
(2016) 03 BOM CK 0024
In the Bombay High Court
Case No : Writ Petition No. 4594 of 2012

Chitra	Vs	APPELLANT
The State of Maharashtra and Others		RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 235

Citation : (2016) 3 AIRBomR 683 : (2017) 1 ALLMR 220

Hon'ble Judges : S.C. Dharmadhikari and G.S. Patel, JJ.

Bench : Division Bench

Advocate : G.T. Kanchanpurkar i/b. Ajay S. Deshpande, for the Appellant;
Sushma Bhende, AGP, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Dharmadhikari, J.—1. By this petition under Article 226 of the Constitution of India, the petitioner prays that by an appropriate writ, order or direction, the impugned order at annexure "Q" dated 3rd October, 2011, retiring the petitioner in public interest, invoking the powers under Rule 10(4) of the Maharashtra Civil Services (Pension) Rules, 1982 read with the provisions of Rule 19 of the Maharashtra Judicial Services Rules, 2008, be quashed and set aside, and that the petitioner be reinstated in service with continuity and full back-wages.

2. It is common ground that Rule 10(4) of the Maharashtra Civil Services (Pension) Rules, 1982 read with Rule 19 of the Maharashtra Judicial Services Rules, 2008 has been invoked to pass the impugned order.

3. This Petition was filed on 7th May, 2012 and the impugned order recites that the State Government being fully empowered to pass an order in public interest, having been satisfied that it is necessary and in public interest to compulsorily retire the petitioner has passed the same order. At the relevant time, the petitioner was working as Judge, Family Court, Nagpur. She had completed the age of 51 years on 30th September, 2011. In the public interest, she was retired

by dispensing with the requirement of three months" notice. The petitioner has, thus, been retired by sanctioning and disbursing her dues for this period together with all allowances.

4. The petitioner joined the judicial service as Civil Judge, Junior Division and Judicial Magistrate First Class on 23rd October, 1990. She states that prior to that, she graduated in law in the year 1984 and registered herself as an advocate of the Bar Council of Maharashtra and Goa. She started practicing law and after her appearance at the examination and fulfilling the requisite eligibility criteria, she was appointed as Civil Judge, Junior Division and Judicial Magistrate First Class on 23rd October 1990. While in service, she completed her post graduation in law in the year 1999. She rendered services sincerely and honestly and to the best of her ability. On account of her hard work and devotion, she earned a substantive promotion as Civil Judge, Senior Division on 5th June, 2000. She earned yet another promotion on 28th May, 2001, which was ad-hoc in nature. The petitioner was given a regular promotion in the cadre of District Judge on 20th March, 2002. Thus, she has been working in the cadre of District Judge and while working, she improved upon her academic qualifications. She was conferred with a doctoral degree by Dr. Babasaheb Ambedkar Marathwada University, Aurangabad in the year 2009. She has also been improving her qualifications as set out in para 5 of the petition.

5. It is her grievance that till August, 2011 she was never communicated any adverse remarks in her confidential reports, save and except the confidential report for the year 2007-08. That was communicated to her in August 2011. It is only when she was served with the impugned order that she obtained the requisite information under the Right to Information Act, 2005. She has then set out the details of her confidential reports and from inception. These details are set out in para 6 at pages 4 to 7 of the paper book.

6. She would submit that the confidential reports being more than 10 years old, in her belief they are not relevant for the purposes of the present state of affairs or the impugned order.

7. The petitioner states that it was in the very first year after her promotion on ad-hoc basis as District Judge, that her confidential reports were graded as "Average" for the year 2001-02. She states that although the five Judges' committee has rated her confidential reports to be "Average" in the year 2001-02, the reporting authority had assessed her performance as "Very Good". The petitioner states that even this remark of "Average" and which is adverse, would not be of any significance once she was promoted on regular basis in the cadre of District Judge on 20th March, 2002. The petitioner states that this confidential report has still been relied upon, and which could not have been done after a lapse of nearly 10 years, to pass the impugned order. She has also referred to the details of this confidential report. She has, in para 9 of the petition, pointed out that the remarks "Fair" so also "Noteworthy" do not appear in the categories which are specified for the confidential reports. Confidential

reports must contain grading in terms of the scheme as "Outstanding", "Very Good", "Positively Good", "Good", "Average", "Below Average". Therefore, nothing that falls outside this scheme is permissible to be inserted as a remark.

8. At the same time, the petitioner states that the confidential remarks as far as her posting for the period 11th June, 2002 to 4th December, 2002 are concerned, were certified to be "Very Good" by the reporting officer. In the second spell from 5th December, 2002 to 31st March, 2003 at the same station, the reporting authority graded her as "Very Good" and against the column "General Remarks", it was written that she is a hard working, honest, sincere and a good hand. These remarks of distinct spells have been graded as "Average" by the five Judges committee of this Court. It is in these circumstances that in paras 10 and 11 she faults the process of writing of these remarks. She also states that it is surprising that in the succeeding year 2004-05 the gradation in the confidential remarks by the learned Guardian Judge in his capacity as reviewing authority are "B+". That means "Positively Good". The reporting authority, however, has assessed as "A" i.e. "Very Good". Annexure "D" is relied upon and this states that for the following years 2005-06, 2006-07, both reporting and reviewing authorities have graded her performance as "Good".

