

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 05.11.2019

Orders Pronounced on : 18.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.P.Nos.6890 of 2019 and 12654 of 2018
and
W.M.P.Nos.14768 of 2018 and 7636 of 2019

Dr.K.Arul ... Petitioner in both the Writ Petitions

Vs.

1. The Registrar General,
High Court, Madras,
Chennai-600 104.

.. First respondent in both the Writ Petitions

2. The Secretary,
Pondicherry Union Government,
Pondicherry.

.. Second respondent in W.P.No.6890 of 2019

2. The Chief Secretary,
Puducherry Union Territory,
Pondicherry.

(Second respondent impleaded,
vide order dated 18.12.2019

in W.M.P.No.26121 of 2018

in W.P.No.12654 of 2018)

.. Second respondent in W.P.No.12654 of 2018

Writ Petition No.6890 of 2019 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records in G.O.(Ms).No.1 of 2019 - Law Department, dated 23.01.2019 on the file of the second respondent and consequential notification R.O.C.No.03/2018-Con.B2 (ACR) Notification No.20/2019, dated 31.01.2019 issued by the first respondent and quash the same as illegal and contrary to Rule 56(j) of Central Civil Service Fundamental Rules.

Writ Petition No.12654 of 2018 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the proceedings dated 19.03.2018 of the Full Court of this High Court of Madras and published in Times of India, dated 21.03.2018 and quash the same as far as the petitioner alone as contrary to the judgment of the Full Bench of the Supreme Court of India reported in All India Judges Association and others (1993 (4) SCC 288) case and direct the respondents to implement the order passed by the Administrative Committee, dated 07.02.2018 in the light of the guidelines given by the Honourable Supreme Court of India in All India Judges Association and others case.

For petitioner : Dr.A.Thiagarajan,
Senior Counsel for Mr.M.Nallathambi

For respondents : Mr.B.Vijay for R-1 in both the
Writ Petitions
Mr.R.Syed Mustafa, Govt. Pleader (Pondicherry)
for R-2 in W.P.No.6890 of 2019 and in
W.P.No.12654 of 2018

COMMON ORDER

R.SUBBIAH, J

Writ Petition No.12654 of 2018 is filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the proceedings dated 19.03.2018 of the Full Court of the High Court of Madras and published in Times of India, dated 21.03.2018 and quash the same as far as the petitioner alone is concerned, as it is contrary to the judgment of the Full Bench of the Supreme Court of India reported in All India Judges Association and others (1993 (4) SCC 288) case and direct the respondents to implement the order passed by the Administrative Committee, dated 07.02.2018 in the light of the guidelines given by the Honourable Supreme Court of India in All India Judges Association and others case.

2. Writ Petition No.6890 of 2019 is filed praying for issuance of a Writ of Certiorari to call for the records in G.O. (Ms).No.1 of 2019 - Law Department, dated 23.01.2019 on the file of the second respondent and consequential notification R.O.C.No.03/2018-Con.B2 (ACR) Notification No.20/2019, dated 31.01.2019 issued by the first respondent and quash the same as illegal and contrary to Rule 56(j) of Central Civil Service Fundamental Rules.

3. Since the issue involved in both these Writ Petitions are inter-related to each other, they are disposed of by this Common Order.

