



Reserved On : 17/09/2025

Pronounced On : 30/09/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 20426 of 2016

**FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA**

**and
HONOURABLE MR.JUSTICE L. S. PIRZADA**

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Approved for Reporting	Yes	No
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JAYESHKUMAR KRISHNAKANT ACHARYA

Versus

HON'BLE HIGH COURT OF GUJARAT & ANR.

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Appearance:

MR. ASIM PANDYA SENIOR ADVOCATE, WITH MR. ANKIT SHAH(6371)
for the Petitioner

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. G H VIRK GOVERNMENT PLEADER WITH MS. DHARITRI PANCHOLI
AGP for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

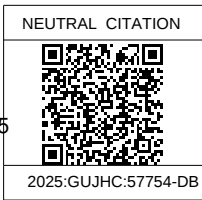
and

HONOURABLE MR.JUSTICE L. S. PIRZADA

CAV JUDGMENT

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

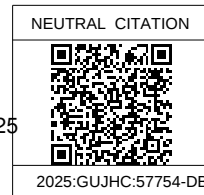
1. **RULE.** Learned Assistant Government Pleader waives service of Rule on behalf of the State. The present petition emanates from the Notification dated 18.07.2016 passed by



the Legal Department notifying the premature retirement of the petitioner, who was serving as an Ad-hoc Additional District Judge at Nadiad, Kheda. The name of the petitioner stands at Sr. No.11 of the Notification.

2. The petitioner has been retired prematurely, in public interest, on attaining the age of 53 years.

3. The High Court on its administrative side undertook an exercise for examining the performance of the Judicial Officers of the State of Gujarat by verifying the service records, such as Annual Confidential Reports, disposals, complaints, vigilance complaints, departmental inquiry etc. and accordingly, a Committee of three Hon'ble High Court Judges was formed which had undertaken necessary exercise of verification of the service records, and ultimately, the Committee filed its report, wherein it was found that 18 Judicial Officers, including the present petitioner, were required to be prematurely retired. The Committee submitted its report dated 23.03.2016 before the Chamber and Chamber meeting was held on 14.07.2016 and the report of the Committee was accepted and accordingly, the names of 18 Judicial Officers, including the petitioner, were recommended to the State Government to retire them prematurely under the provisions of Rule 21 of the Gujarat State Judicial Service Rules, 2005 (for short "the Rules of 2005") by giving three months pay in lieu of notice. The said recommendations were accepted, and the Governor approved the same, and ultimately, it culminated into the issuance of Notification dated 18.07.2016, approving recommendations of the High Court for prematurely retiring the petitioner from

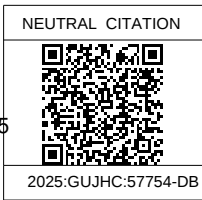


service.

SUBMISSIONS MADE ON BEHALF OF PETITIONER

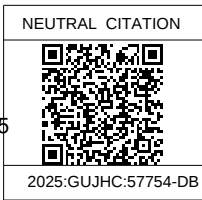
4. Learned senior advocate Mr.Asim Pandya with Mr.Ankit Shah, appearing for the petitioner, has submitted that the impugned Notification dated 18.07.2016 is without authority of law, since the same was not passed on the recommendations of the High court (i.e on the aid and advice of the High Court to the Governor(not to the Government) as required under Rule 21(1) of the Rules of 2005. He has also referred to the provision of Rule 20 of the Rules of 2005 and in juxtaposition, has read the definition of the Government and the Governor, which is incorporated in Rule 2(b) and 2(c) respectively. It is submitted that, since the Notification was issued by the State Government, though it was in the name of the Governor, the Governor had no occasion to examine the recommendation sent by the High Court. Thus, it is urged that the petitioner could not have been retired prematurely in the absence of the Governor in his personal capacity.

5. Learned senior advocate Mr.Asim Pandya further submitted that, at the outset, subjective satisfaction of the High Court is premised on an incorrect entry recorded in the month of June, 2012 as 'poor'. It is further submitted that in fact, the petitioner was not assessed for the quarter ending of June, 2012. However, the High Court while considering his service record for the quarter of June, has considered the entry as poor. It is thus, urged that the subjective satisfaction of the Committee as well as the High Court once it is found to be



incorrect and the entire exercise of assessing the other service records of the petitioner from the year 2001 to 2015, is required to be ignored and the decision taken by the High Court on the basis of the overall assessment, is illegal and contrary to the record, which would be fatal for the notification dated 18.07.2016 prematurely retiring the petitioner from service. Learned senior advocate Mr.Asim Pandya has further submitted that in fact, for the month of December of 2015, the petitioner is assessed as 'excellent' in disposing the cases and if the overall assessment in disposal is concerned, it cannot be said that the petitioner was a deadwood and inefficient officer.

