CASE NO.:
Appeal (civil) 5576 of 2000

PETITIONER:
Chandra Singh

RESPONDENT:
Vs.
State of Rajasthan and Anr.

DATE OF JUDGMENT: 22/07/2003

BENCH:
CJI., S.B. Sinha & Dr. AR. Lakshmanan.

JUDGMENT:

JUDGMENT

WITH

Civil Appeal Nos. 6078/2000 and 7441/2000

Dr. AR. LAKSHMANAN, J.

The questions involved in these three appeals are identical and they are being disposed of by this common judgment.

By order dated 23.03.1999, the appellants, who are the officers of the Rajasthan Higher Judicial Service, were retired from service w.e.f. 31.03.1999 on attaining the age of superannuation. The appellants, who received the order, challenged the same before the High Court of Rajasthan by filing writ petitions which were disposed of by a Division Bench of the said Court. The two learned Judges who constituted the Division Bench rendered two concurrent judgments. While the conclusion was the same, the reasons were different. While one learned Judge held that the order of 23.03.1999 retiring the appellants was sustainable under the Rajasthan Service Rules, 1951, the other learned Judge held that the order was sustainable under the All India Judges' Association and Others vs. Union of India & Ors. (Review case) reported in (1993) 4 SCC 288. All the writ petitions were dismissed by the High Court and being aggrieved by the said judgments, the appellants preferred the above appeals in this Court.

We have gone through the two concurrent judgments. Though we agree with the conclusion arrived at by them, we would, however, prefer to give our own reasons for construction of the relevant provisions of the rules and the judgments cited before us.

We have perused the Minutes of the meeting of the Committee of three Hon'ble Judges headed by the then Chief Justice and other relevant records. Pursuant to the judgment of this Court in All India Judges' Association's case (supra), the matter of several officers (including the three appellants) was placed before the Committee to consider for giving them the benefit of extension up to the age of 60 years.

In the Full Court meeting held on 15.01.1999, it was resolved to screen the officers in accordance with the decision of this Court. The Committee, on examination of the service record, character roll, quality of their work, disposal, integrity, general reputation and their potentiality and utility found that the appellants are not fit to be given the benefit of extension. We have perused the report of the Committee. The Committee had extensively gone through the entire record with minutest details and have come to the conclusion that these appellants are not fit to be given the benefit of extension. The Committee has found that Shri Mata Deen Garg, Shri Bhanwar Lal Sharma and Shri Chandra Singh are found not to possess sufficient potentiality and utility so as to give them the benefit of extension of service

up to the age of 60 years. One of the appellants Shri Mata Deen Garg appeared in-person and argued his case. The Committee was of the view that the officer was not fit to be given the benefit of extension and that his conduct can be judged from the uncontrovertible facts emerging from the disciplinary proceedings pending against him also. In these proceedings, he has admitted that Shri Ramesh Garg was his younger brother and Shri Ramesh Garg stated without being controverted in cross-examination that he was looking after the interests of the claimants in the Motor Accident claim case which was decided by Shri Mata Deen Garg. The charges that Shri Mata Deen Garg himself was the counsel for the claimants in this case and he scored out his name and signatures from Vakalatnama and other documents to conceal the fact of his being the counsel in that case are yet to be found proved. But all the same the fact remains that he decided a case in which his brother was interested. Another charge in the same disciplinary proceedings is about harassment of a lady judicial officer by Shri Mata Deen Garg. Though the enquiry is not yet over but all essential facts relating to detention of the lady officer at his residence till late in the night are admitted by Shri Garg except the harassment part. The Committee was of the view that the admitted facts themselves are sufficient to disentitle Shri Garg from continuing in service beyond 58 years of age. So far as Shri Bhanwar Lal Sharma, appellant no.2 is concerned, the Committee found that the integrity of the said officer is questionable and for several years his integrity certificate was withheld. It was also found that he was not a hard worker and painstaking and found to be an officer of doubtful integrity and that his several representations were also rejected.

Keeping in view the entire material placed before the Committee, the Committee was of the opinion that these three officers, among others, also does not deserve to be given extension beyond 58 years. It is also a matter of record that the report of the Committee was placed before the Hon'ble Judges of the Full Court and the Full Court has also accorded its seal of approval of the same.

