

(2022) 02 GUJ CK 0029

In the Gujarat High Court

Case No : R/Special Civil Application No. 16877 Of 2020, Civil Application (For Direction) No. 1 Of 2021

Hradesh Kumar Sharma

APPELLANT

Vs

Institute Of Plasma Research

RESPONDENT

Date of Decision : 08-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 12, 226

Central Civil Service (Pension) Rules 1972 — Rule 2(b), 9, 9(1), 9(b), 9(2)(a), 9(2)(b), 9(2)(b)(ii), 351A, 45.1

Industrial Disputes, Act, 1947 — Section 25H

Citation : (2022) 02 GUJ CK 0029

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Shalin Mehta, Hemang M Shah, Devang Vyas, DG Shukla

Final Decision : Allowed

Judgement

,,,

Biren Vaishnav, J",,,,

1. In this petition under Article 226 of the Constitution of India, the petitioner, an ex-employee of the Institute for Plasma Research has prayed for a",,,,

direction for quashing and setting aside the show cause notice dated 08.11.2019 and the charge-sheet dated 01.12.2020.,,,,

2. Facts in brief are as under:,,,

2.1 It is the case of the petitioner that he was appointed as Accounts Officer-I on 22.04.2003 by the Institute for Plasma Research. On 07.06.2004, an",,,,

office order was issued by which the petitioner was informed that he has completed the probation period. On 14.10.2011, the petitioner has been",,,,

informed that he has been selected for the post of Accounts Officer II in the pay band of Rs.15600-39100 with the grade pay of Rs.6600/-. By an order,

dated 11.11.2012 the petitioner was designated as Head of the Accounts Department. Probation was declared complete by an order dated,

17.10.2012.

2.2 The petitioner applied for the post of Deputy Registrar at the Indian Institute of Technology, Gandhinagar. The present employer the

respondent No.1 on 23.09.2016 issued a certificate declaring that it had no objection in the petitioner applying for the post. On 14.03.2017 the

petitioner had tendered his resignation with a request to relieve him from services latest by 31.05.2017. On 10.03.2017, the Indian Institute of

Gandhinagar issued a letter of appointment accepting the petitioner on the post of Deputy Registrar. On 31.05.2017, the respondent no.1 accepted the

resignation given by the petitioner. On a request made by the petitioner, a communication was issued by the respondent no.1 dated 22.11.2017 by

which the petitioner's demand for grant of pro-rata pension on benefits, the respondent no.1 informed the petitioner that as he had been absorbed

on immediate basis in IIT, Gandhinagar, they would treat his case as deemed retirement. On 09.12.2017 office orders was issued sanctioning

pensionary benefits.

2.3 For certain irregularities of misconduct, conducting during his service period with the respondent no.1, a show cause notice was issued to the

petitioners on 08.11.2019. The petitioner responded to such notice by way of reply dated 15.11.2019. Relying on Rule 9 of the Central Civil Service

(Pension) Rules 1972, especially Rule 9(2)(b) the petitioner requested that since he was no longer an employee of the respondent no.1, the inquiry

proceedings be dropped. A memorandum of charges was issued on 01.12.2020 reiterating the imputations and allegations made in the show cause

notice and the petitioner was called upon to submit his statement of defense within 10 days. On a request of extension of time, the time was extended.

This charge-sheet issued by the respondent no.1 is subject matter of challenge in this petition.

3. Mr. Shalin Mehta learned Senior Advocate appearing with Mr. Hemang Shah for the petitioner made the following submissions:

3.1 Mr. Mehta would submit that if the charge-sheet is perused, which is dated

01.12.2020, the events for which the charges are issued, are more than",,,
four years old. He would therefore submit that for any event before 30.11.2016,
no charge can be issued to the petitioner because the same would",,,
violate the provisions of Rule 9(2)(b)(ii) of the Central Civil Services Pension
Rules.,,,
3.2 Mr.Mehta would submit that a petitioner joined the Institute for Plasma
Research (IPR) on 22.04.2003. Taking the Court to the certificate at page,,,
372 of the paper-book, Mr.Mehta would submit that the petitioner applied for the
post of Deputy Registrar and the certificate to that effect was issued",,,
categorically stating that in case the petitioner is selected for appointment to the
above post, he will be relieved from duty. Inviting the attention to the",,,
communication dated 12.03.2017, 31.05.2017 and 22.11.2017, Mr.Mehta would
submit that the technical resignation of the petitioner was accepted",,,
from the institute, the petitioner was then relieved, subsequently the petitioner
was absorbed with the Indian Institute of Technology and the",,,
respondent no.1 institute treated the petitioner as having deemed retired. He
having therefore being no longer in service with the institute â?",,,
respondent no.1, the bar under Rule 9(2)(b) read with (ii) applied with the case
of the petitioner.",,,
3.3 Mr.Mehta would then take the Court to the charges which are five in number
and submit that the charges if seen, each of the charge, the event",,,
that has occurred is pre-30.11.2016. He would submit that for charge 1, the
alleged misconduct is in context of the supply agreement dated",,,
18.12.2014. For the charge-2 which is with regard to the contract with M/s. Shell-
n-Tube, Puna, the indent was dated 29.10.2013. Charge 3 which",,,
related to the payments and the irregularities in connection with procurement of
winding pack was dated 09.06.2010 and the last payment was made,,,
on 16.11.2011. Charge 4 pertained to approval of undue benefit to the supplier
of special purpose winding machine, the PO was dated 05.10.2009 and",,,
the amendment date was 20.08.2014. With regard to charge 5 pertaining to non
attending of audit queries viz. Towards purchaser of converter tower,,,
supply, the incident and the replies would indicate that the last date of the event
if any was 07.08.2015. Admittedly therefore all the events were pre-",,,
30.11.2016, the four year period which would commence from that date and this
incident beyond the period of four years, the charge-sheet was",,,

without jurisdiction and authority of law failing the test of Rule 9(2)(b) of the Central Civil Services Pension Rules 1972. He would extensively rely on,,,

the rule and make his submission.,,,

3.4 Mr.Shalin Mehta would otherwise submit that if all the charges are seen, it was not an individual misconduct that can be attributed to the petitioner",,,

that his role was as a member of the Committee. He would invite extensively referring to the each of the charges in question and also rely on the fact,,,

that admittedly when the bye-laws are seen, it is undisputed that the Central Services Rules and the Pension Rules are applicable to the petitioner. He",,,

would therefore submit that not only has the sanction of the President not being taken before issuing a charge-sheet as provided in the rule, but the",,,

incident is more than four years before this institution. Extensive reference was made to the Rule 9 of the Central Civil Services Pension Rules, 1972.",,,

He would resolve his right to make further submissions in rejoinder to that of Mr.D.G.Shukla who appeared for the respondent-Institute.,,,

4. Mr.D.G.Shukla learned counsel appearing for the institute would initially draw the attention of this Court to the affidavit-in-reply filed on behalf of,,,

the respondent no.1. Raising the preliminary objection as to the maintainability of the petition, Shri Shukla would invite the attention of the Court to the",,,

averments made in para 2.1 onwards of the reply and submit that the respondent institute is an autonomous body society registered under the Societies,,,

Registration Act having its own set up bye-laws, the employees of the institute do not hold a civil post nor does the institute derive any public duty",,,

function nor is it functioning like any statutory corporation or body and therefore it is not the State or other Authority within the meaning of Article 12,,,

of the Constitution of India.,,,

4.1 Taking the Court to the contents of the reply, Shri Shukla would submit that the respondent-institute is an internationally reputed premiere scientific",,,

research organization established with the object of promoting, guiding and conducting basic and applied research in the field of Plasma Physics, it is",,,

grant-in-aid institute of the department of atomic energy originally nucleated by the department of Science and Technology. It then became a grant-in-,,,

aid institute of the DAE and is a premiere institute in the area of plasma physics.,,,

4.2 Referring to the service records of petitioner Mr.Shukla would submit that the petitioner's date of birth was 31.07.1968 joined the institute on,,,

05.06.2003. He relinquished his charge with the institute on 31.05.2017. The charge was relinquished at the age of 49 years and not on superannuation,,,

which was otherwise 31.07.2028. Based on a Central Vigilance Committee Commission's recommendations, the institute had asked for the",,,,

sanction of the Director, Gandhinagar to initiate inquiry against him which was vaguely responded by the director of IIT and thereafter the impugned",,,,

charge-sheet of misconduct attributed by him during the course of his tenure as head of the departments of accounts has been leveled against the",,,,

petitioner. The inquiry officer was appointed and the petitioner is not cooperating with the inquiry.,,,,