4. Brief facts of the case leading to the filing of these Writ Petitions are as follows:

(a) The petitioner had been appointed as District Munsif/Judicial First Class Magistrate in the Union Territory of Pondicherry Judicial Service on 09.10.1991. On 31.03.2005, he was promoted to the post of Senior Civil Judge/Assistant Sessions Judge and posted at Tenkasi, Tirunelveli District, Tamil Nadu. On 02.08.2012, he was promoted to the post of District and Sessions Judge and posted in City Civil Court, Chennai. On 05.11.2012, he was appointed as Secretary, High Court Legal Service Committee, High Court of Madras and was also holding the post of Member Secretary, Tamil Nadu State Legal Services Authority with full additional charge till 14.10.2014. The petitioner was also officiating as Member Secretary, Puducherry State Legal Services Authority from May 2014 till 14.10.2014. Further, on 15.10.2014, he was posted as Registrar (Admin-J) in the Supreme Court of India for one year from the date of appointment in the Supreme Court. On 15.10.2015, he was appointed as Chairman, Tamil Nadu State Transport Appellate Tribunal in Chennai. On 14.12.2015, he was again appointed as Registrar (J-III) in the Supreme Court of India and served there till 18.04.2016. Thereafter, on repatriation to the High Court of Madras, he was posted as Additional Director, Tamil Nadu State Judicial Academy, Chennai and in addition to that, he held the post of Officer on Special Duty (OSD) at the High Court of Madras (Chief Justices Conference Secretariat).

(b) During the tenure as Registrar in the Supreme Court of India for the period 2014-2015 and 2015-2016, the petitioner's Annual Confidential Report(s) (ACR) was with appreciation grade as "Very Good"; likewise, for the period from 18.04.2016 to till date, his ACR grade is "very good" without any adverse remarks.

(c) On 23.01.2017, the petitioner's name was recommended by the Collegium of the High Court of Madras for elevation to the High Court along with other five service candidates of Tamil Nadu. On 28.12.2017, the High Court of Madras issued an Official Memorandum by extending the tenure of the petitioner from the age of 58 to 60, subject to the approval of the Administrative Committee of the High Court and the Full Court. The Administrative Committee, by its Resolution dated 07.02.2018, had recommended for extension of the petitioner's service beyond 58 years, subject to the approval of the Full Court. The case of the petitioner was placed before the Full Court, which, in its meeting held on 19.03.2018, while considering the facts, has resolved by majority of voting not to extend the service of the

petitioner beyond the age of 58 years. The petitioner came to know of this fact only through the newspaper publication in the Times of India, dated 21.03.2018. In the meanwhile, the petitioner has given a letter seeking permission to voluntarily retire from service (VRS) to take care of his aged mother. Pending his representation for VRS, the petitioner filed W.P. (Civil).No.322 of 2018 under Article 32 of the Constitution of India before the Supreme Court, challenging the decision of the Full Court, dated 19.03.2018. The said Writ Petition, vide order dated 20.04.2018, was allowed to be withdrawn without prejudice to any other remedy.

(d) In the meantime, the petitioner's letter seeking permission for VRS was accepted by the High Court of Madras. While so, on 20.04.2018, the petitioner has sent a representation to the Madras High Court to re-consider the decision of the Full Court, dated 19.03.2018, regarding his denial of extension of service beyond 58 years. Though the Administrative Committee had resolved to accept the request of the petitioner to withdraw the VRS application submitted by the petitioner, his representation dated 20.04.2018 for re-consideration of the decision of the Full Court, had not been considered. Hence, the petitioner has come up before this Court by filing W.P.No.12654 of 2018 for the relief stated supra.

(e) That being so, the second respondent, being the appointing authority, issued impugned G.O. dated 23.01.2019, ordering compulsory retirement, which had been issued subject to the outcome of the Writ Petition filed by the petitioner in W.P.No.12654 of 2018. Surprisingly, based on the said G.O., dated 23.01.2019, the first respondent-Registrar General of High Court, issued the impugned Notification dated 31.01.2019 of compulsory retirement in public interest under the Fundamental Rules in FR.56(j) of the Central Civil Service (CCS) with effect from the date of service of the said G.O., and the first respondent-Registrar General enclosed a cheque bearing No.058153, dated 30.01.2019 for a sum of Rs.5,31,594/- drawn in favour of the petitioner, being three months pay and allowances, in lieu of three months' notice. The impugned Notifications dated 23.01.2019 and 31.01.2019 are neither sustainable in law, nor on facts. Challenging these two Notifications, the very same petitioner has filed W.P.No.6890 of 2019 for the relief stated supra.