Before proceeding further, it will be useful to refer to the changes effected by the State Government in the Rajasthan Service Rules after the pronouncement of the judgment of this Court in All India Judges' Association case.

Vide Notification dated February 20, 1995 following exception to Rule 56A of the Rajasthan Service Rules was substituted after sub-rule (1):

""Exception"

The retirement age of officers of Rajasthan Judicial Services and Rajasthan Higher Judicial Services who are considered to have a potential for continued useful purpose by the Committee of Judges of the Rajasthan High Court and headed by the Chief Justice would be 60 years while for others it would be 58 years."

Vide Notification dated June 27, 1998, existing Rules 56 and 56A of the Rajasthan Service Rules was substituted by the following Rule 56.

"56. The date of compulsory retirement of a Government servant would be the afternoon of the last day of the month in which he attains the age of 60 years.

Provided that the provisions of age of compulsory retirement as contained in this rule shall not be applicable in the case of Government Servants who are in service after attaining the age of compulsory retirement either on re-employment or on extension in service.

Provided further that no Government servant shall be granted extension in service beyond the age of 60 years.

Note:- 1. A Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on

attaining the age of 60 years.

2. In case the last day of the month happens to be a closed holiday, even then the Government servant should formally relinquish charge of the office in the afternoon of that day."

Vide Notification dated December 28, 1998 (came into force w.e.f. 31.03.1999) the aforequoted quoted Rule 56 was again substituted thus:-

"56. The date of compulsory retirement of a Government servant other than a Government servant of Class IV would be the afternoon of the last day of the month in which he attains the age of 58 years and the date of compulsory retirement of a Government Servant of Class IV would be the afternoon of the last day of the month in which he attains the age of 60 years.

Provided that the Government servants other than Class IV who have crossed the age of 58 years shall also be compulsorily retired on 31.03.1999.
Exception:

The retirement age of officers of Rajasthan Judicial Services and Rajasthan Higher Judicial Services who are considered to have a potential for continued useful purpose by the Committee of Judges of the Rajasthan High Court and headed by the Chief Justice would be 60 years while for others it would be 58 years.

Note:- 1. A Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of compulsory retirement.

2. In case the last day of the month happens to be a closed holiday, even then the Government servant should formally relinquish charge of the office in the afternoon of that day."

It is also beneficial to reproduce Rule 53 of the Rajasthan Civil Services (Pension) Rules, 1996

"53. Compulsory retirement on completion of 25 years qualifying service.

(1) At any time after a Government Servant has completed (25 years qualifying) service or has attained the age of 50 years, whichever is earlier, the appointing authority, upon having been satisfied that the concerned government has on account of his indolence or doubtful integrity or incompetence to discharge official duties or inefficiency in due performance of official duties, has lost his utility, may require the concerned Government Servant to retire in public interest. In case of such retirement the Government Servant shall be entitled to retiring pension.

(2) In such a case, the appointing authority shall give a notice in writing to a Government Servant at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice.

(3) The appointing authority may publish the order of such retirement in Rajasthan Rajpatra, and the Government Servant

shall be deemed to have retired on such publication, if he has not been served with the retirement order earlier.

EXPLANATION-For the purpose of this rule, the expression "appointing authority" shall mean the authority which is competent to make appointments to the service or post from which the Government Servant retires."

The order of retirement served on the respective appellants reads thus: We reproduce one order for sample.

" I am directed to send herewith Government Order No.27(27) Judl/94 dated 23.3.99 retiring you from service with effect from 31.3.99(AN) on attaining the superannuation age for information and necessary action."

The Governor of Rajasthan has also by his order dated 23.03.1999 was pleased to retire the appellants on attaining the superannuation age on 31.03.1999 (afternoon).

