
(2012) 10 JH CK 0054
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3032 of 2011

Ramendra Nath Rai

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 235
Electricity Act, 2003 — Section 153

Citation : (2013) 1 AJR 828 : (2012) 4 JCR 518

Hon'ble Judges : Prakash Tatia, J; Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Bhanu Kumar, for the Appellant; Ananda Sen, for the Jharkhand High Court, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—The petitioner is aggrieved by the order as contained in Memo No. 2135 dated 26.04.2011 (Annexure-15 Series) issued under the signature of Deputy Secretary, Personnel, Administrative Reforms and Rajbhasa Department, Government of Jharkhand, whereby he has been compulsorily retired from service from the post of Additional District & Sessions Judge, Dumka, under Rule-74(b)(ii) of the Jharkhand Service Code in public interest with effect from 28th April, 2011. The short facts of the case as stated by the petitioner are that the petitioner was appointed as Temporary Munsif vide Notification No. 4987 dated 16.04.1985 issued by the Department of Personnel & Administrative Reforms, Government of Bihar pursuant to he having succeeded in the 20th Judicial Service Competition Examination conducted by the Bihar Public Service Commission. The petitioner was posted at Saharsa in the erstwhile State of Bihar vide Notification No. 173A dated 20th May, 1985 issued by the Registrar, Patna High Court showing his name at Serial No. 43.

2. It is the case of the petitioner that after successful completion of probation his service was confirmed with effect from 29.02.1988 vide Notification No. 8564

dated 1st July, 1989 issued by Under Secretary, Department of Personnel & Administrative Reforms, Government of Bihar, showing his name at Serial No. 31 vide Annexure-2. It is further contended on behalf of the petitioner that he was granted the first increment in Munsif's scale of pay with effect from 29.02.1988 vide Memo No. 4894-908 dated 15.04.1989 issued by Joint Registrar (Establishment), Patna High Court, Patna, vide Annexure-3. Learned counsel for the petitioner further submits that he was granted promotion to Junior Selection Grade with effect from 30th May, 1995 vide Notification No. 479A dated 28.12.1995 issued by the Registrar General, Patna High Court, Patna, showing his name at Serial No. 36 (Annexure-4). It is further submitted by the learned counsel for the petitioner that he was vested with the powers of IInd Class Judicial Magistrate and 1st Class Judicial Magistrate at due time. Learned counsel for the petitioner further submits that on recognition of his performance he was posted as Sub Divisional Judicial Magistrate, Jamtara and thereafter was granted regular promotion to the substantive post of Subordinate Judge vide Notification No. 42A dated 13.02.2002 issued by the Registrar General, Jharkhand High Court, Ranchi, showing his name at Serial No. 2 of the said notification (Annexure-5). The petitioner thereafter was appointed as Chief Judicial Magistrate, Dumka vide Notification No. 133A dated 27.08.2002, issued by the Registrar General, Jharkhand High Court, Ranchi, (Annexure-6). It is further submitted on his behalf that the petitioner was granted ad-hoc promotion to the post of Additional District & Sessions Judge, Fast Track Court, Dumka, in the pay scale of Rs. 12,000-16,500 vide notification No. 1127 dated 25th February, 2003, issued by the Deputy Secretary, Department of Personnel, Administrative Reforms and Rajbhasa, Government of Jharkhand (Annexure-7). Learned counsel vehemently submitted that under the provisions of Jharkhand Superior Judicial Services (Recruitment, Appointment & Condition of Service) Rules, 2001 and amended Rules 2004, the petitioner after facing interview along with other eligible candidates, was granted regular promotion to the post of Additional District & Sessions Judge in the pay scale of Rs. 16,750-20,500/- on the basis of merit cum seniority principle vide Notification No. 4640 dated 1st August, 2008 issued by the Deputy Secretary, Department of Personnel, Administrative Reforms and Rajbhasa, Government of Jharkhand showing his name at serial No. 7 vide Annexure-8. It is further contended by the learned counsel for the petitioner that vide letter dated 24th November, 2009 issued by the then Registrar General, Jharkhand High Court, Ranchi the petitioner was vested with the powers of Special Judge u/s 153 of the Electricity Act, 2003 for the jurisdiction of Dumka as per Annexure-9. The petitioner was also posted as 1st Additional District & Sessions Judge, Dumka being vested with the special powers under the Electricity Act, 2003 by order of the Department of Personnel, Administrative Reforms and Rajbhasa, Government of Jharkhand (Annexure-10 Series). It is further contended on behalf of the counsel for the petitioner that the petitioner received a D.O. letter No. 44 dated 12.10.2009 issued by the Registrar (Vigilance) Jharkhand High Court, Ranchi communicating an adverse entry made against him for the assessment year 2006-07 recorded by the then

