AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.11654 OF 2022

Sanjaya Kumar Sahoo …. **Petitioner**

-Versus-

State of Odisha and others …. **Opposite Parties**

Advocates appeared in this case:

For Petitioner : M/s. (Dr.) Purusottam Chuli, P. Nath, A. Routray, (Dr.) S. Patnaik and (Ms.) S. Patnaik, Advocates

For Opp. Parties : Mr. Prabhu Prasanna Behera, Additional Standing Counsel

CORAM:

THE HON'BLE MR. JUSTICE DIXIT KRISHNA SHRIPAD
AND
THE HON'BLE MR. JUSTICE MRUGANKA SEKHAR SAHOO

J U D G M E N T

Date of hearing : 24.06.2025 : Date of judgment : 11.07.2025

***PER* DIXIT KRISHNA SHRIPAD, J.**

Petitioner, a Judicial Officer (then a Family Court Judge), is invoking the Writ Jurisdiction of this Court for calling in question the Government Notification No. 8351/HS dated 11.03.2022 (Annexure-1), whereby he has been prematurely retired from service at the age of 55 years, normal age of superannuation being 60.

(II) Foundational Facts:

(i) Petitioner joined the District Judiciary on 17.11.1997 as Addl. Civil Judge (Jr. Dn.)-cum-Judicial Magistrate Second Class. He was granted ACP-II Scale of Pay vide order 15.10.2009. He earned his first promotion as Sub-Divisional Judicial Magistrate on 03.06.2010. His second promotion to the cadre of Civil Judge (Sr. Dn.) was vide order dated 11.02.2011. A little later, he was granted ACP-II Pay Scale with retrospective effect from 16.11.2007 vide order dated 20.07.2011.

(ii) Petitioner was granted next promotion to the post of Chief Judicial Magistrate vide order dated 01.08.2013 and later to that of District Judge vide order dated 29.07.2015. In 2017 his performance having been reviewed at the age of 50 years, he was allowed to continue. He got Selection Grade w.e.f. 09.08.2020 vide notification dated 29.01.2021 issued by this Court on the administrative side. However, he came to be prematurely retired at the age of 55 years whilst presiding over the Family Court at Nabarangpur vide impugned notification dated 11.03.2022. After service of notice, the opposite parties having entered appearance through their counsel filed their counter to resist the petition.

(III) Submissions on behalf of the Petitioner, as concised by us:

(i) Petitioner is a meritorious candidate with the spotless service of District Judiciary and his service credentials are unimpeachable by any standards, more particularly the normative ones promulgated in

Rule-44 of The Odisha Superior Judicial Service and Odisha Judicial Service Rules, 2007 (hereafter called "2007 Rules").

(ii) In respect of subject allegations, disciplinary proceedings came to be dropped without imposing any punishment prescribed under the extant Rules and once that having happened, the same could not be treated as the material impeaching credentials of the petitioner.

(iii) Petitioner earned several promotions and that after the review of his credentials, the Review Committee decided to continue him in service beyond 50 years. Very importantly, within a short period reckoned from the grant of Time Scale/Promotion, he could not have been asked to quit the service.

(iv) When an employee is granted promotion, whatever arguable black spots that obtained in the Service Records do pale away and therefore there is absolutely no justification for compulsorily retiring the petitioner in a premature way.

(v) Lastly, the extant Rule provides for notice and therefore without such notice the petitioner being asked to retire is in violation of the principles of natural justice, especially when the impugned order has stigmatic elements, notwithstanding its apparent innocuous appearance.

(IV) Contentions urged on behalf of opposite parties:

(i) The Jurisdictional Committee on the administrative side of this Court and the Full Court having examined the matter have taken

the decision to prematurely retire and that being the bedrock of the impugned order, this Court exercising limited supervisory jurisdiction should loathe to interfere in matters like this.

(ii) The impugned decision is a product of collective factors, namely: disciplinary proceedings in D.P. No.2 of 2007; Night Watchman's allegation as to caste aspersions & use of filthy language; complaint of District Bar Association and boycott of petitioner's Court because of his unruly behavior, unfair practice & non-supply of cause list.

(iii) Grant of promotions does not erase adverse remarks entered in the Service Records of an employee; in any event, petitioner does not have unblemished service records, as sought to be projected before the Court;

(iv) A Judicial Officer is not just another public servant; he discharges sovereign functions of the State and therefore the standard of his conduct has to be much higher; even a thick doubt as to the integrity would justify premature retirement, as has happened in this case.

