

PETITIONER:
STATE OF UTTAR PRADESH

Vs.

RESPONDENT:
BATUK DEO PATIL TRIPATHI & ANR.

DATE OF JUDGMENT 21/02/1978

BENCH:

ACT:

Compulsory retirement of a District Judge from service on the opinion recorded by the Administrative Committee constituted under rule 1 of Chapter III of the Rules of the Allahabad High Court, 1952 framed under Art. 225 of the Constitution, whether valid--Authorising the Administrative Committee consisting of its own judges does not amount to self--abnegation of the High Court's powers. Constitution of India, 1950, Articles 216, 225 and 235--The High Courts have the power to frame rules for regulating the manner in which the control vested in it may be exercised. Civil Service Regulations, Art. 465, 465A--Powers of Government to compulsorily retire.

HEADNOTE:

The Allahabad High Court, in exercise of powers conferred upon it by Art. 225 of the Constitution and all other powers enabling it in that behalf has framed Rules, known as the Rules of Court, 1952. Under Rule 1 of Chapter III of the Rules, an Administrative Committee composed of the Chief Justice, the Judge in the Administrative Department and five other judges appointed by the Chief Justice was constituted to act for the Court. Under Rule 7, all matters laid before the Administrative Committee and the manner in which those matters were disposed of are to be circulated in a statement to all the Judges of the Court for their information.

In one of the meetings of the Administrative Committee of the High Court which was held on January 9, 1974, it was resolved by the Committee that respondent No. 1 should be retired compulsorily from service. The Registrar of the High Court communicated the decision of that Committee to the State Government on January 15, 1974 and thereafter on January 17, 1974 circulated the minutes of the Committee's meeting to the other judges of the High Court for "their information". The Governor of U.P. accepted the recommendation of the Administrative Committee and retired respondent 1 compulsorily by an order dated February 27, 1975.

Respondent 1 assailed the said orders by an application under Art. 226, inter-alia, on the ground that "the order is illegal inasmuch as it was passed on the recommendation of the Administrative Committee, while Art. 233 of the Constitution requires consultation by the Governor with the entire High Court and not with a Committee consisting of a few Judges of the, High Court". This ground found favour with the Division Bench which heard it. But considering that such a view was likely to upset the settled practice of the Court and that it was likely to be in conflict with that Court's decision in Civil Misc. No. 1254 of 68 dt. 23-2-70.

they directed that the papers of the case be placed before the learned Chief Justice for constituting a Full Bench to consider the question "whether in view of Art. 233 of the Constitution, consultation with the entire High Court is necessary. before making an order of compulsory retirement against the District Judge ?"

The Division Bench and initially the Full Bench heard arguments on the supposition that the power to retire a District Judge compulsorily is an incident of the power of appointment contained in Art. 233(1) of the Constitution which provides that appointments of persons to be and the posting and promotion of

132

District Judge in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such state. After the Full Bench reserved its judgment this Court held in High Court of Punjab and Haryana v. State of Haryana and Ors., [1975] 3 S.C.R. 365 that compulsory retirement of a District Judge is not an incident of the power of appointments conferred by Art. 233 of the Constitution but is an incident of the control rested in the High Court by Art. 235. Consequently, the Full Bench reframed the question referred to it as "whether a District Judge can be compulsorily retired from service on the opinion recorded by the Administrative Committee constituted under Rule 1 of Chapter III of the Rules of the Court ? The Full Bench also framed an additional question viz. "Whether circulation of a statement to all the Judges of the Court showing what matters were laid before the Administrative Committee and the manner in which these matters were disposed of amounts to consultation with the Full Court ?

Asthana C.J., who presided over the Full Bench answered both the questions in the negative. K. N. Singh and C. S. P. Singh JJ. agreed by a separate judgement with the learned Chief Justice. M. N. Shukla and H. N. Seth JJ. took a contrary view and held that a District Judge can be compulsorily retired from service on the opinion recorded by the Administrative Committee. They did not consider it necessary to express any opinion on the second question. The Writ Petition was allowed according to the majority view, by the Division Bench. A consequential declaration was granted by the Bench that respondent No. 1 should be treated as continuing in service and was entitled to all the privileges pay and allowances which were permissible and payable to him under the law.

