

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.08.2019

Pronounced on : 04-10-2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH  
and  
THE HONOURABLE MR.JUSTICE C.SARAVANAN

Writ Petition No. 5558 of 2018

R. Navamurthy

.. Petitioner

Versus

1. The Additional Chief Secretary to Government  
Home (Courts-I) Department  
Secretariat, Fort St. George  
Chennai - 600 009

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

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned orders issued by the first respondent in G.O. (2D) No.305, Home (Courts-I) Department dated 04.10.2017 and the subsequent order issued by the second respondent in notification No.197/2017 dated 14.11.2017 and to quash the same and consequently directing the respondents to reinstate the petitioner into service as Senior Civil Judge with all consequential and other attendant benefits.

For Petitioner : Mr. Ar.L. Sundaresan, Senior Advocate  
for Mr. K.H. Ravikumar

For Respondents: Mr. V. Shanmuga Sundar  
Special Government Pleader for R1  
Mr. Santhanaraman for R2

## ORDER

R. SUBBIAH, J

The petitioner has come forward with this writ petition seeking to quash the order in G.O. (2D) No.305, Home (Courts-I) Department dated 04.10.2017 on the file of the first respondent and the subsequent order passed by the second respondent in notification No.197/2017 dated 14.11.2017 with a consequential direction to direct the respondents to reinstate him in service as Senior Civil Judge with all consequential benefits.

2. The petitioner was selected and appointed by the Tamil Nadu Public Service Commission for the post of Civil Judge (Junior Division) and after initial training, he was posted as District Munsif cum Judicial Magistrate at Kamudhi, Ramanathapuram District. He joined the said post on 10.12.1999. Subsequently, the petitioner was promoted to the post of Subordinate Judge and on such promotion, he was posted as Subordinate Judge, Pudukottai on 19.01.2011. The petitioner was thereafter transferred and posted in various Districts. While the petitioner was serving as Judicial Officer/Chairman, Taxation Appeals Tribunal, Tiruppur, an Official Memorandum dated 05.02.2014 was issued to him by the Registrar (Vigilance) of this Court listing out the various Motor Accident Cases in which he failed to pass award or the cases in which he has passed exorbitant compensation amount than the one sought for by the claimant and also cited the Transfer Applications filed by Insurance Companies before the Principal District Judge, Tiruchirapalli seeking transfer of some Motor Accident Claim Cases pending on the file of the petitioner to any other Court within Tiruchirapalli. By citing the particulars of the cases in which the petitioner failed to discharge his judicial functions properly, he was called upon to submit his explanation. Accordingly, an explanation dated 19.03.2014 was submitted by the petitioner denying the averments made in the Official Memorandum inter alia stating that he had discharged his judicial functions in accordance with Law. It was also stated by the petitioner that he had awarded more compensation in certain deserving cases upon adjudicating the facts of each case. At the same time, in a number of cases, he has awarded lesser amount than the one claimed by the claimant by taking note of the nature of injuries sustained in the accident.

3. Not satisfied with the explanation offered by the petitioner, a charge memorandum dated 26.02.2015 was issued to the petitioner under Rule 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. The allegations cited in the Official Memorandum 05.02.2014 issued by the Registrar

(Vigilance) of this Court were the basis for issuing the charge memo and the charges related to the alleged failure on the part of the petitioner in discharging his judicial functions properly in awarding compensation amount in Motor Accident Cases. On receipt of the charge memorandum, the petitioner submitted his explanation on 20.03.2015 denying the charges. According to the petitioner, in 16 cases, on the basis of the material evidence made available, he arrived at a higher compensation amount based on the various principles enunciated by the High Court, Madras as well as the Supreme Court. Further, such higher compensation amount has been awarded by following the norms and making meticulous calculation. It is also submitted that when several counsels represented the Insurance Companies, only two advocates appearing for the Insurance Company have filed Transfer Applications and even in those applications, there is no allegation of any corrupt practice against the petitioner nor have they alleged any favouritism shown in favour of the claimants in those cases.

4. Not satisfied with the explanation offered by the petitioner, an Enquiry Officer was appointed on 10.08.2015 to conduct an enquiry into the charges. After conclusion of enquiry, the Enquiry Officer submitted a report on 12.01.2016 holding that the charges levelled against the petitioner are proved. By proceedings dated 04.02.2016, enclosing the report of the enquiry officer dated 12.01.2016, the petitioner was called upon to submit his further explanation. Accordingly, on 21.03.2016, petitioner submitted his further explanation. On consideration of the further explanation of the petitioner and other connected records, the Administrative Committee, in the meeting held on 14.06.2016, has considered the report submitted by the enquiry officer and the explanation submitted by the petitioner resolved to impose upon the petitioner the punishment of 'withholding of increments for a period of two years with cumulative effect'. On the basis of the same, the second respondent passed the order dated 01.08.2016 imposing the punishment of withholding of increments for a period of two years with cumulative effect.

