

(2014) 07 JH CK 0015
In the Jharkhand High Court
Case No : W.P. (s) No. 919 of 2013

Mahesh Prasad Sinha

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 229, 233(1), 235

Citation : (2014) 3 AJR 788

Hon'ble Judges : R. Banumathi, C.J;P.P. Bhatt, J

Bench : Division Bench

Advocate : Dhruv Agrawal, M.S. Mittal, Sr. Counsels, Manoj Saxena and Anand Kumar Sinha, Advocate for the Appellant; Ananda Sen, Counsel, Advocate for the Respondent

Judgement

P.P. Bhatt, J.—The petitioner by way of the present writ petition under Article 226 of the Constitution of India, has prayed for issuance of an appropriate writ for quashing the notification No. 6/est.-a//se./ni/-/1/2012 ka 6783/Ranchi dated 29.5.2012 (Annexure-24) issued by the respondent No. 1, whereby and whereunder the petitioner has been compulsorily retired on 30th May, 2012 from the post of Principal Judge, Family Court, Dumka. It is further prayed to quash/expunge/delete the adverse entry made in A.C.R., of the petitioner as contained in Annexure-5, 10/1, 10/2 and 15/2. It is further prayed that the direction be issued upon the Respondent No. 2 to reinstate the petitioner on his post of Principal District Judge/Principal Judge, Family Court with all consequential benefits with continuity of service like entire back salary and promotion in super time scale.

2. The brief facts of the present case are as follows:-

The petitioner was selected for direct recruitment as Additional District and Sessions Judge vide Notification dated 21st May, 1997 and accordingly, he joined as an Additional District and Sessions Judge, Bhagalpur, Bihar on 28th May, 1997. Thereafter, the petitioner was confirmed in the service on 21st of March,

2001. After creation of the State of Jharkhand, the petitioner joined as Additional District and Sessions Judge at Tenughat, district-Bokaro on 16th of March, 2001.

Thereafter, on 02nd February, 2002, the petitioner was promoted to the rank of District and Sessions Judge. The selection grade was given to the petitioner on 11.08.2006. Thereafter, on the basis of complaint received by the High Court in June, 2006, enquiry was ordered and initiated against the petitioner. In the departmental enquiry, three charges were levelled against the petitioner and on conclusion of the enquiry, the petitioner was exonerated from all the charges. Thereafter, the petitioner was compulsorily retired under Rule 74(b)(ii) with effect from 30th May, 2012 by the State Government upon the recommendation made by the Standing Committee of the High Court under Rule 8(ix) of the Jharkhand High Court Rules, 2001.

3. Being aggrieved and dissatisfied by the said action of compulsory retirement, the petitioner has preferred the present writ petition.

4. The learned senior counsel Mr. Dhrub Agrawal appearing for the petitioner by referring Article 233(1) of the Constitution of India, submitted that appointments, posting and promotion of District Judges, in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. By referring Article 235 of the Constitution of India it is submitted that the control over district courts and courts subordinate thereto including the posting and promotion and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court. In this context, the learned senior counsel for the petitioner has referred to and relied upon paragraphs 23 and 25 of the decision given in the case of Madan Mohan Choudhary Vs. The State of Bihar, and submitted that in view of the above decision under Article 235 of the Constitution of India, the High Court's control over the subordinate judiciary is comprehensive and extends over a variety of matters, including posting, promotion and grant of leave. The three words, namely, "posting", "promotion" and "grant of leave" used in this Article 235 are only illustrative in character and do not limit the extent of control exercised by the High Court over the officers of the subordinate judiciary. It is also submitted that as per the said decision, transfers, promotions and confirmations including transfer of District Judges or the recall of District Judges posted on ex-cadre post or on deputation or on administrative post etc. is also within the administrative control of the High Court. So also premature and compulsory retirement is also within the "control" of the High Court.

