(2001) 12 MP CK 0033

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1626 of 2000

N.M. Hedaoo APPELLANT

Vs

M.P. Electricity Board, Jabalpur RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Citation : (2002) 2 MPLJ 348

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : R.S. Jha, for the Appellant; Anoop Nair, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

The petitioner''s grievance is that he retired from service of M.P. Electricity Board (hereinafter referred to as the "MPEB"), on 31-1-1997. He was served with the charge-sheet dated 31-1-1997 after his retirement, alleging that the petitioner submitted a false caste certificate and had obtained appointment and promotion fraudulently.

An enquiry was held into the allegation by the Additional Secretary (P)-II, MPEB. He opined that the charge No. 1 is not established as the caste certificate is not verified as false and cancelled by the competent authority, As to the charge No. 2, it held that it is not established that caste certificate is false. Hence, the affidavit cannot be treated as fraudulent. Therefore, charge No. 2 is also not proved.

The M.P. Electricity Board on 2-2-1999 remitted the enquiry to further enquire the matter in the light of letter of Collector, Chhindwara dated 13-6-1997, Annexure-III. On further enquiry both the charges are found proved. Report of the enquiry was forwarded to the petitioner. He was asked to submit his representation within 15 days. No punishment was proposed by the MPEB.

Petitioner submitted a representation. Petitioner''s case was that original certificate of the Collector, Chhindwara dated 21-12-1960 has not been declared false and cancelled by the Collector, Chhindwara and finding of the enquiry officer is contrary to the evidence on record and the finding recorded earlier. Respondent on 4-8-1999 passed an order - Annexure P/4 awarding the punishment of impounding 50% of his pension with immediate effect for a period of 5 years.

The petitioner submits that the action is illegal as per Rule 8 of the M.P. Civil Services (Pension) Rules 1976. It is further submitted that in the enquiry, no witnesses were examined. Petitioner prayed for examining the witnesses. Opportunity was not afforded. The finding recorded by the enquiry officer is perverse. The witnesses, whose statements were recorded behind the back of the petitioner were not called for cross-examination.

In the return filed by the respondent, the claim of the petitioner is repudiated. In the year 1961 the petitioner submitted that he belonged to Scheduled Tribe. He was promoted and the Collector, Jabalpur confirmed that. Petitioner belonged to Other Backward Class (OBC), Collector, Chhindwara also opined that the petitioner''s caste falls under OBC. The respondent can impose punishment even after retirement. Enquiry was based on documentary evidence. If the petitioner wanted, he should have produced his own defence witnesses. The M.P. Civil Services (Pension) Rules, 1976 are adopted by the MPEB is not in dispute. The word "Governor" has been substituted by the "Board" with reference to the M.P. Electricity Board. Sub-rule (1) of Rule 9 of M.P. Civil Services (Pension) Rules, 1976 reads as under:-

9. 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 pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceeding, 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 State 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 minimum pension as determined by the Government from time to time;

As per Sub-rule (1) of Rule 9 right is available of withholding or withdrawing the pension or part thereof and/or ordering recovery from pension of the whole or part of any peculnary loss caused to the Government if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service. If the departmental proceedings were instituted while the Government servant was in service, after final retirement, be deemed to be a proceedings under this rule. In case the departmental proceeding is not instituted while the Government servant was in service, shall not be instituted save with the sanction of the Board, shall not be in respect of any event which took place more than 4 years before such institution shall be conducted by such authority and at such place as may be directed, is provided in Clause (b) of Sub-rule (2) of Rule 9, which reads as under:-

9(2)(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 Government may direct and in accordance with the procedure applicable to departmental proceedings:-

(a) in which an order of dismissal from service could be made in relation to the Government Servant during his service in case it is proposed to withhold or withdraw a pension or part thereof whether permanently or for a specified period; or

(b) In which an order of recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders could be made in relation to the Government servant during his service if it is proposed to order recovery from his pension of the whole or part of any pecuniary loss caused to the Government.

