WP(C) 1066/2001
BEFORE
THE HON'BLE MR. JUSTICE I. A. ANSARI
(1) By this common judgment and order, I propose to dispose of WP (C) Nos. 103 8 (AP)2001 1066 (AP) 2001, 174 (AP) 2000, 54 (AP) 2000, 52 (AP) 2000, 180 (AP) 2 000, 63 (AP) 2000, 181 (AP) 2000, 125 (AP)2001,877 (AP) 2001, 868 (AP) 2001,2213 (AP) 2000, 06 (AP) 2002, 367 (AP) 2002, 569 (AP) 2001,205 (AP) 2001 and 75 (AP) 2002.

(2) An employer may find it difficult to carry on financial burden of an emplo yee, but to get rid of the employee concerned, recourse to appropriate provision s of law is essential; otherwise, the action may become arbitrary and untenable in law. An employer's objective in removing the employee may be desirable, but t he recourse taken by it to a particular provision of law may, for this purpose, not be applicable and it is really for the employer to choose the ways and means , permissible in law, to get rid of the financial burden, which it has to bear i n order to maintain its work force. The present one is one of those few cases, w here the object of an employer may not be objected to, but the method adopted by the employer may not stand the scrutiny of law.

(3) In the case at hand, a number of employees are sought to be retired by the Government of Arunachal Pradesh. The recourse for this purpose has purportedly been taken to FR 56 (j). Whether this recourse, on the part of the government, to the provisions of FR 56 (j) is sustainable in law is the question, which this writ petition raises.

(4) The facts of the present set of writ petitions are, broadly speaking, alik e. In a nutshell, the case of the petitioners may be stated as follows: The Stat e of Arunachal Pradesh was a union Territory in the past and its public works de partment was administered by the Central public Works Department (hereinafter re ferred to as \the CPWD\ ). In course of time, the cpwd was replaced by State Pub lic Works Department popularly known as \the PWD\. The petitioners were initiall y appointed as work charge employees by the CPWD. Subsequently, services of the petitioners were regularized. The petitioners were initially governed by Para 23 . 01 of the CPWD manual Vol. III. According to Para 23. 01, the retirement age o f the work charge employees is 60 years subject, of course, to extension, if req uired, in public interest, but they are also liable to be retired compulsorily, in tune with the provisions of FR 56 (j), on attaining the age of 55 years. Howe ver, after their regularization, such work charge employees became regular Gover nment employees and they are to, ordinarily, retire, on superannuation, accordin g to the FR 56 (j), as adopted by the Government of Arunachal pradesh, on attain ing the age of 58 years, but they may also be compulsorily retired on attaining the age of 55 years in terms of the provisions of FR 56 (j). When the petitione rs were so working under the Public Works Department (hereinafter as \the PWD\) in the State of Arunachal Pradesh as regular employees, a Joint Engineering Depa rtmental meeting, held on 09. 05. 2002, decided, as per para d (i) of the minute s of their meeting, that \all work charge labourers be retired at the age of 55 years irrespective of their date of appointment\. In course of time, this decisi on was adopted by the State government, as its policy, in order to reduce the wo rk force engaged in the department of the PWD and for this purpose, it was decid ed that all categories of work charge employees regular as well as non-regular w ould be retired at the age of 55 years. Necessary directions, in this regard, we re accordingly issued asking the authorities concerned to retire such regular as well as non-regular work charge employees in terms of the. provisions of CPWD m anual Vol. m Para 23. 1 at the age of 55 years. The Superintending Engineers acc ordingly communicated this decision to the Executive Engineers, who, in turn, is sued instructions to the Asstt. Engineers to accordingly prepare a list of work charge employees, both regular and non-regular. In terms of this decision, a lar ge number of employees were retired at the age of 55 years. Acting on these dire ctions/instructions, the present petitioners have been served with notices infor

ming them to the effect that they would stand retired on attaining the age of 55 years. It is these notices/office orders, which are under challenge in the present writ petition.