Allowing the appeal by special leave and affirming the minority judgment of the Full Bench, the Court

HELD : 1. (a) The minority view of the Full Bench that Rule 1 of Chapter III of the 1952 Rules framed by the Allahabad High Court is within the frame work of Art. 235. The recommendation made by the Administrative Committee that the respondent should be compulsorily retired does not suffer from any legal or constitutional infirmity. [145 E]

(b) The amplitude of the power conferred by Article 235, the imperative need that the High Courts must be enabled to transact their administrative business more conveniently and an awareness of the realities of the situation, particularly of the practical difficulties involved in a consideration by the whole Court, even by circulation, of every day-to-day matter pertaining to control. over the District and subordinate Courts, lead to the conclusion that by rules framed under Art. 235 of the Constitution, the High Courts ought to be conceded the power to authorise an Administrative Judge or an Administrative Committee of

Judges to act on behalf of the Court. [145 D-E]

(c) It is wrong to characterize as "delegation" the process whereby the entire High Court authorises a judge or some of the Judges of the Court to act on behalf of the whole Court. Such an authorisation effectuates the purpose of art. 235 and indeed without it the control vested in the High Courts over the subordinate Courts will tend gradually to become lax and ineffective. Administrative functions are only a part, though an important part, of the High Court's constitutional functions. Judicial functions ought to occupy and do in fact consume the best part of a Judge's time. For balancing these two-fold functions it is inevitable that the administrative duties should be left to be discharged by some on behalf of all the Judges. Judicial functions brook no such sharing of responsibilities by any instrumentality. [144 D-F]

(d) The Administrative Judge or the Administrative Committee is a mere instrumentality through which the entire Court acts for the more convenient transaction of its business, the assumed basis of the arrangement being that such instrumentalities will only act in furtherance of the broad policies evolved from time to time by the High Court as a whole. Each Judge of the High Court is

133

an integral limb of the Court. He is its alterego. It is therefore inappropriate to say that a Judge or a Committee of Judges of the High Court authorised by the Court to act on its behalf is a delegate of the Court. [144 G-H]

2. (a) The majority view of the High Court Full Bench that by leaving the decision of the question of the respondent's compulsory retirement to the Administrative Committee, the Court had abdicated its Constitutional function is not correct. [142 G-H]

(b) According to the view of the majority the act of the Court in allowing the Administrative Committee to decide that question under Rule 1 of Chapter III of the Administrative Committee to decide that question under Rule 1 of Chapter HI of the 1952 Rules is an act of "self-abnegation" and therefore, void. This approach betrays a misunderstanding of Article 235. [142-H]

(c) The ideal which inspired the provision (Art. 235) that the control over District Courts and Courts Subordinate thereto shall vest in the High Court is that those wings of the judiciary should be independent of the executive. It is in order to effectuate that high purpose that Article 235 requires that all matters relating to the subordinate judiciary including compulsory retirement and disciplinary proceedings, but excluding the imposition of punishments falling within the scope of Article 311 and the first appointments and promotions, should be dealt with and decided upon by the High Court. [142 H, 143 A-B]

High Court of Punjab & Haryana v. State of Haryana and Ors. [1975] 3 SCR 365, Shamshter Singh. v. State of Punjab, [1975] 1 SCR 814; State of Haryana v. Indra Prakash, A.I.R. [1976] S.C. 1841, Misra (B.) v. Orissa High Court, A.I.R. [1976] S.C. 1899; West Bengal v. Nripendra Nath Baghchi A.I.R. [1966] S.C. 447 referred to.

(d) There is no parallel between what the High Court did in Shamsher Singh and what has been done in the instant case. In Shamsher Singh v. State of Punjab the action of the High Court in asking State Government to depute the Director of Vigilance to, hold in inquiry against a judicial officer was deprecated by this Court as an act of "self-abnegation".

The High Court had abdicated therein its control over the subordinate judiciary, which includes the power to hold a disciplinary inquiry against a defaulting judge, by surrendering that power to the executive. That truly was an act of self-abnegation. Here, the decision to compulsorily retire the respondent was taken by the Judges of the High Court itself though not by all. If some but not all judges of the High Court participate in a decision relating to a matter which falls within the High Courts' controlling jurisdiction over subordinate courts, the High Court does not efface itself by surrendering its power to an extraneous authority. The procedure adopted by the High Court under its Rules is not subversive of the independence of the subordinate judiciary which is what Article 235 recognises and seeks to achieve. [143 C-F]

Shamsher Singh v. State of Punjab, [1975] 1 SCR 814; explained & distinguished.

3. Art. 225, it is true, preserves, inter alia the pre-constitution powers of existing High Courts to frame rules and the High Court of Allahabad did not, prior to the enactment of the Constitution, possess the power to frame rules authorising a judge or a Committee of judges of the High Court to act on behalf of the Court. But Article 225 is not the sole repository of the High Court's power to frame rules. [140 E-F]

4. The High Court has the power under Art. 235 itself to frame rules for regulating the manner in which the control vested in it may be exercised. The relevant part of Art. 235 of the Constitution provides that the control over District Courts and Courts subordinate thereto shall be vested in the High Court. Since Article 216 provides that every High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint, Article 235 has to be construed to mean that the control over District Courts and Courts subordinate thereto is vested in the entire body of