4.3 With regard to the provisions of Rule 9, Mr.Shukla would submit that the petitioner was an employee of the institute. After tendering his technical",,,,

resignation, the petitioner is reemployed with the IIT Gandhinagar. He has not superannuated and is not in receipt of superannuation pension. The pay",,,,

of the petitioner was fixed in accordance with the provisions of the DOPTOM dated 31.07.1986 read with the Central Civil Services (Fixation of Pay",,,,

of Reemployed Pensioners) Orders 1986. Since the petitioner is in receipt of pension from the respondent institute and also the pay from the IIT",,,,

Gandhinagar, his employment cannot be considered as a fresh employment with the institute of Technology at Gandhinagar and therefore his case is",,,,

governed under the provisions of Rule 9(1) of the CCS Rules 1972. The proceedings from the charge-sheet were initiated during his reemployment",,,,

before his age of superannuation and therefore the allegations possible to be undertaken under the inquiry.,,,,

4.4 Mr.Shukla would further submit that it is misconceived on the part of the Mr.Mehta to contend that the allegations are pre-cut off date of",,,,

30.11.2016. The allegations if read, read for the period from 2014 to 2017. In support of his submission that the allegations ranged from the year 2014",,,,

to 2017, Mr.D.G.Shukla would rely on an additional affidavit filed pursuant to an order passed by this Court asking the institute to satisfy the Court as",,,,

to the context of the incidents being pre-2016 or post-2016. In the additional affidavit filed by the institute pursuant to the order dated 26.07.2021",,,,

Mr.Shukla would draw the attention of the Court to the table so furnished in para 4 of the affidavit and submit that as far as charge-1 is concerned",,,,

the alleged regularity was for the breach of financial prudence by not taking cognizance of the experts view and visit to South Korea when the,,,

purpose was over by availing a free air ticket and hospitality, the actual period was from March 2014 to March 2015. For Charge-2 regarding",,,

contracts with M/s. Shell-n- Tube, though the financial concurrence was given to the contract despite knowing to the short comings and the contract",,,

may have been from April 2014 but it was extended upto April 2017, he would rely on the vouchers dated 27.02.2017, 15.03.2017 and 12.04.2017 to",,,

indicate that all these are post 30.11.2016.,,,

4.5 With regard to the Charge No.3 of Winding Pack Procurement Mr.Shukla would submit that functioning as a Head of the Accounts, the petitioner",,,

had not exercised adequate financial control which resulted in a huge loss. The advances were paid to the Financial Years 2010-11 and 2011-12 and,,,

were outstanding till 31.03.2017 to M/s.Patel's Analog & Digital Measurement Co. (P) Ltd. Of Rs.23.50 lakhs the ledger of 31.03.2017 was,,,

enclosed in proof thereof.,,,

4.6 With regard to the Charge No.4 pertaining to Special Purpose Winding Machine, the advances were paid in the financial years 2009-10, 2011-12",,,

2013-14 and 2014-15. There was still outstanding dues till 31.03.2017 to M/s.Patel's Analog & Digital Measurement Co. (P) Ltd. Of Rs.2.66,,,

crores against a ledger entry of 31.03.2017 was enclosed again.,,,

4.7 With regard to the charge No.5 for installation of cost of equipment, Mr.Shukla would submit that this came out due to a CAG audit report for the",,,

period of 2016-2017 mentioning the pending audit for the years 2009-10. All these documents, would therefore indicate, in Mr.Shukla's",,,

submissions that they relate back to the period from 2011 to 2017 which came to light on the basis of the letter of the Director of Enforcement dated,,,

09.08.2017.,,,

4.8 With regard to the other submission, Mr.Shukla would submit that this Court in exercise of powers under Article 226 of the Constitution of India",,,

could not entertain a writ petition under Article 226 against a charge-sheet and the same being premature must be rejected.,,,

