(2014) 05 CAL CK 0004

In the Calcutta High Court

Case No : W.P. No. 2131(W) of 2011

Dr. Sunirmal Sarkar APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 07-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 4 CALLT 363 : (2014) 142 FLR 582 : (2014) 3 LLJ 49

Hon'ble Judges : N. Patherya, J

Bench : Single Bench

Advocate : Joytosh Majumder, Adv., Mr. Siddhartha Ghosh, Advocate and Mr. Anindya Bose, Advocate for the Appellant; Achintya Kumar Banerjee, Advocate and Sk. Faridullah, Advocate for Respondent Nos. 2 to 4, Mr. Rabindra Nath Pal, Advocate and Mr. D. Chakraborty, Advocate for Union of India, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Nadira Patherya, J.—By this writ application the writ petitioner seeks release of his retiral benefits and quashing of the disciplinary proceedings initiated.

2. The case of the petitioner is that on 20.3.2008 he availed of the Voluntary Retirement Scheme (VRS) and left the service of the respondent No. 2. One of the conditions for availing of the VRS was that the petitioner could not for a period of 2 years seek re-employment.

3. By letter dated 7.1.2010 the petitioner was called upon to furnish details of the source of his income disclosed in his Income Tax Returns for 2005-06 under the head business or profession within the time specified in the said letter. The petitioner on receipt of the said letter sought time and although such time was granted no attempt was made to furnish the documents on the basis of which the details were sought.

4. On sanction being given departmental proceedings was initiated by the

respondent No. 2 against the petitioner. An order was served upon the petitioner by the authorities along with statement of article of charge, statement of imputation of misconduct in support of the article of charge along with a list of documents. It is from the said documents the petitioner came to know the basis of the departmental proceedings. A reply has also been given to the said charges levelled against him.

5. The proceedings initiated is contrary to Rule 9 of the CCS (Pension) Rules which contemplates initiation of proceedings within 4 years of the event. The alleged misconduct according to the respondent authorities was committed in the financial year 2004-05 and within 4 years therefrom the proceedings ought to have been initiated. As the proceeding has been initiated beyond the said time limit the proceeding is non-est and no proceeding in the eye of law. Therefore retiral benefits including pension be paid to the petitioner. In the affidavit filed the basis of the proceedings is a complaint but the same finds no mention in the List of Documents nor in the Vigilance Report. No Enquiry Officer or Disciplinary Authority has been appointed. No resolution has been taken or ratified by the Governing Body as per the requirement of Clause 7 of the Rules and Regulations of the respondent No. 2.

6. In view of Appendix I of the Regulations of the respondent No. 2 the Director is entitled to exercise financial and administrative function as may be delegated by the Governing Body or President. No such document of delegation has been disclosed. The salary statement is not of financial year 2004-05 but of a different year. The misconduct on the part of the petitioner assuming was known to vigilance in 2007, the respondent no. 2 ought not to have allowed the petitioner to retire in 2008. As a representation was made by the petitioner to which no reply has been given the proceedings cannot be proceeded with and all retiral benefits be paid to the petitioner.

7. Reliance is placed on State of U.P. and Another Vs. Shri Krishna Pandey, , Noida Entrepreneurs Association Vs. NOIDA and Others, , Union of India and others Vs. Sayed Muzaffar Mir, , Kuldeep Singh Vs. The Commissioner of Police and Others, , State of U.P. Vs. Shatrughan Lal and Another, and Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, .

8. Opposing the said application counsel for the respondent No. 2 Institute submits that the departmental proceeding has not been challenged in the writ petition therefore the said issue need not be considered. A reply has also been given to the Article of Charges. This point has been taken before the Disciplinary Authority and needs to be considered by him.

9. Along with the order dated 24th March, 2010 a copy of the Central Vigilance Commissions advice dated 22nd March, 2010 was sent to the writ petitioner and therefore he was aware of the advice given by Vigilance. It has been admitted that the period for initiation of regular departmental enquiry was valid up to 30th March, 2010. It has also not been stated that in the event the document is not

given to the writ petitioner, any prejudice will be caused to him. The issue of limitation has also not been taken. This will be evident from paragraph 36 of the petition where all that has been pleaded is that the disciplinary proceeding is defective as no Enquiry Officer has been appointed and the disciplinary authority himself is the Enquiry Officer which is prohibited in law. Therefore the point of limitation has not been canvassed.