134
judges who together constitute the High Court and not in the Chief Justice as representing the High Court or a smaller body of judges acting as an Administrative Committee. [140 G-H]

5. (a) But, though the control over subordinate Courts is vested institutionally in the High Courts by Article 235, it does not follow that the High Courts have no power to prescribe the manner in which that control may in practice be exercised. In fact, the very circumstance that the power of control, which comprehends matters of a wide-ranging variety, vests in the entire body of Judges makes it imperative that rules must be framed to make the exercise of control feasible, convenient and effective. The seeds of jurisdiction to frame rules regulating the manner in which the control over subordinate Courts is to be exercised are thus to be found in the very nature of the power and in the fact that the power vests in the entire body of Judges. [140 H, 141 A-B]

(b) The power to do a thing necessarily carries with it the power to regulate the manner in which the thing may be done. It is an incident of the power itself and indeed, without it, the exercise of the power may in practice be fraught with difficulties which will frustrate, rather than further, the object of the power. It is undoubtedly true that the rules framed for prescribing the manner in which a power may be exercised have to be truly regulatory in character. The reason is that under the guise of framing rules, the essence of the power cannot be permitted to be

diluted. The abstract power of the High Court to frame the impugned rules cannot be doubted and must be conceded.

[141 B-E]

6. The power to compulsorily retire the respondent could be exercised by the Court either under Note 1 of 465A or Note 1 of article 465 of the Civil Service Regulations. [146 C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1070 of 1977.

(Appeal by special leave from the Judgment and Order dt. 18-4-77 of the Allahabad High Court in Civil Misc. Writ No. 3561 of 1975)

S. N. Kacker, Sol. General & O. P. Rana, for the Appellant.

S. N. Misra, E. C. Agrawala, M. M. L. Srivastava & U. S. Prasad for the respondent.

The Judgment of the Court was delivered by CHANDRACHUD, J.-Respondent 1, Batuk Deo Pati Tripathi, joined the Judicial Service of the State of Uttar Pradesh as a Munsif in 1943 and after intervening promotions, he was appointed as a District Judge on April 13, 1969. Under Note (1) to Article 465-A of the Civil Service Regulations, as adopted for application in Uttar Pradesh, the State Government may at any time, without assigning any reason, require any officer to retire on three months' notice or pay in lieu of whole or part thereof after he has attained the age of 50 years. Such decision is required to be taken by the Government in its Administrative Department and only if it appears to it to be in public interest to do so. Some time in 1969 the State Government requested the High Court of Allahabad, respondent 2 to this appeal, to screen cases of judicial officers in order to determine which of them should be retired compulsorily under the aforesaid provision. In one of the meetings of the Administrative Committee of the High Court which was held on January 9, 1974, it was resolved by the Committee that respondent 1 should be retired compulsorily from service. The Registrar of the High Court communicated the decision of the Administrative Committee to the State Government, appellant herein, and thereafter, he

135

circulated to all the Judges of the High Court, for their intimation, the decision taken by the Administrative Committee. The Governor of U.P. accepted the recommendation of the Administrative Committee and retired respondent 1 compulsorily by an order dated February 27, 1975.

Respondent 1 filed a writ petition under Article 226 of the Constitution against the State of Uttar Pradesh and the Allahabad High Court challenging the validity of the aforesaid order on the following grounds

(1) The order is illegal since no salary was paid to respondent 1 at the time when the order was passed;

(2) The order is really in the nature of punishment since it casts a stigma and is therefore contrary to Article 311 of the Constitution;

(3) Article 465-A of the Civil Service Regulations in so far it purports to empower the Government to consult the administrative

head of the Department before passing an order thereunder, contravenes Article 233 of the Constitution;

(4) The order was passed on irrelevant considerations since the High Court had taken into account the character roll entries of respondent 1 prior to the date when he was allowed to cross the efficiency bar;

(5) The order is arbitrary, capricious and perverse; and the satisfaction that it was in public interest to retire respondent 1 compulsorily was based on no material;

(6) The order was passed by the Governor without any application of mind since it was passed in pursuance of a general policy agreed upon between the Governor and the Chief Justice of the High Court, that recommendations of the High Court for retirement of judicial officers should be accepted without scrutiny; and

(7) The order is illegal inasmuch as it was passed on the recommendation of the Administrative Committee, while Article 233 of the Constitution requires consultation by the Governor with the entire High Court and not with a committee consisting of a few Judges of the Court.

A Division Bench of the High Court consisting of Gulati and C. S. P. Singh, JJ. rejected the first six contentions by their judgment dated December 5, 1975. On the 7th contention they were inclined to the view that Article 233 of the Constitution postulates consultation with the entire High Court and therefore the High Court in the exercise of its rule-making power cannot delegate its function to a smaller body. But considering that such a view was likely to upset the settled practice

136

of the Court and that it was likely to be in conflict with the decision in Civil Misc. Writ No. 1254 of 1968 dated February 23, 1970, they directed that the papers of the case be placed before the learned 'Mel' Justice for constituting a Full Bench to consider the question "whether in view of Article 233 of the Constitution, consultation with the entire High Court is necessary before making an order of compulsory retirement against the District Judge".

