
(1976) 08 AHC CK 0059

In the Allahabad High Court

Case No : Sp. A. No. 42 of 1975 in C.M.W. No. 3047 of 1972

Murli Sharan Sahai Sinha

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-08-1976

Acts Referred:

Citation : (1976) AWC 599

Hon'ble Judges : K.B. Asthana, C.J;K.N. Seth, J;D.M. Chandrashekhar, J

Bench : Full Bench

Advocate : T.P. Singh, S.N. Verma, for the Appellant; J.N. Tewari and V.K. Burman and S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. A Division Bench (which consisted of two of us) has referred to the Full Bench the following three questions of law:

(i) Whether the Government can take resort to the exercise of power under Article 470(b) of the Civil Service Regulations for fixing the pension at a reduced rate when it has been found that the pensioner by his misconduct, negligence or irregularity had caused pecuniary loss to the Government?

(ii) Whether the scope of the two Articles, 351-A and 470(b) is mutually exclusive and in any case where the pension is reduced for recovery of the pecuniary loss caused by the pensioner by his conduct, the case will not be covered by Article 470(b) of the Civil Service Regulations?

(iii) Whether Article 351-A will apply only to a case of a pensioner against whom a verdict of guilt of misconduct had been recorded in any departmental or judicial proceedings and in the absence of such a verdict the Government can take resort to Article 470(b) on the same facts and circumstances on which a departmental inquiry or judicial proceedings could have taken place for the purpose of finding him guilty of misconduct and for having caused pecuniary loss?

2. The Division Bench which made this reference doubted the correctness of the view taken by another Division Bench of this Court in *State of U.P. v. J. Prasad Varshney* 1974 ALJ 635 as to the relative scope of Article 351-A and 470(b) of the Civil Service Regulations, as adopted for application in the Uttar Pradesh (shortly the Regulations). We shall now set out those two Articles:

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 to 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 reemployment 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 event 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 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.

Explanation--For the purposes of this Article-

(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 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 a 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.

Article 470 of the Regulations reads:

470. (a) The full pension admissible under the rules is not to be given as a

matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

Provided that in cases where the authority sanctioning pension is other than the appointing authority, no order regarding reduction in the amount of pension shall be made without the approval of the appointing authority.

Note--For the purpose of this Article "appointing authority" shall mean the authority which is competent to make substantive appointment to the post of service from which the officer concerned retires.

Decision of the State Government.

Subject to the provisions of any law for the time being in force, an appeal against an order sanctioning a reduced pension under clause (b) of the above Article shall lie to the authority to whom an appeal would ordinarily lie against an order of punishment under Chapter XIII of the Classification, Control and Appeal Rules or under the appeal rules promulgated in Government notification No. 2628/II-264, dated August 3, 1932.

(G.O. No. 843/X-325, dated March 3, 1919).

3. Sri S.N. Verma, learned Counsel for the Appellant, contended that these two Articles are mutually exclusive, that if action can be taken against a civil servant under Article 351-A, no action can be taken against him under Article 470(b), that if a civil servant was guilty of grave misconduct or misconduct or negligence resulting in pecuniary loss to the Government, the authorities can only proceed under Article 351-A and not under Article 470(b) and that the authorities can proceed under Article 470(b) where the service of an official has not been thoroughly satisfactory for reasons other than grave misconduct or misconduct or negligence resulting in pecuniary loss to the Government. According to Sri Verma what the authorities have to consider under Article 470(b) is the over all service of a civil servant and not individual instances of misconduct or negligence and that one or more instances of grave misconduct or misconduct or negligence resulting in pecuniary loss to the Government, would not empower the authorities to take action under Article 470(b).

4. For his above contention Sri Verma sought to derive support from the view taken by the Division Bench in State of U.P. v. J. Prasad Varshney 1974 A.L.J. 635. There, this is what G.C. Mathur, J. who spoke for the Division Bench, said at page 636:

In our opinion, the expression "not thoroughly satisfactory" under Article 470 must mean something other than what is meant by the expression "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" in Article 351-A. The two Articles are not co-extensive and are not intended to

operate in the same field. Where an employee can be deprived of a part of his pension under Article 351-A when certain charges are established against him then it is difficult to accept that identical action can be taken under Article 470 also on the establishment of the same charges. If on the very grounds on which action can be taken under Article 351-A action were permissible under Article 470 also then the bar of limitation in Article 351-A will become meaningless and futile as action could be taken even after the expiry of limitation under Article 470 for which there is no limitation. This clearly indicates that action under Article 470 can be taken only on grounds other than those set out in Article 351-A. In our opinion where it is proposed to deprive a person of the whole or any part of his pension on account of grave misconduct or misconduct or negligence causing pecuniary loss to Government, action can only be taken under Article 351-A and not under Article 470. Under Article 470, action can be taken only when the service is found thoroughly unsatisfactory for reasons other than those mentioned in Article 351-A.

