HIGH COURT OF JAMMU AND KASHMIR

AT SRINAGAR

SWP no.1606/2015 Date of decision: 11.11.2016

Muhammad Yousuf Bhat. v. State of J&K & ors.

Coram:
Hon'ble Mr. Justice Ali Mohammad Magrey, Judge

Appearing counsel:

For Petitioner: Petitioner in person.

For Respondents: Mr. Jehangir Iqbal, AG with
Mr. M. A. Beigh, AAG; &
Mr. Muzaffar Nabi, Advocate, Panel Lawyer.

This petition calls in question Government order no.866-GAD of 2015 dated 30.06.2015 issued by the Government in the General Administration Department, in exercise of the powers conferred by Article 226(2) of the Jammu and Kashmir Civil Service Regulations, whereby the petitioner was given notice that he, having already rendered 22 years of service, shall retire from service with effect from forenoon of 01.07.2015, allowing him three months of pay and allowances in lieu of such notice.

2. The petitioner is stated to have been initially appointed in 1990 on a Gazetted Post in the Social Welfare Department. He was inducted into Kashmir Administrative Service (KAS) in the year 2003. He is stated to have remained posted in varied administrative capacities, such as:

i) District Social Welfare Officer;
ii) Programme Officer, ICDS;
iii) Deputy Director, Social Welfare, Kashmir;
iv) Assistant Commissioner, Development; Anantnag;
v) Deputy Secretary, Housing and Urban Development Department;
vi) Chief Executive Officer, Kokernag Development Authority;
vii) Chief Executive Officer, Sonamarg Development Authority;
viii) Additional Deputy Commissioner, Anantnag;
ix) Chief Executive Officer, Pahalgam Development Authority; &
x) Secretary, State Commission for Women.

3. While the petitioner was posted as Secretary, State Commission for Women, the Government issued the impugned order, which is extracted below:

> "Whereas the Government is of opinion that it is in the public interest to do so.
>
> Now, therefore, in exercise of the powers conferred by article 226(2) of the Jammu and Kashmir Civil Services Regulations the Government hereby gives notice to Mohammad Yousuf Bhat, KAS, Secretary, State Commission for Women, that he having already rendered 22 years of service, shall retire from service w.e.f. forenoon of 01/07/2015.
>
> He is allowed three months of pay and allowances in lieu of three months notice.
>
> By order of the Government of Jammu and Kashmir."

4. The orders of premature retirement, as in the instant case, are not supposed to be speaking. However, law, as laid down by the Supreme Court from time to time, recognizes certain grounds on which a Government servant can be prematurely retired from service. These include that the government servant is inefficient or corrupt or is reputed to be so. Obviously, either of these qualities are antithesis to the concept of public services.

5. The petitioner herein, in an attempt to establish that during his service tenure he was susceptible to neither of the aforesaid discrediting and disqualifying qualities, has made detailed averments in his writ petition as to the discharge of his functions in varied capacities and the commendation certificates and/or appreciative Annual Performance Reports earned by him. On the strength of such commendation certificates, APRs/ACRs and generally his performances as a public servant in varied capacities, he has challenged the legality and constitutionality of the impugned order, approaching it by all possible

facets to demonstrate that he neither has been inefficient nor corrupt. Broadly speaking, the petitioner has pleaded that the impugned order is arbitrary, having emanated from non-application of mind and based on extraneous considerations, therefore, *mala fide*. Concomitant therewith, the petitioner has sought to repulse the notion that he had anything to do with the allegations culminating into registration of the FIRs, reference to which would be made later in this judgment.

6. The respondents have filed their reply affidavit. The reply so filed by them is divided into three sections viz., factual matrix, preliminary objections and para-wise reply. Since the reasons for prematurely retiring the petitioner have been explicatively mentioned in the factual matrix part of the reply affidavit, I think it appropriate to refer to the averments made therein.

7. The respondents have stated that in order to make the State administration effective, periodic review of all its officers is taken by the Government to encourage honest and efficient Government servants and, simultaneously, to weed out inefficient and corrupt officers from the services in public interest. In this regard, the Government by order no.17-GAD(Vig)2015 dated 20.05.2015 constituted a Committee of officers to consider the cases of the officers/officials, who had indulged in corruption or enjoyed bad reputation in public and had created impediments in delivery of services to the general public in a smooth and effective manner, for their premature retirement.

8. It is stated that the Committee considered the mandate of Article 226(2) of the Jammu and Kashmir Civil Service Regulations, 1956 (for short, CSRs) and the instructions and guidelines contained in OM no.GAD(V8g.)19-Adm/2010 dated 25.10.2010. The instructions and guidelines so framed by the Government envisage screening of the record of the employees before making recommendations for premature

retirement. The Committee held various meetings. In one of its meetings held on 11.06.2015, the Committee observed that APRs of the employees, whose cases had been placed before it, were either not available or were incomplete. The Committee finally met on 26.06.2015 considered, amongst others, the case of the petitioner and observed that he did not enjoy good reputation in the public due to his consistent conduct over a period of time.

9. It is stated that the Committee noticed that the petitioner in his capacity as Assistant Commissioner, Development, Anantnag, was found to have released funds to the tune of Rs.20 lacs to three Block Development Officers (BDO) of Anantnag District on pick and choose basis, without ascertaining whether the electrification works were executed by them. In the process an amount of Rs.7 lacs was released to BDO, Kulgam; Rs.6.70 lacs to BDO, Dachnipora; and Rs.5.60 lacs to BDO, Pahloo. The amounts so released were fully withdrawn by these BDOs. It is stated that the electrification works were actually being executed through Rural Electrification Wing of R&B, Anantnag, as per typical estimates which covered all expenses for electrification works by Self Help Groups. The petitioner knew this thing, yet, under a well thought out plan, he facilitated drawal of Rs.12 lacs for effecting purchase of electric items for installation in Panchayat Ghars, which otherwise were covered under typical estimates. According to the respondents, the cost of material procured and subsequently distributed among various BDOs was assessed by the engineering experts to be of the value of Rs.4.98 lacs against which an amount of Rs.11.98 lacs were released. It is alleged that these acts of facilitating drawal and release of funds against purchase of substandard material by the petitioner caused a loss to the State exchequer. In this connection, it is averred, a case under FIR no.18/2005 at Police Station Vigilance Organization, Kashmir,

(VOK) was registered against the petitioner. It is further pleaded that after completion of investigation in the case, the competent authority, vide Government order no.36-GAD (Vig.) of 2012 dated 05.10.2012, accorded sanction to prosecute the petitioner. However, it is stated that there is an interim order of stay dated 16.07.2008 operating against production of charge sheet before the court of law, passed by this Court in a writ petition, OWP no.573/2008, CMP no.1148/2008, titled Ghulam Nabi Ganai & others v. State of J&K & others.