The Writ Petition was then placed for hearing before a Full Bench of the High Court consisting of five learned Judges. The Division Bench and initially the Full Bench heard arguments on the supposition that the power to retire a District Judge compulsorily is an incident of the power of appointment contained in Article 233(1) of the Constitution which provides that appointments of persons to be and the posting and promotion of District Judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. After the Full Bench reserved its judgment, this Court held in *High Court of Punjab and Haryana v. State of Haryana & Ors.*(1) that the initial appointment and initial promotion of District Judges rested with the Governor, but once they were appointed or promoted to be District Judges the entire control, over them was vested in the High Court. The power of the Governor in the matter of appointment included the power of dismissal, removal and reduction in rank but since compulsory retirement is neither dismissal, removal nor reduction in rank the power in that behalf

vest, -, in the High Court and not in the Governor. In view of the judgment of this Court referred to above and certain other judgments, it is clear that compulsory retirement of a District Judge is not an incident of the powers of appointment conferred by Article 233 of the Constitution but is an incident of the control vested in the High Court by Article 235. Consequently, the Full Bench reframed the question referred to it as follows

"Whether a District Judge can be compulsorily retired from service on the opinion recorded by the Administrative Committee constituted under rule 1 of Chapter ITT of the Rules of the Court".

The Full Bench also framed an additional question,

"Whether circulation of a statement to all the Judges of the court showing what matters were laid before the Administrative Committee and the manner in which those matter.-, were disposed of amounts to consultation with the Full Court".

Asthana, C.J., who presided over the Full Bench, answered both the questions in the negative, K. N. Singh and C. S. P. Singh, JJ., agreed by a separate judgment with the learned Chief Justice. M. N. Shukla and H. N. Seth, JJ. took a contrary view and held that a District Judge can be compulsorily retired from service on the opinion recorded by the Administrative Committee. They did not consider it necessary to express any opinion on the second question.

(1) A.I.R. 1975 S.C. 613 ; [1975] 3 S.C.R. 365.

137

The Writ Petition then went back to a Division Bench for disposal which, in accordance with the majority view, set aside the order by which respondent 1 was compulsorily retired and allowed the petition. A consequential declaration was granted by the Bench that respondent 1 should be treated as continuing in service and was entitled to all the privileges, pay and allowances which were permissible and payable to him under the law. Being aggrieved by the judgment, the State of Uttar Pradesh has filed this appeal by special leave. Since the High Court of Allahabad which was impleaded as respondent 2 to the Writ Petition had no effective contentions to make in the matter, we will for the sake of convenience refer to respondent 1 as "the respondent".

The main question for consideration is whether a District Judge can be compulsorily retired from service on the basis of the opinion recorded by the Administrative Committee constituted under rule 1 of Chapter III of the Rules of the Court. It is necessary for a determination of this question to refer to the relevant Rules of the Allahabad High Court. The High Court, to the exercise of the powers conferred upon it by Article 225 of the Constitution and all other powers enabling it in that behalf, has framed Rules known as the Rules-of Court, 1952. The relevant rules contained in Chapter III of the Rules are these

CHAPTER III

EXECUTIVE AND ADMINISTRATIVE BUSINESS OF THE COURT

1. Subject to these Rules, a Committee of Judges composed of the Chief Justice, the Judge in the Administrative Department and five other Judges to be appointed by the Chief Justice, referred to in these Rules as the Administrative Committee, shall act for the

Court. The Chief Justice shall have the charge of, and may act for the court in the Administrative Department and the executive and administrative business pertaining to the Court, except that the Judge in the Administrative Department shall have charge of, and may act for the Court in the Administrative Department and the executive and administrative business pertaining to the Courts subordinate to the Court. As far as possible, the Judge in the Administrative Department shall discharge his duties and functions in consultation with the Inspection Judges concerned, who shall be appointed by the Chief Justice from time to time.

The membership of the Committee shall be for two years except in the case of the Chief Justice and the Judge in the Administrative Department.

2. From time to time and as occasion arises the Chief Justice shall nominate one of the Judges to act as the Judge in the Administrative Department, whose terms of office shall be three years unless renominated.

10-211 SCI/78

138

3. All executive and administrative business and all business in the Administrative Department requiring orders, shall be submitted by the Registrar to the Chief Justice or the Judge in the Administrative Department, as the case may be, together with his comments thereon, if any and may, : subject to these Rules, be disposed of by that Judge'.

