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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 05-03-2024

ORDERS PRONOUNCED ON: 13-03-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

WP No.3569 of 2022

And

WMPNo.3696 of 2022

M.Shirijha

.. Petitioner

-VS-

1.The Government of Tamil Nadu,
Represented by its Additional Chief Secretary,
Home (Courts-I) Department,
Fort St. George,
Chennai-600 009.

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

.. Respondents



Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in G.O.Ms.No.518, Home (Courts-I) Department, dated 20.11.2021 and the consequential order of the second respondent in ROC No.4021/2019/B1/Special Cell dated 03.12.2021 quash the same and consequently reinstate the petitioner into the service of Tamil Nadu Judicial Service.

For Petitioner : Mr.M.Ravi
For Respondent-1 : Ms.M.Jayanthi,
Additional Government Pleader.
For Respondent-2 : Mr.M.Santhanaraman

ORDER

S.M.SUBRAMANIAM, J.

The order of compulsory retirement from service in public interest issued in G.O.Ms.No.518, Home (Courts-I) Department, dated 20.11.2021, is under challenge in the present writ petition.

**CASE OF THE PETITIONER:**

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2. The petitioner was selected and appointed as Civil Judge in December 1999 and posted as District Munsif at Kancheepuram.

3. In the year 2010, the petitioner was promoted to the cadre of Sub Judge. On 12.08.2015, a charge memorandum under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued against the writ petitioner. The petitioner was placed under suspension and subsequently charges were dropped and the petitioner was reinstated in service. The period of suspension was regulated as duty. The petitioner was in verge of promotion to the cadre of District Judge. An Office Memorandum was issued by the Registrar-General, High Court on 20.08.2019. The petitioner submitted her detailed explanation stating that the departmental enquiry was conducted earlier in respect of similar findings in Roc.No.799/2014/VC. The Office Memorandum was relating to the allegation of certain lapses against the petitioner during her tenure as Sub Judge at Perambalur. The petitioner submitted her detailed explanations on 19.11.2019. Thereafter, the petitioner was placed under suspension on



10.03.2020, in pursuance of a complaint pertaining to certain allegations of holding dis-proportionate assets. The petitioner submitted her explanations on 24.03.2020 for the Office Memorandum dated 19.03.2020. A detailed enquiry was conducted. The petitioner has submitted her explanations in detail along with the documents. Another charge dated 25.02.2021 was issued based on the very same complaint. The petitioner raised a preliminary objection on 15.04.2021 stating that the charges framed are similar to the one already framed in proceedings dated 12.08.2015. However, another charge memo dated 18.06.2021 was issued against the petitioner. The petitioner submitted her explanations on 11.07.2021. The petitioner was asked to submit her written statement of defence. The petitioner on 03.08.2021 requested the respondent to furnish the copy of the enquiry report in the departmental enquiry conducted in Roc.No.799/2014/VC. Thereafter the petitioner was reinstated in service on 02.12.2021 and posted as Secretary, Legal Services Authority, Thiruvallur. While she was working in the said post, the order of compulsory retirement in public interest was issued in G.O.Ms.No.518, dated 20.11.2021. Thus, the present writ petition came to be instituted.

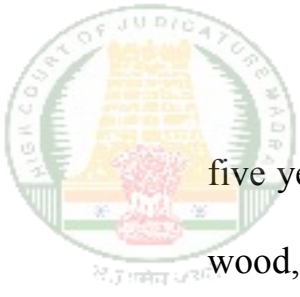


4. Mr.M.Ravi, learned counsel for the petitioner, would contend that the manner in which the departmental disciplinary proceedings were initiated against the petitioner and dropping of the charges and allowing the petitioner to compulsorily retire in public interest, would be sufficient to form an opinion that the respondents have adopted short circuit method to sack the petitioner from the Judicial Service. Such a short circuited method to send a Judicial Officer on compulsory retirement in public interest, is in violation of FR 56 (2). The Authority Competent is bound to conclude the disciplinary proceedings by following due procedures. Contrarily, they cannot compulsorily retire the petitioner in public interest by invoking FR 56. The departmental disciplinary proceedings initiated for the allegation of disproportionate assets, a detailed enquiry was conducted, the petitioner submitted her written explanations along with all documents and cooperated for the conclusion of the proceedings. Instead of concluding the proceedings by following the procedures, the respondents have relieved the petitioner on compulsory retirement in public interest.



5. Pertinently, the respondents have initiated departmental disciplinary proceedings and took a decision to continue the departmental disciplinary proceedings. While-so, there is no reason to compulsorily retire the petitioner in public interest. Therefore, the order impugned is punitive in nature and thus untenable.

