(1994) 07 GAU CK 0005

In the Gauhati High Court

Case No : Civil Rule No. 928 of 1981

Irungbam Daoji Singh APPELLANT

Vs

The State of Manipur and Another RESPONDENT

Date of Decision : 11-07-1994

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 14, 15
Central Civil Services (Conduct) Rules, 1964 — Rule 3
Central Civil Services (Pension) Rules, 1972 — Rule 69, 9, 9(2), 9(5)
Constitution of India, 1950 — Article 226, 309

Citation : (1995) 1 GLR 130

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Advocate : M. Binoy Kumar Singh, for the Appellant; A. Jagatchandra Singh, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N.G. Das, J.—By this application filed under Article 226 of the Constitution of India the Petitioner Shri Irungbam Daoji Singh has thrown a challenge to the departmental proceeding that was drawn up against him by Memo No. 2/152/80-V(D)/P, dated 29th April, 1981 contained in Annexure-A/2.

2. The short facts necessary for disposal of this writ petition are that the Petitioner who was Inspector of Schools under the Education Department, Government of Manipur retired on superannuation on 1-3-1981 A.D. (Annexure-A/1), But the Respondent No. 1 (State of Manipur issued a Memo dated 29th April, 1981 forwarding therewith a departmental proceeding drawn up against the Petitioner in accordance with Rule 14 and 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (Annexure-A/2). It was received by the Petitioner on 26-5-1981 and soon after receipt of this communication the Petitioner submitted a representation on 8-6-1981 (Annexure-A/3) to the Chief Secretary Government of Manipur with a prayer for revocation/withdrawal of the

said Memo dropping the proceeding on the ground that the Petitioner had already retired on superannuation, But the Petitioner was not favoured with any reply. So, the Petitioner again submitted another representation to the Chief Minister, State of Manipur for withdrawal of the aforesaid departmental proceeding (Annuxere-A/4). But this time also Petitioner did not get any response. On the other hand, he got the communication namely, order No. 2/152/80/V(D)/P contained in Annexure-A/5 whereby Respondent No. 2 appointed Respondent No. 2 as enquiring authority. Accordingly Respondent No. 2 fixed the date on 26.11.81 for further proceeding of the matter. The Petitioner, therefore, contended that such a proceeding after retirement is not permissible and it should be dropped.

3. The Respondents resisted this writ petition by filing a counter-affidavit wherein it was averred that some time in the second week of December, 1980 a scandal appeared to have taken place in the office of the Inspector of Schools, Central District Zone No. 2 at Porompat in respect of encashment of medical reimbursement bills amounting to Rs. 7,36,123.51 P. during the period from 10-1-80 to 29-11-80. The Petitioner was the Inspector of Schools at the relevant time and the preliminary enquiry which was conducted against him revealed that while functioning as Inspector of Schools, Central District Zone No. 2 at Porompat the Petitioner in violation of the financial propriety and the Government''s order incurred Rs. 7,42,202.18 P, during May to November, 1980 on medical reimbursement bills of employees and he sanctioned bills amounting to Rs. 1,06,423.20 P. only out of the above total sum of Rs. 7,42,202.18 P. in violation of the Government order No. 3/2/80-F(R.M.), dated 1-9-80 of the Finance Department which restricted claims of medical reimbursement by putting a ceiling limit of Rs. 300/- only and also required that the claim exceeding Rs. 300/- be put up under signature of the Head of the Department. It was further alleged that he has also sanctioned 250 bills amounting to Rs. 2,19,211.15 P. in utter disregard and violation of the valid order bearing No. 14/1-59/79. Ed (Pt)/2, dated 3-2-80, It was thus alleged that while functioning as responsible Government servant the Petitioner failed to manually absolute integrity and devotion to his duties and thus violated the provisions of Rule 3 of C.C.S. (C) Rules, 1964 and thereby caused heavy pecuniary loss to the Government.