The learned senior counsel also referred to paragraphs 22 and 24 of the decision given in the case of Registrar, High Court of Madras Vs. R. Rajiah, , which reads as under:-

"22. It is true that the High Court in its administrative jurisdiction has power to compulsorily retire a member of the judicial service in accordance with any rule

framed in that regard, but in coming to the conclusion that a member of the subordinate judicial service should be compulsorily retired, such conclusion must be based on materials. If there be no material to justify the conclusion, in that case, it will be an arbitrary exercise of power by the High Court. Indeed, Article 235 of the Constitution does not contemplate the exercise by the High Court of the power of control over subordinate courts arbitrarily, but on the basis of some materials. As there is absence of any material to justify the impugned orders of compulsory retirement, those must be held to be illegal and invalid.

24. In regard to the case of the other respondent, namely, K. Rajeswaran, the High Court took the view that the constitution of the Review Committee by the Chief Justice and not by the Full Court was illegal. We are unable to accept the view of the High Court. We fail to understand why the Chief Justice cannot appoint a Review Committee or an Administrative Committee. But in one respect the High Court is, in our opinion, correct, namely, that the decision of the Review Committee should have been placed before a meeting of the judges. In the case of the respondent, K. Rajeswaran, the decision and recommendation of the Review Committee was not placed before the Full Court Meeting. Nor is there any material to show that the same was circulated to the judges. In that sense, the recommendation of the Review Committee was not strictly legal."

5. It is submitted that in view of the above decision, the recommendation of the Review Committee is required to be placed before the Full Court meeting but in the instant case, there is no Full Court decision to recommend the case of the petitioner for compulsory retirement. In the case of High Court of Judicature at Patna, through R.G. vs. Shyam Deo Singh & Ors. passed in Civil Appeal No. 2529 of 2002 by the Hon'ble Supreme Court, para 8 of the said judgment is reproduced hereinbelow.

"8. The importance of the issue can hardly be gainsaid. The evaluation of the service record of a judicial officer for the purpose of formation of an opinion as to his/her potential for continued useful service is required to be made by the High Court which obviously means the Full Court on the administrative side. In all High Courts such evaluation, in the first instance, is made by a committee of senior Judges. The decision of the committee is placed before the Full Court to decide whether the recommendation of the Committee should be accepted or not. The ultimate decision is always preceded by an elaborate consideration of the matter by Hon'ble Judges of the High Court who are familiar with the qualities and attributes of the judicial officer under consideration.

This is also what had happened in the present case. The very process by which the decision is eventually arrived at, in our view, should permit a limited judicial review and it is only in a rare case where the decision taken is unsupported by any material or the same reflects a conclusion which, on the face of it, cannot be sustained that judicial review would be permissible. An enumeration of the extent of permissible judicial review has been made by this Court in Syed T.A. Naqshbandi vs. State of J & K [3]. Paragraph 10 of the report which highlights

the above position may be specifically noticed:-

"Neither the High Court nor this Court, in exercise of its powers of judicial review, could or would at any rate substitute themselves in the place of the Committee/ Full Court of the High Court concerned, to make an independent reassessment of the same, as if sitting on an appeal. On a careful consideration of the entire materials brought to our notice by learned counsel on either side, we are satisfied that the evaluation made by the Committee/Full Court forming their unanimous opinion is neither so arbitrary or capricious nor can be said to be so irrational as to shock the conscience of the 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 overblown 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 monstrous thing 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.

(Emphasis is ours)"

6. The learned senior counsel for the petitioner submitted that in view of the above decisions, the decision of the Committee is required to be placed before the Full Court to decide whether recommendation of the Committee should be accepted or not. In the instant case, there is no such decision of the Full Court before making recommendation to the State Government for compulsory retirement of the petitioner. In this context, paragraph 8 of the counter affidavit referred by him and it is submitted that it is an admitted position that the matter was never placed before the Full Court and therefore the said action on the part of the High Court is in clear contravention of Rules 9 and 13 of the High Court of Jharkhand Rules, 2001.