10. The Committee is also stated to have considered that another FIR no.41/2003 under Section 5(1)(d) read with Section 5(2) of the J&K Prevention of Corruption Act, Svt., 2006 and Section 120-B RPC had been registered at VOK against the petitioner for making illegal appointments of his two brothers in the Social Welfare Department. The Vigilance Organization recommended prosecution against the petitioner. Simultaneously, departmental action was initiated against the petitioner in that matter wherein the enquiry officer concluded that the conduct of the petitioner in connection with the illegal appointments had not been upto the mark. The petitioner was awarded warning by the General Administration Department vide communication dated 06.07.2012. It is stated that the petitioner subsequently filed a petition before this Court on the basis of departmental enquiry report and obtained orders of quashing of the prosecution sanction against him in the aforesaid FIR no.41/2003.

11. It is also stated by the respondents that the Committee also observed that the Annual Confidential Reports (ACRs) of the petitioner for the period in which the FIRs were registered were not available.

12. According to the respondents, the Committee, having regard to the above persistent conduct of the petitioner and taking note of the material placed before it, came to the conclusion that the petitioner had indulged in corrupt practices, misappropriated Government money during his

service and thereby outlived his utility to the public, and recommended his retirement in public interest under Article 226(2) of the CSRs. The recommendations so made were accepted by the competent authority which culminated into issuance of the impugned order.

13. It is pleaded that the impugned order as such is legal and in accordance with law, and that it has been issued after complying with all legal formalities.

14. The petitioner also filed a rejoinder affidavit. Therein he has made detailed submissions, categorically refuting the allegation of him having ever indulged in corrupt practices or having caused loss to the State exchequer or having earned the reputation of being a corrupt public servant in the eyes of public. It is stated in the rejoinder affidavit that the sanction to prosecute accorded by the Government in FIR no.18/2005 was challenged in SWP no.2426/2014 on the basis of the documents / communications / material which had come into existence by exchange between different governmental authorities, clearly establishing that the petitioner had been falsely implicated in the said case and was picked up for extraneous reasons. The petitioner has placed on record of the rejoinder-affidavit many documents to substantiate his allegation of *mala fides*, reference whereto will be made later in this judgment.

15. I heard learned counsel for the parties, perused the material placed before the Court and considered the matter.

16. The petitioner on 20.08.2016 submitted written arguments on his behalf, copy whereof was furnished to the appearing learned State counsel on the very same day to enable him to make his submissions. Thereafter, the case came up before the Court on 17.09.2016, 30.09.2016 and 18.10.2016 and the arguments were finally concluded.

17. In their arguments, both sides mostly reiterated the factual versions and the grounds taken by them in their respective pleadings. Both parties attempted to cover the whole spectrum of grounds on the basis of which a government servant can be prematurely retired from service.

18. The petitioner in his written arguments has cited and relied upon the following judgments:

i) ***S. Ramachandra Raju v State of Orissa***, AIR 1995 SC 111;

ii) ***Baldev Raj Chadda v. Union of India***, AIR 1981 SC 70;

iii) ***Ram Eqbal Sharma v. State***, AIR 1990 SC 1368; ???????

iv) ***Baikuntha Nath Das v Chief Distt. Medical Officer***, AIR 1992 SC 1020;

v) ***Swaran Singh Chand v. Punjab Electricity Board***, 2009 (13) SCC 758;

vi) ***Ishwar Chand Jain v. State***, AIR 1999 SC 1677. ???????

19. On the other hand, the learned Advocate General cited and relied upon the following judgments with particular reference to the paragraphs mentioned against each:

i) ***Union of India v. M. E. Reddy***, (1980) 2 SCC 15 [paras 7 to 19, 22 & 23];

ii) ***Baikuntha Nath Das v Chief Distt. Medical Officer***, (1992) 2 SCC 299 [para 31];

iii) ***Posts and Telegraphs Board v. C. S. N. Murthy***, (1992) 2 SCC 317 [para 3] ;

iv) ***Jugal Chandra Saikia v State of Assam***, (2003) 4 SCC 59 [paras 5, 6 and 10];

v) ***M. L. Binjolkar v State of M. P***., (2005) 6 SCC 224 [para 5];

vi) ***Rajasthan State Road Transport Corp. v. Babu Lal Jangir***, AIR 2014 SC 142 [paras 8, 9, 12, 15, 16, 17 18, 20, 21 & 28];

vii) ***Shakti Kumar Gupta v. State of J&K***, AIR 2016 SC 832 [para 14];

viii) ***Kapoor Chand v. State of J&K***, 2013(II) SLJ 516;

20. However, the reply filed by the respondents has narrowed down the scope of examining the legality of the impugned order through a broader aperture, inasmuch they have minimized the reasons which culminated into passing of the impugned order. Concisely the reason disclosed is that the Committee, on the basis of the registration of above two FIRs against the petitioner, concluded that he was corrupt, had misappropriated Government money and had earned a bad reputation.

21. Apart from the reply of the respondents to the above effect, the photocopies of the recommendations made by the Committee against the petitioner and other records on the basis of which the same were made, produced before the Court as the original record on behalf of the respondents, also demonstrate that the Committee has formulated the said recommendations merely influenced by the registration of such FIRs. No doubt that they have made a passing reference therein to the non-availability of the APRs of the petitioner during the years to which the FIRs pertained, but have not said anything about what was reflected from the record of APRs as were available.

22. Above being the position, in my view, it would be unnecessary to refer to and record all the arguments of the parties; it would be appropriate to restrict the mention of arguments and to deal with only such grounds as relate to the registration of the FIRs and their implication. But before that, it would be appropriate to refer to the guidelines framed by the Government referred to and relied upon by the respondents.

23. As per their own showing, the respondents, i.e., the Government, have vide OM no.GAD(Vig.)19-Adm/2010 dated 25.10.2010 framed and formulated guidelines to be followed while making any recommendations for premature retirements. The said Office

Memorandum has been issued under the signatures of Special Secretary to Government, General Administration Department, and endorsed to all Administrative Secretaries to Government. It reads as under:

> "Government of Jammu and Kashmir,
> General Administration Department.
>
> Subject: Encouraging honest and weeding out of the corrupt, non-performing and inefficient officers/officials from Government service.
>
> The undersigned to (*sic*) directed to invite attention of all Administrative Secretaries to Government order No.62-GAD(Vig) of 2010 dated 1`2.10.2010 under which a Committee has been constituted under the chairmanship of Chief Secretary to make necessary recommendations with a view to encouraging honest and to weed out the corrupt, non-performing and inefficient officers/officials. While making any recommendations for premature retirements, the entire service record of employees is required to be screened. These would include the following documents:-
>
> (a) APR folder of the Government employee with particular reference to the entries in the APRs for the last five years;
>
> (b) details about any promotions given in favour of the employee in the last three to five years;
>
> (c) number and nature of complaints, if any, received by the parent Department/office of the employee or the State Vigilance Organization against the official;
>
> (d) enquiries if any conducted by the State Vigilance Organization or by the Department concerned and the outcome thereof;
>
> (e) cases if any registered / investigated by the State Vigilance Organization, nature of the allegation and the outcome of the investigation;
>
> (f) adverse reports, if any, received by the CID about the reputation of the official and the gist of such reports supported by evidence;
>
> (g) (missing)
>
> (h) gist of irregularities committed by the employee, like in the matter of appointments, etc. supported by documents;

(i) brief mention about failure, if any, in achieving the targets set out for him by the Government / Department with supportive details; and

(j) warning and censures issued to the employee.

