

Reserved On : 09/07/2025

Pronounced On : 25/07/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10772 of 2009

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

Sd/-

and

HONOURABLE MR.JUSTICE R. T. VACHHANI

Sd/-

=====		
Approved for Reporting	Yes	No
	✓	
=====		

K M BHUT

Versus

HIGH COURT OF GUJARAT & ANR.

=====

Appearance:

MR BJ TRIVEDI(921) for the Petitioner(s) No. 1

MS JIGNASA B TRIVEDI(3090) for the Petitioner(s) No. 1

LAW OFFICER BRANCH(420) for the Respondent(s) No. 1

MR SHALIN MEHTA, SENIOR ADVOCATE WITH

MR HAMESH C NAIDU(5335) for the Respondent(s) No. 1

MR AAKASH GUPTA, AGP for the Respondent(s) No. 2

=====

CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MR.JUSTICE R. T. VACHHANI

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. The present writ petition has been filed assailing Notification dated 19.05.2009 compulsory retiring the petitioner from service at the age of 58 years and 6 months (considering his Date of Birth i.e. 22.11.1950).

2. The petitioner serving as a District Judge from 04.11.2004 until 20.05.2009, when he came to be retired compulsory vide Notification dated 19.05.2009. Being aggrieved, the petitioner has filed the present writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

3. Learned advocate Mr.Trivedi appearing for the petitioner at the outset, has submitted that the petitioner could not have been retired compulsory after he was promoted w.e.f. 01.05.2003 as a District Judge. It is submitted that no complaints have been entertained against the petitioner and all the complaints, being 14 in number, were filed and hence, there was no material available with the respondents to compulsory retire the petitioner from service. He has further submitted that in fact the Confidential Reports (CRs) of the petitioner from March, 1994 till he was made to retire was "very good" and the CRs, on the contrary, reveals that he was an excellent Judicial Officer.

4. It is further submitted by learned advocate Mr.Trivedi that the petitioner was never intimated about anything adverse with regard to his work or conduct and his entire career was spotless and unblemished. He has referred that during 10 years of total working days, which were 1573 days and out of that, for 853 days, the

petitioner had conducted the matters of civil side and for 720 days, he had dealt with the criminal work. It is submitted that in both sides, criminal as well as civil, average of the petitioner comes to 666% per year. Further, it is submitted that while the petitioner was functioning at Mehsana from 01.03.2007 to 28.03.2008, he has disposed of the matters of Motor Accident Claims and when the evening Court was functioning from 06:15 to 08:15 P.M. during a period of one year, he has disposed of many old matters.

5. Learned advocate Mr.Trivedi has submitted that the petitioner has only to be ordered to be compulsory retired from service in view of the communication dated 29.12.2008 written by the petitioner to the High Court requesting to transfer him looking to his age and he was not keeping well. It is submitted that in fact the request for transfer could have been rejected instead of compulsory retiring him from service. He has further submitted that the petitioner has been retired under the guise of public interest without following Rule 21(2) of the Gujarat State Judicial Service Rules, 2005 (for short "the Judicial Rules"), which mentions that the Judicial Officer can be compulsory retired, after he has been considered at least three times, when he is about to attain the age of 50 years, 55

years and 58 years. It is submitted that at the age of 50 years, the petitioner was promoted in the cadre of Joint District Judge and hence, it can be presumed that there was nothing adverse against him.

6. Similarly, it is submitted by learned advocate Mr.Trivedi that he was posted at Surendranagar in 2004 and at that time, when he was 54 years of age i.e. nearly 55 years, he may have been considered for compulsory retirement for the second time. Thereafter, it is submitted that he was never communicated any adverse remarks and when he was about to attain the age of 58 years, a competent authority ought to have considered his case for compulsory retirement for the third time but after he has attained the age of 58 years, action of compulsory retirement is belatedly taken and without issuing any notice or prior intimation, he has been suddenly retired compulsorily. Thus, it is submitted that assessment of his work could have been done before attaining the age of 58 years or when he attained the age of 50 or 55 years.

