

(2016) 06 GUJ CK 0012

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1190 of 2015 in Special Civil Application No. 4094 of 2014

Popatbhai Bhimabhai Sutreja

APPELLANT

Vs

Managing Director

RESPONDENT

Date of Decision : 08-06-2016

Acts Referred:

Citation : (2017) 1 GCD 73 : (2016) 3 GLR 2670 : (2016) LIC 3538

Hon'ble Judges : Mr. R. Subhash Reddy, CJ. and Mr. Vipul M. Pancholi, J.

Bench : Division Bench

Advocate : Mrs. Falguni D. Patel, Advocate, for the Appellant No. 1; Mr. Dhawan Jayswal, AGP, for the Respondent No. 4; Mr. H.S. Munshaw, Advocate, for the Respondent No. 3; Rule Served, for the Respondent Nos. 1 - 2, 4

Final Decision : Allowed

Judgement

Vipul M. Pancholi, J.—This appeal is filed under Clause 15 of the Letters Patent by the original petitioner against the judgment dated 06.08.2015 rendered by learned Single Judge in Special Civil Application No. 4094 of 2014 by which learned Single Judge has dismissed the petition.

2. The factual matrix of the case is as under:

2.1. It is the case of the appellant ? petitioner that he was appointed on 24.11.1982 as Assistant Manager by the Gujarat State Civil Supply Corporation Ltd. Thereafter, he was promoted as Deputy District Manager in 1997 and thereafter he got promotion to the post of Manager. However, said promotion was not accepted by him due to certain social circumstances. In January 2012, the petitioner was detected with cancer and therefore he submitted leave report. Thereafter he was transferred from Junagadh to Gandhinagar and therefore he reported at Gandhinagar in April 2012, on completion of his first round of treatment for cancer. In July, 2013, he was again transferred to Junagadh for 9 months on his request. Thereafter, again he was transferred to Gandhinagar and

he was told to remain present before the Medical Board. On 06.08.2013 certificate was issued by the Medical Board that petitioner was suffering from cancer and was in need of adequate treatment and rest. However, it is the case of the petitioner that he was not declared unfit for service by the Medical Board.

2.2. It is the case of the petitioner that on 29.10.2013 he was served with the show-cause notice calling upon him to show cause as to why he should not be punished for remaining absent and thereafter instead of initiating the inquiry against him, by an order dated 26.02.2014, he was made to retire prematurely. Petitioner has, therefore, preferred the aforesaid petition. The learned Single Judge dismissed the said petition by the impugned judgment and therefore the petitioner has preferred the present appeal.

3. Heard learned advocate Ms Falguni D. Patel for the appellant ? petitioner and learned advocate Mr. H.S.Munshaw for respondent Nos. 1 to 3 and learned AGP Mr. Dhawan Jayswal for respondent No. 4.

4. Learned advocate Ms Falguni Patel appearing for the appellant contended that the order dated 26.02.2014 passed by the respondent ? Corporation is non-speaking order and not in consonance with the condition stipulated in G.R. dated 28.07.1987. The respondent - Corporation has violated the principles of natural justice and without giving an opportunity of hearing the order of premature retirement of petitioner was passed and therefore on this ground the learned Single Judge ought to have quashed and set aside the said order.

5. Learned advocate Ms. Patel thereafter submitted that the respondent - Corporation has passed the impugned order which is not in public interest but the same was punitive in nature. At this stage, after referring to the show cause notice dated 29-30.10.2013 produced at Annexure-C, page 20 with the compilation, it is contended that the respondent authority has stated that the petitioner was asked to produce fitness certificate from the Medical Board. However, he has failed to produce such certificate. It is alleged in the show-cause notice that though the medical leave is over, petitioner has not produced any leave report before the Head Office, Gandhinagar and thereby petitioner has committed grave misconduct and violated the Conduct Rules of respondent ? Corporation and therefore the petitioner was called upon to give explanation why penalty under Rule 6 of the Discipline and Appeal Rules should not be imposed. Thus, it is contended that after issuance of the said show cause notice, without following the procedure prescribed under the Discipline and Appeal Rules of the respondent ? Corporation and without holding an inquiry against the petitioner straight way the respondent ? Corporation has passed the impugned order of retiring the petitioner prematurely. The said order is punitive in nature and therefore the learned Single Judge ought to have quashed the said order. However, learned Single Judge has not properly appreciated the aforesaid important aspect of the matter. Hence, this Court may quash and set aside the said order.