9. However, in para 14 of the petition, while presiding over as a Special Judge of cases under the Maharashtra Control of Organised Crimes Act, 2002 for cases related to counterfeit Government Stamps and Stamp Papers for all over Maharashtra ("the Telgi Scam cases" for short), the petitioner has stated that this was an assignment for her meritorious service of the past. Meaning thereby, she was appointed to preside over this Court as a Special Judge on account of her performance in the past. She sets out the details of these cases in paras 14 and 15 and states that during the course of the assignment and on account of annual transfer, she was shifted as Judge of the City Civil Court, Mumbai on 6th July, 2007. Even there she presided over certain Courts as a Special Judge. She also came to be transferred as a Judge of the Family Court at Nagpur. Thus, she states that having been chosen to preside over important Courts and having been assigned special cases, none of the remarks and which are stated to be adverse are of any significance, and no weightage ought to have been given to them. It is in these circumstances that she refers to her representation which dealt with the remarks of August, 2007 and April, 2008. Those remarks were with regard to her disposal and which was found to be inadequate. She has stated that the representation against this was rejected by this Court by communication dated 11th April, 2008.

10. In para 18, she refers to certain loss of records. Though the confidential reports for the year ending 31st March, 2008 were misplaced, but to her knowledge, they were indeed written by the reporting and reviewing authorities. This was made known to the petitioner under communication dated 19th December, 2009 and thus her confidential reports were instructed to be rewritten. That is how the details were called for through the Principal Judge of

the city Civil and Sessions Court, Mumbai. The petitioner believes that her original confidential report was positive but some mischief and malafides in the misplacement of the service records/confidential reports has resulted in injustice to her. She relies upon the information provided to her under the Right to Information Act, 2005, which reveals that she has been rated "Good" all throughout. She was held to be capable of shouldering additional responsibilities. She relies upon annexure "I" to the petition. At the same time, she states that for the year 2009-10 ending on 31st March, 2010, the confidential report carried the entry "Below Average" by the reviewing authority. In that, he recorded disagreement with the net result of the reporting authority. He had graded performance as "Good" and against general remarks column, he had written "Generally Good". It is in these circumstances that she would submit that her grading as "Below Average" would not have been reflecting her performance throughout. It is indeed unjust, according to her, therefore, that even though the confidential report for the year 2009-10 came to be recorded on 28th June, 2011, the administrative committee confirmed the remarks for the year ending 31st March, 2009 and maintained the net result as "Good". If the petitioner is found to be capable and of shouldering higher responsibilities by a different administrative committee on 28th June, 2011 based on the annual confidential report for the year ending 31st March, 2009, then, according to the petitioner, it is inconceivable that for the succeeding year, namely, ending on 31st March, 2010, the general remarks noted as "Below Average" would not have weighed with the same committee. Thus, the committee could not be said to be unaware of these general remarks. Therefore, this dichotomy and distinct difference between the two annual confidential reports and remarks in relation thereto have been highlighted by the petitioner in paras 19 and 20 of the petition. Thus, the case of the petitioner appears to be that there is some deliberate act by which her service record has been spoiled and in that relation, she refers to CBI Case Nos. 111 of 2014, 112 of 2014, 11 of 2014 and Sessions Case No. 550 of 2006. She would submit that it is only because of a very high powered official of the State, who was serving as Superintendent of Stamps, that false allegations were generated against her. The details of all these are set out in paras 22 to 24 of the petition and then the petitioner refers to her transfer to Nagpur in April, 2011. She has also pointed out her difficulties and the general inconvenience faced by her on account of this transfer. She, therefore, submits that if a Guardian Judge has assessed her as "Good" and there is nothing adverse about integrity, impartiality and character, then it cannot be that her performance and overall could be said to be poor, below average or her integrity doubtful. It is in these circumstances, she would submit that the impugned order has a punitive character and requires interference in our writ jurisdiction under Article 226 of the Constitution of India. She has submitted that the order is passed on no material and if there is at all material before the competent authority, the same does not reflect anything by which was necessary to retire the petitioner compulsorily and in public interest.

11. The writ petition was served on the respondents and a reply affidavit has been filed by the Registrar (Legal and Research) of this Court. After general denials, it has been pointed out that the basis of the challenge to the impugned order and the petition is that the annual confidential reports are not correct and if these annual confidential reports and remarks therein are done away with, the petitioner was fit to be continued beyond 50 years in service. Thus, all the allegations in the petition are denied and it is stated that some vague pleas about the malafides or arbitrariness does not carry the case of the petitioner any further. Though it is true to say that the petitioner was not communicated any adverse remarks till the end of August, 2011, save and except the confidential report of the year 2007-08, it is incorrect to say that anybody in the high power committee of this Court had acted arbitrarily. It is incorrect to assume that a particular remark or a particular annual confidential report and of a particular year has influenced the committee in recommending to the State that it would be desirable to retire the petitioner from service on attaining 50 years of age. It is an overall assessment based on the petitioner's performance. It is clear that the recommendations of this Court are based on the materials including the remarks in the annual confidential reports. Thus, merely because the annual confidential reports contain a particular remark and which could be said to be favourable, it is not proper to assume that the petitioner is proceeded against punitively. It is in these circumstances that the order is justified. Thus, all the allegations in the petition have been denied.

