



**TEJ PAL SINGH V. STATE OF U.P &  
ANR, 1986 AIR 1815 - A  
COMMENTARY**

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**Introduction**

It is inevitable to acknowledge the fact that the subordinate judiciary constitutes a very important segment of the judicial system as it has close contact with the people<sup>1</sup>. Therefore, both the Indian Constitution and the Judiciary has promoted the independence of subordinate courts from executive control through various decisions and expanded the control of the High Court over the subordinate judiciary. Down the line, *Tej Pal Singh v. State of U.P & Anr*<sup>2</sup> is one of the significant cases that streamlined the process of compulsory/ premature retirement of judges. In this article, the author elucidated the facts, issues and judgement of the case and further commented on the Apex Courts judgement with the view to enable the readers to understand the significance of the case and convey the author's perspective towards the same.

**Facts of the Case in Nutshell**

The Appellant held the position as Additional District and Sessions Judge in the State of Uttar Pradesh in 1968 and his retirement from service was scheduled on expiry of 31<sup>st</sup> March 1971. Nevertheless, in 1967, the State Government moved to the High Court to enable premature retirement of the Appellant and further on July 8<sup>th</sup> 1968, the Administrative Judge consented to the

proposal. Consecutively on August 24<sup>th</sup> 1968, the Governor passed the order of retirement and the appellant was served with an order by the Secretary of Government of Uttar Pradesh (Home Department) for Appellant's premature retirement (on expiry of three months from the date of service) by exercising power under Fundamental Rule 56 (Financial Hand Book) Clause (a) Para (1). After three days (i.e., on August 27<sup>th</sup> 1968), the Administrative Committee of the High Court gave its approval to the recommendation of the Administrative Judge. Aggrieved by the said notice of premature retirement, the appellant filed Writ Petition before the Hon'ble High Court challenging the validity of the premature retirement and the Fundamental Rule 56. The judgement of the Full Bench was pronounced on September 25<sup>th</sup> 1969 that, Fundamental Rule 56 has violated Article 14 and 16 of the Constitution. Subsequently, the Governor of Uttar Pradesh issued an ordinance on November 5<sup>th</sup> 1969, by amending the Fundamental Rule 56 and validated the actions already taken thereunder. Consequently, the Appellant sought the amendment of the Writ petition challenging the validity of the Ordinance and the Act which was later dismissed by the High Court on February 23<sup>rd</sup> 1970. Owing to the dismissal of the writ petition in the High Court, the Appellant approached the Hon'ble Supreme Court through appeal against the judgement of the High Court.

**Procedural History of the Case**

The procedural history of the case doesn't exhibit more fluctuation where Article 235 of the Constitution is the centric point of issue

<sup>1</sup> State of Maharashtra v. Labour Law Practitioner's Association AIR 1998 SC 1233. The Supreme Court emphasised

<sup>2</sup> 1986 AIR 1815.



in the case. In the case, *State of Haryana v. Inder Prakash Anand H.C.S. & ors*<sup>3</sup> it was held that Article 235 vest the High Court the power to control over district court and courts subordinate i.e., Administrative, Judicial and Disciplinary control over the members of the judicial service vested on the High Court. In Furtherance, in *State of Uttar Pradesh v. Batuk Deo Patil Tripathi & anr*<sup>4</sup>, the apex court held that the premature retirement of the Judges of District Courts and Subordinate Courts falls squarely within the power of the High Court in the light of Article 235.

Besides, in *Yoginath Bagade v. State of Maharashtra*<sup>5</sup>, the Apex ruled that though the appointing authority for Subordinate Judiciary is vested on the Governor of the State, the complete control over them is vested in the High Court. Further in the recent past, in *Registrar General, Patna High Court v. Pandey Ganjendra Prasad & Ors*<sup>6</sup> it was held that Article 235 of the Constitution not only vests total and absolute control over the subordinate courts in the High Courts, but also enjoins a constitutional duty upon them to keep a constant vigil on the functioning of the courts.

### Issues and Holding

The key concern of the Apex Court in the present case is to inquire whether the order of Compulsory Retirement passed against the appellant satisfies the requirements of the Constitution (Article 235)?

After a thorough examination, it was held that the compulsory retirement would be of no consequence as the Administrative Judge's satisfaction of the proposal of State

Government could not be regarded as the satisfaction of the Court in the light of Article 235 of the Indian Constitution. Further, the *ex post facto* approval by the Administrative Committee doesn't constitute a valid order. Therefore, the error committed in this case amounts to an incurable defect amounting to illegality. The appeal is allowed by ordering the respondents to pay the arrears of salary, pension etc to the legal representatives of the appellant within four months from the date of judgement and the legal representatives are entitled to the costs in both the courts.