(5) Though the State respondents have contested all these writ petitions, they have not filed affidavit in all the writ petitions, but their stand may, as reflected from the averments made in their affidavits-in-opposition as well as from the submissions made, on their behalf, at the time of hearing of these writ petitions, in a narrow compass, be put as follows: In the past, since not many contractors were available or willing to work in different remote areas in the State of Arunachal Pradesh, the CPWD and, later on, PWD, Govt. of Arunachal Pradesh, used to execute many of its schemes by deploying casual workers engaged for the purpose. Over the years, many of these casual workers were absorbed in a specified category of workmen known as \work charge\ staff. The appointment of casual workers into work charge category resulted into giving of fair amount of economic benefits to the work charge employees. Thus, while a skilled casual worker is entitled to get a monthly wages of Rs. 1300/- -per month, a work charge staff doing the same kind of job receives salary of Rs. 5000/- per month. Underclause 23. 01 of CPWD manual Vol. III, which has been followed by the Government in respect of work charge employees, a work charge employee, ordinarily, retires on attaining the age of 60 years, but by drawing analogy from the FR 56 (j), he can be retired or attaining the age of 55 years. This provisior has been invoked due to severe financial crisis faced by the PWD and also reduction in the constructional activities of the department concerned. The petitioners are not the isolated cases, where the provisions of FR 56 (j) have been resorted to, but it has been done in pursuance of the general policy of the Government to retire all the work charge, employees, regular or non-regular, on attaining the age of 55 years irrespective of their dates of appointment. A large number of work charge employees have already been retired under this policy.

(6) I have heard Mr. A. Dasgupta, learned counsel for the petitioners in WP (C) 1038 (AP)2001, 1066 (AP) 2001, 180 (AP) 2000, 174 (AP) 2000, 54 (AP) 2000, 52 (AP) 2000,63 (AP) 2000,181 (AP) 2000, 125 (AP) 2001, 172 (M) 2001, 93 (AP) 2002, Mr. A. K. Roy, learned counsel appearing on behalf of the petitioners in WP (C) No. 205 (AP)2001, Mr. R. Saikia, learned counsel, for the petitioners in WP (C) No. 569 (AP) 2001, 868 (AP) 2001, 877 (AP) 2001 and Mr. G. Ori, learned counsel appearing on behalf of the petitioner in wp (C) No. 75 (AP) 2002. I have also heard mr. B. L. Singh, learned Senior Govt. Advocate, appearing on behalf of the respondents.

(7) Mr. A. K. Dasgupta, learned counsel, has cited before me the Office Memorandum No. CEAP/em/88/82 (pt), dated 27. 09. 83, issued by the Secretary, PWD, Govt. of Arunachal pradesh. The relevant portion of this memorandum reads as follows:

\the matter regarding admissibility of CSS (Pension) Rules 1972 etc. to the permanent W/c staff of Arunachal Pradesh has been under consideration for some time past. I am directed to convey the decision of Govt. of Arunachal pradesh and to say that the W/c staff after transfer to regular establishment is to be treated as regular and shall be governed by the same rules as are applicable to Regular establishment including the date of retirement. The relevant provisions of CPWD manual Vol. III which are being made applicable be work-charged staff of CPWD are also made applicable to the W/c staff borne in arunachal Pradesh, PWD, pending finalization of manual for the Arunachal Pradesh, PWD. \
(Emphasis is added by me)

(8) From a bare reading of the above Memorandum, it is clear that a work charge employee, upon his regularization, is to be treated as a regular employee of the PWD, he stands on the same footing as does any other regular employee of the said department and he shall retire, like other regular employees of the said de

partment, on attaining the age of 58 years.

(9) It is submitted by Mr. Dasgupta that since all the petitioners are regular employees of the pwd, it is immaterial whether they were directly recruited by the department concerned as its regular employees or were absorbed by way of regularization of their services. Considered from this angle, it is immaterial, contends mr. Dasgupta, as to whether an employee, whose services have been regularized, was a work charge employee or not at the initial stage of his appointment. Apart from the fact that this position is not disputed before me by the learned sr. Govt. Advocate, since it is clear from the office Memorandum aforementioned that after his regularization, a work charge staff stands on the same footing, as does any other regular employee of the PWD, it logically follows that on his regularization, it really becomes immaterial as to whether the employee concerned was, initially, a work charge employee or not.

