Jethmal Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Sep-27-1984

Reported in : 1984WLN520

Judge : Vinod Shanker Dave, J.

Appeal No. : S B. Civil Writ Petition No. 2451 of 1983

Appellant : Jethmal

Respondent : The State of Rajasthan and ors.

Judgement :

Vinod Shanker Dave, J.

1. The petitioner has filed two writ petitions in this Court. In S.B. Civil Writ Petition No. 2501/83 the petitioner has prayed that the departmental enquiries No. 3/82, 4/82, 5/82 and 7/82 initiated against him by the learned District Judge, Jodhpur be quashed and the respondents may also be directed to pay him the subsistence allowance with effect from September 4, 9182, the date on which he was placed under suspension.

2. In S.B. Civil writ petition No. 2541/83 the petitioner has prayed that the order, dated September 2, 1983, compulsory retiring the petitioner from service under Rule 244(2) of the R.S.R. be quashed. Though the impugned actions are common,

hence I am disposing of both these writ petitions by this single order.

3. Shocking and startling facts, mentioned hereunder, tell a sad tale of petitioner, a clerk working as upper division clerk in court subordinate to District Judge, Jodhpur who because of the arbitrary and non-judicious approach of Shri Acharya Girdharlal, the then District Judge, Jodhpur on administrative side had not only to face humilation but also suffered harassment and faced victimization.

4. The petitioner was initially appointed as a lower division clerk in the court of District & Session Judge, Balotra on September 4, 1951. Thereafter, he was promotes as upper division clerk with effect from June 1, 1970. At the relevant time he was working under District Judge, Jodhpur In later part of 1981 he was transferred form Osian to Jodhpur and was posted as Reader in Court of the Chief Judicial Magistrate, Jodhpur. The styled as `Rajasthan Rajya Nyayaik Karamchari Singh' with district branches also. The elections of the office bearers of Zila Sakha, Jodhpur were due in may, 1982 and the nominations were invited in the month of April, 1982. The petitioner filed his nomination for the office of President-ship but the elections were postponed to July 15, 1982. The petitioner was sought to be opposed by respondent No. 3, Shiv Dutt Harsh, who was holding the post of Munsarim in District Court, Jodhpur. The petitioner's case is that Shiv Dutt Harsh at that time held lot of influence over judicial officers including District Judge as he always claimed himself to be very close to the erstwhile Chief Justice. He could not have conceived of any other employee in the District Judgeship to influence on the petitioner and tried to pressurize him to withdraw his candidate but when he failed in his endeavour he resorted to other practices and sought the aid of the then District Judge posted at Jodhpur. Contrary to the Government circular imposing ban on transfers and the general instructions issued by the Registrar. Rajasthan High Court, dated October 22, 1974, an order of transfer on May 1, 1982, was issued by the District Judge. Jodhpur transferring the petitioner from the court of the Chief Judicial Magistrate, Jodhpur to that of the court of Musiff and Judicial Magistrate, Pokaran. The petitioner who was on leave was unceremonious'y relieved by orders, dated May 6 and May 15, 1982.

5. The orders of the transfer of the petitioner from Jodhpur to Pokaran could not pressurise him from coming out of election arena and the result was that the learned District Judge, Jodhpur placed him under suspension for a contemplated departmental enquiry by his order, dated September 2, 1982 which was served upon the petitioner on September 4, 1982. On September 13, 1982, the petitioner submitted an application to the District Judge, Jodhpur praying that since his family is staying at Jodhpur and his children are getting education in University his headquarter should be shifted from Pokaran to Jodhpur, but this request was turned down. The petitioner suffer a mental shock and he was advised by Doctor at Pokaran to consult a mental specialist at Jodhpur. The petition after moving an application to the Munsiff, Magistrate, Pokaran seeking permission to leave head quarter came to Jodhpur along with a certificate of the Doctor. This application bears the endorsement by the Munsiff and Judicial Magistrate, Pokaran. The petitioner again requested the District Judge to call him at Jodhpur but be instead of giving sympathetic consideration to the petitioner's request, he was served with a notice, dated October 11, 1982, to show cause as to way action should not be taken against the petitioner for his remaining absent from Pokaran.

6. The petitioner submitted a reply to the aforesaid notice on October 18, 1982 wherein he. explained the entire circumstances of his staying at Jodhpur. On October 15, 1982, the petitioner was informed by Munsiff and Judicial Magistrate, Pokaran through a letter that he should hand over the charge to some other employee as he is not staying at Head quarters. He granted time up to November 6, 1982 to hand over the charge. The petitioner then moved an application to the President of the employees Union, Jodhpur Branch for intervening into the matter and reminded that the Union has agitated similar matter when the Munsarim was transferred from Jodhpur and it should come to his rescuu. He endorsed a copy of this representation to the President of the State Union and mentioned therein that his application, in Jodhpur Branch, would not receive any consideration because he had contested election against Shiv Dutt Harsh who bears enmity with him for this reason. It was further mentioned that most of the employee of Jodhpur Branch are terrorized because of him. The petitioner also moved another application before the learned District Judge, Judge, Jodhpur wherein he mentioned that Shiv Dutt Harsh is inimical to him and since after his taking over as Munsarim and

coming into power he had been making efforts to harm him. He quoted the instance in his application Ex. 12 and further said that he is harassing the other employees also who favour him and gave a list of four employees who had been transferred from Jodhpur to out-station and seven employees whose temporary services he got terminated. It was further mentioned in the application that on September 4, 1982, that Shiv Dutt Hard; visited Pokaran along with the then Chief Justice and himself (District Judge, Jodhpur) and had served letter of suspension personally at Pokaran. This exhibits the bias of District Judge, Jodhpur against him. He requested in the application for withdrawing the order of suspension and to sympathetically consider his application for change of headquarter and grant of subsistence allowance. The District Judge instead of giving a sympathetic consideration directed the petitioner that he should produce the medical certificates, the prescriptions and medical bills within seven days else disciplinary action would be taken against him. He was further directed to report at Pokaran. The petitioner submitted the medical bills prescriptions etc before the Munsiff Magistrate, Pokaran and also moved an application for giving subsistence allowance. He moved another application before the learned District Judge, Jodhpur on November 18, 1982 wherein he stated that he had submitted all the desired documents before the Munsiff Magistrate and reiterated that he is being victimized because of the personal grudge of the Munsarim, Shiv Dutt Harsh. He also mentioned that the Munsarim had refused to take letters from him and he had to send them by registered post for which he bad no money as the subsistence allowance was not being paid to him. Instead of giving any answer to this application on November 28, 1982, the learned District Judge gave three memorandums along with charge sheets and statement of allegations on various grounds to the petitioner.