6. Learned senior advocate Mr.Asim Pandya has further submitted that the petitioner ought to have been offered an opportunity of hearing or a bare minimum notice before prematurely retiring him from service to carve out his case by pointing out the gradings or the disposals, and he could have offered his explanation to the satisfaction of the High Court and in absence of such notice or hearing, subjective satisfaction arrived at by the Scrutiny Committee, the full Court can be said to be erroneous. It is submitted that the petitioner is not alleging any *malafide* or any illegal exercise of power but the submission of the petitioner is only confined to the assessment of the disposal of the present petitioner on an incorrect entry incorporated for the month of June, 2012. Learned senior advocate Mr. Asim Pandya has also referred to the norms or guidelines issued by the High Court and he has submitted that the disposal of the petitioner would be inadequate, just adequate or good and hence, the subjective

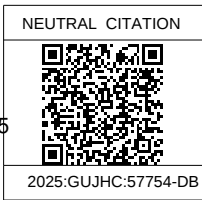


satisfaction recorded by the Committee can be said to be erroneous, which has led to the premature retirement of the petitioner. Learned senior advocate Mr. Asim Pandya has submitted that there was no vigilance complaint or any departmental inquiry against the petitioner during his service tenure and one vigilance complaint which was received against the petitioner, was ordered to be filed.

7. Learned senior advocate Mr. Asim Pandya has also placed reliance on Constitution Bench of the Supreme Court the judgment in the case of **Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others** reported in **(1991 Supp (1) SCC 600)** in support his termination. Thus, it is urged that the present writ petition may be allowed by setting aside the Notification dated 18.07.2016, prematurely retiring him from service.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT-HIGH COURT

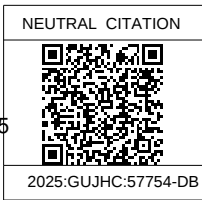
8. In response to the aforesaid submissions, learned senior advocate Mr. Shalin Mehta, appearing for the High Court, while placing reliance on the decision of this Court dated 25.07.2025 passed in Special Civil Application No.10772 of 2009, has submitted that this Court has already delved into the similar facts and issues regarding prematurely retiring the Judicial Officers from service on attaining the age of 55-58 years. It is submitted that in view of the communication dated 14.10.2008 issued by the Hon'ble The Chief Justice of India to various High



Courts, an exercise was undertaken to weed out the Judicial Officers who were dead wood, and accordingly, a Committee was formed to verify their service record.

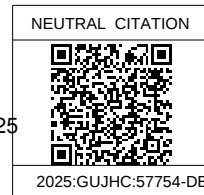
9. With regard to the allegation about the lack of authority by the Governor in issuance of the impugned Notification, learned senior advocate Mr.Mehta has referred to the provisions of Article 163 of the Constitution of India, read with the Gujarat Government Rules of Business, 1990 (for short, "Rules of 1990"), more particularly Rule 8, and has submitted that as per the aforesaid provisions, the Notification has been issued in the name of the Governor, after the approval of the Hon'ble Chief Minister, and hence, it cannot be said that the same was without authority of law. He has submitted that the assessment with regard to compulsory retirement of the employees on attaining the age of 50-55 years is to be channelized to the Chief Minister and the decision of the Hon'ble Chief Minister's Office under the Rules of Business is ultimately, of the Governor.

