A STATE OF GUJARAT

v.

UMEDBHAI M. PATEL

FEBRUARY 27, 2001

B [S. RAJENDRA BABU AND K.G. BALAKRISHNAN, JJ.]

Service Law :

Bombay Civil Services Rules, 1959—Rule 16(1)(1)(i)(aa)—Employee compulsorily retired while disciplinary proceedings were pending against him—
C *High Court set aside the order finding it punitive in nature—On appeal Held, compulsory retirement shall not be imposed as a punitive measure—Ordinarily an order of compulsory retirement is not treated as a punishment—However, it should not be passed as a short cut to avoid a departmental enquiry—High Court rightly set aside the impugned order as the authorities did not wait for*
D *the conclusion of the enquiry and dispensed with his services for extraneous reasons, and there were no adverse entries in his service record to support the same.*

Respondent was placed under suspension pending disciplinary proceedings. An order for compulsory retirement was passed by the appel-
E **lant invoking Rule 161(1)(1)(i)(aa) of the Bombay Civil Services Rules, 1959 against him. This order was set aside by the Division Bench holding it to be punitive in nature, passed without due investigation and without giving reasonable opportunity of hearing to the respondent. Hence this appeal.**

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Appellant contended that the impugned order is not punitive; that the services of the respondent were dispensed in public interest; and that the State Govt. has suffered pecuniary losses due to him.

Respondents contended that the impugned order was passed on
G **specific allegations and the same was illegal.**

Dismissing the appeal the Court

HELD : 1. Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily re-
H **tired for the sake of public interest. Ordinarily, the order of compulsory**

retirement is not to be treated as a punishment coming under Article 311 of the Constitution; 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; any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order, even uncommunicated entries in the confidential record can also be taken into consideration; the order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable, if the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer; compulsory retirement shall not be imposed as a punitive measure. [176-C-G]

State of Orissa & Ors. v. *Ram Chandra Das,* [1996] 5 SCC 331; *State of Gujarat & Anr.* v. *Suryakant Chunilal Shah,* [1999] 1 SCC 529; *Baikuntha Nath Das & Anr.* v. *Chief District Medical Officer, Baripada & Anr.,* [1999] 2 SCC 299; *Allahabad Bank Officer's Association & Anr.* v. *Allahabad Bank & Ors.,* [1996] 4 SCC 504; *Union of India & Ors.* v. *Dulal Dutt,* [1993] 2 SCC 179 and *J.D. Srivastava* v. *State of M.P. & Ors.,* [1984] 2 SCC 8, relied on.

2. There were absolutely no adverse entries in respondent's confidential record. He had successfully crossed the efficiency bar at the age of 50 as well 55. He was placed under suspension pending disciplinary proceedings. The State Govt. had sufficient time to complete the enquiry against him but the enquiry was not completed within a reasonable time. Even the Review Committee did not recommend his compulsory retirement. The respondent had only less than two years to retire from service. If the impugned order is viewed in the light of these facts, it could be said that the order of compulsory retirement was passed for extraneous reasons. As the authorities did not wait for the conclusion of the enquiry and decided to dispense with his services merely on the basis of the allegations which had not been proved and in the absence of any adverse entries in his service record to support the order of compulsory retirement, the Division Bench of the High Court was right in setting aside the order of compulsory retirement. 177-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1561 of 2001.

From the Judgment and Order dated 24.3.2000 of the Gujarat High Court in S.C.A. No. 6626 of 1987.

A R.P. Bhatt, Ms. Hemantika Wahi and Ms. Anu Sawhney for the Appellant.

S.K. Dholakia, Ms. Promila and Ashish Dholakia for the Respondent.

The Judgment of the Court was delivered by

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K.G. BALAKRISHNAN, J. Leave granted.

The respondent, during the relevant time, was an Executive Engineer working in the Narmada Development Department of the State of Gujarat. He was placed under suspension on 22.5.1986 pending disciplinary proceedings. C An enquiry was initiated against him alleging that he had committed acts of misuse of power in connection with the purchase of Tarpauline. While the respondent was continuing under suspension, the Govt. of Gujarat passed an order of compulsory retirement by invoking Clause (aa) (i) (1) of Rule 161 (1) of the Bombay Civil Services Rules, 1959, with effect from 13.2.1987. The respondent was due to retire on superannuation by the end of August D 1988, his date of birth being 17.8.1930. In the order of compulsory retirement, it was stated that the case relating to continuance of the respondent in Govt. service beyond the age of 50 and 55 years was reviewed. The respondent challenged the order of his compulsory retirement before the High Court of Gujarat and by the impugned judgment, the Division Bench of the High Court E set aside that order on the ground that the same was punitive in nature and was passed with an oblique purpose to punish the respondent for the charges which were neither investigated nor had the respondent been given reasonable opportunity of hearing. This judgment is challenged before us.

We heard the learned counsel for the appellant-State as also learned F counsel for the respondent. Elaborate arguments were advanced by the counsel for the appellant-State that the impugned order is not punitive in nature and that the services of the respondent were dispensed with in public interest. It was argued that the respondent's services were no longer useful and that he had committed acts whereby the State Govt. suffered pecuniary losses. It G was also contended that the order of compulsory retirement passed by the State Govt. Is not by way of punishment and the respondent is entitled to get all the benefits.

