

(2007) 10 MP CK 0012

In the Madhya Pradesh High Court

Case No : W.A. No's. 662, 1096, 1339 of 2006, 67, 68, 125, 217, 219, 221, 222, 224, 225, 228, 229, 238 to 242, 273, 274, 827, 828, 842, 980, 1110, 1113, 988 of 2007

Alok Bhatnagar

APPELLANT

Vs

M.P. State Co-Operative Dairy Federation Ltd. and Others

RESPONDENT

Date of Decision : 09-10-2007

Acts Referred:

Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 42(1)
Madhya Pradesh State Co-operative Dairy Federation Limited Employees Recruitment, Classification and Conditions of Service Regulations, 1985 — Regulation 13(1)

Citation : (2008) 2 MPLJ 628

Hon'ble Judges : S.R. Waghmare, J; Dipak Misra, J

Bench : Division Bench

Advocate : N.S. Kale, Rajendra Tiwari, Mrs. Shobha Menon, Kishore Shrivastava, s, Sujoy Paul, H.K. Upadhyaya, Praveen Verma, Udyan Tiwari, K.S. Rajput, Abhijit Bhowmik, Ms. Manjit Chuckal, Mrs. Janhavi Pandit, Nikhil Tiwari, Mrs. P. Shrivastava, Rajneesh Gupta, S.P. Rai, Praveen Verma and Piyush Dharmadhikari, for the Appellant; Anoop Nair, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

Regard being had to the similitude and commonness of the questions involved in this batch of writ appeals it is thought condign to deal with them in a composite manner and dispose of by a singular order. However, the fundamental issues that emanate in all the cases, shall be dwelled upon in one compartment and the specific issues wherever required shall be addressed to individually.

At this juncture, it is seemly to state that the learned Single Judge has dealt with the general factual aspect and the legal position in W. P. No. 4368/2002, Dr. Vishwanath Prasad Agnihotri vs. M.P. State Co-operative Dairy Federation Ltd. and others. Hence for the sake of convenience we shall refer to the said facet that has been adumbrated in that order. The petitioner therein called in question

the legal substantiality of the order dated 24-6-2002 by which he had been compulsorily retired from services under Regulation 13(1) of the M.P. State Co-operative Dairy Federation Limited Employees' Recruitment, Classification and Conditions of Service Regulations, 1985 (in short "the Regulation") on payment of salary of three months and prayed for quashment of the same with the further prayer to reinstate him in service with all consequential benefits. The learned Single Judge referred to the decisions rendered in Arun Kumar Pandey Vs. State of M.P. and Others, , The State of Punjab Vs. Gurdas Singh, , Bishwanath Prasad Singh vs. State of Bihar, (2001)2 SCC 305, State of Gujarat Vs. Umedbhai M. Patel, , State of U.P. vs. Vijay Kumar Jain, AIR 2002 SC 1345 and Jugal Chandra Saikia Vs. State of Assam and Another, and thereafter scanned the anatomy of the Regulation and expressed the opinion that the provision in the Regulation pertaining to compulsory retirement is similar to the provision enshrined under Rule 42(1) of the M.P. Civil Services (Pension) Rules, 1976 (for brevity "the 1976 Rules"). Thereafter the learned Single Judge adverted to the formula that was devised by the Screening Committee, the methodology adopted for the same purpose in respect of government servant as per circular dated 12-12-2001, Annexure-R/1, issued by the State Government, awarding of marks on the basis of grading in the ACRs, the postulate in the circular dated 22-8-2000, Annexure-R/2, for laying emphasis on the service record for the last five years and the average of those years, the factum of public interest, the reasonableness of the criteria provided for screening the marks obtained by the writ petitioner, the purpose of the regulation, the conceptual eventuality in the connotative expanse of the terms "in the public interest" and "in the interest of the Federation", the bona fide exercise of power, acceptance of the formula adopted by the Federation, the inbuilt safeguard and the rationale of the formula and thereafter eventually recorded the finding in paragraph 12 as under:

12. So far as the present petitioner is concerned, his annual confidential reports from the year 1980-81 to 1999-2000 have been considered by the Screening Committee and the competent authority. The original record of the confidential reports has been produced before this Court. It has been perused, the service record atleast for the last ten years of the petitioner on an average cannot be said to "Good". He has been given "poor" remark from the year 1990-91 to 1992-93. His grading is average for three years and he was under suspension for three years. His grading for 1995-96 alone is "Good". Therefore, on consideration of the service record of the petitioner any person of ordinary prudence would come to the conclusion that he was not fit to be retained in service. He is really a dead wood and worthless and has lost his utility to the Federation. He has got only 1.05 marks on an average of 20 years. Therefore, the decision which has been taken by the Federation is bona fide and cannot be said to be arbitrary or unreasonable and therefore, it is not amenable to judicial review as held by the Supreme Court in the recent decision in Vijay Kumar Jain's case referred above and also in State of U.P. vs. Raj Kishore Goel, (2001) 10 SCC 183 .

We have heard Mr. N.S. Kale, Mr. Rajendra Tiwari, Mrs. Shobha Menon, Mr. Kishore Shrivastava, learned Senior Counsels, Mr. Sujoy Paul, Mr. H.K. Upadhyay, Mr. Praveen Verma, Mr. Udyan Tiwari, Mr. K.S. Rajput, Mr. Abhijit Bhowmik, Ms. Manjit Chuckal, Mrs. Janhavi Pandit and Mr. Nikhil Tiwari, learned counsel for the appellants and Mr. Anoop Nair, learned counsel for the respondent.

Before advertng to the contentions raised by the learned counsel for the parties, it is appropriate to state that initially the writ appeal was registered as LPA No. 12/2004. The Division Bench by order dated 25-11-2004 in connected matters referred the matter to a Larger Bench on the question whether M.P. Co-operative Dairy Federation Limited is a "State" under Article 12 of the Constitution of India. The matter was placed before a Bench consisting of three-Judges. The Full Bench took note of the decision rendered in Dinesh Kumar Sharma Vs. M.P. Dugdha Mahasangh Sahkari Maryadit and Another, wherein it had been held that the Federation is not a "State" within the meaning of Article 12 of the Constitution. The Full Bench hearing the matter thought it appropriate to that the matter should be placed before Hon"ble the Chief Justice for constituting of a five-Judges Bench. Eventually the five-Judges Bench in M.P. State Co-operative Dairy Federation and Others Vs. Madan Lal Chourasia, , expressed the opinion that the Dairy Federation is a State under Article 12 of the Constitution of India.

At this stage it is also worthwhile to advert to another facet. The Registrar, Co-operative Societies, had directed for amendment of M.P. Dugdha Mahasangh Sahkari Maryadit Karmchari Bharti Vargikaran Tatha Seva Shartein Viniyam, 1985 (hereinafter referred to as "1985 Regulation"). The said Regulation was approved by the Registrar u/s 55(1) of the M.P. Co-operative Societies Act, 1960. By insertion of Regulation 13(1) a provision for compulsory retirement was inserted. The constitutional validity of the said provision was assailed before this Court. This Court in Triloki Nath Pandey and Others Vs. The Madhya Pradesh Co-operative Dairy Federation Ltd. and Others, held the provision to be constitutionally valid.

We have stated the aforesaid two aspects to keep at bay, the preliminary objection of the Federation that it is not a "State" and the stand of the petitioners that there could not have been exercise of power under Regulation 13(1) of the Regulation.

Presently we shall proceed to enumerate the submissions raised at the Bar. The learned counsel for the appellants have raised the following contentions:

a) The Federation, on the basis of amended regulation had adopted the government circulars dated 22-8-2000 and 12-12-2001 which provide for the guidelines of compulsory retirement of employees and as per the circular dated 22-8-2000 there has to be a screening committee consisting of certain officers but the screening committee that was constituted for the purpose of dealing with the employees of the Federation is not inconformity with the requirements of the Circular.