7. It is further submitted by learned advocate Mr.Trivedi that after the petitioner completed the age of 58 years, he is entitled to continue till the enhanced superannuation age of 60 years. It is submitted that it is true that compulsory

retirement cannot be equated with punishment but simultaneously, the compulsory retirement of the petitioner, without assigning any reason and in absence of any material, which could show that the petitioner has turned as a deadwood, it was not necessary for the respondents to retire him compulsory.

8. While inviting attention of this Court to the Notification dated 19.05.2009 issued by the State Government compulsory retiring the petitioner from service, it is submitted by learned advocate Mr.Trivedi that the same is passed by the Governor of Gujarat and not by His Excellency Governor as per Rule 21 of the Judicial Rules. He has submitted that despite the application filed under the Right to Information Act, 2005 (for short "the RTI Act") to supply the material used against the petitioner for compulsory retiring him, the same was not supplied. Thus, it is submitted that the petitioner ought not to have retired at the verge of his retirement on reaching the age of 60 years.

9. In support of his submissions, learned advocate Mr.Trivedi has placed reliance on the catena of the decisions of the Apex Court in the cases of – (1) Ishwar Chand Jain vs. High Court of Punjab and Haryana, (1988) 3 S.C.C. 370, (2) Bishwanath Prasad Singh vs. State of Bihar,

(2001) 2 S.C.C. 305, (3) Swaran Singh Chand vs. Punjab State Electricity Board, (2009) 3 S.C.C. 758, (4) Nawal Singh vs. State of Uttar Pradesh, (2003) 8 S.C.C. 117, (5) Dev Dutt vs. Union of India and Ors., (2008) 8 S.C.C. 725, and (6) Baikuntha Nath Das vs. Chief District Medical Officer, Baripada, (1992) 2 S.C.C. 299.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.1-HIGH COURT

10. In response to the aforesaid submissions, learned Senior Advocate Mr.Mehta has submitted that pursuant to the letter addressed by the Hon'ble the Chief Justice of India dated 14.10.2008 to all the High Courts of the country to evaluate the potential of Judicial Officers on attaining the age of 50/55/56/57/58 and 59 years on the basis of the past record of service, character rolls, quality of judgements and other relevant materials so as to weed out, those persons i.e. the Judicial Officers, who are found to be indolent, infirm or with doubtful integrity, reputation and utility. A Specially Constituted Committee undertook necessary exercise in case of all the Judicial Officers, who had completed 50 or 55 years of age. It is submitted that on 06.05.2009, the Committee had submitted its report in case of 04 Judicial Officers, including the petitioner. It is submitted that the Specially Constituted

Committee, comprising of 03 Hon'ble Judges of this Court, considered the entire material, including a representation made by the petitioner to the High Court on 29.12.2008 informing that since he was keeping ill-health and some physical problems, which causes inconvenience to him by looking to his age, he may be transferred. It is submitted that the Specially Constituted Committee on 06.05.2009 had also, after considering the service record of the petitioner, including vigilance complaint, formed an opinion that integrity of the petitioner is also reported to be doubtful. It is submitted that the Specially Constituted Committee also opined that on overall assessment of the performance of the petitioner and on evaluation of his potential for useful service in future, it would be in public interest to retire him from service, in exercise of the powers conferred under Rule 21 of the Judicial Rules.

11. Learned Senior Advocate Mr.Mehta has further submitted that thereafter, the said decision of the Specially Constituted Committee was placed before the Standing Committee of the High Court and on 12.05.2009, the Standing Committee accepted the report of the Specially Constituted Committee. Further, the said report was placed before the Full Court Meeting and the Full Court accepted the decision on 14.05.2009. It is

submitted that upon recommendation of the High Court, Notification dated 19.05.2009 was issued by the State Government, accepting the recommendation and compulsory retired the petitioner from service.

12. It is submitted by learned Senior Advocate Mr.Mehta that the High Court had received 14 vigilance complaints and 08 administrative complaints against the petitioner and out of these vigilance complaints, 13 complaints were ordered to be filed, whereas in one Vigilance Complaint No.291 of 2008, preliminary inquiry was ordered to be held on 12.08.2008. While placing reliance on Rule 21 of the Judicial Rules, it is submitted that compulsory retirement of the petitioner in public interest is neither stigmatic nor it has any effect on re-employment and hence, as per the settled legal precedent, before passing the order of compulsory retirement, there is no requirement of observing principles of natural justice.

