

P. D. GOEL

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v.

HIGH COURT OF HIMACHAL PRADESH THROUGH ITS  
REGISTRAR GENERAL

(Civil Appeal No. 10244 of 2017)

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AUGUST 08, 2017

**[J. CHELAMESWAR AND S. ABDUL NAZEER, JJ.]**

*Himachal Pradesh Judicial Service Rules, 2004 – r. 14 – Judicial Services – Retrospective retirement – Date of retirement of the appellant was 31.07.2007, date on which he completed the age of 60 years as provided u/r. 14 – High Court issued notification retiring appellant from service from 31.07.2005 i.e. at the age of 58 years – Notification challenged in writ petition – Single Judge of High Court held the retirement contrary to law – Division Bench held that notification of High Court to be treated as recommendation to the Governor for removal of services of the appellant – In terms of the direction, the Governor passed an order on 31.01.2017 retiring the appellant with retrospective effect from 31.07.2005 i.e. at the age of 58 years – Whether retiring the appellant retrospectively at the age of 58 years was justified – Held: In the instant case, the High Court had issued notification holding that the appellant stood retired from service at the age of 58 years – Appellant had not been retired by the appointing authority, namely, the Governor of Himachal Pradesh – Therefore, it cannot be said that the appellant had retired on the completion of age of 58 years – Division Bench treated the notification as recommendation to the Governor for removal of the services – However, this order was passed after appellant had completed the age of 60 years – The order of the Governor retiring the appellant retrospectively in terms of order of the Division Bench, not permissible in law – Himachal Judicial Service Rules do not provide for retrospective retirement of judicial officers – Therefore, appellant to be treated as retired on completion of 60 years of age – Service Law – Retirement.*

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*Constitution of India – Arts.233, 234 and 235 – Scope of – The control vested in the High Court over the subordinate judiciary – Nature of – Held: Though absolute and exclusive, has to be*

A *exercised without usurping the power vested in the executive under the Constitution.*

Allowing the appeal, the Court

B **HELD: 1.** The control vested in the High Court over the subordinate judiciary though absolute and exclusive, has to be exercised without usurping the power vested in the executive under the Constitution. The High Court retains the power of disciplinary control over the subordinate judiciary, including the power to initiate disciplinary proceedings, suspend them pending enquiry and impose punishment on them. But when it comes to the question of dismissal, removal, reduction in rank or termination of judicial officers on any count whatsoever, the High Court becomes only the recommending authority and cannot itself pass such an order. The High Court has to send its recommendations to the Governor because the Governor is the authority to dismiss, remove, reduce in rank or terminate the appointment. [Para 9] [528-A-C]

D **2.** In the instant case, the High Court issued a notification holding that the appellant stands retired from service with effect from the afternoon of 31.7.2005, i.e. the last day of the month in which he attains the age of superannuation, i.e. 58 years under proviso to Rule 14 of the Himachal Pradesh Judicial Service Rules. The appellant had not been retired by the appointing authority, namely, the Governor of Himachal Pradesh. Therefore, it cannot be said that the appellant had retired on the completion of age of 58 years. Instead of quashing the notification, the Division Bench treated the said notification as recommendation of the High Court to the Governor for removal of the services of the appellant. This order was passed after the appellant had completed the age of 60 years. In terms of the order of the Division Bench, the Governor has passed an order dated 31.1.2017 retrospectively retiring the appellant with effect from 31.7.2005, which is not permissible in law. The Himachal Pradesh Judicial Service Rules do not provide for retrospectively retiring the judicial officers. The order of the High Court retiring the appellant at the age of 58 years cannot take effect as it was without authority of law. It only means that the appellant has to be treated to have been retired from service on completion of 60 years of

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age on 31.7.2007. The order of the Division Bench treating the notification as recommendation of the High Court to the Governor for compulsorily retiring the appellant cannot be sustained. [Paras 3, 10, 11] [526-B; 528-D-G]

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*Registrar (Admn.), High Court of Orissa, Cuttack v. Sisir Kanta Satapathy (Dead) by Lrs. and Anr. (1999) 7 SCC 725 : [1999] 2 Suppl. SCR 473 – referred to.*

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Case Law Reference

[1999] 2 Suppl. SCR 473 referred to Para 10

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10244 of 2017.

