

The State Of Gujarat & Anr vs Suryakant Chunilal Shah on 3 December, 1998

Bench: S. Saghir Ahmad, S.P. Kurdukar

PETITIONER:

THE STATE OF GUJARAT & ANR.

Vs.

RESPONDENT:

SURYAKANT CHUNILAL SHAH

DATE OF JUDGMENT: 03/12/1998

BENCH:

S. SAGHIR AHMAD, S.P. KURDUKAR.,

JUDGMENT:

S. SAGHIR AHMAD J,

Leave granted The State of Gujarat is in appeal before us against the judgment dated 11.2.1998, passed by a Division Bench of the Gujarat High Court by which the judgment and order dated 17.11.1997 passed by the Single Judge, was set aside and the Writ Petition of the respondent by which he had questioned the validity of the order dated 21.7.1986, by which he was compulsorily retired from service, was allowed.

The respondent was appointed as a Clerk in the office of Food Controller, Ahmedabad and after about twenty one years of service, he was promoted as an Assistant Food Controller (Class-II) in the Office of Food Controller, Ahmedabad. In 1983, certain complaints were received against the respondent regarding permits for cement having been issued Illegally by him and, Therefore, he was placed under suspension on 31.5.1983 and an inquiry by the State C.

1. D. (Crime and Railway) was ordered into the matter of issuance of bogus cement permits. On the receipt of the G. I. D. enquiry report, which prima facie made out a case of issuing cement permits to bogus institutions which were not "in existence in Ahmedabad, a first information Report under various Sections of the Indian Penal Code read with the provisions of the Prevention of Corruption Act, was filed against the respondent on 23.12.196S. Another FIR was lodged against the respondent

on the same day in respect of offences committed by him for fabricating the rubber stamp of the Government and fabricating bogus permits in favour of equally bogus parties.

In the meantime, the respondent made two applications to the appellants for revocation of the suspension order but this was not done. By another order dated 21.7.1983, passed under Rule 161 of the Bombay Civil Services Rule, 1959, the respondent was compulsorily retired from service in public interest. It was this order which was challenged by the respondent in a Writ, Petition before the Gujarat High Court which was initially dismissed by the Single Judge but was allowed, in appeal, by the Division Bench by the impugned judgment dated 11.02.1996 which has compelled the State to approach this Court under Article 136 of the constitution.

During the pendency of the Writ Petition before the Single Judge, original records including the proceedings dated 9.2. 1988 of the Review Committee as also the notings of the Secretary, which he had made after discussing the matter with the Chief Secretary, were placed before the Single Judge. After going through the records, the learned Single Judge observed as under:-

The Review Committee has doubted the integrity of the petitioner and it has been opined that it is not advisable to continue the petitioner in service for further period. The Review Committee has further opined that looking to the seriousness of the charges levelled against him, there is a possibility of serious punishment or dismissal of the petitioner. The Review Committee has next opined that in the circumstances if the petitioner retires at the age of 50 years then such proceedings cannot be continued further and serious punishment cannot be inflicted. It has further been opined that the step concerning to reduction of pension also cannot be taken. At that point of time the petitioner was under suspension and it has been taken by the Review Committee that as he is under suspension and not in actual service, there is no question of damage to public and the Government. So, the Review Committee was of the opinion that the petitioner should be continued in service so that he may be dealt with severely for the alleged serious misconduct. This note had been placed before the Secretary, who had raised a question as to whether the Government can wait till the CID inquiry is over. The matter was further discussed and it has been decided that he should be retired prematurely and thereafter the cases against him withdrawn though with a further note "Provided he does not go to Court in issue of premature retirement." The matter has thereafter been discussed with the Chief Secretary and a decision has been taken that if the petitioner goes to the Court against the order of premature retirement then the cases against him should not be withdrawn.

Admittedly, against the petitioner two criminal cases for the offences as punishable under the provisions of the Prevention of Corruption Act have been filed. In one case the final report has been submitted by the Police and in the other case matter is under investigation. It is equally true that there are serious charges of corruption against the petitioner. The criminal against the petitioner. The criminal liability of the petitioner is one thing and his continuation in service when his integrity is

doubtful, is another thing. In between these two there is another aspect that for the alleged serious charges of corruption the petitioner could have been dealt with departmentally also and if the charges are proved the minimum penalty could and should have been, as held by the Hon'ble Supreme Court of India, in the case of Narayan Dattatraya Ramteen Thakar v. State of Maharashtra and others, reported in 1997 (1) SCC 299, would have been dismissal or removal. The order of premature retirement has not been challenged by the petitioner on the ground of mala fides. The petitioner has not alleged any mala fides against any of the officers i.e. the Members of the Review committee as well as the Secretary concerned, or the Chief Secretary concerned, of the chief secretary.

