
(2015) 11 MAN CK 0004
In the Manipur High Court
Case No : WP(C) No. 808 of 2011

N.K. Shimary

APPELLANT

Vs

The State of Manipur and Others

RESPONDENT

Date of Decision : 02-11-2015

Acts Referred:

Citation : (2015) 11 MAN CK 0004

Hon'ble Judges : N. Kotiswar Singh, J.

Bench : Single Bench

Advocate : R.K. Nokulsana, Sr. Advocate, for the Appellant; H.S. Paonam, Senior Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N. Kotiswar Singh, J.—Heard Mr. R.K. Nokulsana, learned senior counsel assisted by Mr. Y. Sanajaoba, learned counsel for the petitioner and Mr. H.S. Paonam, learned senior counsel assisted by Mr. A. Arunkumar, learned counsel for the respondents.

2. In this writ petition, the petitioner has challenged the Office Memorandum dated 17.8.2010 by which the State Government decided to proceed with the departmental inquiry by setting out the articles of charges against the petitioner, a retired Additional Director of Education (S) and who was in-charge of the post of the Director of Education (S), Manipur, under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, primarily on the premise that once the petitioner had retired from service there is no legal provision to proceed against a retired person. Therefore, without adverting to various facts which have been pleaded in the petition, it may be suffice to mention only a few facts, which may be relevant for the decision of the issue raised in this petition.

3. Briefly stated, the petitioner, who was earlier holding the post of Additional Director of Education (S) on substantive basis was directed to look after the work

of Director Education (S) in addition to his normal assignment vide order dated 17.6.2003. According to the petitioner, while the petitioner was looking after the work of Director, Education (S), he was placed under suspension in contemplation of a disciplinary proceeding vide order dated 25.5.2005 relating to a criminal case under FIR No. 71(4)2005. The imputation against the petitioner at that time as reflected in the said order dated 25.5.2005 is that while he was looking after the Office of the Director of Education (S), he had granted pay scales applicable to Head Pandits/Headmasters of Junior Boys Schools to the retired teachers of L.P. Schools with retrospective effect in violation of the existing financial rules. That action of the State was challenged by the petitioner by filing a writ petition being WP(C) No. 97 of 2007 which was disposed of by the Gauhati High Court vide order dated 28.1.2008. While disposing of the said writ petition, the Hon"ble High Court noted that there was an earlier order dated 25.8.2006 passed in WP(C) No. 759 of 2005 directing the authority to complete the departmental proceeding within a period of eight months and there was no progress in the inquiry except for placing the writ petitioner under suspension. The Hon"ble Court also noted that the petitioner was going to retire on superannuation with effect from 29.2.2008 and as such there was no possibility of completing the inquiry within a month. The Hon"ble High Court, accordingly directed the respondents to reinstate the petitioner in service within two weeks failing which the petitioner shall be deemed to have been reinstated in service w.e.f. 12.2.2008, further clarifying that the reinstatement shall be without prejudice to the departmental proceeding and the consequential action as per law.

4. According to the petitioner, the State Government did not initiate the departmental enquiry within 2 (two) weeks and the petitioner came to retire on superannuation w.e.f. 29.2.2008. In compliance of the aforesaid direction of the Hon"ble High Court, the State Government passed an order dated 26.3.2008 declaring that the suspension order of the petitioner shall be deemed to have been revoked w.e.f. 12.2.2008 without any prejudice to the departmental proceeding against the petitioner. On the same date i.e. 26.3.2008, the State Government passed another order allowing the petitioner to go on retirement on attaining the age of superannuation w.e.f. 29.2.2008 and thereby terminating his services w.e.f. 29.2.2008.

5. It is the case of the petitioner that the State authority, thereafter, also granted provisional pension to the petitioner upon his retirement as evident from the order dated 5.2.2009. However, the said order was superseded by another order dated 25.6.2010 by holding that the departmental enquiry against the petitioner is still pending and provisional pension to the petitioner will be granted as per Rule 69 of the CCS (Pension) Rules, 1972. According to the petitioner, however, subsequently on 17.8.2010 the authority issued Memorandum of charges directing the petitioner to submit his statement of defence. It is the issuance of this Memorandum of Charges vide order dated 17.8.2010, that has been challenged in the writ petition contending that the petitioner after having allowed

to retire w.e.f. 29.2.2008 cannot be proceeded against in any departmental enquiry as there is no such provision to proceed against a retired government servant in a departmental proceeding.