4. The Judge in the Administrative Department shall, before passing final orders, cause to be circulated for the information of the Judges of the Administrative Committee then present in Allahabad, his recommendations as to the appointment, promotion or suspension of judicial officers.

Should any Judge dissent from such recommendations, he shall signify his dissent and his reasons therefor in writing.

5. (1) In regard to the following matters the Judge in the Administrative Department shall consult the Administrative Committee either by circulating the papers connected with the matter together with his own opinion or recommendation thereon to the members of the Committee then present in Allahabad or by laying it before a meeting of the Administrative Committee, namely-

- (a) the issue of General Letters to subordinate courts;
- (b) the issue of directions regarding the preparation of returns and statements;
- (c) all matters of importance upon which the Government desires the opinion of the Court;
- (d) appointment of the U.P. Higher Judicial Service; and
- (e) any other matter which the Chief Justice or the Judge

in the Administrative Department may consider fit to be laid before it for consideration.

(2) Copies of all General Letters issued to subordinate courts shall be circulated to all Judges for information as soon as may be after issue.

7. As soon as the Administrative Committee has disposed of any business, a statement showing what matters were laid before the Committee and the manner in which they were disposed of shall be circulated for information to all Judges except such Judges as may be on leave.

8. On the following matters all Judges shall be consulted, namely-

(a) proposals as to legislation or changes in the law;

(b) proposals as to changes in or the issue of new Rules of Court;

139
(c) proposals as to changes in or the issue of new rules for the guidance of subordinate courts;

(d) withholding of promotion, supersession or reduction of judicial officers, not occasioned by the selection of officers for appointment to the U.P. Higher Judicial Service;

(e) important questions of policy or those affecting the powers and status of the Court;

(f) matters connected with the Supreme Court;

(g) annual administration report due for submission to Government before it is adopted by the Administrative Committee;

(h) deleted.

(i) any other matter which the Chief Justice of the Administrative Committee may consider fit to be laid before them for consideration.

12. So far as convenient, papers for circulation shall be sent by the Registrar to the Judges at Allahabad and at Lucknow in their order of seniority, commencing with the junior Judge. The Registrar shall so far as practicable, obtain from each Judge such papers within three days from the date when the same are sent to him. The Registrar shall endorse on the papers the date when they are sent to, and the date when they are received back from each Judge. It shall not be necessary to send papers to any Judge who is not for the time being in Allahabad or Lucknow.

13. When a Judge does not write his opinion within three days from the date when he receives any urgent paper sent to him for opinion, he shall be deemed to have declined to express any opinion on the matter.

14. After any papers have been circulated for opinion, they shall be submitted again, according to the subject-matter thereof, to the Chief Justice or the Judge in the Administrative Department and he may either direct that the opinion of the majority of the Judges including his own be given effect to or lay the matter for consideration before a Judges' meeting or a meeting of the Administrative Committee, as the case may be.

15. The Chief Justice may call a judges' meeting or a meeting of the Administrative Committee whenever there is business to be disposed of:

Provided (i) That a Judges' Meeting shall be

called once every three months excluding the summer vacation;

(ii) further that if a request is made to the Chief Justice by not less than 5 Judges to call a meeting such meeting shall be called within a week of the request.

140

17., The quorum necessary for the transaction of business shall be three in the case of a meeting of the Administrative Committee and seven in the case of a Judges' meeting..

18. In case of a difference of opinion at a Judges' meeting or a meeting of the Administrative Committee the decision shall be in accordance with the opinion of the majority of the Judges present, and in case the, Judges present be equally divided, the Chief Justice or in his absence the Senior Judge present shall have a casting, vote."

A question was mooted as regards the power of the High Court, to frame rules under Article 225 of the Constitution authorising a Judge or a Committee of Judges of the High Court to act on behalf of the whole court. Article 225 provides in. so far as material that the jurisdiction of any existing High Court and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court, shall be the same as immediately before the commencement of the Constitution. It is urged that Article 225 merely saves the pre-Constitution powers of High Courts in certain matters and since under the Letters Patent of the High Court of Judicature at Allahabad, the Government of India Acts of 1919 and 1935 and the U.P. High Court Amalgamation Order 1948, the High Court of Allahabad did not possess the power to frame rules authorising either a Judge or an Administrative Committee of Judges to act on behalf of the whole court, the Rules of Court framed by the High Court in 1952 are beyond its competence in so far as they authorise the Administrative Judge or the Administrative Committee to act on behalf of the court.