All Administrative Secretaries are requested to kindly forward to the GD, the names of officers/officials both who have outlived their utility in service by 15th November, 2010 for consideration by the Committee, supported by such of the documents referred to above as are relevant in each case."

24. On a bare perusal of the aforesaid guidelines, it becomes plain that while making any recommendations for premature retirement, the entire service record of an employee is required to be screened. This is the mandate of the guidelines so framed and issued by the Government for compliance by the Administrative Secretaries. Obviously, the guidelines inherently bear the spirit of the law laid down by the Supreme Court, in that context, from time to time. The Committee constituted by the Government under the chairmanship of the Chief Secretary, which has dealt with the case of the petitioner, is not immune from such guidelines or their mandate. It has also to be borne in mind that the documents/details specifically mentioned in the aforesaid guidelines in sub-paras (a) to (j) quoted above are only inclusive, not exhaustive.

25. The very first clause of the guidelines speaks of taking into account the APRs of the employee concerned with particular reference to the entries in the APRs for the last five years. That means, the Committee was specifically obliged to consider and take into account the APRs/ACRs of the petitioner for the years 2014-15, 2013-14, 2012-13, 2011-2012 and 2010-2011. The recommendations in the instant case were made by the Committee pursuant to deliberations held by it on 21.05.2015, 11.06.2015 and 26.06.2015, but there is nothing coming forth from the record that the Committee on any of these days examined

the entire service record of the petitioner in the shape of ACRs/APRs or even of the last five years, considered the entries recorded therein or took the same into account to come to the subjective satisfaction as ultimately recorded and recommended by it. The photocopies of the records produced on behalf of the respondents reveals that but for the papers concerning or relating to the two FIRs, nothing was placed before the Committee, or considered by it. This fact is also borne out by the contents of the recommendations made by the Committee that it did not take the entries recorded in the ACRs of the petitioner into consideration, for, there is no mention about the same therein.

26. Besides, in paragraph 3 of their recommendations, the Committee has recorded that “it was observed that the Annual Confidential Reports (ACRs) of the officer for the period in which FIR was registered are not available”. It may be mentioned here that the first FIR no.41/2003, as is apparent, admittedly, was registered in the year 2003 i.e. during the reporting year 2002-2003 or 2003-2004. Going by the statement made by the Committee in the recommendations, it would mean that the petitioner’s ACRs for the said two years 2002-2003 and 2003-2004 were not available with the Committee. The petitioner has placed on record, photocopies of his ACRs for some of the years, which include the ACRs for the above two years 2002-2003 and 2003-2004. This by itself establishes that ACRs of the petitioner for the years 2002-2003 and 2003-2004, during which FIR no.41/2003 was registered, were readily available with the Government and/or the Committee. If the same were not available with the Committee, then that would mean that the Government did not place the same before the Committee. In any case, the statement made by the Committee in its recommendations and the stand taken by the respondents before the Court in their reply in this regard is, therefore, wholly belied as untrue. This fact, therefore, lends

credence to the grievance and claim of the petitioner that the Committee did not take into account the entries made in his ACRs, which constituted his record of service. Apart from that, once the recommendation containing the satisfaction of the Committee is founded on a wrong statement, the impugned order emanating therefrom cannot be sustained. Reference to the entries made in the petitioner's ACRs for the years 2002-2003 and 2003-2004 would be made later in this judgment.

27. Furthermore, it is not the case of the Committee, or that of the respondents, that apart from the ACRs of the petitioner pertaining to the years in which the two FIRs had been registered, his other ACRs, especially those relating to the last five years as on the relevant date, were also not available or that, though available, they contained adverse entries reflecting his poor, inefficient, degraded performance, and/or corrupt reputation. There is not even a whisper made in the recommendations of the Committee about the other ACRs of the petitioner. The only inference legally available to the Court is that either the Government did not place the ACRs of the petitioner before the Committee or that the Committee failed to examine and take note of the entries made therein; meaning thereby that the Committee did not consider and take into account the petitioner's record of service. When such is the situation, the law laid down by the Supreme Court is replete, that the order of premature retirement would not sustain. Reference in this connection may be made to the judgment of the Supreme Court in ***S. Ramachandraraju v. State of Orissa*** (supra). Therein, the appellant before the Supreme Court was compulsorily retired from service. The appellant challenged the said order before the Administrative Tribunal which dismissed the petition. The question before the Supreme Court was whether the government, while exercising its power of compulsorily retiring the appellant under Rule 71(a) of Orissaa Service Code and GA

Department Circular No.30495/GA dated 24.11.1987 had exercised its power in the public interest and the order was legal? It was contended in the counter-affidavit filed before the Supreme Court as well as in the Tribunal that the sole foundation for the exercise of the power of retiring the appellant compulsorily from service was the 'gross adverse remarks for the period 1.4.1987 to 29.2.1988' and the recommendation of the Review Committee. The Supreme Court, relying on its earlier decisions in *Shyam Lal v. State of UP*, (1955) ISCR 26 : AIR 1954 SC 369; *Union of India v. J. N. Sinha*, (1971) 1SCR 791 : AIR 1971 SC 40; *B. R. Chadha v. Union of India*, (1980) 4 SCC 321; and *Baikuntha Nath Das v. Chief District Medical Officer*, (1992) 2 SCC, laid down as under:

> "9. It is thus settled law that though the order of compulsory retirement is not a punishment and the government employee is entitled to draw all retiral benefits including pension, the government must exercise its power only in the public interest to effectuate the efficiency of the service. The deadwood need to be removed to augment efficiency; integrity in public service need to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence. The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace in public service and injurious to public interest. The entire service record of character rolls or confidential reports maintained would furnish the back drop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone, the government should form the opinion that the government officer needs to be compulsorily retired from service. Therefore, the entire service record, more particularly the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a government officer. When an officer reaches the age of compulsory retirement, as was pointed out

> by this Court, he could neither seek alternative appointment nor meet the family burdens with the pension or other benefits he gets and thereby he would be subjected to great hardship and family would be greatly affected. Therefore, before exercising the power, the competent appropriate authority must weigh pros and cons and balance the public interest as against the individual interest. On total evaluation of the entire record of service, if the Government or the governmental authority forms the opinion that in the public interest the officer needs to be retired compulsorily, the court may not interfere with the exercise of such bona fide exercise of power but the court has power and duty to exercise the power of judicial review not as a court of appeal but in exercise of its judicial review to consider whether the power has been properly exercised or is arbitrary or vitiated either by mala fide or actuated by extraneous consideration or arbitrary in retiring the government officer compulsorily from service."