7. The petitioner prayed for some time to file the reply to the charge sheets on the ground of illness on which the District Judge asked the petitioner vide his letter dated December 15, 1982, to disclose the name of the Doctor who was treating him and called upon him his to file the reply to the charge sheet by December 21, 1982. Before the expiry of this date, i.e. December 21, 1982 the District Judge wrote another letter, dated December 18 1982, informing the petitioner that Doctor Devraj Purohit his treating physician has informed the office that the petitioner was

absolutely cured and hence he was called upon to file the reply forthwith as otherwise expert proceedings will be drawn against him. Petitioner thereafter was given yet another charge-sheet, which was fourth in succession. The petitioner thereafter moved another application requesting again for the change of his head quarter and revocation of the order of suspension and prayed for reinstatement, but his application was turned down by order dated January 3, 1983 and he was again threatened with another disciplinary action. The learned District Judge also wrote a Setter to Munsiff and Judicial Magistrate, Pokaran directing him not to accept any med cal certificate in future.

8. On January 3, 1983 itself the District Judge appointed three judicial officers namely Shri S.N. Ojha, Munsiff and Judicial Magis rate, Jodhpur, District Jodhpur, Shri Jhanwar Prakash Chhangani, Chief Judicial Magistrate Jodhpur and Pushpendra Kumar Vyas, Munsiff and Judicial Magistrate No. 3 Jodhpur to be enquiry officers for holding enquiries in respect of three charge sheets served upon the petitioner. Despite petitioner's several grievances against Shiv Dutt Harsh be was curiously enough appointed as the departmental representative in all these three enquiries by the order of the same date. On January 5, 1983 he again appointed Shri Vyas as Enquiry Officer and Shiv Dutt Harsh as Departmental representative in 4th enquiry. The petitioner who had neither received the salary till the date of placing him under suspension nor had received the subsistence allowance during the period of suspension, pray should be paid to him forthwith. He expressed that he cannot participate in the enquiry unless he is paid the subsistence allowance as there was no provision for with-holding the payment of such allowances. However, no subsistence allowance was paid to him and the petitioner apprehending that, exparte order may be passed, submitted an application on January 18, 1983, to permit him the assistance of a lawyer who could defend him in the three enquiries The petitioner referred to several judgments of the Supreme Court and the various High Courts in his application. The petitioner's prayer was turned down on January 29, 1983. All the three enquiries were fixed by the enquiry officers on February 14, 1983 and then again on February 28, 1983. The petitioner had moved preliminary objections in these enquiries but the enquiry officers vide their letter, dated February 22, 1983, directed the petitioner to appear before the Superintendent, M.G. Hospital,

Jodhpur and got himself medically examined The petitioner appeared before the Superintendent M.G. Hospital, Jodhpur on February 26, 1983 and March 10, 1983 but his examination could not take place and meanwhile he was admitted as an indoor patient from where he was relieved on May 10, 1983. The petitioner aggrieved by the attitude of the learned District Judge and the enquiry officers and the conduct of Shiv Dutt Harsh submitted an appeal/representation to the Administrative Judge, Rajasthan High Court through the District Judge but the District Judge did not forward the same and the advance copy did not find favour with the High Court The petitioner's request for inspection of documents, for list of witnesses, for appointment of the defence counsel all were refused one after another and the petitioner was compelled to invoke the jurisdiction of this court by S.B. Civil Writ Petition No. 2501/83 which was filed on September 26, 1983, and was admitted on September 27, 1983. This Court was also pleased stay the further proceedings in the enquiries No. 3,4, 5 and 7 of 1982. It is pertinent to mention here that Shiv Dutt Harsh was likely to retire before August 31, 1983, and the enquiry was not proceeding further for one reason or the other he could not have tolerated the petitioners continuing in service after his own superannuation which was on August 31, 1983, and hence he asked the District Judge to compulsorily retire the petitioner The District Judge on August 30, 1983 wrote a letter No. 370 to the Treasury Officer, Jodhpur and the Officer Incharge. Account Section, District Court, Jodhpur that three months' advance salary is to be paid to the petitioner and hence the salary bill may be prepared and cleared immediately. This letter was taken personally by Shiv Dutt Harsh to the Treasury Officer and got the bill passed and the District Judge on September 2, 1983, issued the orders of compulsory retirement of the petitioner. The learned District Judge was not contended by issuing the order of compulsory retirement and sending it by peon but as he wanted to humiliate the petitioner he also got the said notice published in all daily news papers of Rajasthan and put the exchequer to heavy expenditure This order of compulsory retirement has also been challenged by S B Civil Writ Petition No. 2541/83, These both the writ petitions which are based on grounds of malafides of Shiv Dutt and the bias of the learned District Judge arise out of the same facts as indicated above, have been heard together and ate being disposed by this single order.

9. First I will take up the writ petition No. 2541/83 which is a writ petition challenging the order of compulsory retirement. A preliminary objection has been raised about the maintainability of this writ petition on behalf of the respondents.

10. Before recording other contentions and findings thereupon I will first deal with the objection of availability of alternate remedy by way of review raised by the counsel for the respondents. It has been submitted that the petitioner has filed the review before the High Court and he must exhaust that remedy first. On the contrary it has been contended by the earned Counsel for the petitioner that alternate remedy is not an absolute bar for invoking the extraordinary jurisdiction of this Sourt and particularly when the writ petitions have been admitted and listed for final hearing, this Court should not non-suit the petitioner on the ground of alternate remedy, firstly because there are several questions regarding malafides and law are involved in this ease and in secondly the petitioner will not be jetting the assistance of a counsel before the reviewing authority it is submitted that allegations of malafides are against a judicial officer, it would be in the interest of justice in case this Court decides the writ petitions. The counsel for the petitioner submitted that he is moving for withdrawing the review petition.

