(2013) 10 BOM CK 0092

In the Bombay High Court

Case No : Writ Petition No. 3319 of 2012

Manohar B. Patil — APPELLANT

Vs

State of Maharashtra and Others — RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Citation : (2013) 6 ABR 655 : (2013) 6 BomCR 451 : (2014) LabIC 22 : (2013) 6 MhLj 311

Hon'ble Judges : G.S. Patel, J;A.S. Oka, J

Bench : Division Bench

Advocate : Rahul L. Nerlekar, for the Appellant; S.S. Bhende, AGP for respondent Nos. 1 and 2 and A.K. Jalisatgi for respondent Nos. 3 and 4, for the Respondent

Judgement

A.S. Oka, J.—By this Writ Petition under Article 226 of the Constitution of India, the Petitioner has taken an exception to the charge-sheet dated 7th September, 2011. The Petitioner was in the employment of the Maharashtra Animal and Fishery Sciences University. While the Petitioner was head of the department, he applied for voluntary retirement. The Petitioner was relieved from the employment on 30th April, 2010. By a notice dated 19th March, 2011, the Registrar of the University called upon the Petitioner to show cause as to why an action should not be initiated against him for the purposes of withholding or reducing retirement benefits or pension. The Petitioner was served with the charge-sheet dated 7th September, 2011. The Petitioner replied to the charge-sheet. The first prayer in the Petition is for quashing and setting aside the charge-sheet. The second prayer is for issuing a writ of mandamus directing the Respondents to release gratuity, pension and other retirement dues of the Petitioner with 12% compound interest thereon. The 4th Respondent filed a reply contending that the Maharashtra Civil Services (Pension) Rules, 1982 (for short "Pension Rules") are applicable to the said University. The 4th Respondent relied upon Rule 27(2)(b) of the said Rules and submitted that disciplinary proceedings can be initiated against a retired employee.

2. Learned counsel appearing for the Petitioner has made detailed submissions. He did not dispute that the provisions of the Pension Rules and the Maharashtra Civil Services (Discipline and Appeals) Rules 1979 (for short "Disciplinary and Appeal Rules") are applicable to the employees of the said University. He urged that a disciplinary inquiry can be initiated against an employee of the University only under the Discipline and Appeals Rules. He urged that unless there is a specific provision in the Disciplinary and Appeals Rules to that effect, disciplinary proceedings cannot be initiated after superannuation of the Petitioner. He relied upon the decisions of the Apex Court in the cases of Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, and State Bank of India Vs. A.N. Gupta and Others, . He also relied upon decisions of this Court in the case of Mr. Dhairyasheel A. Jadhav Vs. Maharashtra Agro Industrial Development Corporation Ltd. A Government of Maharashtra Undertaking, and Mr. Sudhakar Govind Rave Vs. Maharashtra Agro Industries Development Corporation Ltd. (MAIDC Ltd.), .

3. Learned counsel appearing for the Petitioner submitted that the Pension Rules and Disciplinary Appeal Rules operate in different fields and the provisions of the Pension Rules cannot be read into the Discipline and Appeal Rules for deriving substantive power to initiate disciplinary action after retirement. He pointed out that the Rule 27(2)(b) of the said Rules does not specifically permit initiation of a departmental inquiry after retirement and the said Rule deals only with the right of the State Government to withhold or withdraw pension. He urged that Rule 27 deals only with the effect of departmental proceedings on pension payable under the said Rules and the same cannot be read to mean that a substantive power is vested in the employer to initiate disciplinary proceedings after retirement. He invited our attention to the interpretation of Rule 27 of the said Rules made by the learned Single Judge of this Court in the case of The Chairman/Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal and The Principal, Mahavir Mahavidyalaya Vs. Shri Bhujgonda B. Patil, . Without prejudice to the aforesaid contentions, he urged that the action has been initiated without the sanction of the State Government and therefore, the initiation of inquiry is bad in law. The learned counsel appearing for the 3rd and 4th Respondents relied upon the decision of the Division Bench of Delhi High Court dated 21st October, 2010 in the case of Union of India and another v. S.K. Mathur and another, WP (Civil) No. 17221-22 of 2004. He urged that Rule 27 of the Pension Rules permits initiation of the disciplinary proceedings after superannuation of the employee.

4. We have given careful consideration to the submissions. Before we advert to Rule 27 of the Pension Rules, it will be necessary to advert to the decisions of the Apex Court relied upon by the learned counsel appearing for the Petitioner. In the case of Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, the Apex Court held that after retirement of the delinquent employee, a pending departmental inquiry lapses in absence of a specific provision for its continuation after retirement. In the case of State Bank of India Vs. A.N. Gupta and Others, the Apex Court was dealing with the Service Rules of the State Bank of India.