4.9 Mr.Shukla would reiterate his submission that the petitioner was reemployed. He would submit that he was selected through open recruitment with,,,

the present respondent upon a selection as Deputy Registrar, the petitioner

submitted his technical resignation and was relieved from the institute on",,,,
31.05.2017 at the age of 49, whereas the actual superannuation date was
31.07.2028. The petitioner cannot be construed as superannuated and",,,,
therefore Rule 9(b) was not applicable.,,,,

5. To these submissions made by Mr.Shukla, Mr.Shalin Mehta in his rejoinder
would submit as under:",,,,

5.1 The objection that Rule 2(b) is not applicable is misconceived. The question
is whether the disciplinary proceedings can be initiated against an",,,,

employee after he has retired from service and in view of Rule 9(2)(b)(ii) of the
Central Civil Services Pension Rules, the same was prohibited. The",,,,

petitioner had been retired on 31.05.2017. To the allegation that the petitioner
was reemployed, he would submit that the term reemployed is a one to",,,,

be engaged under the same employer. Relying on the communications
exchanged between the institute and the IIT, Gandhinagar, Mr.Mehta would",,,,

submit that the IIT, Gandhinagar was his new employer and he cannot be said to
be reemployed. Reliance therefore of Mr.Shukla on the resignation",,,,

dated 31.05.2017 was misconceived. The petitioner has become part of the new
pension scheme and his new employer therefore was IIT,",,,

Gandhinagar and once by an order dated 22.11.2017 the petitioner was treated
to have deemed retired, his fresh appointment at Gandhinagar IIT,",,,

which is governed by a separate set of rules cannot be treated as a
reemployment. The concept of reemployment has been extensively explained
by",,,,

Mr.Shalin Mehta.,,,,

5.2 In support of his submissions with regard to the concept of reemployment
and also with regard to the date of the event being the event of tender",,,,

etc. Mr.Mehta relied on the decision of the Supreme Court in case of State of U.P.
and another v. Shri Krishna Pandey reported in AIR 1996 SC",,,,

1656. para 6 thereof. He also relied on the decision for the purposes of the term
"reemployment" in the case of Ranchhodbhai S. Dalvadi v.",,,,

Gujarat Agricultural University reported in 1987 (1) GLR 297.,,,,

5.3 Mr.D.G.Shukla has submitted a list of citations. Citations 1 to 5 were relied
upon for the purposes of the maintainability of the writ petition, albeit",,,,

Mr.Shukla in his submissions was not serious enough to contend on the objection
of maintainability and weighed stress on the question of interpretation",,,,

of Rule 9(2)(b) of the Central Civil Services Pension Rules. Mr.Shukla would then rely on the judgment Sr. No.6 in the case of 2012 (11) SCC 565,",,

paras 11 and 12 of that decision was cited by Mr.Shukla, in support of his submission that ordinarily a writ application does not lie against a charge-"",,,

sheet or a show cause notice. Reliance was also placed on the decision in the case of Union of India v. Kunisetty Satyanarayana reported in (2006),,,

12 SCC 28, paras 13, 14 and 15 were relied upon to submit that against the show cause notice ordinarily a writ petition would not be entertained."",,,

Reliance was also placed on a decision in case of Union of India v. Upendra Singh reported in 1994 (3) SCC 357 for submitting that the same issue,,,

was reconsidered and held that against the charge-sheet a writ be not entertained. Relying on the decision in case of M.J.Pathak v. Union of India,,,

reported in 1985 (2) GLR 839 in support of his submission that the petitioner was reemployed, emphasis was made on the Clause 5 of the resolution" "",,,

and the interpretation in that note and submit that once there is a reemployment and the pension fixation accordingly the petitioner is deemed to be in,,,

service on reemployment under the other employer albeit that the funds coming from the Government. Reliance is also placed on the decision and in,,,

the last part of the judgment that the petitioner's appointment to IIT was a notional extension of service and therefore being reemployed, charge-"",,,

sheet was within jurisdiction.,,,

4.,` Probation,:,"Subject to the provisions in the Statutes, this

appointment is made on probation for a period of two

years from the date of joining, but the appointing

authority has the power to extend the period of

probation without assigning any reason. The

appointment may be confirmed on permanent basis

after satisfactory completion of the period of

probation.