11. The existence of an alternate remedy is no doubt one of the grounds upon which the courts may refuse the discretionary relief under Article 226 of the Constitution of India but this does not constitute an absolute bar to the jurisdiction of this Court. Their lordships of the Supreme Court in v. Vella Sueny v. Inspector General of Police, Tamil Nadu 1931 (3) SLR 39 have held that as the Article 226 now stands, it would be a serious question whether a right to review a proceeding by itself would provide such alternate efficacious remedy to disentitle the petitioner to move the High Court under Article 226 of the Constitution and held 'we think in would be rather harsh' A writ petition under Article 226 of the Constitution can be filed without availing the remedy of a review. In this view of the matter (sic) over rule the preliminary objection, it has been contended by the earned Counsel that while ordering the compulsory retirement under Rule 244(2) of the R.S.R. it was the bounden duty of the appropriate authority to see that it is passed in the public interest and for looking into what is the public interest guide lines have been provided. A screening committee consisting of three persons has to look into the

immediate service record and health conditions of petitioner and it has to come to a conclusion that the person who is being compulsorily retired, his efficiency has been impaired. It is submitted that the petitioner was screened in the year 1975 when all the employees were also screened for being retired compulsorily and at that time the screening committee found that the petitioner's efficiency has not been impaired and he should be continued in service, therefore, up to 1975 it cannot be said that there was anything on record on the basis of which he could have been compulsorily retired. The confidential reports of years earlier to 1975 could not have been taken note of and made basis for deciding that the petitioner should be compulsorily retired. It has been further submitted that the order of compulsory retirement is actuated by malice and has not been passed on merits. The screening committee did not consider the case at all objectively and the learned District Judge at the behest of Shiv Dutt Harsh compulsorily retired him with effect from September 2, 1983. It has been further submitted that the narration of the facts in the writ petition coupled with the repeated applications he had filed before the learned District Judge in his enquiry cases have resulted in annoyance and a personal bias of the learned District Judge who acted in great haste in as much as he sent Shiv Dutt Harsh to the Treasury Officer to get the bills passed for three months' salary and issued the orders forthwith. It has further been submitted that passing of the order of compulsory retirement in the circumstances when as many as four enquiries are pending against the petitioner is circumventing the provisions of the C.C.A. rules. Compulsory retirement by itself is one of the penalties which can be imposed on conclusion of enquiry if the person is found guilty and passing such an order during the pendency of an enquiry purported to be one order Rule 244 (2) of the R.S.R. is virtually pre-judging the charges and punishing the employees. It has further been submitted that the petitioner has become the victim of a conspiracy between the them District Judge and his Munsarim Shiv Dutt Harsh and the entire actions of the learned District Judge from May, 1982 onwards had been such which leads to an irresistible conclusion that he wanted to harass the petitioner to The extent that he will surrender before Shiv Butt Harsh his rival candidate for Presidentship and when he failed in pressurizing the petitioner and the retirement of Shiv Dutt Harsh came, the petitioner was also compulsory retired simultaneously. It has further been

submitted that respondent No. 3, Shiv Dutt Harsh who had been made a party in this writ petition has filed a reply and a bare look at his reply shows his deep rooted anguish against the petitioner and he did not even spare the counsel appearing on behalf of the petitioner. It has now been contended that use of such sort of intemperate and irresponsible language against a counsel whose duty is to plead the case of his client in the court should be deprecated.

12. The learned Government Advocate appearing on behalf of respondent Nos. 1 and 2 submitted that there is no malafide on the fart of the learned District Judge he had followed the rules in letter and spirit and since there were complaints against the petitioner and he served charge sheet on him false allegations have been leveled against him. It has further been submitted that it is wrong to say that the petitioner has excellent record of service and there was no material before the screening committee. It has been contended that committee of three persons headed by District Judge himself had considered the service record and other matters of the employees who had put considered the service record and other matters of the employees who had put in 25 years of qualifying service and took their decisions under the provisions of Rule 244(2) of the R.S.R. It is submitted that it is incorrect to say that respondent No. 3 in any way manoeuvred the compulsory retirement of the petitioner. It has also been submitted that there were adverse remarks in the annual confidential reports of the petitioner for the years 1968 and 1969 and they had been communicated to the petitioner. It was submitted that the fact of considering the case in 1970 for compulsory retirement and recording of the conclusion that the petitioner did not deserve compulsory retirement is irrelevant. There is no bar for further consideration and it is an absolute right of the authority to retire any one in public interest. It was further submitted that this writ petition should be dismissed on the ground that there is power of review in the High Court vide circular dated December 3, 1975 and the petitioner has already moved the review petition, hence this Court should not interfere in extraordinary jurisdiction. It was therefore contended that the petitioner had impaired and this being case of subjective satisfaction of the committee and in the public interest, this Court should not go into the merits of the case.

13. Respondent No. 3 Shiv Dutt Harsh, neither appeared in person nor though counsel during the course of arguments, but he had filed a reply to the writ petition and have carefully gone through it. Respondent No. 3 Shiv Dutt Harsh, in his reply has submitted that the petitioner has concocted the entire story and it has been introduced with the connivance of his Advocate. It has further been stated that the Advocate in the petition is in habit of creating false stories. The Advocate had previously also mentioned in the writ petit on filed by Mr. Prem Ratan Shinghvi the similar allegations against respondent No. 3. This clearly indicates the malafide intention of the Advocate. It has been submitted that he had neither any influence over the District Judge nor on any other judicial officers and he was never revengeful towards the petitioner. He has stated that to the contrary, his relations with the petitioner throughout his service career had been good. It bas further been submitted that the writ petition has been filed to blame Hon'ble Shri K.D. Sharma, the then Chief Justice and Girdhar Lal Acharya, the then District Judge, Jodhpur. It has further has been stated that he had nothing to do with the retirement of the petitioner and it is only an imagination of the Advocate who has created the story. It has been admitted by the respondent that the petitioner contested the election against him but he got only 26 votes as against 86 by him and that he has been so popular amongst the clerks of the judicial department throughout that he had earlier been elected as Prantiya President unanimously. He has stated that the petitioner was no comparison to him and he never bothered about his candidature.