### Analysis

In the writ petition before the High Court, the appellant contented three major concerns viz.,

- i. The compulsory retirement order passed by the Governor has been done without the recommendation of the HC as required under Article 235 of the Constitution
- ii. The Fundamental Rule 56 under which the impugned order had been issued was violative of Article 14 and 16 of the Constitution
- iii. The Appellant's premature retirement violated Article 311 (2) of the Constitution

For which, J. Mathur of Uttar Pradesh High Court (HC) contended that the subsequent consultation about the premature retirement before the officer gets retired cannot be construed as illusory and not genuine<sup>7</sup>. Further, he emphasized that since the HC has considered the matter on merit after passing the order of compulsory retirement, it doesn't

<sup>3</sup> [1976] S.C.R. 603.

<sup>4</sup> [1978] 3 S.C.R. 131.

<sup>5</sup> AIR 1999 SC 3734.

<sup>6</sup> (2012) 6 SCC 357.

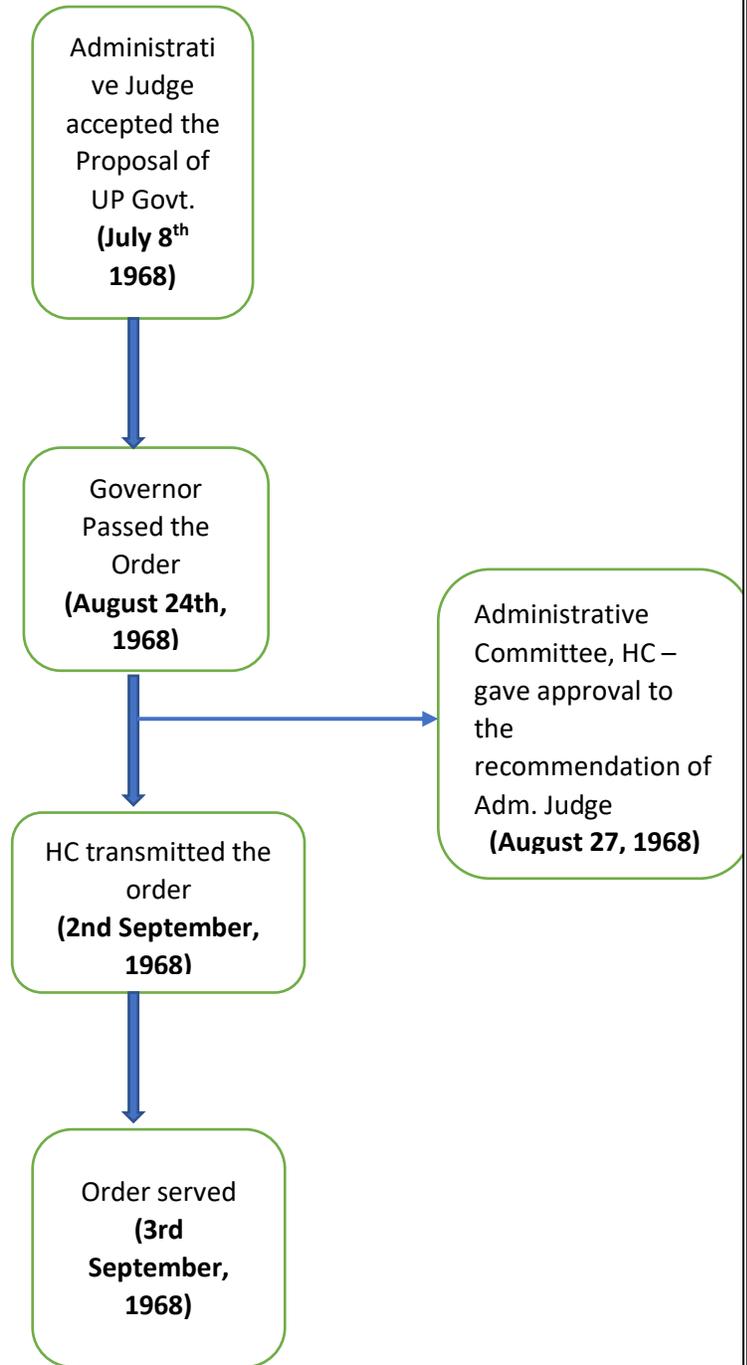
<sup>7</sup> *Tej Pal Singh v. State of Uttar Pradesh and ors* 1986 AIR 1815. at 8



amount to *Fait Accompli* because the facts and circumstances of the case made it evident that the HC was not unduly influenced by the decision of the Governor and approved the order independently. However, he failed to prove and substantiate the lack of undue influence by the decision of the Governor.

