

A HIGH COURT OF JUDICATURE AT ALLAHABAD
J THROUGH REGISTRAR

v.
SARNAM SINGH AND ANR.

B DECEMBER 15, 1999

[S. SAGHIR AHMAD AND D.P. WADHWA, JJ.]

Service Law:

C U.P. Judicial Officers (Retirement on Superannuation) Rules, 1992
Rules 2 and 4/Constitution of India: Article 309—Directions of Supreme
Court to raise the retirement age of Subordinate Judicial Officers to 60 years
from 58 years—State Governments directed to take appropriate steps before
D December, 1992—In the meanwhile extension of the age of superannuation
made subject to scrutiny by an Inspecting Judge of the respective High
Court—State of UP framed Rules in October, 1992 extending the age of
superannuation—Also provided for an overriding effect on the Fundamental
Rules—Respondent compulsorily retired at the age of 58 on the basis of an
adverse remark by the Inspecting Judge—Writ Petition challenging the said
order allowed by High Court—On appeal, Held: Directions of Supreme
E Court for scrutiny of the service record of the Subordinate Judicial Officers
was of a transitory character—It yielded place to the new Rules of 1992 in
the State of UP—It no longer remained incumbent upon the High Court to
the resort to the procedure of scrutiny of service record—Respondent had a
right to continue in service upto the age of 60 years—Order of compulsory
retirement erroneous.

F Rules of Court, 1952 (Allahabad High Court) Constitution of India:
Chapter III/Article 235—Rules for Inspection of the Subordinate Judicial
Officers—Original service record of the Respondent revealed no adverse
remark—Inspection by the Inspecting Judge when lawyers were on strike
and an adverse entry made—Held—High Court justified in holding that the
G impugned adverse entry was unjustified, arbitrary and based on non-existent
facts and hence liable to be quashed.

Adverse entry—Recording of—Giving of an opportunity before making
such entry—Not required.

H In pursuance of the directions made by this Court in *All India Judges'*

Association, case [1992] 1 SCC 119, the age of superannuation of all the Subordinate Judicial Officers was enhanced from 58 years to 60 years. The Court also fixed a time limit within which the State Governments had to take appropriate steps. On review of the said judgment, the enhancement in the retirement age of the Subordinate Judicial Officers was made subject to the determination by the High Court as to whether they were fit to be allowed an extension or not. This scrutiny was to be held in respect of Judicial Officers who were about to attain the age of 58 years. This was a temporary measure to be adopted till the time the State Governments were to take appropriate action. The State of U.P., in pursuance of the above directions, framed Uttar Pradesh Judicial Officers (Retirement on Superannuation) Rules, 1992 which raised the retirement age of Subordinate Judicial Officers to 60 years. The respondent was compulsorily retired from service principally on account of the adverse remark given by the then Inspecting Judge made after a surprise check followed by an annual check. The writ petition filed by the respondent was allowed by the High Court on the judicial side on the ground that the order of compulsory retirement passed on the recommendation of the High Court was not based on any material and was, therefore, erroneous. Hence the present appeal.

The respondent contended that as the Retirement Rules framed by the State of U.P. raised the retirement age of the Subordinate Judicial Officers from 58 to 60 years and had overriding effect on Fundamental Rule 56, the respondent had a right to continue in service till the age of 60 and the rule of scrutiny would not be applicable. The appellant contended that irrespective of the retirement age being raised scrutiny was still compulsory and the direction of this Court has to be read as supplemental to the Rules already framed.

Allowing the appeal, this Court

HELD 1.1. The procedure indicated by this Court in *All India Judges' Association's* case, [1992] 1 SCC 119, for evaluating the work, performance and conduct of Judicial Officers, before allowing them to continue in service upto the age of 60 years was evolved as a temporary measure and was not to be adopted as a permanent feature. The choice was left to the Appointing Authority. If the Appointing Authority itself has made necessary Service Rules extending the age of retirement, the above procedure was to be given up as the Officers would continue in service in accordance with the Service Rules made by the Appointing Authority in the respective States. If it was

A not done, then the Judicial Officers were to continue in service till the age of 60 years in accordance with the directions of this Court, provided the officers, on a scrutiny of their service records were found suitable for the benefit of extended service. [351-H; 352-A, B, C]

B 1.2. In view of the Uttar Pradesh Judicial Officers (Retirement on Superannuation) Rules, 1992 which also had the overriding effect over Fundamental Rule 56, the Judicial Officers in the State of U.P. became entitled to continue in service upto the age of 60 years. The directions of this Court for scrutiny of their service records before allowing them to continue in service beyond 58 years, being of a transitory character, yielded place to the new Rules made by the State Government under Article 309 of the Constitution of India and therefore, it was no longer incumbent upon the High Court to resort to the procedure of scrutiny of the service records of all Judicial Officers before allowing them the benefit of extension in the age of retirement. [350-C; 352-D, E]

