

(2004) 04 GUJ CK 0054

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1323 of 1997 in Special Civil Application No. 4121 of 1984

Jagdishchandra Maganlal Trivedi

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 15-04-2004

Acts Referred:

Army Act, 1950 — Section 72
Constitution of India, 1950 — Article 14, 142, 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2005) 1 LLJ 1092

Hon'ble Judges : Bhawani Singh, C.J;H.K. Rathod, J

Bench : Division Bench

Advocate : Sunil K. Shah, in Letters Patent Appeal No. 1323 of 1997, for the Appellant; Pranav G. Desai, in Letters Patent Appeal No. 1323 of 1997, for the Respondent

Final Decision : Allowed

Judgement

H.K. Rathod, J.—Heard learned Sr. Counsel Mr. Yatin Oza with Mr. Sunil K. Shah for the appellant and Mr. Pranav G. Desai, learned advocate for the respondent. In this Letters Patent Appeal, the appellant has challenged the oral judgment dated July 8, 1997 delivered by the learned Single Judge (Coram : S.K. Keshote, J.) in Special Civil Application NO. 4121 of 1984. Brief facts are as under:

Whether reporters of Local Papers may be allowed to see the Judgment ?

2. Initially, the respondent bank called explanation from the appellant by letter dated November 24, 1978 in respect of the alleged incident. The appellant JAGDISHCHANDRA MAGANLAL TRIVEDI had received charge sheet dated January 24, 1981 when he was working as Branch Manager in State Bank of India, Borsad Branch. Alleged incident is dated October 7, 1978. In charge sheet, following charges were levelled against the appellant :

"(a) A shortage of cash amounting to Rs.55,000.00 in the currency chest balance

at the branch and its replenishment brought to your notice on the 7th October, 1978 were not reported by you to your controlling authority till 8.11.1978. You also failed to record these shortages and their subsequent recovery in any of the bank's books.

(b) Though you were aware of certain acts of Shri R.U. Patel, cashier, committed with mala fide intention, you failed to report the incidents to your controlling authority ?

(c) Knowing fully well that Shri R.U. Patel had committed serious irregularities in the cash department, you failed to proceed against him. "

3. In charge sheet, details of the charges were also given by the competent authority. The Chief General Manager was competent authority or disciplinary authority who had issued the charge sheet. Reply was submitted by the appellant on April 10, 1981. The appellant was placed under suspension with effect from April 21, 1979. Subsequent to the suspension of the appellant, CBI Investigation was carried out. According to the appellant, in report of the CBI, no prima facie case was found against the appellant, therefore, suspension order was revoked and the appellant was reinstated in service by order dated March 13, 1981. Copy of the report of the CBI was demanded by the appellant but the same was not supplied. Departmental inquiry was initiated against the appellant and the inquiry officer was appointed on April 30, 1981. The inquiry officer submitted his report on May 13, 1982. The inquiry officer come to the conclusion that the second and third charges are established to his satisfaction and the first charge had been partly proved.

4. The competent authority after receiving report from the inquiry officer, was in agreement with the findings of the enquiry officer. The competent authority also gave reasons for his agreement. The competent authority imposed punishment of compulsory retirement against the appellant with immediate effect by order dated August 2, 1982. Alongwith the order of punishment, copy of the findings of the enquiry officer was enclosed. Then, the appellant preferred departmental appeal on August 30, 1982 before the Local Board. The appellate authority Local Board decided the appeal by order dated May 7, 1983. The appellate authority modified the order of punishment from compulsory retirement to reversion to the lower cadre JMC Scale-I. Then, the appellant was reinstated in service. Having reached the age of superannuation, the appellant retired in December, 1992. Affidavit in reply was filed by the respondent bank through its Chief General Manager Shri Laxman G. Kulkarni. Thereafter, further affidavit was filed by the respondent bank through its General Manager Shri V. Christian and certain documents relating to subsequent misconduct and order of punishment were produced on record. Said affidavit of the bank was replied by the appellant on April 17, 1997.

