

(1993) 04 AHC CK 0019

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 22942 of 1989

Braj Kishore Tewari

APPELLANT

Vs

Accountant General, (Pension Lekha Vibhag) and Another

RESPONDENT

Date of Decision : 29-04-1993

Acts Referred:

Constitution of India, 1950 — Article 31(1)

Citation : (1993) 3 AWC 1474

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : S.K. Varma, for the Appellant;

Judgement

Sudhir Narain, J.—This writ petition is directed against the order of the State Government dated 7th September, 1988, imposing penalty upon the Petitioner by way of deduction of 25 percent from the Petitioner's pension and the consequential order dated 22-1-1990. On the aforesaid order being passed, the Accountant General issued an order reducing the pension of the Petitioner to Rs. 472/- after deduction of 25 percent with effect from 1st August 1983.

2. The acts in brief are that the Petitioner was posted in 1981-82 in the Agra Region as Regional Marketing Officer in the department of Food and Civil Supplies, Government of U.P. He was posted at Kanpur between 20-4-82 to 31-7-1983 as Regional Marketing Officer in the Allahabad Region. On 6th July 1983 he received a charge sheet from the Inquiry Officer in regard to certain irregularities committed by the Petitioner when he was posted at Kanpur. Meanwhile the Petitioner retired from service on 31st July 1983. On 24th September 1983 a second charge sheet was given to the Petitioner regarding the irregularities committed by him when he was posted in the Agra Region.

3. The Petitioner did not submit any reply to the charges levelled against him when he was posted at Kanpur. He replied only to the charges when he was posted in Agra Region. The Inquiry Officer inquired into the charges against the

Petitioner and submitted his report to the State Government. A show cause notice dated 21st March, 1987 was issued by the State Government after accepting the report of the Inquiry Officer and considering the explanation submitted by the Petitioner, proposed penalty of deduction of 25 percent from the pension of the Petitioner. The Petitioner submitted a reply on 13th November 1987 only with regard to the charges when he was posted in Agra Region. The State Government after considering the explanation submitted by the petitioner came to the conclusion that out of the eight charges levelled against the Petitioner six charges were fully established and imposed penalty upon him by way of deduction of 25 percent from his pension by order dated 7th September 1988. It appears that the order was communicated to the office of the Accountant General, U.P. and the office of the Accountant General, U.P. issued a letter to the Petitioner indicating that the amount of pension to the extent of 25 percent has been reduced with effect from 1st August 1983 and it was indicated that this amount was reduced in pursuance of the order of Government dated 7th September 1988.

4. I have heard Sri S.K. Verma, learned Counsel for the Petitioner and the learned Standing Counsel appearing on behalf of the Respondents.

5. Learned Counsel for the Petitioner submitted that the Petitioner had retired from service with effect from 31st July 1983 and no disciplinary proceedings could be taken or continued after the retirement of the Petitioner. The disciplinary proceedings can be taken when the employee is in service of the Government. He placed reliance upon State of Punjab Vs. Khemi Ram, and B.J. Shelat v. State of Gujrat AIR 1978 SC 1109. These are the cases where the disciplinary action was sought to be taken against the government servant under the Service Rules. In the case of the Petitioner, it was not a disciplinary proceeding for imposing the penalty which may be imposed upon a Government servant when he is in service. The proceeding against the Petitioner is under Article 351-A of Civil Services Regulations (hereinafter referred to as the "Regulations") which confers a right upon the Government of withholding or withdrawing the pension or any part of it. The right to claim pension arises under the Civil Services Regulations. Article 351-A itself contemplates that the proceedings may be instituted while the officer was on duty either before retirement or even thereafter,

