

(2008) 12 OHC CK 0001

In the Orissa High Court

Case No : Writ Petition (C) No. 6553 of 2002

Sri Nishamani Prusty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-12-2008

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Orissa Service Code, 1939 — Rule 71

Citation : (2008) 12 OHC CK 0001

Hon'ble Judges : Dr. B.S. Chauhan, C.J.; B.N. Mahapatra, J

Bench : Division Bench

Advocate : B.M. Pattanaik and M.R. Tripathy, for the Appellant; P.K. Khuntia, AGA for Opp. Party Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Dr. B.S. Chauhan, C.J.—This writ petition has been filed for quashing the order dated 8.1.2002 by which the Petitioner, a member of Orissa Superior Judicial Service has been compulsorily retired in exercise of the power under Rule 71(a) of the Orissa Service Code (hereinafter called the "Code").

2. The facts and circumstances giving rise to the case are that the Petitioner joined the service as Probationary Munsif- Judicial Magistrate on 2.1.1974. He was confirmed in the cadre of Munsif vide order dated 18.5.1976. and was further promoted to the cadre of Subordinate Judge vide order dated 2.1.1985. He was confirmed in the cadre of Subordinate Judge vide order dated 21.3.1989. The Petitioner stood further promoted temporarily to the cadre of Orissa Superior Judicial Service (Jr.Branch) vide order dated 22.3.1991 and confirmed in the said cadre vide order dated 11.8.1993 The Petitioner was promoted to officiate in the Senior Branch of O.S.J.S. vide order dated 25.1.1997.

3. The Review Committee vide its resolution dated 21.12.1997 considered the case of large number of Judicial Officers for their retention in service or giving compulsory retirement. The case of the Petitioner was reviewed after completing

the age of 50 years on 6.8.1998 and the Review Committee resolved to keep the Petitioner under observation for a period of one year. The Review Committee vide its Resolution dated 11.12.2001 recommended the case of the Petitioner for retirement which was accepted by the High Court under the Code vide Resolution dated 18.12.2001. The Government of Orissa accepted the recommendation and passed the impugned order dated 8.1.2002 prematurely retiring the Petitioner. The Petitioner stood relieved in pursuance of the same. Hence this writ petition.

4. Sri B.M. Pattnaik, learned Senior Counsel for the Petitioner has submitted that as per the provisions contained in the Code, the case of an Officer is required to be considered six months prior to attaining the age of 50 years. Therefore, the question of consideration after attaining the age of 50 years and putting him under watch/observation was in contravention of the statutory provisions. In case the Petitioner had been permitted to cross 50 years of age, without any adverse remark, his case could not have been considered till he attained the age of 55 years. Therefore, the Resolution of the Review Committee itself was without jurisdiction. The Petitioner had been promoted to various posts from time to time and thus, adverse entry if any, prior to the date of promotion stood washed off and could not have been taken into consideration. Hon'ble Mr. Justice S. Chatterji, the Portfolio Judge made regular inspection and assessed the officer as very very effective. Subsequently, Hon'ble Mr. Justice R.K. Patra, made surprise visit to the court of the Petitioner on 7.5.1999 and made certain adverse entries against him, though he became the Portfolio Judge of Cuttack District on 14.5.1999. In such a fact situation, it was alleged to be a mala fide act on the part of Mr. Justice R.K. Patra. The members of the Review Committee also participated in the Full Court and there was possibility of influencing the other Judges. Therefore, the Resolution of the Court was in flagrant violation of the principles of natural justice. The Petitioner had an unblemished service record and except for the adverse entry at the fag end of his career given by Mr. Justice R.K. Patra with mala fide intention. Petitioner has been refused a copy of the documents relied upon by the Review Committee, which amounts to arbitrariness. The order impugned is liable to be quashed and petition deserves to be allowed.

5. On the other hand, Mr. P.K. Khuntia, learned Addl. Government Advocate has vehemently opposed the petition contending that the Rule 71 of the Code contains a proviso that after attaining the age of 50 years, the Review Committee is competent to recommend compulsory retirement of any officer at any time if circumstances so demand. The Review Committee had earlier passed a resolution of keeping a watch on the conduct of the Petitioner for one year, to us, the order was not in his favour and it could not have been the case of mala fide. The Petitioner's service record had been full of adverse entries from the very beginning. He could not have been retained in service. Even If the Petitioner had been promoted, for the purpose of compulsory retirement, his entire service record is to be seen. Adverse entries prior to his grant of promotion can also be examined. The allegation of mala fide and violation of principles of natural justice

become meaningless, in case the record of the employee was such that he was merely a liability to the Department and could have been compulsorily retired. The Petitioner cannot be permitted to succeed on technicalities whatsoever in exercise of equity jurisdiction by this Court. The petition lacks merit and is liable to be dismissed.