6. Mr.M.Ravi, learned counsel for the petitioner, would drew the attention of this Court regarding the Annual Confidential Records (ACRs) of the petitioner for the period from 01.01.2000 to 11.03.2020. The petitioner was found performing her duties well in the year 2010 and she was promoted to the post of Sub Judge in the year 2010. Till the departmental disciplinary proceedings are initiated under Rule 17 (b) on 12.08.2015, no adverse remarks were found against the petitioner for about five years. Action was initiated based on the complaint filed by Mr.G.Shanmugam, Advocate and the same set of allegations were taken for issuance of further charge memo also. However, charges were dropped and the petitioner was reinstated in service. When the petitioner was promoted to the cadre of Sub Judge in the year 2010 and continued as such for about



five years, there is no reason to form an opinion that the petitioner is a dead wood, so as to compulsorily retire her in public interest. Thus the said decision is based on insufficient materials and liable to be set aside.

7. The Hon'ble Administrative Committee passed a Resolution on 22.07.2021, holding that the petitioner is to be compulsorily retired in public interest in view of her past records and adverse remarks against her. However, there is no such adverse remarks for many years and therefore, the overall consideration of adverse remarks were not taken into consideration, while taking a decision. Thus the order impugned is liable to be set aside.

8. It is settled that compulsory retirement in public interest, cannot be issued as a punitive measure. The object of FR 56 is to weed out the worthless employees without punitive extremes. Therefore, the impugned order is infirm and to be set aside.

9. In support of the said contentions, Mr.M.Ravi would rely on the judgment of the Supreme Court in the case of **Captain Pramod Kumar Bajaj vs. Union of India** in Civil Appeal No.6161 of 2022, dated



03.03.2023, wherein the principles to be followed in the matter relating to compulsory retirement are stated based on the ratio laid down in the case of **State of Gujarat vs. Umedbhai M.Patel [(2001) 3 SCC 314]**. Relying on the said judgment, the petitioner would state that the Supreme Court in the said case, found that there was an apparent contradiction in the approach of the respondents, who had till as late as in July 2019 continue to grade the appellants as ‘outstanding’ and had assessed his integrity as ‘beyond doubt’. But in less than three months reckoned therefrom, the respondents had turned turtle to arrive at a conclusion that he deserves to be compulsorily retired. Thus the Supreme Court found that the said case fails to satisfy the underlying days of serving the interest of the public.

10. In the case of **High Court of Madras vs. R.Rajiah and K.Rajeswaran [AIR 1988 SC 1388]**, wherein in paragraph-22, the Supreme Court held as follows:-

“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 compulsory retirement, those must be held to be illegal and invalid.”

11. In the case of **Brij Behari Lal Agarwal vs. High Court of Madhya Pradesh [AIR 1981 SC 594]**, wherein in paragraph-9, the Supreme Court held as follows:-

“9. In the circumstances, it seems to us that the recommendation by the High Court recording its satisfaction that the appellant should be compulsorily retired, and the consequent order of the State Government acting on that recommendation, must be regarded as invalid. It will now be for the High Court to consider the



case again and take a fresh decision on the question whether it should recommend the compulsory retirement of the appellant, and for the State Government to act on that recommendation if it is made.”

12. In the case of **State of Gujarat vs. Umedbhai M.Patel [(2001) 3 SCC 314]**, wherein in paragraphs 10 and 11, the Supreme Court held as follows:-

“10. In another decision in J.D. Srivastava v. State of M.P. [(1984) 2 SCC 8 : 1984 SCC (L&S) 206] in para 7 of the judgment, it was observed by this Court as under: (SCC p. 12)

“But being reports relating to a remote period, they are not quite relevant for the purpose of determining whether he should be retired compulsorily or not in the year 1981, as it would be an act bordering on perversity to dig out old files to find out some material to make an order against an officer.”

11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised



thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.



(vii) *If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.*

(viii) *Compulsory retirement shall not be imposed as a punitive measure.”*

13. In the case of **Abhay Jain vs. High Court of Judicature for Rajasthan, in Civil Appeal No.2029 of 2022 dated 15.03.2022**, wherein in paragraph-71, the Supreme Court held as under:-

“71.

After perusing all the relevant record, we hold that the appellant was competent to pass the bail order dated 27.04.2015 and that the Respondent has not been able to prove the presence of any extraneous consideration or ulterior motive on the part of the appellant. It should also be highlighted here that neither the bail order dated 27.04.2015 was ever challenged by the State before any Court of law, nor was any complaint received against the appellant regarding the said bail order. This is not the case where there are strong grounds to suspect the appellant’s bona fides. Even if appellant’s act is considered to be negligent, it



cannot be treated as “misconduct”.”