6. Second submission of learned Counsel for the Petitioner is that before instituting the proceedings under Article 351-A the sanction of the Governor was not obtained as provided under Clause (i) (a) of Article 351-A. It is admitted that the charge sheet was given to the Petitioner on 6th July 1983 for instituting the proceedings under Article 351-A of the Regulations and thereby the proceedings were instituted before his retirement. The Petitioner retired on 31st July 1983. It was contended by the learned Counsel for the Petitioner that the first charge sheet which was given to the Petitioner related to the charges when he was posted in Allahabad Region and the second charge sheet was given on 24th September 1983 and those charges related to the period when the Petitioner was

posted in Agra Region and the second charge sheet should be taken as fresh proceeding against the Petitioner. The proceedings shall be taken to have been instituted when the Petitioner received charge sheet on 6th July, 1983. The fact that second charge sheet was given after his retirement will not be taken as initiation of the proceedings. The departmental proceedings were instituted under Article 351-A before his retirement. The second charge sheet will be taken only as additional charge sheet. The Government had formed an opinion to initiate proceedings against the Petitioner for withholding or withdrawing the amount of pension of the Petitioner under Article 351-A. In case the Government forms an opinion after retirement of the Government servant, it is necessary to obtain the sanction of the Governor but in case the Government had already decided and initiated proceedings before the retirement of the Government servant, it is not necessary to obtain any sanction from the Governor. The second charge sheet shall be taken as an additional charge sheet in continuation of the proceedings under Article 351-A.

7. Third submission of learned Counsel for the Petitioner is that under Article 351-A the Government is entitled to realise the amount of the pecuniary loss which it suffered from its servants, to the extent it suffered such loss and deduction from the pension cannot be made by way of punishment. The pension is a property and a Government servant is entitled to realise the amount of pension and it is not the discretion of the Government to withhold the amount of pension or reduce any- amount of pension. He placed reliance on *Deokinandan Prasad Vs. The State of Bihar and Others*, wherein the Supreme Court observed that the pension is not to be treated as bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is valuable right vesting in a Government servant. The right to receive pension is property under Article 31(1) of the Constitution of India.

8. In *Deoki Nandan Prasad's* case (supra) the Court held that the grant of pension does not depend upon an order being passed by the authorities to that effect. The right to receive pension flows to the employee not because of any order but by virtue of the rules relating to pension of such employee.

9. In *M. Narasimhachar v. State of Mysore* AIR 1960 SC 217, the Supreme Court considering Article 302 of the Mysore Service Regulation, which provided that if the service has not been thoroughly satisfactory, the authority sanctioning the pension can make such reduction in the amount as it thinks proper and the note appended to such Article which provided that, the full pension admissible under the Regulations is not be given as a matter of course but rather to be treated as a matter of discretion, held that such rule is valid and the Appellant in the said case could not claim as a matter of right full pension and the Government was entitled to reduce the amount of pension.

10. In *State of Uttar Pradesh Vs. Brahm Datt Sharma and Another*, , the Supreme Court upheld the validity of a show cause notice calling upon the employee to show cause as to why his pension and gratuity be not forfeited. The.

Court took the view that the right to receive pension is regulated by the Rules and merely because a Government servant who retires from service on attaining the age of superannuation, cannot escape the liability of misconduct, negligence or financial irregularities. The Court observed as follows:

Full pension is admissible under the rules not as a matter of course but only if the service rendered " by the Government employee is approved, The Regulations empower the authority sanctioning the pension to make such reduction in the amount of pension as it may think proper. These provisions indicate that a Government servant is entitled to pension but the claim of pension is determined in accordance w"th the statutory rules. No doubt pension is no more a bounty; instead it is a right earned by the Government servant on the basis of length of service, nonetheless grant of full pension depends on the approval of service rendered by the employee. In other words if the service rendered by the Government servant has not been satisfactory he would not be entitled to full pension and it would always be open to the Government to withhold or reduce the amount of pension in accordance with the statutory rules.

11. Rules regarding pension of the Petitioner are governed by Civil Services Regulations. The claim of compensation is determined under Article 468 on the basis of length of service as set out in Articles 374 to 485. Article 410 provides that full pension is admissible under the rules not as a matter of course or unless the service rendered by the Government servant has been really approved. Article 353 reads as follows:

353. No pension may be granted to an officer dismissed or removed for misconduct, insolvency or inefficiency: but to the officer so dismissed or removed compassionate allowance may be granted when he is deserving of special consideration: provided that the allowance granted to any officer shall not exceed two-third of the pension which would have been admissible to him if he retired on invalid pens;on.

12. It is thus clear that a Government servant cannot claim pension as a matter of right on attaining the age of superannuation. The claim of compensation has to be determined in accordance with the provisions of the Regulation.

