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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2308 OF 2014

Smt. Yashoda Bapu Jadhav  
A-301, Vrindavan Apartment,  
Nimkar Bholewada, Kalyan (W),  
Thane-421301.

...Petitioner

Versus

Municipal Corporation Of Greater Mumbai  
A Body Corporate Through Municipal Commissioner  
Constituted under the Provisions of Mumbai  
Municipal Corporation Act, 1888, Having its Office at  
Municipal Head Office Mahapalika Marg,  
C.S.T. Mumbai-400001

...Respondents

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Mr. Prakash Devdas (Through V.C.) a/w. Ms. Vidula Patil, for Petitioner.

Mr. S.S.Pakale a/w. Ms. Pushpa Yadav a/w. Ms. Rupali Adhate

i/b. Ms. Komal Punjabi, for Respondent-BMC.

Smt. Deshmukh, Joint Chief P.O.(Assessment) present in Court.

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CORAM: G. S. KULKARNI &  
AARTI SATHE, JJ.

RESERVED ON: 27<sup>th</sup> April 2026  
PRONOUNCED ON: 07<sup>th</sup> May 2026

**JUDGMENT (Per: Aarti Sathe, J)**

1. Rule. Rule made returnable forthwith. With the consent of the parties, taken up for final hearing

2. This Petition primarily challenges the compulsory retirement of the Petitioner before the age of 58 years, alleged to be in contravention of the Bombay Municipal Corporation (Service) Regulations, 1989 (hereinafter referred to as the

“Regulations”) governing the employment of the Petitioner. The Petitioner has prayed for the following reliefs:-

(a) This Hon'ble court may be pleased to issue writ of certiorari or any other appropriate unit, directions in the nature of certiorari. To call for the records and after going through the same on satisfaction this Hon'ble Court quash and set aside the order and notice dated 07.06.2014 of Compulsory retirement of the Petitioner.

(b) To direct the Respondents to continue the Petitioner in employment till the final decision in the writ petition or till attaining the age of 58 years whichever is earlier.

(c) If the notice of compulsory retirement is already implemented, and then grant all consequential benefits as if the Petitioner was not compulsorily retired as per the said notice dated 07.06.2014.

(d) Pending the hearing and final disposal of the petition the order/Notice of Compulsory retirement dated 07.06.2014 be stayed and the Petitioner be continued in employment till attaining the age of 58 years.

3. Briefly, the facts are as under:

i. The Petitioner was an employee of the Respondent – Municipal Corporation of Greater Mumbai (MCGM). She joined the services of the Respondent-Corporation as a Clerk on 21<sup>st</sup> July 1977. She was subsequently promoted to the post of Head Clerk on 6<sup>th</sup> January 1988. She was thereafter promoted to the post of Office Superintendent on 4<sup>th</sup> November 2011, and further to the post of Administrative Officer on 12<sup>th</sup> October 2012. The statutory committee of the Respondent–Corporation framed and sanctioned the Regulations which are applicable to the Petitioner. These Regulations were brought into effect in the year 1989 under Section 81(1)(b), (c), (d) and (e) of the Bombay Municipal Corporation Act, 1888 (hereinafter referred to as the BMC Act), wherein Regulation No. 205 provides for compulsory retirement of employees upon attaining the age of 58 years.

- ii. On 1<sup>st</sup> February 1991, the Municipal Commissioner issued circulars prescribing the procedure to be followed in cases of compulsory retirement and for consideration of continuation in service beyond the age of 55 years, including the constitution of appropriate committees.
  - iii. In the year 1999, the Respondent–Corporation published a booklet laying down detailed guidelines to be followed in cases of compulsory retirement or continuation of service upon an employee attaining the age of 55 years.
  - iv. It is the Petitioner’s contention that her case is governed by Regulation No. 205 of the Regulations read with the said procedural guidelines and norms for continuation in service beyond the age of 57 years. However, according to the Petitioner, the Respondent-Corporation failed to adhere to these guidelines and proceeded to compulsorily retire her.
  - v. The Respondent–Corporation issued a memorandum to the Petitioner stating that on account of frequent leaves availed by her, the Deputy Municipal Commissioner (AMC) had decided not to continue her in service beyond the age of 57 years. Thereafter, a notice dated 7<sup>th</sup> June 2014 was served upon the Petitioner, informing her that her services would stand discontinued with effect from 10<sup>th</sup> September 2014. The said notice of compulsory retirement was issued under Regulation No. 205(1) of the aforesaid Regulations.
  - vi. It is the Petitioner’s contention that the aforesaid notice dated 7<sup>th</sup> June 2014 (impugned notice) has been issued in breach of Regulation No. 205 of the said Regulations.
4. In the backdrop of the aforesaid facts, the Petitioner has filed the present

Petition challenging the impugned notice dated 7th June 2014, whereby the Petitioner has been directed to be compulsorily retired.