4. It was, therefore decided by the Government of Manipur that a disciplinary proceeding should be drawn up against the Petitioner for his such unbecoming acts causing heavy financial loss to the Government and accordingly with the previous permission of the President under the provision of Article 351A of the Civil Services Regulations which were repealed by the Manipur Civil Services (Pension) Rules, 1977 (which came into force from 1-1-77), the departmental proceeding in question was drawn up against the Petitioner. It was averred that the sanction against delinquent officer was accorded under Rule 9 of the Pension Rules, 1972 corresponding to Rule 351 A of the Civil Services Regulations and since the proceeding was drawn up for causing financial loss to the Government such a proceeding is permissible under the Pension Rules. Respondents also

denied other material facts set forth in the petition.

5. The arguments at the bar on behalf of the Petitioner may be put under two main heads, namely, (i) the Governor had no power to accord sanction under Article 351A of the Civil Service Regulations for initiating the departmental proceeding against the Petitioner as this Article 351 A was not in force on the date of aforesaid Memo; and (2) no such departmental proceeding can be drawn up against a retired employee under the Civil Services (Classification, Control and Appeal) Rules. 1977.

6. Mr. M. Binoy Kumar Singh, the learned Counsel appearing on behalf of the Petitioner has at the very outset contended that the Article 351A was not in force at the time when the President accorded permission for drawing up departmental proceeding against the Petitioner and as such this proceeding must be regarded to be void ab nitio. Mr. Binoy Kumar also drew my attention to the Civil Service Regulations corrected upto 31st May, 1979 and submitted that page 394 of the aforesaid book would show that Article 351A was omitted. But Mr. Jagatchandra Singh, the learned Government Advocate has repelled the contention of Mr. Binoy Kumar by showing the relevant notification that this omission was ultimately cancelled and it was very much in force at the time when the President accorded approval for drawing up departmental proceeding against the Petitioner.

7. Moreover, it was submitted by Mr. Jagatchandra, the learned Govt. Advocate that the Government of Manipur adopted the Central Civil Services Pensions Rules, 1972. The notification in the extra-ordinary Gazette dated 3rd March, 1977 shows that the Governor of Manipur in exercise of the powers conferred by the proviso to Article 309 of Constitution of India made Rules, namely, Manipur Civil Services (Pension) Rules, 1977. This Rules show that the Central Civil Service (Pension) Rules, 1972 as on 1-1-77 were adopted with the condition that wherever the word/words, ''union'', ''President'', ''Government'', ''Ministry'', and ''head of department'' has/have been referred to in the Central Civil Services (Pension) Rules, 1972 the same shall be construed as referred into the ''State of Manipur'', ''Government of Manipur'' and ''Head of Department'' declared as such by the Governor of Manipur respectively. On seeing the above Rules and the Notification that Article 351A was not omitted Mr. Binoy Kumar, the learned Counsel for the Petitioner did not raise any further controversy as to the propriety and legality of the sanction order contained in Anncxure-B/1 dated 29th April, 1981.

8. But the crucial question which calls for consideration is whether a departmental proceeding can be drawn up against an employee who already retired on superannuation.

9. Mr. Binoy Kumar has argued that since no penalty can be imposed under Rule 11 of the C.C.S. Rules on a retired person such a proceeding must be regarded as void. In support of this contention Mr. Binoy Kumar has placed reliance upon number of decisions. The first of those decisions is a decision rendered in the

case of S.K. Rajasekhariah Petitioner v. State of Mysore and Anr. Respondents reported in AIR 1968 Mysore 206. What happened in that case is that the Petitioner who was an executive Engineer retired on 9-1-65 had to face a departmental proceeding which was commenced against him before his retirement. The Petitioner was placed under suspension by an order dated 5-1-65 and it was directed that he should be retained in service to enable the conclusion of the disciplinary proceeding But it appeared that he was allowed to retire and as such the Special Government Advocate had to admit that the continuance of the disciplinary proceeding after he attained the age of superannuation on January 9, 1965 or his retention in service for the completion of departmental proceeding was not permissible. It further shows that Rule 221 and 289 of Mysore Civil Services Rules (1957) required that a finding that the services of the Government servant were not thoroughly satisfactory. But in that case no such finding was recorded by the Government in the impugned order. In the absence of that finding to that effect the deduction of the pension of the Petitioner, it was held, beyond the competence of the Government. So, on facts the aforesaid ruling is not applicable to the present case.

