
(2014) 10 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 4158 of 2012

Avinash Vitthalrao Choudhary

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 2 ALLMR 726 : (2015) 3 MhLj 873

Hon'ble Judges : G.S. Kulkarni, J;Abhay Shreeniwas Oka, J

Bench : Division Bench

Advocate : Ajay Deshpande and Amol A. Gatne, Advocate for the Appellant;
S.N. Patil, AGP and M.S. Karnik, Advocate for the Respondent

Judgement

Abhay Shreeniwas Oka, J.—A notice for final disposal was issued. The submissions of the learned Counsel for parties were heard in the last week. The petitioner who was a Judicial Officer has challenged the order dated 28th September,2011 passed under the directions of and in the name of the Hon"ble Governor of Maharashtra which is an order of compulsory retirement. The order of compulsory retirement has been passed in purported exercise of powers under the Maharashtra Judicial Services Rules 2008 as amended on 6th August,2011 (for short "the said Rules") as well as under clause (a) of sub-Rule (4) of Rule 10 of the Maharashtra Civil Services (Pension Rules), 1982 (for short "the Pension Rules").

2. The date of birth of the petitioner is 17th June,1960. He was appointed as a Civil Judge (Junior Division) and Judicial Magistrate First Class with effect from 14th August,1995. The case made out by the petitioner is that he was granted benefit of Assured Career Progression Scheme in the year 2002-2003. It is the case of the petitioner that in April,2011 he was granted promotion on ad-hoc basis to the post of Senior Civil Judge. Thus, the case made out in the petition is that the day on which the petitioner was actually appointed, his age was more than 35 years. On 26th April,2011 the case of the petitioner was placed before

the Special Review Committee of this Court consisting of five Hon'ble Judges of this Court of which the Hon'ble the Chief Justice was the Chairman. On 26th April, 2011 the Review Committee recommended the case of the petitioner for passing an order of compulsory retirement in public interest. As stated above, the impugned order of compulsory retirement has been passed on 28th September, 2011 under the order of and in the name of the Governor of Maharashtra.

3. The learned Counsel appearing for the petitioner invited attention to the said Rules and in particular Rule 19 thereof. He pointed out that under the unamended Rule 19 as it existed prior to 6th August, 2011, the power to retire a member of the Judicial Service could be exercised upon a Judicial Officer attaining age of 50 years, 55 years or 58 years. He pointed out that Rule 19 underwent an amendment on 6th August, 2011 after the recommendation of the Review Committee in the present case which provides that whether a member of the Judicial 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. He submitted that though the case for review was considered before the amendment, the impugned order makes a reference to the exercise of powers under Rule 19 of the said Rules as amended by the Notification dated 6th August, 2011. He submits that when the impugned order of compulsory retirement was actually passed, the amended Rule 19 was on the Rule Book. He submitted that in view of the amended Rule, the case of the petitioner could have been considered only when he was about to attain the age of 50 years and not long after he attained the age of 50 years. He pointed out that when the case of the Petitioner was actually considered, the age of the petitioner was 50 years 10 months 9 days. He urged that if a case for compulsory retirement is considered in terms of sub-Rule (1) even after a judicial officer attains the age of 50 years, 55 years or 58 years, as the case may be, sub-Rule (2) of Rule 19 as amended will become redundant. He invited attention to the proviso to sub-Rule (2). He submitted that under the proviso, the case of a Judicial Officer for compulsory retirement can be considered any time after attaining the age of 50 years, 55 years or 58 years, as the case may be, provided his case is considered before attaining the age of 50 years, 55 years or 58 years. His submission is that the case of the petitioner could not have been considered either under sub-Rule (2) or under the proviso under sub-Rule (2) of Rule 19 of the said Rules as his case was not considered before attaining the age of 50 years. His submission is that in any event, the order of compulsory retirement should not have been made by exercising the power under Rule 10 of the Pension Rules in as much as when the petitioner was appointed, he had already completed age of 35 years.

