointed to services and posts in connection with the affairs of the Union or the affairs of the States (as the case may be). Interestingly, the proviso to Article 309 is also a transitional provision, by virtue of which the Rules made in terms of the proviso will continue to be in force until a provision is made by or under an Act of the appropriate Legislature under the substantive part of Article 309.

27. But it is common knowledge that most of the times, all State Legislatures were satisfied with the issue of Rules in terms of the proviso to Article 309, without allowing the Legislatures to pass an Act. This is why we have invariably in every State, General Rules governing the terms and conditions of service of officers appointed to State and Subordinate Services and Special Rules regulating the terms and conditions of service of those appointed to every Department or to the Ministerial Services or to the Last Grade Government Service.

28. But the State of Andhra Pradesh, as pointed out earlier, issued Act No.23 of 1984 for regulating the age of superannuation of persons appointed to public services and posts in connection with the affairs of the State of Andhra Pradesh and by this Act, Chapter-IX of the Fundamental Rules containing the Fundamental Rules 56 and 57 relating to retirement stood repealed. There is actually a flipside to the

repeal of Fundamental Rule 56 by this Act and it is this. Fundamental Rule 56 contained a provision which enabled the Government, whenever a grave misconduct, either committed by an officer on the eve of retirement or committed before, but came to light on the verge of the retirement, to be placed under suspension and retained in service for the purpose of initiation or continuation of disciplinary proceedings that could culminate in one of the major penalties prescribed in the State (Classification, Control and Appeal) Rules. Unfortunately, A.P. Act 23 of 1984 does not contain a corresponding provision, as available in Fundamental Rule 56(3). The consequence is that an officer of the State or Subordinate Service who commits a grave misconduct on the eve of retirement or whose misconduct committed earlier comes to light on the eve of retirement or an officer who manages to drag on the disciplinary proceedings initiated earlier, till the date of superannuation, will walk out scot-free on the date of attaining the age of superannuation. Thereafter, no penalty under the Classification, Control and Appeal Rules could be imposed upon him, though it is possible to initiate proceedings under the Pension Rules. But what could be denied to such an officer under Rule 9 of the Pension Rules is not the same as what could be denied to the officer by imposing a major penalty under the Classification, Control and Appeal Rules.

29. Therefore, it appears that the A.P. Act 23 of 1984 is a poor substitute for Fundamental Rule 56 and it is more in favour of the errand officials who are capable of escaping the clutches of Law. Be that as it may, A.P. Act 23 of 1984 prescribed under Section 3(1), the age of retirement of every Government employee other than a workman and Last Grade servant to be 55 years. But by Act 3 of 1985, the age of superannuation was enhanced to 58 years under Section 3(1). Therefore, under A.P. Act 23 of 1984, the age of superannuation of Judicial Officers was also 58 years. It was so in most of the States.

30. But in *All India Judges' Association v. Union of India*⁸, which came to be known as *The All India Judges' Association-I*, one of the questions that drew the attention of the Supreme Court was the age of retirement. After finding (para-16 of the report) that the age of retirement of Judges of the High Courts and the Supreme Court was fixed at 62 years and 65 years respectively under the Constitution, but the age of retirement of members of the Subordinate Judiciary was fixed at 58 years in several States except the State of Kerala, and after taking note of the recommendation of the Law Commission in its 14th report, the Supreme Court directed all the State Governments to make amendment to the relevant Service Rules so as to fix the age of retirement at 60 years with effect from December 31, 1992. In paragraph-63(iii) of

⁸ (1992) 1 SCC 119

the report, the Supreme Court directed all the State Governments to raise the age of retirement of Judicial Officers to 60 years with a further direction to take appropriate steps by 31-12-1992.

31. But the Union of India and several States thereafter filed applications for review of the directions issued in *All India Judges' Association-I*. One of the objections related to the raising of the age of retirement. These review applications were disposed of by another 3-member Bench of the Supreme Court in what came to be known as *All India Judges' Association-II*⁹.

32. In *All India Judges' Association-II*, the Supreme Court overruled the objections raised by the Union of India and a few States with respect to raising of the age of retirement to 60 years. But while doing so, the Supreme Court issued a modification to the blanket directions issued in para-63(iii) of the report in *All India Judges' Association-I*. The modification suggested in *All India Judges' Association-II* with regard to the raising of the age of retirement are to be found in paragraphs-30 and 31 of the report in *All India Judges' Association-II*. These two paragraphs are extracted as follows:

“30. There is, however, one aspect we should emphasise here. To that extent the direction contained in the main judgment under review shall stand modified. The benefit of the increase of the retirement age to 60 years, shall not be available automatically to all judicial officers irrespective of

⁹ (1993) 4 SCC 288

their past record of service and evidence of their continued utility to the judicial system. The benefit will be available to those who, in the opinion of the respective High Courts, have a potential for continued useful service. It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. The potential for continued utility shall be assessed and evaluated by appropriate Committees of Judges of the respective High Courts constituted and headed by the Chief Justices of the High Courts and the evaluation shall be made on the basis of the judicial officer's past record of service, character rolls, quality of judgments and other relevant matters.

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

33. Eventually, the Supreme Court issued a direction with regard to the enhancement of superannuation age, in paragraph-52(b) of the report in *All India Judges' Association-II*, to the following effect:

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

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

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

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

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

Those who have crossed the age of 57 years and those who cross the age of 58 years soon after the date of this decision will exercise their option within one month from the date of this decision. If they do not do so, they will be deemed to have opted for continuing in service till the age of 60 years. In that case, they will also be subjected to the review for compulsory retirement, if any, notwithstanding the fact that there was not enough time to undertake such review before they attained the age of 58 years. However in their case, the review should be

undertaken within two months from the date of the expiry of the period given to them above for exercising their option, and if found unfit, they should be retired compulsorily according to the procedure for compulsory retirement under the Rules.

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

33. Pursuant to the directions issued in para-63(iii) of the report in *All India Judges’ Association-I*, as modified by para-52(b) of the report in *All India Judges’ Association-II*, the Government of Andhra Pradesh issued Act 26 of 1998 incorporating sub-section (1-A) along with two provisos and an Explanation thereunder. Sub-section (1-A), together with the two provisos thereunder and the Explanation to the same read as follows:

“3. Age of superannuation:--

“(1-A) Notwithstanding anything contained in sub-section (1), every member of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided that any such member of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service may be compulsory retired from service on the after noon of the last day of the month in which he attains the age of fifty eight years if he is not found fit and eligible to be continued in service by the High Court of Andhra Pradesh on an assessment and evaluation of the record of such member for his continued utility well

within time before he attains the age of fifty eight years by following the procedure for compulsory retirement under the rules applicable to him.

Provided further that any such member of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service at his option to be exercised in writing before he attains the age of fifty seven years may retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years.

Explanation:-- The assessment and evaluation by the High Court of Andhra Pradesh for the purpose of this subsection is in addition to and independent of the assessment for compulsory retirement that may have to be undertaken at any other time under the relevant rules applicable to such members of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service.”

34. The import of an amendment to the Rules issued in pursuance of the directions contained in *All India Judges' Association-I* and *All India Judges' Association-II*, came to be considered by another 3-member Bench of the Supreme Court in *Rajat Baran Roy v. State of W.B.*¹⁰. In *Rajat Baran Roy*, the Supreme Court was dealing with writ petitions filed under Article 32 of the Constitution by Judicial Officers of the State of West Bengal who were compulsorily retired on attaining the age of 58 years, purportedly on the basis of a review of the petitioners' service record, performance, efficiency, integrity, utility etc., by a Review Committee of the High Court. The contention of the Judicial Officers before the Supreme Court in *Rajat Baran Roy* was that after the amendment to the Rules pursuant to the directions issued by

¹⁰ (1999) 4 SCC 235

the Supreme Court in *All India Judges' Association-I* and *All India Judges' Association-II*, any premature retirement can be ordered only in accordance with the statutory rules and that the State was not entitled to fall back upon the directions issued by the Supreme Court, while deciding the question of premature retirement. This contention was accepted by the Supreme Court in para-10 of the report in *Rajat Baran Roy*, which reads as follows:

“10. As per the above direction, it became the duty of all the States and the Union of India to make suitable provisions in the rules concerned to enhance the retirement age of the judicial officers to 60 years by 31-12-1992. Instead of complying with the directions of this Court in the 1992 case the Union of India and some of the States filed review petitions before this Court on various grounds. The stand taken by the review petitioners was rejected by this Court by an order which is reported in *All India Judges' Assn. v. Union of India* (hereinafter referred to as “the 1993 case”). By this order, this Court while directing that the retirement age of the members of the subordinate judiciary in India should be 60 years, added a rider to the increase in the retirement age by holding that this benefit of increase in retirement age shall not be available automatically to all judicial officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit, according to this Court, was available to those who, in the opinion of the respective High Courts, have a potential for continued useful service. The Court further said that it is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. The potential for continued utility was directed to be assessed and evaluated by appropriate committees of Judges of the respective High Courts constituted and headed by the Chief Justices of the High Courts. This direction in regard to the retirement age and other directions given in regard to the members of the

Higher Judicial Service in India in the 1993 case came to be issued because of the failure on the part of the Governments concerned to perform their obligatory duties. If as per the 1992 directions, the Governments concerned had acted diligently then there would not have been any cause for issuing the 1993 directions and, consequently, the rider that was included in the 1993 directions, would not have been there at all. That apart, in the 1993 directions, this Court in unequivocal terms said:(SCC p.299, para 15)

“The directions issued are mere aids and incidental to and supplemental of the main direction and intended as a transitional measure till a comprehensive national policy is evolved.”

