
(2013) 08 KL CK 0055

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26162 of 2010 and connected cases

Vijayan, A.A.

APPELLANT

Vs

High Court of Kerala and Another

RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Citation : (2013) 4 ILR (Ker) 39 : (2013) 4 KLJ 44 : (2013) LabIC 4394

Hon'ble Judges : A.M. Shaffique, J

Bench : Single Bench

Advocate : P. Ravindran, Sri K. Gopalakrishna Kurup, s, Sri S. Manu, Smt. K. Deepa Payyanur, Sri P. Deepak, Smt. Aparna Rajan, Sri S. Ramesh Babu and Sri N. Krishna Prasad, for the Appellant; K.R.B. Kaimal , Sri Noushad Thottathil, Sri B. Unnikrishna Kaimal and Smt. Rose Michael, Government Pleader, for the Respondent

Judgement

A.M. Shaffique, J.—Since common questions arise for consideration in the writ petitions those are decided by a common judgment. W.P. (C) No. 26162 of 2010 is filed by a member of the judicial service who was working as Additional District Judge, Fast Track Manjeri. He challenges Ext. P-1 issued by the Registrar (Subordinate Judiciary), High Court of Kerala on 30-7-2010, insofar as it relates to him. It is inter alia observed in Ext. P-1 that the Committee headed by the Chief Justice, High Court of Kerala has assessed and evaluated the petitioner's suitability for continuance in office and the High Court after considering all relevant materials formed an opinion that he was not fit to render continued useful service beyond the age of 55 years. Hence the High Court directed his compulsory retirement from service beyond the age of 55 years. He had attained 55 years on 27-11-2009. He was asked to hand over charge of his office to the Additional District and Sessions Judge (Ad hoc) III Manjeri on the afternoon of 31-7-2010. Subsequently the Government issued Ext. P-3 dated 11-10-2011 approving the recommendation of the High Court which is also impugned.

2. W.P. (C) No. 30427 of 2010 is filed by a member of the Kerala State Higher

Judicial Service, who challenges Ext. P-2, an order issued by the Registrar (Subordinate Judiciary) High Court of Kerala, informing the petitioner that the High Court has decided to compulsorily retire him from service in public interest on the afternoon of 31-10-2010 which was the last day of the month on which he was to attain 55 years for the same reason as stated in Ext. P-1 in W.P. (C) No. 26162 of 2010. He was due to attain the age of 55 years on 26-10-2010. It is further indicated that the said decision has been communicated to the Government and the petitioner was directed to hand over charge as Special Judge (NDPS Act cases)/Additional District Judge, Thodupuzha to the District Judge Thodupuzha.

3. W.P. (C) No. 33094 of 2010 is filed by a member of the judicial service who was working as Additional District and Sessions Judge (Fast Track) Manjeri, challenging Ext. P-1 order to the extent it relates to him. It is the same order as Ext P-1 in W.P. (C) No. 26162 of 2010. The petitioner was informed that the High Court has directed his compulsory retirement from service beyond the age of 55 years. He had attained 55 years on 1-11-2009. The reasons are the same as stated in the earlier two cases.

4. In all these cases the High Court has indicated that the impugned orders are passed on the basis of the Judgment of the Supreme Court in the All India Judges Association v. Union of India and in terms of Rule 60(aa) of Part I of Kerala Service Rules (hereinafter referred as "KSR") and Rule 7A of the Kerala State Higher Judicial Service Rules, 1961 (hereinafter referred as "1961 Rules").

5. The petitioners more or less have raised common contentions. According to the petitioners the impugned order of High Court is void as the High Court can only recommend compulsory retirement and the power to pass such an order absolutely vests with the Governor who is the appointing authority. As per Article 233 of the Constitution when the Governor is the appointing authority the power to remove also vests with the Governor. The 1961 Rules does not give any power to the High Court to order compulsory retirement contrary to Article 233. It is further contended that the impugned order of the High Court is vitiated insofar as the assessment and evaluation contemplated under Rule 7A has not been properly carried out in the case of the petitioners before taking such a decision. It is also contended that if the petitioner's confidential records have been evaluated and assessed objectively there would have been no occasion or reason to take a view that the petitioners are not fit and eligible to continue in service beyond the age of 55 years. Petitioners also challenges Rule 7A of the 1961 Rules as being violative of Rule 60(aa) of Part I KSR. Petitioners also has a case that if at all any adverse remarks or findings had been made against him, proper opportunity could have been granted to explain the said findings against them.

6. In the counter-affidavit filed by the High Court, in these cases, substantially similar contentions are raised. It is inter alia contended that the Hon'ble Supreme Court in All India Judges' Association Vs. Union of India and others, directed the States and Union Territories to make alterations in the service rules

relating to Judicial Officers so as to fix the retirement age at 60 years with effect from 31-12-1992. Later, the Supreme Court in the order in Review Petition No. 2429 of 1992 All India Judges' Association and Others Vs. Union of India and Others, held that the benefit of the increase of retirement age to 60 years shall not be available automatically to all Judicial Officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit should be made available only to those who in the opinion of the respective High Courts have a potential for useful continued service. In that regard it was held that the potential for continued utility has to be assessed and evaluated by appropriate Committees of Judges of the respective High Courts constituted and headed by the Chief Justice of the High Courts and evaluation shall be made on the basis of the Judicial Officers' past record of service, character roles, quality of judgments and other relevant matters. It is contended that it is in compliance with the directions in the above judgment/orders that the State Government introduced Rule 60(aa) in Part I of KSR raising the retirement age of Judicial Officers to 60 years with option to retire at the age of 58 years. It is also specified in the said Rule that their continuance in service beyond 58 years shall be subject to review by the High Court as per the provisions of the Kerala Judicial Service Rules and the 1961 Rules. The amendment was introduced with retrospective effect from 31-12-1992. Consequent to the said amendment, Rule 7A was introduced to 1961 Rules, as per Government Order G.O. (P) No. 313/97/Home dated 17-12-1997 with effect from 31-12-1992. It is further indicated that the first National Judicial Pay Commission (for short "Shetty Commission") has submitted a report as directed by the Supreme Court in which it is stated as under:

The review of all Judicial Officers at the age of 50, 55 and 60 years for compulsory retirement by the procedure prescribed by the respective service rules should be undertaken regularly. There should be continuing Committee of Senior Judges of the High Court headed by Chief Justices for the purpose of review.

Further it is recommended that the review of cases for compulsory retirement under the relevant service rules should be independently taken up by the High Court and it should not be linked to the consideration for giving the benefit of service from 58 to 60 years. The Supreme Court in All India Judges Association and Others Vs. Union of India (UOI) and Others, held that subject to certain modifications made therein all the recommendations of the Shetty Commission was accepted. It is in compliance with the report of the Shetty Commission as approved by the Supreme Court that the State of Kerala incorporated Rule 7A in the 1961 Rules.

7. It is therefore contended that in view of the judgments of the Supreme Court accepting the Shetty Commission recommendations and Rule 7A of the 1961 Rules that the Administrative Committee of Judges of the High Court presided by the Chief Justice in their meeting held on 8-4-2010 considered the case of the

Officers of the Higher Judicial Service and Kerala Judicial Service completing 50 years, 55 years and 58 years of age on different dates in the year 2010, in order to decide whether they should be allowed to continue in service after completing their respective 50, 55 or 58 years of age as the case may be. The Committee duly considered the up to date confidential reports of the Officers, the report submitted by the Registrar (Vigilance) and the remarks of the Judges of the High Court in charge of the Districts. The Administrative Committee after considering various materials and service records recommended compulsory retirement of the petitioners. The recommendation of the Administrative Committee was placed before the Full Court and the Full Court accepted the said recommendations. It is therefore submitted that the decision to compulsorily retire the petitioners was based on assessment of suitability of the Officers beyond the particular age in the light of the stipulations made by the Supreme Court in their order in the Review Petition reported in the 2nd All India Judges' Association and Others Vs. Union of India and Others, .

8. It is further contended that though the Governor is the appointing authority in respect of the District Judges as per Article 233 of the Constitution and as per Article 311 of the Constitution, the Governor alone is competent to dismiss, remove or reduce in rank a District Judge, compulsory retirement does not come within the ambit of Article 311 of the Constitution of India. It is contended that Article 235 of the Constitution provides that the control over the District Courts and the Court subordinate thereto including the posting and promotions is vested in the High Court. Compulsory retirement is a matter which falls squarely within the power of control vested in the High Court by Article 235 of the Constitution of India. It is also contended that the ultimate decision to compulsorily retire a person under Rule 7A rests with the High Court and the decision is binding on the Governor. Insofar as the impugned orders were communicated to the Government and the Governor has not so far refused to accept the decision of the High Court, there is no merit in the contention that the same is without jurisdiction.