5. Mr. Oza, learned Sr. Counsel for the appellant submits that looking to the charge sheet itself, misconduct is not proved against the appellant; non supply of

the copy of the CBI Report amounts to denial of reasonable opportunity to the appellant. Once, in CBI Investigation, the appellant was not held liable for the alleged misconduct, subsequent departmental inquiry on the same subject is against the principles of natural justice. He also submitted that the non reporting of the alleged incident within one month to the Controlling Authority is not a misconduct. Why some time consumed for reporting to the Controlling Authority was explained by the appellant in his reply. Even looking to their circular, such incident is required to be reported to the Controlling Authority within one month, in this case, there was a delay of one day. He also submitted that the Circular dated August 24, 1981 [Annexure-M] is not applicable to the facts of the case as the alleged incident was of 1978. No retrospective effect was given to the Circular dated August 24, 1981. However, the appellant had promptly reported before the controlling authority after collecting relevant material of the alleged incident. It was also emphasized by him that in an appeal, the appellate authority gave finding that only negligence was found to be proved by not promptly reporting shortage of cash in his branch to the Controlling Authority. He also submitted that the order of compulsory retirement has merged with the order of the appellate authority Local Board, therefore, looking to the findings, no charge is proved as per the decision of the appellate authority. According to his submission, in view of such findings, no punishment could have been imposed against the appellant, therefore, according to him, impugned judgment delivered by the learned Single Judge is required to be quashed and set aside. He also submitted that at present, the appellant is aged more than 75 years suffering from the last stage of cancer.

6. On the other hand, learned advocate Mr. Pranav G. Desai for the respondent bank submitted that the appellate authority has rightly passed the order and no error has been committed. According to him, though the order of the appellate authority is there, findings given by the competent authority have remained as they were, therefore, that findings were required to be considered. He also submitted that the appellant attempted to shield one Shri R.U. Patel who was Cashier was the main culprit, therefore, the appellant was responsible as a Branch Manager and was rightly punished by the authority. He also submitted that this court is having limited jurisdiction while exercising powers under Article 226 of the Constitution; this court cannot act as an appellate authority. He also emphasized that the scope of judicial review is very limited in such cases and casual interference in such matters is not permissible under the law. For that, he relied upon certain decisions of the apex court as under:

(1) B.C. Chaturvedi Vs. Union of India and others, (2) UP State Road Transport Corporation v/s. Mohanlal Gupta and others [(2000) 9 SCC 521]. (3) Secretary to Government, Home Deptt. and Others Vs. Srivaikundathan, (4) The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, (5) Tara Chand Vyas Vs. Chairman and Disciplinary Authority and Others,

7. Shri Desai, learned advocate for the respondent read over relevant paragraph

from each decision before us. In short, his submission was that a judicial review is not an appeal from a decision but a review of the manner in which decision is given. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. The power of judicial review does not act as an appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court may interfere where proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribed under the mode of enquiry or where the conclusion or the findings reached by the disciplinary authority are based on no evidence. If the conclusion or the findings be of such a nature reasonable person would have ever reached, the Court may interfere with the conclusion or the findings and mould the relief so as to make it appropriate to the facts of that case. The principles laid down in all the said decisions were high lighted by the learned advocate Mr. Desai by reading the observations of the apex court. His submission was that in such a matter, when there is no violation of the principles of natural justice and statutory rules, this Court should not interfere with the orders in question. Alternatively, Mr. Desai submitted that some punishment must be awarded to the appellant. He suggests that one or two increments must be stopped with or without cumulative effect. Except that, no other submissions were made by the learned advocate Mr. Desai before us.