He also referred to Rule 8(ix) of the High Court of Jharkhand Rules, 2001, which provides as under :-

"8. The Standing Committee shall have power, without reference to the Judges generally--

(ix) to make recommendation to the State Government for compulsory retirement of any Judicial Officer;"

It is submitted that the said rule is contrary to the provision as contained in Article 235 of the Constitution of India.

7. The learned senior counsel also referred to and relied upon the decision given

in the case of Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, and submitted that it has been rightly observed that the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle down its effect. It is also submitted that in the present case, Rule 8(ix) of the High Court of Jharkhand Rules cannot whittle down the scope of power flowing from the Constitution itself. It is further submitted that assuming for the time being that the power is vested under Rule 74(b)(ii) of the Jharkhand Service Code, the same cannot be exercised by mere use of the word "public interest". For the purpose of satisfying the Rule 74(b)(ii), there should be sufficient material regarding misconduct of the person concerned and such order is required to be made bona fide and not with any oblique or extraneous purpose. In support of this submission, the learned senior counsel for the petitioner has also referred to and relied upon paragraph 32 of the decision given in the case of Ram Ekbal Sharma Vs. State of Bihar and another, . Another decision given in the case of Nand Kumar Verma Vs. State of Jharkhand and Others, is also referred to and relied upon to show that the case of the Judicial Magistrate was recommended by the Full Court of Jharkhand High Court to the State Government for compulsory retirement and accordingly, the State Government has issued notification compulsorily retiring the said judicial officer from service.

8. The learned senior counsel appearing for the petitioner by referring the A.C.R. for the year ending 2005-06 (Annexure-5), the A.C.R. for the year ending March, 2007 (Annexure-10/1), the A.C.R. for the year ending March, 2008 (Annexure-10/2), the A.C.R. for the year ending on 31st March, 2009 (Annexure-15/2), submitted that in the said A.C.Rs., written by the Zonal Judge, the printed column "date of inspection" is kept blank, meaning thereby that the A.C.Rs. were prepared without having proper inspection for the aforesaid period. In this context, the learned senior counsel appearing for the petitioner has also referred Rule 24 of the High Court of Jharkhand Rules, 2001 and submitted that as per the said Rule, the Zonal Judges shall inspect the Civil Court of their respective zones as and when need arises or at least once in a year. It is further submitted that the A.C.R. for the year ending 2005-06 (Annexure-5), the A.C.R. for the year ending March, 2007 (Annexure-10/1), the A.C.R. for the year ending March, 2008 (Annexure-10/2), the A.C.R. for the year ending on 31st March, 2009 (Annexure-15/2) was prepared without having any inspection, as required under Rule 24 of the High Court of Jharkhand Rules, 2001. In support of this submission, the learned senior counsel appearing for the petitioner has also referred to and relied upon the decision given in the case of High Court of Punjab and Haryana Through R.G. Vs. Ishwar Chand Jain and Another, and by referring paragraph 32 of the said judgment, it is submitted that under Article 235 of the Constitution of India, the High Court exercises complete control over subordinate courts, which include District Courts. Inspection of the subordinate courts is one of the most important functions, which the High Court performs for control over the subordinate courts. The object of such inspection is for the purpose of