In this connection, we wish to state that:" "",,,

a) You had tendered your technical resignation from this Institute.,,,

b) The same was accepted by the competent authority and you were relieved from this Institute w.e.f. 31.05.2017 (AOH),,,

c) Subsequently, you gave an undertaking to IIT, Gandhinagar stating that you had actually tendered your resignation from the services of",,,

Institute for Plasma Research to join the post of Deputy Registrar at IIT, Gandhinagar.",,,

d) Accordingly, you applied for pensionary benefits from this Institute.",,,

e) Employee quitting service on resignation from service will not be entitled to any pension.,,,

f) However, since you had applied through proper channel, IIT Gandhinagar was requested to confirm whether you have joined them and",,,

have been permanently absorbed in IIT, Gandhinagar.",,,

g) They have not clearly confirmed your permanent absorption. However, they have stated that you have been employed on immediate",,,

absorption basis. If you have been employed on immediate absorption basis then on joining you are deemed to have been permanently,,,

absorbed in IIT, but on other side you are on probation for a period of two years. This is contradictory.",,,

However, in the light of the confirmation given by IIT, Gandhinagar regarding your employment on immediate absorption basis, we would",,,

like to treat your case as deemed retirement.,,,

You are therefore, informed to return the attached undertaking duly signed by you.",,,

Thanking you,,,

Sincerely yours,,,

(P.K. Atrey),,,

Acting Chief Admn. Officerâ??,,,

6.5 Condition No.g) indicates that the petitioner was employed on immediate absorption basis with the Indian Institute of Technology and accordingly,,,

the petitioner was treated as deemed retired from the respondent no.1-Institute.,,,

6.6 The contention of the contesting parties, that of the petitioner is that the appointment at the Indian Institute of Technology was a fresh appointment",,,

and therefore, departmental proceedings and the Rule 9(2)(b) of the Central Civil Service (Pension) Rules was barred as the same was for a incident",,,

more than four years. The case of the erstwhile Institute for Plasma Research

through Mr.D.G.Shukla learned counsel is that since the petitioner has,,,
not superannuated from the department, Rule 9(1) provided that the inquiry that
was instituted pursuant to the charge-sheet could continue upon",,,,
reemployment of the petitioner and as per fiction of Rule 9(2)(a) shall be
deemed to be proceedings continued and concluded by the authority by,,,
which they were commenced as if the Government servant continued.,,,,

6.7 From the reproduction of the documents which have been set out herein
above, it is unequivocally clear that the petitioner was selected for",,,,
appointment to the post of Deputy Registrar in the Indian Institute of Technology
at Gandhinagar. It was a fresh appointment. Pursuant to such,,,
appointment being made the respondent-Institute for Plasma Research relieved
him from duty. The order of appointment at the Indian Institute of,,,
Technology at Gandhinagar, specifically said that his terms and conditions would
be regulated by the the Institutes of Technology Act, 1961 and IIT,",,,
Gandhinagarâ??s statutes besides the other rules of the Institute in force. Terms
of conditions of appointment when set out above would indicate that,,,
it was a fresh appointment to a post of the Deputy Registrar in a separate
institute governed under the separate set of Rules. The letter of 22.11.2017,,,
categorically speaks of deemed retirement.,,,,

6.8 The respondent institution issuing charge-sheet harbors a complete
misconception that the word â??superannuationâ?? has to be read in rules viz,,,
The Rule 9 of the Central Civil Service (Pension) Rules 1972. Rule 9 of the
Central Civil Service (Pension) Rules 1972 is reproduced hereunder:,,,
â??Rule 9 - Right of President to withhold or withdraw pension:,,,

(1) The President reserves to himself the right of withholding a pension or
gratuity, or both, either in full or in part, or withdrawing a pension in full or in",,,,
part, whether permanently or for a specified period, and of ordering recovery
from a pension or gratuity of the whole or part of any pecuniary loss",,,,
caused to the Government, if, in any departmental or judicial proceedings, the
pensioner is found guilty of grave misconduct or negligence during the",,,,
period of service, including service rendered upon re-employment after
retirement :",",,,

Provided that the Union Public Service Commission shall be consulted before any
final orders are passed:,,,