The Committee in the instant case, as elaborated above did not consider the entire service record, i.e., ACRs/APRs, of the petitioner. The whole exercise is, therefore, rendered arbitrary, on account of non-application of mind on the part of the Committee.

28. At this state, I deem it appropriate to refer to the remarks recorded / entries made in the two ACRs of the petitioner for the years 2002-2003 and 2003-2004. In his ACR for the year 2002-2003, the following remarks have been recorded:

> Remarks of the Initiating Officer:
>
> "The official is capable and the end results has shown his innovative skills"
>
> Remarks of the Reporting Officer / Ist Reviewing Officer:
>
> "Yes, the official possesses a capacity to serve the people to the core of his heart and deliver goods thereof. Dedicated to his duties".
>
> Remarks of the II Reviewing Officer:
>
> "I agree with the assessment of both the Initiating Officer as well as the first reviewing officer. The officer is a go-getter and result oriented officer. I would rate him outstanding so far his work is concerned."

As regards the integrity column of the aforesaid ACR, it is recorded therein by the Initiating Officer “nothing adverse came to my notice” and this remark has not been altered by any of the foresaid officers.

29. In his ACR for the year 2003-2004, in the integrity column the remark “noting adverse reported” is repeated. The overall assessment of the officer with reference to his strength and shortcomings is recorded as under:

> “An asset for Govt. and various organizations. Very resourceful and hardworking”.

The first reviewing authority has recorded, “a good officer in field” and the second reviewing authority has recorded “I agree”.

30. From a bare reading of the above entries made in the ACRs of the petitioner for the years 2002-2003 and 2003-2004, it is established beyond doubt that there was nothing adverse about the petitioner’s performance, conduct or reputation for integrity reported, recorded or rumoured either in the reporting year 2002-2003 or 2003-2004. In fact, in the ACR for the year 2002-2003 his performance has been rated to be “Outstanding”. The respondents have not disputed the genuineness of these two ACRs/APRs placed on record by the petitioner. The Committee has recorded that these were not available. Obviously, therefore, the Court is constrained to say, at the cost of repetition, that the Committee has not considered or taken into account these ACRs of the petitioner for arriving at their subjective satisfaction. So is the case with other ACRs of the petitioner as well. It is, therefore, inferable that had the Committee considered and taken into account the entries recorded in the petitioner’s ACRs, be those pertaining to the aforesaid two ACRs, last five years or the entire service period, they would definitely not have recorded the satisfaction against the petitioner and made the recommendation to retire

him prematurely. In any case, the satisfaction arrived at or recorded by the Committee is not supported by the entries made in the petitioner's ACRs constituting his record of service. An order of premature retirement which is passed without considering and taking into account the entire record of service of an employee, especially his APRs/ACRs, and is not supported by the same, cannot withstand the scrutiny of law.

31. What is astonishing is that the Committee has taken note of the fact that the sanction to prosecute the accused in FIR no.41/2003 stood quashed, yet they have proceeded to found their recommendations thereon. It may be mentioned here that the Supreme Court in ***Mohd. Iqbal Ahmad v. State of Andhera Pradesh***, AIR 1979 SC 677, has held that sanction lifts the bar for prosecution; it is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government Servants against frivolous prosecution. Furthermore, the Supreme Court in ***Mansukhlal Vithaldas Chauhan v. State of Gujarat,*** AIR 1997 SC 3400, laid down that normally when a sanction order is quashed, the case is remitted back to the authority for reconsideration of the matter and to pass a fresh order of sanction in accordance with law. In the instant case, the Government has not taken any further steps thereafter. Therefore, when the Government remains content with quashing of the sanction order and does not take any further steps/course legally available to prosecute the accused in a court of law, the allegations underlying the FIR cannot be used against the government servant for retiring him prematurely as the same would tantamount to penalizing him without recourse to due process of law.

32. Here, in the instant case, quashing of the sanction by the Court and the inaction, thereafter, by the Government in that regard adds a degree more to its cruciality to discredit the foundational allegations of the FIR, which is also depicted by communication no.GAD(Vig)78-SP/2006 dated

06.07.2012 sent to the petitioner by the Secretary to Government General Administration Department, issuing a warning to him. The said communication is quoted hereunder:

> "Subject: Warning.
>
> The State Vigilance Organization had registered an FIR No.41/2003 P/SVOK among others against you under Section 5(1)(d) r/w Section 5(2) of J&K Prevention of Corruption Act, Samvat 2006 and Section 120-B RPC for your alleged involvement in the illegal appointment of your two brothers and recommended the case to this Department for sanction of prosecution against you.
>
> In consultations with the Department of Law, Justice and Parliamentary Affairs, vide OM No.GAD(Vig)78-SP/2006 dated 22.05.2008 the then Commissioner / Secretary to Government, ARI & Training Department was appointed as Inquiry Officer to conduct an enquiry in the matter. The then Commissioner/Secretary to Government, ARI & Training Department (Inquiry Officer) concluded the case with the observations that the conduct of the officers had not been upto the mark in connection with these illegal appointments.
>
> The Government accorded prosecution sanction against you vide Government Order No.44-GAD(Vig) of 2009 dated 07.09.2009 which was subsequently quashed by the Hon'ble High Court on 11.12.2010 in OWP no.854/2009 titled Mohammad Yousuf Bhat vs State and (of) J&K and others and it was decided not to file an appeal against the aforementioned judgment of the Hon'ble High Court.
>
> However, when the case was further examined in the General Administration Department, it was noticed that the illegal appointment of your two brothers, would indeed cast a shadow at least in public perception, about your possible role as a civil servant. While it has been decided not to pursue the matter further departmentally, you are counseled and warned to remain careful and to maintain higher standard of probity in your conduct as a civil servant."