14. Before I record my findings on the contentions raised by the earned Counsel and the facts leading to the compulsory retirement of the petitioner in ibis case I deem it proper to consider the orbit within which a public servant can be compulsory retired under Rule 244(2) of the R.S.R. Rule 244(2) of the R.S.R. reads as under:

Rule 244(2)--(i) The Appointing Authority shall have the absolute right to retire in public interest any Government servant, by giving him at least three months previous notice in writing from service on the date on which he completed 25 years of qualifying service or on the date on which he attains the age of 50 years, which ever is earlier, or on any date thereafter:

provided that such Government servant may be retired from service forthwith, and on such retirement the Government, servant shall be entitled to claim three months' pay and allowance in lieu of notice.

(ii) The Government may publish the order of such retirement in Rajasthan Rajpatra, and the Government servant shall be deemed to have retired on such publication, if he has not been served with the retirement order earlier.

15. A perusal of the aforesaid rules makes it abundantly clear that a public servant can always be compulsorily retired if the competent authority comes to a decision on considering the circumstances of the case that the employee should be retired otherwise the public interest would suffer. The question as to what is a public interest and how it has to be construed in case of compulsory retirement has been elaborately discussed by his Lordship Justice Krishna Iyar in Baldev Raj Chadhe v. Union of India and Ors. 1980 I ab. J.C. 184 hold as under:

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

It has further been held:

When an order is challenged and its validity depends on its being supported by public interest the State must disclose the material so that the court may be satisfied that the order is not bad for want of any material whatever which, to a reasonable man reasonably instructed in the law, is sufficient to sustain the grounds of 'public interest' justifying forced retirement of the public servant. Judges cannot substitute their judgment for that of the Administrator but they are not absolved from the minimal review well-settled in administrative law and founded on constitutional obligations. The court is confined to an examination of the material merely to see whether a rational mind may conceivably be satisfied that

the compulsory retirement of the officer concerned is necessary in public interest. The appropriate authority, not the court, makes the decision, but, even so, a caveat is necessary to avoid misuse.

It has been further held:

This takes us to the meat of the matter, viz. whether the appellant was retired because and only because it was necessary in the public interest so to do. It is an affirmative action, not a negative disposition, a positive conclusion, not a neutral attitude. It is a terminal step to justify which the onus is on the Administration, not a matter where the victim must make out the contrary. Security of tenure is the condition of efficiency of service. The Administration to be competent, must have servants who are not plagued by uncertainty about tomorrow. At the age of 50 when you have family responsibility and the somber problems of one's own life's evening, your experience, accomplishments and fullness of fitness become an asset to the Administration, if and only if you are not hurried or worried by what will happen to me and my family? 'Where will I go if cashiered?' How will I survive when I am too old to be newly employed and too young to be superannuate in departments where functional independence, fearless security, and freedom to expose evil or error in high places is the task. And the Ombudamen manic tasks of the office of audit vested in the C & AG, and the entire army of monitors and minions under him are too strategic for the nation's financial health and discipline that immunity from subtle threats and oblique over-aweing is very much in public interest. So it is that we must emphatically state that under the guise of 'public interest' unlimited discretion is regarded acceptable for making an order of premature retirement, it will be the surest monace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. To constitution alise the rule, we must as read it as to free it from the potential for the mischief we have just projected. The exercise of power must be bona-fide and promote public interest. There is no demonstrable ground to infer malafides Lere and the only infirmity alleged which deserves serious notice is as to whether the order has been made in public interest. When an order is challenged and its validity depends on its being supported by public interest the State must disclose the material so that the court may be satisfied that the order in not bad for want of any material

whatever which to a reasonable man reasonably instructed in the law, is sufficient to sustain the grounds of 'public interest' justifying forced retirement of the public servant. Judges cannot substitute their judgment for that of the founded on constitutional obligation. The limitations on judicial power in this area are well known and we are confined to an examination of the material merely to see whether a rational mind may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest.

(underlining is mine)

In Swami Saran Saksena v. State of Uttar Pradesh : (1980)ILLJ103SC it has been held that:

Ordinary the Supreme Court does not interfere with the judgment of the relevant authority on the point whether it is in public interest to compulsorily retire a Government servant but in the peculiar circumstances of the case and on the perusal of the entries in the personal file and character roll of the appellant if there is nothing to show that suddenly there was such deterioration in the quality of the appellant's work or integrity after his crossing the second efficiency bat to as to deserve compulsory retirement.

(underlining is mine)

In Brij Beharilal Agarwal v. Hon'ble High Court of Madhya Pradesh and Ors. : (1982)ILLJ1SC their Lordships reviewing the law laid down in the earlier cases held as under:

It is necessary to communicate adverse entries made in confidential reports to the Govt. servant concerned. When considering the question of compulsory retirement, while it is no doubt desirable to make an overall assessment of the Government servants' record, more than ordinary value should be attached to the confidential reports pertaining to the years immediately preceding such consideration. It is possible that a government servant may possess a somewhat erratic record in the early years of service, but with the passage of time he may have so greatly improved that it would be of advantage to continue him in service

up to the statutory age of superannuating. Whatever value the confidential reports of earlier years may possess, these pertaining to the later years are not only of direct relevance but also of utmost importance.

(underlining is mine)

A Division Bench of the Rajasthan High Court in State of Rajasthan v. Narendra Mal 1981 WLN (UC) 465 reviewed the whole law about compulsory retirement and held:

The power given by Rule 244 can only be exercised against a government servant, whose efficiency has impaired, i.e., there has been deterioration of the efficiency, ordinarily no employees should be compulsorily retired on the ground of inefficiency (1) if during preceding five years of service or (2) in case of promotion to the higher post during 5 years' period his service in the higher post has been satisfactory.