13. So far as the contentions raised by the petitioner of order having been passed by the Government instead of His Excellency Governor of Gujarat is concerned, learned Senior Advocate Mr.Mehta, has submitted that the Notification is always passed by the State Government on the recommendation of the High Court, and there is no

violation of the Rules. It is submitted that ultimately, Notification dated 19.05.2009 is issued by the State Government, accepting the recommendation of the High Court, for compulsory retiring the petitioner.

14. Learned Senior Advocate Mr.Mehta, in support of his submissions, has also placed reliance on the decisions of the Apex Court in the cases of (i) *Swaran Singh Chand (supra)*; (ii) *Nawal Singh (supra)*; and (iii) *Baikuntha Nath Das (supra)*.

15. Learned Senior Advocate Mr.Mehta has further submitted that it is a settled legal precedent that a single adverse remark, which is also uncommunicated, can be considered for the purpose of compulsory retiring an employee, and the promotion will have no bearing on the action of compulsory retiring a Judicial Officer. It is submitted that in cases of the Judicial Officers, who have doubtful integrity, no positive evidence can be found against them. He has submitted that it is not the case of the petitioner that he was never communicated any adverse remarks during his service tenure. It is submitted that even a scintilla of evidence is enough to retire a Judicial Officer compulsorily. Finally, it is submitted that the petitioner has not challenged the process adopted by the High Court, wherein scrutiny of the entire service record has been

undertaken by the Constitutional authorities. Thus, it is urged that the present writ petition may not be entertained.

16. While adopting the submissions advanced by learned Senior Advocate Mr.Mehta, the learned AGP has urged that the present writ petition may be rejected.

17. We have heard the learned advocates for the respective parties and also perused the documents as pointed out by them.

ANALYSIS

18. The exercise of evaluation of the potential of the Judicial Officers in the entire country before attaining the age of 50 years or 55 years were undertaken in view of the communication dated 14.10.2008 written by the Hon'ble the Chief Justice of India to all the High Courts. It was expressed therein that the Service Rules can suitably be amended to provide for the assessments of such officers on attaining the age of 50 or 55 years in addition to 58 years, in light of the decision of the Apex Court in the case of All India Judges Association and Ors. Vs. Union of India and Ors., (2002) 4 S.C.C. 247, in order to weed out those Judicial Officers, who are found to be indolent, infirm or with doubtful integrity. Accordingly, the Hon'ble the Chief Justice of High Court undertook necessary

exercise of evaluation of all the Judicial Officers of the State, who have completed 50 years, 55 years and 58 years of age, as required under Rule 21 of the Judicial Rules. The provisions of Rule 21 of the Judicial Rules are incorporated as under:

"21.(1) Notwithstanding anything contained in these Rules the Governor shall, on the recommendation of the High Court, if he is of the opinion that it is in the public interest so to do, have the absolute right to retire any member of the service who had attained the age of 50 years, by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice.

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

Provided that nothing in sub-rule (2) shall be construed as preventing consideration of a member of the service at any time other than those mentioned therein."

19. Accordingly, the Committee of 03 Judges of this Court was constituted to scrutinize the performance and evaluation of the Judicial Officers, which included the petitioner. The Committee, on 06.05.2009 in case of the petitioner, who had completed 58 years of age on 22.11.2008, prepared a report. The same is as under:

"Mr K.MBhut, Principal District Judge, Narmada at Rajpipla has completed 58 years of age on 22.11.2008.

"This Officer had earned good gradings and had shown good disposals till his transfer to Rajpipla. After his transfer to Rajpipla, in his representation dated

29.12.2008, this Judicial Officer has requested for transfer and state as under :-

"Looking to my age, now I am not keeping well myself. I have got some physical problems which cause inconvenience to me."

We have carefully considered the service record of Mr KM Bhut including the vigilance complaints. The integrity of this officer is also reported to be doubtful.

On an overall assessment of the performance of this officer and on evaluation of his potential for useful service in future, the Committee is of the view that it would be in public interest to retire Mr. KM Bhut from service in exercise of the powers conferred by Rule 21 of the Gujarat State Judicial Services Rules, 2005."