The Apex Court in Paragraph 16 of its decision held thus:

Proceeding in the garb of disciplinary proceedings cannot be permitted after an employee has ceased to be in the service of the Bank as Service Rules do not provide for continuation of disciplinary proceedings after the date of superannuation. Sanction of the Bank is required only if the retirement of an employee is by any other method except superannuation. We do not think that the decision of the Andhra Pradesh high Court in T. Narasiah v. State Bank of India and that of the Bombay High Court in J.K. Kulkarni v. State Bank of India have laid down good law.

(underline supplied)

5. Now we turn to Rule 27 of the Pension Rules. Sub-rules (1) and (2) of Rule 27 of the Pension Rules read thus:

27(1) Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

(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.

(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 Government,

(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 at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

6. Sub-rule (1) confers power on the Government to withhold or withdraw pension or any part of it, whether permanently or for a specified period, by an order in writing. The Rule also confers power on the State Government to recover from such pension the whole or part of any pecuniary loss caused to Government, if in any departmental or judicial proceedings, the Petitioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement. Clause (a) of Sub-rule (2) provides that 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 disciplinary authority in the same manner as if the Government servant has continued in service. Sub-clause (i) of Clause (b) of Sub-rule (2) provides that the departmental proceedings, if not instituted while the Government servant is in service, before his retirement or during his reemployment, the same shall not be instituted save with the sanction of the Government. Sub-clause (ii) of Clause (b) puts an embargo on initiation of departmental proceedings after retirement of a Government servant by providing that the proceedings shall not be in respect of any event which took place more than four years before such institution. Sub-clause (ii) ensures that a retired Government servant is not victimized by initiating departmental inquiry against him based on an incident which has taken place long before his retirement. Subclause (iii) of Clause (b) of Rule 27 of the said Pension Rules lays down that the departmental proceedings instituted after retirement shall be conducted by such Authority at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service. On a conjoint reading of Sub-rule (1) with Sub-rule (2) of Rule 27 of the said Pension Rules, we are of the view that the Pension Rules provide for initiation of departmental proceedings after retirement of a Government servant subject to constraints of Sub-clauses (i) and (ii) of Clause (b) of Sub-rule (2) of Rule 27 of the Pension Rules. The departmental proceedings can be instituted after retirement only for the purposes of Sub-rule (1) of Rule 27 to enable the Government to recover from pension, the whole or part of any pecuniary loss caused to the Government if in the departmental proceedings, the Pensioner is found guilty of grave misconduct or negligence during the period of his service. On conjoint reading of Sub-Rules (1) and (2) of Rule 27 of the Pension Rules, it is obvious that in the departmental proceedings initiated after retirement, no penalty can be imposed on a Government servant in accordance with the Discipline and Appeal Rules. The departmental inquiry can be initiated after superannuation only for the purposes of withholding the whole or part of the pension.

7. At this stage, we may make a reference to a decision of the Division Bench of this Court in the case of Dhairyasheel A. Jadhav, (supra). This was a case where

a Manager working with the Maharashtra Agro Industrial Development Corporation Ltd., after superannuation, was served with a memorandum of charge. In the Petition filed by the Manager, reliance was placed on the decision of the Apex Court in the case of Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, . In Paragraph 9 of the decision in the case of Mr. Dhairyasheel A. Jadhav Vs. Maharashtra Agro Industrial Development Corporation Ltd. A Government of Maharashtra Undertaking, , the Division Bench of this Court made a reference to Sub-rule (2) of Rule 27 of the Pension Rules and observed thus:

It is thus clear that in the event departmental proceedings was instituted it can be continued and concluded "as if the Government servant has continued in service". Thus, by a deemed fiction though relationship of employer and employee has ceased, the rules continue the relationship pursuant to which the departmental proceedings can be proceeded with. There is no provision in the Maharashtra Civil Services (Discipline and Appeal) Rules, which provide for continuation of enquiry for major misconduct by issuing of charge-sheet. The penalties are set out u/s 5. If a Government servant is not in service then none of those penalties can be imposed. Thus, any enquiry initiated and in which there is no provision for continuing enquiry must cease on the employee being allowed to superannuate, in the absence of the provisions like Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982.