D 1.3. In the instant case, the service records of the respondent was scrutinised by the High Court at the time when he was completing 58 years of age to decide whether he was fit to be continued in service upto the age of 60 years. This exercise was undertaken by the High Court in accordance with the directions issued by this Court in the Review Petition. The High Court overlooked the vital fact that the new Rules already made by the State Government under Article 309 of the Constitution provided specifically that the Judicial Officers would retire on attaining the age of 60 years. That being so, it was no longer necessary for the High Court to have scrutinised the service records at that stage. The respondent, in view of the new Rules, was entitled to continue in service upto the age of 60 years. The order of compulsory retirement passed by the State Government on the recommendation of the High Court was wholly erroneous. [353-A, B, C]

All India Judges' Association v. Union of India, [1992] 1 SCC 119 and *All India Judges' Association v. Union of India*, [1993] 4 SCC 288, referred to.

G 2.1. The High Court considered various aspects of the matter including the fact that at the time when the then Inspecting Judge made a surprise inspection of the Moradabad Judgeship, the lawyers were on strike, and ultimately recorded a finding that the impugned adverse entry was unjustified, arbitrary and based on non-existent facts and was, therefore, liable to be quashed. This finding of the High Court is upheld but the view that before

an adverse entry was recorded in the Character Roll, an opportunity of hearing, by any principle, required to be given to the respondent cannot be subscribed to. [361-H; 362-A, B] A

Rajat Baran Roy v. State of W.B. and Ors., [1994] 4 SCC 235; *Maj. Gen. IPS Dewan v. Union of India and Ors.*, [1995] 3 SCC 383; *R.L. Butail v. Union of India*, [1971] 2 SCR 55; *Sukhdeo v. Commisioner, Amravati Division, Amravati and Anr.*; *High Court of Punjab and Haryana v. Ishwar Chand Jain & Another*, JT (1999) 3 SC 266; *State Bank of India and Ors. v. Kashi Nath Kher and Ors.*, [1996] 8 SCC 762; *Union of India v. N.R. Banerjee*, [1997] 9 SCC 287; *State of Uttar Pradesh v. Yamuna Shanker Mishra*, [1997] 4 SCC 7 and *Swatantra Singh v. State of Haryana*, [1997] 4 SCC 14, relied on. B C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7266 of 1999.

From the Judgment and Order dated 16.7.98 of the Allahabad High Court in C.M.W.P. No. 21324 of 1997. D

Rakesh Dwivedi and Ashok K. Srivastava for the Appellant.

P.P. Rao and Jitendra Mohan Sharma for the Respondents.

The Judgment of the Court was delivered by E

S. SAGHIR AHMAD, J. Leave granted.

Sarnam Singh (respondent No. 1), who shall hereinafter be referred to as respondent, was compulsorily retired from service by order dated 12.11.1997 passed by the State Government on the recommendation of the High Court which itself, incidentally, is the appellant before us. F

This Court in *All India Judges' Association v. Union of India*, [1992] 1 SCC 119, had issued certain directions for improvement of the service conditions of the members of the subordinate judiciary in the country. The Union of India and various States thereafter filed a Review Petition which was considered and disposed of by this Court on August 24, 1993 by Judgment since reported as *All India Judges' Association and Ors. v. Union of India & Ors.*, [1993] 4 SCC 288. It may be pointed out that by the earlier Judgment in the main case of *All India Judges' Association* (supra), one of the directions related to the enhancement of superannuation age of all the subordinate Judicial Officers upto 60 years. This question was also considered in the H

A Review Petition and while rejecting the contention of the Union of India and other States that age of retirement should not be enhanced to 60 years, this Court, *inter alia*, observed as under:-

B “30: There is, however, one aspect we should emphasise here. To that extent the direction contained in the main judgment under review shall stand modified. The benefit of the increase of the 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 will be available to those who, in the opinion of the respective High Courts, have a potential for continued useful service. It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. The potential for continued utility shall be assessed and evaluated by appropriate Committees of Judges of the respective High Courts constituted and headed by the Chief Justices of the High Courts and the evaluation shall be made on the basis of the Judicial officer’s past record of service, character rolls, quality of judgments and other relevant matters.

E 31. The High Court should undertake and complete the exercise in case of officers about to attain the age of 58 years well within time by following the procedure for compulsory retirement as laid down in the respective Service Rules applicable to the judicial officers. Those who will not be found fit and eligible by this standard should not be given the benefit of the higher retirement age and should be compulsorily retired at the age of 58 by following the said procedure for compulsory retirement. The exercise should be undertaken before the attainment of the age of 58 years even in cases where earlier the age of superannuation was less than 58 years. It is necessary to make it clear that this assessment is for the purpose of finding out the suitability of the concerned officers for the entitlement of the benefit of the increased age of superannuation from 58 years to 60 years. It is in addition to the assessment to be undertaken for compulsory retirement and the compulsory retirement at the earlier stage/s under the respective Service Rules.”