(10) It is also submitted by Mr. Dasgupta that since the petitioners have, now, been retired by taking resort to FR 56 (j), which makes it clear that an employee can be retired only in public interest, \the appropriate authority\, for this purpose, must form an opinion that it is in public interest to compulsorily retire the employee concerned. It is contended, on behalf of the present batch of writ petitioners, that respondents have failed to show that it is in the public interest that the decision to retire the particular employee has been resorted to. It is also contended, on behalf of the petitioners, that choosing of only work charge employees for the purpose of retiring them at the age of 55 years is wholly discriminatory as well as arbitrary inasmuch as no satisfactory reason (s) have been assigned by the State respondents for not applying the same yardstick in respect of its other regular employees. It has been further contended, on behalf of the petitioners, that the compulsory retirement can be resorted to only if an employee concerned ceases to be of any utility to the Government, but in the case at hand, the policy of retirement of work charge employee as a class is indiscriminate and the same has been resorted to without determination of the fact as to whether the employee concerned is still fit to render his services or not.

(11) it is submitted, on behalf of the petitioners, that the decision to retire an employee under FR 56 (j) can be taken only on forming of an opinion, on the basis of entire record of services of the employee concerned, that it is in the interest of public that he should not be retained in service longer than 55 years. In the case at hand, no such exercise, it is pointed out, has been carried out by the respondents concerned before ordering retirement of the petitioners.

(12) Mr. Dasgupta has also pointed out that though FR 56 (j) lays down that the appropriate authority has absolute right to retire a Govt. servant, the exercise of this absolute right cannot be arbitrary and indiscriminate. In support of this contention, Mr. Dasgupta has referred to Baldev Raj Chadha Vs. Union of India and others (AIR 1981 SC 70). Mr. Dasgupta has also refereed to Baikuntha Nath Das and another Vs. Chief Dist. Medical Officer, baripada (AIR 1992 SC 1020) to show, inter alia, as to how an opinion has to be formed by an authority, who has to exercise powers under FR 56 (j). Mr. Dasgupta has cited before me the decision in Brij Mohan Singh Vs. State of Punjab (AIR 1987 SC 948) to show as to what 'public interest', in relation to public administration under FR 56 (j), envisages and submits that this Rule envisages retention of honest and efficient employees and dispensing with the services of those, who are inefficient, dead-wood, corrupt and dishonest, but in the case at hand, reiterates Mr. Dasgupta, no exercise has been done by the authority concerned to determine further suitability of the petitioners in service. Mr. Dasgupta has also drawn my attention to the C. D. Ailawadi Vs. Union of india and others, reported in (1990) 2 SCC 328, to support his contention that the authority, who has to exercise powers under FR 56 (j), must form his opinion on the basis of the materials available and that his decision can not be based on collateral grounds nor can it be arbitrary. Refere

nce has also been made by Mr. Dasgupta to the State of U. P. Vs. Lalsa Ram, repo rted in 2001 LAB 1c. 1100 (SC) to show that it is only on fulfillment of the con ditions contained in FR 56 (j) that an employee can be prematurely retired on at taining the age of 55 years.

(13) While adopting the above submissions of Mr. Dasgupta, Mr. A K Roy has poi nted out that it is the Article 309 of the Constitution of india, which embodies the conditions of service of a Govt. employee and these conditions of service i nclude the conditions of retirement, but when FR 56 (j) is resorted to, it has t o be shown that the resort to FR 56 (j) has been taken to improve the efficiency of the department concerned and in order to prove this aspect of the matter, it must be shown that the person, who is sought to be removed, is inefficient and/ or dishonest and/or that his removal will lead to efficiency and increase in the productivity of the establishment. It is for this purpose that the service reco rd of the employee concerned, points out Mr. Roy, has to be looked into. However , in the instant case, further points out Mr. Roy, no such effort has been made and the respondents have not been able to show as to how the productivity of the PWD can be improved by removing the petitioners at the age of 55 years. For str engthening his submissions, Mr. Roy has Union of India -Vs. Col. J. N. Sinha and another, reported in 1970 (2) SCC 458, and S. Ramachandra Raju Vs. State of Ori ssa, 1994 supp (3) SCC 424.

