

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8921 OF 2019

Shri Anil s/o Gajraj Mohabey	]
Aged 56 years, Occu : Legal Practitioner	]
R/o Plot No.32, Buty Layout, Rajnagar,	]
Nagpur – 440013	]..... Petitioner.
Versus	
1] The State of Maharashtra,	]
Through its Secretary, Law & Justice Department	]
Madam Cama Road, Hutatma Rajguru Chowk	]
Mantralaya, Mumbai – 32	]
	]
2] The High Court of Judicature at Bombay,	]
Through Registrar General, High Court,	]
Mumbai	]..... Respondents.

Mr. Pradeep Havnur a/w Ms. Radhika Samant for the Petitioner.
Mr. A A Alaspurkar, AGP for Respondent No.1/State.
Mr. Amit B Borkar for Respondent No.2.

CORAM : S. S. SHINDE, J
N. B. SURYAWANSHI, JJ
DATE : 25th NOVEMBER 2019

JUDGMENT : (Per S S SHINDE, J)

1 Rule, having regard to the challenge raised, made returnable forthwith and heard with the consent of the learned counsel for the parties.

2 By this Writ Petition the Petitioner challenges the order/communication dated 12/07/2018 issued by the Respondents compulsorily retiring the Petitioner from service on attaining the age of 55 years. The Petitioner also seeks directions to the Respondents to reinstate the

Petitioner back in service with continuity in service, with all back wages and service benefits and permit him to work as District Judge till he attain the age of superannuation.

3 The factual matrix involved in this Writ Petition can in brief be stated as under :-

The Petitioner was initially appointed as a Civil Judge, Junior Division on 11/05/1992 at Chandrapur. Thereafter the Petitioner was promoted as Civil Judge, Senior Division on 12/01/2004 and further he was promoted as District Judge on 14/11/2014. The Petitioner has completed total service of 26 years 2 months and a day. It is the case of the Petitioner that his entire career in service is unblemished and except some discreet preliminary enquiries in respect of some false and frivolous complaints, no other action is taken against the Petitioner. The Annual Confidential Reports of the Petitioner are also not showing any adverse remarks during the entire span of service. It is the case of the Petitioner that from the Disposal Remarks issued to the Petitioner for his work between 1993 till 2018 it would be clear that the Petitioner has given noteworthy disposal of cases, and in the Minutes of Meeting dated 28/06/2018, it is mentioned by the Hon'ble the then Acting Chief Justice of this Court that overall service record is "Good".

4 However, on 16/07/2018 the Respondents issued a

communication to the Petitioner prematurely retiring him by order dated 12/07/2018 from service. On the receipt of said communication, the Petitioner has filed application dated 07/01/2019 under Right to Information Act and sought information regarding the material on the basis of which the Respondents took the said decision. According to the Petitioner, some information as sought by the Petitioner is supplied to him. It contains the Extract of Minutes of Meeting of the Review Committee dated 28/07/2018 headed by Respondent No.1 that reviewed the cases of Judicial Officers for continuation in the judicial service after the age of 55 years. In so far as the case of the Petitioner is concerned, the Review Committee has considered 4 issues for arriving at the conclusion that Petitioner should be retired prematurely. It is the case of the Petitioner that the 4 issues framed by the Review Committee were factually incorrect and were of such nature that the Petitioner was already either exonerated or relieved from the said charges. According to the Petitioner that the impugned order dated 12/07/2018 has been passed only on assumptions and presumptions and therefore same is not in consonance with the facts of the Petitioner's case.

5 The learned counsel for the Petitioner submits that the entire career of the Petitioner is unblemished and except some discreet preliminary enquiries in respect of some false and frivolous complaints, no other action is taken against him. It is submitted that the Petitioner, during his service career,

