
(1996) 03 BOM CK 0034
In the Bombay High Court
Case No : Writ petition No. 649 of 1996

R.W. Khan, Ex-additional District and Sessions Judge at
Aurangabad

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-03-1996

Acts Referred:

Constitution of India, 1950 — Article 166, 225, 235, 236

Citation : (1996) 1 MhLj 899

Hon'ble Judges : N.D. Vyas, J;G.D. Kamat, J

Bench : Division Bench

Judgement

G.D. Kamat, J.—The petitioner ex-member of the State Judicial Service takes exception to the order dated 18th February 1994 made in exercise of powers under Rule 10(4)(a)(i) of the Maharashtra Civil Services (Pension) Rules, 1982 in the name of the Governor of Maharashtra whereby the petitioner is made to compulsorily retire from service. This order was served on the petitioner on 25th February 1994 along with three month's pay and allowances in lieu of service.

2. The petitioner was recruited to subordinate judicial service as a Civil Judge, Junior Division and Judicial Magistrate, First Class, On 17th April 1970. In 1980, the petitioner was promoted as Civil Judge, Senior Division and on 20th February 1986, he was further promoted as Additional District Judge. For some brief period, the petitioner was posted in an ex-cadre post as member of the 3rd Industrial Court at Pune. Upon repatriation, the petitioner again came back to the cadre and was last posted as Additional District Judge and Additional Sessions Judge at Aurangabad. The impugned order of compulsory retirement came to be served on the petitioner while he was at Aurangabad.

3. In his span of Judicial career, the petitioner, it appears, was issued a warning sometime on 31st January 1992 by the Hon'ble the Chief Justice for not obtaining prior permission for contracting second marriage which was in violation of Maharashtra Civil Services (Conduct) Rules, 1979. In a departmental

proceedings, a minor penalty of withholding the petitioner's promotion for a period of three years had been issued pursuant to the decision of the Disciplinary Committee of the High Court taken on 7th October 1992. In that the imputation against the petitioner was that while working as 5th Additional District Judge, Pune the petitioner had passed order condoning delay in Miscellaneous Application No. 267 of 1987 on 25th May 1989 during summer vacation when petitioner was under the orders of transfer from Pune to Dhule and without hearing the opposite party and when the matter was not listed on Board.

4. This imposition of penalty of withholding promotion for three years was challenged by the petitioner in Writ Petition which was rejected by a Division Bench of this Court. Aggrieved by the rejection of the petition, the petitioner took the matter to the Supreme Court which rejected Special Leave Petition.

5. The impugned order whereby the petitioner has been compulsorily retired is challenged in the present petition, firstly, on the ground that the decision to so retire him when the petitioner has crossed the age of 55 years is not by the High Court meaning all judges but only by Review Committee appointed by the Chief Justice. That in any event, the Review Committee had not been appointed by the High Court and, therefore, the order is hit by Article 235 of the Constitution of India.

The second ground of challenge is to the manner and method adopted by the Review Committee being in violation of Rule 10(4)(a)(i) of the Maharashtra Civil Services (Pension) Rules, 1982 (for short "Rule of 1982"). In that, it is contended that the petitioner's Review ought to have come before the petitioner completed 50 years of age and it was not open to have him removed by compulsorily retirement after crossing 55 years of age which is impermissible under the Circulars issued by the State Government from time to time is that behalf and otherwise his service record is good.

Lastly, it was urged that the order of compulsory retirement is not born out of bonafides or in Public interest but is by way of punishment for, the petitioner had challenged instituting a Writ Petition the order stopping his promotion for three years which was served upon on 12th October 1992.

6. Coming to the principal challenge that the order compulsorily retiring the petitioner was based upon the decision of the Review Committee appointed by the learned Chief Justice and not by the High Court meaning all Judges, it is contended that Article 235 of the Constitution of India enjoin while giving absolute control over District Court and Subordinate Courts to the High Court along and not to either the Chief Justice or Committee of Judges. The submission is that the High Court has not framed Rules though enjoined under Article 225 of the Constitution of India in the matter of powers of Judges in relation to the administration of justice and, therefore, in the first place, the Chief Justice himself has no power, nor he could constitute a Committee to exercise those powers and, in any event, in the absence of the Rules, the power to be exercised

can only by the High Court which would mean "All Judges". It is then urged that even on the assumption that the judges of the High Court can authorise the Committee consisting of smaller number of Judges, even then the impugned order is invalid because the Full House had never appointed the Review Committee.