We heard Shri K.V. Viswanathan, learned counsel for the appellant, in Civil Appeal Nos. 5576 and 7441 of 2000 and the appellant in Civil Appeal No.6078 in-person. The learned counsel for the appellants submitted that the appellants were entitled to continue in service till they attained the age of 60 years, which right was vested in them under Rule 56 of the Rajasthan Service Rules, 1951, as amended and notified on 27.06.1998 and that the said rule did not provide for any pre-retirement assessment and this was the only rule in force on 23.03.1999, when orders retiring them were passed. It was also pointed out that the appellant Shri Chandra Singh completed 58 years on 12.03.1999 and the appellant Shri Bhanwarlal Sharma completed 58 years on 20.09.1998 and, therefore, they could not have been retired after they crossed the age of 58 years and before they attained the age of 60 years and such orders are ultra vires of Rule 56 of the Rajasthan Service Rules, 1951, as amended and notified on 27.06.1998. In support of the above contention, the learned counsel placed reliance on three rulings of this Court being Rajat Baran Roy and Others vs. State of W.B. and Others, (1999) 4 SCC 235; High Court of Judicature at Allahabad through Registrar vs. Sarnam Singh and Another, (2000) 2 SCC 339 and Bishwanath Prasad Singh vs. State of Bihar and Others, (2001) 2 SCC 305. Shri Viswanathan further urged that the reliance placed by the respondents on the Rajasthan Service Rules, 1951 as amended and notified on 28.12.1998 is entirely untenable as the rule itself indicates that it was to come into force with effect from 31.03.1999. Hence on 23.03.1999 when orders pursuant to pre-retirement assessments were made, the said rule which provided for pre-retirement assessment, had not come into force.

In other words, whether a law is passed but had not come into force, no substantive orders against any particular person can be made invoking the law i.e. yet to come into force, even though the orders were to operate from the date of commencement of the law and that the orders affecting substantive rights could be made under such law only after the law had come into force and not in anticipation of its coming into force. For this proposition, he relied on Boppanna Venkateswaraloo and Others vs. Superintendent, Central Jail, Hyderabad State, [1953] SCR 905.

It was contended by Shri Viswanathan that the respondents are not justified in relying on the proviso to Rule 56 of the Rajasthan Service Rules, 1951 as amended and notified on 28.12.1998 and that the proviso to the said rule does not apply to Judicial Officers, since the expression "Officers of Rajasthan Judicial Service and Rajasthan Higher Judicial Services" are used in contra distinction to the expression "Government Servants". Elaborating further, he contended that there is an "exception" clause in the rule and the context in which the exception occurs the only construction possible is that the exception is intended to restrain the applicability of the enacting clause to the excepted cases and that such a construction alone would bring the rule in consonance with the judgment of this Court in All India Judges' Association cases and that any other construction would render the proviso ultra vires the All India Judges' Cases.

He would further submit that Rule 53 of the Rajasthan Civil Service (Pension) Rules, 1997, provides for compulsory retirement on completion of 25 years of qualifying service and stated that at any time after a Government Servant has completed 25 years qualifying service or has attained the age of 50 years whichever is earlier, he may be required by the authority to retire in the public interest and in such a case the appointing authority should give a notice in writing to a Government Servant at least 3 months before the date on which he is required to retire in the public interest or 3 months pay and allowances in lieu of such notice. According to the learned counsel for the appellant, this power has not been invoked by the respondents and the order of 23.03.1999 does not say so. It is further contended that there can be no other mode of retirement for Judicial Officer after he crosses the age of 58 years and before he attains 60 and the very purpose of the Judgment in the All India Judges cases would be defeated and the aim of uniformity would be a far cry if retirement other than by following the procedure for compulsory retirement, is permitted after the officer crosses 58 years and before he attains 60 years. He relied on Bishwanath Prasad Singh's case (supra).

Concluding his argument, Shri Viswanathan submitted that the orders of 23.03.1999 are also not in conformity with the IInd All India Judges case which clearly provides that pre-retirement assessment should be made well within the time before an officer attains 58 years by following the procedure for compulsory retirement under the service rules. In view of the fact that rules were framed and the relevant rule being the rule as notified on 27.06.1998, those rules alone would govern the situation. Hence he submitted that the reasoning given by one of the Judges in this aspect is incorrect.