5. Mr. Prakash Devdas, learned counsel (appearing through video conferencing), along with Ms. Vidula Patil, appeared on behalf of the Petitioner. Mr. S.S. Pakale, Senior Advocate, along with Ms. Pushpa Yadav and Ms. Rupali Adhate, instructed by Ms. Komal Punjabi appeared on behalf of the Respondent-Corporation. We have perused the papers and proceedings with the assistance of the learned counsel for the parties and proceed to decide the present Petition.

6. Learned counsel for the Petitioner, Mr. Devdas, has submitted that prior to issuing the impugned notice of compulsory retirement dated 7<sup>th</sup> June 2014, the Respondent-Corporation failed to follow the procedure as laid down in the guidelines/rules contained in the booklet published by the Respondent-Corporation in the year 1999, wherein detailed guidelines governing compulsory retirement have been prescribed.

7. He further submitted that, as per the said guidelines, a Committee under the Chairmanship of the Deputy Municipal Commissioner (General Administration) is required to consider the case of an employee for continuation beyond the age of 57 years, taking into account factors such as physical fitness, integrity, and the remarks in the confidential reports, which should not be below the grading of "Good". It is his submission that the said mandatory procedure has not been followed in the present case. He further contended that even assuming such procedure was followed, any recommendation for non-continuation could

only have been made in respect of continuation beyond the age of 57 years, and not at the age of 55 years, as has been done in the present case.

8. Learned counsel for the Petitioner further submitted that there was no element of “public interest” warranting the Petitioner’s compulsory retirement. He contended that the Scrutiny Committee had neither recommended denial of continuation to the Petitioner in service beyond the age of 57 years, nor was any such recommendation placed before the Additional Municipal Commissioner through the Deputy Municipal Commissioner (General Administration). He further submitted that the Scrutiny Committee did not find the Petitioner to be physically unfit, nor was her integrity found to be doubtful. It was also pointed out that there were no adverse remarks in the Petitioner’s confidential reports for the preceding five years.

9. Learned counsel on behalf of the Petitioner emphasized that prior to issuing a notice of compulsory retirement, it was incumbent upon the Respondent-Corporation to place the Petitioner’s case before the Committee constituted under the Chairmanship of the Deputy Municipal Commissioner (General Administration). Such Committee, upon due consideration, was required to arrive at a unanimous recommendation regarding non-continuation of the Petitioner beyond the age of 57 years and forward the same to the concerned Additional Municipal Commissioner through the Deputy Municipal Commissioner (General Administration). It was submitted that the aforesaid procedure is mandatory. However, in the present case, none of these requirements were complied with prior to the issuance of the impugned notice dated 7<sup>th</sup> June 2014. He therefore

contended that the action of the Respondent–Corporation was therefore arbitrary and without authority of law. Learned counsel for the Petitioner also invited our attention to the Petitioner’s confidential reports, which, according to him, contain no adverse remarks warranting compulsory retirement.

10. In view of the aforesaid, learned counsel for the Petitioner vehemently submitted that the impugned notice of compulsory retirement is liable to be quashed and set aside, and that the Petitioner be granted all consequential benefits as if she had continued in service till the age of superannuation, i.e., 58 years.

11. *Per contra*, learned Senior Counsel Mr. Pakale appearing on behalf of the Respondent-Corporation submitted that the impugned notice has been validly issued, and that the compulsory retirement of the Petitioner is in consonance with the applicable rules and prescribed procedure. He further submitted that the Petitioner and her son got entry into the service on compassionate grounds, and further that the Petitioner and her son had not disclosed true and correct facts to the Respondent-Corporation and procured the job without undergoing the regular selection process. It was further his submission that the Petitioner had incorrectly stated that her confidential history sheet for the last five years was excellent, i.e., “A+”, and in fact, out of the five confidential history sheets, three had "A" remarks and two had "B" remarks. Learned Counsel on behalf of the Respondent-Corporation therefore submitted that the Petitioner had not approached this court with clean hands, and in view thereof, the Petition was liable to be dismissed. He further submitted that it is a settled principle of law that the principle of natural justice is not attracted in a case of compulsory retirement. He also submitted that in

the facts of the present case, on the basis of specific conduct and other material, the committee came to the conclusion that the Petitioner was unfit to be continued in service. He submitted that the said decision was taken in public interest, after considering the entire service record of the Petitioner, and not with malafide intention, as casually alleged by the Petitioner. The impugned order was passed on the subjective satisfaction of the committee.

12. He also sought to place reliance on the affidavit-in-reply dated 9<sup>th</sup> September 2014 filed by Shri Ashok Chavan, Joint Assessor and Collector on behalf of the Respondent–Corporation. In the said affidavit, it has been stated that for continuation of service beyond the age of 55 years, it is necessary that the case of the employee be placed before a Committee under the Chairmanship of the Deputy Municipal Commissioner (General Administration), which considers factors such as physical fitness, integrity, and the remarks in the confidential reports, which should not be below the grading of “Good”.