8. We have considered the impugned judgment rendered by the learned Single Judge. We have also perused the relevant records of the petition and appeal. We have given our anxious consideration to the submissions made by the learned advocates for the parties. The decisions cited by the learned advocate Mr. Pranav G. Desai have been considered by us. In special civil application, the appellant challenged two orders namely order dated May 7, 1983 [Annexure-J] passed by the appellate authority board and the order dated November 30, 1983 [Annexure-L] passed by the appellate authority in respect of the second appeal of the appellant dated October 11, 1983. The second appeal filed by the appellant was dismissed by the appellate authority. The appellate authority local Board examined the first appeal of the appellant dated August 30, 1982 on April 19, 1983 which was communicated to the appellant by letter dated May 7, 1983. Following orders were passed by the appellate local board:

"The Board are of the opinion that Shri J.M. Trivedi has shown negligence by not promptly reporting the shortage of cash in his branch to the controlling authority. However, on the basis of the following considerations and on compassionate grounds the Board resolves that Shri J.M. Trivedi may be punished for his negligence under the Rule 49(a) by being reverted to a lower cadre i.e. to that of JMC Scale I.

a) The past record of long service of 28 years of Shri JM Trivedi in the Bank does not show any financial irregularities committed by him. b) In this particular case, there is no loss involved to the bank. c) Taking the fact (b), Shri Trivedi may be

given a benefit of doubt considering his intention. d) His long service in the Bank and his social obligation of family life also needs to be taken into account on compassionate grounds. "

Shri JM Trivedi's substantive salary in the reverted grade will be fixed at Rs.1500.00 per mensem and he will draw his next increment in the scale on 2nd August, 1982 the date on which his increment ordinarily falls due. His period of suspension will be treated as such."

2. You are hereby instructed to report for duty immediately on receipt of this letter to the Chief Regional Manager, Ahmedabad."

9. Thus, the appellate authority board come to the conclusion that only negligence was there on the part of the appellant in not promptly reporting the shortage of cash in his branch to the controlling authority. Except that, no other misconduct as alleged and found to be proved against the appellant by the competent authority was found to be proved by the appellate local board. Thus, the punishment of reversion was imposed on the appellant by the board only on the ground of negligence. Thus, considering 28 years past unblemish service record of the appellant, as there was no loss involved to the bank, considering his intention, the board was of the opinion that a benefit of doubt should be given to the appellant. His social obligation of family life was also considered. When the intention of the appellant was considered by the Board and was not doubted by the Board, then, the question of negligence does not arise. No specific period has been specified for reporting to the controlling authority in any circular. Circular dated August 24, 1981 is not applicable to the case of the appellant. It was relating to some fraud/suspected fraud which is required to be reported to the Reserve Bank of India. Therefore, non reporting by the appellant has been considered as a negligence on the part of the appellant. If there is any procedural irregularity, same cannot be termed as "negligence" if such negligence is not having any connection with intention. In this case, considering his intention, the Board gave benefit of doubt. Therefore, negligence is not connected with intention. Intention of the appellant is not doubted by the appellate local board. The appellant had explained the circumstances from the date of the incident till the date of reporting about one month and one day to find out Mr. R.U. Patel, main culprit, to pursue him to collect the amount and to ascertain whether any similar irregularity were committed or not, to inquire into it and ultimately the appellant had been able to get all the amount of Rs.55000.00 deposited in the bank which was found to be shortage and, thereafter, inquiring in the matter in absence of Shri R.U. Patel while sanctioning the leave. All this exercise consumed some time. Unless the alleged incident is completely inquired at the level of the branch manager, the appellant was not able to report immediately to the controlling authority. In reply to the charge sheet, defence was narrated in detail by the appellant. For not reporting promptly, his intention was not doubted as per the findings given by the appellate local board. Therefore, looking to the findings as it is and considering

the reply of the appellant, according to our opinion, no misconduct of negligence or any other lapse has been found to be proved against the appellant. Therefore, punishment imposed by the appellate board is illegal.

