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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 22-03-2024

ORDERS PRONOUNCED ON: 27-03-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

WP No.12562 of 2023

And

WMP No.12387 of 2023

M.Suresh Viswanath

.. Petitioner

-VS-

1.The State Represented by
its Chief Secretary,
Government of Tamil Nadu,
Fort St. Georg,
Chennai-600 009.

2.The Registrar-General,
High Court of Judicature at Madras,
Post Box No.79,
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 relating to the G.O.(Ms.)No.299, PUBLIC (SPECIAL-A), dated 20.04.2022 issued by the first respondent and quash the same, consequently direct the respondents to reinstate the petitioner in service in accordance with the present seniority along with all attendant, service and monitory benefits.

For Petitioner : Mr.S.R.Rajagopal,
Senior Counsel for Mr.M.Devaraj.

For Respondent-1 : Ms.M.Jayanthi,
Additional Government Pleader.

For Respondent-2 : Mr.B.Vijay

ORDER

S.M.SUBRAMANIAM, J.

FACTS IN BRIEF:-

The writ petitioner was appointed as District Judge (Entry Level) in the Tamil Nadu State Judicial Service by mode of Direct Recruitment on 18.02.2011. While the petitioner was working as Presiding Officer Labour Court, Hosur, he was placed under suspension from 31.01.2020 in contemplation of departmental disciplinary proceedings for alleged gross violation of passing an order in bail petition. A charge



memorandum was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, on 29.06.2020. Enhanced subsistence allowance of 75% was granted to the petitioner with effect from 31.07.2020.

The departmental disciplinary proceedings ended with an order of punishment of stoppage of increment for five years with cumulative effect vide departmental disciplinary proceedings dated 16.08.2021. The petitioner was reinstated into service on 29.09.2021 and posted as District Judge (Senior Division) at Karaikkal.

2. Vigilance complaints have been received against the petitioner. The petitioner's case was reviewed at the age of 50 years under Rule 56(2) of Fundamental Rules. Hon'ble Administrative Committee in the meeting held on 07.12.2021 reviewed service records, work done statements, overall performances, quality of judgments and general reputation of petitioner. It was unanimously resolved not to extend the service of the petitioner beyond the age of 50 years in public interest. Hon'ble Full Court had resolved to accept the recommendation of the Hon'ble Administrative Committee on 26.02.2022. Resultantly, the first respondent issued Government Order on 20.04.2022 compulsorily retiring



the petitioner from service by invoking Rule 56(2) of Fundamental Rules.

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ARGUMENTS OF THE PETITIONER:

3. Mr.S.R.Rajagopal, learned Senior Counsel appearing on behalf of the petitioner, would mainly contend that there is no material available on record for invoking FR 56(2). The punishment of stoppage of increment with cumulative effect for five years was imposed and challenging the said punishment WP No.27122 of 2022 is filed. No adverse remarks have been communicated to the petitioner. In the absence of any such materials available on record, the order of compulsory retirement in public interest is untenable and do not satisfy the requirements of public interest.

4. The entire service records of the petitioner would reveal that he performed his duties diligently. The allegation regarding passing an order in a bail petition, the order of the Supreme Court is capable of interpreting in two ways. The petitioner understood the Supreme Court order in his own way and considered the bail petition in exercise of his judicial power and discretion. There is no allegation of corruption In the absence of any such



allegation, mere interpretation of the order of the Hon'ble Supreme Court, cannot be a ground to issue charge memorandum.

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5. Pertinently, in the said criminal case, the FIR itself had been quashed by the High Court. Therefore, the petitioner performed his judicial functions and granted bail in exercise of his judicial discretion. In the event of drawing any inference, there is no possibility for the Judicial Officers to perform their duties. Therefore, the ground for invoking FR 56(2) is untenable. A single incident of imposing punishment, cannot be a ground to compulsorily retire the petitioner in public interest.

6. Out of four complaints alleged pending before the Vigilance Cell, no complaint was communicated to the petitioner. Even assuming that the complaints are serious in nature, compulsory retirement in public interest cannot be imposed by way of short cut method.

7. In the present case, it was imposed as a punishment and therefore, untenable.



8. Mr.S.R.Rajagopal, learned Senior Counsel for the petitioner, would submit that mistakes and errors occur in all Courts, including in Higher Judiciary. Such errors cannot be ground to invoke FR 56(2). Single departmental disciplinary proceedings initiated against the petitioner regarding the judicial exercise of power in granting of bail, cannot be a ground to compulsory retire in public interest.