- b) The Screening Committee having not been constituted in congruity with the circular the entire screening has been conducted by an incompetent body which makes the recommendations and the consequential orders of compulsory retirement sensitively susceptible.
- c) A direction was issued by the General Administration Department on 1-6-2002 to all the departments of the Government providing that the Bhagirath Prasad, Secretary, Transport Department, representing the reserved category shall be a Member of the Screening Committee and the Review Committee but the said order was not followed by the Federation and no number of such reserved category was there in the Screening Committee at the time of scrutiny which has entailed in unjust and improper scrutiny of the employees.
- d) A member of the Screening Committee S.C. Prajapati, Dairy Commissioner, Veterinary and Animal Husbandry Department has been inducted in a forged manner as perceptible from Annexure-A/12, order dated 6-5-2002 passed by the Screening Committee which makes the recommendations a sanctuary of incurable errors.
- e) The Sub-Committee constituted after the order of compulsory retirement was passed to review the decision of the Screening Committee has also not been properly constituted if the Government circular dated 22-8-2000 is appositely scrutinised.
- f) The Review Committee submitted its report on 28-12-2002 to the Chairman of the Federation in paragraph 3 of the report and on a perusal of paragraph 3 of the report it is manifest, the Screening Committee had scrutinised the ACRs only up to the year 1999- 2000 despite the factum that the meeting was held when ACRs of the years 2000-2001 and 2001-2002 were available on record.
- g) The ACRs of the petitioner during his total service period before the order of compulsory retirement has not been properly evaluated inasmuch as in the Federation each employee was given grades and according to the Government Circular dated 12-12-2001 the gradings of the ACRs were divided into five categories and marks were to be assigned and that has brought in an anomalous situation.
- h) The grading, marking system and the method of assessment of employees done for the purpose of compulsory retirement is arbitrary and unacceptable inasmuch as the whole exercise has been done without considering the germane and relevant factors, namely, performance of an employee, the promotion earned by him, his honesty and integrity.
- i) The Federation has arbitrarily and capriciously fixed the cut off date as 31-12-2001 for consideration of the service record though fixation of such cut off date has no justification in the facts and circumstances of the case.
- j) The respondent-Federation has not observed the trend of performance for the last five years whether it is declining or progressing as per the provision of

Government circular for the purpose of determination of compulsory retirement and that makes the whole exercise fallacious.

k) In certain cases the employees were not given any marks for certain years and average has been computed as a result of which some people have been axed without acceptable reason.

l) Prior to 1998 the grading and marking system followed by the Federation was completely different from one laid down in the Government Circular. The grading of ACRs was shifted one step lower in comparison to that of the order prior to 1998. Instead of giving marks in accordance with the grading system applicable to a particular year, the Federation has mechanically assigned marks in accordance with the Government Circular. It is propounded by the learned counsel for the petitioners that this method would have not been taken recourse to in view of the mandate of the Circular of 2001 and in any case the same could not have been applied retrospectively to the ACRs of the petitioners and by such applicability substantial prejudice has been caused to the petitioners.

m) It is manifest from the affidavit dated 4-10-2004 filed in LPA No.39/2004 [MPSCDF vs. Ashok Kumar Mahule) that the assessment of the employees of the Federation has changed from year to year. That from 1975-1981 there are no guidelines with regard to ACRs. The Federation issued the guidelines for the first time on 24-2-1982 in which the grades were excellent, good, average, low and extremely low for which 100, 80, 60, 40 and less than 40 marks were respectively assigned.

n) The respondent-Federation introduced different parameters from 1986-87 onwards but the grades were changed to outstanding, very good, good, average and poor and instead of marking, alphabetical grading, A+, A, B, C and D respectively were assigned. By order dated 15-4-1996 a new classification was introduced wherein the previous grading of poor were changed to below average.