9. In regard to the allegation that there is no assessment and evaluation by the High Court, it is contended that the assessment is made entirely based on the order passed by the Supreme Court while considering the potential for confirmed utility. Several factors are considered by a Committee headed by the Chief Justice. The past record of service, character, quality of judgments and other relevant factors are taken into consideration for the purpose of such assessment and evaluation. The confidential reports are not the only material to decide on the eligibility of officers to continue in service till superannuation. In regard to the contention that there is violation of principles of natural justice, it is contended that the principles of natural justice has no place in the context of an order of compulsory retirement and that an order of compulsory retirement is not a punishment and it implies no stigma. It is also contended that Rule 7A overrides other provisions of Higher Judicial Service Rules and the provisions of KSR regarding retirement.

10. Having regard to the nature of contentions raised by the petitioners the question to be considered is threefold. The first question is regarding the competency of the High Court to issue the order deciding to compulsorily retire the petitioners on completion of 55 years, in public interest. The second contention is regarding the justifiability of the decision taken by the High Court and the third contention is regarding the validity of Rule 7A of the Rules.

11. Heard the learned senior counsel Sri S. Ramesh Babu, Sri P. Ravindran and Sri K. Gopalakrishna Kurup appearing on behalf of the petitioners, the learned senior counsel Sri K.R.B. Kaimal appearing on behalf of the High Court and the learned Government Pleader Smt. Rose Michael appearing on behalf of the State.

12. Before proceeding further I may refer to a three Judges Bench of the Supreme Court in Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, wherein certain principles regarding compulsory retirement in public interest and the scope for interference is laid down which reads as follows:

34. The following principles emerge from the above discussion:

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

(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 (c) 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.

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above.

This principle has been adopted by the Supreme Court in the matter relating to compulsory retirement of Judicial Officers as well.

13. The first question to be answered is with reference to the power of High Court to order compulsory retirement of Judicial Officers. Reference is made to Articles 233 and 235 of the Constitution of India which reads as under:

233. Appointment of District Judges.--(1) Appointments of persons to be, and the posting and promotion of, District Judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

235. Control over subordinate courts.--The control over District Courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

Reference is made to Rule 7A of the 1961 Rules which reads as under:

7A. Special provision regarding compulsory retirement in public interest.--(1) Notwithstanding anything contained in these rules and without prejudice to the generality of the provisions contained in the Kerala Service Rules an officer borne in the service who has attained the age of 50 years, 55 years and 58 years may compulsorily be retired in public interest by giving him notice of not less than one month in writing or one month pay and allowances in lieu of such notice, if the High Court on an assessment and evaluation of the records of such officer is of the view that such officer is not fit and eligible to continue in service beyond the age of 50 years, 55 years and 58 years, as the case may be.

(2) Whether a member of the service should be retired in public interest under sub rule (1) shall be considered at least three times, that is when he is about to attain the age of 50 years, 55 years and 58 years:

Provided that nothing in sub rule (2) shall be construed as preventing such consideration by the High Court of a member of the service at any time other than those mentioned therein.

Rule 7A therefore clearly provides that the High Court can on an assessment and

evaluation of the records of the Judicial Officer form an opinion that such Officer is not fit and eligible to continue in service beyond the age of either 50 years, 55 years or 58 years. If so found, such officer could be compulsorily retired in public interest.

14. The High Courts' power to recommend compulsory retirement of its officers is not disputed. The dispute is whether such an order could be passed by the High Court or should such an order be passed by the Governor is the question. The issue as well as other questions are considered in a long line of judgments cited by either side as indicated hereunder:

(i) In *The State of West Bengal Vs. Nripendra Nath Bagchi*, a Constitution Bench of the Supreme Court considered the scope of Article 235 of the Constitution of India and held as under:

14. Articles 233 and 235 make a mention of two distinct powers. The first is power of appointments of persons, their postings and promotion and the other is power of control. In the case of the District Judges, appointments of persons to be and posting and promotion are to be made by the Governor but the control over the District Judge is of the High Court. We are not impressed by the argument that the term used is "District Court" because the rest of the Article clearly indicates that the word "court" is used compendiously to denote not only the court proper but also the presiding Judge. The latter part of Article 235 talks of the man who holds the office. In the case of the judicial service subordinate to the District Judge the appointment has to be made by the Governor in accordance with the rules to be framed after consultation with the State Public Service Commission and the High Court but the power of posting, promotion and grant of leave and the control of the courts are vested in the High Court. What is vested includes disciplinary jurisdiction. Control is useless if it is not accompanied by disciplinary powers. It is not to be expected that the High Court would run to the Government or the Governor in every case of indiscipline however small and which may not even require the punishment of dismissal or removal. These Articles go to show that by vesting "control" in the High Court the independence of the subordinate judiciary was in view. * * * *

(ii) In *Samsher Singh Vs. State of Punjab and Another*, a Seven Judge Bench of the Supreme Court held as under:

76. The High Court under Article 235 is vested with the control of subordinate judiciary. The High Court according to the appellant failed to act in terms of the provisions of the Constitution and abdicated the control by not having an inquiry through Judicial Officers subordinate to the control of the High Court but asking the Government to enquire through the Vigilance Department.

77. It was submitted on behalf of the State that the enquiry suggested by the High Court through the Director of Vigilance was not to satisfy itself about the unsuitability of the appellant but to satisfy the Government that the recommendation which had already been made by the High Court for the

termination of the service of Ishwar Chand Agarwal should be accepted.

78. The High Court for reasons which are not stated requested the Government to depute the Director of Vigilance to hold an enquiry. It is indeed strange that the High Court which had control over the subordinate judiciary asked the Government to hold an enquiry through the Vigilance Department. The members of the subordinate judiciary are not only under the control of the High Court but are also under the care and custody of the High Court. The High Court failed to discharge the duty of preserving its control. The request by the High Court to have the enquiry through the Director of Vigilance was an act of self abnegation. The contention of the State that the High Court wanted the Government to be satisfied makes matters worse. The Governor will act on the recommendation of the High Court. That is the broad basis of Article 235. The High Court should have conducted the enquiry preferably through District Judges. The members of the subordinate judiciary look up to the High Court not only for discipline but also for dignity. The High Court acted in total disregard of Article 235 by asking the Government to enquire through the Director of Vigilance.

88. For the foregoing reasons we hold that the President as well as the Governor acts on the aid and advice of the Council of Ministers in executive action and is not required by the Constitution to act personally without the aid and advice of the Council of Ministers or against the aid and advice of the Council of Ministers. Where the Governor has any discretion the Governor acts on his own judgment. The Governor exercises his discretion in harmony with his Council of Ministers. The appointment as well as removal of the members of the Subordinate Judicial Service is an executive action of the Governor to be exercised on the aid and advice of the Council of Ministers in accordance with the provisions of the Constitution. Appointments and removals of persons are made by the President and the Governor as the constitutional head of the Executive on the aid and advice of the Council of Ministers. That is why any action by any servant of the Union or the State in regard to appointment or dismissal is brought against the Union or the State and not against the President or the Governor.

(iii) In *State of Haryana Vs. Inder Prakash Anand H.C.S. and Others*, the Supreme Court held as under:

16. * * * Administrative, judicial and disciplinary control over members of the Judicial Service is vested solely in the High Court. Premature retirement is made in the exercise of administrative and disciplinary jurisdiction. It is administrative because it is decided in public interest to retire him prematurely. It is disciplinary because the decision was taken that he does not deserve to continue in service up to the normal age of superannuation and that it is in the public interest to do so.

18. The control vested in the High Court is that if the High Court is of opinion that a particular judicial officer is not fit to be retained in service, the High Court will communicate that to the Governor because the Governor is the authority to

dismiss, remove, reduce in rank or terminate the appointment. In such cases it is the contemplation in the Constitution that the Governor as the head of the State will act in harmony with the recommendation of the High Court. If the recommendation of the High Court is not held to be binding on the State consequences will be unfortunate. It is in public interest that the State will accept the recommendation of the High Court. The vesting of complete control over the subordinate judiciary in the High Court leads to this that the decision of the High Court in matters within its jurisdiction will bind the State. The Government will act on the recommendation of the High Court. That is the broad basis of Article 235.

(iv) In *Baradakanta Mishra Vs. High Court of Orissa and Another*, the questions for consideration before the Supreme Court were whether the High Court was competent to reduce the appellant in rank and whether the High Court could pass orders dismissing the appellant from service. It is held as under:

23. It was argued in *N.N. Bagchi's* case that the extent of control exercisable by the High Courts under Article 235 must be so cut down as to keep disciplinary jurisdiction out. This argument was not accepted by this Court. This Court said that the provisions that certain powers are to be exercised by the Governor and not by the High Court do not take away other powers from the High Courts. This Court however incidentally added that in exercising these special powers in relation to inquiries against District Judges, the Governor would always have regard to the opinion of the High Court in the matter. This Court concluded by holding that there is nothing in Article 311 which compels the conclusion that the High Court is ousted of the jurisdiction to hold the enquiry.

24. The High Court within the power and control vested under Article 235 could hold disciplinary proceedings against the appellant and could recommend the imposition of punishment of reduction in rank on the appellant. The actual power of imposition of one of the major punishments viz. reduction in rank is exercisable by the Governor who is the appointing authority. The order passed by the High Court on December 8, 1972 reducing the appellant in rank is unconstitutional and is quashed.

