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(16) For the reasons given above, judgment and decree of Additional District Judge, Gurdaspur dated 25th July, 1997 are set aside and those of Sub Judge IInd Class, Gurdaspur dated 8th August, 1994 are restored. In consequences, the plaintiff's suit is dismissed but without any order as to costs.

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**R.N.R.**

*Before S.S. Sudhalkar, J*

G. S. JHAJ—*Petitioner*

*versus*

STATE OF PUNJAB & ANOTHER—*Respondents*

C.W.P. No. 5379 of 1999

29th March, 2001

*Constitution of India, 1950—Arts. 14 & 226—High Court Rules & Orders, Vol. V (Chapter-9), Rl. 7 (ii)—Compulsory retirement—Order by Full Court against an Addl. District Judge based on adverse report of Inspecting Judge—Designation as Inspecting Judge by Full Court—Decision taken by the Inspecting Judge deemed to be of Full Court—Placing of adverse report by Inspecting Judge before the next higher authority not necessary—No mala fides on the part of High Court—Necessary opportunity for representation against order of the Inspecting Judge given to the petitioner—Neither a disciplinary enquiry ordered nor any charge sheet issued to the petitioner—Question of lifting veil would not arise—Order of compulsory retirement not punitive—Petitioner being a member of Superior Judicial Service, Rule 7 of Chapter 9, Part A not applicable.*

Held, that the remarks regarding the petitioner's integrity are not found on inspection of one occasion only. They are because of visits to Faridkot and also because of contradictory decisions given in two bail applications within a very short span of time and when the raid against both the accused were carried out at the same time when both were going on in the same vehicle.

(Para 35)

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Further held, that it is not worth to interfere with the order of compulsory retirement. No *mala fides* have been alleged against the Inspecting Judge. The Inspecting Judge has based his report not only what he came to know during the inspection but also on other visits and there is a concrete example of deliberate dissenting judgments of the petitioner.

(Para 55)

Further held, that the Inspecting Judges are appointed by Full Court. Actually, the Inspecting Judge's remark will be a remark of the High Court. Moreover, the adverse remarks are written by the Inspecting Judge and they are confirmed by the Full Court. The petitioner belonged to Superior Judicial Service and not to Punjab Civil Services (J.B.) service, therefore, the rule 7 of Chapter 9 Part A, which is applicable to the lower judiciary will not be applicable. It can be said that the report of the Inspecting Judge could not be said to be without basis and it cannot be said that the order of compulsory retirement could not have been passed in this case. There was no necessity of further finding of inefficiency, dishonesty and dead wood.

(Para 56)

Further held, that the High Court has not acted only on secret information but has acted on concrete evidence. Necessary opportunity for representation against order of Inspecting Judge was given to the petitioner. The compulsory retirement need not have waited for representation against the adverse remarks recorded by the Full Court. Firstly, because the representation could still be made and secondly because learned Single Judge is also acting as the High Court when he deals with the case as an Inspecting Judge. There is no *mala fide* on the part of High Court; no such *mala fides* have been alleged against it. No question to lift the veil arises. No enquiry was ever ordered against the petitioner so as to hold that the impugned order was passed to by-pass any enquiry.

(Para 56)

R.K. Joshi, Advocate for the Petitioner

Anil Sharma, DAG Punjab for respondent No. 1.

Arun Nehra, Advocate for respondent No. 2.

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**JUDGMENT**

*S.S. Sudhalkar, J.*

(1) Petitioner joined the judicial service in the State of Punjab in the year 1975. He was promoted as Chief Judicial Magistrate, Senior Sub Judge and Additional District Judge, during the tenure of his service. According to the petitioner, during the tenure of his service, there was no complaint regarding his conduct and behaviour. He was posted at Faridkot as Additional District and Sessions Judge and served there for a period from August, 1995, to October, 1997. His court was inspected by various Inspecting Judges. He was given good report in April, 1997.

(2) Faridkot Sessions division was inspected by learned Inspecting Judge for the Year 1997-98. The learned Inspecting Judge gave adverse remarks to the petitioner in his inspection. The report of the learned Inspecting Judge regarding the petitioner from 1st April, 1997 to 18th October, 1997 is as under :—

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|-----|--|---|
| “3. | Are his judgments and Orders well written and clearly expressed ?    | Must do & perform better.   |
| 5.  | Is he an efficient Judicial Officer ?                                | No really.  |
| 6.  | Has he maintained Judicial reputation for honesty and impartiality ? | No. does not enjoy good reputation & lacks element of impartiality. Needs regular surveillance. |
| 8.  | Behaviour towards members of the Bar and the Public                  | Discriminatory though otherwise reasonable.   |
| 9.  | Net result.  | C (Below satisfactory)”   |

(3) The petitioner was transferred to Kapurthala in October, 1997 where his court was inspected by another Inspecting Judge who gave him a good report.

(4) The contention of the petitioner is that when the Inspection for the Year 1997-98 was carried out at Faridkot, he was already transferred and the inspection was carried out in his absence. Amongst the report of learned Inspecting Judge, there is also a report of not enjoying good reputation, regarding the honesty and lack of impartiality. The petitioner was conveyed the adverse remarks recorded by the learned Inspecting Judge.

(5) The petitioner made a representation against the adverse remarks of the learned Inspecting Judge. That was rejected. The matter came up before the Full Court of this Court and the Full Court also perused the adverse remarks passed by the Inspecting Judge. The confidential report, recorded by the Full Court, for the Year 1997-98 are as under :—

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1. Year ending	31st March, 1998 (1997-98)
2. Period of employment excluding the period of vacation and Earned Leave.	11.07
3. Knowledge of law and other judicial qualifications	Average
4. Is he industrious and Has he coped effectually with heavy work ? Is he prompt in the disposal of cases ?	No
5. Is his supervision of the distribution of business among and his control over the subordinate Courts good ?	No
6. Is his reputation that an officer of integrity and impartiality ?	No

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7. Remarks about his attitude towards his Superiors, Subordinates and Colleagues.	Unsatisfactory
8. Behaviour towards the members of the Bar and the public.	Unsatisfactory
9. Remarks about his administrative capability.	Unsatisfactory
10. Whether the officer remains present at the Head-quarter after closing hours of the Office and during vacations or not ?	Yes
11. Net result	C (Below Average)

(Sd)/-

(Registrar)."