7. This petition is opposed. For that matter, an affidavit has been filed by Additional Registrar (Legal) dated 7th September 1994. It is averred in the affidavit that the petitioner's case for review under provisions of Rule 10(4)(a)(i) of the Rules of 1982 was considered by the Review Committee constituted by the Hon"ble the Chief Justice in accordance with the modalities fixed in the Chamber Meeting of all the Hon"ble Judges of the High Court; that the Review Committee so appointed examined the Confidential Record, Leave and Disposal Record, etc. and the Committee unanimously decided that the petitioner should be compulsorily retired from service as it is not in the public interest to continue him in service. The further recommendation was that instead of service of notice of duration of three months, it was desirable to retire the petitioner by payment of three months' pay and allowances in lieu of said notice. That the minutes of the Review Committee dated 23rd November 1993 were submitted to the Hon"ble the Chief Justice by its letter dated 30th November 1993 and the decision of the Review Committee was considered by the Administrative Judges in the meeting held on 10th December 1993. It may be mentioned at this stage itself that the Review Committee consisted of Senior Judges of this Court and what is more, the decision of the Review Committee was approved by the Administrative judges who are, at all times, the Hon"ble the Chief Justice and two Senior-most Judges. It is also averred in the affidavit by the Additional Registrar that regard being had to modalities fixed in the Chamber Meeting of all the Judges of the High Court, the impugned decision is that of the High Court, which accords with the decision of the Apex Court in *State of Uttar Pradesh v. Ratuk Deo Pati Tripathi* reported in 1978 (2) SCC 103.

8. This challenge of the petitioner is no longer *res integra*. It may be mentioned that neither the petitioner, nor his counsel were aware that in an unreported judgment delivered on 23rd June 1992 by Division Bench of this Court in Writ Petition No. 369 of 1992 and Writ Petition No. 5847 of 1991 similar challenge as is made in the present petition had been negatived. Writ Petition No. 369 of 1992 which was instituted by Extra Joint District Judge, Pune and writ petition No. 5847 of 1991 which was instituted by Civil Judge, Senior Division and Judicial Magistrate, First Class, Satara were compulsorily retired by the orders dated 25th October 1991 issued by Governor of Maharashtra on the plea that the decision to retire them compulsorily had not been taken by the High Court as required by Article 235 of the Constitution of India but only by a Committee set up by the Chief Justice. In fact, it appears that the Chief Justice had appointed a Committee of three Judges to review the cases of several Judicial Officers for judging their suitability to continue in service. The Review Committee upon taking into consideration the confidential/service records of past few years, took

the decision to either retain or to compulsorily retire as the case is in public interest after completion of 50/55 years. The Committee had recommended to compulsorily retire these two Officers as the record was found unsatisfactory. This decision of the Review Committee was considered by the Chief Justice and two Administrative Judges in the meeting held on 26th July 1991 and, accordingly, affirmed the decision to retire them prematurely.

While examining the question whether the decision taken is that of the High Court or not in view of Article 235 of the Constitution of India, the Division Court found that there is in the filed Resolution dated 2nd May 1981 passed by the Full Court which lays down the manner and regulates the procedure for administrative decisions on several subjects and matters. In other words, the Resolution lays down the procedure and the modality for administrative decision in matter enumerated therein.

9. It is not necessary to refer to the entire minute of the Full Court Meeting of 2nd May 1981 and suffice to make reference to relevant part of the decisions which reads :

"IV. (A) Decisions on the following matters shall be taken at a meeting of all the Judges.

1) Promotion of an Assistant Judge as a District Judge if such promotion involves supersession of any senior Judge or Judges.

2) Appointment of a Civil Judge as a Civil Judge, Senior Division, otherwise than in accordance with the order of seniority.