5. In the meantime, as the petitioner had completed 50 years during the month of July 2015, his case along with that of the others who have also completed 50 years of service, was placed before the Administrative Committee of this Court for extension of service beyond the period of 50 years. The Administrative Committee, in the meeting convened on 18.04.2017, upon considering the Annual Confidential Report recorded against the petitioner and his service particulars, resolved that the petitioner is not fit to continue in service beyond the age of 50 years and referred the matter to be placed before the Full Court. Accordingly, the matter was placed before the Full Court

in the meeting convened on 17.08.2017. After considering the entire records relating to the service rendered by the petitioner, the Full Court unanimously resolved that in view of the fact that the petitioner had been proceeded against departmentally on charges of corrupt practices and imposed with punishment, a direction was issued to the Registry to address the Government to issue necessary orders to compulsorily retire the petitioner from service under FR 56 (2) in public interest. Pursuant to such an order passed by the Full Court of this Court, the Government passed the order in G.O. (2D) No.305, Home (Courts-I) Department dated 04.10.2017 on the basis of the recommendations made by the Full Court and in exercise of the powers conferred under Rule 56 (2) of the Fundamental Rules and ordered to compulsorily retire the petitioner from service. Consequently, the second respondent issued the notification No.197 of 2017 dated 14.11.2017 relieving the petitioner from Tamil Nadu State Judicial Service with effect from the date of service of G.O. (2D) No.305, Home (Courts-I) Department dated 04.10.2017. In the meanwhile, prior to passing of order relieving the petitioner from judicial service, the petitioner submitted a letter dated 18.08.2017 to the second respondent herein seeking to permit him to retire from service voluntarily on health grounds. However, by a subsequent proceeding of the same date namely 14.11.2017, the second respondent rejected the request of the petitioner made in his letter dated 18.08.2017 to permit him to retire from service voluntarily.

6. Mr. Ar.L. Sundaresan, learned Senior Counsel appearing for the petitioner would contend that the impugned orders, ordering to compulsorily retire the petitioner from service, is attached with a stigma and it is legally not sustainable. Such an order, according to the learned Senior Counsel, would amount to passing an order of punishment attracting Article 311 of The Constitution of India. According to the learned Senior Counsel for the Petitioner, the Honourable Administrative Committee resolved to continue the service of the petitioner beyond the age of 50 years and directed the Registry to place the matter before the Honourable Full Court for approval, whereas, the impugned order reads that the Administrative committee considered the ACR, quality of Judgments, work done statements, vigilance clearance and over all performance and resolved as if the petitioner is not found fit to continue the service beyond the age of 50 years and directed the Registry to place the matter before the Full Court for approval, which is factually incorrect. Therefore, the learned Senior Counsel would contend that the Full Court has been misconceived based on the Agenda placed by the Registry as if the Administrative Committee unanimously decided not to permit the petitioner to continue in service beyond 50 years. Further, the note submitted to the Full Court was made to appear as though the petitioner was

earlier punished for corrupt practices on proven charges. It is this note, according to the learned Senior counsel for the petitioner, that had influenced the Full Court to arrive at a decision not to extend the service of the petitioner beyond the age of 50 years. The learned Senior counsel for the petitioner proceeded to contend that the original decision of the Administrative Committee is to permit the petitioner to continue in service beyond the age of 50 years. If the Full Court intends to differ from such decision of the Administrative committee, the Full Court should have sent the issue to the Administrative Committee for re-consideration. When it is admitted that the review under FR 56 (2) was deferred due to the pendency of charges under Rule 17 (b) against the petitioner from the year 2015 and the Honourable Full Court had taken a decision to impose the punishment of withholding of increment for two years with cumulative effect, there should have been no further proceedings under FR 56 (2) against the petitioner. Such decision of the Full Court is contrary to FR 56 (2) and clause 8 (i) of G.O. (Ms) No.623, Personnel and Administrative Reforms Department dated 14.07.1983, which prescribe procedures to be followed while passing an order of compulsory retirement against a government servant, wherein it has been ordered as follows:-

"8 (i) In case wherein action has been initiated for imposing a major penalty and the proceedings are in the final stage, the disciplinary proceedings will be finalised instead to compulsorily retire the officer under FR 56 (d)."