(6) The remarks of the Full Court were conveyed to the petitioner by letter dated 22nd December, 1998 through District and Sessions Judge, Kapurthala.

(7) In the meeting of the Full Court, held on 22nd December, 1998, the matter regarding retention in service of the petitioner was considered because he was completing 55 years of age and it was decided to retire him from service on the completion of 55 years. The decision is as under :—

“The matter regarding retention in service of Shri G.S. Jhaj, a member of Punjab Superior Judicial Service beyond the completion of 55 years of age was considered along with the note of the Registrar and it was decided that a recommendation be made to punjab Government that Shri Jhaj be retired from service on completion of 55 years by giving him pay and allowances by which the period of notice falls short of as it would be in public interest to do so.

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It was further decided that the Judicial work be withdrawn from the officer forthwith."

(8) By this writ petition, the petitioner has prayed for quashing of the Inspection remarks of the learned Inspecting Judge, the decision conveying the rejection of representation against adverse remarks made by the learned Inspecting Judge, conveying of adverse remarks,—*vide* letter dated 22nd December, 1998, letter of the High Court to the Government for issuance of orders of retiring the petitioner, and the order of the Government retiring the petitioner.

(9) Respondent No. 2 has filed written statement and has challenged the writ petition. Replication is also filed.

(10) I have heard the learned counsel for the parties.

(11) Counsel for the petitioner has argued the following points :—

- (1) That the order of retirement is a punishment and the petitioner could not have been retired only because of a single adverse report against him.
- (2) the report of learned Inspecting Judge is also without any basis and the representation could not have been rejected by the same Inspecting Judge.
- (3) the Full Court was mis-informed while making recommendations to the Government.
- (4) the petitioner could not be retired without recording the finding of in-efficient dis-honest and dead wood and that the retirement was in public interest.
- (5) that he could not be retired when the District Judge held that the complaint was fake and that the report of the District Judge could not be rejected by the Inspecting Judge.
- (6) the District Judge Kapurthala was ordered to keep surveillance on the petitioner and there is no evidence that the report was unfavourable.

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(7) High Court could not have retired him only on a secret information and the court should have lifted the veil to find out what was behind it.

(8) No opportunity was given to him for making representation against the remarks recorded by Full Bench.

(9) Procedure of Rule 7 Chapter 9 Part A is not followed.

(12) It was argued by the learned counsel for the petitioner that the solitary adverse remarks have been relied upon and therefore, the petitioner could not have been compulsorily retired after 23 years of service.

(13) He has relied on the case of *Sheo Prakash Misra vs. High Court of Judicature at Allahabad* (1). It has been held by the Allahabad High Court in the said judgement that when the Inspecting Judge made adverse entry, he only relied upon certain orders passed by petitioner in judicial cases and his integrity was found to be doubtful from the said orders it was held that the petitioner could have been orally told to be more careful instead of awarding a poor entry. It is further held that if adverse entry is given in such cases Judges shall not be able to decide the cases freely as the Judges of Subordinate judiciary are already facing tremendous difficulties and pressures. The present case differs from the case of *Sheo Prakash Mishra* (supra). In the present case the adverse entry is not given only because of the judgments. There were complaints and the learned Inspecting Judge found that judgments showed lack of integrity.

(14) There was a complaint from one Gurdip Singh son of Kartar Singh that the Petitioner granted bail in a N.D.P.S. matter where there was recovery of 3 Kgs. of opium and that this was done after deciding the request of same accused earlier on the occasions within a short span and with an ulterior motive. Further it was also complained that in the connected FIR where the recovery was seven kgs. of opium relatable to the same vehicle, place, time and crime, even the interim bail for attending the marriage of the niece was declined by the petitioner after granting bail to the accused in the

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connected FIR. The learned Judge had called for the files and found that the allegations were not baseless.

(15) Counsel for the petitioner argued that the petitioner has decide only two cases out of the cases complained of. Annexure R/ 2 is the report of the learned Inspecting Judge. According to the report, the learned Inspecting Judge had received a complaint from Gurdeep Singh and according to the complaint, the petitioner had granted bail in the NDPS matter where the recovery was of 3 Kg opium after declining the request of the same accused earlier (However, the earlier orders declining the request were by Mr. Ashish Sharma and not by the petitioner). After a request for bail has been declined earlier, there should be some reasons for granting the bail after a short period. Annexure P/11 is the order granting bail to accused Jagsir Singh. No mention is there regarding the earlier bail application being rejected and no reason is stated as to why he has been granted bail after the rejection of the earlier bail applications. While granting bail, reasons should have been assigned to grant the bail, particularly when the earlier bail application was rejected by another judicial officer.

(16) Counsel for the petitioner argued that the case in which bail was granted by the petitioner ultimately ended in acquittal and the case in which, the petitioner rejected the bail ended in conviction. However, the ultimate result in a case is not material and what is to be seen at the time of bail application are the allegations and the *prima facie* evidence regarding the same. The grant of bail itself may not invoke such harsh remarks of doubtful integrity but grant of bail in case where earlier other Judicial Officer had rejected the same, casts a great doubt on the integrity of a Judicial Officer particularly when no reason was shown while deviating from the earlier decision.

