

(2024) 10 CAL CK 0018
In the Calcutta High Court
Case No : M. A. T. 725 Of 2024

Dilip Kumar Banerjee @ Dilip Banerjee APPELLANT
Vs
State Of West Bengal & Ors RESPONDENT

Date of Decision : 01-10-2024

Acts Referred:

Citation : (2024) 10 CAL CK 0018

Hon'ble Judges : Joymalya Bagchi, J;Gaurang Kanth, J

Bench : Division Bench

Advocate : Subir Sanyal, Sutirtha Das, Sourojit Mukherjee, Dr. Chapales Bandyopadhyay, Anandamayee Dutta, Gargy Basu, Mir Anuruzzaman, Suman Ghosh, Gourav Das

Final Decision : Allowed

Judgement

Joymalya Bagchi, J

1. Judgment and order dated 16.08.2022 passed by the Hon'ble Single Judge directing the appellant to challenge the order of punishment as well as charge sheet and enquiry proceedings in an appropriate proceeding is the subject matter of challenge.

2. Salient facts giving rise to the appeal are as follows :-

3. Appellant was working as an Upper Division Assistant (UDA) at Rajpur-Sonarpur local office under Rajpur-Sonarpur Municipality. He superannuated on 31.12.2015. On 02.01.2016 a charge sheet dated 31.12.2015 proposing to initiate enquiry under Rule 7 of the West Bengal Municipal Employees' (Classification, Control, Appeal and Conduct) Rules, 2010 (hereinafter referred to as 'Appeal & Conduct Rules, 2010') and Rules 78(f) and 81(2) of the West Bengal Municipal (Employees' Service) Rules, 2010 (hereinafter referred to as 'Employees' Service Rules of 2010') was served upon him. On 04.01.2016 Enquiry Officer was appointed and the disciplinary proceeding commenced. Appellant participated in the disciplinary proceeding and

denied and disputed the imputations levelled against him. Enquiry Officer submitted his report dated 17.04.2016 holding appellant guilty of the charges levelled against him and proposing withholding of pension under Rule 21 of the West Bengal Municipal (Employee's Death-cum-Retirement Benefits) Rules, 2003 (hereinafter referred to as 'Rules of 2003').

4. At this stage appellant approached this court and challenged the charge sheet and the enquiry proceeding including issuance of show cause notice for withholding pension under the Rules of 2003 on the ground the disciplinary authority had no jurisdiction to continue the proceeding after his superannuation. During pendency of the writ petition, pension of the appellant was stopped. He took out an interlocutory application praying for release of pension. At that stage, order of punishment dated 02.08.2022 came to be passed permanently withholding 50% of his pension.

5. The order was placed before the Hon'ble Single Judge and the Hon'ble Judge disposed of the writ petition giving liberty to the appellant to assail the charge sheet, findings of the Enquiry Officer as well as the order of punishment in accordance with law.

6. Mr. Subir Sanyal for the appellant argues the Appeal & Conduct Rules, 2010 do not permit continuation of the disciplinary proceeding against a superannuated employee. In absence of any enabling provision to continue disciplinary proceeding, continuation of the enquiry and all consequential steps including the order of punishment was void ab initio. Hon'ble Single Judge incorrectly declined to decide the issue involving patent lack of jurisdiction of the disciplinary authority to conduct the enquiry and impose punishment on the appellant.

7. Per contra, Dr. Chapales Bandyopadhyay for Rajpur-Sonarpur Municipality contends the impugned order does not suffer from any illegality which would require interference in an intra-court appeal.

Appellant did not challenge the order of punishment before the Hon'ble Single Judge. On the other hand, taking note of the subsequent development he was granted leave to challenge the same in a separate proceeding.

8. The moot issues which arise for decision are as follows :-

(i) Was the respondent-Municipality entitled to continue the disciplinary proceeding against the appellant after his superannuation?

(ii) If the answer to issue (i) is in the negative, was the Hon'ble Single Judge correct in refusing to decide the issue of patent lack of jurisdiction of the disciplinary authority and dispose of the case by giving liberty to the appellant to challenge the order of punishment in a subsequent proceeding?

9. Employees of the respondent-Municipality are governed by the Appeal & Conduct Rules, 2010. Rule 6(1) of the Rules states the Chairman of the Municipality shall be the disciplinary authority.