(v) In *State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another*, the Constitution Bench of the Supreme Court while considering the scope of Article 235 held as under:

12. Compulsory retirement of Judges of the District Court and of subordinate courts is a matter which falls squarely within the power of control vested in the High Courts by Article 235 of the Constitution. That is clear from the decisions of this Court in *High Court of Punjab and Haryana v. State of Haryana*, *Shamsher Singh v. State of Punjab*, *State of Haryana v. Inder Prakash Anand H.C.S.* and *B. Misra v. Orissa High Court*.

(vi) In *Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others*, the Constitution Bench of the Supreme Court had occasion to consider the scope

of Article 235 of the Constitution and the matter relating to compulsory retirement. In paragraph 40 of the said judgment the Supreme Court evaluated the case law on the subject and held as under:

40. The interpretation and scope of Article 235 has been the subject of several decisions of this Court. The position crystallised by these decisions is that the control over the subordinate judiciary vested in the High Court under Article 235 is exclusive in nature, comprehensive in extent and effective in operation. It comprehends a wide variety of matters. Among others, it includes:

(a)(i) Disciplinary jurisdiction and a complete control subject only to the power of the Governor in the matter of appointment, dismissal, removal, reduction in rank of District Judges and initial posting and promotion to the cadre of District Judges. In the exercise of this control, the High Court can hold inquiries against a member of the subordinate judiciary, impose punishment other than dismissal or removal, subject, however, to the conditions of service, and a right of appeal, if any, granted thereby and to the giving of an opportunity of showing cause as required by Article 311(2).

(ii) In Article 235, the word "control" is accompanied by the word "vest" which shows that the High Court alone is made the sole custodian of the control over the judiciary. The control vested in the High Court being exclusive, and not dual, an inquiry into the conduct of a member of the judiciary can be held by the High Court alone and no other authority (*State of West Bengal v. Nripendra Nath Bagchi*; *Samsher Singh v. State of Punjab* and *Punjab and Haryana High Court v. State of Haryana* (sub nom *Narendra Singh Rao*).

(iii) Suspension from service of a member of the judiciary with a view to hold a disciplinary inquiry.

(b) Transfers, promotions and confirmation of such promotions, of persons holding posts in the judicial service, inferior to that of District Judge. (*State of Assam v. S.N. Sen* and *State of Assam v. Kuseswar Saikia*)

(c) Transfers of District Judges. (*State of Assam v. Ranga Mahammad* and *Chandramouleshwar v. Patna High Court*)

(d) Recall of District Judges posted on ex-cadre posts or on deputation on administrative posts. (*State of Orissa v. Sudhansu Sekhar Misra*)

(e) Award of selection grade to the members of the judicial service, including District Judges, being their further promotion after their initial appointment to the cadre. (*State of Assam v. Kuseswar Saikia*)

(f) Confirmation of District Judges, who have been on probation or are officiating, after their initial appointment or promotion by the Governor to the cadre of District Judges under Article 233. (*Punjab and Haryana High Court v. State of Haryana*)

(g) Premature or compulsory retirement of Judges of the District Courts and of

Subordinate Courts. (State of U.P. v. Batuk Deo Pati Tripathi)

(vii) In *Tej Pal Singh Vs. State of U.P. and Another*, a two Judge Bench of the Supreme Court while considering the scope of Articles 233 and 235. In Paragraphs 13 and 14 the Supreme Court held as under:

8. * * * The control which is vested in the High Court is complete control subject only to the power of the Governor in the matter of appointment, dismissal, removal or reduction in rank and the initial posting of and initial promotion to the rank of District Judge. The vesting of complete control over the subordinate judiciary in the High Court, leads to this that if the High Court is of opinion that a particular officer is not fit to be retained in service, the High Court will communicate that opinion to the Governor, because, the Governor is the authority to dismiss, remove or reduce in rank or terminate the appointment. In such cases, the Governor, as the head of the State, will act in harmony with the recommendation of the High Court as otherwise the consequences will be unfortunate. But, compulsory retirement simpliciter does not amount to dismissal or removal or reduction in rank under Article 311 or under service rules. When a case is not of removal or dismissal or reduction in rank, any order in respect of exercise of control over the judicial officers is by the High Court and by no other authority; otherwise, it will affect the independence of the judiciary. It is in order to effectuate that high purpose that Article 235 of the Constitution, as construed by this Court in various decisions, requires that all matters relating to the subordinate judiciary including premature retirement and disciplinary proceedings but excluding the imposition of punishment falling within the scope of Article 311 of the Constitution and the first appointment on promotion should be dealt with and decided upon by the High Courts in exercise of the control vested in them. 9. In *High Court of A.P. v. V.V.S. Krishnamurthy* this Court has again observed that Article 235 of the Constitution is the pivot around which the entire scheme of Chapter VI of Part VI of the Constitution revolves. * * * The Court proceeded to observe that the said power under Article 235 of the Constitution was exclusive in nature, comprehensive in extent and effective in operation. Amongst the several matters which fell within its scope, this Court was of the view that premature retirement of Judges of the district courts and of the subordinate courts was one.

14. Under the circumstances, it has to be held that the impugned order of premature retirement passed by the Governor without having before him the recommendation of the Administrative Committee or of the Full Court is void and ineffective. We, therefore, set aside the judgment of the High Court and quash the order of premature retirement passed in respect of the appellant. He shall be treated as having been in service until the expiry of March 31, 1971 when he would have retired from service on attaining 58 years of age.

(viii) In *Registrar, High Court of Madras Vs. R. Rajiah*, the contention before the High Court was that the High Court had no power to compulsorily retire members of the Tamil Nadu State Judicial Service. Such an order could be passed only by

the State Governor, who was the appointing authority. All that the High Court could do was to make a recommendation to the State Governor in that behalf. It was also contended that there was no material on record which would justify the premature retirement of the respondents. The respondents also challenged the validity of the constitution of the Review Committees of the High Court that passed the impugned orders of compulsory retirement. Supreme Court held as under:

9. Rule 56(d) of the Fundamental Rules confers absolute right on the appropriate authority to retire a Government servant in the public interest. Under Explanation I, "appropriate authority" means the authority which has the power to make substantive appointment to the post or service from which the Government servant is required to retire or wants to retire. In view of Explanation I, it is manifestly clear that the absolute power to retire any Government servant has been conferred on the appropriate authority, that is, the authority which has the power to make substantive appointment to the post or service from which the Government servant is required to retire. It is not disputed that the authority to make substantive appointment to the post of Munsif or District Munsif is the Governor. Therefore, without anything else, under Rule 56(d) of the Fundamental Rules, the State Government or the Governor being the appointing authority, has the absolute power to retire a District Munsif.

10. It is now necessary to consider the provision of Article 235 of the Constitution and its impact on Rule 56(d) of the Fundamental Rules as to the absolute right of the State Government to retire a member of the subordinate judicial service. Article 235 vests in the High Court the control over District Courts and courts subordinate thereto. The vesting of such control is consistent with the ideal of preservation of the independence of the judiciary. The power of control comprises within it various matters in respect of subordinate judiciary including those relating to appointment, promotion and imposition of punishment, both major and minor. If any authority other than the High Court is conferred with the absolute right to take action against a member of the subordinate judicial service, such conferment of power will impinge upon the power of control that is vested in the High Court under Article 235 of the Constitution.

11. Rule 56(d) of the Fundamental Rules under which a member of subordinate judicial service can be compulsorily retired has to be read subject to and in harmony with the power of control vested in the High Court under Article 235 of the Constitution. At this stage, it is necessary to consider the extent of the power of control of the High Court under Article 235. In the instant cases, it has been already noticed that the High Court had held the enquiry and made the impugned orders of compulsory retirement. According to one of the learned judges of the Division Bench of the High Court, as the impugned orders were not signed by the Governor, but by the High Court, they were illegal and should be struck down. The contention of the learned Additional Solicitor-General is that if

the Governor is required to sign the impugned orders, it would take away the control of the High Court as conferred on it by Article 235. We are, however, unable to accept the contention.

12. The test of control is not the passing of an order against a member of the subordinate judicial service, but the decision to take such action. It may be that so far as the members of the subordinate judicial service are concerned, it is the Governor, who being the appointing authority, has to pass an order of compulsory retirement or any order of punishment against such a member. But passing or signing of such orders by the Governor will not necessarily take away the control of the High Court vested in it under Article 235 of the Constitution. An action against any government servant consists of two parts. Under the first part, a decision will have to be made whether an action will be taken against the government servant. Under the second part, the decision will be carried out by a formal order. The power of control envisaged under Article 235 of the Constitution relates to the power of making a decision by the High Court against a member of the subordinate judicial service. Such a decision is arrived at by holding an enquiry by the High Court against the member concerned. After the High Court comes to the conclusion that some action either in the nature of compulsory retirement or by the imposition of a punishment, as the case may be, has to be taken against the member concerned, the High Court will make a recommendation in that regard to the Governor and the Governor will act in accordance with such recommendation of the High Court by passing an order in accordance with the decision of the High Court. The Governor cannot take any action against any member of a subordinate judicial service without, and contrary to, the recommendation of the High Court.

