

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 780 of 2005****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE VIJAY MANOHAR SAHAI****and****HONOURABLE MR.JUSTICE A.G.URAIZEE**

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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 ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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STATE OF GUJARAT....Petitioner(s)

Versus

D.M.NAIK & 1....Respondent(s)

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Appearance:

MR.N.J.SHAH AGP for the Petitioner(s) No. 1

MR MUKUL SINHA, ADVOCATE for the Respondent(s) No. 1

MR SHAKEEL A QURESHI, ADVOCATE for the Respondent(s) No. 2

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CORAM: HONOURABLE MR.JUSTICE VIJAY MANOHAR SAHAI

and

HONOURABLE MR.JUSTICE A.G.URAIZEE

Date : 31/7/2013

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE VIJAY MANOHAR SAHAI)

1. We have heard Mr. N.J.Shah, learned AGP for the petitioner and Mr. Mukul Sinha, learned advocate appearing for the respondent no. 1 and Mr. S.A.Qureshi appearing for respondent no. 2.
2. This writ petition has been filed challenging the order of the Tribunal dated 8/8/2002 passed in OA no. 460/97. Before the Tribunal, the respondent had challenged the memorandum of charges dated 13/11/1986 on the ground that the inquiry proceeding had not been completed inspite of the direction given by the Tribunal on 27/2/1997. The respondent had retired on 30/6/1997. The Tribunal has quashed the charges on the ground of inordinate delay. It is further being observed by the Tribunal that inspite of repeated opportunity being given to the State Government, no reply in the OA was filed by the Government. Para 7 of the order of the Tribunal as extracted below:

"7. Apart from these facts, a perusal of the charge also shows that it is not so grave and the evidence which has come on record during the enquiry clearly shows that the applicant had been touring the areas in a routine matter that is why after discussing everything the Board of inquiry had come to the conclusion that the charge is not proved. Ofcourse disciplinary authority had a right to disagree and differ with the reason given by the inquiry officer but in case they had

valid grounds to disagree with the report given by the board of enquiry, then there was nothing that prevented them from passing the final order within a reasonable time. We definitely cannot allow the disciplinary authority to give show cause and then sleep over the matter without passing the final orders for years together, thus keeping the Damocles sword hanging on the head of a retired person that too without any fault or delay on his part. We have seen that the Tribunal had given indulgence to the respondents at every stage, first to complete the inquiry and then to pass final orders but it is seen the respondents are not at all keen or willing to pass the final orders, we feel no purpose would be served by keeping this disciplinary proceedings pending endlessly. Generally we do not interfere in such matters but looking at the facts of this case we feel it is one of those gross cases which calls for our interference therefore we put an end to these disciplinary proceedings by our order. In view of the discussion above, we quash and set aside the disciplinary proceedings initiated against the applicant vide charge sheet dated 13/11/86 and direct the respondents to release all the retiral benefits to the applicant within a period of two months from the date of receipt of a copy of this order. Normally a Court does not award cost however the peculiar facts of this and keeping in view the case number of times, applicant has been driven to the Court by the respondents and also keeping in view the fact that respondents have not even bothered to file reply in the OA, we feel it would be appropriate and in the interest of justice to award a cost of Rs. 2000/- in favour of the applicant and against the respondents. In view of the above order, the OA is allowed with cost of Rs. 2000/-."

3. The respondent has retired on 30/6/1997 and the respondent has also released his post retiral

benefits including pension so no dispute survives between the parties with regards to post retiral benefits. Counsel for the respondent found that at present respondent no. 1 is aged 76 years.

4. In this view of the matter, we do not find any reason to interfere with the impugned order passed by the Tribunal. Hence, the writ petition fails and dismissed accordingly.

5. However, Mr. N.J.Shah, learned AGP and Mr. S.A.Qureshi, learned advocate for the respective respondents have urged that Rs. 2000/- costs imposed upon the respondents may be set aside.

6. In our opinion, the prayer of learned advocates is required to be accepted and costs of Rs. 2000/- is hereby set aside.

(V.M.SAHAI, J.)

(A.G.URAIZEE, J)

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