applicable to any appointment of Assistant Electrical Inspector in the State. According to him, since under section 36-A (2) (b) and (e) one by member each by the State Government as well as the State Electricity Board are to be nominated for constitution of the Central Electricity Board is *ipso facto* binding on the State Government. I am afraid I cannot agree with this contention. The constitution of the Board had nothing to do with the Rule making power as such. As I have already observed above, it is only when the State Government is appointing Electrical Inspector or Assistant Electrical Inspectors to whom the powers under the Act have to be conferred, only then the qualifications as prescribed under 1956 Rules would come into play. Otherwise as in the present case, the Assistant Electrical Inspectors under 1979 Rules have nothing to do with the Assistant Electrical Inspectors that are envisaged under 1956 Rules.

(12) For the reasons recorded above, this petition fails and is dismissed without any order as to costs.

R.N.R.

Before : S. S. Sodhi, J.

POSTGRADUATE INSTITUTE OF MEDICAL EDUCATION AND RESEARCH, CHANDIGARH,—*Appellants.*

versus

Cdr. M. L. MEHANDROO,—*Respondent.*

Civil Original Appeal No. 6 of 1990.

3rd October, 1990.

Post Graduate Institute of Medical Education and Research, Chandigarh, Regulations, 1967—Regl. 37-A—Code of Civil Procedure, 1908—O. 39, Rls. 1 & 2—Temporary injunction—Tenure of service cannot be prolonged beyond age of superannuation by grant of temporary injunction in a suit filed on the very day of retirement—Grant of temporary injunction—Principles, restated—Mala fide *attempt by plaintiff to continue in service—Application liable to be dismissed with punitive costs.*

Held, that the well settled principle of law, governing grant of temporary injunction have been glossed over and blatantly circumvented. No temporary injunction should be issued unless the three

essential ingredients are made out, namely (i) *prima facie* case, (ii) balance of convenience, (iii) irreparable injury which could not be compensated in terms of money. If a party fails to make out any of the three ingredients he would not be entitled to the injunction. The blatantly *mala fide* attempt by the plaintiff to continue in service beyond his age of superannuation by procuring an interim injunction on grounds and for reasons which were clearly to his knowledge too, wholly unsustainable. The trial Court, on its part, disregarded the well-settled principles governing grant of temporary injunction in letting the plaintiff have the relief sought. The impugned order cannot, therefore, but be branded as patently erroneous and wholly unwarranted and is hereby set aside. Further, punitive costs of Rs. 5,000 are also hereby imposed upon the plaintiff while accepting this appeal.

(Paras 10 & 15)

Code of Civil Procedure, 1908—Ss. 24 & 151—Application for transfer of appeal—Duties of judicial officers explained while dealing with urgent matters.

Held, that it was indeed unfortunate that the District Judge, Chandigarh declined to intervene when moved under S. 24 read with S. 151 of the Code of Civil Procedure. In the case of a Judicial Officer entrusted with the duty of dealing with urgent matters, even during vacations, interests of justice render it incumbent that due care and attention be given to the merits of any matter coming up before such officer, in order to safeguard against any injustice being perpetuated by merely routine orders being passed without appreciating the gravity and importance of the point in issue.

(Para 16)

Appeal against the order of the Court of District Judge, Chandigarh dated 19th June, 1990 whereby he declining the application u/s 24 read with section 151 CPC for vacation of the order of injunction and ordering that appeal has already been entrusted to the Learned Additional District Judge, Chandigarh for disposal and further ordering that there is no any ground for withdrawing the same from that court at this stage.

D. S. Nehra, Sr. Advocate Mr. Arun Nehra, Advocate with him *for the Appellants.*

Anil Malhotra, Advocate, *for the Respondent.*

JUDGMENT

(1) Prolonging the tenure of service of a Government servant beyond the age of superannuation by the grant of a temporary injunction and that too issued on the very day, he attained such age is, what is challenged here.

(2) On the face of it, such an order cannot, but be described as extraordinary and in the context of the circumstances of the present case, even more so, rendering thereby the impugned order of the Senior Subordinate Judge Chandigarh. Mr. G. C. Suman of May 31, 1990, a classic illustration, as it were, of grant of temporary injunction being almost an abuse of the process of court.