9. There is no allegation of corruption, mala fide or extraneous considerations. In the absence of any specific complaint from any of the parties, granting of bail by interpreting the order of the Supreme Court, cannot be a ground to impose punishment and such punishment cannot be taken into consideration for compulsorily retiring the petitioner in public interest.

10. The petitioner relied on the judgment of the Supreme Court of India in the case of **Zunjarrao Bhikaji Nagarkar vs. Union of India and Others [(1999) 7 SCC 409]**. The Supreme Court held that if every error of law were to continue a charge of misconduct, it would impinge upon independent functioning of Quasi-Judicial Officers. To maintain any



charge sheet against the Quasi-Judicial Authority, something more has to be alleged than a mere mistake of law, for example, in the nature of extraneous consideration influencing Quasi-Judicial Order. In the absence of any such specific complaint or allegation, the charge sheet is rendered illegal.

11. In the case of **Union of India and others vs. G.R.Meghwal [2022 SCC Online SC 1291]**, the Supreme Court considered the Annual Confidential Report of the Officer served as the Deputy General Manager in BSNL.

12. In the case of **S.Padmanabhan vs. Principal Secretary, Home Department, Secretariat [pronounced on 01.03.2024 in WP 34999 of 2023]**, this Court allowed the writ petition by setting aside the order of compulsory retirement issued in public interest on the ground that there was no material available on record for invoking FR 56(2). Therefore, the principles in the said cases are to be followed.

ARGUMENTS ON BEHALF OF THE SECOND RESPONDENT:

13. Mr.B.Vijay, learned counsel appearing on behalf of the



second respondent, would oppose the petitioner by stating that the punishment of stoppage of increment with cumulative effect for five years, was imposed on the petitioner on the proved charges in the matter of ordering the bail petition.

14. The Hon'ble Administrative Committee reviewed the entire service records of the petitioner and resolved not to extend the service of the petitioner beyond the age of 50 years in public interest. The decision was taken after careful review of the service records, work done statements, over all performances, quality of judgments and general reputation of the petitioner.

15. The case of the petitioner along with 117 Judicial Officers, who have completed / completing the age of 50 years during the period from July 2021 to December 2021 were considered by the Hon'ble Administrative Committee in its meeting held on 07.12.2021. There is neither any oblique motive or incidence, malice as alleged by the petitioner and the allegations reviewed nothing but figment of his imagination.



16. The second respondent has stated that the services of the petitioner were with several blemishes. There were five vigilance complaints pending against him. In addition, punishment of stoppage of increment with cumulative effect for five years, was imposed on the petitioner on 16.08.2021. The petitioner has failed to reach the norms fixed during various spells. Thus the petitioner was compulsorily retired from service after consideration of over all service records.

17. Conferment of Selection Grade do not mean that earlier adverse record cannot be looked into, while deciding whether a Judicial Officer should be compulsorily retired in public interest.

18. The allegation that the petitioner was made a scapegoat for re-fixation of seniority and he was shown institutional bias are figment of imagination without any substance. The order of compulsory retirement was imposed by considering the entire service records, including work done statements, overall performances, quality of judgments and general reputation of the petitioner.



19. The writ petitioner has failed to reach the norms for the period from 01.01.2014 to 30.04.2014, 01.08.2014 to 31.12.2014, 01.01.2015 to 31.03.2015, 01.04.2015 to 12.09.2015 and 01.01.2016 to 18.07.2016. In addition, the petitioner suffered punishment of stoppage of increment with cumulative effect for five years.

20. The period of suspension was regulated as per the Rules.

21. Mr.Vijay, learned counsel for the second respondent, would submit that it is true that the mistakes, irregularities, illegalities committed by a Judicial Officer in the course of dispensation of justice will have to be dealt with appropriately, but that would not clothe a Judicial Officer to commit mistakes, irregularities and illegalities. The High Court cannot be a mere spectator of such activities committed by the Judicial Officers, when the same is being committed on regular basis. If the averment of the petitioner is to be accepted, it would go against public interest, only for which reason the FR 56(2) has been envisaged.

22. It is contended that the vigilance complaints were pending



against the petitioner in (i) Roc.No.633/2018/VC, (ii) Roc.No. 363/2019/VC, (iii) Roc.No.522/2019/VC, (iv) Roc.No.810/2019/VC and (v) Roc.No.873/2019/ VC as per the letter of Registrar (Vigilance), High Court of Madras, dated 29.12.2021, but the same was not the basis for invoking FR 56(2), but other reasons stated supra. In addition, punishment of stoppage of increment with cumulative effect for five years was imposed on the petitioner on Roc.No.46774-A/2019/Complaint Cell/B2, dated 16.08.2021. The petitioner was compulsorily retired from service after consideration of overall service records.