10. It is submitted by learned senior advocate Mr.Mehta, that as per Rules 12 and 13 of the Rules of 1990, "*All orders or instruments made or executed by or on behalf of the Government of the State shall be expressed to be made by or by order of or executed in the name of the Governor*". It is submitted that this is not the case where the Governor has to incorporate his/her personal wisdom and the decision has to be taken personally by verifying the files of each and every officer. It is submitted that the entire exercise was already



undertaken by the High Court on its administrative side that too by the Committee comprising of three Hon'ble Judges and ultimately, the report of the Committee was accepted by the Chamber and such recommendations were forwarded to the State Government. He has submitted that the Notification cannot be set aside on the technical ground raised by the petitioner for the first time in the writ petition. It is submitted that the Review Committee of the High Court has considered the entire service record of the petitioner and threadbare scrutinized and assessed his performance in all the quarters and ultimately, the Committee has opined that during the last 5 years of service, the petitioner had performed inadequately and poorly and accordingly, he was made to retire prematurely on reaching the age of 53 years. Thus, it is urged that the present writ petition may not be entertained and be rejected.

11. Learned senior advocate Mr.Shalin Mehta has submitted that in fact, the overall service record of the petitioner reveals that his disposal was adequate, just adequate and in some of the quarters of the year 2013, was poor. It is further submitted that the Committee scrutinizes the record of more than 150 judicial officer before arriving at a conclusion that a particular judicial officer is required to be prematurely retired from the service. It is further submitted that overall disposal of the matter was degrading and hence, in public interest, steps were taken by the High Court by considering the confidential reports as well as the overall assessment of the disposal. Learned senior advocate Mr.Shalin Mehta has further submitted that in fact, he has pointed out to the communication dated



22.10.2013 issued by the learned Principal District Judge conveying the re-assessment of his judicial work for the quarter 01st April, 2012 to 15th May, 2012, which was assessed as poor and the High Court has not assessed for June , 2012 and, the original assessment as poor has remained as it is.

12. Learned Government Pleader appearing for the State has submitted that though there is limited role of the State in the present matter, however, he has pointed out the error of the vigilance complaint being V.C. No.651 of 2014 and has submitted that the said allegations were not against the petitioner but against another judicial officer and it appears that there is some error in considering the vigilance complaint no.651 of 2014.

ANALYSIS AND OPINION

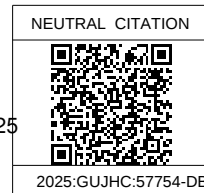
13. We have heard the learned advocates appearing for the respective parties at length and also perused the documents, as pointed out by them.

14. The facts, which are established on record, are that vide Notification dated 18.07.2016, the petitioner, who was serving as an Additional District Judge has been prematurely retired from service on attaining the age of 53 years.

15. 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 was 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 be suitably amended to provide for the assessment 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*** reported in **2002 (4) SCC 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 the necessary exercise of evaluation of all the Judicial Officers of the State, who have completed 50 years, 55 years, or 58 years of age, as required under Rule 21 of the Judicial Rules.

16. 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. Ultimately, the Committee in its report dated 23.03.2016 opined that 18 Judicial Officers, after considering their service records, such as Annual Confidential Report, disposal, complaints, vigilance complaints, departmental inquiry etc., are required to be retired prematurely in public interest except one who has already retired on reaching the age of superannuation during the process. Accordingly, the report was placed before the Chamber, and a meeting was held on 14.07.2016, and after considering the report submitted by the Committee consisting of three Hon'ble Judges, for effective implementation of the provision of Rule 21 of the Rules of 2005, recommended the Government of Gujarat to prematurely retire 18 Judicial Officers by giving three months' pay in lieu of notice.



18. Ultimately, such recommendations were accepted, and the Notification dated 18.07.2016 was issued by the Government of Gujarat, Legal Department, in the order and in the name of the Governor of Gujarat.

RECOMMENDATION MADE BY THE HIGH COURT AND SCOPE OF EXERCISE OF POWERS BY THE GOVERNOR :

19. The first and foremost contention, which is raised before us challenging the aforesaid Notification, is that the same is without authority of law, as the Governor was not supplied with the recommendation and instead, the same was supplied to the State Government. We have examined the vigor of the submission in light of the relevant Rules, and legal precedent. Indubitably, the Notification dated 18.07.2016 is issued “*By Orders and in the name of the Governor of Gujarat,*” signed by the Deputy Secretary, Legal Department.

20. The petitioner has been compulsorily retired by invoking the provisions of Rule 21 of the Rules of 2005, which reads as under : -

“Rule - 21. Addition of certain service for purpose of pension. An Advocate appointed as a Civil Judge or a District Judge shall be entitled to reckon, as service qualifying for superannuation pension, the actual period of practice put in by him at the Bar not exceeding three years or seven years respectively.

