

CASE NO.:
Appeal (civil) 7839-7840 of 2004

PETITIONER:
State of U.P. & Others

RESPONDENT:
Gulab Shankar Srivastava

DATE OF JUDGMENT: 03/12/2004

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

[Arising out of SLP (C) Nos.12108-12109 of 2003]

KAPADIA, J.

Leave granted.

These appeals are directed against two sets of orders passed by the High Court of Allahabad, both, dated 30.01.2003 dismissing CMWP No.9951 of 2002 filed by State of U.P. and simultaneously allowing CMWP No.41586 of 1999 filed by the respondent herein, directing payment of all consequential benefits, as if the order of punishment dated 19.4.1993 had not been passed, with interest @ 10% per annum.

The relevant facts giving rise to these appeals are necessary to be recapitulated.

Gulab Shankar Srivastava, the respondent herein, was posted on 30.12.1987 as Assistant Deputy Director in the Finance Department, Directorate of Education, U.P. As Assistant Deputy Director, he was required to deal with the matters concerning financial sanction of salaries payable to the staff under three language formula and reimbursement of fees of girls and scheduled castes and scheduled tribes from the allocations made by the State. On 26.4.1988, he was suspended. On 2.1.1989, he was charge-sheeted. In all, 48 charges were framed and they inter alia related to irregularities in the matter of preparation of budget and sanctioning grants without obtaining prior approval from his superiors. On 7.5.1990, he replied and denied the said charges. On 3.4.1991, the Enquiry Officer submitted his report, in which charge nos.7 and 20 were found to be fully proved whereas charge nos.2, 4, 5, 8, 9, 10, 13, 14, 19, 21, 22, 28, 35, 36, 38, 42, 43, 44, 45, 46 and 47 were found to be partly proved. By his report, the Enquiry Officer proposed stoppage of three annual increments with permanent effect. By letter dated 12.10.1992, the delinquent was asked by the Appointing Authority to submit his reply to the enquiry report. By order dated 19.4.1993, the disciplinary authority, after considering the material on record imposed the punishment of reduction to the lowest stage of his pay scale of Rs.2200-75-2600-E.B.-100-4000.

To complete the chronology of events, the respondent herein, challenged the order dated 19.4.1993 by filing Claim Petition No.1393 of 1993 before the State Public Services Tribunal, Lucknow, in which he alleged lack of opportunity of

hearing, non-supply of vital documents, denial of opportunity to cross-examine the witnesses and breach of Civil Services (Classification, Control & Appeal) Rules. He further submitted that the impugned punishment amounted to a major punishment which warranted full-fledged enquiry, whereas what was held was a summary enquiry and consequently, the said order dated 19.4.1993 was arbitrary, illegal and bad in law.

The said claim petition was contested by the appellants herein stating, that, the delinquent had committed serious financial irregularities in performance of his duties; that the copies of all relevant documents in support of the charges were supplied; that inspection of the documents was also given; and that the said order dated 19.4.1993 was passed after giving full opportunity of hearing to the respondent herein. That, looking to the gravity of charges, appropriate punishment of reduction to the lowest stage in the time scale was awarded both justifiably and in accordance with the provisions of Civil Services (Conduct & Disciplinary) Rules.

By judgment and order dated 28.2.1998, the Tribunal, held, that, the punishment of reduction to the lowest stage of the pay scale was a major punishment; that the charge-sheeted employee was not supplied with the necessary documents despite repeated demands; that out of 48 charges, no details of the documents in support of 39 charges were ever given; that mere permission to inspect the documents was not sufficient compliance of law, particularly when 48 charges were levelled; that the respondent herein was prevented from cross-examining the witnesses; that he was not allowed to produce defence evidence; that no reasons have been given by the disciplinary authority for not accepting the punishment proposed by the Enquiry Officer and consequently, the Tribunal quashed the said order dated 19.4.1993, with liberty to the appellants to hold the departmental enquiry, afresh, if so advised, keeping in mind the factum of respondent's retirement in 1994. By the impugned judgment, the Tribunal gave liberty to the appellants to hold the departmental enquiry by observing that charges levelled against the respondent were of serious nature.