6. The Petitioner after retirement applied for the copy of the documents on the basis of which he has been compulsory retired. However, the said application was rejected.

7. We have considered the rival submission made by the Learned Counsel for the parties and perused the record.

8. Rule 71 of the Code provides that the Review Committee would consider the case of the employees before completing the age of 50 years. Undoubtedly, the Statutory provisions contained in the said Code are mandatory in nature and binding on the authorities concerned. Therefore, in a normal case, if the employee is permitted to continue in service after attaining the age of 50 years, his case can be considered only after he attains the age of 55 years. However, in view of the proviso, contained in Rule 71(a) of the Code, it is not in dispute that the case may be considered any time in exceptional circumstances. The said proviso reads as under:

The appropriate authority may also require any officer to retire in public interest any time after he has completed thirty years qualifying service or attained the age of fifty years, by giving a notice in writing to the Government servant at least three months before the date on which he is required to retire or by months before the date on which he is required to retire or by giving three months pay and allowances in lieu of such notice.

(Emphasis added)

9. Therefore, it is not absolute right of the employee to be in service till he attains the age of 55 years in case he has not been given compulsory retirement at the age of 50 years.

10. Thus, in view of the above, the submissions made by the learned Sr. Counsel for the Petitioner Sri B.M. Pattnaik in this regard is not worth consideration and the judgment cited by him in support of his submission namely, P.A. Manickam v. Government of Tamil Nadu, 1984 LAB.I.C. 1085 and State of Uttar Pradesh Vs. Chandra Mohan Nigam and Others, are not attracted.

11. So far as the grievance of non-supply of documents to the Petitioner after retirement is concerned, undoubtedly, such documents cannot be held to be privileged documents and the order of this Court refusing supply of such documents cannot be sustained, but it could not be canvassed that non-supply of such documents has caused any prejudice to the Petitioner, particularly in view of the fact that this Court had summoned the entire service record of the Petitioner as well as of the Review Committees' Reports and the same had been placed

before Mr. Pattnaik also for his perusal.

12. The Review Committee consisting of Hon''ble Mr. Justice S.C. Charterjee, Hon''ble Mr. Justice A. Pasayat and Hon''ble Mr. Justice R.K. Patra examined the service records of 46 judicial officers including the Petitioner on 6.8. 1998 and resolved that 3 officers including the Petitioner be kept under observation for a period of one year and cases shall be taken up for consideration at the appropriate time.

13. Review Committee dated 20th & 21st July, 2000 considered the cases of large number of judicial officers including the Petitioner and deferred the matter of the Petitioner and two other officers to be considered in the next meeting. The Review Committee in its meeting dated 6th & 11th December, 2001 considered the cases of large number of judicial officers including the Petitioner and resolved as under.

We have carefully perused the service records of Shri N. Prusty and Shri A.P. Das as reflected in their respective character rolls. We have also gone through their personal files. Taking into consideration the totality of the circumstances and the C.C. Rs. more particularly of the year 1998, the Committee is of the opinion that both of them do not possess the standard of efficiency required to discharge the duties of the post which they hold. As their integrity is doubtful, both of them should not be retained in service in the interest of better administration of justice. The Committee accordingly recommends for their premature retirement in public interest on payment of three months' salary and allowances in lieu of three months' notice, as provided in the first proviso to Rule 71 (a) of the Orissa Service Code.

(Emphasis added).

14. In order to satisfy ourselves, we have examined the entire service record of the Petitioner and following adverse entries are recorded therein.

YEAR: REMARKS

1974: Knowledge of law is poor. Judicial capacity is not up to mark. Administrative ability is also not up to mark.

1975: Knowledge of law is poor. Judicial capacity is average. Administrative ability- not upto mark.

1978: He should improve his knowledge of Civil Law and procedure.

1979: Not prompt in disposal of cases. Lacks in supervision and administrative capacity. Should improve quality of judgment. Should improve his out turn in civil work. Knowledge in Civil and Criminal law need be improved.

1995: Knowledge of law and Judicial capacity - need be improved. Slow in disposal of civil matters.

1996: Needs improvement

1997: Reputation & integrity: Allegations heard. In all cases integrity or otherwise may not always be supported by materials on record.

