

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Order Reserved on 26.7.2019**
Order Delivered on 24/10/2019**WPS No. 462 of 2013**

1. Phool Singh Penkra S/o Hari Singh R/o Vill Gandapali Pathiapali, Tah Kartala Distt Korba, Cg, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through Principal Secretary, Law and Legislative Affairs Department, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh.
2. High Court of Chhattisgarh, Through Registrar General, Bilaspur, Chhattisgarh

---- Respondents

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For Petitioner : Shri Rajat Agrawal & Shri Harshwardhan
Parghania, Advocates.

For Respondent No.1: Shri Siddharth Dubey, Dy Govt. Advocate.

For Respondent No.2: Shri Rajeev Shrivastava, Advocate.

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Hon'ble Shri P. R. Ramchandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****C A V Order****Per Parth Prateem Sahu, J.**

1. Petitioner has filed this petition challenging recommendation of the Screening Committee dated 14.3.2011; resolution of the Full Court of the High Court dated 15.3.2011 and order dated 26.3.2011 passed by respondent No.1 thereby compulsory retiring the petitioner from service. The petitioner has also sought for a relief that Rule 13 (2) of the CG Higher Judicial Service (Recruitment Conditions of Service) Rules, 2006 (henceforth 'the Rules of 2006') be declared ultra vires to the

Madhya Pradesh State Reorganization Act, 2000 (for short 'the Act of 2000').

2. Facts of the case, in nutshell, are that in the year 1994 the petitioner was appointed as 'Civil Judge Class-II' in the then State of Madhya Pradesh. After reorganization of State of Madhya Pradesh and formation of new State of Chhattisgarh, the services of petitioner were allocated to newly constituted State of Chhattisgarh. On 7.4.2006 the Rules of 2006 came into force and in the month of October, 2006 the petitioner was promoted to the post of 'Additional District & Sessions Judge' on ad-hoc basis, as per provisions of the Rules of 2006. While the petitioner was posted and working as Additional District Judge (FTC), Durg, he was served with office memo dated 7.10.2010 apprising him that he has been placed at Sr. No.1 in the select list of District Judge (Entry Level) Examination, 2010 for promotion on the post of District & Sessions Judge. The Screening Committee constituted by the Hon'ble Chief Justice of High Court of Chhattisgarh for the purpose of screening service record of the Judicial Officers, considered the service records of 72 Judicial Officers, who had completed 20 years of service or 50 years of age, and after considering their service record, recommended 16 Judicial Officers including petitioner herein to be retired compulsory. Report of the Screening Committee recommending 16 Judicial Officers for compulsory retirement was placed before the Full Court of the High Court of Chhattisgarh. The Full Court vide resolution dated 15.3.2011

have resolved to accept report/ recommendation of the Screening Committee and recommended to the State Government for compulsory retirement of petitioner and 15 other Judicial Officers. Based on the recommendation of the Full Court, on 26.3.2011 the State Government ordered compulsory retirement of the petitioner herein and 15 other Judicial Officers. Aggrieved by the order of compulsory retirement, the petitioner preferred writ petition before Hon'ble Supreme Court under Article 32 of the Constitution of India. Taking note of the fact that some Judicial Officers, who have also been compulsory retired along with petitioner, have approached the High Court of Chhattisgarh against the order of compulsory retirement, Hon'ble Supreme Court has transferred petition of petitioner herein to this Court with a direction to register it as 'writ petition' and decide the same in accordance with law. Accordingly, the instant writ petition came to be registered.

3. Shri Harshvardhan Parganiha, learned counsel representing petitioner would argue that the Screening Committee has not properly considered service record of petitioner and thus recommendation for compulsory retirement of the petitioner was not made by the Screening Committee after due application of mind. The Full Court also did not independently apply its mind and merely confirmed recommendation of the Screening Committee and the State Government also acting mechanically on the recommendation of the Full Court passed