Mr. Mata Deen Garg who argued in-person, after adopting the arguments of the learned counsel for the appellants, submitted that the expression "Government Servants" referred to in Rule 56 will not include Judicial Officers. He would further submit that as he was facing a departmental inquiry, he cannot be retired at the age of 58 years under the amended Rule 56. He placed reliance on a decision of this Court in High Court of Punjab & Haryana through R.G. vs. Ishwar Chand Jain and Another, (1999) 4 SCC 579, for the proposition that as the appellant was facing departmental inquiry, he cannot be retired at the age of 58 years. He also cited the decision of this Court in Nepal Singh vs. State of U.P. and Others, AIR 1985 SC 84.

Mr. P.P. Rao, learned senior counsel appearing for the Rajasthan High Court, respondent No.1, submitted that the All India Judges' Association cases will not apply to the case on hand, once the statutory rules are made. After the rules are made, the statutory rules alone govern the superannuation of members of judicial service as well as extension of service of those who, in the opinion of the High Court, have a potential for continued useful purpose, up to 60 years of age. He took us through the statutory rules which have been made from time to time and also the various rulings relied on by him. He also submitted that the object of the assessment under Rule 53 of the Rajasthan Civil Services (Pension) Rules, 1996 and in terms of the exception to the impugned Rule 56 is broadly the same, namely, to judge the fitness of the officer to be continued in service and, if not, retire him. According to Mr. Rao, both rules sub-serve public interest. He would submit that neither Rule 53 of the Pension Rules nor the exception to Rule 56 of the Rajasthan Service Rules permits continuance in office of an officer of doubtful integrity or incompetence or indolence or inefficiency. Mr. Rao, in support of his contentions, placed strong reliance on the judgments of this Court in Rajat Baran Roy and Others case (supra), Sarnam Singh and Another case (supra) and Bishwanath Prasad Singh's case (supra) and submitted that the reliance placed on the All India Judges' Association cases by the appellants for the proposition that after a judicial officer has crossed the age of 58 years, he could not be subjected to assessment of his performance and has a right to continue in service till he attained the age of 60 years is, therefore, untenable.

Mr. Rao also placed reliance on the judgment of a Division Bench of the Kerala High Court which upheld the order of retirement passed in the case of S. Paradesi Thyagarajan vs. High Court of Kerala, 1998 (2) K.L.T. 967 equivalent to 1998 (2) K.L.J. 414 and the said that the judgment has been affirmed by this Court

by its order dated 20.02.2003 in Civil Appeal No. 346 of 1999.

We have given our thoughtful consideration for the arguments advanced by the counsel appearing for the respective parties and also of the appellant in- person. We have carefully perused the relevant rules and the Minutes of the Committee dated 19.02.1999, the resolution by the Full Court and other relevant records and the judgments cited by both the sides.

All India Judges Association's case (supra) would not have had any application in the event by reason of the statutory rules the age of superannuation would have automatically been extended to 60 years. On the other hand, if by reason of the statutory rules governing the field the age of superannuation of the members of the judicial service is 58 years subject to extension of their services who, in the opinion of the High Court, would have a potential or useful purpose up to 60 years of age, the decision of this Court would apply. In the instant case, the following statutory rules have been made after the All India Judges' cases I and II:

(a) Rajasthan Civil Services (Pension) Rules, 1996. Rule 53 of the above rules which have already been extracted above permits assessment of the service record and performance of any Government Servant at any time for the purpose of retirement after completion of 25 years qualifying service or attaining the age of 50 years, whichever is earlier.
(b) Amendment to Rajasthan Service Rules by notification dated 20.02.1995 raising the age of retirement of judicial officers who have a potential for continued useful purpose to 60 years, while for others it was 58 years.
(c) Further amendment of Rajasthan Service (Amendment) Rules, 1998, notified on 27.06.1998 raising the age of retirement to 60 years for all government servants without any distinction between judicial officers and others.
(d) Rajasthan Service (Amendment) Rules, 1998, notified on 28.12.1998 to come into force w.e.f. 31.03.1999 whereby the age of retirement was reduced to 58 years with a proviso requiring all government servants who have crossed the age of 58 years to be retired on 31.03.1999, subject to the exception that in the case of judicial officers who are considered to have the potential for continued useful purpose by the High Court, the age of retirement would be 60 years while for others, it would be 58 years.

As by reason of the purported amendment in Rule 56 aforementioned, the age of superannuation has been reduced to 58 years, the decision of this Court in All India Judges Association's case (supra) would become applicable in the instant case. The following three rulings can be usefully referred to in the present context.

