UNREPORTED

IN THE HIGH COURT OF JUDICATURE AT

BOMBAY

BENCH AT AURANGABAD.

WRIT PETITION NO.36 OF 1997.

Nilkantha Prabhakar Wagle,
Age 58 years, Occ.Ex-
General Manager,
Textile Corporation of
Marathwada (TEXCOM) Ltd.,
Nanded, presently residing
at Unity Department Plot No.53,
Second Main Road, Sadashiv
Nagar, Belgaon-590 001. … Petitioner.

Versus

1. The State of Maharashtra.

2. The Textile Corporation of
Marathwada (TEXCOM) Ltd.,
MIDC, Industrial Area,
Balirampur, (Dhanegaon),
Nanded-431 601, through
its Managing Director.

3. Shri G.B.Raut,
Chairman, Textile Corporation
of Marathwada (Texcom) Ltd.,
MIDC Industrial Area,
Balirampur, (Dhanegaon),
Nanded-431 601.

4. Shri J.K.Santhia,
Vice-Chairman, (TEXCOM)
& Managing Director,
Maharashtra State Textile
Corporation Ltd., Lotus
House, 33-A, New Marine

Lines, Mumbai-20.

5. Shri V.Anand Swaroop,
Managing Director,
Textile Corporation of
Marathwada (TEXCOM)
Ltd., MIDC, Industrial Area,
Balirampur,(Dhanegaon),
Nanded.-431 601.

6. S.G.Vaidya,
Vaidya Assciate,
3rd floor (M), K.K.(Navsari),
Chambers, Sir P.Thakurdar
Marg,Fort, Mumbai.

7. Shri S.K.Khade,
Sandesh Niwas,
978/1, Kasar Lane,
At & Post & Tq.Shahapur,
Dist.Thane-421 601.

8. Shri B.M.L.Sahagal,
R/103, Natasha Enclave,
NIBM-Road, Kondhwa Khurd,
Pune-411 048.

9. Shri S.M.Joshi,
Director, TEXCOM & Director,
(Commercial) MSTC,
C/o Maharashtra State
Textile Corporation
(M.S.T.C.), Ltd.,Lotus
House, 33-A, New Marine
Lines, Mumbai-400 020.

10. Shri R.C.Joshi,
Managing Director,
Neuclear Power Corporation
of India, Vikram Sarabhai Bhawan,
Anu Shakti Nagar,Trombway,
Mumbai.

11. V.B.Gaikwad,
Manager (Industrial Relations),
Maharashtra State Textile
Corporation (MSTC)Ltd, Lotus House
33-A, New Marine Lines,

Mumbai-400 020.

12. S.G.Thakur,
Manager (Finance),
Maharashtra State Textile
Corporation (MSTC) Ltd.,
Lotus House 33-A,
New Marine Lines,
Mumbai-400 020.

13. Board of Directors,
Textile Corporation of
Marathwada,(TEXCOM) Ltd.,
MIDC, Industrial Area,
Balirampur (Dhanegaon),
Nanded-431 601.

14. Disciplinary Authority,
Textile Corporation of
Marathwada (TEXCOM) Ltd.
MIDC, Industrial Area,
Balirampur (Dhanegaon),
Nanded-431 601.

15. Shri Sambhajirao Pawar,
Director, TEXCOM,
R/o C/o Textile Corporation
of Marathwada (TEXCOM) Ltd.,
MIDC Industrial Area,
Balirampur (Dhanegaon),
Nanded-431 601. … Respondents.

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Mr.P.L.Shahane, advocate for the Petitioner.
Mr.G.K.Naik Thigle, Addl.Govt. Pleader for the State.
Mr.S.V.Natu, advocate for the Respondent Nos.6,7,11,12 and 15.

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CORAM : S.V.GANGAPURWALA &
A.I.S.CHEEMA,JJ.

Date : 05.05.2015.