5. The respondents have filed counter affidavit detailing the facts and circumstances under which the impugned orders are passed.

6. The learned Senior Counsel appearing for the petitioner submitted that the petitioner is governed by the Puducherry Judicial Service (Cadre and Recruitment) Rules. As per Rule 16 therein, the age of superannuation is 60 years. Therefore, the petitioner will be retiring on superannuation only at the age of

60 years. But absolutely, there is no material to suggest that the said fact contemplated under Rule 16 of the said Rules, was placed before the Full Court, or was there any discussion on this legal point. A perusal of the Minutes of the Full Court meeting, would show that it was only by way of secret ballot that the decision was taken by majority of votes of the Judges. Had these facts, coupled with the said Rules, were placed before the Full Court, along with any decision on this legal issue, the result would have been different. Thus, the learned Senior Counsel appearing for the petitioner submitted that the case of the petitioner was not considered in accordance with law.

7. The learned Senior Counsel appearing for the petitioner further submitted that the second respondent-Puducherry Union Government passed the impugned G.O. dated 23.01.2019 and consequently, the first respondent-Registrar General of High Court had invoked F.R.56(j) of CCS and gave three months pay and other allowances by way of Cheque, in lieu of three months' prior notice. The respondent(s) had an opportunity to invoke the said F.R.56(j) only at the age of 50 and 55 years when the petitioner was in service. In the instant case, the High Court issued Official Memorandum, dated 28.12.2017, extending the petitioner's tenure from the age of 58 to 60 years, subject to the approval of the Administrative Committee of the High Court and also the Full Court. Further, on 07.02.2018, the Administrative Committee of the High Court approved the Official Memorandum, dated 28.12.2017 and the Official Memorandum and the Resolution of the Administrative Committee were based on the norms prescribed in the judgment of the Supreme Court reported in 1993 (4) SCC 288 (All India Judges' Association Vs. Union of India). The Administrative Committee had passed the Resolution considering the conditions stipulated by the Supreme Court in the said decision reported in 1993 (4) SCC 288. The petitioner had complied with all the conditions stipulated by the Supreme Court, which was approved by the Administrative Committee.

8. The learned Senior Counsel appearing for the petitioner further submitted that, absolutely, there is no allegation or charge memo against the petitioner. However, in the impugned G.O., the words "compulsory retirement" of the petitioner who was District Judge (Entry Level) of the Puducherry Judicial Service, had been used. Therefore, the words "compulsory retirement" as per the Service Rules, is a punishment. The Central Civil Service Rules would show that the "compulsory retirement" is a major penalty. In this regard, the learned Senior Counsel appearing for the petitioner submitted that the Supreme Court had distinguished the words "compulsory retirement" into two categories, namely, (i) when an enquiry was conducted on the basis of grave charges and order of compulsory retirement is passed, that alone will amount to punishment, and (ii) other than that, any compulsory retirement simpliciter will not be treated as punishment.

9. The learned Senior Counsel appearing for the petitioner further contended that though there was no enquiry or adjudication against the petitioner, the words "compulsory retirement" are a stigma attached to the petitioner. Now, the petitioner is aged about 60 years and he has a meritorious Certificate from two Chief Justices of India. The petitioner is eligible to be a member in the Consumer Forum, Human Rights Commission, etc. The learned Senior Counsel reiterated that the words "compulsory retirement" will be used as stigma against the petitioner, even though his carrier was unblemished. Therefore, in the impugned G.O., the words "compulsory retirement" require to be considered in the light of the judgment of the Supreme Court reported in 2014 (4) SCC 773 (High Court of Judicature at Patna Vs. Shyam Deo Singh and others), wherein, paragraph 6(4) reads as follows:

"6. In Bishwanath Prasad Singh Vs. State of Bihar (2001 (2) SCC 305 : 2001 SCC (L & S) 403 which coincidentally arises out of the same resolution of the Full Court as in the present case, this Court had the occasion to consider whether continuance in service beyond 58 years is a right or a benefit conferred and also the norms that should govern the decision to grant or refuse such continuance. The aforesaid consideration by this Court was necessitated by the different interpretations that seem to have emerged from the directions in All India Judges Assn.(2) Vs. Union of India (1993 (4) SCC 288 : 1994 SCC (L & S) 148 : 1993 (25) ATC 818). In para 18 of the Report in Bishwanath Prasad Singh (2001 (2) SCC 305 : 2001 SCC (L & S) 403) the conclusions of this Court were summed up as follows: (SCC p.320)

...
...
....

