

V. PADMANABHAM

v.

GOVERNMENT OF ANDHRA PRADESH & ORS.

(Civil Appeal No. 4717 of 2009)

JULY 27, 2009

[S.B. SINHA AND DEEPAK VERMA, JJ]

Andhra Pradesh Pension Code: r.9(2) – Departmental proceedings can be continued despite superannuation.

Appellant was a Tehsidlar, Director of Civil Supplies. While he was working in that capacity, essential commodities meant for public distribution were supplied to the private parties. The State by reason of acts of omission and commission on the part of appellant was said to have suffered financial loss to the extent of Rs.12 lacs. He was placed under suspension on 29.1.1993. Departmental proceeding was initiated whereafter he was found guilty and an order of dismissal was passed on 21.10.1994. An appeal thereagainst was dismissed. He filed OA before tribunal which set aside the order of dismissal on the premise that enquiry officer was not competent to frame the charges. On appeal, High Court set aside the order of tribunal. It held that though enquiry officer himself framed the charges which was contrary to the rules 20 and 21 of APCS (CC & A) Rules however employee was under suspension prior to the order of dismissal, therefore tribunal ought not to have ordered reinstatement. It modified the order of reinstatement and directed that appellant would be deemed to have continued under suspension. The enquiry proceedings did not make much progress. He was allowed to superannuate.

Aggrieved appellant filed the present appeal. It was

A contended for the appellant that departmental proceedings were initiated in 1992-93, this court should not direct continuation of the departmental proceeding any further.

B Dismissing the appeal, the Court

HELD:1. The disciplinary proceeding was initiated against the appellant in terms of the provisions of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules. Part-V of the said Rules lay down the procedure for imposing penalties. Indisputably, in the departmental proceedings, it is incumbent to draw up the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge and a statement of the imputations of the misconduct or misbehaviour in support of each article of charge containing the details as are specified therein. In terms of Rules 9(2) of the Andhra Pradesh Pension Code the disciplinary proceedings initiated against the appellant could continue. [Para 8] [460-D-F; 461-E]

E 2. Continuation of the departmental proceedings is not illegal. The Pension Code raises a legal fiction in terms whereof the departmental proceedings would be deemed to have continued. The Tribunal passed an order in favour of the appellant on technical grounds. The High Court, therefore, cannot be said to have committed any illegality in passing the impugned judgment. [Para 12] [463-E-G]

G *State of Madhya Pradesh v. Bani Singh* 1990 Supp. SCC 738, distinguished.

State of U.P. & Ors. v. Harihar Bholenath (2006) 13 SCC 460; *UCOBank & Anr. v. Rajinder Lal Capoor* (2007) 6 SCC 694 and *M.V. Bijlani v. Union of India & Anr.* (2006) 5 SCC

H

88, referred to.

3. There was no delay in the matter of initiation of the departmental proceedings. It was also concluded within a reasonable time. The appellant preferred appeals before the Collector in the year 1994. The said appeal was dismissed by an order dated 21.10.1994. In the orders passed by the disciplinary authority as also the Collector, the matter was dealt with in great details. Each and every aspect of the matter including defences raised by the appellant had been taken into consideration. It has specifically been noticed that various notices have been issued to the appellant. The appellant, however, filed the original application before the Tribunal in the year 1997. It was disposed of by the Tribunal by a judgment and order dated 2.1.2002. The State immediately filed a writ petition before the High Court which was disposed of by an order dated 23.11.2004. It is during the pendency of the matter before this Court, the appellant is said to have reached the age of superannuation. Therefore, delay alone in a case of this nature should not be held to be fatal in the matter of continuing the departmental proceeding as the charges against the appellant are serious in nature and a large sum of money was to be recovered from him. It is, thus, not expedient in the interest of justice that on the ground of delay alone, the matter should be given a quietus. [Para 13] [464-G-H; 465-A-D]

U.P. State Sugar Corporation Ltd. & Ors. v. Kamal Swaroop Tondon etc. (2008) 2 SCC 41, relied on.

