IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5468 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

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 concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

S.R.K MATHUR

Versus

NATIONAL TEXTILE CORPORATION LTD.

Appearance:

1. Special Civil Application No. 5468 of 1996

MR NN SOOD for M/S TRIVEDI & GUPTA for Petitioner No. 1

MR BR GUPTA for Respondent No. 1

MR SANJAY R GUPTA for Respondent No. 1

RULE SERVED for Respondent No. 2

SERVED BY RPAD - (R) for Respondent No. 3

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 31/07/2002

ORAL JUDGEMENT

1. The petitioner has approached this Court under Article 226 of the Constitution of India challenging the order of respondent dated 4th May, 1993 purported to have been issued under Clauses (i) and (ii) of Sub-rule (2) of Rule 29 of the National Textile Corporation (Gujarat) Ltd. Recruitment & Promotion Rules, 1989 (hereinafter referred to as 'the Rules') for premature retirement of the petitioner.

2. Relevant facts, in short, can be stated as under :-

2.1. The petitioner joined the service of respondent no. 1 with effect from 14th July, 1983 as a general Manager at Petlad Textile Mills. He was thereafter transferred to Ahmedabad Jupiter Textile Mills and at the relevant time he was discharging duty as the General manager at Mahalaxmi Textile Mills at Bhavnagar. On 4th May, 1993 respondent no. 1 issued the aforesaid order and prematurely retired the petitioner from service. According to respondent no.1, decision to prematurely retire the petitioner was taken because in the opinion of the competent authority of respondent no. 1, namely Chairman-cum-Managing Director, it was in the interest of Corporation and also in larger public interest to do so. In lieu of 3 months' notice, amount of Rs.26,895/being the salary for that period was paid to the petitioner. It was also mentioned in the said order that the petitioner would be paid all his legal dues that may be admissible under the existing Rules of respondent no.1. The petitioner in light of the said order was required to hand over the charge of his office to the General Manager, Ahmedabad New Textile Mills.

2.2. Since the petitioner was not paid his dues such as encashment of unavailed earned leave, gratuity, etc., he made several representations to respondent no. 1 requesting to release the said dues in his favour. It appears from the record of the petition that the same were not paid to him. The petitioner ultimately decided to approach this Court and hence this petition.

3. In this petition the petitioner has, as stated above, challenged the impugned order and also prayed for direction on respondent no. 1 to pay to him all the retiral dues together with interest.

4. Mr. N.N. Sood, learned counsel appearing for M/s. Trivedi & Gupta for the petitioner has raised the following contentions :-

4.1. The petitioner has been compulsorily retired by the competent authority of respondent no. 1 in accordance with Rule 29.2 of the Rules, but the Rules are not applicable in the case of petitioner as rule 2.3 of the Rules carves out exception and the petitioner falls in that excepted category. He has further submitted that before passing the impugned order the competent authority of respondent no. 1 was required to follow certain procedure but the same has not been followed and hence the impugned order is bad in law. His third submission is that since the impugned order is in the nature of a penal order the competent authority ought to have followed the principles of natural justice, but the same have not been complied with and, therefore, impugned order is required to be quashed and set aside. Lastly, he has submitted that considering the affidavit-in-reply filed on behalf of the respondents in this petition, it is not clear that on what ground the competent authority has thought it fit to pass the impugned order. The second limb of this argument is that while deriving the satisfaction with regard to interest of the Corporation and the public interest, the competent authority has taken into consideration the material which is not relevant and the satisfaction arrived at, which is based on such material, cannot be termed as legal and valid. He has, therefore, submitted that this petition deserves to be allowed and the prayers sought by the petitioner are required to be granted.

4.2. On perusal of the affidavit-in-reply filed by the respondents, it appears that the competent authority has taken into consideration three factors, namely, inefficiency of the petitioner, integrity of the petitioner and indifferent health of the petitioner and has thereafter passed the impugned order.

4.3. Mr. Sood has drawn my attention to Annexure-D of the petition, which is a circular circulated vide letter of the General Manager (P) of respondent no. 1 dated 28th March, 1991/2nd April, 1991. In the circular procedure for premature retirement has been prescribed. It states that if the competent authority is of the opinion that it is in the Corporation's interest so to do, he shall have absolute right to prematurely retire any employee who is considered medically unfit, inefficient or of doubtful integrity by giving him notice of not less than one/three months or salary of one/three months and allowance in lieu thereof. It further prescribes the criteria for judging the medical unfitness, inefficiency or doubtful

integrity of an employee proposed to be prematurely retired. They are as under :-

"(i) Inefficiency :-

Inefficiency would be evaluated on the basis of the Appraisal Reports. An employee who has secured consecutively for three years "C" in his Appraisal Reports may be deemed as a fit case for premature retirement.