(17) In the case of Shiv Parshad Mishra (*supra*), this was not the position. The illustration of unsatisfactory work given in the said case is merely an illustration showing the defect in procedure.

(18) Learned counsel for the petitioner has relied on the case of *The Registrar (Administration), High Court of Orissa, Cuttak vs. Sisir Kanta Satapathy (dead) by Lrs and Anr. (2)*. The said judgment



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cannot be helpful to the petitioner. It is retarding as to who has to issue the order of premature retirement in public interest. It has been held that the High Court itself cannot pass an order of compulsory retirement of a Judicial Officer and the proper procedure is to forward the decision to the Governor, who in turn would issue the order of compulsory retirement.

(19) Counsel for the petitioner has further cited the case of *Ex. Capt. R.S. Dhull vs. State of Haryana* (3). It is a judgment of learned Single Judge of this Court wherein it has been held that according to the instructions of Haryana Government, adverse report must be supported with reasons and it should be recorded by the officer who actually saw the work of the official concerned and should also be conveyed within time to afford an opportunity to represent against it to comply with the principles of natural justice. It is further held that the authority recording the adverse reports must place the representation against the same before the next higher authority and the representation be decided by the next higher authority with a speaking order. This case will not be applicable to the present case because it deals with the instructions of Haryana Government. The petitioner was in the Punjab Judicial Service. No rule of Punjab Government is shown to have been violated.

(20) In the case of *Brij Mohan Singh Chopra vs. State of Punjab* (4), the Punjab rule is quoted, which is as under :—

“3. Premature retirement :—

(1) (a) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right by giving an employee prior notice in writing to retire that employee on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date, thereafter to be specified in the notice.

(b) The period of such notice shall not be less than three months :

Provided that where at least three month's notice is not given or notice for a period less than three months is

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(3) 1991 (2) SCT 574

(4) 1987 (2) SLR 54

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given, the employee shall be entitled to claim a sum equivalent to the amount of his pay and allowances, at the same rate at which he was drawing them immediately before the date of retirement, for a period of three months or, as the case may be, for the period by which such notice falls short of three months.

2. xx            xx            xx            xx            xx

(21) Regarding adverse remarks, it has been held that right to make representation against the adverse remarks is a valuable right. Therefore, the discussion and decision on the rule applicable to the Haryana Government Service will not be of any assistance to the petitioner. Moreover, in the case of *High Court of Judicature at Bombay vs. Shirish Kumar Rangrao Patil* (5) the Supreme Court considered the permissibility of constituting Committees of High Court Judges for convenient transaction of business on the administrative side. It has been held that the decision of the Committee, which has been constituted by the Chief Justice on the basis of resolution passed by the Full Court to consider disciplinary cases against the Judicial Officers of subordinate courts should be treated as decision of the High Court. In that case, the plea that on facts that only Full Court can recommend imposition of penalty was rejected. In that case, four out of five members of the Committee were held capable of validly transacting business. The fifth member to whom papers were sent, could not be present due to unavoidable reasons, deemed to have concurred because he did not show any dissent. Therefore, the decision in the case of Ex. Capt. R.S. Dhull (supra), which is not in connection with any judicial officer, cannot be of any help. In Punjab and Haryana High Court, the learned Judges are designated as a Inspecting Judges by the full Court and if the Inspecting Judge takes a decision, then by virtue of the principle laid down in the case of Shirish Kumar Rangrao Patil (supra) the decision shall be deemed to be of Full Court and therefore, the question of placing the adverse report before the next higher authority will not arise.

(22) In the light of this position, another argument advanced by the learned counsel for the petitioner can be dealt with. He has argued that the report of Hon'ble Mr. Justice Aggarwal is down graded. It can be seen that when for the particular year, there are

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two reports regarding the petitioner, because he was transferred in the meanwhile, both the reports of Inspecting Judges could even be separately dealt with as the reports of the High Court in view of the judgement of Supreme Court in the case of Shirish Kumar Rangrao Patil. It is not that Hon'ble Mr. Justice Aggarwal's report has been down graded. It is the combined effect of both the reports for the same year, one by the Inspecting Judge and the second by Hon'ble Mr. Justice Aggarwal, who was the Inspecting Judge of the petitioner at Kapurthala.

(23) The counsel for the petitioner argued that there was no basis on which the learned Inspecting Judge made his report. The learned Inspecting Judge has made his report from what he learnt not only during the inspection but also on other visits. This can be clearly seen from the Note of learned Inspecting Judge, which is at Annexure R/2. He has referred to his visits to Faridkot. He also dealt with complaint of Gurdip Singh. Of course, the learned District Judge had, on the directions of the High Court, called Gurdip Singh, according to the report of learned District Judge, Annexure R/2/7. He had given a statement to the effect that he did not make any complaint to this Court against the petitioner and he even does not know English and he never complained that the petitioner was selling justice for huge cash and is earning lacs of rupees. Counsel for the petitioner argued that this report shows that the complaint was false. Judge had called for the files and found that there was something fishy. The petitioner was in charge of criminal cases from 18th June, 1997 to 30th June, 1997. This is clear from the copy of order of learned District Judge, which has been produced at Annexure P/10. Jasgir Singh and Shamsher Singh were arrested in connection with possession of opium. Two separate FIRs were registered against them though they were arrested at the same time. They were going in the same 'Gypsy' at the time of alleged incident. Jasgir Singh was sitting in the 'Gypsy' while Shamsher Singh was driving it. From the possession of Jasgir Singh, 3 Kg. of opium was found and from the possession of Shamsher Singh 7 Kg of opium was found. Jasgir Singh had earlier given bail applications and were rejected by another Additional District and Sessions Judge. Copy of the order granting bail to Jasgir Singh is at Annexure R-2/16. After stating the facts, Jasgir Singh has been released on the ground that he was in judicial custody for the last more than 8 months and the trial of the case will take time and that no useful purpose would be served by keeping him