10. Similarly, the next case referred to by Mr. Binoykumar, namely Nawal Kishore Dubey Vs. State of Rajasthan, opp. party is not applicable to the present case as the facts are quite distinguishable. In this case it was alleged by the Petitioner that since he did not avail of the earned leave which stood to his credit his retirement according to the order became effective from the afternoon of the 18th September, 1961. Para 2 of the judgment shows that it was admitted that the Petitioner retired compulsorily under Rule 244(2) of the Rajasthan Civil Services Rules by the order dated 11th September, 1961 and it was stated that this order was issued by mistake as it escaped the notice of the Government that the Petitioner was also under suspension and a departmental enquiry was going on against him. In face of this fact it is not necessary to make an elaborate discussion as to non-applicability of this decision in the present case.

11. In this context decision of the Apex Court rendered in the case of State of Punjab Vs. Khemi Ram, may be referred to. In this case Their Lordships under para 11 of the judgment held:

If disciplinary action is sought to be taken against a Government servant it must be done before he retires as provided by the said rule. If a disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the Government is to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such enquiry is completed and a final order is passed therein.

12. It would, therefore, be quite apparent from the above dictum that a disciplinary proceeding started before the retirement of an employee can be conducted even after his retirement on superannuation if the concerned authority passes necessary order for continuation of his service and refuses to permit him to retire until the enquiry is completed. In the case of Rajasekhariah (Supra) and

Nawal Kishore Dubey (Supra) the Petitioners were not retained in service after retirement on superannuation.

13. In the instant case, the contention of the Respondents is that the Disciplinary proceeding which was drawn up against the Petitioner was for his latches and negligence causing pecuniary loss to the Government Mr. Jagatchandra, the learned Government Advocate has contended that such a proceeding is permissible against a retired person in view of the provisions laid down under Rule 9 of C.C.S. (Pension) Rules, 1972 which was adopted by the Government of Manipur vide Manipur Civil Services (Pension) Rules, 1977. Article 351 A of the Civil Service Regulations, now Rule 9 of the Pension Rules, 1972 provides that such proceeding can be drawn up against a retired Government servant. It may be useful to quote Rule 9(b) of the C.C.S. (pension) Rules, 1972 which reads:

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 which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose, or in respect of an event which took place, more than four years before such institution.

(4) In the case of a 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), a provisional pension as provided in Rule 69 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

14. A perusal of the provisions quoted above shows that Rule 9(2)(b) states that a 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 look 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 which an order of dismissal from service could be made in relation to the Government servant during his service.

15. In the present case Annexure-B/1 dated 29th April, 1981 sanction order shows that the Governor accorded the approval for drawing up the departmental proceeding against the Petitioner and this Memo also indicated that one Shri A.P. Sarma, C.D.E. would conduct the departmental proceeding in accordance with the procedure laid down in Rules 14 and 15 of the C.C.S. (C.C.A.) Rules, 1965.

16. In the counter it was specifically stated that a scandal in respect of drawal/ encashment of medical reimbursement bills amounting to Rs. 7,36,123.50P. was detected some time in the second week of December, 1980. It was stated that this drawal took place during the period from 10-1-80 to 29-11-80. Admittedly the Petitioner retired w.e.f. 1-3-81. It cannot therefore be said that the proceeding which was drawn up against him in respect of any event which look place more than four years before institution of the proceeding. It has been specifically stated by the Respondents that negligence and latches on the part of the Petitioner resulted in pecuniary loss to the Government. It is the case of Respondents that on account of misconduct and negligence of the Petitioner heavy pecuniary loss was occasioned. I am, therefore, of opinion that if such misconduct or negligence is established saying that due to such misconduct or negligence pecuniary loss was occasioned to the Respondents, the competent authority, in my opinion, can direct withholding of a part of the pension as mentioned under Rule 9(5) of the C.C.S. (Pension) Rules, 1972.

17. In this connection Mr. Jagatchandra the learned Government Advocate also placed reliance on a decision of the Apex Court reported in State of Bihar Vs. Narasimha Sundram, Respondent to show that withholding of pension is permissible on principle.

18. For the reasons stated above, I dismiss this writ petition with costs.