In the instant case the caste certificate was filed on 21-12-1960. The charge No. 1 was with respect of an event which took place in 1961 on 23-3-1961. Charge No. 2 is also inter related to charge No. 1. The petitioner retired on 31-1-1997. The enquiry officer was appointed on 16-1-1998 after about one year of the retirement of the petitioner. When the petitioner has served for about 37 years and retired, it cannot be said that he caused any financial loss and pecuniary loss to the respondent, which is pre-requisite under Sub-rule (1) Rule 9 of M.P. Civil Services (Pension) Rules, 1976, as enquiry can be instituted if pecuniary loss has been caused. Since, the petitioner was paid salary for the service rendered by him, it cannot be said that he had caused any pecuniary loss to the respondent. Since the matter was stale, after retirement, no enquiry should have been directed, it is against equity, justice and good conscience.

The petitioner retired from service on 31-1-1997 and after his retirement the charge-sheet Annexure P/1 was served and enquiry officer was appointed after one year of his retirement. As per Sub-rule (1) of Rule 9 the holding of enquiry cannot be said to be permissible as no pecuniary loss can be said to have been caused by the petitioner. Petitioner was not given show-cause notice before institution of departmental enquiry, which is necessary as held in Bhupat Narayan Sharma vs. State of M.P. 1985 MPWN 575.

The main charge in the enquiry was whether petitioner belongs to scheduled caste/scheduled tribe or other backward class (OBC)? The finding recorded is that the petitioner belongs to OBC. As a matter of fact the certificate was filed by the petitioner in year 1961 and once an employee is retired, intention of Sub-clause (ii) of Clause (b) of Sub-rule (2) of Rule 9 is that departmental proceedings shall not be in respect of any event which took place more than 4 years before such institution, if the departmental enquiry was not instituted while the Government Servant was in service. Since the charge No. 1 is relating to submitting of the certificate in the year 1961, the Sub-rule (2) of Rule 9 prevents the departmental enquiry into such a matter which took place more than 4 years before and charge No. 2 is dependent on outcome of charge No. 1. Thus, permissible period of four years has been extended to four decades in the instant case. In any case the matter was stale and petitioner as a matter of fact retired on completion of age of 58 years in 1997, thereafter charge-sheet was served on him after his retirement, though it bears the date 31-1-1997, but, was served subsequently. Matter was clearly stale, thus, enquiry is liable to be set aside only on the ground of it being stale. In State of Maharashtra vs. Milind and Ors., 2001 (1) MPU (SC) 1 : (2001) 1 SCC 4, the Supreme Court in similar case of dispute as to caste status, held that the matters of appointment, which have been concluded should not be reopened. The Apex Court held that the scope of entry under Article 341 cannot be enhanced by conducting an enquiry by the State Government. However, appointments which were made were left untouched and were directed not to be reopened. Thus, in light of ratio of Milind''s case (supra), enquiry into validity of appointment and promotion could not be reopened after retirement.

It also remains uncontroverted that the petitioner was not allowed to examine the defence witnesses. It does not appear from the return filed by the respondents that the petitioner was allowed an opportunity to examine the defence witnesses. It appears that most of the enquiry was conducted behind the back of the petitioner who stood retired. However, it is not much necessary to delve into this question as enquiry is held to be impermissible under Rule-9 of M.P. Civil Services (Pension) Rules, 1976.

Resultantly, the writ petition is allowed. The order of punishment -Annexure-P/4, and charge-sheet - Annexure-P/1 are quashed. The respondents are directed to pay full pension to the petitioner and he has also prayed for payment of commuted pension, which may be paid as per the existing rules. It also appears that the death-cum-retirement gratuity has not been paid. Petitioner has claimed various retiral dues, they may be settled and paid to the petitioner with interest at the rate of 10% from the date of his retirement and same rate of interest is allowed on paid up retiral dues for the period which payment was delayed. Costs on parties.