13. In the State of West Bengal v. Nripendra Nath Bagchi a question arose whether Article 311 takes away the control of the High Court vested in it under Article 235 of the Constitution. In that context, Hidayatullah, J. (as he then was) speaking for the court observed as follows: (SCR p. 790) "There is, therefore, nothing in Article 311 which compels the conclusion that the High Court is ousted of the jurisdiction to hold the enquiry if Article 235 vested such a power in it. In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, subject however to the conditions of service, to a right of appeal if granted by the conditions of service, and to the giving of an opportunity of showing cause as required by Clause (2) of Article 311 unless such opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. The High Court alone could have held the enquiry in this case. To hold otherwise will be to reverse the policy which has moved determinedly in this direction."

14. Thus, it appears that this Court brought about a harmony between the power

of the Governor and the power of control of the High Court.

15. The question was again considered by this Court in *State of Haryana v. Inder Prakash Anand*. In that case A.N. Ray, C.J. observed as follows: [SCC p. 981 : SCC (L & S) p. 376, para 18]

The control vested in the High Court is that if the High Court is of opinion that a particular Judicial Officer is not fit to be retained in service the High Court will communicate that to the Governor because the Governor is the authority to dismiss, remove, reduce in rank or terminate the appointment. In such cases it is the contemplation in the Constitution that the Governor as the head of the State will act in harmony with the recommendation of the High Court. If the recommendation of the High Court is not held to be binding on the State consequences will be unfortunate. It is in public interest that the State will accept the recommendation of the High Court. The vesting of complete control over the Subordinate Judiciary in the High Court leads to this that the decision of the High Court in matters within its jurisdiction will bind the State. "The Government will act on the recommendation of the High Court. That is the broad basis of Article 235".

16. It is apparent from the observation extracted above that this Court also understood the power of control of the High Court as the power of taking a decision against a member of the subordinate judicial service. The High Court is the only authority that can take such a decision. The High Court will hold an enquiry and decide on the result of such enquiry whether any action will be taken against a member of the subordinate judicial service. If it comes to the conclusion that such an action is required to be taken, it will make a recommendation in that regard to the State Governor who will make an order in accordance with the recommendation of the High Court.

17. There can be no doubt and, indeed, it is well established that compulsory retirement of members of the subordinate judicial service comes within the purview of the power of control of the High Court under Article 235 of the Constitution. See *State of Uttar Pradesh v. Batuk Deo Pati Tripathi*; *High Court of Punjab and Haryana v. State of Haryana*; *Shamsher Singh v. State of Punjab*; *State of Haryana v. Inder Prakash Anand* and *B. Mishra v. Orissa High Court*

18. The control of the High Court, as understood, will also be applicable in the case of compulsory retirement in that the High Court will, upon an enquiry, come to a conclusion whether a member of the subordinate judicial service should be retired prematurely or not. If the High Court comes to the conclusion that such a member should be prematurely retired, it will make a recommendation in that regard to the Governor inasmuch as the Governor is the appointing authority. The Governor will make a formal order of compulsory retirement in accordance with the recommendation of the High Court.

19. In the instant cases, admittedly, the impugned orders of compulsory retirement have been passed by the High Court under Rule 56(d) of the

Fundamental Rules. It has been noticed that under Rule 56(d) of the Fundamental Rules right of compulsory retirement has been conferred on the appropriate authority which, under Explanation I, means the appointing authority, that is, the Governor. While the High Court decided to compulsorily retire the respondents, it did not communicate the recommendations to the State Governor for passing formal orders of compulsory retirement. Instead, the High Court passed the orders of compulsory retirement itself. As Article 235 vests the power of control of subordinate judiciary in the High Court, the absolute right to compulsorily retire a government servant conferred on the Governor by Rule 56(d) of the Fundamental Rules must be subject to the power of control of the High Court, so far as the members of the subordinate judicial service are concerned. In other words, if the High Court considers that a member of the subordinate judicial service should be compulsorily retired, the High Court will make a recommendation in that regard to the Governor, who will make an order of compulsory retirement in accordance with the recommendation of the High Court. The Governor will only act on the basis of the recommendation and pass a formal order.

20. But however formal it is, the compulsory retirement of the member concerned will take effect after the order is passed by the Governor. The High Court, in the present cases, sought to derive its power to compulsorily retire the respondents from Rule 56(d) of the Fundamental Rules and in exercise of its power of control it decided to compulsorily retire the respondents, but ignored the power of the Governor under Rule 56(d) of the Fundamental Rules to make the order of compulsory retirement in accordance with the recommendation of the High Court. It may be that the power of the Governor under Rule 56(d) of the Fundamental Rules is very formal in nature, for the Governor merely acts on the recommendation of the High Court by signing an order in that regard. But however formal it may be, yet the procedure has to be complied with. So long as there is no formal order by the Governor, the compulsory retirement, as directed by the High Court, could not take effect. We are unable to accept the contention of the learned Additional Solicitor-General that to send the recommendation to the Governor for the purpose of making a formal order of compulsory retirement would be in derogation of the power of control of the High Court as vested in it under Article 235 of the Constitution. As has been discussed above, the power of control is a power to make the decision as to whether any action would be taken against a member of the subordinate judicial service and if so, what would be the nature of the action. In the case of compulsory retirement, when the High Court comes to a decision that the member should be compulsorily retired from service, its decision or recommendation has to be communicated to the Governor so that he may pass a formal order of compulsory retirement. In the instant cases, as there is no formal order by the Governor under Rule 56(d) of the Fundamental Rules, the impugned orders of the High Court are ineffective. The view expressed by one of the learned judges of the Division Bench that it was not the High Court but the Governor who had to pass formal orders of compulsory

retirement, is correct. The contention made on behalf of the High Court that as Rule 56(d) of the Fundamental Rules impinges upon the power of control of the High Court, as vested in it under Article 235 of the Constitution, it should be declared ultra vires insofar as it confers power on the Governor to compulsorily retire government servants, who, in the instant cases, are members of the subordinate judicial service, is without any substance whatsoever and is rejected.

(ix) In Madan Mohan Choudhary Vs. The State of Bihar, the Supreme Court held as under:

27. The word "consult" in its ordinary meaning means "to ask advice" or "to take counsel". The Governor is thus a "consultor" and the High Court is the "consultee" which is treated as an expert body in all matters of service including appointments, disciplinary action, compulsory retirement etc. relating to State Judicial Services. Since the Governor cannot act on his own unless he has consulted the High Court, the Constitution has conferred upon the High Court a sacred and noble duty to give the best of advice or opinion to the Governor; an advice tendered after due deliberation and after taking into consideration all the relevant material and record relating to the problem on which consultation is made or advice is sought by the Governor. It is, therefore, essentially a matter of trust and confidence between the Governor and the High Court. The High Court cannot act arbitrarily in giving its opinion to the Governor or else it will be a betrayal of that trust. If the advice is not supportable by any material on record and is arbitrary in character, it may not have any binding value.

28. It has already been pointed out by this Court in Registrar, High Court of Madras v. R. Rajiah that though the High Court, in its administrative jurisdiction, has the power to recommend compulsory retirement of a member of the Judicial Service in accordance with the Rules framed in that regard, it cannot act arbitrarily and there has to be material to come to a decision that the officer has outlived his utility. It was also pointed out in this case that the High Court while exercising its power of control over the subordinate judiciary is under a constitutional obligation to guide and protect judicial officers from being harassed or annoyed by trifling complaints relating to judicial orders so that the officers may discharge their duties honestly and independently, unconcerned by the ill-conceived or motivated complaints made by unscrupulous lawyers and litigants.

29. In M.M. Gupta v. State of J & K it was indicated that normally, as a rule, the High Court's recommendations for the appointment of a District Judge should be accepted by the State Government and the Governor should act on the same. If in any particular case, the State Government for good and weighty reasons finds it difficult to accept the recommendations, it should communicate its views to, and have complete and effective consultation with, the High Court. It was also pointed out that there can be no doubt that if the High Court is convinced that the Government's objections are for good reasons, it will undoubtedly reconsider its earlier recommendation. Efficient and proper judicial administration being the main object, both the High Court and the State Government must necessarily

approach the question in a detached manner.

30. Again in *State of Kerala v. A. Lakshmikutty* this Court pointed out that the duty of the Governor to consult the High Court in the appointment of District Judges is integrated with the exercise of his power; he must exercise it in the manner provided by Article 233(1) or not at all. Normally, the High Court's recommendations have to be accepted by the State Government and the Governor has to act on the same but if the State Government for "good and weighty reasons" cannot agree with the High Court, it should take the High Court into confidence and place before it the difficulties in acting upon the recommendations.