Their Lordships in aforesaid case also considered the judgment of this Court in Prem Chand Sanghi v. State of Rajasthan (D.B. Civil Special Appeal No. 144/1975, decided on March 11, 1980) wherein it was observed:

Taking into consideration the entire set of circumstances, we have no hesitation in coming to the conclusion that there was no legal material on the basis of which the Screeing Committee could ultimately come to a conclusion that the petitioner be ordered to retire compulsory. We must make it clear that we are not trying to sit in appeal over the orders of the Screening Committee, bat at the same time if the orders of the Screening Committee, are based on irrelevant and extraneous circumstances and are based on no legal material then this Court shall not fail in its duty to render justice where justice has been denied to an individual on the basis of extraneous and irrelevant consideration. The order of compulsory retirement dated September 2, 1972 was therefore, wholly unjustified and based on no relevant material. Under these circumstances, we find it exceedingly difficult to uphold the order of the learned Single Judge.

(underlining is mine).

The Division Bench consisting of Hon'ble Mr. Justice S.K. Mal Lodha and Hon'ble Miss Justice Kanta Bhatnagar had reviewed the entire case law concerning the compulsory retirement and I need nor repeat all what has already been said in the aforesaid judgment. The application of Rule 244(2) of the R.S.R. was again considered by this Court in Deo Narain v. State of Raj. and Ors. 1982 WLN (UC) 324, wherein also guide lines were provided. In Dr. S.P. Kapoor v. State of Himachal Pradesh and Ors. 1982 U.J. (SC) 731 their Lordships of the Supreme Court were considering the law about malafide and it was held.

The post haste manner in which the things have been done on November 3, 1979 suggests that some higher up was interested in pushing through the matter hastily when the regular Secretary, Health and Family Welfare was on leave.' Such rush is not usual in any State Government.

In Thanaram v. State of Rajasthan 1973 RLW 621 his Lordship Mr. Justice Tyagi J. as he then was while considering the law about malafide action in order of suspension held.

In a State wedded to democracy rule of law acts as a constant deterrent for temptation against the misuse of the power conferred by the Legislature on the Government which functions as a trustee to safeguard the rights and the interest of the people. The expression 'rule of law' primarily implies that the life, liberty, property and reputation of the people shall not be damaged or impaired except under the authority of the law, that is to say, for a purpose stated in the law and the manner so stated. Rule of law is not a mere mechanical rule just requiring compliance with statute. It is much more; it is a principle. Thus, if the law laid down by the Parliament itself authorises that the Government or any official thereof may act in a manner stated therein, then he has not only to follow the procedure laid down in the statute but has to follow the purpose for which such a law has been enacted by the Legislature. An act may be perfectly legal and yet it may be contrary to rule of law. There is no doubt that the administration always exercises come degree of discretion, but the area of discretion left with the administrator should be delimited by certain clear-out norms so as to exclude the exercise of arbitrary power.

Considering an order passed by the Minister on a day prior to his laying down the office placing a Pradhan under suspension was an act of malafide as the post haste shown leads to such irresistible conclusion. In Partap Singh v. State of Punjab AIR 1964 Punjab 264 their Lordships held as under:

Doubtless, he who seeks to invalidate or nullify any act or order must establish the charges of been faith, an abuse or a miouse by Government of its powers. While the indirect motive or purpose or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the appellant has to establish in this case, though this may some times be done, (see Edgington v. Fitzmaurise 1883, 29 Ch.D 459). The difficulty is not lessened when one has to establish that a person in the position of a Minister apparently acting in the legitimate exercise of power has in fact, been acting malafide in the sense pursuing an illegitimate aim. We must, however, demur to the suggestion that malafide in the sense of improper motive should be established only by direct evidence that is that it must be discernible from the order impugned or must be shown from the notings in the file which preceded the order. If bad faith would vitiate the order the same can, in our opinion, be deduced as a reasonable inference from proved facts.

In General Assembly of Free Church of Scotland v. Overteun (1904 AC 515) it has been hold:

I take it to be clear that there is a condition implied in this as well as in other instruments which create powers. namely that the power shall be used bonafide for the purposes for which they are conferred.

In State of Mysore v. C.N. Vijendra Rio : [1976]2SCR321 his Lordship Hon'ble Chandrachud J considered a case where Divisional Forest Officer was placed under suspension pending enquiry and withdrawing his order of suspension he was compulsorily retired. His Lordship held:

The Government cannot go back on that position and retire the respondent.

16. The impugned order of compulsory retirement has to be tested on the touch stone of the rational and the law laid down by their Lordships of this Court and the Supreme Court in cases referred to above. The petitioner is in Government service since 1951 and in his 32 years service career according to the reply filed by respondents he had only two adverse entries and those too also relate to years 1968 & 1969. It is after these entries tint he was promoted as upper division clerk. According to the respondents' reply itself it is proved that in 1975 the petitioner was screened along with other employees and it was found that he was perfectly suitable to continue in service and need not be compulsorily retired which clearly means that his two service adverse entries relating to 1968 & 1969 were not found enough for his compulsory retirement in the year 1975 and in my opinion rightly so because these were not the adverse remarks given to the petitioner in recent live years preceding the date of consideration and that during this period he was promoted also. It has not been shown in this case that since after 1975 there was any adverse entry against the petitioner which has been communicated to him and it has also Dot been shown that be has become physically or mentally unfit to continue doing his normal work in the office There is net an iota of circumstances to substantiate that efficiency of the petitioner in any manner, has been impaired, then the question arises whether the order passed by the learned District Judge, Jodhpur can be said to be 'in public interest'? I have already quoted above the decisions of their Lordship of Supreme Court and this Court judging in the light of these decisions the answer is big NO , and to justify this 'NO' my reasons are based on facts and circumstances referred to hereuner.