6. Mr. R.K. Nokulsana, learned senior counsel for the petitioner has relied on a number of decisions of the Hon''ble Supreme Court to substantiate his contention that a departmental proceeding is not permissible to be initiated against a retired government servant in absence of any specific provision under the relevant rules. He submits that as far as the State of Manipur is concerned, relevant rules which are applicable are CCS (CC & A) Rules, 1965, which do not provide for initiation of departmental proceeding against a retired government official. Mr. Nokulsana, Ld. Sr. Counsel relied on the decision of the Apex Court in Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, in which the Hon''ble Supreme Court held that in absence of any provision made for continuation of the departmental enquiry after superannuation, continuation of any departmental proceeding is not permissible. Similarly, the Hon''ble Supreme Court in Dev Prakash Tewari Vs. U.P. Cooperative Institutional Service Board, held that in absence of any authority to continue the disciplinary proceeding after retirement, it must be held that the inquiry had lapsed. Further, relying on the decision of the Hon''ble Supreme Court, in The State of Madhya Pradesh Vs. Bani Singh and another, , Mr. Nokulsana, learned Senior Counsel, submits that even if holding of departmental enquiry against the retired person is held permissible, it cannot be allowed to be continued indefinitely. In the present case, the petitioner had retired in 2008 and yet the departmental enquiry continues without any end in sight and hence, continuation of the departmental enquiry at this stage is impermissible. Further, the learned senior counsel also relied on the decision of the Supreme Court in Prafulla Chandra Mohapatra Vs. State of Orissa and others, , in which the Apex Court deprecated the prolonged continuation of departmental enquiry and directed the inquiry to be decided within six months.

Mr. Nokulsana, learned senior counsel has referred to Rule 11 of the CCS (CC & A) Rules, which provides for imposing of penalty in disciplinary proceedings and submits that these provisions are applicable only on the government servants who are still in service and not against a person who is no more in government service and since no penalty could be imposed on a retired Government servant under Rule 11, the said provision cannot be invoked against the petitioner as the petitioner is no more in service.

The sum and substance of the contention of Mr. Nokulsana, learned senior counsel for the petitioner, thus, is that the petitioner having already retired from service and as there is no provision under the CCS(CCA) Rules, 1965 for continuation or initiation of departmental enquiry against him, the issuance of the Office Memorandum, by which the charges were framed against the petitioner who is now retired for proceeding with the departmental enquiry is not permissible and has accordingly, prayed for quashing the same. Mr. Nokulsana, learned senior counsel further submits that since the petitioner has retired in

2008 appropriate direction may be given to the respondents to grant pensionary benefits entitled to him in accordance with law.

7. On the other hand, Mr. H.S. Paonam, learned senior counsel for the respondents has submitted that it is not correct that there is no provision under the Rules to proceed with the departmental enquiry against a retired person. It has been submitted that Rule 9 of the CCS (Pension) Rules clearly provides for withholding or withdrawing pension in respect of any government employee, if in any department or judicial proceeding, the petitioner is found guilty of grave misconduct during the period of service. It has been contended that sub rule 6(a) of Rule 9 of the CCS (Pension) Rules provides that for the purpose of this Rule, departmental proceeding shall be deemed to be instituted on the date on which the statement of charge is issued to the government servant or the pensioner, or if the government servant has been placed under suspension from an earlier date, on such date. It has been submitted that in the case of the petitioner, the petitioner was earlier placed under suspension on 25.5.2005, while he was in service and in view of the said provision of sub rule 6(a) of Rule 9 of the CCS (Pension) Rules, it can be said that the departmental proceeding was initiated against him from 25.5.2005 and as such it can be stated that the departmental proceeding against the petitioner had been already initiated earlier and the impugned Memorandum cannot be faulted with and accordingly, the departmental enquiry can be proceeded.