10. We are aware about our powers with limitation. In *B.C. Chaturvedi Vs. Union of India and others*, while concurring with the decision of Ramaswamy, J. it was observed by Justice Hansaria, J. as under:

"HANSARIA, J. (concurring)- I am in respectful agreement with all the conclusions reached by learned brother Ramaswamy, J. This concurring note is to express my view on two facts of the case. The first of these relates to the power of the High court to do "complete justice", which power has been invoked in some cases by this court to alter the punishment/penalty where the one awarded has been regarded as disproportionate but denied to the High courts. No doubt, Article 142 of the Constitution has specifically conferred the power of doing complete justice on this point, to achieve which result it may pass such decree or order as deemed necessary, it would be wrong to think that other courts are not to do complete justice between the parties. If the power of modification of punishment/penalty were to be available to this Court only under Article 142, a very large percentage of litigants would be denied this small relief merely because they are not in a position to approach this Court, which may, inter alia, be because of the poverty of the person concerned. It may be remembered that the framers of the Constitution permitted the High Courts to even strike down a parliamentary enactment, on such a case being made out, and we have hesitated to concede the power of even substituting a punishment/penalty, on such a case, being made out. What a difference! May it be pointed out that Service Tribunals too, set up with the aid of Article 323-A have the power of striking down a legislative act. "

11. In para 25, the apex court observed as under:

"25. No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of the High Court's view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law makers do desire application of judicial mind to the question of even proportionality of punishment/penalty. I have said so because the Industrial Disputes Act, 1947 was amended to insert Section 11-A in it to confer this power even on a labour court/industrial Tribunal. It may be that this power was conferred on these adjudicating authorities because of the prevalence of unfair labour practice or victimization by the management. Even so the power u/s 11-A is available to be exercised, even if there be no victimization or taking recourse to unfair labour practice. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to government employees or employees of public corporations. I have said so because if need for maintenance of office discipline be the reason of our adopting

a strict attitude qua the public servants, dispute has to be maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference as the appellate/revisional authority is known to have taken a different view on the question of sentence only rarely. I would, therefore, think that but for the self imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionality of punishment/penalty. I then while seized with this question as a writ court interference is permissible only when the punishment/penalty is shockingly disproportionate."

12. In *Kailash Nath Gupta v. Enquiry Officer (RK Raj) Allahabad Bank and others* [2003 Lab. IC 2290], in a very identical case where loan has been disbursed without sufficient security by the officer, the apex court observed that some procedural irregularity cannot be termed to be negligence to warrant extreme punishment of dismissal from service and observed as under in para 10 and 11:

"10. It is also further stated in the same judgment that "the High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof.

11. In the background or what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject matter of his removal from service. The stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the bank (which he quantifies at about Rs.46000/-) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most, there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service."

13. Looking to the facts of the present case, not to promptly reporting to the controlling authority about the shortage of cash has been considered to be the negligence of appellant by the appellate Local Board but according to our opinion, considering the evidence, when the intention of the appellant was not doubted and when the benefit of doubt has been given, means, full exoneration, therefore, conclusion to prove negligence is contradictory findings. At the most, it

could be termed as procedural irregularity but it cannot be termed to be the negligence of the appellant.

14. When the Court is reading, perusing the order in question, proper reading of the evidence does not amount to reappreciation of the evidence according to the decision of the apex court in case of Sri Champa Lal Vs. Sri Shaik Najmuddin alias Gulsheer Pasha and Another, It is also the duty of the court to properly apprise all the evidence of an order passed by the authority and even that cannot be considered to be the reappreciation of the evidence by the Court.

15. Recently, the apex court has considered the question of punishment, proportionality, judicial review and Court's interference in Dev Singh v/s. Punjab Tourism Development Corporation and another 2003 SCC 1198]. In that case, the apex court observed that in absence of any ulterior motive, punishment of dismissal would shock judicial conscience. After considering two earlier decisions of the apex court in Bhagat Ram Vs. State of Himachal Pradesh and Others, and Ranjit Thakur v. Union of India and Ranjit Thakur Vs. Union of India (UOI) and Others, the apex court observed as under in para 6 and 7:

"6. A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court, then, the Court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the above noted judgments of this court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case.

