

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3410 OF 2009

(Arising out of SLP(C) NO. 20691 of 2005)

The Secretary,
Forest Department & Ors.

..... Appellants

Versus

Abdur Rasul Chowdhury

.....Respondent

ORDER

H.L. DATTU, J:

Leave granted.

- 2) Challenging the judgment and order passed by the High Court in W.P.S.T. No. 1010 of 2003 dated 13.6.2005, the Secretary, Forest Department and others, have filed this appeal.
- 3) The facts in nutshell are, the respondent while he was working in wild life Division – II at Jalpaiguri was served with a memo dated 10.3.1987, inter alia directing him to show cause, why disciplinary action should not be taken against him by the Divisional Forest Officer for gross financial irregularities in respect of measurement

taken and payment made thereof for some of the works undertaken by him as Care Taker, Tourist Lodge, Jaldapara, as detected during the course of checking by the Divisional Forest Officers, Wild Life Division – II. Since the explanation offered by the respondent was not satisfactory, he was kept under suspension, pending departmental enquiry proceedings by the Divisional Forest Officer, Cooch Bihar Division vide his order dated 13.8.1987. Thereafter, a charge memo dated 13.8.1987 was served on the respondent by the disciplinary authority. The Articles of charges against respondent were two, namely :-

- (i) The respondent while functioning as Care Taker, Tourist Lodge, Jaldapara under Cooch Bihar Division from October 1985 to January 1987, deliberately neglected his duty in execution of works entrusted on him as care taker of the said Tourist Lodge and made excess payments against inflated measurements to the contractors for malafide personal gain, causing financial loss to the government to the tune of Rs.1,25,293.34 paisa.
- (ii) While functioning as care taker of the tourist lodge, Jaldapara, the respondent intentionally falsified government

documents and tempered with the same with ulterior motive of personal gain.

- 4) After initiation of departmental proceedings nothing seems to have been done by the disciplinary authority.
- 5) The respondent retired from service on 31st day of March, 1995, on attaining the age of superannuation.
- 6) As the authorities neither completed the departmental enquiry proceedings, nor released the retirement benefits to the respondent, he was constrained to file original application before the West Bengal Administrative Tribunal in O.A. No. 5963 of 1999, inter alia, requesting the tribunal to direct the respondents therein to pass an order dropping the disciplinary proceedings, in view of inordinate delay in completing the disciplinary enquiry proceedings though it was initiated by issuing the charge memo dated 13.8.1987; to revoke the order of suspension dated 13.8.1987; to direct the respondents to pass an order declaring that the entire service period of the applicant from 13.8.1987 to 31.3.1995 as the period spent on duty and the applicant is entitled to salaries and the other emoluments for the said period; and lastly to pass an order computing the retiral benefits, including pensionary benefits.

- 7) The Administrative Tribunal vide its order dated 1st day of August, 2003, disposed of the original application by directing the respondents/petitioners to conclude the departmental enquiry proceedings initiated against the applicant within a period of six months in accordance with Rule 10(1) of West Bengal Service (Death-cum-Retirement Benefits) Rules, 1971, with a further direction to settle the entire subsistence allowance payable to the applicant.
- 8) The applicant being aggrieved by the aforesaid order passed by the Administrative Tribunal, had filed a Writ Petition under Article 227 of the Constitution of India, inter alia, requesting the court to set aside the orders passed by the tribunal and to grant reliefs sought for by the applicant in the original application.
- 9) The High Court has allowed the writ petition, inter alia, holding that during the pendency of departmental enquiry proceedings, the delinquent employee has retired from service on attaining the age of superannuation and there is no provision/Rule which would permit the employer from continuing with the enquiry proceedings. Secondly, Rule 10 of West Bengal Services (Death-cum-Retirement) Benefits Rules, 1971, cannot be resorted to by the employer, since the said rule has been declared as ultra-vires by the

courts and, lastly, that the charge sheet having been issued on 13th August, 1987, the disciplinary authority had not proceeded with the enquiry till the delinquent employee retired from service on attaining the age of superannuation and, therefore, the employer now cannot proceed with the domestic enquiry proceedings.

- 10) The State being aggrieved by the aforesaid order of the High Court, has presented this Special Leave Petition.
- 11) The learned counsel Shri Tara Chandra Sharma would submit Rule 10(1) of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971, would permit the employer to reduce or withhold pension by initiating proceedings against a government servant even after his retirement from service and the vires of the said rule has been upheld by this court in the case of State of West Bengal vs. Haresh C. Banerjee and Others, (2006) 7 SCC 651. It is further contended that departmental proceedings though initiated in 1987, the same could not be completed before the respondent retired from service on attaining the age of superannuation in view of non-cooperation of the respondent and, if any body has to be blamed, it is the respondent and not the employer for the delay in completing the proceedings.

- 12) The learned counsel Shri D.N. Ray, appearing for the respondent justifies the judgment of the High Court.
- 13) Two issues would arise for our consideration and consequent decision. They are :-
- (i) Whether the employer could continue with the departmental enquiry proceedings initiated prior to the retirement of government servant by virtue of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971?
 - (ii) Whether the delay in completing the domestic enquiry proceedings would be fatal to the proceedings?
- 14) To answer the first issue which we have framed for our consideration, Rule 10(1) of the Rules, 1971, requires to be noticed and, therefore, it is extracted :-

"10. Right of the Governor to withhold pension in certain cases.—(1) 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 the Government, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence, during the period of his service, including service rendered on re-employment after retirement:

Provided that—

(a) such departmental proceeding if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(b) such departmental proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment—

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

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Governor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service;

(c) no such judicial proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose on an event which took place more than four years before such institution; and

(d) the Public Service Commission, West Bengal, shall be consulted before final orders are passed.