It transpires from the aforesaid communication dated 06.07.2012 addressed to the petitioner that when the Vigilance Organization referred the matter to the Government in the General Administration Department

for grant of sanction to prosecute the accused involved in the case, the General Administration Department before accord of the requisite sanction required Commissioner/Secretary to Government, ARI & Training Department to hold an enquiry into the allegations. The said Officer reported his observations that the conduct of the officers in connection with the illegal appointments had not been upto the mark. Thereafter, the Government accorded sanction for prosecuting the accused in the case. However, the said sanction was quashed by the High Court. And the Government decided not to file any appeal against the said judgment of the Court. Not only that, the Government also decided not to proceed any further departmentally, meaning thereby it decided against taking any further steps to reconsider the case for accord of a fresh sanction for prosecuting the petitioner and, in fact, no such step was taken. Instead, the Government not only felt it adequate, sufficient and commensurate with the allegations on the basis of which the said FIR had been registered, to remain content with counseling the petitioner on the lines mentioned in the communication. The communication also makes it out that it was not that there was any public perception about the conduct of the petitioner, but the Government thought that there was likelihood of the shadow of such a perception being cast about the possible role of the petitioner in the alleged act. Once the Sanction to prosecute the accused named in the FIR was quashed by the High Court, the Government decided against taking any further steps either by challenging the order of the Court in any higher forum and reconsidering the matter and, at the top of it, counselled the petitioner after holding some enquiry into the allegations, it would be unjust and unfair on the part of the Committee to proceed to rake over such allegations and rely thereon to recommend action against the petitioner in exercise of the powers under Article 226(2) of the CSRs.

33. In juxtaposition to the above, it would also apt to mention here that apart from the ACRs/APRs for the years 2002-2003 and 2003-2004, the petitioner has also placed on record photocopies of his ACRs for the years 1995-1996 (Annexure N to the writ petition); 2006-2007 (Annexure V to the writ petition); 2009-2010 (Annexure W to the writ petition); 2011-2012 (Annexure X to the writ petition); 2012-2013 (Annexure R-9 to the rejoinder); and 2014-2015 (Annexure Z to the writ petition). There is not a single adverse remark recorded in these ACRs; instead, these ACRs speak high of the conduct and efficiency of the petitioner. Curiously, there no mention made in his ACR for the reporting year 2012-13 about issuance of the aforesaid warning to the petitioner, which is said to have been communicated to him on 06.07.2012 and, therefore, would have a bearing only during that year. Contrary to that, in the said ACR for the year 2012-13, against the integrity column, “nothing adverse proved” is the remark entered. Besides, the petitioner has been described as “a very good officer” and rated as “very good” by none other than the Commissioner/Secretary to Government, Tourism and Culture Department. The said remarks recorded in the ACR have not been refuted, negated or reversed by the accepting authority, i.e., the Minister, Urban Development and Land Reforms, J&K. The Committee has not made mention of any of these ACRs or the entries made therein in its recommendations; meaning thereby the same were not taken into account. That fact will have its impact on the legality of the recommendations made by them and consequently, the impugned order.

34. Apart from the above, the petitioner has placed on record photocopies of three Certificates of Appreciation issued to him by Chief Executive Officer, Shri Amarnathji Shrine Board, conveying to him the deep appreciations or Shri N. N. Vohra, Chairman, Shri Amarnathji Shrine Board (H. E. the Governor, J&K) for the valuable services

rendered by the petitioner in his capacity as Chief Executive Officer, Sonamarg Development Authority; Additional Deputy Commissioner, Anantnag; and Chief Executive Officer, Pahalgam Development Authority, respectively, during Yatra sessions 2012, 2013, 2014. These certificate too have been lost sight of by the Committee.

35. Now, coming to the other case, FIR no.18/2005 registered at Police Station, VOK, against the petitioner. Admittedly, there has been a stay operating in relation thereto since 16.07.2008, granted by the High Court in OWP no.573/2008, as a result the criminal proceedings have not yet begun. The respondents seem to have not taken any steps, muchless effective steps, during the past eight years to get the ad interim stay order vacated or to get the writ petition decided, so as to ensure commencement of the prosecution and completion of the trial against the accused in the case. They have instead chosen to scuttle such steps and circumvent the process of law by using the allegations levelled in the FIR to cut short the service tenure of the petitioner.

36. The petitioner has also placed on record of the rejoinder affidavit certain documents to show that he had been falsely implicated in the aforesaid FIR. Reference in this connection may be made to the following comments made in the communication no.GAD(Vig)-04-SP/2008-II dated 14.10.2008 written by Deputy Secretary to Government, General Administration Department, to the Commissioner of Vigilance, J&K, Srinagar:

> "I am directed to refer to your letters No.SVOI-FIR-18/2005-K-575-76 dt: 15.01.2008 & SVO-FIR-19/2005-K-577-78 dt: 15.01.2008 regarding subject cited above and to say that Final Investigation Reports submitted by Vigilance Organization in aforementioned cases were referred to Law Deptt for their legal opinion which has been obtained and reads as under:

> ‘There are two impediments in granting sanction for prosecution against the accused persons as sought by the Vigilance Organization. Firstly, the two Committees constituted by Director Rural Development Kashmir for physical verification of various items used for electrification of Panchayat Ghars have reported that electrification has been completed and they did not mention anything about the quality of items used in such electrification. The third Committee constituted by the government vide G. O. No.1456-GAD of 2005 in order to verify the findings of the committees constituted by Director Rural Development has also found that the number of electrification items used correspond to the numbers mentioned in the statement by the above said two committees. The second impediment is the case pending before the State Accountability Commission. Though the said complaint has been stayed by the Hon’ble High Court, yet it would be advisable to avoid duplicity of actions in the matter.’
>
> In view of these factors, it would be advisable for the department to go for departmental inquiry instead of criminal prosecution.”

The allegations on which the aforesaid FIR had been registered, which also constitute the sheetanchor of the opinion framed by the Committee and their consequent recommendations against the petitioner and are vehemently put forward by the respondents in their reply-affidavit are contradicted and belied by the concerned and competent authorities of the Government on the basis of record. Apart from that vital fact, when a criminal case alleging corruption against a Government servant is pending adjudication and the allegations are yet to be proved, the law laid down by the Supreme Court is clear and loud that such allegations cannot be used to prematurely retire the Government servant. Reference in this connection may be made to the decision of the Supreme Court in ***State of Gujarat v. Suryakant Chunilal Shah,*** (1999) 1 SCC 529 : 1998 Legal

Eagle (SC) 114. The respondent therein was appointed as a Clerk in the office of Food Controller, Ahmedabad, and after about twenty-one years of service, he was promoted as an Assistant Food Controller (Class II) in the office of Food Controller, Ahmedabad. In 1983 certain complaints were received against him regarding permits for cement having been issued illegally by him and, therefore, he was placed under suspension and an enquiry by the State CID was ordered into the matter of issuance of bogus cement permits. On receipt of the CID enquiry report, which *prima facie* made out a case of issuing cement permits to bogus institutions, a first information report under various sections of IPC read with the provisions of Prevention of Corruption Act was filed against the respondent. Another FIR was lodged against him on the same day in respect of offences committed by him by fabricating the rubber stamp of the Government and fabricating bogus permits in favour of equally bogus parties. By order dated 21.7.1988, passed under Rule 161 of the Bombay Civil Service Rules, 1959, the respondent was compulsorily retired from service in public interest. This order was challenged by him before the Gujarat High Court. Whereas the learned Single Judge dismissed the writ petition, the Division Bench on appeal allowed the appeal as well as the writ petition. Against the judgment passed by the Division Bench of the Gujarat High Court, the State of Gujarat went in appeal to the Supreme Court. The Review Committee in the aforesaid case had doubted the integrity of the petitioner therein and it was opined that it was not advisable to continue the him in service for a further period.