has given noteworthy disposal of cases. It is also submitted that the four issues which were framed by the Review Committee were factually incorrect and were of such nature that the Petitioner was already either exonerated or relieved from the said charges. He further submitted that the order dated 12/07/2018 prematurely retiring the Petitioner on attaining the age of 55 years and 5 months in public interest is legally unsustainable inasmuch as it does not take into consideration the clean and unblemished service record of the Petitioner, his annual confidential reports, and disposal of cases by the Petitioner. The learned counsel for the Petitioner also submitted that the incidents that were taken into consideration for prematurely retiring the Petitioner vide the impugned order were of such nature that it did not involve any charge of moral turpitude or for that matter any act of omission or commission on the part of the Petitioner that would even remotely go to show that the Petitioner has indulged into such activity. He submits that the issues which were taken into consideration by the Review Committee for prematurely retiring the Petitioner from service were neither serious in nature nor amounted to such a grave situation where premature retirement of the Petitioner was warranted, and even the charges levelled against the Petitioner were not proved. It is submitted that the Review Committee has failed to ascertain the correctness of the facts which were placed before it.

6 In so far as first issue is concerned, the learned counsel for the

Petitioner submits that the reply given by the Petitioner to the complaint made by Shri Sanjay V Patil, member, industrial Court, Latur has not been considered by the Review Committee. It is also submitted that the Petitioner has dictated the judgment of complaint ULP No.39 of 2004 on 28/12/2010, but its print out could not be taken because the printer was out of order. However, this fact was completely lost sight of by the Review Committee. It is also submitted that the Review Committee has failed to take into consideration the clear findings recorded by the enquiry officer Mr. N B Bhose, the then learned Member, Industrial Court, Solapur in the discreet preliminary enquiry report that, there is no substance in the allegation that the Petitioner has decided case of only one advocate as the said Advocate simply helped in arranging truck for transfer of household articles, and none of the advocate has stated in the discreet preliminary enquiry that the Petitioner has behaved rudely with advocates. So far as lodging a case with the police at Ganeshpeth police Station, Nagpur against Sushilabai Durugkar is concerned, it is submitted that the Petitioner has never lodged any complaint against anybody and, it is the Petitioner's wife who lodged a complaint against the said Sushilabai and her son, as they assaulted the wife of the Petitioner. It is also submitted that at that time the Petitioner was neither posted in Nagpur nor was he involved in lodging of the complaint in any manner. The learned counsel for the Petitioner submitted that the Petitioner has sought no objection for selling of his old car on 17/11/2016 and six days after the passing of the impugned order, on 18/07/2018 the

Respondent No.2 was pleased to accord ex-post-facto permission regarding sale of old car, and therefore, sale of car without permission could not have been a ground for compulsorily retiring the Petitioner from service. He therefore submitted that, the Review Committee has, therefore, relied upon the material that had no bearing on the day to day working of the Petitioner as a judicial officer. It is submitted that the Petitioner has not acted against the public interest, and as provided in Rule 19(2) of the Maharashtra Judicial Service Rules, 2008, the case of the Petitioner has not been considered three times, prior to retiring him prematurely. The learned counsel for the Petitioner submits that the Petitioner had clean and unblemished record to his credit, and therefore, the decision taken by the Review Committee is unsustainable in law. It is also submitted that the Petitioner cannot be deprived of his legitimate claim of continuation in service till the age of retirement as per Rules. In support of his contentions, the learned counsel for the Petitioner has sought to place reliance on the unreported judgment dated 03/09/2019 passed by Hon'ble Supreme Court in the matter of Yogesh M Vyas v/s. Registrar, High Court Gujarat & Anr in Civil Appeal No.4514 of 2010. The learned counsel for the Petitioner therefore submits that, the impugned order/communication dated 12/07/2018 issued by the Respondents is legally unsustainable, and therefore is required to be quashed and set aside. He lastly submits that the Writ Petition deserves to be allowed.

7 The learned counsel appearing for Respondent No.2 submits that the Petitioner came to be compulsory retired from service as he was not found suitable for continuation. He further submits that the decision to compulsory retire the Petitioner from service has been taken by Review Committee after considering the overall service record, Annual Confidential Report and the other material placed before it, and after assessing the suitability of the Petitioner on the said basis, in the public interest, the Review Committee issued order thereby compulsorily retiring the Petitioner from service. He submits that the Review Committee has taken a decision not to continue the Petitioner in judicial service as the Petitioner has lost his utility to continue in the judicial service. The learned counsel for Respondent No.2 in support of his contentions has sought to place reliance on the judgment of the Hon'ble Supreme Court in the matter of Tusharkant Maniklal Mantri Vs. High Court of Judicature at Bombay, through Registrar General at Mumbai and ors.¹ He therefore prays that the Writ Petition may be dismissed.