12. There is a rejoinder affidavit which is filed by the petitioner, seeking to deal with the affidavit in reply and it is nothing but a reiteration of the averments in the petition. Further reliance is placed therein on certain judgments of the Hon"ble Supreme Court of India and this Court, to which we will make a reference while dealing with the petitioner's arguments.

13. It is on the above material that we have heard the petitioner's counsel Mr. Deshpande. The petitioner's counsel has submitted that the annual confidential reports for the year 2002-03 are not adverse. Our attention is invited to pages 117 and 119 of the paper book and, pages 36 and 41, to certain remarks recorded in the annual confidential reports and it is urged that "Fair" and "Satisfactory" are not the remarks which could be recorded in the confidential reports. In any event, according to the counsel, the cumulative effect of all these remarks cannot be adverse, for one cannot ignore the positive remarks in the annual confidential reports. If, save and except for the year 2007-08, the annual confidential remarks contain nothing adverse, then, it is impossible that a conclusion can be reached suddenly that it is necessary to retire the petitioner in public interest. The oral arguments are also supported by a detailed written note. That written note was handed over at the conclusion of the arguments.

14. The thrust of Mr. Deshpande's arguments is that this is a case of no material at all. Once there was no material to arrive at the satisfaction that the judicial officer is required to be retired compulsorily and in public interest, then, the

order must be quashed and set aside. Mr. Deshpande has submitted that if knowledge of law and procedure and the quality of judgments is fair, the disposal is noteworthy, reputation, integrity, impartiality and character are good, then, the net result could not have been "Average". If the petitioner's performance has been throughout rated as "Good", then only on account of some intermittent remarks of the above nature, the overall assessment could not have led to the conclusion that the petitioner was unfit to be retained in service.

15. It is submitted that the un-communicated adverse remarks cannot form the basis for the satisfaction necessary for compulsorily retiring a public servant and particularly a judicial officer. The petitioner entertains the belief that the decision is based predominantly on the alleged lack of integrity and character. Mr. Deshpande would submit that if the annual confidential reports are not ready within a reasonable time, then, legal malafides are apparent. It is submitted that belated assessment and review of the adverse remarks by the Guardian Judge would mean that this Court does not fulfill its Constitutional obligation and duty to fairly judge and assess the performance of the members of District Judiciary. It is emphasised that if the judicial work of the petitioner is not below the required standards, then, the justification to retire her and that too in public interest is vitiated for non-application of mind and for ignoring the relevant and germane materials. This is a case, therefore, where the order can be termed as based on no material. It is, therefore, submitted that the same be quashed and set aside.

16. Reliance is placed on number of judgments, copies of which have been annexed to the written note of submissions and compilations of which were tendered during the course of arguments.

17. On the other hand, Mr. Dani, learned Senior Counsel appearing for respondent No. 2, has submitted that while scrutinising the legality and validity of an order of compulsory retirement, this Court does not function as an appellate authority or an appellate Court. It cannot sit in judgment or in appeal over the conclusion reached by the administrative committee. Mr. Dani would submit that the order of compulsory retirement does not cast any stigma. It is not punitive in nature. It is not based on mere remarks for a year or so, but on an overall assessment of the performance to find out whether the officer is fit to be continued in judicial service. Once the assessment is made in an overall manner and taking into account all relevant and germane factors, then no arbitrariness or malafides can be attributed to the authorities. Just as it is the duty of this Court to protect honest and hardworking judicial officers, equally it is its Constitutional duty to assess their performance periodically to determine their fitness for continuance in judicial service. Those inefficient would have to be chopped off or their services done away with in order to protect the larger public interest. In the circumstances, he would justify the satisfaction reached and consequently the impugned order. Mr. Dani places reliance on the following judgments:--

"(a) Pyare Mohan Lal v. State of Jharkhand and Ors. , (2010) 10 SCC 693).

(b) Rajendra Singh Verma (dead) through legal heirs and Ors. v. Lieutenant Governor (NCT of Delhi) and Ors. , (2011) 10 SCC 1.

(c) R.C. Chandel v. High Court of Madhya Pradesh and Anr. , (2012) 8 SCC 58."