10. The memorandum dated 24th March, 2010 prima facie discloses certain charges and, therefore, calls for no interference in an application filed under Article 226 of the Constitution. The CCS (Conduct) Rules especially Rule 18 needs to be considered as it relates to disclosure of landed property.

11. Reliance is placed on (2007) 2 CHN 609 (National Institute of Homeopathy-vs.-Dr. Ashok Kumar Das) for the proposition that Courts will examine whether the charges constitute misconduct will not adjudicate on the correctness of the charges but reliance is also placed on Iqbal Singh Vs. Avtar Singh and Others, .

12. As per Regulation 10.6 of the Institute''s Rules and Regulation the Governing Body is empowered by resolution to delegate to the President and to the Secretary, such powers for the conduct of business as it may think fit and therefore the Disciplinary Authority and Inquiry Officer may be the same person as per the said Regulation. Delay in initiation of proceedings is not fatal as held in (2007) 14 SCC 49 and The Secretary, Forest Department and Others Vs. Abdur Rasul Chowdhury, . Judicial review is not of the decision taken but the decision making process as held in Bank of India and Others Vs. T. Jogram, . The CCS Rules have been followed. The Memorandum and Articles of Association permits exercise of emergent powers subject to ratification. As held in Registrar of Cooperative Societies, Madras and Another Vs. F.X. Fernando, non-issuance of a charge-sheet by a competent authority will not vitiate the charge-sheet. The petitioner was required to disclose his assets and income and on such disclosure the authorities are entitled to initiate proceedings against him as held in Ashok Tshering Bhutia Vs. State of Sikkim, . The petitioner has sought payment of his retiral benefits. The question was considered by the Delhi High Court in RPS Panwar Vs. Union of India (UOI) and Another, .

13. For the assessment year 2005-06 31st March, 2006 is to be taken for computing the period of limitation. Noida Entrepreneurs Association Vs. NOIDA and Others, is not to apply and Union of India and others Vs. Sayed Muzaffar Mir, is distinguishable on facts. As held in Kuldeep Singh Vs. The Commissioner of Police and Others, all points can be raised before the disciplinary authority and therefore is not to apply. In the event prima facie an offence is disclosed, the High Court will not interfere and the petitioner ought to approach the disciplinary authority. Documents could have been sought by the petitioner before the disciplinary authority which would not have been denied but no such application has been filed. Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, is a case of land acquisition and therefore is not to apply to the case in hand. In fact paragraph 59 of the reported decision comes to the aid of the respondents.

State of U.P. and Another Vs. Shri Krishna Pandey, is distinguishable on facts.

14. Reliance is placed on the decision reported in Punjab National Bank Vs. R.L. Vaid and Others, . As no submission has been made on the charge sheet therefore the departmental proceedings ought to continue and the petitioner be bound by his pleading and in particular paragraph-16 of the petition. The petitioner suppressed material facts and the respondent no. 2 institute was justified in initiating proceedings as held in B.R. Chowdhury Vs. Indian Oil Corporation Ltd. and Others, . For the said reasons, therefore the writ petition be dismissed.

15. In reply counsel for the petitioner submits that the word ''event'' has been defined in the Oxford Dictionary therefore the assessment year is not relevant and the financial year of 2004-05 be considered as the starting point. Rule 9 of the CCS (Pension) Rules and in particular Rule 2(b)(ii) be looked into. It is on the basis of the advice given by vigilance that the proceeding has been initiated.

16. No list of witness nor enquiry by I.O. has been annexed, documents which are to be exhibited have also not been disclosed. The charges are stale therefore the representation for release of pension ought to have been considered. No documents of private practice has also been produced or relied on by the authorities, therefore the proceedings initiated is nothing but an afterthought.

