

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 4373 of 1997****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

Whether this case involves a substantial question
of law as to the interpretation of the

4 constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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RD NAYAK - Petitioner(s)**Versus****STATE OF GUJARAT & 1 - Respondent(s)**

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Appearance :

MR DR BHATT for Petitioner(s) : 1,
Ms. Kiran Pande, AGP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 30/11/2006****ORAL JUDGMENT**

By way of this petition under Article 226
of the Constitution of India, the petitioner has
challenged the order passed by the respondents
dated 8.5.1997 prematurely retiring the
petitioner.

2. It is the contention on behalf of the petitioner that only in the years 1992-93 and 1994-95 the petitioner's performance was found to be average and necessary adverse entries were made in the Annual Confidential Reports. However, so far as the subsequent year is concerned, i.e., 1995-96 his performance was found to be fair and considering overall service record of the petitioner the respondents ought not to have passed the order of prematurely retiring the petitioner. It is further submitted that in the past neither any punishment was imposed against the petitioner nor any departmental enquiry was initiated and therefore the impugned order prematurely retiring him is bad in law and requires to be quashed and set aside.

3. An affidavit-in-reply is filed on behalf of the respondents. It is submitted therein that the Government has passed the said order in

exercise of powers under Section 161(1) of the Bombay Civil Services Rules, 1959 and that the petitioner was reprimanded in the year 1993; displeasure was also expressed against him and he was facing ACB enquiry. It is further submitted in the reply that the petitioner was retired prematurely not only on the basis of Annual Confidential Reports for the years 1992-93, 1994-95 and 1995-96 but also on the basis of overall assessment of the ACRs which were found unsatisfactory. It is further submitted that High Level Committee review the case of the officers who attain the age of 50 years and that Committee considers overall assessment of officers C.Rs., before arriving at a decision. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of **M.L. Binjolkar Vs. State of M.P.**, reported in **2005(6) SCC Page 224** and therefore requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing for the parties. It is not in dispute that the petitioner came to be retired prematurely by the respondents in exercise of powers under Section 161(1) of the BCSR. It appears that, while taking the decision to prematurely retire the petitioner, overall assessment of the ACRs was considered which were found to be unsatisfactory. The petitioner was reprimanded in 1993, displeasure was also expressed against him, and ACB enquiry was also initiated against the petitioner. In the case of *M.L. Binjolkar Vs. State of M.P.[supra]*, the Hon'ble Supreme Court has observed as under;

"It is a tried law that an order of compulsory retirement is not a punishment. The employer takes into account various factors emanating from the employee's past records and takes a view whether it would be in the interest of employer to continue services of the employee concerned. It can

certainly pass an order of compulsory retirement when the employee is considered to be a dead-wood and practically of no utility to the employer. The purpose and object of premature retirement of a Government employee is to weed out the inefficient, the corrupt, the dishonest or the dead-wood from Government service."

In the back ground of facts of this case, it cannot be said that there is an illegality committed by the respondents in retiring the petitioner prematurely. When considering the overall ACRs and considering the fact that the petitioner was facing ACB enquiry a decision is taken in the public interests not to continue the petitioner and/or to retire the petitioner prematurely, it cannot be said that the same is arbitrary and/or illegal.

5. For the reasons stated above, the

petition fails. Rule is discharged. Ad-interim relief if any stands vacated forthwith. No costs.

[M.R. Shah, J.]

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