
(2009) 04 RAJ CK 0024
In the Rajasthan High Court

Manorama Asopa (Smt.)

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-04-2009

Acts Referred:

Citation : (2009) 3 WLN 77

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—By these two petitions, the petitioner has challenged the impugned punishment orders dt. 29.05.2003 and Annex.25 dt. 06.10.2004 passed by the respondent No. 2-Director, Secondary Education, Bikaner (in SBCWP No. 1120/2005) and Annex.17 dt. 06.10.2004 (in SBCWP No. 1310/2005). Both these penalty orders have been passed by the Director, Secondary Education under the Rajasthan Pension Rules, 1996 under Rule 7 by imposing penalty of withholding of 5% of the pension amount payable to her in one case permanently and in another writ petition for a period of 1 year. The said penalty order was passed against the petitioner after holding an enquiry against the petitioner while she was working as Head-Mistress in Government School, Raj Mahal, Jodhpur under Rule 16 of the CCA Rules.

2. The case set up by the petitioner in the present writ petition is that the petitioner was initially appointed as Teacher Grade II in the Education Department of Government of Rajasthan on 17.10.1965 and after passing RPSC examinations in the year 1966, she was posted as Sr. Teacher cum Lecturer and continued on the said post. Thereafter she was promoted as Head Mistress of the Secondary School in the year 1978 and after working as Principal from the year 1990, she retired from the services in the year 1999 on 31.08.1999 on attaining the age of superannuation. According to the petitioner her service career had remained unblemished throughout and she was granted promotion also from time to time, but in the year 1995, three different charge-sheets were served

upon her under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. These charge-sheets pertained to the period when the petitioner was working as Head-mistress at Govt. Girls Secondary School, Jalori Gate, Jodhpur between the period from 03.12.1988 to 08.11.1989. According to the petitioner, enquiry with regard to first charge-sheet was dropped by the Disciplinary Authority himself vide order dt. 27.09.2003 (Annex.1) whereas the enquiry for two charge-sheets were held against the petitioner and the petitioner was found guilty of the various charges levelled against her and the enquiry report was given to her along with letter dt. 27.02.2002.

3. Mr. Manoj Bhandari, learned Counsel appearing for the petitioner assailed the impugned punishment orders, mainly on the following grounds:

1. The impugned penalty order was passed by the Disciplinary Authority without giving any notice for imposition of penalty in question of withholding of 5% of pension as per Rule 7 of the Rules of 1996.

2. The charges against the petitioner were in the nature of supervisory negligence and no pecuniary loss was caused to the State Government and, therefore, the pension in part could not be withheld by the respondents.

3. There was breach of principles of natural justice in holding enquiry against the petitioner and she was not given proper opportunity of hearing during the course of enquiry and for this reason also, the enquiry report as well as impugned punishment orders deserve to be quashed.

4. As per Rule 7 of the Rules of 1996 which is in pari materia with Rule 170 of the Rajasthan Service Rules, only the Governor has power to withhold whole or part of the pension of a Government servant and though in the present case, the RPSC and the Governor were consulted and they approved the said punishment on the petitioner, but no notice prior to the said approval or passing of impugned penalty order by the Disciplinary Authority was given to the petitioner and, therefore, the said orders deserve to be quashed.

4. Mr. Bhandari mainly relied upon the judgment of this Court in the case of Dr. J.N. Purohit Vs. State of Rajasthan and Another, of the said judgment, this Court held as under:

It is not disputed that no notice was given to the petitioner under Rule 170 of the RSR to show cause as to why his pension or any part of it for a period of 10 years be not withheld. Under the proviso (a) to Rule 170 of the RSR departmental proceedings if instituted while the officer was in service whether before his retirement or during his re-employment, shall after the final retirement of the officer be deemed to be proceeding under Rule 170 and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service. There is a clarification issued by the Government which appears below proviso (e) to Rule 170 of the RSR. It was made on a question being raised whether in respect of an officer

whose case falls within the purview of proviso (e) of Rule 170 of the RSR and proceedings against whom were instituted by an authority subordinate to the Governor, order for withdrawal or withholding of pension can be passed by the subordinate authority on the conclusion of the proceedings, or the authority should refer the case to the Governor for final orders. The matter has been considered and decision was taken as under:

The matter has been considered and it is clarified that the function of the disciplinary Authority in respect of departmental proceedings referred to in Rule 170 is only to reach a finding to the Government. It is then for the Government to consider the findings and take a final decision under Rule 170 of the Rajasthan Service Rules in the light of the findings of the Disciplinary Authority, the Government will serve the person concerned with a show-cause notice specified the action proposed to be taken under Rule 170 of the Rajasthan Service Rules and the person concerned will be required to submit his reply to the show cause notice within such time as may be specified by the Government. The Government will consider the reply and consult the Rajasthan Public Service Commission. If as a result of such consultation with the Commission; it is decided to pass an order under Rule 170 of the Rajasthan Service Rules, necessary orders will be issued in the name of the petitioner. Though, the clarification was made in respect of an officer whose case fell within purview of the provisions of Rule 170, the RSR and the proceedings against whom were instituted by the Governor but it can be said that in case where the Disciplinary Authority proposed and if it is decided to take action under Rule 170 of the Government has to serve the person concerned a show cause notice of the proposed action requiring him to submit his reply within such time as may be specified by the government. It has already been stated that withholding of pension or any part of it whether permanently or for a specified period is not one of the penalties specified in Rule 14 of the CCA Rules. One of the penalties specified in Clause (iv) of Rule 14 of the CCA Rules is reduction to a lower service or in case of pension to an amount lower than that due under the rules. Even if the penalty imposed in this case may fall in Clause (iv) of the Rule 14 of the CCA Rules, notice to show cause notice before inflicting such penalty is missing. Therefore, before an order under Rule 170 of the RSR can be passed against a Government servant when he is found guilty of grave misconduct in a departmental or judicial proceedings, it is necessary to issue show cause notice under Rule 170 of the RSR to the Government servant and an opportunity to show cause against the action proposed to be taken must be given to him and unless it is done, no order under Rule 170 of the RSR can be made. In the instant case admittedly no notice for the proposed action under Rule 170 of the RSR was given to Dr. Purohit and he was not called upon to show cause against the proposed action. Thus, the order Ex.22 cannot be said to be in accordance with law and is liable to be quashed.

