

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 4766 OF 2009
[Arising out of SLP(C) No. 13946/2006]

GIRIJAN CO-OP. CORPORATION LTD., A.P. ... APPELLANT(S)

:VERSUS:

K. SATYANARAYANA RAO ... RESPONDENT(S)

WITH

CIVIL APPEAL NO. 4767 OF 2009
[Arising out of SLP(C) No. 15717/2006]

CIVIL APPEAL NO. 4769 OF 2009
[Arising out of SLP(C) No. 15500/2006]

CIVIL APPEAL NO. 4770 OF 2009
[Arising out of SLP(C) No. 15772/2006]

CIVIL APPEAL NO. 4771 OF 2009
[Arising out of SLP(C) No. 699/2008]

ORDER

Leave granted.

These appeals are directed against the judgment and order dated 14.02.2006 passed by a Division Bench of the High Court of Judicature of Andhra Pradesh whereby and whereunder the letters patent appeal filed against the judgment and order dated 14.7.2005 passed by the learned Single Judge of the High Court passed in

Writ Petition No. 799/2007 was affirmed.

Respondents herein were employees of the appellant-Corporation. They reached the age of superannuation some time in 2000. A departmental proceeding was initiated against the respondents in the year 1999 alleging some financial irregularities on their part committed in the year 1992-93. Certain amount was sought to be recovered from them which the appellant allegedly suffered by reason of the misconduct committed by them shortly before their superannuation.

One of the question which had been raised before the High Court and found favour with by both the learned Single Judge as also the Division Bench of the High Court, was that no disciplinary proceeding could have been initiated against the respondents and/or continue the same after their retirement. The High Court in support of the aforementioned finding relied upon a decision of this Court in Bhagirathi Jena vs. Board of Directors, O.S.F.C., 1999 (3) SCC 666. The High Court in its order referred to a Circular dated 29.8.1998 which reads as under:

“Sub:- G.C.C. Service Rules – Amendment of Service Rules of G.C.C. for adoption of Andhra Pradesh Civil Service Code and Andhra Pradesh Fundamental Rules – Reg.

Ref: Board Resolution No. 74/98-99 dated 11.8.1998

The Board in its resolution No. 7498-99 have resolved to amend the GCC Service Rules for adoption of Andhra Pradesh Civil Service Code rules and Andhra Pradesh Fundamental Rules where ever the G.C.C. service rules are silent.

All the Unit Officers of G.C.C. are requested to include this para in service rules of GCC in Chapter I Part-A as Rule 7.

7. ADOPTION OF GOVT. RULES.

The M.D. shall have power to adopt rules under 'Andhra Pradesh Civil Service Rules' and Andhra Pradesh Fundamental Rules to its employees whenever the GCC Service Rules of employees are silent.

Receipt of the circular should be acknowledged.”

Interpreting the words “The M.D. shall have power to adopt rules”, it was opined by the High Court that as no such order adopting the said rules by the Managing Director of the Corporation was brought on record, continuation of the disciplinary proceedings against the respondents was bad in law.

Before this Court, however, the Corporation seeks to take a different stand. According to it, the power to adopt the Government Rules vests in the Board of Directors and the Managing Director was merely to apply the same. By an affidavit affirmed by one K.S.V.R.N. Sarma, Legal Executive/Junior Manager (Legal) of the Corporation filed on 10th July, 2009 which has been brought to our notice that in fact the Board of Directors had adopted Rule 7 of Part-A, Chapter I of the G.C.C. Service Rules by resolution dated 11.8.1998, in terms whereof the aforementioned circular dated 29.8.1998 has been issued. It was furthermore contended before the High Court:

“I say and submit that the respondent herein who is in the cadre of General Manager has committed certain grave irregularities, misappropriation of huge Corporation funds, committed criminal breach of trust while working as Senior Accounts Officer (Comp.) incharge of the subject of industries during 1991-92. The petitioner Corporation after conduct of enquiry issued him provisional conclusion orders on 28.4.2000 stating that since he is due to retire on 30.4.2000, he will be allowed to retire on the day without any retirement benefits till all the pending cases are finalized and to recover the losses sustained to the tune of Rs. 2,38,855/-. The respondent did not choose to file his explanation to the said

provisional conclusion orders. Thus after affording him the opportunity, final orders are passed on 3.7.2000 confirming the provisional conclusion orders. The employees of Corporation besides the respondent herein are well aware of the said Board resolution and have not challenged the same in any legal forum so far. The respondent without filing the statutory appeal before the Board, filed the WP 25073 of 2000 which is allowed on 12.4.2001 by the Hon'ble High Court of Andhra Pradesh holding that the disciplinary proceedings cannot be maintained subsequent to the retirement of the respondent employees.”