G Pursuant to the above directions, the High Courts, all over the country, before allowing Officers of the subordinate judiciary to continue in service upto the age of 60 years, scrutinised the work, conduct and performance of H all Officers who were about to attain the age of 58 years, to determine whether

they were fit to be allowed an extension in service or were fit to be compulsorily retired. This scrutiny was done in accordance with the procedure laid down by the respective Service Rules relating to compulsory retirement as applicable to the Judicial Officers. A

This exercise was done in the case of respondent also who was compulsorily retired from service principally on account of the adverse remark given by the then Inspecting Judge who had made a surprise inspection of the Moradabad Judgeship on April 18, 1995, *in cognito*, which was followed by the annual inspection by the Inspecting Judge (Mr. Justice R.B. Mehrotra) from 22nd May to 28th May, 1995. A reference to the surprise inspection as also to the regular inspection shall be made later as we intend to consider a more important aspect first on which the whole appeal can be disposed of finally. B C

The principal contention urged by Mr. P.P. Rao, learned Senior Counsel, appearing on behalf of the respondent is that pursuant to the directions issued by this Court in its Judgment in *All India Judges' Association v. Union of India and Ors.*, [1992] 1 SCC 119, the U.P. Government framed new Rules, namely, U.P. Judicial Officers (Retirement on Superannuation) Rules, 1992 which were notified on 20.10.1992 by which the age of retirement of the Judicial Officers was raised from 58 years to 60 years. It is contended that since the State Government itself had framed new Rules by which the age of retirement was raised from 58 years to 60 years, the age of retirement fixed under Fundamental Rule 56, contained in Financial Hand Book, Volume II, Part 2 to 4, would not be applicable to the Judicial Officers as it is specifically provided in the new Rules that they shall have effect notwithstanding anything to the contrary contained in Rule 56 of the Fundamental Rules. Mr. P.P. Rao contends that the age of retirement having been raised from 58 years to 60 years, the respondent had a right to continue in service till the age of 60 years and the rule of scrutiny envisaged by this Court in its Judgment dated August 24, 1993, [1993] 4 SCC 288 would not be applicable. D E F

Mr. Rakesh Dwivedi, learned Senior Counsel, appearing on behalf of the High Court has, on the contrary, contended that though the State Government had made a specific Rule by which the age of retirement of Judicial Officers was raised from 58 years to 60 years, a scrutiny had still to be done to find out their suitability to continue till the age of 60 years in terms of the directions issued by this Court which had specifically provided that continuance upto the age of 60 years would not be automatic and only those Officers who G H

- A are found suitable would alone be allowed the benefit of extension. It is further submitted that the directions issued by this Court have to be read as supplemental to the Rules already made by the State Government. Regarding the overriding provision under the Rules, it is submitted by Mr. Rakesh Dwivedi that the new Rules override all other earlier rules relating to the age of retirement of Judicial Officers but do not intend to override the directions
- B issued by this Court in *All India Judges' Association's* case, [1992] 1 SCC 119.

The direction relating to the age of retirement in the *All India Judges' Association's* case, [1992] 1 SCC 119, was to the following effect :

- C “(iii) Retirement age of judicial officers be raised to 60 years and appropriate steps are to be taken by December 31, 1992.”

Acting upon these directions, the State Govt. framed the U.P. Judicial Officers (Retirement on Superannuation) Rules, 1992, under Article 309 of the Constitution. They came into force on October 20, 1992. Rules 2 and 4 of the aforesaid Rules which are relevant for the present case are quoted below :

- D “2. Overriding effect—The provisions of these Rules shall have effect notwithstanding anything to the contrary contained in Rule 56 of the U.P. Fundamental Rules, contained in the Financial Hand Book Volume II Parts 2 to 4 or any other Rules made by the Governor under the proviso to Article 309 of the Constitution or orders, for the time being in force.

- E 4. Retirement—A Judicial Officer shall retire from service on superannuation in the afternoon of the last day of the month in which he attains the age of sixty years.”

- F The above Rules indicate that the age of superannuation of Judicial Officers was fixed at 60 years. It was also specifically provided that these Rules would have effect notwithstanding anything to the contrary contained in Rule 56 of the U.P. Fundamental Rules which provided that the age of superannuation of a Govt. servant would be 58 years. All Judicial Officers
- G working in the subordinate courts are, undoubtedly, Govt. servants and like all other Govt. servants, they retired from service on attaining the age of 58 years in terms of Rule 56 of the Fundamental Rules. But on account of the directions issued by this Court in the *All India Judges' Association's* case [1992] 1 SCC 119, the Govt. of Uttar Pradesh, as pointed out earlier, framed new Rules specially for the Judicial Officers and provided that their age of
- H retirement would be 60 years. In order to give effect to the new Rules, it was

specifically provided that these Rules would have effect notwithstanding anything to the contrary contained in Fundamental Rule 56. The directions issued by this Court were thus fully implemented and the State Govt., by bringing out new Rules, and that too with effect from October 20, 1992, acted within the time limit fixed by this Court. The age of superannuation thus having been raised from 58 years to 60 years, all Judicial Officers in the State would retire on attaining the age of 60 years and not earlier.