(v) The impugned order is not stigmatic; it has been made in the public interest after scrupulously following the normative procedure promulgated in the extant Rules applicable to the case and no prejudice is caused to the petitioner, who draws full pension and all terminal benefits.

(vi) Lastly, the principles of natural justice do not apply to cases of the kind and even otherwise granting of an opportunity of hearing would not have brought about a different end product and therefore no case on that count is made out by the petitioner.

(V) We have heard learned counsel for the parties and perused the petition papers. We also looked into the records furnished in Sealed Cover. Advertence to relevant of the Rulings cited at the Bar, is also made. We are inclined to grant limited relief to the petitioner, as under and for the following reasons:

(1) **As to the Statutory Scheme providing for premature retirement**:

(a) The 2007 Rules have been promulgated by the Governor of Odisha in exercise of power conferred by the Proviso to Article 309 read with Articles 233, 234 & 235 of the Constitution of India. Rule 42 prescribes 60 years as the age of superannuation. Rule 44 provides for premature retirement in public interest. This Rule, being relevant to the case at hand, is reproduced below:-

> *"**44. Retirement in public interest**-(1) Notwithstanding anything contained in these rules the Governor shall, in consultation with the High Court, if he is of the opinion that it is in the public interest so to do, have absolute right to retire any member of the service who has attained the age of fifty years, by giving him/her notice of not less than three months in writing or three months pay and allowances in lieu of such notice.*
> *(2) Whether any officer of the service should be retired in public interest under Sub-rule (1) shall be considered at*

least three times, that is, when he is about to attain the age of fifty years, fifty five years and fifty eight years:
Provided that nothing in Sub-rule (2) shall be construed in public interest as preventing the Governor to retire a member of the service at any time after he/she attains the age of fifty years on the recommendation of High Court under Sub- rule (1).”

(b) In the ordinary circumstances, every Judicial Officer shall retire on attaining the age of superannuation which Rule 42 fixes to be 60 years. This one sentence Rule has the following text:

> *“**42.Age of superannuation**- The age of superannuation of an officer of the service shall be sixty years.*

This Rule in a normal way guarantees every Judicial Officer the right to hold and continue in office till he completes the age of 60 years. It hardly needs to be stated that the cases of termination of service by virtue of disciplinary action do not fall within the parameters of this Rule. Rule 44 is in the nature of an exception to the general norm promulgated in Rule 42. Sub-Rule (1) of Rule 44 vests “absolute right” in the Governor of the State to retire any Member of Judicial Service in public interest. The expression “absolute right” is an anathema to the Rule of Law. In a constitutionally ordained Welfare State, there is nothing like “absolute right” or “absolute power”, and the very text & context of this Rule makes it abundantly clear that the adjective ‘absolute’ remains on the Rule Book as an ornamental relic of bygone Colonial Era. Rule 42 prescribes certain conditions, which the Governor is required to satisfy himself.

(c) The pre-conditions, which Rule 42 prescribes for causing premature retirement of a Judicial Officer, are: (i) He should have

attained the age of 50 years; (ii) Governor has to have consultation with the High Court; & (iii) three months' prior notice or three months' pay & allowances in lieu of such notice. It hardly needs to be stated that cutting short tenure of public office is a serious matter; such decisions have to be consistent with the intent of Makers of the Constitution as lurking in Article 16. Though right to public employment is not guaranteed, once a citizen is duly employed, he cannot be whimsically removed. Therefore, the power to prematurely retire is in the nature of an exception and the sine qua non for exercising such power has to be strictly complied with. Appreciably, there is no much divergence of opinions at the Bar in this regard.

(2) **As to the scope of judicial review in matters of premature retirement**:

(a) The vehement contention of learned State Counsel appearing for the opposite parties that a Writ Court cannot undertake a deeper examination of the matter like this, as if it is an appellate authority, is too broad a proposition. We are not exercising appellate power, because we do not have such power granted under the subject Rules or under any other law. The case at hand is not an appeal, is also not disputed. That being said, a worthy cause brought before the Court cannot be turned down by quoting some jurisprudential theories. It was Justice Oliver Wendell Holmes, who in ***DAVIS v. MILLS***,[1] observed as under:

> *"Constitutions are intended to preserve practical and substantial rights, not to maintain theories…"*

[1] 194 US 451 (1904)

The above observation cannot be lost sight of, when Writ Jurisdiction is invoked by the aggrieved citizens. We also have to bear in mind that litigants come to Court inevitably and with no joy at heart, for obvious reasons. A Writ Court has to be doubly sure before sending them back, empty handed. This is not to say that in every case, regardless of its intrinsic merits, indulgence should be sought, conventional limitations obtaining in the realm of Law of Writs, notwithstanding.