(4) If the High Court finds a judicial officer not entitled to the benefit of extension in superannuation age he would retire at the age of superannuation appointed by the service rules. No specific order or communication in that regard is called for either by the High Court or by the Governor of the State. Such retirement is not 'compulsory retirement' in the sense of its being by way of penalty in

disciplinary proceedings or even by way of 'compulsory retirement in public interest'. No right of the judicial officer is taken away. Where the High Court may choose to make any communication in this regard, it would be better advised not to use therein the expression 'compulsory retirement'. It creates confusion. It would suffice to communicate, if at all, that the officer concerned having been found not fit for being given the benefit or extended age of superannuation, would stand retired at the normal age or date of superannuation."

Thus, the learned Senior Counsel appearing for the petitioner prayed this Court to set aside the impugned orders and allow the Writ Petitions.

10. Countering the above submissions, the learned counsel appearing for the first respondent-High Court, Madras, submitted that the age of retirement prescribed under the Puducherry Judicial Service (Cadre and Recruitment) Rules is subject to F.R.56(j) of CCS. Though the High Court may, before or after the normal age of superannuation, compulsorily retire a Judicial Officer, subject to formation of an opinion that the 'compulsorily retirement' in public interest was needed, the decision to compulsorily retire the petitioner under FR 56(j) is independent of the exercise of evaluation of the Judicial Officer pursuant to the decision of the Supreme Court reported in 1993 (4) SCC 288 (All India Judges' Association and others Vs. Union of India). Hence, the contention of the petitioner that he cannot be compulsorily retired from service before the age of superannuation under Service Rules, is legally untenable. Moreover, the order of compulsorily retirement passed under FR.56(j) does not cast any stigma and cannot be termed as punishment. It is like premature retirement. FR.56(j) confers on Government or Appropriate Authority, an absolute right to retire a Government servant on his attaining a particular age or on his having completed certain number of years of service on formation of an opinion that in public interest, it is necessary to compulsorily retire a Government servant. It is neither a punishment, nor a penalty, with loss of retiral benefits.

11. The learned counsel appearing for the first respondent further submitted that the petitioner is entitled to pension actually earned and other benefits. The object of compulsorily retirement is not to punish or penalise a Government servant, but to weed out the worthless who have lost their utility for the administration by their insensitive, unintelligent or promoting stagnation. Hence, the submission of the learned

Senior Counsel appearing for the petitioner that the impugned order of compulsorily retirement casts stigma, cannot be accepted.

12. The learned counsel appearing for the first respondent further submitted that with regard to the enhancement of superannuation age of Judicial Officers given in the decision of the Supreme Court in the case of All India Judges Association (cited supra), the same does not result in automatic enhancement of the age of superannuation. By force of the said judgment of the Supreme Court, a Judicial Officer does not acquire a right to continue in service up to the extended age of 60 years. It is only a benefit conferred on the Judicial Officers, subject to evaluation of their continued utility to the judicial system to be carried out by the respective High Courts before attaining the age of 58 years and formation of an opinion as to their potential for their continued useful service.