Provided that the benefits of the Gujarat Civil Service (Pension) Rules, 2002 shall continue to apply to the Judicial Officers appointed prior to the date of commencement of these Rules unless they opt otherwise.

(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 has 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."

21. Thus, a plain and simple reading of the provisions of Sub-rules (1) and (2) of Rule 21 abundantly clarifies that the Governor has the absolute right to retire any Judicial Officer, or any member from service, who has attained the age of 50 years, on the recommendations made by the High Court. As per Clauses (b) and (c) of Rule 2 of the Rules of 2005, the term "Government" means "the Government of Gujarat" and the term "Governor" means "the Governor of Gujarat." As per Rule 4 of the Rules, the appointing authority for the cadre of District Judges and Civil Judges is the Government of Gujarat, and for the cadre of Senior Civil Judges, it is the High Court.

22. It is not in dispute that the Chamber accepted the Report of the Committee and, thereafter, in its meeting held on 14.07.2016, resolved to recommend the premature retirement of the writ petitioner to the Government of Gujarat. Pursuant thereto, the Notification came to be issued.

23. Article 166 of the Constitution of India permits the Governor to delegate powers, unless and until an occasion arises wherein the Governor himself/herself would have to take

a decision. The provisions of Article 163 and 166 are as under:

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“163. Council of Ministers to aid and advise Governor

(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

166 : Conduct of business of the Government of a State

(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in the rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

24. It is not in dispute that a decision taken by any Minister or Officer under the Rules of 1990, framed under Article 166(3) of the Constitution of India, is deemed to be the decision of the Governor. Such powers are conferred under the Rules of 1990, more particularly Rule 8 thereof, which reads as under : -

"8. The Council shall be collectively responsible for all advice tendered to the Governor whether by an individual minister on a matter appertaining to his portfolio or as a result of discussions at a meeting of the Council or howsoever otherwise."

25. Rules 12 and 13 of the Rules of 1990, which reads as under : -

"12. All orders or instruments made or executed by or on behalf of the Government of the State shall be expressed to be made by or by order of or executed in the name of the Governor.

13. Every order or instrument of the Government of the State shall be signed either by a Secretary, an Additional Secretary, a Special Secretary, a Joint Secretary, A Deputy Secretary, an Under Secretary, an Assistant Secretary or a Section Officer or by such other officer as may be Specially empowered in that behalf by the Government and such signature shall be deemed to be the proper authentication of such order or instrument."

26. Thus, all orders or instruments made or executed by or on behalf of the State Government are mandatorily required to be made in the name of the Governor. It is further stipulated that every order or instrument of the State Government may be signed by a Secretary, an Additional Secretary, a Special Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary, an Assistant Secretary, or a Section Officer, or by such other officer as may be specially empowered in that behalf by the Government. Such signature shall be deemed to be the proper authentication of such order or instrument.

27. The Apex Court in the case of the State of M.P. and Others vs. Dr. Yashwant Trimbak, (1996) 2 S.C.C. 305, has held as under: -

“10. Coming to the first question, from a bare look at the order which was served on the respondent, it is implicitly clear that the said order has been executed in the name of the Governor and has been duly authenticated by the signature of the Under Secretary to the Government and therefore the bar to judicial enquiry with regard to the validity of such order engrafted in Article 166(2) of the Constitution will be attracted. The order which is expressed in the name of the Governor and is duly authenticated cannot be questioned in any court on the ground that it is not made or executed by the Governor. The signature of the concerned Secretary or Under Secretary who is authorised under the authentication rules to sign the document signifies the consent of the Governor as well as the acceptance of the advice rendered by the concerned Minister. It is not the case of the respondent and Mr. Jain appearing for the respondent in this Court did not urge that the order in question is not an order within the meaning of Article 166(2) of the Constitution. But according to Mr. Jain under the Rules the Governor being the authority to sanction and the Governor not having sanctioned, the prohibition contained in sub Article (2) of Article 166 of the Constitution cannot be attracted and the courts power to examine is not taken away. We are unable to accept this contention of Mr. Jain, appearing for the respondent.

13. This being the position and the order initiating the departmental proceeding having been signed by the Under Secretary to the Government by Order of the Governor, the same is immune from attack on the ground that it is not an order executed by the Governor as provided under Article 166(2) of the Constitution. As such the Tribunal was wholly incompetent to examine the legality of the same. In fact Article 166(2) of the Constitution has not been looked into at all by the Tribunal. In our opinion the Tribunal was wholly in error in quashing the order on the ground that the Governor has not executed the same. In view of our conclusion on the first question though the appeal is bound to succeed, but we think it proper to examine the second question also.”