If the integrity of the officer is doubtful, then his retention in public service cannot be said to be in the public interest. There cannot be two opinion on this question. In such matters it is difficult to accept that the petitioner has been prematurely retired by way penalty.

xxx xxx xxx In the present case as recorded earlier the proceedings of the Review Committee have been produced on the record of this Special Civil Application by the respondents. The Review Committee has found that nothing adverse has been recorded in the C.R. file of the petitioner regarding his integrity. It has also been noticed by the said Committee that the petitioner has been promoted with effect from 16.5.1981 and therefore, C.Rs. of the years 1981-82 and 1982-83 are required to be considered. The C.Rs. of those two years were not available. On reading the aforesaid portion of the report of the Review Committee, what I gather is that it has proceeded on presumption that whatever service record of the petitioner was available was of the period earlier to 16.5.1981 and it stood washed off on his getting promotion on that day. After reaching that conclusion the Review Committee has not bothered to look into the service records of the petitioner for the period earlier to 16.5.1981....."

The learned Single Judge further observed as under:-

"At one point of time, I thought of to sent the matter back to the respondent-State to reconsider the case of compulsory retirement of the petitioner. But, from the record I find that the Review Committee found strong grounds of doubtful integrity of the petitioner and the review Committee has opined that it is not advisable to continue the petitioner in service for further period. However, the Review Committee has further opined that when there are serious charges against the petitioner if felt that there are probabilities that the petitioner may be given major penalty of dismissal and in case he is retired at the age of 50 years such disciplinary proceedings for major penalty cannot be continued and no punishment can be imposed. The Review Committee also observed that step for reduction of pension also cannot be taken. So, the review Committee was of the opinion that as the petitioner's integrity is doubtful he should not be allowed to continue in service....."

The learned Judge further proceeded to say as under:-

"So, the opinion of the Review Committee was that the petitioner, whose integrity is doubtful, should be dismissed from service. After forming this opinion the Review Committee has observed that he should be continued in service under suspension so that enquiry can be held against him and appropriate major penalty can be imposed on him.

The Report of the Review Committee was placed for consideration before the Secretary concerned and the Chief Secretary and ultimately, the chief Secretary has opined that the petitioner should be compulsorily retired. However, the Chief Secretary has opined that in case the petitioner goes to the Court challenging the order of compulsory retirement, case pending against him should not be withdrawn. In other words, if he does not challenge the order of compulsory retirement case against him may be withdrawn.

From the proceedings of the Review Committee as also the discussion of the Secretary concerned and the Chief Secretary, it is clear that the Review committee has formed an opinion that the petitioner's integrity is doubtful. SO far as the law on the point of compulsory retirement is concerned, it is a consensus that in case of employee/officers of doubtful integrity or dishonesty retention of such employee/officer would not be in public interest. Not only this, but to maintain efficiency and honesty in services such officer/employee has to be chopped off from service. It is true, as opined by the Review Committee, that such person should not be allowed to go with all rewards of pension and other retrial benefits and he should be dismissed from service....."

It was also observed as under:-

"I may revert back to the facts of this case and admittedly there were two cases against the petitioner for offence punishable under the provisions of Prevention of Corruption Act. It is true that in one case "A" Summary has been filed and in the other one charge-sheet has been filed and case is pending in the Court. Only question which now requires consideration of this Court is, whether on the basis of this material the review Committee and the Disciplinary Authority could have formed bona fide opinion, to compulsorily retire the petitioner or not. The contention of the learned counsel for the petitioner is that on the basis of these two criminal cases, the petitioner could not have been ordered to be retired compulsorily. But, in view of the latest decision of the Hon'ble Supreme Court this contention may not be of much substance and certainly the Review Committee and the Disciplinary Authority could have formed an opinion on the basis of the material available whether the integrity of the petitioner is doubtful or not...."

