

High Court of Punjab and Haryana through R.G

Vs

Ishwar Chand

Civil Appeal No. 2465 of 1999

(D.P. Wadhwa, N. Santosh Hegde JJ)

26.04.1999

JUDGMENT

D.P. Wadhwa, J.

1. Leave granted. Delay condoned in S.L.P. (C) No. 1830 of 1999. High Court of Punjab and Haryana is aggrieved by the judgment dated May 22, 1998 of a Division Bench of its own High Court on judicial side setting aside the order of the State of Haryana, Respondent No. 2, prematurely retiring the first respondent Ishwar Chand Jain (hereinafter referred to as 'Jain'), a member of the superior judicial service of the State of Haryana on the recommendation of the High Court.

2. Jain, a practising advocate of 14 years standing, joined the superior judicial service of the State of Haryana after his selection by the High Court. He joined service on May 2, 1983 and under Rule 10 of the relevant Rules put on probation for a period of two years. He was posted at Hissar as Additional District and Sessions Judge. In the year 1983-84 inspection of his court was made by the inspecting judge of the High Court, who graded his work as "B-satisfactory". Full Court of the High Court reduced this grading to "B-average/satisfactory". For the subsequent year 1984-85 Jain was posted at Narnaul. The inspecting judge grade him "B+(Good)". Full Court of the High Court, however, graded it to "C-Below Average". While the inspecting judge considered "knowledge of law and procedure" of the officer as "good", High Court recorded it as "poor". Against the column 'if the Officer was industrious and prompt in disposal of the cases and has he coped effectively with heavy work inspecting judge gave him the remarks as "yes", High Court said it is "No". Against the column 'whether the judgments and orders were well written and clearly expressed', the inspecting judge said "Yes + B (Good)". There is no such column in the form of recording ACR by the High Court. Inspecting judge said officer was an efficient judicial officer and had maintained the judicial reputation for honesty and impartiality. According to High Court there was "scope for improvement". About his attitude towards members of the Bar and the public the inspecting judge recorded that "some members of the Bar were complaining about his unaccommodating nature." High Court used this entry to say "scope for improvement."

3. In the Full Court meeting of the High Court held on March 21, 1985 the High Court resolved that the work and conduct of Jain was not satisfactory and that his services deserved to be dispensed with forthwith. It made recommendation to the State Government for issuing necessary orders in this respect. Extract of the proceedings of Full Court meeting of the High Court held on March 21, 1985 is as under :-

"The matter regarding Shri I.C. Jain, Additional District and Sessions Judge, was

considered. In view of the fact that his period of probation of two years is going to expire on 2nd May, 1985, his performance as Additional District and Sessions Judge was reviewed. It was decided on further consideration that during this period, his work and conduct was not satisfactory and his services deserve to be dispensed with forthwith. Consequently, a recommendation be made to the State Government for issuing necessary orders in this respect."

4. Jain challenged the recommendation of the High Court terminating his probation by filing a writ petition in the High Court (CWP No. 2213 of 1986). A Division Bench of the High Court by its judgment dated December 9, 1986 dismissed the same. The Division Bench also observed that the Governor had since accepted the recommendation of the High Court dispensing with the services of Jain in terms of Rule 10(3) of the Rules. Then it directed that formal order in that regard shall be issued by the State Government without further delay. Against that Jain came to this Court seeking leave to appeal. This Court granted him leave and by judgment dated May 26, 1988 set aside the judgment of the High Court. This Court held that the modification of the ACR by the Full Court for the year 1984-85 from "B+Good" to "C-Below Average" was based on no material and unsustainable in law. The result was that Jain was put back in service. He joined his duty on June 9, 1988. He was, however, not granted consequential benefits on his reinstatement and he approached this Court again by filing an Interlocutory Application, which was allowed by order dated September 11, 1988 and the original seniority of Jain was restored by the High Court.

5. ACRs of Jain for the years 1985-86, 1986-87 and 1987-88 were not written because he was not in service during the period. For the year 1988-89 the inspecting judge graded him "B+(Good)" by his report dated March 21, 1989. Full Court of the High Court, however, graded it as "B(Satisfactory)". After being reinstated Jain was posted at various places in the State. His complaint was also that he was entitled to be posted as District and Sessions Judge and even Legal Remembrancer to the State, which was encadared post, yet these were not given to him. However, this is not relevant for our purpose and we need not go into that grievance of Jain.