17. The petitioner decided to contest the election for Presidentship in Way 1982 postponed to July 1982 against Shiv Dutt Harsh who was Munsarim working with learned District Judge. The fact of his contesting the election has not been denied by any of the respondents, on the contrary it is admitted. It has not been disputed that the petitioner was transferred from Osian to Jodhpur only six months before his transfer was ordered from Jodhpur to Pokaran again on May 1, 1982. The petitioner's contention is that he was transferred because he was contesting election against Shiv Dutt Harsh and he was pressurised to withdraw but since he did not yield to pressure he was transferred. The respondents have denied this in their reply and have stated that cause of transfer was promotion of one Sohan

Meditya from the pest of lower division clerk, but to me it appears to be a lame excuse sur(sic)sequently found out to justify the transfer. Ex. 1 is the order relieving the petitioner parsed by the concerned Chief Judicial Magistrate Jodhpur. He endorsed the copy of order of relieving to the learned District Judge and therein made prayer that a new reader may be appointed at an early date in place of Jethmal. This endoresment clearly belies the reply of the respondent that somebody was promoted and for that his transfer had become essential. Had somebody been posted in place of the petitioner prior to May 6, 1982 the Chief Judicial Magistrate would not have made this endorsement and petitioner would have been asked to hand over charge to Sohan Medtiya. This transfer obviously has been ordered within six months of the petitioner's coming to Jodhpur from Osian and could not be said to be in the exigencies of service. The transfer order was contrary to instructions of the Government, dated April 28, 1982 putting a ban over the transfers and also was in clear violation of the circular issued by the High Court dated October 12, 1974. The petitioner was thereafter suspended by the order, dated September 2, 1983 of the learned District Judge and his bead quarter was kept at Pokaran. The petitioner brought to the notice of the learned District Judge that his eldest son is a student of ME in Engineering College at Jodhpur, his second son is also having University education, his daughters were studying in secondary and since he was only to draw half the salary during the period of suspension It would be in the interest of justice and humanity that his head quarter is shifted to Jodhpur. He also quoted in his application a precedents where this Court had changed the head quarter of a Judicial Officer in his home District. It is strange that such a reasonable request of the petitioner was turned down time and again by the learned District Judge and not only that when the petitioner came for his treatment to Jodhpur after seeking the permission of the Munsiff & Judicial Magistrate to leave the head quarter he was threatened with another disciplinary enquiry vide letter, dated October 11, 1982. The petitioner in his repeated letters, namely, Ex. P. 9, Ex. P. 12, Ex. P. 16 so on and so forth brought to the notice of the learned District Judge that Shiv Dutt Harsh, respondent No. 3, who was Munsarim is inimical to him since he had contested the election and is bent upon to ruin his career. The petitioner sought the protection of the Court. The petitioner wrote a similar letter to the President of the State Judicial Employees Union,

Jaipur where also he mentioned this fact. The learned District Judge while giving his answers to the various Setters only insisted the petitioner to stay at Pokaran and did not say a word about his complaint about Shiv Dutt Harsh. He neither assured the petitioner to look into his grievances nor at any time told him that he has false apprehensions. On the contrary he served three charge-sheets on various charges upon the petitioner on November 20, 1982. It is after these charge sheets that the petitioner fell sick and produced the medical certificates from time to time. It is curious to note that the learned District Judge on December 18, 1982 wrote a letter to the petitioner wherein he stated that Dr. Devraj Purohit who was treating the petitioner had informed his office that the petitioner had been cured and was capable of assuming his duties I have yet to conceive of a case that the Doctor suo moto would inform some department of the patients resuming health unless there is some querry. It is also strange that the learned District Judge had been asking the petitioner not only to disclose the name of his physicians but to place before him the prescriptions and the cash memos by which he had brought the medicines. It also strange to note that the learned District Judge directed the Munsiff and Judicial Magistrate, Pokaran not to accept any medical certificate and also that the petitioner should not be permitted to leave his head quarter. All the three respondents have stated in their reply that there was no malafide on the part either of learned District Judge or the Minsarim bit I am cancelled to infer from the aforesaid attitude of the learned District Judge that he had bias against the petitioner for reasons best known to him and it also cannot be thought for a moment that Shiv Dutt Harsh who was then the Munsarim of the Court was ignorant as to what has happened or was a silent spectator. On the contrary the cat is out of bag on reading Ex. P. 32, Ex- P. 34, Ex- P. 36 and Ex. P. 41 the orders by which Shiv Dutt Harsh, Munsarim, was appointed as a departmental representative to appear against the petitioner in the departmental enquiries It cannot be lost right off that it was from May, 1982 onwards that the petitioner had been telling the learned District Judge that he is being victimized because of Shiv Dutt Harsh with whom he has inimical relations and against whom he had contested the election. He had been seeking protection of the court against atrocities but instead of protecting him the learned District Judge appointed Shiv Dutt Harsh as prosecutor in the enquiry who could have worked none else than a

persecutor in the circumstances of the case After this the petitioner brought to the notice of learned District Judge that Shiv Dutt Harsh is not only inimical to him and he should be changed, he also prayed that since he is a law graduate and three Magistrates holding the enquiries are also law graduates he should be permitted a lawyer to defend him He cited 19 decisions of the various courts including four of the Supreme Court in support of his request but the request was turned down without even looking into cases referred to in application Ex. 44. All these cases have provided guide lines as to how assistance should be provided to delinquent officer, Not relying upon the judgment of Hon'ble Supreme Court and High Courts is not only showing disregard to the judgment of the High Court but is contemptu us. The enquiry officers and the presenting officer were appointed from Jodhpur and the enquiries were also to be conducted at Jodhpur, but headquarter of the petitioner was kept at Pokaran. In these circumstances it was neither reasonable nor rational to have refused the legitimate prayer of the petitioner for shifting his headquarter from Pokaran to Jodhpur. It is also pertinent to mention that the petitioner has not been paid any subsistence allowance also, I will consider this aspect when I will deal with another connected writ petition in this very judgment at a later stage. However, suffice it to say that this was an insult to the injury. It makes an interesting reading of a letter addressed by Shiv Dutt Harsh as a department representative to the enquiry officers on January 17, 1983, wherein he stated as under:

irk yxkus ij ekywe gqvk fdlh ds-ds- O;kl tsBeyth ds fj'rsnkj gS vkSj tks'kh;ks dh dVdj tks fd tsBey ds edku ds ikl jgrs gS A bl izdkj Jh tsBey ckj ckj vkius feyus okys MkDVjks ls >wBs jksx izek.ki= izkIr dj foHkkxh; tkWp dks yfEcr dj jgs gS A

vr% Jh tsBey dks ,d vkf[kjh ekSdk fn;k tkdj mls fgnk;r dn nh tkos vxj vxyh ckj is'kh ij foHkkxh; tkap ij mifLFkr ugh gqvk A rks mlds fo:) ,d i{kh; dk;Zokgh izkjEHk dj nh tkosxhA