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in custody. This order is dated 26th June, 1997. It is clear from the record that after this, Shamsher Singh filed bail application. A copy of the bail application is at Annexure R/2-17. It is dated 27th June, 1997. It was rejected on 30th June, 1997 and the reason given was that it was a second bail application and that the previous bail application was dismissed. The petitioner in his replication dated 20th January, 2000, has stated that he was directed to dispose of urgent Civil and Criminal matters from 18th June, 1997 to 30th June, 1997 and an application was filed for grant of bail in FIR No. 112 of 1997 (Case against Jasgir Singh). He has stated that the case was of the file of another Additional District & Sessions Judge and it was put up before him in summer vacation and *it was not brought to his notice that the accused had filed bail application and it was rejected*. This contention in the replication assumes importance in view of the fact that Jasgir Singh *had in the bail application* decided by the petitioner, *mentioned that it was the second bail application* and that no application was pending in the Court. This can be found from the copy of bail application, which has been produced at Annexure R/2-17. This goes to show that after Jasgir Singh's application was decided by the petitioner, Shamsher Singh filed bail application and it was rejected being the second bail application.

(24) Counsel for the petitioner argued that the dismissal of the bail application for interim bail dated 11th November, 1997 was not by the petitioner. To that extent, he is correct. However, it will be proper to note some dates. The note of learned Inspecting Judge is of August 27th 1998. Earlier, the petitioner's comments were asked for and in the comments, he had stated that Shamsher Singh's bail application was rejected on 30th June, 1997 on the ground that it was a second bail application. These comments were forwarded to this Court by the learned District Judge vide his letter dated 17th March, 1998. They are at Annexure R/2-7. Though there is a discrepancy as to which the bail application of Shamsher Singh has been rejected by the petitioner, it is clear that the fact of his having rejected Shamsher Singh's bail application was before the Inspecting Judge in March, 1998. Therefore, the Inspecting Judge could form his opinion about the working of the petitioner though in the note annexure R/2, so far as bail application of Shamsher Singh is concerned, the subsequent bail application has been mentioned. This was not a regular enquiry against the delinquent and the question was of

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forming of opinion by the Inspecting Judge and when he formed the opinion about the integrity of the petitioner, the comments of the petitioner were already with him. The bail orders in cases of both the accused were already with him. Therefore, it cannot be said that the Inspecting Judge formed opinion against the petitioner without any basis. It may also be mentioned that the bail application of Shamsheer Singh was rejected on 30th June, 1997 i.e. on the last day of the charge, which the petitioner was holding.

(25) When this is the position, and after the learned Inspecting Judge learnt during his visits to Faridkot, about the integrity of the petitioner being doubtful, it cannot be said that he had formed opinion without any basis. There is no allegation of malafides against the learned Inspecting Judge.

(26) Counsel for the petitioner argued that decision of judicial matter in one way or the other should not be considered for doubting the integrity of the judicial officer. However, when two decisions of similar cases within the short span of time have been given and they are divergent, certainly it leaves no scope for the argument that the judicial discretion should not be considered against the judicial officer for the purpose of assessing his integrity.

(27) Learned counsel for the petitioner argued that when the District Judge had given a report in favour of the petitioner, the Inspecting Judge should not have re-opened the matter. He has relied on the case of *R.C. Sood vs. High Court of Judicature at Rajasthan and others* (6) In that case, the Chief Justice had exonerated the judicial officer from the charges levelled against him and the Full Court again re-opened the matter on the basis of complaints against him, making the charges of corruption. It was held that order of revoking the decision of the Chief Justice was not valid. In that case, the Supreme Court observed as under :—

“..There was no reason as to why this order should have been ignored and the complaint of Vijay Singh entertained even though it was not supported by an affidavit. The resolution of 30th November, 1994 also states that some of the Judges have received fresh complaints against the petitioner making serious charges of corruption. No

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particulars are indicated as to which complaints were received by which Judge. It is evident from the wording of these minutes that what those complaints were, were not even known to all the members of the Full Court when they passed the resolution on 30th November, 1994. We have, therefore, no doubt that when a valid decision had been taken by the then Chief Justice on 31st January, 1994 exonerating the petitioner there was no valid reason in law for the Full Court to revoke that decision.”

(28) In that case, the matter was closed by the Chief Justice himself and secondly, in view of the other reasons in the paragraph, quoted above, the facts of the case are completely different from the present case. Though the District Judge based his report only on the reason that the complainant did not support the allegation, and the complainant has stated that he never made such complaint, the facts in the present case could be verified from the record, and are verified and therefore, this judgement is also not helpful in any way.

(29) Learned counsel for the petitioner has cited the case of *Brij Kishore Thakur vs. Union of India and others* (7) In that case, the learned Single Judge of the High Court castigated District Judge for granting bail in proceedings under Narcotic Drugs and Psychotropic Substances Act as being ignorant of law and is not aware of the latest rulings. It was held that no greater damage can be caused to the administration of justice and to the confidence of people in judicial institutions when Judges of the higher Courts publicly express lack of faith in the Subordinate Judges. A Judicial officer against whom aspersion are made in the the judgement could not appear before the higher Court to defend his order. Judges of higher Courts must, therefore, exercise greater judicial restraint and adopt greater care when they are tempted to comply strong terms against lower judiciary. The facts of the case are different. That was a case in which adverse remarks were made on judicial side for which the judicial officer had no chance to offer his explanation. Here the case is totally different.