8 An Affidavit in reply on behalf of Respondent No.2 has been filed by Mr. Atul Madhukar Kurhekar – Registrar (Legal & Research) High Court, Appellate Side Bombay. It is stated in the said affidavit that the Annual Confidential Reports of the Petitioner for the period 1993-1994, 1996-1997 and 1997-1998 show Net Result "Average." It is also stated that though the service record of the Petitioner was good, there were 3 cases requiring

1 2016 SCC OnLine Bom 5002

consideration to decide continuation of Petitioner in the judicial service. The Review Committee after considering the overall service record of the Petitioner has taken a decision that the Petitioner has lost his utility to continue in the judicial service, and therefore it was decided not to continue the Petitioner in the judicial service and to retire him prematurely in public interest by invoking provisions of Rule 19 of the Maharashtra Judicial Service Rules 2008, (for short Judicial Service Rules”) read with sub-Rule (iv) of Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short “Pension Rules 1982”). It is also stated that the said Rule provides that an officer can be retired by the appropriate authority if it is found necessary to do so in public interest at the age of 50/55/58 years by taking into account the date of entry in judicial service. It is further stated that it was held by the Hon’ble Supreme Court in the case of All India Judges’ Association Vs. Union of India and others reported in AIR 1993 SC 2493, that the benefit of increase in age of superannuation beyond 58 years may be given subject to examination of suitability of the Judicial Officer by the Special Review Committee. It is stated in the said affidavit that as per Rule 17 of the said Rules every member of the Judicial Service shall retire on attaining the age of superannuation i.e. 60 years, subject to clearance by the Special Review Committee constituted by the Chief Justice of the High Court, and procedure for such special review shall be the same as prescribed for compulsory retirement, and Rule 19(2) of the said Rules provides that nothing in Rule 19 shall be construed as preventing

consideration of a member of the service again at any time after attaining the age of 50 years, 55 years or 58 years as the case may be, for the purpose of retiring him in the public interest despite such member was considered earlier as per Rule 19(2) of the said Rules. It is stated that the Supreme Court in the case of Pyare Mohanlal Vs State of Jharkhand and others reported in 2010(10) SCC 693 has laid down the criterion for review the case of judicial officers for their continuation in service, and the case of the judicial officer is required to be examined, treating him to be different from other wings of society. It is stated in the said affidavit that the Judicial officers who have potential for continued useful service should remain in service. The cases of the judicial officers who are indolent, infirm, of doubtful integrity, reputation and utility need to be reviewed on their attaining the age of 50, 55 or 58 years by following the procedure of compulsory retirement as per Rule 17 of the Judicial Service Rules read with Pension Rules, 1982. The evaluation needs to be made on the basis of the judicial officers' service record, character rolls, quality of judgments, complaints against them and other relevant matters. The proviso to sub-rule 2 of Rule 19 of the Judicial Services Rules makes it clear that there is power to consider the case for review even after judicial officer attaining the age of 50 years, 55 years or 58 years. The proviso clarifies that a residuary power is retained which can be exercised notwithstanding the fact that the case of the judicial officer has been already considered in accordance with sub-rule 1 of Rule 19 of the Judicial Services Rules. It is well settled

principle of law that the scope of judicial review in case of compulsory retirement of judicial officer is limited to the extent of malafide, based on no evidence and arbitrary in the sense that no reasonable person would form requisite opinion on the basis of material on record, and judicial service is not a service in the sense of an employment as is commonly understood and there is no legal right to a judicial officer to continue after 50 years as his continuation is dependent on discretion of appointing authority. The order of compulsory retirement does not amount to stigma and cannot be termed as punitive in nature. It is further stated that the explanation provided by the Petitioner in the memo of petition as regards 4 files referred by Review Committee has been duly considered by the committed while going through overall service record of the Petitioner, and the decision of compulsory retirement of the Petitioner was taken by the Committed after carefully considering the overall service record of the Petitioner.