13. Learned Counsel for the Petitioner further contended that the pension cannot be withheld or reduced by way of penalty but the amount of pension which is payable to an employee after his attaining the age of superannuation may be reduced to the extent the Government has suffered any loss on account of his negligence or misconduct. It was urged that the word "or" in Article 351-A should be read as "and". The relevant part of Article 351-A is quoted below:

351-A. 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 the service, including service rendered on re-employment after retirement.

....

14. If there is an ambiguity as to find out the legislative intent an aid of the principles of statutory interpretation can be taken into account but where the language is plain does not require any interpretation, it is not necessary to give a different meaning used in the provision. Article 351-A was amended in the year 1961 and before amendment this Article stood as follows:

351-A The Provincial Government reserve to themselves the right to order the recovery from the pension of an officer who entered service on or after 7th August, 1940, of any amount on account of losses found in judicial or departmental proceedings, to have been caused to Government by the negligence or fraud of such officer during his service.

.....

15. Prior to the amendment the words "if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct" were not existing and by amendment these words were added and that clearly indicates that the pension could be withheld or withdrawn "not only on the ground that the Government servant has caused pecuniary loss to the Government by misconduct or negligence during his service but also when the Petitioner is found in departmental or judicial proceedings to have been guilty of grave misconduct. Article 353 clearly contemplates a situation where no pension may be granted to an officer dismissed or removed for misconduct or inefficiency. These Articles clearly contemplate situation where the pension can be withheld, withdrawn or it may be reduced to such an extent as the authorities find proper in the proceedings taken under Article 351-A of the Regulations. The amount of pension is co-related with the fact of misconduct and inefficiency of the Government servant. The amount of pension can be withheld or withdrawn or reduced by way of penalty as well

16. Lastly it was urged that the Government passed order reducing the amount of pension on 7th September 1988 and in the said order it was not indicated that the amount of pension is reduced from the date of retirement of the Petitioner. The office of the Accountant General relying upon the said order sought to deduct the pension of the Petitioner retrospectively from the date the Petitioner retired on 31st July 1983 and thereafter sought to recover the amount of pension which the Petitioner had been receiving during the period 31st July 1983 to 7th September 1988. It was open to the Government to pass an order that the pension may be deducted from the date of retirement and unless such direction was given in the order, the order should be given effect from the date the order was passed. He placed reliance upon the Circular issued by the Government on 8th February 1978 which provided that in case the amount of pension has been paid during the proceedings under Article 351, the same should not be realised.

17. Learned Counsel for the Respondent submitted that the proceedings under Article 351-A had- been initiated before the Petitioner attained the age of superannuation and the mere fact that the proceedings" remained pending and the final order passed in the said proceedings did not indicate that the amount of pension is reduced from the date of retirement, does not give any right to the Petitioner to get the amount of pension for the period during which the proceedings remained pending and the order should be treated to have been passed reducing the amount of pension from the date of retirement.

18. In this context it is necessary to refer to the Circular issued by the Government itself on 8th February 1978. It provides that during the pendency of the proceedings under Article 351-A some time elapses and during that period the Government servant is paid pension and there being no provision for realisation of such amount which has already been paid, the said amount should not be realised from such Government servant after the proceeding are completed. The Government was aware of such Circular and when the order was passed by the Government reducing the amount of pension, it could have passed an order that the amount of pension of the Petitioner shall stand reduced from the date of his retirement. The Petitioner was being paid pension during the proceedings. Learned Counsel for the Respondent has not shown any other Circular, In view of the Circular issued by the Government and there being no specific order passed by the Government in its order dated 7th September 1988 reducing the amount of pension from the date of retirement, the Government is not entitled to realise the amount of pension which has already been paid to the Petitioner prior to the date of passing of the order on 7th September 1988.

19. In the result, the writ petition is allowed in part. The order of Accountant General office reducing the amount of pension of the Petitioner with effect from 31st July 1983 to the extent the Petitioner has already realised the amount of pension, is set aside.. The order dated 7th September 1988 imposing penalty reducing the amount, of pension of the Petitioner to the extent of 25 percent is upheld.

20. There will be no order as to costs.