assessment of the work performed by the Subordinate Judge, his capability, integrity and competency. It is submitted that in view of the above-referred judgments delivered by the Hon''ble Supreme Court, the A.C.R. for the year ending 2005-06 (Annexure-5), the A.C.R. for the year ending March, 2007 (Annexure-10/1), the A.C.R. for the year ending March, 2008 (Annexure-10/2), the A.C.R. for the year ending on 31st March, 2009 (Annexure-15/2) cannot be looked into. The learned senior counsel appearing for the petitioner by referring Annexure-30 to the rejoinder affidavit filed by the petitioner, submitted that in a departmental enquiry, ordered against the petitioner, there were three charges firstly, gross judicial impropriety, sheer misuse of authority and a conduct unbecoming of a Judge, secondly, integrity, dereliction of duty, gross judicial indiscipline and the third is regarding inefficiency but ultimately at the end of enquiry, the petitioner was exonerated from all the three charges. In this context, paragraph 26 of the writ petition was also referred to show that the Registrar General vide letter No. 597/vigilance cell dated 22.10.2011 informed the petitioner that the Hon''ble Court has been pleased to accept the enquiry report by the Hon''ble Enquiry Officer in the matter of departmental enquiry initiated against him and since the petitioner was not found guilty in the departmental enquiry, it was recommended by the Hon''ble enquiry officer for exonerating the petitioner from the charges.

9. The learned senior counsel appearing for the petitioner has also referred to and relied upon the decision given in the case of Union of India (UOI) and Others Vs. J. Ahmed, .

By referring paragraph 9 of the said judgment, it is submitted that in the said case, five charges were levelled against the petitioner. Some negligence is being attributed to him and some lack of qualities expected of an officer of the rank of Deputy Commissioner were listed in the charges which refers to the quality of lack of leadership, inaptitude, lack of foresight, lack of firmness and indecisiveness. It was held in the said decision, that these are qualities undoubtedly expected of a superior officer and they may be very relevant while considering whether a person should be promoted to the higher post or not or having been promoted, whether he should be retained in the higher post or not, or they may be relevant for deciding the competence of the person to hold the post, but they cannot be elevated to the level of acts of omission or commission as contemplated by Rule 4 of the Discipline and Appeal Rules, so as to incur penalty under Rule 3.

By referring paragraph 11 of the said judgment, it is also submitted that as held thereunder it is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct.

10. The learned senior counsel appearing for the petitioner further submitted that prior and post departmental enquiry, the ACRs of the petitioner were good. It is further submitted that the ACR with remarks "average" are also without

having any date of inspection and the said ACR were not communicated to the petitioner at any point of time. In support thereof he has also referred to and relied upon the decision given in the case of Dev Dutt Vs. Union of India (UOI) and Others, and submitted the confidential reports and gradings are required to be communicated to fulfill the constitutional obligation and so as to apply principles of natural justice and fairness. By referring paragraphs 34, 36, 37 and 41 of the said decision, it is submitted that in the above decision, it is held that non-communication of entries in Annual Confidential Report of a public service whether he is in Civil, Judicial, Police or any other service, other than military, certainly has civil consequence, because it may affect his chances of promotion or get other benefits. Hence, such non-communication would be arbitrary and as such, violative of Article 14 of the Constitution of India. The learned senior counsel appearing for the petitioner has also referred to and relied upon the decision given in the case of Sukhdev Singh Vs. Union of India (UOI) and Others, in support of his submission. It is also submitted that the compulsory retirement and order regarding compulsory retirement of the petitioner is in contravention of Rules 9 and 13 of the High Court of Jharkhand Rules, 2001.

11. Learned counsel Mr. Ananda Sen, appearing for the respondent High Court by referring Rule 6 of the High Court of Jharkhand Rules, 2001 submitted that Rule 6 provides constitution of the Standing Committee. By referring Rule 7, it is submitted that the Standing Committee shall be charged with the control and direction of the Subordinate Courts. By referring Rule 8(ix) of the High Court of Jharkhand Rules, 2001 it is submitted that the Standing Committee shall have power without reference to the Judges generally to make recommendation to the State Government for compulsory retirement of any Judicial Officer. Mr. Ananda Sen, learned counsel appearing for the Respondent High Court submitted that there is no challenge to this Rule in the writ petition. In support of his submission, the learned counsel appearing for the Respondent-High Court, Mr. Ananda Sen has referred to and relied upon the decision given in case of Nawal Singh Vs. State of U.P. and Another, and submitted that it is held in the said decision that order of compulsory retirement of a judicial officer based on opinion given by the Screening Committee of High Court is valid. By referring the said decision, it is submitted that in the said judgment, it is held that the Full court resolution for the said purpose is not necessary. It is further held in the said decision that formation of opinion regarding compulsory retirement of a judicial officer working with subordinate judiciary based on doubt as to integrity of judicial officer can be entertained on the basis of opinion of the higher officer who had the opportunity to watch the performance of the judicial officer concerned and to form an opinion with regard to overall reputation enjoyed by him.