(30) Counsel for the petitioner has cited the case of *Yoginath D. Bagde vs. State of Maharashtra & Anr.* (8). It is held by the Supreme Court in that case that the High Court has duty to protect

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(7) AIR 1997 SC 1157

(8) JT 1999 (7) SC 62

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officers of subordinate Judiciary from unscrupulous litigants and lawyers. The Supreme Court has relied on its earlier decision in the case of *Ishwar Chand Jain vs. High Court of Punjab and Haryana and Anr.* (9) in which it has been held that the High Court while exercising its power of control over the subordinate judiciary is under a Constitutional obligation to guide and protect judicial officers and that an honest and strict judicial officer is likely to have adversaries in the mofussil courts; if trifling complaints relating to judicial orders which may have been upheld by the High Court on the judicial side are entertained, no Judicial Officer would feel protected and it would be difficult for him to discharge his duties honestly and independently. There may be no dispute regarding finding of the Supreme Court in both these cases. Unscrupulous complaints have to be thrown away but if on the complaint some thing emerges from which it can be inferred that there is some element of truth in it and that too regarding integrity of a Judicial officer, it cannot be just burshed aside. Though the complainant has not supported the complaint, but from the facts, the allegations which were made are found to be true, it will not be possible to close the eyes to the facts. In the case of *Yoginath* (supra), the facts were that two session trials were going on in the court of the appellant (in that case) in which one Deepak Trymbakrao Deshmukh was involved as an accused. Both the cases related to a murder in which the appellant had refused long adjournments on the ground that the matters were old. The accused filed transfer application for transferring the case to some other Court on the ground that one Shri Patil, Advocate, who was opposed to him, was very close to the District Judge and therefore, he was apprehending that he would not get justice from the appellant's Court. The accused also filed another Transfer application on the allegation that his Advocate had assured him of his acquittal provided he would pay Rs. 20,000 to him as his fee. Subsequently, the accused withdrew both the Transfer applications. Thereafter, he made a complaint against the District Judge to the High Court. A charge framed against the District Judge in pursuance of the complaint was that he had met the accused when he assured him acquittal on payment of Rs. 10,000 in each case and therefore, he indulged in corrupt practice and that subsequently also he made a demand of Rs. 10,000 from him as consideration for acquittal in one session trail. Enquiry was held

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against the District Judges. The Enquiry officer held that the charges were not established and he recommended his re-instatement. The disciplinary Committee of the High Court considered the report but dis-agreed with the findings of the Enquiry officer and therefore, tentatively decided to impose the penalty of dismissal from service upon the District Judge. Consequently, he was dismissed from service. The Supreme Court found that the Disciplinary Committee had gone by surmises and conjectures rather than evidence on record and statement of two witnesses were not taken into consideration and it had also over-looked the aspect of the case, which was to the effect that the session trials were earlier pending in the court of Sessions Judge Mr. S.S.N. They were transferred from his court to the court of Additional District and Sessions Judge Mr. S.T.K. He attempted to proceed with those trials but the accused created all sorts of hindrances and obstacles and filed transfer application making allegation against Mr. S.T.K. It was rejected by the Sessions Judge. However, when the cases were taken by Mr. S.T.K., the accused made an application for adjournment to enable him to file Vakalatnama of his counsel. Mr. S.T.K. wrote an elaborate order having regard to the quarrelsome nature of the accused and requested the Sessions Judge to transfer the cases to some other Court and consequently both the sessions Trials were transferred to the court of appellant in that case. The accused adopted dilatory tactics to prolong the trial and ultimately gave an application in which he stated that he was certain that no impartial justice was going to be done. This was treated to be a contumacious conduct and the appellant-District Judge passed an Order taking cognizance under Section 345 of the Code of Criminal Procedure read with Section 228 of IPC and detained the accused in custody. He also issued a notice as to why action under Section 345 Cr. P.C. be not taken against the accused. The accused did not submit any reply and he was convicted and sentenced to pay a fine of Rs. 200. The accused challenged this order in appeal but the appeal was dismissed. The accused thereafter also continuously made frivolous applications for adjournments and ultimately approached the High Court for transfer of both the cases to some other Court. Explanation was submitted by the appellant but thereafter the accused withdrew both the transfer applications. When the appellant as Presiding Officer proceeded to dispose of these cases, the accused made allegations in question, against him and reported the matter to the Chief Justice and because of the same the disciplinary proceedings had started.



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(31) The Supreme Court found that the facts indicated that the accused had taken the court, where the two Sessions Trials were pending against him, for a ride and he had adopted similar tactics in the court of Sessions Judge Wardha, and again in the court of 1st Additional District and Sessions Judge, Wardha, where these two cases were transferred and yet again in the court of the appellant where these Sessions Trials came to be ultimately transferred. The Supreme Court also took into consideration that after withdrawal of transfer applications, when the appellant proceeded with the two Sessions cases, the Disciplinary Committee inferred that he was still pursuing his demand otherwise, he himself would have written that he will not conduct those two cases. The Supreme Court found that this was totally fallacious.

(32) The facts of this case are totally different. The Supreme Court had considered the obstacles raised by the accused in letting the sessions trials to proceed against him and considered all the aspects and the behaviour of the accused obstructing the Judges to conduct the cases. I agree that high Court has to protect the judicial officers but that does not mean that the High Court cannot in any case use its power to retire any officer at the age of 55 years, if it finds that his integrity is doubtful.

(33) Learned counsel for the petitioner has argued that the learned Inspecting Judge had directed that the petitioner be kept under surveillance and there is no report as to what transpired after the surveillance was kept on the petitioner. He has relied on the case of *Shri Pal Jain vs. Engineer-in-Chief, Haryana, Public Works Department (B&R) Branch, Chandigarh, and another (10)*. It is a Division Bench judgment of this Court. The D.B. had relied on earlier judgment of this Court in the case of *Fakir Chand Aggarwal vs. State of Haryana and others*, (Civil Writ Petition No. 1984 of 1987) in which it was held that the remarks "Integrity deserves to be watched" cannot be read to mean that the officer was lacking integrity or his integrity was doubtful. In the present case, there is not only a remark of integrity being doubtful but also is there a direction to keep a watch on the petitioner. These two are separate things. The first part means that the integrity is doubtful and the second part would mean that a watch is required to be kept so that in further act of such nature can be observed and noted.

