
(1993) 03 CAL CK 0019
In the Calcutta High Court
Case No : F.M.A.T. No. 964 of 1990

Mrinal Kanti Chakraborty

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 15-03-1993

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1993) 2 CALLT 27 : (1994) 68 FLR 159 : (1993) LabIC 1747 : (1993) 2 LLJ 1009 : (1993) 2 SLR 647

Hon'ble Judges : B.P. Banerjee, J;A.K. Bhattacharji, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.P. Banerjee, J.—This is an appeal against the judgment and order dt. March 19, 1990 passed by the learned trial Judge in Civil Order No. 2713 (W) of 1990, In the writ application the appellant-writ petitioner challenged the validity of the chargesheet dt. December 26, 1989 as also for release of the retirement benefit, namely, the provident fund dues, leave salaries, gratuity etc. together with interest thereon.

The appellant was appointed as a clerk under 24-Parganas (South), Southern Central Co-Operative Bank Ltd. and in the year 1965 he was promoted to the post of Head Assistant. Subsequently, he was designated as Office Superintendent. Thereafter the appellant was promoted to the post of Assistant Manager and from that post he was further promoted to the post of: Branch Manager. The appellant writ petitioner was due to retire from service on attaining the normal age of superannuation on December 31, 1987. After the retirement, the service of the appellant petitioner was extended for one year with effect from January 1, 1988 and another extension of service was also given to the appellant petitioner for further period of one year with effect from August 1, 1989. It was alleged that such extension of service was given by the bank authorities considering the past performance of the petitioner. Accordingly the appellant

after completion of such extended service was due to retire from the bank on and from January 1, 1990. On December 23, 1989 the appellant petitioner submitted an application for leave up to December 30, 1989 and proceeded on such leave preparatory to retirement after handing over charge to one Sri K.P. Mondal. During this period on December 26, 1989, a charge-sheet was served to the petitioner by a special messenger. The charge-sheet was issued by the Special Officer, West Bengal State Co-operative Bank. Thereafter the General Manager of the said bank by a letter dt. January 5, 1990 informed the appellant petitioner that the Board of Directors of the said bank in the meeting held on January 1, 1990 directed to withhold the retirement benefit of the appellant petitioner till the enquiry proceeding was completed.

2. The appellant-petitioner thereafter moved a writ application before the learned trial Judge on March 19, 1990 challenging the said charge-sheet and also against the withholding of the said retirement benefit. The writ application was heard by the learned trial Judge and by order dated March 19, 1990 the learned trial Judge disposed of the writ application by giving liberty to the appellant writ petitioner to raise all points taken in the writ petition before the disciplinary authority including the maintainability of show-cause by the disciplinary proceeding itself. It was further observed that the appellant petitioner raised the question regarding the validity of the initiation of the proceeding and the issuance of the charge-sheet and that if such points were raised, in that event authority concerned shall consider the same on the basis of matter on records by passing a reasoned order. The I learned trial Judge also gave time within which the appellant petitioner should submit reply to the show cause and the disciplinary authority was also directed to conclude the said proceeding within certain lime.

3. The age of retirement was 58 years and on attaining the age of superannuation with effect from December 31, 1987 a notice of retirement was served upon the appellant petitioner. The extension was given by the managing committee of the bank initially for one year with effect from January 1, 1988 and another extension was given for a period of one year with effect from August 1, 1989. The charges against the appellant petitioner were as follows:

"You were grossly negligent in preserving valuable documents such as Title Deeds, Deeds of Lease, Agreement for Sale etc. although you were responsible for their safe-custody. You deliberately omitted to take appropriate steps regarding Court cases relating to the landed property of the bank (24 Parganas South Unit) at Diamond Harbour. As a result of failure on your part to diligently look after the matters, the Bank suffered enormous loss and prejudice. You deliberately allowed the litigation to go in favour of the parties whose interest was adverse to the Bank. You failed to take reasonable care for the protection of the property belonging to the Bank. The bank has lost substantially in respect of the said property by reason of your disregard to duties and responsibilities attached to your office and/or gross negligence.

You are hereby charged with having committed gross misconduct causing loss of 9 Bank's property either wilfully or by gross negligence or dereliction of duties."