In view of this observation, it is clear that the direction issued as above, would cease to exist when appropriate rule enhancing the retirement age of the judicial officers to 60 years is made. Consequently, the rider to the directions issued by the Court also ceases to operate, being coterminous with the direction. After the directions in the 1993 case in the case of such States which had framed rules consequent upon which the members of the subordinate judiciary in those States became entitled to continue in service till the age of 60 years, it will have to be held that the enhancement has come into force by virtue of such rules framed. In other words, the enhancement of retirement age in those States will be dehors the directions of this Court and will be subject only to the terms of the rules applicable. In such cases, in our opinion, the pre-retirement assessment will not be applicable unless the same is specifically provided under the rules.”

35. As seen from the portion of the judgment in *Rajat Baran Roy* extracted above, the Supreme Court came to the conclusion that the directions issued in *All India Judges' Association-I* and *All India Judges' Association-II* were only intended to be transitional in nature and that those directions would cease to exist when appropriate Rules enhancing the

age of retirement were made. But this conclusion was reached by the Supreme Court in *Rajat Baran Roy*, on the basis of an observation made in paragraph-15 of the report in *All India Judges' Association-II* to the effect that the directions issued were mere aids and incidental to and supplemental of the main direction and intended as a transitional measure till a comprehensive national policy is evolved. But what was not brought to the notice of the Supreme Court in *Rajat Baran Roy* was that the observations contained in para-15 of the report in *All India Judges' Association-II* had nothing to do with the direction contained in para-63(iii) of *All India Judges' Association-I* as modified in para-52(b) of the *All India Judges' Association-II*. As seen from the relevant observations of the Supreme Court in para-15 of the report in *All India Judges' Association-II*, the Supreme Court started dealing with the contention of the review applicant that the directions of the Court had encroached upon the powers of the Executive and the Legislature under Article 309 to prescribe service conditions for the members of the Judicial Service, from paragraph-10 onwards. After taking note in para-12 of the report in *All India Judges' Association-II* of the fact that the 14th report of the Law Commission of India submitted way back in 1958 was consigned to the cold storage, the Supreme Court repelled in paragraph-15 of the report, the contention that the directions constituted an encroachment into the power of the Executive under Article 309. Therefore, the

observations contained in para-15 of the report in *All India Judges' Association-II* cannot be taken as circumscribing the observations contained in the subsequent paragraphs, namely, paragraphs-30 and 31 of the report. What was dealt with in para-15 of the report in *All India Judges' Association-II* was only the validity of the directions issued in *All India Judges' Association-I*. The moment the directions contained in *All India Judges' Association-I* were modified in paragraphs-30 and 31 of the report in *All India Judges' Association-II*, the justification provided in the earlier paragraph for the first decision vanished. But unfortunately, the Supreme Court read in *Rajat Baran Roy*, the observations made in para-15 of the report in *All India Judges' Association-II* as curtailing the modified directions in paragraphs-30 and 31 of the report in *All India Judges' Association-II*. It was not stated either in paragraphs-30 and 31 or in the operative portion of the judgment in *All India Judges' Association-II* that the observations in para-15 that these directions were transitory would continue to hold even to the modified directions.

36. In any case, the right of a Judicial Officer to be continued up to the age of 60 years flowed only out of the direction contained in *All India Judges' Association-I* as modified by the decision in *All India Judges' Association-II*. ***The judgment which created this right, actually called it “not a right but a benefit”.*** Therefore, the amendments made either by Acts of Legislature under Article 309 or by the

Rules framed under the proviso to Article 309, by various States, have to be interpreted only such a manner which is in tune with the observations made in paragraphs-30 and 31 of the report in *All India Judges' Association-II*. **To say that the conditions subject to which all State Governments were directed to increase the age of superannuation of Judicial Officers to 60 years, lost their relevance, after the issue of the Statutory Rules, would be to destroy completely the purport of the directions contained in All India Judges' Association-II.** After having rejected the cry of the Union of India and the State Governments about the encroachment into their powers with regard to enhancement of the age of retirement, with an argument that the enhancement was not automatic, it may not be fair to say now that the continuance in service upto 60 years is automatic (and without reference to the conditions stipulated by the Supreme court) unless the rules provide otherwise. In fact it is the High courts which frame rules and the Government merely approve the same and gazette them. Hence, we do not agree with the contention of Mr. G.Vidya Sagar, learned Senior Counsel for the petitioners, that after the advent of Rule 23 of the 2007 Rules, the Court cannot fall back upon the directions contained in *All India Judges' Association-II*.

37. There is also one more reason for us to come to the above conclusion. Today we have on hand, an Act of the State

Legislature known as the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984, which contains a stipulation under sub-section (1-A) of Section 3. This Section has not been repealed. This is a substantial legislation in terms of the main part of Article 309 of the Constitution.

38. The Andhra Pradesh State Judicial Service Rules, 2007 are issued by the Executive in terms of the proviso to Article 309. By their very nature, the Rules issued in terms of the proviso to Article 309 can have effect only subject to the provisions of any Act issued in terms of the main part of Article 309. Therefore, 2007 Rules cannot be construed as overriding the first proviso to sub-section (1-A) of Section 3 of the Act, in view of the mandate of the proviso to Article 309.

39. The Andhra Pradesh State Judicial Service Rules, 2007 were actually issued in pursuance of the directions issued by the Supreme Court in All India Judges' Association-I, as modified in All India Judges Association-II and fine-tuned further in accordance with All India Judges' Association-III (2002 (4) SCC 247). It is relevant to note that while the directions issued in All India Judges' Association-I and II concerned the terms and conditions of service, age of retirement etc., the directions contained in All India Judges' Association-III included re-structuring of the posts in the cadre based on the recommendations of the Shetty Commission and the grant of various allowances. Therefore,

any interpretation to be given to the 2007 Rules, should be perfectly in tune with the judgments of the Supreme Court in all the three decisions, as otherwise the purpose for which the Supreme Court took upon itself the task of directing the State Governments to make amendments to the law will be completely lost.

40. Keeping the above points in mind, let us now have a look at the 2007 Rules. Rule 16 of the 2007 Rules provides that the age of superannuation of a member of service will be 60 years. Rule 19(d) makes the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, Andhra Pradesh Civil Services (Conduct) Rules, 1964, the Fundamental Rules, the Andhra Pradesh Leave Rules, 1933 and the Pension Rules, applicable to the members of the service. As a consequence, the Andhra Pradesh State Judicial Service Rules, 2007 do not deal with the question of penalties and the procedure to be adopted for imposing minor and major penalties. In other words, the Disciplinary Authority should fall back upon the A.P. Civil Services (Conduct) Rules, 1964 and the A.P. Civil Services (CCA) Rules, 1991 for the initiation of disciplinary proceedings and for the imposition of any penalty, upon a member of the service.

41. Rule 23 of the 2007 Rules reads as follows:

Retirement in public interest: Notwithstanding anything contained in these Rules, the Governor, on the recommendation of the High Court containing the reasons in writing, if he is of the opinion that it is in the public interest so to do, has the absolute right to retire any member of the service, who has attained the age

of 50, 55 or 58 years, by giving him notice of not less than three months in writing or three months pay and allowances in lieu thereof.

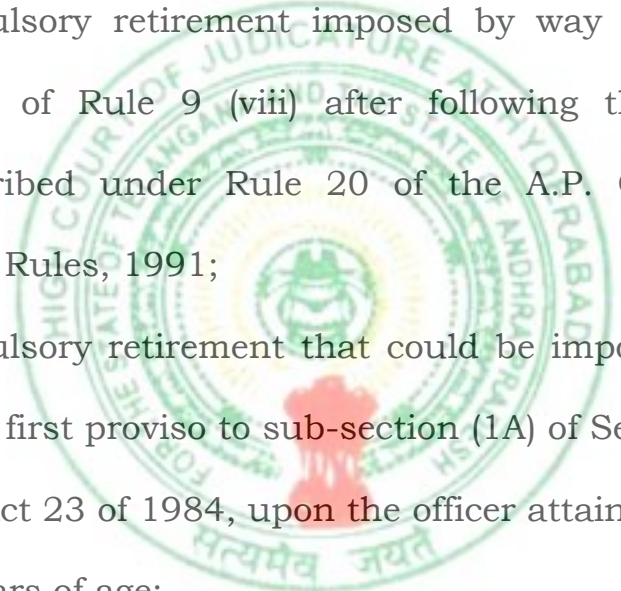
42. It will be clear from Rule 23 extracted above that the Rule contains a *non-obstante* clause and hence whenever Rule 23 is invoked, it will be notwithstanding the age of retirement contained in Rule 16. The Governor, on the recommendations of the High Court is entitled to invoke Rule 23 at 3 stages of the career of a member of the service namely when the member has attained 50 years of age or 55 years of age or 58 years of age.