7. Therefore, according to the learned Senior counsel for the petitioner, when the Honourable Full Court had taken a decision to impose punishment of stoppage of increment in the disciplinary proceedings initiated against the petitioner on 21.07.2016, based on the very same materials, without any other fresh or additional materials, the Full Court ought not to have taken the decision to compulsorily retire the petitioner under FR 56 (2). Further, the orders which are impugned in this writ petition does not reflect that there are other materials or grounds which formed the basis for passing the order of compulsory retirement.

8. The learned Senior counsel for the petitioner also invited the attention of this Court to the report of the enquiry officer to contend that even during the course of enquiry, there was no evidence made available to show that the petitioner indulged in corrupt practice. Even though the petitioner defended the charges and stated that he only discharged his judicial function, the enquiry officer concluded that the act of the petitioner will amount to dereliction of duty. It is in those circumstances, the Administrative Committee, having regard to the nature of charges alleged against the petitioner, had decided to impose the punishment of withholding of increment for

two years with cumulative effect. During the tenure of the petitioner, he has reached the norms set out by the High Court, Madras. In the Annual Confidential Report relating to the petitioner, his performance was recorded either as 'good' or as 'satisfactory' and no adverse remarks has been made against him. However, only for the period between 24.05.2013 to 30.12.2013, it was recorded as 'doubtful' when the petitioner was working as Chairman/Judicial Officer, Taxation Appellate Tribunal, Tiruppur Corporation on deputation. While the petitioner was on deputation, no norms has been fixed by the High Court for such post. In such circumstance, the order of compulsory retirement had cast an aspersion against the petitioner besides it has become a stigma in his career. Therefore, the order of compulsory retirement can only be regarded as a punishment imposed on the petitioner as contemplated under Article 311 (2) of The Constitution of India. There is no public interest in passing such an order of compulsory retirement against the petitioner. The order of compulsory retirement is solely on the basis of the order of punishment imposed against him, and in such event, the Administrative Committee or the Full Court ought to have issued a show cause notice or afforded a pre-decisional hearing to the petitioner. In the absence of the same, the impugned orders cannot be sustained. In effect, it is the submission of the learned Senior counsel for the petitioner that when the Full Court has already imposed the punishment of stoppage of increment for two years with cumulative effect, the decision to compulsorily retire him under FR 56 (2) is unwarranted. In order to buttress this submission, the learned Senior counsel for the petitioner relied on the decision of the Honourable Supreme Court in the case of Registrar of High Court of Madras vs. R. Rajiah reported in 1988 (3) Supreme Court Cases 211 wherein it has been held as follows:-

"21. We may now come to the merits of the case.

It has been upheld by both the learned Judges of the Division Bench of the High Court that the impugned orders were not supported by any material. Further, it has been held that no material has been placed before the High Court to show that the impugned orders have been passed in public interest. This finding has not been challenged by the learned Additional Solicitor General appearing on behalf of the High Court. All that has been submitted by him is that the High Court was not justified in considering the adequacy or otherwise of the materials in support of the orders of compulsory retirement. There can be no doubt that when the High Court takes the view that an order of compulsory retirement should be made against a member of the subordinate judicial service, the adequacy or sufficiency of such materials cannot be questioned,

unless the materials are absolutely irrelevant for the purpose of compulsory retirement. But, in the instant case, there is no question of adequacy or sufficiency of the materials in support of the impugned orders of compulsory retirement. According to the High Court, no material has been placed in justification of the impugned orders of compulsory retirement of the respondents.

22. It is true that the High Court in its administrative jurisdiction has power to compulsorily retire a member of the judicial service in accordance with any rule framed in that regard, but in coming to the conclusion that a member of the subordinate judicial service should be compulsorily retired, such conclusion must be based on materials. If there be no material to justify the conclusion, in that case, it will be an arbitrary exercise of power by the High Court. Indeed, Article 235 of the Constitution does not contemplate the exercise by the High Court of the power of control over subordinate courts arbitrarily, but on the basis of some materials. As there is absence of any material to justify the impugned orders of compulsorily retirement, those must be held to be illegal and invalid.

9. The learned Senior counsel for the petitioner also relied on the decision of the Honourable Supreme Court in Ram Ekbal Sharma vs. State of Bihar and another reported in 1990 (3) Supreme Court Cases 504 wherein it was held that the object of enacting Fundamental Rule 56 (2) is to get rid of dead wood thereby dispensing with the service of those employees who have lost their utility, become useless and whose further continuance in service is considered not to be in public interest. In the said Judgment, it has been held as follows:-

"28. ....It is now settled that the object of compulsory retirement from service is to weed out the dead wood in order to maintain a high standard of efficiency and honesty and to keep the judicial service unpolluted. Keeping this object in view, the contention of the appellant has to be appreciated on the basis of the settled law on the subject of compulsory retirement.