We may now examine the contention of Mr. Rakesh Dwivedi that before allowing them to continue in service for another two years, that is from 58 to 60 years, there should have been a scrutiny of their service record and only those who were found suitable for continuance in service alone should have been given that benefit in terms of the directions issued by this Court in the Review Judgment [1993] 4 SCC 288.

This Court, while issuing directions for raising the age of superannuation of Judicial Officers from 58 to 60 years had fixed a time limit within which appropriate action was to be taken by the State Governments. It was provided that appropriate steps in that direction may be taken by December 31, 1992. Instead of complying with those directions, many of the States, including the Union of India filed Review Petitions in which various contentions were raised for recalling the earlier direction for raising the age of superannuation. The contentions raised by the State Governments as also by the Union of India were not accepted and it was provided that the age of superannuation of Judicial Officers would be 60 years. Since all the State Governments had not, by that time, made a statutory rule to give effect to the directions of this Court, it was provided that the benefit of extension in the age of superannuation would be available to those officers only who, in the opinion of the High Court, had meticulous service record and were officers of integrity. This benefit, it was further provided, was not intended to serve as a "windfall" for officers of doubtful integrity, reputation or utility. It was left to the High Courts to consider the work, conduct and performance of the Judicial Officers to assess their merit and to decide whether they were fit to continue in service beyond 58 and upto the age of 60 years. These directions were qualified by the following words :

"The directions issued are mere aids and incidental to and supplemental of the main direction and intended as a transitional measure till a comprehensive national policy is evolved."

These observations indicate that the procedure indicated by this Court

- A for evaluating the work, performance and conduct of Judicial Officers, before allowing them to continue in service upto the age of 60 years, was evolved as a temporary measure and was not to be adopted as a permanent feature. The choice was thus left to the Appointing Authority. If the Appointing Authority itself had made necessary Service Rules extending the age of retirement, the above procedure was to be given up as the Officers would
- B continue in service in accordance with the Service Rules made by the Appointing Authority in the respective States. If it was not done, then the Judicial Officers were to continue in service till the age of 60 years in accordance with the directions of this Court in the earlier case, provided the Officers, on a scrutiny of their service records, in accordance with the directions issued
- C in the Review Petition, were found suitable for the benefit of extended service.

- As pointed out above, the State Govt., acting upon the directions of this Court in the earlier case [1992] 1 SCC 119, made new Rules under Article 309 of the Constitution, and that too within the time fixed by this Court, by which the age of retirement of all Judicial Officers was raised from 58 to 60
- D years. In view of these Rules, which also had the overriding effect over F.R. 56, the Judicial Officers in the State of U.P. became entitled to continue in service upto the age of 60 years. The directions of this Court for scrutiny of their service records before allowing them to continue in service beyond 58 years, being of a transitory character, yielded place to the new Rules made
- E by the State Govt. under Article 309 of the Constitution and, therefore, it was no longer incumbent upon the High Court to resort to the procedure of scrutiny of the service records of all Judicial Officers before allowing them the benefit of extension in the age of retirement.

- The contention of Mr. Rakesh Dwivedi, learned senior counsel appearing
- F on behalf of the High Court, that the directions of this Court about the scrutiny of the service record should be read as supplemental to the new Service Rules cannot be accepted as this Court itself had indicated clearly that the directions were intended to serve as a "transitional measure".

- A Three-Judge Bench of this Court in *Rajat Baran Roy & Ors. v. State of W.B. and Ors.*, [1999] 4 SCC 235, relating to the Judicial Service of the State of West Bengal, has taken a similar view and has held that if a Rule is made by the State Govt. extending the age of retirement of the Judicial Officers, the directions of this Court in the Review Petition for scrutiny of the service record would not be applicable as the Judicial Officers, by virtue of the new
- H Rule, would continue upto the age of superannuation fixed under the new

Rule.

In the instant case, the service record of the respondent was scrutinised by the High Court at the time when he was completing 58 years of age to decide whether he was fit to be continued in service upto the age of 60 years. This exercise was undertaken by the High Court in accordance with the directions issued by this Court in the Review Petition. The High Court overlooked the vital fact that the new Rules already made by the State Government under Article 309 of the Constitution provided specifically that the Judicial Officers would retire on attaining the age of 60 years. That being so, it was no longer necessary for the High Court to have scrutinised the service record at that stage. The respondent, in view of the new Rules, was entitled to continue in service upto the age of 60 years. The order of compulsory retirement passed by the State Govt. on the recommendation of the High Court was wholly erroneous.