the impugned order compulsorily retiring the petitioner from service. Thus, the impugned order is not only perverse but also suffers from non-application of mind and therefore liable to be set aside. He further submits that petitioner has been found fit for promotion by the Competent Authority and therefore it cannot be said that past service record of petitioner was such that he can be declared as 'dead wood' to the institution. He also submits that the amendment in Rule 13 (2) of the Rules of 2006 has been carried out without prior permission of the Central Government as required under Section 69 of the Act of 2000 and therefore, the impugned order compulsorily retiring petitioner from service as per provisions of Rule 13 (2) of the Rules of 2006 being bad in law is liable to be interdicted. He further submits that some other Judicial Officers namely Tularam Churendra, Vijay Bhushan Singh, Amrit Lal Dahariya & Lakhan Singh, who were also compulsorily retired along with petitioner, have filed writ petitions before this Court bearing WPS Nos.4154/11, 2055/12, 2057/12 & 460/13 respectively, and a Division Bench of this Court taking into consideration the totality of facts and circumstances of case, allowed their writ petitions, set aside the order of compulsory retirement and granted all consequential services benefits to them. As the petitioner's case also stands on the same footing as that of petitioners in aforementioned writ petitions, therefore, on the ground of parity, petitioner is also entitled to the same treatment/ benefits. In support of his arguments, learned

counsel for the petitioner has placed reliance on the decisions of Hon'ble Supreme Court rendered in the matters of The State of Rajasthan & anr v. Shri Rajinder Singh reported in (1973) 4 SCC 172; Baldev Raj Bhatia v. Union of India & ors reported in (1980) 4 SCC 321; Ahmed Hussain Khan & ors v. State of Andhra Pradesh reported in 1984 Suppl (1) SCC 467; J.D. Shrivastava v. State of MP & ors reported in (1984) 2 SCC 8; PU Joshi & ors v. Accountant General, Ahmedabad & ors reported in (2003) 2 SCC 632.

4. Mr. Siddharth Dubey, learned Deputy Government Advocate for the State submits that order of compulsory retirement has been passed strictly in accordance with law and there is no procedural illegality, irregularity or perversity in the impugned order warranting any interference.
5. Mr. Rajeev Shrivastava, learned counsel representing High Court of Chhattisgarh, submits that service records of petitioner and other Judicial Officers, who have completed 50 years of age or 20 years of service, as the case may be, were considered by the Screening Committee of the High Court to assess their efficiency and suitability to continue as Judicial Officer in service and submitted its report recommending compulsory retirement of 16 Judicial Officers including petitioner herein, under sub-rule (2) of Rule 13 of the Rules of 2006. The Full Court after due deliberation, discussion and perusing the entire service record including Annual Confidential Reports of petitioner, accepted report of the Screening

Committee and a resolution to that effect was passed. He further submits that as there was no improvement in the ACRs of petitioner, which were communicated to him from time to time, therefore, the Screening Committee recommended name of petitioner for compulsory retirement, which cannot be said to be illegal or an outcome of non-application of mind. Reliance is placed on the judgments delivered in the matters of **Rajendra Singh Verma (Dead) Through LRs & ors v. Lieutenant Governor (NCT of Delhi) & ors** reported in (2011) 10 SCC 1 & **R.C. Chandel v. State of MP** reported in (2012) 8 SCC 58.

He further submits that the order passed by a Division Bench of this Court in WPS Nos.4154/11, 2055/12, 2057/12 & 460/13 filed by Judicial Officers namely Tularam Churendra, Vijay Bhushan Singh, Amrit Lal Dahariya & Lakhan Singh respectively, who were also compulsorily retired along with petitioner on the basis of recommendation of the Screening Committee, is of no help to the petitioner as his case stands on different footing from the case of aforementioned Judicial Officers.

6. We have heard learned counsel for the parties and perused the records.
7. Before coming to the merits of case, it would be profitable to scan service record of the petitioner, who joined Judicial Service as 'Civil Judge Class II' in the year 1994. Following is the table showing grading and remarks in the ACR year-wise:-