34. It is also well settled that the formation of opinion for compulsorily retirement is based on the subjective satisfaction of the authority concerned but such satisfaction must be based on a valid material. It is permissible for the courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of

the administrative committee is based. In the present matter, what we see is that the High Court, while holding that the track record and service record of the appellant was unsatisfactory, has selectively taken into consideration the service record for certain years only while making extracts of those contents of the ACRs. There appears to be some discrepancy. We say so for the reason that the appellant has produced the copies of the ACRs which were obtained by him from the High Court under the Right to Information Act, 2005 and a comparison of these two would positively indicate that the High Court has not faithfully extracted the contents of the ACRs.

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

10. For the same proposition, the learned Senior counsel for the petitioner placed reliance on the decision of the Honourable Supreme Court in the case of High Court of Judicature at Patna vs. Ajay Kumar Srivastava and others reported in (2017 (5) Supreme Court Cases 138 wherein it has been held as follows:-

"12. During the pendency of the matter, on two earlier occasions, this Court passed two orders dated 01.12.2016 (set out in para 8 to 10, above) and 08.12.2016 (set out in paras 1 to 7, above). The substance of the said orders is that the appellant submitted before this Court that there are serious allegations of misconduct against the first respondent, therefore, the continuation of the respondent's service will not be in the larger public interest and the judiciary. In the context of the submissions made by the appellant, this Court by the abovementioned orders called upon the appellant to file an affidavit in support of the statements made at the Bar. Such affidavit along with huge volume of the material in support of the affidavit is filed.

13. It all boils down to this that there are serious allegations of misconduct on the part of the first respondent. If that is the case, the appellant is always at liberty to take appropriate disciplinary action against the respondent which action, according to us, the High Court is duty-bound to take. If the officer whose conduct is questionable warranting his removal or compulsory retirement from service, such an officer cannot simply be sent home with all the retiral benefits. But at the same time, if an officer is to be retired on the ground that his conduct is unwholesome, he is entitled to claim that the due process of law be followed."

11. That apart, the learned Senior counsel for the petitioner relied on the decision of the Honourable Supreme Court in the case of Baldev Raj Chadha vs. Union of India and others reported in (1980 (4) Supreme Court Cases 321 wherein it has been held as follows:-

"8. This takes us to the meat of the matter viz., whether the appellant was retired because and only because it was necessary in the public interest so to do. It is an affirmative action, not a negative disposition, a positive conclusion, not a neutral attitude. It is a terminal step to justify which the onus is on the administration, not a matter where the victim must make out the contrary. Security of tenure is the condition of efficiency of service. The administration, to be competent, must have servants who are not plagued by uncertainty about tomorrow. At the age of 50 when you have family responsibility and sombre problems of one's own life evening, your experience, accomplishments and fullness of fitness become an asset to the administration and if only if you are not harried or worried by "what will happen to me and my family" "where will I go if cashiered?" How will I survive when I am too old to be newly employed and too young to be superannuated? These considerations become all the more important in departments where functional independence, fearless scrutiny and freedom to expose evil or error in high places is the task. And the Ombudsmanic tasks of the office of audit vested in the C & AG and the entire army of monitors and minions under him are too strategic for the nation's financial health and discipline that immunity from subtle threats and oblique overawing is very much in public interest. So it is that we must emphatically state that under the guise of "public interest" if unlimited discretion is

regarded acceptable for making an order of premature retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. To constitutionalise the rule, we must so read it as to free it from the potential for the mischiefs we have just projected. The exercise of power must be bona fide and promote public interest. There is no demonstrable ground to infer mala fides here and the only infirmity alleged which deserves serious notice is as to whether the order has been made in public interest. When an order is challenged and its validity depends on its being supported by public interest, the State must disclose the material so that the court may be satisfied that the order is not bad for want of any material whatever which, to a reasonable man reasonably instructed in the law, is sufficient to sustain the grounds of 'public interest' justifying forced retirement of the public servant. Judges cannot substitute their judgment for that of the Administrator but they are not absolved from the minimal review well settled in administrative law and founded on constitutional obligations. The limitations on judicial power in this area are well known and we are confined to an examination of the material merely to see whether a rational mind may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest.

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 to cross the efficiency bar without qualms. A short cut may often be a wrong cut. The order of compulsory retirement fails because vital material, relevant to the decision, has been ignored and obsolete material, less relevant to the decision, has influenced the decision. Any order which materially suffers from the blemish of overlooking or ignoring, wilfully or otherwise, vital facts bearing on the decision is bad in law. Likewise, any action which irrationally digs up obsolete circumstances and obsessively reaches a decision based thereon, cannot be sustained. Legality depends on regard or the totality of material facts viewed in a holistic

perspective. For these reasons, the order challenged is obviously bad and we quash it. It is, however, open to the A.G. to take a fresh decision based on legal material and guided by principles. The appellant has, by now, reached the age of superannuation in the normal course. The result is that the consequence of any fresh order may only be financial. It is for the A.G. to consider whether in the circumstances a fresh evaluation for the purpose of compulsory retirement is called for. We merely allow the appeal, quash the order of compulsory retirement and leave the law to take its course. The appellant will be entitled to costs which we quantify at Rs.2,000.