The portions of the judgment of the Single Judge have been extracted above to show that the original records were placed before him, who, after perusing those records, has specifically and categorically referred all the material which existed on that record and which constituted the basis of the opinion of the Review Committee that the respondent may be retired prematurely, although, what we feel is that on this question, namely, on the question of premature retirement, the Review Committee itself appeared to be in a dilemma and could not be said to have been consistent on the question of its recommendations:

From what has been extracted above, it would be seen that the Review Committee was of the opinion that :

- (1) There was no a a verse entry or remarks recorded in the C.R. Fife of the respondent regarding his integrity,
- (ii) Respondent was promoted to the higher post on 16th of May, 1981 and, therefore, the Review Committee wanted to look to the entries made subsequent to the date of promotion, but it noticed that the character roll entries for the years 1981-82 and 1982-83 were not available.
- (iii) There were two First Information Reports lodged against the respondent under various Sections of the Indian Pena? Code and the Prevention of Corruption Act. In one FIR, final report had been submitted, while in the other the charge sheet was filed.
- (iv) The integrity of the respondent was doubtful and, therefore, he was not fit to be retained in Govt. service.

But he should be continued in service, so that he would be available for severe departmental punishment and can be removed from service and dealt with severely for the alleged serious misconduct.

These recommendations of the Review Committee were placed before the Chief Secretary with a note of the Secretary, who had raised the question whether the Government could wait till the CID inquiry was over. Thereafter, the matter was further discussed and it was decided to retire the respondent prematurely and to withdraw the criminal cases against him, "provided he does not go to court on the issue of premature retirement." There was a subsequent opinion recorded on the file that it could not be said with certainly that the respondent would not go to court on the question of premature retirement. The matter was, therefore, again discussed with the Chief Secretary and a decision was taken that if the respondent approached the court, the criminal cases pending against him would not be withdrawn. It was in these circumstances that the decision to retire the respondent compulsorily, at the age of 52, was taken.

This decision was taken under Rule 161 of the Bombay Civil Service Rules, 1959, which provides as under:

"Rule 161

(1)[a] Except as otherwise provided in the other clauses of this rule, the date of compulsory retirement of a Government servant other than a Class IV servant, is the date on which he attains the age of 58 years, Provided --

(i) (Deleted)

(ii) (Deleted)

(iii) He may be retained in service after the date of compulsory retirement only with the previous sanction of Government on public grounds which must be recorded in writing.

[(aa) Notwithstanding anything contained in clause

(a) :-

(i) An appointing Authority shall, if he is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant to whom clause (a) applies by giving him notice of not less than three months in writing or three months pay and allowance in lieu of such notice:

(1) if he is in Class I or Class II service or post or in any unclassified gazetted post, the age limit for the purpose of direct recruitment to which is below 35 years, on or after the date on which he attains the age of 50 years, and (2) if he is in any other service or post, the age limit for the purpose of direct recruitment to which is below 40 years, on or after the date on which he attains the age of 55 years.

(ii) any Government servant to whom clause

(a) applies may be giving notice of not less than three months, in writing to the appointing authority, retire from service after he has attained the age of 50 years, if he is in Class I or Class II service or post or in any unclassified gazetted post the age limit for the purpose of recruitment to which is below 35 years and in an other case, after he has attained the age of 55 years.

Provided that it shall be open to the Appointing Authority to withhold permission to retire to a Government servant who is under suspension, or against whom Departmental proceedings are pending or contemplated and who seeks to retire under this sub-clause.]

(b) A Government servant"

Sub-clause (aa) of Clause (1) of this Rule gives power to the Appointing Authority to retire a Government servant in public interest by giving him three months' notice in writing or three months's pay in lieu thereof at any time after the date on which he has attained the age of 50 years.

What is 'public interest' was explained in the classic decision of this Court in *Union of India vs. Col. J.N.Sinha & Anr.* (1970) 2 SCC 458 = AIR 1971 SC 40 = 1971 (1) SCR 791. It was pointed out that the object of premature retirement of a Govt. servant was to weed out the inefficient, corrupt, dishonest employees from the Govt. service. The public interest in relation to public administration means that only honest and efficient persons are to be retained in service while the services of the dishonest or the corrupt or who are almost dead-wood, are to be dispensed with. The court observed :

"Compulsory retirement involves no civil consequences. The aforementioned Rule 56(j) is not intended for taking any penal action against the Government servants. That rule merely embodies one of the facts of the pleasure doctrine embodied in Article 310 of the constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have more efficient officer. It may further be that in certain Key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in Government organisations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56 (j) holds the interests of the public. While a minimum service is guaranteed to the Government, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest....." It is true that a compulsory retirement is bound to have some adverse effect on the Government servant who is compulsorily retired but then as the rule provides that such retirements can be made only after the officer attains the prescribed age. Further a compulsorily retired Government servant does not lose any of the benefits earned by him till the date of his retirement. Three months' notice is provided so as to enable him to find out other suitable employment. In our opinion, the High Court erred in thinking that the compulsory retirement involves civil consequences."