o) The petitioners were never communicated the change of parameters and the respective grading and marks in the ACRs. In view of the aforesaid, the Screening Committee would not have changed the marks of ACRs of the petitioners as that could tantamount to substitution of marks of appointing of Controlling Officer, who had assessed the performance of the appellants. The respondent-Federation has submitted a chart showing the grading as per the Screening Committee and the re-assessment conducted on the basis of suggestion of this Court in accordance with grading system of the Federation and if the re-assessment is appreciated certain petitioners would not be liable for compulsory retirement. That apart, in the reassessment the marks of the year 1980-81, 1981-82 and 1997-98 have not been considered in certain cases.

p) The competent authority has not recorded subjective satisfaction and in the absence of any opinion which is the mandatory requirement the orders relating to compulsory retirement are vulnerable in law.

q) The Screening Committee has not taken note of the fact that some of the incumbents had been conferred the benefit of promotion despite certain gradings which should have been weighted in favour of the employees but that having not been done the eventual acceptance of the recommendations is totally unsound.

r) When ACRs of certain years were not available the principles of the best average should have been taken recourse to instead of dividing or converting the grade to marks and dividing by the years concerned. The learned counsels have given an example that an employee who does not have the ACRs for four years his marks have been totalled and divided by 16 and on that basis he has been compulsorily retired. It is contended that four years ACRs which are not available for whatsoever reason should have been upgraded keeping in view the best average method or approximate best average method but not to ignore them in entirety.

s) The Federation would not have applied the principle of public interest, as fundamentally the said concept cannot be attracted to the employees of a Federation.

Mr. Anoop Nair, learned counsel appearing for the respondent in support of the order passed by the learned Single Judge submitted as follows:

i) The stand and stance that there has to be an opinion recorded in clear-cut terms is sans substance and the recommendations which are objective in nature have been accepted by the competent authority.

ii) The order of compulsory retirement has been passed on consideration of the ACRs for the entire service period and there has been objective scrutiny of the matter. In the absence of any arbitrariness or non-application of mind there is no warrant to interfere with the order.

iii) The circulars adopted by the Federation have been followed in letter and spirit and the formula adopted by the Corporation cannot be found fault with.

iv) There is no mala fide on the part of the Federation as the orders were passed in the interest of the Federation regard being had to the concept of utility of services of the incumbents which is in the broader spectrum of public interest.

v) The distinction drawn by the petitioners in public interest and in the interest of the Federation is devoid of any merit and in the interest of the employee at large. The Federation is an authority under Article 12 of the Constitution and bona fide exercise has been undertaken to weed out the inefficiency and otherwise ineligible employees keeping in view the facet of productivity.

vi) There has been evaluation of service records, a special emphasis has been given for the last five years and the said formula is in conformity with the principles applicable for compulsory retirement and hence, the entire process is flawless.

vii) The learned Single Judge had called for the service records and found

everything to be correct and in view of that the order passed by the learned Single Judge deserves to be concurred with.

viii) The ground that there had been no rationalisation of the grading and the marks fixed, does not merit consideration as full endeavour has been made to rationalise the whole marking system and as there has been an empirical and pragmatic approach to the same the formula evolved cannot be regarded as faulty.

This Court in course of hearing had directed the learned counsel for the respondent-Federation to produce the original records and he has produced the same. Before we proceed to advert to the circulars, the formula and the screening to find out the logistics and approach of the Federation, it is thought condign to refer to certain decisions in the field.

In *Baikunth Nath Das vs. Chief District Medical Officer, Baripada*, AIR 1992 SCW 793 the Apex Court has held as under:

34. The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor 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 un-communicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference. Interference is permissible only on the grounds mentioned in (iii) above.

In *The State of Punjab Vs. Gurdas Singh*, it has been held as under:

11.Before the decision to retire a Government servant prematurely is taken the authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any un-communicated adverse entries as well.

In *State of Gujarat Vs. Umedbhai M. Patel*, their Lordships after referring to the decisions rendered in *Baikunth Nath Das (supra)*, *Allahabad Bank Officers Association and another Vs. Allahabad Bank and others*, and *Union of India (UOI) and Others Vs. Dulal Dutt*, expressed the view in paragraph 11 as under:

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

(i) Whenever the service 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.

