(2004) 10 CAL CK 0048

In the Calcutta High Court

Case No : M.A.T. No''s. 744 and 1303 of 2004

Kolkata Metropolitan Development Authority — APPELLANT

Vs

Saroj Kumar Ganguly
 Saroj Kumar Ganguly Vs Kolkata Metropolitan Development Authority — RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:
Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (2005) 1 CALLT 348 : (2005) 105 FLR 398

Hon'ble Judges : Asit Kumar Bisi, J;Altamas Kabir, J

Bench : Division Bench

Advocate : Debashis Kar Gupta and Somnath De, Gautam Chakraborty, Debobrata Banerjee, Kaushik Bhattacharya and Ayan Basu, P.S. Basu and S. Talukdar, for the Appellant;

Final Decision : Allowed

Judgement

Altamas Kabir, J.—These two appeals arise out of the same judgment and have, therefore, been taken up for hearing together. While M.A.T. No. 744 of 2004 has been filed by the writ petitioner Shri Saroj Kumar Ganguly, M.A.T. No. 1303 of 2004 has been filed by the Kolkata Metropolitan Development Authority and its officers, who had been made respondents in the writ petition filed by Shri Saroj Kumar Ganguly.

2. The writ petitioner who had previously worked in the Military Engineering Service and was also employed by the Calcutta Corporation joined the service of the Kolkata Metropolitan Development Authority on 24th November, 1976 as an Assistant Engineer. On 9th August, 1991, he was promoted to the post of Executive Engineer of the Kolkata Metropolitan Development Authority, hereinafter referred to as "KMDA" and retired from service on 31st December, 2002. It appears that on the ground of physical infirmities the writ petitioner could not personally make-over charge to the next Incumbent, but under an order dated 31st December, 2002, one Bimal Behari Modak took over charge as

Executive Engineer.

3. The writ petitioner was paid his salary for the month of December, 2002, but on 3rd January, 2003, he received a Memo of charges in connection with Departmental Proceeding No. 331/KMDA/ Sectt/217/2000 dated 31st December, 2002, initiated against him resulting in the. withholding of his retrial benefits and/ or pensionary benefits, including gratuity and pension, after superannuation from the post of Executive Engineer, KMDA.

4. The writ petitioner challenged the initiation of the departmental proceeding in a writ application, being W.P. No. 1151(W) of 2004 on several grounds, including the ground that the said proceedings had been commenced after he had retired from service. In other words, although, he had retired from service on 31st December, 2002, he was served with the impugned Memo of charges thereafter on 3rd January, 2003. The writ petitioner prayed for quashing of the departmental proceeding and for immediate release of his retrial and/ or pensionary benefits. Apart from the aforesaid ground that the departmental proceeding had been initiated after his retirement, the writ petitioner also claimed that the entire exercise was mala fide as would be evident from the fact that in spite of long and continued service with the KMDA the said authority and its officers had taken a decision to initiate the impugned disciplinary proceeding on the date on which he was to superannuate and that too on account of the charges which related back to the year 1981. It was also contended in the writ petition that after having granted promotion to the writ petitioner to the post of Executive Engineer on 9th August, 1991, it must be deemed that the KMDA and its authorities had given a clean chit to the petitioner in respect of his service prior to the date of his promotion and the disciplinary authority was estopped from issuing any charge-sheet in respect of alleged charges pertaining to the period prior to such promotion.

5. The writ petition was partly allowed and partly rejected by the learned single Judge who disposed of the same by his judgment and order dated 6th February, 2004. While choosing not to interfere with the initiation and continuance of the departmental proceeding the learned single Judge directed that provisional pension be paid to the writ petitioner in accordance with the rules. The learned single Judge directed that all arrears from the date of retirement be released to Shri Ganguly within a month from the date of the order along with interest at the rate of 18% per annum.

6. The writ petitioner has preferred an appeal against the decision of the learned single Judge to allow the continuance of the departmental proceeding. On the other hand, the KMDA has preferred an appeal against the direction of the learned single Judge directing payment of provisional pension to the writ petitioner during the pendency of the disciplinary proceeding with interest on the arrears from the date of retirement at the rate of 18% per annum.

7. Appearing on behalf of the writ petitioner Mr. Gautam Chakraborty, learned

senior counsel, firstly referred to the Office Order issued by the Chief Engineer SURAD-Sector, KMDA, on 31st December, 2002. Mr. Chakraborty submitted that in the said order it had been categorically mentioned that on attaining the age of superannuation the service of the writ petitioner automatically came to an end in the afternoon of 31st December, 2002. Mr. Chakraborty also referred to another Officer order issued by the same authority on 26th December, 2002, according sanction to the payment of cash equivalent to leave salary for 300 days to the writ petitioner who was to retire in the after-noon of 31st December, 2002.