6. For the year 1991 Jain was posted as Additional District and Sessions Judge at Jind. It is alleged that during his tenure at Jind several complaints were received from members of the Bar relating to his judicial work. On the basis of the complaints Full Court of the High Court directed the District and Sessions Judge (Vigilance), Haryana to conduct an inquiry into the allegations levelled against Jain. District and Sessions Judge (Vigilance) submitted his Inquiry Report on April 10, 1992, which was placed before the Full Court for necessary action. It is not that complaints were made by the Bar of the Jind District and these were made only by one advocate Shri K.C. Sharma. They were in all ten complaints. There were thoroughly gone into by the Inquiry Officer and his conclusion is reproduced as under :-

"Out of the ten cases mentioned herein before, bias of the Presiding Officer is *prima facie* proved in cases mentioned at serial Nos. 2, 4, 5, 6, 8 and 10. From these cases, nothing can be inferred about any other consideration having played part in delivering these judgments. Thus, as far as these complaints are concerned, these do not make out *prima facie* case against the Presiding Officer, except that it does show element of bias against the complainant. I would, therefore, suggest that the complaints be filed but the directions be given to the District Judge to transfer all the cases of the complainants from the court of Shri Jain and fix them either before himself or other Additional District and Sessions Judge. In future also he should not send any case of the complainant to the Court of Shri Jain till he remains posted in

that District or any other orders deemed fit."

7. After considering the conclusion aforesaid in the Inquiry Report Full Court in its meeting held on April 24, 1992, decided that Jain be charge-sheeted and judicial work be withdrawn from his court. Relevant extract of the minutes of the Full Court meeting is as under :-

"6 & 8. The matter regarding preliminary enquiry report submitted by Shri B.L. Gulati, District and Sessions Judge (Vig) Haryana with regard to the complaint dated 26.12.91 made by Sh. K.C. Sharma Advocate of Jind and some other matters concerning Sh. I.C. Jain, Additional District and Sessions Judge, Jind and that of preliminary enquiry report dated 10.4.92 submitted by Sh. B.L. Gulati, D.J.V. (Haryana) on the complaints dated 17.8.91, 28.8.91, 29.8.91, 3.9.91 and 22.10.91 made by Shri Krishan Chander Sharma, Advocate, Jind was considered along with the note of the Registrar and it was decided that the Officer be charge-sheeted and judicial work be withdrawn from his court."

8. A charge-sheet was served upon Jain on July 29, 1992 and he was called upon to submit his reply thereto. His reply was considered by the Full Court and was found to be wholly unsatisfactory. It was, therefore, directed that a departmental inquiry be conducted against Jain and that in the meantime he be placed under suspension. This was by resolution of the Full Court meeting dated September 28, 1992. Extract of his meeting of Full Court is as under :-

"13. The matter regarding reply to the charge-sheet submitted by Shri I.C. Jain, Additional District and Sessions Judge, Jind was considered along with the note of the Registrar and the same was found unsatisfactory. It was accordingly decided that a regular departmental enquiry be held against him. Hon'ble Mr. Justice V.K. Jhanji and Shri H.S. Gill, Advocate, were appointed Enquiry Officer and Presenting Officer respectively. It was further decided that Shri I.C. Jain be placed under suspension forthwith."

9. Order placing Jain under suspension is dated October 3, 1992. By order dated April 8, 1993 headquarters of Jain were shifted from Jind to Chandigarh and he was informed of this decision of the High Court by communication dated May 8, 1993. There is another episode that in spite of the order Jain did not shift his headquarters from Jind to Chandigarh and did not vacate the Government accommodation allotted to him at Jind despite various directions issued to him in this regard from time to time. This, according to High Court, constituted an irresponsible behaviour, gross misconduct, disobedience of the orders and directions of the High Court and had amounted to acting in a manner unbecoming of a judicial officer. Second charge sheet dated May 12, 1995 on this account was also served on Jain. We are, however, not concerned with the second charge.

