Arun Kumar Gupta vs State Of Jharkhand on 27 February, 2020

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Bench: Deepak Gupta, L. Nageswara Rao

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 190 OF 2018

ARUN KUMAR GUPTA …PETITIONER(S)

Versus

STATE OF JHARKHAND & ANR. …RESPONDENT(S)

WITH

WRIT PETITION (CIVIL) NO. 391 OF 2018

JUDGMENT

Deepak Gupta, J.

1. These writ petitions have been filed by two erstwhile judicial officers who were members of the judicial service in the State of Jharkhand and are directed against the orders whereby they have been compulsorily retired. In respect of the two writ petitions which are the subject matter of this judgment, this Court passed the following order on 06.09.2018:

> "Writ Petition Nos. 190/2018 and 391/2018 shall remain pending. The High Court of Jharkhand may like to reconsider the matter in the light of the entirety of the materials that have been placed before us at the hearing by the Registrar General of the Jharkhand High Court and also by the learned counsel for the High Court.
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> We make it clear that the High Court is free to decide the matter as may be

> considered appropriate and that we have expressed no opinion on merits at this stage. The High Court of Jharkhand would be free to support its conclusions in terms of the present order with adequate reasons.
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> The decision of the High Court in accordance with this order be laid before us at the end of two months from today.
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> List the matters after two months." Pursuant to the aforesaid order, the matters were placed before the Screening Committee of the High Court of Jharkhand and the Screening Committee on 11.10.2018 again found sufficient reasons and approved the earlier action taken to compulsorily retire these officers. The resolution of the Screening Committee was placed before the Standing Committee of the Jharkhand High Court, which approved the resolution of the screening committee on 25.10.2018.

2. Challenge is laid in both these writ petitions to the orders of compulsory retirement and especially to the reasons assigned or the material ignored by the Screening Committee. The orders of compulsory retirement have been passed in terms of the Rule 74(b)(ii) of the Jharkhand Service Code, 2001 which reads as follows:

> "(ii) The appointing authority concerned may after giving a Government servant atleast three month's previous notice in writing, or an equal amount to three month's pay and allowance in lieu of such notice, require him in public interest to retire from the service on the date on which such a Government servant completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice" The aforesaid rule is pari materia to Rule 56(j) of the Fundamental Rules.

3. The main contentions raised on behalf of the petitioners are that their retirement is not in the pubic interest: their entire service record especially the contemporaneous record has not been taken into consideration and also that the petitioners have been granted various promotions which would have the effect of washing off their previous adverse entries, if any.

4. While deciding the present case we are conscious of the fact that we are dealing with the cases of judicial officers. The standard of integrity and probity expected from judicial officers is much higher than that expected from other officers. Keeping these factors in mind we shall first discuss the law on the subject and then take up these two cases on merits.

Principles Governing Compulsory Retirement

5. This Court in Union of India v. Col. J.N. Sinha1 held that compulsory retirement does not involve civil consequences. It also dealt with the issue of what constitutes public interest. The following observations are apposite:

> "9. Now coming to the express words of Fundamental Rule 56(j) it says that the appropriate authority has the absolute right to retire a Government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. The 1st respondent challenged the opinion formed by the Government on the ground of mala fide. But that ground has failed. The High Court did not accept that plea. The same was not pressed before us. The impugned order was not attacked on the ground that the required opinion was not formed or that the opinion formed was an arbitrary one. One of the conditions of the 1st respondent's service is that the Government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights 1 (1970) 2 SCC 458 acquired by him before retirement. Compulsory retirement involves no civil consequences. The aforementioned Rule 56(j) is not intended for taking any penal action against the Government servants. That rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there.

There is no denying the fact that in all organizations and more so in Government organizations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual Government servant and the interests of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.

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11. In our opinion the High Court erred in thinking that the compulsory retirement involves civil consequences. Such a retirement does not take away any of the rights that have accrued to the Government servant because of his past service. It cannot be said that if the retiring age of all or a section of the Government servants is fixed at 50 years, the same would involve civil consequences. Under the existing system there is no uniform retirement age for all Government servants. The retirement age is fixed not merely on the basis of the interest of the Government servant but also depending on the requirements of the society." (emphasis supplied) This judgment was followed in

State of Gujarat v. Suryakant Chunilal Shah2, wherein this Court dealt with the concept of public interest in great detail.