(x) In *The Registrar (Administration), High Court of Orissa, Cuttack Vs. Sisir Kanta Satapathy (Dead) by Lrs. and Another*, the Constitution Bench was considering the law on the point held at paragraphs 15 to 18 as under:

15. On going through the judgments of this Court right from *Shyamlal v. State of U.P.* down to *High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal* one cannot but reach one conclusion regarding the power of the High Court in the matter of ordering compulsory retirement. That conclusion is that the High Courts are vested with the disciplinary control as well as administrative control over the members of the judicial service exclusively, but that does not mean that they can also pass orders of dismissal, removal, reduction in rank or termination from service while exercising administrative and disciplinary control over the members of the judicial service. Undoubtedly, the High Courts alone are entitled to initiate, to hold enquiry and to take a decision in respect of dismissal, removal, reduction in rank or termination from service, but the formal order to give effect to such a decision has to be passed only by the State Governor on the recommendation of the High Court. It is well-settled again by a catena of decisions of this Court that the recommendation of the High Court is binding on the State Government/Governor (vide para 18 in *Inder Prakash Anand's* case).

16. We are clearly of the view that while the High Court retains the power of disciplinary control over the subordinate judiciary, including the power to initiate disciplinary proceedings, suspend them pending enquiries and impose punishment on them but when it comes to the question of dismissal, removal, reduction in rank or termination of the services of the judicial officer, on any count whatsoever, the High Court becomes only the recommending authority and cannot itself pass such an order (vide *Inder Prakash Anand's* case and *Rajiah's* case).

17. In the instant case, the decision of the Orissa High Court dated 4-2-1987 (on the administrative side) was required to be forwarded to the Governor for passing an order of compulsory retirement. That was not done. It was wrong for the High Court to have passed the order of compulsory retirement itself. The judicial side of the High Court rightly decided the writ petition in favour of the judicial officers and held the order dated 5-2-1987 to be bad. In the words of the

Division Bench of the High Court:

There is a stronger constitutional objection to accept the submission of Shri Nayak for regarding the High Court as the appointing authority of the Chief Judicial Magistrate on the basis of what has been provided in Rule 10 of the Orissa Superior Judicial Service Rules, 1963, inasmuch as it has been laid down in Article 234 of the Constitution that appointments of persons other than District Judges to the judicial service of a State shall be made by the Governor of the State in accordance with the rules made by him in that behalf. The aforesaid rules are one set of such rules. So, no provision in the rules could have altered the constitutional position that the Governor of the State is the appointing authority of persons other than District Judges also. Conferment of this power on the High Court by virtue of what is stated in Rule 10 of the Orissa Superior Judicial Service Rules would have clashed with the constitutional mandate. We would, therefore, not accept because of what is stated in Rule 10 that the High Court is the appointing authority of a Chief Judicial Magistrate.

* * * * *

In view of all that is stated above, we would hold that the High Court is not the appointing authority of Chief Judicial Magistrates to clothe it with the power of compulsory retirement conferred by the first proviso to Rule 71(a) of the Orissa Service Code. In this connection, may we also point out that it would be really incongruous where, though the High Court cannot retire a Munsiff, or for that matter a District Judge, as fairly conceded by Shri Nayak it would be in a position to retire a Chief Judicial Magistrate. We do not think if the concerned provisions permit us to take this view.

Before closing this aspect of the discussion, we may say that we are conscious of the legal position that passing of an order of compulsory retirement by the Governor is a formal matter as stated in Rajiah's case because, according to this decision, the Governor in such cases merely acts on the recommendation of the High Court by signing an order in that regard; but the procedure of the Governor formally passing an order of retirement has to be complied with. So long as there is no formal order of the Governor, the compulsory retirement as directed by the High Court cannot take effect, as opined in Rajiah's case itself.

Having come to the aforesaid conclusion, it is not necessary to deal with the second submission of Shri Ray that there were no materials in the present case to order for the compulsory retirement of the petitioner....

18. The judgment of the Division Bench of the High Court is strictly in accord with the catena of judgments referred to above and in particular with the judgment in Rajiah's case. We, therefore, see no error in the orders under appeal.

(xi) In Bishwanath Prasad Singh Vs. State of Bihar and Others, the Supreme Court held as under:

31. Article 235 of the Constitution vests administrative and disciplinary control over the district judiciary including the subordinate judiciary in the High Court immunising them from the executive control of the State Government so as to protect judicial independence. Control over subordinate courts vested in the High Court is a trust and confidence reposed by the founding fathers of the Constitution in a high institution like the High Court. The trust has to be discharged with a great sense of responsibility. All the High Courts have framed rules dealing with executive and administrative business of the Court. There are administrative committees and Inspecting Judges in the High Court. Periodical inspections of subordinate courts have to be carried out regularly so as to keep a vigil and watch on the functioning of the subordinate judiciary, the importance and significance whereof needs no emphasis. In *High Court of Punjab & Haryana v. Ishwar Chand Jain* this Court observed: (SCC p. 598, para 32)

* * * * *

32. The abovesaid observations were reiterated by this Court in *High Court of Judicature at Allahabad v. Sarnam Singh* with a note that they indicated the attitude and objectivity to be adopted by the Inspecting Judges while objectively expected (sic) considering the work and conduct of the judicial officers who have to work under difficult and trying circumstances. Observation in *R. Rajiah's* case were also noticed cautioning against acting on ill-conceived or motivated complaints and rumour mongering which may seriously jeopardise the efficient working of the subordinate courts.

33. A number of decisions dealing with the object and purpose of writing confidential reports and care and caution to be adopted while making entries in the confidential records of Government Officers have been referred to in the cases of *Sarnam Singh* (vide paras 31, 32) as also in the case of *Ishwar Chand Jain*. We need not repeat the same. Suffice it to observe that the well-recognised and accepted practice of making annual entries in the confidential records of subordinate officials by superiors has a public policy and purposive requirement. It is one of the recognised and time-tested modes of exercising administrative and disciplinary control by a superior authority over its subordinates. The very power to make such entries as have potential for shaping the future career of a subordinate officer casts an obligation on the High Courts to keep a watch and vigil over the performance of the members of subordinate judiciary. An assessment of quality and quantity of performance and progress of the judicial officers should be an ongoing process continued round the year and then to make a record in an objective manner of the impressions formulated by such assessment. An annual entry is not an instrument to be wielded like a teachers' cane or to be cracked like a whip. The High Court has to act and guide the subordinate officers like a guardian or elder in the judicial family. The entry in the confidential rolls should not be a reflection of personal whims, fancies or prejudices, likes or dislikes of a superior. The entry must reflect the result of an objective assessment coupled with an effort at guiding the judicial officers to

secure an improvement in his performance where need be; to admonish him with the object of removing for future, the shortcoming found; and expressing an appreciation with an idea of toning up and maintaining the imitable qualities by affectionately patting on the back of meritorious and deserving. An entry consisting of a few words, or a sentence or two, is supposed to reflect the sum total of the impressions formulated by the Inspecting Judge who had the opportunity of forming those impressions in his mind by having an opportunity of watching the judicial officer round the period under review. In the very nature of things, the process is complex and the formulation of impressions is a result of multiple factors simultaneously playing in the mind. The perceptions may differ. In the very nature of things there is a difficulty nearing an impossibility in subjecting the entries in confidential rolls to judicial review. Entries either way have serious implications on the service career. Hence the need for fairness, justness and objectivity in performing the inspections and making the entries in the confidential rolls.

35. We are conscious of the fact that we are dealing with an administrative decision taken by a High Court occupying a place of supremacy under the Constitution. The High Court as an institution is administratively totally independent and is not subject to superintendence by any other institution. We hope our observations are read in the right spirit--these are by way of suggestions and not intended in any way to be criticism of the working of the High Court.

(xii) In *Rajendra Singh Verma (Dead) through L.Rs Vs. Lt. Governor of NCT of Delhi and Another*, the Supreme Court held as under:

135. Thus, it is fairly well-settled by a catena of decisions of this Court that in the matter of compulsory retirement of a judicial officer the Governor cannot act on the aid and the advice of the Council of Ministers but has to act only on the recommendation of the High Court. Though the Lt. Governor is a party to these appeals, he has not raised any plea that the recommendation made by the Delhi High Court was not binding on him and he could have acted in the matter only on the aid and advice of his Council of Ministers. Thus the order of the Lt. Governor compulsorily retiring the appellants without seeking aid and advice of his Council of Ministers is neither ultra vires nor illegal and is rightly sustained by the High Court. The Governor could not have passed any order on the aid and advice of the Council of Ministers in this case. The advice should be of no other authority except that of the High Court in the matter of judicial officers. This is the plain implication of Article 235.

(xiii) In *Registrar General, Patna High Court Vs. Pandey Gajendra Prasad and Others*, the Supreme Court held as under:

25. However, before parting with the judgment, we deem it necessary to make a mention about the recording of the ACRs of judicial officers. We feel that the present system of recording the ACRs leaves much to be desired and needs to be

revamped. Experience has shown that it is deficient in several ways, being not comprehensive enough to truly reflect the level of work, conduct and performance of each individual on the one hand and unable to check subjectivity on the other. This undoubtedly breeds discontent in a section of the judicial service besides eroding proper and effective superintendence and control of the High Court over subordinate judiciary.

