

(2016) 09 AHC CK 0203

In the Allahabad High Court

Case No : Writ A. No. 18457 of 2013 and Writ A. No. 35663 of 2015.

Mahendra Nath Pandey - Petitioner @HASH State of U.P. and 3 Ors

Date of Decision : 26-09-2016

Acts Referred:

Civil Service Regulations, 1930 — Regulation 351-A

Citation : (2016) 10 ADJ 511 : (2017) 2 AILLJ 25 : (2016) 6 AllWC 6146 :
(2016) 119 ALR 757 : (2017) 152 FLR 818 : (2016) 4 UPLBEC 3004

Hon'ble Judges : Dilip Gupta and Manoj Kumar Gupta, JJ.

Bench : Division Bench

Advocate : Swarn Kumar Srivastava and Anil Kumar Srivastava, Advocates, for the Petitioners (Writ A. No. 18457 of 2013); Anil Kumar Srivastava, Advocate, for the Petitioner (Writ A. No. 35663 of 2015); C.S.C, for the Respondent (Writ A. Nos. 18457 of 2013 and 35663

Final Decision : Disposed Off

Judgement

Manoj Kumar Gupta, J. - These two petitions filed by a retired Assistant Engineer of the Public Works Department seek to challenge (i) the order dated 2 September 2009 by which the State Government has disapproved the report dated 27 January 2007 submitted by the Inquiry Officer in course of disciplinary proceedings held against the petitioner and considering the fact that the petitioner had retired on 31 July 2009 has directed for issuing fresh charge-sheet and for continuing the disciplinary proceedings in accordance with Regulation 351-A of the Civil Services Regulations (Regulation) and (ii) the order dated 15 April 2015 negating the claim of the petitioner for grant of second promotional pay scale on account of pendency of the disciplinary proceedings.

2. The main submission of learned counsel for the petitioner is that the charges relate to the alleged irregularities committed by the petitioner during the period May 1998 to June 2000 whereas he retired on 31 July 2009 on attaining the age of superannuation. Thus, the charge against the petitioner relates to an event which took place more than four years before the institution of the fresh proceedings against him. It is urged that under Regulation 351-A, the Governor is competent to grant sanction for instituting proceedings only in respect of an

event which took place not more than four years. However, in the instant case, the petitioner having retired on 31 July 2009 and the charges being in respect of an event which took place more than four years thus, could not form subject matter of disciplinary proceedings instituted at this stage.

3. On the other hand, learned Standing Counsel contended that the proceedings were initiated against the petitioner with the appointment of the Inquiry Officer by order dated 18 October 2005. Since the petitioner did not submit any reply to the charge-sheet issued to him by the Inquiry Officer, the enquiry was concluded ex parte. The State Government finding that the enquiry was conducted without following the procedure prescribed under the Uttar Pradesh Government Servant (Discipline & Appeal) Rules, 1992, directed for continuing the enquiry proceedings as per the Regulation 351-A. In other words, the submission of learned Standing Counsel is that the enquiry against the petitioner having commenced prior to retirement, the bar contained under Regulation 351-A would not be attracted.

4. Before coming to the submission advanced by learned counsel for the parties, certain background facts deserve to be noted. The charge against the petitioner was in relation to alleged irregularities committed by him while he was posted as Assistant Engineer, Provincial Division, Public Works Department, Bansi, District Siddharth Nagar during the period May 1998 to June 2000. By an order dated 18 October 2005, a charge-sheet was issued to the petitioner and the Chief Engineer, Public Works Department, Gorakhpur was nominated as the Inquiry Officer. The petitioner did not submit his reply and consequently the Inquiry Officer concluded the enquiry ex parte and submitted an enquiry report dated 27 January 2007. After considering the enquiry report, the proposal for imposing punishment upon the petitioner was sent to Uttar Pradesh Public Service Commission (Commission) on 4 February 2008. The Commission by letter dated 9 July 2009 raised various objections in regard to the manner in which the enquiry was conducted. The State Government revisited the matter and found various deficiencies in the disciplinary proceedings. The Inquiry Officer had not conducted oral enquiry to bring home the charges levelled against the petitioner. The State Government, therefore, did not approve the report of the Inquiry Officer dated 27 January 2007 and it was accordingly, set aside with further direction for holding a de novo enquiry by issuing a fresh charge-sheet to the petitioner. It was further provided, having regard to the fact that the petitioner had retired on 31 July 2009, that the disciplinary proceedings shall be continued in accordance with the provisions of Regulation 351-A.

5. Regulation 351-A of the Civil Service Regulations is extracted below for convenience of reference :-

"351-A. The Governor reserves to himself the right of 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 Government, if the pensioner is found in departmental or

Judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, 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 reemployment-

i. shall not be instituted save with the sanction of the Governor. ii. shall be in respect of an event which took place not more than four years before the institution of such proceeding; and iii. shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

(b) 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

(c) the Public Service Commission, U.P. shall be consulted before final orders are passed.