13. It was further stated in the affidavit-in-reply that the Petitioner attained the age of 55 years on 4<sup>th</sup> May 2012, and accordingly, a proposal for her continuation in service was placed before the competent Committee. Upon perusal of the Petitioner’s service record and confidential reports, the Committee recommended that the Petitioner be compulsorily retired. It was thus contended that due procedure was followed prior to issuance of the notice dated 7<sup>th</sup> June 2014. It was also submitted that the Petitioner was discontinued from service on account of her habitual absenteeism, as she had been frequently availing leaves. Further, it was pointed out that the Petitioner was given three months’ advance

notice before the issuance of the impugned notice of compulsory retirement dated 7<sup>th</sup> June 2014. The relevant paragraphs of the said affidavit-in-reply are reproduced hereinbelow:

4. I say that without prejudice to the aforesaid contentions, the brief facts the present case are as follows:

a) I say that the Standing Committee of Corporation has framed and sanctioned the Bombay Municipal (Service) Regulation, 1989. Rule 205 of the said Regulation relates to compulsory retirement. The said rules are exhibited to the petition at Exhibit-'A'.

b) I say that as per rules, if the services of an employee is to be extended beyond the age of 55, it is necessary that the employee's case be put up for consideration before a Committee under the Chairmanship of Dy. Municipal Commissioner (General Administration) after taking into consideration, the physical fitness, integrity and the remarks in the confidential history sheet not below "good". There have been circulars issued from time to time regarding the formation of the committee as per cadre of the employee. The Petitioner is working as Administrative Officer. Therefore, as per the circular dtd. 31.01.2004, the Petitioner's case was put up before the Committee under the Chairmanship of the D.M.C. of the concerned department as he has completed 55 years on 4.5.2012. The Petitioner is working in the Assessor & Collector's department and therefore, the concerned D.M.C is D.M.C. (A&C). I crave leave to refer to and rely upon the circular dtd. 31.01.2004 as and when produced.

c) I say that the said Committee examined the record placed before carefully and thereafter took decision not to grant extension to the petitioner. The said decision was taken in public interest. Thus no fault could be attributed to the same.

d) I say that the Petitioner has averred in the petition that after the Committee submit his recommendation, the same has to be submitted to the concerned Additional Municipal Commissioner through the Dy. Municipal Commissioner (General Administration). I say that there is no such procedure and Corporation puts up the proposal only before the committee and on the recommendation of the Committee, the concerned employee is given an extension. I say that the said decision was taken after following due process as established in law.

e) I say that the Petitioner has stated that the remarks in the confidential history sheet for the last five years are excellent i.e. 'A' which is the highest rating. I say that in fact, out of five C.H. Sheets, three C.H. Sheets have 'A' remarks and two C.H. Sheets have 'B' remarks. Thus the petitioner is trying to mislead the Hon'ble Court by making incorrect statement.

f) I say that since the Petitioner's term was to expire on 04.05.2014, the Petitioner's proposal was put up by the head of the department before the committee. The committee after considering the proposal and also after considering her service records, came to the conclusion that she should not be

granted further continuation as the Petitioner has been habitually taking leave. The said recommendation is dtd. 25.4.2014. I crave leave to refer to and rely upon the copy of Petitioner's leave record from 2009 to 2014.

g) I say that in order to follow the due process as per provisions of rule 205 (1), it is necessary to give three months advance notice to the Petitioner regarding compulsory retirement from Municipal Service. I say that accordingly, after taking sanction from the concerned D.M.C on 06.06.2014, the Petitioner was issued the notice td. 07.06.2014. By the said notice, the Petitioner was informed that she will be given compulsory retirement w.e.f 10.09.2014. It is pertinent to note that the Petitioner was granted extension up to 04.05.2014, and as per Rules, the petitioner has to be given three months advance notice. In view thereof, her services were extended upto 10.09.2014 in order to enable these Respondents to give her three months advance notice. I say that the Petitioner was not provided with the recommendation of the committee dtd. 25.4.2014 or with the copy of order dtd. 06.06.2014 passed by the D.M.C along with the notice, however, the Petitioner obtained the same under the Right to Information Act and so the Petitioner was well aware of the reasons on which her proposal was rejected.

h) I say that the Petitioner has been taking leave very often as per the leave record of the Petitioner from 2009 to 2014. I say that the Petitioner is working as A.O. and looking after the work of Octroi refund claims. However, since the Petitioner has been taking leave frequently, there has been pendency of the work of refund claim for which the Petitioner is responsible being an Administrative Officer. I say that Corporation is a public body and has to provide timely services to the public at large and therefore, it is necessary that Corporation takes into consideration the interest of the public at large. During the last five years i.e. from April, 2009 to March, 2014, the Petitioner has enjoyed leave for 18 times. Taking into consideration, all these aspects, the Committee recommended that the Petitioner is not entitled to continue in the employment till the superannuation age i.e. 58 years.