28. The Apex Court, while examining the provisions of Article 166(2) of the Constitution of India, has held that an order expressed in the name of the Governor and duly authenticated cannot be questioned in any court on the ground that it was

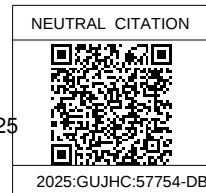
not made or executed by the Governor. The signature of the concerned Secretary or Under Secretary, who is authorized under the Authentication Rules to sign the document, signifies both, the consent of the Governor and the acceptance of the advice rendered by the concerned Minister.

29. In the case of State of Gujarat and Another Vs. Hon'ble Mr. Justice (Retd.) Ramesh Amritlal Mehta & Ors. (2013) 3 S.C.C. 1, on which reliance is placed by the petitioner, the Apex Court, while examining the provisions of the Gujarat Lokayukta Act, 1986, and powers conferred to the Governor under Article 163 of the Constitution of India, has held thus:

"41. Thus, where the Governor acts as the Head of the State, except in relation to areas which are earmarked under the Constitution as giving discretion to the Governor, the exercise of power by him must only be upon the aid and advice of the Council of Ministers, for the reason that the Governor being the custodian of all executive and other powers under various provisions of the Constitution is required to exercise his formal constitutional powers only upon and in accordance with the aid and advice of his Council of Ministers. He is, therefore, bound to act under the Rules of Business framed under Article 166(3) of the Constitution. (Vide Pu Myllai Hlychho v. State of Mizoram [(2005) 2 SCC 92 : AIR 2005 SC 1537] .)

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44.Article 166(3) of the Constitution further bestows upon the Governor the power to make rules for more convenient transactions of business of the Government of the State and also for the purpose of allocating among the Ministers of State such business. There are several ways by which, a power may be conferred upon the Governor, or qua the Governor, which will enable him to exercise the said power by virtue of his office as Governor. Therefore, there can be no gainsaying that all the powers that are exercisable by the Governor by virtue of his office can be exercised only in accordance with the aid and advice of the Council of Ministers except insofar as the Constitution expressly, or perhaps by

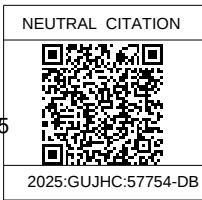


necessary implication, provides otherwise.

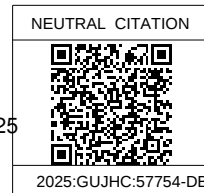
30. The Constitution Bench of the Apex Court in the case of Registrar (Admin), High Court of Orissa, Cuttack Vs. Sisir Kanta Satapathy, 1999 (7) S.C.C. 725 has held thus:

“15. On going through the judgments of this Court right from Shyamlal v. State of U.P. [AIR 1954 SC 369 : (1955) 1 SCR 26] down to High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal [(1998) 3 SCC 72 : 1998 SCC (L&S) 786] one cannot but reach one conclusion regarding the power of the High Court in the matter of ordering compulsory retirement. That conclusion is that the High Courts are vested with the disciplinary control as well as administrative control over the members of the judicial service exclusively, but that does not mean that they can also pass orders of dismissal, removal, reduction in rank or termination from service while exercising administrative and disciplinary control over the members of the judicial service. Undoubtedly, the High Courts alone are entitled to initiate, to hold enquiry and to take a decision in respect of dismissal, removal, reduction in rank or termination from service, but the formal order to give effect to such a decision has to be passed only by the State Governor on the recommendation of the High Court. It is well settled again by a catena of decisions of this Court that the recommendation of the High Court is binding on the State Government/Governor (vide para 18 in Inder Prakash Anand case [(1976) 2 SCC 977 : 1976 SCC (L&S) 372]).”