43. For the invocation of Rule 23, 3 conditions are to be satisfied viz., (a) that there is a recommendation of the High Court to the Governor containing the reasons in writing; (2) that the Governor is of the opinion that it is in public interest to do so; and (3) that a notice of not less than 3 months in writing or 3 months pay and allowances in lieu thereof is given to the officer concerned. Subject to compliance with these 3 conditions, the right to retire a Judicial Officer on attaining the age of 50 years, 55 years or 58 years, is an absolute right. It must be remembered that Rule 23 uses the expression "absolute right to retire".

44. As we have pointed out earlier, the provisions of the Andhra Pradesh Civil Services (CCA) Rules, 1991 are applicable to the members of the judicial service by virtue of Rule 19 (d) of the 2007 Rules. Rule 9 of the A.P. Civil Services (CCA) Rules, provides a list of penalties, both minor and

major, that could be imposed upon a member of the State or Subordinate service. Compulsory Retirement is one of the major penalties listed in clause (viii) of Rule 9 of these Rules. A detailed procedure is prescribed under Rule 20 of the A.P. Civil Services (CCA) Rules, 1991 for imposing any of the major penalties enlisted in Rule 9.

45. Therefore, it is clear that ***there are 3 different types of compulsory retirement that could be imposed upon a member of the State Judicial Service.*** They are:

- 
- (i) compulsory retirement imposed by way of penalty in terms of Rule 9 (viii) after following the procedure prescribed under Rule 20 of the A.P. Civil Services (CCA) Rules, 1991;
 - (ii) compulsory retirement that could be imposed in terms of the first proviso to sub-section (1A) of Section 3 of the A.P. Act 23 of 1984, upon the officer attaining the age of 58 years of age;
 - (iii) a retirement in public interest upon the officer attaining 50 or 55 or 58 years of age in terms of Rule 23 of the 2007 Rules.

46. It must be remembered that a compulsory retirement imposed by way of penalty under the A.P. Civil Services (CCA) Rules stands on a completely different footing than (1) a compulsory retirement under A.P. Act 23 of 1984 and (2) a retirement in terms of Rule 23 of the 2007 Rules. ***In fact, Rule 23 of the 2007 Rules does not even use the***

expression “compulsory retirement”. It uses only the expression “retirement”.

47. A major distinction between these 3 types of retirement is that while the penalty of compulsory retirement can be imposed at any stage of the career of a member of the service, a compulsory retirement in terms of Act 23 of 1984 is available only upon attainment of the age of 58 years and a retirement in terms of Rule 23 is available at 3 stages of the career of an officer, namely upon his attaining the age of 50, 55 or 58 years. As we have pointed out earlier, A.P. Act 23 of 1984, as it was originally enacted, replaced Fundamental Rules 56 and 57 and it fixed the age of retirement of the holders of all posts in the State as 55 years. But in 1985 the age of retirement was increased to 58 years. Sub-section (1A) was inserted under Section 3 under the Amendment Act 26 of 1998 pursuant to the decisions in All India Judges Association-I and II. Rule 23 of the 2007 Rules was a sequel to the decisions in All India Judges Association-I, II and III. ***Therefore, any interpretation to sub-section (1A) of Section 3 of the Act should be in tune with the decisions in All India Judges Association-I and II and an interpretation to the 2007 Rules should be in tune with the decisions in All India Judges Association-I, II and III.***

48. Keeping the above principles in mind, let us now get back to All India Judges Association-I. In All India Judges

Association I, the Supreme Court dealt with the question of enhancement of the age of retirement from paragraphs 16 to 25 and eventually issued a direction in para 63 (iii) for raising the age of retirement to 60 years. But the justification for such enhancement, not only of the age of retirement but also of the other facilities, was provided by the Supreme Court in paragraphs 58 to 62. Quoting from Burger C.J. of the American Supreme Court in para 59 of the report, the Supreme Court pointed out in All India Judges Association-I that a sense of confidence in the Courts is essential to maintain the fabric of ordered liberty for a few people and it is for the subordinate judiciary by its action and the High Court by its appropriate control, to ensure it. In para 61 of the report in All India Judges Association-I, the Supreme Court pointed out that the conduct of every judicial officer should be above reproach and that he should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private, political or partisan influences. The Supreme Court cautioned that a Judicial Officer should deal with his appointment as a public trust.

49. It must be noted that none of the attributes that the Supreme Court indicated in para 61 of the report in All India Judges Association-I are to be found in the Civil Services (Conduct) Rules. Therefore, the failure of a Judicial Officer to maintain the standards of conduct indicated in para 61 of the

decision in All India Judges Association-I, may not strictly make him liable to disciplinary action for a misconduct, if these attributes are not read into the rules. ***It is exactly for the above reason that an unconditional directive issued in All India Judges Association-I, to increase the age of retirement, was modified by the Supreme Court in paragraphs 30 and 31 of the decision in All India Judges Association-II.*** We have already extracted paragraphs 30 and 31 of the report in All India Judges Association-II. It was made clear in paragraphs 30 and 31 of the report in All India Judges Association-II that the benefit of increase of the age of retirement to 60 years will not be available automatically to all Judicial Officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The Supreme Court made it clear that ***the benefit conferred by them was not intended to be a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility.*** The Court made it clear that the benefit will be available only to those who have, in the opinion of the High Court, a potential for continued useful service.

50. Sub-section (1A) of Section 3 of A.P. Act No.23 of 1984 merely incorporates the attributes mentioned in para 30 of the decision in All India Judges Association-II. Therefore, we may have to look beyond the Rules and draw inspiration from the mandate of law given by the Supreme Court in All

India Judges Association-II, whenever an order of retirement upon attaining the age of 58 years is challenged. We must always keep in mind that what was deprived to a person by retiring him at the age of 58 years, was not a right but only a benefit. ***Therefore, the most appropriate, nay the one and only question that a Court should ask itself on the judicial side while dealing with cases of this nature is “Does this officer deserve the benefit conferred by a judicial mandate, which was later converted into a statutory prescription?” and not the question “whether there were an infringement of a right, statutory or otherwise, otherwise than in accordance with the procedure established by law?”.***

51. If we keep in mind ***the fundamental distinction between the infringement of a right and the deprivation of a benefit, it will be clear that every violation of the procedure prescribed, including those on syntax, grammar and punctuation marks, may not make the deprivation of the benefit, vulnerable to attack.***

52. Keeping the above in mind, if we test the second contention of Mr. G. Vidya Sagar, learned senior counsel for two writ petitioners before us, it would be clear that the Governor passed an order on the recommendations of the High Court, which contained reasons in tune with the language used in sub-section (1A) of Section 3 of A.P. Act 23 of 1984. It must be remembered that while dealing with the

cases of termination on probation simplicitor, the Courts have tested the same on a simple question as to whether a misconduct formed the foundation or the motive for the termination, though the same was labelled only as termination simplicitor. Therefore, if the reasons to be recorded in writing as required in Rule 23 of the 2007 Rules include those hinging upon allegations of corrupt practices, an order of retirement passed under Rule 23 may slip over to the other side, making it a penalty of compulsory retirement, which cannot be imposed except after disciplinary proceedings. Therefore, if the recommendations made by the High Court in writing contained indications that satisfy the requirements of sub-section (1A) of Section 3 of Act 23 of 1984 and the observations of the Supreme Court in para 30 of the decision in All India Judges Association-II, the same would be a satisfactory compliance with Rule 23. In all the three cases on hand, the recommendations made in writing by the High Court to the Government very clearly indicate the presence of the factors including the opinion of the High Court about the continued utility of the officer. The recommendations need not be made in such a manner, as to constitute a thesis on the entire service record of the concerned Judicial Officer, nor could it contain allegations.

53. In other words, we hold that if the recommendations made in writing by the High Court to the Governor for retiring of an officer on completion of 50, 55 or 58 years of age reflect

the requirements contained in para 30 of the decision in All India Judges Association-II and those indicated in sub-section (1A) of Section 3 of the Act, the same would be sufficient compliance with the requirement of the Rules.

The necessity to record reasons in terms of Rule 23:

54. As we have stated earlier, one of the main contentions of Mr. G. Vidya Sagar, learned Senior Counsel for two of the petitioners is that under Rule 23, the recommendation of the High Court should contain the reasons for recommending the retirement of the officer upon attaining the age of 58 years and that they were absent in these cases.