20. A Perusal of the report would reveal that the Committee had undertaken necessary exercise of scrutinizing the service records of the petitioner. The Committee has also opined in favour of the petitioner to the extent that he was an Officer, who had earned good grading and had shown good disposal till his transfer to Rajpipla however, thereafter he made a representation on 29.12.2008 requesting for transfer as he was having some physical problems, which caused inconvenience and he was not keeping well. The Committee has also scrutinized the service record and also vigilance complaint and opined that integrity of the petitioner was also reported to be doubtful. Accordingly, it was opined that he should be retired under the provisions of Rule 21 of the Judicial Rules. The said recommendation of the Committee was placed

before the Standing Committee of the High Court, which accepted the report on 12.05.2009 and report of the Standing Committee was further placed before the Full Court and the decision was accepted on 14.05.2009. Thus, after scrutiny of the entire service record of the petitioner by the High Court in 03 stages, it was concluded that he should be retired in public interest. The process, which has been adopted by the High Court, has not been challenged or questioned by the petitioner.

21. It is also adroitly settled by various decisions of the Apex Court and High Courts that the order of compulsory retiring an Officer or Government Servant in public interest is neither stigmatic nor it has any effect on re-employment of such persons.

22. Learned advocates appearing for the respective parties have placed reliance on various case laws dealing with the said subject. The judgements are repetitive and hence, in order to avoid prolixity, we are not inclined to refer to all the judgements however, in order to deal with the issue, we are relying upon the following observations of the Apex Court made in different cases.

(i) Ishwar chand Jain (supra)

The Apex Court has dismissed the order of compulsory retiring the Judicial Officer, who was on probation, on the basis of 04 complaints. Unquestionably, the said judgement will not apply to the present issue of retiring a public servant in public interest as it is not a punishment.

(ii) Bishwanath Prasad Singh (supra)

The Apex Court was dealing with the decision of the compulsory retirement of an Officer of 58 years of age on complaint. The Full Bench decision of the Apex Court, after considering the array of judgements, has held that in absence of any allegation of bias and *mala fides* against the High Court, opinion formed by the High Court cannot be interfered with. The judgement is primarily on the issue of timely preparation and recording the entries in the CR, in order to see that the Judicial Officers can improve their performance. The Apex Court has also held that compulsory retirement of an Officer or Government servant does not cause any stigma as the Government servant is entitled to pension actually earned and other retiral benefits.

It is also held that so long as the opinion formed on the basis of the order of compulsory retirement in public interest is found *bona fide*, the opinion cannot be ordinarily interfered with

by a judicial forum and the said order may be subject to judicial review on very limited grounds such as the order being *mala fide*, based on no material or on collateral grounds or having been passed by the authority not competent to do so. It is further observed that the object of compulsory retirement in public interest is not to punish or penalize the Government servant but to weed out the worthless, who have lost their utility for the administration by their insensitive, unintelligent or dubious conduct impeding the flow of administration or promoting stagnation.

(iii) Swaran Singh Chand (supra)

The Apex Court has held that the principles of natural justice are not required to be complied with and even adverse entries in the CR, including non-communicated entries may be taken into consideration, while compulsory retiring the Judicial Officers in public interest. The relevant paragraphs are as under:

"16. The learned counsel appearing on behalf of the respondent would contend that the principles of natural justice are not required to be complied with in a case of compulsory retirement, particularly, when no mala fide is alleged. Allegation against the delinquent was not only that he lacked integrity but also unfit to be retained in service. Those comments, in our opinion, are stigmatic in nature.

It is also not a case where there had been a steady decline in the performance of the employee.

17. *** *** ***

18. ***

19. Thus, when an order suffers from malice in law, neither any averment as such is required to be made nor strict proof thereof is insisted upon. Such an order being illegal would be wholly unsustainable."

(iv) Nawal Singh (supra)

The Apex Court, while examining the scope and power of retiring the Judicial Officer by way of compulsory retirement, has recorded thus:

"2. At the outset, it is to be reiterated that the judicial service is not a service in the sense of an employment. Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. Further nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility. If such evaluation is done by the Committee of the High Court Judges and is affirmed in the writ petition, except in very exceptional circumstances, this Court would not interfere with the same, particularly because order of compulsory retirement is based on the subjective satisfaction of the Authority.

