

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 13155 of 2013****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE RAVI R.TRIPATHI****and****HONOURABLE MR.JUSTICE MOHINDER PAL**

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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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AMRISH RAMESHCHANDRA TRIVEDI....Petitioner(s)**Versus****STATE OF GUJARAT & 1....Respondent(s)**

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Appearance:**MR BJ TRIVEDI, ADVOCATE for the Petitioner(s) No. 1****MR JT TRIVEDI, ADVOCATE for the Petitioner(s) No. 1****MS JIGNASA B TRIVEDI, ADVOCATE for the Petitioner(s) No. 1**

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CORAM: HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**and****HONOURABLE MR.JUSTICE MOHINDER PAL**

Date : 09/05/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI)

1. The petitioner is before this Court praying that:

*"5(a) to allow this petition with costs and issue a writ of mandamus or any other appropriate writ, direction or order in the nature of writ, quashing and setting aside the communication at Annexure-A and to enjoin upon the respondents by directing the respondents to grant to the petitioner **all the pensionary and other concomitant benefits with interest, including release of the amount of gratuity to the petitioner, with interest forthwith.**"*

(emphasis supplied)

2. Learned advocate Mr.Trivedi, appearing for the petitioner, invited the attention of the Court to communication dated 24.01.2013, a copy of which is produced at Annexure-A, which reads as under:

*".....With reference to your letter dated 30.7.2010 and subsequent reminder dated 27.8.2012, on the subject noted above, I am directed by the Hon'ble Chief Justice and Judges to state that **upon consideration of the matter, Their Lordships have been pleased to reject your prayer for grant of retiral benefits.**"*

(emphasis supplied)

3. Learned advocate for the petitioner then invited the attention

of the Court to notification issued by the Legal Department, Sachivalaya, Gandhinagar dated 5.11.2009, a copy of which is produced at Annexure-B. It reads as under:

“On the basis of the recommendation of the High Court of Gujarat, in view of the charges levelled against him are held to be proved in Departmental Inquiry No.16/2001 & 6/2002, the Government of Gujarat hereby compulsorily retires Mr.A.R.Trivedi, Judge, Labour Court (Junior Division) from judicial service with immediate effect according to Rule 6 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971.

By order and in the name of the Governor of Gujarat.”

4. Learned advocate for the petitioner next invited the attention of the Court to another communication, which is produced at Annexure-C, titled as ‘Final Decision (04.08.2009)’. Learned advocate for the petitioner made available a xerox copy of Rule 6 of the Gujarat Civil Service (Discipline & Appeal) Rules, 1971. Rule 6 is shown in Chapter-III, which is titled as ‘Discipline’. Rule 6 is, ‘Nature of Penalties’. There is a sub-title in Rule-6, ‘Minor Penalties’. There are eight items of penalties mentioned under the said sub-title of ‘Minor Penalties’. After the 8th item, there is an Explanation to the effect that, ‘The following shall not amount to a penalty within the meaning of this rule..’.

5. Item No.6, in these eight items, is 'Compulsory Retirement'. Item No.7 is 'Removal from service which shall not be a disqualification for future employment under Government'. Item No.8 is, 'Dismissal from service which shall ordinarily be a disqualification for future employment under Government'. The copies produced by the learned advocate are taken on record.

6. The Court inquired from the learned advocate for the petitioner, how come, "Dismissal from service, which shall ordinarily be a disqualification for future employment under the government" can be a minor penalty? Learned advocate made available xerox copy of the entire book, the first page of which is 'Government of Gujarat, General Administration Department', 'Gujarat Civil Services (Conduct) Rules, 1971' and 'Gujarat Civil Services (Discipline & Appeal) Rules, 1971'. It is also mentioned that the same are 'As amended upto 5th August, 1999'. Incidentally, the Court is having the same Rules, which is also a xerox copy bearing the stamp 'Hon. Judges Library, High Court of Gujarat'. When Rule 6 of Chapter-III is compared, it is found that Rule 6 falls in **Part-III** and the title of Part-III is '**Discipline**'. It has a sub-title of 'Minor Penalties, which contains only three items. After that there is another sub-title of 'Major Penalties'. For the reasons which this Court is not able to make out this sub-title '**Major Penalties**' is missing in the copy of the Rules supplied by the

learned advocate appearing for the petitioner. In the copy of the Court, item No.6 'Compulsory Retirement', item No.7 'Removal from service' and item No.8 'Dismissal from service' are listed under the tile of 'Major Penalties'.

7. Learned advocate Mr.Trivedi for the petitioner relied upon the following decisions:

- (1) In the matter of Shyamal v. State of Uttar Pradesh reported in AIR 1954 SC 369;
- (2) Judgment in the matter of Ishwar Chandra Jayaswal v. Union of India in Civil appeal Nos.48-49 of 2014 arising out of SLP(C) Nos.20506-20507 of 2012.
- (3) Decision in the matter of Allahabad Bank Officers' Association v. Allahabad Bank reported in (1996) 4 SCC 504.
- (4) Decision in the matter of Rajendra Singh Verma (Dead) through LRs. And others v. Lieutenant Governor (NCT of Delhi) and others reported in (2011) 10 SCC 1.

7.1 On careful consideration of the aforesaid decisions, this Court is of the opinion that the same have no application to the facts of the present case.

8. The Court is conscious of the fact that 'Compulsory Retirement' could be even without it being a penalty, as is referred to by the Hon'ble the Apex Court in its decision of **Allahabad Bank Officers' Association** (supra), wherein the Hon'ble the Apex Court observed as under:

"5. The power to compulsorily retire a Government servant

is one of the facets of doctrine of pleasure incorporated in Article 310 of the Constitution. The object of compulsory retirement is to weed out the dead wood in order to maintain efficiency and initiative in the service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration. Generally speaking, Service Rules provide for compulsory retirement of a Government servant on his completing certain number of years of service or attaining the prescribed age. His service is reviewed at that stage and a decision is taken whether he should be compulsorily retired or continued further in service. There is no levelling of a charge or imputation requiring an explanation from the Government servant. While misconduct and inefficiency are factors that enter into the account where the order is one of the dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the inquiry, if held-and there is no duty to hold an inquiry-is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal they form the very basis on which the order is made. A Government servant who is compulsorily retired does not lose any part of the benefit that he has earned during service. Thus, compulsory retirement differs both from dismissal and

removal as it involves no penal consequences. Therefore compulsory retirement is not considered prima facie and per se a punishment and does not attract the provisions of Article 311.”

9. In the present case, ‘compulsory retirement is ordered by way of ‘penalty’. That being so, the natural consequences follow and the petitioner is deprived of the retiral dues. In light of the aforesaid discussion the Court finds that the petition is without any substance and merits. The same is dismissed.

(RAVI R. TRIPATHI, J.)

(MOHINDER PAL, J.)

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