4. Turning to the recommendation of the Review Committee, he pointed out that the Review Committee has predominantly considered the Annual Confidential Reports for the years 1999-2000 to 2002-2003. He has taken us through the said Annual Confidential Reports and urged that by no stretch of imagination, the

Annual Confidential Reports for the said years are adverse and the remarks which are projected as adverse are at highest suggestive in nature. He has invited out attention to the additional compilation tendered across the bar which contains Annual Confidential Reports from the year 2004-05 till the year 2009-10. He pointed out that the grading of the petitioner is consistently good in the said Annual Confidential Reports . He pointed out that Annual Confidential Report for the year 2010-11, the net result of good was assigned by the Reporting Authority and even by the reviewing Authority. He pointed out that the said Annual Confidential Reports from the year 2004-05 which show a remarkable improvement in the work of the petitioner were not considered by the Review Committee. He pointed out that in the year 2002-03, the petitioner was awarded benefit of Assured Career Progression Scheme and in the year 2011, he was given promotion to the post of Senior Civil Judge on ad-hoc basis.

5. As regards the First Information Report considered by the Review Committee being Crime No.137 of 2010, after the conclusion of the submission, he has tendered an affidavit of the petitioner by which the petitioner purported to give an explanation about what is stated by him in his statement recorded by the police during the investigation of the said crime. His contention is that the petitioner granted bail on merits of the case. He submitted that an attempt has been made to brand the petitioner as dishonest only on the basis of the First Information Report. He pointed out that on two occasions, the petitioner remanded the accused in the said case to the police custody. He extended the police custody again on 25th November,2010 till 26th November,2010 and thereafter, the accused were remanded to the Magisterial custody till 10th December,2010. He submitted that on the application for grant of bail, the petitioner passed an order calling upon the Prosecution to file a reply and kept the application on 29th November,2010. He stated that he passed an order on that date releasing the accused on bail by imposing stringent conditions. In the affidavit which was tendered after the conclusion of the arguments, the Petitioner has tried to make a distinction between a release order addressed to the Superintendent of Adharwadi Jail, Kalyan and the order granting bail. By the affidavit, he has pointed out that the release order was signed by him on 29th November,2010 that is the date on which the bail was granted and it was handed over to the Advocate representing the accused by the outward clerk. He has stated that the order granting bail was never issued before 30th November,2010, but the release order was issued on the earlier day on which he dictated the order granting bail.

6. The learned Counsel appearing for the petitioner relied upon the decision of the Apex Court in the case of Baldev Raj Chadha Vs. Union of India (UOI) and Others, . He submitted that while testing the order of compulsory retirement, the Court must be satisfied that there was a material on record on the basis of which a rational mind may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest. He pointed out that this was a case where there is were no adverse entries in the Annual Confidential reports

for last five years immediately preceding the impugned order of the compulsory retirement. He submitted that the Apex court held that such order of compulsory retirement cannot be upheld. He also relied on the decision of the Supreme Court in the case of Swami Saran Saksena Vs. State of Uttar Pradesh, . He pointed out that in this case, few months before the date of passing the order of compulsory retirement, for the purpose of crossing the second efficiency bar, the appellant was considered to have worked with distinct ability and with integrity. He pointed out that in this case on the ground that there was no evidence to show that suddenly there was sudden deterioration in the quality of the work, the Apex Court proceeded to quash and set aside the order of compulsory retirement. He also relied on the decision of the Apex Court in the case of M.S. Bindra Vs. Union of India and Others, . He urged that when the order of compulsory retirement is found to be based on no material, the order of compulsory retirement calls for interference. He urged that the material in the form of Annual Confidential Reports after 2002-2003 has not been considered. He urged that most relevant material was not placed before the Review Committee.

7. The learned Counsel representing the High Court Administration submitted that the scope of interference in writ jurisdiction with the order of compulsory retirement is very limited. He urged that Rule 19 cannot be applied to a mathematical precision. He invited our attention to the decision of the Apex Court in the case of R.C. Chandel Vs. High Court of M.P. and Another, and in particular what is held in paragraphs 26 to 29. He also made an extensive reference to the decision in the case of Pyare Mohan Lal Vs. State of Jharkhand and Others, . Lastly, he invited our attention to the decision of the Apex Court in the case of High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another, . He, therefore, submits that no interference is called for in the impugned order which is passed on the basis of the material available.

