

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE V.G.ARUN

WEDNESDAY, THE 19TH DAY OF FEBRUARY 2020 / 30TH MAGHA, 1941

WP(C).No.9521 OF 2013(R)

PETITIONER/S:

V. JAYAKUMAR
(FORMERLY JUDICIAL FIRST CLASS MAGISTRATE,
PATHANAMTHITTA), RESIDING AT KARTHIKA, T.C
8/715(1), T.V NAGAR, NEAR THIRUMALA VILLAGE
OFFICE, THIRUVANANTHAPURAM.

BY ADVS.
SRI.V.T.RAGHUNATH
SRI.P.V.DILEEP

RESPONDENT/S:

- 1 THE HIGH COURT OF KERALA
ERNAKULAM, REPRESENTED BY ITS REGISTRAR
(SUBORDINATE JUDICIARY) COCHIN 682031
- 2 STATE OF KERALA
REPRESENTED BY THE SECRETARY, LAW DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM 695 001.

R1 BY ADV. .
R1 BY ADV. SRI.B.UNNIKRISHNA KAIMAL
R2 BY GOVERNMENT PLEADER

OTHER PRESENT:

SR.GP SRI.T.RAJASEKHARAN NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11.02.2020, THE COURT ON 19.02.2020 DELIVERED THE
FOLLOWING:

JUDGMENT

Dated this the 19th day of February, 2020

Vinod Chandran, J.

The petitioner was compulsorily retired under Rule 13A of the Kerala Judicial Service Rules, 1991, while he was working as Judicial Magistrate of the First Class-I Pathanamthitta. The order of the High Court of Kerala is produced at Ext.P1 dated 13.07.2010 and he had completed the age of 50 years as on 21.04.2010. The compulsory retirement was on an evaluation and assessment of his service records at the age of 50 as has been stipulated in the aforementioned Rule. The order indicates that there was a Committee of Judges headed by the Hon'ble The Chief Justice of the High Court, who on the basis of the records of service assessed his performance and evaluated the suitability for continuance and found him to be

not entitled to be continued.

2. The learned Counsel had raised very many grounds most of which have been answered by a Division Bench in W.A No.1633/2013 and connected cases by judgment dated 16.01.2015 and our judgment in W.P(C) NO.33298/2015 dated 11.02.2020.

3. The challenge to the specific rule (R.13A) does not survive for reason of the judgment of the Hon'ble Supreme Court in Civil Appeal No.9700-9701 of 2013 dated 21.11.2017 which upheld *in pari materia* provision in the State of Andhra Pradesh. The rule hence has to be found to be *intra-vires*. The next ground, that the Shetty Commission Report though generally accepted, the recommendation for consideration of suitability to continue, after the age of 50, 55 and 58 had not been accepted by the Hon'ble Supreme Court in All India Judges Association (3) Vs. Union of India

(2002) 4 SCC 247, has also been rejected. All India Judges Association(2) v. Union of India [(1993) 4 SCC 28, itself had found that the benefit of enhanced retirement age of 60 was not available automatically and that 'It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility' (sic).

4. The contention that Rule 13A provides for retirement at the age of 50, 55 and 58 and not after that has also been rejected in W.P(C) No.33298/2015. It was found that the proviso to the Rule saves the rigour of sub-rule (2), the latter of which requires consideration of suitability to continue in service, at least three times before attainment of the age of 50, 55 and 58 years. It was found that sub-rule (1) saved by the proviso does not mandate compulsory retirement to be 'on attainment' of 50, 55 and 58 or 'at that

age'. It was found that the detection of a major delinquency in the conduct of a Judicial Officer after he attains 50 years cannot be ignored; till he attains 55 or 58 years of age. We also notice that the petitioner had attained the age of 50 on 21.04.2010 and was compulsorily retired by Ext.P1 on 30.07.2010. But, however, the order of the Governor had come only subsequently and is dated 11.10.2011.

5. The learned Counsel for the petitioner had one another contention insofar as Rule 60(aa) of Part I Kerala Service Rules (for brevity "KSR") providing for retirement of an officer in the Kerala Judicial Service only at the age of 60 years with an option to retire at the age of 58 years. The continuance in service which could be subject of a review by the High Court, as per the said Rule could only be continuance beyond the age of 50

years. In such circumstances, without amendment to the KSR, the Rules of 1999 cannot be pressed into service, is the compelling ground. It is also argued that the Registrar-Vigilance, who submitted the report to the Committee of Judges, was inimical towards the petitioner, on the basis of various instances which occurred when the petitioner had worked under the said officer who was then his Principal District Judge. No material was supplied to the petitioner of his various alleged delinquency which made him disentitled from continuance beyond 50 years of age; is yet another contention. It is also argued that one of the adverse remarks was expunged in a review, after the compulsory retirement.