This was also the view of this Court in *H.C. Gargi vs. State of Haryana* (1986) 4 SCC 158 = AIR 1987 SC 64.

In *Gian Singh Mann vs. High Court of Punjab & Haryana & Anr.* (1980) 4 SCC 266 = AIR 1980 SC 1894, it was pointed out that 'the expression 'public interest' in the context of premature retirement has a well settled meaning. It refers to cases where the interests of public administration require the retirement of a Government servant who with the passage of years has prematurely ceased to possess the standard of efficiency, competency and utility called for by the Government service to which he belongs."

In *Kailash Chandra Agarwal vs. State of M.P. & Anr.* (1987) 3 SCC 513 = AIR 1987 SC 1871, it was pointed out that the order of compulsory retirement, if taken in public interest, could not be treated as a major punishment and that Article 311(2) of the Constitution could not be invoked, as the employee concerned was no longer fit in public interest to continue in service and, therefore, the was compulsorily retired.

In *Union of India vs. M.E. Reddy & Anr.* (1980) 2 SCC 15 = AIR 1980 SC 563, it was pointed out that the object of compulsory retirement was to weed out the dead-wood in order to maintain a high standard of efficiency and initiative in service. Rule 16(3) of the All India (Death-cum-Retirement) Rules, 1958, empowered the Govt. to compulsorily retire officers of doubtful integrity. The safety value of public interest was the most powerful and the strongest safeguard against any abuse or colorable exercise of power under that rule.

A three Judge Bench of this Court in *Baikuntha Nath Das & Anr vs. Chief District Medical Officer Saripada & Anr.* (1992) 2 SCC 299, laid down the following five principles:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehavior.

(ii) The order has to be passed by the government of 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 favorable 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. That circumstance by itself cannot be a basis of interference."

This decision was reiterated by another three Judge Bench of this Court in Posts & Telegraphs Board & Ors. vs. C.S.N. Murthy (1992) 2 SCC 317, in which it was laid down as under :

"An order of compulsory retirement is not an order of punishment. F.R. 56(j) authorises the Government to review the working of its employees at the end of their period of service referred to therein and to require the servant to retire from service, if in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record."

(emphasis supplied) In K. Kandaswamy vs. Union of India. (1996) 6 SCC 162, this court observed that:-

"While exercising the power under Rule 56(j) of the Fundamental Rules, the appropriate authority has to weigh several circumstances in arriving at the conclusion that the employee requires to be compulsorily retired in public interest. The Government is given power to energies its machinery by weeding out dead wood, inefficient, corrupt and people of doubtful integrity by compulsorily retiring them for service. When the appropriate authority forms bona fide opinion that compulsory retirement of the government employee is in the public interest, court would not interfere with the order."

The Court, however, added that the opinion must be based on the material on record otherwise it would amount to arbitrary or colorable exercise of power. It was also held that the decision to compulsorily retire an employee can, therefore, be challenged on the ground that requisite opinion was based on no evidence or had not been formed or the decision was based on collateral grounds or that it was an arbitrary decision.

In. S.R. Venkataraman vs. Union of India. (1979) 2 SCC 491, this Court held the order of compulsory retirement as a gross abuse of power as there was nothing on the record to justify and support the order.

In Baldeo Raj Chaddha vs. Union of India, (1980) 4 SCC 321, it was held that although the purpose of FR 56 was to weed out worthless employees without punitive extremes, if, under the guise of "public interest", an order of premature retirement is made for any other purpose, it would be the surest menace to public interest and the order must fail for unreasonableness, arbitrariness and "disguised dismissal".

Baikuntha Nath's case (supra) was considered by this Court in M.S. Bindra vs. Union of India & Ors. JT 1998 (6) SC 34 and it was laid down as under:

"Judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or mala fide or if it is based on no evidence. The observation that principles of natural justice have no place in the context of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion the same can be obviated on the assumption that other materials alone need be looked into."

It was further observed as under :

"While viewing this case from the next angle for judicial scrutiny, i.e. want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that from the available materials no reasonable man would reach such a conclusion.