1. Rajat Baran Roy and Others vs. State of W.B. and Others, (1999) 4 SCC 235 at 240
It is observed in para 10 of the above judgment that the direction issued would cease to exist when appropriate rule enhancing the retirement age of the judicial officer to 60 years is made and after the directions in the 1993 case in the case of such States which had framed the rules consequent upon which the members of the subordinate judiciary in those States became entitled to continue in service till the age of 60 years, it will have to be held that the enhancement has come into force by virtue of such rules framed. In other words, the enhancement of retirement age in those States will have de hors the directions of this Court and will be subject only to the terms of the rules applicable and in such cases, the pre-retirement assessment will not be applicable unless the same is specifically provided under the rules.
2. High Court of Judicature at Allahabad through Registrar vs. Sarnam Singh and Another, (2000) 2 SCC 339 at 346.
This Court in para 13 has observed as under:
"These observations indicate that the procedure indicated by this Court for evaluating the work, performance and

conduct of Judicial Officers, before allowing them to continue in service up to 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 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 scrutiny of their service records, in accordance with the directions issued in the review petition, were found suitable for the benefit of extended service."

3. Bishwanath Prasad Singh vs. State of Bihar and Others (2001) 2 SCC 305 at 315
This Court in para 7 has observed as under:
"It is clear that this Court intended to confer a benefit on the judicial officers by the force of the judgment of this Court and to provide a mechanism for availing the benefit during the period until the State concerned amended the service rules governing the age of superannuation of judicial officers. Once rules are amended, the age of superannuation would be governed by the service rules. But so long as that was not done, the judgment of this Court in 1993 case was intended to govern the age of superannuation. Under the service rules, if amended, the right to hold the judicial office shall be a statutory right subject to satisfying the requirements, if any, contemplated by the rules. Till then, the extended age of superannuation of 60 years shall be a benefit available to judicial officers subject to their satisfying the test of suitability at the evaluation or assessment to be made by the High Courts in accordance with the judgment of the Supreme Court. Such evaluation is independent of and other than an assessment undertaken for compulsory retirement in public interest which could be resorted to earlier or later also. The abovesaid view finds support from a number of decisions rendered by this Court which may be referred to briefly.

The views which we have taken are in consonance with the decision of this Court in the cases referred to hereinbefore. Times without number this Court pointed out the difference between a judicial service and other services. Keeping in view the rigours, constraints and difficulties faced by the Judicial Officers in discharge of their duties in All India Judges' Association vs. Union of India and Others [(1992) 1 SCC 119], this Court issued a direction to all the States and the Union Territories to the effect that the age of superannuation of the judicial officers be fixed at 60 years with effect from 31.12.1992. A large number of review petitions came to be filed and in All India Judges' Association case (review case) (supra) while maintaining that the normal age of superannuation of the judicial officers would be 60 years, but it was directed that a committee appointed by the Chief Justice would review the records of the members of the judicial service with view to find out their potentiality before they attain the age of 58 years and those who, in the opinion of the High Court are not found suitable, would be made to compulsorily retire at the age of 58 years. In other words, the services of those members of the judicial service would not be extended to 60 years. It was directed :
"(b) The direction with regard to the enhancement of the superannuation age is modified as follows :
While the superannuation age of every subordinate judicial officer shall stand extended up to 60 years, the