6. We first deal with the contention of Rule 13A being not enforceable for reason of Rule 60(aa) of Part I KSR, not being amended suitably.

The KSR is a general rule while the Rules of 1991, is a Special Rule applicable to the judicial service of the State. We rely on Maya Mathew v. State Of Kerala [(2010) 4 SCC 498] and the principle of *generalibus specialia derogant (i.e., special things derogate from general things)* Rule 13A having been substituted by amendment in 2006, in the special rules, prevails over Note 3 to Rule 5 of Part-I KSR, the general rule; which Note was introduced by an amendment of 1992.

7. On facts we called for the files and perused the same. Before we look into the merits, we have to notice the contention raised by the learned Counsel for the petitioner regarding malafides, which we could immediately reject for the simple reason of the then Registrar-Vigilance, having not been impleaded in the personal capacity. However, we realise that at the time of filing of

the writ petition, the particular person who was referred to was elevated as a Judge of this Court. We also hence desist from mentioning his name but, however, notice that the petitioner in Ext.P28 had referred to the said person who was a Principal District and Sessions Judge when the petitioner was Principal Munsiff at Kozhikode. We have to pertinently observe that from the files, it is revealed that the Registrar-Vigilance, whose Report was submitted to the Committee of Judges was not the same person, but another District Judge, who too was elevated to this Court. We do not find any substance in the allegation of malafides.

8. The report of the Registrar (Vigilance) indicates that the petitioner was in the habit of discharging the accused in criminal cases under Section 239 Cr.PC without a proper hearing and without even notice to the Assistant Public

Prosecutor. Identical orders of discharge were made in cases under Section 498 A of the Indian Penal Code without any recording of reasons. That too without hearing the parties, while recording that they were heard. On perusal of A Diaries maintained in the Criminal Section, for the period when the petitioner was continuing as Munsiff-Magistrate Sasthamkotta, it was noticed that he was in the habit of adjourning cases merely by notification even when witnesses were present in Court, on summons or warrants issued. The Bench Clerk had specifically deposed that the adjournment by notification was on the orders of the Presiding Officer, the petitioner herein. The explanation offered by the officer was that he had been dealing with targeted cases and hence the matters were adjourned.

9. Even in the matter of achieving targets

the petitioner was in the habit of disposing of cases in the month end under Section 256 of the Cr.PC without examining the witnesses present for the prosecution resulting in acquittal of the accused. The orders of discharge passed by the petitioner was also not forwarded to the Sessions Judge along with calendar statement required under Rule 148 of the Criminal Rules of Practice. The Assistant Public Prosecutor had also complained regarding the relectance of the Presiding Officer to grant adjournment when the summoned Officers were not able to be present on a particular day for reason of other engagements. It was also complained of that no applications of the APP were accepted by the Presiding Officer.

10. Yet again the petitioner while working as Munsiff-Magistrate avoided pronouncing judgments in Civil matters and adjourned them for

one reason or other. The disposals were either dismissal for default or for not filing written statement within 90 days. The only explanation of the petitioner was that he had been dealing with Civil cases for the first time.

11. While the petitioner was working as JFCM Attingal many instances were seen of accused being released on self bond, when they are produced, before the Magistrate, without hearing the Prosecutor nor even serving notice on the Prosecutor. It was also seen that in many cases where the Prosecutor had requested for recall of witnesses under Section 311 Cr.PC the same were summarily rejected without any reasoning. There was also minimal work done by the Officer and a discreet inquiry conducted by the Registrar (Vigilance), through the Officer attached to the Vigilance Cell revealed that the Petitioner was not

sitting after the afternoon recess, while the closure of the proceedings was recorded as at 5 P.M.

12. The Committee of Judges specifically noticed the complaint against the Officer, of adopting short cut methods to dispose of cases, and that too without examining material witnesses. There were also allegations with respect to leave being availed and leaving station without permission from the Chief Judicial Magistrate. The Officer was reported to be indifferent and insensitive in his work. The Judge in charge of the District in which the petitioner was working noticed that, the Reporting Officer had by two page remarks found him to be indifferent and of slightly doubtful integrity, as also disposal of cases in a casual manner. The Judge in Charge also had agreed with the Reporting Officer.