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CONTENTIONS OF THE RESPONDENTS:

14. Mr.M.Santhanaraman, learned counsel appearing on behalf of the second respondent would oppose the contentions raised on behalf of the petitioner by stating that, no doubt the departmental disciplinary proceedings were pending against the petitioner in Roc.No.799/2014/VC. She was placed under suspension for the period from 16.10.2015 to 25.02.2018. Consequent to the closure of departmental disciplinary proceedings, she was reinstated into service on 26.02.2018.

15. The High Court vide Official Memorandum dated 16.08.2018 had called for judgments from the petitioner and other Senior Civil Judges, for considering them for promotion to the cadre of District Judge (Entry Level) on the basis of merit cum seniority and suitability under 65% quota.



16. The Hon'ble Promotion Committee in the meeting held on 15.04.2019, while considering the cases of 91 Senior Civil Judges for promotion to the cadre of District Judge (Entry Level) under 65% quota, had deferred the case of the petitioner and seven other Senior Civil Judges as discreet enquiry was then pending against them and had recommended 67 Senior Civil Judges for promotion to the cadre of District Judge (Entry level).

17. The petitioner's case was reviewed under Fundamental Rule 56(2) for continuance in service beyond the age of 50 years in the meeting held on 27.02.2020 and the Hon'ble Administrative Committee had resolved to suspend the petitioner and to initiate disciplinary proceedings against her, keeping in view the gravity of the allegations regarding possession of cash-deposits, bank accounts and other questionable financial transactions. Therefore, the petitioner was placed under suspension vide High Court's proceedings in Roc.No.1/2020/R.V.(Confdl.)/B2, dated 10.03.2020 in contemplation of disciplinary proceedings against her on the serious allegation of possession of disproportionate assets by corruptive means.



18. The performance of the petitioner was below average for the period from 09.05.2018 to 31.12.2018 and the same was communicated to the petitioner vide High Court's Official Memorandum in Roc.No.2/2019-Con.B2(ACR), dated 18.05.2020. She has also not reached norms during the period viz., (i) 01.01.2013 to 02.06.2013, (ii) 26.06.2013 to 31.12.2013, (iii) 05.05.2014 to 31.12.2014 and (iv) 01.01.2015 to 31.03.2015. Therefore, the case of the petitioner was considered by the Hon'ble Administrative Committee under Fundamental Rule 56(2), in the meeting held on 22.07.2021 as to her continuance in service beyond the age of 50 years and the Hon'ble Administrative Committee had resolved not to continue her in service in public interest keeping in view her past record and the adverse remarks against her. The said Minutes dated 22.07.2021 was unanimously approved by the Hon'ble Full Court in the meeting held on 05.08.2021. In view of the above, the Government was addressed, requesting orders of the Appointing Authority, retiring the petitioner compulsorily from service under Fundamental Rule 56(2) in public interest. Accordingly, the Government in G.O.Ms.No.518, Home (Courts-I) Department, dated 20.11.2021, issued orders that the petitioner be compulsorily retired from



service in public interest under Fundamental Rule 56(2) with effect from the date of service of Government Order on payment of three months pay and allowance in lieu of three months notice. As per the guidelines issued in G.O.Ms.No.623, P&AR (Per.R) Department, dated 14.07.1983, before service of Government Order for compulsory retirement under Fundamental Rule 56(2), the suspension of the petitioner has to be revoked and she has to be reinstated into service at the first instance and then the said Government Order has to be served on her. Therefore, after receipt of the said Government Order, the suspension of the petitioner was revoked and she was reinstated into service at the first instance and posted as Secretary, District Legal Services Authority, Tiruvallur, vide High Court's Notification No.289/2021, dated 02.12.2021 and she took charge of the said post on 03.12.2021 F.N., and was relieved from the Tamil Nadu State Judicial Service vide High Court's Notification No.290/2021, dated 03.12.2021 and the Government Order was served on her on 03.12.2021.

19. The High Court vide proceedings in Roc.No.1/2020/R.V. (Confdl.)/B2, dated 28.01.2022 regularised the period of suspension from 12.03.2020 F.N. To 02.12.2021 A.N., and treated as “Duty for all purposes”



and she is entitled to full pay and allowances for the said period as per the Fundamental Rules, subject to adjustment of subsistence allowance already paid to her. The petitioner is however trying to take advantage of revocation of suspension for implementing the order of compulsory retirement by alleging that since she is entitled for full pay and allowances for the suspended period from 12.03.2020 to 02.12.2021, the impugned order should not have been passed against her.

LEGAL POSITION:

20. Principles on the scope of judicial review are settled:-

(i) An order of compulsory retirement is not a punishment. It implies no stigma of misbehaviour.

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

(iii) The principles of natural justice have no place.