I) I say that these Respondents has followed the procedure as laid down in the rules and have rightly issued the notice of compulsory retirement as per Rule 205(1) on the Petitioner on 07.06.2014 at 5.30 p.m. I say that after the receipt of the said notice, the Petitioner made a representation on 01.07.2014 to the Additional Municipal Commissioner (Project) which has also been considered by A.M.C. (P) thereby agreeing with the decision of D.M.C. (A&C) by passing order on 25.7.2014. The same will be communicated to the Petitioner by these Respondents immediately.

5. In view of the aforesaid circumstances, the petitioner is not entitled for any reliefs and the petition is liable to be dismissed accordingly.

14. Learned Senior Counsel Mr. Pakale appearing on behalf of the Respondent-Corporation also sought to place reliance on the following judgments, which we shall deal with later, in support of his contention that the impugned

notice dated 7<sup>th</sup> June 2014 compulsorily retiring the Petitioner has been correctly passed:-

i. **Baikuntha Nath Ds Vs. Chief Medical Officer, Baripada**<sup>1</sup>

ii. **Ashok Kumar Chadha v. State of Punjab**<sup>2</sup>

15. Having heard the learned counsel for the parties and upon perusal of the papers and proceedings, we find substance in the submissions advanced on behalf of the Petitioner that the impugned notice dated 7<sup>th</sup> June 2014 has been issued in violation of the Regulations framed by the Respondent–Corporation, and that the due procedure prescribed therein has not been followed.

16. We are further of the view that there are no adverse remarks against the Petitioner in her confidential reports. In fact, as per the guidelines issued by the Respondent–Corporation in the year 1999, it is specifically stipulated that a Special Scrutiny Committee is required to be constituted, and factors such as physical fitness, integrity, and a service record not below the grading of “Good” are to be considered as conditions for continuation of service beyond the age of 55 years.

17. On a perusal of the Petitioner’s confidential reports, we find that the aforesaid stipulations stand satisfied, inasmuch as there are no adverse remarks regarding the Petitioner’s health, conduct, or overall performance. In such circumstances, the action of the Respondent–Corporation in issuing the impugned notice of compulsory retirement is, in our view, arbitrary and unsustainable in law.

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**1** 1992 (2) SCC 299

**2** 1998 SCC OnLine P&H 1670

18. Further, Regulation No. 205 provides that every Corporation employee shall retire from service on the afternoon of the last day of the month in which he/she attains the age of 58 years. It also provides that a Corporation employee may, after attaining the age of 55 years, seek voluntary retirement by giving at least three months' notice in writing to the appropriate authority, and in deserving cases, the appropriate authority may accept a shorter period of notice.

19. The said Regulation further stipulates that if the appropriate authority is of the opinion that it is in public interest to do so, it may require a Corporation employee to retire from service after he/she has attained the age of 55 years, by giving at least three months' notice in writing, or by payment of three months' pay and allowances in lieu of such notice, excluding those allowances which are granted for defraying expenses incurred in the performance of special duties.

20. It is also provided in the aforesaid Regulation that for the purposes of retiral benefits such as provident fund, pension, etc., such an employee shall be deemed to have retired from service upon attaining the age of superannuation. For ease of reference, Regulation No. 205 of the aforesaid Regulations is reproduced hereinbelow:

### **205 - Compulsory Retirement**

#### **(1) Age of retirement**

Every Corporation employees shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years.

Note: -A Corporation employee whose date of birth is The 1st of a Month shall retire from service on The afternoon of the last Day of proceeding Month on attaining the age of 58 years.

Provided that a corporation employee may after attaining the age of 55 years voluntarily retire after giving at least three months notice in writing to the appropriate authority. Appropriate authority may in deserving cases

accept a notice of less than three months from the Corporation employee.

**Provided further that the appropriate authority may, if it is of the opinion that it is in the public interest to do so, require a Corporation employee to retire from service after he has attained the age of 55 years by giving him notice of not less than three months in writing or on payment of three month's pay and allowances which he would have drawn during the notice period except those allowances which are granted for defraying the expenses for performances of special duties in lieu of such a notice. Such a Corporation employee will be deemed to have retired from service on attaining the age of superannuation, for Provident Fund, Pension etc. benefits.**

**(emphasis supplied)**

21. On a plain applicability of the aforesaid Regulation, it is quite clear that there is nothing on record to indicate that the Petitioner has been compulsorily retired in public interest. There does not appear to be any basis much less acceptable in law to compulsorily retire the Petitioner. Further, the action taken against the Petitioner is not in consonance with the provisions stipulated in the said Regulation, inasmuch as there are no adverse remarks or findings against the Petitioner in her confidential reports