6. Case of Bharthari Prasad is also of the same nature. His confidential reports reveal that various allegations were made and various inquiries were held against him. In confidential report for the year 1975-76, the District Judge observed disposal of cases to be poor and judgment of average quality. For the years 1978-79 and 1980-81, the disposal was observed to be below standard. Once he was charged for the omission while delivering the judgment of conviction in the absence of the accused and also discharging the bail bonds and sureties, which was in violation of Section 353 Cr.P.C. For this, he was asked to be careful in future. For the year 1994-95, District Judge remarked his integrity to be doubtful and overall assessment as poor. Representation of the appellant against these remarks was also rejected. For the year 1997-98, the District Judge awarded adverse remarks against him. The District Judge also requested for his transfer from Allahabad to another station. The appellant was later on transferred from Allahabad. It is also stated that the appellant did not comply the orders of transfer

but even after receiving the orders of transfer, he continued to decide cases. The matter was later on considered by the Administrative Committee."

The Apex Court has considered the judgement of Full Bench in the case of **Baikuntha Nath Das** (*supra*) and held as under:

"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 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 interfere. Interference is permissible only on

the grounds mentioned in (iii) above. This aspect has been discussed in paras 29 to 31 above.

4. Appellant Nawal Singh was appointed in 1972. In Confidential Reports for the year 1975-76, 1976-77, it has been mentioned that his judicial work needs improvement. For the year 1980-81, his judicial work was of average quality. For the year 1984-85, the District Judge has rated him as good officer. For the year 1986-87, there were complaints about his integrity. For this purpose, reference was made to cases wherein he had granted bail in serious offences. However, with regard to doubtful integrity, the representation of the appellant was accepted and it was substituted by holding that no reason to doubt the integrity of the officer. Again, for the year 1990-91, it has been stated that with regard to the interim orders/injunctions, he was directed to be more scrupulous; it was stated that integrity was doubtful and over all assessment was poor. On his revision, adverse remarks with regard to his integrity were expunged by holding that the appellant was suspended during the relevant year pending the departmental enquiry touching his integrity but he was exonerated by the Administrative Committee. Again, there are instances indicating that various inquiries were held subsequently. It is not necessary to refer to the same. His application for revoking the suspension was also rejected. However, later on, order of suspension was revoked.

*5. *** *** ****

*6. *** *** ****

7. Hence, it is apparent that the Screening Committee after examining the past records of service; character roll and other matters relating to the appellants opined that they were not suitable for continuing in service beyond the age of 58 years.

8. From the facts narrated above, even if we were to sit in appeal against the subjective satisfaction of the High Court, it cannot be said that the orders of compulsory retirement of the appellants are, in any way, erroneous or unjustified. Further, it is impossible to prove by positive evidence the basis for doubting integrity of the judicial officer. In the present day system, reliance is required to be placed on the opinion of the higher officer who had the opportunity to watch the performance of the concerned officer from close quarters and formation of his opinion with regard to overall reputation enjoyed by the concerned officer would be the basis.

9. It is to be reiterated that for keeping the stream of justice unpolluted, repeated scrutiny of service records

of judicial officers after specified age/completion of specified years of service provided under the Rules is must by each and every High Court as the lower judiciary is the foundation of judicial system. We hope that the High Courts would take appropriate steps regularly for weeding out the dead-wood or the persons polluting justice delivery system."

(v) R.C.Chandel vs. High Court of M P & Anr.,
(2012) 8 S.C.C. 58.

In the cases, where the District Judge was granted selection grade and super time scale, it was held that the same do not wipe out the adverse entries which have remained on record and continued to hold the field, it was held thus:

"34. It is true that the appellant was confirmed as District Judge in 1985; he got lower selection grade with effect from 24.03.1989; he was awarded super time scale in May, 1999 and he was also given above super time scale in 2002 but the confirmation as District Judge and grant of selection grade and super time scale do not wipe out the earlier adverse entries which have remained on record and continued to hold the field. The criterion for promotion or grant of increment or higher scale is different from an exercise which is undertaken by the High Court to assess a judicial officer's continued utility to the judicial system. In assessing potential for continued useful service of a judicial officer in the system, the High Court is required to take into account the entire service record.