Zonal Judge of Hazaribagh Judgeship, asking him to file representation for expunction of the said adverse entry. The petitioner submitted his representation vide letter No. 292 dated 9.12.2009 (Annexure-12), but did not receive any communication regarding the same. It is submitted that although the adverse entry related to the year 2006-07, but the said remarks were entered on 6th January, 2008 by the then Zonal Judge, Hazaribagh and was communicated on 12.10.2009 after a delay of more than 1 year 10 months. It is further submitted that in spite of said adverse entry entered, the petitioner was granted regular promotion to Jharkhand Superior Superior Judicial Services vide notification dated 1st August, 2008, which clearly goes to show that despite the adverse entries the Hon''ble Court considered him fit enough to grant promotion on the basis of merit cum seniority. Based upon the aforesaid facts, it is submitted that on account of grant of regular promotion as stated above the adverse remarks lose their sting.

3. However, it is further contended on behalf of the petitioner that vide notification dated 30th July, 2009, an explanation was called for from the petitioner by the Hon''ble High Court communicated through the Registrar (Vigilance) against some allegations leveled against him. He submitted his explanation vide letter No. 395 dated 17th August, 2009 (Annexure-14). However, the petitioner was taken surprise by the impugned order contained in Memo No. 2135 dated 26.04.2011 issued by the Deputy Secretary, Department of Personnel, Administrative Reforms and Raj Bhasa, Government of Jharkhand with the forwarding letter No. 723 dated 28.04.2011 of his compulsory retirement under Rule 74(b)(ii) of the Jharkhand Service Code in public interest (Annexure-15 Series).

4. Learned counsel for the petitioner by referring to the averments made in the supplementary counter affidavit, has submitted that the petitioner has obtained the relevant extracts of the annual confidential report of the petitioner under the Right to Information Act, 2005. In respect of certain Minutes/Resolution/Proceeding of the Screening Committee/Standing Committee/Full Court, the petitioner was informed that he can inspect the relevant records on any working day as per the Jharkhand High Court (Right to Information) Rules, 2007. It is submitted on the basis of such inspection carried out by the petitioner that it was found that pursuant to the order of Hon''ble the Chief Justice of India, cases of 152 Judicial Officers were examined by the Screening Committee consisting of two Hon''ble Judges of the Court and a report was submitted in respect of the petitioner and four others, who were found to be unsuitable to the Standing Committee of the Court. The Standing Committee accepted the report submitted by the Screening Committee and a recommendation was made to the State Government vide letter No. 6087 dated 30th March, 2011 for compulsorily retiring the petitioner. Learned counsel for the petitioner by referring to the averments made in the supplementary affidavit submits that the report of the Screening Committee was not placed before the Full Court as per requirement of Rule 8(3) of the High Court of Jharkhand Rules, 2001, and based upon the said