8. We have considered the submissions. As far as the scope of judicial review of an order of compulsory retirement in exercise of powers under the Article 226 of the Constitution of India is concerned , the law is very well settled. It is permissible to interfere with the said order only if it is found that the order is arbitrary or malafide or is based on no material. Such order can be interfered with if the same is passed without any legal authority.

9. Before we go to the merits, it will be necessary to make a reference to the law laid down by the Apex Court in the case of R.C.Chandel Vs. High Court of Madhya Pradesh and another wherein the Apex Court was dealing with the legality and validity of an order of compulsory retirement passed against a Judicial Officer. Paragraph 26 of the said decision reads thus:-

"26. It is true that the appellant was confirmed as District Judge in 1985; he got lower selection grade with effect from 24-3-1989; he was awarded super timescale in May 1999 and he was also given above super timescale in 2002 but the confirmation as District Judge and grant of selection grade and super

timescale 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."

(emphasis added)

The Apex Court categorically held that in case of the Judicial Officers, the criterion for promotion or grant of increment for higher scale is different from the exercise which is undertaken by the High Court in assessing the Judicial Officer's continued utility to the judicial system. While assessing the continued utility of the Judicial Officer to the judicial system what is required to be seen is the overall profile of the Judicial Officer. The Apex Court emphasized on the fact that a judicial officer of doubtful integrity or questionable reputation, or an officer found wanting in utility is not entitled to continuation in service after attaining the requisite length of service. Even paragraph 29 of the said decision is material which reads thus:-

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

(emphasis added)

10. In the case of Pyare Mohan Lal Vs. State of Jharkhand & Ors. , the Apex Court has considered all its earlier decisions on the issue. What is relevant for this case is in paragraph 29 which reads as under:-

"29. The law requires the authority to consider the "entire service record" of the

employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse entries had not been communicated to him and the officer had been promoted earlier in spite of those adverse entries. More so, a single adverse entry regarding the integrity of an officer even in remote past is sufficient to award compulsory retirement. The case of a judicial officer is required to be examined, treating him to be different from other wings of the society, as he is serving the State in a different capacity. The case of a Judicial officer is considered by a committee of Judges of the High Court duly constituted by the Hon"ble the Chief Justice and then the report of the Committee is placed before the Full Court. A decision is taken by the Full Court after due deliberation on the matter. Therefore, there is hardly any chance to make the allegations of non application of mind or mala fides."

11. The argument of the learned Counsel appearing for the petitioner was that even assuming that the entries in the Annual Confidential Reports upto the year 2003 are treated as adverse, the same are remote in point of time considering the fact that the case of the Petitioner for review was considered in the year 2011. The Apex Court has precisely negated the such submission by holding that a single adverse entry on integrity of the officer even in remote past is sufficient to award compulsory retirement as the case of the Judicial Officer is required to be examined treating him to be different from other wings of the State. Therefore, the argument that reliance could not have been placed on the entries in the ACRs which are remote in point of time has been expressly overturned by the Apex Court in the case of the Judicial Officers. The last decision is in the case of High Court of Judicature at Bombay Vs. Shirishkumar Rangrao Patil. In paragraph 14 of the said decision, the Apex Court has reiterated the special position enjoyed by the Judicial Officers. In paragraph 17, the Apex Court has observed thus:-

"17. It would, therefore, be necessary to see whether the respondent has committed misconduct by demanding illegal gratification. The fallen standard in morality and rectitude in the general public finds its transmission into the judiciary as well. Since the respondent was a probationer, he was more prone to tread the path of corrupt practice of demanding illegal gratification to do judicial work, namely, to grant or refuse to grant an order of injunction in the suit. The tendency to corrupt activity is more serious and deleterious than the actual catching of a corrupt judicial officer while demanding and accepting illegal gratification. Therefore, if the evidence adduced during the departmental enquiry proves the proclivity of corrupt conduct on the part of the judicial officer and enquiry into his conduct is fair and germane, the imposition of punishment should be appropriate to the magnitude of the misconduct. The question, therefore, is whether the respondent has committed misconduct.