37. The Supreme Court, while explaining as to what was ‘public interest’ in paragraph 11 of the judgment laid down as under:

> “11. What is ‘public interest’ was explained in the classic decision of this Court in *Union of India v. Col. J. N. Sinha* {(1970) 2 SCC 458}. It was pointed out that the object of premature retirement of a government servant was to weed out the inefficient, corrupt, dishonest employees from

> the government service. The public interest in relation to public administration means that only honest and efficient persons are to be retained in service, while the services of the dishonest or the corrupt or who are almost deadwood, are to be dispensed with…."

Relying on and discussing its earlier decisions in *H. C. Gargi v. State of Haryana*, (1986) 4 SCC 158; *Gian Singh Mann v. High Court of Punjab & Haryana*, (1980) 4 SCC 226; *Kailash Chandra Agarwal v State of MP*, (1987) 3 SC 513; *Union of India v. M. E. Reddy*, (1980) 2 SCC 15; *Baikuntha Nath Das v. Chief Distt. Medical Officer* (supra); *Posts & Telegraphs Board v. C. S. N. Murthy*, (1992) 2 SCC 317; *K. Kandaswamy v. Union of India*, (1995) 6 SCC 162, *S. R. Venkataraman v. Union of India*, (1979) 2 SCC 491; *Baldev Raj Chanda v. Union of India*, (1980) 4 SCC 321, the Apex Court in the aforesaid case held as under:

> "27. The whole exercise described above would, therefore, indicate that although there was no material on the basis of which a reasonable opinion could be formed that the respondent had outlived his utility as a government servant or that he had lost his efficiency and had become a deadwood, he was compulsorily retired merely because of his involvement in two criminal cases pertaining to the grant of permits in favour of fake and bogus institutions. The involvement of a person in a criminal case does not mean that he is guilty. He is still to be tried in a court of law and the truth has to be found out ultimately by the court where the prosecution is ultimately conducted. But before that stage is reached, it would be highly improper to deprive a person of his livelihood merely on the basis of his involvement. We may, however, hasten to add that mere involvement in a criminal case would constitute relevant material for compulsory retirement or not would dependent upon the circumstances of each case and the nature of offence alleged committed by the employee.
>
> (*Underlining supplied*)
>
> 28. There being no material before the Review Committee, inasmuch as there were no adverse remarks in the character roll entries, the integrity was not doubted at

> any time, the character roll entries subsequent to the respondent's promotion to the post of Assistant Food Controller (Class II) were not available, it could not come to the conclusion that the respondent was a man of doubtful integrity nor could have anyone else come to the conclusion that the respondent was a fit person to be retired compulsorily from service. The order, in the circumstances of the case, was punitive having been passed for the collateral purpose of his immediate removal rather than in public interest. The Division Bench, in our opinion, was justified in setting aside the order passed by the Single Judge and directing reinstatement of the respondent."

38. The law thus laid down is that involvement of a person in a criminal case does not mean that he is guilty. He is still to be tried in a court of law and the truth has to be found out ultimately by the court where the prosecution is ultimately conducted. But before that stage is reached, it would be highly improper to deprive a person of his livelihood merely on the basis of his involvement. The instant case is squarely covered by the law so laid down by the Supreme Court, inasmuch as in the instant case the trial has not at all commenced and the petitioner has not yet been proven guilty. Therefore it was improper to retire the petitioner on the basis of the allegations made in the FIR in question. It is true that the Supreme Court, while laying down the above law, also sounded a caution that whether mere involvement in a criminal case would constitute relevant material for compulsory retirement or not would dependent upon the circumstances of each case and the nature of offence allegedly committed by the employee. But having regard to the peculiar facts and circumstances herein, this is a case where, on the basis of the overwhelming material on record, I am convinced that involvement of the petitioner in the criminal case would not constitute a relevant material for compulsorily retiring him.

39. Since the Committee herein had founded their opinion/satisfaction solely on the allegations contained in the two FIRs and, consequently, the

impugned order was passed thereon, and, in view of the law laid down by the Supreme Court in ***State of Gujarat v. Suryakant Chunilal Shah*** (supra), since this Court has come to the conclusion that involvement of the petitioner in those criminal cases, in the peculiar facts and circumstances of the case, would not constitute a relevant material for compulsory retiring the petitioner, coupled with the fact that there has been nothing adverse recorded in the petitioner's ACRs/APRs, particularly of the years relevant to the registering of the FIRs, I deem it unnecessary to refer to, reproduce and discuss the law laid down by the Supreme Court in the judgments cited and relied upon by the petitioner.

40. Now, coming to the case law cited and relied on behalf of the respondents, it may be observed that the judgments in ***Union of India v. M. E. Reddy*** (supra), ***Baikuntha Nath Das v Chief Distt. Medical Officer*** (supra) and ***Posts and Telegraphs Board v. C. S. N. Murthy*** (supra) have also been referred to and discussed in ***State of Gujarat v. Suryakant Chunilal Shah*** (supra) which stands already quoted above. The same do not render any help to the respondents.

41. So far as the judgment in ***Jugal Chandra Saikia v State of Assam*** *(supra)* is concerned, the learned Advocate General, in particular, referred to paragraphs 5, 6 and 10 thereof. The sum and substance of these paragraphs of the judgment has been extracted under the head note of the citation. The same is reproduced hereunder:

> "In the present case no mala fides are attributed. The Screening Committee consisting of high officials had perused the entire records including the report of the Rao Committee and on that basis an opinion was formed recommending compulsory retirement. Therefore, on that recommendation the order of compulsory retirement was passed. It is not possible to accept the argument that the Screening Committee acted only on the basis of the report of the Rao Committee. The High Court did not find any good

> ground to interfere with the order of compulsory retirement. This being the position, there is no merit in this appeal.
>
> The passing of an order of compulsory retirement depends on the subjective satisfaction of the competent authority, of course on objective consideration. Unless it is shown that the order of compulsory retirement was passed arbitrarily and without application of mind or that such formation of opinion to retire compulsorily was based on no evidence or that the order of compulsory retirement was totally perverse, the court cannot interfere."