8. This contention however, has been resisted by the learned senior counsel for the petitioner on the ground that Rule 9 can be invoked only when departmental proceeding is instituted with the sanction of the Governor as provided under sub rule 2(b) of Rule 9. In the present case, as no such sanction was obtained from the Governor, the departmental enquiry cannot be proceeded against the petitioner. It has been stated that the standard form or proceeding has also been laid down in which the fact that the sanction of the Governor which has been obtained before proceeding with the departmental enquiry must be clearly reflected. However, in the present case, in the impugned Memorandum there is no such mentioning of any prior sanction of the Governor to initiate the departmental enquiry. It has been submitted in any event, Rule 9 is not applicable in respect of a retired person, and hence, the impugned Memorandum of charge issued on 17.9.2010 is not permissible.

9. Mr. H.S. Paonam, learned senior counsel, however, relying on the decision of the Hon"ble Supreme Court in State of Nagaland Vs. Lipok AO and Others, (para 7) has submitted that even if such prior permission of the Governor has not been specifically mentioned in the Memorandum of charge, since it is merely a technical defect, as the fact remains that sanction of the Governor in terms of the rules applicable had been already obtained and is on record, non mentioning of this fact of previous sanction of the Governor in the Memorandum of charge will not be fatal.

Mr. Paonam, learned senior counsel further submits that he has been specifically

instructed to submit before this Court that the authority will complete the departmental enquiry within two months and at best three months and if the same is not completed within the said period, the enquiry may be deemed to have been abated. He also submits there is no question of prolonging the departmental enquiry as the petitioner himself was the person responsible for the delay by avoiding the earlier process.

10. Heard the learned counsel for the parties and perused the materials on record.

11. The crux of the issue involved in this writ petition is whether it is permissible to proceed with the departmental enquiry against a retired person or not.

It is not in dispute that the Central Civil Services (CCA) Rules, 1965 has been adopted in the State of Manipur which holds the field as far as departmental proceedings against the State Government employees are concerned. CCS(CCA) Rules defines government servant under Rule 2(h) as a person who is a member of a Service or holds a civil post etc. Rule 3 further provides that these Rules shall apply to every Government servant but shall not apply to any Railway servant, any member of All India Services, any person in casual employment, etc. as mentioned therein. Therefore, a reading of the various provisions of the Rules would clearly indicate that these Rules are applicable in respect of serving government employees. There is no mention in the Rules that these Rules will apply to a retired government employee. To that extent, the contention of Mr. R.K. Nokulsana, learned senior counsel appearing for the petitioner that CCS(CCA) Rules, 1965 as adopted in the State of Manipur will be applicable in respect of serving government servant and not the retired persons, cannot be doubted.

However, there are other rules and regulations which may have a bearing on the initiation or continuation of disciplinary proceeding against a retired person. For this, we may refer to Rule 9 of the CCS (Pension) Rules, 1972. Though CCS (Pension) Rules provide the various aspects how payment of pension are to be regulated, it also includes a rule which provides for withholding or withdrawing of pension in full or part whether permanently or for a specified period, etc. as provided under Rule 9 of the CCS (Pension) Rules. Rule 9(1) of CCS (Pension) Rules provides that the Governor 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, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement. Sub-rule (2)(a) of Rule 9 of the Pension Rules further 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 authority by which they were commenced in the same manner as if the Government servant had continued in service. Thus, the aforesaid sub-rule (2) (a) of Rule 9 of CCS(Pension) Rules, 1972 provides for a situation where the departmental proceeding initiated while the government servant was in service can be continued even after retirement. Sub-rule (2)(b) further provides that if the said departmental proceedings were not initiated while the government servant was in service, it cannot be instituted without sanction of the Governor and it cannot be in respect of any event which took place more than four years before such institution and shall be conducted by such authority and in such place as the Governor 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. Therefore, sub-rule (2)(b) contemplates a situation where a departmental proceedings can be initiated even against a retired government servant provided the previous sanction of the Governor has been obtained and it relates to an event which was within four years before such institution of the departmental proceedings etc.