10. There is no record of ACRs of Jain for the years 1989-90 and 1990-91. For the year 1991-92 the inspecting judge in the column 'net result' recorded "Integrity Doubtful". As regards 'knowledge of law and procedure, industrious and promptness of disposal of cases, nature of the officer, writing of judgments' he gave him "Good B+". As regards the attitude of the officer towards his superiors, subordinates and colleagues it was said "Not what it should be", and against the column 'Behaviour towards members of the Bar and the public' remark was "Not Good". Against the column 'has he maintained judicial reputation for honesty and impartially' the inspecting judge recorded : "See note attached". This note is as under :-

"Note

This officer does not enjoy the reputation which a judicial officer is expected to have. Many complaints regarding his poor reputation were received from Advocates and the members of the Bar. There are some complaints which now form the subject matter of disciplinary proceedings against him.

Sd/- (Inspecting Judge)

25.2.92."

High Court in its Full Bench meeting, however, graded the officer "C'-Integrity Doubtful" and recorded that his knowledge of law and other judicial qualification were just average and that he was not industrious and had not coped effectively with heavy work and was also not prompt in the disposal of the cases. Full Court said that the officer was not having reputation for integrity and impartiality and further that his attitude towards the superior officers etc. and his behaviour towards the members of the Bar and the public was unsatisfactory. ACR for the year 1991-92 was written by the Full Court only on September 20, 1995 as will be presently seen. It was communicated to the officer on September 22, 1995.

11. Meanwhile a meeting note was prepared by the Registry of the High Court in respect of the retention in service of Jain beyond the age of 55 years. In this note it was pointed out that the date of birth of Jain was October 7, 1940 and he would be attaining the age of 55 years on the afternoon of October 6, 1995. His services were terminated w.e.f. December 30, 1986 and he was reinstated on June 9, 1988 in pursuance to the order of Supreme Court in Civil Appeal No. 811 of 1988 (arising out of SLP No. 15776 of 1986). He was placed under suspension w.e.f. October 3, 1992 in contemplation of disciplinary proceedings initiated against him which were still pending. With this note extracts of the relevant rule i.e. clause (d) of Rule 3.26 of the Punjab Civil Services Rules Volume I, Part I (as applicable to the State of Haryana), instructions regarding retention in service of class I and II officers beyond the age of 55 years issued by the State of Haryana by its letter dated September 24, 1974, relevant guidelines prescribed by the High Court as contained in its letter dated September 20, 1979 and the precis of the confidential remarks on the work and conduct of the officer, were attached. As per direction of the Chief Justice of the High Court the matter was placed before the Full Court. In the meeting of the Full Court held on September 20, 1995 consideration of the case of Jain (under suspension) for his retention in service beyond the age of 55 years was deferred. It was resolved to record the annual confidential report of the officer for the year 1991-92 and at the same time graded it as "C Integrity Doubtful". Further note was prepared by the Registry on September 21, 1995 for consideration of the Full Court meeting to be held on December 12, 1995. In this it was included the remark recorded by the High Court in the ACR of Jain for the year 1991-92. Full Court in its meeting on December 12, 1995 resolved to make recommendation to the Haryana Government to retire Jain forthwith by giving him three months' pay and allowances in lieu of notice. The resolution of the Full Court is as under :-

"6. The matter regarding retention in service of Sh. I.C. Jain (under suspension), a member of the Haryana Superior Judicial Service beyond the age of 55 years was considered along with the note of the Registrar and it was decided that in light of his annual confidential reports, recommendation be made to the Haryana Government that he be retired forthwith by giving him three months pay and allowances in lieu of

notice as required by the rules as it would be in the public interest to do so. It was further decided to continue the enquiry against him for the limited purpose for imposing the cut on his retiral benefits."

Further in its meeting on January 11, 1996 Full Court modified its earlier decision of December 12, 1995 in the following manner:-

"12. The modification of earlier Full Court decision dated 12.12.1995 regarding retention in service beyond the age of 55 years of Sh. Ishwar Chand Jain (under suspension), a member of Haryana Superior Judicial Service was taken up along with the report and the earlier Full Court decision was substituted as indicated below:-

- i) That in light of his annual confidential reports, recommendation be made to the Haryana Government to retire him forthwith by giving him three months pay and allowances in lieu of notice as required by the rules as it would be in the public interest to do so.
- ii) That in view of the above recommendation, the departmental proceedings against Shri Ishwar Chand Jain be not proceeded with for the present.
- iii) That in the event of acceptance of above recommendation of this Court by the State Government, the period of suspension of Sh. Ishwar Chand and the departmental enquiries against him shall be deemed to have been dropped from the date of acceptance of the recommendation of this Court regarding compulsory retirement of Shri Ishwar Chand Jain."

