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SHIV DAYAL GUPTA

v.

STATE OF RAJASTHAN AND ANR.

DECEMBER 13, 2005

B

[H.K. SEMA AND DR. AR. LAKSHMANAN, JJ.]

C

Judiciary—Higher Judicial Service—Compulsory retirement—Appellant, an Additional District Judge in the Rajasthan Higher Judicial Service—Compulsorily retired from service on basis of Review Committee report submitted by four Senior Judges of the Rajasthan High Court which was approved by the Full Court—Review Committee found that continuance of Appellant in office would be a liability and adverse to public interest—Writ petition filed by Appellant assailing the order of compulsory retirement dismissed—On appeal, held, the order of compulsory retirement was passed

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after subjective satisfaction of the matter inasmuch as it was based on ACR and service record of Appellant—Besides, appellant never raised any allegation of malafide or non-application of mind before High Court or this Court—Hence, no interference called for by this Court.

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Appellant was holding the post of Additional District Judge in the Rajasthan Higher Judicial service. He was compulsorily retired from service on the basis of Review Committee report submitted by four Senior Judges of the Rajasthan High Court which was approved by the Full Court. The Review Committee found that the continuance of Appellant would be a liability and adverse to public interest and accordingly recommended that he should be compulsorily retired. Appellant assailed the order of compulsory retirement before High Court by filing writ petition. But the High Court dismissed the petition after perusing the entire records placed before it. Hence the present appeal.

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Dismissing the appeal, the Court

HELD: 1. On the basis of overall perusal of the ACR and overall assessment of service record of the appellant, the Review Committee consisting of four Senior Judges found that continuance of officer would be liability to the Department and adverse to the public interest and recommended that he should be compulsorily retired. The recommendations of the Review

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Committee was accepted by the Full Court It is really a case of chopping of the dead wood. [734-E] A

2. That apart, either before the High Court or before this Court, the appellant never raised any allegation of *malafide* nor the said order has been passed without application of mind. In fact, considering all the facts and circumstances the appointing authority has come to the conclusion that the appellant's continuance in the service will be a liability to the public interest and passed the order after subjective satisfaction of the matter on the basis of the record placed before the authority. [734-F] B

Bhaikuntha Nath Das & Anr. v. Chief District Medical Officer Braipada & Anr., [1992] 2 SCC 299; *State of Gujarat v. Umedhbhai M. Patel*, [2001] 3 SCC 314; *State of U.P. & Anr. v. Vinay Kumar Jain*, [2002] 3 SCC 641 and *State of U.P. & Anr. v. Lalsa Ram*, [2001] 3 SCC 389, distinguished. C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5397 of 2002.

From the Judgment and Order dated 22.5.2002 of the Rajasthan High Court in D.B.C.W.P. No. 1614 of 2001. D

M.R. Calla and Ms. Rachana Srivastava for the Appellant.

Sunil Kumar Jain, S. Borthakur, Aruneshwar Gupta and Navin Singh for the Respondents. E

The Judgment of the Court was delivered by

SEMA, J. The appellant at the relevant time was holding the post of Additional District Judge (Rajasthan Higher Judicial Service). By an order dated 9.11.2000, he was compulsorily retired from service. He has assailed the order of compulsorily before the High Court. The High Court of Rajasthan dismissed the Writ Petition after perusing the entire records placed before it. The appellant was compulsorily retired on the basis of Review Committee report submitted by four Senior Hon'ble Judges of the High Court which was approved by the Full Court of the High Court. F G

We have been taken through the entire judgment of the High Court. The High Court, on perusal of the record produced before it, found that in the year 1983, the appellant was not assessed as good officer and his integrity was doubtful. In 1984 he was reported to be corrupt officer. The High Court was also of the view that when the appellant has been granted selection grade, H

A the adverse entries were not brought to the notice of the authority. The High Court also noted that the Review Committee consisting of four Senior Hon'ble Judges of the High Court noticed that the performance of the appellant was poor and he was advised to improve his judgment writing, In 1974 there was a remark that he should be watched and quality of case work was found unsatisfactory. The remarks were also communicated to the appellant. In 1977

B there was also an entry that he should improve the quality of his judgments. In 1983 he was not assessed as good officer and his integrity was found doubtful. His representation against adverse entry was reflected. In 1993 there was an entry in his ACR that he failed to inspire the confidence in subordinate staff and lawyers and his disposal was also found low. The Review Committee

C also noted that he has been superseded without being considered for promotion in 1983. The departmental enquiry under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) rules, 1958 where finding against the appellant of being negligent and grossly careless in discharging his judicial duties, have been recorded, which ended in minor penalty of censure imposed on him and he was further warned to remain careful and cautious

D while discharging his judicial functions.

On the basis of overall perusal of the ACR and overall assessment of service record of the appellant, the Review Committee consisting of four Senior Judges found that continuance of officer would be liability to the Department and adverse to the public interest and recommended that he

E should be compulsorily retired. It is noticed that the recommendations of the Review Committee was accepted by the Full Court in a meeting held on 8th November, 2000. It is really a case of chopping of the dead wood.

That apart, either before the High Court or before this Court, the appellant

F never raised and allegation of *mala fide* nor the said order has been passed without application of mind. In fact, considering the aforesaid facts and circumstances the appointing authority has come to the conclusion that the appellant's continuance in the service will be a liability to the public interest and passed the order after subjective satisfaction of the matter on the basis of the record placed before the authority.

G Learned senior counsel cited the decisions rendered in 1. [1992] 2 SCC 299 (*Bhaikuntha Nath Das and Anr. v. Chief District Medical Officer Braipada and Anr.*); 2. [2001] 3 SCC 341 (*State of Gujarat v. Umedhbhai M. Patel.*); 3. [2002] 3 SCC 641 (*State of U.P. and Anr. v. Vinay Kumar Jain*) and 4. [2001] 3 SCC 389 (*State of U.P. and Anr. v. Lalsa Ram.*)

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The ratio of the decision cited quoted by the learned senior counsel for the appellant, are not applicable in the facts of this case. A

The contentions raised by the learned counsel for the appellant, in our view does not merit consideration in view of the facts and circumstances as recited above.

In the result, we see no merit in this appeal. The appeal is accordingly dismissed. No costs. B

B.B.B.

Appeal dismissed.