(ii) Doubtful Integrity :-

An employee who gets an adverse comment consecutively for three years in his integrity in his annual confidential report would be considered for premature retirement.

(iii) Medical Unfitness :-

(a) If an employee has been continuously on leave on medical grounds for a period of 12 weeks (including Sundays and holidays) or he has been on leave for reasons of sickness for a total period of 120 days (including Sundays and holidays) or more during a continuous period of six months or if a person though attending duties but is found to be mentally deranged, his departmental head may refer him to a medical board for his thorough medical check-up report :-

- The disease he is suffering from;
- Whether it is curable or incurable;
- Whether the disease is infectious/ contagious;
- in case of curable disease whether the person is likely to be fit to resume his normal duties within a period of 12 months.

(b) If the person is not fit to resume his duties within a period of 12 months and in cases of employees suffering from incurable and infectious/contagious disease or suffering from lunacy or mental derangement and whose services cannot be utilised by the company or whose attendance is likely to pose health hazard to others as may be certified by the Medical Board, premature retirement will be considered on recommendation of Managing Director/Director Incharge.

(c) This premature retirement on medical

grounds is independent of and without prejudice to the right of the Company under the contract or employment to dispense with the service of an employee on three months' notice inter-alia on grounds of medical fitness in case of an employee who might not have even attained the age of 50 years as is being presently done."

Mr. Sood has also drawn my attention to rule 2.3 and rule 29.2 of the Rules. So far the first contention of Mr. Sood is concerned, it pertains to these rules and hence these rules are required to be reproduced here. Rule 2.3 reads as under :-

"2.3 These Rules shall also not apply to

(a) employees of retail outlets/showrooms and Depots including erstwhile employees of the Marketing Division.

(b) employees borne on the muster rolls of Mills posted to work in the Head Office of the Corporation."

Rule 29.2 reads as under :-

29.2. Notwithstanding anything contained in these Rules the competent authority shall, if it is of the opinion that it is in Corporation's interest so to do, have the absolute right to retire any employee by giving him notice of not less than three months in writing or three months' pay and allowance in lieu of such notice -

(i) If he is in the scale of Rs.650-1200 and above (and has entered the Corporation's service before attaining the age of 35 years), after he has attained the age of 50 years.

(ii) In any other case after he has attained the age of 55 years."

Mr. Sood has submitted that these rules do not apply to the petitioner because the cause of the petitioner falls in the excepted category contained in Clause (b) of rule 2.3. According to him, the petitioner is borne on muster roll of the mills and at the relevant time he was working at the Mahalaxmi Mills at Bhavnagar. This contention of Mr. Sood, however, cannot be accepted, because Clause (b) of rule 2.3 envisages two contingencies, firstly that

the employee should have been borne on the muster roll of the mills and secondly at the relevant time he should have been posted to work in the head office of respondent no. 1. In the case of the petitioner, second requirement is missing and, therefore, the rules will squarely apply to him. The second submission of Mr. Sood that the requisite procedure has not been followed by the competent authority of respondent no. 1 before passing the impugned order is concerned. To deal with the same the impugned order as well as affidavit-in-reply filed by the respondents are required to be seen. So far the impugned order is concerned, it does not indicate that out of the aforesaid three reasons, for which reason the petitioner was sought to be prematurely retired. The impugned order simply states that the competent authority of respondent no. 1 Corporation was of the firm opinion that it was not in the interest of the Corporation to continue the service of the petitioner and it was also not in the larger public interest to continue him in service. Except this, nothing else has been stated as to for what reason the competent authority had formed that opinion. In other words, the said order is totally silent as to whether the petitioner was found inefficient or his integrity was doubtful or that he has medically unfit to continue in the service. However, the respondents have sought to explain in the affidavit-in-reply that it was done on account of inefficiency as well as doubtful integrity and on account of medical ground. No material whatsoever has been produced by the respondents to substantiate their stand except for a letter and medical certificate submitted to respondent no. 1 by the petitioner himself. If the said documents are perused, it reveals that it is a letter addressed to the Chairman-cum-Managing Director by the petitioner dated 24th April, 1993 wherein it has been stated that considering the compelling family circumstances and also the ill-health of the petitioner, he was not inclined to continue in the service with the respondent and, therefore, he had stated that the said letter may be treated as notice of termination and he may be relieved from service. So far the compelling family circumstances are concerned, it appears from the said letter that the petitioner was worried on account of the mentally handicapped daughter. Alongwith the said letter the petitioner had also forwarded medical certificate dated 30th November, 1992 issued by Dr. Nathubhai Heart Hospital and Research Centre. As already stated above, except these documents, nothing else has been produced by the respondent to substantiate its say that the petitioner was found inefficient as well as his integrity was doubtful and that he was medically unfit also.