55. We have already extracted Rule 23 of the Andhra Pradesh State Judicial Service Rules. As we have pointed out elsewhere, the power to retire an officer in terms of the said Rule is conferred upon the Governor, but he must act on the recommendation of the High Court. The words employed in Rule 23 are “on the recommendation of the High Court containing the reasons in writing”. At the cost of repetition, we should point out that what is conferred upon the Governor under Rule 23, is termed by Rule 23 itself to be “***an absolute right***”. Therefore on a plain reading of the Rule, it is clear that it is only the recommendation of the High Court to the Governor that should contain the reasons in writing.

56. The question as to whether the reasons recorded by the Full Court in writing, in the recommendation sent to the

Governor, are justiciable, is extremely difficult to be answered. ***The judicial office is so sensitive and is also, at one and the same time, very fragile as well as strong, that it would be extremely difficult to make the reasons recorded by the Full Court justiciable.***

57. While invoking Rule 23, the High Court is called upon to follow a delicate path that is so slim that there is every scope for the order to fall on other side. Let us take a hypothetical case where the reputation of a judicial officer is so bad and his integrity is so doubtful that the Full Court decides to recommend the invocation of Rule 23. In case the High Court records these facts in the order to be communicated to the officer, the High Court would be found guilty of retiring the officer prematurely, by a stigmatic order. Even an order of transfer, if it is attached with stigma, has always been frowned upon by the Courts, on the ground that the same may tantamount to penalty without enquiry. ***The very reason as to why the Hon'ble Supreme Court termed the increase of the age of retirement from 58 to 60 years as a benefit and not as a right, is to show that officers, who are too intelligent to leave any trail of their misdeeds, but whose reputation is very bad, should be eased out without any pain on both sides.*** Therefore, Rule 23 has to be given an interpretation in such a manner that the reasons recorded are not projected as stigmatic.

58. To put it differently, an order passed under Rule 23 should convince a person going through the same that it is not an order of penalty but only the denial of the benefit of continuance in service upto 60 years. If the order passed under Rule 23 has the potential of being treated as an order of penalty or an order casting stigma, then the whole exercise would be rendered futile and the High Court will be caught in a catch 22 situation vis-à-vis erring officers. Therefore, we hold that it is enough for the High Court to record its reasons in writing, in the recommendation sent to the Governor. We also hold that it is enough, if the reasons are brief indicating that the officer may not be of continued utility.

The role of the Portfolio/Inspecting Judge:

59. It was contended by Mr. D.V. Seetharam Murthy, learned Senior Counsel for one of the petitioners that the role of the Portfolio/Inspecting Judge in assessing the performance of an officer is very vital and that therefore, if he is not present when a review is undertaken by the Administrative Committee at the time of the officer attaining the age of 58 years, the same may vitiate the whole process. In support of this contention, the learned Senior Counsel placed heavy reliance upon a decision of the Division Bench of the Delhi High Court in ***Barkha Gupta v. High Court of Delhi***¹¹, which later came to be affirmed by the Supreme Court.

¹¹ 136 (2007) DLT 119

60. There can be no quarrel about the proposition that the Inspecting Judge (also called as Administrative Judge or Portfolio Judge) holds the key, to the career of a judicial officer, during the period when he acts as the Inspecting Judge. From paragraphs 34 to 41 of its judgment in *Barkha Gupta*, the Division Bench of the Delhi High Court highlighted the importance of inspection of subordinate Courts by the Administrative Judges, the object of which is the assessment of the work of the subordinate judicial officers, their capability, integrity and competence. In fact, the Delhi High Court quoted a few passages from two judgments of the Supreme Court, one in **High Court of Punjab & Haryana v. Ishwar Chand Jain**¹² and another in **Rajiv Ranjan Singh 'Lalan' (VIII) v. Union of India**¹³.

61. But the question relating to the importance of the role played by the Portfolio Judge, is different from the question, whether the absence of the Portfolio Judge in the meeting of the Administrative Committee at the time of review of the performance of the judicial officer on attaining the age of 58 years, would vitiate the recommendations made by the High Court. As a matter of fact, the practice of this Court has always been to invite the Administrative Judge, even if he is not a member of the Administrative Committee, to be present when the question of continuance of the officer beyond 58 years is taken up. Very rarely such practice has failed, due to

¹² 1999 (2) SCR 834

¹³ 2006 205 CTR (SC) 53

the absence of the Administrative Judge for other reasons than the lack of an invitation.

62. But it must be remembered that while taking a decision to retire an officer upon attaining the age of 58 years, it is the Full Court that gets involved, after a resolution is passed to the effect, by the Administrative Committee. There are many instances where the decision of the Administrative Committee, to ease an officer out, at the age of 58 years, is not approved by the Full Court. The decisions of the Full Court or even the resolutions of the Administrative Committee, are not to be treated or adjudged on the same parameters as those concerning an order passed by the executive in the Government through a single individual. In all other departments, any decision affecting the career of an employee is taken by an individual and confirmed, reversed or modified by another individual sitting as an appellate authority or a revisional authority. But insofar as Courts are concerned, the decisions of this nature are always collectively made by the Administrative Committee comprising of 6 or 7 senior most Judges and later approved by the Full Court in a meeting duly convened.

63. Therefore, it is not merely one Judge holding the Portfolio of that particular District at the time when the judicial officer attains the age of 58 years, but all Hon'ble Judges, who have, at some point of time or the other, been the Administrative/Portfolio Judge of the District where the

concerned officer was employed at any point of time in his career, who participate in the Full Court with liberty to air their views.

64. In other words, even in cases where the Administrative/Portfolio Judge was not present in the meeting of the Administrative Committee at the time when the performance of the officer was reviewed at the age of 58 years, no serious prejudice would be caused to the judicial officer, in view of the fact that the same Administrative Judge as well as many other Judges, who were Administrative Judges for that officer, get an opportunity to be present in the meeting of the Full Court where the resolution of the Administrative Committee is put up for consideration and approval.

65. One important distinction has always to be kept in mind between judicial service and all other services. As pointed out by the Supreme Court itself in All India Judges Association II, Judges are not employees. They exercise sovereign judicial powers of the State. Therefore it is not open to the Courts to deal with cases of punishments or compulsory retirements of judicial officers, in the same way the cases of similar nature relating to other Government servants are treated. In all other services, the holder of a civil post is looked at merely as part of the whole system and not as a representative of the system itself. But in judicial service, every judicial officer is seen by the public as a representative of the entire system of administration of justice. This can be

illustrated with an example. If an assistant in the department of revenue is caught red handed and proceeded against, people do not perceive the same as the representative of how the entire department functions. But if the same thing happens to a judicial officer, the same leads to the erosion of the public confidence in the judiciary. Therefore, we cannot apply the same tests while judicially reviewing the compulsory retirement of a judicial officer, as we would apply in the case of compulsory retirement of officers belonging to other services.

66. It hardly needs to be emphasized that compulsory retirement simplicitor, in accordance with the terms and conditions of service, does not amount to a penalty. The officer so retired, does not lose the terminal benefits already earned by him. In **Chief Justice of A.P. v. Dixitulu**¹⁴, the Supreme Court pointed out that compulsory retirement is a condition of service. Therefore, so long as three months notice or three months pay in lieu of notice is given and the High Court has recorded broad reasons in the recommendation made to the Governor, the statutory requirements would stand satisfied and the absence of the Portfolio Judge in the meeting of the Administrative Committee will get more than compensated by the presence of not one but many Administrative Judges in the meeting of the Full Court.

¹⁴ (1979) 2 SCC 34

Value to be attached to the entries in the Annual**Confidential Reports:-**

67. As we have pointed earlier, the first proviso to sub-section (1-A) of Section 3 of the Act can be invoked upon an assessment and evaluation of the record of a member of the service, for his continued utility. The emphasis under the first proviso to sub-section (1-A) of Section 3 is on ***“the assessment and evaluation of the record of such member for his continued utility”***. Therefore, Annual Confidential Reports (ACRs) of an officer assume significance, since an assessment and evaluation has to be done under the statutory prescription, only of the record of such member.

68. But at the same time, the assessment and evaluation of the ACRs, are to be done only with the object of finding out whether the Officer is of continued utility or not. ***In other words, the past performance is actually to be projected into the future expectations.*** An Officer, whose track record has seen several ups and downs, may not be of continued utility. There are some officers whose performance graph may show an upward trend, in contrast to those whose graph may show a decline or downward trend. The level of motivation of an Officer may get reflected, in the level of his performance.

69. Today, it is common knowledge that the officers are awarded units, with reference to the quantum of disposals. But, the quality of such disposal is assessed only when

judgments and orders passed by such officers come up for consideration on the judicial side, some times before the same Administrative Judge and some times before others, depending upon various circumstances.