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(34) Counsel for the petitioner relied on the judgement in the case of *High Court of Punjab and Haryana through R.G. vs. Ishwar Chand Jain and another (11)*. He has referred to paragraph No. 32 of the judgement. In the said paragraph, it has been observed by the Supreme Court that the object of the inspection is for the purpose of assessment of work performed by the subordinate judge, his capacity, integrity and competency and since judges are human beings and also prone to all the human failings, inspection provides an opportunity for pointing out mistakes so that they are avoided in future. It is also observed that inspection should act as a catalyst in inspiring subordinate judges to give best results. It is also observed that remarks recorded by the Inspecting Judge are normally endorsed by the Full Court and become part of the Annual Confidential Reports and are foundations on which the career of a judicial officer is made or marred. Therefore, inspecting of subordinate court is of vital importance. It has to be both effective and productive. It is observed that it should be well regulated and it has to go on all the year round by monitoring the work of the court by the inspecting Judge. It is further observed that casual inspections can hardly be beneficial to a judicial system.

(35) The principle laid down in the above mentioned paragraph of the judgement does not help the petitioner in anyway. The remarks regarding the petitioner's integrity are not found on inspection of one occasion only. They are because of visits to Faridkot and also because of contradictory decisions given in two bail applications within a very short span of time and when the raid against both the accused were carried out at the same time when both were going on in the same vehicle.

(36) Counsel for the petitioner further argued that the case in which the petitioner granted bail has resulted in acquittal and the case in which he refused bail has resulted in conviction and the judgements are not set-aside by the High Court on judicial side. This argument of the learned counsel for the petitioner cannot be accepted in view of the fact that the decision regarding bail in either of the cases was not given after considering the merits of the case by considering them on factual aspects-Bail was granted in one case because the case had prolonged (though earlier bail application was rejected) and in the other case, only because the earlier bail application

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was rejected, the bail was refused. It may be noticed that the case in which the bail was granted had resulted in acquittal, it was not a case in which the Court found that there was no case and no charge should have been framed.

(37) Counsel for the petitioner has relied on the case of *Jagdish Singh Raghava vs. State of Haryana and others* (12). It has been held therein that the petitioner was having good remarks where only one remark was held to be adverse. However, it is observed in the judgement by the learned Single Judge of this Court that the officer giving remarks alone found the petitioner (therein) lacking in all aspects and against every column of the Confidential Report for the year 1988-89, he was described as "average" or "below average." It is further observed that all other reporting officers did not comment adversely upon the work and conduct or any of the qualities in any of the columns in reports either before or after. It is further observed that the said petitioner was pegged down in all his qualities and the final remarks in his confidential reports from good to very good became average or below average and his integrity was also found to be doubtful. It is also observed that *in view of the facts that were available*, adverse remarks did raise a suspicion. It was further observed that *in that particular case* at least the Government ought to have come with reasons which persuaded respondent No. 3 (in that case) to give adverse remarks in his Confidential report.

(38) The facts of that case are, therefore, different. The learned Judge has further observed that instances have come to the notice of Government in which even though officers are being proceeded against for serious forms of corruption, their confidential report for the said period certify their integrity to be good and it was felt that contradictions of this type arise because reporting officers are failing in their duty to make entries in the columns relating to integrity forthrightly and without hesitation. The above judgement, therefore, does not give assistance to the petitioner in any way.

(39) Counsel for the petitioner has cited the case of *Rajiv Puri vs. Panjab University, Chandigarh* (13). This judgement is not applicable to the facts of present case. It is regarding granting

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(12) 1998 (3) RSJ 285

(13) 1992(1) SCT 148

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admission by way of migration by pick and choose which did not satisfy the test of Article 14 of the Constitution.

(40) Learned counsel for the petitioner has cited the case of *Ram Ekbal Sharma vs. State of Bihar and another (14)*. It has been held by the Supreme Court in that case that even though the order of compulsory retirement is couched, innocuous language without making any imputations against the government servant who is directed to be compulsorily retired from service, if challenged, the court, *in appropriate cases*, can lift the veil to find out whether the order is based on any misconduct of the government servant concerned or the order has been made *bona fide* and not with any oblique or extraneous purposes. In that case, the appellant had wanted promotion on merits. Thereafter in September, 1998 the State issued a notification promoting a large number of juniors to the higher scale without considering the case of the appellant. Being aggrieved, the appellant filed one representation against his supersession. The representation was filed on 7th October, 1988. In that representation, the appellant had brought to the notice of respondent-State that his service record through-out remained excellent, integrity beyond doubt and the appellant was never communicated with any punishment in service career. While he was waiting the decision, the respondent-State issued notification compulsorily retiring him from the post of General Manager, District Industries Centre. The appellant had claimed that the order of compulsory retirement has been passed as a measure of major punishment. The only crucial question in that case was whether the impugned order of compulsory retirement was in public interest or with an oblique motive. The Supreme Court then considered the question of lifting of veil. In the said case, the oblique motive was apparent. The appellant was not promoted and when he gave a representation, the reply was to compulsorily retire him. The facts, therefore, being different, the judgment will not be applicable to the present case.