22. We also find that the impugned notice dated 7<sup>th</sup> June 2014 categorically records that in view of a departmental inquiry pending against the Petitioner, wherein the final decision was stated to be pending before this Court, and the right of the Respondent–Corporation to take action was kept open subject to the decision of this Court, the Petitioner was directed to be compulsorily retired with effect from 10<sup>th</sup> September 2014. In our considered view, such a notice casts aspersions on the Petitioner and is stigmatic in nature and therefore cannot be sustained in law. Compulsory retirement cannot be a tool to be used in such circumstances so as to otherwise achieve the result which can be obtained as a consequence of departmental proceedings. The contents of the impugned noticed

are reproduced hereinbelow:- (English Translation of Marathi Document)

Municipal Corporation of Greater Mumbai  
Dy. Assessor & Collector Octroi/ 1458 / Estt.  
Date 07/06/2014

Municipal Corporation of Greater  
Mumbai  
Deputy Assessor & Collector (Octroi)  
Lodha Complex, Gate No. 3, 1st Floor  
Kanjurmarg (E.) Mumbai - 400042  
Date: 07/06/2014

To,  
Mr. Yashoda Babu Jadhav,  
Administrative Officer (Octroi Refund)  
Assessor and Collection Dept.

Notice for Compulsory Retirement

Sub:- Notice for compulsory retirement of Smt. Yashoda Babu Jadhav Administrative Officer (Octroi Refund) B.M.C Service regulation No. 205(1)

A proposal regarding the grant of continuity of service within the Municipal Corporation beyond the age of 57 years to Smt. Yashoda Babu Jadhav, Administrative Officer (Octroi Refund) in the Octroi Establishment of the Assessment and Collection Department, was submitted to the Service Continuity Committee, as she was completing 57 years of age on May 4, 2014.

In accordance with the recommendations of the Service Continuity Committee dated April 25, 2014, and pursuant to the order of the Deputy Commissioner (A&C) bearing No. DE/D&E/823 dated June 6, 2014, Smt, Yashoda Babu Jadhav has been ordered to be compulsorily retired from the Municipal Corporation service with effect from 10.09.2014 while keeping the right of the Municipal Corporation to take action as per the final order of the pending court petition regarding the departmental inquiry held against her under charge sheet No.CHOE/DE/SJP/752/ dated 08.10.2000.

Smt. Yashoda Babu Jadhav is being terminated from the service of Brihanmumbai Municipal Corporation with effect from 10.09.2014 (after office hours) as per the provisions of Rule No. 205(1) of the Mumbai Municipal Corporation Service Rules, 1989 by Deputy Commissioner (A&C) vide Order No. Deputy Commissioner/A&C/823 dated 06.06.2014.

Sd/-

07.06. 2014

Assessor & Collector

23. The affidavit-in-reply as also from the impugned notice of compulsory retirement, it is quite clear that the reasons underlying the Petitioner's compulsory retirement are in fact reasons which are in the realm of misconduct, i.e., the Petitioner taking leaves, as also that the proceedings are pending in respect of a departmental enquiry held against the Petitioner subject matter of charge sheet dated 8<sup>th</sup> October 2000. This in our considered opinion, the reasons underlying, compulsory retirement and more particularly which can be gathered from Regulation No. 205, can never be any substitution for the departmental proceedings or any final action which may be taken against the employee in the departmental proceedings. This would amount to abuse and/or misuse of the provisions of the compulsory retirement. On this count itself, the order of compulsory retirement passed against the Petitioner cannot be sustained. The principles in this regard are well settled.

24. The aforesaid conclusion is further fortified by the absence of any material on record indicating bad conduct or unsatisfactory performance on part of the Petitioner. On the contrary, as noted earlier, the confidential reports of the Petitioner consistently reflect gradings of "Good" and "Very Good", and there is nothing to indicate any deficiency in her performance or physical fitness. There are, thus, no adverse remarks against the Petitioner. We are also of the view that in the facts of the present case the notice of compulsory retirement is stigmatic in

nature. It is settled law that an order of compulsory retirement cannot be stigmatic in nature. Therefore, the reliance on behalf of the Petitioner on the decision of the Supreme Court in **Swaran Singh Chand vs. Punjab State Electricity Board**<sup>3</sup> would be relevant in the facts of the present case. In such case, the Supreme Court, while dealing with the issue of compulsory retirement of an employee, held that if such an order is stigmatic in nature, the same would not be sustainable in law. The Court observed that compulsory retirement must be based on an objective assessment of service record and cannot be resorted to in the absence of material indicating a decline in performance or non-compliance with prescribed guidelines. The relevant paragraphs of the said decision are reproduced hereinbelow:

"7. The law relating to compulsory retirement is no longer *res integra*. An order of compulsory retirement *inter alia* can be passed when the officer concerned is found to be a dead wood. (See *M.P. State Coop. Dairy Fedn. Ltd. v. Rajnesh Kumar Jamindar*.) Although, for the said purpose, the principles of natural justice are not required to be complied with and even adverse entries made in, the confidential record including uncommunicated entries may be taken into consideration but the same should not be passed in place of or in lieu of a disciplinary proceedings. If an order of compulsory retirement is stigmatic in nature, the same would be bad in law.