70. Therefore, we have no doubt that a great value is to be attached to the ACRs of the officers. In a catena of decisions, the Supreme Court has also emphasized the need for objective assessment of the performance of the officers in the ACRs and the importance of making proper entries in the ACRs.

71. But no hard and fast rule has been laid so far as to how and what kind of inferences are to be drawn from the entries found in the ACRs. For instance, different adjectives such as (1) Very Good; (2) Good; (3) Satisfactory; (4) Average; and (5) Poor are used in relation to different aspects of the performance of an officer such as (1) quantity of work; (2) quality of judicial as well as administrative work; (3) Integrity, tact and temper; (4) Indebtedness; (5) Fitness for promotion and Confirmation; and (6) General Remarks. In respect of Judicial Officers other than District Judges, the ACRs are primarily written by the respective District Judges with reference to the above parameters such as quantity, quality etc. Those ACRs are placed for review of the High Court before the Administrative Judge and the Administrative Judge records his over all view in terms of quality and quantity

alone. But, even the Administrative Judge uses the very same adjective such as Very Good, Good and Average etc.

72. The question as to how a person can be considered to be one of continued utility, when the review of his work discloses that his past performance was actually a mixture of good, bad and the ugly, has not come up for consideration before any Court so far. Let us take for instance a case where the entries made by the Administrative Judge reflect a Good or Very Good performance quantitatively and only a satisfactory performance qualitatively for a considerable number of years. For an outsider, such an officer would have had a clean record of performance, since he had disposed of adequate number of cases quantitatively, though the quality of such judgments was not of a high order. The question whether such a person can be considered to be a person who would be of continued utility, has not been answered by the Courts so far.

73. In other words, scientific principles governing the manner in which ACRs are to be read and the kind of inferences that could be drawn from the entries in the ACRs, have not so far been laid down by Courts, with particular reference to the aspect of continued utility of the officer. If we perceive the continuance of an officer up to the age of 60 years as a matter of right, an officer whose performance was just satisfactory, would also be entitled to continue. But, if his continuance up to the age of 60 years is a benefit

extended only to the good wood and fire wood, a person whose performance was below average or only satisfactory in terms of quality of service, cannot be conferred with such a reward or benefit.

74. At this stage, it may be relevant to take note of a long line of decisions that arose out of compulsory retirement either of Judicial Officers or of others, that are cited across the Bar. The decisions fall under 3 categories namely (i) cases of other Government servants compulsorily retired under F.R.56 (ii) cases of Judicial Officers compulsorily retired; and (iii) cases where the effect of uncommunicated adverse remarks and the effect of promotions after the recording of adverse remarks, came up for consideration.

Cases of other Government servants retired under F.R.56:

75. In *Baldev Raj Chadha v. Union of India*¹⁵, the Court was concerned with the compulsory retirement of an Accounts Officer. His compulsory retirement was in terms of Fundamental Rule 56(j). As we have pointed out earlier, there are three different types of compulsory retirement in the case of Judicial Officers. They are:

((i) compulsory retirement imposed as a measure of penalty under Rule 9 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules,

¹⁵ (1980) 4 SCC 321

(ii) compulsory retirement, not actually called as compulsory retirement but called only as retirement, in terms of Rule 23 of the Andhra Pradesh State Judicial Service Rules, 2007, upon a review of the performance after the officer attained the age of 50, 55 or 58 years, and

(iii) compulsory retirement in terms of sub-section (1A) of Section 3 of the A.P. Act 26/1998.

76. But in the case of other Government servants, there are only two types of compulsory retirement, one imposed as a measure of penalty pursuant to disciplinary proceedings and another imposed in public interest under F.R. 56(j). Therefore, in the context of an Accounts Officer, the Supreme Court held in *Baldev Raj Chadha* that if unlimited discretion is regarded as acceptable, under the guise of public interest, it will be a menace to public interest. But the same test that was applied in *Baldev Raj Chadha* cannot be applied to the continuance of Judicial Officers beyond 58 years of age, since their age of retirement was directed by the Supreme Court to be enhanced from 58 to 60 years, subject to certain conditions. While no parameters are prescribed in F.R. 56(j) to assess the requirement of public interest in the case of other Government servants, there are well defined parameters laid down by the Supreme Court itself in *All India Judges' Association-II* for defining the scope of public interest, based upon which an order of retirement on attaining the age of 58 years could be passed. In fact, the tests of – (i) chopping of

dead wood and (ii) continued utility to the institution form the bedrock of “public interest” while dealing with the cases of premature retirement of Judicial Officers. These two tests were never read into F.R. 56(j) in its application to Government servants other than the Judicial Officers. Therefore, the decision in *Baldev Raj Chadha* cannot be pressed into service by Judicial Officers.

77. In ***Sukhdeo v. Commissioner, Amravati Division***¹⁶, the Supreme Court was concerned with the compulsory retirement of an officer of the State Government under Rule 65(1)(b) of the Maharashtra Civil Services (Pension) Rules, 1982. But this decision actually turned on the facts. In fact, the decision in *Sukhdeo* arose out of an order passed by the Maharashtra Administrative Tribunal. Still, the Supreme Court summoned the Annual Confidential Records of the officer, scrutinised the same and thereafter came to the conclusion that no public interest was served in sending such an officer, merely on the basis of adverse remarks which were mutually inconsistent and for reasons which were self-evident of lack of *bona fides*. Hence, the decision in *Sukhdeo* cannot be pressed into service by the petitioners.

78. ***M.S. Bindra v. Union of India***¹⁷ arose out of the compulsory retirement of an officer of the Indian Revenue Service under F.R. 56(j). Even in this case, the Supreme

¹⁶ (1996) 5 SCC 103

¹⁷ (1998) 7 SCC 310

Court went into greater details on merits, since the Screening Committee dubbed the officer as a person of doubtful integrity, before issuing marching orders. The Supreme Court found upon a scrutiny of material that there was utter dearth of evidence for the Screening Committee to come to such a conclusion. Therefore, the decision in *M.S. Bindra* is also of no assistance to the petitioners.

79. In ***State of Gujarat v. Umedbhai M. Patel***¹⁸, the Supreme Court was concerned with the case of an Executive Engineer working in the State of Gujarat. Actually the officer was placed under suspension and disciplinary proceedings were initiated against him. However, the disciplinary proceedings were aborted and an order of compulsory retirement in terms of Rule 161(1) of the Bombay Civil Services Rules, 1959 was passed. The order of compulsory retirement was set aside by the Gujarat High Court on the ground that it was punitive in nature and was passed with the oblique motive of punishing him for the charges that were not investigated into. In paragraph-11 of the report, the Supreme Court summarised the principles as follows:

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

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

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

¹⁸ (2001) 3 SCC 314

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

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

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

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

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

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

80. But the principle that promotion despite adverse entries, is a fact in favour of the officer, enunciated in paragraph-11(vii) extracted above, in the decision in *Umedbhai M. Patel*, is not in tune with the opinion of the 3-member Bench in *Gurdas Singh*. We will be dealing with same in the subsequent paragraphs under the caption “Cases where the effect of promotion after adverse entries and cases where the effect of uncommunicated adverse remarks”. Suffice it to point out that *Umedbhai M. Patel* is by a 2 member bench and the decision of a 3-member Bench in *Gurdas Singh*, especially the one relating to the effect of promotion subsequent to an adverse entry was not cited before the Supreme Court.

81. ***M.P. Electricity Board v. Shree Baboo***¹⁹, turned on the peculiar facts of the case and hence the same cannot go to the rescue of the petitioners.

82. In ***Rajesh Gupta v. State of Jammu and Kashmir***²⁰, the Supreme Court was concerned with the compulsory retirement of an Assistant Executive Engineer working in the Rural Engineering wing, in terms of Articles 226(2) and 226(3) of the Jammu and Kashmir Civil Services Regulations, 1956. Therefore, the tests that were applied in *Rajesh Gupta* cannot be imported to cases of Judicial Officers.

Cases of Judicial Officers:

83. The next decision relied upon by the learned Senior Counsel appearing for the petitioners is the one in ***The Registrar, High Court of Madras v. R.Rajiah***²¹. Though the said decision arose out of compulsory retirement of two Judicial Officers, the same concerned the applicability of F.R. 56(d) as applicable in the State of Tamil Nadu. Under F.R. 56(d), a Government servant could be sent out after he had attained the age of 50 years or after he had completed 25 years of qualifying service. But the power to send an officer out, was actually vested with the Governor. In the case before the Supreme Court, though the High Court decided to compulsorily retire the officers, the recommendation was not

¹⁹ (2002) 9 SCC 704

²⁰ (2013) 3 SCC 514

²¹ AIR 1988 SC 1388

communicated to the Governor for passing formal orders of compulsory retirement. Instead, the High Court itself passed orders of compulsory retirement, assuming that in terms of Article 235 of the Constitution, the High Court had the absolute right to do so. Therefore, the Supreme Court found that the order of compulsory retirement was not in tune with F.R. 56(d).