(3) The plaintiff, Commander M. L. Mehandroo a retired Naval Officer held the post of Hospital Engineer (Mechanical) at the Post Graduate Institute for Medical Education and Research, Chandigarh (hereinafter referred to as 'the Institute'). This being a Class A post equivalent to that of an Executive Engineer.

(4) The conditions of service of the employees of the Institute are governed by the Post Graduate Institute of Medical Education and Research, Chandigarh Regulations 1967 (To be adverted to hereafter as 'The Regulations'). The provisions regarding superannuation being those as contained in Regulation 37-A thereof, which read as under :—

> "(1) The age of superannuation of the employees of the Institute other than the Director, the Medical Superintendent, the members of the teaching faculty and Class IV employees shall be 58 years;
>
> (2) The age of superannuation of the Director, the Medical Superintendent, members of the teaching faculty and Class IV employees shall be 60 years:
>
> Provided that the services of members of the teaching faculty may be retained up to the age 62 years in exceptional cases of such members for reasons to be recorded in writing on the merits of each such case and subject to physical fitness and continued efficiency of the member concerned.
>
> (3) Notwithstanding anything contained in this regulation, the appointing authority shall, if it is of the opinion that it is in the public interest so to do have the absolute right to retire any employee of the Institute by giving him notice of not less than 3 months in writing or 3 months pay and allowances in lieu of such notice;
>
> (i) If he is in Class I or Class II Service or post and had entered in this service of the Institute before attain-

ing the age of 35 years, after he has attained the age of 50 years; and

(ii) In any other case after he has attained 55 years;

Provided that nothing in this sub-regulation shall apply to any employee in Class IV service or post who entered service on or before 7th August, 1970."

(5) A plain reading of this Regulation would show that the age of retirement of all employees of the Institute is 58 years except in the case of the Director, the Medical Superintendent, the members of the teaching faculty including Class IV employees where it is 60 years. Admittedly, the plaintiff did not belong to any of these categories. He was thus to retire at the end of the month of the year in which he attained the age of 58 years. Undisputedly, this date was May 31, 1990. The plaintiff in fact in C.W.P. 8389 of 1990 filed by him, in this Court, swore an affidavit saying in so many words, that he was to retire on this date, that is, May 31, 1990. And yet on May 28, 1990, just three days prior to his date of retirement, he filed the present suit accompanied by an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, seeking a declaration to the effect that the orders retiring him on May 31, 1990 were illegal and a permanent injunction restraining the Institute from retiring him from service with effect from that date. The trial court issued notice of the application for temporary injunction to the defendant-Institute for May 30, 1990 and on the very next day, which was the day on which the plaintiff was to retire, proceeded to pass the impugned order.

(6) On June 1, 1990, an appeal was filed against the impugned order which the District Judge, Chandigarh entrusted to the Additional District Judge, who directed issuance of notice to the parties for June 5, 1990. The parties appeared on that date and the stay matter was adjourned for arguments to the next date. On June 6, 1990, however, on account of strike by lawyers, no counsel appeared and both parties, on that ground, sought adjournment. The appeal was then adjourned to July 16, 1990 with the observation "long date has been given because of summer vacations as also the fact that I shall be on summer vacation from June 8, 1990 and District Bar is on strike as per its resolution".

(7) Faced with this situation, an application under Section 24 read with Section 151 of the Code of Civil Procedure was filed before the District Judge, Chandigarh, on behalf of the Institute, stating therein that the circumstances of the case required immediate disposal of the appeal and vacation of the order of injunction and it was consequently prayed that the appeal pending before the Additional District Judge be withdrawn and disposed of at the earliest. This prayer was, however, declined by the District Judge with the observation, "The appeal has already been entrusted to learned Additional District Judge, Chandigarh for disposal and I do not find any ground for withdrawing the same from that Court as it cannot be disposed of during no work period. The application is declined."

(8) It is in this background that the matter was brought to this Court. Here, keeping in view the circumstances of the case, in the context of the nature of the controversy raised, the appeal pending before the Additional District Judge, Chandigarh was withdrawn and transferred to the file of this Court.