The writ petition filed by the respondent, as pointed out earlier, has been allowed by the High Court on the judicial side, on the ground that the order of compulsory retirement passed on the recommendation of the High Court was based on no material and was, therefore, erroneous. In view of the fact that we have already found above that the respondent had a right to continue in service upto the age of 60 years, there does not appear to be any need to enter into the scrutiny of the reasoning adopted by the High Court for setting aside the order of compulsory retirement as we are also of the view that the order of compulsory retirement was bad, though for different reasons. But, looking to the importance of the matter, particularly the adverse entries recorded in the character role of the respondent by the Inspecting Judge, we would rather dispose of that issue as well.

Chapter III of the Rules of Court, 1952, (as amended upto 1.8.1994) made by the Allahabad High Court, deals with the Executive & Administrative Business of the Court. It provides for Inspecting Judges and Administrative Committee. The Rule relating to "Inspecting Judges" provides as under :

"Inspecting Judge

The Chief Justice shall nominate and assign one sessions division to each Hon'ble Judge as Inspecting Judge of that division for a period of one year. In a given situation, however, the Chief Justice may assign more than one sessions divisions to one Inspecting Judge and more than one Inspecting Judges to hold the charge of one sessions

A division.

(a) In case of retirement, resignation, refusal or death of any Inspecting Judge, another Hon. Judge shall be nominated by the Chief Justice.

B (b) Inspecting Judge shall proceed for inspection in consultation with the Chief Justice. The Inspecting Judge will not ordinarily devote more than five working days for annual inspections."

The Rule relating to "Administrative Committee" provides as under :

"Administrative Committee

C There shall be a committee called the Administrative Committee composed of the Chief Justice, two seniormost Judges and six Judges to be nominated by the Chief Justice.

D (a) The two senior most Judges shall be permanent members and six Judges shall be nominated as members by the Chief Justice for a term of three years.

(b) The Chief Justice and in his absence the seniormost member of the Committee shall preside over its meetings.

E (c) In the case of retirement, resignation, refusal or death of any member of the committee, another Judge shall be nominated by the Chief Justice in his place.

(d) In the event of a member being temporarily absent on leave or otherwise, it will be open to the Chief Justice to assign his work to any other Judge.

F (e) Each member of the committee shall discharge such functions, dispose of such executive and administrative business, as may be allocated to him by the Chief Justice."

G "Matters" which are within the jurisdiction of the Inspecting Judge are as under :

"Matters for Inspecting Judges

H (1) Review of Judicial work of subordinate Courts, tribunals, district consumer forums and all other special courts and control of their working including inspection thereof, to record entries in the character rolls of the officers posted in the division assigned to the Inspecting

Judge.

A

(2) Perusal of returns, calendars, evaluation of inspection reports made by the presiding officers in respect of their own offices, audit reports received from those courts, tribunals etc., and to make orders thereon.

B

(3) Any adverse remarks or strictures made by Inspecting Judge about Judicial work, conduct or integrity of any officer under his charge will be communicated to the officer concerned, who may make his representations, if any, within a month and the same shall be placed before the Administrative Committee for consideration and decision.

C

(4) Grant of earned leave to officers posted in the sessions division under the charge of the Inspecting Judge.

(5) Grant of casual leave (including special casual leave) and permission to leave headquarters to the District and Sessions Judge, Presiding Officers of the tribunals and special Courts etc. howsoever designated.

D

(6) Disposal of appeal against orders of punishment imposed on and representations etc., of the employees of the subordinate Courts.”

The relevant portion relating to the matters within the jurisdiction of the “Administrative Committee” is reproduced below :

E

“Matters for the Administrative Committee

1 to 15.

16. Decision on the reports of the Inspecting Judge including annual confidential remarks recorded by him in respect of an officer in his charge.”

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The High Court has also prescribed “Self Assessment Forms” which are filled up by the Judicial Officers and are sent to the District Judges. The High Court has also issued Circular Letters laying down the appropriate guidelines and instructions for the District Judges to record the Annual Character Roll entries. In Circular Letter No. C-54/71 dated 16th April, 1971, it is provided, inter alia, as under :

G

“Annual remarks recorded by the District Judges should give a correct and full picture of the work, conduct and reputation of the officers. In case annual remarks do not properly assess the work of the officers,

H

- A** administrative lapse on the part of the District Judge concerned would be presumed.”

In Circular Letter No. 17/78 dated 2nd February, 1978, it is indicated as under :

- B** “In evaluating the judicial work of an officer, the number of his judgments, orders reversed or modified in appeal or revision will not be taken into account. The assessment of judicial work of an officer will be asked on the quality of his judgments or orders and not on the result of the appeals or revisions. Henceforth, the work of an officer will be assessed on the basis of quality of his judgments or orders and not on the basis of the number of judgments or orders reversed or modified in appeal or revision.”
- C**

Vide Circular Letter Nos. C-10/85 and C-14/89 dated 22nd March, 1985 and 10th March, 1989, respectively, it was emphasised that :

- D** “The District Judge shall ensure that the following instructions as contained in various Circular Letters issued by the Court from time to time are followed strictly in recording the annual remarks in respect of the judicial officers:

- E** (a) The annual remarks should be recorded in respect of all the officers whose work and conduct was seen for three months or more during the year.