respective High Courts should, as stated above, assess and evaluate the record of the judicial officer for his continued utility well within time before he attains the age of 58 years by following the procedure for the compulsory retirement under the Service rules applicable to him and give him the benefit of the extended superannuation age from 58 to 60 years only if he is found fit and eligible, he should be compulsorily retired on his attaining the age of 58 years.
The assessment in question should be done before the attainment of the age of 58 years even in cases where the earlier superannuation age was less than 58 years.
The assessment directed here is for evaluating the eligibility to continue in service beyond 58 years of age and is in addition to and independent of the assessment for compulsory retirement that may have to be undertaken under the relevant Service rules, at the earlier stage/s.
Since the service conditions with regard to superannuation age of the existing judicial officers is hereby changed, those judicial officers who are not desirous of availing of the benefit of the enhanced superannuation age with the condition for compulsory retirement at the age of 58 years, have the option to retire at the age of 58 years. They should exercise this option in writing before they attain the age of 57 years.
Those who do not exercise the said option before they attain the age of 57 years, would be deemed to have opted for continuing in service till the enhanced superannuation age of 60 years with the liability to compulsory retirement at the age of 58 years.
Those who have crossed the age of 57 years and those who cross the age of 58 years soon after the date of this decision will exercise their option within one month from the date of this decision. If they do not do so, they will be deemed to have opted for continuing in service till the age of 60 years. In that case, they will also be subjected to the review for compulsory retirement, if any, notwithstanding the fact that there was not enough time to undertake such review before they attained the age of 58 years. However in their case, the review should be undertaken within two months from the date of the expiry of the period given to them above for exercising their option, and if found unfit, they should be retired compulsorily according to the procedure for compulsory retirement under the Rules.
Those judicial officers who have already crossed the age of 58 years, will not be subjected to the review for compulsory retirement and will continue in service up to the extended superannuation age of 60 years since they have had no opportunity to exercise their option and no review for compulsory retirement could be undertaken in their case before they reached the age of 58 years.

Indisputably pursuant to or in furtherance of the said direction, Rules 56 and 56A of the Rajasthan Service Rules were substituted by the State of Rajasthan in terms of the notification dated 27.6.1998 in terms whereof the date of compulsory retirement (date of superannuation) of a Government servant would be the last day of the month in which he attains the age of 60 years. Rules 56 and 56A, however, were amended by a notification dated 28.12.1998 which have already been extracted above. The said rules, however, were to come into force on and from 31.03.1999.

The appellants herein were members of the Rajasthan Judicial Service. Chandra Singh (Appellant in C.A. No.5576 of 2000 and Bhanwar Lal Sharma

(Appellant in C.A. No.7441 of 2000) attained the age of 58 years on 12.3.1999 and 19.9.1998 respectively while Mata Deen Garg (Appellant in C.A. 6078 of 2000) attained the age of 58 years on or about 4.1.1999.

Thus, on 31.3.1999 all of them crossed the age of 58 years. In terms of the direction of this Court, therefore, their cases could not have been reviewed as on the said date. Despite the same, however, the Review Committee of the High Court considered the question as to whether having regard to their performance their services should be extended or not in terms of exception contained in Rule 56 aforementioned; although the amended rules had not come into force. They were found ineligible for extension of their services and recommendations were made by the Full Court of the Rajasthan High Court that they be compulsorily retired. A Government order dated 23.3.1999 retiring the appellants herein with effect from 31.3.1999 was issued which was communicated to them by the Registrar General of the High Court in terms of a letter dated 26.3.1999.

The appellants herein questioned the said order before the Rajasthan High Court. The High Court by reason of its impugned judgment upheld the validity of the said order, inter alia, holding that the High Court has the requisite jurisdiction to evaluate the performance of the appellants and come to the conclusion that the services of the appellants should not be extended from 58 to 60 years.

The contention of the appellants that the question of extending the age of superannuation till 60 years would not arise where the age of superannuation had been fixed at 60 years by the rules framed by the State and as thence existing itself is correct.

The law in this behalf has recently been laid down in High Court of Judicature at Bombay through Registrar and Another vs. Brij Mohan Gupta (Dead) through L.Rs. and Another [(2003) 2 SCC 390] in the following terms :

"Rule 10(3)(c) of the Maharashtra Civil Services (Pension) Rules, 1982 is applicable only to direct appointees from the Bar. By reason thereof, the benefit of pension has been extended to them so as to enable them to complete the minimum qualifying service of ten years subject to the outer limit of 60 years of age. The normal age of superannuation of such an officer would either be completion of ten years of service or 55 years, whichever is earlier. In that view of the matter, the respondent would have reached the age of superannuation on attaining the age of 55 years. He, however, in view of the benefit conferred in terms of Judges' case, as referred to hereinbefore, was to retire at the age of 60 years but such benefit was subject to the conditions laid down therein. Only in the event the age of superannuation of the judicial officers is 60years under the Service Rules, the question of review of his performance on attaining the age of 58 years would not arise; but when under the Service Rules applicable to the judicial officers the age of superannuation is 58 years or below, he would be entitled to the benefit of the judgment, in which event the limitations of applicability thereof would also squarely apply."