Sr.	ACR for the Year	Grade	Remarks / Assessment
1.	1994-95	'D'	-----
2.	1995-96	'C'	-----
3.	1996-97	'D'	Quality of work - Poor. However, disposal of Mr. Penkra is not upto mark and there is scope of improvement. He never done the monthly inspection of his subordinate staff.
4.	1997-98	'D'	<u>Quality of work</u> - Poor. However, disposal of Mr. Penkra is not upto mark and there is scope of improvement.
5.	1998-99	'D'	Quality of work - Satisfactory Needs improvement
6.	1999-00	'C'	-----
7.	200-01	'C'	-----
8.	2001-02	'D'	-----
9.	2002-03	'D'	-----
10.	2003-04 1.4.04 to 30.10.04	'C'	-----
11.	2005-06	'C'	-----
12.	2006-07	'C'	-----
13.	2007-08	'D'	<u>Nature & Quality of Work</u> ;- In the whole District shortage of staff but other officers are trying to do better in less staff and looking to

			poor disposal not give him more cases but he has sufficient cases for trial and disposal. <u>Appraising ability:</u> Poor <u>Decision making Ability;</u> Poor <u>General Assessment:</u> Needs Improvement.
14.	2008-09	'C'	<u>Quality of output;-</u> Standard of work is not satisfactory. <u>Knowledge of sphere of work;-</u> He is some weak in knowledge level but he may improve. Instructions and their applications are not such satisfactory but may be improved. <u>Leadership quality:</u> His capacity to achieve target is slow. <u>Interpersonal relations and team work;</u> His capacity to perform and promote team spirit are poor <u>General Assessment:</u> Overall performance and assessment is not satisfactory because he has not achieved targets which is fixed by Hon'ble High Court. His legal knowledge is also superficial. He has to advise to do deeply law study. Also advise for deep study of rules and orders civil and criminal.
15.	2009-10	'C'	<u>Management Qualities;-</u> He lacks the ability to motivate and control the staff. <u>Decision Making Ability:-</u> Slow

8. We have also called for the original service record of petitioner and on comparison of the above entries from the original service record of petitioner, which is made part of reply filed by

respondent No.2, we do not find any inconsistency or difference. In the ACRs for the year 1996-97 & 1997-98, the quality of work of petitioner has been recorded to be poor; for the year 1998-99 it was recorded that there is no clear order in the order sheets of proceedings of case causing delay in disposal and it was recommended that petitioner needs to study legal provisions more deeply. Remarks entered in the ACR for the year 2007-08 were "disposal and appraisal ability is poor". Remarks entered in the ACR for the year 2008-09 were "standard of work is not satisfactory, weak knowledge level, capacity to achieve targets is less, capacity to perform and promote team spirit is poor and overall performance & assessment is not satisfactory'. Remarks entered in the ACR for the year 2009-10 were that the petitioner lacks ability to motivate and control the staff, decision making ability slow and he was graded 'C'.

9. It is also evident from the original service record of petitioner that on 5.3.2008 adverse remarks in ACR for the period ending on 31.3.2007 have been communicated to the petitioner and the same was received by him on 27.3.2008 and acknowledgement was also forwarded by him. Adverse remarks recorded in the ACR of petitioner for the period from 1.4.2007 to 31.1.2008 were conveyed to petitioner vide communication dated 15.12.2008, which was also acknowledged by petitioner vide acknowledgment dated 16.12.2008. Another communication with regard to adverse

entries in ACR for the period from 1.4.2009 to 31.3.2010 was made to the petitioner by respondent No.2 on 10.8.2010.

10. In view of above, we find force in the submission of learned counsel for respondent No.2 that most of the ratings/ gradings in the ACR of different years is either 'poor' or 'average' with further remarks as mentioned therein and on the basis of gradings and general assessment/comments made by the Reviewing Authority & the Accepting Authority of the petitioner, the Screening Committee has evaluated the case of petitioner and recommended his name for compulsory retirement in public interest, which was accepted by the Full Court of High Court of Chhattisgarh and a resolution to that effect was passed and accordingly, the impugned order of compulsory retirement of petitioner was passed by respondent State Government.
11. Coming to the judgments relied upon by learned counsel for the petitioner in support of his submissions. In Baldev Raj Chadha's case (supra) Hon'ble Supreme Court after going through service record has held that Scrutiny Committee has ignored entries, yearly/half-yearly reports of the year 1970 and further there was no adverse entry in service record, which was the reason to allow the appeal by observing thus:-

“16.....One wonders how an officer whose continuous service for 14 years crossing the efficiency bar and reaching the maximum salary in the scale and with no adverse entries at least for five years immediately before the compulsory retirement, could be cashiered on the score that

long years ago, his performance had been poor, although his superiors had allowed him cross the efficiency bar without qualms.