(iv) The High Court can interfere only if it is satisfied that the order of compulsory retirement has been passed (a) mala fide (b) it is based



on no evidence (c) that it is arbitrary and found to be perverse.

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21. The guidelines to compulsorily retire a Government Servant in public interest issued in G.O.Ms.No.623, Personnel and Administrative Reforms Department, dated 14.07.1983, states that the following types of cases may be put up before the Review Committee for review:-

“4. (i) In cases where the Government have reasonable cum believe that an officer is lacking in integrity, this would be an appropriate ground to consider him for compulsory retirement irrespective of an assessment of his ability or efficiency in work.

(ii) In cases where Government have reason to believe that habitually takes bribes but there is no definite proof of a specific anti corruption, or where the officer has a bad reputation and where the abundant suspicion against him even though the guilt may not have established in a criminal case, such case can be brought up for review. (G.O.(Ms).No.761, Public (Ser.A), dated:19th March 1973.).

(iii) Cases where an Officer's integrity is



not in doubt, but his physical or mental condition is such as to make him inefficient for further surrender him unfit to discharge his duties properly.

(iv) Cases of Officers against whom there are repeated complaint corruption;

(v) Cases of Government servants who although have done whom lower grades, are not considered adequate for the responsibilities of they occupy or will not be able to perform efficiently in their post for the 3/5 years. (Circular Memo. No.39541/75-139, Pub. (Ser.M), dated: November 1976.).”

22. The guidelines for Review Committee are also issued. The principles relating to compulsory retirement in public interest has been broadly settled by the Supreme Court in the case of **J.D.Srivastava vs. State of Madhya Pradesh and Others [1984 (2) SCC 8]**, it has been held as under:-

“The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:



(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.



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(viii) Compulsory retirement shall not be imposed as a punitive measure.”

23. It is also well settled that formation of opinion for compulsory 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 Authority is based. The principles discussed above, were considered by the supreme Court in the case of **Arun Kumar Gupta vs. State of Jharkhand and another [2020 (13) SCC 355]**, it has been held as under:-

“9. Now coming to the express words of Fundamental Rule 56(j) it says that the appropriate authority has the absolute right to retire a government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the authority concerned must be of the opinion that it is in public interest to do so. If



that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision.

7.A three-Judge Bench in Baikuntha Nath Das v. District Medical Officer [Baikuntha Nath Das v. District Medical Officer, (1992) 2 SCC 299 : 1993 SCC (L&S) 521] dealing with the concept of compulsory retirement laid down the following principles : (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 compulsory retirement. This does not mean that judicial



scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary — in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

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

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated



adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

“40. Article 235 of the Constitution of India enables the High Court to assess the performance of any judicial officer at any time with a view to discipline the black sheep or weed out the deadwood. This constitutional power of the High Court cannot be circumscribed by any rule or order. ...

11. In Rajendra Singh Verma v. Lt. Governor (NCT of Delhi) [Rajendra Singh Verma v. Lt. Governor (NCT of Delhi), (2011) 10 SCC 1 : (2012) 1 SCC (Cri) 129 : (2012) 1 SCC (L&S) 489] , this Court was dealing with the compulsory retirement of a judicial officer from the Delhi Higher Judicial Service. It was held that if the authority bona fide forms an opinion that the integrity of a particular officer is doubtful and it is in public interest to compulsorily retire such judicial officer, judicial review of such order should be made with great care and circumspection. It was specifically observed that when an order of compulsory retirement is passed,



the authority concerned has to take into consideration the whole service record of the officer concerned which could include non-communicated adverse remarks also.

29. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secured that the Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The



credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and the rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty.”

13. *In Rajasthan SRTC v. Babu Lal Jangir [Rajasthan SRTC v. Babu Lal Jangir, (2013) 10 SCC 551 : (2014) 2 SCC (L&S) 219] , this Court held as follows : (SCC p. 564, para 23)*

“23. The principle of law which is clarified and stands crystallised after the judgment in Pyare Mohan Lal v. State of Jharkhand [Pyare Mohan Lal v. State of Jharkhand, (2010) 10 SCC 693 : (2011) 1 SCC (L&S) 550] is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this “washed-off theory” will have no application when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is



based on “entire service record”, there is no question of not taking into consideration the earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage.

16. Reference may also be made to the judgment of this Court in Pyare Mohan Lal [Pyare Mohan Lal v. State of Jharkhand, (2010) 10 SCC 693 : (2011) 1 SCC (L&S) 550] in which while dealing with the concept of washed-off theory, this Court after dealing with the entire case law on the subject held as follows : (SCC pp. 704-706, paras 24 & 29)

29. The law requires the authority to consider the “entire service record” of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse entries had not been communicated to him and the officer had been promoted earlier in spite of those adverse entries. More so, a single adverse entry regarding the integrity of an officer even in remote past is sufficient to award



compulsory retirement. The case of a judicial officer is required to be examined, treating him to be different from other wings of the society, as he is serving the State in a different capacity. The case of a judicial officer is considered by a committee of Judges of the High Court duly constituted by the Hon'ble the Chief Justice and then the report of the Committee is placed before the Full Court. A decision is taken by the Full Court after due deliberation on the matter. Therefore, there is hardly any chance to make the allegations of non-application of mind or mala fides."