Overall profile of a judicial officer is the guiding factor. Those of doubtful integrity, questionable reputation and wanting in utility are not entitled to benefit of service after attaining the requisite length of service or age.

35. *** *** ***
36. *** *** ***

37. 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 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."

(vii) Rajendra Singh Verma vs. Lt.Governor of NCT of Delhi and Anr., (2011) 10 S.C.C. 01.

The Apex Court, after considering the array of judgements on the issue and also on the issue of the compulsory retiring the Judicial Officer while considering his grading of doubtful integrity, has held thus:

"99. In view of the two three Judge Bench decisions of this Court mentioned above the contention that adverse remarks relating to integrity regarding which no opportunity of making representation was provided or pending representation was not considered and, therefore, orders of compulsory retirement were bad in law cannot be accepted. Therefore, the said contention is hereby rejected.

XXX XXX XXX

119. The argument that material was not supplied on the basis of which "C' Doubtful Integrity" was awarded to the appellants and, therefore, the order of compulsory retirement is liable to be set aside has no substance. Normally and contextually word 'material' means substance, matter, stuff, something, materiality, medium, data, facts, information, figures, notes etc. When this Court is examining as to whether there was any 'material' before

the High Court on the basis of which adverse remarks were recorded in the confidential reports of the appellants, this 'material' relates to substance, matter, data, information etc. While considering the case of a judicial officer it is not necessary to limit the 'material' only to written complaints or 'tangible' evidence pointing finger at the integrity of the judicial officer. Such an evidence may not be forthcoming in such cases.

120. As observed by this Court in R.L. Butail Vs. Union of India and Others, (1970) 2 SCC 876, it is not necessary that an opportunity of being heard before recording adverse entry should be afforded to the officer concerned. In the said case, the contention that an inquiry would be necessary before an adverse entry is made was rejected as suffering from a misapprehension that such an entry amounts to the penalty of censure. It is explained by this Court in the said decision that making of an adverse entry is not equivalent to imposition of a penalty which would necessitate an enquiry or giving of a reasonable opportunity of being heard to the concerned Government servant. Further in case where the Full Court of the High Court recommends compulsory retirement of an officer, the High Court on the judicial side has to exercise great caution and circumspection in setting aside that order because it is a complement of all the judges of the High Court who go into the question and it is possible that in all cases evidence would not be forth coming about doubtful integrity of a Judicial Officer.

121. As observed by this Court in High Court of Punjab & Haryana through R.G. Vs. Ishwar Chand Jain and Another, (1999) 4 SCC 579, at times, the Full Court has to act on the collective wisdom of all the Judges and if the general reputation of an employee is not good, though there may not be any tangible material against him, he may be given compulsory retirement in public interest and judicial review of such order is permissible only on limited grounds. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of an officer and gain notoriety much faster than the smoke. Sometimes there may not be concrete or material evidence to make it part of the record. It would, therefore, be impracticable for the reporting officer or the competent controlling officer writing the confidential report to give specific instances of shortfalls, supported by evidence.

122. Normally, the adverse entry reflecting on the integrity would be based on formulations of impressions which would be result of multiple factors simultaneously playing in the mind. Though the perceptions may differ in the very nature of things there is a difficulty nearing an

impossibility in subjecting the entries in the confidential rolls to judicial review. Sometimes, if the general reputation of an employee is not good though there may not be any tangible material against him, he may be compulsorily retired in public interest. The duty conferred on the appropriate authority to consider the question of continuance of a judicial officer beyond a particular age is an absolute one. If that authority bona fide forms an opinion that the integrity of a particular officer is doubtful, the correctness of that opinion cannot be challenged before courts. When such a constitutional function is exercised on the administrative side of the High Court, any judicial review thereon should be made only with great care and circumspection and it must be confined strictly to the parameters set by this Court in several reported decisions. When the appropriate authority forms bona fide opinion that compulsory retirement of a judicial officer is in public interest, the writ Court under Article 226 or this Court under Article 32 would not interfere with the order.