In the matter of JD Shrivastava (supra), Hon'ble Supreme Court considering the fact that High Court has considered the entries made in service record prior to consideration of case of petitioner therein by Screening Committee and made it basis for compulsory retirement, has observed thus:-

“8.....From what has been stated we find that the decision taken by the High Court in respect of the appellant is arbitrary as it was mainly based on the entries that were made about 20 years before the date on which the decision was taken.....”

Both the above two judgments, reliance on which was placed by learned counsel for petitioner, are on different footings and the principles laid down therein cannot be made applicable to the facts of present case.

12. So far as the order passed by a Division Bench of this Court in favour of other Judicial Officers, who were compulsorily retired along with petitioner herein on the basis of recommendation of the Screening Committee, is concerned, the same is also of no help to the petitioner for the reason that case of present petitioner stands altogether on different footing than the cases of those petitioners whose petitions were allowed by a Division Bench of this Court. Cases of above named Judicial Officers have been decided on the basis of their respective service record and fair admission on the part of learned counsel representing High Court that records are not conciliable. Para 7 & 8 of the judgment passed by Division

Bench in WPS No.2057/12, which is common in all writ petitions preferred by aforementioned Judicial Officers, are quoted below for ready reference:-

“7. Confronted with the original service record which we had occasion to go through and which was also shared with the learned Advocate General representing the High Court he with due grace and dignity, that is expected from the Office of the Advocate General, submits that there could be an error of judgment because the decision and the records are not reconcilable which fits into the parameters for exercise of power of compulsory retirement.

8. We too are satisfied that the reasons which should have formed the basis for declaring a Judicial Officer to be undesirable or a deadwood is not emerging from the entire service record of the petitioner. If that be so, then obviously, there seems to be serious omission on the part of the Full Court of the High Court in including the petitioner in the list of such Judicial Officers, who needed to be compulsorily retired.”

13. Admittedly, no question of law has been decided in the above cases of other Judicial Officers decided by this Court because each case is required to be decided on its own facts.
14. Judgment relied upon by learned counsel for respondent No.2 i.e. **Rajendra Singh Verma's case (supra)**, has been considered by a Division Bench this Court in WPS No.464 of 2013, parties being Shri Reshamlal Kurure v. State of CG & anr, and it was held that there should be regular exercise for weeding out undesirable element as a cleansing measure and there cannot be any compromise in this regard. In Rajendra Singh Verma's case (supra) the Supreme Court has observed thus:-

"161. In Baikuntha Nath Das case [(1992) 2 SCC 299 : 1993 SCC (L&S) 521 : (1992) 21 ATC 649], after referring to the decision of this Court in Brij Mohan Singh Chopra v. State of Punjab [(1987) 2 SCC 188 : (1987) 3 ATC 496], wherein a three- Judge Bench of this Court has specifically affirmed the decision rendered in Union of India v. M.E. Reddy [(1980) 2 SCC 15 : 1980 SCC (L&S) 179] , this Court has laid down following firm propositions of law stated in para 34 of the reported decision: (Baikuntha Nath Das case [(1992) 2 SCC 299 : 1993 SCC (L&S) 521 : (1992) 21 ATC 649] , SCC pp. 315- 16)

"34. The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary -- in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter -- of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference. Interference is permissible only on the grounds mentioned in Principle (iii) above."

183. It is well settled by a catena of decisions of this Court that while considering the case of an officer as to whether he should be continued in service or compulsorily retired, his entire service record up to that date on which consideration is made has to be taken into account. What weight should be attached to earlier entries as compared to recent entries is a matter of evaluation, but there is no manner of doubt that consideration has to be of the entire service record. The fact that an officer, after an earlier adverse entry, was promoted does not wipe out earlier adverse entry at all. It would be wrong to contend that merely for the reason that after an earlier adverse entry an officer was promoted that by itself would preclude the authority from considering the earlier adverse entry. When the law says that the entire service record has to be taken consideration, the earlier adverse entry, which forms a part of the service record, would also be relevant irrespective of the fact whether the officer concerned was promoted to higher position or whether he was granted certain benefits like increments, etc.