9 We have heard the learned counsel for the parties. With their able assistance, perused the pleadings and the grounds taken in the Petition as also annextures thereto, affidavit in reply and the impugned order/communication issued by the Review Committee.

10 The question that arises for consideration is, whether the order/communication dated 12/07/2018 issued by the Respondents

compulsorily retiring the Petitioner from judicial service on attaining the age of 55 years is legally sustainable? To answer the said issue, the minutes of meeting of the Review Committee and the issues framed by the Review Committee have to be looked into. In the minutes of meeting of the Committee dated 28/06/2018, it is noted that, although the overall service record is good, there are 3 cases requiring consideration to decide continuation of Shri Mohabey (i.e. the Petitioner) in the judicial service. The reference of following cases is made by the Review Committee in its Minutes of Meeting dated 28/06/2018 :-

“In File No.SID-II/VM/68/2011, the complaint was made by Shri S V Patil, Member, Industrial Court, Latur, that although the case (ULP No.39/2004) was declared to be decided on 28.12.2010, the judgment was not ready till 12.01.2011, that the result of the case was not mentioned in the Board and the next date was not mentioned on the said Board. Although the Officer had assured during his counseling before the Guardian Judge, not to commit such mistake in future, this instance reflects on the integrity, competence and usefulness to continue him in the judicial service.

Although another complaint No. SID-II/VM/93/2011, made by the Latur Bar Association was closed after giving advice, it was seen from the allegations that for one year he had kept the matters of workmen compensation pending for orders. However, he had disposed of matters of only one advocate, who owned truck and carried household articles of Judicial Officer to his place of posting at Nanded and native place at Nagpur. It was alleged that shri Mohabey speaks rudely with the advocates and did not maintain decorum of the Court.

In File No. SID-I-WM/06/2015, pertaining the complaint of Smt. Sushilabai Annasaheb Duragkar, the allegations

were that spouse of Shri Mohabey had lodged false complaint at Ganesh Peth Police Station and son of the complainant was arrested. In this case, after considering the fact finding inquiry report it was decided to close the file subject to the condition that Shri Mohabey shall not be posted at Nagpur until the civil/criminal cases are concluded, to sub-serve larger public interest and to avoid embarrassment to the Presiding Officer.

In File No. SID-I/WM/2/2017, Shri Mohabey was given caution in the matter of obtaining permission for sale and purchase of movable property. It was seen that on the date of receiving cash for sale of car there was no application for approval and he had requested for grant of ex-post facto permission. However, the explanation was found to be incorrect and he was given caution for the same.”

In the concluding paragraph of the Minutes of Meeting, the Review Committee has decided thus, “it was thus seen that Shri Mohabey has lost his utility to continue in the judicial service. It was, therefore, decided not to continue Shri Anil Gajraj Mohabey in the judicial service and to retire him prematurely in public interest by invoking provisions of Rule 19 of the Maharashtra Judicial Service Rules, 2008, read with sub-Rule (iv) of Rule 10 of Maharashtra Civil Service (Pension) Rules, 1982”

11 It appears from the perusal of the Minutes of Meeting dated 28/06/2018 that while retiring the Petitioner prematurely from service in public interest, the Review Committee has invoked provisions of Rule 19 of the Maharashtra Judicial Service Rules, 2008 read with Sub-rule (iv) of Rule 10 of Maharashtra Civil Service (Pension) Rules, 1982. Hence in the context of the

impugned order and the minutes of meeting of the Review Committee, it would be apt to refer to the provisions of Rule 19 of the Judicial Service Rules and Rule 10 of the Pension Rules 1982 and the same are reproduced herein under for ready reference :-

“Rule 19 of the Judicial Service Rules :-

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

(2) Whether a member of the service should be retired in the public interest under sub-rule (1) shall be considered at least three times, that is, when he is about to attain the age of 50 years, 55 years and 58 years.

Provided that nothing in this Rule shall be construed as preventing consideration of a member of the service again at any time after attaining the age of 50 years or 55 years or 58 years, as the case may be, for the purpose of retiring him in the public interest despite such member was considered earlier as per sub-rule (2)."

“Rule 10 of the Pension Rules 1982 :-

“10 *Age of Retirement* :-

- 1.....
- 2.....
- 3.....