4.4. It may be noted here that for judging the inefficiency of a person, the competent authority is required to follow the procedure which has been described above. The affidavit-in-reply filed by the respondents does not indicate that on what basis the inefficiency of the petitioner was assessed. It also does not indicate that at any point of time prior to passing the impugned order any communication with regard to the adverse remarks that may have been passed against the petitioner, was made to him. In absence of such relevant material, it is difficult to come to the conclusion that the respondent was justified in passing its order on the ground of inefficiency. Moreover, so far the ground of doubtful integrity is concerned, substantial reliance has been placed by the respondents on the report of the Vigilance Officer to show the involvement of the petitioner in making payments to M/s. Parco Dyechem and its sister concern, which concerns were already blacklisted. So far this aspect is concerned, Mr. Sood has drawn my attention to the judgment of this Court rendered in the case of Balbir Vasisht v. N.T.C. reported in 2000 [3] G.L.R. p.2191. This case has arisen as a result of a departmental inquiry held against a co-employee of the petitioner and the allegation against him was of the same nature, namely that he had made payment to M/s. Parco Dyechem, even when that company was blacklisted. The same allegation has also been levelled against the present petitioner. In the aforesaid cited judgment the Court came to the conclusion on verifying the facts from the record that it was as per the decision of the Chairman-cum-Managing Director that the payments were made to M/s. Parco Dyechem and its sister concern. The same reasoning can squarely apply to the facts of this case also. Apart from the fact that scope of this Court is very limited in the matter of interferring with the order of dismissal passed by the administrative authority, this Court can certainly interfere with the same if it finds that the decision which has been taken by the concerned authority is by way of a penalty and while taking such a decision and passing the order of dismissal, the principles of natural justice have been completely violated. If the respondent had based its decision on the first two grounds, namely, the inefficiency and doubtful integrity, then it was incumbent upon it to atleast follow the principles of natural justice and give adequate opportunity to the petitioner to explain that the order regarding premature retirement in his case is not warranted for. If that is not done, then this Court can certainly interfere and upset the decision of the administrative authority.

4.5. There is also a reason to come to the conclusion that the order in question has been passed by way of penalty because till this date the petitioner has been not paid the dues which have been mentioned in the impugned order. This fact is born out from the letter dated July 7, 1993 which has been produced by the respondent alongwith the affidavit-in-reply, which says that in supersession of office order dated 4th May, 1993 it is now decided that payment of legal dues of Mr. S.R.K. Mathur i.e. present petitioner may be withheld until further order. This makes it clear that the order of premature retirement of the petitioner was not as simple and innocuous as it is sought to be made out by the respondent. When the impugned order is found to be of penal nature, the next step the Court is required to take is to find out whether before passing the said order principles of natural justice have been followed. So far this exercise is concerned, it has been time and again said by the Apex Court that though the scope of judicial review of administrative order is very limited, the Court can certainly inquire into the fact whether the principles of natural justice have been adequately complied with. If the Court comes to the conclusion that the said principles have been violated by the concerned authority, the Court can certainly disturb the order of the said authority on that sole count. In the decision rendered by the Apex Court in the case of Murari Mohan v. Secretary, Govt. of India reported in AIR 1985 S.C. p. 931 it has been held as under :-

> "Held on facts that there was admission on the part of Government that the order of compulsory retirement was by way of penalty imposed upon him for misconduct after an enquiry. Obviously therefore, Art. 311(2) will be attracted and an enquiry in accordance with the rules of natural justice would be a pre-requisite before imposing any penalty. Further the enquiry was sham and held in violation of principles of natural justice and hence illegal and the punishment imposed as a result of such inquiry is vitiated."