(underlines add)

Relying upon the decision in the case of Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, , the Division Bench held that the conduct of inquiry after retirement of the Pensioner was bad in law. At this stage, we may make a reference to the decision of the learned Single Judge in the case of The Chairman/ Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal and The Principal, Mahavir Mahavidyalaya Vs. Shri Bhujgonda B. Patil, . In Paragraphs 13 and 14, the learned Single Judge observed thus:

13. All these provisions, read together, would apparently disclose that the departmental proceedings spoken of in Rule 27 of the Pension Rules are wholly and solely in relation to the issues pertaining to the payment of pension. Those proceedings do not relate to disciplinary inquiry which can otherwise be initiated against the employee for any misconduct on his part and continued till the employee attains the age of superannuation. Undoubtedly Sub-rule (I) refers to an event wherein the pensioner is found guilty of grave misconduct or negligence during the period of his service or during his re-employment in any departmental proceedings. However, it does not specify to be the departmental proceedings for disciplinary action with the intention to impose punishment if the employee is found guilty, but it speaks of misconduct or negligence having been established and nothing beyond that. Being so, the proceedings spoken of in Rule 27 of the Pension Rules are those proceedings conducted specifically with the intention of deciding the issue pertaining to payment of pension on the employee attaining the age of superannuation, even though those proceedings might have been

commenced as disciplinary proceedings while the employee was vet to attain the age of superannuation. The fact that the proceedings are continued after retirement only with the intention to take appropriate decision in relation to the payment of pension must be made known to the employee immediately after he attains the age of superannuation and, in the absence thereof the disciplinary proceedings continued for imposing punishment without reference to the intention to deal with the issue of payment of pension alone cannot be considered as the proceedings within the meaning of said expression under Rule 27 of the Pension Rules.

14. The fact that the proceedings are continued only to deal with the issue of reduction or withdrawal of pension is necessarily required to be made known to the employee even though there is no specific provision in that regard in Rule 27. The observations by the Apex Court in Brahm Datt Sharma''s case are to the effect that the opportunity of hearing in that regard to the employee is necessary as any order of reduction or withdrawal of pension could affect the right of the employee to receive full pension. Principles of natural justice, therefore, need to be complied with in all the proceedings under Rule 27, to the extent that an opportunity of being heard must be offered to the employee before an order under Rule 27(1) is passed.

[(Underlines added)

8. Thus, the learned Single Judge was of the view that the departmental proceedings contemplated by Sub-rule (1) of Rule 27 of the Pension Rules are wholly and solely in relation to the issue pertaining to the payment of pension and the Rule does not authorise initiation of regular inquiry under the Disciplinary and Appeal Rules.

9. We may, at this stage, make a reference to the decision of the Division Bench of Delhi High Court in the case of Union of India v. S.K. Mathur and another, WP (Civil) No. 17221-22 of 2004. The departmental proceedings referred to in Sub-rule (1) of Rule 27, if instituted while the government servant was in service, can continue only for the purposes of taking action under Sub-rule (1) of Rule 27. The Division Bench of Delhi High Court was dealing with the interpretation of Rule 9 of the Central Civil Services (Pension) Rules. The Rule 9 thereof reads as under:

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, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement;

Provides that the Union Public Service Commission shall be consulted before any financial orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees four hundred and seventy-five (Rupees Four through five hundred from 1-1-2006 See GID below Rule 49) 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 where the departmental proceedings are instituted by an authority subordinate to the President, that 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 which an order of dismissal from service could not made in relation to the Government servant during his service.

(3) Deleted.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are continued under Sub-rule 9(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.

(6) For the purpose of this rule,

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted--

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.

10. In Paragraphs 31 and 32, the Division Bench of Delhi High Court thus:

31. A government employee gets pension on his retirement and continues to get the same for the remainder of his life. So much so, that the family of a government servant is entitled to family pension after the death of government servant. This benefit is given for rendering long and faithful service by the government servant. However, if it is found that during his employment he had committed some act of indiscipline or misconduct, it should naturally have some bearing on these terminal dues like gratuity and pension. For this reason, when the irregularities committed by a government servant while in service are noticed and the disciplinary proceedings are initiated, the Government has the right to continue the same after retirement as well. In cases where the gross misconduct is found to have been committed by a government servant while in service, allowing such a person to earn full pension for rest of his life after retirement may not be proper as the pension is given for not only long service but for sincere and faithful discharge of duties. It is for this reason that even when no inquiry was instituted when the Government servant was in service, provision is made to proceed against him departmentally even after his retirement. However, at the same time, balance is struck by providing that the alleged irregularity should not be of a period more than four years old from the date of institution of departmental proceedings. This provision obviates the possibility of harassing retired Government servants by digging up old issues.