4. The learned Advocate appearing on behalf of the appellant submitted that the charge-sheet dt. December 26, 1989 was vague and that the chargesheet did not specifically speak about the amount of loss sustained by the bank on account of the alleged negligence on the part of the appellant petitioner nor it disclosed the period during which such negligence was there on the part of the appellant petitioner concerned and in this connection a reference was made to a decision of the Supreme Court in the case of Surath Chandra Chakrabarty Vs. State of West Bengal, wherein the Supreme Court has held that if a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of him. The whole object of furnishing the statement of allegation is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up a defence and unless this is done that would amount to denial of proper and reasonable opportunity to defend himself. Reference was also made to another decision of the Supreme Court in Sawai Singh Vs. State of Rajasthan, wherein it was held that where the charges framed against the delinquent officer were vague and no allegations regarding it have been made by him before the enquiring officer or before the High Court the fact that he has participated in the enquiry would not exonerate the department to bring home the charges. The equity based on such charges would stand vitiated being not fair. It was further held that the report of the enquiring officer finding the delinquent officer guilty could not be sustained as the charges were vague and it was difficult to meet the charges fairly by the delinquent officer. Any order of punishment based on such enquiry was liable to be set aside.

5. It was next submitted that the appellant petitioner was handling court cases admittedly between 1969 and 1974 and that the charges might relate only to that period. It was submitted that more than 18 years have elapsed, the charges were wholly stale in nature and in this connection reference was made to a decision of the Supreme Court in the case of The State of Madhya Pradesh Vs. Bani Singh and another, . In this case the Supreme Court deprecated the charges. It related to a period which was 12 years old. It was contended that after the appellant was given promotion to the higher post and after the retirement from service, the service of the petitioner was extended, the same should construe as given a clean chit in respect of anything done or omitted to have been done before such promotion was given and before the service was further extended after the retirement and in this i connection reliance was placed to a decision of the Supreme Court in the case of The State of Punjab Vs. Dewan Chuni Lal, .

6. It was further submitted by the learned counsel appearing on behalf of the appellant that the respondent bank had no authority and/or jurisdiction to

continue with any departmental proceeding after the retirement. It was further submitted that the allegations on the face of it did not disclose misconduct as misconduct has a definite connotation and that omission and commission or negligence per se do not amount to misconduct only from the motive near it. In support of this contention reliance was placed in the decision of Supreme Court in the case of Union of India (UOI) and Others Vs. J. Ahmed, .

7. On behalf of the bank it was submitted that in this appeal no interference could be made as the learned trial Judge had not decided all the points on its merits and that all the points raised in the writ petition were expressly kept open by the learned trial Judge. It was denied that the charges were vague, wanting in material particulars. It was further submitted that there was no bar in continuing with the departmental proceeding even after the retirement and/or to withhold the retirement benefit after the retirement in such a case. It was further stated that the Chairman of the Bank was empowered to issue the charge-sheet and that the decision was taken by the Board of Directors for withholding the retirement benefits till the completion of departmental proceeding. It was further stated that the appellant writ petitioner had received all his retirement benefits excepting the amount which may be payable on account of gratuity. Admittedly, the appellant had retired from service on attaining the age of 58 years on December 31, 1987 and thereafter the managing committee sanctioned extension of service and that only a few days before the extended service expired and the appellant petitioner finally retired that the charge-sheet was issued. The charge-sheet was given only five days before this extended I period of service expires, and he finally retires. In the terms and conditions of service by which the service of the appellant petitioner is governed there is no provision for continuation of a departmental proceeding even after retirement. In *S. Pratap Singh Vs. The State of Punjab*, it was pointed out by the Supreme Court at page 462 that "We should, however, add that we should not be taken to have accepted the interpretation which Dayal, J.; has placed on each one of the several rules which he has considered. Beside, we should not be taken to have accepted the submission of the learned Attorney-General who appeared for the respondent-State, that the provision in Article 310(1) of the Constitution that "members of a Civil Service of a State hold office during the pleasure of the Governor," conferred a power on the State Government to compel an officer to continue in service of the State against his will apart from service rules which might govern the matter even after the age of superannuation was reached, or where he was employed for a defined term, even after the term of his appointment was over. We consider that to construe the expression "the pleasure of the Governor" in that manner would be patently unwarranted besides being contrary to what this Court said in *The State of Bihar Vs. Abdul Majid*, .