On the other hand, J. Satish Chandra resonated with the decision of J. Mathur and said “*Even if the consultation take place subsequently, if the committee approves of the action of the Administrative Judge, then the original action would be valid and effective with effect from its own date*”. On that line, J.Satish Chandra technically signified the constitutionality of the order by establishing that the order of compulsory retirement met all the requisite requirements of Article 233 of the Constitution when it came to force. The same has been depicted in the flowchart I hereunder for better understanding. Further, he spotlighted *Rule 21 of Chapter III, Rules of the Court* which would cure the irregularity in the procedure.

**Flowchart I**





However, the Apex Court has rejected the contention made by the Uttar Pradesh High Court and highlighted the fact that in the instant case, the Administrative Committee came to know about the order of premature retirement which has already passed by the Governor based on the opinion expressed by the Administrative Judge. In Furtherance, the Apex Court has spotted the erroneous approach of the High court viz.,

- i. The High Court referred to Article 233 of the Constitution whereas, Article 235 should have been the paramount consideration. To add upon, the learned judges of the HC took the view that the Governor is only expected to consult the HC and thereby they overlooked that the Governor can pass such order only on a recommendation made by the HC or the Administrative Committee
- ii. The learned judges held that such consultation with the HC is permissible even after the Governor has passed the order of compulsory retirement
- iii. They equated the recommendation of HC to be made for premature retirement of the judicial officer to the Consultation contemplated under *Article 320 (3)(c)*.

Further, they relied on the decision made in *State of Uttar Pradesh v. Manbodhan Lal Srivastave*<sup>8</sup> which held that consultation under Article 320 (3)(c) is not mandatory and failure to consult do not afford a cause of action to the Appellant. However, in *State of Haryana v. Inder Prakash Anand H.C. S. & ors*<sup>9</sup> the apex court has made it clear that Article 235 of the Constitution vests the control over district courts and courts subordinate over the HC. The term “Control” includes both disciplinary and administrative jurisdiction<sup>10</sup>

Owing to this fact, the Supreme Court has rightly highlighted *Rule 3*<sup>11</sup>, *Rule 4*<sup>12</sup>, *Rule 5*<sup>13</sup>, *Chapter III, the Rules of the Courts* that mandates the Administrative Judge to circulate the proposal received from the government amongst the members of the Administrative Committee or place it before the meeting of the committee. The rationale behind such procedure is that the Administrative Committee could act for and on behalf of the Court but, the Administrative Judge could not. On that line, the author would opine that having an administrative committee to approve the Government’s proposal of appointment, promotion or

<sup>8</sup> [1958] S.C.R. 533.

<sup>9</sup> [1976] S.C.R. 603

<sup>10</sup> Disciplinary control means not merely jurisdiction to award punishment for the misconduct, but also the power to determine whether the record of a member of the service is satisfactory or not so as to entitle him to continue in service for the full term till he attains the age of superannuation.

<sup>11</sup> All executive and administrative business and all business in the Administrative Department requiring orders shall be submitted by the Registrar to the Chief Justice or the Judge in the Administrative Department, as the case may be, together with his comments thereon, if any and may be subject to these Rules disposed of by that Judge.

<sup>12</sup> The Judge and the Administrative Department shall before passing final order, cause to be circulated for the information of the Judges of the Administrative Committee then present in Allahabad, his recommendations as to the appointment, promotion or suspension of judicial officers, and that should any Judge dissent from such recommendations, he shall signify his dissent and his reasons therefore in writing.

<sup>13</sup> In regard to the matters set out thereunder the Judge in the Administrative Department shall consult the Administrative Committee either by circulating the papers connected with the matter together with his own opinion or recommendation thereon to the members of the Committee then present in Allahabad or by laying it before a meeting of the Administrative Committee.



suspension of Judicial Officers serves to be a check/limitation that secures the due process from arbitrariness/ motivated decisions and safeguards the independence of the Judiciary<sup>14</sup>. The Apex court gave emphasis to the power/functions of the Governor and the High Court where the power to appoint, dismiss, reduce the rank, initial promotion are vested upon Governor on one hand, and complete control over subordinate judiciary on the other. Here, so as to understand the balance between the functional overlap v. Separation of power, the author would like to reiterate Montesquieu's principle which reaffirms that the existing division of power between the organs may not be water-tight.