Article 225, it is true, preserves: inter alia the pre-Constitution. powers of existing High Courts to frame rules and it may be assumed for purposes of argument, an assumption which is largely borne out by provisions of the laws mentioned in the preceding paragraph, that the High Court of Allahabad did not, prior to the enactment of the Constitution, possess the power to frame rules authorising a Judge or a Committee of Judges of' the High Court to act on behalf of the court. But Article 225 is not the sole repository of the High Courts' power to frame rules. The relevant part of Article 235 of the Constitution provides that the control over District Courts and courts subordinate thereto shall be vested in the High Court. Since Article 216 provides that every High Court shall consist of a Chief Justice and such other Judges as the President may from time, to time deem it necessary to appoint, Article 235 has to be construed' to mean that the control over District Courts and courts subordinate thereto is vested in the entire body of Judges who together constitute the High Court and not in the Chief Justice as representing the High Court or an Administrative Judge or a smaller body of Judges acting as an Administrative Committee. But though the control over subordinate courts is vested institutionally in the High Courts by Article, 235, it does not follow that the High Courts have no power to prescribe the manner in which that control may in practice be exercised,

141

In fact, the very circumstance that the power of control, which comprehends matters of a wide-ranging variety, vests in the entire body of Judges makes it imperative that rules must be framed to make the exercise of control feasible, convenient and effective. The seeds of the jurisdiction to frame rules regulating the manner in which the control over subordinate courts is to be exercised are thus to be found in the very nature of the power and in the fact that the power vests in the entire body of Judges. The High Court has, therefore, the power under Article 235 itself to frame rules for regulating the manner in which the control vested in it may be exercised.

The power to do a thing necessarily carries with it the power to regulate the manner in which the thing may be done. It is in incident of the power itself and indeed, without it, the exercise of the power may in practice be fraught with difficulties which will frustrate, rather than further, the object of the power. It is undoubtedly true that the rules framed for prescribing the manner in which a power may be exercised have to be truly regulatory in character. The reason is that under the guise of framing rules, the essence of the power cannot be permitted to be diluted. But that is a separate matter which we will consider later. The limited object of the present discussion is to show that High Courts possess the power under Article 235 to prescribe the manner in which the control over subordinate courts vested in them by that article may be exercised. That explains why the Allahabad High Court framed Rules of 1952 not only in the exercise of power possessed by it under Article 225, but in the exercise of all other powers enabling it in that behalf. One of such powers is to be found in Article 236 itself and therefore the abstract power of the High Court to frame the impugned rules cannot be doubted and must be conceded.

We call such a power 'abstract' in order to prepare the ground for consideration of the main point involved in the appeal. The High Court may possess the power to frame rules under Article 235 and yet the rules framed by it may be bad because they are derogatory to the terms of that Article. In other words, if by Article 235 the control over subordinate courts is vested in the High Court as a whole, is it permissible to the High Court to, provide by framing a rule that a matter falling within the area of control may be decided, not by the whole court, but by a Judge or a Committee of Judges acting on behalf of the court? That is the first question which the Full Bench of the High Court formulated for its consideration.

Compulsory retirement of Judges of the District Court and subordinate courts is a matter which falls squarely within the power of control vested in the High Courts by Article 235 of the Constitution. That is clear from the decisions of this Court in High Court of Punjab and Haryana v. State of Haryana and ors.(1), Shamyher Singh v. State of Punjab(2), State of Haryana v. Indre Prakash(3)

(1) A.I.R. 1975 S.C. 613--[1975] 3 S.C.R. 365.

(2) [1975] 1 S.C.R. 814.

(3) A.I.R. 1976 S.C. 1841.

142

and B. Misra v. Orissa High Court(1). The respondent was compulsorily retired from service as a District Judge, on the recommendation of the Administrative Committee of the High Court; and it is clear from the facts and sequence of events that the other Judges of the High Court had no effective opportunity to consider the propriety or correctness of the decision of the Administrative Committee recommending to the State Government that the respondent be

retired compulsorily. The resolution of the Administrative Committee is dated January 9, 1974. The Registrar of the High Court communicated the decision of that Committee to the State Government on January 15, 1974. The Registrar circulated the minutes of the Administrative Committee's meeting of January 9 to the other Judges of the High Court on January 17, 1974. We were shown the minutes and the Registrar's letter of January 17, from which it is clear that the Judges to whom the minutes were circulated made their initials or signatures thereon in token only of the fact that they were informed of the decision of the Administrative Committee. They have neither expressed their concurrence nor their dissent which, indeed, goes to show that Rule 7 merely contemplates, what it says, that as soon as the Administrative Committee has disposed of any business, a statement showing what matters were laid before the Committee and the manner in which they were disposed of shall be circulated "for information" to all the Judges.

But the language of Rule 7 and the shape of events leave unanswered the first question whether a power vested in the Court as such can, with the considered consent of the Court itself, be exercised on its behalf by a Judge or a Committee of Judges of that very Court. The reason for referring to Rule 7 and the formal treatment which the other Judges gave to the Registrar's circular informing them of the decision taken by the Administrative Committee is to emphasize that the first question framed by the Full Bench has to be answered on the basis that the other Judges of the High Court were not consulted upon and had no occasion or opportunity to consider the justness, propriety or necessity of the decision taken by the Administrative Committee that the respondent be retired compulsorily.