191. Further, in case where the Full Court of the High Court recommends compulsory retirement of an officer, the High Court on the judicial side has to exercise great caution and circumspection in setting aside that order because it is a complement of all the Judges of the High Court who go into the question and it is possible that in all cases evidence would not be forthcoming about integrity doubtful of a judicial officer. As observed by this Court in *High Court of Punjab & Haryana v. Ishwar Chand Jain* [(1999) 4 SCC 579 : 1999 SCC (L&S) 881], at times, the Full Court has to act on the collective wisdom of all the Judges and if the general reputation of an employee is not good, though there may not be any tangible material against him, he may be given compulsory retirement in public interest and judicial review of such order is permissible only on limited grounds. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of an officer and gain notoriety much faster than the smoke. Sometimes there may not be concrete or

material evidence to make it part of the record. It would, therefore, be impracticable for the reporting officer or the competent controlling officer writing the confidential report to give specific instances of shortfalls, supported by evidence."

15. From the above verdict of Hon'ble Supreme Court it is clear that the entire service record of a Judicial Officer i.e from beginning till the date on which record has been placed before the Screening Committee, is to be taken into consideration and merely promotion of a Judicial Officer will not wipe out all adverse entries which are already forming part of his service record. Hon'ble Supreme Court has also held that the Full Court to act on the collective wisdom of all the Judges and if general reputation of an employee is not good, though there may not be any tangible material against him, he may be given compulsory retirement in public interest.

16. In R.C. Chandel's case (supra), which was relied upon by learned counsel for respondent No.2, Hon'ble Supreme Court taking into consideration its earlier decisions with respect to power of High Court with regard to control over subordinate judiciary as well as authority to recommend for compulsory retirement of a judicial officer, held thus;-

"11. Article 235 of the Constitution vests in the High Court the control over the subordinate judiciary within the State. It reads as follows :

"235. Control over subordinate courts.—The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High

Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.”

12. In *Samsher Singh v. State of Punjab*⁴,, a seven-Judge Bench of this Court considered the ambit and scope of the word “control” and while elaborating the powers included in the High Courts with regard to control over subordinate judiciary within its respective state, inter alia, expounded the position that such power included premature or compulsory retirement of Judges of the district courts and of subordinate courts. In *Chandra Singh v. State of Rajasthan*⁵,, the above position laid down by this Court in *Samsher Singh*⁴, has been reiterated.

13. The above position laid down by this Court in the cases of *Samsher Singh*⁴, and *Chandra Singh*⁵, has been reiterated in a recent decision of this Court in *Rajendra Singh Verma*³. In para 82 of the Report, this Court in *Rajendra Singh Verma*³ stated as follows (SCC p. 43):

“82. As explained by this Court in *Chandra Singh v. State of Rajasthan*⁵, the power of compulsory retirement can be exercised at any time and that the power under Article 235 in this regard is not in any manner circumscribed by any rule or order. What is explained in the said decision by this Court is that Article 235 of the Constitution of India enables the High Court to assess the performance of any judicial officer at any time with a view to discipline the black sheep or weed out the dead wood, and this constitutional power of the High Court cannot be circumscribed by any rule or order.”

14. Following the decision of this Court in *High Court of Judicature at Bombay v. Shrishkumar Rangrao Patil*⁶, this Court in *Rajendra Singh Verma*³,

reiterated that the High Court had to maintain constant vigil on its subordinate judiciary.

15. A three-Judge Bench of this Court in *All India Judges' Assn, (2) v. Union of India*⁷ (SCC pp. 305-06, para 30) has emphasized that the benefit of increase of 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 is available to only those who, in the opinion of the respective High Courts, have a potential for continued useful service. The Bench said, "It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility".

16. That power of the High Court to recommend to the Government to compulsorily retire a judicial officer on attaining the required length of service or requisite age and consequent action by the Government on such recommendation are beyond any doubt."