ORAL JUDGMENT (Per S.V.Gangapurwala,J.)

1. Heard.

2. The petitioner at the relevant time was working as a Managing Director of the Textile Corporation of Marathwada (TEXCOM) Limited. The Departmental Inquiry was initiated against the petitioner in respect of the eight (8) charges. The Inquiry Officer exonerated the petitioner of all the charges. That Disciplinary Authority did not concur with the finding of the Inquiry Officer, as such issued show cause notice to the petitioner calling for the reply. The Disciplinary Authority imposed punishment upon the petitioner i.e. dismissal from service and recovery of Rs.12,47,000/- (Rupees twelve lacs forty seven thousand). The petitioner has assailed the said order in the present petition.

3. Mr.Shahane, learned counsel for the petitioner strenuously contends that the petitioner has performed his duty diligently and in the interest of the Respondent employer. The Inquiry Officer after considering the entire

evidence on record has exonerated the petitioner of all the charges. There was no reason for the Disciplinary Authority to take a contrary view. The learned counsel submits that as far as charge of notice pay is concerned, the same is totally erroneous. The petitioner was guided with the communication of the Deputy Secretary to Government who vide letter dated 20.6.1991 stated that Corporation is liable to make the payment of Notice pay and leave encashment. As such it would be clear that decision to pay amount towards the notice pay to the employees who were granted the benefit of V.R.S. Was based on the communications of the Central Government. The Inquiry Officer has considered the said aspect and has rightly exonerated the petitioner.

4. The charge of Ex-gratia payment is illegal. The ex-gratia payment is required to be paid to the persons who are in continuous service. The Inquiry Officer rightly considered the provisions of Section 25-B(2) of the Industrial Disputes Act. He has rightly interpreted the said provision vis-a-vis the

facts on record which were brought before him. The Disciplinary Authority on an irrational notion of law has held the petitioner guilty of the said charge. The provision of the Industrial Disputes Act, are rightly considered by the Inquiry Officer. The learned counsel submits that as far as Charge No.(iii) is concerned, while computing the ex-gratia payment, the Employer/Disciplinary Authority has not considered the definition of wages as is laid down under the statute. The same is not restricted to basic wages and Dearness Allowance only, it includes the other emoluments payable. No loss is sustained on account of the same. The Charge No.(iv) with regard to the Voluntary Retirement Scheme being made applicable to one Mr.A.M.Desai is also erroneous. He was working in supervisory category. His salary was in the pay-scale of Rs.1,000/- (Rupees one thousand), as such the said person come within the definition of Workman and the said scheme is rightly made applicable to him. His name was also included in the agreement placed before the Industrial Court for conciliation. Only names of workmen were included in the same. It is erroneous on the part of the Respondents to contend that said Mr.Desai, is of a middle level, Managerial cadre employee. The learned counsel further submits that as far as Charge in respect of granting benefit of V.R.S. To one Mr.N.K.Shaikh is concerned, the same is misplaced. The name of said Mr.Shaikh is also in the list of employees which was subject matter of agreement and placed before the Industrial Court. If the benefit of V.R.S. Would not have been given to him, then the Respondent/Employer would have been caused much more loss as benefit of retrenchment would have been required to be given to the said employee. The learned counsel submits as far as Charges Nos.(vi) to (viii) are concerned, no loss has been sustained by the employer nor any figure has been culled out of the alleged loss. The said charges are vague, without any specific instances and there is absolutely no evidence, worth the name. Even while calculating the alleged loss, which is denied by the petitioner, no amount is included in respect of the alleged Charges (vi) to (viii). The learned counsel submits that even the Disciplinary Authority has come to the conclusion that the petitioner is not guilty of any misappropriation or fraud, however, the punishment of dismissal from service and recovery is inflicted on the ground of negligence on the part of petitioner and causing loss. The said finding of negligence on the part of petitioner and causing loss is erroneous, illegal and without evidence on record. The Inquiry Officer has considered threadbare, the complete evidence on record, so also the legal position by referring various Judgments delivered by the Apex Court and this Court, so also the provisions of law and had rightly exonerated the petitioner.

