

CASE NO.:
Appeal (civil) 1539 of 2007

PETITIONER:
State of U.P. & Ors

RESPONDENT:
R.C. Misra

DATE OF JUDGMENT: 22/03/2007

BENCH:
G.P. Mathur & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T
(Arising out of Special Leave Petition (Civil) No.16753 of 2004)

G. P. MATHUR, J.

1. Leave granted.

2. This appeal, by special leave, has been preferred against the judgment and order dated 16.3.2004 of Allahabad High Court (Lucknow Bench), by which the writ petition filed by the State of U.P. was dismissed. In the writ petition challenge was laid to the order dated 10.4.2002 passed by U.P. Public Service Tribunal, Lucknow (hereinafter called 'the Tribunal') by which the claim petition filed by the respondent R.C. Misra had been allowed and the order passed by the State Government for recovery of certain amount from his pension/gratuity was set aside.

3. The respondent was working as Block Development Officer when he was placed under suspension by the order dated 20.10.1997 and a charge sheet containing 12 charges was served upon him on 24.10.1997. The respondent attained the age of superannuation on 31.10.1997 and retired from service. The enquiry officer submitted a report on 16.11.1999 that all the 12 charges levelled against the respondent were found to have been established. Thereafter, an order was passed by the State Government on 25.1.2001 directing recovery of Rs.9,69,141.60 from the pension/gratuity of the respondent. The respondent filed a claim petition before the U.P. Public Service Tribunal, Lucknow, challenging the aforesaid order passed by the State Government. The Tribunal allowed the claim petition by the order dated 10.4.2002 and set aside the order passed by the State Government directing recovery of Rs.9,69,141.60 from the respondent. It was, however, left open to the State Government to proceed against the respondent under Regulation 351A of the Civil Service Regulations after obtaining sanction from the competent authority. The appellant State of U.P. filed a writ petition challenging the aforesaid order of the Tribunal but the same was dismissed on 16.3.2004.

4. We have heard Shri Dinesh Dwivedi, learned senior counsel for the appellant, Shri Sunil Gupta, learned senior counsel for the respondent and have perused the record.

5. There is no dispute regarding the factual position that the respondent was placed under suspension on 20.10.1997 and a charge sheet containing 12 charges was served upon him on 24.10.1997 and shortly thereafter he attained the age of superannuation on 31.10.1997.

The enquiry officer recorded a finding that all the charges were found to have been established against the respondent. The Tribunal has held that the disciplinary proceedings were initiated against the respondent prior to his retirement by issuing a charge sheet but the same could not have continued after his retirement unless specific order for its continuance had been taken from the competent authority i.e. the Governor, as provided in Regulation 351A of the Civil Service Regulations. The High Court has accepted the aforesaid reasoning of the Tribunal and has observed as under :-

"\005\005\005\005.. This enquiry was thus, initiated few days before the date of retirement of the respondent no.1. At that time there was no occasion for the State Government to take any permission or sanction under Regulation 351A of the Civil Service Regulations. During continuance of the enquiry the respondent no.1 retired from service on attaining the age of superannuation but no sanction or permission as required under Regulation 351A of the Civil Service Regulations was taken from the Governor by the petitioner."

The High Court repelled the contention raised on behalf of the appellant State of U.P. that as the enquiry had been initiated before the respondent had attained the age of superannuation, no sanction of the Governor was required and for this reliance was placed on a decision of this Court rendered in State of U.P. v. Shri Krishna Pandey (1996) 9 SCC 395.

6. Regulations 351A and 470 of Civil Service Regulations read as under :-

351A. 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 reemployment -

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) of Clause (a); and

(c) The Public Service Commission, UP shall be consulted before final orders are passed.

(Provided further that if the order passed by the Governor relates to a case dealt with under the Uttar Pradesh Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, it shall not be necessary to consult Public Service Commission.)

Explanation - For the purpose 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 complaint is made, or a charge-sheet is submitted, to a criminal court; and

(ii) in the case 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.

470. (a) The full pension admissible under the Rules is not to be given as a matter of course, or unless the service rendered has been really approved (See Appendix 9)

(b) If the service has not been thoroughly satisfactory the authority sanctioning the pension should make such reduction in the amount as it thinks proper. Provided that in cases where the authority sanctioning pension is other than the appointing authority, no order regarding reduction in the amount of pension shall be made without the approval of the appointing authority.

Note: For the purpose of this Article 'appointing authority' shall mean the authority which is competent to make substantive appointment to the post or service from which the officer concerned retires."

The substantive part of Regulation 351A confers the power upon the Government 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. There is a proviso appended to the Regulation which circumscribes the power conferred by the substantive part of the Regulation. Clause (a) of the proviso with which we are concerned here uses the expression "if not instituted while the officer was on duty either before retirement or during re-employment. Clause (a) of the proviso will, therefore, get attracted only when the departmental proceedings are instituted against the officer after his retirement or when he is not in re-employment. If the departmental proceedings are instituted before an officer has attained the age of superannuation and before his retirement, proviso (a) can have no application. In order to remove any doubt regarding the date of institution of enquiry or the judicial proceedings an Explanation has been appended after the proviso. According to Explanation (a), departmental proceedings shall be deemed to have been instituted (i) when the charges framed against the officer are issued to him, or (ii) if the officer has been placed under suspension from an earlier date, on such date. By incorporating the explanation, the rule framing authority has notionally fixed two dates as the date on which the departmental proceedings shall be deemed to have been instituted against an officer. A combined reading of the proviso and the explanation would show that there is no fetter or limitation of any kind for instituting departmental proceedings against an officer if he has not attained the age of superannuation and has not retired from service. If an officer is either placed under suspension or charges are issued to him prior to his attaining the age of superannuation, the departmental proceedings so instituted can validly continue even after he has attained the age of

superannuation and has retired and the limitations imposed by sub-clause (i) or sub-clause (ii) of clause (a) of proviso to Regulation 351A will not apply. It is only where an officer is not placed under suspension or charges are not issued to him while he is in service and departmental proceedings are instituted against him under Regulation 351A after he has attained the age of superannuation and has retired from service and is not under re-employment that the limitations imposed by sub-clauses (i) and (ii) of proviso (a) shall come into play.