23. Regarding the arguments advanced that the petitioner has interpreted the order of the Supreme Court while dealing with bail petition, the Enquiry Report, categorically said that the anticipatory bail petition was originally filed, which was converted as a bail petition and more specifically, the word 'anticipatory' was struck off in green ink by the delinquent Officer. The Enquiry Officer while dealing with the charges made several observations and findings, which would establish the suspicious conduct of the petitioner in his performance as Judicial Officer.



24. Careful reading of the findings of the Enquiry Officer, in his report, in the said departmental disciplinary proceedings, would be sufficient to form an opinion that invocation of FR 56(2) is inevitable. Thus the writ petition is to be rejected.

LEGAL POSITION:

25. 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.

26. 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.).”

27. 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.



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(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.”



28. 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:

29. Directing the compulsory retirement of Judicial Officer in public interest is not punitive in nature. It has no civil consequences. The entire service records of the Judicial Officer should be taken into consideration, though later and the very contemporaneous records must be given more weightage.

30. 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.

31. One of the arguments raised on behalf of the petitioner, is that no adverse remarks have been communicated to him. One punishment alone was imposed in his entire service. Uncommunicated adverse remarks, cannot be held against the petitioner. Vigilance enquiry, as stated by the



respondents, are not communicated to the petitioner nor ended in logical conclusion. Mere pendency of vigilance complaints before the Vigilance Cell, cannot be held against the petitioner, so as to retire him compulsorily.

Interpretation regarding the order of Supreme Court, while considering the bail petition amounts to exercise of judicial power. Therefore, ordering bail petition, cannot be a ground to impose punishment and compulsorily retire the petitioner under FR 56(2) based on the said punishment.

32. With reference to the ground where an employee is being assessed by the Reviewing Authority to determine, whether he 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”.

33. What is emphasized is “entire Service Records” of the Judicial Officer, while assessing, whether he 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.



34. In unequivocal terms, it is 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 him to be different from other wings of the Society, as he is serving the State in a different capacity.

35. 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.

36. The Review Committee in the present case had considered the issues with reference to the entire service records of the petitioner. 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.



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37. The Annual Confidential Records of the petitioner from 18.02.2011 till 31.12.2021, are extracted hereunder:-

ANNUAL CONFIDENTIAL RECORD
THIRU M. SURESH VISWANATH

Appointed as District Judge (Entry Level) by direct recruitment vide G.O.Ms.No.16, Public(Spl.A) Dept., dated 05.01.2011

18.02.2011 to 28.04.2011

Underwent training in Tamil Nadu State Judicial Academy, Chennai

29.04.2011 to 28.10.2011

Underwent training as III Additional District Munsif, Nagercoil.

29.10.2011 to 29.04.2012

Underwent training as III Additional Subordinate Judge, Nagercoil.

01.05.2012 to 31.12.2012

"Good"

Sd/ CVJ / 19.10.2013

Sd/ ACJ / 23.10.2013

01.01.2013 to 31.12.2013

"Satisfactory"

Sd/ NPJ / 14.12.2014

Sd/ CJ / 09.01.2015

01.01.2014 to 30.04.2014

"Good"

Sd/ MJJ

Sd/ CJ / 05.01.2016

01.05.2014 to 31.07.2014

"Good"

Sd/ MJJ

Sd/ CJ / 05.01.2016

01.08.2014 to 31.12.2014

"Good"

Sd/ RMJ / 28.05.2015

Sd/ CJ / 05.01.2016

01.01.2015 to 12.09.2015

"Average"

Sd/ MDJ / 10.02.2017

Sd/ CJ

14.09.2015 to 09.10.2015

Under Compulsory wait



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**ANNUAL CONFIDENTIAL RECORD
THIRU. M. SURESH VISWANATHI**

12.10.2015 to 31.12.2015

"Satisfactory"

Sd/ MJJ

Sd/ CJ

01.01.2016 to 18.07.2016

"Good"

Sd/ HGRJ / 21.06.2018

Sd/ CJ

21.07.2016 to 31.12.2016

"Good"

Sd/ BGI / 18.05.2017

Sd/ CJ

01.01.2017 to 17.05.2017

10. Overall view

11. Special remarks if any

: "Average"

: "I was in Coimbatore Regional Centre (KNSIA) on 10.03.18 and 11.03.18 as a resource person and in my capacity as BOC (refresher course). I had the occasion to see this judicial officer as a participant. I had the occasion to notice his attitude interpersonal skills and approach in a group."