6. A three□Judge Bench in Baikuntha Nath Das v. Chief Distt. Medical Officer3 dealing with the concept of compulsory retirement laid down the following principles:

> "34. The following principles emerge from the above discussion:
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> (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
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> (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.
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> (iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary — in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.
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> (iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter — of course attaching more importance to record of and performance during 2 (1999) 1 SCC 529 3 (1992) 2 SCC 299 the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above."

7. In Chandra Singh v. State of Rajasthan4, though this Court came to the conclusion that the compulsory retirement awarded to the applicant was not in consonance with the law, it did not give relief to the petitioner on the ground that even under Article 235 of the Constitution of India, the High Court can assess the performance of any judicial officer at any time with a view to discipline the black sheep or weed out the dead wood. This Court held that this constitutional power of the

High Court is not circumscribed by any rule. Reference may be made to paras 40 and 47 of the judgment:

> "40. Article 235 of the Constitution of India enables the High Court to assess the performance of any 4 (2003) 6 SCC 545 judicial officer at any time with a view to discipline the black sheep or weed out the deadwood. This constitutional power of the High Court cannot be circumscribed by any rule or order.
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> 47. In the instant case, we are dealing with the higher judicial officers. We have already noticed the observations made by the Committee of three Judges. The nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility."

8. In Syed T.A. Naqshbandi v. State of J & K,5, this Court held that while exercising powers of judicial review the Courts should not substitute themselves for the Committee/Full Court of the High Court. The following observations are pertinent:

> "10...Neither the High Court nor this Court, in exercise of its powers of judicial review, could or would at any rate substitute themselves in the place of the Committee/Full Court of the High Court concerned, to make an independent reassessment of the same, as if sitting on an appeal. On a careful consideration of the entire materials brought to our notice by learned counsel on either side, we are satisfied that the evaluation made by the Committee/Full Court forming their unanimous opinion is neither so arbitrary or capricious nor can be said to be so irrational as to shock the conscience of the Court to warrant or justify any interference. In cases of such assessment, evaluation and formulation of opinions, a vast range of multiple factors play a vital and important role and no one factor should be allowed to be overblown out of proportion either to decry or deify an issue to be resolved or claims sought to be considered or asserted. In the very nature of things it would be 5 (2003) 9 SCC 592 difficult, nearing almost an impossibility to subject such exercise undertaken by the Full Court, to judicial review except in an extraordinary case when the Court is convinced that some monstrous thing which ought not to have taken place has really happened and not merely because there could be another possible view or someone has some grievance about the exercise undertaken by the Committee/Full Court..."

9. In Pyare Mohan Lal v. State of Jharkhand6, dealing with a case of judicial officers, this Court in relation to the powers under the same rule, after referring to a number of judgments, summarised the law on the point as follows:

> "18. Thus, the law on the point can be summarised to the effect that an order of compulsory retirement is not a punishment and it does not imply stigma unless such

> order is passed to impose a punishment for a proved misconduct, as prescribed in the statutory rules. [See Surender Kumar v. Union of India] [(2010) 1 SCC 158]. The Authority must consider and examine the overall effect of the entries of the officer concerned and not an isolated entry, as it may well be in some cases that in spite of satisfactory performance, the authority may desire to compulsorily retire an employee in public interest, as in the opinion of the said Authority, the post has to be manned by a more efficient and dynamic person and if there is sufficient material on record to show that the employee "rendered himself a liability to the institution", there is no occasion for the court to interfere in the exercise of its limited power of judicial review." 6 (2010) 10 SCC 693

10. In Rajendra Singh Verma v. Lt. Governor (NCT of Delhi) , this Court was dealing with the compulsory retirement of a judicial officer from the Delhi Higher Judicial Service. It was held that if the authority bona fide forms an opinion that the integrity of a particular officer is doubtful and it is in public interest to compulsorily retire such judicial officer, judicial review of such order should be made with great care and circumspection. It was specifically observed that when an order of compulsory retirement is passed, the authority concerned has to take into consideration the whole service record of the concerned officer which could include non□communicated adverse remarks also. It would be apposite to refer to the following observations of this Court:

> "218. On a careful consideration of the entire material, it must be held that the evaluation made by the Committee/Full Court, forming their unanimous opinion, is neither so arbitrary nor capricious nor can be said to be so irrational, so as to shock the conscience of this Court to warrant or justify any interference. In cases of such assessment, evaluation and formulation of opinions, a vast range of multiple factors play a vital and important role and no one factor should be allowed to be blown out of proportion either to decry or deify an issue to be resolved or claims sought to be considered or asserted. In the very nature of things, it would be difficult, nearing almost an impossibility 7 (2011) 10 SCC 1 to subject such exercise undertaken by the Full Court to judicial review except in an extraordinary case when the Court is convinced that some real injustice, which ought not to have taken place, has really happened and not merely because there could be another possible view or someone has some grievance about the exercise undertaken by the Committee/Full Court.
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> 219. Viewed thus, and considered in the background of the factual details and materials on record, there is absolutely no need or justification for this Court to interfere with the impugned proceedings. Therefore, the three appeals fail and are dismissed. Having regard to the facts of the case, there shall be no order as to costs."

11. In R.C. Chandel v. High Court of M. P.8, this Court, after dealing with the entire law on the subject, framed the following 3 questions of law:

> "18. The questions that fall for consideration are:

(1) Whether the recommendation made by the High Court on the basis of unanimous opinion to the Government for compulsory retirement of the appellant and the order of compulsory retirement issued by the Government suffer from any legal flaw?

(2) Is the order of compulsory retirement so arbitrary or irrational that justifies interference in judicial review?

(3) Is the view of the Division Bench upholding the order of the appellant's compulsory retirement so erroneous warranting interference by this Court in an appeal under Article 136 of the Constitution of India?" The Court took note of the fact that the appellant before it had been promoted and confirmed as District Judge and was also 8 (2012) 8 SCC 58 given selection grade and super time scale etc., but it held that these promotions would not wash off the earlier adverse entries which shall remain on record. It would be pertinent to refer to paragraphs 26 and 29 of the judgment which read as follows:

"26. It is true that the appellant was confirmed as District Judge in 1985; he got lower selection grade with effect from 24□3□1989; he was awarded super timescale in May 1999 and he was also given above super timescale in 2002 but the confirmation as District Judge and grant of selection grade and super timescale do not wipe out the earlier adverse entries which have remained on record and continued to hold the field. The criterion for promotion or grant of increment or higher scale is different from an exercise which is undertaken by the High Court to assess a judicial officer's continued utility to the judicial system. In assessing potential for continued useful service of a judicial officer in the system, the High Court is required to take into account the entire service record. Overall profile of a judicial officer is the guiding factor. Those of doubtful integrity, questionable reputation and wanting in utility are not entitled to benefit of service after attaining the requisite length of service or age.

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29. Judicial service is not an ordinary government service and the Judges are not employees as such.

Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secured that the Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to

thrive and the rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty."

12. In Rajasthan SRTC v. Babu Lal Jangir9, this Court held as follows:

> "23. The principle of law which is clarified and stands crystallised after the judgment in Pyare Mohan Lal v. State of Jharkhand is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this "washed□off theory" will have no application when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on "entire service record", there is no question of not taking into consideration the earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then 9 (2013) 10 SCC 551 that may be sufficient to justify the order of premature retirement of the government servant." (emphasis supplied) The view in Pyare Mohan Lal (supra) was reiterated. The only caveat being that the entire record should be taken into consideration and the earlier record even after promotions could not be ignored.