recommendation the order of compulsory retirement impugned herein has been issued against the petitioner. It is submitted on behalf of the counsel for the petitioner that the Screening Committee has taken into account the A.C.Rs. and matters concerning the petitioner of remote past i.e. more than 10 years old for the period relating to the year 1985-86; 1990-91 and 1989-99, 1997-98 and 2002-03. It is further submitted that though the petitioner was confirmed in service and granted substantive promotion to the post of Sub Judge and thereafter to the post of Chief Judicial Magistrate and had also been granted regular promotion to the post of Additional District Judge in the year 2008 by superseding nine senior officers vide notification No. 4640 dated 1st August, 2009, the Screening Committee has overlooked these facts by making recommendation for compulsory retirement of the petitioner. Learned counsel for the petitioner by making reference to extracted copy of the A.C.R. of the petitioner submitted that the relevant entries for different years indicate that the petitioner was a sincere and good officer, found to be brilliant, sincere and punctual in the year 1994-1995 and Intelligent & industrious in the year 1995-96 and moreover the adverse remarks entries in the year 1997-98 that his integrity is doubtful where expunged vide minutes of Hon"ble Full Court. It is further submitted that in subsequent entries the petitioner was awarded remarks of overall assessment such as satisfactory in the year 1999-2000 B+Good and satisfactory in the years 2000-2001 and 2002-03, 2004-05. It is submitted that the petitioner was awarded remarks for the year 2007-08 as Average Officer and "B" Satisfactory with adverse remarks "integrity and impartiality. Some complaint received."

5. However, learned counsel for the petitioner submitted by relying upon the judgment in the case of State of Gujarat Vs. Umedbhai M. Patel, para 11(vii) whereof that if the officer was granted promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer. Learned counsel for the petitioner has also relied upon the judgment in the case of Madan Mohan Choudhary Vs. The State of Bihar, , specifically in paragraph 36 whereof, in which the judgment in the case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, , have been relied upon by the Hon"ble Supreme Court of India. Learned counsel for the petitioner by referring to paragraph (iii) quoted in the said paragraph of the judgment of Baikunth Nath Das, submits that in the matter of compulsory retirement the High Court would not examine the matter as an appellate court, but may interfere if they are satisfied that the order is passed (a) mala fide or (b) it is based upon no evidence or (c) it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order. Learned counsel submits that the order impugned prima facie is an arbitrary order and moreover he again relies upon sub para (iv) of the aforesaid paragraph 36 of Madan Mohan Choudhary (supra) to reiterate his contention that if a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if

the promotion is based upon merit (selection) and not upon seniority. Learned counsel for the petitioner has also relied upon the judgment of Hon''ble Supreme Court, as delivered in the case of Nand Kumar Verma Vs. State of Jharkhand and Others, , specifically paragraph 23, 28 and 32. It is submitted that the formation of opinion for compulsory retirement of a judicial officer is based upon the subjective satisfaction of the concerned authority but such satisfaction must be based on a valid material and it is permissible for the Courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based. Learned counsel by referring to the facts of the said case has submitted that the Hon''ble Supreme Court found in the case of Nand Kumar Verma that the High Court has not faithfully extracted the contents of the A.C.Rs. in respect of the said petitioner while forming an opinion in relation to his compulsory retirement. It was further submitted by learned counsel for the petitioner that the Hon''ble Supreme Court in the said case found that the subjective satisfaction the High Court was not based upon sufficient relevant material and the service record of the said appellant, Nand Kumar Verma. The Hon''ble Supreme Court upon appraisal of the A.C.Rs. of the said appellant held that it cannot be said that the service record of the appellant was unsatisfactory which would warrant premature retirement from service. Accordingly, the Hon''ble Supreme Court quashed the order of compulsory retirement of the said appellant Nand Kumar Verma.

6. Learned counsel for the petitioner submits that in the present case, the subjective satisfaction of the Hon''ble High Court based upon the report of the Screening Committee and the Standing Committee in recommending compulsory retirement of the petitioner upon appreciation of the A.C.Rs. of the petitioner in his entire service carrier, cannot be said to be based upon sufficient or relevant material so as to reach to a conclusion that the petitioner's service was unsatisfactory, warranting premature retirement. Learned counsel for the petitioner by referring to the different A.C.Rs. entries of the petitioner, submits that overall appraisal of the extracts ACR of his service would show that the contents for forming a subjective satisfaction in recommending the compulsory retirement of the petitioner was not proper in the eye of law. Learned counsel for the petitioner has also raised this contention that under Article 235 of the Constitution of India, it is the High Court and thereby the Full Court which has to take a decision in respect of recommendation of compulsory retirement of a Judicial Officer while in present case the impugned notification has been issued only upon the recommendation of the Standing Committee. However, from the submission of the learned counsel for the petitioner and the averments made in the writ petition, the Jharkhand High Court Rules under which the recommendation has been made by the Standing Committee has not been impugned by the writ petitioner.