The language used above exhibits to show of authority and virtually a command to enquiry officer. When this enquiry was pending it is also not denied that Shiv Dutt Harsh was superannuated and was to retire on August 31, 1983. This is a very crucial date in this case. It it borne out from the record that Shiv Dutt wanted this

enquiry to be completed expeditiously but this Court had granted a stay hence it could not be completed obviously. Neither Shiv Dutt Harsh could wreck his vengence against the petitioner nor the learned District Judge could have taken any action in pursuance of charge-sheet served. Feeling helpless because of stay order as it was neither possible nor feasible for the learned District Judge to have taken any action against the petitioner, the only way left out to use the arbitrary power was to compulsory retire the petitioner as he was retiring en August 31, 1983 and, therefore, before he retires on August 30, 1983 a letter No. 370 was addressed by the learned District Judge to the Treasury Officer, Jodhpur and officer Incharge Accounts to prepare the salary bills for three months of the petitioner and Shiv Dutt Harsh personally went to the Treasury Officer. There is yet another interesting feature in the case that in enquiry No. 4/82 being conducted by Shri J.P. Chhangani got the statement of one Ganpat Singh recorded on August 4. 1980. From this statement of Ganpat Singh the case against the petitioner was not being made out, therefore, Shiv Dutt Harsh requested the enquiry officer to adjourn the enquiry and record his statement again because the had not supported the department case and this is surprising that that the enquiry officer yielded to his request and the statement of Ganpat Singh was recorded denovo. This also exhibits influence of Shiv Dutt Harsh where even the statement of the witnesses Can be re-recorded because the prosecutor wants it. All this hot haste when enquiries were pending leads me to an 'irresistible conclusion that malice was writ drags and was a naked exposition of power. Several other allegations have been levelled in the writ petition and vague replies have been give to these allegations made in paras 7(1) to 7(7). The reply has been given in a slipshod manner and I have no hesitation in saying that the petitioner has been victimized.

18. It was the duty of the respondents to have disclosed the material leading to subjectives of the authority to take a decision of compulsory retiring the petitioner but the respondents have not placed before the court and have with held the material taken into consideration made by the Screening Committee in arriving at a conclusion that keeping the petitioner in service was not in public interest However, I asked the Government Advocate to show me the original file where the Committee has recorded its finding considering the retirement of the petitioner in public interest. I do not intend to reproduce what has been said in the order, but

suffice it to say that it is a sad commentry on the way of working of a District Judge. The manner in which the finding has been arrived at and the reasons assigned can by no cannon of Jaw or a rational consideration be considered to be grounds for compulsory retiring a person. It is borne out from the minutes as if a ritual has been performed because something had to be written but no considerations have been kept in mind whether what is being recorded is relevant or irrelevant. It cannot be expected of a Judicial Officer who though acting on administrative side that he will be so non-judicious in his approach. On perusal of the file I can only say less said the better as it has left a very unhappy impression on my mind.

19. The petitioner in his writ petition has stated that he has never been punished by way of disciplinary action or otherwise in the manner and also stated that in the year 1975 a decision was taken to screen him as he had completed 20 years of service, his case was acreened along with several others by committee headed by the then District Judge and it came to the conclusion that there was no reason for affecting compulsory retirement of the petitioner. He submitted that there was no material available for his compulsory retirement in the year 1983. To this reply of respondent Nos. 1 and 2 is that for disciplinary enquiries are pending against the petitioner and so far as the adverse remarks of ACR are concerned, he had adverse remarks in the years 1968 and 1969. His screening in 1975 was admitted and not a word has been stated in the reply that subsequent to 1975 there is any complaint against him except the pendency of the four enquiries for which I will comment later on in this judgment. It is most unfortunate and regrettable that in the circumstances when there was not a word to say against the petitioner since after 1975 an order of compulsory retirement should have been passed. Passing of such an order is in clear violation of law and ignoring the guide lines provided and can only be deprecated. I have deliberately used the strong phraseology because this is a case of an employee serving in a judicial court and order has been passed by as high officer as the District Judge. It is expected of a judicial officer that he will pass orders even on administrative side in a manner that the people's faith in judicial system is not shaken but if such orders are permitted to be passed and not quashed the people will soon lose faith in this great institution.

20. There is yet another reason to quash the order of compulsory retirement of the petitioner and that is the circumstance in which it has been passed. I have already mentioned above that there were neither adverse entries against the petitioner in the record after 1975 nor there was any material to infer that his efficiency has been impaired however four departmental enquiries were pending against him. The three of the departmental enquiries have been started on one day and the fourth after about a fortnight. Different enquiry officers have been appointed for holding these enquiries with one common presenting officer, namely, Shiv Dutt Harsh and according to the letters of the learned District Judge many more were contemplated. When these enquiries were already pending the petitioner could have been punished on completion of either of them if the charges were proved against him, and cutting short the matter and retiring compulsorily would only be circumventing the process Of enquiry and fore-stalling the decision of the enquiries. Compulsory retirement is one of the punishment mentioned in Rule 14 of the CCA Rules and is a major penalty. This could have been inflicted upon the petitioner if tie would have been found guilty of the charges levelled against him He could certainly not be retired compulsorily before the conclusion of the enquiries. I am constrained to hold that the impugned order of compulsory retirement was passed not in the public interest but to cause harm to the petitioner. The learned District Judge could not have given such an abrupt uncertainty to long service career of the petitioner. Judging and viewing from any point of view the manner in which the impugned order has been passed is conscience shaking.