Case Law Reference:

(2006) 13 SCC 460	referred to	Para 10
(2007) 6 SCC 694	referred to	Para 10
(2006) 5 SCC 88	referred to	Para 11

A **1990 Supp. SCC 738 distinguished Para 12**
 (2008) 2 SCC 41 relied on Para 13

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4717 of 2009.

B From the Judgment & Order dated 23.11.2004 of the High Court of Andhra Pradesh at Hyderabad in Writ Petition No. 23049 of 2002.

C D. Rama Krishna Reddy and Asha Gopalan Nair for the Appellants.

I. Venkatanarayana, Manoj Saxena, Rajneesh Kr. Singh, T.V. George for the Respondents.

D The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

E 2. Appellant herein was a Deputy Tehsildar, Director of Civil Supplies, Punganoor in the District of Chittoor. He worked in the said capacity from 11.5.1992 to 21.1.1993. During the aforementioned period, Essential Commodities meant for public distribution were supplied to the private parties; the price whereof is stated to be Rs.12,46,523.60.

F He was placed under suspension on 29.1.1993. A departmental proceeding was initiated. An enquiry officer was appointed for the said purpose. He was found guilty in the said departmental proceedings, relying on or on the basis whereof, an order of dismissal was passed on 21.10.1994.

G 3. An appeal preferred by the appellant thereagainst was also dismissed. He filed an original application before the Andhra Pradesh Administrative Tribunal. On the premise that the enquiry officer was not competent to frame the charges, the order of dismissal was set aside.

H

4. The State filed a writ petition thereagainst before the High Court. By reason of the impugned judgment, the said judgment and order of the Tribunal was set aside, directing :

"We have considered the contentions of the learned counsel with reference to the APCS (CC & A) Rules. As can be seen from the Rules, appointment of Enquiry Officer comes into play only after the explanation is filed to the charge sheet and decision is to be taken by the Disciplinary Authority to conduct further enquiry. In the instant case, the Enquiry Officer had himself framed the charges which goes contrary to the Rules 20 and 21 of the APCS (CC & A) Rules. Under those circumstances, we do not find any ground to interfere with the order of the Tribunal, but, however, it is contended by the learned Government Pleader that giving direction to the Department to reinstate the petitioner is only misconceived. Admittedly, the employee was under suspension prior to the order of dismissal. Under those circumstances, the Tribunal ought not to have directed reinstatement of the petitioner. We are in agreement with the contention raised by the learned Government Pleader. When further action is sought to be taken in accordance with the Rules, the Tribunal ought to have left the matter to the discretion of the authorities. Moreover, in the instant case, the employee was already under suspension from 1993 and the order of dismissal was set aside on the technical ground that the Enquiry Officer was not competent to frame the charges. Under those circumstances, we are inclined to modify the order relating to reinstatement and we direct that 1st respondent shall be deemed to have continued under suspension impugned order."

5. Appellant is before us aggrieved by and dissatisfied with the said directions.

6. Indisputably, the enquiry proceedings did not make much

A progress. He was allowed to superannuate.

B It is on the aforementioned premise, Mr. D. Rama Krishna Reddy, learned counsel appearing on behalf of the appellant, would contend that the impugned judgment of the High Court should be set aside and the disciplinary proceedings may not be directed to be continued.

C 7. Mr. I. Venkatanarayana, learned senior counsel appearing on behalf of the State, however, urged that despite superannuation of the appellant, the departmental proceedings which were pending against him must be held to be continuing in terms of the provisions of Andhra Pradesh Pension Code and, thus, there is no legal impediment in imposing any punishment withdrawing the whole or part of the pension so as to enable the State go recover the amount which it suffered owing to the acts of omission and commission on the part of the appellant.