7. Learned counsel for the Respondent No. 4-Jharkhand High Court, on the other hand, has submitted that the impugned orders are wholly legal and proper in the eye of law. They have been issued in exercise of the powers under Rule 74(B) (ii)

of the Jharkhand Service Code on the subjective satisfaction of the High Court and upon recommendation made by the Standing Committee of the High Court as per the provisions of the Jharkhand Superior Judicial Report, 2001 as amended in 2004, specifically Rule 8(ix) whereunder the Standing Committee has the power to make recommendation to the State Government for compulsory retirement of any judicial officer. However, it is not obligatory upon the Standing Committee to refer all matters for decision to the Full Court as has been made out by the petitioner by referring to Rule 8(3) of the High Court of Jharkhand Rules, 2001. Learned counsel appearing on behalf of the Respondent No. 4 submits that the petitioner even as a probationer under training, was found to have associated himself with the leaders of the ministerial officers, who led their agitation against administration without any genuineness. In the year 1995-96, he was not found fit for exercise of enhanced power. In the year 1997-98, his integrity was found doubtful. However, the same remarks were expunged by Hon'ble Full Court on 19.12.2001. It is further submitted by referring to the averments made in the counter affidavit that in the year 1989-99, several complaints regarding his integrity and partiality were received in the court. Learned counsel for the Respondent No. 4 submitted that similar complaint was received against him in the year 2006-07 and in the year 2008-09 complaints were received against his integrity, it was found that his attitude or Behaviour with sub-ordinate staffs, litigants and witnesses was not good. Learned counsel for the Respondents No. 4- Jharkhand High Court vehemently submitted by referring to the statements made in the counter affidavit that complaints were received on 26.02.2009 that the petitioner had kept one Mr. Tapas in his residence, who is an advocate and he also used the vehicle of the petitioner for coming to the court. The said Tapas was junior to one Mr. Ajay Kumar Sinha, Advocate and used to take undue advantage. It is further stated that the said Mr. Tapas and one Delip Verma acted as middlemen of the petitioner. Based upon the aforesaid complaints report was sought for from the District Judge, Hazaribagh. The learned District Judge gave his detailed report on enquiry from persons living in the same block as the petitioner and also personally went to his residence. The said Mr. Tapas was found with Mr. Ajay Kumar Sinha his Senior in petitioner's house. The said Mr. Ajay Kumar Sinha was allotted work of A.P.P. in the petitioner's Court. Learned District Judge found the attitude and behaviour of the petitioner not desirable. These facts have been brought on record by way of averments in the counter affidavit. The entire matter was placed before Hon'ble Standing Committee of the Jharkhand High Court and an explanation was sought for from the petitioner. In his explanation the petitioner submitted that Mr. Tapas Layak is not a lawyer enrolled at Hazaribagh and in fact he is a cook. However, he further explained that he retained Mr. Tapas as he wanted to continue his study and ultimately passed L.L.B. and obtained licence. It was further stated on behalf of the petitioner, in his explanation, that after returning from leave from July, 2008 to August, 2008 as he had gone to USA, he stopped taking services of Mr. Laik, who is a resident of Seraikella and that he does not practice at Hazaribagh.

8. Learned counsel for the Respondent No. 4 submitted that the explanation of the petitioner was self contradictory, as according to him, the said Mr. Tapas Laik was not a lawyer and was a cook he ultimately passed L.L.B. and obtained license in the month of June, 2008, whereas the report of the District Judge was submitted after receiving the anonymous complaint on 22.6.2009 clearly stating that Mr. Tapas had been living with the petitioner.