21. Before dealing with this prayer of setting aside the compulsory retirement. I cannot refrain myself from expressing that the reply filed by 1 respondent No. 3 is in a very bad taste language which has been used for the counsel for the petitioner in the case is peruse defamatory and strengthens the presumption of peevishness on the part of respondent No. 3. He has time and again in his reply mentioned that everything is creation of the Advocate while I have already said above there are reasonable grounds to infer on the documentary evidence on record in the shape of long drawn correspondence that the allegations levelled against the counsel are absolutely false, frivolous and baseless. When this writ petition has been filed and the notices were issued the learned District Judge, Jodhpur was made a party. He

was served in* this writ petition and no affidavit has been filed challenging the grounds of malafide and that he was acting under the influence of Shiv Dutt Harsh, as such the allegations made in the writ petition go unrebutted.

22. The net result of my discussion of law and facts of this case is that the order of compulsory retirement has not been passed to chop off the dead wood and also not in public interest but is unreasonable, arbitrary and a disguised punishment and therefore, deserves to quashed.

23. Now coming to the second writ petition filed with a prayer for quashing the departmental enquiry proceedings have been challenged on the following grounds.

24. It has been contended by the earned Counsel for the petitioner that all the enquiries have been started with a view to harass and humiliate the petitioner and were started, at the behest of respondent No. 3. It has further been submitted that the consequence of events in quick succession from May to August 1983 clearly and ex facie exhibits a revengeful attitude. The institution of three enquiries on one single day with multiple charges therein and the question of the fourth one within a span of 15 days and appointing Shiv Dutt Harsh as presenting officer in all the four enquiries also indicates the bias of the learned District Judge. It has further been submitted that the proceedings are vitiated because firstly subsistence allowance has not been paid to the petitioner during the period of suspension, secondly he has been denied the assistance of a competent person to defend him at the enquiry, it is submitted that the petitioner wanted a lawyer to defend him as the enquiry officers were Magistrates and the presenting officer was also a law graduate. Thirdly the institution of the enquiries was malafide and bad been initiated under the influence of respondent No. 3, Shiv Dutt Harsh. Fourthly the petitioner has not been permitted to have all the necessary materials for defending his case. Fifthly the enquiry was to be held at Jodhpur as all the witnesses and the presenting officer and the enquiry officers were also at Jodhpur but the petitioner's head quartet was not ordered to be shifted from Pokaran to Jodhpur and lastly the initiation of the enquiries has been calculated to victimse the petitioner and the allegations which have been made in the statement of allegations, are baseless.

25. I do not propose to go in detailed discussions as I am neither expected to nor am inclined to say anything on the merits of the enquiries but I consider only one ground to be enough for quashing the enquiry from the stage of charge sheet, i.e., non-payment of subsistence allowance during the period of suspension. The short question therefore, would be whether an enquiry conducted without paying the subsistence allowance during the period of suspension can be held to be a proper enquiry. In this respect I will refer to Ghanshyam Das Srivastva v. State of Madhya Pradesh 1973 SLR 636. Their Lordships of the Supreme Court held that:

Suspension pending departmental enquiry and suspension allowance not paid the official not attending the enquiry for nonpayment of suspension allowance the order of dismissal Is hit by Article 311 of the Constitution, as the employee was not afforded opportunity to defend.

On the strength of above case it can safely be said that the petitioner cannot proceed unless the subsistence allowance is paid to him. It is not denied that subsistence allowance was not paid to the petitioner from the date of his suspension till the date of his compulsory retirement. Thus this ground alone is sufficient to vitiate the enquiry and what ever proceedings have been done till now deserve to be quashed. There is yet another circumstance and that is not providing a lawyer to tie petitioner in this case. It is not denied that enquiries were being held by judicial officers and the presenting officer was also a law graduate. In these circumstances as laid down in the Board of Trustees of Port of Bombay v. Dilip Kumar Raghavendranath and Ors. : (1983)ILLJ1SC wherein their Lordships have provided guide lines for permitting lawyers. There are scores of cases on this count that when a trained and law graduate person is appearing for department the delinquent officer must he permitted to engage a lawyer It is always necessary for the Disciplinary authority and enquiry officer while exercising their discretion to permit or refuse a lawyer they should bear in mind that long drawn out proceedings may not be ultimately declared null and void on the ground that discretion has not been exercised judiciously and carefully. I am hot setting aside these enquiries as whole as I am not going into the question whether the allegations made in the statement of allegations are true or false or are based on some preliminary enquiry, but at the same time I hope that the Disciplinary

Authority in the circumstances of this case will review the entire matter and it is open to him to either drop the enquiries or to continue with them. But he must be sure that neither the rules of law nor principles of natural justice are in any way violated.

26. I have stated much above but still unable to restrain myself from expressing that the judicial officers in courts subordinate to the High Court when deal with their staff and the employees working under them must act in a manner that it neither shakes the confidence of the people nor violates the rule of law so as to denigrate the position of the judiciary. Let not people say that injustice percolates right under the nose of the judicial officers. These lines I have added neither to offend any judicial officer nor in any way means that such things often happen but only in order to remind them that the judiciary is that organ of this democracy where the faith of the people rests and they come for seeking redress if we would not be judicious in our actions, then how people in general would have confidence.

27. In conclusion, I allow writ petition No. 2501/83 to the extent that whatever proceedings have been drawn from the stage of serving of charge-sheets are quashed and it is open to the learned District Judge to proceed with the enquiries in accordance with law if he so chooses and also direct that the arrears of subsistence allowance and pay and allowances may be paid forthwith to the petitioner if not already paid. The petitioner has already been reinstated in compliance with the interim order passed on January It is May 1984 and not January 1984--Editor 1984 by Hon'ble Mr. Justice D.P. Gupta.

28. S.B. Civil Writ Petition No. 2541/83 is allowed. The order of compulsory retirement, dated September 2, 1983 is quashed. The petitioner shall be deemed to be in service and shall be paid the consequential benefits. In the circumstances of this case the petitioner is entitled to costs which I quantify at Rs. 1,000/-.