3) Appointment of Civil Judge as a Metropolitan Magistrate or a Judge of the Court of Small Causes.

4) Promotion of :

a) A Metropolitan Magistrate as an Additional Chief Metropolitan Magistrate or as the Chief Metropolitan Magistrate.

b) A Judge of Small Cause Court in Bombay as an Additional Chief Judge or as the Chief Judge of the Court.

5) Postponement of confirmation of Judge or a Magistrate.

6) Recommendation by way of Disciplinary action against any Judge or Magistrate.

7) Appointment of an Inspecting District Judge.

8) Recommendation of names for appointment to posts other than these of District Judges and Bombay City Civil Court Judges where such appointments are to be made on the recommendation of the High Court.

Decision : Accepted.

VII. In respect of any matter not mentioned hereinabove a proposal be initiated by the Chief justice and circulated among all the Judges and decision shall be taken in accordance with the majority opinion. The Chief justice may, if he so desires, instead refer the matter to the meeting of all the Judges.

Decision : To be deleted and substituted by the following residuary clause :

"Decisions of all matters except these enumerated in paragraph IV (A) shall be taken in accordance with the practice followed hitherto or in accordance with the directions that the Chief justice may issue from time to time hereafter".

Clause IV (A) lays down what decision shall be taken at a meeting of all the Judges. Clause VII provides that the decision in all other matters except those enumerated in clause IV (A) shall be taken in accordance with the directions that the Chief justice may issue from time to time hereafter. The decisions of the High Court in respect of premature retirement fall under Clause VII. Based upon this resolution of Full Court, the practice evolved in this Court is that from time to time a Review Committee is appointed by the Chief Justice which normally consists of not less than three Senior Judges and the decisions and recommendations made by such Review Committee are then placed before the Committee of Administrative Judges of this Court.

10. The Division Court, therefore, held that in view of the Resolution of the Full Court meaning all Judges taken on 2nd May 1981 empowers the Chief Justice to appoint a Review Committee. That the decisions taken by the Review Committee and approved by the Administrative Judges Committee is nothing but the decision of the High Court itself. It is also further held by the learned Judges of the Division Court that it is not thereafter necessary to place the decision for approval before the meeting of all the Judges or Full Court. That, in any event, passing of the resolution by the High Court is meant for conveniently transacting the business of the High Court as it is often impracticable to place every matter before the Full House particularly because there are different Benches of this Court.

11. This decision was rendered by the Division Bench after reviewing some cases of the Supreme Court and more particularly, *State of Uttar Pradesh v. Batuk Deo Pati Tripathi* and another reported in (1976) 2 SCC 102.

12. The learned counsel appearing for the petitioner once confronted with this decision fairly conceded that the point raised in the present petition is covered by the decision of Division Bench of this Court. He, however, indeed produced an order made by the learned single Judge on 3rd November 1995 in writ petition No. 1755 of 1995. Again a petition by a member of the subordinate judiciary challenged the order of compulsory retirement dated 13th September 1995. The learned single Judge in his order after referring to the modalities adopted by the Chief Justice, the Committee of the Administrative Judges and the Review Committee in terms of the resolution of Chamber Meeting of Judges held on 2nd May 1991 while admitting the writ petition formulated two questions holding that

the some requires consideration. The two questions being (1). Whether the power of the High Court to recommend compulsory retirement of a judicial Officer under Article 236 of the constitution of India can be exercised by Review Committee or by the Administrative Committee for the Full Court in absence of rule framed by the High Court in this behalf in exercise of its rule making power and (2) if so, whether the Resolution dated 2nd May, 1981 passed at the Chamber Meeting of the Hon"ble Judges of this Court can be equated to a rule made by the High Court presenting the manner in which the control of the High Court vacated is it under Article 235 of the Constitution of India is to be exercised?

Having considered the importance of the questions framed by him, the learned Judge made a recommendations that the above two questions be decided by larger Bench of this Court and they deserve to be decided by a Bench of two or more Judges.

13. Shri Maralapalle, learned counsel appearing for the petitioner, says that the learned single Judge has made the aforesaid recommendation by posing two questions even after viewing the judgments of the constitutional Bench of the Supreme Court in the State of Uttar Pradesh v. Batuk Deo Pati Tripathi and another and several other decisions and, therefore, the matter deserves consideration.