42. In ***M. L. Binjolkar v State of M. P***. (supra), paragraph 5, the Supreme Court laid down as under:

> "5. Learned counsel for the State submitted that the High Court's view about the scope of examination of cases involving compulsory retirement is not in line with various judgments of this Court. The scope for judicial review in matters involving orders of compulsory retirement has been explained in several cases. It is a tried law that an order of compulsory retirement is not a punishment. The employer takes into account various factors emanating from the employee's past records and takes a view whether it would be in the interest of the employer to continue services of the employee concerned. It can certainly pass an order of compulsory retirement when the employee is considered to be a dead wood and practically of no utility to the employer. The purpose and object of premature retirement of a government employee is to weed out the inefficient, the corrupt, the dishonest or the dead wood from government service. As noted above, in the background facts of these cases, we do not consider it necessary to go into the merits."

43. In so far as the judgment of the Supreme Court in ***Rajasthan State Road Transport Corp. v. Babu Lal Jangir*** (supra) is concerned, in that case the employee had been declared as deadwood on the basis of his service record which had nearly 19 cases of misconduct between the years 1978-1990. The Supreme Court in its judgment detailed out the particulars of the 19 misconducts and the result of the enquiries conducted therein, and came to the conclusion that the record projected a dismal picture. The Supreme Court noticed that apart from the years

1978-90, the service record after 1990 also did not depict a rosy picture and that there was nothing to show that his performance had become better during the this period. While allowing the appeal filed by the employer, the Supreme Court in paragraph 28 of the judgment laid down as under:

> "28. It hardly needs to be emphasized that the order of compulsory retirement is neither punitive nor stigmatic. It is based on subjective satisfaction of the employer and a very limited scope of judicial review is available in such cases. Interference is permissible only on the ground of non-application of mind, mala fide, perverse, or arbitrary or if there is non-compliance of statutory duty by the statutory authority. Power to retire compulsorily, the Government servant in terms of service rules is absolute, provided the authority concerned forms a bona fide opinion that compulsory retirement is in public interest."

44. The judgment of the Supreme Court in ***Shakti Kumar Gupta v. State of J&K*** (supra), governs an entirely different service. The principles laid down therein emanating from the Rules governing the higher judicial service and attributes of a judicial officer cannot be made applicable herein. Even so, as recorded in the judgment, the Full Court had found the petitioner therein to be incorrigible. That is not the case herein; there is no such finding recorded in the instant case.

45. The judgment of the Division Bench of this Court in ***Kapoor Chand v. State of J&K*** (supra) only reiterates what the Supreme Court has held and laid down from time to time in the judgments already referred to hereinabove.

46. Having gone through the above judgments, I must straight away say that the same have no application to the facts of the present case. In this case, as would be shown hereafter, the petitioner has taken some serious pleas attributing *mala fides* to the impugned action. It is another thing that the Court may or may not return a finding thereon. This Court

has also found it and come to the conclusion that the Committee has not considered the entire record of service of the petitioner, which include his APRs/ACRs and/or the commendation certificates awarded to him. There is not even a single adverse remarks recorded in the ACRs of the petitioner. The Committee has also made some incorrect statements in their recommendations concerning the availability of the ACRs of the petitioner. Therefore, the judgments relied upon by the learned Advocate General, in view of the discussions already made, are wholly distinguishable and not applicable to the facts and circumstances attendant to the present case.

47. The petitioner in his writ petition has averred that the impugned order has been actuated by extraneous and *mala fide* considerations and is politically motivated on account of his functioning as Chief Executive Officer, Pahalgam Development Authority. The specific averments made by the petitioner in the petition in an attempt to furnish material particulars in that regard are hereunder, briefly narrated. It is averred:

i) that by Government order no.647-GAD of 2014 dated 17.06.2014, the petitioner was posted as Chief Executive Officer, Pahalgam Development Authority, with additional charge of Additional Deputy Commissioner, Anantnag, in place of one Reyaz Ahmad Wani, who was attached with General Administration Department. According to him, this assignment was highly challenging because there were numerous complainants about illegal constructions raised in Pahalgam in violation of Master Plan and the orders of the Division Bench of the High Court passed in a Public Interest Litigation concerning thereto, bearing OWP (PIL) no.484/2016, titled Pahalgam Peoples Welfare Organization v State of J&K. Such constructions had been raised in the non-permissible areas, like banks of Lidar

Nalla, forest areas, areas reserved for wildlife and in village Mowara. The petitioner demolished 113 illegal structures in the shape of pakka huts, additional hotel blocks, restaurants and huge sheds of CGI sheets raised on concrete structures and plinths, in green belt of Bradhiji, Wildlife area of Mamal forest area of Circuit Road, and non-permissible areas of Athnadan and Lidar banks in Laripora. Besides, the petitioner is also stated to have sealed 28 illegal structures of hotels and huts at Mowra. It is averred that aforesaid facts were duly brought on record of the aforesaid PIL by him on affidavit, a photocopy whereof has been placed on record of the writ petition as annexure ‘I’;

ii) that while the aforesaid drive undertaken by the petitioner in his capacity as being the Chief Executive Officer, Pahalgam Development Authority, was appreciated by press and public at large, it annoyed number of hoteliers, businessmen, top bureaucrats, police officers, politicians and land mafia brokers who had personal interests and high stakes in all these illegal construction activities at Pahalgam. It is also stated that, in fact, he was attacked and physically assaulted many a time, so much so one day, to be precise, on 13.03.2015, when he installed a CCTV at a Checkpost, Pahalgam, the local MLA accompanied by a group of land mafia and notorious land brokers of the locale attacked him in his office, ransacked his office and broke the office furniture. In that connection, case FIR no.20/2015 under Sections 147, 353, 506 427 RPC was registered at his instance at Police Station, Pahalgam;

iii) that the aforesaid local MLA moved a privilege motion against the petitioner before the Speaker of the State Legislative

Assembly, but the authorities of the Tourism Department, who had been supervising the petitioner's work as Chief Executive Officer, Pahalgam Development Authority, took a strong stand thereto and that on reply being furnished, the motion was dropped;

iv) that the petitioner undertook the task of revision of Master plan, completed it and submitted the same to the Government for further action and that this process affected and annoyed numerous influential persons who were inimical to revision of the Master Plan for Pahalgam;

v) that the people who got affected by the demolitions effected by the petitioner and the revision in the Master Plan for Pahalgam, which included land brokers, politicians, bureaucrats and others hatched a conspiracy against the petitioner as soon as the present Government was formed in the month of March, 2015, consequent upon which he was transferred from the post of Chief Executive Officer, Pahalgam Development Authority, and the same officer, namely, Shri Riyaz Ahmad Wani, who had previously been attached with General Administration Department, was again posted in his place to facilitate constructions in contravention of the orders of the High Court. It is also alleged that said Mr. Reyaz Ahmad Wani, is a close relative of the (erstwhile) Chief Minister (son-in-law of his brother).