1998: Quality of judgment/order needs to be improved.

Integrity: - Lots of allegations were received touching his integrity.

1999: Allegations of corrupt practices were received.

2000: Quality of judgments - unsatisfactory. Integrity - some rumors were heard.

15. So the question does arise as to whether the person having such a service record could not have been given compulsory retirement.

16. In Union of India (UOI) Vs. Col. J.N. Sinha and Another, , the Apex Court held that an employee compulsorily retired does not lose any right acquired by him before retirement, as the compulsory retirement is not intended for taking any personal action against the government servant, and the order so passed can be challenged on the ground that either the order is arbitrary or it is not in public interest. No other ground can be available to the government servant who is sought to be compulsorily retired from service. However, it may be subject to the conditions provided under the statutory provisions.

17. In Union of India (UOI) Vs. M.E. Reddy and Another, , the Hon"ble Supreme Court examined the issue involved herein and held that it is a absolute right of an employer to compulsorily retire its employee from service if he falls within the zone of consideration as it may be necessary to weed out the dead wood or remove a person having doubtful integrity and his retirement is in public interest. There may not be material on record to show that the employee is dishonest, but those who had the opportunity to watch his performance from close quarter and are in position to know the nature and character not only of his performance but also reputation that he enjoys. In such a case the principles of natural justice are not attracted. The removal does not cast any stigma and it is not a punishment.

18. In Brij Mohan Singh Chopra Vs. State of Punjab, , without noticing the judgment in M.E. Reddy (supra) the Apex Court held that the principle of natural justice would apply while giving compulsory retirement to a government employee on the basis of adverse entries which were neither communicated nor representation against the same was considered.

19. In Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, , the Supreme Court laid down certain criteria for the Courts, on which it can interfere and they included mala fide, order if based on no evidence, order is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material, i.e. if it is found to be a perverse order. The Hon"ble Apex Court observed that the order of compulsory retirement is not a punishment, it implies no stigma nor any suggestion of misbehaviour; the order should be passed in public interest on subjective satisfaction of the Authority and while reviewing the service record, the entire

service record is to be considered. However the record of the later years should be given more importance and even uncommunicated adverse entries may be taken into consideration. The Apex Court held as under:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or " that 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.

(iv) The Government (or the Review Committee, as the case may be, shall have to consider the entire record of service before taking a decision in the matter- of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. 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.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

20. Similar view has been reiterated in Posts and Telegraphs Board and others Vs. C.S.N. Murthy, ; Sukhdeo Vs. Commissioner Amravati Division, Amravati and Another, ; State of Orissa and others Vs. Ram Chandra Das, ; and M.S. Bindra Vs. Union of India and Others,

21. In Rajat Baran Roy and Others Vs. State of W.B. and Others, , the Supreme Court held that there is a very limited scope of judicial review in a case of compulsory retirement and it is permissible only on the grounds of non-application of mind and want of material particulars.

22. In State of Gujarat and Anr. v. Suryakant Chunilal Shah, (1999) 1 SCC 529, the Supreme Court held that while considering the case of an employee for compulsory retirement, the public interest is of paramount importance. A dishonest, corrupt and dead-wood deserves to be dispensed with, how much efficient and honest an employee is, it is to be assessed on the basis of material on record which may also be ascertained from confidential reports. However,

there must be some tangible material against the employee warranting his retirement.

23. In *State of U.P. and Another Vs. Bihari Lal*, , the Apex Court held as under:

It is now settled law that the entire service record should be considered before taking" a decision to compulsorily retire a government servant.

It is not necessary that adverse remarks should be communicated or every remark, which may sometimes be categorised as adverse, be communicated. It is on an overall assessment of the record, the authority would reach a decision whether the government servant should be compulsorily retired in public interest. In an appropriate case, there may not be tangible material but the reputation of officer built around him could be such that his further continuance would imperil the efficiency of the public service and would breed indiscipline among other public servants. Therefore, the Government could legitimately exercise their power to compulsorily retire a government servant.

(Emphasis added)

24. Similarly in *Swatantar Singh Vs. State of Haryana and others*, ; the Hon''ble Supreme Court observed as under:

It is sad but a bitter reality that corruption is corroding, like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralising the honest officers..The reputation of corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke. Sometimes, there may not be concrete or material evidence to make it part of the record. It would, therefore, may be impracticable for the reporting officer or the competent controlling officer" writing the confidential report to give specific instances of shortfalls, supported by evidence, like the remarks made by the Superintendent of Police. More often the corrupt officer manipulates in such a way and leaves no traceable evidence to be made part of the record for being cited as specific instance.