12. The learned counsel appearing for the Respondent High Court by referring Annexure 15/2 i.e. A.C.R. for the year ending on 31st March, 2009, submitted that the information furnished regarding disposal of cases and achievements furnished in Part II relating to disposal of cases was not approved by the zonal

Judge in Part III. By referring Part IV of the said confidential report, it is submitted that the Hon"ble Zonal Judge, has given specific remarks against Column No. II, pertaining to integrity and impartiality that the same was doubtful. In this context, he has referred to and relied upon the decision given in the case of Pyare Mohan Lal Vs. State of Jharkhand and Others, , and by referring paragraph 29 of the said judgment, it is submitted that in the said judgment, it is held that a single adverse entry, touching on integrity is enough to impose compulsory retirement. The learned counsel appearing for the Respondent High Court by referring Annexure-14 to the petition, submitted that the petitioner made representation for expunction of adverse remarks made in the ACRs for the year 2005-06, 2006-07 and 2007-08 respectively but the same was rejected by the High Court and the said rejection was communicated by the Registrar Vigilance vide communication dated 22.09.2011.

13. It is further submitted that the departmental proceedings, has nothing to do with compulsory retirement as the decision regarding compulsory retirement was taken by the Screening Committee after careful consideration of the over all performance and service record of the petitioner and the said decision of the Screening Committee was considered by the Standing Committee, which is a statutory Committee constituted under the Jharkhand High Court Rules and after careful consideration of the report of the Screening Committee, the Standing Committee recommended to the State Government for compulsory retirement of the petitioner. It is also submitted that decision cited by the learned counsel for the petitioner given in the case of Union of India (UOI) and Others Vs. J. Ahmed, does not help to the petitioner's case. He has also referred to and relied upon the decision given in the case of Rajasthan State Road Transport Corporation and Others Vs. Babu Lal Jangir, and placed reliance on paragraph 24 of the said judgment which provides as under:-

"24. Having taken note of the correct principles which need to be applied, we can safely conclude that the order of the High Court based solely on the judgment in Brij Mohan Singh Chopra was not correct. The High Court could not have set aside the order merely on the ground that service record pertaining to the period 1978-1990 being old and stale could not be taken into consideration at all. As per the law laid down in the aforesaid judgments, it is clear that entire service record is relevant for deciding as to whether the government servant needs to be cased out prematurely. Of course, at the same time, subsequent record is also relevant, and immediate past record, preceding the date on which decision is to be taken would be of more value, qualitatively. What is to be examined is the "overall performance" on the basis of "entire service record" to come to the conclusion as to whether the employee concerned has become a deadwood and it is in public interest to retire him compulsorily. 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."

14. Learned counsel appearing for the High Court of Jharkhand has also referred to and relied upon the decision given in the case of R.C. Chandel Vs. High Court of M.P. and Another, and submitted that 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.

15. Learned Junior counsel to Advocate General appearing for the Respondent-State has also supported the argument advanced by the learned counsel appearing for the Respondent No. 2-Jharkhand High Court and submitted that the Respondent-State Government has rightly and properly in exercise of powers conferred under Rule 74(b)(ii) of the Jharkhand Service Code and thereby passed an order of compulsory retirement of the petitioner. It is also submitted that the said order has been passed in accordance with law.