17. In *R.C. Chandel's case* (supra), on the basis of Rule 56 (2) (a) of the Fundamental Rules, a Judicial Officer of State of Madhya Pradesh was compulsorily retired on 13.9.2004, on which date Rule 56 of the Fundamental Rules, as amended on 1.1.2000, was in force. In such a situation, Hon'ble Supreme Court considering the fact of grant of promotion or increment or higher pay-scale to Judicial Officer prior to consideration of service record by the Screening Committee with respect to suitability of Judicial Officer to continue in service, has held in very specific terms as under:-

"25.From the above, it is clear that the appellant did not have unblemished service record all along. He has been graded "Average" on quite a few occasions. He was assessed "Poor" in 1993 and 1994. His quality of judgments and orders was not found satisfactory on more than one occasion. His

reputation was observed to be tainted on few occasions and his integrity was not always found to be above board. In 1988-89, the remark reads, "never enjoyed clean reputation". In 1993, the remark "his reputation was not good" and in 1994 the remark "officer does not enjoy good reputation", were recorded. His representations for expunction of these remarks failed. The challenge to these remarks on judicial side was unsuccessful right up to this Court. In 1993, it was also recorded that quality of performance of the appellant was poor and his disposals were below average. In 1994, the remark in the service record states that the performance of the appellant qualitatively and quantitatively has been poor. With this service record, can it be said that there existed no material for an order of compulsory retirement of the appellant from service? We think not. The above material amply shows that the material germane for taking decision by the Full Court whether the appellant could be continued in judicial service or deserved to be retired compulsorily did exist. It is not the scope of judicial review to go into adequacy or sufficiency of such materials.

26. It is true that the appellant was confirmed as District Judge in 1985; he got lower selection grade with effect from 24.03.1989; he was awarded super time scale in May, 1999 and he was also given above super time scale in 2002 but the confirmation as District Judge and grant of selection grade and super time scale do not wipe out the earlier adverse entries which have remained on record and continued to hold the field. The criterion for promotion or grant of increment or higher scale is different from an exercise which is undertaken by the High Court to assess a judicial officer's continued utility to the judicial system. In assessing potential for continued useful service of a judicial officer in the system, the High Court is required to take into account the entire service record. Overall profile of a judicial officer is the guiding factor. Those of doubtful integrity, questionable reputation and wanting in utility are not entitled to benefit of service after attaining the requisite length of service or age.

27. That the appellant's challenge to 1993 and 1994 entries was unsuccessful right upto this Court is not in dispute. However, learned senior counsel for the appellant has placed heavy reliance upon the observations made by the Division Bench in its judgment and order dated 25.02.1997, particularly, paragraph 69 thereof wherein the Division Bench

held that adverse remarks on the reputation in the relevant years should not haunt him all through his judicial career and hamper his prospects for all times. We are afraid the above observations by the Division Bench while upholding the remarks in no manner restricted the power of the Full Court in taking into consideration these adverse remarks in its exercise to find out whether or not the appellant should be retained in service after he has attained the required length of service. The consideration of the appellant's case for grant of selection grade and super time scale stood on different footing. The entire service record and overall profile of a judicial officer guide the High Court in reaching its satisfaction about the continuance or otherwise after the judicial officer has attained the required length of service or age. When the entire service record of a judicial officer is under consideration, obviously the High Court is alive to such judicial officer's having got promotion/s, increments, etc. during the service."

18. Thus, in R.C. Chandel's case (supra) Hon'ble Supreme Court has reiterated that grant of promotion and higher pay scale do not wipe out earlier adverse entries which continued in the record and for the purpose of assessing suitability of officer for continuing on the post of judicial officer, his entire service record is to be considered and assessed, as on the date of consideration by Screening Committee. It was held that scope of judicial review is very limited. Interference in the matter of compulsory retirement can be made only in very extreme cases like over looking of entries or when the service track is without any adverse remarks. It is for the authority to consider suitability of an employee to continue with service. In the case at hand, the petitioner failed to make out any exceptional case warranting interference in the impugned order of compulsory retirement, except the averment that he was at Sr. No.1 in the list of Judicial Officers to be promoted on the post of District &

Sessions Judge, which is not sustainable in view of the verdict passed by Hon'ble Supreme Court in the matters of Rajendra Singh Verma (supra) & RC Chandel (supra).

19. Coming to next submission of learned counsel for petitioner that Rule 13 (2) of the Rules of 2006 is ultra vires to the provisions of the Act of 2000. Learned counsel representing petitioner could not support his contention with any material to show that as to how Rule 13 (2) of the Rules of 2006 is violative of the provisions of the Act of 2000. except the submission that prior permission as provided under Section 69 of the Act of 2000 was not obtained. He also failed to explain that while framing such rule, there was lack of any competency or it is violative to any fundamental rights. Rule 56 (2) (a) of the Fundamental Rules was inserted by way of amendment by Notification dated 14.6.2000 and made it effective from 1.1.2000. From a bare perusal of Rule 56 (2) (a) of the Fundamental Rules it is apparent that this Rule was made applicable prior to reorganization of State of Madhya Pradesh and thus applicable to the service of the petitioner. Proviso to Rule 56 (2) (a) also provides that retirement may be forthwith subject to entitlement of claim of notice period.