9. The Screening Committee constituted by Hon''ble Court to consider the matters of the officers in view of provision of Rule 74(ii) (b) of the Code looked into the Vigilance file service record and related aspects of the petitioner and resolved not to allow the petitioner in service beyond 58 years and to compulsorily retire him. The Screening Committee recommendation was placed before the Hon''ble Chief Justice and was referred to the Standing Committee which resolved in its meeting dated 28th March, 2011 after considering the recommendation of the Screening Committee, the explanation of the petitioner and the relevant records that the petitioner should be compulsory retired. In accordance with the provisions of Rule 8(iii) of the Jharkhand Service Code, the recommendation was sent to the State Government and by the order of His Excellency The Governor of Jharkhand the notification dated 26.4.2011, directing the petitioner to compulsory retire has been issued as contained in Annexure-15 Series under the signature of the Deputy Secretary, Department of Personnel, Administrative Reforms and Raj Bhasa, Government of Jharkhand in public interest.

10. Learned counsel for the Respondent No. 4 has categorically submitted that the complaints as referred hereinabove in respect of the petitioner were of very serious nature relating to the integrity of the officer concerned. The relevant A.C.Rs. of the petitioner were considered by Screening Committee as well as the Standing Committee which found earlier also complaints have been received regarding integrity and impartiality in the year 1998-99 and even in subsequent year 2000-2001, it was observed that he should be more punctual and also improve disposal. Learned counsel for the Respondent No. 4-Jharkhand High Court submitted that the complaints were received against the petitioner in the year 2006-07 and adverse remarks entry in his A.C.R. in the year 2008-09 were related to the integrity and impartiality of the petitioner. Even in the subsequent year 2009-10, it was recorded in his ACR that his attitude and Behaviour with subordinate staffs was not so good and he was accorded average and satisfactory overall assessment for the relevant years 2008-09 and 2009-10.

11. Learned counsel for the Jharkhand High Court further relied upon the judgment of the Hon''ble Supreme Court delivered in the case of Pyare Mohan Lal Vs. State of Jharkhand and Others, . By referring to paragraph nos. 19 and 24 of the said judgment, learned counsel submitted that on account of grant of promotion, it cannot be said that the entire sting in the A.C.R. of a judicial officer is washed out or wiped away in the matter of consideration of the compulsory retirement of the judicial officer.

12. Learned counsel for the respondent further submits that the judgment of the Apex Court in Bainkunth Nath Das Case has also been quoted in the said judgment and the Hon"ble Supreme Court at paragraph 29 clearly laid down that a single adverse entry regarding integrity of the Judicial Officer even in remote past is sufficient to award compulsory retirement.

13. The Relevant extracts of the judgment in the case of Pyare Mohan Lal Vs. State of Jharkhand and Others, are quoted hereinbelow:

Para 19: In State of Punjab v. Dewan Chuni Lal a two-Judge Bench of this Court held that adverse entries regarding the dishonesty and inefficiency of the government employee in his A.C.Rs. have to be ignored if, subsequent to recording of the same, he had been allowed to cross the efficiency bar, as it would mean that while permitting him to cross the efficiency bar such entries had been considered and were not found of serious nature for the purpose of crossing the efficiency bar.

Para 24: In view of the above, the law can be summarised to state that in case there is a conflict between two or more judgments of this Court, the judgment of the larger Bench is to be followed. More so, the washed-off theory does not have universal application. It may have relevance while considering the case of government servant for further promotion but not in a case where the employee is being assessed by the reviewing authority to determine whether he is fit to be retained in service or requires to be given compulsory retirement, as the Committee is to assess his suitability taking into consideration his "entire service record".

Para 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.

14. Learned counsel for the Respondent No. 4, therefore, submits that the serious allegations relating to integrity that have been found in the case of the petitioner upon inquiry, are sufficient to justify the order of compulsory retirement of the petitioner. Apart from that the previous complaints relating to integrity and impartiality have been considered in entirety during appraisal of his A.C.Rs. while the matter for compulsory retirement of the petitioner was

considered by Screening Committee as well as by Standing Committee of the Hon''ble High Court. The impugned order is therefore wholly justified and in accordance with law and the subjective satisfaction of the High Court, does not suffer from any lack of substantive material to support the same. Learned counsel, therefore, submits that the reliance of the petitioner upon the case of Nand Kumar Verma, is wholly misplaced as in the present case the Hon''ble High Court had taken into account the serious allegations relating to integrity of the person while recommending his compulsory retirement. Therefore, it is submitted that the impugned order is neither arbitrary nor in violation of the Rules of the High Court and are duly supported by sufficient cogent materials that have already been brought on record.