- (b) Even if an officer has worked at the station for period of less than three months during the year, the District Judge should send the figures of his disposal for that part of the year, so that his full figures of disposal during the whole year may be worked out.”
- F**

- The Inspecting Judges, as set out in the Rules, are nominated by the Chief Justice and a particular sessions division is assigned to them. The Rules also provide that the Chief Justice may assign more than one sessions divisions to one Inspecting Judge or for one sessions division, he may nominate more than one Inspecting Judges. The Rules visualise that the Inspecting Judge will be appointed by the Chief Justice strictly in the interest of administration of justice and the Chief Justice, while appointing an Inspecting Judge for a particular sessions division or assigning more than one sessions divisions to one Inspecting Judge or, for that matter, appointing two Inspecting Judges for one sessions division, will be guided by relevant factors pertaining
- G**
- H**

to the proper and smooth running of the administration so that the High Court may effectively exercise its power of control over the subordinate judiciary as contemplated by Article 235 of the Constitution. Personal liking for a particular sessions division or convenience of the Judge will not be a relevant factor for his appointment as an Inspecting Judge. A

The Inspecting Judge, according to Rules of Court, 1952, will proceed to inspect the sessions division assigned to him only in consultation with the Chief Justice and will not ordinarily devote more than five working days for annual inspection. The time limit has been fixed purposely so that the judicial work in the High Court, which is of prime importance, may not suffer. This philosophy leads to the conclusion that the Inspecting Judge would not normally sacrifice the working days in the High Court at the cost of their visit to the Districts. The Rules set out the matters which are within the jurisdiction of the Inspecting Judge and those which are within the jurisdiction of the Administrative Committee. According to the scheme set out in the Rules as also various circular letters issued by the High Court from time to time, it appears that annual remarks would be recorded by the District Judges who would give a correct and full picture of the work, conduct and reputation of the Officers. The guidelines on the basis of which annual remark would be given have also been laid down by the High Court in the circular letters issued from time to time. The High Court, thereafter, records the Character Roll entry. B C D E

Mr. Justice R.B. Mehrotra, who has since retired, was the Inspecting Judge of the Moradabad Judgeship at the relevant time. In the counter-affidavit filed on behalf of the appellant in the writ petition while it was pending in the High Court, regarding which it is erroneously mentioned by the Division Bench that it was not filed, it has been stated, *inter alia*, as under: F

“7. That the then Inspecting Judge, Moradabad, Hon. Mr. Justice R.B. Mehrotra, sent a D.O. Letter dated 20.4.95 addressed to Hon’ble the Chief Justice stating therein that His Lordship made a surprise visit to District Judgeship of Moradabad on 18.4.1995. His lordship went around Civil Court compound in cognito, made queries from litigants and met several Advocates without disclosing his lordship’s identity. The enquiries made by his lordship from litigants and Advocates without knowing lordship’s identity revealed that petitioner and four other Judicial Officers whose names mentioned in the D.O. letter dt. G H

A 20.4.1995 of Hon'ble Mr. Justice R.B. Mehrotra command stinking reputation of being corrupt. Thereafter, Hon'ble the Inspecting Judge made queries from District Judge regarding stinking reputation of being corrupt in respect of the officer. The District Judge has confirmed that all the officers whose names mentioned in the instant D.O. Letter of Hon'ble the Inspecting Judge are having a very bad reputation of being corrupt Judicial Officers. The District Judge has expressed his regrets for not having brought to the aforesaid facts to the knowledge of the Hon'ble Court. His Lordship was strongly of the opinion that all the officers whose name mentioned in the D.O. letter of Inspecting Judge, Moradabad, who had stinking reputation should be transferred and he be given punishment posting to far-fetched stations.

C After dictation of the aforesaid report by Hon'ble the Inspecting Judge, Moradabad Session, a Confidential report from District Judge, Moradabad was received by his lordship and the same were also sent to Hon'ble the Chief Justice for his lordship's kind perusal and orders.

D The District Judge in his D.O. letter dated 20.4.95 has informed the Hon'ble the Inspecting Judge in respect of the petitioner that though there is no complaint against Sri Sarnam Singh (petitioner), Special Judge (Essential Commodities), Moradabad, he also has connections with the said a cocous of lawyers and public-men. His reputation is also very bad.

E The District Judge had also requested to his lordship to transfer the officer whose names mentioned in his report (including petitioner) from this Judgeship immediately so that public confidence in judiciary may be restored and judicial discipline be maintained in the Judgeship.