8. Mr. Chakraborty urged that the authorities were fully aware of the fact that the writ petitioner would retire on attaining the age of superannuation on 31st December, 2002, and issued different instructions in that regard, but ultimately took a decision, purportedly on 31st December, 2002, itself to hold an enquiry against the writ petitioner on the basis of the Articles of Charge enclosed with the Memorandum of 31st December, 2002. Mr. Chakraborty pointed out from the Statement of the Articles of charge against the writ petitioner that while charge number 1 related to the year 1981, charge number 4 related to the year 1992. In other words, charge number 1 was in respect of alleged acquisition of assets disproportionate to the known source of income of the writ petitioner 21 years prior to his attaining the age of superannuation, while charge number 4 was in respect of a similar allegation relating to a period ten years prior to his attaining the age of superannuation.

9. Mr. Chakraborty submitted that it would be amply clear that all the four Articles of charge were stale and even thereafter the writ petitioner had been granted promotion which debarred the respondents from reopening the matters prior in point of time to such promotion.

10. Mr. Chakraborty submitted that under Regulation 115 of the Service Regulations of the KMDA the writ petitioner had to disclose his assets before the authority on the 1st day of April each year from 1976 till the date of his superannuation. Mr. Chakraborty urged that at no point of time prior to the issuance of the Articles of charge had any objection been raised on behalf of the respondents with regard to such disclosure by the writ petitioner each year. Mr. Chakraborty submitted that in 1991 the writ petitioner was not only promoted to the post of Executive Engineer but he was also sent to London and Bangladesh for acquiring more technical knowledge and training in connection with Basti Improvement Work in 1996-97.

11. Mr. Chakraborty urged that the entire exercise was entered into with the mala fide intent of harassing the petitioner after his superannuation and to deny him his rightful retrial benefits.

12. In support of his aforesaid submissions Mr. Chakraborty firstly referred to a single Bench decision of this Court in the case of R.K. Gupta v. Coal India Ltd. and Ors., reported in 1996 CWN 1157, in which relying on certain decisions of the Hon''ble Supreme Court the learned Judge held that since the petitioner had

been promoted on several occasions, the allegations prior to such promotion should not be taken into account by the authority and the charge sheet issued after a long delay was required to be quashed.

13. Mr. Chakraborty then referred to the decision of the Hon''ble Supreme Court in the well known case of The State of Madhya Pradesh Vs. Bani Singh and another, , in which the Hon''ble Supreme Court was considering a departmental enquiry which was initiated after 12 years and in respect whereof no satisfactory explanation for the inordinate delay in issuing the charge memo had been given. The Hon''ble Supreme Court in the given facts held that it would be unfair to permit the departmental enquiry to proceed at such a late stage.

14. Mr. Chakraborty also referred to a Bench decision of this Court in the case of Mrinal Kanti Chakraborty v. State of West Bengal, reported in 1993(1) CLJ 371, wherein the Court was considering charges which were stale in nature. Relying on the decision of the Hon''ble Supreme Court in Bani Singh''s case (supra), the Appeal Court was of the view that the authorities should not be permitted to continue the departmental proceeding in respect of such stale charges to deny to the appellant/petitioner his retrial benefits.

15. Reference was also made to two Bench decisions of this Court in (i) Arun Kumar Biswas v. Superintendent of Police, Burdwan and Ors., reported in 1992(1) CHN 354 and (ii) Gour Narayan Barat v. State of West Bengal and Ors., reported in 1998 1 CLJ 200 wherein the same principle was reiterated and it was also held that disciplinary proceedings on the basis of the charges framed could not be continued or conducted against the petitioner after he had retired from service.

16. Mr. Chakraborty referred to the decision of the Hon''ble Supreme Court in the State of Andhra Pradesh Vs. N. Radhakishan, , wherein the Hon''ble Supreme Court was considering the situation where there was considerable delay in prosecuting the disciplinary proceedings. The Hon''ble Supreme Court observed that in considering whether the delay had vitiated the disciplinary proceeding the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how serious the disciplinary authority was in pursuing the charges against its employee. It was observed that delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. The Hon''ble Supreme Court went on to observe that ultimately the Court is to balance these considerations and when the charge Memo relates to an incident which is over ten years stale and there is no explanation for such delay and the delinquent had not contributed to such delay, the charge Memo was liable to be quashed.