Explanation.—For the purpose of this article—

(a) a departmental proceeding shall be deemed to have been instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and

(b) a judicial proceeding shall be deemed to have been instituted—

(i) in the case of criminal proceeding, on the date on which the complaint or report of police officer, on which the Magistrate takes cognizance, is made, and

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

15) Rule 10 of the rules speaks of the right of the Governor to withhold pension in certain cases. Sub-Rule 10(1) says that the Governor reserves himself the right of withholding or withdrawing pension or any part of it whether permanently or for a specified period and the right of ordering the recovery from pension or the whole or the part of any pecuniary loss caused to the government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or negligence during the period of service, including service rendered on re-employment after retirement. Proviso appended to the rules specifically provides that the resort to sub-Rule (1) to Rule 10 can be made only apart from others, that the departmental proceedings had been instituted while the officer in service. This rule came up for interpretation before this court in Haresh C. Banerjee's case (supra) and this court after considering the object, purpose and purport of the rule has stated :

"7. Various State rules or regulations vest power of withholding or reduction of pension on compliance with the principles of natural justice. The question of an order withholding or reducing pension being invalid and bad in law on a legally permissible ground is one thing but to hold the rule *ultra vires* is another. In *State of U.P. v. Brahm Datt Sharma*² this Court observed that if the Government incurs pecuniary loss on account of

misconduct or negligence of a government servant and if he retires from service before any departmental proceedings are taken against him, it is open to the State Government to initiate departmental proceedings, and if in those proceedings, he is found guilty of misconduct, negligence or any other such act or omission as a result of which the Government is put to pecuniary loss, the State Government is entitled to withhold, reduce or recover the loss suffered by it by forfeiture or reduction of pension. In *State of Punjab v. K.R. Erry*³ it was held that the State Government could not direct cut in pension of officers without giving a reasonable opportunity of hearing. In *State of Maharashtra v. M.H. Mazumdar*⁴ it was observed that the State Government's power to reduce or withhold pension by taking proceedings against a government servant, even after his retirement is expressly preserved by the Rules.

8. Rule 10(1) is the authority of law under which the pension could be withheld on compliance with stipulations of the rule. We are unable to appreciate how such a rule could be held *ultra vires* even at a point of time when pension was a property to which Article 19(1)(f) was applicable."

- 16) In the present case, while the delinquent employee was in service, the departmental enquiry proceedings had been instituted by the employer by issuing the charge memo and the proceedings could not be completed before the government servant retired from service on attaining the age of superannuation and in view of Rule 10(1) of the Rules, 1971, the employer can proceed with the departmental enquiry proceedings though the government servant has retired from service for imposing only punishment contemplated under the Rules.

17) The next issue is with regard to delay in concluding disciplinary proceedings. In our view that the delay in concluding the domestic enquiry proceedings is not fatal to the proceedings. It depends on the facts and circumstances of each case. The un-explained protracted delay on the part of the employer may be one of the circumstance in not permitting the employer to continue with the disciplinary enquiry proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should be permitted to continue. This court in the case of Deputy Registrar, Co-operative Societies vs. Sachindra Nath Pandey, (1995) 3 SCC 134, has explained the various circumstances when the departmental proceedings can be directed to be closed, it is worthwhile to refer to the observation made by this court in this regard :-

"5. The learned counsel for the appellant submits that in this case the first respondent adopted a course of total non-cooperation and procrastination and that in spite of repeated opportunities being given he did not respond or participate in the inquiry. The first respondent did not even care to file an explanation or reply to the memo of charges. In the circumstances, the authorities had no option but to hold that the charges are proved. Even after the report of the Inquiry Officer was submitted, a number of opportunities were given which he again failed to avail of. It is submitted that though the whole history of the case has been set out in the counter-affidavit filed in the High Court, the learned Judge did not notice any of those facts and yet allowed the writ petition on an untenable ground. It is further contended that according to Regulation 68 of the Cooperative Federal Authority (Business) Regulations, 1976, it was not obligatory upon

the Inquiry Officer to record the evidence of the witnesses where the first respondent did neither submit a reply nor an explanation to the memo of charges. Though he was apprised of the inquiry, he did not care to attend in spite of repeated opportunities. In such a situation, he cannot complain of not recording the evidence of witnesses and other evidence."

- 18) In the present case the Administrative Tribunal after going through the entire record from the date of initiation of the departmental proceedings till the government employee retired from service on attaining the age of superannuation, has observed that since the government employee had left the head quarters without permission of the competent authority, so the proceedings could not be completed. This finding on facts need not be disturbed by us, since the said finding cannot be said a perverse finding.
- 19) In view of the above discussion, the appeal is allowed and the judgment and the order passed by the High Court is set aside. The disciplinary authority is directed to complete the domestic enquiry proceedings from the stage it was interdicted by the High Court and complete the same as expeditiously as possible and at any rate within three months from the date of receipt of this court's order. The respondent herein is directed to participate in the enquiry without unnecessarily seeking adjournment in the enquiry

proceedings. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.

.....J.
[TARUN CHATTERJEE]

.....J.
[H.L. DATTU]

New Delhi,
May 08, 2009.