F Under orders of Hon'ble the Chief Justice these officers including the petitioner have been transferred. The petitioner was transferred from Moradabad to Aligarh vide Court's notification No. C-304/DR(S)/1995 dated 29.5.1995."

It was further stated as under :

G "8. That thereafter Hon'ble Mr. Justice R.B. Mehrotra, the Inspecting Judge, Moradabad, made annual Inspection of this judgeship and submitted his report to the Court on 16.10.1995. It is apparent from Inspection Note that the then Hon'ble Inspecting Judge also inspected the court of Special Judge (ECA) Moradabad and at that time the petitioner was the Presiding Officer of that Court. In his Inspection

H

Note Hon'ble the Inspecting Judge had made the assessment of Judicial performance of the petitioner. Hon'ble the Inspecting Judge had made observation that he had seen the file of 13 Sessions Trials and 6 bail Applications decided by him in the month of August, 1994. In all these Sessions Trials the accused had been acquitted. In the six Sessions Trials the accused had been acquitted on the ground that prosecution witnesses turned hostile. In Sessions Trial No. 119/89 the accused had been acquitted u/s 399/402 IPC and section 25 Arms Act. The Hon'ble the Inspecting Judge after perusal of judgment in the instant case has observed that judgment is sketchy and no proper reason had been recorded discarding the prosecution witnesses.

In Bail Application No. 1980/94 bail had been granted in case of fire arm injury u/s 302 IPC on the ground that 2 persons fired whereas injury found on person of the deceased was only one. Even assuming that bullet fired by the other person did not hit the deceased admittedly the allegation is that both accused had fired with the intention to kill the deceased who was actually killed. Hon'ble the Inspecting Judge observed that there was absolutely no justification of granting bail on the aforesaid ground.

In Bail Application No. 187/95, bail had been granted by referring that there was a Judgment of Justice Palok. Hon'ble the Inspecting Judge observed that there was no way of quoting precedent. The reference of judgment should have been mentioned if the Judge wanted to rely on decision of this Court. Mr. Justice Palok Basu delivered many judgments and on which judgment petitioner relied should have also been indicated in the order.

Hon'ble the Inspecting Judge likewise in Bail Application No. 3241/94 has also observed that bail had been granted on the basis of parity. No reference has been mentioned in the order that who was co-accused, who had been granted bail, what was the role assigned to him and what was the role assigned to the applicant. Hon'ble the Inspecting Judge on persual of orders passed in the aforesaid bail applications has observed that they are also sketchy. The judicial performance of the petitioner is assessed to be poor and unsatisfactory.

9. That the Hon'ble Inspecting Judge (Hon'ble Mr. Justice R.B. Mehrotra) while giving annual remarks to the petitioner for 1994-95 had recorded that the officer enjoyed a stinking bad reputation as

A revealed in his lordship's Surprise Inspection in cognito dated 18th April, 1995. The assessment of judicial performance of the petitioner was adjudged as poor and unsatisfactory. The petitioner made representation dated 26.08.1996 to the Court against the aforesaid adverse remarks and same was duly considered and rejected by the Court. The petitioner was informed accordingly through the District Judge, Aligarh, vide Court's D.O. No. C-189/CF(A)/97, dated 6.3.1997.

B 10. That during his surprise Inspection, Hon'ble Inspecting Judge also contacted various sections of lawyers, a good number of lawyers were opposed to strike and were appearing in Court but due to strike the work by and large remained paralysed for one and half months and only urgent bail applications were being attended by District Judge and other officers to whom bail applications were transferred. His lordship tried to persuade the Lawyers to withdraw the strike so that their grievances if any may be looked in it. His lordship was given to understand by section of lawyers supporting the strike that strike would be called off."

The original service record of the respondent was placed before us which reveals that respondent, at no time, was given any adverse remarks during the entire tenure of his service. The High Court had itself, while disposing of the writ petition, scrutinised the service record of the respondent and observed as under :

E "It appears that petitioner joined, as already stated, U.P. Higher Judicial Service on 23.4.1984. He was posted as Additional District Judge Moradabad from June, 1992 under Sri Tej Shankar, the then District Judge, Moradabad, who was later on elevated to the Bench. He was also posted under Sri Bhagwan Din, the then Distt. Judge Moradabad who also was elevated to the Bench later on. It may be stated that the petitioner was posted with (three) Distt. Judges who were later on elevated to the Bench namely, Sri N.S. Gupta, Sri Bhagwandin and Sri Tej Shankar, and according to petitioner there was no complaint to all those 3 (three) the then District Judges against his work and conduct."