17. The law on the subject of compulsory retirement, especially in the case of judicial officers may be summarised as follows:

17.1. An order directing compulsory retirement of a judicial officer is not punitive in nature.

17.2. An order directing compulsory retirement of a judicial officer has no civil consequences.

17.3. While considering the case of a judicial officer for compulsory retirement the entire record of the judicial officer should be taken



into consideration, though the latter and more contemporaneous record must be given more weightage.

17.4. Subsequent promotions do not mean that earlier adverse record cannot be looked into while deciding whether a judicial officer should be compulsorily retired.

17.5. The “washed-off” theory does not apply in case of judicial officers specially in respect of adverse entries relating to integrity.

17.6. The courts should exercise their power of judicial review with great circumspection and restraint keeping in view the fact that compulsory retirement of a judicial officer is normally directed on the recommendation of a high-powered committee(s) of the High Court.

24. As is obvious from the law quoted above, adverse entries with regard to integrity do not lose their sting at any stage. A judicial officer's integrity must be of a higher order and even a single aberration is not permitted. As far as the present cases are concerned, the matter has been considered by the Screening Committee on two occasions and the recommendations of the Screening Committee have been accepted by the



Standing Committee on both occasions. The action taken is not by one officer or Judge, it is a collective decision, first by the Screening Committee and then approved by the Standing Committee.”

DISCUSSIONS:

24. Therefore, an order directing the compulsory retirement of a Judicial Officer is not punitive in nature. An order directing compulsory retirement of a Judicial Officer has no civil consequences. The entire service record of the Judicial Officer should be taken into consideration, though the later and more contemporaneous records must be given more weightage.

25. The Supreme Court held that “Washed-off Theory” does not apply in case of Judicial Officers, specially in respect of adverse entries relating to integrity.

26. One of the main arguments raised on behalf of the petitioner is that, the petitioner has been promoted to the cadre of Sub Judge



and her record prior to promotion will lose its sting and is not of much value. The ‘Washed-off Theory’ does not have universal application. It may have relevance while considering the case of Judicial Officers for further promotion is not a case, where an employee is being assessed by the Reviewing Authority to determine, whether she is fit to be retained in service or requires to be given compulsory retirement in public interest, as the Committee is to assess suitability taking into consideration “entire Service Records”.

27. What is emphasized is “entire Service Records” of the Judicial Officer, while assessing, whether she can be given compulsory retirement irrespective of the fact that the adverse entries have not been communicated to the Officer and had been promoted earlier in spite of those adverse entries.

28. In unequivocal terms, it is to be reiterated that, **a single adverse entry regarding the integrity of an Officer even in remote past is sufficient to award compulsory retirement in public interest.** The case of a Judicial Officer is required to be examined, treating her to be different



from other wings of the Society, as she is serving the State in a different capacity.

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29. Therefore, the degree of consideration to compulsorily retire in public interest, is differ from Government servant to Judicial Officer. High degree of integrity is expected in Judicial Services, considering the nature of duties and the status being enjoyed by the Judges in the society.

30. In the present case, the Review Committee considered the issues in consonance with the requirements under FR 56. The object of the scheme of compulsory retirement in public interest is to weed out the dead wood, to maintain a high standard of efficiency and integrity in judicial services. In the present case, the petitioner was appointed as District Munsif in December 1999. The Annual Confidential Records (ACRs) from 01.01.2000 to 11.03.2020, as submitted by the Registrar General, High Court of Madras, are extracted here under:-



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ANNEXURE-I
ANNUAL CONFIDENTIAL RECORDS
ADVERSE REMARKS RECORDED IN RESPECT OF
TMT. M. SHIRLIJA

S.No.	Period		Adverse remarks recorded by the Hon'ble Administrative Judge
	From	To	
1.	01.01.2000	07.09.2000	1. Quality of Judgment/Order a) Language b) Narration c) Clarity in thought d) Reasoning e) Conclusion 2. Knowledge of Law and Procedure 3. Promptitude in disposal of cases a) Current b) Old 4. a) Industry b) Aptitude for hard/heavy work Sd/-PSMJ / 20.08.2001 "Seen" Sd/-CJ / 21.08.2001 Adverse remarks communicated on 24.08.2001 - The officer has submitted a representation on 21.09.2001 to expunge the adverse remarks made against her for the reasons submitted therein. The High Court carefully considered the representation submitted by the officer and has directed to expunge the remarks and also directed the officer to be more careful and sincere in her work and try to dispose of more cases. Sd/-PSMJ / 15.10.2001 "I Agree with PSMJ may be expunged" Sd/- CJ / 29.10.2001 The Officer was informed accordingly on 30.10.2001.