[Provided further that of the order passed by the Governor relates to a cash dealt with under the Uttar Pradesh Disciplinary Proceedings, (Administrative Tribunal) Rules, 1947, it shall not be necessary to consult Public Service Commission].

Explanation - For the purposes of this article-

(a) Departmental proceeding 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 and earlier date, on such date; and

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

(i) in the case of criminal proceedings, on the date on which complaint is made, or a charge-sheet is submitted, to a criminal court; and

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

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."

6. Regulation 351-A empowers the Governor to withhold or withdraw the pension or any part of it, permanently or for a specified period and to order recovery from a pension whole or part of any pecuniary loss caused to the Government if the pensioner is found in the departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to the Government by misconduct or negligence during his service. The said power is hedged with

various safeguards in favour of the pensioner. The departmental proceedings could not be instituted after retirement (i) without the sanction of the Governor; (ii) shall not be instituted in respect of an event which took place more than four years before the institution of the proceedings; and (iii) shall be conducted by such authority or in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

7. The main issue before the Court is the date on which the departmental proceedings would be deemed to have been instituted against the petitioner as that would determine whether Regulation 351-A is attracted or not. According to the petitioner, the date of institution of the departmental proceedings shall be the date when fresh charge-sheet is served upon the petitioner in pursuance of the impugned order. It is submitted that any charge-sheet which would now be issued would attract the rigour of Regulation 351-A as it would be after the petitioner has retired. On the other hand, according to the respondents, the departmental proceedings shall be deemed to have commenced on 18 October 2005 when the charge-sheet was initially issued culminating in passing of the impugned order.

8. The Explanation to Regulation 351-A specifically provides that the departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him and if the officer has been placed under suspension from the earlier date on such date. Concededly, in the instant case, the petitioner was never placed under suspension. Thus the proceedings would be deemed to have been instituted on the date when the charges framed against the petitioner were issued to him.

9. Undoubtedly, the respondents had earlier issued a charge-sheet dated 18 October 2005 to the petitioner. An enquiry was also held on the basis of that charge-sheet but ultimately by the impugned order, the enquiry report was not approved and the charge-sheet issued to the petitioner was set aside. The State Government directed for a de novo enquiry being held against the petitioner after issuing a fresh charge-sheet to him. The said order itself was passed on 2 September 2009 after the petitioner has retired on attaining the age of superannuation. Since the charge-sheet issued to the petitioner on 18 October 2005 itself has been set aside with a further direction to hold a de novo enquiry by issuing a fresh charge-sheet, it is not possible for this Court to accept the submission of learned Standing Counsel that the disciplinary proceedings shall be deemed to have commenced on the date when the earlier charge-sheet was issued. It was always open to the State Government while passing the impugned order dated 2 September 2009 to have directed for the disciplinary proceedings being held from the stage of issuance of the charges but such course was not adopted. It is clear from the impugned order that the State Government preferred not to adopt such a course as it was conscious of the fact that the petitioner had retired in the meantime. It is for the said reason that the order

further provided that the disciplinary proceedings in pursuance of the impugned order shall be continued against the petitioner after ensuring compliance of Regulation 351-A. We are thus, of the view that Regulation 351-A will fully apply to the facts of the case at hand.

10. According to the case set up in the counter affidavit, a fresh charge-sheet dated 7 June 2011 was prepared in pursuance of the impugned order dated 2 September 2009. It was served on the petitioner by affixation on 18 February 2012. Though the service of fresh charge-sheet has been denied by the petitioner, but in any event, the same was after the petitioner had superannuated. Thus, there is no escape from the rigour of Regulation 351-A.

11. Undoubtedly, the permission of the Governor to hold enquiry against the petitioner after his retirement is contained in the impugned order itself, but the charges against the petitioner are in relation to the alleged misconduct on his part while he was posted as Assistant Engineer, Provincial Division, Public Works Department, Bansi during the period May 1998 to June 2000. The charge-sheet dated 7 June 2011 brought on record along with the counter affidavit proves the same. Thus, the fresh departmental enquiry is in relation to an event which took place more than four year. It is contrary to the safeguard provided in favour of pensioner under clause (a)(ii) of the proviso to Regulation 351-A. In such view of the matter, the direction contained in the impugned order dated 2 September 2009 for holding a de novo enquiry by issuing a fresh charge-sheet cannot be sustained and is hereby quashed.

12. The claim for grant of second promotional pay scale to the petitioner has been negated only on the ground of pendency of the disciplinary proceedings in pursuance of the order dated 2 September 2009. In view of the findings recorded above that the disciplinary proceedings cannot be initiated against the petitioner at this stage, the order dated 15 April 2015 also cannot be sustained. Resultantly, the respondents shall now consider the claim of the petitioner for grant of second promotional pay scale, in accordance with law, preferably within a period of three months from the date of filing of a certified copy of this order before the concerned respondent. The petitioner shall also become entitled to his post retiral dues and other pensionary benefits, in accordance with law.

13. Writ Petition No.18457 of 2013 stands allowed with cost while writ petition 35663 of 2015 stands disposed of with the directions given above.