18. For properly appreciating the rival contentions, it would be worthwhile referring to the relevant Rules.

19. The Maharashtra Civil Services (Pension) Rules, 1982 have been relied upon as the relevant Rule in this regard. It is common ground and undisputed that these Rules also govern the members of the judicial service of the State. In addition, the Rules of 2008, which have been pressed into service also would authorise and empower the Court to make the requisite recommendations. In this regard, the Maharashtra Civil Services (Pension) Rules, 1982 contains Rule 10. That Rule reads as under:--

"10. Age of retirement.

(1) Except as otherwise provided in this rule, every Government servant, other than a Class IV servant, shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years:

Provided that, a Government Servant who had attained the age of 58 years prior to issuance of Government Resolution, Finance Department No. PEN. 1099/34/SER-4, dated the 2nd February 1999 and who has been continued thereafter in service shall retire from 28th February 1999 (a.n.)

(2) Subject to the provisions of sub-rule (4), a Government servant in Class IV service shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years.

(3) The following rules are applicable to particular services:

(a) Holders of the posts of the Chief Judge of the Court of Small Causes, Bombay, and the Administrator General and Official Trustee, Bombay, whether they are recruited directly or are promoted from subordinate posts, should ordinarily be retained in service till the age of 60 years, if they continue to be efficient upto that age, otherwise they may be required to retire at the age of 55 years or any time thereafter.

(b) The Principal Judge, Bombay City Civil and Sessions Court, Bombay, the Chief Metropolitan Magistrate, Bombay, the Coroner of Bombay and the Additional Coroner of Bombay, should be required to retire on attaining the age of 60 years.

(c) A Judge of the City Civil and Sessions Court (being a Judge appointed direct from Bar) should be required to retire on his completion of the requisite years of qualifying service or duty necessary to entitle him to get the benefit of rule 53 or on his attaining the age of 60 years, whichever is earlier, provided that such a Judge should not be required to retire before he attains the age of 55 years.

(4) Notwithstanding anything contained in sub-rules (1) and (2) of this rule, the appropriate authority, if it is of the opinion that it is in the public interest so to do, by giving [notice of three months] in writing in Form 30 or in Form 31, as the case may be, or three month's pay and allowances in lieu of such notice, have the absolute right to retire-

(a) any Gazetted Government servant under the rule making control of the State Government:--

(i) if he had entered Government service under any Government in India, before attaining the age of thirty-five years, after he has attained the age of fifty years, and

(ii) in any other case, after he has attained the age of fifty-five years;

[Provided that a Government servant who holds a Class III post in a substantive capacity but is holding a Class I or Class II post in an officiating capacity, shall, in case it is decided to retire him from service while holding a Class I or Class II post, in the public interest, be allowed on his request in writing to the appropriate authority to continue in service in Class III post which he holds in a substantive capacity.]

(b) any Government servant who holds a post in class III service of the State, either pensionable or non-pensionable, after he has attained the age of fifty-five years;

(c) any Government servant who holds a post in class IV service of the State and who is recruited in Government service on or after the 21st September, 1970, after he has attained the age of fifty-five years.;

(5) Notwithstanding anything contained in sub-rules (1) and (2) of this rule, any Government servant may, by giving [notice of three months] in writing to the appropriate authority, retire.

(a) in the case of a Government servant-

(i) referred to in sub-rule (4) (a) (i), after he has attained the age of fifty years.

(ii) Referred to in sub-rule (4)(a)(ii) after he has attained the age of fifty-five years;

(b) in the case of a Government servant referred to in sub-rule (4) (b) and (c), after he has attained the age of fifty-five years:

Provided that where the Government servant giving notice under sub-rule (5) is under suspension or is deemed to be under suspension, it shall be open to the appropriate authority to withhold permission to such Government servant to retire under this rule:

Provided further that where a Government servant giving notice under sub-rule (5) is placed under suspension after he has given notice of retirement as above,

it shall be open to the appropriate authority to withdraw permission, if already granted or, as the case may be, to withhold permission to such government servant to retire voluntarily under this rule.

Explanation-

For the purposes of sub-rules (4) and (5) -

(1)"appropriate authority" means the authority which has the power to make substantive appointment to the post or service from which the Government servant retires, or wants to retire;

(2) the three months notice referred to in these sub-rules may be given either before or after the Government servant attains the age of fifty or fifty-five years provided that the retirement takes place after he has attained the age of fifty or fifty-five years, as the case may be;

(3) in computing the notice period of three months referred to in these sub-rules the date of service of notice and the date of its expiry shall be excluded.

Note 1 - A Government servant whose date of birth is the 1st of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of 58 years or 60 years, as the case may be

Note 2 - For the purposes of sub-clauses (a) and (b) of sub-rule (4) the age of entry into Government service or recruitment in Government service shall be the age at which a Government servant was appointed to a full time post and not to a part time or honorary post.