8. The same principle was restated in the *The State of West Bengal Vs. Nripendra Nath Bagchi*, and in *B.L. Goel Vs. State of Uttar Pradesh and Others*,

9. If the power of the employer to continue with the departmental proceeding

even after the retirement is conceded that would be destructive of the concept of relationship of employer and employee which has come to an end by reason of the retirement of the employee, beyond which disciplinary control cannot extend.

10. The modern welfare State believes it to be for people's own good that they should not be exposed to any risk of being overreached. Thus in *Guardians of Salford Union v. Dewhurst* (1926) AC 619 the House of Lords held that an employer could not contract out of a statutory duty to pay a pension. The reason was expressed by Pollock MR (p. 664) in somewhat quaint language...

".... the public should be safeguarded from the melancholic spectacle of seeing a man who had done work and been in responsible position during years of his life, suffering from poverty and distress by reason of the fact that no adequate provision had been made to enable him to spend his later years in reasonable comfort".

In *Hirendra Kumar Nag v. Collector of Calcutta* reported in 1979(2) CHN 291 a learned Single Judge of this Court held that the disciplinary proceeding could not be continued after the retirement and the same view was also taken in another decision of this Court in *Satya Ranjan Chowdhury v. Commissioner of Police, Calcutta* reported in 87 CWN 1009. This point is also concluded by another decision of this court in the case of *Ram Copal Bhattacharjee v. State of West Bengal* judgment dated November 14, 1986 in CO No. 18299(n) of 1984 reported in 1987 Labour and Industrial Cases 1617 and that the said judgment of the learned Single Judge has been affirmed on appeal by the Division Bench of this Court by the judgment dated December 15, 1992 in P.M.A. No. 1175 of 1990. Accordingly we are of the view that the departmental proceeding and/or disciplinary proceeding could not be continued in the facts and circumstances of the case after the appellant petitioner finally retired from the service after serving two extensions thereof and that after retirement there cannot be any disciplinary control over an employee who had retired only for the purpose of denying the retiring benefit which is his property and with that he will have to maintain his last days of his life. If such hard earned benefit is allowed to be taken away in his old age days it would be also destructive to the principles of social and economic justice which the Constitution of India designed to secure to all the citizens of India.

11. On perusal of the charges it was clear that the charges were vague and accordingly on the basis of the principle laid down by the Supreme Court in the case of *Suroj Chandra Chakraborty v. State of West Bengal* (supra) and *Suwai Singh v. State of Rajasthan* (supra) no departmental proceeding could be allowed to be continued on the basis of charge-sheet which was absolutely vague, indefinite and wanting in material particulars. Further in the instant case the allegations, if any, relate to a period which is about 14 years prior to the retirement and that the same should be held to be stale in view of the decision of the Supreme Court in the case of *State of Madhya Pradesh v. Bani Singh and Anr.* (supra).

12. It is also well settled principle that after the promotions are given no departmental proceeding could be initiated on the basis of omission or commission or material which related to periods prior to the granting of such promotions, inasmuch as promotion once given on consideration of the entire records amounts to giving a clean chit and after promotion is granted disciplinary authority is estopped from issuing any charge-sheet in respect of the allegations pertaining to the period prior to promotion. In the instance case two extensions of service were granted considering the fact that appellant petitioner's service was satisfactory and it was in the interest of the Bank such extensions were found necessary. We are of the view that initiating a departmental proceeding when few days were left for expiry of the extended period of service is not bona fide and/or done in good faith and could not be continued even after final retirement.

13. Accordingly, we are of the view that the employer cannot withhold any dues on retirement of an employee after retirement from service. Thus the writ petition succeeds. The entire departmental proceeding and chargesheet initiated on the basis of the chargesheet dated December 26, 1989 is quashed. The decision of the managing committee of the Bank withholding the retirement benefits are all set aside. Let a writ of Mandamus do issue commanding the respondent not to proceed on the basis of the said departmental proceeding initiated on the basis of the charge-sheet dated December 26, 1989 and to forthwith release all the retirement benefit and other benefits which the appellant petitioner was entitled to with interest @12% from the date of retirement up to the date of such payment.

14. Writ petition succeeds. The order of the learned trial Judge dt. March 19, 1990 passed in Civil Order No. 2713(W) of 90 is set aside. The appeal is allowed without any order as to costs.

A.K. Bhattacharji, J.

15. I agree