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

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

28. In *Bishwanath Prasad Singh v. State of Bihar and High Court of Punjab & Haryana v. Ishwar Chand Jain*, highlighting the importance of ACRs, this Court had observed that the power to make such entries, which have the potential for shaping the future career of a subordinate officer, casts an obligation on the High Courts to keep a watch and vigil over the performance of the members of the subordinate judiciary. This Court also stressed on the need for the assessment to be made as an ongoing process continued round the year and the record to be made in an objective manner. We are constrained to note that these observations have not yet engaged the attention of most of the High Courts in the country.

(xiv) In *High Court of Punjab and Haryana Through R.G. Vs. Ishwar Chand Jain and Another*, the Supreme Court held as under:

32. Since late this Court is watching the spectre of either judicial officers or the High Courts coming to this Court when there is an order prematurely retiring a judicial officer. Under Article 235 of the Constitution the High Court exercises complete control over subordinate courts which include District Courts. Inspection of the subordinate courts is one of the most important functions which the High Court performs for control over the subordinate courts. The object of such inspection is for the purpose of assessment of the work performed by the Subordinate Judge, his capability, integrity and competency. Since Judges are human beings and also prone to all the human failings inspection provides an

opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the working of the subordinate court, remedied. Inspection should act as a catalyst in inspiring Subordinate Judges to give the best results. They should feel a sense of achievement. They need encouragement. They work under great stress and man the courts while working under great discomfort and hardship. A satisfactory judicial system depends largely on the satisfactory functioning of courts at the grass-roots level. Remarks recorded by the Inspecting Judge are normally endorsed by the Full Court and become part of the annual confidential reports and are foundations on which the career of a judicial officer is made or marred. Inspection of a subordinate court is thus of vital importance. It has to be both effective and productive. It can be so only if it is well regulated and is workman-like. Inspection of subordinate courts is not a one-day or an hour or a few minutes' affair. It has to go on all the year round by monitoring the work of the court by the Inspecting Judge. A casual inspection can hardly be beneficial to a judicial system. It does more harm than good. As noticed in the case of R. Rajiah there could be ill-conceived or motivated complaints. Rumourmongering is to be avoided at all costs as it seriously jeopardizes the efficient working of the subordinate courts.

33. Time has come that a proper and uniform system of inspection of subordinate courts should be devised by the High Courts. In fact the whole system of inspection needs rationalization. There should be some scope of self-assessment by the officer concerned. We are informed that the First National Judicial Pay Commission is also looking into the matter. This subject, however, can be well considered in a Chief Justices' Conference as the High Court itself can devise an effective system of inspection of the subordinate courts. The Registrar General shall place a copy of this judgment before the Hon'ble Chief Justice of India for him to consider if the method of inspection of subordinate courts could be a matter of the agenda for the Chief Justices' Conference.

(xv) In *M.S. Bindra Vs. Union of India and Others*, the Supreme Court held as under:

11. Therefore, judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or mala fide or if it is based on no evidence. The observation that principles of natural justice have no place in the context of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion, the same can be obviated on the assumption that other materials alone need be looked into.

(xvi) In *All India Judges' Association Vs. Union of India and others*, Supreme Court held as under:

25. The recommendation that superannuation should be fixed at 58 for judicial officers was made at a time when in public services retirement was prescribed at the age of 55. Considering the enhancement of the longevity of human life and

taking all other relevant considerations into account, all the States and all the Union Territories have now enhanced the age of retirement to 58 years excepting, as already pointed out, in the case of the State of Kerala. We are of the view that on the logic which was adopted by the Law Commission and for the reasons which we have indicated the age of retirement of judicial officers should be 60 years. We accordingly direct that appropriate alterations shall be made in the Rules obtaining in the States and Union Territories in respect of judicial service so as to fix the age of retirement at 60 years with effect from December 31, 1992. We have given a long period so that appropriate amendments may be made in the meantime.

(xvii) In *R.C. Chandel Vs. High Court of M.P. and Another*, the Supreme Court held as under:

18. The questions that fall for consideration are.--(1) Whether the recommendation made by the High Court on the basis of unanimous opinion to the Government for compulsory retirement of the appellant and the order of compulsory retirement issued by the Government suffer from any legal flaw?

(2) Is the order of compulsory retirement so arbitrary or irrational that justifies interference in judicial review?

(3) Is the view of the Division Bench upholding the order of the appellant's compulsory retirement so erroneous warranting interference by this Court in an appeal under Article 136 of the Constitution of India?

19. In *Rajendra Singh Verma's* case 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 retiral 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. v. Bihari Lal*, *Union of India v. V.P. Seth*, *Baikuntha Nath Das v. District Medical Officer*, *Baidyanath Mahapatra v. State of Orissa*, *Union of India v. Col. J.N. Sinha*, *All India Judges' Assn. (1) v. Union of India* and *All India Judges' Assn. (2)* and culled out the legal position in para 183 of the Report as follows: (*Rajendra Singh Verma's* case, SCC p. 75).

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.

20. A few other features based on the service record of the appellant highlighted in the counter filed by Respondent 1 in opposition to the writ petition as well as in response to the SLP before this Court may be noticed. The appellant was informed of his having been assessed in Grade "D" for the period 1-4-1981 to 31-3-1982 by communication dated 15-9-1982. The said adverse grading was not assailed by the appellant and it remained on the record as it is. The appellant was also intimated on 6-11-1989 about the adverse remarks recorded in his ACR for the period 1988-1989 that he never enjoyed clean reputation and that his quality of judgments and orders was not satisfactory. The appellant made a representation against the above remarks but the same was rejected and they hold the field as it is. For the period ending 31-3-1992, the appellant was graded D and that grading remains as it is.

29. Judicial service is not an ordinary Government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. 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 than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and the rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty.

30. The most shocking and unbecoming conduct of the appellant highlighted by Respondent 1 before the High Court in opposition to the writ petition and in response to the present appeal is his act to overreach the administrative decision on the review petition filed by him before the Chief Justice after his representations for expunction of adverse remarks for the period ending on 31-3-1993 and 31-3-1994 had been thrice earlier rejected. The appellant approached Shri R.K. Malaviya, Member of Parliament and Chairman, House

Committee (Rajya Sabha) for his grievance concerning rejection of his representations for expunction of remarks for 1993 and 1994. Though the appellant has denied that he ever approached Shri R.K. Malaviya but to falsify his claim, the learned Senior Counsel for Respondent 1 placed before us a xerox copy of the letter dated 14-2-1996 written by Shri R.K. Malaviya to Shri H.R. Bhardwaj, Minister of State for Law, Justice and Company Affairs, Government of India, New Delhi and the copy of the letter dated 8-3-1996 sent by the Ministry of Law, Justice and Company Affairs (Department of Justice), Government of India addressed to the Chief Secretary to the Government of Madhya Pradesh, Bhopal and the Registrar, High Court.

(xviii) In Chandra Singh Vs. State of Rajasthan and Another, the Supreme Court held as under:

40. Article 235 of the Constitution of India enables the High Court to assess the performance of any judicial officer at any time with a view to discipline the black sheep or weed out the dead wood. This constitutional power of the High Court cannot be circumscribed by any rule or order. We can usefully refer to some of the leading cases on Article 235:

1. State of Assam v. Ranga Mohd. (five Judges)
2. Samsher Singh v. State of Punjab (seven Judges)
3. High Court of Judicature at Bombay v. Shirishkumar Rangrao Patil

41. However, our aforementioned findings did not lead to a conclusion that the appellants would not be entitled to a discretionary relief.

15. Under Article 235, the High Court has to exercise supervision and control over the Subordinate Judiciary and therefore, recommendations of the High Court in regard to compulsory retirement are binding on the State Government/ the Governor. Article 163 inter alia provides that there shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except insofar as he is by or under the Constitution required to exercise his functions or any of them in his discretion. Under Article 235 of the Constitution, the control vested in the High Court over the Subordinate Judiciary, is exclusive and comprehensive to subserve the basic feature of the Constitution which inter alia includes premature or compulsory retirement of Judges of the District Courts and of the Subordinate Courts [L.V.A. Dixitulu and others (supra)]. It is however held in several judgments that the formal order to give effect to such a decision has to be passed by the State Governor on the recommendations of the High Court. Of course the Governor is left with no discretion except to act according to the recommendations.

16. The facts of the present cases would show that the Registrar (Subordinate Judiciary) has issued the impugned orders, informing the petitioners that the High Court of Kerala has assessed and evaluated the petitioners' suitability for continuance in office and the High Court after considering all relevant materials

formed an opinion that the petitioners were not fit to render continued useful service beyond the age of 55 years and hence the High Court has decided to compulsorily retire them from service in public interest. It is also indicated that High Court has communicated the decision to the Governor. The records also reveal that the Registrar (Subordinate Judiciary) has addressed a letter dated 6-9-2010 to the Additional Chief Secretary to Government requesting to place the matter before the Governor of Kerala in order to issue Government Orders compulsorily retiring the Officers from Kerala Higher Judicial Service in accordance with the decision of the High Court. Specific reference was made to Rule 13A of the Kerala Judicial Service Rules as well as Rule 7A of the 1961 Rules and the decision taken by the Full Court. By G.O. (Rt.) No. 2993/2011/Home dated 11-10-2011, order was issued indicating the approval of the Governor in the matter relating to the compulsory retirement of the petitioners. Therefore in effect the order of the High Court is approved by the Governor.