5. On the other hand the learned Standing Counsel who appeared for the Respondents, contended that grave misconduct, misconduct and negligence resulting in pecuniary loss are undoubtedly relevant factors in determining whether the service of a civil servant was thoroughly satisfactory for the purpose of deciding whether he should be given full pension or whether his pension should be reduced. The learned Standing Counsel maintained that since Article 351-A empowers withdrawal or withholding of pension or recovering from pension, action under that Article can be taken only after award of pension, either full or partial, under Article 470 and not before award of such pension. In support of this construction of Article 351-A he relied on occurrence of the word "pensioner" in Article 351-A. He submitted that until pension is awarded to a civil servant who retires, he can not be regarded as a pensioner.

6. We do not see any reason why grave misconduct or misconduct or negligence resulting in pecuniary loss to the Government, on the part of a civil servant should not be taken into account in determining whether his service was or was not thoroughly satisfactory. How can his service be regarded as thoroughly satisfactory if he is guilty of grave misconduct or misconduct or negligence on his part had caused pecuniary loss to the Government? Grave misconduct or misconduct or negligence resulting in pecuniary loss to the Government cannot, in our opinion, be less important than lack of efficiency, ability, diligence or devotion to duty, on the part of a civil servant in assessing whether his service was thoroughly satisfactory.

7. What then is the true scope of these two Articles? Article 470(b) empowers the authorities to deny full pension to a civil servant if his service was not thoroughly satisfactory. The condition precedent for exercise of power under this Article, is a civil servant's service not having been thoroughly satisfactory. His service not being thoroughly satisfactory may be due to misconduct, negligence, incompetence, inefficiency or lack of diligence or of devotion to duty or other

relevant factors.

8. Article 351-A empowers the Governor to withhold or withdraw pension of a civil servant, whether permanently or for a specified period, and to order recovering from his pension, the whole or a part of the pecuniary loss caused to the Government if he is found to be guilty of grave misconduct or misconduct or negligence which caused such pecuniary loss. The condition precedent for exercise of power under Article 351-A, is a civil servant being found guilty of gross misconduct or misconduct or negligence resulting in pecuniary loss.

9. Not all factors which render the service of a civil servant thoroughly unsatisfactory, will amount to misconduct or negligence. The power under Article 351-A can be exercised in regard to a civil servant even after his pension, whether full or partial, has been sanctioned under Article 470. This, however, is subject to the limitation that departmental proceedings on the basis of which action can be taken under Article 351-A, cannot be initiated in respect of acts done by him more than four years before his retirement. For the purpose of this reference it is not necessary to decide whether action under Article 351-A can be taken even before pension is sanctioned under Article 470.

10. An action under Article 351-A against a civil servant, can be taken upon finding of guilt in a departmental enquiry against him or judicial proceedings. For taking action under Article 470(b) such finding of guilt in a departmental enquiry or judicial proceedings is not necessary, though principles of natural justice would require that a show cause notice should be issued to the concerned civil servant and that he should be heard before he is denied full pension.

11. Another distinguishing feature between these two Articles is that the power under Article 470(b) can be exercised by or with the approval of the appointing authority in respect of the concerned civil servant. But the power under Article 351-A can be exercised only by the Governor, the highest executive authority of the State.

12. If on a set of facts and circumstances a departmental enquiry or judicial proceedings could have been taken for establishing grave misconduct or misconduct or negligence on the part of a civil servant resulting in pecuniary loss to the Government, there is no compulsion on the Governor to resort to that course. There is no reason why on those very facts and circumstances the authority sanctioning pension or the appointing authority should not issue a show cause notice to the concerned civil servant and consider his explanation or representation. If such authority, on considering such explanation or representation, is satisfied that his service was not thoroughly satisfactory, there is no reason why it should not, under Article 470(b), reduce his pension. Neither in Article 351-A nor in Article 470(b) is there any express or implied prohibition against such course of action being taken by such authority merely because on the same set of facts and circumstances a departmental enquiry or judicial proceedings could have been taken to establish that he was guilty of grave

misconduct or misconduct or negligence resulting in pecuniary loss to the Government which would warrant action under Article 351-A.

13. We are unable to agree with the view taken by the Division Bench in State of U.P. v. J. Prasad Varshney 1974 ALJ 635 as to the scope of Articles 351-A and 470(b).

14. As a result of the foregoing discussion, we answer the questions referred to us as follows:

(1) When it is found that a civil servant has by his misconduct or negligence, caused pecuniary loss to the Government, the authority empowered under Article 470(b) of the Civil Service Regulations (as adopted for application in Uttar Pradesh) can resort to exercise of the power conferred under that Article.

(2) Articles 351-A and 470(b) are not mutually exclusive, but are overlapping to some extent. Article 470(b) covers also a case where a civil servant has by his conduct, caused pecuniary loss to the Government.

(3) Both Article 351-A and Article 470(b) will apply to a case where misconduct of a civil servant has resulted in pecuniary loss to the Government. If such misconduct is established in a departmental enquiry against him or judicial proceedings, action can be taken under Article 351-A subject to fulfilment of other conditions under that Article. In respect of the same misconduct, action can also be taken under Article 470(b) subject to fulfilment of other conditions under that Article.