12. When the communication was received from the High Court by the State Government recommending the pre-mature retirement of the appellant, a letter dated April 2, 1996 was sent to the High Court seeking clarification as to whether a suspended official could be compulsorily retired. High Court sent its reply on April 16, 1996 stating that the retirement of Jain was made on the basis of an overall assessment of the service record as reflected in his confidential reports and not on the basis of the departmental inquiry. Thereafter State Government issued letter dated May 10, 1996 retiring the appellant. We may reproduce this order, which was impugned by Jain in the High Court:-

"ORDER"

Whereas on the recommendation of the Punjab & Haryana High Court, it has been decided by the State Government to retire Sh. Ishwar Chand Jain, a member of the Haryana Superior Judicial Service (under suspension) from service in public interest.

2. Now, therefore, in terms of the provisions contained in clause (d) of rule 3.26 of Punjab Civil Services Rules, Volume I, Part-1 read with clause A(c) of rule 5.32 of Punjab Civil Services Rules, Volume II, as applicable to the State of Haryana, the Governor of Haryana hereby orders the retirement of Sh. Ishwar Chand Jain, Additional District & Sessions Judge (under suspension) from service with effect from the date of communication to him of this order on payment of three months salary and allowances in lieu of the period of notice.

Sd/-

(M.C. Gupta)

Chief Secretary to

Government, Haryana

Dated Chandigarh

10th May, 1996."

We may as well reproduce the relevant rules mentioned in the order:-

"Rule 3.26 (a)

Except as otherwise provided in other clause of this rule, every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He must not be retained in service after the age of compulsory retirement except in exceptional circumstances with the sanction of the competent authority in public interest, which must be recorded in writing;

`Provided that the age of compulsory retirement for the members of the Judicial services and Class IV Government employees shall be sixty years'.

x x x x x

d) The appointing authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government employee by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:-

i) If he is in Class II service or post and had entered Government service, before attaining the age of thirty-five years, after he has attained the age of fifty years; and

ii) a) If he is Class III service or post, of

b) If he is Class I or Class II Service or post and entered Government service after attaining the age of thirty-five years;

1. After he has attained the age of fifty-five years.

`Provided that in the case of a member of the Judicial Service, if he had entered Government service before or after attaining the age of thirty-five years, his case for retention in service beyond the age of fifty-eight years, shall be considered before he attains such age.

The Government employee would stand retired immediately on payment of three months' pay and allowances in lieu of the notice period and will not be in service thereafter."

13. In the Full Court meeting in which decision was taken to make recommendation for pre-mature

retirement of Jain, Registry had submitted the precis of annual confidential remarks and conduct of Jain as under:-

"(Appointed as Addl. District & Sessions Judge, w.e.f. 2.5.1983 direct recruit from the Bar)

	Year	Remarks by the High Court
	1983-84	B(Average/Satisfactory
(In accordance with the meeting decision dated 21.3.1985, a recommendation was sent to the Haryana Government for dispensing with his services and Judl. work from his court was also withdrawn	1984-85	'C-Below Average'
	1985-86	No Scope
	1986-87	No Scope
	1987-88	No Scope
	1988-89	B-Satisfactory
	1989-90	B-Plus (Good)
(His services were dispensed with vide Haryana Governor's order dt. 30.12.86	1990-91	Dispensed with

<TD1991-92

C-integrity doubtful)

(In view of Supreme Court orders dated 26.5.88 passed in Civil Appeal No. 811 of 88 arising out of S.L.P. 15776 of 86 Sh. I.C. Jain has been reinstated vide meeting decision dt. 2.6.88 and posted vide orders dt. 3.6.88 at Narnaul).

(The Judicial work has been withdrawn vide letter dated 27.4.1992)

(Placed under suspension vide this Court's Office order dt. 3.10.1992 pending departmental inquiry.)"