32. Keeping in view the aforenoted principle regarding the interpretation of a deeming provision that full effect must be given to the statutory fiction and it should be carried to its logical conclusion; the object of enactment of Rule 9 and, that the cardinal principle of interpretation that no statute should be interpreted in a manner so as to render part thereof surplusage, full meaning and effect should be given to Rule 9(6)(a). When interpreted in said manner, the result which emerges is that: (i) where a government servant was under suspension at the time of his retirement, the departmental proceedings shall be deemed to be instituted from the date of his suspension or the date of issuance of charge-sheet to him, whichever is earlier and (ii) where a government servant was not under suspension at the time of his retirement, the departmental proceedings shall be deemed to be instituted from the date of issuance of charge-sheet to him. In that view of the matter, the Tribunal was not correct in holding that second part of Rule 9(6)(a) does not apply in case of a pensioner.

[(underline added)

11. The Delhi High Court was dealing with Rule 9 of the Central Civil Services (Pension) Rules, which is similar to Rule 27 of the Pension Rules with which we are concerned.

12. We may also make a reference to the Government Resolution dated 2nd

June, 2003 under which various powers under the Pension Rules were delegated by the Government. That part of Schedule-I which deals with Pension Rules specifically provides that the power to initiate inquiry and to make deduction from pension has been conferred on the officer concerned.

13. Coming back to the facts of the case in hand, we must note here that the impugned charge-sheet was preceded by a notice dated 19th March, 2011. The show cause notice was issued specifically calling upon the Petitioner to show cause as to why appropriate action should not be initiated against him for withholding or reducing benefit of pension. The charge-sheet was issued on the basis of the said show cause notice. Thus, the inquiry was initiated against the Petitioner for the purposes of withholding and/or reducing pension and not for imposing a penalty upon him.

14. Sub-rule (1) of Rule 27 of the Pension Rules deals with powers of the Government of reducing or withholding pension. It also confers power to recover from pension the amount of financial loss caused to the Government due to misconduct on the part of a retired employee. The power to withdraw or to reduce pension or power to recover pecuniary loss caused to the Government can be exercised provided the Pensioner is found guilty of misconduct or negligence. Thus, Rule 27 permits initiation of departmental proceedings against the Pensioner for a limited purposes of taking action as provided in Sub-rule (1) of Rule 27 of the Pension Rules. We have already adverted to Clause (b) of Sub-rule (2) of Rule 27 which provides that the departmental proceedings cannot be instituted after superannuation save with the sanction of the Government and the proceedings shall not be in respect of any event which took place more than four years before such institution. If the interpretation that a departmental inquiry cannot be initiated against the Pensioner even for limited purposes of taking action under Sub-rule (1) of Rule 27 of the Pension Rules is accepted, Clause (b) of Sub-rule (1) of Rule 27 of the Pension Rules becomes completely redundant. Sub-clauses (i) and (ii) of Clause (b) of Sub-rule (2) of Rule 27 of the Pension Rules provide for safeguards to ensure that a Pensioner is not unduly harassed by initiation of departmental proceedings. Thus we hold that Rule 27 permits institution of departmental proceedings after superannuation of an employee only for the purposes of taking action contemplated by Sub-rule (1) of Rule 27 in relation to pension and in the said proceedings, no penalty can be imposed in accordance with the Discipline and Appeal Rules. To that extent, we approve the view taken by the learned Single Judge in the case of The Chairman/ Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal and The Principal, Mahavir Mahavidyalaya Vs. Shri Bhujgonda B. Patil, .

15. In the present case, as is clear from the show cause notice, the inquiry is for the sole purpose of withholding or reducing retirement benefits. Therefore, in our view, the challenge to the charge-sheet has no merit. The inquiry in the present case has been initiated for the limited purposes of action under Sub-rule (1) of Rule 27 of the Pension Rules.

16. Now, we deal with the submissions made in the alternative regarding absence of consent. Statute 169 of the said University provides that the provision of the Pension Rules and other Civil Service Rules of Maharashtra shall be applicable to the employees of the recognized institutions mutates mutandis. The notice dated 19th March, 2011 addressed to the Petitioner has been issued by the Registrar by an order and with the approval of the Vice-chancellor of the said University. Even the charge-sheet has been issued by the Registrar of the University under the orders of Vice-chancellor of the said University. Therefore, the argument that the charge-sheet has been issued without the consent of the Government has no merit and the same deserves to be rejected in the light of the powers conferred on the Vice-chancellor of the said University by virtue of section 17 of the Maharashtra Animal and Fishery Sciences University Act, 1988. Hence, there is no merit in the Petition and the same is accordingly rejected.