12. In the present case, the fact remains that the memorandum of charges was furnished on the petitioner after retirement from service. Therefore, the question that arises for consideration is whether it will be permissible to initiate or continue with the departmental proceedings with the framing of charges against the petitioner who is now already retired from service under the rules. As mentioned above, the departmental proceedings in respect of a retired person can be instituted with the previous sanction of the Governor and a departmental proceedings if had been already initiated while the government servant was in service, could be continued. Only, in the event of falling under either of these two categories, that a departmental proceeding can be said to be validly initiated or continued. Therefore, in the present case, it has to be examined whether the case of the petitioner falls under any of these two categories. If it falls under either of these, certainly the authorities can proceed with the departmental proceedings and if not, the departmental proceedings cannot be allowed to be proceeded.

13. It is the case of the petitioner that the petitioner had retired from service in the year 2008 and as such, initiation/continuation of the departmental proceedings against the petitioner by way of issuing a memorandum of charges dated 17.8.2010 after retirement of the petitioner is not permissible. On the other hand, the State authorities contended that since the departmental proceedings had been already initiated while the petitioner was in service, the issuance of the aforesaid memorandum of charges on 17.8.2010 is valid.

14. The answer to this vexed question is to be found in sub-rule (6) of Rule 9 of the CCS (Pension) Rules, which reads as follows:--

"(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;

(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 cognisance, is made, and

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

The aforesaid sub-rule (6), therefore, introduces a legal proposition by which it has been provided that the 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. In other words, the departmental proceedings shall be deemed to have been instituted either (1) on the date the statement of charges is issued to the Government servant or pensioner, or (2) if the Government servant had been placed under suspension from an earlier date, from that date. In the present case, what has been noted is that though the statement of charges was furnished to the petitioner on 17.8.2010 after he retired from service, it is also seen that the petitioner was earlier placed on suspension vide order dated 25.5.2005 while he was very much in service. Therefore, by virtue of the aforesaid deeming provision under sub-rule (6)(a), since the petitioner was placed under suspension from an earlier date on 25.5.2005 while he was in service, it can be, by virtue of the aforesaid sub-rule (6)(a), be deemed that the departmental proceedings had been already initiated w.e.f. 25.5.2005. The contention of the petitioner that the aforesaid suspension order has been subsequently revoked by the Government by order dated 26.3.2008 w.e.f. 12.02.2008 would be of no avail, in view of the fact that the said revocation was pursuant to a direction of the Hon"ble High Court passed in W.P(C) No. 97 of 2007 on 28.01.2008. The aforesaid order of the Hon"ble High Court also clearly mentioned that this reinstatement of service will be without any prejudice to the departmental proceedings and consequential actions as per law. Therefore, even if the suspension of the petitioner had been revoked subsequently, because of intervention of the High Court, the fact remains that he was placed under suspension on an earlier date of 25.5.2005. If that is so, the question of obtaining previous sanction of the Governor as contemplated under sub-rule (2)(b) of Rule 9 of CCS(Pension) Rules will not arise as sanction of the Governor will be arise only when the authorities seek to initiate the departmental proceedings after the Government servant had retired from service and who was never placed under suspension earlier while in service. If the retired government servant had never been placed under suspension earlier, while in service, as suspension can be made only in respect of a serving government employee, and not a retired government servant, if the Government decides to initiate any

departmental enquiry, it must obtain the sanction of the Governor and it can be deemed to have been initiated that too only when the statement of charges is issued to the Government servant or the pensioner. But in the present case, as discussed above, by virtue of deeming provision under sub-rule (6)(a) of Rule 9 of CCS (Pension) Rules, the departmental proceedings shall be deemed to have initiated against the petitioner w.e.f. 25.5.2005 and as such, the question of obtaining previous sanction of the Governor will not arise. In view of the above, this Court is of the opinion that the issuance of the memorandum of charges dated 17.8.2010 by the authorities against the petitioner cannot be faulted with. This Court also has noted that before issuance of the aforesaid memorandum of charges, before his retirement and while issuing the order dated 26.3.2008 revoking the suspension of the petitioner w.e.f. 12.02.2008, it was also clearly mentioned in the said order that this order will not prejudice to the departmental enquiry against the him. This order, however, has not been challenged by the petitioner in this petition.

