IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1058 of 1998
in
SPECIAL CIVIL APPLICATION No 4160 of 1987
and
CIVIL APPLICATION No 7959 of 1998

For Approval and Signature:

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

==========

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

2. To be referred to the Reporter or not? : NO

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 YES; 2 to 5 NO

N M CHAUDHARI
Versus
STATE OF GUJARAT

Appearance:
1. LETTERS PATENT APPEAL No. 1058 of 1998
MR YN OZA for Appellant No. 1
MR RC KODEKAR AGP for Respondents No. 1-2

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 by an Executive Engineer retired prematurely on 29.6.1987, who would have otherwise also superannuated on 31.12.1989, came up for admission hearing after almost three years of its filing, while the judgment of the learned single Judge which is called into question is dated 10.12.1997 in the petition which was filed in the year 1987. The impugned judgment opens with the note that none remained present for the petitioner, the appellant herein, even as the matter was called out in three rounds and none assisted the Court for the respondent either. This narration of facts about the state of affairs is too eloquent in itself to require any further comments. If that were not enough, as if to compensate for loss of opportunity, a prolix memo of appeal running into 40 pages containing more facts and arguments in detail rather than grounds of appeal was pressed by cursory arguments which were left incomplete and abandoned halfway by the learned counsel.

2. It is contended in the memo of appeal that the learned single Judge ought to have adjourned the hearing instead of deciding it ex-parte on merits and that, therefore, the impugned judgment was null and void. Referring to his long service-record in detail, it is contended that the petitioner was a man of positive merits all throughout his career and the impugned order of compulsory retirement was motivated by extraneous consideration and suffering from total non-application of mind. The appellant had not attracted any adverse remarks in his long service career of 30 years; and the adverse remarks belatedly communicated in the last three years were, in fact, not adverse. As regards the several charges and enquiries held thereon, it is submitted that either the charges were not sustainable or abandoned or too petty to warrant and justify premature retirement. Thus, in short, while challenging the order of premature retirement, the appellant has indirectly sought a declaration that the adverse remarks in the later years of his career were improper and the charges on the basis of which enquiries were held were also false. In the process, however, it is admitted that the confidential reports in respect of the years 1982-83, 1984-85 and for the period from 1.4.1985 to 21.10.1985, and the remarks were not entirely good and that no less than six enquiries have been held against the appellant involving

charges of negligence and carelessness and causing loss and damage. Out of these enquiries, the appellant was actually punished with minor punishments in at least three.

2.1 The case of the respondent, as stated in the affidavit-in-reply of an Under Secretary filed in the original petition, was that the appellant was made to retire at the age of 55 in the interest of public service after perusal of his entire service record; that, according to the confidential reports, more particularly of the last three years, the appellant was not found upto the mark and was found to be disobedient and not attentive in discharge of his duties. The petitioner was under suspension when the impugned order dated 29.6.1987 was passed and enquiries into serious charges against the appellant were also pending at that time. Thus, in short, the action of prematurely retiring the appellant was fully justified on objective consideration of facts, according to the respondent.

3. 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.

3.1 After considering the relevant judgments in Girdharsinh Ramsinh Parmar v. Deputy Inspector General of Police, Junagadh [1988 (1) GLH 534], S. Ramachandra Raju v. State of Orissa [JT 1994 (5) SC 459], Brij Mohan Singh Chopra v. State of Punjab [AIR 1987 SC 948] and the Larger Bench judgment in Baikuntha Nath Das v. Chief District Medical Officer, Baripada [AIR 1992 SC 1020], it is held by this Bench in Letters Patent Appeal No.538 of 1994 that:

"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."

3.2 Following the same principles and applying them in the similar facts of the present case, we do not find any reason to interfere with the impugned judgment and we also do not find any substance in the appeal. Accordingly, the appeal is dismissed with no order as to costs. No order on the Civil Application.

Sd/-

(J.N.Bhatt, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)