5. He further relied upon a decision of Hon''ble Supreme Court in the case of Anil Kumar Vs. Presiding Officer and Others, and Kuldeep Singh Vs. The Commissioner of Police and Others, and Arjun Chaubey Vs. Union of India (UOI)

and Others, in support of his submission about the breach of principles of natural justice in the enquiry and consequently setting aside of the impugned penalty order.

6. On the side opposite, Mr. G.R. Calla, learned Government counsel contended that the impugned penalty order was passed by the Disciplinary Authority with due approval of the Governor and the RPSC as is given in the impugned order itself and therefore, as per Rule 7 of the Rules of 1996, the impugned order is valid. He however, could not point out or submit that any such notice proposing to withhold 5% of pension, prior to imposition of said penalty by impugned order dt. 06.10.2004 was served upon the petitioner.

7. Having heard the learned Counsels and upon perusal of the record and the judgments cited at the Bar, this Court is of the opinion that the present writ petition deserves to be allowed.

8. There is no dispute that Rule 7 of the Rules of 1996 is *pari materia* with Rule 170 of the RSR which was considered by this Court in the case of Dr. J.N. Purohit (*supra*). Rule 7 of the Rules of 1996 reads as under:

7. Right of Governor to withhold or withdraw pension (1) The Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the 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 Rajasthan Public Service Commission shall be consulted before any final 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 one thousand two hundred seventy five per mense).

(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 reemployment, 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 Governor, that authority shall submit a report recording its findings to the Governor.

(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 Governor,

(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 Governor 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 or attained 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 90 shall be sanctioned.

(5) Where the Governor 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 charges together with a statement of allegations on which they are based, or the proposal of Government to take disciplinary action together with the allegations on which it is proposed to be taken, are 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 proceeding, 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.

9. A bare perusal of the impugned order shows that the said order of withholding of 5% of pension has been passed by the Disciplinary Authority, namely, the Director of Education though with the approval of the Governor and RPSC, but no notice prior to imposition of such penalty was given to the petitioner. A perusal of Annex.24 dt. 22.11.2002 a letter written by the Dy. Secretary of the Government of Rajasthan to the Director shows that the record was called by the said Dy. Secretary for approval of the punishment by the RPSC and in pursuance of the same along with letter dt. 29.05.2003, the Director sent back the said record along with the stipulation of proposed punishment on the petitioner of withholding of 5% of the pension permanently. Copy of both these letters

Annex.24 dt. 22.11.2002 and 29.05.2003 were not endorsed to the petitioner and, therefore, the petitioner was never put to notice of that punishment of withholding of pension to the extent of 5% proposed against her to be approved by the RPSC and the Governor. The petitioner for the first time came to know of this punishment with the approval of the Governor only by the impugned order dt. 06.10.2004. In view of this admitted position that no notice of proposed penalty of withholding of pension of 5% was given to the petitioner prior to passing of the impugned order, this Court is of the clear opinion that the impugned order of penalty deserves to be quashed on this ground alone. Therefore, without going into the merits of the charges and alleged breach of principles of natural justice during the course of enquiry, this Court is of the view that the impugned orders cannot be sustained on the ground of not giving notice of proposed punishment to the petitioner prior to passing of the impugned orders.

10. Though the learned Counsel for the petitioner took this Court through the nature of charges and the defence taken by the petitioner to establish that the charges were only relating to supervisory negligence and no financial loss was caused to the State Government and for this reason also, the impugned punishment of withholding of pension could not be passed against the petitioner, this Court considers it not necessary to go into the said aspects.

11. This Court in the case of J.N. Purohit (supra) as quoted above in para 10 has clearly laid down that in absence of such notice the impugned punishment order cannot be sustained while considering Rule 170 of the RSR which is admittedly *pari materia* with Rule 7 of the Rules of 1996. Since punishment in question was imposed after retirement of the petitioner from service in the year 1999, obviously Rule 7 would apply in the present case. Since mandatory requirement of giving prior notice of proposed punishment has not been complied with in the present case, this writ petition deserves to be allowed.

12. Consequently this writ petition is allowed and the impugned punishment order dt. 06.10.2004 in SBCWP No. 1120/2005 and impugned order dt. 06.10.2004(Annex.17 in SBCWP No. 1310/2005) are quashed and set aside and the respondents are directed to pay amount of the pension withheld under the impugned orders to the petitioner with interest @ 9% per annum within a period of three months from today. No costs.