(6) (a) A Government servant referred to in sub-rule (5) may make a request in writing to the appropriated authority to accept notice of voluntary retirement of less than three months giving reasons therefore;

(b) on receipt of a request under clause (a), the appropriate authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appropriate authority, with the concurrence of the Finance Department, may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(7) A Government servant, who has elected to retire under sub-rule (5) and has given the necessary notice to that effect to the appropriate authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement

20. A perusal of Rule 10 would reveal that the competent authority is empowered

to undertake a review of the performance or work of a public servant/official including a judicial officer on her/his attaining 50 years of age. This would enable the administration to remove those who are inefficient and can safely be termed as deadwood. Equally, the services of those who, in public interest, ought not be continued can be done away with. All this is without casting any stigma. A three Judge Bench of the Hon''ble Supreme Court of India, in the case of Pyare Mohan Lal v. State of Jharkhand and Ors. , (2010) 10 SCC 693 had an occasion to refer to the relevant principles which must be applied for judicial review of an order of this nature. From para 8 onwards of this decision, the Hon''ble Supreme Court of India refers to power of compulsory retirement and the nature of the order. If the order is based on no evidence or is arbitrary in the sense that no reasonable person would form the necessary opinion on the given material and perverse, then, this Court can interfere with it. The principles have been summarised and each of those cases which Mr. Dani relies upon are referred from paras 8 onwards. In para 18, the law and the point has been summarised as under:--

"18. Thus, the law on the point can be summarised to the effect that an order of compulsory retirement is not a punishment and it does not imply stigma unless such order is passed to impose a punishment for a proved misconduct, as prescribed in the statutory rules. (See *Surender Kumar v. Union of India* , (2010) 1 SCC 158). The Authority must consider and examine the overall effect of the entries of the officer concerned and not an isolated entry, as it may well be in some cases that in spite of satisfactory performance, the authority may desire to compulsorily retire an employee in public interest, as in the opinion of the said Authority, the post has to be manned by a more efficient and dynamic person and if there is sufficient material on record to show that the employee "rendered himself a liability to the institution", there is no occasion for the court to interfere in the exercise of its limited power of judicial review."

21. Once the power is not exercised to impose a punishment for a proved misconduct, then by its very nature, the order of compulsory retirement is not a punishment nor does it imply a stigma. The Hon''ble Supreme Court thus obliged the authority to consider the overall effect of the entries of the official concerned and not an isolated entry, for it may well be in some cases that in spite of satisfactory performance, the authority may desire to compulsorily retire an employee in public interest, as in the opinion of the said authority, the post should be manned by a more efficient and dynamic person. If there is sufficient material on record to show that the employee has rendered himself a liability to the institution, then he must be retired in the public interest and a replacement brought in.

22. It is this very principle which has been applied and we do not see how Mr. Deshpande can seek any assistance of another legal principle that uncommunicated adverse remarks cannot form the basis for an opinion that the officer concerned is required to be retired compulsorily.

23. Mr. Dani has also relied upon a subsequent judgment in the case of Rajendra

Singh Verma v. Lieutenant Governor (NCT of Delhi) and Ors. , (2011) 10 SCC1
This also is a case of compulsory retirement of a judicial officer. In this judgment, while emphasising the importance of judicial service to the State, the Hon'ble Supreme Court holds that judicial service is not a service in the sense of an employment as is commonly understood. Judges discharge 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. There is no manner of doubt that the 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. The Hon'ble Supreme Court emphasises this to be a part and parcel of the mandate of Article 235 of the Constitution of India. Thus, the power of control vesting in the higher judiciary is coupled with a duty. The High Court, therefore, must weed out those who are inefficient and that is why the powers are conferred on it to prematurely retire and make a recommendation to that effect to the State Government, and by which the State Government is bound.

24. It is futile to suggest that while assessing the performance of judicial officer, the High Court does not desire to protect those whose performance is exemplary or those who are efficient, honest and devoted to work. A balance is struck inasmuch as the High Court must equally perform sometimes a unpleasant task of assessing the performance of the members of the district judiciary for finding out whether they are fit to be continued beyond a certain specified age or a certain number of years of service rendered by them. The very power to review and assess their performance periodically is exercised to subserve the larger public interest. Once the High Court acts as a trustee of the public, then, that enables it to take a decision as in the present case. When there is an overall assessment of the record and work of the judicial officer, then there is hardly any ground to complain. It is not possible to interfere with an order of compulsory retirement merely because another view is possible on the basis of the same material. Powers of judicial review would not enable this Court to interfere with the opinion recorded on the administrative side.

25. We had, during the course of arguments, impressed upon the parties that on the administrative side of this Court, the remarks of the reporting authority are reviewed. These remarks in the confidential reports are reviewed by a Judge who is appointed as a Guardian Judge of that district in which the judicial officer is posted either as a District Judge or otherwise. The reporting authority, namely, the Principal District Judge reports about the administrative abilities, punctuality, relations with the staff, colleagues and members of public litigants and the manner in which official duties and other work has been performed. He is not a superior of the Judge concerned. Therefore, he has no occasion to sometimes remark about his peer's judicial ability. The judicial ability and quality of the concerned presiding officer or District Judge is judged by the Guardian Judge. He has before him the entire service record including certified true copies of the judgments on the civil and criminal side recently delivered by the Judge. Upon