14. Now we may refer to the article of charges which were subject matters of departmental proceedings against Jain and in contemplation of which he was placed under suspension. There were

five charges. First charge was that while acting as Motor Accident Claims Tribunal he in a revengeful spirit and with some ulterior motive had initially dismissed the claim petition when the petitioner therein did not accept the offer of Jain conveyed to him through his uncle that if the petitioner promised to pay half the claim amount Jain would allow his claim petition in full. However, after two days when the petitioner threatened to make complaint against Jain he changed his decision from dismissal to allowing the petition and awarded Rs. 12,000/- as compensation. Second charge was that while acting as Additional District and Sessions Judge, Jind changed his judgement with some ulterior motive. Third charge was that without awaiting the orders of the High Court he got shifted his official telephone from office to his residence and got STD facility thereon, thus committing financial irregularity in an irresponsible manner and being guilty of insubordination. Fourth charge related to seven land acquisition cases where it was alleged that with some ulterior motive he got deposited an amount of Rs. 2 lacs in two banks at Delhi through the decree-holder, who belonged to Jind after obtaining their statements under the duress. Fifth charge related to the cases conducted by Shri K.C. Sharma, advocate, where it was alleged that he had shown vindictiveness and bias mind towards the advocate, which was highly objectionable and unbecoming of a judicial officer.

15. On various dates inquiry proceedings were held and ultimately these proceedings came to be dropped. It is not that Jain was in any way responsible for any delay of inquiry proceedings. In between inquiry officer had also been changed by the Full Court. The order by which the inquiry against Jain was dropped is dated February 2, 1996 and we reproduce the same as under:-

"Enquiry case of Mr.I.C.Jain

Present : Mr. H.S. Gill, Presenting Officer

I have been shown the extract from the Confidential proceedings of the meeting of the Hon'ble Judges held on 11th of January, 1996 at 3.00 p.m. The proceedings reveal that the Full Court has taken a decision that the departmental proceedings against Shri I.C. Jain be not proceeded with for the present. It is in view of the decision first taken by the Full Court that in light of the annual confidential reports of Shri I.C. Jain, recommendation should be made to the Haryana Government to retire him forthwith by giving him three months pay and allowances in lieu of notice as required by the rules as it is in public interest to do so. That being the situation, enquiry against Shri I.C. Jain is dropped for the time being and would be revived if at all required to be so done.

In view of the above, bailable warrants issues against Jai Bhagwan so ordered on 10th of January, 1996, are recalled.

Sd/-

(V.K. Bali, J.)

February 2, 1996 Inquiring Authority"

By order dated May 29, 1996 suspension of Jain was also invoked. This order is as under -

"ORDER

Dated, Chandigarh the 29.5.1996

In supersession of this Court's order dated 3.10.92 placing Shri I.C. Jain, a member of Haryana Superior Judicial Services under suspension, Hon'ble the Acting Chief Justice and Judges have been pleased to revoke the said suspension order and to reinstate Shri I.C. Jain in service from the date of acceptance of the recommendation of this Court regarding the compulsory retirement. Their Lordships have further been placed (pleased ?) to order that this period of suspension be treated as spent on duty.

BY ORDER OF HON'BLE THE ACTING CHIEF JUSTICE AND JUDGES.

Sd/- B.L. Gulati

REGISTRAR"

16. Jain also represented against adverse entries in his ACRs. First he wanted certain records which was the basis of recording of adverse entries against him. He was informed that his request for supply of some documents had been declined by the Chief Justice. It was pointed out to us that against recording of the adverse entries for the year 1991-92 Jain filed another writ petition in the High Court which is perhaps still pending.

17. We have reproduced the note attached to the ACR of Jain for the year 1991-92 prepared by the inspecting judge which is dated February 25, 1992. It is submitted before us (and there is no challenge to that) that the inspecting judge himself visited Jind only on March 16/17, 1992. That being so representations made to the inspecting judge at Chandigarh must have been received in writing and if orally then at least the names of the advocates, who came to Chandigarh, could have been mentioned and informed to Jain but this was not done.