E 8. The disciplinary proceeding was initiated against the appellant in terms of the provisions of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules. Part-V of the said Rules lay down the procedure for imposing penalties. Indisputably, in the departmental proceedings, it is incumbent to draw up the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge and a statement of the imputations of the misconduct or misbehaviour in support of each article of charge containing the details as are specified therein.

The Administrative Tribunal in its judgment and order dated 2.1.2002 has held as under :

G "It is seen from the records that the charges were framed by the enquiry officer who is the RDO. RDO is neither the appointment authority nor the disciplinary authority for the Dy. Tahsildars. According to Rules 20 and 21 it is only the

H

appointing authority/Disciplinary authority who has to frame charges against the applicant duly furnishing him the documents prescribed therein namely the basis for the charges. List of documents and witnesses to be examined etc., this was not done. The Collector ought to have framed the Charges and called for the applicant's explanation. In case he was not satisfied then only he ought to have appointed the enquiry officer. The very appointment of the enquiry officer straight way by the Collector rendered the proceedings void as the procedure laid down under the OCA Rules is a statutory one."

In view of the aforementioned findings of the Administrative Tribunal itself, the State was entitled to initiate a fresh departmental proceeding. It furthermore appears from the records that the appellant himself had admitted distribution of a part of the essential commodities meant for public distribution to private persons. The State by reason of the aforementioned acts of omission and commission on the part of the appellant is said to have suffered financial loss to the extent of more than Rs.12,00,000/-.

It has not been disputed before us that in terms of Rules 9(2) of the Andhra Pradesh Pension Code the disciplinary proceedings initiated against the appellant could continue.

9. Rule 9(2)(a) reads as under :

"9. Right of Government to withhold or withdraw pension:—(1)...

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the

A authority by which they were commenced in the same manner as if the Government servant had continued in service :

B Provided that where the departmental proceedings are instituted by an authority subordinate to the State Government, that authority shall submit a report recording its findings to the State Government.

C 10. Indisputably, therefore, the departmental proceedings which have been pending against the appellant do not suffer from any legal infirmity and in law would be deemed to have been continuing.

In *State of U.P. & Ors. v. Harihar Bholenath* [(2006) 13 SCC 460], this Court stated :

D "10. A departmental proceeding can be initiated for recovery of amount suffered by the State exchequer owing to the acts of omission or commission of a delinquent employee in three different situations:

E (i) when a disciplinary proceeding is initiated and concluded against a delinquent employee before he reaches his age of superannuation;

F (ii) when a proceeding is initiated before the delinquent officer reached his age of superannuation but the same has not been concluded and despite the superannuation of the employee, an order of recovery of the amount from the pension and gratuity is passed; and

G (iii) an enquiry is initiated after the delinquent employee reaches his age of superannuation."

In *UCO Bank & Anr. v. Rajinder Lal Capoor* [(2007) 6 SCC 694], this Court stated :

H

“21. The aforementioned Regulation, however, could be invoked only when the disciplinary proceedings had clearly been initiated prior to the respondent’s ceasing to be in service. The terminologies used therein are of seminal importance. Only when a disciplinary proceeding has been initiated against an officer of the bank despite his attaining the age of superannuation, can the disciplinary proceeding be allowed on the basis of the legal fiction created thereunder i.e. continue “as if he was in service”. Thus, only when a valid departmental proceeding is initiated by reason of the legal fiction raised in terms of the said provision, the delinquent officer would be deemed to be in service although he has reached his age of superannuation. The departmental proceeding, it is trite law, is not initiated merely by issuance of a show-cause notice. It is initiated only when a charge-sheet is issued.”

11. Mr. Rama Krishna Reddy, however, would urge that having regard to the fact that the departmental proceedings were initiated in the year 1992-93, this Court should not direct continuation of the departmental proceedings any further. Strong reliance in this behalf has been placed on *M.V. Bijlani v. Nion of India & Anr.* [(2006) 5 SCC 88].