The decisions of Hon'ble Supreme Court in the matters of Shri Rajendra Singh (supra) & Ahmad Hussain Khan (supra) are not applicable to the facts of present case. In Rajendra Singh's case (supra), the employee therein was in service of State of Ajmer since 1939; on reorganization in the year 1956,

Ajmer merged into State of Rajasthan and employee was compulsorily retired. Thus, considering the fact that there was no provision of compulsory retirement in the rules regulating service of employee in the State of Ajmer, Hon'ble Supreme Court held that order of the State Government prematurely retiring the employee therein is bad in law.

In the matter of Ahmad Hussain's case (supra), employee joined the services in the Public Works Department of the erstwhile State of Hyderabad and retired as Chief Engineer, Electricity (Operation), Andhra Pradesh State Electricity Board. As per Rule 299 (1) (b) of the Hyderabad Civil Services Rules, his monthly pension was fixed at Rs.801-96 paise. Subsequently, vide Government Order dated 2.7.1973, his pension was reduced to Rs.683-11 paise by amending earlier Clause (b) of Rule 299 (1) of the Hyderabad Civil Services without prior approval of the Central Government and was given effect retrospectively i.e. from date of coming into force of the Rules. Whereas, in the case at hand, in the erstwhile State of Madhya Pradesh itself, on 14.6.2000 the provision of compulsory retirement was inserted in Rule 56 as 'sub-rule (2) (a)', which is a substantive part of action.

20. As regards submission of learned counsel for petitioner that Section 69 of the Act of 2000 provides some protection to employees/officers, who were employed by erstwhile State of Madhya Pradesh and by virtue of reorganization of State of Madhya Pradesh, have been allocated to newly constituted

State of Chhattisgarh, that their service conditions shall not be varied to their disadvantage except with the previous approval of the Central Government. In the erstwhile State of Madhya Pradesh, as per Rule 56 (2) (a) of the Fundamental Rules, a government servant may be retired at any time on completion of 20 years qualifying service or attaining 50 years of age, whichever is earlier, by giving him three month's notice. However, in the State of Chhattisgarh, vide Notification dated 1.11.2010, old 'Rule 13' of the Rules of 2006 was substituted by a new 'Rule 13' omitting/deleting the proviso only requiring three months' prior notice before compulsorily retiring an employee. Rule 56 (2) (a) of the Fundamental Rules, as it was existing on 1.1.2000 i.e. prior to reorganization of State of Madhya Pradesh, reads as under:-

“(2) (a). Any government servant who completes the compulsory service of 20 years or after the completion of 50 years of his age, whichever is earlier, at any time without stating any reason, can be retired from service in the interest of public by giving him information in writing.

(b) The period of such notice shall be three months:

Provided that such Government servant may be retired forthwith and on such retirement the Government shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before his retirement or, as the case may, for the period by which such notice falls short of three months.”

21. A glance of the above quoted provision would show that the Appropriate Authority shall have right to retire any government servant by giving him notice of not less than three months in

writing or three months pay & allowances in lieu of such notice at any time after he has attained the age of 50 years or completed 20 years qualifying service, whichever is earlier. Here, the petitioner has not in very specific term pleaded the reason to be allocated in the State of Chhattisgarh. Rule 13 (2) of the Rules of 2006 cannot be declared to be ultra vires only on the ground that it is disadvantageous to the petitioner. Rule 13 (2) came into force only on 11.11.2010 i.e. after more than 10 years of the formation of new State of Chhattisgarh. There may be several Judicial Officers born in the cadre of State of Chhattisgarh and therefore the entire Rule 13 (2) of the Rules of 2006 cannot be declared to be ultra vires unless the foundation for declaring any legislation to be ultra vires is made out.