Thus, when it is found in the instant case that the impugned order is of penal nature, the competent authority of respondent no. 1 was bound to afford the petitioner an opportunity of hearing. From the record of this petition, it clearly appears that no such opportunity has been given to the petitioner. In that view of the matter, it can very well be said that the competent authority has failed to comply with the

principles of natural justice.

4.6. So far the medical ground is concerned, no-doubt it has been stated by the petitioner himself in the letter which has been annexed with the affidavit-in-reply seeking permission of respondent to quit the job, but considering the circumstances which have been mentioned in the said letter, the real reason for the same appears to be the mental condition of the petitioner's daughter. If the authority had to rely on the ground of medical unfitness for passing the impugned order, it was required to see whether the case of the petitioner is covered under Clause (iii) of the circular prescribing procedure for premature retirement. As can be seen from the clauses (a), (b) and (c) of item no. (iii) the case of the petitioner does not fall in any of the criteria mentioned therein. The decision which is contrary to the procedure laid down by respondent itself it can be said that the competent authority of respondent no. 1 has taken into consideration irrelevant facts and when that is so, this Court can certainly interfere and set aside the impugned order.

5. Mr. B.R. Gupta, the learned counsel for the respondents has relied on decision of the Apex Court rendered in the case of State of U.P. v. Vijay Kumar Jain reported in (2002) 3 S.C.C. p. 641. In that case scope of judicial review has been laid down by the Apex Court. In para. 11 it has been said by the Apex Court while relying on earlier decision rendered by it in the case of Union of India v. Col. J.N. Sinha (1970) 2 S.C.C. 458 that -

> "an employee compulsorily retired does not lose any right acquired by him before retirement and that the Rule is not intended for taking any penal action against the government servant and that the order retiring a government servant compulsorily can only be challenged on the ground that either the order is arbitrary or it is not in public interest. No other ground is available to a government servant who is sought to be compulsorily retired from service under the relevant rules subject to the conditions provided therein."

There cannot be any dispute with regard to the said principle. However, in the instant case the same is not applicable because for the reasons stated above it is very clear that the impugned order is penal in nature. Moreover, it has been time and again laid down by the Apex Court that whenever the order under challenge is

passed without following the principles of natural justice or it is in violation of any statutory provisions or binding precedent or suffers from misreading of the evidence or omission to consider relevant and clinching evidence, then the High Court can certainly interfere with the said decision. When it is found that so far inefficiency and doubtful integrity are concerned, the competent authority of respondent no. 1 has not only violated the principles of natural justice but the same is also based on facts which are not relevant for this purpose. So far the third ground with regard to medical unfitness is concerned, as stated above, the petitioner does not fall in any of the criteria laid down therein. In light thereof, the impugned order is required to be quashed and set aside.

6. In view of the aforesaid discussion, it clearly appears that though the petitioner was entitled to receive the retiral benefits in time, the same has been wrongly denied to him. Mr. Sood has contended that looking to the high-handed attitude of the respondent-Corporation, it is required to saddle with the liability to pay interest. For that purpose he has placed reliance on decision rendered by the Apex Court in the case of Vijay L. Mehrotra v. State of U.P. reported in AIR 2000 S.C. p. 3513. In that case on account of delayed payment of retiral benefits without any justification, simple interest at the rate of 18% p.a. was saddled on authority. Further in the case of Gorakhpur University v/s. Shitla Prasad Nagendra reported in AIR 2001 S.C. page 2433 the Apex Court dismissed the appeal of the University challenging the grant of penal interest at the rate of 18% by the Allahabad High Court on account of delayed payment of the retiral benefits. In the case of R. Kapur v/s. Director of Inspection reported in (1994) 6 S.C.C. page 589 the Apex Court enhanced the rate of interest awarded by the Tribunal at 10% to 18% p.a. on account of the wrongly withholding of death-cum-retirement gratuity. Looking to the facts of the present case, it appears that this is a fit case wherein the respondents be directed to pay interest. The respondent - Corporation is therefore, directed to pay to the petitioner interest at the rate of 18% p.a. from the date on which the retiral benefits were admissible to the petitioner till the date of payment.

7. For the foregoing reasons, the impugned order at Annexure-A to the petition is quashed and set aside. The respondents are directed to pay to the petitioner all his legitimate dues, with interest as

aforesaid, as if the petitioner has retired from the service on reaching the age of superannuation, forthwith. The petition is, therefore, allowed. Rule made absolute with no order as to costs. D.S. permitted.

[Akshay H. Mehta, J.]

* Pansala