(9) Coming to the merits of the case, it will be seen that the relief sought by the plaintiff is founded upon a plea of discrimination. The discrimination complained of being that five persons belonging to the Engineering Department, as mentioned in the plaint, were allowed to continue in service till the age of 60 years while the plaintiff was being retired at 58 years. In reply, regarding these five persons, it was specially averred on behalf of the Institute that unlike the plaintiff, none of them belonged to the Class A Cadre service. Further, there is on record the letter of the Director of the Institute of May 29, 1990 informing the plaintiff that these five persons were borne on the work-charge establishment and the age of retirement of such employees was 60 years. No contradiction to this is forthcoming. It is apparent, therefore, that the allegations of discrimination, as levelled by the plaintiff, are devoid of any tenable basis.

(10) A reading of the impugned order of the Senior Subordinate Judge provides no escape from the conclusion that the well-settled principle of law, governing grant of temporary injunction have been glossed over and blatantly circumvented. As observed by the Supreme Court in *Hazrat Surat Shah Urdu Education Society* v. *Abdul Sahab* (1). "No temporary injunction should be issued unless

(1) 1988 (5) S.L.R. 768.

the three essential ingredients are made out, namely (i) *prima facie* case, (ii) balance of convenience, (iii) irreparable injury which could not be compensated in terms of money. If a party fails to make out any of the three ingredients he would not be entitled to the injunction——". There, in a suit filed by a Headmaster, seeking a declaration that the order terminating his services was illegal, the High Court granted a temporary injunction restraining his employers from enforcing this order of termination and thereby enabling him to continue in service. While setting aside this order, the Supreme Court held that what the plaintiff was claiming to enforce, was a contract of service. The refusal of injunction could not cause any irreparable injury to him as he could be compensated by way of damages in terms of money, in the event of his success in the suit. He was thus not entitled to any injunction.

(11) An apt judicial precedent of our Court is provided by *Union of India* v. *Bakshi Amrik Singh* (2), where just four days before his retirement, the plaintiff, who was the Station Superintendent at the Railway Station, Ambala, filed a suit seeking a permanent injunction to restrain the railways from retiring him from service on attaining the age of superannuation, as per his date of birth in the official records, on the plea that his correct date of birth was in fact about a year later. The District Judge granted him the temporary injunction prayed for resulting in the plaintiff being allowed to continue in service during the pendency of the suit. This order was, however, up-set in revision by the High Court, where, it was observed, "The principal function of an injunction is to furnish preventive relief against irremediable mischief. An injury is deemed to be irreparable and the mischief is said to be irremediable, when having regard to the nature of the act and from the circumstances relating to the threatened harm, the apprehended damage cannot be adequately compensated with money." Further, "Courts issue injunctions where the right which is sought to be protected is clear and unquestioned, and not, where the right is doubtful and there is no emergency, and further, where the injury threatened is positive and substantial and is irremediable otherwise. It is also an important rule that the conduct of the parties seeking injunction must not be tainted with unfairness or sharp practice." It was accordingly held that "An injunctive relief must not be granted when it is prone to operate contrary to the real justice of the case. What are the hardships which had to be balanced in this

(2) A.I.R. 1963 Punjab 104.

case? If the plaintiff thought that he was being prematurely retired, he could claim damages measurable by the extent of the emoluments of which he had been unjustly deprived. On the other hand if the plaintiff was actually due to retire on 14th July, 1961, on account of superannuation, he could not be permitted to remain in service after that date, and, a result of the arbitrary exercise of the discretion, he continues in the office which he could not hold even for a day after 14th July, 1961. Against the injunctive fiat of the Court ordering his wrongful continuance in office, the defendant has no *ex post facto* remedy."

(12) *Abdul Saheb's case* (supra), though cited and noticed in the impugned order was brushed aside with the remark, that on facts, it was different from the facts and circumstances of the present case. It was, however not explained how it was not relevant here. Instead, a dubious process of reasoning, the trial Court prefer to seek support from *Miss Raj Soni* v. *Air Officer Incharge Administration and another* (3), and *Union of India* v. *K. T. Shashtri* (4). In dealing with the two cases, it must, at the very out-set be noted that neither of them pertained to the grant of any temporary injunction. They were apparently referred to in the context of the plea of discrimination as put-forth by the plaintiff. Even on this aspect. the facts there bear no resemblence to the situation here. *Miss Raj Soni's case* (supra) pertained to retirement of a teacher at the age of 58 years. The management had been following the Delhi Education Rules which provided for retirement of teachers at the age of 60 years. It was consequently held that the petitioner too was entitled to retirement at the same age, that is, 60 years. *K. T. Shastri's case* (supra) concerned retirement on superannuation from the Defence Science Service. After recruitment to the service, the employees were posted and transferred to one of three Units of it. The conditions of service of all these three Units were the same. In 1979, the Defence Science Service was reconstituted into three separate Units. The age of retirment in one of these Units was fixed at 60 years while those of the others was 58 years. It was held that this was violative of Article 16 of the Constitution of India and the petitioner was consequently held entitled to continue in service till he attained the age of 60 years. In the present case, however, as pointed out earlier, even *prima facie*, there is no discrimination that the plaintiff can complain of as the instances

(3) J.T. 1990 (2) S.C. 173.

