

Court No. - 7

Reserved
A.F.R.

Case :- WRIT - A No. - 4338 of 2019

Petitioner :- Mahendra Nath Sharma

Respondent :- State of U.P. and others

Counsel for Petitioner :- Mr. Ashutosh Tripathi, Advocate

Counsel for Respondent :- Mr. Girijesh Kumar Tripathi, Addl. C.S.C. and Mr. O.P. Singh, Sr. Advocate assisted by Mr. Sushil Kumar Rao, Advocate

Hon'ble J.J. Munir,J.

1. This writ petition is directed against an order dated 12.05.2010 passed by the Managing Director, U.P. State Warehousing Corporation, punishing the petitioner, a former Warehouse Superintendent post retirement, with recovery of a sum of Rs.12,60,586/-.

2. The facts giving rise to this petition are:

The petitioner was a Senior Warehouse Superintendent with the U.P. State Warehousing Corporation (for short, 'the Corporation'). He retired from the Corporation's employ upon attaining the age of superannuation on 31st July, 2009. He had joined the service of the Corporation in the year 1971 as a Clerk and was a permanent employee. In course of time, he was promoted to the post of a Senior Warehouse Superintendent. Disciplinary proceedings were instituted against the petitioner with the issue of a charge-sheet dated 08.11.2005. It carried allegations marshalled into five charges, all about negligence in the matter of maintenance of records and storage of rice, leading to loss sustained by the Corporation.

3. The petitioner submitted his reply to the charge-sheet on 18.11.2005, denying the charges. He offered his explanation to each of the charge. The Inquiry Officer submitted an inquiry report dated 17.01.2006, holding the petitioner guilty of all the charges and finding him negligent in taking care of the stored stock at the Centre, laxity in control, deficiency in upkeep of records, storage of substandard rice and detection of damage to the stored rice beyond the approved limits by the Food Department.

4. The petitioner superannuated from the service of the Corporation on 31.07.2009 without any final orders being made in the pending disciplinary proceedings. The Managing Director of the Corporation passed the order impugned dated 12.05.2010, notifying a decision of the Executive Committee dated 19.04.2010, holding the total loss occasioned to the Corporation on account of misfeasance charged against the petitioner and three other employees in the sum of Rs.25,21,171.38. Apportioning the liability between the petitioner and the three other employees, the petitioner was held liable to make good a loss of Rs.12,60,586.19 from his post retirement benefits and other assets. It was also resolved that the petitioner's subsistence allowance, that he had received during the period he was under suspension, that is to say, between 16.09.2005 and 17.05.2009, alone would be payable. This decision of the Executive Committee was notified and enforced through the order impugned passed by the Managing Director on 12.05.2010. It was directed that in order to realize the sum of Rs.12,60,586.19 to be recovered from the petitioner's post retirement benefits and other dues, the sum of money payable to him on account of four increments that he

had earned between 1st March, 2006 to 1st March, 2009, would be adjusted.

5. It appears that the petitioner preferred an appeal dated 06.07.2010 and a supplementary appeal dated 10.02.2011, challenging the order of the Disciplinary Authority dated 12.05.2010, raising a ground that there is no jurisdiction with the Corporation under the U.P. State Warehousing Corporation Staff Regulations, 1961 (for short, 'the Regulations') to pass the impugned order, inasmuch as there was no provision in the Regulations to continue disciplinary proceedings against a retired employee. As such, the proceedings lapsed and the impugned order was a nullity.

6. The petitioner has raised a grievance that this appeal preferred on 06.07.2010 has remained pending for years together – as long as nine years – with no result or information about its disposition being conveyed to the petitioner. It was in these circumstances that the petitioner invoked our jurisdiction under Article 226 of the Constitution, praying that the impugned order be quashed on the basis of grounds raised.

7. A counter affidavit has been filed on behalf of respondent No.2 dated 08.04.2019, to which a rejoinder has been filed by the petitioner. A supplementary counter affidavit has also been filed on behalf of the Corporation on 20th January, 2023.

8. Heard Mr. Ashutosh Triptahi, learned Counsel for the petitioner, Mr. O.P. Singh, Senior Advocate assisted by Mr. Sushil Kumar Rao, learned Counsel appearing on behalf of the Corporation and Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel appearing for the State.