18. Jain challenged his pre-mature retirement on the ground that the action of the High Court and the State Government was arbitrary, malice in law and was in violation of the Punjab Civil Service Rules as applicable to Class I officers. He also pleaded that the impugned rule was *ultra vires* Articles 14 and 16 of the Constitution inasmuch as it did not prescribe the minimum service which an officer must render before he could be retired from service prematurely. Then there was a challenge to pre-mature retirement on the ground that it was violative of Article 311 of the Constitution as pre-mature retirement is punitive in character. High Court did not go into the question if the impugned rule 3.26(d) of the Punjab Civil Services Rules was violative of Articles 14 and 16 of the Constitution and also that in any case the Rule was violated inasmuch as on account of non-payment of three months' pay and allowances to Jain. In the writ petition Jain had sought setting aside (1) adverse entries in the ACR against him for the year 1991-92, and (2) decision of the High Court taken in its Full Court meeting on December 12, 1995 recommending pre-mature retirement of Jain and consequently the impugned order dated May 10, 1995 of the State Government prematurely retiring him, he being a member of Haryana Superior Judicial Service.

19. A Division Bench of the High Court speaking through G.S. Singhvi, J., in its well considered judgment, which is now impugned before us, set aside the order of pre-mature retirement of Jain on the ground that on inquiry consistent with Article 311, Haryana Civil Services (Punishment and Appeal) Rules, 1970 and principles of natural justice, had been conducted against him. It came to the conclusion that the decision to retire Jain was founded on the allegation of misconduct which was subject-matter of inquiry and formed the basis of adverse remarks made by the inspecting judge

and the Full Court. Then it proceeded to hold as under :-

"We do find some substance in the argument of Shri Jain that the rejection of his representation against the adverse remarks does not satisfy the test of fairness because no reasons have been recorded by the High Court for not accepting the points and contentions raised in the representation and the record also does not show the existence of such reasons, we do not want to express any conclusive opinion on this issue because even after invalidation of the pre-mature retirement of the petitioner, the departmental inquiries can be continued and the fate of the remarks made in his ACR of 1991-92 will ultimately depend on whether the Court upholds the allegations levelled against the petitioner. The issue regarding claim of the petitioner for grant of selection grade and other benefits will also be dependent on the final conclusion of the departmental inquiries which may be continued against the petitioner in view of the quashing of the order of pre-mature retirement. Therefore, we do not want to entertain his claim for grant of selection grade at this stage. For the reasons mentioned above, the writ petition is allowed. The pre-mature retirement of the petitioner brought about vide order dated 10.5.1996 is declared illegal and the said order is quashed. The petitioner shall get consequential benefits. However, we make it clear that the competent authority shall be entitled to revive the proceedings of inquiries and take appropriate decision in accordance with law."

20. The foremost question arising for our consideration is if the order of premature retirement of Jain is based on sound legal principles and is not punitive in nature. Further question connected with this would be if recording of adverse remarks in the ACR for the year 1991-92 is justified in the circumstances and whether the Full Court was misled by the precis of ACR prepared by the Registry for the meeting of the Full Court held on December 12, 1995.

21. In *Shyam Lal v. The State of Uttar Pradesh, 1955(1) SCR 26* the appellant was compulsorily retired under the provisions of Article 465-A of Civil Service Regulations. Note 1 to Article 465-A provides that the Government retains the absolute right to retire any Government servant after he has completed 25 years of qualifying service without giving any reasons and that this right will not be exercised except when it is in the public interest to dispense with the services of an officer. This Court said that the two requirements for compulsory retirement were that the officer had completed 25 years of service and that it was in public interest to dispense with his further services. Then the Court added : "It is true that this power of compulsory retirement may be used when the authority exercising this power cannot substantiate the misconduct which may be the real cause for taking the action but what is important to note is that the directions in the last sentence in Note 1 to article 465-A make it abundantly clear that an imputation or charge is not in terms made a condition for the exercise of the power. In other words, a compulsory retirement has no stigma or implication of misbehaviour or incapacity."

22. In *Ram Ekbal Sharma v. State of Bihar and another, 1990(3) SCC 504* it was laid down that court can lift the veil of an innocuous order in appropriate cases to find the real basis of the order of compulsory retirement of an officer. This is how the Court said :-

"On a consideration of the above decisions the legal position that now emerges is that even though the order of compulsory retirement is couched in innocuous language without making any imputations against the government servant who is directed to be compulsorily retired from service, the court, if challenged in appropriate cases can

lift the veil to find out whether the order is based on any misconduct of the government servant concerned or the order has been made bona fide and not with any oblique or extraneous purposes. Mere form of the order in such cases cannot deter the court from delving into the basis of the order if the order in question is challenged by the concerned government servant as has been held by this Court in Anoop Jaiswal case, 1984(2) SCC 369."