16. Now above mentioned submissions are required to be considered in the light of the following important facts, which are emerging from the record:-

(i) It appears that the Screening Committee constituted by the Hon"ble Chief Justice has considered the A.C.R. for the year ending 2005-06 (Annexure-5), the A.C.R. for the year ending March, 2007 (Annexure-10/1), the A.C.R. for the year ending March, 2008 (Annexure-10/2), the A.C.R. for the year ending on 31st March, 2009 (Annexure-15/2). The said A.C.Rs. consistently speaks about the doubtful integrity of the petitioner. The abstract of the above mentioned A.C.Rs. are as under:-

"2005-2006

1. Knowledge of Law and Procedure: Below average

2. Is he industrious and prompt in the disposal of cases and has he coped effectually with heavy works?: Neither industrious nor prompt in disposal of cases. Below the yardstick of disposal.

3. Has he maintained reputation for honesty integrity and impartiality? : Doubtful integrity

4. Remarks about his attitude and behaviour towards his superiors, Subordinates and Colleagues, the members of Bars, Litigants and the witnesses: Below average

2006-2007

1. Knowledge of Law and Procedure: Satisfactory
2. Is he industrious and prompt in the disposal of cases and has he coped effectually with heavy works?: Average
3. Has he maintained reputation for honesty integrity and impartiality?: Doubtful integrity
4. Remarks about his attitude and behavior towards his superiors, Subordinates and Colleagues, the members of Bars, Litigants and the witnesses: Cordial

2007-2008

1. Knowledge of Law and Procedure: Satisfactory
2. Is he industrious and prompt in the disposal of cases and has he coped effectually with heavy works?: Should improve
3. Has he maintained reputation for honesty integrity and impartiality?: Some complaint received
4. Remarks about his attitude and behaviour towards his superiors, Subordinates and Colleagues, the members of Bars, Litigants and the witnesses: Should improve

2008-2009

1. Disposal of Cases: No
2. Knowledge of Law & Procedure?: Average
3. Attitude and behavior: Cordial, no complaint received.

It is pertinent to note that the said A.C.Rs. were communicated to the petitioner and thereafter, representation was also filed by the petitioner with a request and to reconsider and expunge the adverse remarks but the said representation submitted by the petitioner was rejected by the Respondent-High Court vide Communication dated 22.09.2011. Thereafter, the petitioner has never challenged the said rejection at any point of time.

(ii) It further appears that the Screening Committee has considered and evaluated the overall performance of the judicial officer-petitioner including the A.C.R. wherein, consistently, doubtful integrity was recorded.

(iii) The decision cited by the learned counsel appearing for the respondent No. 2, Jharkhand High Court in the case of Pyare Mohan Lal (Supra) is very much relevant and applicable to the facts of the present case. Paragraph 29 of the said judgment is reproduced hereunder:-

"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.

(emphasis supplied)"

(iv) In view of the above decisions, the facts of the present case is required to be analyzed, whereunder A.C.Rs. consistently the A.C.R. for the year ending 2005-06 (Annexure-5), the A.C.R. for the year ending March, 2007 (Annexure-10/1), the A.C.R. for the year ending March, 2008 (Annexure-10/2), the A.C.R. for the year ending on 31st March, 2009 (Annexure-15/2), doubtful integrity is mentioned and the representation submitted by the petitioner for expunging the said remarks was also rejected after careful consideration and the same was communicated by the Registrar General vide communication dated 22.09.2011 and thereafter, it was never challenged by the petitioner at any point of time. In view of the above factual position, the ratio laid down in the case of Pyare Mohan Lal (Supra) is relevant and applicable to the present case. Likewise, the decision cited by the learned counsel appearing for the Respondent-Jharkhand High Court given in the case of R.C. Chandel (Supra) is also relevant, which reads as under: -

"29. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their Junction 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 court room, he must feel secured that the Judge before whom this 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 standard 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."