13. These were the issues on which the Officer was found not entitled to be continued in Judicial service and liable to be compulsorily retired. We do not think there is any scope for interference especially looking at the recent decision of the Honourable Supreme Court in Ram Murthy Yadav Vs. State of Uttar Pradesh [2020(1) SCC 801] wherein the Honourable Supreme Court had found the limited scope of judicial review when an order of compulsory retirement is based on subjective satisfaction of the employer. The interference of judicial review was held to be possible only if it is found to be arbitrary, capricious, malafide or overlooking and ignoring any relevant material. This court as has been held in the cited decision, is not sitting in judgment over the decision of the Full Court.

14. Rajendra Singh Verma Vs. Lt. Governor

(NCT of Delhi) [2011(10)SCC 1] declared that, where the Full Court of the High Court recognized compulsory retirement of the officer, High Court on the judicial side has to exercise great caution and circumspection in setting aside that order because it is a compliment of all the Judges of the High Court who go into the question and it is not possible that in all cases, evidence would be forthcoming about doubtful integrity of a judicial officer.

15. We reject the writ petition but notice that going by the decision in WA 1633/2013 and connected cases, the petitioner is entitled to pay and allowances till the order of the Governor. In such circumstances, he shall be paid the entire pay and allowances between the date on which he was compulsorily retired (01.8.2010) and the order of the Governor (11.10.2011), however deducting three

months' pay which was given in lieu of notice.

Writ petition is rejected with the above observations. Parties to suffer their respective costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE.

Sd/-
V.G. ARUN,
JUDGE.

Jma/

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 THE PHOTOSTAT COPY OF THE ORDER NO. B 11451/2009(3) DT. 30-07-2010 ISSUED BY THE REGISTRAR (SUBORDINATE JUDICIARY, HON'BLE HIGH COURT OF KERALA AT ERNAKULAM
- EXHIBIT P2 THE PHOTOSTAT COPY OF THE REPRESENTATION DT. 27-02-2007 SUBMITTED BY THE PETITIONER TO THE REGISTRAR, HON'BLE HIGH COURT OF KERALA, ERNAKULAM.
- EXHIBIT P2 A THE PHOTOSTAT COPY OF THE REPRESENTATION DT 08-01-2009 SUBMITTED BY THE PETITIONER TO THE REGISTRAR HON'BLE HIGH COURT OF KERALA, ERNAKULAM.
- EXHIBIT P4 THE PHOTOSTAT COPY OF THE OFFICIAL MEMORANDUM NO. R1/2008 (SS) DT. 13-05-2010 ISSUED BY THE REGISTRAR (SUBORDINATE JUDICIARY) HON'BLE HIGH COURT OF KERALA, ERNAKULAM.
- EXHIBIT P5 THE PHOTOSTAT COPY OF THE OFFICIAL MEMORANDUM NO. E4-19834/2001 DT 19-02-2002 ISSUED BY THE ASST. REGISTRAR (SUBORDINATE JUDICIARY) HON'BLE HIGH COURT OF KERALA, ERNAKULAM
- EXHIBIT P6 THE PHOTOSTAT COPY OF THE STATEMENT DT. 10-02-2010 SUBMITTED BY THE PETITIONER TO THE REGISTRAR, HON'BLE HIGH COURT OF KERALA, ERNAKULAM.
- EXHIBIT P7 THE PHOTOSTAT COPY OF THE AMENDED RULES G.O(P) NO. 158/2006/HOME DATED 31-08-2006 ISSUED BY THE GOVERNMENT,

PUBLISHED BY AUTHORITY, KERALA GAZETTEE.

EXHIBIT P8 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 01-01-1991 TO 31-12-1999.

EXHIBIT P9 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 01-01-2000 TO 12-05-2000

EXHIBIT P10 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 20-05-2000 TO -10-2000

EXHIBIT P11 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 29-10-2000 TO 31-12-2000

EXHIBIT P12 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 01-01-2001 TO 31-12-2001

EXHIBIT P13 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 01-01-2002 TO 15-02-2002

EXHIBIT P14 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 16-02-2002 TO 31-12-2002

EXHIBIT P15 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 01-01-2003 TO 14-05-2003

EXHIBIT P16 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 21-05-2003 TO 31-08-2003

EXHIBIT P17 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 01-09-2003 TO 31-12-2003

EXHIBIT P18 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 01-01-2004 TO 31-12-2004.