13. The learned counsel appearing for the first respondent-High Court, Madras further submitted the service records of the writ petitioner, character, quality of judgments and matters like general reputation, efficiency, integrity and honesty, were considered by the Full Court before taking a decision in the light of the decision of the Supreme Court in the case of All India Judges' Association (cited supra) and the service record and remarks obtained by the petitioner for a particular period alone, cannot be taken into consideration to confer the benefit, and the overall performance of the petitioner was considered by the High Court and he was not found fit and eligible. The learned counsel appearing for the first respondent further submitted that the contention of the petitioner that the Full Court had completely overlooked the decision of the Administrative Committee and took a decision by vote not to extend his services from the age of 58 years to 60 years, is not legally sustainable. The learned counsel appearing for the first respondent also submitted that the benefit of increase of retirement age to 60 years conferred under the decision of the Supreme Court reported in 1993 (4) SCC 288 (cited supra) shall not be available automatically to all the Judicial Officers, irrespective of their past record of service and evidence of their continued utility to the judicial system.

14. In support of his submissions, the learned counsel appearing for the first respondent also relied upon decisions of the Supreme Court reported in 2001 (2) SCC 305 (Bishwanath Prasad Singh Vs. State of Bihar) (cited supra) and also in the case of S.D.Singh Vs. Jharkhand High Court, reported in 2005 (13) SCC 737. He also relied on an order of this Court in W.P.No.9321 of 2019, dated 07.08.2019 (S.Natarajan Vs. The Registrar General, High Court of Judicature at Madras and another) and prayed for dismissal of the Writ Petitions.

15. The learned counsel appearing for the second respondent-Puducherry Chief Secretary/Secretary, submitted that by

following the guidelines issued by the Supreme Court in the case of All India Judges' Association (cited supra), invoking F.R.56 (j), thereby compulsorily retiring the petitioner, is not a punishment, in view of the age of retirement which is 60 insofar as the Judicial Service Rules of Puducherry is concerned, unlike in Tamil Nadu. The learned counsel also relied on a decision of the Supreme Court reported in 1979 (2) SCC 34 (Chief Justice of A.P. and others Vs. Dixitulu). He also stated that vesting of complete control over the Subordinate Judiciary in the High Court leads to the fact that the decision of the High Court in the matter, is within its jurisdiction, which will bind the State. Therefore, the submission made by the petitioner that he can be made to retire on attaining the age of superannuation, only at the age of 60 years, cannot be countenanced and thus, the learned counsel appearing for the second respondent prayed for dismissal of the Writ Petitions.

16. Keeping in mind the submissions made on either side, we have carefully perused the entire materials available on record. The following are the contentions raised by the petitioner in the present Writ Petitions:

(i) As per Rule 16 of the Puducherry Judicial Service (Cadre and Recruitment) Rules, the petitioner can be made to retire on attaining the age of superannuation only on completion of the age of 60 years and had this Rule been placed before the Full Court, the Full Court would have taken a different view and therefore, the petitioner's case was not considered in accordance with law.

(ii) As per F.R.56(j) of the Central Civil Services, the respondents had the opportunity to invoke the same only at the age of 50 and 55 years, when the petitioner was in service and not beyond the age of 55 years.

(iii) Though the words "compulsory retirement", cast a stigma or punishment to the petitioner, there was no allegation or charge memo against the petitioner. However, in the impugned G.O., the words "compulsory retirement" had been used, which would amount to a major penalty/punishment, and hence, the impugned orders are liable to be set aside.

17. According to the learned Senior Counsel appearing for the petitioner, as per Rule 16 of the Puducherry Judicial Service (Cadre and Recruitment) Rules, the petitioner cannot be made to retire compulsorily and only on attaining the age of superannuation at the age of 60 years, he can be made to retire. Further, the cases of the Government servant covered by F.R.56 (j) or Rule 48 of CCS (Pension) Rules, should be reviewed six months before he attains the age of 50/55 years or completes 30 years service, whichever occurs earlier in cases covered by F.R.56(j) and 30 years of qualifying service under Rule 48 of CCS (Pension) Rules. Therefore, beyond 55 years, there cannot be any review. In view of this submission, it is appropriate to

extract Rule 16 of the Puducherry Judicial Services (Cadre and Recruitment) Rules and F.R.56(j) of the CCS, as follows:

"Rule 16: Age of superannuation: Every person appointed to the service shall retire from the service on the afternoon of the last day of the month in which he/she completes the age of 60 years."