5. Learned counsel submits in alternate that even the punishment imposed is disproportionate to the charges levelled. The learned counsel relies on the judgment of the Apex Court in a case of **“U.P.State Road Transport Corporation and others Vs. Mahesh Kumar Mishra and others”** reported in **[2000 (85) FLR 291].** According to the learned counsel, the Disciplinary Authority has on surmises and

conjectures disagreed with the finding of the Inquiry Officer. The charges against the petitioner are not established. In such a case, the punishment imposed by the Disciplinary Authority can not be sustained. The learned counsel relies on the judgment of the Apex Court in the case of **“Yoginath D.Bagde Vs. State of Maharashtra and another”** reported in **1999 II CLR 971.** According to the learned counsel, even this Court in writ jurisdiction under Article 226 of the Constitution of India can examine the question whether the findings are correct or not and whether the finding of the Disciplinary Authority is based on evidence. The learned counsel relies on the judgment of the Apex Court in a case of **“Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and others”** reported in **1984(II) LLJ 517.** So also on the judgment of the learned Single Judge of Gujarat High Court in a case of **“P.P.Parekh Vs. State of Gujarat”** reported in **(1989) II LLJ 267.**

6. Mr. Shahane, learned counsel relies on the judgment of the Apex Court in the case of

Girish Bhushan Goyal V/s BHEL & anr. [(2014) 1 SCC 82] with regard to the proportionality of the punishment.

7. Mr.Shahane, learned counsel further states that almost 83 suits were filed by the Respondent-Employer against the petitioners for recovery. Out of 83 suits, 81 suits are dismissed on merits and only two suits are decreed, of which appeals are filed by the petitioner and the appeals are pending. The learned counsel submits that the order of the Disciplinary Authority deserves to be set aside, the punishment imposed upon the petitioner also deserves to be set aside and the petitioner be awarded retiral benefits. Mr.Shahane, learned counsel further submits that the past record of the petitioner is unblemished.

8. Mr.Natu, learned counsel for the Respondent/Employer submits that the petitioner was holding a responsible post and it was his duty to see that V.R.S. Scheme is properly implemented. Because of the negligence on the

part of the petitioner, the Respondent has to sustain huge loss which is quantified at Rs.12.47 lacs after considering the evidence on record by the Disciplinary Authority. The learned counsel submits that there was no confusion as far as notice pay is concerned. Admittedly, notice pay was not part of the Scheme finalised and approved by the Government of Maharashtra. The Government of Maharashtra in its reply dated 28.6.1991 had made it abundantly clear that V.R.S as prepared does not require any change and the Government of India was to be moved for approval of the Scheme. The Government of India, vide order dated 17.2.1992 confirmed the Voluntary Retirement Scheme as framed without directing to include notice pay. The learned counsel submits that the scheme as finally approved does not contain any term of notice pay because of the amount paid towards notice pay, huge loss is caused to the Respondent-Corporation. As far as Charge Nos.(ii) and (iii) are concerned, according to learned counsel, ex-gratia amount under V.R.S was required to be paid only to the permanent employee for every completed year of continuous service and the amount is to be calculated on the basic pay and Dearness Allowance, whereas the petitioner has made ex-gratia payment without considering completed year of continuous service and has also added other allowances. In this regard there was no confusion. As per agreement dated 24.1.1993, it was specifically agreed that for the purpose of V.R.S the continuous service has to be calculated for every completed year from the date of joining and the compensation has to be calculated on the basis of basic pay plus dearness allowance. The learned counsel relies on clause 6 of the said agreement. The learned counsel submits that in view of the specific agreement, reliance paid on the definition of continuous service as defined under the Industrial Disputes Act and the definition of wages under the Payment of Wages Act was misplaced and not relevant.