(14) While supporting the above submissions made by Mr. Dasgupta and Mr. Roy o n behalf of the writ petitioners represented by them, mr. G. Ori has 1999 (2) GL T 407 work Charged Employees Asson Vs. State of Mizoram and Others. Mr. Ori has submitted that since the CPWD manual has been made applicable to the PWD in the State of Arunachal pradesh, no work charge employee, regular or non-regular, can be retired including the petitioners before they attain the age of 60 years and that if any such employee is required to be removed/retired, valid reasons have got to be assigned therefor.

(15) Controverting the above submissions made on behalf of the petitioners, le arned Sr. Govt. Advocate has submitted that the Govt. has decided to retire the work charge employees, whether regular or not, at the age of 55 years, because t he Government found it impossible to carry on with the financial burden of these employees and, secondly, volume of constructional activities having got reduced , the number of work charge employees has become surplus. In the context of the facts of the case at hand, contends Mr. Singh, the Government has made reasonabl e classification for applying the provisions of FR 56 (j).

(16) Before entering into the merit of the conflicting and rival submissions m ade before me on behalf of the parties, it is essential to note that when Arunac hal Pradesh was a Union Territory, it was the CPWD, which carried out the functi ons of the PWD. For the purpose of execution of constructional works associated with various projects, some persons, who may not be regular employees of the Gov ernment, were engaged by the CPWD for the purpose of completion of their constru ctional projects and these employees were commonly called as work charge employe e/staff. These work charge staffwere not maintained out of the fund of the Gover nment concerned, but were paid from the budget available for the project in whic h they were engaged. It was for them that the cpwd manual Vol. III para 23. 01 c onceived the normal age of retirement and also the age at which they may be comp ulsorily retired. As far as regular work charge employees are concerned, they ar e just like any other Govt. employee and they are governed by the provisions of FR and SR as much as any other Government employee. This position, if I may reit erate, is not, in fact, disputed before me by the learned Senior Government Advo cate.

(17) The scope and ambit of FR 56 (j) have been coming up for judicial scrutin y and interpretations from time to time before various High courts and also the Apex Court. After considering a number of its previous decisions on this subject

, the Apex Court in Baikuntha Nath Das and another (supra) has laid down as follows:

\32. The following principles emerge from the above discussion: (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour. (ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government. (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this court would not examine the matter as an appellate Court they may interfere if they are satisfied that the order is passed (a) mala fide, or (b) that it is based on no evidence, or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material in short: if it is found to be a perverse order. (iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority. (v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remakes were also taken into consideration. That circumstance by itself cannot be a basis for interference. Interference is permissible only on the grounds mentioned in (iii) above. \
(Emphasis is added by me)

(18) The purpose and object of compulsory retirement of a Government employee has been succinctly described in Brij Mohan Singh (supra) in the following words:

\the purpose and object of premature or compulsory retirement of Government employee is to weed out the inefficient, corrupt, dishonest or dead- wood from the Government service. The right of the Government is well established in accordance with relevant service Rules. The scope and ambit of exercise of this absolute power depends on the provisions of Rules and it is always object to Constitutional limitations. . . . . The public interest in relation to public administration envisages retention of honest and efficient employees in service and dispensing the services of those who are inefficient, dead-wood or corrupt and dishonest. Therefore the rule contemplates premature retirement of the inefficient, corrupt or dead-wood which would subserve the public interest. \
(Emphasis is added by me)

(19) As to who can exercise the powers to retire a Government employee under FR 56 (j)and the extent to which this power can be exercised have been dealt with and described by the Apex Court in Baldev Raj (supra) and I am tempted to quote the relevant observations, which ran as follows:

\the order to retire must be passed only by the 'appropriate authority'. That authority must form the requisite opinion-not subjective satisfaction but objective and bona fide and based on relevant material. The requisite opinion is that the retirement of the victim is 'in public interest' - not personal, political or other interest but solely governed by the interest of public service. The right to retire is not absolute, though so worded. Absolute power is anathema under our constitutional order. 'absolute' merely means wide not more. Naked and arbitrary exercise of power is bad in law. . . . . .
. . . . . .