XXX XXX XXX

124. From the admitted facts noted earlier it is evident that there was first a report of the Inspecting Judge to the effect that he had received complaints against the appellants reflecting on their integrity. It would not be correct to presume that the Inspecting Judge had written those remarks in a casual or whimsical manner. It has to be legitimately presumed that the Inspecting Judge, before making such remarks of serious nature, acted responsibly. Thereafter, the Full Court considered the entire issue and endorsed the view of the Inspecting Judge while recording the ACR of the appellants. It is a matter of common knowledge that the complaints which are made against a judicial officer, orally or in writing are dealt with by the Inspecting Judge or the High Court with great caution. Knowing that most of such complaints are frivolous and by disgruntled elements, there is generally a tendency to discard them. However, when the suspicion arises regarding integrity of a judicial officer, whether on the basis of complaints or information received from other sources and a committee is formed to look into the same, as was done in the instant case and the committee undertakes the task by gathering information from various sources as are available to it, on the basis of which a perception about the concerned judicial officer is formed, it would be difficult for the Court either under Article 226 or for this Court under Article 32 to interfere with such an exercise. Such an opinion and impression formed consciously and rationally after the enquiries of the nature mentioned above would definitely constitute

material for recording adverse report in respect of an officer. Such an impression is not readily formed but after Court's circumspection, deliberation, etc. and thus it is a case of preponderance of probability for entertaining a doubt about integrity of an official which is based on substance, matter, information etc. Therefore, the contention that without material or basis the adverse entries were recorded in the ACR of the appellants cannot be upheld and is hereby rejected.

XXX XXX XXX

136. On a careful consideration of the entire material, it must be held that the evaluation made by the Committee/ Full Court, forming their unanimous opinion, is neither so arbitrary nor capricious nor can be said to be so irrational, so as to shock the conscience of this Court to warrant or justify any interference. In cases of such assessment, evaluation and formulation of opinions, a vast range of multiple factors play a vital and important role and no one factor should be allowed to be blown out of proportion either to decry or deify an issue to be resolved or claims sought to be considered or asserted. In the very nature of things, it would be difficult, nearing almost an impossibility to subject such exercise undertaken by the Full Court, to judicial review except in an extraordinary case when the Court is convinced that some real injustice, which ought not to have taken place, has really happened and not merely because there could be another possible view or someone has some grievance about the exercise undertaken by the Committee/Full Court. Viewed thus, and considered in the background of the factual details and materials on record, there is absolutely no need or justification for this Court to interfere with the impugned proceedings. Therefore, the three appeals fail and are dismissed. Having regard to the facts of the case, there shall be no order as to costs."

(viii) High Court of Judicature For Rajasthan vs. Bhanwar Lal Lamror, (2021) 8 S.C.C. 377.

In this case, the Apex Court has held as under:

"8 We have heard learned counsel for the parties. The moot question is whether it was open to the High Court to substitute its view for the one recorded by the Administrative Committee, which commended to the Full Court of the High Court, pursuant to which the order of compulsory retirement came to be issued.

9 Indeed, the High Court on judicial side could have done so, if it found that there was absolutely no record or material whatsoever as referred to in the recommendations made by the Administrative Committee, or that the Committee relied on irrelevant material, or that apposite material was overlooked and discarded. Further, the High Court's view would have been acceptable if it found patent illegality, breach of procedure causing prejudice to respondent no.1, or imposition of a gravely disproportionate measure. We notice that the Administrative Committee, in its Report, had adverted to the entire service record, including the pending disciplinary enquiry regarding integrity of respondent no.1.

10 It is settled position in law that the competent authority is supposed to consider the entire service record of the judicial officer and even if there is a solitary remark of lack and breach of integrity, that may be sufficient for a Judicial Officer to be compulsory retired as expounded in *Tarak Singh Vs. Jyoti Basu* reported in (2005) 1 SCC 201.

11 The High Court took notice of this judgment, but still ventured to examine the entire record by itself, overlooking the thorough examination conducted by the Administrative Committee, which was affirmed and commended to the Full Court. It was not open to the High Court to substitute its own view for the satisfaction arrived at by the Full Court of the High Court regarding the necessity or otherwise of the respondent no.1 continuing in the Rajasthan Higher Judicial Services. It was also not open to the High Court to re-write the annual confidential reports by taking over the role of inspecting or confirming authority.

12 Suffice it to note that the disciplinary enquiry was pending against respondent no.1 which raised questions about his integrity. Past service record of respondent no.1 was found to be sub-par and short of the exacting standard expected from a judicial officer.