(41) In the present case, there are no *mala fides*. Also, at no stage, the High Court had decided to start disciplinary proceedings against the petitioner. No charge sheet was ever issued and therefore, no question of lifting the veil will arise. Much stress has been laid by the learned counsel for the petitioner that in the report of Inspecting

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Judge dated 27th August, 1998, Annexure R/2, it has been stated that the observations of the District Judge that the complaint should be filed, deserves to be rejected and the complaint should be taken to its logical end. Distinction has to be drawn in such cases to decide whether the enquiry against the delinquent has already started or not. In this case, it was only a suggestion. No decision was taken by the High Court to start the departmental enquiry against the petitioner. No decision to issue a charge-sheet was taken. This being the position, it cannot be said that the compulsory retirement was a punishment given to the petitioner. The judgement of the case of *Ram Ekbal Sharma* (supra) is also considered by the Supreme Court in the second judgement of I.C. Jain's case (supra). After considering the facts and the said judgment, the Supreme Court held in I.C. Jain's case that he was retired apparently when he was under suspension and that the High Court on administrative side decided to keep disciplinary proceedings against Mr. Jain pending for the purpose of imposing the cut on his retiral benefits.

(42) Counsel for the petitioner, relying on these two judgments argued that after lifting the veil, the case of compulsory retirement cannot be made out. However, as mentioned above, there should be some line of distinction drawn as to on at what stage, the disciplinary action can be said to have started. Merely, recommending the case to be taken to its logical end does not mean that the disciplinary proceedings had started and that the order of compulsory retirement acted as camouflage. In view of the facts of the present case, principle of both these judgements i.e. in the case of *I.C. Jain and Ram Ekbal Sharma*, (supra) will not be applicable.

(43) Counsel for the petitioner has cited the case of *M/s J. Mohapatra and Co and another vs. State of Orissa and another* (15). It has been held by the Supreme Court in that case that a person who is author of a book should not be made the member of the Selection Committee because he is interested in the matter. This judgement is totally irrelevant so far as the present case is concerned in view of its facts and principles laid down in it, because they are different.

(44) Counsel for the petitioner has cited the case of *V.D. Gaur vs. State of Haryana* (16). It is a judgment of learned Single Judge of this Court in which it has been held that if an officer is compulsorily

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(15) AIR 1984 SC 1572

(16) 1991 (3) SCT 148

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retired on the basis of his Confidential report according to which his integrity has been doubted, action on the basis of such report will be considered to be an action by way of punishment.

(45) In reply to this, Mr. Nehra, learned counsel for respondent No. 2 has relied on the judgment of *Brij Mohan Singh Chopra* (supra). In that case, the Supreme Court held that if the entries for the period of more than 10 years past are taken into account it would be an act of digging out past to get some material to make an order against the employees and hence their Lordships confined their scrutiny to the appellant's record of service for the last 10 years prior to the date on which he was prematurely retired. This shows that when there is an adverse entry regarding the integrity, it is not necessary that in each such case, enquiry has to be held.

(46) In the case of *Baikuntha Nath Das and another vs. Chief District Medical Officer, Baripada and another* (17) the Supreme Court upheld the compulsory retirement of a person who was having the following adverse remarks :—

“.....most insincere, irregular in habits and negligent and besides being a person of doubtful integrity, he had been quarrelsome with his colleagues and superior officers and has been creating problems for the administration.”

(47) It has also been held therein that uncommunicated adverse remarks also can be considered and principles of natural justice do not apply to such cases. The Supreme Court in the said case has relied on the case of *Union of India etc. vs. M.E. Reddy and another*, (18) in which same principles have been laid down. It is also relied on the case of *Union of India vs. J.N. Sinha and another* (19) in which it has been held that when the appropriate authority forms bona fide opinion to compulsorily retire an employee, show cause notice against such retirement is not required. Relying on these two judgments, the Supreme Court in the case of *Baikuntha Nath Das* (supra) has not followed its earlier decision.

(48) In view of the principles laid down in the case *Shirish Kumar Rangrao Patil* (supra) and in the case of *Baikuntha Nath Das*

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(17) AIR 1992 SC 1020

(18) AIR 1980 SC 563

(19) AIR 1971 SC 40

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(supra), the petitioner cannot get the advantage of the findings in the case of Ex. Capt. R.S. Dhull (supra) and *Brij Mohan Singh Chopra* (supra).

(49) In view of this position, the principle laid down in the case of *V.D. Gaur* (supra) will not be applicable to the present case.

(50) Counsel for the petitioner has cited the case of *M.S. Bindra vs. Union of India and Ors.* (20) In that case, the Supreme Court had held that while evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently. It is also observed that the maxim "Nemo Firut Repente Turpissimus" (no one becomes dishonest all of a sudden) is not unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of Administrative Law. In that case, the order of compulsory retirement was passed on "doubtful integrity" on the basis of certain cases revived by Screening Committee. There was certain dearth of evidence in support of conclusion of the Committee. It was held that doubtful integrity cannot be based on *mere hunch* and the order of compulsory retirement was uncalled for as it does not stand judicial scrutiny even with limited scope. The learned counsel argued that in view of this judgement, the principle laid down in the case of *Baikuntha Nath Das* (supra) by the Supreme Court has been diluted. It can be seen that the judgment in the case of *M.S. Bindra* (supra), is of two Judges and that of *Baikuntha Nath Das* (supra) is of *three Judges*. The principle in the case of *Baikuntha Nath Das* (supra) cannot be therefore, said to be diluted. Moreover, the facts in the case of *M.S. Bindra* were such that there was utter dearth of evidence in support of conclusion.

(51) Relying on the aforesaid maxim, it cannot be said that in all the cases, no one becomes dishonest all sudden. In the present case, not only the Inspecting Judge found that the reputation of the petitioner was not good but there are concrete instances of two bail applications of two different) accused, arrested together (though FIR numbers are different) and the reasons given for releasing one of the accused on bail was not correct because his earlier bail application was dismissed ; though on the same ground, the bail application of the other was rejected in a very short span of time.

