IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 538 of 1994

in

SPECIAL CIVIL APPLICATION No 382 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 YES; 3 to 5 NO

STATE OF GUJARAT

Versus

RAVJIBHAI SHANKERBHAI PATEL

Appearance:

1. LETTERS PATENT APPEAL No. 538 of 1994

RC KODEKAR AGP for Appellants No. 1-2

MR MK VAKHARIA for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 28/02/2002

C.A.V. JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

1. This appeal under Clause 15 of the Letters Patent by the State of Gujarat and its Director of Agriculture is directed against the judgment and order of the learned single Judge setting aside the order dated 12.11.1987, whereby, the respondent was prematurely retired and relieved in exercise of the powers under Rule 161 of the Bombay Civil Service Rules (BCSR).

2. The respondent (original petitioner) joined the Directorate of Agriculture as a Supervisor in 1960 and after crossing Efficiency Bars, he was promoted as Deputy Director of Agriculture in the year 1981. A chargesheet dated 9.7.1987 came to be issued to the respondent before the order dated 12.11.1987 prematurely retiring him from service. The respondent's age at that time was only 50. What appealed to the learned single Judge was that before taking the decision of prematurely retiring the respondent, the Review Committee had relied upon only the service record of the past ten years and the entire record of service of the respondent was not evaluated. And, therefore, relying upon the ratio of the judgment in S. RAMACHANDRA RAJU v. STATE OF ORISSA [1994 (5) J.T. SC 459], the impugned order was made.

2.1 The other main observations made by the learned single Judge after perusal of the record and about which there is no controversy are as under:

(a) The action of the State in prematurely retiring the original petitioner, the respondent herein, was challenged on the ground that it was a mala fide exercise of power to cut short the departmental enquiry initiated against the petitioner;

(b) That the alleged activities of the petitioner had become a subject-matter of enquiry by the Gujarat Vigilance Commission at the end of which the Commission had recommended initiation of departmental enquiry; and, on the other hand, his activities as a civil servant were scrutinized by the Department as he was to attain the age of 50 years and his case was to be put before the Review Committee;

(c) The Review Committee had found the integrity of the respondent to be doubtful and taking into

consideration the confidential reports of last ten years, the Committee had recommended premature retirement and that recommendation was accepted by the Government;

(d) Even as the respondent was prematurely retired, the Government had decided to exercise the power under Rule 181-A of the BCSR to conduct the enquiry;

(e) The departmental enquiry was the result of the opinion expressed by the Vigilance Commission, whereas the impugned order of premature retirement was the result of the exercise gone through by the Review Committee; and

(f) The Court had to scrutinize the action of the Government in exercise of its power of judicial review not as a Court of appeal but to consider whether the power was properly exercised or whether the exercise of power was vitiated by arbitrariness, mala fides or extraneous considerations.

3. Even within the parameters prescribed by the above propositions, it was found and held by the learned single Judge that the exercise of evaluation undertaken by the Review Committee was not proper insofar as, instead of the entire record of service, only the record of the past 10 years was evaluated. It has throughout been reiterated and emphasized on behalf of the respondent that except for the adverse remarks for the years 1982-83 and 1985-86 and the charges levelled against him, which were yet to be proved in the enquiry, he had an unblemished record of service. It was again argued that had the adverse remarks in respect of the year 1982-83 been serious, he would not have been allowed to cross the Efficiency Bar on 1.1.1984. Equating that with promotion, it was further submitted that crossing of the Efficiency Bar wiped out the adverse remarks and could not have been considered by the Review Committee. It was also sought to be re-agitated that the entries of adverse remarks were improper and his representations against the adverse entries were improperly turned down by the Government. And, in any case, the adverse remarks were not such as would warrant or justify the action of prematurely retiring the respondent from service.

3.1 As against the respondent's case as above, it was clearly stated on affidavit by the Under Secretaries of the Government that the specially constituted Review Committee had, after going through the confidential reports and an overall assessment of the last 10 years of the respondent's service, recommended his premature retirement. It was found by the Committee that the

integrity of the respondent was doubtful and his further continuance in active service was found to be prejudicial to the public interest and, therefore, a decision was taken to retire him in public interest; that the duly constituted Review Committee had followed the legal procedure and instructions issued by the State Government from time to time. It was also found that he had committed several irregularities and illegalities with an intention to take undue advantage of his position. In the reply to such statements, the respondent had averred that most of the allegations were vague and taken from the chargesheet served upon him and were found to have no substance at the end of the enquiry.

