HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 12243 of 2015

Ganesh Prasad

.....Petitioner(s)

Versus

State Of U.P. And 2 Ors.

.....Respondent(s)

Counsel for Petitioner(s)	:	Ashwani Kumar Mishra
Counsel for Respondent(s)	:	C.S.C.

Reserved on 25.8.2026
Delivered on 3.9.2026

A.F.R.

Court No. - 34

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Sri Ashwani Kumar Mishra, learned counsel for the petitioner and Sri Rajiv Gupta, learned Additional Chief Standing Counsel for the State.

2. The instant petition has been filed by the petitioner seeking quashing of the order dated 15.01.2015 passed by the respondent, Director of Social Welfare Department, Government of UP, whereby the punishment of reduction of $2/3^{rd}$ pension as well as recovery of Rs.36,98,603/- had been directed against the petitioner.

3. It is pertinent to mention here that the aforesaid order was stayed by this Court vide order dated 26.02.2015 by directing that no action shall be taken against the petitioner for recovery of the amount till the next date of listing.

4. Briefly stated facts of the case are that the petitioner herein was appointed as Junior Clerk in the office of District Welfare Officer, District Ballia, in the year 1970 and later he was promoted to the post of Senior Clerk. On 11.08.2005, the disciplinary proceeding was initiated against the petitioner. During the pendency of the enquiry, the petitioner herein requested for various documents to be supplied to him so that he can effectively defend himself in the enquiry proceeding. However, the documents, which were demanded by the petitioner, were not provided to him and the ex-parte enquiry was concluded by the enquiry officer by submitting the ex-parte enquiry report dated 30.10.2006. Before any final decision could be taken on the aforesaid disciplinary proceeding initiated against the petitioner, the petitioner attained the age of superannuation on 31.03.2008. However, due to non-conclusion of the disciplinary proceeding, the retiral dues and other pensionary benefits were not accorded to the

petitioner, then the petitioner moved a representation on 20.09.2008. Since no decision was taken on the representation of the petitioner, the petitioner approached this Court by filing Civil Misc. Writ Petition No. 66833 of 2008, which was disposed of vide order dated 09.04.2009, directing the Director, Social Welfare Department, UP, Lucknow to consider and dispose of the representation of the petitioner dated 20.09.2008.

5. Pursuant to the aforesaid direction of this Court vide order dated 09.01.2010, the representation of the petitioner was disposed of holding that since the petitioner himself is keeping in possession his service book, GPF records etc., a final decision could not be taken without reviewing those original documents. Consequently, the instructions were issued for reconstruction of the aforesaid record. It was further ordered that the department will take a decision with regard to the payment of retiral and other outstanding dues. Thereupon, without obtaining proper sanction from the Governor as required under Regulation 351-A of the Civil Services Regulations, the respondents continued with the disciplinary proceedings against the petitioner, which was initiated in the year 2005. Subsequently, the Director, Social Welfare, Government of U.P. passed an order dated 27.01.2010 punishing the petitioner to the extent that he shall be treated as removed from service with retrospective effect from 31.03.2008. Being aggrieved by the aforesaid order dated 27.01.2010, the petitioner herein approached this Court by filing Writ-A No.30068 of 2010, which was disposed of vide order dated 24.05.2010 with liberty to the petitioner to file the statutory appeal against the order dated 27.01.2010. Pursuant thereto, the petitioner herein filed the appeal before the Government of UP, wherein the appellate authority cancelled the order dated 27.01.2010 and the matter was remanded back to the Director, Social Welfare to proceed in accordance with Regulation 351-A. Thereupon, the Director, Social Welfare, Government of UP has passed an order dated 27.12.2011 without taking any sanction in terms of Regulation 351-A and only on the basis of a remand order whereby the appellate authority directed him to proceed in accordance with Regulation 351-A and passed the order for stoppage of 50% pension of the petitioner permanently. Being aggrieved, the petitioner herein approached the State Public Services Tribunal, Lucknow by filing the Claim Petition No. 122 of 2012 and the Tribunal had allowed the petition filed by the petitioner that the order so passed by the Director is in utter violation of the provisions of Civil Services Regulation 351-A. Consequently, the order dated 27.12.2011 was quashed. It was further directed that the deduction, if any, has been made from pensionary benefits, shall be returned to the petitioner within 3 months.

6. The respondent-State, being aggrieved by the order dated 31.07.2012 passed by the State Public Service Tribunal, Lucknow, filed a writ petition being Service Bench No. 76 of 2014 before the Lucknow Bench of this Court. The same was dismissed by order dated 15.01.2014, holding that no sanction as required under Regulation 351-A of Civil Services Regulation was taken. Therefore, there is no illegality in the order of

the tribunal. In compliance of the aforesaid order passed by the Lucknow Bench of this Court on 15.01.2014, the Director, Social Welfare Department had taken a decision on 13.02.2014 to terminate the disciplinary proceeding for want of necessary sanction under Regulation 351-A. Thereafter, the petitioner submitted repeated representations seeking the release of his retiral and pensionary benefits, and thereupon provisional pension was sanctioned to the petitioner on 17.11.2014 by the District Social Welfare Officer, Ballia. However, several other retiral dues like GPF, etc. remain unpaid to the petitioner and the petitioner continued to represent for the same.