. . . . . His first challenge to the competence of the Accountant general compulsorily to retire him because, according to the appellant, he is not the appropriate authority within the meaning of the rule. The appointing authority who actually appointed the appellant was the C. and AG. , but the A. G. retired him on the assumption that he had the requisite power. Article 311 (1) insists that a civil shall not be dismissed or removed by an authority \subordinate to that by which he was appointed\. The appellant bv parity of reasoning, argues that the a. G. being subordinate to the C. andag. . has no power to retire him. The fallacy in the argument lies in the confusion between 'dismissal' and 'compulsorily retirement'. The two cannot be equated and the constitutional bar cannot be operative. Therefore, we have to find, on an independent enquiry, as to who is the appropriate au-thority under Rule 56 (j). Under Note 1 to FR 56. the authority entitled to make substantive appointments is the appropriate authority to retire government servants under the said rules. From this Note, which is virtually a part of the rule, the respondents contend that the power of the appropriate authority in respect of Accounts Officers like the appellant has been vested in the A. G. by notification of the Ministry of Finance dated 29. 11. 1972. Since the A. G. has been clothed, from the date, with power to appoint substantively accounts Officers, he has become the appropriate authority for compulsorily retirement even though the appellant Accounts Officer had been appointed by the C. and A. G. prior to 29. 11. 1972. In the light of the note, which is part of the rule read with the notification delegating the power to the a. G. , we see no flaw in the order impugned no doubt, ordinarily the appointing authority is also the dismissing authority but the position may be different where retirement alone is ordered. There, the specific provision in the Note to FR 56 must hold good and Article 311 is not violated either. Nor is there any discrimination, as contended for, because retirement is a category different from the punishments covered by Article 311. Who is the retiring authority on a given date? this is answered by the Note, which, in substance, says that he who is empowered to appoint the Accounts Officer is also the appropri-ate authority to retire compulsorilv. on that date. In this view, we cannot nullify the retirement of the appellant for want of competence. This takes us to the meat of the matter, viz. , whether the appellant was retired because and only because it was necessary in the public interest so to do. It is an affirmative action, not a negative disposition, a positive conclusion, not a neutral attitude. It is terminal steps justify which the onus is on the Administration, not a matter where the victim must make out the contrary. Security of tenure is the condition of efficiency of service. The Administration, to be competent, must have servants who are not plagued by uncertainty about tomorrow. At the age of 50. when you have family responsibility and the somber problems of one's own life's evening, your experience, accomplishments and fullness or fitness become an asset to the Administration, if and only if you are not harried or worried by 'what will happen to me and my family? 'where will I go if cashiered' 'how will I survive when I am too old to be newly employed and too young to be superannuated? (Emphasis is supplied by me)

(20) How absolute the power under Rule 56 (j) can be regarded is expressed by the Apex court in the following words in Col. J. N. Sinha's case (supra):

\now coming to the express words of Fundamental Rules 56 (j), it says appropriate authority has the absolute right to retire a Government servant if it is of the opinion that it is in the public interest to do so. The power conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which being that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or decision is based on collateral grounds or that it is an arbitrary decision. . . . . Fundamental Rule 56 (j) holds the balance be

tween the rights of the individual Government servant and the interests of the p
ublic. While a minimum service is guaranteed to the Government servant, the Gove
rnment is given power to energize its machinery and make it more efficient by co
mpulsorily retiring those who in its opinion should not be there in public inter
est. \
(Emphasis is supplied by me)

(21) How a decision to retire a Government servant under Rule 56 (j) can be ta
ken has been described by the Apex Court in Lalsa Ram's case (supra) in the foll
owing words:

\the principles adumbrated in the decision of Baikuntha Nath's case (1992 AIR SC
W 793: air 1992 SC 920:1992 Lab I. C. 945) (supra) has been adopted by this Cour
t in the case of State of punjab Vs. Gurdas Singh, (1998) 4 SCC 92: (1998 air SC
W 1425: AIR 1998 SC 1661:1998 Labl. C 1401) wherein this Court categorically obs
erved that before the decision to retire a Government employee prematurely is ta
ken, the authorities are required to consider the whole record of service and an
y adverse entry prior to earning of promotion or crossing of efficiency bar or p
icking up higher rank is not wiped out and can be taken into consideration while
 considering the overall performance of the employee during the whole of his ten
ure of his service and the same also includes even uncommunicated adverse entry
as well. Similar also is the situation in a very recent decision of this Court i
n the case of Prabodh Sagar vs. Punjab State Electricity Board. \
(Emphasis is supplied by me)

(22) What are the grounds on which an order for compulsory retirement can be c
hallenged have been laid down by the Apex Court in C. D. Ailawadi (supra) as fol
lows:

\an aggrieved civil servant can challenge an order of compulsorily retirement on
 any of the following grounds as settled by several decisions of this Court: (i)
 that the requisite opinion has not been formed: or (ii) the decision is based o
n collateral grounds: or (iii) that it is an arbitrary decision. In Union of Ind
ia V Col. J. N. Sinha this Court held that if the civil servant is able to estab
lish that the order of compulsory retirement suffered from any of the above infi
rmities, the Court has jurisdiction to quash the same. It is not disputed that c
ompulsory retirement under Rule 56 (j) is not a punishment as it does not take a
way any of the past benefits. Chopping of the dead wood is one of important cons
iderations for invoking Rule 56 (i) of the Fundamental Rules. In the instant cas
e, on the basis of the service record, the committee formed the requisite opinio
n that the petitioner had ceased to be useful and therefore should be retired pr
ematurely. We do not think petitioner has been able to place any satisfactory ma
terial for the contention that the decision was on collateral grounds. Once the
opinion is reached on the basis of materials on record, the order cannot be trea
ted to be arbitrary. \
(Emphasis is supplied by me)

(23) What emerges from the successive judicial pronouncements of the Apex Cour
t and the position of law, which emerges from these pronouncements is thus: An o
rder forcompulsory retirement is not a punishment and it does not attach any sti
gma to the employee concerned. Security of tenure is an essential condition for
achieving efficiency in service. The power of compulsory retirement can, therefo
re, be resorted to only as an exceptional measure and not as a general rule; it
can be invoked on a \positive conclusion\ and not on a \neutral attitude\. Order
 for compulsory retirement has to be passed by an appropriate authority, the app
ropriate authority being one, which has the power to make substantive appointmen
t to the post of category of posts from which the employee is sought to be retir
ed. Though the power to compulsory retire an employee is absolute, the word 'abs
olute' has to be read as 'wide'. The recourse to compulsory retirement cannot be
 taken on personal, political or other interest, but solely in public interest,

the public interest being retention of efficient and honest employees and weedin g out of inefficient, corrupt and dishonest persons or dead wood from the Govern ment services. The order for compulsory retirement can be passed only upon formi ng of opinion that it is in the public interest to retire the Government servant concerned compulsorily and, for this purpose, his entire record of service has to be considered before the decision is taken in the matter, more importance hav ing been attached to the record of performance during the later years. The opini on, so formed, is subjective satisfaction of the authority concerned. The burden will rest with the authority to prove that the step has been taken in public in terest and the onus is not on the employee to prove the contrary. If the authori ty concerned forms, the opinion bona fide to retire the Government servant, corr ectness of that opinion can not be challenged before the Courts. While minimum s ervice tenure is granted to the Government servant, the Government is given powe r to energies its machinery and to make it more efficient by compulsory retiring those, who should not be there in the public interest. The dismissal or removal from service shall not be equated with retirement. The exercise of power of com pulsory retirement must not to be used as a haunt on public servant, but must ac t as a check and reasonable measure to ensure efficiency of service and freedom from corruption and incompetence. A Government servant can challenge an order of compulsory retirement on any of the three grounds, namely, (i) that the requisi te opinion has not been formed; or (ii) that the decision is based on collateral grounds or (iii) it is an arbitrary decision. The decision to compulsorily reti re an employee can, therefore, be taken on \positive conclusions\ reached and no t on a \neutral disposition\ or \neutral attitude\.