(b) It again would be too farfetched an argument that whenever the Full Court of a High Court on the administrative side takes a decision, an Island of Immunity from judicial review, is created. We hasten to add that such a decision by its very nature raises a high presumptive validity, is also true. Learned State Counsel is right in drawing our attention to ***Arun Kumar Gupta v. State of Jharkhand,***[2] which restricts judicial review whilst examining decisions of Screening Committee & Standing Committee comprising of Senior Judges of the High Court. Obviously, these limitations do apply with more vigor to the Resolutions of Full Court. We also appreciate the fair stand taken up by both the sides that this case be heard and decided at our hands on merits, one of us (Justice M.S. Sahoo) being a party to the Full Court decision, notwithstanding. Administrative decision is one thing and judicial determination is another. There is difference between them in terms of approach, nature, quality & content. This is not to belittle the deliberations that happen in a Full Court meeting. A Writ Court exercising original jurisdiction in a service dispute would be committing a grave error if it declines indulgence only on the ground

[2] (2020) 13 SCC 355

that the impugned action is founded on the administrative opinion of Full Court. It all depends upon errors demonstrable from the records. *Much is not necessary to discuss and less is insufficient to leave it unsaid.*

(c) Both the sides have cited a plethora of rulings and that since we do not have quarrel with their *ratio decedendi*, reference to most of them is avoidable. In ***UOI v. M. E. Reddy***,[3] it is said that compulsory retirement causes no prejudice to the official, since he draws full pension and other terminal benefits, which would provide solace to him even if he feels a bit hurt. In ***Baldev Raj Chhada v. UOI***,[4], it is observed that the order to retire can be passed on a broad principle as to whether a rationale mind in the trade might conceivably be satisfied that the compulsory retirement of the official is necessary in public interest. The Apex Court faltered such an order on the ground that vital materials relevant to the decision such as, 14 years of spotless service, absence of any adverse entries for the preceding five years, crossing of efficiency bar, etc. were ignored. In State of ***Gujurat v. Umedbhai M Patel***,[5] it is observed that the order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable, and that if the officer was given a promotion despite adverse entries made in the confidential record, that is a fact weighing in favour of the official, and that compulsory retirement shall not be imposed as a punitive measure. In ***UOI v. Dulal Dutta***,[6] it is

[3] (1980) 2 SCC 15
[4] AIR 1981 SC 70
[5] (2001) 3 SCC 314
[6] (1993) 2 SCC 179

ruled that such an order need not invariably be a speaking order, since it is made on subjective satisfaction of the competent authority.

(d) A Coordinate Bench of this Court in ***Pradeep Kumar Pattnaik v. State of Odisha***[7] decided on 04.04.2022 surveyed the growth of law relating to premature retirement and observed at Para-14 as under:

> *"14. xxxx The Officer in question did not have an unblemished service record and for many years, his rating was 'Average'. It is entirely possible that he received his promotions in due course, but the parameters that weigh with the Court when it comes to retaining a Judicial Officer in service after attaining the ages of fifty years, fifty-five years and fifty-eight years would be based on a review of the entire service career of the Officer and not just on a few years of performance. In that sense, the grant of promotion a few months earlier to the review of such performance would not ipso facto preclude such a review for the purposes of the decision to be taken regarding compulsory retirement of such Officer."*

In ***State of U.P. v. Vijay Kumar Jain***,[8] it is held that the vigor or sting of an adverse entry does not get wiped out while considering the case for compulsory retirement. In ***Pyare Mohn Lal v. State of Jharkhand***,[9] it is observed that the authority has to consider the "entire service records" of the official while assessing whether it is desirable to part ways with him, despite granting of promotion disregarding the adverse entries. One single adverse entry as to integrity may justify premature retirement.