13. In High Court of Judicature of Patna v. Shyam Deo Singh10, this Court was dealing with a case where a judicial officer was retired at the age of 58 years and was denied the benefit of service of 2 years. This Court has held as follows:

> "8. The importance of the issue can hardly be gainsaid. The evaluation of the service record of a judicial officer for the purpose of formation of an opinion as to his/her potential for continued useful service is required to be made by the High Court which obviously means the Full Court on the administrative side. In all High Courts such evaluation, in the first instance, is made by a committee of senior Judges. The decision of the Committee is placed before the Full Court to decide whether the recommendation of the Committee should be accepted or not. The ultimate decision is always preceded by an elaborate consideration of the matter by the Hon'ble Judges of the High Court who are familiar with the qualities and attributes of the judicial officer under consideration. This is also what had happened in the present case. The very process by which the decision is eventually arrived at, in our 10 (2014) 4 SCC 773 view, should permit a limited judicial review and it is only in a rare case where the decision taken is unsupported by any material or the same reflects a conclusion

> which, on the face of it, cannot be sustained that judicial review would be permissible." Washed off theory

14. One of the main arguments raised by the petitioners is that since the petitioners have been promoted to various higher posts, their record prior to the promotion will lose its sting and is not of much value. Reliance is placed on the observations of this Court in D. Ramaswami v. State of T. N.11 wherein this Court held as follows:

> "4. In the face of the promotion of the appellant just a few months earlier and nothing even mildly suggestive of ineptitude or inefficiency thereafter, it is impossible to sustain the order of the Government retiring the appellant from service. The learned counsel for the State of Tamil Nadu argued that the Government was entitled to take into consideration the entire history of the appellant including that part of it which was prior to his promotion. We do not say that the previous history of a government servant should be completely ignored, once he is promoted. Sometimes, past events may help to assess present conduct. But when there is nothing in the present conduct casting any doubt on the wisdom of the promotion, we see no justification for needless digging into the past."

15. Reference may also be made to the judgment of this Court in Pyare Mohan Lal (supra) in which while dealing with the 11 (1982) 1 SCC 510 concept of washed off theory, this Court after dealing with the entire case law on the subject held as follows:

> "24. In view of the above, the law can be summarised to state that in case there is a conflict between two or more judgments of this Court, the judgment of the larger Bench is to be followed. More so, the washed□off theory does not have universal application. It may have relevance while considering the case of government servant for further promotion but not in a case where the employee is being assessed by the reviewing authority to determine whether he is fit to be retained in service or requires to be given compulsory retirement, as the Committee is to assess his suitability taking into consideration his "entire service record".
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> 29. The law requires the authority to consider the "entire service record" of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse entries had not been communicated to him and the officer had been promoted earlier in spite of those adverse entries. More so, a single adverse entry regarding the integrity of an officer even in remote past is sufficient to award compulsory retirement.

The case of a judicial officer is required to be examined, treating him to be different from other wings of the society, as he is serving the State in a different capacity. The case of a judicial officer is considered by a committee of Judges of the High Court duly constituted by the Hon'ble the Chief

Justice and then the report of the Committee is placed before the Full Court. A decision is taken by the Full Court after due deliberation on the matter. Therefore, there is hardly any chance to make the allegations of non-application of mind or mala fides."

16. The law on the subject of compulsory retirement, especially in the case of judicial officers may be summarised as follows:

> (i) An order directing compulsory retirement of a judicial officer is not punitive in nature;
>
> (ii) An order directing compulsory retirement of a judicial officer has no civil consequences;
>
> (iii) While considering the case of a judicial officer for compulsory retirement the entire record of the judicial officer should be taken into consideration, though the latter and more contemporaneous record must be given more weightage;
>
> (iv) Subsequent promotions do not mean that earlier adverse record cannot be looked into while deciding whether a judicial officer should be compulsorily retired;
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> (v) The 'washed off' theory does not apply in case of judicial officers specially in respect of adverse entries relating to integrity;
>
> (vi) The courts should exercise their power of judicial review with great circumspection and restraint keeping in view the fact that compulsory retirement of a judicial officer is normally directed on the recommendation of a high-powered committee(s) of the High Court.

It is in the light of the aforesaid law that we will now consider the factual aspects of the present case.