12. By citing the aforesaid decisions of the Honourable Supreme Court, the learned Senior counsel for the petitioner would contend that there is no public interest involved in compulsorily retiring the petitioner from service. The order of compulsory retirement has been passed based on irrelevant material by ignoring the relevant and vital materials and therefore, the learned Senior counsel for the petitioner prayed for allowing the writ petition as prayed for.

13. Countering the submissions made by the learned Senior counsel for the petitioner, the learned counsel for the second respondent would contend that it is factually incorrect to state that the Full Court arrived at a decision on misconception as if the Administrative Committee refused to extend the service of the petitioner and that the Registry of this Court placed an incorrect agenda before the Full Court. The fact remains that the Administrative Committee resolved to continue the service of the petitioner beyond the age of 50 years, subject to the approval of the Full Court. When the matter was placed before the Full Court on 17.08.2017, it was unanimously resolved not to extend the service of the petitioner beyond the age of 50 years in view of the fact that the petitioner was subjected to disciplinary proceedings and imposed with punishment on earlier occasion. Furthermore, in addition to the punishment of stoppage of increment awarded to the petitioner, the petitioner suffered two adverse entries in his Annual Confidential report, one for the period from 01.01.2010 to 31.12.2010 where the over all view of the petitioner's performance was recorded as 'poor' and the other for the period from 24.05.2013 to 30.12.2013 where the petitioner's reputation as to (a) honesty (b) integrity and (c) impartiality was recorded as 'doubtful'. It is on the basis of these adverse remarks suffered by the petitioner, the Full Court of this Court had unanimously resolved not to extend the service of the petitioner beyond the age of 50 years. To lend support to this submission, learned counsel for the second

respondent placed reliance on the decision of the Honourable Supreme Court in the case of Nawal Singh vs. State of Uttar Pradesh and another) reported in (2003) 8 Supreme Court Cases 117 wherein in para No.4, it has been held as follows:-

"4. This contention is required to be appreciated on the basis of settled law on the subject of compulsory retirement. In Baikuntha Nath Das vs. Chief District Medical Officer (1992) 2 SCC 299, this Court considered Fundamental Rule 56 (j) and the rule corresponding to it and observed that the object and purposes for exercise of these powers are well settled in Union of India vs. Col.J.N. Sinha (1970) 2 SCC 458 and other decisions referred to by the court and held thus: (SCC pp.315-16 para 34):-

"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 compulsorily 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"

14. By placing reliance on the above decision of the Honourable Supreme Court, the learned counsel for the second respondent would contend that the order of compulsory retirement passed against the petitioner cannot be construed as a punishment nor does it imply any stigma. In fact, the petitioner himself has submitted an application dated 18.08.2017 seeking to permit him to retire from service voluntarily by citing his health condition. However, the application of the petitioner seeking permission to retire from service voluntarily was rejected while passing order of compulsory retirement.

15. The learned counsel for the second respondent proceeded to contend that the order of compulsory retirement passed against the second respondent is not punitive and it was not passed on the basis of the order of punishment imposed against the petitioner in the disciplinary proceedings initiated against him. The punishment of withholding of increment was passed for the proved charge against the petitioner. On the contrary the order of compulsory retirement was based on the past performance of the petitioner including his Annual Confidential Reports and other records. In any event, as against the order of compulsory retirement, a judicial review is not warranted inasmuch as all the established procedures contemplated under law have been followed while passing the order of compulsory retirement.

16. The learned counsel for the second respondent also submitted that the petitioner cannot be permitted to contend that the Administrative Committee had resolved to extend his service beyond 50 years. Such a decision taken by the Administrative Committee is subject to the approval to be accorded by the Full Court. The Full Court, considering the recommendations of the Administrative committee unanimously resolved to recommend to retire the petitioner compulsorily upon arriving at a subjective satisfaction on the past performance of the petitioner. Such a decision of the Full Court is based on the appraisal of over all service details of the petitioner, including the work done statement, annual confidential report, vigilance report etc., It is an admitted fact that in the order passed by the Government in G.O. (2D) No. 305, Home (Court-I) Department dated 04.10.2017, it was erroneously stated as if the Administrative Committee has resolved not to continue the