Learned counsel for the respondent, on the other hand, supported the impugned judgment and contended that the order of compulsory retirement H was passed on the specific allegations, for which the respondent was under

suspension awaiting formal enquiry, and under that circumstance, the impugned order of compulsory retirement was patently illegal. Reliance was placed on various decisions of this Court.

This Court, in a number of cases, had occasion to consider the law relating to compulsory retirement and has laid down various principles. In *State of Orissa & Ors* v. *Ram Chandra Das*, [1996] 5 SCC 331, this Court held in paragraph 3 of the judgment as follows :

> "It is needless to reiterate that the settled legal position is that the Government is empowered and would be entitled to compulsorily retire a government servant in public interest with a view to improve efficiency of the administration or to weed out the people of doubtful integrity or who are corrupt but sufficient evidence was not available to take disciplinary action in accordance with the rules so as to inculcate a sense of discipline in the service. But the Government, before taking such decision to retire a government employee compulsorily from service, *has to consider the entire record of the government servant including the latest reports.*"
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> [Emphasis supplied]

In *State of Gujarat & Anr.* v. *Suryakant Chunilal Shah*, [1999] 1 SCC 529, the State Govt. challenged the judgment of the Division Bench of the Gujarat High Court by which the order passed by the Single Judge was set aside. The Division Bench held that the order of compulsory retirement was bad and thereupon the State of Gujarat filed an appeal. In that case, two criminal complaints had been filed against the respondent-Asstt. Food Controller; one alleging that he had illegally issued cement permits to some bogus institutions; and second that he had fabricated some rubber stamps of the Government for the purpose of issuing illegal permits. But, there were no adverse entries in his confidential records and his integrity was not doubted at any stage. However, the authorities thought that the investigation and subsequent prosecution of the respondent would take long time and it would be better to dispense with his services by compulsorily retiring him. The Review Committee, therefore, recommended his compulsory retirement. This Court, in paragraph 28 of the judgment, held as under:

> "There being no material before the Review Committee, inasmuch as there were no adverse remarks in the character roll entries, the

A integrity was not doubted at any time, the character roll entries subsequent to the respondent's promotion to the post of Assistant Food Controller (Class II) were not available, it could not come to the conclusion that the respondent was a man of doubtful integrity nor could have anyone else come to the conclusion that the respondent was a fit person to be retired compulsorily from service. The order, in the circumstances of the case, was punitive having been passed for the collateral purpose of his immediate removal rather than in public interest."

In *Baikuntha Nath Das & Anr.* v. *Chief District Medical Officer, Baripada & Anr.*, [1992] 2 SCC 299, following the decision in *Union of India* v. *J.N. Sinha*, [1970)] 2 SCC 458, this Court held thus:

"(i) An order of compulsory retirement is not a punishment. It implies no stigma or any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) *mala fide* or (b) that it is based on no evidence or (c) that it is arbitrary -- in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter -- of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. The circumstance by itself cannot be a basis for interference."

In *Allahabad Bank Officers' Association & Anr.* v. *Allahabad Bank & Ors.*, [1996] 4 SCC 504, this Court, in paragraph 5 of the judgment on page 508, held as under:

> "The power to compulsorily retire a government servant is one of the facets of the 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.
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> While misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held - and there is no duty to hold an enquiry - 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, as pointed out by this Court in *Shyam Lal* v. *State of U.P.*, AIR (1954) SC 369".

In *Union of India & Ors.* v. *Dulal Dutt*, [1993] 2 SCC 179, this Court reiterated the view held right from the case of *R.L. Butail* v. *Union of India*, [1970] 2 SCC 876 and *Union of India* v. *J.N. Sinha*, [1970] 2 SCC 458 "that an order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court, the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order."

A In another decision in *J.D. Srivastava* v. *State of M.P. & Ors.*, [1984] 2 SCC 8, in paragraph 7 of the judgment, it was observed by this Court as under:

> "But being reports relating to a remote period, they are not quite relevant for the purpose of determining whether he should be retired compulsorily or not in the year 1981, as it would be an act bordering
B on perversity to dig out old files to find out some material to make an order against an officer."

The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarised thus:

C (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.
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(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
E 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
F 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.

G (viii) Compulsory retirement shall not be imposed as a punitive measure.

In the instant case, there were absolutely no adverse entries in respondent's confidential record. In the rejoinder filed in this Court also, nothing has been averred that the respondent's service record revealed any adverse en-
H tries. The respondent had successfully crossed the efficiency bar at the age of

50 as well 55. He was placed under suspension on 22.5.1986 pending disciplinary proceedings. The State Govt. had sufficient time to complete the enquiry against him but the enquiry was not completed within a reasonable time. Even the Review Committee did not recommend the compulsory retirement of the respondent. The respondent had only less than two years to retire from service. If the impugned order is viewed in the light of these facts, it could be said that the order of compulsory retirement was passed for extraneous reasons. As the authorities did not wait for the conclusion of the enquiry and decided to dispense with the services of the respondent merely on the basis of the allegations which had not been proved and in the absence of any adverse entries in his service record to support the order of compulsory retirement, we are of the view that the Division Bench was right in holding that the impugned order was liable to be set aside. We find no merit in the appeal, which is dismissed accordingly. However, three months' time is given to the appellant-State to comply with the directions of the Division Bench, failing which the respondent would be entitled to get interest at the rate of 18% for the delayed payment of the pecuniary benefits due to him.

A.Q. Appeal dismissed.