It is seen that the officers made the remarks on the basis of the reputation of the Petitioner.

(Emphasis added)

25.(SIC) In *I.K. Mishra Vs. Union of India and Others*, , the Supreme Court observed as under:

Power to retire compulsorily a Government servant in terms of Service Rules is absolute, provided the authority concerned forms an opinion bona- fide that compulsory retirement is in public interest.

26. Similar view has been reiterated in *Ramesh Chandra Acharya Vs. Registrar, High Court of Orissa and Another*, while dealing with a case of judicial officer.

27. In *Prabodh Sagar v. Punjab State Electricity Board and Ors.* AIR 2000 SC

1684, the Supreme Court held that employee's unsatisfactory performance, coupled with the tendency to resort to litigation, most of which was unsuccessful, rendered him a liability to his employer, and he was rightly retired in public interest.

28. In *S. Prabhjeet Singh Johar Vs. Harjeet Singh and Others*, , the Supreme Court while dealing with the case of a judicial officer, placed reliance upon its earlier judgments in *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, , wherein it has been held that an order of compulsory retirement is neither a punishment nor any stigma attached to it, rather, further services of a person are dispensed with in public interest. The Apex Court held that if an employee has been given the adverse entries regarding his integrity at any stage of his service career, he loses the right of continuation in service, and compulsory retirement, if given, should not be interfered with.

29. In *Jugal Chandra Saikia Vs. State of Assam and Another*, , the Apex Court held that where the screening committee is consisting of responsible officers of the State and they have examined/assessed the entire service record and form the opinion objectively as to whether any employee is fit to be retained in service or not. In absence of any allegation of mala fide, there is no scope of a judicial review against such an order. While deciding the said case, reliance had been placed upon a large number of judgments, particularly, upon judgments in *S. Ramachandra Raju Vs. State of Orissa*, ; and *M.S. Bindra v. Union of India and Ors.* (Supra).

30. In *Nawal Singh Vs. State of U.P. and Another*, a similar view has been reiterated, observing that formation of an opinion regarding compulsory retirement by the authority is in the nature of a subjective satisfaction. However, it should be based on assessment of the service record. In case of adverse entry regarding the officer is concerned, it should be entertained on the basis of the opinion of a higher officer who had an opportunity to watch the performance of the officer concerned and to form an opinion with regard to overall reputation enjoyed by him.

31. In *Shiv Dayal Gupta Vs. State of Rajasthan and Another*, , the Apex Court dealt with a case where on perusal of the entire service record the High Court came to the conclusion that employee had been assessed as a poor officer, his integrity was found to be doubtful. He was advised to improve his judgment writing. He was directed to be watched for quite some time and quality of case work was found unsatisfactory. The Apex Court refused to interfere. While dealing with the said case, the Court placed reliance on its earlier judgments particularly in *State of U.P. and Another Vs. Lalsa Ram*, ; and *State of Gujarat Vs. Umedbhai M. Patel*, .

32. Thus, the law on the point of "compulsory retirement" can be summarised that the Authority must consider and examine over-all 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.

33. Compulsory retirement is not a punishment and thus, no enquiry is required. As for imposing punishment the judgments cited at the Bar particularly in T.R. Parihar v. State of Jammu & Kashmir and Anr., 1986 LAB.I.C. 1250; and Khem Chand Vs. The Union of India (UOI)and Others, are distinguishable on facts as well as in law.

34. In the instant case, allegation of mala fide has been alleged and in support of the submissions, judgment of the Hon"ble Supreme Court in State of U.P. v. Chandra Mohan Nigam and Ors., (supra) has been cited. In the said case, the Apex Court held that in case order of compulsory retirement is simpliciter and if any allegations are made, the authority must produce the relevant material before the Court and the Court may examine as to whether there was some adverse entries on the basis of which compulsory retirement may be justified. In the instant case, we have examined the entire record as explained hereinabove and found that the service record was not such which may entitle the Petitioner to be retained in service.

35. In Madan Mohan Choudhary v. State of Bihar and Ors. AIR 199 SC 1018; Hon"ble Supreme Court disapproved the order of compulsory retirement on the basis of adverse entries for three years recorded on the same date. The ratio of the judgment is not applicable in this case. More so, it was not the case of solitary adverse entry and the judgments cited at the Bar in the case of S. Ramachandra Raju Vs. State of Orissa, is not applicable.