(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 note of and be given due weightage in passing such order.

(v) Even un-communicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short 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.

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

Thereafter, their Lordships analysed the facts of the case and concluded in paragraph 12 as under :

12. 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 entries. 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 month's 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.

In the case at hand, as is manifest, the Federation adopted the government Circular. The challenge to the constitution of the Screening Committee is on the ground that Shri S.C. Prajapati, Dairy Commissioner, Veterinary and Animal Husbandry Department was inducted in a manner not in accordance with law is not tenable as there is no material to show that there was any irregularity in his appointment. It is contended that Shri Bhagirath Prasad, Secretary, Transport Department, representing the reserved category should have been a member is not acceptable inasmuch as what is meant in the Circular that there should be a reserved category person but not a particular person.

In view of the aforesaid, we repel the stand that there has been erroneous constitution of the Screening Committee.

The allegations that the Circular provides for constitution of a review committee to be consisted of an Additional Secretary, Principal Secretary/ Secretary of the concerned Department and the Principal Secretary/Secretary of the General Administration Department. The said officers are required to be members of the Review Committee as far as government departments are concerned. But in the Review Committee of the Federation there are different persons and they are qualified. Thus, the said authorities were not in the Review Committee is sans substratum as adoption of circular does not mean that the said authorities would also be in the Review Committee. It is contended that they are political persons and, therefore, the Review Committee is improperly constituted. The said stand, in our considered opinion, has no legs to stand upon and hence, hereby rejected.

The next submission which requires to be adverted to is whether the Screening Committee has adopted a correct formula and whether there has been rationalisation of the grading and marks. It is patent that the Screening Committee of the Federation applied the evaluation system meant for the

Government servants. In the ACRs of each employee of the Federation initially they were given grades. In the Federation, grading system was applied. It is also clear from the documents and affidavits brought on record by the Federation that from the year 1975 to 1981 there were no guidelines with regard to the ACRs. The first guideline was issued on 24-2-1982 in which grades were changed. Good, average low and extremely low in which 100, 80, 60, 40 and less than 40 marks respectively were awarded. From the year 1986-87 the Federation introduced different parameters and the grades were changed to A+, A, B, C and D. On 15-4-1996 a new classification was introduced wherein the previous grading of poor was changed to "below average". The Screening Committee divided the grade into five categories as under:

- i. Outstanding : 04
- ii. Very Good : 03
- iii. Good : 02
- iv. Average : 01
- v. Poor : 00

On the basis of the aforesaid grading average was taken and if an employee had obtained 2.5 marks he was retained in service and an employee who did not get the said mark he was compulsorily retired. To appreciate the scenario it is appropriate to take a grading chart, a sample of one Mrs. Saroj Shrivastava. It is reproduced below:

ACR of the Year Grading done by Scrutiny Committee Marks

1980-81 Good 2
1981-82 Not available -
1982-83 Not available -
1983-84 Very Good 3
1984-85 Very Good 3
1985-86 Good 2
1986-87 Not available -
1987-88 Average 1
1988-89 Good 2
1989-90 Average 1
1990-91 Very good 3
1991-92 Poor 0

1992-93 Average 1

1993-94 Good 2

1994-95 Good 2

1995-96 Average 1

1996-97 Average 1

1997-98 Average 1

1998-99 Good 2

1999-2000 Good 2

In many cases this Court has noticed that ACRs were not available but an attempt has been made to grant average on the basis of year. Submission of the learned counsel for the appellants is that an acceptable average should have been adopted and this principle should not have been adopted.

Another aspect which is noticeable is that the cut off date has been fixed to 31-12-2001 though it is worth noting the Screening Committee met in 2002. The latest ACRs for two years, namely, 2000-2001 and 2001-2002 were not taken into consideration and the last ACR that was taken is of the year 1999-2000. It is perceptible that the Screening Committee was required to lay emphasis in the grading of last five years. We perceive no justification why the last two years grading were not taken into consideration. That could have changed the scenario as it could have been known whether an employee had been improved and had been highly graded.