We are bound by the said decisions.

The impugned orders, therefore, could not have been passed in terms of the 'Exception' contained in Rule 56 of the Rajasthan Service Rules. Further contention of the appellants to the effect that the High Court, keeping in view the fact that amended rules were to come into force with effect from 31.3.1999, could not have initiated a proceeding, prior thereto also appears to be correct. This Court in Boppanna Venkateswaraloo and Others (supra) categorically held that the orders affecting substantive right could be made under such law only after it comes into force and not in anticipation thereof.

At this juncture, it is profitable to take note of the provision of Section 24 of the Rajasthan General Clauses Act, 1955 which is in pari materia with Section 22 of the General Clauses Act, 1897.

Section 24 of the Rajasthan General Clauses Act, 1955 reads thus :-

"24. Making of rules, etc. and issuing of orders between passing and commencement of enactments :

Where, by any Rajasthan Law, which is not to come into operation immediately on the passing thereof, a power is conferred to make rules, regulations, bye-laws or to issue orders with respect to the application of such law or with respect to the establishment of any court or office or the appointment of any judge or officer thereunder or with respect to the person by whom or the time when, or the place where or the manner in which or the fess for which any thing is to be done under such law, then that power may be exercised at any time after the passing of such law, but rules, regulations, bye-laws or orders so made or issued shall not take effect till the commencement of such law".

The said provision clearly prescribes the limit and scope of the power given to the authorities concerned as the words "with respect to" have been used therein. We are, however, unable to accept the submission of the appellants that Rule 56 is not applicable to the judicial officers at all as no other rules fixing the age of judicial officers has been placed before us. The appellants themselves have relied upon the un-amended Rule 56. The Rajasthan Service Rules, 1951 apply also to the judicial officers in terms whereof the age of superannuation had been fixed at 60 years or 58 years, as the case may be. Exception provided for in Rule 56 of the said Rules also is a pointer to the fact that the said Rules apply to the judicial officers. Unless the said rules are per se applicable, the question of making any exception to the applicability thereof would not arise. In other words, the exclusionary clause contained in the exception points out to the applicability of the rules and thus it must be held that the members of the judicial service come within the purview thereof. The contention of the appellants to the effect that the said exception runs contrary to the decisions of this Court in All India Judges Association's case (supra) is not correct. The said exception, in our opinion, has been provided in conformity with the directions contained in said decision.

This takes us to the question as to the whether the action of the High Court in making the assessment of the performance of the appellants prior to 31.3.1999 stand the scrutiny of Rule 53 of the Rajasthan Civil Service (Pension) Rules, 1996. In a given case, the said rule may be taken recourse to but the High Court never took any stand that its action was justified thereunder. Ex facie the said rule is not applicable inasmuch as it has never been the contention of the respondents that the impugned order had been passed in public interest or other pre-requisite therefor, namely, giving of three months' notice in writing to the Government servant before the date on which he is required to retire in public interest or three months' pay and allowances in lieu thereof, had been complied with. Compliance of pre-requisites of such a rule, it is well-settled, is mandatory and not directory. Such a plea has expressly been negatived by this Court. [See Rajat Baran Roy's case (supra) - paras 13 to 16]. It is fairly well-settled, that the legality or otherwise of an order passed by a statutory authority must be judged on the face thereof as the reasons contained therein cannot be supplemented by an affidavit. [See Mohinder Singh Gill and Another vs. The Chief Election Commissioner, New Delhi and Others â\200\223 (1978) 1 SCC 405] . It may be true that mentioning of a wrong provision or omission to mention the correct provision would not invalidate an order so long as the power exists under any provision of law, as was submitted by Mr. Rao. But the said principles cannot be applied in the instant case as the said provisions operate into two different fields requiring compliance of different pre-requisites. It will bear repetition to state that in terms of Rule 53 of the Pension Rules, an order for compulsory retirement can be passed only in the event the same is in public interest

and/or three months' notice or three months' pay in lieu thereof had been given. Neither of the aforementioned conditions had been complied with.