From the Judgment and Order dated 31.12.2015 of the High Court of Himachal Pradesh, Shimla in LPA No. 34 of 2009.

P. S. Patwalia, Sr. Adv. Tushar Bakshi, Dhruv Sheoran, Ms. Natasha Vinayak, Advs. for the Appellant.

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Ms. Pragati Neekhara, Suryanarayana Singh, Advs. for the Respondent.

The Judgment of the Court was delivered by

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**S. ABDUL NAZEER, J.** 1. Leave granted.

2. The appellant was appointed as sub Judge on 14.1.1975. He was inducted as a member of the Higher Judicial Service on 19.4.1995. He was granted selection grade on 20.11.2003. He was conveyed with the adverse entry in his Annual Confidential Report for the year 2003-2004 on 30.10.2004. He sought a clarification from the Registrar (Vigilance) as to whether the aforesaid remarks were advisory or adverse in nature. The respondent vide letter dated 1.12.2004 conveyed that the remark in column No.13 against him was 'adverse' whereas the remark in column No.14 was 'advisory' in nature. After prolonged correspondence, the respondent conveyed to the appellant vide letter dated 5.3.2005 that upon consideration of the entire matter, the Full Court felt that the adverse entry in column No.13 was not specifically relatable to any particular record nor it had any specific genesis of particular record of his service.

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A 3. As per the gradation list of Himachal Pradesh Judicial Service as it stood on 1.1.2005, the date of retirement of the appellant was shown as 31.7.2007 on which date he completed the age of 60 years as provided under Rule 14 of the Himachal Pradesh Judicial Service Rules, 2004 (hereinafter referred to as 'the Rules'). The High Court issued a notification at Annexure P-16 dated 20.4.2005 holding that the appellant stands retired from service with effect from the afternoon of 31.7.2005, i.e. the last day of the month in which he attains the age of superannuation, i.e. 58 years under proviso to Rule 14 of the Rules. The said Notification is as under:

C "HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001  
HHC/GAZ/14-46/74-IV Dated Shimla April 20, 2005.

**NOTIFICATION**

D Hon'ble the Chief Justice and Hon'ble Judges of the High Court of Himachal Pradesh are pleased to order that Shri P.D. Goel, District and Sessions Judge, Chamba (a Member of Himachal Pradesh Judicial Service), shall stand retired from service on and with effect from the afternoon of 31<sup>st</sup> July, 2005 i.e. last day of the month in which he attains the age of superannuation, that is, 58 years, under Rule 14 of Himachal Pradesh Judicial Service Rules, 2004.

E BY ORDER OF THE HON'BLE HIGH COURT OF H.P.

REGISTRAR GENERAL

F Endst. No. HHC/GAZ/14-46/74-IV- Dated: 20.04.2005"

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G 4. The appellant filed C.W.P. No.649/2005 challenging the notification before the High Court of Himachal Pradesh, Shimla. The learned Single Judge vide order dated 9.1.2009 struck down the adverse entry made in the Annual Confidential Report. It was held that retiring the appellant at the age of 58 years vide order dated 20.4.2005 is contrary to law. It was further held that the order had not been passed by the appointing authority, viz. the Governor of State of Himachal Pradesh. The learned Single Judge further held that the appellant is entitled to all consequential benefits.