15. It may be also observed that by virtue of Rule 9 of the CCS(Pension) Rules, 1972, applicability of which the petitioner does not deny, the provisions of CCS(CCA) Rules, 1965 have been attracted and activated to regulate the manner of disciplinary proceeding contemplated under Rule 9 of the CCS(Pension) Rules, 1972. Rule 9 of the CCS(Pension) Rules provides the substantive law and basis to justify initiation/continuation of a departmental proceeding against the retired person subject to fulfilment of the conditions stipulated in the said rules. In other words, the power of the State Government to initiate and continue departmental proceedings against the retired Government employee is to be found in Rule 9 of the CCS(Pension) Rules, 1972. It is true that there is no provision under the CCS(CCA) Rules, 1965 providing for initiation or continuation of a departmental proceeding against a retired person as these rules have been framed to deal with disciplinary proceedings against a serving Government employee. However, the power to initiate or continue a departmental proceeding against the Government employee who has retired from service is specifically mentioned under Rule 9 of CCS(Pension) Rules, 1972. The source or authority of law under which the authority can take actions need not be located only in one set of rules or regulations but may be spread over different sets of rules and regulations. The power of the State authority to initiate or hold departmental enquiry against a serving Government employee and the method thereof are crystallised in the CCS(CCA) Rules, 1965. However, as regards the power and authority of the State Government to continue or initiate disciplinary proceeding against a retired person, it is to be found in CCS(Pension) Rules, 1972. As regards the procedure to be followed in such cases, certain aspects of it are already mentioned in the CCS(Pension) Rules, 1972 which lays down the circumstances and manner in which a departmental enquiry against the retired person can be initiated and continued and in absence of any contrary provisions, the procedure mentioned in the CCS(CCA) Rules, 1965 are also to be followed for continuing the departmental proceeding against a retired person. The provisions of CCS(CCA)

Rules, 1965 subject to the provisions of CCS(Pension) Rules, 1972 will be applicable as regards the departmental proceeding against a retired person.

16. The decisions of the Hon''ble Supreme Court relied on by Mr. Nokulsana, learned senior counsel for the petitioner in Bhagirathi Jena (supra) and Dev Prakash Tewari (supra), in the opinion of this Court will not be applicable. No absolute principle had been laid down in any of these cases that departmental proceeding cannot be initiated or continued at all against a retired person. In fact, the Hon''ble Supreme Court observed in Dev Prakash Tewari (supra) that in absence of any such an authority it must be held that the enquiry had lapsed, thereby, indicating that if there were provisions, the enquiry would not lapse. Further, in these cases, there was no occasion to deal with a similar provision like Rule 9 of the CCS(Pension) Rules, 1972 as in the present case as discussed above. As regards the other two decisions in Bani Singh (supra) and Prafulla Chandra Mohapatra (supra) where the Supreme Court had deprecated prolonged delay in conclusion of departmental enquiry this Court has already taken note of the submission made by the learned senior counsel for the respondent.

17. In view of the above, this Court holds that the present petition is without merit and the same is dismissed.

While doing so, this Court has also noted the submission of Mr. H.S. Paonam, learned senior counsel for the respondent authorities made before this Court that the authorities will complete the departmental enquiry against the petitioner within a period of 2 to 3 months and if the same is not completed within the said period, the departmental enquiry may be deemed to have been abated. Accordingly, it is directed that despite the dismissal of this writ petition, if the aforesaid departmental proceedings continued against the petitioner is not completed within a period of three months from today, the departmental proceedings shall be deemed to have been abated and as such the disciplinary proceedings cannot be continued further against the petitioner as regards the same charges after three months and he shall be entitled to all the retiral benefits as per his entitlements without any further delay.