8. It is furthermore well settled that when the State lays down the rule for taking any action against an employee which would cause civil or evil consequence, it is imperative on its part to scrupulously follow the same. *Frankfurter, J. in Vitarelli v. Seaton* stated: (US pp. 546-47)

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. ... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. .. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes ma the procedural sword shall perish with that sword."

(See also *H. V. Nirmala v. Karnataka State Financial Corpn.*)

12. It is a well-settled principle of law that an order of compulsory retirement would be held to be stigmatic *inter alia*, in the event the employee has lost confidence (see *Chandu Lal v. Pan American World Airways Inc.*, at SCC p.

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**3** (2009) 13 SCC 758

730, para 8), or he has concealed his earlier record (see Jagdish Parsad v. Zila Ganna Committee, Muzaffarnagar, at SCC pp. 342-43, para 9). He can, however, be subjected to compulsory retirement *inter alia* if he has outlived his utility (see State of U.P. V. Madan Mohan Nagar, AIR at p. 1262).

13. In *Officers' Assn. V. Allahabad Bank* it was held: (SCC p. 512, para 17)

"17. The above discussion of case law makes it clear that if the order of compulsory retirement casts a stigma on the government servant in the sense that it contains a statement casting aspersion on his conduct or character, then the court will treat that order as an order of punishment, attracting provisions of Article 311(2) of the Constitution. The reason is that as a charge or imputation is made the condition for passing the order, the court would infer therefrom that the real intention of the Government was to punish the government servant on the basis of that charge or imputation and not to exercise the power of compulsory retirement. But mere reference to the rule, even if it mentions grounds for compulsory retirement, cannot be regarded as sufficient for treating the order of compulsory retirement as an order of punishment. In such a case, the order can be said to have been passed in terms of the rule and, therefore, a different intention cannot be inferred. So also, if the statement in the order refers only to the assessment of his work and does not at the same time cast an aspersion on the conduct or character of the government servant, then it will not be proper to hold that the order of compulsory retirement is in reality an order of punishment: Whether the statement in the order is stigmatic or not will have to be judged by adopting the test of how a reasonable person would read or understand it."

14. The question came up for consideration before a Division Bench of this Court in *State of Gujarat v. Umedbhai M. Patel* wherein Balakrishnan, J. (as the learned Chief Justice then was), summarised the law, thus: (SCC p. 320, para 11)

"11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short

cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure."

15. In a slightly different context viz. in a case of probation, this Court in *Jaswantsingh Pratapsingh Jadeja v. Rajkot Municipal Corpn.*<sup>1</sup> opined as under: (SCC p. 79, para 24)

"24. In this case, however, the period of probation as provided for under the statute had expired and his misconduct had been taken note of. Such misconduct was not founded only upon absence from duty, but also upon carelessness, negligence on the part of the appellant and lack of devotion amongst others."

Upon taking into consideration some precedents operating in the field, it was concluded: (SCC p. 81, para 28)

"28. From the discussions made hereinbefore, it is evident that termination of services of the appellant purporting to discharge him simpliciter cannot be accepted, being stigmatic in nature. The form of the order terminating the services coupled with the background facts clearly leads to the conclusion that the order impugned in the writ petition by the appellant was punitive."

16. The learned counsel appearing on behalf of the respondent would contend that the principles of natural justice are not required to be complied with in a case of compulsory retirement, particularly, when no mala fide is alleged. Allegation against the delinquent was not only that he lacked integrity but also unfit to be retained in service. Those comments, in our opinion, are stigmatic in nature. It is also not a case where there had been a steady decline in the performance of the employee

17. The learned counsel appearing on behalf of the respondent would contend that in this case malice has neither been alleged nor been proved. In support of his contention reliance has been placed on *Purushottam Kumar Jha v. State of Jharkhand* wherein Thakker, J. speaking for the Bench stated the law, thus: (SCC p. 466, para 23)

"23. It is well settled that whenever allegations as to mala fides have been levelled, sufficient particulars and cogent materials making out prima facie case must be set out in the pleadings. Vague allegation or bald assertion that the action taken was mala fide and malicious is not enough. In the absence of material particulars, the court is not expected to make 'fishing' inquiry into the matter. It is equally well established and needs no authority that the burden of proving mala fides is on the person making the allegations and such burden is 'very heavy'. Malice cannot be inferred or assumed. It has to be remembered that such a charge can easily be 'made than made out' and hence it is necessary for the courts to examine it with extreme care, caution and circumspection, It has been rightly described as 'the last refuge of a losing litigant'. (Vide *Gulam Mustafa v. State of Maharashtra*<sup>12</sup> and *Ajit Kumar Nas*