14. This Court is not aware what directions have been passed by the learned Chief Justice Single Judge but it does seem to us that the matter has been concluded as far as this Court is concerned and, therefore, the question is so longer res integra. Though no reference has been made to this Bench by the learned Chief Justice in so far as Writ petition No. 1755 of 1995 is concerned, upon carefully going into the order made by the learned Single Judge on 3rd November, 1995 it is crystal clear that none of the parties were aware of the decision of the Division Court dated 23rd June 1992 which disposed of Writ Petitions Nos. 369 of 1992 and 5847 of 1991. Had this unreported judgment been brought to the notice of the learned single Judge, needless to say that he would not have recommended to the learned Chief Justice to constitute a Bench for deciding the point in controversy, judicial discipline and decorum demands that a single Judge follows the precedent of a Division Bench.

15. Though we respectfully agree with the view taken by the learned Judges of the Division Bench in Writ Petition Nos. 369 of 1992 and 5847 of 1991, we are unable to resist the temptation of once again referring to the judgment rendered by the Constitutional Bench of the Supreme Court in the State of Uttar Pradesh v. Batuk Deo Pati Tripathi and another (supra). This decision in our view, has as lived several controversies raised and arising out of the full Bench decision of Allahabad High Court. The Supreme Court did not, however, accept the majority view and upon accepting the majority view clearly held in answer to the controversy posted in para 11 of the report which is as under :

"In other words, if by Article 235 the control over subordinate Courts is vested in the High Court as a whole, is it permissible to the High Court to provide by framing a rule that a matter falling within the area of control may be decided, not by the whole Court, but by a Judges or a Committee of Judges meeting on behalf of the Court that is the first question which Full Bench of the High Court formulated for its consideration.

While answering it is held :

"Having given our close and anxious consideration to that question, we regret that we are unable to share the view of the majority of the High Court Full Bench that by leaving the decision of the question of the respondent's compulsory retirement to the Administrative Committee, the Court had abdicated its constitutional function".

"A proper understanding and appreciation of this position will be conducive to a correct assessment of the situation under examination in the instant case. For, knowing that the object of Article 235 is to ensure the independence of an important wing of the judiciary, the inquiry which assumes relevance is whether the procedure sanctified by the Rules of the High Court is in any manner calculated to interfere with or undermine that independence".

"The procedure adopted by the High Court under its Rules is not subversive of the independence of the subordinate judiciary, which is what Article 235 recognises and seeks to achieve. The true question the for decision is not the one by which the majority of the Full Bench felt oppressed but simply, whether the procedure prescribed by the High Court Rules is in any other manner inconsistent with the terms of Article 235 of the Constitution".

In paragraph 16 it is observed :

"In fact, it is so 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 has the authority of the court to consider the manifold matters falling within the purview of Article 235".

"For balancing these two-fold functions it is inevitable that the administrative duties should be left to be discharged by some on behalf of all the Judges. Judicial functions brook no such sharing of responsibilities by any instrumentality".

Paragraph 17 reads as under :

"The High Court has not by its Rule authorised any extraneous authority, as in Shamsheer Singh, to do what the Constitution enables and empowers it to do. The Administrative Judge or the Administrative Committee is a mere instrumentality through which the entire Court acts for the mere convenient transaction of its business, the assumed basis of the arrangement being that such instrumentalities will only act in furtherance of the broad policies evolved from

time to time by the High Court. He is its alter ego. It is therefore inappropriate to say that a Judge or a Committee of Judges of the High Court authorised by the Court to act on its behalf is delegate of the Court".

16. The learned counsel for the petitioner, however, places reliance on the decision in Registrar, High Court of Madras Vs. R. Rajiah, to suggest that there is a departure from State of U.P. v. Batuk Deo Pati Tripathi and another (supra). He urges that unless Rules are framed by the High Court no decision for premature retirement can be made and secondly the High Court i.e., body of all Judges must approve the decision if taken by a smaller committee.

