

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

***HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
and**

***HONOURABLE Ms. JUSTICE J.UMA DEVI**

+Writ Petition No.39196 of 2016

% Date: 31-12-2018

#Between:

Marakkagari Krishnappa, S/o.Late Akkulappa,
Aged 58 years, District Judge (Retired), 4/70-3, Donthi Street, Indira
Nagar, Madanapalli, Chittoor District

... Petitioner

Vs.

1. The State of Andhra Pradesh,
Rep. by the Secretary, Dept. of Law (LA&J), Secretariat,
Velagapudi, Guntur, Guntur District
2. The Hon'ble High Court of Judicature at Hyderabad
for the States of Telangana and A.P.,
Rep. by the Registrar General, High Court Buildings, Hyderabad
3. The Registrar (Vigilance),
The Hon'ble High Court of Judicature at Hyderabad
for the States of Telangana and A.P., Hyderabad

... Respondents

! Counsel for the Petitioner : Mr. K.G. Krishna Murthy,
Senior Counsel for
Mr. K.Rama Mohan

^Counsel for Respondent No.1 : Government Pleader for
Law and Legislature

^ Counsel for Respondents 2&3 : Mr. S. Sri Ram

<GIST:

> HEAD NOTE:

- 1) (1992) 1 SCC 119
- 2) (1993) 4 SCC 288
- 3) (1999) 4 SCC 235
- 4) (2003) 8 SCC 117
- 5) 2006 (5) ALT 459
- 6) (2003) 9 SCC 592
- 7) (2012) 3 SCC 592
- 6) (1980) 1 SCC 12
- 7) (2014) 4 SCC 773
- 8) (1980) 4 SCC 321
- 9) AIR 1988 SC 1388
- 10) (1998) 4 SCC 92
- 11) (2010) 10 SCC 693

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI**

Writ Petition No.39196 of 2016

ORDER: (per VRS,J.)

Aggrieved by an order of retirement upon completion of 58 years of age and the refusal of the Government to continue his services up to the age of 60 years, a District Judge has come up with the present writ petition.

2. Heard Mr. K.G. Krishna Murthy, learned Senior Counsel appearing for the petitioner and Mr. S.Sri Ram, learned counsel appearing for the Registry.

3. The petitioner was originally appointed as a District Munsif on 02-11-1989. He was promoted as Senior Civil Judge in April, 2004. He was subsequently promoted as District Judge on 16-6-2015, under the 65% quota for promotion on the basis of merit cum seniority.

4. The petitioner reached 58 years of age in September, 2016. The Administrative Committee of the High Court resolved on 01-9-2016 not to continue the petitioner in service up to the age of 60 years but to retire him in public interest 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. Accordingly, an order in G.O.Ms.No.67, Law Department, dated 22-9-2016 was issued followed by the proceedings of the High Court

dated 22-9-2016. Challenging these orders, the petitioner is before us.

5. The grounds on which the petitioner challenges the order of retirement are:

(1) that except stating that the petitioner is not of continued utility and not fit to be continued in service beyond the age of 58 years, the impugned orders do not state any reason and hence the impugned orders are vitiated,

(2) that the Annual Confidential Reports (ACRs) obtained by the petitioner under the Right to Information Act, 2005 show that his performance had been consistently rated as “good” or “satisfactory” and hence there was no rationale or basis for sending him out at the age of 58 years,

(3) that in any case, the performance of the petitioner during the period from 2014 to 2016 was not even assessed by the High Court and hence the conclusion that he will not be of continued utility, is not based upon any objective criteria,

(4) that the procedure prescribed by Section 3(1A) of the Act for the assessment and evaluation of the record has not been properly followed,

(5) that the formation of opinion, on the basis of subjective satisfaction was not based upon any valid material,

(6) that in the year 2015, the petitioner was found to be fit for promotion on the basis of merit cum seniority based

upon the evaluation of ACRs and hence suddenly the petitioner cannot become a person of no continued utility,

(7) that the petitioner has performed very well even during the last one year of his service achieving more than the prescribed number of units, but the same had not been taken into account and

(8) that the retirement at the age of 58 years, of an officer who maintained consistently good record of performance is highly arbitrary.

6. We have carefully considered the above submissions. All the submissions of the learned Senior Counsel for the petitioner actually revolve around (1) absence of reasons (2) absence of any adverse material in the annual confidential records; (3) promotion of the petitioner in the year 2015 and (4) his good record of performance in the past.

7. Before considering the submissions of Mr. K.G. Krishna Murthy, learned Senior Counsel appearing for the petitioner, it must be pointed out that judicial service stands on a completely different footing than the other services under the State or Union.