Since there is the controversy regarding text of the operative part of the judgment of the Tribunal, we quote herein below the said part, in extenso:

"ORDER:

The petitioner's petition is allowed in the manner that the punishment order dated 19.4.1993, contained in Annexure No.15 and the appellate order dated 27.4.1994 annexed with the amendment application are quashed as illegal and it is directed that the petitioner should be allowed the consequential service benefits in accordance with law. Petitioner's prayer for the payment of salary etc. for the suspension period is not allowed since the matter relating to it is subjudiced before the Hon'ble High Court. It is further directed that the opposite parties shall be at liberty to hold departmental enquiry against the petitioner afresh as observed above. The departmental enquiry should be initiated within four months from the date of communication of the order and it should then be completed within another four months and the service benefits given to the petitioner shall be subject to the final result of the enquiry. In case no enquiry is held within the stipulated period, the

petitioner shall be entitled to get the consequential service benefits accordingly as per rules."

As stated above, being aggrieved by the decision of the Tribunal dated 28.2.1998, the appellants herein, moved the High Court vide CMWP No.9951 of 2002 whereas the respondent herein moved the High Court by way of CMWP No.41586 of 1999 claiming arrears of salary (including difference of pay for suspension period) and allowances as the enquiry was not completed within the stipulated period as ordered by the Tribunal vide its decision dated 28.2.1998.

By the impugned judgments dated 30.01.2003, the writ petition filed by the appellants being CMWP No.9951 of 2002 stood dismissed whereas CMWP No.41586 of 1999 filed by the respondent herein was allowed with a direction to pay the arrears of salary, allowances and all consequential benefits with interest @ 10% per annum. Accordingly, the appellants applied to this Court under Article 136 and have obtained special leave to appeal against the impugned judgments.

The contention urged before us by the appellants is that the High Court had erred in directing the appellants to pay the difference in salary for the period of suspension with all benefits with 10% interest without deciding upon the rights of the appellants to continue the departmental proceedings instituted prior to the respondent's retirement under regulation 351-A of U.P. Civil Service Regulations (relating to pension). It was urged on behalf of the appellants that they had right to continue the departmental proceedings for which leave was granted by the Tribunal, without Governor's sanction to enable them to deduct or withhold the pension in entirety or in part under the said regulation.

Per contra, it was urged on behalf of the respondent herein that no such right vested in the appellants after 1994 (when the respondent retired) and particularly when the departmental proceedings were not completed within the stipulated period.

In the case of State of U.P. v. Brahm Datt Sharma & Another reported in [(1987) 2 SCC 179], this Court held that under regulation 351-A of U.P. Civil Service Regulations, the Government was authorized to withhold or reduce pension and merely because a Government servant retired from service on attaining the age of superannuation, he cannot escape the liability for misconduct and negligence or financial irregularities, which he may have committed during the period of his service. This decision has been followed by this Court in the case of Takhatray Shivadattray Mankad v. State of Gujarat reported in [1989 Supp. (2) SCC 110, paras 24 & 25].

There is merit in the argument advanced on behalf of the appellants. As stated above, the respondent herein, had moved the High Court under Article 226 of the Constitution for difference in the pay during the period of suspension and for consequential benefits. Before the High Court, the appellants submitted that they had the right to deduct or withhold the pension either in part or in toto on account of the alleged financial irregularities. In our view, the questions indicated above ought to have been decided by the High Court particularly before ordering payment with interest @ 10% per annum. Moreover, applicability of regulation 351-A requires compliance of pre-conditions including the period of limitation for holding the enquiry. Hence, the High Court ought to have

examined the scope and the applicability of the said regulation in the light of the facts and circumstances of this case.

Before concluding, we may mention that the appellants have paid all the retirement benefits including pension and gratuity to the respondent herein. That the omission of word "no" in the operative part of the order, quoted above, was a mistake. We reiterate that the order of the Tribunal holding that the earlier departmental enquiry stood vitiated by non-compliance of the rules of natural justice does not suffer from any infirmity and need not be re-examined by the High Court.

Subject to what is stated above, the appeals are allowed, the impugned judgment and orders dated 30.01.2003 are set aside to the extent indicated above and the matter is remitted to the High Court to adjudicate and decide the questions formulated above in the light of the provisions of U.P. Civil Service Regulations (relating to pension) as expeditiously as possible. There will be no order as to costs.