17. We are unable to accept that the decision of the Constitutional Bench of Five Judges in Tripathi's case has been in any manner diluted by the decision of Registrar, High Court of Madras v. R. Rajiah. The High Court of Madras had decided Rajiah's case on facts. It was observed that the Chief justice had nominated Enquiry Committee which took the decision and which was later on communicated by the Chief justice to the State Government without prior approval of the High Court, i.e., Full Court. The High Court had not empowered the Chief justice to nominate Enquiry Committee nor the decision was approved by the Full Court before the approved by the Full Court before the decision was forwarded to the State Government for compulsorily retiring Rajiah.

18. It is true that there are no rules framed by this High Court but in absence of the rules, the resolution made by the Full Court has the effect of the rules themselves. Even if Rules under various Articles of the Constitution of India were to be framed by the High Court, such Rules indeed had to be approved by the Full House. Therefore, on an analogy when the resolution is made by the Full House, it is nothing less than a rule itself may it under Article 225 of the Constitution of India. This type of situation is also foreseen by a Full Bench decision of Andhra Pradesh High Court in B. Ramanjaneyulu v. Government of Andhra Pradesh and another reported in 1981 LIC. 835 and upon consideration of the decision in Tripathi's case. The relevant passage is :

"By laying emphasis on the use of the expression "rules" in these passages, it was argued that the decision of the Supreme Court in the above case should be regarded only as holding that the High Court can entrust the administration functions to a smaller body of Judges only by rules framed by the High Court. We are unable to agree with this contention. Under Article 235, the administrative control is vested in the High Court. As pointed out by the Supreme Court, in the above case, it is necessary having regard to the very nature of the powers vested in the High Court that the High Court should be empowered to authorise a smaller body. Otherwise, as pointed out by the Supreme Court if the whole High Court is to consider every one of the matters, the exercise of the control instead of becoming effective will end to cause delay and confusion in the administration of justice in the State and will frustrate the very object of the salient provisions contained in Art. 235. It is open to the High Court to devise the manner and method by which the power is entrusted to a smaller body. There is nothing in

the language of Art. 235 which indicates that it is obligatory on the part of framing rules. There is no reason why it cannot confer this power by means of a resolution".

19. In answer to this particular challenge raised on behalf of the petitioner, the same can be also advantageously met by referring to a decision in T.S. Sankanarayanan v. High Court of Judicature at Madras (represented by Registrar, High Court) reported in 1995 I L.L.J. 140. In this case, on analysis of various cases commencing from the judgment of the Supreme Court in Tripathi's case, the High Court of Madras had laid down three propositions, the last of which is as under :

"In the absence of rules of resolution by a Full Court, the Chief Justice by himself cannot appoint a smaller body constituting the disciplinary committee or the enquiring committee".

From the aforesaid what is deducible is that when the Full Court resolves to empower Chief Justice to appoint a smaller body constituting of Review Committee, the decision taken by Review Committee and approved by the Administrative Judges must be held to be made by the Full Court itself.

20. Having regard to the resolution of Chamber Meeting dated 2nd May 1981 matters relating to review of Judicial Officers and disciplinary proceedings falling under item VII is clearly left to the Chief Justice to appoint Committees according to the practice followed. The practice followed of appointment of Review Committee from time to time to review the cases of the officers at 50/55 years as laid down in Rule 10(4)(a)(i) of the Rules of 1982 is not disputed. Nothing, therefore, survives in the challenge made.

21. On second challenge, it is contended by the learned counsel for the petitioner that the petitioner completed 50 years of age on 5th February 1988 and the review of the petitioner was taken sometime by end of 1993 when the petitioner had already crossed 55 years of age. It is urged that the State Government as issued circulars from item to item and regard being had to the circular in the filed dated 1st September 1983 only single review is possible and there cannot be any second review. In support of this contention, counsel relied upon earlier circular issued by the State Government dated 2nd May 1977 which permitted two reviews, one on completion of 30 years of qualifying service when the incumbent has enters service after 35 years of service in which case he is liable to be reviewed on completion of 55 years.