We may at this juncture state that the State Government had the marking system and the Federation on grading system. There has been conversion of grades to marks but there has been no rationalisation in the same. In the Federation on different periods different systems were followed. There could have been a rationalization of the same. In our considered view the process of weeding out is not correct and suffers from unreasonability, irrationality and arbitrariness on the following grounds:

(a) There has been no rationalisation of marking system when conversion has taken place from grading to award of marks by the Screening Committee.

(b) The principle of average that has been applied by the Screening Committee is not an acceptable one as the best average principle should have ordinarily been applied in the absence of nonavailability of the ACR, for the ACRs are maintained and kept by the employer.

(c) There was no justification to fix a cut off date when the Screening Committee met at a later stage.

(d) Though the Circular postulates that last five years ACRs have to be taken into

consideration for the purpose of finding out whether there has been declining of progress in the performance of the employee the last two years ACRs were not considered.

(e) In certain cases benefit of promotion were conferred but the said facet has not been taken into consideration at all which reflects non-application of mind.

In view of the aforesaid analysis, we are unable to concur with the order passed by the learned Single Judge and it is liable to be set aside and accordingly, we so direct.

The next question that emerges for consideration to what relief the appellants are entitled. There can be no shadow of doubt that on setting aside of the order of the learned Single Judge the writ appeals are to be allowed and the orders of compulsory retirement have to pave the path of extinction because of quashing of the order of compulsory retirement. What would be the sequitur that has to be adverted to. Submission of the learned counsel for the appellants in each case is that they should be granted full back-wages.

In this context it is appropriate to notice few decisions in the field. In *M.L. Binjolkar Vs. State of Madhya Pradesh*, it has been held as under:

6. We find that so far as the backwages issue is concerned, there are two periods involved. The first was from 1-10-1997 up to the High Court's order dismissing the writ petitions filed by the State while permitting fresh action. As noted above, the Tribunal had directed that the employees concerned were to be paid full backwages. The High Court had not interfered with that part of the order. Therefore, so far as this period is concerned, the High Court's direction in the impugned judgment for payment of 50% of the backwages does not appear to be correct. So far as the rest of the period is concerned, obviously that relates to the period up to the High Court's order i.e. 1-3- 2002. Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. *Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another*, , *Rajendra Prasad Arya Vs. State of Bihar*, , *Management of Sonapat Cooperative Sugar Mills Ltd. Vs. Ajit Singh*, , *Haryana State Coop. Land Development Bank Vs. Neelam*, , *Manager, R.B.I., Bangalore Vs. S. Mani and Others*, and " *Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another*, we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full backwages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view. That being so, we do not think it appropriate to interfere with the quantum of 50% fixed by the High Court.

In *General Manager, Vijaya Bank and Another Vs. Pramod Kumar Gupta*, their Lordships in paragraphs 6 and 11 held as under:

6. We have carefully perused the order passed by the High Court. A perusal of the order passed by the High Court would show that the High Court has not considered the question as to whether the respondent was gainfully employed or not during the relevant period in question. The High Court has also not adverted to the categorical finding recorded by the Tribunal on this aspect. The High Court directed the appellant bank to reinstate the respondent on the post held by him with continuity in service and that the respondent shall also be entitled to other consequential benefits to which he is entitled to in accordance with law. The High Court, in our opinion, without considering the relevant issue has ordered full backwages with all other consequential benefits which, in our opinion, is not correct. It is argued by Mr. K.T.S. Tulsi, learned senior counsel for the appellants that the respondent-workman has not discharged his burden by adducing any evidence that he was not gainfully employed. He has also now shown any acceptable material that he was not gainfully employed and, under these circumstances, ordering full backwages to the respondent by the High Court without considering the merits of the claim by the bank is not correct and that the approach made by the High Court in ordering full backwages cannot, at all, be countenanced in the facts and circumstances of this case.