84. After holding that it was the Governor who was entitled to pass the order in terms of F.R. 56(d), though it may be a formal order, the Supreme Court went into the merits of the case, cited with approval the decision in *Baldev Raj Chadha* to come to the conclusion that the decision of the High Court on the administrative side should be based upon materials. But as we have pointed out, while dealing with the contention revolving around the decision in *Baldev Raj Chadha*, the entire landscape of the jurisdiction of the High Court to deprive the benefit of continuance in service beyond the age of 58 years, underwent a radical change after the decision in *All India Judges' Association-II*. Therefore, the decisions rendered under F.R. 56(j) or F.R. 56(d) may not be of any relevance, unless they are in tune with the decisions in *All India Judges' Association-I and II*.

85. In ***Nawal Singh v. State of U.P.***²², the Supreme Court pointed out that insofar as Judicial Officers are concerned, the order of compulsory retirement is actually

²² (2003) 8 SCC 117

based upon the subjective satisfaction of the competent authority. In paragraph-6 of the report, the Supreme Court pointed out that the object of compulsory retirement is to weed out the dead wood in order to maintain a high standard of efficiency and honesty to keep the Judicial Service unpolluted. The Court held that the power to retire officers of doubtful integrity depended upon “***the overall impression gathered by the higher officers***” as it is impossible to prove by positive evidence that a particular officer is dishonest.

86. The above observations of the Supreme Court in *Nawal Singh* are of significance and are specially applicable to Judicial Service. This is in view of the fact that unlike other services, the public (litigants) do not deal with Judicial Officers directly, but they engage the services of lawyers to plead their cases. ***In respect of public officers where the public directly deal with Government servants, any misdemeanor on the part of the public servant becomes known in the form of direct evidence. But in the case of Judicial Officers, the intermediaries in the form of lawyers play a crucial role (both ways). Therefore, what a Judicial Officer does can be known only indirectly and not directly. Unfortunately or fortunately, the Bar is fully aware of who is a dead wood or a person of doubtful integrity (or undoubtedly of no integrity), among the Judicial Officers. But for reasons which are obvious, complaints are made or withheld, to subserve selfish***

interests and not the interests of the institution. But the perception that the Bar has, percolates to the Higher Judiciary. As Kautilya pointed out in his Arthashastra it becomes a case of fish drinking water without anyone being aware of or in a position to prove the same. Therefore, the compulsory retirement of Judicial Officers especially upon attainment of 58 years of age, passed on the recommendations of the Administrative Committee of 6 or 7 senior most Judges, by the Full Court, has to be viewed in the context of the peculiar nature of the office, with particular reference to -- (i) the non-availability of concrete material and (ii) the high expectations of the public in the office.

87. On the basis of the decision of a Division Bench of this Court in ***P. Raghavender v. High Court of Andhra Pradesh***²³, it was contended by one of the learned Senior counsel for petitioners that an honest Judicial Officer may have adversaries in Mufassil Courts and that therefore the High Court should not act on the basis of misconceived and *mala fide* complaints.

88. But there are two difficulties for us to follow the ratio in *P. Raghavender*. The first is that as pointed out by the Supreme Court in its decision in *Syed T.A. Naqshbandi*, which we shall refer to in the next part of this order, the scope of judicial review in cases of this nature is extremely circumscribed. Therefore it is not possible to look into the

²³ 2006 (5) ALD 566

ACRs and the fate of the complaints received against the officer to find out their merits and demerits. Once it is found that there were materials in the ACRs for a person making an assessment to come to the conclusion that the officer is of doubtful integrity or at least not of continued utility, the scope of judicial review ends there. The second difficulty is that in *P. Raghavender* all the complaints were either dropped or closed with the reports of the concerned District Judges clearly supporting *P. Raghavender*. Therefore, the case on hand is not comparable to the case in *P. Raghavender*.

89. In ***Nand Kumar Verma v. State of Jharkhand***²⁴, the Supreme Court set aside an order of compulsory retirement of a Judicial Officer on the short ground that the decision was taken by the High Court on the basis of selective service record which included summarized ACRs for the selected years. Moreover, it was a case where disciplinary proceedings were initiated against the officer and a penalty of compulsory retirement was passed on 20-4-1998. When the same was challenged before the Supreme Court and was pending adjudication, a second order of compulsory retirement came to be passed, on the basis of the ACRs. Therefore, the decision in *Nand Kumar Verma* turned on the peculiar facts and circumstances of that case.

²⁴ (2012) 3 SCC 580

Cases dealing with the effect of uncommunicated adverse remarks and promotions after recording adverse remarks:

90. The decision which became a milestone in this regard is the one in ***State of Punjab v. Gurdas Singh***²⁵. The case related to the premature retirement of a Sub Inspector of Police in terms of Rule 3(1)(b) of the Punjab Civil Services (Premature Retirement) Rules, 1975. The premature retirement of the officer in that case was set aside by the Courts below on two grounds viz., (a) that his record of service prior to his promotion could not have been taken into account and (b) that uncommunicated adverse remarks cannot also form the basis for premature retirement. But the Supreme Court after taking note of the decision of a 3-member Bench in ***Baikuntha Nath Das v. Chief Distt. Medical Officer*** [(1992) 2 SCC 299] which overruled the earlier decision of a 2-member Bench in ***Brij Mohan Singh Chopra v. State of Punjab*** [(1987) 2 SCC 188], held – (i) that the decision to retire a Government servant prematurely should be taken after considering the whole record of service, (ii) that any adverse entry prior to earning of promotion or crossing of efficiency bar is not wiped out, but can be taken into consideration while assessing the overall performance and (iii) that the whole record of service of the employee will include any uncommunicated adverse entries.

²⁵ (1998) 4 SCC 92

91. In ***Syed T.A. Naqshbandi v. State of Jammu & Kashmir***²⁶, the Supreme Court was concerned with the grant of Selection Grade to a few Judicial Officers, overlooking the claims of senior officers. The main thrust of the argument of the writ petitioners before the Supreme Court was that ACRs prepared or taken into consideration were not reliable. While rejecting the said contention, the Supreme Court made an important observation in paragraph-10 of the report, which reads as follows:

“10. In the very nature of things it would be difficult, nearing almost an impossibility to subject such exercise undertaken by the Full Court, to judicial review except in an extraordinary case when the Court is convinced that some monstrous thing which ought not to have taken place has really happened”

92. The test to see how ACRs were given weightage by the Administrative Committee and later by the Full Court while taking a decision to ease an officer out of service upon completion of 58 years of age, is just the same as opined by the Supreme Court in the paragraph extracted above in *Syed T.A. Naqshbandi*.

93. In ***Pyare Mohan Lal v. State of Jharkhand***²⁷, a 3-member Bench of the Supreme Court reiterated the principles laid down in *Gurdas Singh* and held that the washed off theory is of no relevance. In paragraph-29 of the decision, the Supreme Court held as follows:

²⁶ (2003) 9 SCC 592

²⁷ (2010) 10 SCC 693

“29. The law requires the Authority to consider the "entire service record" of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse entries had not been communicated to him and the officer had been promoted earlier in spite of those adverse entries. More so, a single adverse entry regarding the integrity of an officer even in remote past is sufficient to award compulsory retirement. The case of a Judicial Officer is required to be examined, treating him to be differently from other wings of the society, as he is serving the State in a different capacity. The case of a Judicial Officer is considered by a Committee of Judges of the High Court duly constituted by Hon'ble the Chief Justice and then the report of the Committee is placed before the Full Court. A decision is taken by the Full Court after due deliberation on the matter. Therefore, there is hardly any chance to make the allegations of non-application of mind or mala fide.”

94. The emphasis in *Pyare Mohan Lal*, as seen from the portion extracted above, was that the judicial officers are to be treated differently from the officers of the other wings of the Government. If for the purpose of conferment of special benefits, they are to be treated differently from the officers of the other wings of the Government, then even for the purpose of review upon attaining the age of 58 years, they are to be treated differently. Therefore, there is no use in drawing inspiration from the decisions of the Court relating to compulsory retirement of officers from the other wings of the Government.

95. In so far as uncommunicated adverse remarks are concerned, the decision of a Division Bench of this Court in ***Ashok Pissay v. High Court of Andhra Pradesh*** (W.P.No.

23604 of 2010, dated 09-6-2011) clinched the issue by holding that adverse entries anterior to the award of Selection Grade and uncommunicated adverse entries as well as entries as to doubtful integrity without any material particulars, could also be taken into consideration, insofar as Judicial Officers are concerned. In fact, an argument was advanced in that case that the impugned order of compulsory retirement did not expressly state that it was passed in public interest. But the Division Bench held that the mere absence of the magic words “public interest” does not derogate from the fact that the relevant authorities were sensitized to and conscious of the relevant standards.