Procedure for enquiry is laid down in Rule 7 and the penalties which may be imposed on an employee for good and sufficient reasons i.e.

- (i) censure,
- (ii) withholding of increment or promotions,
- (iii) recovery from pay of the whole or part of any pecuniary loss caused to the Local Body by negligence or breach of orders,
- (iv) reduction to a lower stage in the time-scale of pay for a specified period,
- (v) compulsory retirement,
- (vi) removal from service and,
- (vii) dismissal from service,

are set out in Rule 5 of the said Rules. Rules 11 & 12 of the Rules provide for appeals against orders of suspension and imposition of penalty respectively. None of the rules provide for continuation of disciplinary proceedings in the event a delinquent retires during the pendency of the proceeding.

10. In a catena of decisions (State Bank of India v. A.N. Gupta, (1997) 8 SCC 60; Bhagirathi Jena v. Board of Directors, O.S.F.C., (1999) 3 SCC 666; Chandra Singh v. State of Rajasthan, (2003) 6 SCC 545; UCO Bank v. Rajinder Lal Capoor, (2007) 6 SCC 694; Dev Prakash Tewari v. U.P. Coop. Institutional Service Board, (2014) 7 SCC 260; Mahanadi Coalfields Ltd. v. Rabindranath Choubey, (2020) 18 SCC 71 (paras 44 and 68)), the Apex Court has consistently held in the event the service Rules do not provide for continuation of disciplinary proceeding against a superannuated employee, the disciplinary proceeding cannot continue.

11. However, it would be argued such power may be traced to Rule 21 sub-rule (3) and Rule 25 of the Rules of 2003.

12. Rules 21 & 23 of the Rules of 2023 read as follows :-

"R.21. (1) Future good conduct shall be an implied condition of every grant of pension. The pension sanctioning authority may, by order of writing, withhold or withdraw a pension or part thereof whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.

(2) Where a Pensioner is convicted of a serious crime by court of law, action under sub-rule (1) shall be taken in the light of the judgment of the court relating to such conviction.

(3) In a case not falling under sub-rule (2), if the pension sanctioning authority considers that the pensioner is prima facie guilty of grave misconduct, it shall before passing an order under sub-rule (1) -

(a) serve upon the pensioner a notice specifying the action proposed to be taken

and call upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal and,

(b) take the representation, if any, submitted by the pensioner under clause (a) into consideration.”

R.25. (1) Where any departmental or judicial proceedings are instituted or where a departmental proceeding is continued against an employee who has retired on attaining the age of compulsory retirement or otherwise, he may be granted, by the pension sanctioning authority during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding 50% of the pension which would have been admissible on the basis of qualifying service up to the date of retirement or if he were under suspension, on the date of retirement up to the date immediately preceding the date on which he was placed under suspension, but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and the issue of final orders thereon. The sanction of such pension by the pension sanctioning authority will be communicated to the Director of Pension, Provident Fund and Group Insurance and the Pensioner.

(2) Payment of provisional pension under sub-rule (1), shall be adjusted against the final retirement benefits sanctioned to such employee upon conclusion of the aforesaid proceedings, but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Note : The grant of pension under this rule shall not prejudice the operation of rule 9 when final pension is sanctioned upon conclusion of the proceedings.”

13. Rule 21 sub-rule (3), inter alia, empowers the pension sanctioning authority to pass an order withholding pension after giving an opportunity of hearing to the superannuated employee in the event it considers ‘the pensioner is prima facie guilty of grave misconduct’.

14. Rule 25 sub-rule (1) provides for release of provisional pension in the event departmental or disciplinary proceedings are instituted or where departmental proceedings are continued against the employee who had superannuated.

15. These rules envisage situations where the disciplinary authority is vested with the power to initiate or continue disciplinary proceedings after superannuation of an employee. They cannot be construed as sources vesting power to the disciplinary authority to continue the disciplinary enquiry under the service rules. That is to say, only if the service rules provide for continuation of a disciplinary enquiry after superannuation then the pension sanctioning authority may on the basis of finding recorded by the disciplinary authority initiate

proceeding under Rule 21(3) of the Rules of 2023 and pass order withholding pension. But if the service rules do not empower the continuance of the disciplinary enquiry, Rule 21 sub-rule (3) of the Rules of 2003 cannot be deemed to be the source of authority to continue the proceeding.