Development of Law relating to different types of retirement

8. It is common knowledge that 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. But, 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 the Subordinate Services, (iv) holders of posts in the Ministerial Services and (v) holders of posts in the Last Grade Services of the State.

9. 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.”

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. The main 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.

16. 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 invariably have in every State, General Rules governing the terms and conditions of service of officers appointed to the 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.

17. 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 which 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 in the State of Andhra Pradesh 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 A.P. Civil Services (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.

18. 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 erring 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.

19. But in *All India Judges' Association v. Union of India*¹, 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 amendments 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

¹(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.

20. But the Union of India and several States 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*².

21. 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

² (1993) 4 SCC 288

the increase of the retirement age to 60 years, shall not be available automatically to all judicial officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit will be available to those who, in the opinion of the respective High Courts, have a potential for continued useful service. It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. The potential for continued utility shall be assessed and evaluated by appropriate Committees of Judges of the respective High Courts constituted and headed by the Chief Justices of the High Courts and the evaluation shall be made on the basis of the judicial officer's past record of service, character rolls, quality of judgments and other relevant matters.

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

22. 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.”

23. 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 Amendment Act 26 of 1998 incorporating in section 3, a sub-section as sub-section (1-A) along with two provisos and an Explanation. Sub-section (1-A), together with the two provisos and the Explanation to the same, inserted under section 3 of the Act 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.”

24. Thus what was done in other States by way of amendment of the Rules was done by the State of Andhra Pradesh by way of amendment of the Special enactment. But the effect was the same. Interestingly, the import of such an amendment to the Rules (with respect to the age of retirement) issued in pursuance of the directions contained in *All India Judges’ Association-I* and *All India Judges’ Association-II*, came to be considered by a 3-member Bench of

the Supreme Court in *Rajat Baran Roy v. State of W.B.*³. 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 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”).

³(1999) 4 SCC 235

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.”

25. 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 to 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, from paragraph-10 onwards, 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. 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 or annulling 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 good even to the modified directions.

26. 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.

27. In any case, 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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”.

34. 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.

35. 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.

36. 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”.***

37. ***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.

38. 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, our 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.

39. 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 the 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.

40. Sub-section (1A) of Section 3 of A.P. 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 kind 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, except in accordance with the procedure established by law?”.***

41. If we keep in kind ***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.

42. In **Nawal Singh v. State of U.P.**⁴, the Supreme Court pointed out that insofar as the judicial officers are concerned the order of compulsory retirement is actually based upon the subjective satisfaction of the authority. In paragraph-6 of the report, the Supreme Court indicated 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 went on to hold that ***the exercise of the power conferred upon the authority to retire officers of doubtful integrity, depends upon an overall impression gathered by the higher officers, as it is impossible to prove by positive evidence that a particular officer is dishonest.***

43. Once it is settled that the easing out of an officer upon attaining the age of 58 years is on the basis of subjective satisfaction of the assessing authority and that the subjective satisfaction is arrived at on the basis of the over all impression, the scrutiny that could be made under Article 226, of such an order of compulsory retirement becomes extremely circumscribed.

Case on hand

44. Keeping the above legal principles in mind, let us take a look at the career of the petitioner, as reflected by the

⁴ (2003) 8 SCC 117

entries made in the annual confidential reports of the petitioner. It is seen therefrom that he was first appointed as a Junior Civil Judge on 2.11.1989 and was promoted to the post of Senior Civil Judge on 01.05.2004 and later to the post of District Judge on 22.06.2015. Year after year, from 1990 onwards, the quantity and quality of work performed by him has been assessed either as satisfactory or as average and at times it was recorded as not satisfactory. If we have a look at the High Court review from the year 1992, the work of the petitioner was assessed as not satisfactory quantitatively during the second period, for the years 1992, 1993, 1994, and 1995. In the year 1998, his work quantitatively was found to be unsatisfactory and qualitatively as poor/average during the first period. Though in the years 1999 and 2000 the work was assessed as good quantitatively, there was once again a downfall either to average or satisfactory. In the year 2003, a learned Judge of this Court recorded, insofar as the conduct of the petitioner is concerned, "to be cautious; work to be improved". In the year 2013, his work was assessed quantitatively to be poor during the second quarter and for the year 2014 his work was assessed only as satisfactory both qualitatively and quantitatively.

45. The vigilance file indicates that there were several complaints of abuse of official position, but the High Court could not proceed further, since substantial material could

not be gathered. Therefore, the officer was let off either with a warning or after administering a caution.