"CCS: Chapter IX: Retirement:
F.R.56: ..

(j) Notwithstanding anything contained in this rule, the Appropriate Authority shall, if it is of the opinion that it is the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:

(i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;

(ii) in any other case after he has attained the age of fifty-five years."

18. The age of retirement prescribed under the above extracted Rule 16 is subject to F.R.56(j) of the CCS. So far as the Judicial Officers are concerned, the High Court is the cadre controlling and competent authority under the Constitution of India and the relevant Judicial Service Rules for Subordinate Judiciary and that evaluation of all the Judicial Officers, is done at the age of 58 being the age of retirement in the State of Tamil Nadu and since the age of superannuation is 60 years in the Union Territory of Puducherry, F.R.56(j) is invoked in addition and in consonance with the recommendations of the High Court to decide as to the continuance of any Puducherry Judicial Officer in public interest. In this regard, it is appropriate to extract the relevant paragraph from the judgment of the Supreme Court reported in 1993 (4) SCC 288 (cited supra):

"52. To sum up, we hold as follows:

....

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

While the superannuation age of every

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

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

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

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

Those who have crossed the age of 57 years and those who cross the age of 58 years soon after the date of this decision will exercise their option within one month from the date of this decision. If they do not do so, they will be deemed to have

opted for continuing in service till the age of 60 years. In that case, they will also be subjected to the review for compulsory retirement, if any, notwithstanding the fact that there was not enough time to undertake such review before they attained the age of 58 years. However, in their case, the review should be undertaken within two months from the date of the expiry of the period given to them above for exercising their option, and if found unfit, they should be retired compulsorily according to the procedure for compulsory retirement under the Rules.

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

19. Therefore, the Supreme Court, in the above judgment, directed to assess and evaluate the records of the Judicial Officer before attaining the age of 58 years and follow the procedures for compulsory retirement under the Service Rules applicable to Judicial Officers and give them the benefit of the extended superannuation age from 58 to 60 years, only if they are found fit and eligible to continue in service. Therefore, the above decision of the Supreme Court reported in 1993 (4) SCC 288 and invocation of F.R.56(j) of CCS, had to be read jointly together and not independently. Hence, the submission made by the learned Senior Counsel appearing for the petitioner, placing reliance on Rule 16 of the Puducherry Judicial Service (Cadre and Recruitment) Rules and F.R.56(j) of CCS, cannot be countenanced. Similarly, the submission that the petitioner should be made to retire on attaining the superannuation only at the age of 60 and there cannot be any review of 50 and 55 years, is also not legally sustainable. Further, the submission of the learned Senior Counsel appearing for the petitioner that had the records been placed before the Full Court, the case of the petitioner would have been considered, has no force.

20. In the present case, the Administrative Committee of the High Court had resolved to continue the services of the petitioner beyond the age of 58 years and upto 60 years, subject to the approval of the Full Court. It is evident from the decision of the Administrative Committee, dated 07.02.2018 that

the extension of service conferred to the petitioner beyond the age of 58 years is not without any pre-condition, rather, it was subject to the outcome of or a decision to be taken by the Full Court of the High Court, meaning thereby, the petitioner may or may not be permitted to continue in service beyond the period of 58 years, as, such continuance is subject to the decision of the Full Court. It is also an admitted fact when the Full Court was convened on 19.03.2018, it was resolved by majority of votes that the services of the petitioner beyond the age of 58 years need not be continued. The extension of service beyond the age of retirement i.e., 58 years, is a benefit conferred on the Judicial Officer, subject to assessment of his or her potentiality, by forming an opinion thereof by the High Court. Hence, the petitioner, as a matter of right, cannot be permitted to seek interference of such a discretionary decision by the High Court, especially when there is no procedural violation in such decision making process.