22. It is true that by Circular dated 1st September 1983, the instructions issued by the Government in case of Class I and Class II Gazetted Officers in both eventualities stipulated a single review for considering Officer concerned for retention beyond 50 years only. Based upon this, it was submitted that once the petitioner was allowed to cross and complete 50 years of age, petitioner was deemed to have been reviewed and found to be good for retention and there was no question of any further review when the petitioner was to complete 55 years.

The other submission of the learned counsel was that going strictly by the circulars issued by the Government, the review ought to have taken place sometime in August 1992 and in any case before the petitioner reached 55 years of age. In other words, the submission is that the case of the petitioner could not have been reviewed after petitioner crossed 55 years of age or at least round about the time of completion of 55 years, but in no case the review taken in November 1993, 10 months after he completed 55 years of age is justified and, therefore, the impugned decision is vitiated.

23. Upon a query by the Court, whether the circulars issued by the State Government could possibly cover the members of the judiciary or whether the High Court is bound by the circulars issued by the State Government for review of the cases, the learned counsel for the petitioner says that the Additional Registrar who has filed the affidavit has clearly averred while traversing the averments in the petition that the case of the petitioner was reviewed in accordance with the rule and circulars in that behalf. Obviously, reference was to these circulars.

24. It is indeed true that the Government has issued circulars and there are three circulars in the field (1) dated 2nd May, 1977, (2) 1st September, 1983 and (3) 12th May, 1986. They are, in fact, issued and needless to hold have statutory force being executive instructions issued under Article 166 of the Constitution of India, but what is relevant to notice is that they are issued to all Heads of the Government Departments. Obviously, these circulars are not binding on the High Court, nor the Judicial Officers can be brought within its fold as the State Government has no control over the members of the judiciary and the control is that of the High Court under Article 235 of the Constitution of India. It is not necessary to reiterate that this control has been envisaged as a safeguard so that the judiciary is made totally independent from the executive.

The Additional Registrar when averred in the affidavit that the Review Committee has taken into consideration the circulars issued in that behalf, what probably he meant is that the High Court has been following the criteria not because High Court is bound by the circulars issued by the State Government but because they accord to the principles which are in consonance with equity, good conscience and fair play.

25. This argument of the learned counsel also can be defeated on the ground that the Rules of 1982 do not prohibit the High Court from taking up review of the Judicial Officer at any time after completion of 50 years if he had entered service before attaining age of 35 years or after completion of 50 years if he had entered service before attaining age of 35 years or after completion of 55 years. In other words, the power to be exercised by the High Court under Rule 10(4)(a) (i) is in public interest, the entire guidelines is nothing but public interest and when a Judicial Officer has become a dead wood, inefficient or otherwise his record is below average, he is required to be weeded out. Such power can be exercised at any time either after completing 50 years or 55 years. Counsel still

urged that the word "after" in sub-clause (i) of clause (a) of sub-rule (4) of Rule 10 of the Rules of 1982 clearly indicate that such a review can be after attaining the age of 50 years when the Officer has entered service before age of 35 years. This aspect of the matter on this very rule is fully concluded in the decision of the Apex Court in *Suryakant Govind Oke v. State of Maharashtra* reported in 1995 2 CLR 404. On consideration of Rule 10 of Rules of 1982 and aforesaid mentioned Government Circulars, it was held in Para 8 of the report as under :-

"A conjoint reading of the above two paras of the circular show that the cases of Government servants, Class I Gazetted, may be reviewed once and the review may take place at the age of "50 - 55" years. Undoubtedly in this case, review has taken place at the age of 55 in so far as the appellant is concerned. We are not persuaded to accept the argument that when there was no first review before the employee reached the age of 50 years, there could be no review at the age of 55, to determine whether the employee deserved to be continued in service. The Rules and the Circular do not prohibit the review at the age of 55".

26. The learned counsel further says that in case of sub-rule (3), the expression is "any time thereafter", whereas sub-rule (4)(a)(i) does not speak of any time thereafter but restricted to "after".

There is, in fact, no difference in such an expression and what is more there is no warrant in interpreting that any limitation of time is imposed. Any restriction of time for review will also militate against Public Interest which wholly aims at weeding out the dead wood, inefficient, corrupt and Officers of doubtful integrity. We are, therefore, unable to accept that the petitioner's case could not have been reviewed after he had attained age of 55 years.