17. Mr. Chakraborty submitted that the consistent view of all the Courts, including the Supreme Court, has been that stale charges, unless there was

proper explanation for delay in prosecuting the charges, could not be continued and were liable to be quashed.

18. Mr. Chakraborty lastly referred to Chapter IX of the Services Regulations of KMDA dealing with discipline and appeal. Referring to Regulation 76, which deals with penalties, Mr. Chakraborty urged that after an employee attained the age of superannuation, the only penalty which could be imposed, even if a departmental proceeding was allowed to continue after his retirement, was confined to Clause (iii) of Regulation 76 whereunder recovery could be made from the pay of the concerned employee of any pecuniary loss caused to the authority by negligence or breach of orders. Mr. Chakraborty urged that the charges against Shri Ganguly were not included in Regulation 77 which contained the illustrations of misconduct, which could have attracted the provisions of Clause (iii) of Regulation 76 if the departmental proceeding against Shri Ganguly was allowed to continue and he was found to be guilty in respect of the charges. Mr. Chakraborty repeated that the entire exercise was an exercise in futility and was initiated against Shri Ganguly with the sole object of harassing him and denying him his rightful benefits after retirement.

19. Appearing for the KMDA, Mr. Partha Sarathi Basu, submitted that as was the practice in the KMDA. officers were required to make a declaration of their assets on the 1st of April each year in a sealed cover and these were never opened unless certain reasons surfaced for doing so. Mr. Basu submitted that in the instant case also the declaration of assets made each year by Shri Ganguly under Regulation 115 of the Service Regulations were kept unopened till certain complaints were received against him of acquiring assets which appeared to be disproportionate to his known sources of income and an enquiry was conducted against him by the Anti-Corruption Bureau, Vigilance Commission, Government of West Bengal.

20. Mr. Basu submitted that in the course of the enquiry the Investigating Officer was provided with the statements made each year by Shri Ganguly for the periods from 1st January. 1991 to 1st January. 1996 and 1st January, 1998 to 1st January, 2000. The said sealed covers were received by the Investigating Officer, Vigilance Commission, on 18th November, 2002, and in the course of examination of the documents contained in the sealed covers certain facts relating to the earlier periods of Shri Ganguly''s services also came to light. Shri Ganguly was thereafter examined and ultimately on the basis of such examination and the documents submitted by Shri Ganguly, a proposal was sent by the Deputy Secretary, Vigilance Commission, West Bengal, by his Memo dated 24th December, 2002, to the Chief Executive Officer, KMDA, for initiating a departmental proceeding against Shri Ganguly in respect of the discrepancies indicated in the said communication.

21. It was on receipt of the said proposal as late as on 24th December, 2002, that a decision was taken to start a departmental proceeding against Shri Ganguly, who was to retire on 31st December, 2002.

22. Mr. Basu submitted that it was on account of the aforesaid facts that the decision was taken to initiate a departmental proceeding against Shri Ganguly on the eve of his superannuation.

23. Mr. Basu submitted that it is also on record that Shri Ganguly was not attending his duties just prior to his retirement on account of certain physical ailments and ultimately by an office order dated 31st December, 2002, issued by the Chief Engineer, Surad Sector, KMDA, one Shri Biman Behari Modak, Executive Engineer (Civil), was placed In Shri Ganguly''s post immediately.

24. Mr. Basu submitted that the decision to initiate disciplinary proceedings against Shri Ganguly was taken on 31st December, 2002, before the retired from service and under Clause 4 of Regulation 121 of the Service Regulations, KMDA was entitled to continue the disciplinary proceedings even after Shri Ganguly''s retirement.

25. Mr. Basu submitted that on account of the practice followed in KMDA the discrepancies in Shri Ganguly''s assets with his known sources of income came to light only in the month of November, 2002, when the sealed covers submitted by him relating to the assets acquired by him over the years were handed over to the Vigilance Commission and were examined by the Investigating Officer. Mr. Basu submitted that it could not, therefore, be submitted that the charges against Shri Ganguly could not be continued on the ground that the charges are stale and/or Shri Ganguly had been given promotion and even sent abroad in connection with his service.

26. As regards the appeal preferred by the KMDA, Mr. Basu submitted that the amount of interest imposed on KMDA by the learned single Judge by way of penal interest, was excessive and far in excess of the existing bank rate of interest. Mr. Basu submitted that even if the learned single Judge thought it fit to impose interest on the amounts of provisional pension alleged to be in arrears, the rate of interest should have been much lower than was awarded by the learned single Judge.

