
(2004) 07 AHC CK 0063

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 50379 of 2002

Mahendra Nath Dubey

APPELLANT

Vs

Pramukh Abhiyanta (Engineer-in-Chief), Lok Nirman Vibhag
and Others

RESPONDENT

Date of Decision : 29-07-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 5 AWC 4916 : (2004) 3 UPLBEC 2521

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Advocate : Indra Raj Singh and Pratap Upadhyay, for the Appellant;

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Heard the learned Counsel for the parties.

2. With the consent of parties, I proceed to decide the writ petitions by a common judgment as the facts and issue in petitions are same.

3. The factual matrix of the case is that the petitioner was working on the post of Junior Engineer in Lok Nirman Vibhag. On 20th March, 1991, the petitioner was suspended for certain charges. A charge-sheet was served on the petitioner on 1st of July, 1991 and the enquiry report was submitted on 19.10.1999. According to the enquiry report, charges were not found to be proved. Accordingly, the Government had revoked the order of suspension by order dated 9.11.1992 and later on the petitioner was exonerated from the charges levelled against him by the order dated 28th September, 1993. Copy of the order dated 28th September, 1993/ has been filed as Annexure-3 to the writ petition. Thereafter, the petitioner was retired from the service on 31st January, 1998. After retirement from the service, a notice dated 28th August, 1998 was served on the petitioner to show cause why the earlier order dated 28th September, 1993 may not be cancelled or revoked. Feeling aggrieved with the order dated 28th August, 1993, petitioner

has filed W.P. No. 14970/1999, which was allowed by the Judgment and Order dated 16.7.2001, copy of which has been filed as Annexure No. 6 to the writ petition.

I have gone through the Judgment and order dated 16th July, 2001. While allowing the writ petition, this Court had proceeded to hold that the petitioners shall be paid retiral benefits except the disputed amount of Rs. 3,33,087/-. This Court had permitted the respondent that if they desire to do so, they may initiate fresh departmental proceedings in accordance to provisions contained in Regulation 351-A of Civil Services Regulations. The relevant portion of the Judgment of this Court in Writ Petition No. 14970/1999 is reproduced as under:-

"In view of the above, the order dated 28th August, 1998 (Annexure No. 9) to the writ petition is quashed. However, the respondents may continue the proceedings under Regulation 351-A of Civil Services Regulations against the petitioners and take appropriate decision after giving proper show cause notice to the petitioner. In the order dated 28th August, 1998 (annexure to the writ petition) it has been held that an amount of Rs. 3,33,087/- is to be recovered from the petitioner. In view of the above fact it is further directed that after withholding an amount of Rs. 3,33,087/- out of retirement benefits rest of retirement benefits should be paid to the petitioner during the pendency of the proceedings under Regulation 351-A of Civil Services Regulations. Petitioner will also be entitled for his provisional pension from due date. The proceedings which the respondents have continued under Regulation 351-A of Civil Services Regulations should be completed within a period of six months from the date of service of a certified copy of the order.

With the aforesaid direction, the writ petition is finally disposed of."

4. The petitioner had served the certified copy of the Judgment and order dated 16th July, 2001 on 4.8.2002 as per the averments pleaded in the Para 16 of the writ petition. While filing counter affidavit, respondents have not given any reply to the Para 16 of the writ petition except with the remark that it requires no comment. Keeping in view, the judgment referred hereinabove it was open to the opposite parties to initiate fresh enquiry only within a period of six months from the date of receipt of certified copy of the judgment. A decision taken by the opposite parties to initiate a departmental proceeding after the lapse of the period of 6 months, shall not be permissible as the Judgment and order dated 16th July, 2001 attains finality. It has been admitted by the parties that the Judgment and order dated 16th July, 2001 has not been impugned in the Hon'ble Supreme Court or before a Division Bench of this Court. No application for extension of time was moved by respondents till date. On account of non-compliance of the Judgment and order dated 16th July, 2001, the petitioner has filed a contempt petition in which a notice was issued to the opposite party. Thereafter, opposite parties have released the entire post retiral benefits except the amount of Rs. 3,33,087/-.