perusal and scrutiny of this entire material, the learned Guardian Judge remarks about judicial ability of the officer. While reviewing his overall performance, he comments upon the quality of his judgments. The quality of judgments is assessed in such a manner that the learned Guardian Judge remarks about knowledge of law and procedure, the ability of the judicial officer of appreciation and marshalling of facts and evidence, application of case law, etc. If the judgments are clear and if there is no difficulty for the litigant to understand the reasoning and conclusion, then, there are several categories of remarks that can be entered. It is not necessary that the learned Judge must always confine himself or herself to pre-defined remarks like "Good", "Positively Good", "Very Good" or "Outstanding". In a given case, a stray entry as "Fair" or "Satisfactory" against one column would not mean that the net result is incapable of categorised as, "Average", "Below Average", "Good", "Very Good", "Positively Good" or "Outstanding". The ordinary and dictionary meaning of the word "Fair" in the context of the grading or assessment of one's performance is moderately good or just a above average. Hence, we cannot restrict the grading or assessment in the manner suggested for the meaning is to be gathered by reading the remarks as a whole. Eventually, "Fair" or "Satisfactory" may not necessarily be a positive or negative grading. Everything depends on the facts and circumstances of each case. The learned Guardian Judge, therefore, has a wide choice of words, inasmuch as he may also, while assessing the performance qua the judgments, term them as "Satisfactory" or "Fair" and remark that there is a scope for improvement. He may have a word of advice for the concerned Judge as well. In these circumstances, we would not be able to agree with Mr. Deshpande that the entries in these columns have to be necessarily restricted or the choice or use of words would reveal that the reviewing authority has acted unfairly or unjustly. We would not be in a position to agree with him that the remarks ought to have been as "Good" and not "Poor", "Average" or "Below Average". It is the overall assessment, therefore, by the Guardian Judge for a particular time period that is material. However, it must be clarified immediately that after the exercise is carried out by the learned Guardian Judge, there is an another committee of three Judges of this Court which applies its mind and concludes that it is agreeable or affirms the remarks of the learned Guardian Judge or that it disagrees with him or her as against the remarks in a particular column or against a particular head. It may, thus, alter the net result as well. It can confirm it or modify it. After the three Judge committee applies its mind, it is not as if the matter stands concluded. These remarks are then placed before a committee of five judges, namely, the administrative committee. The administrative committee then once again peruses the entire record, scrutinises and verifies each of the remarks, the entries for all the relevant years and then arrives at a conclusion. It is thus the overall assessment of the service is made. If the matter passes through several hands and at nearly four competent levels, then it is futile to urge that the power of the full court has been usurped or taken over by a small committee in this Court. Even otherwise, in a three Judge Bench decision in the case of Chandra Singh v. State of Rajasthan , AIR 2003 SC 2889

the Hon"ble Supreme Court clarifies the legal position in para 41 at page 2901 in the following terms:--

"41. Article 235 of the Constitution of India enables the High Court to assess the performance of any Judicial Officer at any time with a view to discipline the blacksheep or weed out the dead wood. This constitutional power of the High Curt cannot be circumscribed by any rule or order. We can usefully refer to some of the leading cases on Art. 235.

1. State of Assam v. Ranga Mohammed, , AIR 1967 SC 903 (5-Judges).
2. Shamsheer v. State of Punjab, , AIR 1974 SC 2192 (7-Judges).
3. High Court of Judicature at Bombay v. Shirish Kumar Rangrao Patil, , AIR 1997 SC 2631 (2637)."

26. Thus, after the seven Judge Bench decision in State of Uttar Pradesh v. Batuk Deo Pati Tripathi and Anr. , (1978) 2 SCC 102, the delegation to smaller committees cannot be termed as unconstitutional and illegal. (See para 3-II of Nawal Singh v. State of Uttar Pradesh , AIR 2003 SC 4303) We do not see how any complaint of this nature can be made in the given facts and circumstances. The annexures to the petition would reveal as to how the remarks and for those years, as have been referred, were placed before the learned Guardian Judge and thereafter the administrative committee applied its independent mind to the same. It is not a rubber stamp endorsement made routinely of these remarks. It is not as if some casual exercise is undertaken and completed. It is not a mechanical or formal exercise. Once the remarks were placed and in this case before the five Judges committee and the committee found that the annual confidential reports from 2000 to 2010 shows the performance of the petitioner as falling short of the required standards, that there is a marked deterioration in the same, then, it was rightly concluded that her continuation in service would not be useful to the institution. The 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 [see para 48 of Chandra Singh (supra)].

27. The remarks against the column "Integrity" have also been perused carefully. It is, therefore, clear that there was material before the appropriate committees, which took into consideration the remarks and concluded that the performance needs to be weighed for integrity and character. The vigilance record and maintained by an independent department of this Court on administrative side was also perused for the number and nature of complaints. Thus, the record has been considered in totality. If this consideration reveals that the judicial officer does not deserve to be continued in judicial service and it is fit to retire her prematurely from service in public interest, then acceptance of that decision by the State does not mean that the order passed and impugned in the petition can be termed as based on no material at all. It cannot be termed as arbitrary and perverse either. Once there was definite material and some of which has been referred by the petitioner herself, then it is not possible to agree with Mr.