17. In view of the fact that the Screening Committee has given detailed reasoning only after the orders of this Court referred to above and in view of the limited scope of judicial review when there are no allegations of mala fide, we would have avoided giving reasons to uphold such an order since it does not amount to punishment and is not penal in nature. However, since the petitioners have insisted that there is no material against them, we have no option but to refer to some of the reasons given by the Screening Committee.

Case of Shri Arun Kumar Gupta

18. As far as Mr. Arun Kumar Gupta is concerned, there are two very serious allegations against him. The first is that when he was working as Deputy Director, Administrative Training Institute at Ranchi, as many as 10 ladies, who were Civil Service Probationers, made allegations that he was using unwarranted and objectionable language during his lectures, citing indecent examples and using words having double meaning, thereby causing embarrassment to the lady officers. We have

perused the complaints which are filed with the reply and the common refrain is that the language used by Mr. Gupta during his lectures was highly sexist.

19. There is also another allegation that he had physically hurt a washerman by placing a hot iron on the head of the washerman who had allegedly not ironed his clothes properly. It would be pertinent to mention that the Principal District Judge had reported to the High Court that the victim had personally approached him immediately after the occurrence and he (the Principal District Judge) found that the victim had sustained burn injuries and he got the victim treated. It is true that Mr. Arun Kumar Gupta was exonerated by the successor judicial officer before whom the complainant denied having suffered any injury but we may note that this is a preliminary inquiry and the successor Principal District Judge did not even care to examine his predecessor Principal District Judge, who had not only been approached personally by the washerman, but who had himself noted the burn injuries and had got the victim treated. Therefore, we are of the view that the Screening Committee was right that the victim may have been put under some pressure to withdraw his complaint. These occurrences are of the year 2011–2012 and cannot be said to be very old.

20. In our view, the aforementioned two instances are sufficient to decide the case against the petitioner. We may also note that Shri Raju Ramchandran, learned senior counsel appearing for the petitioner has urged that the Screening Committee had only taken the entries from 1992–1993 to 2004–2005 and had ignored the entries from 2005–2006 to 2016–2017. As explained by Mr. Sunil Kumar, learned senior counsel appearing for the High Court, all the ACRs were before the Screening Committee but in the order it is only the adverse entries which have been noted. Be that as it may, we are of the view that even if these adverse entries are ignored, the petitioner cannot be granted relief for the reasons aforesaid.

Case of Shri Raj Nandan Rai

21. As far as this officer is concerned, we find that his record on many counts is not at all good. His reputation and integrity have been doubted more than once in the years 1996–1997, 1997–1998 and 2004–2005. Some adverse remarks have been conveyed to him. In the year 2015–2016, even his knowledge of law and procedure is found to be average and his relation with the members of the Bar was found not very good. There are also allegations against him of having granted bail for illegal gratification and substance has been found in this allegation in the report of the Judicial Commissioner, Ranchi (who is equivalent to the Principal District Judge). The officer had granted bail by noting in the order that Section 327 of the Indian Penal Code, 1860 was bailable whereas the offence is non–bailable and an unrecorded warning regarding the integrity of the judicial officer was issued to him in 2012. Conclusion

22. As is obvious from the law quoted above, adverse entries with regard to integrity do not lose their sting at any stage. A judicial officer's integrity must be of a higher order and even a single aberration is not permitted. As far as the present cases are concerned, the matter has been considered by the Screening Committee on two occasions and the recommendations of the Screening Committee have been accepted by the Standing Committee on both occasions. The action taken is not by one officer or Judge, it is a collective decision, first by the Screening Committee and

then approved by the Standing Committee.

23. Senior judges of the High Court who were the members of the Screening Committee and Standing Committee have taken a considered and well□reasoned decision. Unless there are allegations of mala fides or the facts are so glaring that the decision of compulsory retirement is unsupportable this court would not exercise its power of judicial review. In such matters the court on the judicial side must exercise restraint before setting aside the decision of such collective bodies comprising of senior High Court Judges. In our opinion these are not fit cases to interfere with the said decisions.

24. In view of the above, both the writ petitions are dismissed. Any pending application(s) shall stand(s) disposed of.

.....J. (L. Nageswara Rao) .....J. (Deepak Gupta) New Delhi February 27, 2020