5. In the meantime, another notice dated 25th October, 2002 was issued by the respondents without taking permission from the Governor to initiate fresh enquiry. Notice dated 25th October, 2002 has been impugned in the Writ Petition No. 50379/2002. This Court by interim order dated 25.11.2002 had stayed the notice dated 25th October, 2002. In spite of the stay granted by this Court and issuance of notice in contempt proceedings, the opposite parties have passed the impugned order dated 11.7.2003 to initiate a de novo proceeding. The impugned order has been stayed by this Court by an interim order dated 6th August, 2003 passed in present writ petition.

6. Section 351-A of Civil Services Regulations for convenience is reproduced as under:-

"351-A. The Governor reserves to himself the right of the withholding or withdrawing a pension or any part of it. Whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceedings to have been guilty of grave mis-conduct, or to have caused pecuniary loss to Government by mis-conduct or negligence, during his services including service rendered on re-employment after retirement.

Provided that--

(a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment-

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall be in respect of an even which took place not more than four years before the institution of such proceedings; and

(iii) "shall be conducted by such authority and in such place of places as the Governor may direct the and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made:

(a) Judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with Sub-clause (ii) of clause (a); and

(b) The public Service Commission, U.P. shall be consulted before final orders are passed.

Explanation.-For the purpose of this articles :-

(a) Departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are. issued to him or if the officer has been placed under suspension from an earlier dated, on such dated; and

(b) judicial proceedings shall be deemed to have been instituted :

(i) in the case of criminal proceedings on the date on which a complaint is made

or a charge-sheet is submitted, to a Criminal Court; and

(ii) in the case of the civil proceedings on date on which the plaint is presented or as the case may be an application is made.

Note.--As soon as proceedings of the nature referred to in this Article are instituted, the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned."

7. Learned Counsel for the petitioner had relied upon the judgments of this Court reported in 1996 (3) ESC 193, Ramesh Chandra Sharma v. State of U.P. and 2003 (2) ESC 975, A.N. Verma v. S.K. Chaturvedi, Managing Director, Bharat Pumps and Compressors, Naini Allahabad and Ors.,

8. In Ramesh Chandra's case (supra), it has been held by this Court that in the absence of sanction granted by the Governor the State Government has got no right to proceed ahead to initiate disciplinary proceedings in view of provision contained in Regulation 351 Civil Services Regulations. For convenience Para 4 of the judgment is reproduced as under :-

"He, who asserts the existence of a document or order, must prove it by producing it before the Court, if existence of such document or order is denied, It was, therefore, obligatory for the Governor to place the order of place the order of sanction before the Court. But as mentioned before the State has failed to produce such an order. We have no alternative but to accept the averment made by the petitioner in Paragraph 13 of the writ petition. According to which, department proceeding has been initiated against the petitioner after his retirement without obtaining necessary sanction from the Governor. As sanction of the Governor is a condition precedent for initiating departmental proceeding against a Government servant after his retirement, the proceeding initiated in the instant case, are void ab initio and are liable to be quashed."

9. In the case of A.N. Verma (supra), also this Court again reiterated the applicability of Regulation 351-A and held that in the absence of prior sanction from the Governor no disciplinary proceedings can be initiated after retirement of an employee. For convenience Paras. 10 and 11 is reproduced as under :-

"10. In our opinion this writ petition deserves to be allowed on the short point that the respondent has acted arbitrarily in restarting the enquiry after such a long delay, it is well settled that arbitrariness violates Article 14 of the Constitution vide Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . It may be noted that the petitioner's Writ Petition No. 32154 of 1991, had been allowed by the learned Single Judge on 12.8.1992. Against the judgment the respondent filed Special Appeal No. 412 of 1992, which was dismissed on 3.11.1992. In that judgment it was observed that the decision would not preclude the Disciplinary Authority if it so desires from continuing with the proceedings from the stage of supplying the report of the enquiry. Against that decision SLP was filed in the Supreme Court which was also dismissed on

25.9.1997 and the review was also dismissed on 10.12.1997.