(v) The submissions advanced by the learned senior counsel for the petitioner

that there is no Full Court decision for making recommendation for the compulsory retirement of the petitioner as the matter was never referred by the Standing Committee to the Full Court, cannot be accepted in view of Rule 8(ix) of the High Court of Jharkhand Rules, 2001, which clearly provides that the Standing Committee is empowered to make recommendation to the State Government for compulsory retirement of any judicial officer without referring the said subject matter for decision to the Full Court. Moreover there is no challenge to, the above mentioned Rule in the writ petition. In this context the decision cited by the learned counsel Ananda Sen appearing for the High Court in the case of Nawal Singh Vs. State of U.P. and Another, is relevant. The relevant abstract of the said judgment is reproduced herein below:-

"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, 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. 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 the order of compulsory retirement is based on the subjective satisfaction - of the authority.

3. (II) The learned counsel next submitted that as per the Allahabad High Court Rules, before recommending compulsory retirement of the appellants, the Full Court was required to pass such orders and as the Full Court has not passed any resolution, compulsory retirement is bad.

Dealing with the Allahabad High Court Rules, in *State of U.P. v. Batuk Deo Pati Tripathi* a seven-Judge Bench of this Court considered similar contention and negated the same by holding that it was a misconception that control over the subordinate judiciary which is vested by Article 235 in the High Court must be exercised by the whole body of the Judges. The Court negated the contention that the High Court cannot delegate its function or power to a Judge or a smaller body of Judges of the Court; it is no exaggeration to say that the control will be better and more effectively exercised if a smaller Committee of Judges has the authority of the Court to consider the manifold matters falling within the purview of Article 235. Such an authorisation effectuates the purpose of Article 235. After elaborate discussion, the Court upheld the minority judgment of the Full Bench that Rule 1 of Chapter III of the 1952 Rules framed by the Allahabad High Court is within the framework of Article 235 and the recommendation made by the Administrative Committee that the judicial officer should be compulsorily retired cannot be said to suffer from any legal or constitutional infirmity. The aforesaid decision is repeatedly followed by this Court. Finally, in *Chandra Singh v. State of Rajasthan* the Court observed as under: (SCC pp. 562 and 63, paras 40 and 47)

"40. Article 235 of the Constitution of India enables the High Court to assess the

performance of any judicial officer at any time with a view to discipline the black sheep or weed out the dead wood. This constitutional power of the High Court cannot be circumscribed by any rule or order.....

* * *

47. In the instant case, we are dealing with the higher judicial officers. We have already noticed the observations made by the Committee of three Judges. 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."

(emphasis supplied).

Similarly, in *High Court of Judicature for Rajasthan v. P.P. Singh* the Court held that: (SCC p. 251, para 19)

"19. It is also true that the powers of the Chief Justice under Articles 235 and 229 of the Constitution of India are different and distinct Whereas control over the subordinate courts vests in the High Court as a whole, the control over the High Court vests in the Chief Justices only. (See *All India Judges' Assn. v. Union of India*.) However, the same does not mean that a Full Court cannot, authorize the Chief Justice in respect of any matter whatsoever, In relation to certain matters keeping the rest of it in itself by the Full Court, authorization to act on its behalf in favour of the Chief Justice on a Committee of Judges is permissible in law. How far and to what extent such power has been or can be delegated would be discernible only from the Rules. Such a power by the Full Court can also be exercised from time to time."

5. In *J.N. Sinha* case the Court specifically held that the rule embodies one of the facts of the pleasure doctrine embodied in Article 310 of the Constitution and that the rule holds the balance between the rights of the individual government servant and the interest of the public; the rule is intended to enable the Government to energise its machinery and to make it efficient by compulsorily retiring those who in its opinion should not be there in public interest.