9. This Court must remark that the petitioner's appeal carried to the Board of Directors of the Corporation was kept pending for an unpardonably long period of time, that is to say, from 06.07.2010 to 13.06.2019, a period of almost nine years. Departmental remedies are meant to be remedies of convenience; not inconvenience or a trap for the indefinite postponement of determination of an employee's rights. Now, that the departmental appeal has been rejected by the order dated 16.06.2019, a copy of which has been brought on record through the supplementary counter affidavit dated 12.01.2023, this Court is of opinion that there is no impediment for this Court to hear this writ petition on merits. Even if the appeal had not been decided, there was no impediment, because an alternative remedy after all does not oust the jurisdiction of this Court. If this Court finds that the remedy is being utilized as an abuse of the statutory process, it can and ought to be ignored in the interest of justice.

10. The short question involved in this petition is: If it was within the jurisdiction of the Corporation to continue pending disciplinary proceedings against the petitioner post retirement and pass the order impugned, punishing him in the exercise of their disciplinary jurisdiction? The general principle is that the disciplinary jurisdiction of the employer comes to an end with the end of the employer-employee relationship, upon the employee's superannuation. Generally, therefore, the employer ceases to exercise any kind of the employer's authority, *vis-a-vis* his quondam employee upon the latter's exit from service in consequence of superannuation. The relationship of an employer and employee in case of the Government or Government owned corporations, like the Corporation, which have a constitutive statute of their own, is more often than not

governed by statutory rules, generally called service rules. The relationship between the employer and the employee in such establishments, that have statutory service rules is not governed by contract, which is otherwise invariably the case. In case of any other private employer or even a State employer, where there are no statutory Service Rules governing the terms and conditions of employment, the rights, liabilities and duties of the employer, *vis-a-vis* the employee, are governed by contract. However, wherever there are statutory Service Rules governing the terms of employment, the relationship between the employer and employee is not governed by contract. It is a status.

11. Here, there are Regulations in force governing the terms and conditions of service for the petitioner. These Regulations are framed by the Corporation in the exercise of powers conferred upon them by Section 42 of the Warehousing Corporations Act, 1962 (No.58 of 1962). If these Service Rules were to provide in terms akin to Regulation 351-A of the Civil Service Regulations, which permit the employer to hold/continue pending disciplinary proceedings, after the employee's retirement and impose penalties, it would have been a different matter. A provision of that kind in the Regulations would then, by fiction of law, extend the employer's disciplinary jurisdiction over a retired employee, against whom proceedings were initiated prior to his retirement. Some regulations invest employer with powers to initiate proceedings against their employees post retirement up to a certain period of time, of course, with permission of some higher authority. It is, thus, only by dint of statute that the employer can enjoy extended disciplinary jurisdiction over his retired employee; not otherwise.

12. There is hardly cavil on the issue that the Regulations do not empower the Corporation any kind of disciplinary jurisdiction over their retired employees, enabling them to continue disciplinary proceedings post retirement. Reference in this connection may be made to the decision of this Court in **Rishi Pal Singh v. State of U.P. and another, Neutral Citation No. 2017:AHC:73316-DB**, where it has been held:

"We have considered the submissions raised and having heard learned counsel for the parties, no provision has been pointed out to be available under the U.P. State Warehousing Corporation Staff Regulation, 1961, that may permit the Corporation to proceed to hold disciplinary proceedings and impose any penalty on its employees governed by the aforesaid Regulations under the same after retirement. There is no such provision pari materia with Regulation 351-A of the Civil Services Regulation. The Division Bench in the case of Dhananjay Prasad Pandey (supra) has held as follows:-

"The petitioner was to retire on 31 October 2014 and it appears that for this reason action was taken against the petitioner because the Rules do not permit initiation or continuance of disciplinary proceedings after retirement. The action of the respondents is clearly arbitrary and against the principles of natural justice."

The aforesaid case was in relation to the Warehousing Corporation itself. The same ratio has been followed in the case of Surendra Singh (supra) decided on 22.02.2017, as referred to hereinabove.

Consequently, since there is no such provision available under which the disciplinary proceedings can be continued or penalty imposed, as a consequence there of, the writ petitions deserve to be allowed."