Deshpande that the powers of judicial review should be exercised to interfere with the impugned order. The parameters of judicial review are well settled. As held by the Hon'ble Supreme Court in the case of Nawal Singh (supra) at page 4311 that it is impossible to prove by positive evidence the basis for doubting the 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 judicial officer from close quarters and formation of his opinion with regard to overall reputation enjoyed by the concerned officer would be the basis. (see para 8 at page 4311). Thus, we are not appellate authorities to reassess or re-appreciate all the materials.

28. As far as the judgments which have been relied upon by Mr. Deshpande, in the case of Madan Mohan Choudhary v. State of Bihar , AIR 1999 SC 1018 the Hon'ble Supreme Court found that the order of compulsory retirement passed by the State Government had to be quashed because the adverse remarks for the years 1991-92, 1992-93 and 1993-94 were not recorded in the normal course and that too when the standing committee of the High Court had already formed an opinion to compulsorily retire the appellant from service. The representation made against these remarks was not dealt with promptly but was disposed of by the High Court after a long period of one year. These remarks which were recorded in the character roll of the appellant at one go and were communicated to the appellant on 29th November, 1996, were considered by the Full Court on 30th November, 1996 and the Full Court then approved a proposal to compulsorily retire the appellant from service. This was the background in which the High Court order was interfered with by the Hon'ble Supreme Court. It found that the materials before the High Court were not of such nature as would enable it to reach and form the opinion that the appellant had outlived his utility as a judicial officer. Thus, in the given facts and circumstances the Hon'ble Supreme Court referred to the principles in the earlier cases and quashed and set aside the order of compulsory retirement.

29. In the case of High Court of Judicature at Patna v. Shyam Deo Singh and Ors. , 2014(4) SCC 773 the Hon'ble Supreme Court found that the adverse remarks dated 15th December, 1995 had not been communicated to the respondent. The record further revealed that the standing committee of the High Court in its meeting had decided to close the matter instead of proceeding any further. The subsequent annual confidential reports of the respondent for the year 1997-98 and 2000-01 were sufficiently positive and depicted the respondent as an efficient judicial officer with a good reputation for honesty and impartiality. The respondent gained two promotions and thus, it was evident that the adverse remarks dated 15th December, 1995 were not acted upon. It was in these circumstances and on account of the exemplary service record so also the overall improved performance that the Hon'ble Supreme Court in a three Judge Bench decision dismissed the appeal of the High Court. The order of compulsory retirement which was set aside by the High Court was thus set aside by the Hon'ble Supreme Court, meaning thereby, the High Court's conclusion was

upheld.

30. We would be failing in our duty if we do not remind all concerned about the importance of writing and communicating the remarks in the annual confidential reports. In the case of Registrar General, High Court of Patna v. Pandey Gajendra Prasad and Ors. , (2012) 6 SCC 357, the Hon"ble Supreme Court, in the above context, held thus:--

"12. Article 235 of the Constitution of India not only vests total and absolute control over the subordinate courts in the High Courts but also enjoins a constitutional duty upon them to keep a constant vigil on the day-to-day functioning of these courts. There is no gainsaying that while it is imperative for the High Court to protect honest and upright judicial officers against motivated and concocted allegations, it is equally necessary for the High Court not to ignore or condone any dishonest deed on the part of any judicial officer. It needs little emphasis that the subordinate judiciary is the kingpin in the hierarchical system of administration of justice. It is the trial Judge, who comes in contact with the litigant during the day-to-day proceedings in the court and, therefore, a heavy responsibility lies on him to build a solemn unpolluted atmosphere in the dispensation of justice which is an essential and inevitable feature in a civilised democratic society.

13. In High Court of Judicature of Bombay v. Shashikant S. Patil (2003) 1 SCC 416: 2000 SCC (L&S) 114 highlighting a marked and significant difference between a judicial service and other services, speaking for a Bench of three Judges, K.T. Thomas, J. observed as follows: (SCC p. 425, para 23)

"23. The Judges, at whatever level they may be, represent the State and its authority, unlike the bureaucracy or the members of the other service. Judicial service is not merely an employment nor the Judges merely employees. They exercise sovereign judicial power. They are holders of public officers of great trust and responsibility. If a judicial officer "tips the scales of justice its rippling effect would be disastrous and deleterious". A dishonest judicial personage is an oxymoron."

14. In short, it is the constitutional mandate that every High Court must ensure that the subordinate judiciary functions within its domain and administers justice according to law, uninfluenced by any extraneous considerations. The members of the subordinate judiciary are not only under the control but also under the care and custody of the High Court. Undoubtedly, all the judges of the High Court, collectively and individually, share that responsibility.