(4) 1990 U.T. (S.C.) 463.

given by him of persons being allowed to remain in service till the age of 60 years were of work-charged employees while he was a Class-A Officer.

(13) As measure of last resort, as it were, counsel for the plaintiff, leaving the merits of the case aside, sought to question the compentency of the present proceedings by contending that this matter had not been brought before this Court by a person competent to do so. The arguments being that only the Director of the Institute was competent in this behalf or in his absence, an Acting Director, appointed as such by the President of the Institute. The Director of the Institute was no doubt out of the country at the relevant time; but Professor P. N. Sharma, who purported to be the Acting Director in his absence, had not been so appointed by the President of the Institute, and hence this petition/appeal had not been filed by a person competent to do so.

(14) In a case like the present, it must, at the very out-set be observed that the High Court is undoubtedly possessed of ample inherent power and authority, to even *suo motu* vary or set aside an erroneous or illegal order passed by a court subordinate to it. Indeed, interests of justice would compel it to do so. The answer to the point canvassed is, at any rate, provided by the Regulation 25 of the Regulations, which not only lists out the powers and duties of the Director, but specifically empowers the Director to delegate any of his powers to any officer of the Institute subject, of course, to such limitations as may be imposed by the governing body. No such limitation in this behalf, has been adverted to. The record, on the other hand, shows that in the exercise of this power, the Director had in fact delegated the requisite powers to Professor Sharma as Acting Director and this petition having been filed by the said Professor Sharma on behalf of the Institute, cannot, but be held to have been filed by a person competent to do so.

(15) The picture that thus emerges brings out in bold relief the blatantly *mala fide* attempt by the plaintiff to continue in service beyond his age of superannuation by procuring an interim injunction on grounds and for reasons which were clearly, to his knowledge too, wholly unsustainable. The trial court, on its part, disregarded the well-settled principles governing grant of temporary injunction in letting the plaintiff have the relief sought. The impugned order cannot, therefore, but be branded as patently erroneous and wholly unwarranted and is consequently hereby set aside. Further, in the

context of the circumstances, as narrated, punitive costs of Rs. 5,000 are also hereby imposed upon the plaintiff while accepting this appeal now.

(16) Before parting with this matter, it must also be observed that it was indeed unfortunate that the District Judge, Chandigarh, declined to intervene when moved under section 24 read with section 151 of the Code of Civil Procedure. The circumstances were clearly such as rendered such interference, at that stage, imperative. In the case of a Judicial Officer, entrusted with the duty of dealing with urgent matters, even during vacations, interests of justice render it incumbent that due care and attention be given to the merits of any matter coming up before such officer, in order to safeguard against any injustice being perpetuated by merely routine orders being passed without appreciating the gravity and importance of the point.

R.N.R.

Before : Ashok Bhan, J.

SMT. PREM VATI BHANDARI,—*Appellant.*

versus

SMT. MAYA WATI AND OTHERS,—*Respondents.*

Regular First Appeal No. 472 of 1978.

14th December, 1990.

The Benami Transactions (Prohibition) Act, 1988—Ss. 3 & 4—Suit for recovery of Benami property—Suit is not maintainable—S. 4 is retrospective in nature.

Held, no suit on behalf of the plaintiff was maintainable to enforce any right in respect of the property held benami by defendant on the ground that the plaintiff was the real owner of this property. Sector 4 of the Benami Transactions (Prohibition) Act, 1988 came into force with effect from 19th May, 1988 on which date, this appeal was pending and is still pending. In view of the law laid down by the Supreme Court in *Mithilesh Kumari and another* v. *Prem Behari Khare*, AIR 1989 S.C. 1247, the appeal has to be allowed as S. 4 of the Act is retroactive in nature and applies to the pending suits and appeals arising out of such suits.

(Para 5)