We also cannot accept the contention of Mr. Rao that in the case of Mata Deen Garg, the departmental proceedings could be kept pending despite the passing of the impugned order. The High Court had not passed any order in the departmental proceedings. It sought to invoke the jurisdiction which was conferred on the High Court and the State by reason of a statutory rule. A departmental proceeding can continue so long as the employee is in service. In the event, a disciplinary proceeding is kept pending by the employer the employee cannot be made to retire. There must exist specific provision in the pension rules in terms whereof, whole or a part of the pension can be withheld or withdrawn wherefor a proceeding has to be initiated. Furthermore, no rule has also been brought to our notice providing for continuation of such proceeding despite permitting the employee concerned to retire. In absence of such a proceeding, the High Court or the State cannot contend that the departmental proceedings against the appellant Mata Deen Garg could continue.

We have, therefore, no option but to hold that the actions on the part of the High Court or the State in compulsorily retiring the appellants herein were illegal.

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

1. State of Assam vs. Ranga Mohammed, AIR 1967 SC 903 (5 Judges)
2. Shamsher vs State of Punjab, AIR 1974 SC 2192 (7 Judges)
3. High Court of Judicature at Bombay vs. Shirish Kumar Rangrao Patil, AIR 1997 SC 2637

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

In any event, even assuming that there is some force in the contention of the appellants, this Court will be justified in following Taherakhatoon vs. Salambin Mohammad, (1999) 2 SCC 635 wherein this Court declared that even if the appellants contention is right in law having regard to the overall circumstances of the case, this Court would be justified in declining to grant relief under Article 136 while declaring the law in favour of the appellants.

Issuance of a Writ of Certiorari is a discretionary remedy. [See Champalal Binani vs. CIT, West Bengal, AIR 1970 SC 645]. The High Court and consequently this Court while exercising its extra-ordinary jurisdiction under Articles 226 or 32 of the Constitution of India may not strike down an illegal order although it would be lawful to do so. In a given case, the High Court or this Court may refuse to extend the benefit of a discretionary relief to the applicant. Furthermore, this Court exercised its discretionary jurisdiction under Article 136 of the Constitution of India which need not be exercised in a case where the impugned judgment is found to be erroneous if by reason thereof substantial justice is being done. [See S.D.S. Shipping Pvt. Ltd. vs. Jay Container Services Co. Pvt. Ltd. & Ors. [2003 (4) Supreme 44]. Such a relief can be denied, inter alia, when it would be opposed to public policy or in a case where quashing of an illegal order would revive another illegal one. This Court also in exercise of its jurisdiction under Article 142 of the Constitution of India is entitled to pass such order which will be complete justice to the parties.

We have been taken through the annual confidential reports as against the appellants. Having gone through the same, we are of the opinion that it is not a fit case where this Court should exercise its discretionary jurisdiction in favour of the appellant. This Court in Brij Mohan Gupta's case (supra) has also refused to exercise its discretionary jurisdiction in favour of the appellant although the order of

the High Court was found liable to be set aside being not in accordance with law.

This Court said that this principle applies to all kinds of appeals admitted by special leave under Article 136, irrespective of the nature of the subject-matter. So even after the appeal is admitted and special leave is granted, the appellant must show that exceptional and special circumstances exist, and that, if there is no interference, substantial and grave injustice will result and that the case has features of sufficient gravity to warrant a review of the decision appealed against on merits. So this Court may declare the law or point out the lower Courts error, still it may not interfere if special circumstances are not shown to exist and the justice of the case on facts does not require interference or if it feels the relief could be moulded in a different fashion.

The observations made in para 15-20 of the Teherakhatoon (supra) can be usefully applied to the facts and circumstances of the case on hand.

In the instant case, we are dealing with the higher judicial officers. We have already noticed the observations made by the committee of three Judges. The nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility.

In the instant case, the appellants, so retired, does not lose any part of their benefit that they have earned during their service and it involves no penal consequence and in our view the retirement is not considered prima facie and per se as punishment.

We, therefore, would although dismiss the appeals, but we would direct the High Court and the State Government to pay all retiral benefits to the appellants herein as expeditiously as possible preferably within a period of three months from the date of communication of this order. No Costs.