96. In **Sukhdev Singh v. Union of India**²⁸, a 2-member Bench of the Supreme Court found inconsistencies between the two decisions, one in **U.P. Jal Nigam v. Prabhat Chandra Jain** [(1996) 2 SCC 363] and another in **Union of India v. Major Bahadur Singh** [(2006) 1 SCC 368]. Therefore, the matter was referred to a 3-member Bench. Eventually, the 3-member Bench held that every entry in ACR of a public servant must be communicated to him within a reasonable period. In fact, all the 3-member decisions of the Supreme Court starting from *Gurdas Singh* up to *Pyare Mohan Lal*, even while holding that the adverse entries should be communicated, made it clear that the non-communication will not preclude the concerned authority from taking into

²⁸ (2013) 9 SCC 566

account the same while reviewing the past record of service of the officer. Therefore, the decision in *Sukhdev Singh* is of no assistance.

97. In ***High Court of Judicature of Patna v. Shyam Deo Singh***²⁹, the Court was concerned with the retirement of a Judicial Officer upon completion of 58 years of age. The order of retirement passed on 17-5-2000, was based upon an uncommunicated adverse remark made on 15-12-1995. But the issue leading to the uncommunicated remarks was closed by the Standing Committee of the High Court on 03-01-1997 and the subsequent ACRs for the years 1997-98 and 2000-01 depicted the officer as an efficient Judicial Officer with a good reputation for honesty and impartiality. He was also promoted as District Judge on 05-9-1998 and granted Selection Grade on 17-02-2000 before being sent out in May, 2000. It is on these peculiar circumstances that the Supreme Court held that the subsequent events had the effect of wiping out the adverse remark.

98. But to come to the conclusion that the adverse remarks stood wiped out by the subsequent promotion, the Supreme Court in *Shyam Deo Singh*, relied upon the decision in *Brij Mohan Singh Chopra*. But *Brij Mohan Singh Chopra* was actually expressly overruled by a 3-member Bench in *Baikuntha Nath Das* and this fact was taken note of by the

²⁹ (2014) 4 SCC 773

Supreme Court in *Gurdas Singh*, again by a 3-member Bench. Unfortunately, the decision of the 3-member Bench in *Baikuntha Nath Das* which expressly overruled *Brij Mohan Singh Chopra*, was not cited before the Supreme Court in *Shyam Deo Singh*.

99. Even in the last of the series of judgments viz., the one in ***Punjab State Power Corporation Ltd. v. Hari Kishan Verma***³⁰, the Supreme Court reiterated that the object of compulsory retirement being public interest, previous adverse entries do not melt into insignificance, even if the employee is subsequently promoted. Therefore, the principles of law to be applied while judicially reviewing the cases of compulsory retirement of officers, now stands fairly well settled. Keeping these principles in mind, let us now go to the third part of this order dealing with the overall performance of the petitioners herein as reflected in the ACRs.

PART-III:

100. As we have indicated in para-8 of this judgment, we have dealt with the reasons for the compulsory retirement of the petitioners, in Part-I of this order and we have dealt with the contentions, which are common to all the writ petitioners, in Part-II of this order. Therefore, we shall now move to Part-III of the order dealing with the details of the career of the each of the petitioners and the contentions

³⁰ (2015) 13 SCC 156

arising out of the same, which may be specific to each individual case.

W.P.No.16336 of 2016

101. The career of the petitioner in this writ petition, as reflected by the ACRs can be summarised in the form of the table as follows:

Year	Period	Quantita tively	Qualitati vely	Work	Conduct	General Remarks
1992	I	--	--	--	--	Nil
	II	Not satisfacto ry	Average	--	--	
1993	I	Good	satisfacto ry	Satisfactor y	satisfacto ry	He is one of the truly committed judicial officers amongst the direct recruits
	II	Not satisfacto ry	Average	Satisfactor y	good	
1994	I	Satisfacto ry	Satisfacto ry	Average	satisfacto ry	Satisfactor y
	II	Not satisfacto ry	Average	Average	--	
	III	Satisfacto ry	Average	Satisfactor y	Satisfacto ry	
1995	I	Satisfacto ry	Average	Average	Good	Conduct is good works hard
	II	Not satisfacto ry	Average	Average	Good	
	III	Satisfacto ry	Average	Average	Good	
1996	I	Good	Satisfacto ry	Good	Satisfacto ry	No adverse reports from any quarter
	II	Good	Average	Good	Satisfacto ry	
1997	I	Good	Satisfacto ry	Satisfactor y	Satisfacto ry	No sufficient material to doubt his integrity except rumours.
	II	Good	Average	Satisfactor y	Satisfacto ry	
1998	I	Satisfacto ry	Satisfacto ry	Satisfactor y	No opinion can be	No material to doubt his

					expressed	integrity though mentioned one or two petitions against him
	II	Very good	Satisfactory	Satisfactory	No opinion can be expressed	
1999	I	Very good	Satisfactory	Satisfactory	--	He is honest, sincere and hard working
	II	Very good	Satisfactory	Satisfactory	--	
2000	I	Very good	Satisfactory	Satisfactory	--	Nil
	II	Very good	Satisfactory	Satisfactory	--	
2001	I	Satisfactory	Good	Satisfactory	Satisfactory	No adverse remarks
	II	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
2002	I	Good	Average	Not satisfactory	--	Nil
	II	Very good	Satisfactory	Not satisfactory	--	
2003	I	Good	Satisfactory	Good	Satisfactory	Qualitative improvement necessary
	II	Good	Satisfactory	Good	Satisfactory	
2004	I	Average	Satisfactory	Average	Satisfactory	Work improvement essential
	II	Average	Average	Average	Satisfactory	
2005	I	Poor	Average	Average	Satisfactory	Nil
	II	Average	Average	Average	Satisfactory	
2006	I	Very Good	Satisfactory	Satisfactory	Satisfactory	Improve
	II	Very Good	Satisfactory	Satisfactory	Satisfactory	
2007	I	Very Good	Satisfactory	Satisfactory	Satisfactory	Improve qualitatively
	II	Very Good	Satisfactory	Satisfactory	Satisfactory	
2008	I	Good/Satisfactory	Average	Satisfactory	Satisfactory	Improve
	II	Very Good	Satisfactory	Satisfactory	Satisfactory	
2009	I	Very Good	Satisfactory	Satisfactory	Satisfactory	Nil
	II	Good	Satisfactory	Satisfactory	Satisfactory	
2010	I	Good	Satisfactory	Satisfactory	Satisfactory	Nil
	III	Poor	Satisfactory	Poor	Satisfactory	
	IV	Good	Satisfactory	Satisfactory	Satisfactory	

			ry	y	ry	
2011	I	Satisfactory	Good	--	--	Nil
	II	Average	Satisfactory	--	--	
	III	Average	Satisfactory	--	--	
	IV	Poor	Satisfactory	--	--	
2012	I	Poor	Poor	--	--	Nil
	II	Recorded	Good	--	--	
	III	Average	Satisfactory	--	--	
	IV	Average	Good	--	--	
2013	I	Average	Satisfactory	--	--	Nil
	II	Poor	Average	--	--	
	III	Good	Under circulation	--	--	
2014	I	Good	Under circulation	--	--	Nil

102. A careful look at the entries made in the ACRs of the petitioner in W.P.No.16336 of 2016 would show that in terms of quantity, his work was rated as “not satisfactory” four times, but as “satisfactory” on eight times, rated as “good” 13 times, “very good” on 12 times, and as “poor or average” on 11 times. On the qualitative side, his performance was rated mostly as “average or satisfactory” except on four occasions when it was rated as “good”. Insofar as the work is concerned, it was always rated as “average or satisfactory” except on four occasions when it was rated as “good”. In fact, on two occasions it was rated as “not satisfactory” and on two occasions it was rated as “poor”. Same is the case with his conduct. In the general remarks column, he was directed repeatedly in the years 2003, 2004, 2006, 2007 and 2008 to “strive to improve”.

103. On the basis of these remarks if the Administrative Committee had decided that the officer may not be of continued utility, and the Full Court had accepted the same, we do not know how we could find fault with the same.