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S.No.	Period		Adverse remarks recorded by the Hon'ble Administrative Judge
	From	To	
12.	05.05.2004	31.12.2004	1. Quality of Judgment/Order a) Language b) Narration c) Clarity in thought d) Reasoning e) Conclusion "Not satisfactory should improve" 2. Knowledge of Law and Procedure : "Required to improve" 3. Promptitude in disposal of cases a) Current b) Old "Not up to the cases instituted" 4. a) Industry b) Aptitude for hard/heavy work 5. Conduct and Dignity a) Inside Court b) Outside Court "Not Satisfactory" 6. Outlook towards a) Members of the Bar b) Public 7. Reputation as to a) Honesty b) Integrity c) Impartiality "Entire Bar complained and went on strike. Not satisfactory" 8. Overall view : "Not Satisfactory" Sd/- PDDJ "Seen" Sd/- CJ / 23.09.2005 Adverse remarks communicated to the officer on 27.09.2005. The Officer has submitted a representation dated 06.12.2005 to expunge the remarks made against her for the reasons submitted therein. The High Court considered the representation submitted by the officer and <i>rejected</i> the said representation. Sd/- PDDJ / 02.02.2006 "As per PDDJ" Sd/- CJ



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S.No.	Period		Adverse remarks recorded by the Hon'ble Administrative Judge
	From	To	
			The Officer was informed accordingly on 20.07.2006. The Officer has submitted further representation dated 14.03.2008 to consider her petition with mercy and sympathy for the reasons submitted therein. The High court has considered the further representation submitted by the officer and <i>observed that finding no reason to expunge the adverse remarks, as the same were made based on materials, the request is rejected.</i> Sd/-PDDJ / 03.04.2008 "As per PDDJ" Sd/-CJ / 09.04.2008. The Officer was informed accordingly on 15.04.2008. Officer has submitted a Mercy Petition dated 22.01.2012 to expunge the adverse remarks made against her for the periods from <u>05.05.2004 to 31.12.2004 & 01.01.2005 to 31.12.2005.</u> The High Court, Madras has considered the Mercy Petition dated 22.01.2012 submitted by the Officer and ordered as follows:- <i>"..... The Judicial Officer submitted representations in accordance with Rule 8 of the said Rules and the same having been considered by the then Portfolio Judge, which was also approved by the Hon'ble Chief Justice, the Mercy Petition filed by the Judicial Officer is not maintainable, as there is no provision under the Rules to entertain the Mercy Petition. Hence, the Mercy Petition filed by the Judicial Officer may be rejected as not maintainable."</i> Sd/-NPVJ / 21.03.2012 "I agree" Sd/-CJ Informed to the officer on 19.11.2012.



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S.No.	Period		Adverse remarks recorded by the Hon'ble Administrative Judge
	From	To	
3.	01.01.2005	31.12.2005	1. Promptitude in disposal of cases a) Current b) Old 2. Attitude towards a) Superiors b) Subordinates c) Colleagues 5. Conduct and Dignity a) Inside Court b) Outside Court 6. Outlook towards a) Members of the Bar b) Public 7. Reputation as to a) Honesty b) Integrity b) Impartiality 8. Overall view Sd/-PDDJ / 06.02.2008 Sd/-CJ / 11.02.2008 Adverse remarks communicated to the officer on 14.02.2008. The officer has submitted a representation dated 14.03.2008 to expunge the adverse remarks made against her for the reasons submitted therein. The High Court has considered the said representation and <i>rejected</i> the same. Sd/-PDDJ / 01.04.2008 "As per PDDJ" Sd/-CJ / 03.04.2008 The officer was informed accordingly on 04.04.2008. Officer has submitted a Mercy Petition dated 22.01.2012 to expunge the adverse remarks made against her for the periods from <u>05.05.2004 to 31.12.2004 & 01.01.2005 to 31.12.2005.</u>