17. CCS Rules need to be looked into especially Rules 2(d) and 2(f). Regulation 5.1 of the Regulations deals with proceedings of the Governing Body. Regulation 6.1 deals with quorum. Regulation 10.3 deals with powers of the Governing Body and 10.6 deals with resolution to delegate to the President which in the instant case is absent. Regulation 10.7 deals with no post-facto ratification and there is nothing in the affidavit which shows ratification under Regulation 10.6 and 10.7 of the Regulations. As the President is not empowered by resolution therefore the order dated 10th March, 2010 must fail, so also the disciplinary proceedings. 2007(2) CHN 609 is not a case where a person retired from service voluntarily. By virtue of clause 12 of the Bye laws, the CCS (pension) Rules will apply and there is no estoppel against statute, therefore order be passed as sought.

18. Having considered the submissions of the parties the petitioner seeks release of pensionary benefits and quashing of disciplinary proceeding.

19. Although the petitioner has sought for quashing of the disciplinary proceedings, the said relief cannot be granted in the light of the reply given. The initiation cannot also be prima facie faulted as it is only on assessment of returns filed that an assessment order is passed. The charge-sheet has also not been challenged nor any submission made thereon.

20. State of U.P. and Another Vs. Shri Krishna Pandey, , Noida Entrepreneurs Association Vs. NOIDA and Others, , Union of India and others Vs. Sayed Muzaffar Mir, and Kuldeep Singh Vs. The Commissioner of Police and Others, will not apply to the facts of the instant case and are distinguishable on facts.

21. State of U.P. Vs. Shatrughan Lal and Another, will apply only if documents relied on are not supplied and statement of witness relied on not supplied. The documents to be relied on have been mentioned in the list of documents. A copy of the Vigilance Committee Report was disclosed with the show-cause notice. The petitioner has not requested supply of documents nor has any letter seeking documents been annexed to the petition. Therefore, the reported decision will not apply to the instant case. There is no dispute with the proposition of law enunciated in Paragraph 40 of Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, .

22. As held in Ashok Tshering Bhutia Vs. State of Sikkim, a Government servant required to make disclosure of assets and income, for non-disclosure will be liable to disciplinary proceedings.

23. Therefore, the disciplinary proceedings could have been initiated against the petitioner and in view of the findings above need not be interfered with. Any finding or prima facie finding will not in anyone influence the proceedings in any manner whatsoever.

24. Admittedly, the petitioner took VRS in 2008 and proceeding against him was initiated in 2010. A representation for payment of retiral benefits was made on 23rd June 2010. This was after a reply had been given to the show-cause notice.

25. No request or representation was made by the petitioner with the authorities regarding payment of pension immediately after retirement in 2008. It is true that the Vigilance Committee Report came in 2010 and prior thereto payment ought to have been made but by virtue of such non-payment the petitioner was not aggrieved.

26. A person is entitled to earn full pension for the rest of his life after retirement for not only the long service rendered but also sincere and faithful discharge of duties and normally upon superannuation. The petitioner would have become entitled to payment of retiral benefits including pension but for Rule 9(2)(b)(ii) of the CCS (Pension) Rules which permits initiation of departmental proceedings within the time set-out therein. To deal with cases where departmental or judicial proceedings are pending Rules 9 and 69 of the CCS (Pension) Rules have been framed. Under Rule 9 the President is empowered to withhold, or withdraw pension or order recovery from pension if in any department or judicial proceeding, the pensioner has been found guilty of misconduct or negligence during the period of his service. This Rule is not relevant for the present as no such power has been exercised by the President but undoubtedly departmental proceedings are pending and Rule 9(4) of the CCS (Pension) Rules attains importance. Rule 9(4) of the Pension Rules reads as follows:-

In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), provisional pension as provided in [Rule 69] shall be sanctioned.

27. Therefore, in view of Rule 9(4) of the Pension Rules the petitioner would be entitled to provisional pension under Rule 69 of the Pension Rules and for such purpose steps be taken by the authorities to fix the provisional pension payable to the petitioner in accordance with law within two weeks from the date of receipt of this order. Such provisional pension be paid on and from the fixation of such sum till conclusion of the disciplinary proceedings and will abide by the final decision taken in the disciplinary proceedings.

28. This order is passed as irrespective of any proceeding initiated an employee would be entitled to payment of pension or provisional pension u/s 64 of the CCS (Pension) Rules.

29. In view of the aforesaid this writ petition is disposed off.