It was further observed by the High Court as under :

H "It may be mentioned that in the year 1984-85 the then Administrative Judge Hon'ble Mr. Justice N.N. Mithal gave remark that petitioners relations with members of the Bar are reported to be good, the District

Judge rated the officer as good and the officer was transferred on administrative grounds from Etawah. In the year 1985-86 the same Administrative Judge has certified integrity of the petitioner and has given remark that the officer took pains to dispose of old Sessions Trials and Special cases under the Dacoity Affected Areas Act and his judgments are properly written and expressed in good language. A

In the year 1986-87 there is no adverse entry against the petitioner. There is remark that he has taken interest in disposal of old cases both Civil and Criminal. His judgments on facts and law are sound, well reasoned and expressed in good language. The officer has good control over his office and possesses administrative capacity and tact. Relations with the members of the Bar are cordial. On overall assessment Sri P.K. Jain the then District Judge (subsequently elevated to the Bench) had rated the petitioner to be good officer. In the year 1987-88 more or less the entry is similar, to that of 1986-87. B C

In the year 1988-89 the entry of the petitioner is recorded by Sri N.S. Gupta, the then District Judge (subsequently elevated to the Bench). He has given remark to the petitioner that the integrity of the officer is beyond doubt, judgments on facts and law are sound, well reasoned and expressed in good language and on over all assessment the officer has been rated as good. D

In the year 1988-89 good entry has been given to petitioner by the then District Judge Sri P.P. Gupta and in the year 1990-91 also the petitioner has been given good entries, and his integrity has been certified. More or less similar entry is awarded to petitioner in the year 1991-92. In the year 1992-93 Sri Tej Shankar the then District Judge Moradabad (subsequently elevated to the Bench) has given good entry to the petitioner and his integrity is stated to be beyond doubt. Similar entry has been given by Sri Bhagwan Din the then District Judge (subsequently elevated to the Bench) in the year 1993-94. Similarly in the year 1994-95 Sri Bhagwan Din the then District Judge Moradabad has stated that the integrity of the officer was beyond doubt and on overall assessment the officer was rated as good, before the visit of Hon'ble the then Inspecting Judge. E F G

We have perused the entire service record of the petitioner and there is nothing adverse against him."

The High Court, thereafter, proceeded to consider various aspects of H

- A the matter, including the fact that at the time when Mr. Justice R.B. Mehrotra made a surprise Inspection of the Moradabad Judgeship, the lawyers were on strike, and ultimately recorded a finding that the impugned adverse entry was unjustified, arbitrary and based on non-existent facts and was, therefore, liable to be quashed. We uphold the findings of the High Court, but we do not subscribe to the view that before an adverse entry was recorded in the
- B Character Roll, an opportunity of hearing was, by any principle, required to be given to the respondent. See: *Major General I.P.S. Dewan v. Union of India and Ors.*, [1995] 3 SCC 383, in which *R.L. Butail v. Union of India*, [1970] 2 SCC 876 = [1971] 2 SCR 55 has been followed. The decision of this Court in *Sukhdeo v. Commissioner, Amravati Division, Amravati and Anr.*,
- C relied upon by the respondent regarding Adverse Remarks in the service record cannot be pressed into aid as in that case it was held that Adverse Remarks suffered from inconsistency and lack of *bona fides*. We may also point out that the High Court in its judgment was wrong in observing that no counter-affidavit on behalf of the appellant was filed as counter-affidavits both on behalf of the State Govt. as also on behalf of the appellant were filed
- D at the stage of writ petition, copies whereof have been placed before us.

The role of Inspecting Judges and the manner in which they are to assess the work of the Judicial Officers were considered by this Court in *High Court of Punjab & Haryana through R.G. v. Ishwar Chand Jain and Anr.*, JT (1999) 3 SC 266, in which one of us (Brother Wadhwa, J.), speaking for the Court, said :

- F “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 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 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 best results. They should feel a sense of achievement.
- H 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 grass root 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 harms 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 efficient working of the subordinate courts.”

These are extremely important observations and constitute important guidelines for assessing the work of a Judicial Officer. These observations also indicate the attitude with which the Inspecting Judge should objectively consider the work and conduct of the Judicial Officers who sometimes have to work under difficult and trying circumstances. The same views were earlier expressed in *State Bank of India & Ors. v. Kashi Nath Kher and Ors.*, [1996] 8 SCC 762 = AIR (1996) SC 1328. [See also : *Union of India v. N.R. Banerjee*, [1997] 9 SCC 287; *State of Uttar Pradesh v. Yamuna Shanker Mishra*, [1997] 4 SCC 7 as also *Swatantra Singh v. State of Haryana*, [1997] 4 SCC 14 = AIR [1997] SC 2105 on the question as to what precisely is the object and purpose of writing Annual Confidential Report.

We would conclude the discussion by referring to the observations of this Court in *M.S. Bindra v. Union of India*, JT (1998) 6 SC 34 = [1998] 7 SCC 310, which are as under :

“To dunk an officer into the puddle of “doubtful integrity” it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is

A justification to ram an officer with the label "doubtful integrity".

For the reasons stated above, we do not find any merit in this appeal which is dismissed, but without any order as to costs.

R.C.K.

Appeal allowed.