(emphasis by Court)

13. In **Dev Prakash Tewari v. Uttar Pradesh Cooperative Institutional Service Board, Lucknow and others, (2014) 7 SCC 260**, the issue that is involved here came up before the Supreme Court in the context of the Uttar Pradesh Cooperative Societies Employees' Service Regulations, 1975. In those regulations also, there was no provision at the time for initiation or continuation of disciplinary proceedings against a retired employee. The employer in **Dev Prakash Tewari (supra)** initiated disciplinary proceedings against an employee of theirs, whose earlier punishment order was quashed on grounds of violation of principles of natural justice with a direction to reinstate. Liberty was, however, granted to pursue fresh proceedings. Pending those proceedings, the employee retired. It was in the context of these facts that in **Dev Prakash Tewari**, it was held by their Lordships of the Supreme Court:

"5. There is no provision in the Uttar Pradesh Cooperative Societies Employees' Service Regulations, 1975, for initiation or continuation of disciplinary proceeding after retirement of the appellant nor is there any provision stating that in case misconduct is established a deduction could be made from his retiral benefits.

6. An occasion came before this Court to consider the continuance of disciplinary inquiry in similar circumstance in *Bhagirathi Jena case* [*Bhagirathi Jena v. Orissa State Financial Corpn.*, (1999) 3 SCC 666 : 1999 SCC (L&S) 804] and it was laid down as follows: (SCC pp. 668-69, paras 5-7)

"5. Learned Senior Counsel for the respondents also relied upon clause (3)(c) of Regulation 44 of the Orissa State Financial Corporation Staff Regulations, 1975. It reads thus:

'44. (3) (c) When the employee who has been dismissed, removed or suspended is reinstated, the Board shall consider and make a specific order:

(i) Regarding the pay and allowances to be paid to the employee for the period of his absence from duty, and

(ii) Whether or not the said period shall be treated as a period on duty.'

6. It will be noticed from the abovesaid Regulations that 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.

7. In view of the absence of such a provision in the abovesaid 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 for 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 30-6-1995, 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."

7. In a subsequent decision of this Court in *U.P. Coop. Federation case* [*U.P. Coop. Federation Ltd. v. L.P. Rai*, (2007) 7 SCC 81 : (2007) 2 SCC (L&S) 598] on facts, the disciplinary proceeding against employee was quashed by the High Court since no opportunity of

hearing was given to him in the inquiry and the management in its appeal before this Court sought for grant of liberty to hold a fresh inquiry and this Court held that charges levelled against the employee were not minor in nature, and therefore, it would not be proper to foreclose the right of the employer to hold a fresh inquiry only on the ground that the employee has since retired from the service and accordingly granted the liberty sought for by the management. While dealing with the above case, the earlier decision in *Bhagirathi Jena case* [*Bhagirathi Jena v. Orissa State Financial Corpn.*, (1999) 3 SCC 666 : 1999 SCC (L&S) 804] was not brought to the notice of this Court and no contention was raised pertaining to the provisions under which the disciplinary proceeding was initiated and as such no ratio came to be laid down. In our view the said decision cannot help the respondents herein.

8. Once the appellant had retired from service on 31-3-2009, there was no authority vested with the respondents for continuing the disciplinary proceeding 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 get full retiral benefits.

9. The question has also been raised in the appeal with regard to arrears of salary and allowances payable to the appellant during the period of his dismissal and up to the date of reinstatement. Inasmuch as the inquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him."

14. In similar circumstances, a learned Single Judge of this Court in **Chatter Sen v. State of U.P. and another, 2015 (33) LCD 2724** has held in the context of the Regulations that the Corporation have no jurisdiction to initiate or continue

disciplinary proceedings against an employee after his retirement.

15. The decision of the Supreme Court in **Dev Prakash Tewari** clinches the issue. It has not at all been suggested or urged by the respondents that there is indeed any provision in the Regulations empowering them to continue proceedings against a retired employee. This Court on a perusal of the said Regulations has not found any provision enabling the Corporation to continue pending disciplinary proceedings against a retired employee.

16. In the result, this writ petition succeeds and is **allowed with costs**. The impugned order dated 12.05.2010 passed by the Managing Director of the Corporation, the appellate order dated 13.06.2019 passed by the Board of Directors of the Corporation are hereby **quashed**.

17. The consequences shall follow. Costs easy.

Order Date :- 09.01.2024

Anoop

(J.J. Munir, J.)