36. Mr. Pattnaik has placed a very heavy reliance upon the judgment of the Constitution Bench of the Hon"ble Supreme Court in The State of Uttar Pradesh Vs. Madan Mohan Nagar, ; wherein the Court placing reliance on its earlier judgment in Jagdish Mitter Vs. The Union of India (UOI), held that the order of removal by any manner it casts stigma, regular enquiry must be conducted. In the said case, the order of removal of temporary employee was held to be stigmatic. It was stated therein that "he has outlived his utility"; and these words were considered as stigmatic as they indicated that the employee had incapacitated himself from holding the post and any person who read that order would have immediately considered that there was something wrong with him or his capacity to work. The said judgments were considered by the Apex Court in Allahabad Bank Officers Association and another Vs. Allahabad Bank and others, and held that in order to apply the ratio of the said judgment, the party has to establish that the order of removal has been worded in stigmatic terms. The Court placed reliance upon the judgments in The State of Orissa and Another Vs. Ram Narayan Das, ; Union of India v. R.S. Dhaba ; and Hari Singh Mann Vs.

State of Punjab and Others, . Court held as under:

The above discussion of case-law makes it clear that if the order of compulsory retirement casts a stigma on the government servant in the sense that it contains a statement casting aspersion on his conduct or character, then the court will treat that order as an order of punishment, attracting provisions of Article 311(2) of the Constitution. The reason is that as a charge or imputation is made the condition for passing the order, the court would infer there from that the real intention of the Government was to punish the government servant on the basis of that charge or imputation and not to exercise the power of compulsory retirement. But mere reference to the rule, even if it mentions grounds for compulsory retirement, cannot be regarded as sufficient for treating the order of compulsory retirement as an order of punishment. In such a case, the order can be said to have been passed in terms of the rule and, therefore, a different intention cannot be inferred. So also, if the statement in the order refers only to the assessment of his work and does not at the same time cast an aspersion on the conduct or character of the government servant, then it will not be proper to hold that the order of compulsory retirement is in reality an order of punishment. Whether the statement in the order is stigmatic or not will have to be judged by adopting the test of how a reasonable person would read or understand it.

(Emphasis added).

37. In State of U.P. and Another Vs. Abhai Kishore Masta, ; Hon"ble Supreme Court considered the judgment in Madan Mohan Nagar (supra) where during the pendency of the enquiry the order of compulsory retirement was passed and the Departmental Proceedings were dropped. The Court held as under:

It is true that merely because the order of compulsory retirement is couched in innocuous language without making imputations against the government servant, the court need not conclude that it is not penal in nature. In appropriate cases, the court can lift the veil to find out whether in truth, the order is penal in nature.

38. In the instant case the order impugned dated 8.1.2002 reads as under:

Government of Orissa, Home Department

Order Dated Bhubaneswar the 8.1.2002.

No. S.J.S./I-17/2001-1741/HS, In exercise of powers conferred under Clause (a) of Rule 71 of the Orissa Service Code the Governor of Orissa is pleased to retire Sri Nishamani Prusty, an Officer of Orissa Superior Judicial Service (Senior Branch), at present Additional District and Sessions Judge, Parlakhemundi from Government Service with immediate effect giving him three months pay and allowances in lieu of three months Notice as prescribed in the proviso to the said rule.

By Order of Governor

Sd/- S.N. Tripathy,

Special Secretary to Government.

The order impugned cannot be held by any stretch of imagination to caste any stigma. Thus, the said judgment has no application in the facts of the case. More so, the order impugned is not exclusively based on adverse entry, alleged to be made with malice.

39. In *The State of Punjab Vs. Dewan Chuni Lal*, a bench of two Judges of Supreme Court held that the adverse entries regarding dishonesty and inefficiency of the government employee in his ACRs 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 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.

40. Similarly a Bench of two Judges in *Baidyanath Mahapatra Vs. State of Orissa and Another*, had taken a similar view on the issue observing that adverse entries awarded to the employee in the remote past and the fact that he had subsequently been promoted to the higher post loses significance, for the reason that while considering the case for promotion he had been found possessing eligibility and suitability and if such entry did not reflect deficiency in his work and conduct for the purpose of promotion, it would be difficult to comprehend as to how such adverse entry could be pressed into service for retiring him compulsorily. When a government servant is promoted to higher post on the basis of merit and selection, adverse entries if any contained in his service record lose their significance and remain on record as part of past history.