It is alleged by the petitioner that his compulsory retirement was ordered at the behest of the owners of sealed and demolished structures, which include politicians, Police officers, bureaucrats and businessmen, having

personal interest in illegal constructions at Pahalgam, who had also greatly contributed to the petitioner's transfer from the place.

48. Apart from the above, in his rejoinder affidavit, the petitioner has refuted the stand of the respondents that the Committee considered and compulsorily retired only those officers who were involved in FIRs or against whom criminal investigation was going on. It is stated that had the stand of the respondents been *bona fide*, then such action would have been taken against the hundreds of officers against whom FIRs stand registered, whose cases are pending before the Government for accord of sanction etc. The petitioner has appended with the rejoinder affidavit as annexure R-11, a document titled un-starred CQ No.185 of the Legislative Council, Autumn Session, 2015, signed by Under Secretary to the Government, General Administration Department, alongwith its annexures, comprising pages 52 to 127. Annexure-A thereto is a list of the Government and PSU Officers/Officials against whom Vigilance Organization has sought prosecution sanction. It is seen therefrom that the VOK sought sanction for prosecution in 126 of such cases, involving more than 218 public servants of different ranks on different dates ranging from 04.01.2011 to 28.08.2015. Annexure A-1 is the list of the Government and PSU Officers/Officials against whom the Crime Branch sought prosecution sanction. The list contains the particulars of 13 such cases, involving 40 officers/officials. Annexure-B is the list of cases against officers/officials in whose case sanction for prosecution has been accorded by the competent authority during the period 01.01.2014 to 24.09.2015 which included 16 earlier cases. It depicts a total number of 142 cases involving 244 public servants. Then Annexure B-1 is the list of cases of Crime Branch, Kashmir, pertaining to Government/PSU officers/officials against whom prosecution sanction had been accorded with effect from 01.01.2011 to 30.09.2015. The list shows the number of

cases as 8, involving 21 persons. Annexure-C is the list of cases of Vigilance Organization, Kashmir, which were pending with the Government for accord of prosecution sanction. It contains a total of 19 cases, involving 45 persons. Then annexure C-1 is the list of cases of Crime Branch which were pending with the Government for accord of sanction with effect from 01.01.2011 to 30.09.2015. It contains a total number of 5 cases, involving 19 persons. The names, official designations and all other particulars of the public servants involved in all the above cases have fully been given in the aforesaid lists. These particulars have been furnished by the petitioner to demonstrate that he has been picked up on extraneous reasons; whereas similar action has not been proposed or taken against the hundreds of officers and officials involved in the above cases. Therefore, according to the petitioner, the impugned order has emanated from *mala fides* on the part of the Government.

49. There may be all the truth in whatever the petitioner has stated, but it is difficult for the Court to return a finding *vis-à-vis* the ground of *mala fide* alleged by the petitioner because he has not impleaded any of the authorities or persons, against whom such allegations of *mala fides* have been levelled, as respondents in the petition. Even the names and other particulars of the MLA, the bureaucrats, the police officers, the hotel owners, the land owners, the land brokers who are alleged to have been instrumental in taking the impugned action against the petitioner have not been given. The members of the Committee which made the recommendations have also not been arraigned as respondents in the writ petition. Therefore, it is not possible for the Court to return a finding on the ground of *mala fide* alleged by the petitioner. There is an allegation also levelled against the Chief Minister (erstwhile). He too was not impleaded as respondent.

50. However, since the Court has come to a definite finding that the impugned order cannot be sustained on account of it being arbitrary, the inability of the Court to return a finding on the ground of *mala fides* would be immaterial.

51. Now, the question is what relief can be granted to the petitioner. Before coming to that, I would wish to record my strong displeasure about the misstatement made by the petitioner while mentioning his age against his name in the array of parties at the top of the writ petition. Against his name, at the top of the petition, the petitioner has shown his age as 49 years. This petition was presented before the Registry of the Court on 27.07.2015. Meaning thereby that as on the date of filing of this writ petition he had almost 11 years of service left. The record produced by the respondents, especially the recommendations made by the Committee, before the Court, depicts his recorded date of birth as 17.06.1956. That means as on the date of filing of this writ petition, the petitioner was of 59 years of age and he had less than a year's service left.

52. Mention of exact age in a writ petition filed before the Court against the name of a writ petitioner is not a mere formality; it is the mandate of Rule 2(a) of the Jammu and Kashmir Write Proceedings Rules, 1997 framed by the High Court pursuant to Article 226 of the Constitution of India and relevant provision of of the Constitution of Jammu and Kashmir, and all other powers enabling in that behalf. The above Rule stipulates that every petition under Article 226 of the Constitution of India and Section 103 of the State Constitution shall be called 'writ petition' and that "It shall contain the full name, parentage, age and complete address of the petitioner(s)". The Rule uses the word "shall", describing the mandatory nature of the requirement. Therefore, the petitioners as well as the learned Advocates, while preparing the writ

petitions, are legally obliged to take abundant caution in ensuring that age of the writ petitioner(s) is correctly mentioned. In the instant case, the petitioner and his counsel, both have been absolutely careless and casual in that regard.

53. Taking a lenient view, the petitioner is pardoned for making such a false statement in the writ petition. However, the incorrect age mentioned against his name in the writ petition needs to be corrected. The learned counsel for the petitioner shall carry out table amendment before the Registrar Judicial of the Court. Unless such table amendment is carried out in the manner as provided, the Registrar Judicial shall not issue certified copies of this order to any party.

54. In view of the fact that the petitioner's recorded date of birth is 17.06.1956; that means he has already attained the age of 60 years at which he ought to otherwise superannuate and that as on the date he was prematurely retired from service, viz. 30.06.2015, he had just one year's service left.

55. In light of the above, this petition is allowed. The impugned Government order no.866-GAD of 2015 dated 30.06.2015 whereby the petitioner was given notice in exercise of the powers conferred by Article 226(2) of the Jammu and Kashmir Civil Service Regulations, that he, having already rendered 22 years of service, shall retire from service with effect from forenoon of 01.07.2015, allowing him three months of pay and allowances in lieu of such notice, is quashed. The respondents are directed to treat him to have continued in service till the date he attained the actual age of superannuation. Consequently, the petitioner would be entitled to and paid all the dues and service benefits for the period he has remained out of service pursuant to the impugned order till the date he actually attained his age of superannuation. It hardly needs a mention here that this will govern his retirement benefits as well.

56. No order as to costs.

(Ali Mohammad Magrey)
Judge

Srinagar,
11.11.2016
Syed Ayaz Hussain, Secretary