Para 11. The petitioner retired on 30.4.2002. After the dismissal of the SLP by Supreme Court on 25.9.1997, it appears that the respondents issued a show cause notice letter dated 9.1.1999 to the petitioner to which the petitioner replied by letter dated 4.2.1999, as stated in Annexure 1 to the writ petition. Thus, the respondents took no steps for recommencing the enquiry from the date of dismissal of the SLP i.e., from 25.9.1997 till 9.1.1999. Thereafter also on receiving the petitioner's reply dated 4.2.1999 to show cause notice dated 09.01.1999 again the respondents sat over the matter and did nothing until the eve of the petitioner's retirement on 30.4.2002 when they suddenly issued the letter dated 29.4.2002 Annexure-1 to the writ petition. Thus, it appears that the respondent took no steps in connection with the enquiry from 4.2.1999 till 29.4.2002 and suddenly woke up when the petitioner was about to retire. No doubt in view of the judgment in the Special Appeal No. 412 of 1992, the respondent could have recommenced the enquiry, but it is not open to them to recommence the enquiry whenever they wish. It appears that it was only when the petitioner was about to retire that the respondents realized that the petitioner would claim his gratuity and other dues and only then they suddenly issued the impugned notice dated 29.4.2002. Even assuming that Rule 30.(1) applies in the present case, yet in our opinion the authority concerned is not entitled to act arbitrarily as that would violate Article 14 of the Constitution as held in Maneka Gandhi's case (supra). In our opinion the delay in holding or recommencing the enquiry itself amounts to arbitrariness. In this case, there has been unexplained delay as already stated above."

10. Admittedly, the impugned proceedings have been initiated by the opposite parties without having prior sanction from the Governor. Accordingly, the impugned order/notice dated 2nd July, 2003 as contained in Annexure-13 to the writ petition passed by the opposite party No. 4 as well as show cause notice dated 11.7.2003, as contained in Annexure No. 14 to the writ petition are not sustainable and are liable to be set aside.

11. There is one another reason which rendered the impugned notice bad in law as discussed hereinabove. This Court while deciding the Writ Petition No. 14970 of 1999, had given opportunity to the respondents to initiate afresh disciplinary proceedings against the petitioner within a span of six months from the date receipt of certified copy of the judgment of said writ petition, but the opposite parties had failed to take action in accordance to law within specified period by this Court. Once this Court provide certain period to hold a disciplinary enquiry in accordance to law and authorities does not act upon accordingly, then any action taken after expiry of said period will be nullity and shall be illegal, as well as without jurisdiction.

12. No application was moved by the opposite parties for extension of time nor the judgment of this Court was impugned by filing a Special Appeal or by filing SLP in Apex Court. Accordingly, as discussed hereinabove the judgment and

order dated 16.7.2001 attains finality. Hence, the impugned order/notice is violative of the judgment of this Court passed in W.P. No. 14970 of 1999. The operative portion of the order of the said writ petition has been reproduced hereinabove. Accordingly, the impugned notice/order is not sustainable.

13. Learned Counsel for the petitioner further submits that since petitioner suffers from no fault on his part and authorities had acted not only in violation of judgment of this Court but also proceeded ahead to issue the impugned notice without any prior sanction from the Governor in violation of Regulation 351-A of the Civil Services Regulations, hence, the petitioner may be compensated by payment of interest at the rate of 18 per cent. The petitioner's Counsel has relied upon a Division Bench judgment of this Court reported in 2004 (2) ESC 1375, Smt. Marjaddi v. C.A.T., Allahabad, The relevant portion from the Division Bench judgment of this Court is reproduced as under :-

"The writ petition is allowed with no order as to costs and the impugned order dated 4.12.2000, passed by the Tribunal, a copy of which has been filed as Annexure-1 to the petition, is hereby quashed. The respondent Nos. 2 to 6 are hereby directed to make the payment of entire balance of gratuity amount with compound interest at the rate of 18% per annum within a period of two months hereinafter. It is further made clear that this order shall not have the effect of foreclosing the rights of the respondents, if any, if they chose to work out for the purposes of recovery of damages, as may be permissible in law."

However, the payment of interest at the rate of 18 percent seems too excessive under the present market and banking rates.

14. In view of above, the writ petition is allowed. Writ of certiorari is issued, quashing the impugned order dated 2.7.2003, as contained in Annexure No. 13 to the writ petition as well as show cause notice dated 11.7.2003, as contained in Annexure No. 14 to the writ petition with all consequential benefits. Petitioner shall be entitled to get the dues or arrears within a period of four months from the date of service of copy of present judgment on the Competent Authority along with simple interest @ 10%.

15. Writ Petition No. 50379/02, is also allowed and the order dated 25.10.2002, as contained in Annexure No. 12 to the writ petition is quashed with all consequential benefits.

16. No order as to costs.