23. In *Anoop Jaiswal v. Government of India*, 1984(2) SCC 369 this Court said :-

"It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

24. In *Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another*, 1992(2) SCC 299 this Court laid the following principles, which a Court has to keep in mind while considering the question of compulsory retirement."

"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 misbehaviour.

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

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

25. In *State of U.P. and another v. Abhai Kishore Masta*, 1995(1) SCC 336 this Court relied on its earlier decision in *Baikuntha Nath Dass* case, 1992(2) SCC 299. It was observed that it cannot be said as a matter of law nor can it be said as an invariable rule, that any and every order of compulsory retirement during the pendency of disciplinary proceedings is necessarily penal. It may be or it may be not. It is a matter to be decided on a verification of the relevant record or the material on which the order is based.

26. In a recent judgment in *Madan Mohan Choudhary v. The State of Bihar and others*, JT 1999(1) SC 459 this Court was considering the order of compulsory retirement of the appellant, who was a member of superior judicial service in the State of Bihar. On a writ petition filed by the appellant in the High Court challenging his order of compulsory retirement by the Full Court of the High Court, the High Court on the judicial side refused to interfere and dismissed the petition. The appellant came in appeal before this court. This Court found that while on various earlier occasion remarks were given by the High Court but there were no entries in the character roll of the appellant for the years 1991-92, 1992-93 and 1993-94. The entries for these years were recorded at one time simultaneously and the appellant was categorized as "C" Grade Officer. The date on which these entries were made was not indicated either in the original record or in the counter affidavit filed by the respondent. These were communication to the appellant on 29.11.1996 and were considered by the Full Court on 30.11.1996. It was clear that these entries were recorded at a stage when the Standing Committee had already made up its mind to compulsorily retire the appellant from service as it had directed the officer on 6.11.1996 to put up a note for compulsory retirement of the appellant. This Court held that it was a case where there was no material on the basis of which an opinion could have been reasonably formed that it would be in the public interest to retire the appellant from service prematurely. This Court was of the opinion that the entries recorded "at one go" for three years, namely, 1991-92, 1992-93 and 1993-94 could hardly have been taken into consideration. The Court then referred to its earlier decision in *Registrar, High Court of Madras v. R. Rajiah*, JT 1988(2) SC 567 where this Court said that the High Court in its administrative jurisdiction had the power to recommend compulsory retirement of the member of the judicial service in accordance with the rules framed in that regard but it cannot act arbitrarily and there has to be material to come to a decision to compulsorily retire the officer. In that case it was also pointed out 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.

27. Keeping in view the aforesaid principles we may examine the background under which the order compulsorily retiring Jain came to be passed. In December, 1995 judges comprising the Full Court were not the same as that in the year 1985 when probation of Jain was terminated. There were new appointments of judges and there were judges, who had come on transfer from other High Courts. They could not be aware of the circumstances leading to termination of the probation of Jain and ACR given to him for the year 1984-85. In the precis of the ACRs for the Full Court ACR given to Jain for the year 1984-85 was shown as "C-Below Average". The inspecting judge for the year 1984-85 had graded the officer as "B+Good" but the Full Court modified the same to "C-Below Average". This Court in earlier appeal filed by Jain against termination of his probation held that the modification of the entry by the High Court was without any material and was not sustainable in