Provided further that where a part of pension is withheld or withdrawn the

amount of such pensions shall not be reduced below the amount of rupees,,,
three hundred and seventy five per mensem],,,,

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his",,,,

retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and",,,,

shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in,,,
service:,,,

Provided that in all cases where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a",,,,

report recording its findings to the President.,,,,

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-",,,,

employment,-",,,,

(i) shall not be instituted save with the sanction of the President.,,,,

(ii) shall not be in respect of any event which took place more than four years before such institution; and,,,

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to,,,

departmental proceedings in relation to the Government servant during his service.â??,,,

6.9 Rule 9 talks of the Right of the President to withhold or withdraw the pension. Sub-Rule (1) states that the President reserves to himself the right,,,

of withholding the pension or gratuity or both either in full or in part or withdrawing a pension in full or in part or ordering recovery from a pension or,,,

gratuity for the pecuniary loss caused to the Government if in any departmental or judicial proceedings the pensioner is found guilty of grave,,,

misconduct or negligence during the period of services including services rendered upon reemployment after retirement. Sub-Rule (2a) talks about the,,,

departmental proceedings referred to in sub-rule (1) and sets out that if the departmental proceedings are instituted while the government servant is in,,,

service before his retirement or during his retirement, shall after the retirement be deemed to be proceedings under these Rules and shall be concluded",,,,

continued by the authority as if they were commenced when the Government servant continued in service. Rule 9(2b) talks of the sanction of the,,,

President and a bar against of conducting inquiry of any event which took place more than four years before such institution. It talks of the,,,

departmental proceedings if not instituted while the Government servant was in service whether before his retirement or during his reemployment,",,

Mr.Shukla would want the Court to hold that the umbilical cord between the Institute for Plasma Research and the Indian Institute of Technology at,,,

Gandhinagar was not severed inasmuch as, since the petitioner had not superannuated from the Institute for Plasma Research and since as such he",,,

was reemployed because of not superannuated, the departmental proceedings could be continued under Rule 9(2)(a) of the Rules. It appears that",,,

Mr.Shukla is reading the Rules in isolation. It is well settled that when a Rule or provision has to be interpreted, it has to be in its entirety. When read",,,

in its entirety, the Rule talks of a departmental or a judicial proceeding being continued or initiated when he was in Government Service then it shall be",,,

continued a deemed research upon reemployment after retirement. Reemployment cannot taken to be the manner in which the learned counsel for the,,,

respondent perceives.,,,

6.10 From the extensive reproduction of the letters herein above, it is abundantly clear that the petitioner's appointment under the Indian Institute",,,

of Technology at Gandhinagar, was not a reemployment but a fresh appointment. Reliance placed on the OM of 2017 by Mr.Shukla therefore is",,,

misconceived. The petitioner while in service with the Institute for Plasma Research, respondent no.1 applied for the post of Deputy Registrar at the",,,

Indian Institute of Technology at Gandhinagar against his advertisement. The application was forwarded through proper channel and based on his,,,

interview, he was offered the position by the letter of 10.03.2017. It has come on record that the Indian Institute of Technology at Gandhinagar, is not",,,

governed by the old GPF-cum-Pension Scheme. The petitioner was relieved by the Institute for Plasma Research on 31.05.2017 after obtaining a,,,

technical resignation. In a case where a Central Government employee shifts an autonomous body pursuant to an open advertisement and where he,,,

gets prorata retirement benefits, it cannot be treated as reemployment, as the fiction of deemed retirement cannot be stressed/stretched to mean that",,,

the retirement is not superannuation but a continuing connection between his erstwhile employer and the new employer. It will be in the fitness of,,,

things to reproduce the definition of 're-employment' as laid out in the judgment in the case of Ranchhodbhai S. Dalwadi (supra),,,

8. The expression 're-employment' when construed in the above context can only mean re-employment in the same post or cadre carrying,,,

the same pay scale from which the Government servant voluntarily retires. According to Corpus Juris Secundum, Volume LXXVI (76 C.J.S.),,,

Release 32) the expression 're-employment' means the re-employment in the same service in which a person had formerly been employed. In,,,

the context of Section 25-H of the Industrial Disputes Act, the Supreme Court in Cawnpore Tannery Ltd. v. Guha (S) and Ors. 1961 (II),,,