Having given our close and anxious consideration to that question, we regret that we are unable to share the view of the majority of the High Court Full Bench that by leaving the decision of the question of the respondents compulsory retirement to the Administrative Committee, the Court had abdicated its constitutional function. According to the view of the majority, the act of the Court in allowing the Administrative Committee to decide that question under Rule 1 of Chapter III of the 1952 Rules is an act of "self-abnegation" and therefore void. This approach betrays, with respect, a misunderstanding of the object of Article 235. The ideal which inspired the provision that the control over District Courts and courts subordinate thereto shall vest in the High Court is that those wings of the judiciary

(1) A.I.R. 1976 S.C. 1899.

14 3

should be independent of the executive. Tracing the history of that concept, Hidayatullah, J. in *West Bengal v. Nripendra Nath Bagchi* (1) has highlighted the meaning and purpose of Article 235. It is in order to effectuate, that high purpose that Article 235, as construed by this Court in various decisions, requires that all matters relating to the subordinate judiciary including compulsory retirement and disciplinary proceedings but excluding the imposition of punishments falling within the scope of Article 311 and the first appointments and promotions should be dealt with and decided upon by the High Courts in the exercise of the control vested in them. A proper understanding and appreciation of this position will be conducive to a correct assessment of the situation under examination in the instant case. For, knowing that the object of Article 235 is to ensure the independence of an important wing of the

judiciary, the inquiry which assumes relevance is whether the procedure sanctified by the Rules of the High Court is in any manner calculated to interfere with or undermine that independence. Does that procedure involve "self-abnegation", by conceding the right of control to any outside authority? It is pertinent, while we, are on this question, to know the context in which the expression "self-abnegation" was used by this Court. In *Shamsher Singh v. State of Punjab* (supra) the action of the High Court in asking the State Government to depute the Director of Vigilance to hold an inquiry against a judicial officer was deprecated by this Court as an act of self-abnegation. The High Court abdicated its control over the subordinate judiciary, which includes the power to hold a disciplinary inquiry against a defaulting Judge, by surrendering that power to the executive. That, truly, was an act of self-abnegation. There is no parallel between what the High Court did in *Shamsher Singh* and what has been done in the instant case. Here, the decision to compulsorily retire the respondent was taken by the Judges of the High Court itself, though not by all. If some but not all Judges of the High Court participate in a decision relating to a matter which falls within the High Courts controlling jurisdiction over subordinate courts, the High Court does not efface itself by surrendering its power to an extraneous authority. The procedure adopted by the High Court under its Rules is not subversive of the independence of the subordinate judiciary, which is what Article 235 recognises and seeks to achieve. The true question then for decision is not the one by which the majority of the Full Bench felt oppressed but simply, whether the procedure prescribed by the High Court Rules is in any other manner inconsistent with the terms of Article 235 of the Constitution.

Yet another misconception may now be cleared. It is urged on behalf of the respondent by his learned counsel *Shri Misra* that under Article 216, 'High Court' means the entire body of Judges appointed to the Court and therefore, the control over the subordinate judiciary, which is vested by Article 235 in the High Court must be exercised by the whole body of Judges. The thrust of the argument is that the High Court cannot delegate its functions or power to a Judge or a smaller body of Judges of the court. This argument requires consideration the question whether any delegation as such is involved in the processes

(1) A.I.R. 1966 S.C. 447.

144

whereby a Judge or a Committee of Judges of the court, like the Administrative Committee in the instant case, is authorised by the whole court to act on behalf of the court. For answering this question it is necessary in the first place to bear in mind that the power of control over the subordinate courts which is vested in the High Court comprises such numerous matters, often involving consideration of details of the minutest nature, that if the whole High Court is required to consider every one of those matters, the exercise of control instead of becoming effective will tend to cause delay and confusion in the administration of justice in the State. A construction which will frustrate the very object of the salient provisions contained in art. 235 ought, as far as possible, to be avoided. The control vested in the High Courts by that article comprehends, according to our decisions, a large variety of matters like transfers, subsequent postings, leave, promotions other than initial promotions, imposition of minor penalties which do not fall within art. 311,

decisions regarding compulsory retirements, recommendations for imposition of major penalties which fall within art. 31 1, entries in character rolls and so forth. If every Judge is to be associated personally and directly with the decision on every one of these matters, several important matters pertaining to the High Court's administrative affairs will pile into arrears like court arrears. In fact, it is no exaggeration to say that the control will be better and more effective exercised if a smaller committee of Judges has the authority of the court to consider the manifold matters falling within the purview of art. 235. Bearing in mind therefore the nature of the power which that article confers on the High Courts, we are of the opinion that it is wrong to characterise as 'delegation' the process whereby the entire High Court authorises a judge or some of the Judges of the Court to act on behalf of the whole court. Such an authorisation effectuates the purpose of art. 235 and indeed without it the control vested in the High Court over the subordinate courts will tend gradually to become lax and ineffective. Administrative functions are only a part, though an important part, of the High Courts' constitutional functions. Judicial functions ought to occupy and do in fact consume the best part of a Judge's time. For balancing these two-fold functions it is inevitable that the administrative duties should be left to be discharged, by some on behalf of all the judges. Judicial functions brook no such sharing of responsibilities by any instrumentality.