petitioner in service beyond 50 years and it was a typographical mistake. The fact remains that the Administrative committee, though resolved to permit the petitioner to continue in service has clearly stated that such a decision is subject to the approval to be accorded by the Full Court. When the Full Court resolved not to extend the service beyond 50 years, the petitioner cannot seek a judicial review over such a decision by citing the typographical error which crept in the order passed in G.O. (2D) No. 305, Home (Court-I) Department dated 04.10.2017. The learned counsel for the second respondent therefore submitted that judicial review in a case of this nature is not warranted by this Court. To buttress this submission, the learned counsel for the second respondent relied on the decision of the Honourable Supreme Court in the case of R.R. Parekh vs. High Court of Gujarat and another reported in (2016) 4 Supreme Court Cases 1 wherein in para No. 15 and 16, it has been held as follows:-

"15. The first submission which has been urged on behalf of the appellant is that there was no warrant for the Full Court to require a reconsideration of the decision initially taken by the Disciplinary Committee on 27.10.2004. The submission is that once the Disciplinary Committee concluded that the appellant should be exonerated by accepting the report of the enquiry officer, the Full Court in the Chamber meeting had no jurisdiction to revisit that decision.

16. The submission suffers from a fundamental fallacy. Under Article 235 of the Constitution, the High Court exercises control over the District Judiciary. The exercise of disciplinary control is a manifestation of that power. Exercise of disciplinary control over the District Judiciary is vested in the High Court in pursuance of the provisions of Article 235. The High Court, in order to streamline the process governing the exercise of its disciplinary jurisdiction may make - as High Courts in fact do make - procedural provisions regulating its exercise. The High Court of Gujarat in a meeting of a Full Court held on 02.03.2004 resolved that matters listed in Annexure 'A' to the resolution should be dealt with and decided by the High Court as a whole. Action to be taken against judicial officers in the exercise of disciplinary jurisdiction was one of those matters. However, having regard to the multitude of administrative matters over which the Full Court exercise jurisdiction, the High Court assigns and distributes its administrative functions to constituent committees. This is imperative for the efficient

exercise of the control of the High Court over the District Judiciary under Article 235. Distribution of work to a committee of the High Court does not efface the jurisdiction that vests in the High Court. By a resolution that was passed in a Chamber meeting of the High Court held on 26.12.1998, a detailed procedure was enunciated for the conduct of disciplinary inquiries against judicial officers of the District Judiciary. The procedure envisages that after an enquiry officer submits a report, the report together with underlying material on the record would be examined by a Disciplinary Committee consisting of two Judges. The Disciplinary Committee would submit its provisional conclusions in a report which would be laid before the High Court and this would become a decision of the Court after a stipulated period. The second stage for the Disciplinary Committee to prepare and submit its report would be after issuing a notice to show cause to the officer and granting him a personal hearing after which the Disciplinary Committee would prepare a report containing its reasoned conclusion regarding the punishment. Once again the report would be tabled before the High Court and would become a decision of the Court after passage of a stipulated period. The recommendation which is submitted by the Disciplinary Committee on whether or not to accept the report of an enquiry officer is not binding on the High Court. The Full Court has an obligation to apply its mind to a report which has been submitted by the Disciplinary Committee and to determine whether it should or should not be accepted. Hence, there is no merit in the submission that the Full Court was bound by the decision of its Disciplinary Committee."

17. According to the learned counsel for the second respondent, the petitioner was ordered to be retired compulsorily in public interest after arriving at a subjective satisfaction with respect to the continuance of the petitioner in judicial service. Unless it is shown that the order of compulsory retirement was passed arbitrarily by the Full Court without considering the relevant materials, this Court cannot interfere with the decision taken by the respondents. The learned counsel for the second respondent, by placing reliance on the aforesaid decision, further submitted that an order of compulsory retirement is not a punishment and it implies no stigma or misbehaviour. Furthermore, the petitioner himself submitted an application seeking to permit him to retire from service voluntarily by citing health reasons and therefore now

the petitioner cannot turn around and assail the order of compulsory retirement passed against him. The learned counsel for the second respondent therefore prayed for dismissal of the writ petition.

18. The learned counsel for the first respondent adopted the arguments of the learned counsel for the second respondent and contended that when recommendations were made by the Full Court for passing an order of compulsory retirement, the Government has no other option but to comply with such a direction. Accordingly, the Government has passed the order of compulsory retirement in public interest against the petitioner and he prayed for dismissal of the writ petition.