7. The word used in proviso (a) is "institute". The dictionary meaning of the word "institute" is \026 set up; cause to come into existence; to originate and get established; to commence. It obviously refers to the initial action or the commencement of the action. It is entirely different from continuance of an action already initiated. If the intention of the rule making authority had been that an enquiry instituted against an officer while in service should not proceed after his retirement, save with the sanction of the Governor, then the proviso (a) would have been differently worded and instead of the word "instituted", the words "continue" or "proceed" or "go on" would have been used. This being not the language of the proviso, there is absolutely no warrant for holding that an enquiry validly instituted against an officer while he was in service would, after retirement of the officer, require sanction of the Governor for its continuance and culmination.

8. In the present case, the respondent had been placed under suspension and charges were also served upon him while he was in service. In such circumstances, proviso (a) did not come into play at all and there was no requirement of obtaining sanction of the Governor. The enquiry which had been instituted prior to the retirement of the respondent and was completed after his retirement could not, therefore, be held to be illegal on the ground of want of sanction of the Governor. The view to the contrary taken by the Tribunal and by the High Court is, therefore, clearly erroneous in law and cannot be sustained.

9. The provisions of Articles 351A and 470 of Civil Service Regulations have recently been examined by this Court in State of U.P. & Ors. v. Harihar Bhole Nath JT 2006 (9) SC 567, and it is held as under in paras 14 and 15 of the report :-

14. The proceedings for recovery of the amount from a Government servant can be passed in the event he is held to be guilty of grave misconduct or caused pecuniary loss to Government by his misconduct or negligence during his service. Some procedural safeguards, however, have been laid down in terms of proviso appended thereto, including the requirement to obtain an order of sanction of the Governor. Such order of sanction, however, would not be necessary if the departmental proceedings have been initiated while the delinquent was on duty. Proviso appended to Regulation 351-A merely controls the main proceedings. The same would apply in the exigencies of the situation envisaged therein, namely, when the proceedings were initiated after retirement and not prior thereto.

15. Explanation appended to Regulation 351-A provides for a legal fiction in terms whereof departmental proceedings would be deemed to have been instituted when the charges are framed against the pensioner or issued or the delinquent has been placed under suspension from an earlier date, on such date.

10. The High Court has placed reliance upon State of U.P. v. Shri Krishna Pandey (1996) 9 SCC 395 for coming to the conclusion that even when departmental proceedings have commenced prior to retirement of an officer, they cannot continue after retirement without the sanction of the Governor. In this case, the officer had retired on 31.3.1987 and the proceedings were initiated on 21.4.1991. Thus, the departmental proceedings were instituted long after the retirement of

the officer and in such a situation the limitations imposed by proviso (a) clearly got attracted and no enquiry could have been instituted against him save with the sanction of the Governor. This decision has been noticed and explained in State of U.P. & Ors. v. Harihar Bhole Nath (supra) in para 20 of the reports which is being reproduced below :-

20. The High Court has placed strong reliance on State of U.P. and Anr. v. Shri Krishna Pandey (AIR 1996 SC 1656), wherein the departmental enquiry was initiated after the delinquent officer reached his age of superannuation. Noticing Rule 351-A of the Civil Services Rules and that the departmental proceeding was initiated after the retirement of the employee, the same was held to be impermissible in law. Although it was not necessary to pronounce upon the construction of Rule 351-A involving a case where a departmental proceeding was initiated prior to reaching of the age of superannuation by the delinquent officer, it was observed that as the officer had retired on 31st March, 1987 and proceedings were initiated against him on 12th April, 1991, proviso appended to the Rule would be applicable.

The decision in State of U.P. & Ors. v. Shri Krishna Pandey (supra) is clearly not an authority for the proposition that the departmental proceedings instituted while the officer was on duty either before retirement or during re-employment cannot be continued after his retirement save with the sanction of the Governor. Regulation 351A cannot be interpreted in a manner that a departmental proceeding validly instituted while the officer is in service would require sanction of the Governor for its continuance subsequent to his retirement as the limitation imposed by sub-clause (i) of clause (a) of the proviso is only on institution of the proceedings and not the continuance thereof.

11. For the reasons discussed above, the appeal is allowed with costs. The judgment and order dated 10.4.2002 of the U.P. Public Service Tribunal, Lucknow and judgment and order dated 16.3.2004 of Allahabad High Court (Lucknow Bench) are set aside. The matter is remitted to the Tribunal for a fresh decision of the claim petition filed by the respondent on merits and in accordance with law. The Tribunal shall make all possible endeavour to decide the proceedings as expeditiously as possible, preferably within a period of four months from the date of filing of a certified copy of this judgment, which shall be done by the parties at the earliest.