7. The order dated 15.01.2014 passed by the Division Bench of this Court sitting at Lucknow has attained finality as the same was never challenged by the respondents. Despite that, on the basis of the same disciplinary proceeding, the impugned order dated 15.01.2015 was passed by the respondents treating that the proceedings of the disciplinary proceedings are still continuing under Regulation 351-A. However, in the impugned order itself there is no mention that any sanction has ever been granted after the retirement of the petitioner on 31.03.2008 to continue with the disciplinary proceedings or to initiate any proceeding in terms of Regulation 351-A after his retirement and has passed the order of withholding 2/3rd pension permanently and recovery of Rs.36,98,603/- was also ordered against the petitioner.

8. Learned counsel for the petitioner submits that the disciplinary proceedings, which were initiated before the superannuation of the petitioner cannot continue after his retirement. It is further submitted that after retirement the fresh proceedings could be initiated only with regard to any financial irregularities committed by the petitioner within four years of his retirement or from the date of such proceedings were initiated in terms of Regulation 351-A, for which the sanction of the Governor is a precondition, which has never been granted in the instant case and for the said reason itself, the previous punishment order after the retirement of the petitioner on the basis of the same disciplinary proceeding was set aside by the Division Bench of this Court holding that the same is not in accordance with Regulation 351-A and the said order has attained finality. Despite that the impugned order has been passed without taking any proper sanction as required under Regulation 351-A and again the punishment order has been passed by the Director, Social Welfare, Lucknow, which is nothing but a continuous harassment of the petitioner by denying him the proper retiral dues and pension, which are otherwise available to the petitioner on his attaining the age of superannuation on 31.03.2008. In support of his submission, learned counsel for the petitioner has relied upon the judgment of Division Bench of this Court dated 29.03.2005 in **Writ Petition No. 435 (S/B) of 2002 (Harihar Bhole Nath Misra vs. State Public Services Tribunal).**

9. Learned Additional Chief Standing Counsel for the State submits that since two disciplinary proceedings were pending prior to the retirement of the petitioner with

respect to financial irregularities committed by him and in the first disciplinary proceeding, the earlier order of punishment was passed whereby the 50% pension was stopped, though the same has been set aside by the Tribunal and subsequently, it has been upheld by the Division Bench of this Court. However, with regard to the other disciplinary proceeding of like nature, the impugned order has been passed in compliance with the provisions of Civil Services Regulations 351-A. Thus, he submits that the conclusion of the previous round of proceedings cannot operate as res-judicata with regard to the second disciplinary proceeding, which was pending against the petitioner. However, learned Standing Counsel for the State is not in a position to point out either from the impugned order or from the counter affidavit that after the retirement of the petitioner on 31.03.2008, any sanction in terms of Regulation 351-A was ever granted to the respondents to continue with the disciplinary proceeding against the petitioner and on the same count, the previous punishment order passed by the Director, Social Welfare was set aside by the Tribunal, which was upheld by the Division Bench of this Court.

10. Having heard the rival submissions so made by learned counsel for the parties, this Court has carefully gone through the record of the case. The facts of the case have already been noted hereinabove. It is undisputed in the instant case that the disciplinary proceedings were initiated against the petitioner while the petitioner was in service and it is further admitted in the instant case that the petitioner has attained the age of superannuation on 31.03.2008. The previous punishment order passed by the disciplinary authority dated 27.12.2010 was set aside by the appellate authority vide its order dated 29.09.2010 remanding the matter to the Director, Social Welfare to take appropriate proceedings in compliance of Regulation 351-A.

11. However, without complying or obtaining any sanction in terms of Regulation 351-A, the respondents herein have passed another order of punishment dated 27.12.2011, whereby the 50% pension of the petitioner was stopped. The said order dated 27.12.2011 was challenged by the petitioner before the State Public Services Tribunal, the same was quashed and the directions were issued by the Tribunal to make the payment of the pensionary dues to the petitioner within three months. The writ petition filed against the order of the Tribunal was also dismissed vide order dated 15.01.2015 as the order of punishment dated 27.12.2011 was found to be without sanction as required under Regulation 351-A. After the aforesaid proceedings became final and vide impugned order again an impugned punishment order has been passed on 15.01.2015 without complying with the provisions of Regulation 351-A. Regulation 351-A of the Civil Services Regulations reads as under:

> *"351-A. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the*

pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused, pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement :

Provided that-

(a) Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment :

(i) shall not be instituted save with the sanction of the Governor ;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings, and

(iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

(b) judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with Sub-clause (ii) (a), and

(c) the Public Service Commission, U.P., shall be consulted before final orders are passed.

Explanation. -- For the purposes of this article :

(a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or, if the officer has been placed under suspension from an earlier date, on such date ; and

(b) judicial proceedings shall be deemed to have been instituted :

(i) in the case of criminal proceedings, on the date on which a complaint is made, or a charge-sheet is submitted to a criminal court ; and

(ii) in the cases of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

Note. -- As soon, as proceedings or the nature referred to in this article are instituted, the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned."