(24) Keeping in view the purpose and object, scope and ambit of Rule 56 (j), a s delineated by the Apex court in its various decisions cited above, when I turn to the merit of the present writ petition, what attracts my eyes, most prominen tly, is that the decision to retire the writ petitioners has not been, admittedl y, taken on the basis of the merit of the each individual petitioner; rather, th eir removal is a result of the policy decision of the Government that all work c harge employees, irrespective of the fact whether his/her services stand regular ized or not, shall be retired by taking recourse to the provisions of FR 56 (j) . Is such a policy sustainable in law?

(25) The answer to the above question is not very far to seek. It is, as corre ctly pointed out by Mr. A. K Roy, Article 309, which governs recruitment and ser vice conditions of every government servant. The proviso to Article 309, thus, p rovides for making of rules regarding recruitment and conditions of service of g overnment servants, whether the employee is in the service of the Union Governme nt or the State Government.

(26) It is not in dispute before me that Chapter IX of FR and SR governs retir ement of a govt. servant in the State of Arunachal Pradesh. According to FR 56 (a), as adopted by the State of Arunachal Pradesh, every government servant shall retire from services on the afternoon of the last day of the month in which he attains the age of 58 years, but if his date of birth is on 1 st of a month, he shall retire from services on the last day of the afternoon of the preceding mon th on attaining the age of 58 years.

(27) As far as Rule 56 (j) is concerned, it lays down as follows:

(j) Notwithstanding anything contained in this rule, the appropriate authority s hall, if it is of the opinion that it is in the public interest so to do. have t he absolute right to retire any Government servant by giving him notice of not l ess than three months in writing or three months' pay and allowances in lieu of such notice : (i) If he is, in Group 'a' or Group 'b' service or post in a subst antive, quasi-permanent or temporary capacity and had entered government service before attaining the age of 35 years, after he has attained the age of 50 years ; (ii) In any other case, after he has attained the age of fifty- five years; no

te 1 - Appropriate authority means the authority which has the power to make substantive appointment to the post of category of posts from which the work charge employee is retired or wants to retire. \
(Emphasis is supplied by me)

(28) A close analysis of FR 56 (a) read with fr 56 (j) clearly shows that ordinarily, a Government servant shall retire on attaining the age of 58 years, but he may be retired by appropriate authority on attaining the age of 55 years under FR 56 (j) if, in the opinion of the authority concerned, it is in the public interest to do. In other words, as a general rule, every Government servant shall retire only on attaining the age of 5 8 years, but it is only as a measure of exception that a Government servant may, if it is required in the public interest so to do, be compulsorily retired on attaining the age of 55 years.

(29) In the case at hand, however, what the respondents have done is to bring down/reduce, with the aid of FR56 (j), the retirement age, in general, of all the work charge employees, irrespective of the fact whether his/her services stand regularized or not, to 55 years from the normal retirement age of 58 years. Is such a drastic change, in the service condition of the employees, possible with the help of a mere policy decision? The answer to this question has to be an emphatic 'no', for, when the legislature has fixed normal retirement age of a regular work charge employee at 58 years, this statutory guarantee can not be overridden by state by an executive policy/instruction. This does not, however, mean, I may hasten to add, that the Government is powerless and cannot reduce the age of retirement of all the Government servants or of any particular class of government servants from 58 to 55 years. In fact, it was so done in the State of Andhra Pradesh way back in 1983 and the Apex Court upheld this reduction in the retirement age of the Government servants. Reference may be made in this regard to K. Nagraja and Another Vs. State of Andhra Pradesh (AIR 1985 SC 5 51).