6. Further, it is to be reiterated that the object of compulsory retirement is to weed out the dead wood in order to maintain a high standard of efficiency and honesty to keep the judicial service unpolluted. It empowers the authority to retire officers of doubtful integrity which depends upon an overall impression gathered by the higher officers as it is impossible to prove by positive evidence that a particular officer is dishonest. This aspect is dealt with in *Union of India v. M.E. Reddy* wherein the Court (in para 17) held thus:

"17. Mr. Krishnamurty Iyer appearing for Reddy submitted that the order impugned is passed on materials which are non-existent inasmuch as there are no adverse remarks against Reddy who had a spotless career throughout and if such remarks would have been made in his confidential reports they should have been communicated to him under the rules. This argument, in our opinion, appears to be based on a serious misconception. In the first place, under the

various rules on the subject it is not every adverse entry or remark that has to be communicated to the officer concerned. The superior officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. Some of these remarks may be purely innocuous, or may be connected with general reputation of honesty or integrity that a particular officer enjoys. It will indeed be difficult if not impossible to prove by positive evidence that a particular officer is dishonest but those who have had the opportunity to watch the performance of the said officer from close quarters are in a position to know the nature and character not only of his performance but also of the reputation that he enjoys."

(emphasis supplied)

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 the integrity of the judicial officer. In the present-day system, reliance is required to be place on the opinion of the higher officer who had the opportunity to watch the performance of the officer concerned from close quarters and formation of his opinion with regard to the overall reputation enjoyed by the officer concerned 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 a specified age/ completion of specified years of service provided under the Rules is a must by each and every High Court as the lower judiciary is the foundation of the judicial system. We hope that the High Courts would take appropriate steps regularly for weeding out the dead wood or the persons polluting the justice delivery system."

(vi) In view of Rule 8(ix) of the Jharkhand High Court Rules, 2001, the Standing Committee shall have power without reference to the Judges to make recommendation to the State Government for compulsory retirement of any judicial officer. As per Sub Rule 3 of Rule 8, the Standing Committee may refer any matter for decision to the Full Court. Thus, it is for the Standing Committee to decide as to whether any subject falling within the purview of the Standing Committee is required to be referred for the decision to the Full Court or not. In the instant case, the report prepared by the Screening Committee was placed before the Standing Committee, which is empowered to make recommendation to the State Government for compulsory retirement of any judicial officer. The Standing Committee after careful consideration of the report submitted by the Screening Committee thought it fit to make recommendation to the State

Government for compulsory retirement of the petitioner without referring to the Full Court, as it was not mandatory under Jharkhand High Court Rules, 2001 to refer such matter to the Full Court. The learned senior counsel appearing for the petitioner tried to justify from the averments made in the petition, that Rule 8(ix) of the Jharkhand High Court Rules, 2001 is also under challenge but on perusal of the writ petition, it becomes clear that neither substantive averments challenging said Rule is made nor any specific prayer is made in the petition to declare Rule 8(ix) as ultra vires. It appears that without any specific averments, question was formulated for consideration, but such consideration can not be made unless specific averments and prayers are there in the pleadings. The submissions regarding legality and validity of the Rule 8(ix) of the Jharkhand High Court Rules, 2001 have been canvassed for the first time at the time of argument without any challenge and specific prayer in the writ petition, therefore, the submissions made by the learned senior counsel appearing for the petitioner in this regard cannot be accepted.

(vii) In view of the above discussion, the Judges are expected to discharge his judicial functions with integrity, impartiality and intellectual honesty. As discussed hereinabove, the Screening Committee after careful consideration of the confidential Report's remarks regarding doubtful integrity for consecutive four years", as also considering the overall performance of the petitioner-judicial officer, decided to recommend the case of the petitioner for compulsory retirement under Rule 74(b)(ii) in the public interest and the said recommendation of the Screening Committee has been approved by the Standing Committee, which is a statutory Committee under the Jharkhand High Court Rules, having powers under Rule 8(ix) to make recommendation to the State Government for compulsory retirement of any judicial officer.

17. In view of the above position, there is no merit in the writ petition filed by the petitioner and the same deserves to be rejected. Accordingly, the same is hereby dismissed.