We, therefore, remit the matter to the High Court to consider the question of payment of backwages for the period in question. We request the High Court to consider the matter afresh on the question of backwages only. The appellant bank is also free to hold any departmental enquiry against the respondent-workman for his absence from duty during the relevant period. Since the matter is remitted to the High Court on the question of backwages only, the respondent will not be entitled for payment of any backwages during the period in question which will depend upon the ultimate order that may be passed by the High Court. The order passed by the High Court ordering reinstatement shall stand.

In *A.P.S.R.T.C. and Another Vs. B.S. David Paul*, Their Lordships referring to the decisions rendered in *State of Uttar Pradesh and Another Vs. Brijpal Singh*, ; *Rajasthan SRTC vs. Shyam Bihari Lal Gupta*, (2005) 7 SCC; *Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) and Others Vs. Abdul Kareem*, ; *A.P.S.R.T.C. and Another Vs. S. Narsagoud*, ; and *State Bank of India Vs. Ram Chandra Dubey and Others*, expressed the view that backwages cannot be granted as a natural consequence under the provisions of Industrial Disputes Act, 1947.

In *U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey*, a two-Judge Bench of the Apex Court opined as under:

17. Before adverting to the decisions relied upon by the learned counsel for the parties, we may observe that although direction to pay full backwages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing

at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.

The changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the government in the wake of prevailing market economy, globalization, privatization and outsourcing is evident.

The judgments and orders of the Labour Court and the High Court are set aside and it is directed that the Respondent herein shall be entitled to 25% backwages of the total backwages payable during the aforesaid period and compensation payable in terms of section 6-N of the U.P. Industrial Disputes Act. If, however, any sum has been paid by the Appellant herein, the same shall be adjusted from the amount payable in terms of this judgment.

In Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another, Their Lordships have expressed thus:

6. A law in absolute term cannot be laid down as to in which cases, and under what circumstances, full backwages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration. It is not in dispute that the Respondent No. 1 herein was appointed on an ad hoc basis; his services were terminated on the ground of a policy decision, as far back as on 24-1-1987. The Respondent No. 1 had filed a written statement wherein he had not raised any plea that he had been sitting idle or had not obtained any other employment in the interregnum. The learned counsel for the Appellant, in our opinion, is correct in submitting that a pleading to that effect in the written statement by the workman was necessary. Not only no such pleading was raised, even in his evidence, the workman did not say that he continued to remain unemployed. In the instant case, the Respondent herein had been reinstated from 27-2-2001. 16. We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full backwages was the usual result. But now with the passage of time, it has come to be realized that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at.

In view of the fact that the Respondent had been reinstated in service and keeping in view the fact that he had not raised any plea or adduced any evidence to the effect that he was remained unemployed throughout from 24-1-1987 to

27-2-2001, we are of the opinion that the interest of justice would be sub-served if the Respondent is directed to be paid 50% of the backwages.

We are conscious, some of the judgments were delivered in the context of Industrial Disputes Act, 1947 and some directly in exercise of writ jurisdiction. The principle with regard to backwages, as is manifest, has gone a seachange. The earlier view was that with the quashment of the order of termination consequent grant of full backwages were a logical corollary. Presently, as the law has been enunciated, it would depend upon many a factor. A pragmatic view has to be taken.

The order of compulsory retirements were passed in the year 2002. We have been apprised by Mr. Anoop Nair, learned counsel for the respondent/Federation that it is undergoing a tremendous financial crunch. It earns almost no profit. Regard being had to the facts and the circumstances in totality, the law in the field, the financial crunch suffered by the Federation and keeping in view the concept of a pragmatic approach, we are of the considered opinion that grant of 20% backwages would meet the ends of justice.

Consequently, the writ appeals are allowed in part, the orders passed by the learned Single Judge are set aside and also the orders of compulsory retirement that have visited the appellants. We direct that the appellants in each case be reinstated and they shall be entitled to 20% back-wages which shall be paid to them within a period of four months hence. There shall be no order as to costs.