6. Learned advocate Ms. Patel thereafter urged that entire service record of the petitioner is unblemished and petitioner has never received any adverse remarks nor any departmental inquiry was held against him. Petitioner got promotion from time to time and in past petitioner has never remained absent from his duty without prior permission of the competent authority. Petitioner was on medical leave after getting it sanctioned by the competent authority and as on 01.07.2013 more than 250 medical leave and more than 300 privilege leave were in balance with the petitioner. At this stage, it is contended that the petitioner was never declared as physically or mentally unfit for service by the Medical Board and therefore the impugned order dated 26.02.2014 of premature retirement of the petitioner is not in consonance with the G.R. dated 12.01.1999 issued by the Government and Circular dated 27.09.2013 issued by the respondent - Corporation.

7. It is further submitted by learned advocate for the appellant that there are three other employees who are also suffering from cancer and on long medical leave who are also of the same age group but cases of such employees are not reviewed and no such order of premature retirement is passed against them. However, order of premature retirement is passed against the petitioner for some extraneous reasons and therefor the impugned order is illegal, arbitrary, discriminatory and violative of Article 14 of the Constitution of India and hence the same may be quashed and set aside. It is contended that learned Single Judge has failed to consider all the aforesaid important aspects of the matter and hence the order passed by the learned Single Judge may also be quashed and set aside.

8. Learned advocate for the appellant has placed reliance on the following decisions rendered by the Hon''ble Supreme Court:

(1) In the case of Rajesh Gupta v. State of Jammu and Kashmir and Others, reported in (2013) 3 SCC 514.

(2) In the case of Ram Ekbal Sharma v. State of Bihar and another, reported in AIR 1990 SC 1368

(3) In the case of Swami Saran Saksena v. State of U.P., reported in AIR 1980 SC 269

(4) In the case of Sukhdeo v. Commissioner, Amravati Division, Amravati and another, reported in (1996) 5 SCC 103

9. On the other hand, learned advocate Mr. Munshaw appearing for the respondent ? Corporation has submitted that the respondent - Corporation is a Government company engaged in public distribution system and rules and regulations applicable to Government employees are not ipso facto applicable to the respondent - Corporation unless they are adopted by the Corporation. It is submitted that Rule 161 of Bombay Civil Services Rules empowers the State Government to retire a Government servant from Government service

prematurely on attaining the age of 50 or 55 years, as the case may be, if the Government is satisfied that it is necessary to do so in the public interest. Procedure for the same has been prescribed by the Government by issuing G.R. dated 28.07.1987. Such procedure was modified by another G.R. dated 12.01.1999. At this stage, it is contended that the respondent - Corporation has taken a decision in the meeting held on 27.09.2013 of Board of Directors by which the provision of premature retirement is adopted by the Corporation and therefore the respondent - Corporation issued circular dated 22.10.2013 regarding implementation of the provisions of premature retirement in the respondent - Corporation. It is contended that the impugned order was passed by the respondent - Corporation in public interest and the said order is not punitive in nature and therefore principles of natural justice have no application in case of such premature retirement for inefficient or unsatisfactory service.

10. Learned advocate Mr. Munshaw thereafter contended that petitioner was working as Deputy Manager (Commerce) at the Head Office of respondent - Corporation since 01.07.2013. He was remaining continuously absent due to his ill-health since July 2013. Earlier also when the petitioner was working at Junagadh, he remained absent for 49 days on medical ground during the year 2012. On completing 55 years of age as on 15.11.2013, the review committee was authorised to evaluate the services of the petitioner as per the circular issued by the Corporation with regard to the premature retirement of the petitioner. Accordingly, in the meeting of the review committee held on 16.01.2014, it was decided that long and continuous absent of petitioner due to his ill-health had adversely affected the administration of the Corporation and therefore it was in the interest of the Corporation to retire the petitioner prematurely. Accordingly, the impugned order was passed and therefore no illegality is committed by the respondent ? Corporation while passing the impugned order. Hence, the learned Single Judge has rightly dismissed the petition.

11. Learned advocate Mr. Munshaw has placed reliance upon the decision rendered by the Hon"ble Supreme Court in the case of National Aviation Company of India Limited v. S.M.K. Khan, reported in (2009) 5 SCC 732 and submitted that the scope of judicial review of this Court is very limited while interfering with the decision taken by the authority by which the order of premature retirement is passed. The petitioner has failed to demonstrate that the impugned order is arbitrary, irrational or is passed with mala fide intention and therefore this Court may not interfere with the said order. Hence, this appeal be dismissed.