In various decisions of the Apex Court, emphasis has been laid on the probity of conduct on the part of the judicial officers.

12. Now we turn to the minutes of the meeting of the Review Committee of this

Court. The Review Committee has observed that the net result of the Petitioner of the year 1999 to 2003 was average. It is observed that adverse remarks were communicated in the year 2000-01 and 2002-03. What is material is further portion of the minutes of the meeting which reads thus:-

"On 17/11/2010, Crime No.137/2010 was registered against two brothers of Shri.Ramesh Budhaji Patil and four others with Padgha Police Station. On 23/11/2010 all the accused were arrested in the above crime. The bail application filed by the accused was kept for hearing on 29/11/2010 before the Court presided by Mr.A.V.Choudhary, then Civil Judge, Junior Division and JMFC, Bhiwandi, District Thane. It is said that one Shri.Chandrakant Shelar (Court orderly/ Police Naik) had demanded bribe of Rs. 80,000/- for securing bail to the accused by managing the Judicial Officer and the Public Prosecutor. It is further said that the said amount was settled at Rs. 50,000/-. However, the complainant Ramesh Patil reported the matter to the Anti-corruption Bureau. Smt.K.J.Kadam, Police Inspector, ACB, who had verified the complaint of complainant Ramesh Patil, had recorded the conversation of accused Chandrakant Shelar with the complainant Ramesh Patil in the matter of payment of bribe of Rs. 50,000/- and obtaining bail for the accused persons. In the conversation, accused Chandrakant Shelar (Police Orderly/ Naik) informed the complainant that his work will be done 100% on 29/11/2010 itself, that by making a telephonic call he will ask the Judge to come to his chamber from the dais and then he will meet the Judge in his chamber. Thereafter, when the complainant Ramesh Patil met the accused Shelar he gave a copy of the bail order to the complainant.

On 29/11/2010 at 7.15 p.m., the trap was laid down and the accused Shelar was caught red-handed in the said trap. However, considering the conversation recorded by the Police Inspector, permission to record the statement of Judicial Officer Shri.Choudhary was solicited to examine his involvement in the said crime of demand and acceptance of bribe by accused Shelar.

It is seen that bribe was demanded for securing bail on 29/11/2010 whereas, Shri.Choudhary granted bail on 29/11/2010 itself. In fact, accused Shelar (Police Naik) had handed over the photo copy of the bail order to the complainant Ramesh Patil on 29/11/2010 itself.

Having considered all the above facts, it was seen that the integrity of the Judicial Officer is doubtful and therefore, did not deserve to be continued in the Judicial Service."

(emphasis added)

The material which was produced before the Review Committee shows that the bribe was demanded for securing bail on 29th November 2010 and that the Petitioner granted bail on 29th November,2010. One of the accused who was trapped was a Police Naik who had handed over a photo copy of the bail order to the complainant on 29th November,2010. It is on the basis of the facts which are narrated above that the Review Committee was of the view that the petitioner

did not deserve to be continued in the judicial service. In a matter like this, it is not the function of the Writ Court to examine whether there was an adequate material. What is to be seen is whether there was a material available before the Review Committee on the basis of which a recommendation could be conceivably made that the petitioner did not deserve to be continued in the Judicial Service. After having considered the material placed before it, the Review Committee was of the opinion that the integrity of the Judicial Officer appears to be doubtful and that he does not deserve to continue in judicial service.