7. Applying the said principles laid down by this Court in the cases noted hereinabove, we see that in this case the appellant has been serving the respondent corporation for nearly 20 years with unblemish service before the present charge of misconduct was levelled against him. The charge itself shows that what was alleged against the appellant was misplacement of a file and there is no allegation whatsoever that this file was either misplaced by the appellant deliberately or for any collateral consideration. A reading of the charge sheet shows that the misplacement alleged was not motivated by any ulterior consideration and at the most could be an act of negligence, consequent to which the appellant was unable to trace the file again. The disciplinary authority while considering the quantum of punishment came to the conclusion that the misconduct of the nature alleged against the appellant should be viewed very seriously to prevent such actions in future, whereby important and sensitive records could be lost or removed or destroyed by the employee under whose custody the records are kept. Therefore, he was of the opinion that a deterrent punishment was called for, forgetting a moment that no such allegation of

misplacing of important or sensitive record was made in the instant case against the appellant and what he was charged of was misplacement of a file, importance or sensitiveness of which was not mentioned in the charge sheet. Therefore, in our opinion, the disciplinary authority was guided by certain facts which were not on record, even otherwise, we are of the opinion that when the Service Bye laws applicable to the Corporation under Service Bye law 17 provide various minor punishments, we fail to appreciate why only maximum punishment available under the said Bye laws should be awarded on the facts of the present case. We think the punishment of dismissal for mere misplacement of a file without any ulterior motive is too harsh a punishment which is totally disproportionate to the misconduct alleged and the same certainly shocks our judicial conscience. Hence, having considered the basis on which the punishment of dismissal was imposed on the appellant and the facts and circumstances of this case, we think to avoid further prolonged litigation it would be appropriate if we modify the punishment ourselves. On the said basis, while upholding the finding of misconduct against the appellant, we think it appropriate that the appellant be imposed a punishment of withholding of one increment including stoppage at the efficiency bar in substitution of the punishment of dismissal awarded by the disciplinary authority. We further direct that the appellant will not be entitled to any back wages for the period of suspension. However, he will be entitled to the subsistence allowance payable upto the date of the dismissal order."

16. There is one old decision of the apex court in Ex. Naik Sardar SINGH v. Union of India and others [AIR 1982 SC 417] where the doctrine of proportionality was examined. The facts of the said case were to the effect that the accused, army jawan was found to have extra 7 bottles of rum within area under prohibition while going to home town, having valid permit to carry 5 bottles. Plea was that the extra bottles were purchased from Army Canteen on chit given by higher authority. In such facts, punishment of three months RI and dismissal from service was held liable to be set aside being severe, arbitrary and violative of Section 72 while remanding the case to court martial. The apex court considered three decisions for examining doctrine of proportionality in paragraph 5 of the judgment. These three decisions are relevant to the question involved in this appeal. Therefore, para 5 of the judgment is reproduced as under:

"5. In Council of Civil Service Unions v. Minister for the Civil Service [1984] 3 All ER 935, 950 Lord Diplock said :

"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and third "procedural impropriety! This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the

future of the principle of "proportionality" which is recognised in the administrative law of several of our fellow members of the European economic community "

This principle was followed in *Ranjit Thakur Vs. Union of India (UOI) and Others*, where this Court considered the question of doctrine of proportionality in the matter of awarding punishment under the Army Act and it was observed thus [at p.2392 of AIR]:

"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock conscience and the amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

In *Bhagat Ram Vs. State of Himachal Pradesh and Others*, this Court held as under [at p.460 of AIR]:

"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

Applying these principles to the instant case, we are also constrained to say that there is an element of arbitrariness in awarding these severe punishments to the appellant."

17. In view of the above referred decision and relying on the principles laid down by the apex court in number of decisions and also considering the facts of this case, in light of the order passed by the appellate local board [page 69 dated May 7, 1983], according to our opinion, in fact, not to promptly reporting shortage of cash in his branch to the controlling authority cannot be termed as a negligence. The defence of the appellant was that the time consumed in finding out the main culprit Shri RU Patel who was ultimately found after number of days, efforts made by the appellant to secure the amount of Rs.55,000.00 which was deposited in bank account, account of the customer concerned was regularized, brother of the main culprit Shri RU Patel consumed some time to deposit Rs.5000.00; then to further inquire from RU Patel whether any such similar misconduct was committed in past or not. Therefore, leave was sanctioned so in absence of Shri RU Patel, independently, whole record can be examined and thereafter everything has been found to be all right and then he reported before the Controlling Authority within a period of one month and one day from the date of incident. Circular dated August 24, 1981 is not applicable to the facts of the present case. Therefore, bona fide efforts made by the appellant,