9. Mr.Desai, was a person from middle Management cadre even by considering his salary which was in the pay-scale of Rs.2000-3500. As such it is clear that he was drawing pay more

than Rs.1,000/-(Rupees one thousand). It was not necessary to enter into the question as to whether he was workman/supervisor.

10. Learned counsel submits that as far as Charge No.(v) with regard to giving benefit of V.R.S to one Mr.Shaikh is concerned, it is a case of total negligence of the petitioner. Instead of taking action against Mr.Shaikh for remaining absent for two years, the petitioner has rewarded him by giving benefit of V.R.S. The contention of the petitioner that granting of benefit to such a person was not prohibited by the Scheme is erroneous. The learned counsel submits that Charges (vi) to (viii) are duly supported by the conclusion of the Disciplinary Authority. The petitioner was a Managing Director of the Respondent-Corporation. It was he who was required to safeguard the interest of the Corporation and was expected to act diligently. On the contrary, because of the negligence of the petitioner, the corporation which was already running in loss had to suffer more monetary loss. There is no procedural irregularity, all the

documents were supplied to the petitioner. The Disciplinary Authority has differed with the conclusion of the Inquiry Officer by giving cogent reasons. The learned counsel submits that there is no violation of principles of natural justice. Re-appreciation of evidence as an appellate authority by the High Court is not permissible. The learned counsel relies on the judgment of the Apex Court in a case of **“Govt.of A.P. And Ors. Vs. Mohd.Nasrullah Khan”** reported in **AIR 2006 Supreme Court 1214.**

11. We have considered the submissions canvassed by the learned counsel for respective parties. There can not be any dispute with the proposition that Disciplinary Authority had a right to defer from the view taken by the Inquiry Officer. The caution is that the Disciplinary Authority should give cogent reasons and also should give opportunity to the petitioner. This Court in its writ jurisdiction under Article 226 of the Constitution of India, would be loath in reappreciating the evidence, it would not readily enter into exercise of

reappreciation of evidence unless it is shown that the appreciation of evidence by authority is perverse.

12. It is admitted fact that the petitioner at the relevant time was working as a Managing Director of the Respondent Corporation. The petitioner was holding the top most post, certainly is expected to exercise high degree of skill and diligence. The petitioner had the authority to implement the voluntary retirement scheme floated by the Respondent Corporation. In fact, it was the petitioner who was to take decision about the benefit of the V.R.S to be given to the particular employee. The major charges from (i) to (v) is with regard to operation of the said Voluntary Retirement Scheme. The charges as are levelled against the petitioner are detailed as under :

“**CHARGE-SHEET**

1. You have been working in the Textile Corporation of Marathwada Limited (TEXCOM) since February 15, *1980 in the capacity of General Manager/Managing Director. By virtue of the position occupied, you are responsible for ensuring efficient and economically viable operations of the Company so that the Administrative, Financial, Technical and Commercial interests of TEXCOM are efficiently and effectively looked after and the overall interest of the Company are safeguarded. However, it has been noticed that while discharging the various activities of the company, you have committed the following acts of omissions and commissions :-*

i. While paying the workers, staff and others, the (Voluntary) retirement benefits, they are also paid the NOTICE PAY although it was neither required under any law nor under the Voluntary Retirement Scheme (A copy of which is enclosed herewith and marked as ANNEXTURE-1) to pay them the Notice Pay in as much as the

Notice Pay is to be paid only when the services of any of them is terminated by way of retrenchment or in any such manner, suddenly and without any notice of termination. By payment of Notice Pay, which was neither necessary under the law nor under the VRS, the Corporation has sustained a pecuniary loss of Rs.1.93 lacs. A list of employees who have been given the notice pay showing the exact amount each one is paid, is enclosed herewith and marked as ANNEXTURE-2 hereto.