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(52) Learned counsel for the petitioner has cited the case of *Punjab State and others vs. Kulwantbir Singh* (21). It has been held therein that adverse entry of doubtful integrity figuring against the petitioner (in that case), is not washed away by crossing of Efficiency Bar or by continuing in service after the requisite qualifying service. This judgment does not help the petitioner and on the contrary goes against him. The subsequent remarks of the Inspecting Judge on the Work done at Kapurthala will not wash away the adverse remarks in question.

(53) Learned counsel for the petitioner has cited the case of *High Court of Judicature at Allahabad through Registrar vs. Sarnam Singh* (22) It has been held therein that the adverse remarks against the Judicial Officer are of great importance and must not be recorded casually merely on the basis of surprise visits by the Inspecting Judge and on doubts. There is no dispute regarding this position.

(54) Learned counsel for respondent No. 2 has also relied on the case of *High Court of Judicature at Bombay through Registrar vs. Shashikant S. Patil* (23). Of course, it is a case regarding departmental enquiry and disciplinary authority not agreeing with the Inquiry officer's report. However, it has been observed in the said case by the Supreme Court that it is the constitutional duty of every High Court, on administrative side, to keep guard over subordinate judiciary and while it is imperative for High Court to protect honest judicial officers against all ill-conceived or motivated complaints, the High Court cannot afford to by-pass any dishonest performance of a member of subordinate judiciary. It has further been held that any instance of High Court condoning or compromising with a dishonest deed of one of its officers would only be contributing to erosion of judicial foundation. It has been further held that the judicial service is not merely an employment nor the Judges merely are employees but they are exercising judicial powers.

(55) Considering the various authorities cited by both the Counsel and the facts of the case, I find that it is not worth to interfere with the order of compulsory retirement. No *mala fides* have been alleged against the Inspecting Judge. The Inspecting Judge has

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(21) 1993 (1) PLR 1

(22) 2000 (1) SCT 637

(23) 1999 (4) SCT 770



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based his report not only what he came to know during the inspection but also on other visits and there is a concrete example of deliberate dissenting judgments of the petitioner. Inquiry was not ordered nor was any decision to hold a departmental enquiry against the petitioner. The question is whether the High Court has no power to use the provisions of "Compulsory retirement" in such a case? If the enquiry was ordered, the question could have been different. To hold otherwise would mean to hold that an employee can be compulsorily retired, but if there are adverse remarks or adverse remarks of integrity being doubtful, then the power of compulsory retirement would not be there. This will be absurd.

(56) Counsel for the petitioner has relied on Rule 7 of the High Court Rules and Orders, Vol-5 (Chapter 9). Sub rule (ii) of Rule 7 empowers the Administrative Committee of the Judges consisting of Hon'ble the Chief Justice and the next four senior Judges to deal with the recording of Confidential remarks on the work and conduct of members of Punjab and Haryana Civil Services (Judicial Branch) Officers. According to the learned Counsel, the remarks could only have been written by the Administrative Committee and not the Inspecting Judge. As mentioned earlier, the Inspecting Judges are appointed by Full Court. Actually, the Inspecting Judge's remark will be a remark of the High Court. Moreover, the adverse remarks are written by the Inspecting Judge and they are confirmed by the Full Court. Counsel for the petitioner argued that adverse remarks of the Inspecting Judge are washed out by the subsequent remarks of Inspecting Judge of Kapurthala sessions Divisions. However, there is no force in the same. The remarks are for different period, though in the same inspecting year. They cannot be said to be of same period. Moreover, the petitioner belonged to Superior Judicial Service and not to Punjab Civil Services (Judicial Branch) Service, therefore, the rule 7 of Chapter 9 part A, which is applicable to the lower judiciary will not be applicable. Summarising the above discussions, it can be said that the report of the Inspecting Judge could not be said to be without basis and in view of the facts of this case, it cannot be said that the order of compulsory retirement could not have been passed in this case. There was no necessity of further finding of inefficiency, dishonesty and dead wood in view of the facts mentioned above. The report of the District Judge cannot be said to have of any value in view of the fact that there is a concrete picture coming from

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the divergent judgments mentioned above. Further surveillance need not be kept if the employer has the opportunity to compulsorily retire a government servant. The High Court has not acted only on secret information but has acted on concrete evidence. Necessary opportunity for representation against order of Inspecting Judge was given to the petitioner. The compulsory retirement need not have waited for representation against the adverse remarks recorded by the Full Court. Firstly, because the representation could still be made and secondly because in view of the discussion above, learned Single Judge is also acting as the High Court, when he deals with the case as an Inspecting Judge. As mentioned earlier, there is no malafide on the part of respondent—High Court; no such *mala fides* have been alleged against it. No question to lift the veil arises. To repeat, it may be stated that no enquiry was ever ordered against the petitioner so as to hold that the impugned order was passed to by-pass any enquiry.

(57) Moreover, as held in the case of *Shirish Kumar Rangrao Patil* (supra) any instance of High Court condoning or compromising with a dishonest deed of one of its officers would only be contributing to erosion of judicial foundation.

(58) In view of the above reasons, technicalities are also not in favour of the petitioner. Even if, they were, in view of the above case of compulsory retirement against the petitioner, they must not be given much importance in view of the observations in the case of *Shirish Kumar Rangrao Patil* (Supra). This writ petition is, therefore, dismissed.

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**R.N.R.**

*Before Amar Bir Singh Gill & V.S. Aggarwal, JJ*

BHIRA @ NADA,—Petitioner

*versus*

STATE OF HARYANA & OTHERS,—Respondents

C.W.P. NO. 4508 OF 2000

The 21st May, 2001

*Haryana Panchayati Raj Act, 1994—Ss.8 & 209—Haryana Panchayati Raj Election Rules, 1994—Rls. 61 & 62—Election to the office of Sarpanch—Glaring irregularities in the election process—*