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S.No.	Period		Adverse remarks recorded by the Hon'ble Administrative Judge
	From	To	
			The High Court, Madras has considered the Mercy Petition dated 22.01.2012 submitted by the Officer and ordered as follows:- <i>"..... The Judicial Officer submitted representations in accordance with Rule 8 of the said Rules and the same having been considered by the then Portfolio Judge, which was also approved by the Hon'ble Chief Justice, the Mercy Petition filed by the Judicial Officer is not maintainable, as there is no provision under the Rules to entertain the Mercy Petition. Hence, the Mercy Petition filed by the Judicial Officer may be rejected as not maintainable."</i> Sd/-NPVJ / 21.03.2012 "I agree" Sd/-CJ Informed to the officer on 19.11.2012.
4.	01.01.2007	03.06.2007	1. Supervision and control b) On office staff 2. Attitude towards b) Subordinates c) Colleagues 3. Conduct and Dignity a) Inside Court 4. Outlook towards a) Members of the Bar b) Public 5. Overall view "Needs improvement" "Complaints from the Bar there. Hence, needs improvement in the outlook" "Workwise no comments adverse. Yet the attitude towards the Bar has to improved" Sd/-CVJ / 08.01.2009 Sd/-CJ / 22.04.2009 Adverse remarks communicated to the officer on 28.04.2009.



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S.No.	Period		Adverse remarks recorded by the Hon'ble Administrative Judge
	From	To	
5.	04.06.2007	31.12.2007	1. Supervision and control a) On Subordinate Judges 2. Attitude towards b) Subordinates c) Colleagues 3. Conduct and Dignity a) Inside Court b) Outside Court 4. Outlook towards a) Members of the Bar b) Public 5. Reputation as to a) Honesty b) Integrity c) Impartiality 6. Overall view 7. Special remarks, if any : "Needs improvement in her attitude towards the staff, colleagues and the Bar" Sd/- CVJ / 10.10.2008 Sd/- CI / 20.10.2008 Adverse remarks communicated to the officer on 23.10.2008. The officer has submitted a representation dated 10.11.2008 to expunge the adverse remarks made against her for the reasons submitted therein. The High Court considered the said representation and rejected the same and also observed that the officer has to mend her attitude towards the staff and the Bar. Sd/- CVJ / 27.11.2008 "I agree" Sd/- CI / 04.12.2008 The officer was informed accordingly on 10.12.2008.



S.No.	Period		Adverse remarks recorded by the Hon'ble Administrative Judge
	From	To	
6.	01.01.2008	31.12.2008	1. Supervision and control b) On office Staff 2. Attitude towards c) Colleagues 3. Conduct and Dignity a) Inside Court b) Outside Court 4. Outlook towards a) Members of the Bar b) Public 5. Reputation as to a) Honesty b) Integrity c) Impartiality 6. Overall view "Poor" "Poor. Needs improvement." "Needs improvement" Sd/-CVJ / 14.05.2009 "I agree" Sd/-ACJ Adverse remarks communicated to the officer on 26.05.2010 – Representation submitted by the officer on 09.07.2010 to expunge the adverse remarks – The High Court, Madras has considered the representation submitted by the officer and Minuted as follows:- <i>"The remarks must bring about a change in the attitude of the judicial officer. Being in a service sector, the post of a judicial officer carries a great degree of responsibility not only in disposal of cases, but equally so in maintaining the dignity of the office and in promoting the confidence of the people. I can only wish that the officer shows better performance in future."</i> Sd/- CVJ / 23.07.2010 Sd/- CJ Informed to the officer on 03.02.2012.



S.No.	Period		Adverse remarks recorded by the Hon'ble Administrative Judge
	From	To	
7.	09.05.2018	31.12.2018	4. a) Industry b) Aptitude for hard/heavy work } "Below Average" Sd/- MSJ / 30.10.2019 Sd/- CI / 27.02.2020 Adverse remarks communicated to the officer on 18.05.2020.
<u>Proceedings in Roc.No.779/2014/VC/B2, dated 16.07.2019</u> <i>As ordered, the suspension period in respect of Tmt. M Shirijha from 16.10.2015 A.N. to 25.02.2018 A.N. (both days inclusive) is treated as period spent on duty as per Fundamental Rule 54-B-1(7). The pay & allowances during the said suspension period, is determined at 95% under Fundamental Rule 54-B-1(5).</i>			



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ANNEXURE-II

ANNUAL CONFIDENTIAL RECORDS

**ADVERSE REMARKS RECORDED IN RESPECT OF
TMT. M. SHIRLIHA FOR THE YEARS 2019 AND 2020**

S.No.	Period		Adverse remarks recorded by the Hon'ble Administrative Judge
	From	To	
1.	01.01.2019	13.06.2019	5. Supervision and control b) On office staff 8. Outlook towards a) Members of the Bar Sd/- BPJ Sd/-CJ / 23.08.2022 "Below Average"
2.	14.06.2019	31.12.2019	9. Reputation as to a) Honesty b) Integrity c) Impartiality 10. Overall view 11. Special remarks if any Sd/- NSKJ/ 13.11.2021 Sd/- CJ / 23.08.2022 "Below Average" "Reputation of the Officer not Good from the inception"
3.	01.01.2020	11.03.2020	4. a) Industry b) Aptitude for hard/heavy work c) Readiness to take up responsibility 8. Outlook towards a) Members of the Bar b) Public 9. Reputation as to a) Honesty b) Integrity c) Impartiality Sd/-NSKJ Sd/-CJ / 23.08.2022 "Below Average"