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5. The respondent challenged the order of the learned Single Judge by filing Letters Patent Appeal, being LPA No.34 of 2009, before the Division Bench. The Division Bench vide order dated 31.12.2015 did not agree with the order of the learned Single Judge striking down the adverse entry made in the Annual Confidential Report. The Division Bench held that the Governor alone has the power to pass an order of dismissal, removal or termination on the recommendation of the High Court which is made in exercise of powers of control vested in the High Court and that the High Court cannot dismiss, remove or terminate the services of the District Judge. It was further held that the notification Annexure P-16 has to be treated as recommendation of the High Court to the Governor for removal of services of the appellant and the Governor has to proceed and make necessary consequential order in accordance with the recommendations of the High Court. Accordingly the appeal was disposed of.

6. Shri P.S. Patwalia, learned senior counsel appearing for the appellant submits that the Governor of the Himachal Pradesh is the appointing authority who alone could retire the appellant, that too in public interest after forming an opinion and after giving a notice of three months to the appellant and that the High Court is only recommending authority in that respect. The Governor has not passed an order retiring the appellant at the age of 58 years. The appellant has attained the age of superannuation on 31.7.2007. Therefore, he is entitled for all the service benefits till the date of attaining the age of superannuation.

7. Ms. Pragati Neekhara, learned counsel appearing for the respondent submits that in terms of the direction of the Division Bench, the Governor of Himachal Pradesh has passed an order on 31.1.2017 retiring the appellant with effect from the afternoon of 31.7.2005, i.e. the last day of the month in which he attains the age of superannuation, i.e. 58 years. Therefore, it cannot be said that the appellant has retired on attaining the age of superannuation at 60 years.

8. Having regard to the contentions urged, the only question for consideration is whether retiring the appellant retrospectively on completing the age of 58 years is justified in law.

9. This Court in **Registrar (Admn.), High Court of Orissa, Cuttack vs. Sisir Kanta Satapathy (Dead) by LR. and Anr. (1999)**

- A 7 SCC 725, while considering the scope of Articles 233, 234 and 235 of the Constitution of India has held that the control vested in the High Court over the subordinate judiciary though absolute and exclusive, has to be exercised without usurping the power vested in the executive under the Constitution. The High Court retains the power of disciplinary control over the subordinate judiciary, including the power to initiate disciplinary proceedings, suspend them pending enquiry and impose punishment on them. But when it comes to the question of dismissal, removal, reduction in rank or termination of judicial officers on any count whatsoever, the High Court becomes only the recommending authority and cannot itself pass such an order. The High Court has to send its recommendations to the Governor because the Governor is the authority to dismiss, remove, reduce in rank or terminate the appointment.

10. In the instant case, the appellant had not been retired by the appointing authority, namely, the Governor of Himachal Pradesh. Therefore, it cannot be said that the appellant had retired on the completion of age of 58 years. Instead of quashing the notification at Annexure P-16, the Division Bench treated the said notification as recommendation of the High Court to the Governor for removal of the services of the appellant. This order was passed after the appellant had completed the age of 60 years. In terms of the order of the Division Bench, the Governor has passed an order dated 31.1.2017 retrospectively retiring the appellant with effect from 31.7.2005, which, in our view, is not permissible in law. The Himachal Pradesh Judicial Service Rules, 2004 do not provide for retrospectively retiring the judicial officers. The order of the High Court retiring the appellant at the age of 58 years cannot take effect as it was without authority of law. It only means that the appellant has to be treated to have been retired from service on completion of 60 years of age on 31.7.2007.

11. We are of the view that the order of the Division Bench treating the recommendation of the High Court to the Governor for compulsorily retiring the appellant cannot be sustained. The order of the Division Bench to that extent is hereby set aside. Consequently, the order of the Governor dated 31.1.2017 is also set aside. The appellant is entitled to his salary, allowances and all other consequential benefits till 31.7.2007. The arrears as per above terms shall be paid to the appellant

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REGISTRAR GENERAL [S. ABDUL NAZEER, J.]

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within three months from the date of receipt of copy of this judgment. A  
The appeal is accordingly allowed.

12. There will be no order as to costs.

Ankit Gyan

Appeal allowed.