19. We have heard the counsel for both sides and perused the materials placed on record. The sum and substance of the contentions urged on behalf of the petitioner is that even though the petitioner was inflicted with punishment of withholding of increments for a period of two years with cumulative effect by an order dated 01.08.2016 passed by the second respondent, such a punishment imposed against the petitioner could not be the basis for passing the order of compulsory retirement. It is further stated that the Administrative Committee, while considering the extension of service of the petitioner beyond 50 years, has come to the conclusion that the petitioner can be permitted to continue his service beyond 50 years, subject to the approval to be accorded by the Full Court. However, it is alleged by the petitioner that while placing the agenda before the Full Court, it was erroneously stated as if the Administrative Committee refused to extend the service of the petitioner beyond 50 years and therefore, the Full Court was carried away by such a decision arrived at by the Administrative Committee and recommended to impose the punishment of compulsory retirement from service. According to the petitioner, such an order of compulsory retirement imposed on him is attached with a stigma and it is legally not sustainable. सत्यमेव जयते

20. It is an admitted fact that the petitioner was subjected to disciplinary proceedings on the charge that he failed to pass award in some Motor Accident Claim cases and in some cases he passed exorbitant award amount than the one claimed by the claimant. The petitioner was also charged that due to erratic award passed by him, some of the counsel appearing for the Insurance Companies have filed Transfer Applications before the Principal District Judge, Tiruchirapalli for transfer of some of the Motor Accident Claim Petitions pending on the file of the petitioner apprehending that the petitioner may award enhanced award amount in the cases filed by

them much to their chagrin. The enquiry proceedings were defended by the petitioner by stating that he had passed the award fixing the compensation on the basis of material evidence available in each case in the light of the parameters laid down by this Court as well as the Supreme Court. However, the enquiry officer, upon scanning the oral and documentary evidence made available, concluded that the petitioner is guilty of dereliction of duty. The documentary evidence produced before the enquiry officer includes the cases in which the petitioner has passed exorbitant award than the one made in the claim petition. Ultimately, accepting the report of the enquiry officer, the petitioner was imposed with the punishment of withholding of increments for a period of two years with cumulative effect. Admittedly, such an order of punishment dated 01.08.2016 has not been challenged by the petitioner and it had reached a finality.

21. It is seen from the records that a year after the order dated 01.08.2016 was passed inflicting punishment to the petitioner, the petitioner submitted a letter dated 18.08.2017 seeking permission to retire from service voluntarily. This letter of the petitioner has not been considered for the reason that the extension of service of the petitioner and others who have crossed the age of 50 years was under consideration of the Administrative Committee by then. Further, on 18.04.2107, the Administrative Committee has taken up the case of the petitioner along with others for consideration. The Administrative Committee in fact recommended to extend the service of the petitioner beyond the age of 50 years, which decision is subject to the approval to be accorded by the Full Court, meaning thereby, if the Full Court approves the decision of the Administrative Committee, then the petitioner can continue in service beyond the age of 50 years. However, the Full Court resolved not to extend the service of the petitioner beyond the age of 50 years and over-turned the decision of the Administrative Committee. Such a conclusion was arrived at by the Full Court upon perusal of the Annual Confidential Reports of the petitioner, quality of judgment writing of the petitioner, over all performance, work done statement, Vigilance and other service particulars etc., Therefore, it cannot be said that the Full Court was carried away by the incorrect agenda placed by the Registry. The fact remains that the Administrative Committee resolved to continue the service of the petitioner beyond 50 years subject to approval by the Full Court, but the Full Court resolved not to permit the petitioner to continue his service beyond 50 years. There is no incorrect agenda placed before the Full Court, as contended by the petitioner.

22. At this juncture, it is pertinent to point out that admittedly, the petitioner suffered some set backs in the Annual Confidential Report recorded by this Court. For the period from 01.01.2010 to 31.12.2010, the manner in which the petitioner discharged his judicial functions was recorded as "poor" by this Court. However, when such adverse remarks recorded against the petitioner was communicated to him on 28.02.2013, he submitted a representation to expunge the remark. Considering the representation of the petitioner, this Court recorded that the over all view with respect to "promptitude in disposal, and aptitude for hard/heavy work and readiness to take up responsibility can be changed as 'satisfactory' instead of 'poor' as recorded earlier. Further, for the period commencing from 24.05.2013 to 30.12.2013, this Court recorded that the reputation of the petitioner as to (i) honesty (ii) integrity and (iii) impartiality is 'doubtful'. As against this remark made in the Annual Confidential Report of the petitioner, which was communicated to the petitioner on 13.03.2015, the petitioner submitted a representation dated 12.05.2015 to expunge the remarks. Such a representation dated 12.05.2015 was considered by the Committee which rejected the same. The order of rejection was also communicated to the petitioner on 17.10.2016 by this Court. Therefore, apart from the disciplinary proceedings initiated against the petitioner which culminated in imposition of punishment of withholding of increments for a period of two years with cumulative effect by the second respondent on 01.08.2016, the past service records of the petitioner is not appreciable. While so, the Full Court of this Court, having considered the past performance of the petitioner has arrived at a subjective satisfaction not to permit the petitioner to continue in service beyond 58 years and recommended to pass an order of compulsory retirement against him. When such a conclusion has been arrived at by the Full Court of this Court, whether, at the instance of the petitioner herein, in exercise of power under Article 226 of The Constitution of India, this Court can interfere with the conclusion arrived at by the Full Court is to be examined. सत्यमेव जयते