L.J. 110 approved the principle that re-employment could be in the same category to which the retrenched employee belonged. In that,,,

case the employee Guha was working as an Assistant Store Keeper when he was retrenched from service, After his retrenchment the,,,

management filled in three posts belonging to the clerical cadre without inviting Guha for re-employment to anyone of the said three posts.,,,

Guha complained that he had been wrongly and unjustifiably kept out of re-employment even though vacancies had arisen in the clerical,,,

cadre to which he originally belonged. The management contended that Guha held the post of Assistant Store Keeper at the date of his,,,

retrenchment and since the vacancies were in the cadre of Clerks, the management was not bound to offer him reemployment. This",,,

submission was dealt with as under:,,,

It is then urged that the principle of industrial adjudication on which the respondents rely cannot require the appellant to offer to Guha,,,

a job unless the said job belongs to the same category to which Guha belonged. On principle, Sri Sen may be right in assuming that the",,,

offer would be conditioned by the consideration of the category to which the retrenched employee belonged.â??,,,

The Supreme Court, however, reached the conclusion that Guha belonged to the clerical category and upheld the Tribunal's order. The",,,

above observations clearly lend support to the contention that in order that the appointment can be termed 're-employment' it must be shown,,,

that it belongs to the same category of posts/cadre which the incumbent held at the time of retirement. The Patna High Court in Bihar Sugar,,,

Works v. S.G. Prasad 1969 (2) L.I.C. (Labour & Industrial Cases) 1430 also held that 'reemployment' within the meaning of Section 25-H of,,,

the Industrial Disputes Act imports the significance of taking back a retrenched workman in the same category to which he belonged. Where,,,

a retrenched workman is not employed in the same category of work to which he belonged before retrenchment, Section 25H cannot apply.",,,

These two decisions also lend support to the view to which I am inclined on a reading of Rule 45.1 of the Rules read with Rule 330 of B.C.S.,,,

Rules and Instructions thereto.â??,,,

The expression â??reemploymentâ?? means reemployment in the same service in which a person had formerly been employed. Therefore, in service",,,

parlance re-employee would mean employment under the same of the cadre carrying same pay scale from which the government servant has retired.,,,

In Section 9 of the Central Civil Services (Pension) Rules, the word â??reemploymentâ?? therefore, is used in the sense of the reemployment in the",,,

same post in the same department from which he has retired.,,,

The appointment of the petitioner to the post of Deputy Registrar in the Indian Institute of Technology at Gandhinagar would certainly not amount to,,,

reemployment within the meaning of Rule,,,

9 of the Central Civil Services (Pension) Rules 1972. Rule 9 provides for the right of the President to withhold or withdraw the pension. At the cost of,,,

reiteration it may be said that sub-rule (1) provides that the President reserves to himself the right of withholding a pension or gratuity if in any,,,

departmental or judicial proceedings a pensioner is found guilty of grave misconduct or negligence during the period of service including service,,,

rendered upon reemployment after retirement. Reading this would indicate that misconduct committed while in service before retirement and,,,

misconduct committed in service during the period of reemployment are treated separately. Reading sub-rule 2(a) in context of sub-rule (1) would,,,

mean that departmental proceedings instituted while the Government servant was in service for the misconduct committed while in service and,,,

departmental proceedings instituted for the misconduct committing while in service during his reemployment. Rule 9(2)(a) therefore is evidently not,,,

applicable in the facts of the case and what will apply is Rule 9(2)(b) of the Central Civil Services and Pension Rules. Having held thus, the decision in",,,

the case of Shri Krishna Pandey (supra). Para 6 thereof would come into play. Para 6 thereof reads as under:",,,

â??6. 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.â??,,,

7. Evidently therefore, since the petitioner was not reemployed, the event for which the charges were framed for misconduct were pre-30.11.2016 i.e.",,,

more than four years before the event and for which no sanction of the President be obtained, the charge-sheet dated 01.12.2020 is held to be without",,,

authority of law and is accordingly quashed and set aside.,,,

8. The petition is allowed. Rule is made absolute.,,,

9. In view of the disposal of the main petition, Civil Application for direction will also not survive and hence, the same is also disposed of." ,,,