41. In *Union of India Vs. V.P. Seth and another*, the Hon'ble Supreme Court held that adverse remarks against the employee and particularly of the integrity would not stand eclipsed by his subsequent promotion while considering the case of compulsory retirement.

42. A three Judge Bench of Supreme Court in *State of Orissa and Ors. v. Ram Chandra Das*, (supra) had taken a different view as it had been held therein that as such entry still remains part of the record for overall consideration to retire a government servant compulsorily, such entry do not lose significance, even if the employee has subsequently been promoted. The Court held as under:

Merely because a promotion has been given even after adverse entries were made, cannot be a ground to note that compulsory retirement of the government servant could not be ordered. The evidence does not become inadmissible or irrelevant as opined by the Tribunal. What would be relevant is whether upon that state of record as a reasonable prudent man would the Government or competent officer reach that decision. We find that selfsame material after promotion may not be taken into consideration only to deny him further

promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service after he attained the required length of service or qualified period of service for pension.

43. Similar view has been reiterated in *I.K. Mishra Vs. Union of India and Others*, ; and *The State of Punjab Vs. Gurdas Singh*, .

44. In *State of U.P. and Ors. v. Vijay Kumar Jain*, (supra) the Apex Court held that vigour or sting entry does not get wiped out by efflux of time, particularly while considering the case of employee for giving him compulsory retirement as it requires to examine the entire service records including character rolls and confidential reports. It is on consideration of totality of the materials with emphasis later entries, the authority is expected to form its opinion whether an employee is to be compulsorily retired or not. "Vigour or sting of an adverse entry is not wiped out" merely it relates to a remote past while considering the case of compulsory retirement. There may be a single adverse entry of integrity which may be sufficient to compulsorily retire the government servant.

45. In view of the above, the law can be summarized that washed of theory does not have any universal application and it will have some relevance while considering the case of government servant for further promotion but certainly not in a case where the employee is being assessed by the Reviewing Authority as to whether he is fit to be retain in service or require to be given compulsory retirement. Thus, we do not find force in the submissions made in this regard as the same are not found acceptable.

46. In the instant case, it has been pleaded at the behest of the Petitioner that Hon"ble Mr. Justice S. Chatterji had given a very good remarks to the Petitioner. We should keep in our mind that the Hon"ble Mr. Justice Chatterji himself was a member of the Review Committee which had resolved to keep the Petitioner under observation for one year and similarly there is nothing on record to show that Mr. Justice R.K. Patra had given him adverse entry because of some mala fide intention. It is always easy to make allegation of mala fide but difficult to prove. More so, the participation of the member of the Review Committee in the Full Court becomes irrelevant if on analyzing the service record of the Petitioner objectivity a prudent person reaches the conclusion that he was not fit to be retained in service. In case the adverse entry is in respect of his integrity are ignored, it is evident that he had never improved so far as knowledge of law was concerned and he had been assessed as a poor officer throughout.

47. It is settled legal proposition that in case of allegation of mala fide are alleged and to certain extent stands established, the Court has to examine as to whether the order could have been passed on the basis of record/evidence available against such an officer. In case on such examination it is found that the person cannot be considered to be fit to be retained in service, allegations of mala fide etc. become of secondary importance or of no importance at all and

the order should not be quashed merely on the ground of mala fide. (Vide State of Haryana v. Ch. Bhajan Lal; Sheonandan Paswan Vs. State of Bihar and Others, State of Bihar and Another Vs. J.A.C. Saldanha and Others, ; Sarjudas and Another Vs. State of Gujarat, ; State of Orissa and Another Vs. Saroj Kumar Sahoo, ; M. Narayandas Vs. State of Karnataka and Others, ; and State of Bihar and Another Vs. P.P. Sharma, IAS and Another,)

48. In the instant case, allegations of mala fides have been made. However, considering the case in totality of circumstances and particularly taking the adverse entries into consideration, we are not in a position to hold that Petitioner's service record warranted his retention. If the finding can be sustained on the basis of the evidence on record, the Writ Court should not interfere for the reason that in a writ petition for certiorari the Court does not sit in appeal but exercises only supervisory jurisdiction.

49. Be that as it may, the writ is a discretionary relief and the Court has a right to refuse exercise of equity jurisdiction if it comes to the conclusion that setting aside an order would cause great injustice to the other party.

50. In view thereof and considering the facts and circumstances in totality, we are not inclined to entertain the petition which is accordingly dismissed.

B.N. Mahapatra, J.

51. I agree.