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23. As regards the observation of the Division Bench on the reputation of the first respondent based on his ACRs, it would suffice to note that apart from the fact that an ACR does not necessarily project the overall profile of a judicial officer, the entire personal file of the respondent was before the Full Court when

a conscious unanimous decision was taken to award the punishment of his dismissal from service. It is also well settled that in cases of such assessment, evaluation and formulation of opinion, a vast range of multiple factors play a vital and important role and no single factor should be allowed to be blown out of proportion either to decry or deify issued to be resolved or claims sought to be considered or asserted. In the very nature of such things, it would be difficult, rather almost impossible to subject such an exercise undertaken by the Full Court, to judicial review, save and except in an extraordinary case when the Court is convinced that some exceptional thing which ought not to have taken place has really happened and not merely because there could be another possible view or there is some grievance with the exercise undertaken by the Committee/Full Court. (See Syed T.A. Naqshbandi v. State of J&K , (2003) 9 SCC 592 : 2003 SCC (L&S) 1151.

.....

25. However, before parting with the judgment, we deem it necessary to make a mention about the recording of the ACRs of judicial officers. We feel that the present system of recording the ACRs leaves much to be desired and needs to be revamped. Experience has shown that it is deficient in several ways, being not comprehensive enough to truly reflect the level of work, conduct and performance of each individual on the one handed and unable to check subjectively on the other. This undoubtedly breeds discontent in a section of the judicial service besides eroding proper and effective superintendence and control of the High Court over subordinate judiciary.

26. The process of evaluation of a judicial officer is intended to contain a balanced information about his performance during the entire evaluation period, but it has been noticed that many a times, the ACRs are recorded casually in a hurry after a long lapse of time (in some cases even after the expiry of one year from the period to which it relates), indicating only the grading in the final column. It needs no elaboration that such hurried assessment cannot but, be either on the basis of the assessment/grading of the preceding year(s) or on personal subjective views of the Inspecting Judges(s), which is unfair to the judicial officer.

27. Undoubtedly, ACRs play a vital and significant role in the assessment, evaluation and formulation of opinion on the profile of a judicial officer, particularly, in matters relating to disciplinary action against a judicial officer. The ACRs of such officer hold supreme importance in ascertaining his conduct, and therefore, the same have to be reported carefully with due diligence and caution. We feel that there is an urgent need for reforms on this subject, not only to bring about uniformity but also to infuse objectivity and standardisation."

31. In a subsequent judgment in the case of Sukhdev Singh v. Union of India and Ors. , (2013) 9 SCC 566 the three Judge Bench of the Hon"ble Supreme Court, resolving the controversy, held as under:--

"In our opinion, the view taken in *Dev Dutt v. Union of India*, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771. that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR - poor, fair, average, good or very good - must be communicated to him/her within a reasonable period."

32. We do not think that any larger question and controversy should be decided, simply because the emphasis in Mr. Deshpande's arguments is that uncommunicated adverse remarks cannot form the basis of the opinion to compulsorily retire the petitioner. In the facts before us, it was not the complaint of the petitioner that remarks are uncommunicated. Had they been uncommunicated, the petitioner could have complained straightaway. It is her complaint that in August, 2011 her annual confidential reports for prior period were written and those were taken into consideration by the committee of this court on administrative side to form the requisite opinion. The complaint is that the committee did not take into consideration the positive reports but relied upon the adverse remarks and stated to be recorded at one go by this Court. That is not the factual position. The annual confidential reports of 10 years have been considered. Some intermittent positive entries do not mean that on all fronts and consistently the petitioner's performance was of the required standard and to be categorised as "Good". There was something lacking in the sense the disposal was not adequate, the integrity and character was remarked upon as not of required standard. Her performance was required to be weighed on these counts as well. Therefore, the averments in the petition would not enable us to reach the conclusion that the impugned order is vitiated.

33. We have taken into consideration all the materials that were relied upon to retire the petitioner compulsorily from service and which have been placed before us. Our conclusion that the petition is required to be dismissed is thus not on some remarks and which in the complaint of the petitioner were not communicated.

34. In passing, we would also invite the attention of all concerned to the pleadings in this petition. Although the argument is premised on legal malafides, what we find repeatedly as an averment in the petition and particularly in paras 21 and 26 is that the learned Guardian Judge, who recorded the net result as "Average"/"Below Average", is accused of bias and prejudice against the

petitioner. The averment is hopelessly vague. The particulars of the tenure of the learned Guardian Judge and the petitioner's postings at the relevant station are conspicuously missing from the pleadings. It is well settled that allegations of malafides are easily made, but are difficult to prove. They should not be taken into consideration unless cogent and satisfactory materials are placed to establish and prove the allegations. In such circumstances, when the projection is of personal malafides, but the argument is directed against legal malafides, then all the more we are disinclined to interfere at the instance of the petitioner in our equitable and discretionary jurisdiction under Article 226 of the Constitution of India. The above situation can be avoided by timely writing, reporting and reviewing of the annual confidential reports.

35. As a result of the above discussion, the Writ Petition is dismissed. There would be no order as to costs.