15. We have heard learned counsel for the parties at length and have also gone through the averments made through the pleadings on behalf of the rival parties including the relevant materials brought on record.

16. From the conspectus of the entire facts and circumstances, it appears that the matter relating to the compulsory retirement of the petitioner was considered by the Screening Committee duly constituted by the Hon''ble Jharkhand High Court and the entire A.C.Rs. of the petitioner right from his entry in service, were taken into account. It further appears that the complaints were received in respect of his integrity earlier also in the year 1998-99, which have been duly recorded in the A.C.Rs of the petitioner. It further appears that further complaints were received in respect of the petitioner in the year 2006-07, which have also been recorded in his A.C.Rs. In the year 2008-09 anonymous complaints were received in respect of his integrity and impartiality over which the District Judge Hazaribagh was directed to submit a report. The learned District Judge, Hazaribagh on inquiry found that the block in which the petitioner concerned was residing as Additional District Judge, III, Hazaribagh, three other Judicial Officers, namely, Ramesh Kumar Gupta, Sub Judge-II, Hazaribagh, Sri Ajit Kumar Singh, Judicial Magistrate, 1st Class, Hazaribagh and Sri R.K. Mishra, Judicial Magistrate, 1st Class, Hazaribagh were also residing. The aforesaid three Judicial Officers supported the fact, on inquiry, by the District Judge that Mr. Tapas Layak is residing with the petitioner and he has been using his vehicle as well as he takes meal in his Chamber while practicing as Junior Counsel of Sri Ajay Kumar Since, Special P.P. and additional P.P. of the court of Ramendra Nath Rai i.e. petitioner. It was further found that in absence of the petitioner Mr. Tapas Layak used to call unsocial elements at the residence and take wine. He had also beaten one Home Guard posted as Guard of the said block where the petitioner was residing at Hazaribagh. The said Mr. Tapas had also beaten one person in front of the quarter''s main gate. Further it was mentioned in the report that about a month ago, Mr. Tapas had entered into the quarter of other Judicial Magistrate, Sri Shwyambhu in drunken condition and in spite of objection of his wife Smt. Premlata Tripathy, Judicial Magistrate, 1st class, Mr. Tapas has parked his motor cycle in the premises of her quarter, which was complained to the petitioner by Sri Shwayambhu, but nothing was done by him. It is further

submitted on the part of the learned counsel that learned District Judge personally went to the residence of the petitioner and found the said Mr. Tapas in his residence and also found that Ajay Kumar Sinha an A.P.P. and senior advocate of Mr. Tapas, who was allotted the work of the court of the petitioner, Mr. Ramendra Nath Rai. Learned Sessions Judge found that the attitude and Behaviour of the petitioner was not desirable. The explanation submitted by the petitioner, which was placed before the Screening Committee, was far from convincing and rather unsatisfactory. While the petitioner reported that Mr. Tapas Layak was only a cook and he wanted to continue his study in order to obtain his LLB degree and obtained licence in the month of June, 2008, but even in the report of District Judge, Hazaribagh on the basis of the complaint received in the High Court on 22.6.2009, Mr. Tapas was found to be residing in the residence of the petitioner. The explanation of the petitioner that he had stopped taking the services of Mr. Tapas Laik after August, 2008, were therefore wholly without basis and unsatisfactory.

17. The Screening Committee of the High Court, therefore, recommended the matter to Hon'ble Chief Justice, who placed it before the Standing Committee of the High Court for its consideration in accordance with the Rules. The Standing Committee thereafter took into account the recommendation of the Screening Committee, the explanation of the petitioner as also the relevant records, the service extracts and the A.C.Rs. of the petitioner and on appraisal of these materials was satisfied that the continuance of the petitioner as a Judicial Officer was not in public interest. It therefore recommended for compulsory retirement of the petitioner from service.