17. The contention of the petitioners is that the High Court had no power to issue the impugned orders and only the Governor could have issued the order of compulsory retirement. Specific reference is made to Rajiah's case (supra) which is followed by the Constitution Bench in Sisir Kanta Satapathy's case (supra). Apparently under Article 233 appointments, posting and promotion of the District Judges in any State shall be made by the Governor of the State in consultation with the High Court. Therefore there is no doubt that the power to remove shall also be exercised by the Governor as provided under Article 311(1) of the Constitution. But by virtue of Article 235 the control over District Courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court. What is control has been dealt by the Supreme Court in a long line of judgments referred above. The State Government has amended the 1961 Rules by incorporating Rule 7A by which, if the High Court on an assessment and evaluation of the records of the officer is of the view that such officer is not fit and eligible to continue in service beyond the age of 50 years, 55 years and 58 years, as the case may be, can be compulsorily retired. In Shamsheer's case (supra) a seven Judge Bench of the Supreme Court held the High Court under Article 235 is vested with the control of subordinate judiciary. The Governor will act on the recommendation of the High Court. That is the broad basis of Article 235. The Governor acts on the aid and advice of the Council of Ministers in executive action and is not required by the Constitution to act personally without the aid and advice of the Council of Ministers or against the aid and advice of the Council of Ministers. Where the Governor has any discretion the Governor acts on his own judgment. The Governor exercises his discretion in harmony with his Council of Ministers. The appointment as well as removal of the members of the Subordinate Judicial Service is an executive action of the Governor to be exercised on the aid and advice of the Council of Ministers in accordance with the provisions of the Constitution. Appointments and removals of persons are made

by the Governor as the constitutional head of the Executive on the aid and advice of the Council of Ministers. That is why any action by any servant of the Union or the State in regard to appointment or dismissal is brought against the Union or the State and not against the President or the Governor. It is the case of the respondent that since compulsory retirement is neither dismissal nor removal from service, Article 311(2) has no application and therefore High Court was justified in issuing the impugned orders. In Tejpal Singh's case (supra) a two Judge Bench of the Supreme Court while considering the scope of Article 233 and 235 held that compulsory retirement simpliciter does not amount to dismissal or removal or reduction in rank under Article 311 or under Service Rules. When a case is not of removal or dismissal or reduction in rank, any order in respect of exercise of control over the Judicial Officers is by the High Court and by no other authority; otherwise, it will affect the independence of the judiciary.

18. In Inder Prakash Anand's case (supra) the Supreme Court held that premature retirement is made in the exercise of administrative and disciplinary jurisdiction. It is administrative because it is decided in public interest to retire him prematurely. It is disciplinary because the decision was taken that he does not deserve to continue in service up to the normal age of superannuation and that it is in the public interest to do so. The control vested in the High Court is that if the High Court is of opinion that a particular Judicial Officer is not fit to be retained in service, the High Court will communicate that to the Governor because the Governor is the authority to dismiss, remove, reduce in rank or terminate the appointment. In Batuk Deo Pati Tripathi's case (supra) the Constitution Bench while considering the scope of Article 235 held that compulsory retirement of Judges of the District Court and of subordinate courts is a matter which falls squarely within the power of control vested in the High Courts by Article 235 of the Constitution which is clear from the decisions in High Court of Punjab and Haryana v. State of Haryana, Shamsher Singh v. State of Punjab, State of Haryana v. Inder Prakash Anand H.C.S. and B. Misra v. Orissa High Court. In L.V.A. Dixitulu's case (supra) the Constitution Bench while considering the scope of Article 235 of the Constitution held that the control over the subordinate judiciary vested in the High Court is exclusive in nature and it includes premature or compulsory retirement of Judges of the District Courts and of Subordinate Courts.

19. In Rajiah's case (supra) Rule 56(d) of the Fundamental Rules conferred absolute right on the appropriate authority to retire a Government servant in the public interest Under Explanation I, "appropriate authority" meant the authority which has the power to make substantive appointment to the post or service from which the Government servant is required to retire or wants to retire. In view of Explanation I, it is held that the absolute power to retire any Government servant has been conferred on the appropriate authority, that is, the authority which has the power to make substantive appointment to the post or service from which the Government servant is required to retire. In that case the authority to make substantive appointment to the post of Munsif or District

Munsif was the Governor. Therefore, under Rule 56(d) of the Fundamental Rules, the State Government or the Governor being the appointing authority, alone had the absolute power to retire a District Munsif. Having regard to the said Rules the Supreme Court held that:

Rule 56(d) of the Fundamental Rules under which a member of subordinate judicial service can be compulsorily retired has to be read subject to and in harmony with the power of control vested in the High Court under Article 235 of the Constitution.

It is further held that:

The test of control is not the passing of an order against a member of the subordinate judicial service, but the decision to take such action. It may be that so far as the members of the subordinate judicial service are concerned, it is the Governor, who being the appointing authority, has to pass an order of compulsory retirement or any order of punishment against such a member. But passing or signing of such orders by the Governor will not necessarily take away the control of the High Court vested in it under Article 235 of the Constitution. An action against any Government servant consists of two parts. Under the first part, a decision will have to be made whether an action will be taken against the Government servant. Under the second part, the decision will be carried out by a formal order. The power of control envisaged under Article 235 of the Constitution relates to the power of making a decision by the High Court against a member of the subordinate judicial service. Such a decision is arrived at by holding an enquiry by the High Court against the member concerned. After the High Court comes to the conclusion that some action either in the nature of compulsory retirement or by the imposition of a punishment, as the case may be, has to be taken against the member concerned, the High Court will make a recommendation in that regard to the Governor and the Governor will act in accordance with such recommendation of the High Court by passing an order in accordance with the decision of the High Court. The Governor cannot take any action against any member of a subordinate judicial service without, and contrary to, the recommendation of the High Court.

Further it is held as under:

In the instant cases, admittedly, the impugned orders of compulsory retirement have been passed by the High Court under Rule 56(d) of the Fundamental Rules. It has been noticed that under Rule 56(d) of the Fundamental Rules right of compulsory retirement has been conferred on the appropriate authority which, under Explanation I, means the appointing authority, that is, the Governor. While the High Court decided to compulsorily retire the respondents, it did not communicate the recommendations to the State Governor for passing formal orders of compulsory retirement. Instead, the High Court passed the orders of compulsory retirement itself. As Article 235 vests the power of control of subordinate judiciary in the High Court, the absolute right to compulsorily retire

a Government servant conferred on the Governor by Rule 56(d) of the Fundamental Rules must be subject to the power of control of the High Court, so far as the members of the subordinate judicial service are concerned. In other words, if the High Court considers that a member of the subordinate judicial service should be compulsorily retired, the High Court will make a recommendation in that regard to the Governor, who will make an order of compulsory retirement in accordance with the recommendation of the High Court. The Governor will only act on the basis of the recommendation and pass a formal order.

20. In Sisir Kanta Satapathy's case (supra) the Constitution Bench followed Rajiah's case (supra). I have already indicated that in Rajiah's case (supra) there was a specific provision which indicated that the Governor has to pass an order of compulsory retirement. But in Sisir Kanta Satapathy's case (supra) the factual situation was that the Review Committee constituted by the Full Court of Orissa High Court decided to recommend to the Full Court to retire the Judicial Officer prematurely in public interest. The Full Court accepted the recommendation of the Review Committee. Pursuant to the same, the officers were retired prematurely by virtue of a notification issued by the High Court which was under challenge. The main ground taken was whether the High Court had the power of making an order of compulsory retirement. I think the factual situation in the present cases clearly matches with the judgment in Sisir Kanta Satapathy's case (supra). The Full Bench after considering various judgments on the point including Nripendra Nath Bagchi's case (supra), Inder Prakash Anand's case (supra), Batuk Deo Pati Tripathi's case (supra), L.V.A. Dixitulu's case (supra), Tejpal Singh's case (supra) and Rajiah's case (supra) found that the decision of the Orissa High Court on the administrative side was required to be forwarded to the Governor for passing an order of compulsory retirement. Since that was not done, it was wrong for the High Court to have passed the order of compulsory retirement itself. The aforesaid cases squarely applies to the facts and circumstances of the case on hand.

21. In Rajendra Singh Verma's case (supra) the Supreme Court held that it is well-settled by a catena of decisions that in the matter of compulsory retirement of a Judicial Officer the Governor cannot act on the aid and the advice of the Council of Ministers but has to act only on the recommendation of the High Court.