27. For that matter, it may be maintained that even in the Circular dated 1st September, 1983, the second review at the age of 55 years has not been completely ruled out by the State Government. No doubt, a single review has been made the rule and that too when the Gazetted Officer - Class I and Class II is about to reach the age of 50 years or completes 30 years of qualifying service, whichever, is earlier. But that they circular says that the second review at the age of 55 years should not be taken as a matter of course. That, however, the Government reserves the right to review the case of any such Officer at any time after the initial review if justified on the basis of his subsequent work, conduct or physical or mental health which may make premature retirement clearly desirable.

28. Reliance was indeed placed by the learned counsel on an unreported decision of the Division Bench of this Court rendered on 29th August, 1990 in Appeal No. 825 of 1990 in Writ Petition No. 1390 of 1990. The Division Bench was concerned with a case of an Executive Engineer, a Government servant working in P.W.D., who had been prematurely retired. The Division Bench on facts found that the Executive Engineer had been in fact promoted as such from the post of Deputy Engineer when he completed 50 years of age i.e., about the time he was

supposed to have been reviewed either for his retention or retirement. It is in the light of those facts that the Division Bench had looked into the circulars and held that the second review was not possible in his case.

29. The counsel for the petitioner suggested to this Court that the material which was placed before the Review Committee be called for and looked into. It must be stated in all fairness to the Advocate General who readily argued to furnish the Minutes of the Review Committee as well as the Annual Confidential Reports of the petitioner. What is more, the learned Advocate General gave inspection of all these documents to the counsel for the petitioner so that the petitioner is given a full opportunity thereby removing the veil of secrecy in the matter making it transparent. He indeed said that High Court cannot go into the adequacy of the material. He is justified in saying so.

30. Looking, to the Minute of the Review Committee which as mentioned earlier consisted of three Senior Judges, it is clear that the Review Committee has examined and taken into consideration, the confidential record, leave and disposal record as also the reports as regards physical condition and thereafter took the decision of recommending compulsory retirement in so far as the petitioner is concerned. As far as Annual Confidential Reports are concerned, for the year ending 31st March, 1990, the Officer had been rated "poor" and "integrity doubtful" and he needs to be watched. Similar is the situation in relation to the year ending 31st March, 1991. These A.C. Rs. are written by a Committee of 5 senior Judges of the Court. President, Industrial Court, Maharashtra wrote a confidential reports of the petitioner as the petitioner was working under him as industrial Court on ex-cadre post from 1.4.1992 to 31.10.1992. The petitioner has been rated as "average" and integrity as "doubtful". For the remaining period, that is to say, from November 1992 to 31st March, 1993, the Officer has been rated again as "average". For the year 1st April, 1993 to 30th November, 1993, the petitioner has again been rated "average" by the President. Industrial Court, and in the column of integrity, impartially and character, it is recorded that the promotion is withheld by the High Court. From the aforesaid, it is clear that the Officer has been rated as "poor" and "average" and what is more, throughout his integrity is held doubtful. In our opinion, in no manner the decision of the Review Committee and the Committee of the Administrative Judges could be faulted with when the record of the Officer is poor and average since 1990 and integrity "doubtful".

31. The next question to answer is whether the action taken against the petitioner of compulsorily retiring him is not borne out of bonafides. It is not necessary to dilate on this ground. Regard being had to his record of service, there could have been no less an order than that of, compulsory retirement in so far as the is concerned and that too in public interest. The order dated 18th February, 1984 is otherwise innocuous and does not carry any stigma. It does not lie in the mouth of the petitioner to suggest that the High Court borne any ill-will against him and compulsorily retired him only because he had instituted writ

petition against imposition of a minor penalty withholding his promotion for three years.

32. In this view of the matter, all the challenges fail and accordingly the writ petition is rejected with no order as to costs.

33. Learned counsel for the Petitioner, at this stage, orally applies for leave to appeal to Supreme Court. In our view, there is no substantial question of law, much less of public importance. Hence leave is rejected. Certified copy expedited.