(30) Since it is clear from what has been discussed above that the recourse to FR 56 (j)can be adopted only as an exception, the Apex court has laid down the conditions as to when, how and with what object, FR 56 (j) can be invoked. The most rudimentary condition precedent for an effective order under FR 56 (j) is that the authority, who passes the order, has to be \appropriate authority\ within the meaning of FR 56 (j), the appropriate authority being, as indicated in Baldev Raj (supra), the authority who has the power to make substantive appointment to the post of the category of posts from which the employee is sought to be retired. The other condition precedent for an effective order under FR 56 (j) is that the authority, who retires the Government servant, has to form an opinion that such retirement is necessary in the public interest, the opinion so formed being based on the scrutiny and consideration of the entire service record of the employee concerned. The opinion, which is so formed, is, according to Baikuntha Nath Das (supra), subjective satisfaction of the authority concerned. This satisfaction has to be, therefore, reached, as expressed in Baldev Raj (Supra), on \positive conclusions\ and not by adopting \a neutral attitude\. In short, the decision to retire the employee/employees concerned has to be of the authority, who is competent to so retired the employee concerned. In the case at hand, the decision to retire the petitioners has been taken by an executive policy of the Government and not by the individual appropriate authorities, within the meaning of FR 56 (j), on the basis of the service record/performance of the employee (s) concerned. It has been done, if I may borrow the words used in Baldev Raj (Supra), not on reaching \positive conclusions\ as regards the utility of the individual employee concerned, but by adopting a \neutral attitude\ that the Government policy so demands. It needs to be born in mind that a statutory right can not be taken away by an executive instruction more so, if the executive instruction causes prejudice and irreparable damage to the statutory rights guaranteed to the employee concerned.

(31) In other words, since the Government has already taken a decision to reti

re all its work charge employees, even if regularized, on attaining the age of 5 5 years irrespective of their service record and level of efficiency, exercise o f powers under Rule 56 (j) has become mechanical and arbitrary, 'which' is contr ary to the established position of law as discussed hereinabove.

(32) I may pause here to point out that apart from the fact that the Governmen t has not denied categorically that they have chosen to retire, indiscriminately , all those regular employees, who have been working as work charge employees, w hat is essential to note is that the reason assigned for compulsory retirement o f the petitioners is merely lack of fund. Even learned Sr. Govt. Advocate has ca ndidly conceded that the petitioners have not sought to be 7 etired, because of the fact that their service utility and efficiency stand reduced. No wonder, the refore, that the service record of none of these petitioners was considered befo re retiring them compulsorily. If, on consideration of the service record of the petitioners concerned, an appropriate authority had decided to retire the petit ioners from service with the object of improving the efficiency of the departmen t concerned or to energize the department concerned, the situation would have, p erhaps, been a little different.

(33) It is well settled that the provisions for compulsory retirement can be r esorted to as an exception to the general rule of retirement. Since FR 56 (j) ca n be resorted to only in exceptional cases, it is more than abundantly clear tha t without determining utility or otherwise of the present petitioners, the decis ion taken to retire them indiscriminatory is wholly against the object and spiri t of FR 56 (j)- Viewed from this angle, the impugned decisions/orders cannot be maintained.

(34) Moreover, the resort to FR 560 on the ground of financial constraints is nothing but arbitrary inasmuch as if the finance is the only reason for dispensi ng with the services of the work charge employees, the State has to justify as t o why it has not adopted the same policy in respect of its employees similarly s ituated. If the removal of the petitioner is on the ground that the efficiency o f a work charge employee gets reduced on attaining the age of 55 years, general resort to FR 56 (j) will be contrary to the established position of law inasmuch as the order of compulsory retirement of the employees has to reveal subjective satisfaction of the authority concerned about the utility of the employee, who is sought to be removed from service. In the case at hand, however, there was, a dmittedly, no exercise done to determine the level of efficiency and/or capabili ty and/or ability of the individual concerned. Hence, the impugned decision / or der suffers from arbitrariness and cannot be allowed to stand good on record.

(35) Situated thus, I am firmly of the view that the impugned orders retiring the petitioners from services on attaining the age of 55 years is illegal and no t tenable in law.

(36) In the result and for the reasons discussed above, the impugned orders re tiring the petitioners compulsorily, as reflected from the present set of writ p etitions, are hereby set aside and quashed. The petitioners shall stand reinstat ed in services with effect from the date on which they are sought to be compulso rily retired from their respective services and their services shall be treated as a continuous one without any break. It is further directed that the petitione rs shall be paid their full wages/salaries and other benefits irrespective of th e fact whether they have worked or not during the period they remained away from their services on account of the impugned orders.

(37) With the above observations and directions, these writ petitions shall st and disposed of. No order as to costs.