22. Substantive provision with respect to compulsory retirement of a government employee was already there since 1.1.2000 i.e. prior to reorganization and therefore it also cannot be said that the petitioner was put to any disadvantage by amending Rule 13 (2) of the Rules of 2006 as the age of superannuation, as provided in the Fundamental Rules, provides for compulsory retirement on attaining age of 50 years or completion of 20 years qualifying service, whichever is earlier.
23. For the foregoing reasons, the contention raised by the petitioner that Rule 13 (2) of the Rules of 2006 is ultra vires is not tenable and is hereby rejected.

24. In the case hand, the petitioner has been compulsorily retired considering his service record and his utility in judicial service. Consideration on the basis of performance and utility based on the entire service record is a factual finding recorded by the Competent Authority on the basis of relevant materials, which is not liable to be interfered with by this Court, particularly when learned counsel for petitioner has not been able to point out any material from the records establishing that the Screening Committee and also the Full Court have ignored or overlooked any part of service record of petitioner and not taken into consideration the same before arriving at a conclusion for recommending petitioner for compulsory retirement in public interest.

25. One another Judicial Officer namely Shri Resham Lal Kurre, who was also made to compulsory retire along with petitioner herein, preferred writ petition bearing WPS No.464/13 raising similar grounds of challenge, as have been raised by petitioner herein. A Division Bench of this Court after considering the law laid down by Hon'ble Supreme Court relating to compulsory retirement, arrived at the conclusion as under:-

“22. From paragraph 25, it is clear that several entries rating the performance of the Petitioner concerned as 'poor', 'average', etc. has been dealt with holding that such person requires to be weeded out as not an officer of utility. Same is reiterated in the next paragraph as well. Three different circumstances under which the profile of the judicial officer is to be examined have been mentioned therein which included 'doubtful integrity', 'questionable reputation' and 'wanting in utility'. These are three different segments and as such, merely for the reason that there is no challenge or threat with regard to the 'integrity' of the

Petitioner by itself cannot come to his rescue to hold that the relevant aspects have not been considered by this Court or by the Government. There is no plausible answer with regard to the various remarks with reference to the performance or in other words, the utility to the system and as such, even if the Petitioner may be having a proper integrity track record, it will not save him, if he otherwise is not suitable to be continued in service beyond the stipulated period of service/age concerned. The compulsory retirement of the Petitioner is obviously not with reference to anything with regard to 'integrity' but with regard to his 'level of performance/utility'.

25. Lastly, it is to be noted that the compulsory retirement with reference to the mandate of Rule 13(2) of the Rules can never be regarded as a punishment imposed in disciplinary proceedings. The Petitioner is entitled to get all the service benefits to the extent he has served the institution. Whether his continuance in the service beyond the stipulated age or service, as the case may be, alone is the relevant question and this has been considered and answered by this Court and also by the Government taking a conscious decision not to extend the service in view of the limited/restricted output. As the matter stands so, we are of the firm view that this is not a fit case to call for interference. The challenge raised against the orders Annexure P/1 and P/2 fails. The writ petition stands dismissed accordingly.”

In the case at hand also, as from the extract of service record of the petitioner it is apparent that remarks have been made against the petitioner and on that basis the Screening Committee has considered suitability of the petitioner to continue in service as Judicial Officer and submitted its report before the Full Court recommending his premature retirement and the Full Court considering overall service record of petitioner and comments of the Screening Committee had recommended to the State Government for compulsory retirement of the petitioner.

26. Compulsory retirement of a government employee under Rule 13 (2) of the Rules of 2006 is simply discontinuance of service

after a certain period. It is not described as a 'punishment' anywhere in the Rules of 2006 or the Fundamental Rules. There is no loss of anything already earned by government employee and all that happens is that he will not in future render service to the Government and will not be paid anything. There will be no loss of pension etc. to him. In other words, the compulsory retirement is subjective satisfaction of the appointing authority based upon the overall assessment and evaluation of service record of a government servant as to his continued utility in service beyond the stipulated period of service / age.

27. In view of above, the petitioner fails to make out any case in his favour warranting interference of this Court in the recommendation dated 14.3.2011, resolution dated 15.3.2011 and order dated 26.3.2011 passed by the State Government compulsory retiring the petitioner from service in public interest.

28. The writ petition fails. It is dismissed. No order as to costs.

Sd/-

(PR Ramchandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

roshan/-