31. Thus, the conspectus of the foregoing discussion is that, if the action of the Government and the order/Notification is duly authenticated in accordance with Article 166(2) and the Rules 12 and 13 of the Rules of 1990, a conclusive and irrefutable presumption arises that the decision was duly taken in accordance with the concerned Rules. The recommendation of the High Court is binding on the State Government /



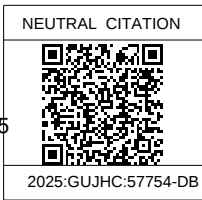
Governor. The exceptions carved out in the main clause of Article 163(1) of the Constitution, permit the legislature to entrust certain functions to the Governor to be performed by him, either at his discretion, or in consultation with other authorities, independent of the Council of Ministers. In the present case, as noted hereinabove, the petitioners have not challenged the decision of the Full bench or the findings of the Committee comprising three Hon'ble Judges. The three members Committee of the Hon'ble Judges of this Court, and the Full bench had examined the service record of the petitioners and thereafter, his case for premature retirement was recommended to the State Government. As per Rule 4 of the appointing authority for the cadre of District Judges and Civil Judges, is the Government of Gujarat. Hence, the High Court had sent the recommendation to the State Government, and ultimately after the recommendation has been accepted and approved by the Governor the Notification has been issued in his order and name. We do not find any infringement of any Rules or the provisions of Articles 163 and 166 of the Constitution in the entire process and hence, the Notification issued in the name of the Governor of Gujarat, cannot be set aside on the ground canvassed before us. Reliance placed on the judgment of the Apex Court in the case of P.D.Goel vs. State of Himachal Pradesh through its Registrar General, 2017 (16) S.C.C. 390 by the petitioners will not even remotely apply to the facts of the present case, since in the said case, the Governor, who was the appointing authority, retired a Sub-Judge Officer retrospectively, after the High Court passed an order of compulsory retirement.



SCOPE OF JUDICIAL REVIEW OF PREMATURE RETIREMENT :

32. It is not in dispute that the Committee has examined the entire service record of the petitioner from 2001 to 2015. We have also perused the same. It reveals that except for the year 2005 and 2007, the disposal of the petitioner has been assessed as "Good" and "Very Good", and for the rest of the years it is either "Just Adequate" or "Adequate". (2008 to 2010). There is one vigilance complaint against him, which is ordered to be filed. The petitioner is also seeking setting aside of the impugned action of compulsory retirement on the ground that his assessment of the judicial work for the quarter ending June, 2012, though was not assessed, and it is incorrectly shown as poor. The petitioner was aware of such assessment, and it was communicated to him also. Before us the High Court has contended that it was assessed as 'poor' in part. Out of four quarters in the year 2012, the performance for two quarters is 'just adequate' and for one quarter it is 'good'. The Committee after considering the overall assessment as per the norms, which is fixed for the judicial officers ranging from poor to excellent, very good and outstanding as in its subjective satisfaction, has found an opinion to prematurely retire him from service. The petitioner was made aware of all the assessment, hence at this stage, we cannot substitute the subjective opinion of the Scrutiny Committee or the Full Court.

33. We may, at this stage, refer to the legal precedent on the

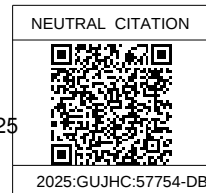


issue of compulsory/premature retirement, as enunciated by the Apex Court in following cases.

(1) Bishwanath Prasad Singh vs. State of Bihar & Ors., (2001) 2 S.C.C. 305,

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 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.

(2) Swaran Singh Chand vs. Punjab State Electricity Board & Ors., (2009) 13 S.C.C. 758 :

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 (Confidential Report), 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. 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."

(3) Nawal Singh Vs. State of Uttar Pradesh & Anr., (2003) 8 SCC 117:

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.

10. 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 and Anr. v. Chief District Medical Officer, Baripada and Anr., (1992) 2 S.C.C. 299** and held as under:

"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 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.

8. 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.

9. *** *** ***

10. *** *** ***

11. 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.

12. 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.

13. 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."

(4) R.C.Chandel Vs. High Court of M P & Anr.(2012) 8 SCC 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:

"26. 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.

27. *** *** ***

28. *** *** ***

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 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."

(5) Rajendra Singh Verma dead through LRS & Ors. Vs. Lt.Governor (NCT of Delhi) and Ors., (2011) 10 S.C.C. 1.

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:

"162. 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.

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189. 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.

190. 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.

191. 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.

192. 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.

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194. 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.

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218. 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."

(6) 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:

"7 We have heard learned counsel for the parties.