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31. Perusal of the Annual Confidential Record (ACR) reveals that even from the period from 01.01.2000 to 07.09.2000, in the quality of judgment column, the Hon'ble Administrative Judge in remarks recorded as 'Poor'. The subsequent remarks recorded by the Hon'ble Administrative Judge for a continuous period, would be sufficient enough to form an opinion that the overall performance of the petitioner and the integrity that she maintained in the Judiciary, would be sufficient for taking a decision to compulsorily retire her in public interest. Especially, in the year 2019-2020, the Hon'ble Administrative Judge made a remark that 'Reputation of the Officer not good from the inception'. Her reputation, as to her honesty, integrity and impartiality is 'below average'. The records also shows that, all the adverse entries communicated to the Officer, and she has sent representation, mercy petitions etc., to remove those entries. Those representations, mercy petitions etc., were considered and rejected by the High Court.

32. Therefore, beyond the grounds raised that the departmental disciplinary proceedings were initiated for the allegations of



disproportionate assets, the overall performance of the Judicial Officer was taken into consideration to compulsorily retire her in public interest. By merely citing the initiation of departmental disciplinary proceedings, the overall performance and the integrity of the Judicial Officer cannot be wiped off, since the Review Committee has taken a decision that further continuance of the Judicial Officer in service would cause dis-reputation to the Judicial Institution.

33. It is relevant to consider the principles laid down by the Supreme Court in the case of J.D.Srivasthava, cited supra. No doubt, compulsory retirement in public interest shall not be imposed as a punitive measure and also shall not be passed as a short cut to avoid departmental enquiry. However, in the present case, though departmental enquiry has been initiated, the Review Committee independently considered the overall performance of the Judicial Officer right from her date of inception as District Munsif. Now the petitioner is not entitled to take shelter on the ground that the departmental disciplinary proceedings were initiated and before concluding the same, she was retired compulsorily in public interest and the respondents short circuited the proceedings.



34. We are not inclined to consider the case of the petitioner in view of the fact that the past Annual Confidential Records (ACRs) of the petitioner right from the year 2000 till 2020 would reveal that, her performances were not upto the mark. At one point, the Hon'ble Administrative Judge recorded that her reputation is not good right from her inception. Honesty and integrity are below average. Many such remarks were made in confidential records. Thus, the overall performance and the entire service records, were taken into consideration by the Review Committee for formation of an opinion to invoke FR 56.

35. With reference to the above facts, the Apex Court, in the case of **Arun Kumar Gupta**, cited supra, reiterated that for compulsory retirement in public interest, entire record of the Judicial Officer should be taken into consideration. The 'Washed-off Theory' does not applied in case of a Judicial Officer specially in respect of adverse entries relating to integrity. Therefore, the Courts should exercise their power of judicial review with great circumspection and restraint keeping in view of the fact that the compulsory retirement of a Judicial Officer is normally directed on



the recommendations of the High Power Committee of the High Court.

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36. The Law Requires the Authority has to consider the ‘entire service records’ of the Officer while assessing whether she can be given compulsory retirement in public interest irrespective of the fact that the adverse entries had not been communicated to her and the Officer had been promoted earlier in spite of those adverse entries. The principles reiterate that a single adverse entry regarding the integrity of an Officer found in remote past is sufficient to award compulsory retirement in public interest. The Three Judges Bench of the Supreme Court in the case of **Pyare Mohan Lal vs. State of Jharkhand and Others [(2010) 10 SCC 693]** in unequivocal terms held that the case of Judicial Officer is required to be examined, treating him to be different from other wings of society, as he is serving the State in a different capacity”.

37. The cases of Judicial Officers are considered by a Committee of Judges of the High Court duly constituted by the Hon’ble Chief Justice and then the report of the Committee, is placed before the Full Court. A decision is taken by the Full Court after due deliberation of the



matter. Therefore, there is hardly any chance to make any non-application of mind or mala fides. Thus, the High Court objectively decided to recommend her compulsory retirement in public interest and the State Authorities acted accordingly. No fault can be found with the decision making process or with the decision in the present case. Thus we do not find any force in the submissions made on behalf of the petitioner. Thus the writ petition has to fail and consequently stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)

13-03-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn



To

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

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



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S.M.SUBRAMANIAM, J.
AND
K.RAJASEKAR, J.

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Order in
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