12. Learned AGP has supported the submission canvassed on behalf of the learned advocate Mr. Munshaw.

13. We have considered the submissions canvassed on behalf of the learned advocates appearing for the parties. We have also considered the material produced on record and the decisions upon which reliance is placed by the

learned advocates.

14. At the outset, it is required to be noted that when this Court directed the learned advocate appearing for the respondent ? Corporation to produce the copy of the confidential reports of the petitioner, such confidential reports for last 10 years i.e. for the period between 2004 to 2013 were produced before us. We have also gone through said confidential reports of the petitioner. It is also required to be stated at this stage that during the pendency of the appeal, the appellant has expired and therefore his legal heirs are brought on record.

15. It emerges from the record that petitioner was appointed in November 1982 as Assistant Manager by the respondent - Corporation and thereafter he got promotion from time to time. It is not in dispute that the entire service record of approximately 30 years of service of petitioner is unblemished. Learned Single Judge has also discussed it in the last paragraph of the impugned order. From the confidential reports produced before us i.e. the confidential reports of last 10 years, it can be said that there is nothing adverse which is found against the petitioner. In light of the aforesaid undisputed facts, if the impugned order passed by the respondent ? Corporation is carefully examined, it can be seen that the review committee has observed in the meeting held on 16.01.2014 as under:

"Under the letter dated 28.11.2013 of the Medical Board, Shri Sutreja has been advised to take rest from 25.07.2013 to 31.08.2013. Thereafter, Shri Sutreja has not submitted fitness report. On Shri Sutreja being transferred at Gandhinagar, he has avoided to resume duty for one or other reasons. Lastly, he has not submitted fitness report after 31.08.2013. Because of his illness and irregularity in duty, mismanagement is also created in the office administration and it seriously affects the administration.

In view of these details, because of absence of Shri Sutreja on duty for a long time, disturbance is created in the office work, therefore as it is not in the interest of the corporation to allow such long term absence on duty and it has affected the services of the Corporation, a decision was taken in the committee to grant immature retirement to Shri Sutreja."

16. Accordingly, the impugned order was passed on 26.02.2014 by the Corporation. In the impugned order dated 26.02.2014, the respondent - Corporation has stated that it is not desirable to continue the petitioner in the service of the Corporation as per the decision taken in the meeting of review committee.

17. Thus, the review committee has considered that the petitioner has not submitted fitness report and when he was transferred at Gandhinagar, he avoided to resume the duty for one or other reasons and because of his illness and irregularity in duty, administration is seriously affected. Thus, the review committee has taken into consideration about the misconduct committed by the petitioner by not submitting the fitness report and not resuming duty at

Gandhinagar.

18. It is also revealed from the record that before taking such decision by the review committee, the respondent ? Corporation issued show cause notice to the petitioner on 29- 30.10.2013 which is produced at Annexure-C with the compilation. In the said show cause notice also it was alleged that fitness certificate has not been produced by the petitioner and necessary details were not supplied to the Medical Board. Though the medical leave is over, petitioner has not reported for duty at Gandhinagar and thereby he has committed grave misconduct and violated Rule 3 of the Conduct Rules of the Corporation. Petitioner was therefore called upon to show cause why penalty under Rule 6 of the Discipline and Appeal Rules of the Corporation shall not be imposed upon him. Thus, it appears that for the reasons discussed by the review committee the respondent Corporation had already issued the show cause notice to the petitioner and he was called upon to show cause why penalty should not be imposed upon him for the said purpose. Instead of holding a departmental inquiry for the said misconduct, straight way the respondent Corporation has passed the impugned order of prematurely retiring the petitioner from service and therefore it cannot be said that said order was passed in public interest. The said order is punitive in nature for the alleged misconduct committed by the petitioner. Thus, we are of the opinion that instead of holding a departmental inquiry the respondent Corporation has adopted a shortcut and passed the impugned order.