(4) Notwithstanding anything contained in sub-rules (1) and (2) of this rule, the appropriate authority, if it is of the opinion that it is in the public interest so

to do, by giving {notice of three months} in writing in Form 30 or in Form 31, as the case may be, or three months' pay and allowances in lieu of such notice, have the absolute right to retire-

- (a) any Gazetted Government servant under the rule making control of the State government :-
 - (i) if he had entered government service under any government in India, before attaining the age of thirty-five years, after he has attained the age of fifty years, and
 - (ii) in any other case, after he has attained the age of fifty-five years;

[Provided that a government servant who holds a Class III post in a substantive capacity but is holding a Class I or Class II post in an officiating capacity, shall in case it is decided to retire him from service while holding a Class I or Class II post, in the public interest, be allowed on his request in writing to the appropriate authority to continue in service in Class III post which he holds in a substantive capacity];

- (b) any Government servant who holds a post in class III service of the State, either pensionable or non-pensionable, after he has attained the age of fifty-five years;
- (c) any Government servant who holds a post in class IV service of the State and who is recruited in Government service on or after 21st September 197-, after he has attained the age of fifty-five years.

Considering the facts of the present case and the impugned communication, a reference can also be made to Rule 17 of the Judicial Service Rules, which reads thus :-

"17. ***Age of Superannuation*** :- Every member of the

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

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

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

A conjoint reading of the aforesaid provision would indicate that the Review Committee is vested with powers to take a decision as regards retiring a judicial officer prematurely in public interest. It is crystal clear from the reading of the aforesaid Rules that the authorities have the absolute power to retire any member in the judicial service when he attains the age of either 50 or 55 or 58 year, by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice, if the authority is of the opinion that the compulsory retirement of a judicial officer is in public interest. In the present case by communication dated 12/07/2018 the Respondent-State, on the recommendation of High Court, has passed the order to retire Shri Anil Gajraj Mohabey, District Judge-1 and Additional Sessions

Judge, Nanded in public interest, by giving three months pay and allowances in lieu of three months notice.

12 Now coming to the judgment cited by the learned counsel for the Petitioner. The facts in Yogesh M Vyas's case (supra) before the Hon'ble Supreme Court, and the facts of the present case are clearly distinguishable, and therefore, reliance placed by the learned counsel for the Petitioner on the said decision is wholly misplaced. In the said case before the Hon'ble Supreme Court, it is alleged that the Appellant granted seven bail orders against the provision of law and initially the allegations were of corruption against him. These allegations were enquired into and after inquiry it was held that there was no direct evidence to show that corrupt practice was done by the appellant but he had exercised jurisdiction not vested in him by enlarging the accused on bail in cases falling under Section 307 IPC. The enquiry officer also noted that there may be possibility of the appellant having indulged in some corruption. Another allegation was that in a civil case, after granting ex parte order he had vacated injunction the very next day without notice to the plaintiff. The appellant was visited with the penalty of compulsory retirement on the basis of the report submitted against him. The Appellant in the said case filed Writ Petition and in the said Writ Petition the High Court came to a conclusion that no charge of corruption was made out against the Appellant. However, the High Court did not extend necessary benefits to the Appellant therein. After

hearing the parties and advertent to the judgment of High Court, the Hon'ble Supreme Court has held thus :-

“We are not inclined to agree with this view of the High Court. Once the High Court held that the charges had not been proved against the appellant, who was a judicial officer his honour and dignity required that he should be brought back into the service. We hold that the appellant has not committed any act unbecoming of a judicial officer. Unfortunately, we cannot do so because now he has already passed the age of superannuation.”