EXHIBIT P19 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 01-01-2005 TO 06-01-2005

EXHIBIT P20 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 12-04-2004 TO 31-12-2004

EXHIBIT P21 COPY OF CONFIDENTIAL REPORT FOR THE

PERIOD 14-05-2005 TO 31-12-2005

EXHIBIT P22 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 01-01-2006 TO 17-03-2006

EXHIBIT P23 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 16-07-2007 TO 25-09-2007

EXHIBIT P24 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 01-10-2008 TO 31-12-2008

EXHIBIT P25 COPY OF CONFIDENTIAL REPORT FOR THE PERIOD 14-1-2009 TO 31-12-2009

EXHIBIT P26 COPY OF APPLICATION GIVEN TO THE PIO, DISTRICT COURT, KOZHICODE.

EXHIBIT P27 COPY OF INFORMATION FURNISHED BY PIO, DISTRICT COURT, KOZHICODE

EXHIBIT P28 COPY OF APPLICATION GIVEN TO THE PIO, DISTRICT COURT , KOZHICODE DATED 25-11-2010

EXHIBIT P29 COPY OF INFORMATION FURNISHED BY PIO, DISTRICT COURT KOZHICODE DATED 08-12-2010

EXHIBIT P30 COPY OF INFORMATION FURNISHED BY PIO, DISTRICT COURT, KOZHICODE DATED 10-11-10

EXHIBIT P31 COPY OF INFORMATION FURNISHED BY APPELLATE, DISTRICT COURT, KOZHICODE DATED 18-01-2011

EXHIBIT P32 COPY OF COMPLAINT GIVEN BEFORE THE STATE INFORMATION COMMISSION DT 24-12-2010

EXHIBIT P33 COPY OF ORDER OF THE STATE INFORMATION COMMISSION DT 30/6/17

- EXHIBIT P34 COPY OF APPLICATION GIVEN TO THE PIO,
DISTRICT COURT, KOZHICODE DATED 27-01-11
- EXHIBIT P35 COPY OF INFORMATION FURNISHED BY PIO,
DISTRICT COURT, KOZHICODE DATED 22-02-11
- EXHIBIT P36 COPY OF APPLICATION GIVEN TO THE PIO,
DISTRICT COURT, KOZHICODE DATED 27-01-
2011
- EXHIBIT P37 COPY OF INFORMATION FURNISHED BY PIO,
DISTRICT COURT, KOZHICODE, DATED 22-02-
11
- EXHIBIT P38 COPY OF LETTER GIVEN TO DISTRICT JUDGE,
KOZHICODE, DATED 03-06-2008
- EXHIBIT P39 COPY OF THE PROCEEDINGS OF DISTRICT
JUDGE, KOZHICODE, DATED 06-06-2008
- EXHIBIT P40 COPY OF MONTHLY REVIEW STATEMENT FOR
THE DECEMBER 2006 (RELEVANT PAGES)
- EXHIBIT P41 COPY OF MONTHLY REVIEW STATEMENT FOR
THE JUNE 2007 (RELEVANT PAGES)
- EXHIBIT P42 COPY OF EXPLANATION FURNISHED APPLICANT
BEFORE HON'BLE HIGH COURT OF KERALA DT
2/4/2007
- EXHIBIT P43 REVIEW OF THE SPECIAL LIST SYSTEM FOR
THE MONTH NOVEMBER 2008
- EXHIBIT P44 REVIEW OF THE ACHIEVEMENT OF TARGETS
FOR THE MONTH OF OCTOBER, 2008
- EXHIBIT P45 TRUE COPY OF ORDER ISSUED BY THE
APPELLATE AUTHORITY (RIGHT TO
INFORMATION ACT) HIGH COURT OF KERALA
DATED 09-09-2010
- EXHIBIT P46 TRUE COPY OF ORDER OF THE HON'BLE

SUPREME COURT IN SLP NOS 30770
-30771/2013 DATED 17-11-2014

EXHIBIT P47

TRUE COPY OF CONFIDENTIAL REPORT OF
PETITIONER FOR THE PEREIOD 01-01-2010
TO 14-05-2010

RESPONDENT'S/S EXHIBITS:

EXHIBIT R1 A

TRUE COPY OF THE G.O(RT) NO.
2993/2011/HOME DATED 11-10-2011.