16. Similar issue fell for decision in *Durgadas Mukhopadhyay v. State of West Bengal*, 2005 SCC OnLine Cal 552 In the said case, a Hon'ble Division Bench was called upon to decide in absence of specific provisions in the service rules whether the disciplinary authority may continue enquiry against a superannuated employee by reason of provisions in the pension scheme. Negating the proposition, the Bench held as follows :-

"10. Now the question arises as to whether by reason of paragraph 19(5) of the Pension Scheme the disciplinary proceeding could be continued. Admittedly, unlike Rule 10 of the West Bengal Service (Death-cum-Retirement) Benefit Rules, no authority has been conferred to continue a disciplinary proceeding after retirement specifically neither any authority has been recognized as to who has been empowered to continue with the disciplinary proceedings after retirement of an employee. Therefore, in a case where Rule 28(8) and (8a) of the 1969 rules did not provide for continuation of disciplinary proceedings after retirement, we are of the view that without any specific authorization or creation of a disciplinary authority or recognition of a disciplinary authority, it is very difficult to accede to the contention of Mr. Ghosh that by reason of paragraph 19(5) of the Pension Scheme, a disciplinary proceeding could be continued. Unless an authority is conferred the jurisdiction, and an authority is created or recognized by the Pension Scheme, no disciplinary proceeding could be continued for the purpose of inflicting any kind of punishment in terms of Rule 28(8) and (8a) of the 1969 rules."

17. In light of the aforesaid discussion, we are of the view the continuation of disciplinary proceeding against the appellant at the behest of the respondent-Municipality was de hors the service rules and therefore, without authority of law.

18. This leads us to the second issue. When a question of patent lack of jurisdiction of the disciplinary authority is raised in a lis, was it not incumbent on the Hon'ble Single Judge to adjudicate the issue after taking into consideration the subsequent event namely, passing of the order of punishment and decide whether the entire proceeding including the order of punishment was without authority of law?

19. It may not be out of place to reiterate there is ample power in constitutional courts to take into consideration subsequent events and mould relief to the exigencies of the situation for the ends of justice.

20. Dr. Bandyopadhyay would argue the order of punishment had not been formerly challenged before the Hon'ble Single Judge. He contends in absence of appropriate pleadings challenging the order of punishment, Hon'ble Single Judge's order cannot be said to be illegal or perverse.

21. We find little substance in the submission. In the writ petition appellant had assailed the continuation of the disciplinary proceeding after superannuation including the second show cause notice calling upon him to show cause why his pensionary benefits would not be withheld. Order of punishment was merely a consequence of the impugned notice whose legitimacy was already under challenge.

22. It is nobody's case the consequential decision namely, order of punishment gave rise to a wholly alien cause of action with reference to the subject matter of the writ petition itself. Given this situation, it would amount to unnecessary prolixity and multiplicity of proceedings if the appellant is called upon to assail the entire disciplinary proceeding including the order of punishment afresh in a subsequent proceeding.

23. Ordinarily discretionary orders ought not be interdicted in an intra-court appeal. However, if the impugned order runs contrary to well established principles of law and practice, it is the duty of the appellate court to correct the error. Moulding reliefs by taking note of subsequent events is based on the time tested wholesome principle of avoiding unnecessary prolixity and delay and thereby secure the ends of justice.

This was lost sight of when the Hon'ble Single Judge chose not to decide the issue of validity of the disciplinary enquiry and the consequential order of punishment which came to be passed during pendency of the writ petition and directed the appellant to start afresh.

24. For the following reasons we are of the opinion continuation of the disciplinary proceedings against the appellant and the consequential order of punishment being de hors the disciplinary rules is without authority of law and the same are quashed.

25. Respondent no.3 i.e. Chairman, Rajpur-Sonarpur Municipality is directed to send all papers pertaining to pension, provident fund, group insurance and other retiral benefits of the appellant to the Directorate of Pension, Provident Fund and Group Insurance (respondent no.6) within two months from date. Respondent no.6 upon receipt of papers shall issue the Pension Payment Order (PPO) in favour of the appellant within one month thereof for release of pension and other retiral dues after complying with necessary formalities and the respondent-Municipality shall release the pensional and other retiral benefits forthwith.

26. With these directions, appeal is allowed.

27. In view of disposal of the appeal, connected application being CAN 2 of 2024 is also disposed of.

28. There shall be no order as to costs.

29. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.