ii. The ex-gratia amount under the VRS was required to be paid only to the permanent employees for every completed year of continuous service. Continuous service has been defined under the provisions contained in Industrial Disputes Act, 1947 vide Section 24(B)(2). Therefore, the payment of ex-gratia was not required to be paid to 44 employees for the *years in which the concerned employees have not completed the continuous service of 240 days. As the employees who have been paid the ex-gratia amount without ascertaining the period for which they were eligible to be paid under the provisions of Section 25(B)(2) of the Industrial Disputes Act, 1947, the Company was put to an avoidable financial loss of Rs.5.43 lacs. A list of such employees who have been paid the excess amount is enclosed herewith and marked as ANNEXURE-3 hereto.*

iii) While computing the ex-gratia payment, under the VRS, only the Basic Wages and the Dearness Allowances were to be taken in the computation. However, not only the Basic Wages and the Dearness Allowances were taken in the computation but also the OTHER ALLOWANCES like increments as per the

Chief Minister's Award and Adhoc increases were included in the computation. Thus and thereby the workers are paid excess amount and the Corporation has sustained a pecuniary loss of Rs.2.55 lacs. A list of employees who have been given more payments in this manner, showing the exact amount each one is paid more, is enclosed herewith and marked as ANNEXURE-4 hereto.

iv) Whereas the Voluntary Retirement Scheme in TEXCOM was made applicable only to regular/permanent workmen and supervisors, Shri A.M.Desai, Transport and Movement Officer who is a middle level, Managerial cadre employee was also paid an amount of Rs.1,94,369.97 by way of Ex-Gratia under VRS. By such payment the Corporation has sustained a pecuniary loss of Rs.1,94,369.97.

v) One Shri Nizamuddin Kali Shaikh, working with the Corporation as Printer was reporting absent for morel than TWO consecutive years. Instead of taking the disciplinary action, he was given the benefits of VRS, thereby causing pecuniary loss of Rs.61,648.31 to the Corporation.

vi) The Board for Industrial and Financial Reconstruction (BIFR), New Delhi had appointed the State Bank of India as the Operating Agency for the Corporation. The said Operating Agency had appointed M/s Desai, Saksena and Associates as the Consultants. In the report submitted by the said Consultants it is pointed out that fresh cloth has been sold realising a lower price as compared to fents of the same quality, the details of which have been given at APPENDIX-ix of the said report, a copy of which is enclosed herewith and marked as

ANNEXURE-5 hereto. As a result of fresh cloth being sold at prices lower than fents, the financial interest of TEXCOM have been adversely affected.

vii) from the stock of finished goods it is learnt that as on 31.3.1994, the Corporation had a very heavy stock of 3621 cloth Bales of which 2270 Cloth Bales were sold out but no Delivery was affected. This resulted in blocking the funds of the Corporation causing financial crises to the Corporation.

Viii) The Stock of the Corporation was carried for more than one to one and half Years AND that the Contracts were not executed in time and deliveries were delayed for more than one to one and half years after the expiry of contracted delivery period. (A list of such late deliveries effected to Bombay parties in November, 1993 is enclosed herewith

> *which is only illustrative and marked as ANNEXURE-6 hereto). The Corporation has thus suffered an adverse financial implication resulting in Sales being executed at rates prevailing prior to One to One and Half Years while the input cost had increased substantially during the intervening period.”*