19. Apart from the above, there is no denial with regard to the averment made by the petitioner that more than 250 medical leave and more than 300 privilege leave were in balance with the petitioner as on 01.07.2013. It is also not in dispute that petitioner was on leave for a period of 49 days but such leave was sanctioned by the competent authority of the respondent ? Corporation. Therefore, when the medical leave was sanctioned by the competent authority of the respondent Corporation, it cannot be said that petitioner has remained absent without prior permission. It is also not in dispute that the Medical Board has examined the petitioner and has advised rest for few days. Moreover, petitioner was not declared physically or mentally unfit by the Medical Board or any competent authority. Thus, on overall facts and circumstances of the present case, we are also of the opinion that the impugned decision taken by the respondent Corporation is arbitrary and perverse.

20. At this stage, it is to be observed that the learned Single Judge has discussed the facts of the case and decisions rendered by the Hon"ble Supreme Court and thereafter observed in para 23 as under:

"23. Insofar as the decision of the Supreme Court in the case of State of Gujarat v. Umedbhai M. Patel, (2001) 3 SCC 314 is considered, I am of the opinion that the present case does not fall into any of the categories which are enumerated in paragraph 11 of the said decision. In the present case, from the averments made in the memorandum of the petition, there is nothing to reveal that any

proceedings for initiating departmental inquiry had been either initiated or were contemplated at the time when the order of compulsory retirement was passed. Therefore, there is no reason to believe that the order of compulsory retirement had been passed as a short cut to avoid any departmental inquiry."

21. We are of the opinion that the aforesaid observation of the learned Single Judge is factually incorrect because as observed herein above, the show cause notice dated 29- 30.10.2013 was issued by the respondent Corporation for the same reasons alleging misconduct on the part of the petitioner and therefore he was called upon to give explanation why penalty under Rule 6 of the Discipline and Appeal Rules of the Corporation shall not be imposed. Thus, the order of compulsory retirement has been passed as a shortcut to avoid the departmental inquiry.

22. In the case of Rajesh Gupta (supra), relied upon by learned advocate for the appellant, the Hon"ble Supreme Court has observed and held in paragraph Nos.8, 9, 20, 21, 29, 30 and 31 as under:

"8. We may also notice at this stage that the appellant had a spotless service record throughout 24 years of service. In the annual performance report for the period 1.4.1997 till 31.3.1998, his work has been assessed as "Good". The reviewing authority has graded the appellant as a "Very Good Officer". Against the column of integrity, the remark is "Excellent". Similarly, for the year 1998-1999, he was assessed as "Good officer" and having "excellent" integrity. In the annual performance report for the year 1999-2000 again his integrity is said to be "Excellent". He has been assessed as a very capable and efficient officer. The overall assessment given by the reviewing authority is "A very good officer". For the year 2000-2001, the annual performance report again records that the appellant is "A good officer" with good integrity. A separate assessment was given on 12th March, 2005 for the period 27th October, 2001 to 29th July, 2002 and thereafter from 23rd October, 2002 till 23rd December, 2002. This annual performance report was recorded by the Deputy Commissioner, Jammu for the period of 11 months. In the aforesaid two tenures, the work and conduct of the appellant was found to be good. It is also recorded that no complaint was brought to the notice of the reporting officer. For the year 2003-2004 against the column integrity, it is mentioned that "nothing against came in notice". The reporting officer has said "he is a very good field officer". The reviewing officer assessed the appellant as "An outstanding officer".

9. In spite of having a blemish-free record of service as noticed above, the appellant was directed to be prematurely retired by order dated 26th April, 2005 on the basis of the recommendations made by the High Powered Review Committee. The conclusion on the basis of which the recommendations for retirement of the appellant has been made are as under:-

"5. As per inputs provided by the Additional DG CID the officer has amassed property disproportionate to his known sources of income which include a palatial

house at Krishna Colony Kathua built over about 3 kanals of land; two shops in Kathua market; six kanals of land in Kathua town, one kanal of land at Trikuta Nagar Jammu (Sector No. 3), two kanals of land at Trikuta Nagar extension, three kanals of land at Greater Kailash Colony, Jammu; 10 marla plot at Bhatiandi and bank account and lockers in United Commercial Bank, R.N.Bazar and Vijay Bank, Purani, Mandi, Jammu.

20. The principles on which a Government servant can be ordered to be compulsorily retired were authoritatively laid down by this Court in the case of Baikuntha Nath Das (supra). In Paragraph 34, the principles have been summed up as follows :

"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. This aspect has been discussed in paras 30 to 32 above.