---

[7] [WP(C) No. 19416 of 2014]
[8] (2002) 3 SCC 641
[9] (2010) 10 SCC 693

3. **As to service credentials of the petitioner & arbitrariness in impugned action**:

(a) Learned counsel for the petitioner vehemently submitted and that is not much disputed that: petitioner has put in a long service from 17.11.1997 to 11.03.2022, i.e., the date of the impugned order and he earned promotion to the post of Sub-Divisional Judicial Magistrate in 2010, Civil Judge (Sr. Dn.) in 2011, Chief Judicial Magistrate in 2013, District Judge in 2015 & Selection Grade District Judge in 2021. These promotions are on the basis of merit-cum-seniority. He was allowed to continue in service in 2017, pursuant to recommendation of the Review Committee, after he attained 50 years. All this is founded on the decision/opinion of the Full Court itself. We repeat that petitioner was promoted to the position of Selection Grade District Judge vide notification dated 29.01.2021 issued by the High Court itself. The impugned order of premature retirement is essentially founded on the subject Full Court decision dated 23.02.2022. That being the position, what grave thing happened during the short period between 29.01.2021 & 23.02.2022, remains a riddle wrapped in enigma. Thus, the first pillar of the structure of the impugned order is shaken.

(b) The vehement submission of learned State Counsel that the decision to prematurely retire the petitioner is taken keeping in view the spotted service records, is bit difficult to countenance. Reasons for this are not far to seek: Admittedly, there is not even one sporadic adverse remark in the CCRs/PARs of the petitioner all these years. It is not that he has been found guilty in any of the disciplinary proceedings. True it is that he was "cautioned to be careful in future". However, this is not a

prescribed punishment in the extant Rules. At the most, it is advisory in character and therefore cannot be construed as an adverse remark. What punitive action was taken, pursuant to complaint of the Bar Association, is also not demonstrated. If Lawyers boycotted his Court, that is deprecable, since they do not have such a right, other avenues availing for redressal vide ***District Bar Association Dehradun v. Ishwar Shandilya***,[10]. Contra contention if accepted amounts to placing premium on illegality. 'Judging is difficult', said U.S. Judge Richard A Posner. And being a judge is also. Nowadays, judicial functions by their very nature have become sensitive for several reasons, one of them being unregulated social media. It is not uncommon that even tall judges of unimpeachable integrity at times suffer the ire of public and face red eye of a section of the Bar. Unless the material is loaded to the CCR/PAR as an adverse entry in due process, no Judicial Officer can be put to prejudice.

(c) We have perused the original records by opening the sealed cover. They reveal the fact that the petitioner earned career progression on regular basis as obtaining in the hierarchy; he was granted promotion to District Judge Selection Grade, vide notification dated 29.01.2021; this was done on the recommendation of the Jurisdictional Committee that comprised of judges of this Court, followed by the Resolution of Full Court. The Review Committee, after due deliberation, recommended his retention in service in terms of Sub-Rule (1) of Rule 44 of 2007 Rules after he attained 50 years. Even this

[10] 2023 SCC OnLine SC 45

was accepted by the Full Court and accordingly he was continued in the service.

(d) At the stage of Statutory Review of petitioner's performance for his retention in service, the following were available on record:

> (i) Petitioner had average ratings in the ACRs during the initial five years of service;
>
> (ii) Inquiry vide DP No.2 of 2007 had ended in exoneration, asking him to be "cautious in future";
>
> (iii) Inquiry into Night Watchman's allegation of caste aspersions & use of filthy words was dropped vide Minutes dated 24.12.2009 after receiving discrete report;
>
> (iv) Inquiry into anonymous complaint of the year 2015 of District Bar Association was dropped vide Minutes dated 03.11.2016;
>
> (v) Inquiry as to misconduct with the Bar Members that led to boycott of his Court (such boycott itself being legally impermissible) was dropped vide Minutes dated 10.09.2018.
>
> (vi) Full Court approved Jurisdictional Committee recommendation and accordingly petitioner came to be promoted as Selection Grade District Judge vide Notification dated 29.01.2021.

It sounds strange that on 23.02.2022 the "Full Court/Review Committee" resolved to prematurely retire the petitioner, there being absolutely no change of circumstance after he was accorded promotion to Selection Grade. By and large, the fact matrix of petitioner's case matches with that of ***High Court of Patna v. Shyam Deo Singh,***[11] (2014) 4 SCC 773 and also the legal principles laid down therein.

[11] (2014) 4 SCC 773

(e) There is one striking aspect in the matter: Allegations were received regarding manipulation of depositions, of asking the advocates to arrange for women & money. Despite such wild allegations, no disciplinary proceedings were drawn up. The Apex Court in **Umedbhai** supra has observed that an order of compulsory retirement cannot be passed as a short cut to avoid departmental inquiry, when such course is eminently desirable. It also said that if the officer was given a promotion, despite adverse entries in ACRs, that is a fact weighing in his favour. In ***Shyam Deo Singh*** supra it is ruled that subsequent promotions would have the effect of wiping out adverse remarks. We repeat that there were absolutely no adverse entries in the CCRs/PARs of petitioner.