18. Although during the course of argument, learned counsel for the petitioner had raised this ground that the recommendation for compulsorily retiring this petitioner was made by the Standing Committee of the Hon'ble Court whereas under Article 235 of the Constitution of India, the Full Court is required to make such a recommendation, however, the petitioner has not challenged the validity of the Jharkhand High Court Rules whereunder it is the Standing Committee which has been duly empowered to make recommendation for compulsory retirement of a Judicial Officer. The writ petitioner's contention to that effect is therefore untenable in law. As per Rule 8(1)(ix) it is the Standing Committee which is conferred with the power to make a recommendation for compulsory retirement of a Judicial Officer. The said Rule as stated above is not under challenge herein.

19. The contention of the petitioner that he was granted regular promotion as Sub Judge and thereafter was posted as Chief Judicial Magistrate and finally promoted as Additional District and Sessions Judge on regular basis by notification dated 1st of August, 2008 (Annexure-8) to substantiate his contention that any adverse entry or remarks had lost its sting in the matter of consideration of his case by the High Court for the purposes of compulsory retirement is not tenable in the eye of law categorically in view of the judgments

delivered by Hon''ble Supreme Court of India in the case of Pyare Mohan Lal Vs. State of Jharkhand and Others, . It has been clearly held as quoted hereinabove that the washed-off theory does not have universal application, while it may have relevance while considering the case of government servant for further promotion but not in a case where the employee is being assessed by the authority to determine whether he is fit to be retained in service and requires to be given compulsory retirement, as the committee is to assess his suitability taking into consideration his entire service record. The Hon''ble Supreme Court in the said judgment has clearly laid down at paragraph 29 that 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.

20. It would be relevant to refer to a recent judgment of the Hon''ble Supreme Court rendered in the case of R.C. Chandel-Vs.-High Court of M.P. & anr. reported in JT 2012 (7) SC 332, wherein the Hon''ble Supreme Court after a survey of the judgments rendered on the issue relating to compulsory retirement, has held that those of doubtful integrity, questionable reputation and wanting in utility are not entitled to benefit of service after attaining the requisite length of service or age. The opinion of the Hon''ble Court in paragraph nos. 27, 34, 35, 37 is quoted hereinbelow.

27. In Rajendra Singh Verma (supra), this Court restated what has been stated in earlier decisions that compulsory retirement from service is neither dismissal nor removal; it differs from both of them, in that it is not a form of punishment prescribed by the rules and involves no penal consequences inasmuch as the person retired is entitled to pension and other retrial benefits proportionate to the period of service standing to his credit. An order of compulsory retirement being not an order of adverse consequence, principles of natural justice have no application. This Court took into consideration a long line of cases including State of U.P. and another v. Bihari Lal [1994 (Suppl. 3) SCC 593], Union of India v. V.P. Seth and another [1994 SCC (L & S) 1052], Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another [JT 1992(2) SC 561; 1992 (2) SCC 299], Baidyanath Mahapatra v. State of Orissa and another [JT 1989 (3) SC 360; 1989 (4) SCC 664], Union of India (UOI) Vs. Col. J.N. Sinha and Another, All India Judges'' Association (1) v. Union of India and others [JT 1991 (4) SC 285; 1992 (1) SCC 119] and All India Judges'' Association (2) (supra) and called out the legal position as follows:

183. It is well settled by a catena of decisions of this Court that while considering the case of an officer as to whether he should be continued in service or compulsorily retired, his entire service record up to that date on which consideration is made has to be taken into account. What weight should be attached to earlier entries as compared to recent entries is a matter of evaluation, but there is no manner of doubt that consideration has to be of the

entire service record. The fact that an officer, after an earlier adverse entry, was promoted does not wipe out earlier adverse entry at all. It would be wrong to contend that merely for the reason that after an earlier adverse entry an officer was promoted that by itself would preclude the authority from considering the earlier adverse entry. When the law says that the entire service record has to be taken into consideration, the earlier adverse entry, which forms a part of the service record, would also be relevant irrespective of the fact whether the officer concerned was promoted to higher position or whether he was granted certain benefits like increments etc.