21. It is vehemently contended by the learned Senior Counsel appearing for the petitioner that there is no material available to the Full Court, which resulted in the discontinuance of service of the petitioner beyond the age of 58 years. We are not inclined to accede to such submission of the learned Senior Counsel appearing for the petitioner. At the first blush, it is to be noted that when the Full Court of the High Court resolved by majority of votes not to extend the service of the petitioner beyond the age of 58 years, it cannot be subjected to judicial review. Moreover, the Full Court always will be in possession of all the requisite records in relation to the service of the petitioner, from the date of his appointment till his retirement. Therefore, it cannot be gainsaid that the Full Court has taken such a decision to discontinue the service of the petitioner without any material records. In any event, such a decision taken by the Full Court cannot be re-appreciated by this Court in exercise of the powers conferred under Article 226 of the Constitution of India. The judicial review over such decision of the Full Court is very limited. Only when there is a procedural violation in the decision making process, this Court can interfere. In this case, the Administrative Committee of the High Court decided to extend the service of the petitioner beyond 58 years, subject to approval of the Full Court and thereafter, it was placed before the Full Court along with the service particulars of the petitioner. After discussion on the subject, the Full Court decided not to extend the service of the petitioner beyond 58 years. We do not find any procedural violation in the decision making process to discontinue the service of the petitioner beyond the age of 58 years. Hence, judicial review over such decision taken by the Full Court is legally impermissible and consequently, no relief can be granted to the petitioner in these Writ Petitions.

22. Further, the submission of the learned Senior Counsel appearing for the petitioner that the words "compulsory retirement" attach stigma to the petitioner, is not sustainable in law, in view of the decision of the Supreme Court reported in 2001 (2) SCC 305 (cited supra). Further, from the decision of the Supreme Court reported in 1993 (4) SCC 288 (cited supra), it is to be noted that the compulsory retirement will arise in two categories, namely:

(i) When an enquiry was conducted on the basis of grave charges and order of compulsory retirement is passed, that alone will amount to punishment;

(ii) Other than that, any compulsory retirement, simpliciter, will not be treated as punishment.

23. In the instant case, no enquiry was conducted and the order of compulsory retirement is not based on any enquiry or charge memo proceedings. Furthermore, F.R.56(j) of the Central Civil Services, does not cast any stigma on the petitioner and therefore, in this case, the 'compulsory retirement' cannot be termed as a penalty/punishment. Hence, it cannot be said that "compulsory retirement" had caused stigma to the petitioner.

24. Further, 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 compulsory retirement 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 such conclusion is based on no evidence or irrelevant materials. In this context, reference can be made to the decision of the Supreme Court in the case of High Court of Judicature at Bombay through its Registrar vs. Udaysingh and others, reported in AIR 1997 SC 2286, wherein it was held as follows, regarding the scope of the Court in regard to Judicial Review of cases:

"10. 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... ..

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."

25. Thus, it is evident from the above decision of the Supreme Court that this Court has no power to interfere with the decision taken by the respondents and to substitute its own conclusion. In such cases, judicial review is only meant to ensure that the conclusion which the respondents reached, is based on semblance of evidence. In the present case, there is evidence made available against the petitioner, based on which the respondents have come to a conclusion to compulsorily retire the petitioner from service, in the form of service particulars of the petitioner like ACR, work done statement, vigilance enquiry report, leave particulars etc. While so, it cannot be gainsaid that there are no materials at all for the respondents to arrive at a conclusion to pass the order of compulsory retirement against the petitioner.

26. In view of the foregoing reasonings, the Writ Petitions are dismissed. No costs. Consequently, W.M.Ps. are closed.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

CS

To

1. The Registrar General,
High Court, Madras,
Chennai-600 104.
2. The Secretary,
Pondicherry Union Government,
Pondicherry.
3. The Chief Secretary,
Puducherry Union Territory,
Pondicherry.

W.P.Nos.6890 of 2019 & 12654 of 2018

GP(CO)
GMY(06/02/2020)



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