22. Therefore it is clear from the decisions cited above that compulsory retirement of District Judges comes within the control of the High Court. In Chandra Singh's case (supra) the Supreme Court held that Article 235 of the Constitution of India enables the High Court to assess the performance of any Judicial Officer at any time with a view to discipline the black sheep or weed out the deadwood. Such a constitutional power of the High Court cannot be circumscribed by any rule or order. Supreme Court in fact relied upon the leading cases on Article 235, State of Assam v. Ranga Mohd. (five Judges), Samsher Singh v. State of Punjab (seven Judges) (supra) and High Court of Judicature at

High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another,

23. Rajiah's case (supra) will not help the petitioners, since in the said case there was a specific rule which indicated that compulsory retirement has to be by an order of Governor.

24. But, as already held, Sisir Kanta Satapathy's case (supra) squarely applies to the cases on hand and therefore I have no hesitation to hold that the impugned orders issued by the High Court in its administrative side retiring the officers compulsorily is not in accordance with the law laid down by the Constitution Bench of the Supreme Court in the above case and hence liable to be quashed.

25. Now coming to the next point, the evaluation is to be made by a Committee of the High Court Judges presided by the Chief Justice on the basis of the entries in the confidential reports of the officers, a medical certificate issued by the Civil Surgeon certifying that the Officer is physically fit to continue in service beyond the aforesaid years. I have perused the file in this connection. I have also permitted the learned counsel for the parties to peruse the file. The Administrative Committee in its meeting held on 18-9-2009 resolved that it is just and proper to collect more details regarding the merit and suitability of the Judicial Officers for continued service with special reference to their performance in the Court, disposal of cases and their integrity. It was therefore resolved that the Registrar (Vigilance) should be directed to collect confidentially the aforesaid details of the officers in the field of choice. It was also resolved that the opinion of the High Court Judges concerned who are in administrative charge of the concerned District should be obtained in order to ascertain the merits and suitability of the officers which had to be placed before the Administrative Committee. It was therefore resolved to place before the Administrative Committee the report of the Registrar (Vigilance) and also the opinion of the Administrative Judges before the Committee. By a letter dated 25-9-2009 the Registrar (Subordinate Judiciary) requested the Registrar (Vigilance) to collect a report consisting of details of the Judicial Officers mentioned in the list to ascertain their merit and suitability for continuance in service as directed by the Administrative Committee.

26. In respect of the petitioners a detailed enquiry is seen undertaken by the Vigilance Officer who was of the opinion that there were sufficient materials to give adverse remarks against them. The confidential records, along with the report given by the Administrative Judges along with the report of the Vigilance Registrar was considered by the Administrative Committee. A list of names of Judicial Officers in the Subordinate Judiciary who were about to attain the age of 50, 55 and 58 years along with the up-to-date confidential reports, report submitted by the Registrar (Vigilance) and the remarks of the Judges in charge were placed before the Administrative Committee. The concerned High Court Judge having administrative charge over the petitioners opined with reference to the petitioner in W.P. (C) No. 33094 of 2010 and 30427 of 2010 that the

consideration of their suitability is required to be deferred on account of pending disciplinary enquiry. With reference to the petitioner in W.P. (C) No. 26162 of 2010, the Judge opined that he is fit to continue in service beyond 55 years.

27. The committee held its meeting on 8-4-2010 and resolved that out seven officers of whom two of them were not found suitable for continuing in service beyond the age of 58 years, four of them beyond the age of 55 years and one among them beyond the age of 50 years. The petitioners fell in the category of persons who were not suitable to continue after the age of 55 years. In respect of two officers the Committee deferred the decision as it was found that some more judgments were to be verified for further evaluation.

28. The meeting of the Committee held on 8-4-2010 would indicate that in respect of Officers whose service were to be considered beyond the age of 55 years, the Committee noted that disciplinary proceedings have been initiated against the petitioners. After considering the performance of twenty four officers it is indicated that "On evaluation of their potential by making an objective assessment of their work and conduct, the Committee is satisfied about the continued utility of all the officers except certain Officers". The excepted officers include the petitioners. Hence it is recommended to exercise the powers conferred by Section 7A of the 1961 Rules and Rule 13A of the Kerala Judicial Service Rules, 1991 to compulsorily retire them from service.

29. The Full Court in its meeting held on 29-7-2010 approved the decision of the Administrative Committee dated 8-4-2010.

30. In Baikuntha Nath Das's case (supra) the principles governing compulsory retirement in public interest has been dealt with elaborately and the Supreme Court has considered the scope for interference. It is held that principles of natural justice have no place in the context of an order of compulsory retirement. But it does not mean that judicial scrutiny is excluded altogether. The High Court would not examine the matter as an appellate court, but may interfere if it is satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary or perverse. It is also held that 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 attaching more importance to the records relating to the 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. It is not in dispute that the High Court has absolute discretion to consider whether an Officer of Higher Judicial Service should be continued beyond the age of 50, 55 or 58 years as the case may be if it is found that they are not fit and eligible to continue in service beyond the said age. For that purpose what is required is that the High Court shall make an assessment and evaluation of the records of such officers and form an opinion about such Officers' suitability or eligibility to continue in service. Apparently the report of the Vigilance Officer discloses certain adverse remarks against the Officers concerned. The said adverse

remarks along with other materials available with the High Court was considered by the Administrative Committee of Judges. It might be true that the adverse remarks, or the opinion formed by the Registrar (Vigilance) was not sufficient evidence as is required for a disciplinary enquiry. But as far as an Officer is concerned, the very purpose of evaluation and assessment is not merely on the basis of the cases decided by him, but also taking into consideration his character, his approach towards society, his approach towards passing lawful orders and to uphold the dignity of judiciary. It might be an instance that the members of the Committee of High Court Judges were carried away by the adverse remarks in the vigilance report as well. But still, there was further chance for the petitioners, as the decision of the Committee was placed before the Full Court and if the Full Court of the High Court also approved that the decision to compulsorily retire the said officers was correct and when it is based on sufficient materials, I do not think that it will be possible for this Court to interfere in the said decision making process of the High Court. None of the parameters mentioned in Baikuntha Nath Das's case (supra) is available in the case for interference. Though several other judgments were relied upon to substantiate the above contention I think that when facts clearly disclose application of mind by the Committee, there is no scope for interference.

31. In regard to the challenge regarding validity of Rule 7A it is contended that Shetty Commission Report does not recommend compulsory retirement at 50, 55 or 58 years. It is also contended that Rule 7A was amended with the specific object of implementing the directions in the third All India Judge's Association's case, which does not indicate that compulsory retirement should be made at 50, 55 and 58 years. It is also stated that incorporation of Rule 7A creates anomaly with Rule 60(aa) of KSR.

32. It is the contention of the respondents that Shetty Commission has submitted a report as directed by the Supreme Court in which it is stated that:

The review of all Judicial Officers at the age of 50, 55 and 60 years for compulsory retirement by the procedure prescribed by the respective service rules should be undertaken regularly. There should be continuing Committee of Senior Judges of the High Court headed by Chief Justices for the purpose of review.

What is provided under Rule 7A is evaluation of the officers at a particular age in order to find out their continued suitability for the judicial work. The legislative power of the State to enact such a law cannot be doubted. The State does not require any specific directions from the Supreme Court to enact a law. This rule is enacted for the purpose of weeding out the deadwood as held in Chandra Singh's case (supra). The Supreme Court has held that Article 235 of the Constitution of India enables the High Court to assess the performance of any Judicial Officer at any time with a view to discipline the black sheep or weed out the deadwood. Such a constitutional power of the High Court cannot be circumscribed by any rule or order. Hence I am of the view that Rule 7A cannot

be challenged as ultra vires or illegal.

33. As already indicated, the Government has issued Ext. P-3 in W.P. C. No. 26162 of 2010 on 11-10-2011 approving the compulsory retirement of various officers including the petitioners herein. I have already held that the impugned orders passed by the High Court is bad in law and are liable to be quashed. Having regard to the fact that the Governor had already approved the order of compulsory retirement, I am of the view that the order of compulsory retirement comes into effect only as on 11-10-2011, the date on which the Government Order had been issued approving the compulsory retirement of the said officers. As I have already indicated, the Registrar (Sub Ordinate Judiciary) had informed the Government on 6-9-2010 regarding their decision to compulsorily retire the said officers, on the basis of which Ext. P-3 order has been passed. Therefore, for all practical purposes, the compulsory retirement of the petitioners have come into effect only on the date of Ext. P-3 that is 11-10-2011.

In the result, these Writ Petitions are disposed as under:

(i) In W.P. C. No. 26162 of 2010, Ext. P-1 is quashed and it is declared that the compulsory retirement of the petitioner shall take effect only with effect from 11-10-2011. The petitioner shall be entitled for all the benefits as if he continued in service as on the said date.

(ii) In W.P. C. No. 30427 of 2010, Ext. P-2 is quashed and it is declared that the compulsory retirement of the petitioner shall take effect only with effect from 11-10-2011. The petitioner shall be entitled for all the benefits as if he continued in service as on the said date.

(iii) In W.P. C. No. 33094 of 2010, Ext. P-1 is quashed and it is declared that the compulsory retirement of the petitioner shall take effect only with effect from 11-10-2011. The petitioner shall be entitled for all the benefits as if he continued in service as on the said date.