law. It meant that the Supreme Court restored the grading of Jain in his ACR for the year 1984-85 as "B+Good". There is no indication of this in the precis prepared by the Registry which certainly would have misled many of the judges of the Full Court. There is no ACR recorded for the years 1992-93, 1993-94, 1994-95 and for nine months of 1995-96 when the Full Court met on December 12, 1995. In its earlier meeting on September 22, 1995 it recorded ACR for the year 1991-92 grading Jain as "C-integrity doubtful". In coming to this conclusion Full Court relied on the inspection report prepared by the inspecting judge on February 22, 1992 where he graded Jain as "integrity doubtful" and gave his note which we have quoted above. There is no material forthcoming as to why the inspection report of February 1992 came to be considered by the Full Court in September, 1995 and why there could be no inspection from that year till holding of the Full Court meeting. Inspection note by the inspecting judge gives an impression that he inspected the Court of Jain and visited the bar room before he gave his report. Fact, however, remains that the inspecting judge inspected the Court of Jain only in March, 1992. Inspecting judge also noted that there were some complaints which formed the subject-matter of the disciplinary proceedings against him. This also does not appear to be correct inasmuch as on the date of the inspection report no disciplinary proceeding were pending against Jain. There were also no particulars of the complaints whether these were in writing or oral and if these related to the judicial work performed by the officer. At least some of the cases in which Jain was found to have acted improperly could have been mentioned when there were many complaints from the members of the Bar. The inspection note is certainly flawed and could not have formed the basis by the Full Court to record that integrity of the officer was doubtful and to grade him "C". Moreover we were told at the Bar and it was not contradicted that the Inspecting Judge took charge of Jind district only on November 21, 1991 and within three months, i.e., on February 25, 1992 gave his inspection report. This is certainly not satisfactory. The ACR for the year 1991-92 is, therefore, to be kept aside. That being the position if we now refer to the precis of the ACRs of Jain there were only four ACRs and these are for the years 1983-84 (B-Average/satisfactory), 1984-85 (B+Good), 1988-89 (B-Satisfactory) and 1989-90 (B+(good). On the basis of these ACRs it is difficult to hold that the recommendation of the High Court could be justified under clause (c) of third principle laid in Baikuntha Nath Das case.

28. From the resolutions of the Full Bench of December 12, 1995 and January 11, 1996 it is apparent that Jain was retired while under suspension. It appears that the High Court on its administrative side decided to keep disciplinary proceedings against Jain pending for the purpose of imposing the cut on his retiral benefits. The conclusion is obvious that action of the High Court in retiring Jain was based on the allegation of misconduct, which was subject matter of the inquiry before a Judge of the High Court and which appears to us to be the basis of recording of adverse remarks by the High Court in the ACR of the officer for the year 1991-92. There is substance in the argument of Mr. M.N. Krishnamani, learned counsel for Jain, that the High Court found a short cut to remove Jain from service when the order of retirement was based on the charges of misconduct, subject matter of the inquiry. We agree with Mr. Krishnamani that the impugned order of compulsorily retiring Jain though innocuously worded is in fact an order of his removal from service and cannot be sustained. High Court on its judicial side was correct in setting aside the order compulsorily retiring Jain and allowing the writ petition of Jain to the extent mentioned in the impugned judgment. In this view of the matter it is not necessary for us to consider other submissions made before us if Jain could at all have been compulsorily retired under Rule 3.26 of the Punjab Civil Service Rules, Volume I, Part 1, he being a member of the superior judicial service.

29. Though in Baikuntha Nath Dass case, 1992(2) SCC 299 this Court has laid principles when there is challenge to compulsory retirement of an officer. In that case the appellants were not a judicial

officer. In the case where Full Court of the High Court recommends compulsory retirement of an officer High Court on judicial side has to exercise great circumspection in setting aside that order. Here it is a complement of all the judges of the High Court, who go into the question. It may not be possible that in all cases evidence would be forthcoming about the doubtful integrity of a judicial and at times Full Court has to act on the collective wisdom of all the judges.

30. Since late this Court is watching the specter 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 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 High Court performs for control over the subordinate courts. Object of such inspection is for the purpose of assessment of the work performed by the subordinate judge, his capacity, 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 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 hardships. A satisfactory judicial system depends largely on the satisfactory functioning of courts at grassroots 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 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 few minutes affair. It has to go on all the year round by monitoring the work of the court by the inspecting judge. The casual inspection can hardly be beneficial to a judicial system. It does more harm than good. As noticed in the case of R. Rajiah, JT 1988(2) SC 567 there could be ill conceived or motivated complaints. Rumour mongering is to be avoided at all costs as it seriously jeopardizes the efficiency working of the subordinate courts.

31. 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 need 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 High Court itself can devise an effective system of inspection of the subordinate courts. Registrar General shall place a copy of this judgment before the Hon'ble Chief Justice of India for him to consider if method of inspection of subordinate courts could be matter of agenda for the Chief Justices Conference. With these observations these appeals are dismissed. There shall be no order as to costs. Appeals dismissed.