In order, therefore, to find out whether any Govt. servant has outlived his utility and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of overall performance of that Govt. servant has to be taken before deciding, after he has attained the age of 50 years, either to retain him further in service or to dispense with his services in public interest, by giving him three months' notice or pay in lieu thereof.

The performance of a Govt. servant is reflected in the annual character roll entries and, therefore, one of the methods of discerning the efficiency, honesty or integrity of a Govt. servant is to look to his character roll entries for the whole tenure from the inception to the date on which decision for his compulsory retirement is taken. It is obvious that if the character roll is studded with adverse entries or the overall categorization of the employee is poor and there is material also to cast doubts upon his integrity, such a Govt. servant cannot be said to be efficient. Efficiency is a bundle of sticks of personal assets, thickest of which is the stick of "Integrity". If this is missing the whole bundle would disperse. A Govt. servant has, therefore, to keep his belt tight.

Purpose of adverse entries is primarily to forewarn the Govt. servant to mend his ways and to improve his performance. That is why, it is required to communicate the adverse entries so that the Govt. servant, to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the adverse entry was wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance.

Applying the principles laid down above to the instant case, what comes out is that in compulsorily retiring the respondent from service, the authorities themselves were uncertain about the action which was to be taken ultimately against him. In fact, there was hardly any material on the basis of which a bona fide opinion could have been formed that it would be in public interest to retire the respondent from service

compulsorily. The material which was placed before the Review Committee has already been mentioned above. To repeat, respondent was promoted in 1981; the character roll entries for the next two years were not available or record; there were no adverse entries in the respondent's character roll about his integrity; he was involved in two criminal cases, in one of which a final report was submitted while in the other a charge sheet was filed. Although there was no entry in his character roll that the respondent's integrity was doubtful, the Review Committee, on its own, probably on the basis of the FIRs lodged against the respondent, formed the opinion that the respondent was a person of doubtful integrity. The review Committee was constituted to assess the merits of the respondent on the basis of the character roll entries and other relevant material and to recommend whether it would be in public interest to compulsorily retire him from service or not. The Review Committee, after taking into consideration the character roll entries and noticing that there were no adverse entries and his integrity was, at no stage, doubted, proceeded, in excess of its jurisdiction, to form its own opinion with regard to respondent's integrity merely on the basis of the FIRs lodged against him. Whether the integrity of an employee is doubtful or not, whether he is efficient and honest, is the function of the Appointing Authority or the immediate superior of that employee to consider and assess. It is not the function of the Review Committee to brand, and that too, off hand, an employee as a person of doubtful integrity. Moreover, the Review Committee did not recommend compulsory retirement. It was of the opinion that the respondent had committed grave irregularity and that he must be retained in service so that he may ultimately be dealt with and punished severely. The Secretary and the Chief Secretary, who considered the recommendations of the Review committee, had other ideas. They thought that the investigation and subsequent prosecution of the respondent would take a long time and that it would be better to immediately dispense with his services by giving him the temptation of withdrawing the criminal cases and retiring him compulsorily from service, provided he does not approach the court against the order of compulsory retirement. This proposal too was not immediately acted upon and it was thought that nobody could say whether the order of compulsory retirement would be challenged by the respondent before the court or he would merely submit to it on the withdrawn. It was at this stage, that the or the order of compulsory retirement was passed.

The whole exercise described above would, therefor, indicate that although there was no material on the basis of which a reasonable opinion could be formed that the respondent had outlived his utility as a Govt. Servant or that he had lost his efficiency and had become a dead wood, he was compulsorily retired merely because of his involvement in two criminal case pertaining to the grant of permits in favour of take and bogus institutions. The involvement of a person in a criminal case does not mean that he is guilty. He is still to be tried in a court of law and the truth has to be found out ultimately by the court where the prosecution is ultimately conducted. But before that stage is reached, it would be highly improper to deprive a person of his livelihood merely on the basis of his involvement. We may, however, hasten to add that mere

involvement in a criminal case would constitute relevant material for compulsory retirement or not would depend upon the circumstances of each case and the nature of offence allegedly committed by the employee.

There being no material before the Review Committee, in as much as there were no adverse remarks in the character roll entries, the integrity was not doubted at any time, the character roll entries subsequent to the respondent's promotion to the post of Asstt. 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. The Division Bench, in our opinion, was justified in setting aside the order passed by the Single Judge and directing reinstatement of the respondent.

We find no merit in this appeal which is dismissed without any order as to costs.