time consumed by the appellant in making such efforts cannot be termed as negligence on the part of the appellant especially when the intention of the appellant has not been doubted by the appellate authority Local Board. Therefore, with bona fide intention, whatever efforts made and the time consumed by the appellant in making such efforts cannot be made as a misconduct of negligence, therefore, looking to the grounds given by the appellate Local Board, according to our opinion, there is no allegation against the appellant about the dishonesty and misappropriation. He was having 28 years unblemish past record. In the incident, no loss has been caused to the bank, benefit of doubt has been given considering his intention. Social obligations of the appellant has also been taken into account. According to our opinion, once benefit of doubt has been given to the intention of the appellant, impliedly and clearly, appellant has been exonerated from all the charges which were levelled against the appellant by the competent authority. Considering all these aspects and considering the reasoning given by the appellate authority Local Board, we are of the opinion that no punishment could be imposed against the appellant. Second appeal has also been dismissed with casual approach by the second appellate authority. Therefore, according to our opinion, when no misconduct is proved, then, the question of imposition of punishment of reversion against the appellant does not arise.

18. We are of the opinion that the appellant was not at all responsible for any act of lapse with mala fide intention as alleged. That aspect has been legally examined by us. We have also considered that in CBI Report also, the appellant has not been held liable. We are also considering the hard reality that the incident took place on October 7, 1978; the appellate authority Local Board passed order on May 7, 1983; special civil application filed by the appellant in 1984 was decided by the learned Single Judge on July 8, 1997 and appeal against that decision is now decided by us in 2004. According to the date of superannuation, the appellant retired in 1992 after reaching the age of superannuation. From the date of incident, almost 25 years have passed. Now, the appellant is getting the result in 2004 when he is aged more than 75 years, suffering from the last stage of cancer.

19. We have perused the impugned judgment delivered by the learned Single Judge. Whole approach of the learned Single Judge is technical, ignoring the substance of the matter. Learned Single Judge ought to have examined the matter in light of the proportionality whether it has been pressed into service or not by the parties. The Court is not precluded from considering the matter with full application of mind and should not be confined only to the submissions made by the parties. If the Court feels that further merits are required to be examined for doing complete justice, then, the court should not stop and examine further merits of the matter for doing complete justice between the parties so that the dispute may reach the finality in all respects. Therefore, according to our opinion, the learned Single Judge has committed gross error in not considering the petition in proper perspective and, therefore, impugned judgment of the learned

Single Judge is required to be quashed and the said petition allowed.

20. Considering the reasons and the grounds given by the appellate authority Local Board in its order dated May 7, 1983, we are of the opinion that the misconduct is not proved against the appellant and, therefore, the punishment imposed by the appellate authority Local Board is not sustainable and that part of the order dated May 7, 1983 imposing punishment of reversion against the appellant is required to be quashed.

21. In the peculiar facts and circumstances of the present case, the decisions cited at the Bar by the learned Counsel Mr. Desai are not helpful to the respondent Bank.

22. Therefore, order passed by the appellate authority of the respondent bank dated May 7, 1983 relating to imposing punishment of reversion [Annexure-J] and the order dated November 30, 1983 [Annexure-L] are hereby quashed and set aside. Judgment and order of the learned Single Judge rendered in Special Civil Application No. 4121 of 1984 dated July 8, 1997 is hereby quashed. Special Civil Application No. 4121 of 1984 is allowed. Accordingly, this appeal is allowed with no order as to costs.

23. Considering the hard reality that the appellant is aged 75 years and suffering from the last stage of cancer as reported by the learned Senior Counsel for the appellant, we are of the opinion that the ends of justice would met if some suitable directions are issued to the respondent bank for implementation of the order within some reasonable period. Accordingly, respondent bank is directed to implement the order of this Court and to make payment of necessary benefits available to the appellant as a consequence of this order within two months from the date of receipt of xerox copy of this order.