13. While conducting the Inquiry full opportunity has been given by the Inquiry Officer to both the parties and the report is submitted to the authority. The Board disagreed with the finding of the Inquiry Officer. The Board thereafter, authorised the Managing Director to communicate the petitioner about its finding and disagreement with the finding of the Inquiry Officer. The notice was issued to the petitioner on 31.7.1996. The same was also circulated to the members of the Sub-Committee. So also telegram was issued to the petitioner on 6.8.1996, however, the petitioner had only sought for the time. As the petitioner was to

retire on 20.8.1996. The decision was required to be taken prior to the same. The Disciplinary Authority and Sub-Committee noticed that no new facts or evidence is claimed by the petitioner nor has availed the opportunity, the Committee thereafter considered the finding, the report of the Inquiry Officer charge-wise and thereafter has taken the decision and came to the conclusion that loss of Rs.12.47 lacs has been occasioned to the Corporation on account of negligence of petitioner by the various acts and omissions and commissions in respect of the charges (i) to (v) as per the charge-sheet. However, the Disciplinary Authority held that the petitioner is not guilty of misappropriation of any amount for his personal benefit.

14. The disciplinary authority has discussed about the facts. In fact the petitioner being Managing Director of the respondent, it was the petitioner who had drafted the V.R.S. in consultation with others. The State Government, vide its order dated 17.2.1992, approved the voluntary retirement scheme as

framed by the Corporation. As such, there was no manner of doubt that the clause of payment of notice pay was not a part of the V.R.S. as was drafted and settled by the Corporation. However, the petitioner still made payment of the amount of notice pay to the beneficiaries of the V.R.S. and thereby caused loss. The same is also in respect of ex-gratia payment while considering the continuous service. As far as the case of Mr. Desai is concerned, it has come on record that Mr. Desai was from middle management and his pay was more than Rs.1000/-, he was working in the managerial capacity. As far as the charge of Mr. Shaikh is concerned, it is not in dispute that he was absent for two years and petitioner, who was Managing Director of the Corporation, did not taken action against said Mr. Shaikh, but he is rewarded with the benefit of V.R.S. Even the disciplinary enquiry was not initiated against Mr. Shaikh. These aspects have been considered by the disciplinary authority. With regard to charges from 6 to 8 are concerned, no amount is quantified for loss in respect of charges 6 to 8. However, it was stated that the cloth was lying in the store room and no efforts were being taken to dispose the same.

15. Considering the aforesaid aspects of the matter, it is clear that the disciplinary authority, upon taking stock of all the factual matrix, has arrived at a plausible conclusion. This Court would not sit in appeal while discussing the evidence led in the disciplinary enquiry unless the same is found to be perverse. The view taken by the disciplinary authority is a plausible view based on evidence. As such, the findings of the disciplinary authority need no interference.

16. The aspect about quantum of punishment requires to be considered. The Wednesbury's principles of reasonableness is substituted by the doctrine of proportionality. The punishment cannot be shockingly disproportionate to the charges levelled. The disciplinary authority, has held that the petitioner is not guilty of any misappropriation, however, has held him guilty of negligence and because of the negligence on the

part of the petitioner, the Corporation has sustained loss which was already a loss-making organisation.

17. We find the punishment of dismissal just few days before his retirement, to be disproportionate. The loss to the extent of Rs.12.47 lakhs is said to have been caused because of the negligence of petitioner. The following punishments are provided as per the provisions of Rule 48 of the Staff Rules applicable for Managerial cadre :

(a) Censure;

(b) Cancellation, withholding, reducing or delaying of increment,

(c) Recovery from pay or from such other amounts, as may be due to be paid to him by the Corporation of the whole or part of any pecuniary loss caused to the Corporation by negligence or beach of orders,

(d) Reducing to a lower post or grade.

(e) Requiring the employee to resign;

(f) Compulsory retirement.

(g) Dismissal.

18. Considering the fact that it is not a case of fraud on the part of the petitioner, we set aside the punishment of dismissal from service and instead, the petitioner shall be deemed to have been compulsorily retired from service with effect from 12th August, 1996.

19. Save and except the aforesaid substitution of the punishment i.e. compulsory retirement in place of dismissal, the other order passed by the disciplinary authority stands confirmed. Rule accordingly made partly absolute. Writ Petition stands disposed of. No costs.

(A.I.S.CHEEMA,J.) **(S.V.GANGAPURWALA,J.)**

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