W.P.No.18272 of 2016

104. The entries in the ACRs of the petitioner are tabulated as follows:

1999	I	--	--	Satisfactory	--	Nil
	II	Good	Good	Satisfactory	--	
2000	I	Good	Satisfactory	Good	--	Nil
	II	Satisfactory	Satisfactory	Just satisfactory	--	
2001	I	Satisfactory	Satisfactory	Satisfactory	--	No adverse reports
	II	Good	satisfactory	Average	--	
2002	I	Satisfactory/average	Satisfactory	Satisfactory	Good	To improve qualitatively
	II	Good	Satisfactory	Satisfactory	Good	
2003	I	Average	Satisfactory	Good	Satisfactory	Improvement necessary
	II	Good	Good	Satisfactory	Satisfactory	
2004	I	Good	Satisfactory	Good	Satisfactory	He is sincere and hard working
	II	Good	Satisfactory	Satisfactory	Satisfactory	
2005	I	Good	Satisfactory	Good	satisfactory	Improve qualitatively
	II	Good	Satisfactory	Good	satisfactory	
2006	I	Average	Satisfactory	Satisfactory	Satisfactory	He is active hard working
	II	Good	Satisfactory	Satisfactory	Satisfactory	
2007	I	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor has to improve communication skills
	II	Average	Satisfactory	Satisfactory	Good	
2008	I	Satisfactory	Satisfactory	Satisfactory	Satisfactory	He disposed of more cases
	II	Satisfactory	Satisfactory	Satisfactory	Satisfactory	

		ry/short period	ry/no review	ory	ry	
2009	I	Short period/sa tisfactory	No review/sa tisfactory	Satisfact ory	Satisfacto ry	Satisfactory
	II	Average	Satisfacto ry	Satisfact ory	Satisfacto ry	
2010	I	Satisfacto ry	Satisfacto ry	Satisfact ory	Satisfacto ry	Nil
	II	Satisfacto ry	Satisfacto ry	Satisfact ory	satisfacto ry	
2011	I	Average	Satisfacto ry	Satisfact ory	Satisfacto ry	He is evasive in doing matters particularly on civil side resulting pendency of several old civil matters.
	II	Satisfacto ry	Satisfacto ry	Satisfact ory	satisfacto ry	
2012	I	Satisfacto ry	Satisfacto ry	--	--	--
	II	Satisfacto ry	Satisfacto ry	--	--	
2013	I	Recorded	Satisfacto ry			--
	II	Poor/aver age	Under circulatio n/satisfac tory	--	--	
2014	I	Very good	Under circulatio n	--	--	--

105. While the performance of the petitioner quantitatively was recorded as “good” on 10 occasions and “very good” on one occasion, it was recorded only as “satisfactory or average” on 17 occasions and as “poor” on one occasion. Qualitatively his performance was rated as “good” only on one occasion. On all other occasions (26 times) it was found to be only “satisfactory”. The work was found to be “good” on four occasions and on rest of the occasions it was recorded only as “satisfactory”. In respect of conduct also, the remark was that it was “satisfactory”. Though in respect of

the year 2008, a remark was recorded that “he disposed of more cases”, he was advised to improve qualitatively, in the years 2002, 2003, 2005 and 2007”. In the year 2011 it was recorded that “he is evasive in doing matters particularly on the civil side resulting in pendency of several old civil matters”.

106. Therefore, we do not find any reason to interfere with the recommendation of the Administrative Committee, which was accepted by the Full Court.

WP 25280/2016

107. The relevant entries in the ACRs of the petitioner are as follows:

Year	Period	Quantitatively	Qualitatively	Work	Conduct	General Remarks
1989	I	Yes	No remarks	Average	Good	Nil
1990	I	Adequate	Satisfactory	Satisfactory	Satisfactory	Nil
1991	I	Adequate	Satisfactory	Satisfactory	Satisfactory	Nil
1992	I	Not satisfactory	Average	Satisfactory	Nothing adverse	Nil
	II	Not satisfactory	Average	Average	Satisfactory	
1993	I	Satisfactory	Average	Satisfactory	Nothing adverse	Seems to be satisfactory
	II	Good	Good	Satisfactory	Nothing adverse	
1994	I	Not Satisfactory	No remarks	Not Satisfactory	Nothing adverse	He is a new recruit
	II	Not satisfactory	Not satisfactory	Not Satisfactory	Nothing adverse	
1995	I	Not satisfactory	Satisfactory	Not satisfactory	Good	Nil
	II	Just satisfactory	Not satisfactory	Not Satisfactory	Normal	
1996	I	Good	Average	Average	Satisfactory	Nil

	II	Good	Average	Satisfactory	Satisfactory	
1997	I	Good	Average	Average	Satisfactory	He is zeal to do work
	II	Good	Average	Satisfactory	Satisfactory	
1998	I	Poor/satisfactory	Poor	Average	Satisfactory	His general conduct and character are good
	II	Good	Average	Poor	Satisfactory	
1999	I	Good	Satisfactory	Satisfactory	Satisfactory	His conduct and character good
	II	Average	Average	Satisfactory	Satisfactory	
2000	I	Good	Satisfactory	Satisfactory	Satisfactory	Satisfactory
	II	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
2001	I	Good	Good	Satisfactory	Satisfactory	No adverse remarks
	II	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
2002	I	Very poor	Average	Average	Satisfactory	Nil
	II	Very good	Satisfactory	Satisfactory	Satisfactory	
2003	I	Very good	Good	Good	Satisfactory	His conduct is satisfactory
	II	Very good	Satisfactory	Good	Satisfactory	
2004	I	Good	Satisfactory	Satisfactory	Satisfactory	He is hard working and sincere to his duty
	II	Very Good	Satisfactory	satisfactory	satisfactory	
2005	I	Satisfactory	Average	Satisfactory	Satisfactory	To be watched
	II	Good	Satisfactory	Average	satisfactory	
2006	I	Very good	Satisfactory	Good	Satisfactory	Qualitatively to improve
	II	Very good	Satisfactory	Very good	Satisfactory	
2007	I	Very good	Good	Satisfactory	Satisfactory	satisfactory
	II	Very good	Good	Satisfactory	Satisfactory	
2008	I	Very good	Good	Satisfactory	Good	Nil
	II	Very good	Good	Satisfactory	Good	
2009	I	Very good/satisfactory	Satisfactory/satisfactory	Satisfactory	Satisfactory	Satisfactory
	II	Satisfactory	Satisfactory	Satisfactory	Satisfactory	

		y		ry	y	
2010	I	Satisfactor y	satisfactory	Satisfacto ry	Good	Nil
	II	Satisfactor y	satisfactory	satisfacto ry	Satisfactor y	
2011	I	Satisfactor y	Average	Satisfacto ry	Satisfactor y	Satisfacto ry
	II	Satisfactor y	Satisfactory	Satisfacto ry	Satisfactor y	
2012	I	OD secretary, DLSA	OD	Satisfacto ry	Satisfactor y	Nil
2013	I	Satisfactor y	Satisfactory	Satisfacto ry	Satisfactor y	Nil
	li	Satisfactor y	Satisfactory	Satisfacto ry	Satisfactor y	
2014	I	Good	Under circulation	--	--	Integrity not beyond doubt
	II	Good	Under circulation	--	--	

108. A look at the table would show that his performance had been assessed to be swinging from one extreme to the other. It ranges from 'very poor' to 'very good'. It is true that during the period 2003 to 2008 his performance was mostly rated as good/ very good. But the benchmark of his overall performance appears only to be average or satisfactory. In the year 2014, the Administrative Judge has recorded that his integrity was not beyond doubt. Therefore, this is also not a case where any interference is possible.

Conclusion:

109. At the cost of repetition we should point out (1) that the case of judicial officers stand on a completely different footing from that of officers of the other limbs of the Government; and (2) that the refusal to continue an officer beyond the age of 58 years need not wholly depend upon what he has done or not done in the past, but upon his

continued utility to the institution. One must also remember that the Supreme Court treated the judicial officers as a distinct and different category and directed the Union of India and all the State Governments, by judicial intervention, to increase the age of retirement to 60 years. The resistance displayed by the State Governments when they filed review applications, was thwarted by the Apex Court by holding that there would be a review and that only officers of continued utility would have the benefit of enhancement of the age of retirement. Therefore, all the State Governments reposed confidence and issued amendment to the Rules. The State Governments do not have administrative or disciplinary control over the judicial officers. It is the High Court, which evaluates and reviews the performance of judicial officers and advise the Governor/State Government to retire a robed brethren upon attaining the age of 58 years. The recommendation of the High Court is accepted by the Governor/State Government and marching orders are issued by them. Thereafter, if the very same High Court, on the judicial side finds fault with those orders and directs payment of the pay and allowances from the date of retirement at 58 years up to the date of completion of 60 years, it is public money that gets involved. The Government will not be at fault for merely accepting the recommendation of the High Court and retiring an officer upon completion of 58 years of age. Yet it is the Government, which is directed to shell out the

consequential benefits. Therefore, the High Court is duty bound (1) to exercise due caution and diligence while making recommendations for the retirement of an officer, on the administrative side; and (2) to exercise a lot of restraint while interfering with such decisions on the judicial side.

110. If we test the merits of the cases of the petitioners, on the parameters indicated above, it will be clear that no interference is called upon in any of these cases. Therefore, the writ petitions are dismissed. There shall be no order as to costs.

111. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed.



V.RAMASUBRAMANIAN, J

N.BALAYOGI, J

20th April, 2018

Ak/Js

Note: L.R. Copy to be marked.

B/o Js

HON'BLE SRI JUSTICE
V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

Writ Petition Nos.16336, 18272 and 25280 of 2016
(per VRS, J.)



20th April, 2018

Js.