13. In the normal course, the Writ Court would not have entered into the issue of adequacy of material. However, after the conclusion of the submissions, an affidavit has been filed by the petitioner affirmed on 10th October, 2014 in which the petitioner has tried to explain the contents of his police statement which was placed before the Review Committee. A copy of the police statement has been placed on record by the petitioner himself along with the additional compilation tendered during the course of hearing. As we are required to deal with the additional affidavit which deals with the contents of the police statement, only for the purpose of dealing with the additional affidavit, we have perused the said police statement. The Petitioner has not at all disputed the correctness of the contents of his statement recorded by the police. The Petitioner has stated in the police statement that on 29th November, 2010 he dictated the order granting bail to the stenographer in the Court. The order could not be typed on that date. It records that on the very day, a letter addressed to the Jail Superintendent was prepared on which he signed and handed over to the same to the concerned clerk. He has stated that on the next day in the morning at about 10.30 a.m, he signed the order granting bail. What is considered by the Review Committee is the circumstance that on 29th November, 2010 itself the accused (Police Naik) had handed over a photo copy of the bail order to the complainant and that on 29th November, 2010 itself bribe was demanded by the accused. It is in this context that in the affidavit, a distinction is sought to be made by the Petitioner between the release order and the order granting bail. When he was referring to the release order, he has referred to the letter addressed to the Jail Superintendent communicating the order granting bail. He has reiterated that he issued order granting bail on 30th November, 2010. In the light of the statement of the petitioner before the police and the explanation sought to be offered what becomes relevant is that the accused Police Naik handed over a copy of the order granting bail to the complainant on 29th November, 2010 itself on the date on which the bribe was demanded. It is not the case that a copy of the release order which was addressed the Jail Superintendent was handed over. According to the case of the Petitioner, he signed the order granting bail on 30th November 2010. Thus, the attempt made by the petitioner to improve upon the case by filing an affidavit, does not help the petitioner but it creates a question mark.

14. We have done the exercise of referring to the police statement only for the purposes of dealing with the affidavit. Suffice it to say that, we find that there was a material before the Review Committee on 26th April, 2011 when the

recommendation was made. Before we go into the other legal submissions made by the learned Counsel for the petitioner, we must make a reference to the decision relied upon by the Petitioner in the case of Baldev Raj Chadha Vs. Union of India and Ors. The view taken therein is in the facts of the case before the Apex Court. In the present case, even assuming that the material in the form of the ACRs considered by the Review Committee is remote in point of time, in addition what is considered is the incident of 29th November, 2010 which had taken place four to five months before the recommendation was made. In the case of J.D. Srivastava Vs. State of M.P. and Others, , the Apex Court was dealing with the case where a reliance was placed in the order of compulsory retirement on the entries made twenty years prior to the date of the order. The present case stands on a completely different footing. In view of the material before the Review Committee in the case in hand, the decision in the case of Madan Mohan Choudhary Vs. The State of Bihar, , will not help the petitioner. In the said case, a Judicial Officer was ordered to retire on the basis of single act of granting an anticipatory bail. As far as the decision in the case of M.S. Bindra Vs. Union of India is concerned, this is not a case where the order is based on no material. There was a material available which we have discussed above. As far as the malafides are concerned, as held by the Apex Court, it must be noted that the decision is taken by the Committee of five Senior Judges of this Court headed by the Hon'ble The Chief Justice after due deliberations as well as perusal of the record and therefore, there is hardly any scope to make allegations of non application of mind or malafides against the recommending Authority.

15. Now we turn to the submissions made on behalf of the learned Counsel for the Petitioner on the basis of applicability of relevant Rules. Even assuming that the Pension Rules were not applicable, the order is specifically made under Rule 19 of the said Rules. Rule 19 reads thus:-

"19. (1) Retirement in public interest.- 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 when he attains the age of 50 years, 55 years or 58 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 the 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 this Rule shall be construed as preventing consideration of a member of the Service again at any time after attaining the age of 50 years or 55 years or 58 years, as the case may be, for the purpose of retiring him in the public interest despite such member was considered earlier as per sub-Rule (2)."