12. We have noticed heretobefore that continuation of the departmental proceedings is not illegal. The Pension Code raises a legal fiction in terms whereof the departmental proceedings would be deemed to have continued. The Tribunal has passed an order in favour of the appellant on technical grounds. The High Court, therefore, in our opinion, cannot be said to have committed any illegality in passing the impugned judgment.

It may be true that in *Bijlani* (supra), this Court relying on or on the basis of an earlier judgment of this Court in *State of Madhya Pradesh v. Bani Singh* [1990 Supp. SCC 738], held as under :

A "16. So far as the second charge is concerned, it has not
B been shown as to what were the duties of the appellant in
C terms of the prescribed rules or otherwise. Furthermore,
D it has not been shown either by the disciplinary authority
or the Appellate Authority as to how and in what manner
the maintenance of ACE-8 Register by way of sheets which
were found attached to the estimate file were not
appropriate so as to arrive at the culpability or otherwise
of the appellant. The Appellate Authority in its order stated
that the appellant was not required to prepare ACE-8
Register twice. The appellant might have prepared another
set of register presumably keeping in view the fact that he
was asked to account for the same on the basis of the
materials placed on records. The Tribunal as also the High
Court failed to take into consideration that the disciplinary
proceedings were initiated after six years and they
continued for a period of seven years and, thus, initiation
of the disciplinary proceedings as also continuance thereof
after such a long time evidently prejudiced the delinquent
officer."

E In that case, the disciplinary proceedings were initiated
F five years after the appellant therein had handed over charge.
It was opined that he was not having possession of any
document. Seven years' time was taken to complete the
enquiry. Appellate Authority also took five years in disposing
of the appeal. None of the authorities had taken into
consideration as to whether the procedure laid down under the
Rules has been followed or not. It is in the aforementioned fact
situation, such a direction was issued.

G 13. This case, however, stands on a different footing. There
was no delay in the matter of initiation of the departmental
proceedings. It was also concluded within a reasonable time.
The appellant preferred appeals before the Collector in the year
1994. The said appeal was dismissed by an order dated

H

† 21.10.1994. In the orders passed by the disciplinary authority as also the Collector, the matter has been dealt with in great details. Each and every aspect of the matter including defences raised by the appellant had been taken into consideration. It has specifically been noticed that various notices have been issued to the appellant.

A

B

The appellant, however, filed the original application before the Tribunal in the year 1997. It was disposed of by the Tribunal by a judgment and order dated 2.1.2002. The State immediately filed a writ petition before the High Court which was disposed of by an order dated 23.11.2004. It is during the pendency of the matter before us, the appellant is said to have reached the age of superannuation. We, therefore, are of the view that delay alone in a case of this nature should not be held to be fatal in the matter of continuing the departmental proceeding as the charges against the appellant are serious in nature and a large sum of money have to be recovered from the appellant. It is, thus, not expedient in the interest of justice that on the ground of delay alone, the matter should be given a quietus. We may place on record that a Division Bench of this Court in *U.P. State Sugar Corporation Ltd. & Ors. v. Kamal Swaroop Tondon* [(2008) 2 SCC 41], held as under :

C

D

E

“27. In *UCO Bank v. Sanwar Mal*, the Court held that two concepts: (i) resignation; and (ii) retirement were different and employed for different purposes and in different contexts. Resignation brings about complete cessation of master and servant relationship, but retirement does not do so. In case of retirement, master and servant relationship continues for grant of retiral benefits.

F

28. If it is so, the appellant Corporation, in our opinion, is right in submitting that the proceedings could have been continued after the retirement of the respondent employee as far as the financial loss caused to the Corporation because of negligence on the part of employee and the

G

H

A benefit claimed by the respondent workman on his terminal benefits are concerned.”

14. We respectfully agree with the aforementioned dicta having regard to the fact situation obtaining in the instant case.

B 15. The appeal is, therefore, dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

D.G.

Appeal dismissed.