Sd / MSJ/ 21.05.2018

Sd/ CJ

18.05.2017 to 31.12.2017

"Good"

Sd/ KKSJ / 10.10.2018

Sd/ CJ

01.01.2018 to 08.11.2018

"Average"

Sd/ MSNJ / 08.08.2019

Sd/ CJ

09.11.2018 to 31.12.2018

Short period

01.01.2019 to 06.11.2019

To be recorded (Thoothukudi District)

07.11.2019 to 19.12.2019

Under Compulsory writ



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ANNUAL CONFIDENTIAL RECORD
THIRU. M. SURESH VISWANATHI

20.12.2019 to 31.12.2019

Short period.

01.01.2020 to 30.01.2020

Short period.

Roc.No.46774-A/2019/Complaint Cell/B2, dated 30.01.2020

Placed under suspension from service with immediate effect in contemplation of Disciplinary proceedings in Roc.No.46774-A/2019/Complaint Cell for gross violation and improper court proceedings are noticed against the officer.

31.01.2020 to 31.12.2020

Under suspension.

Roc.No.46774-A/2019/Complaint Cell/B2, dated 16.08.2021

Punishment of stoppage of increments with cumulative effect for five years he and hereby is imposed against the officer.

High Court's Notification No.241/2021, dated 29.09.2021

The suspension of the officer was revoked; reinstatement into service and posted as District Judge, Karnikal on 29.09.2021.

30.09.2021 to 31.12.2021

- 4] a. Industry
- b. Aptitude for hard/heavy work
- c. Readiness to take up responsibility
- 7] Conduct and Dignity
 - a) Inside Court
 - b) Outside Court
- 8] Out look towards
 - a) Members of the Bar
 - b) Public
- 9] Reputation as to
 - a) Honesty
 - b) Integrity
 - c) Impartiality
- 10] Overall view

"Below Average"

Sd/ TKRJ / 06-01-2023

Sd/ ACJ / 12-05-2023



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ANNUAL CONFIDENTIAL RECORD
THIRU M. SURESH VISWANATHI

01.01.2022 to 10.03.2022

Under circulation (Puducherry and Karaikal)

11.03.2022 to 07.05.2022

Under compulsory wait - Regularised as "Duty", vide G.O.Rt.No.2577, Public (Special-A) Department, dated 28.06.2022 - G.O. communicated on 18.07.2022.

(Compulsorily retired from service under F.R. 56(2) at the age of 59 years, vide G.O.Ms.No.299, Public (Special-A) Department, dated 20.04.2022 and High Court's Notification No.78/2022 in Roc.4029/2021/B1/Spl.Cell, dated 05.05.2022. G.O. and Notification served on 07.05.2022 at 11.46 A.M. - Finally Compulsory wait period (from 11.03.2022 to 07.05.2022) - Regularised as "Duty", vide G.O.Rt.No.2577, Public (Special-A) Department, dated 28.06.2022 - G.O. communicated on 18.07.2022.)

38. Cursory reading of the Annual Confidential Record reveals that the petitioner has blemishes in his services. More specifically, for the period from 30.09.2021 to 31.12.2021, reputation as to honesty, integrity and impartiality have been recorded as 'below average'. He was under suspension from 31.01.2020 to 31.12.2020 and the punishment of stoppage of increment with cumulative effect for five years, was imposed vide proceedings in Roc.No.46774-A/2019/Complaint Cell/B2, dated 16.08.2021. Even in the year 2017, the over all view of the petitioner has been recorded as 'average'.



39. Therefore, mere pendency of complaints in the Vigilance Cell, alone was not the basis for invoking FR 56(2), but the entire service records had been considered, including the punishment imposed on the petitioner.

40. The petitioner was appointed as Directly Recruited District Judge in Tamil Nadu on 05.01.2011 and compulsorily retired from service in public interest on 20.04.2022, for which his service records and the reputation as to honesty and integrity are also taken into consideration for forming an opinion as required under FR 56(2). By merely citing the departmental disciplinary proceedings or the punishment imposed, the overall performance and the integrity of the Judicial Officer, cannot be wiped off, since the Review Committee has taken decision, further continuance of the Judicial Officer in service would cause damage and dis-reputation to the Judicial Institution.

41. 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.

42. The Law Requires the Authority has to consider the 'entire service records' of the Officer while assessing whether he can be given compulsory retirement in public interest 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. 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".

**CONCLUSION:**

43. 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 him 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.)

27-03-2024

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



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To

1. The Secretary,
Government of Tamil Nadu,
Fort St. Georg,
Chennai-600 009.
2. The Registrar-General,
High Court of Judicature at Madras,
Post Box No.79,
Chennai-104.



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

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Order in
WP 12562 of 2023

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