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

35. That the appellant's challenge to 1993 and 1994 entries was unsuccessful right up this Court is not in dispute. However, learned senior counsel for the appellant has placed heavy reliance upon the observations made by the Division Bench in its judgment and order dated 25.02.1997, particularly, paragraph 69 thereof wherein the Division Bench held that adverse remarks on the reputation in the relevant years should not haunt him all through his judicial career and hamper his prospects for all times. We are afraid the above observations by the Division Bench while upholding the remarks in no manner restricted the power of the Full Court in taking into consideration these adverse remarks in its exercise to find out whether or not the appellant should be retained in service after he has attained the required length of service. The consideration of the appellant's case for grant of selection grade and super time scale stood on different footing. The entire service record and overall profile of a judicial officer guide the High Court in reaching its satisfaction about the continuance or otherwise after the judicial officer has attained the required length of service or age. When the entire service record of a judicial officer is under consideration, obviously the High Court is alive to such judicial officer's having got promotion/s, increments, etc. during the service.

37. Judicial service is not an ordinary government service and the judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the

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

42. Learned senior counsel for the appellant placed heavy reliance on a decision of this Court in Nand Kumar Verma (supra). Having carefully considered Nand Kumar Verma (supra), we find that the decision of this Court in Nand Kumar Verma (supra) has no application on the facts of the present case. This is clear from the Report which reads as follows:

36. The material on which the decision of the compulsory retirement was based, as extracted by the High Court in the impugned judgment, and material furnished by the appellant would reflect that totality of relevant materials were not considered or completely ignored by the High Court. This leads to only one conclusion that the subjective satisfaction of the High Court was not based on the sufficient or relevant material. In this view of the matter, we cannot say that the service record of the appellant was unsatisfactory which would warrant premature retirement from service. Therefore, there was no justification to retire the appellant compulsorily from service.

Nand Kumar Verma (Supra), thus, turned on its own facts.

21. The Hon''ble Supreme Court in the aforesaid judgment after discussing the various judgments laid down by Apex Court has spelt out in unequivocal terms that when the entire service record of a judicial officer is under consideration, obviously the High Court is alive to such judicial officer's having got promotions increments etc. during the service. The Hon''ble Supreme Court in the aforesaid judgment at paragraph 34 has once again held that those of doubtful integrity, questionable reputation and wanting in utility are not entitled to benefit of service after attaining the requisite length of service or age. The Hon''ble Supreme Court thereafter proceeded to uphold the recommendation of the High Court for compulsory retirement of the said appellant stating that it does not suffer from any arbitrariness and it was neither arbitrary nor irrational justifying any interference in judicial review.

22. From review of the law laid down and summarized in the extracts from the

judgments quoted hereinabove, it is apparent that the subjective satisfaction of the High Court found on the basis of the report of the Screening Committee and the Standing Committee for compulsory retirement of the petitioner, did not suffer from any arbitrariness or irrationality justifying interference in judicial review in a case of serious doubt relating to the integrity of the judicial officer, in question, i.e. the petitioner being brought to the notice of the High Court. The entire service record of the petitioner were considered before arriving at an informed and rational decision recommending the compulsory retirement of the petitioner. The fact that he had been granted regular promotion on the post of Sub Judge or Additional District & Sessions Judge in 2008 would not wipe away the effect of such an adverse remarks on the integrity and impartiality of the judicial officer, who is supposed to perform his role with absolute rectitude. In the words of Hon"ble Supreme Court the office of Judicial Officer is an office of public trust which requires a person to be of integrity and independence so as to inspire confidence in the litigant, who enters into the courtroom so that he must feel secured that the judge before whom the matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a judge is much higher than that of an ordinary man. A Judge, like Caesar's wife, must be above suspicion. After giving anxious thought and consideration to the contention of the rival parties, this court comes to the inescapable conclusion that the recommendation of the High Court to compulsory retire the petitioner and the impugned notification issued consequent thereto, does not suffer from any arbitrariness or illegality so as to warrant interference in exercise of powers under Article 226 of the constitution of India. The writ petition is, therefore, devoid of any merit and it is accordingly dismissed.