21. The aforesaid principles have been re-examined and reiterated by this Court in the case of Nand Kumar Verma (supra). The principles have been restated as follows :-

34. It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the authority concerned but such satisfaction must be based on a valid material. It is permissible for the courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based. In the present matter, what we see is that the High Court, while holding that the track record and service record of the appellant was unsatisfactory, has selectively taken into consideration the service record for certain years only while making extracts of those contents of the ACRs. There appears to be some discrepancy. We say so for the reason that the appellant has produced the copies of the ACRs which were obtained by him from the High Court under the Right to Information Act, 2005 and a comparison of these two would positively indicate that the High Court has not faithfully extracted the contents of the ACRs.

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36. The material on which the decision of the compulsory retirement was based, as extracted by the High Court in the impugned judgment, and material furnished by the appellant would reflect that totality of relevant materials were not considered or completely ignored by the High Court. This leads to only one conclusion that the subjective satisfaction of the High Court was not based on the sufficient or relevant material. In this view of the matter, we cannot say that the service record of the appellant was unsatisfactory which would warrant premature retirement from service. Therefore, there was no justification to retire the appellant compulsorily from service.

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29. The report also does not indicate that there is any irregularity in the bank accounts maintained by the appellant. The affidavit filed on behalf of the State of Jammu and Kashmir clearly shows that according to the Vigilance Organization, three First Information Reports bearing Nos. 49/91, 11/95 and 63/94 were registered by the State Vigilance Organization against the appellant when he was posted as Executive Engineer (REW, Kathua). Upon investigation, all the FIRs were found to be "Not Proved". However, recommendation was made to initiate departmental action against the officer. In spite of the aforesaid recommendation, it has not been disputed before us, that no departmental action was ever initiated against the appellant. In fact, after the completion of the investigation into the FIRs, the appellant was promoted to the post of Executive Engineer on 15.12.1996. Therefore, it can be safely concluded that there were no material before the High Powered Committee to conclude that the officer possessed assets beyond his known source of income.

30. This now takes us to the other material on the basis of which the recommendation has been made by the High Powered Committee. It has been noticed by us earlier that the appellant was required, in the performance of his

official duties, to recommend the sanctioning of technical approval to the construction of works of various projects. The allegation with regard to issuing back dated technical sanctions was duly inquired into. The conclusion ultimately reached by inquiry officer noticed in the earlier part of the order indicates that at best the appellant acted in a casual and haphazard manner in the maintenance of records. Such negligence on the part of the appellant cannot per se lead to the conclusion that the appellant was acting in such a manner with an ulterior motive. The conclusions reached by the High Powered Committee also do not correlate to the assessment of work and integrity of the appellant in the annual performance report. As noticed earlier, in all the annual performance reports, the officer has been rated "very good", "excellent" and even "outstanding".

31. In view of the aforesaid, the conclusion is inescapable, that the order passed by the State Government suffers from vice of arbitrariness. The High Court erred in arriving at conclusions which were not borne out by the record produced before the High court. In view of the settled law, it is not possible for us to uphold the judgments of the Single Judge as also of the Division Bench."

23. In *State of Gujarat v. Umedbhai M. Patel*, reported in (2001) 3 SCC 314, the Hon"ble Supreme Court has summarised the principles with regard to compulsory retirement and observed in para 11 as under:

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

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(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."

24. In the case of *National Aviation Company of India Limited (supra)*, relied

upon by learned advocate for the respondent Corporation, the Hon"ble Supreme Court has observed in paragraph Nos. 13 to 16 as under:

"13. An order of compulsory retirement in pursuance of a rule/regulation which enables the competent authority to prematurely retire an employee, on the formation of a bona fide opinion that continuation of the employee in service will not benefit the institution or be in the interest of the institution (or will not be in public interest where the employee is a Government servant), on review of the performance/service record of the employee, on the employee attaining the specified age or completing the specified period of service, is valid and not open to challenge. It is neither a punishment nor considered to be stigmatic. Where the compulsory retirement, is not by way of punishment for a misconduct, but is an action taken in pursuance of a valid condition of service enabling the employer to prepone the retirement, the action need not be preceded by any enquiry and the principles of natural justice have no application.