The High Court has not by its Rules authorised any extraneous authority as in *Shamsher Singh* (supra) to do what the Constitution enables and empowers to do. The Administrative Judge or the Administrative Committee is a mere instrumentality through which the entire Court acts for the more convenient transaction of its business, the assumed basis of the arrangement being that such instrumentalities will only act in furtherance of the broad policies evolved from time to time by the High Court as a whole. Each Judge of the High Court is in integral limb of the Court. He is its alter ego. It is therefore inappropriate to say that a Judge or a Committee of Judges of the High Court authorised by the Court to act on its behalf is a delegate of the Court.

145

Since a Judge of the High Court or an Administrative Committee consisting of High Court Judges is, for the purposes of matters falling within art. 235, not a delegate of the High Court, the principle enunciated by S.A. de Smith in his famous work on *Judicial Review of Administrative Action* (3rd edn, 1973, P. 263) that a discretionary power must, in general, be exercised only by the authority to which it has been committed has no application. The various cases discussed by the learned author have arisen, as stated by him at p. 265, in diverse contexts and many of them turn upon unique points of statutory interpretation. The true position as stated by the author is :

"The maxim *delegatus non potest delegare* does not enunciate a rule known without exception; it is a rule of construction to the effect that "a discretion conferred by statute is *facie* intended to be exercised by the authority on the statute has conferred it and by no other authority, but this intention may be negated by any contrary indications found in the language, scope or object of the statute."

We have pointed out above that the amplitude of the power

conferred by art. 235, the imperative need that the High Courts must be enabled to transact their administrative business more conveniently and on awareness of the realities of the situation, particularly of the practical difficulties involved in a consideration by the whole court, even by circulation, of every day-to-day matter pertaining to control over the District and subordinate Courts, lead to the conclusion that by rules framed under art. 235 of the Constitution the High Court ought to be conceded the power to authorise an Administrative Judge or an Administrative Committee of Judges to act on behalf of the Court. Accordingly, we uphold the minority judgment of the Full Bench that rule 1 of Chapter III of the 1952 Rules framed by the Allahabad High Court is within the framework of art. 235. The recommendation made by the Administrative Committee that the respondent should be compulsorily retired cannot therefore be said to suffer from any legal or constitutional infirmity.

Learned counsel for the respondent also, argued on the other contentions involved in the remaining six issues which were decided against the respondent by the Division Bench prior to the reference made by it to the Full Bench. We see no substance in any of those contentions. 'There are no words in the order of the compulsory retirement casting any stigma on the respondent and therefore the grievance that the order is in the nature of punishment is unjustified. The statement made on behalf of the Government on matters of public policy in which it was claimed that corrupt and undesirable officials were being weeded out cannot justify the conclusion that the respondent was retired compulsorily by reason of any stain attaching to his character. Nor are we impressed by the contention that the Administrative Committee had no material before it on the basis of which it could conclude that the respondent should be retired compulsorily. We do not think that this Court would be justified in interfering in such matters with the exercise of a discretionary power which, by the Constitution, is vested in the

146

High Courts. it appears that the output of the respondent was substandard and even if the entries in his character roll prior to the time when he was allowed to cross the efficiency bar are ignored, there was enough material before the Administrative Committee to come to the conclusion to, which it did.

Shri Mishra attempted to urge that art. 465-A of the Civil Service Regulations has no application to the case by reason of the fact that the respondent was not holding any of the posts mentioned in art. 349-A and therefore. no action could be taken against him under Note 1 to art. 465-A for compulsorily retiring him. The argument does not appeal to us. But it is not necessary to consider it in any detail because a similar note is appended to art. 465 also and the application of that article is not restricted to officers mentioned in art. 349-A. Whether therefore the one or the other articles applies to the respondent, the power to compulsorily retire him could be exercised by the Government either under Note 1 of art. 465-A or Note 1 of article 465. For these reasons we allow the appeal, affirm the minority judgment of the Full Bench and uphold the validity of the order passed by the State Government compulsorily retiring the respondent. There will be no order as to costs.

S.R.

Appeal allowed.

147

JUDIS