8 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.*

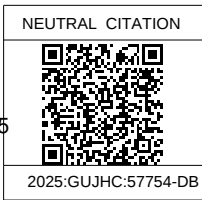
11 *The High Court took notice of this judgment, but still ventured to examine the entire record by itself, overlooking the thorough examination conducted by the Administrative Committee, which was affirmed and commended to the Full Court. It was not open to the High Court to substitute its own view 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.*

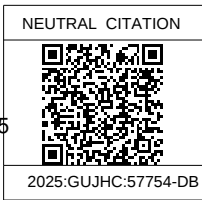
13 *It is also noticed from the record that the disciplinary enquiry came to be dropped in lieu of compulsory retirement of respondent no.1. That was a composite recommendation made by the Administrative Committee and commended to the Full Court of the High Court. The two being inseparable, and the solitary 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

33. Thus, the law on compulsory retirement of a Judicial Officer is no longer *res integra*. An Order of



compulsory/premature retirement in public interest or in the interest of administration is not a punishment. The compliance of principles of natural justice is not necessary; hence, the requirement of issuance of a show-cause notice before premature retirement is not necessary. A single uncommunicated adverse remark in the entire service record, or a doubtful integrity is enough to retire a Judicial Officer compulsorily in the public interest. Any promotion or grant of a 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. Even the filing of complaints made against the Judicial Officer 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 different stages. We may reiterate that sometimes it would be very difficult to gather concrete or material evidence to prove doubtful integrity and make it part of the record, and it would be impracticable for the Reporting Officer or the competent controlling officer preparing the Confidential Report to provide specific instances of shortfalls supported by evidence. The entire exercise of the High Court arises from the doctrine of special circumstances. The opinion formed by the Administrative Committee, which undertakes the task of gathering information from various sources, and the perception formed of the integrity of the Judicial Officer, cannot be tinkered with by exercising powers under Article 226 of the



Constitution, more particularly when the opinion is further sanctioned by the Standing Committee and the Full Court. The impression formed regarding the Judicial Officer is based on the perception by the High Court, after careful circumspection and deliberation, and it would be based on the preponderance of probability when entertaining a doubt about the integrity of an officer, which is based on substance, matter, information etc. Therefore, in such circumstances, an opinion formed by the High Court cannot be interfered with on the ground that it is formed without any material. The satisfaction and recommendation of the Administrative Committee, Standing Committee, and Full Court of the High Court cannot be interfered with unless tainted by patent illegality, breach of procedure causing prejudice to the Judicial Officer, or a grossly disproportionate measure. In view of settled legal precedent regulating the premature/compulsory retirement of the Judicial Officers exclusively falls within the domain, supremacy and subjective satisfaction of the High Court.

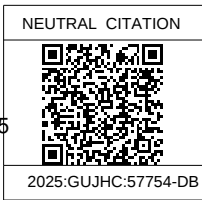
34. All aspects of the decision, deliberation, and satisfaction of the High Court emanate exclusively from the overall reputation of Judicial Officers. As held by the Apex Court in the case of ***R.C.Chandel (supra)***, *“Judicial service is not an ordinary government service and the Judges are not employees 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."

35. Any breach of the pristine standards/values as enumerated above will invite scrutiny by 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 the public interest, depending upon the extent of the 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 formed its opinion after assessing and evaluating multiple factors of the service record of the petitioner, more particularly in wake of the fact that the petitioner has not alleged patent illegality or *mala fide* in the decision-making process adopted by the High Court.

17. The judgment of **Delhi Transport Corporation (Supra)**



on which the reliance is placed by the petitioner will not come to his rescue, as it exclusively operates in a different realm of assessing the termination of service of an employee on the principle of lifting the corporate veil. In the present case, as held by us, the order of premature retirement is not a punishment order and hence, there would not be requirement of following the principles of natural justice. The parameters for examining a punishment order of termination of service due to unsuitability or loss of confidence or misconduct cannot be equated with the parameters while examining the order of premature retirement of a Judicial Officer.

37. On an overall appreciation of the facts and law, we are not inclined to interfere with the impugned Notification dated 18.07.2016, by which the petitioner was prematurely from service. The present writ petition fails, the same is accordingly dismissed. Rule is discharged. There shall be no order as to costs.

(A. S. SUPEHIA, J)

(L. S. PIRZADA, J)

Jaimin Prajapati/1