

PETITIONER:
STATE OF U.P. & ANR.

Vs.

RESPONDENT:
SHRI KRISHNA PANDEY

DATE OF JUDGMENT: 01/03/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
1996 AIR 1656 1996 SCALE (3)1

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard learned counsel on both sides. This appeal by special leave arises from the order of the High Court of Allahabad, made on December 2, 1993 in Civil Misc. Writ Petition No.29951 of 1993. The admitted position is that before departmental enquiry was initiated against the respondent for embezzlement of Rs.2,47,479/-, on hit attaining the age of superannuation on March 31, 1987, he was allowed to retire from service. The departmental proceedings thereafter were initiated against him. F.I.R. was lodged and investigation is stated to be in progress. No such rule to continue the proceedings after retirement as is in vogue in some State or Central Service Pension Rules, is in operation. So the action of departmental proceedings cannot be continued. There would be no impediment to have the investigation into the offences continued. However, when pension was not paid to him it came to be challenged in the High Court in the above writ petition which the High Court has allowed it and has directed to pay the pension. Thus this appeal by special leave.

The only provision brought to our notice is Rule 351-A which reads as under:

"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 part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave mis-conduct, 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 re-employment-

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, U.P., shall be consulted before final orders are passed.

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

i) in the case of criminal proceedings, on the date on which a 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.

Note:- As soon as proceedings of the nature referred to in this article are instituted the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned."

A reading thereof clearly indicates that the Governor reserves to himself the power and right to withhold or

withdraw pension or a part thereof, whether permanently or for a specified period. Equally, he has right to order recovery from pension of the whole or part of any pecuniary loss caused to Government when it is found in a departmental or judicial proceedings that the delinquent was guilty of grave misconduct or has caused pecuniary loss to the Government by his misconduct or negligence while he was continuing in service including the period of his re-employment after retirement. But the conditions precedent are that the departmental proceedings should be initiated only either before retirement or during re-employment and the same shall not be instituted without the sanction of the Governor. It should be in respect of an event which may have taken place not more than 4 years before the institution of such proceedings.

Explanation to the rule purports to give the meaning to the words 'commencement of departmental proceedings'. It says that 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, from such date the date of suspension and the proceedings shall be deemed to have been instituted 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 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 the civil Court. As soon as the proceedings of the nature referred in the articles are instituted, the authority which institutes such proceedings shall without delay intimate the fact to the audit officer of the concerned.

It would thus be seen that proceedings are required to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue on re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision that the proceedings be initiated as disciplinary measure and the action initiated earlier would remain unabated after retirement. If Rule 351-A is to be operative in respect of pending proceedings, by necessary implication, prior sanction of the Governor to continue the proceedings against him is required. On the other hand, the rule also would indicate that if the officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty, then proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the events of misconduct etc. which may have resulted in the loss to the Government or embezzlement, i.e., the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four years from the date on which the event of misconduct etc. had taken place. Admittedly, in this case the officer had retired on March 31, 1987 and the proceedings were initiated on April 21, 1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provisions of Rule 351-A of the Rules. This order does not preclude proceeding with the investigation into the offence and taking action

thereon.

The appeal is accordingly dismissed. No costs.

JUDIS