12. In the case of **State of U.P. vs. Shri Krishna Pandey, (1996) 9 SCC 395,** wherein following observations have been made by the Apex Court :

"It would thus be seen that proceedings are required to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue on re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision

> *that the proceedings be initiated as disciplinary measure and the action initiated earlier would remain unabated after retirement.* ***If Rule 351- A is to be operative in respect of pending proceedings, by necessary implication, prior sanction of the Governor to continue the proceedings against him is required."***

13. Likewise a similar view has also been taken by the Apex Court in **Bhagirathi Jena vs. Board of Directors, (1999) 3 SCC 666,** wherein the following observations have been made by the Apex Court:

> *".....no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of the departmental enquiry after superannuation. In view of the absence of such a provision in the aforesaid regulations, it must be held that the corporation had no legal authority to make any reduction in the retiral benefits of the appellant.* ***There is also no provision of conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 3. 6. 1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."***

14. Relying upon the aforesaid judgment of the Apex Court, the Division Bench of this Court in **Harihar Bhole Nath Misra (supra)** has observed as under:

> *"(24)* ***THUS, a departmental enquiry cannot proceed after retirement, unless due sanction under regulation 351-A is obtained, and the enquiry is held under that very provision, which gives a complete procedure and the manner in which the enquiry has to be held and what punishment can be awarded,*** *if the misconduct given therein is established in such proceedings.*
>
> *(25)* ***FOR understanding the meaning and import of the aforesaid provision of Regulation 351-A, it would also be relevant to mention that there is a class of Government servants, whose appointing authority is not the Governor and there are Government servants, whose appointing authority is the Governor. If a disciplinary enquiry is to be instituted against a Government servant either, of whom appointing authority is the Governor or not, or during the course of his re-employment, unobjectionably, sanction of the Governor is required as per the***

> ***provision of Regulation 351-A.*** *In case the argument of the learned Standing Counsel that since the order has been passed by the governor after the approval of the Public Service Commission, therefore, requirement of regulation 351-A has been complied with, is accepted, it would mean interpretation of regulation 351-A in two different ways for the Government servants by making an artificial classification i. e, with respect to one set of Government servants, whose appointing authority is the Governor and the other set of Government servants, whose appointing authority is not the governor. Such an interpretation would lead to anomalous results and would also negate the provisions of Regulation 351-A in respect of those Government servants, whose appointing authority is the Governor. The interpretation so made does not flow from the aforesaid provision and rather defeats the very meaning and purpose of the same."*

15. From the aforesaid judgments, it is apparent that in terms of Regulation 351-A, after the retirement of a government servant, the disciplinary proceedings, which were initiated prior to his retirement cannot continue automatically and no punishment pursuant to the aforesaid disciplinary proceeding can be passed. However, with regard to the recovery of any pecuniary loss caused to the government due to misconduct or negligence on the part of such government servant after the departmental proceeding may continue but with the sanction of the Governor in terms of Regulation 351-A. So far as the initiation of the fresh proceedings under Regulation 351-A, the financial irregularities are required to be constituted only for a period of four years from the date of institution of such proceedings. Thus, practically after four years of retirement of a person, no disciplinary proceedings can be initiated even in terms of Regulation 351-A. Even for continuation of the already initiated proceedings the sanction of Governor is required. Without sanction of the Governor, the further proceedings after the retirement of the petitioner, cannot continue. The aforesaid view has already been taken by the State Public Service Tribunal, which was also affirmed by the Division Bench of this Court in the writ petition filed by the respondents in its order dated 15.01.2014. Despite that and being fully aware that no disciplinary proceeding can continue without the sanction of the Governor after the retirement of the government servant as has already been held by the Division Bench in the previous writ petition filed by the respondents, the Director, Social Welfare has proceeded to pass the impugned order that too without taking any prior sanction from the Governor in this regard.

16. In such view of the matter, this Court is of the considered opinion that the Director, Social Welfare, U.P. despite being fully aware that without sanction of the Governor, no proceeding can be initiated and continued and no punishment order however, without prior sanction under Regulation 351-A can be passed, he has proceeded to pass the impugned orders, which itself reflects the biased and deliberate

approach of the Director against the petitioner to continue his harassment and denial the release of the lawful dues to which the petitioner was entitled for after attaining the age of superannuation on 31.03.2008.

17. In such view of the matter, the instant petition is **allowed.**

18. The impugned order dated 15.01.2015 passed by the 15.01.2015 passed by the respondent, Director of Social Welfare Department, Government of UP, is hereby set aside and quashed.

19. The respondents are directed to pay all the retiral dues available to the petitioner along with an interest at the rate of 8% per annum within a period of eight weeks from the date of production of certified copy of this order before the respondent no.3. If the said retiral dues are not paid within the aforesaid period, the respondents shall be liable to pay the interest at the rate of 12% per annum.

(Anish Kumar Gupta,J.)

September 3, 2026
Ashish Pd.