27. Mr. Basu submitted that under the Service Regulations, the KMDA was entitled to continue with the disciplinary proceedings and the learned single Judge had rightly allowed it to do so.

28. During the course of hearing of the two appeals, since the Vigilance Commission had not been made a party in the proceedings, we had requested Mr. Debashis Kar Gupta, learned junior standing counsel to assist the Court by taking instructions from the authorities of the Vigilance Commission regarding the enquiry said to have been conducted in respect of Shri Ganguly''s assets, in November, 2002. Mr. Kar Gupta very kindly took instructions from the Vigilance Commission and submitted a report which had been compiled in respect of the enquiry conducted by the Vigilance Commission. From the said report it appears that on complaints made to the Vigilance Commission an enquiry was conducted into the assets acquired by Shri Ganguly during the tenure of his service in the

KMDA. The stand taken by Mr. Basu, on behalf of the KMDA that the sealed covers submitted each year by Shri Ganguly had remained unopened was also corroborated in the report in which it was mentioned that all the sealed covers were received by the Vigilance Commission and examined during the course of the enquiry and that various facts came to light in the course of such examination relating to acquisition of assets by Shri Ganguly from as far back as in the year 1981. Mr. Kar Gupta submitted that it was on account of such investigation the facts revealed by Shri Ganguly during the interrogation that led to framing of charges which date back to the year 1981 till the year 1992. Mr. Kar Gupta urged that the recommendation to initiate departmental proceedings against Shri Ganguly was made by the Vigilance Commission only after all the materials available were looked into and considered by the Investigating Officer of the Vigilance Commission.

29. We have carefully considered the submissions made on behalf of the respective parties and the materials on record which reveal that the departmental proceeding against Shri Ganguly was commenced prior to his retirement, though the charge-sheet which had been prepared on 31st December, 2002, had been served on Shri Ganguly after the date of his retirement on 3rd January, 2003. Consequently, under Regulation 121(4} of the Service Regulations, KMDA was and/or is within its rights, to continue with the departmental proceeding. At the same time, it also has to be considered, as submitted by Mr. Chakraborty, whether in the absence of any charge involving pecuniary loss to KMDA, Shri Ganguly could at all be punished even if ultimately found guilty of the said charges. From the charges made against Shri Ganguly, it is quite evident that the continuance of the disciplinary proceeding, even if permissible under the Rules and Regulations cannot result in any positive action against Shri Ganguly.

30. In our view, it would be an exercise in futility if the proceedings against Shri Ganguly were to continue without any positive purpose of such continuance. Apart from the above, we cannot lose sight of the fact that while Shri Ganguly superannuated from service on 31st December, 2002, the charges related back to the year 1981 till the year 1992. Even if the facts as alleged relating to acquisition of assets disproportionate to Shri Ganguly''s known source of income was not within the knowledge of authorities of the KMDA, it is too late in the day to proceed against Shri Ganguly against such stale charges, particularly when he had been rewarded for his meritorious service by being sent abroad and also by being granted promotion after the date of the alleged charges.

31. The decisions cited by Mr. Chakraborty in this regard are apposite to the facts of the instant case.

32. We, therefore, have little hesitation in quashing the departmental proceedings initiated against Shri Ganguly on the date of his retirement after 28 years of service with KMDA. The KMDA and its authorities are, therefore, directed to release to the petitioner his retrial benefits at an early date, but preferably

with three months from the date of this order.

33. However, on the question of interest at the rate of 18 per cent per annum on the arrears of provisional pension directed to be paid to Shri Ganguly from the date of his retirement, we are of the view that the same is excessive having regard to the decline in interest rates, and till finalisation of Shri Ganguly''s retrial benefits, we direct authorities of KMDA to pay Shri Ganguly interest at the rate of 6 per cent per annum on arrears of provisional pension from the date of his retirement until finalisation of his retirement benefits.

Both the appeals are accordingly allowed to the extent indicated hereinabove.

There will, however, be no order as to costs.

If an urgent xerox certified copy of this judgment is applied for, the same is to be supplied to the applicant expeditiously, subject to compliance with all the required formalities.

Asit Kumar Bisi, J.

34. I agree.

Later: After the judgment was delivered, a prayer was made on behalf of the KMDA for stay of operation of the portion of the judgment by which the proceeding against Sri Ganguly had been quashed.

However, having regard to the view taken up by us hereinabove we are not inclined to stay the operation of the order as prayed for. Leave is given to the parties to communicate this order to the concerned authorities who are directed to act on the basis of such communication.