Mr. Jaideep Gupta, learned senior counsel appearing on behalf of the appellant would raise a two-fold submission before us.

Firstly, having regard to the bye-laws of the appellant Corporation, the powers to fix the strength of the establishment and to frame subsidiary regulations for recruitment, service conditions and disciplinary control of the employees, were vested in the Board of Directors, and only in terms of the said powers the following resolution was passed:

“Subject No. 74:

To seek approval of the Board to amend ' the GCC Service Rules' for adoption of 'AP Civil Service Code' and 'A.P. Fundamental Rules' wherever the GCC Service Rules are silent.

Resolution No. 74/98-99

Approved.”

Secondly, in any event, one of the meanings of the word “adopt”, being to 'follow', the Managing Director was merely to follow the rules which are adopted by the aforementioned resolution of the Board of Directors and he did not have any independent power to adopt or accept the same.

Mr. Ranjan Mukherjee, learned counsel appearing on behalf of the respondents, on the other hand, would contend that the respondents having

retired some time in 2000, this Court may not exercise its discretionary jurisdiction under Article 136 of the Constitution in the above terms. It is not in dispute that before the High Court what was produced was only the Circular dated 29.8.1998. Neither the bye-laws nor the resolution purported to have been adopted by the Board of Directors were brought to the notice of the High Court. The documents whereupon reliance is now sought to be placed, along with the affidavit affirmed by Shri Sarma, in our opinion, are additional documents which can be admitted by this Court only in terms of Order 41 Rule 27 of the Code of Civil Procedure ('CPC'). There was absolutely no reason as to why the authorities of the appellant did not bring the same to the notice of the High Court; they being within the power and possession of the Corporation.

We, therefore, are of the opinion that it is not a fit case where this Court should exercise its jurisdiction under Order 41 Rule 27 of the CPC or the provisions akin thereto, keeping in view the fact that the parameters laid down therein are not satisfied.

So far as the second contention raised by Mr. Gupta is concerned, we are of the opinion that the manner in which the word “adopt” has been used in the circular letter dated 29.8.1998, does not lead to the conclusion that the same has been used in the sense of following the rules as the word “adopt” has been preceded by the words “shall have power to”. There cannot be any doubt or dispute that an employer can initiate a departmental proceedings and/or continue the same only in terms of the rules framed by it. It is also a well

settled law that the disciplinary proceedings are initiated only when a charge-sheet is issued. See: *Union of India vs.*

This Court in *UCO Bank & Anr. vs. Rajinder Lal Capoor*, 2007 (6) SCC 694, has held as under:

“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 proceedings, 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 (See *Union of India vs. K.V. Jankiraman*, 1991 (4) SCC 109. This aspect of the matter has also been considered by this Court recently in *Goal India Ltd. v. Saroj Kumar Mishra*, 2007 (9) SCC 625, wherein it was held that date of application of mind on the allegations levelled against an officer by the competent authority as a result whereof a charge-sheet is issued would be the date on which the disciplinary proceedings are said to have been initiated and not prior thereto. Pendency of a preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause 20 of the Regulations.”

(See also **Ramesh Chandra Sharma v. Punjab National Bank and Anr.**, 2007 (9) SCC 15 and 2008 (8) SCC 4).

In absence of any rules, therefore, a disciplinary proceeding against a retired employee should not have been continued. The judgment of the High Court, in our opinion, cannot be said to be faulty. We, however, keeping in view the subsequent documents brought before us by the appellant, would observe that, in future, in any other case or before any other authority, the Corporation would be at liberty to place all the relevant documents and to that effect the question of law raised by the appellant herein shall remain open.

The appeals are dismissed with the aforementioned observations and direction. However, in the facts and circumstances of this case, there shall be no order as to costs.

.....J
(S.B. SINHA)

.....J
(DEEPAK VERMA)

NEW DELHI,
JULY 24, 2009.