14. The unsatisfactory service of the employee which may include any persistent misconduct or inefficiency furnishes the background for taking a decision that the employee has become a dead wood and that he should be retired compulsorily. Such "compulsory retirement" is different and distinct from imposition of a punishment of compulsory retirement (or dismissal/removal) on a specific charge of misconduct, where the misconduct is the basis for the punishment. The difference is on account of two factors: firstly, the employee on account of completing a particular age or number of years of service falls within the zone where his performance calls for assessment as to whether he is of continued utility to the employer or has become a deadwood or liability for the employer. Secondly, the record of service, which may include poor performance, unsatisfactory service or incidentally any recent conduct (which if separately considered may constitute a misconduct subject to punishment) when considered as a whole, leads the Reviewing Authority to the conclusion that the employee in question is not fit to be continued in service and not of utility to the employer. Therefore, any incidental reference to unsatisfactory service, or any remarks in the context of explaining the reason for compulsory retirement under the relevant rule, in the letter of compulsory retirement will not be considered as stigmatic, even though read out of context, they may be capable of being construed as allegations of misconduct.

15. Any order of compulsory retirement in terms of the rule/regulation providing for such compulsory retirement is not open to interference unless shown to be malafide or arbitrary or not based on any background material at all relating unsatisfactory service justifying the premature retirement.

16. When an order of compulsory retirement purports to be one under the rule/regulation providing for such premature retirement, the proper approach of the court would be to consider whether the order is sustainable with reference to the requirements of the relevant rule, rather than examining whether the order could also be construed as a punishment for misconduct -- vide *Baikuntha Nath Das v.*

Chief District Medical Officer, Allahabad Bank Officers" Association v. Allahabad Bank, I.K.Mishra v. Union of India, State of Uttar Pradesh v. Lalsa Ram and M.L. Binjolkar v. State of Madhya Pradesh."

25. Keeping in mind the aforesaid decisions rendered by the Hon"ble Supreme Court, if the facts of the present case are examined, we are of the opinion that the impugned order passed by the respondent ? Corporation is arbitrary and perverse and the same is nothing but a shortcut to avoid departmental inquiry. The impugned order is punitive in nature because of the alleged misconduct on the part of the petitioner and it cannot be said to be in public interest.

26. The decision in the case of National Aviation Company of India Limited (supra) upon which the reliance is placed by the respondent ? Corporation is not applicable to the facts of the present case because in the said case service of the concerned employee was unsatisfactory and several warnings and minor punishments were given for insubordination, indiscipline, negligence, sleeping on duty, etc. to the said employee. He was also charge-sheeted in regard to the repeated acts of misconduct and was imposed with the punishment of demotion to the post of chokidar. Even thereafter the service of the said employee was unsatisfactory resulting into several reprimands and warnings. However, he was again appointed as Security Assistant w.e.f. 17.08.1990 in the normal process of recruitment under internal selection. He was thereafter promoted in 1998. The material was on record that because of poor performance and unauthorized absence during the period between 1994 to 1997, warning was given to him. He admitted his absenteeism but offered the explanation that it was on account of family reasons. He requested that he may be continued in service assuring satisfactory service in future. Thus, in the aforesaid background, the order of compulsory retirement of the said employee was examined and the Hon"ble Supreme Court has discussed the aforesaid aspects.

27. However, in the present case, as discussed herein above, the entire service record of the petitioner is unblemished. He remained on medical leave which was already sanctioned. There is no adverse remarks in the confidential reports for a period of last 10 years. The only allegation in the show cause notice is that the petitioner has not produced the certificate of the Medical Board and not reported for the duty at Gandhinagar after his leave is over. For the said alleged misconduct no departmental inquiry was held against him and relying upon the said material the order of compulsory retirement is passed by observing that in the public interest and in the interest of the Corporation such order is passed. Thus, we are of the opinion that said order is arbitrary, perverse and is nothing but a shortcut adopted by the respondent Corporation and instead of holding a departmental inquiry, straight way the impugned order is passed which is in nature of penalty. Hence, the same is required to be quashed and set aside. In this background of facts, we are of the opinion that the learned Single Judge has also not properly appreciated the important aspects and therefore the order of learned Single Judge is also required to be quashed and set aside.

28. Accordingly, the appeal is allowed. The impugned order dated 26.02.2014 passed by the respondent Corporation is quashed and set aside. The judgment and order dated 06.08.2015 passed by learned Single Judge in Special Civil Application No. 4094 of 2014 is also quashed and set aside. The respondent ? Corporation is hereby directed to give all consequential benefits to the legal heirs of the deceased appellant within a period of 3 months from the date of receipt of this order.