4. The law on the subject of compulsory retirement has now crystallized into definite principles which have been broadly summarised as under by the Apex Court in STATE OF GUJARAT v. UMEDBHAI M. PATEL [JT 2001 (3) SC 223]:

"(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead-wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration;

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure."

Having regard to the facts that there were absolutely no adverse entries in the confidential record, the officer having crossed the Efficiency Bar at the age of 50 as well as 55, and the disciplinary proceedings having not been completed within a reasonable period crowned with the fact that even the Review Committee had not recommended compulsory retirement, it was held in the above case that the impugned order could be said to have been passed for extraneous reasons. The facts of the present case are obviously different on all these counts.

4.1 Dwelling upon the same Rule 161 (1) (aa) (i) and the Circulars related thereto, the learned single Judge of this Court has, in GIRDHARSINH RAMSINH PARMAR v. DEPUTY INSPECTOR GENERAL OF POLICE, JUNAGADH [1988 (1) G.L.H.534] (which was relied upon and cited on behalf of the respondent) observed as under:

"15.....On the one hand, it is true that the Government had intended chopping the dead wood off, but at the same time Government has taken care to see, as is evidenced in different circulars relating to premature retirement that a person's service career should be put an end to prematurely only after due deliberation of the service record and particularly of the confidential reports of the last 8 to 10 years....."

4.2 In the judgment of the Apex Court in S.RAMACHANDRA RAJU v. STATE OF ORISSA [JT 1994 (5) SC 459], only on which the impugned judgment is based, the relevant observations are as under:

"9.....The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence. The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and

reputation is such that his continuance in service would be a menace in public service and injurious to public interest. The entire service record or character rolls or confidential reports maintained would furnish the backdrop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone, the government should form the opinion that the government officer needs to be compulsorily retired from service. Therefore, the entire service record, more particularly the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a government officer....." (Unerline added)

4.3 In the earlier judgment of a Larger Bench of three Honourable Judges in BAIKUNTHA NATH DAS v. CHIEF DISTRICT MEDICAL OFFICER, BARIPADA [AIR 1992 SC 1020], which has been referred and relied in the aforesaid two latter judgments, it is clearly observed as under:

"32. The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) mala fide, or (b) that it is based on no evidence, or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material in short; if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the

entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This object has been discussed in paras 29 to 31 above."

(Underlines added)

4.4 In the earlier judgment in BRIJ MOHAN SINGH CHOPRA v. STATE OF PUNJAB [AIR 1987 SC 948], the Supreme Court has also observed that it had consistently taken the view that old and stale entries should not be taken into account while considering the question of premature retirement; instead, the entries of recent past of 5 to 10 years should be considered in forming the requisite opinion to retire a government employee in public interest. Their Lordships were further of the opinion that if entries for a period of more than 10 years past were taken into account, it would have been an act of digging out past to get some material to make an order against the employee. By the same token, if the performance of a government servant were, in the later years, sliding down towards making him dead wood required to be chopped off in public interest, a good record of service in earlier years cannot save him in the name of consideration of the entire service record.

5. Following the ratio and rationale of the above judgments, we find that in the matter of consideration of the entire record of service, the emphasis is clearly on the more important record of and performance during the later years. Therefore, a good record in the distant past pales into insignificance if the record of service in the recent years, as reflected in the confidential record or even uncommunicated adverse remarks, is not

edifying and the Government are subjectively satisfied on the basis of relevant material that it is in the public interest to retire a government servant. In the facts of the present case, the order of compulsory retirement is neither proved to be mala fide nor arbitrary nor one based on no evidence and nor is it found or held to be a short cut to avoid the departmental enquiry. Therefore, in short, we are of the considered opinion that the order to prematurely retire the respondent could not have been interfered in exercise of the powers and discretion under Article 226 of the Constitution. Accordingly, we allow the appeal and set aside the impugned judgment with no order as to costs. Sd/-

(J.N.Bhatt, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)