Indian Oil Corpn. Ltd. 13)"

18. In a case of this nature the appellant has not alleged malice of fact. The requirements to comply with the directions contained in the said Circular Letter dated 14-8-1981 were necessary to be complied with in a case of this nature. Non-compliance wherewith would amount to malice in law. (See Branch Press v. D.B. Belliappa<sup>4</sup>, S.R. Venkataraman v. Union of India<sup>5</sup> and P. Mohanan Pillai v. State of Kerala<sup>o</sup>.) Thus, When an order suffers from malice in law, neither any averment as such is required to be made nor strict proof thereof is insisted upon. Such an order being illegal would be wholly unsustainable.

19. For the reasons aforementioned, the impugned order is set aside. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs."

25. We also are inclined to reject the submission made on behalf of the Respondent-Corporation that the Petitioner has approached this court with unclean hands, inasmuch as the confidential reports of the Petitioner form part of the present petition and do not indicate any adverse remarks. The submission made on behalf of the learned Senior Counsel on behalf of the Respondent-Corporation that the Petitioner and her son got entry into the service on compassionate grounds is a completely new case which the Respondent-Corporation seeks to make out against the Petitioner, inasmuch as the same has not been pleaded by them in the affidavit-in-reply dated 9<sup>th</sup> September 2014 filed by Shri Ashok Chavan, Joint Assessor and Collector on behalf of the Respondent-Corporation, and in fact goes to show that the Petitioner was being severely victimized by compulsorily retiring her on the alleged ground that the Petitioner and her son had got entry into the service on compassionate grounds. Whether at all was the consideration before the Committee itself is not known, this, to our mind could not have been the consideration before the Committee before compulsorily retiring the Petitioner, and also for the very first time this submission

has been made by learned Counsel on behalf of the Respondent-Corporation, which according to us deserves to be rejected.

26. We have perused the judgments relied upon by the Petitioner in her submissions and are only discussing the decisions which are apposite to the facts of the present case.

27. The reliance of the Petitioner on the decision of **Baldev Raj v. State of Punjab**<sup>4</sup> is also apposite to the facts of the present case. The Supreme Court in such decision, while dealing with the issue of compulsory retirement of the Appellant-Constable in the aforesaid case held that the High Court was in error in dismissing the Writ Petition filed by the Appellant-Constable therein challenging the order of compulsory retirement. The Appellant-Constable had earlier been suspended from service and subsequently reinstated in light of an earlier order of the Supreme Court. The order of compulsory retirement was issued to the Appellant-Constable on the same day he was reinstated, and no material or confidential reports were produced before the Supreme Court to justify the order of compulsory retirement of the Appellant-Constable. The Supreme Court, while allowing the appeal filed by the Appellant-Constable, had held that public interest is an unruly horse and once it is alleged that the order was a device to circumvent the decision of this Court, it was obligatory upon the respondents to explain why it became necessary to retire the Appellant-Constable in public interest. The Court observed the fact that while the Appellant-Constable was reinstated on 11<sup>th</sup> February 1980 in the forenoon, on the same day in the afternoon he was compulsorily retired from service, and that

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**4** 1984 Supp SCC 221

the decision to reinstate was taken simultaneously with the decision to retire him. The Court held that an order of compulsory retirement affects the livelihood of the person in whose respect the order is made and it cannot be left to the guesswork to decide what prompted the making of such an order, and that in the absence of any record and the annual confidential reports, it must be confessed that there was no material before the competent authority to pass the impugned order. When in view of the judgment of this Court, it became obligatory to reinstate the appellant in service, the power to order compulsory retirement was exercised not in public interest but to make a pretence of reinstatement and to get rid of the appellant. The decision rendered by the Supreme Court is therefore relevant to the facts of the present case, inasmuch as in the present case the Petitioner was issued the order of compulsory retirement which could not be justified through the confidential reports, and the Respondents could not establish that the order was passed in public interest. The decision of the Supreme Court in **Baldev Raj v. State of Punjab** (supra) is therefore apposite to the facts of the present case.

28. Further, the Supreme Court in **Amar Kant Choudhary v. State of Bihar**<sup>5</sup> was seized with the matter of an appeal against the order of the High Court of Patna in the case of recruitment of the Appellant in the Indian Police Service, and the non-inclusion of his name in the Select-List relying upon adverse entries which were expunged after the Selection Committee had taken its decision, and further subsequent favourable entries in confidential records were not placed before the Committee. Also, the Appellant's representation against non-inclusion in the Select

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**5** (1984) 1 SCC 694

List was not considered by the Committee in its next meeting, and in view thereof it was held that the decision of the Committee was vitiated, having not been taken in a just and fair way. Therefore, the order of the High Court was set aside, and it was held that the Appellant had made out a case for reconsideration of the question of his promotion in the Indian Police Service cadre of the State of Bihar and directions were issued to reconsider the submissions of the Appellant by the Committee. In the facts of the present case, in fact, there were no adverse remarks at all which were there in the confidential reports of the Petitioner, and further only on the basis of a pending inquiry the impugned notice dated 7<sup>th</sup> June 2014 was issued to the Petitioner seeking her compulsory retirement.