13 It is also noticed from the record that the disciplinary enquiry came to be dropped in lieu of compulsory retirement of respondent no.1. That was a composite recommendation made by the Administrative Committee and commended to the Full Court of the High Court. The two being inseparable, and the solitary remark about integrity with the service record being sufficient in law to proceed against the judicial officer, we fail to comprehend as to how the conclusion reached by the competent authority can be said to be arbitrary or manifestly wrong."

CONCLUSION

23. Thus, the law on compulsory retiring a Judicial Officer is no more *res integra*. The Order of compulsory retirement is not a punishment. The compliance of principles of natural justice is not necessary. A single uncommunicated adverse remark in the entire service record or doubtful integrity is enough to retire a Judicial Officer compulsory in public interest. Any promotion or grant of higher pay scale / selection grade cannot have any impact on the order of compulsory retirement. The Full Court, on the collective wisdom of all the Judges and considering the general reputation of an employee, without any tangible material against him/her, may compulsorily retire a Judicial Officer in public interest and judicial review of such order is permissible only on very restricted grounds. In the present case, it is true that 14 complaints received by the High Court, were ordered to be filed. However, filing of such complaints may not *ipso facto* wipe out the subjective satisfaction and deliberation of the High Court, which has been arrived at by careful scrutiny and filtration at three stages. Before the petitioner was ordered to retire, he was facing a preliminary inquiry being Vigilance complaint No.291 of 2008 relating to corrupt practices, however, it was closed in view of the

impugned Notification. We may reiterate that sometimes it would be very tough to gather concrete or material evidence to prove the doubtful integrity and make it part of the record, and it would be impracticable for the Reporting Officer or the competent controlling officer writing the Confidential Report to give specific instances of shortfalls, supported by evidence. The entire exercise of the High Court stems out of special circumstances doctrine. The opinion formed by the Administrative Committee, which undertakes the task of information of various sources, and the perception formed of integrity of the Judicial Officer cannot be tinkered with by exercising powers under Article 226 of the Constitution, more particularly when it is sanctioned further by the Standing Committee and the Full Court. The impression of the Judicial Officer is premised on the perception by the High Court, after careful circumspection and deliberation, and it would be on preponderance of probability for entertaining a doubt about integrity of an official which is based on substance, matter, information etc. Therefore, in such circumstances, opinion formed by the High Court cannot be interfered for the reason that it is formed *sans* any material. The satisfaction and the recommendation of the Administrative Committee, Standing Committee and Full Court of the High Court cannot be interfered

with unless it is tainted with patent illegality, breach of procedure causing prejudice to the Judicial Officer, or it is a grave disproportionate measure.

24. All the aspects of the decision / deliberation and satisfaction of the High Court exclusively emanate from the overall reputation of the Judicial Officers. As held by the Supreme Court in the case of **R.C.Chandel (supra)** *"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 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."

25. Any breach of the pristine standards/values as enumerated above, will invite scrutiny from the High Court, and any Judicial Officer, whose conduct / reputation / behavior is found impinging the same can either attract disciplinary proceedings or compulsory retirement in public interest, depending upon the extent of breach. Thus, in view of the settled legal proposition, this Court cannot delve into the wisdom of the Full Court of the High Court, which has formulated the opinion of assessment/valuation by considering multiple factors of service record of the petitioner, more particularly in wake of the fact, that the petitioner has not alleged patent illegality or *mala fide* on the decision making process adopted by the High Court.

26. Any breach of the pristine standards / values as enumerated above, will invite scrutiny from the High Court, and any Judicial Officer, whose conduct / reputation / behavior is found

impinging the same can either attract disciplinary proceedings or compulsory retirement in public interest, depending upon the extent of breach. Thus, in view of the settled legal proposition, this Court cannot delve into the wisdom of the Full Court of the High Court, which has formulated the opinion of assessment/valuation by considering multiple factors of service record of the petitioner, more particularly in wake of the fact, that the petitioner has not alleged patent illegality or *mala fide* on the decision making process adopted by the High Court.

27. In light of the foregoing observations, the present writ petition fails. The same is hereby dismissed.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(R. T. VACHHANI, J)

NVMEWADA