Further, in the instant case, the author seconds the observation made by the Apex court that the Administrative Committee may not have dissented from the Governor's order or the opinion expressed by the Administrative Judge as there is a considerable degree of Undue Influence effected upon the Administrative Committee<sup>15</sup>.

This deviation from the Standard Operating Procedure laid down in the "Rule of the Court" and Article 233, 235 of the Constitution is not a mere irregularity (which could be cured *Ex Post Facto* approval) but it is illegality (an incurable defect). Because Article 233 – 237 of the Constitution is pivotal that regulates the organization of the courts and ensures the independence of the

subordinate court. In that context, the author is of the opinion that any compromise in the process laid down under Article 233, 237 would render the Independence of the Judiciary futile and thereby devastate the rule of law in the country. A similar observation was made in the case - *High Court of Andhra Pradesh and ors v. V. V. S Krishnamurthy and ors*<sup>16</sup> that Article 235 of the constitution is the pivot around which the entire scheme of Chapter VI, Part VI of the Constitution revolves.

Besides, it is inferred that the Apex Court was comprehensive enough to figure out the errors in the judgement of the High Court and clearly elucidated the scope of Article 235 by highlighting that "Article 235 is exclusive in nature; comprehensive in extent and effective in operation. Hence, the premature retirement of the Judges of the District Court (or Subordinate Courts) falls well within the scope of it <sup>17</sup>". Therefore, it could be attributed that the Supreme Court in the present case has adopted a *Textual and Purposive* form of interpretation to uphold the "Doctrine of Separation of Power" as envisioned by the framers of the Constitution<sup>18</sup>. Thus it is more appropriate to reiterate the two requisites of the Independent Judiciary as emphasised in *Harris v. Minister of Interior SA*<sup>19</sup>

- i. The Judiciary should not be influenced by Executive/Legislature

<sup>14</sup> The author's opinion goes in line with the case – High Court of Madhya Pradesh v. Mahesh Prakash AIR 1994 SC 2595.

<sup>15</sup> The Administrative Committee would undergo Undue Influence because, the order has already passed the Governor (The Executive Head of the State)

<sup>16</sup> [1979] 1 S.C.R. 26.

<sup>17</sup> The Supreme Court also substantiated the rule by quoting case - State of Haryana v. Inder Prakash Anand H.C. S. & ors [1976] S.C.R. 603.

<sup>18</sup> Debate Summary, CONSTITUTION OF INDIA (Mar. 9, 2021, 3:04 PM), [https://www.constitutionofindia.net/constitution\\_of\\_india/the\\_states/articles/Article%20235](https://www.constitutionofindia.net/constitution_of_india/the_states/articles/Article%20235).

<sup>19</sup> (no.2) (1952) 4 SA 769.



- ii. Judiciary should consist of a Legally qualified person (Judges/advocate)

With special reference to the first requisite, the Apex court in the present case rightly upheld the Independence of the Judiciary without the influence of the Executive by strictly interpreting Article 235 of the constitution. To add upon, with the view to effectively express the author's contention about the separation of power (the very essence of Article 235), the author would like to throw light upon the case of *Bankey Singh v. Jhingan Singh*<sup>20</sup> where it is observed that, the executive powers of the judiciary include the power to appoint officers and servants of the High Court and the court subordinate. Although there are some intended overlaps between the functions or powers between the organs, there still remains an essential and organic division between their powers which expresses the imminent need for independence of governmental organs to defend rule of law in a democracy. Therefore, in the light of independence of the judiciary, as per Article 235, the subordinate judiciary is not only under the control, but also under the care and custody of the High Court (*Samsher Sing v. State of Punjab*<sup>21</sup>)

### Conclusion

The case *Tej Pal Singh v. State of U.P.*<sup>22</sup> holds a significant position concerning both Constitutional and Administrative law. The present case is not only centred on the High Court's control on Subordinate courts but also delve deep to impart the importance of the Separation of Power in general and the Independence of the Judiciary in particular. That is, When the Government of Uttar Pradesh (Executive) entered into the sphere

of Judiciary (Crossing the Functional overlap with respect to separation of power), the Supreme Court safeguarded the Independence of Judiciary through a comprehensive interpretation of *Article 235* of the Indian Constitution. Hence, like Britain, the Judiciary of India can also be rightly regarded as "*Lion*"<sup>23</sup> which serves a significant role in uprooting the derailment of the Rule of Law.

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<sup>20</sup> A.I.R [1952] Patna 166

<sup>21</sup> AIR 1974 SC 2192

<sup>22</sup> *Supra* note 2.

<sup>23</sup> *Liversidge v. Anderson* [1941] UKHL 1.