46. In the year 2010, disciplinary proceedings were initiated against the writ petitioner as well as six other judicial officers on the allegations of adoption of malpractices (copying) in LLM examinations. On the ground that the evidence available was weak (despite the evidence being a video-graph) all the officers including the petitioner were let off and the suspension was revoked. However, the High Court passed an order that the period of suspension could not be treated as on duty as the suspension cannot be taken to be wholly unwarranted.

47. Therefore, taking into account the over all performance of the officer during his entire tenure, the Administrative Committee resolved to retire the petitioner from service on attaining the age of superannuation and we do not think that the same calls for any interference.

Contentions

48. Drawing our attention to a judgment of the Division Bench of this Court in **P. Raghavender v. High Court of Andhra Pradesh**⁵, it was contended by Mr. K. G. Krishna Murthy, learned Senior Counsel for the petitioner that it is natural for an honest judicial officer to have adversaries in the mofussil Courts, and that therefore, the High Court

⁵ 2006 (5) ALT 459

should not act on the basis of misconceived and malafide complaints.

49. As a matter of fact, the Division Bench of this Court, in *P. Raghavendar*, went into minute detail, of all the ACRs as well as the complaints against the petitioner therein and came to the conclusion in paragraph 45 of the report that when the work and conduct were always treated as good or very good and satisfactory and when all the complaints received during the entire tenure were closed or dropped, the Administrative Committee could not have recommended the officer for compulsory retirement.

50. But there are two difficulties for us to follow the ratio in *P. Raghavender*. The first is that the Supreme Court pointed out, albeit in a different context, in **Syed T.A. Naqshbandi v. State of Jammu & Kashmir**⁶ that – ***“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.”*** Therefore, the scope of judicial review in cases of this nature is extremely circumscribed. It is not possible to subject the ACRs and the inquiry into complaints received against the officer, to a microscopic scrutiny to find out their merits and demerits.

⁶ (2003) 9 SCC 592

Once it is found that there were material 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*.

51. In **Nand Kumar Verma v. State of Jharkhand**⁷, relied upon by Mr. K.G. Krishna Murthy, learned Senior Counsel, what was taken exception to, by the Supreme Court was a selective consideration by the High Court, of the service record relating to a few years, before issuing marching orders. But in the case on hand, we have ourselves seen the ACRs for the years 1990 to 2014 and we find that no other conclusion than the one reached by the Administrative Committee, could have been arrived at.

52. Though Mr. K.G. Krishna Murthy, learned Senior Counsel also relied upon the decision in **Swamy Saran Saksena v. State of Uttar Pradesh**⁸, we do not think that the said decision is of any avail, since much water has flown after the said decision.

⁷ (2012) 3 SCC 592

⁸ (1980) 1 SCC 12

53, The decision in **High Court of Judicature of Patna v. Shyam Deo Singh**⁹, turned on the peculiar facts of the case as seen from paragraph 10 of the report. Therefore, the reliance placed upon the same is also of no avail.

54. Mr. K. G. Krishna Murthy, learned Senior Counsel also relied upon two other judgments, in **Baldev Raj Chadha v. Union of India**¹⁰ and **the Registrar, High Court of Madras v. R. Rajiah**¹¹. But any decision rendered prior to the decision in *All India Judges Association (I)* in the context of Fundamental Rule 56(j), is of no avail, since the continuance in service beyond 58 years was at the instance of the Supreme Court and was ordered as a benefit.

55. In **State of Punjab v. Gurdas Singh**¹², though related to the compulsory retirement of a police constable, the Supreme Court held that even adverse remarks made prior to promotion could be taken into account. In paragraph-11, the 3 Member Bench of the Supreme Court indicated that even subsequent promotion does not wipe out the adverse entry made before the promotion. In fact the Supreme Court, in that case, went to the extent of holding that since the entire service record can be taken into consideration for the purpose of compulsory retirement, even uncommunicated adverse entries could be taken note of.

⁹ (2014) 4 SCC 773

¹⁰ (1980) 4 SCC 321

¹¹ AIR 1988 SC 1388

¹² (1998) 4 SCC 92

56. The aforesaid principles were reiterated by another 3 Member Bench of the Supreme Court in **Pyare Mohan Lal v. State of Jharkhand**¹³,

57. Therefore, in fine, we are of the considered view that the Administrative Committee of the High Court and the Full Court considered all the materials on record in the right perspective to come to the conclusion that the benefit of continuance beyond 58 years of age need not be extended to the petitioner. Hence, the impugned order does not warrant any interference. Therefore the writ petition is dismissed as devoid of merits.

58. As a sequel, miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

V.RAMASUBRAMANIAN, J

J.UMA DEVI, J

31st December, 2018.

Ak/Js

¹³ (2010) 10 SCC 693

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI**

Writ Petition No.39196 of 2016
(per VRS, J.)



31st December, 2018.

Js.