23. We are conscious of the fact that the scope of Judicial review in exercise of power conferred under Article 226 of The Constitution of India, is limited to test only the correctness or otherwise of adherence of the decision making process and not the decision of the respondents. While exercising jurisdiction under Article 226 of The Constitution of India, we can only ensure as to whether the procedural formalities preceding the order of punishment have been adhered to in the touch stone of principles of natural justice. In other words, the conclusion arrived at by the respondents to compulsorily retire the petitioner from service cannot be interfered with by this Court, unless the conclusion is based on no evidence or irrelevant

material. In this context, reference can be made to the decision of the Honourable Supreme Court in the case of (High Court of Judicature at Bombay through its Registrar vs. Udaysingh and others) reported in AIR 1997 Supreme Court 2286 wherein it was held as follows:-

"10. ....The only question is; whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of The Constitution of India was taken away by the power under Article 323-A and invested the same in the Tribunal by Central Administrative Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal when the conclusion reached by the authority is based on evidence. Tribunal is devoid of power to reappraise the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence....

13. Under the circumstances, the question arises: whether the view taken by the High Court could be supported by the evidence on record or whether it is based on no evidence at all? From the narration of the above facts, it would be difficult to reach a conclusion that the finding reached by

the High Court is based on no evidence at all. The necessary conclusion is that the misconduct alleged against the respondent stands proved. The question then is; what would be the nature of punishment to be imposed in the circumstances? Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that the imposition of penalty of dismissal from service is well justified. It does not warrant interference.

24. Thus, it is evident from the above decision of the Honourable Supreme Court that this Court has no power to interfere with the decision taken by the respondents in a departmental enquiry and to substitute it's own conclusion. In such cases, judicial review is only meant to ensure that the delinquent receives fair treatment in the departmental enquiry conducted against him and that the conclusion which the authority reached is based on semblance of evidence. In the present case, as mentioned above, there are evidences made available against the petitioner based on which the respondents have come to a conclusion to impose the punishment of compulsory retirement from service. While so, we cannot interfere with such a conclusion arrived at by the respondents.

25. The learned counsel for the petitioner submitted that even assuming that the charges levelled against the petitioner are proved, the punishment of compulsory retirement from service imposed as a measure of punishment amounts to a stigma and therefore it has to be set aside. It is also submitted that the punishment of compulsory retirement is excessive and it is not warranted. We are not inclined to accept such submission made on behalf of the petitioner. At the outset, we wish to observe that there were material records made available against the petitioner in the form of order of punishment dated 02.08.2016 passed by the second respondent in the disciplinary proceedings initiated against the petitioner, Annual Confidential reports where his past performances were recorded, report of the Vigilance department etc., Therefore, it is not as if there is no material evidence made available against the petitioner to impose the punishment of compulsory retirement. The petitioner, as a Judicial Officer, is required to maintain absolute integrity and honesty in discharge of his functions without giving any room for any complaint, much less complaint touching his integrity and honesty. When the charges levelled and proved against the petitioner goes to the root of his honesty and

integrity in discharge of his duties, we can only approve the decision taken by the respondents to compulsorily retire the petitioner from service. In this context, we are fortified by a decision of the Honourable Supreme Court in the case of (Union of India and others vs. P. Gunasekaran) reported in (2015) 2 Supreme Court Cases 610 wherein in para No.20, it was held as follows:-

"20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Articles 226/227 of The Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the Court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford Dictionary is 'moral uprightness; honesty'. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc., In short, it depicts sterling character with firm adherence to a code of moral values."

26. Applying the above observation of the Honourable Supreme Court to the facts of this case, we do not see that the punishment imposed on the petitioner is disproportionate and it does not shock our conscience warranting our interference.

27. For all the reasons mentioned above, we refuse to interfere with the orders passed by the respondents, which are impugned in this writ petition. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Additional Chief Secretary to Government  
Home (Courts-I) Department  
Secretariat, Fort St. George  
Chennai - 600 009
2. The Registrar General  
High Court of Madras  
Chennai - 600 104

+1cc to Mr.K.H. Ravikumar, Advocate SR.No.85659

WP No. 5558 of 2018

PM(CO)  
GMY(06/11/2019)



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