29. Considering the aforesaid decisions of the Supreme Court, which are apposite to the facts of the present case, we are of the firm view that there was neither a finding recorded against the Petitioner that she was no longer useful for the organization, nor were there any adverse remarks in her confidential reports. Further, the impugned notice also refers to a departmental enquiry pending against the Petitioner, which to our mind cannot be a ground for compulsorily retiring the Petitioner, and the same would be in the nature of punishment, which is arbitrary in nature.

30. In so far as the reliance of the Respondent-Corporation on the case of **Baikuntha Nath Das Vs. Chief Medical Officer, Baripada** (supra) is concerned, the same is distinguishable from the facts of the present case as the Supreme Court in the aforesaid case while dealing with the issue of compulsory retirement had dismissed the appeal filed by the Appellant-Employee against the order of the

Orissa High Court. The Appellant-Employee in the aforesaid case had been compulsorily retired from service by the State Government on the basis of uncommunicated adverse entries in his CR. The Appellant-Employee had challenged the order of compulsory retirement before the Orissa High Court, which had dismissed the Writ Petition on the ground that the order of compulsory retirement was based not merely upon the uncommunicated adverse remarks but also on other material. The Supreme Court, while adjudicating upon the issue, had agreed with the decision of the High Court and ruled that there is no room for importing the facet of natural justice in such a case, more particularly when an order of compulsory retirement is not a punishment nor does it involve any stigma. The Court further held that the order of compulsory retirement has to be passed by the Government on forming the opinion that it is in the public interest to retire a government servant compulsorily, and that such an order is passed on the subjective satisfaction of the government. The Court also held that an order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. The decision of the Supreme Court is however not apposite to the facts of the present case inasmuch as no adverse remarks were present in any of the confidential reports pertaining to the Petitioner, and there is no reference to the remarks not being communicated to the Petitioner. Further the Respondent-Corporation has failed to demonstrate how the compulsory retirement of the Petitioner was in public interest. Therefore, the decision rendered in **Baikuntha**

**Nath Ds Vs. Chief Medical Officer, Baripada** (supra) would not be applicable to the facts of the present case.

31. Further, the reliance of the Respondent-Corporation on the decision of **Ashok Kumar Chadha v. State of Punjab** (supra) rendered by the High Court of Punjab and Haryana in fact assists the Petitioner's case and does not support the Respondent-Corporation's case, inasmuch as though in the aforesaid decision the High Court of Punjab and Haryana held that while exercising jurisdiction under Article 226 of the Constitution, the High Court does not sit in appeal over the judgment of the government in such matters but confines the review of the decision making process to the well defined limitations, namely, whether the exercise of the power of retirement is vitiated due to consideration of irrelevant and extraneous material or there is no cogent material justifying the formation of opinion that the employee is not fit to be retained in service, however, on facts the High Court has held that except for the Annual Confidential Report of the year 1995-96 which contained advisory remarks, there was nothing adverse available in the record of the Petitioner-Employee which could cast a reflection on his ability and integrity, justifying the exercise of power of premature retirement, and those entries cannot justify premature retirement in view of the fact that his other reports are good and satisfactory. The Court further held that the consideration of the warning administered to the Petitioner-Employee in the year 1973-74 (24 years before the order of compulsory retirement) had the effect of vitiating the decision-making process, and that the impugned order of retirement suffered from a patent legal error warranting interference by the Court under Article 226 of the

Constitution of India. This decision therefore would not assist the Respondent-Corporation to advance their case further.

32. Therefore, looked at from any angle and having already reached conclusion that the impugned action of compulsory retirement of the Petitioner has been taken without following the prescribed procedure and is not in consonance with the applicable Regulations, the same is rendered arbitrary and illegal, we thus are of the clear view that the present Petition deserves to succeed.

We therefore deem it appropriate to pass the following order:

**ORDER**

- (i) Rule is made absolute.
- (ii) The impugned notice dated 7<sup>th</sup> June 2014, whereby the Petitioner has been compulsorily retired, is hereby quashed and set aside.
- (iii) The Respondent-Corporation is directed to grant all consequential benefits to the Petitioner by treating her as having continued in service until the age of superannuation, i.e., 58 years, and not from the date of compulsory retirement, i.e., 10th September 2014.
- (iv) The aforesaid benefits shall be granted to the Petitioner within a period of three months from the date a copy of this order is made available to the Respondent-Corporation.
- (v) The Writ Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)