The order of retirement in public interest is required to be made by the Hon'ble

Governor on the recommendation of High Court. When the Review Committee considered the matter, only the first part of Rule 19 which was subsequently numbered as sub-Rule (1) was in existence. The said part of the Rule which was numbered as sub-Rule (1) provides for an absolute right to retire any member of the judicial service in public interest when he attains the age of 50 years, 55 years and 58 years. Therefore, the Review Committee was well within its powers to consider the case of the petitioner for making a recommendation to the Governor. On the day on which his case was considered, the age of the Petitioner was 50 years and 10 months. Sub-Rule (2) was brought on the Rule Book on 6th August, 2011. We proceed on the assumption that the said Sub-Rule was applicable. The argument is that the power under sub-Rule (2) can be exercised only before a Judicial Officer attains the age of 50 years, 55 years and 58 years, as the case may be. The emphasis in the Sub-Rule is on the consideration of the case of the Judicial Officer at three stages. The object of the Rule is to weed out the deadwood from the judicial service. By no stretch of imagination, sub-Rule (2) can be interpreted to mean that the High Court can consider the case of a Judicial Officer only before he attains the age of 50 years, 55 years or 58 years, as the case may be and the recommendation under the Rule cannot be made even few days after the judicial officer attains age of 50 years, 55 years or 58 years, as the case may be. This sub-Rule cannot be literally interpreted. Moreover, it cannot be considered in isolation. Consideration of a proposal for review is not an empty formality. The Authorities are not expected to act with mathematical precision in terms of time at which the consideration of the case is made. In a given case, the process of review of service record may start before a judicial officer attains age of 50 years, 55 years or 58 years. But the actual recommendation of the Review committee and the order of the compulsory retirement can be made after the officer attains the age of 50 years, 55 years or 58 years, as the case may be. The entire service record of the Judicial Officer is required to be compiled and placed before the Review Committee. As in this case, the Review Committee consists of Senior Judges of this Court. Several cases are placed before it. The Review committee may not be able to take a decision before the officer actually completes the age of 50 years, 55 years or 58 years. Sub-Rule 1 of Rule 19 confers absolute power to retire any member of judicial service when he attains age of 50 years, 55 years or 58 years. Sub-Rule 2 lays down that the case for compulsory retirement in public interest shall be considered at least three times, that is when he is about to attain the age of 50 years, 55 years or 58 years. The object of sub-Rule 2 is to ensure that the cases of the judicial officers are considered on at least three occasions so that deadwood is weeded out. The provision regarding the time of consideration provided in the Sub-Rule 2 cannot be held to be mandatory. Apart from the fact that the plain reading of the Sub-Rule does not warrant such an interpretation, if such interpretation is accepted, it will defeat the very object of the Rule of conferring absolute power. It is impossible to accept the submission of the learned Counsel for the petitioner that the sub-Rule has to be implemented with mathematical precision. It is impossible to accept the submission that if the High

Court considers the case of a Judicial Officers after he completes the age of 50 years, 55 years or 58 years, as the case may be, the exercise of the absolute power conferred by sub-Rule 1 becomes illegal. On conjoint reading of both the sub- Rules, it is impossible to accept the interpretation sought to be give by the Petitioner.

16. Now we turn to the proviso. The Proviso makes it very clear that there is a power to consider the case for review even after a judicial officer attaining age of 50 years, 55 years or 58 years, as the case may be. The last part of the Rule cannot be interpreted to mean that power under the proviso can be exercised between the age of 50 to 55 years only if the case of the Judicial Officer is considered before attaining the age of 50 years. The object of the proviso is to clarify that a wider power is retained by the employer which can be exercised even after the Judicial Officer attaining the age of 50 years, 55 years or 58 years, as the case may be. The proviso cannot be interpreted to mean that the power to retire a Judicial officer cannot be exercised, if the case of the Judicial Officer has not been considered before he actually attains the age of 50 years, 55 years or 58 years. The proviso clarifies that a residuary power is retained which can be exercised notwithstanding the fact that the case of the Judicial Officer has been already considered in accordance with the sub-Rule (1) of Rule 19. Therefore, interpretation tried to be suggested by the learned Counsel for the petitioner cannot be accepted.

17. It is well settled that no stigma is attached to the order of compulsory retirement under Rule 19 of the said Rules. The order under the Rule 19 of the said Rules is not by way of punishment for any misconduct. We find no merit in the challenge to the impugned order. We, accordingly, reject the petition.