4. **As to punitive nature of impugned order and violation of principles of natural justice**:

(a) Learned State Counsel vehemently controverted the submission of petitioner's counsel that the impugned order is not only arbitrary but has abundant elements of punitive nature. Let us examine this: The order *ex facie* looks innocuous, is true. However, a deeper examination would reveal its true nature & effect, because of the following stand taken up by the opposite parties:

> (i) Petitioner had thrown some caste aspersions on and used filthy words against a Night Watchman of the Court in Jharsuguda.
>
> (ii) Petitioner had shown unruly behaviour qua Bar Members, and that he was asking them to arrange for women & money for penning favourable orders, and that he was receiving cash & kind.

At least, the above allegations are as wild as can be, is not disputable. Along with other the said allegations too entered the decision making process that eventually culminated into the impugned order of premature retirement, stands obviated. In fact, in the written submissions dated 24.06.2025 filed on behalf of opposite parties, the said allegations are specifically mentioned at pages 2 & 3. We repeat that these being wild allegations against a sitting Judicial Officer, ought to have been enquired into by constituting a disciplinary proceeding.

(b) While adjudging the nature of orders of impugned kind, one can lift the veil to see the true picture. Reference to above allegations abound in the records furnished to us in the sealed cover. Even otherwise, these allegations are specifically pleaded by the opposite parties, as already mentioned above. A compulsory retirement is no substitute for holding a disciplinary inquiry and that such decisions cannot be taken as a punitive measure vide ***Umedbhai*** supra. Be that as it may, once an action is punitive then the question arises as to whether such an order could have been passed without giving an opportunity of hearing to the official. The answer has to be in the negative. Records do not reveal any reasons as to why no disciplinary inquiry was initiated nor was any opportunity afforded. We hasten to add that the requirement of hearing arises only because of imperative principles of natural justice, and not on account of requirement of a 3-month notice prescribed in Rule 38. It hardly needs to be stated that payment of three months emoluments dispenses with such a notice. Admittedly, they are paid in this case.

5. **As to the nature of relief to be granted to the petitioner**:

(i) Petitioner has put in a pretty long service, having earned multiple promotions, the last one being to the post of District Judge Selection Grade. Whatever allegations were leveled against him, were dropped after being looked into and after securing the reports at the hands of quarters that be. The Jurisdictional Committees comprising of Senior Judges of this Court, having seen the allegations & dropped disciplinary proceedings, had recommended his case for promotion after promotion in due course and the Full Court accepted the same. Petitioner successfully crossed the review at the age of 50 years in 2017 and the last promotion was conferred on him in 2021. It is only thereafter the decision is taken to prematurely retire him from service and accordingly he has been, by virtue of impugned order.

(ii) The case of petitioner as to impugned order being punitive and having stigmatic elements is to an extent demonstrated from the record and also from the pleadings of the parties. Sages of law have said that what is stated in the pleadings draws the battlelines and therefore can be construed meaningfully, unless otherwise diluted. *Prima facie*, no such rebuttal material avails on papers at our hands. Grievance of the petitioner as to violation of principles of natural justice also needs to be addressed. Further, his stand that he has spotless service records or otherwise, has to be ascertained, with the aid of records. Who is grieving before us, is not just an ordinary public servant, but a Presiding Officer of a Court, who discharges functions involving abundant elements of *sovereign powers* and they have enormous implications to the public in general and to the litigants in

particular. Integrity of a judicial officer is not *punctus punctilio* of the market place. It has to be unimpeachable. In cases like this, one cannot straightway seek reinstatement in service or grant of monetary benefits in lieu thereof, per se because the impugned order is being set at naught. Therefore, in the fitness of things, matter merits a fresh look at and from the stage of Jurisdictional Committee of Review, of course after giving an opportunity of representation to the petitioner.

In the above circumstances, this petition succeeds in part; a *Writ* of *Certiorari* issues quashing the impugned order of premature retirement of the petitioner. Matter is remitted back for consideration afresh keeping open all contentions, in the light of observations herein above made. Costs made easy.

(Dixit Krishna Shripad)
Judge

M.S. SAHOO,J. I agree.

(M.S. Sahoo)
Judge

Orissa High Court, Cuttack
The 11th day of July, 2025/GDS