13 Now coming to the judgment cited by the learned counsel for Respondent No.2 in Tusharkant Maniklal Mantri's case (supra), paragraphs 9, 16, 17, and 21 of the said judgment of the Division Bench (Coram S C Dharmadhikari and P D Naik, JJ) are relevant and the same are reproduced herein under :-

9 It is pertinent to note that the decision of the Review Committee dated 01 December 2009 cannot be quashed and set aside. The said decision is rendered in exercise of provisions of Rules 17 and 19 of the Judicial Services Rules, 2008 read with Rule 8(a) of the Rules of 1999, which empower the first Respondent to determine and have periodic review of the services of all the judicial officers who have attained the age of either 52 years or 55 years or 58 years. The decision of the Review Committee not to grant extension of service to the Petitioner, cannot be questioned as it is taken in accordance with law. The Petitioner cannot claim eligibility as legal right to continue in service till the age of 60 years. The continuation of service of judicial officer beyond the age of 58 years is not as of right but is at the discretion of the Disciplinary Authority i.e. first Respondent. The said authority is required to consider the question of continuation or otherwise of judicial officers' services who have attained the age of either 52 years or 55 years or 58 years, after taking into

consideration the totality of the circumstances and if it is found that services of such officers are not required, then there is no inherent right in such officers to continue in services beyond the age of either 52 years or 55 years or 58 years. The Review Committee has to take totality of the circumstances and the entire service record into account and thereafter has to decide as to whether a particular judicial officer's services are required to be continued by giving extension in service after the age of 58 years. The contention of the Petitioner that he has unblemished service record and because of his past annual confidential reports he has vested right to get extension in service, has no basis. The contention that the decision is punitive in nature and also a stigma on the Petitioner, is also devoid of any merit. It may be noted that retiring the Petitioner on attaining the age of 58 years, does not amount to any stigma or the action retiring him cannot be termed as punitive in nature.

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

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

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

21 Learned Senior Advocate appearing for the first Respondent places reliance upon certain decisions of the Apex Court as well as this Court. In the case of Rajendra Singh Verma (dead) through LRs and others Vs. Lieutenant Governor (NCT of Delhi) and others reported in (2011)10- SCC-1, it has been observed that under Article 235 of the Constitution of India, the control over the subordinate judiciary is vested in the High Court which is exclusive in nature and comprehensive in extent and effective in operation and it is to sub-serve the basic feature of the Constitution, that is independence of judiciary. In paragraph 145 of the said decision it has been observed that there are no words in the order of compulsory retirement which throw any stigma against the appellant therein. It is not necessary for the Court to

make an inquiry into the Government files to discover whether any remark amounting to stigma should be found in the files. The reason is that it is the order of compulsory retirement which alone is for examination and scrutiny. If the order itself does not contain any imputation or charge against the person, the fact that considerations of misconduct or misbehaviour weighed with the High Court in coming to its conclusion to retire them compulsorily, does not amount to any imputation or charge against them.

14 The Division Bench of this Court in paragraph 22 of the judgment in Tusharkant Maniklal Mantri's case (supra) has relied upon the decision of Hon'ble Supreme Court in Pyare Mohan Lal's (supra), reference of which has already been made in the affidavit in reply filed on behalf of Respondent No.2 herein. The Hon'ble Supreme Court in Pyare Mohan Lal's case has observed thus :-

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

15 In the first place the contention of the learned counsel for the Petitioner that this Court may look into the reasons assigned by the Review Committee while issuing order of compulsory retiring the Petitioner from judicial service, and may find out from the documents placed on record by the Petitioner, whether those reasons of the Review Committee are correct or

otherwise. The said course suggested by the learned counsel for the Petitioner is not permissible in view of the ratio laid down by the Hon'ble Supreme Court in Pyare Mohan Lal's case and, by the Division Bench of this Court in the case of Tusharkant Manilal Mantri's case (supra). It is on the basis of the assessment of overall suitability of the Petitioner that the decision was taken by the Review Committee to retire the Petitioner prematurely in public interest.

16 It is required to be noted that the service record was before the Review Committee. The Review Committee after taking into consideration the service record of the Petitioner has taken a conscious decision that, the Petitioner has lost his utility to continue in the judicial service and therefore decided not to continue him in judicial service and to retire him prematurely in public interest. The decision making process by the Review Committee on the basis of the relevant record and invoking Rule 19 of the said Rules is legally sustainable. It is clarified in the affidavit in reply filed on behalf of Respondent No.2 that the order of compulsory retirement does not amount to stigma and cannot be termed as punitive in nature.

17 In that view of the matter, we do not find any merit in the above Writ Petition. The same is accordingly dismissed. Rule discharged. Parties to bear their respective costs.

[N. B. SURYAWANSHI, J]

[S. S. SHINDE, J]