

(1998) 10 AP CK 0088

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23848 of 1995

P. Narayana Rao

APPELLANT

Vs

A.P. State Meat and Poultry Development Corporation
Limited, Hyderabad and another

RESPONDENT

Date of Decision : 06-10-1998

Acts Referred:

Andhra Pradesh Revised Pension Rules, 1980 — Rule 2, 45(5), 52(2)
Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 12, 309

Citation : (1998) 6 ALD 362 : (1998) 6 ALT 157

Hon'ble Judges : J. Chelameswar, J

Bench : Single Bench

Advocate : Mr. G. Vedantha Rao, for the Appellant; Mr. J.V. Suryanarayana Rao and Mr. D. Prabhakar Reddy, for the Respondent

Judgement

1. The petitioner was selected by the Andhra Pradesh Public Service Commission and joined service of the State of Andhra Pradesh as Veterinary Assistant Surgeon in the year 1962. On 1-11-1977 the Andhra Pradesh State Meat and Poultry Development Corporation Limited (R1) was formed. The said Corporation is admittedly a company registered under Companies Act and it is a Government Company as per Section 617 of the Companies Act. It appears that when the above-mentioned respondent-Corporation was created some of the employees working with the Government of Andhra Pradesh in the Veterinary Department were given option to join service of the first respondent-Corporation under G.O. Ms. No.400, dated 2-6-1978. Pursuant to the said order the petitioner gave an unconditional option to be absorbed into service of the first respondent-Company with effect from 2-6-1978. The petitioner ceased to be an employee of the State of Andhra Pradesh and became an employee of the Corporation. Thereafter, the petitioner had work in the Corporation in various capacities as Zonal Manager, subsequently, Regional Manager and he retired as Regional Manager on 30-6-1994.

2. It appears that in the year 1980 there were certain irregularities regarding extension of credits to the farmers by the first respondent-Corporation. The petitioner and Mr. B. Srirama Rao are alleged to be responsible of the extension of the said irregular credit. What exactly is the irregularity in extending the said credit is not the subject-matter of this writ petition. On the allegation of extending irregular credits a charge memo was issued to the petitioner on 24-12-1981 and Mr. Srirama Rao on 1-3-1985 respectively. It appears thereafter an enquiry was conducted and the enquiry officer submitted a report that the loss arising out of the extension of irregular credits to the farmers should be borne by the petitioner and the above-mentioned Mr. Srirama Rao equally. Questioning the said decision it appears the petitioner and Mr. Srirama Rao filed the Writ Petitions 11193 of 1986 and 12175 of 1986 respectively. It appears that both the writ petitions were disposed of by a common order dated 23-1-1989 by which order this court quashed the above decision with a direction to conduct a de novo enquiry in the matter, as this Court came to the conclusion that the petitioners were not given a reasonable opportunity to meet the case against them. It is also pertinent to mention that this Court while disposing of the said writ petitions directed "the enquiry be completed within three months from the date of this order."

3. However, the enquiry was not completed within the stipulated time. The counter-affidavit filed by the first respondent-Corporation does not disclose clearly, the reasons as to why the enquiry was not completed within the stipulated time except making a vague statement which reads:

"I state that the enquiry could not be completed within the stipulated period since the relevant records were in the High Court of Andhra Pradesh, Hyderabad in connection with the suits filed by poultry marketing centre, Vizag for recovery of dues."

4. During the pendency of the enquiry proceedings, the petitioner retired on 30-6-1994 on reaching "the age of superannuation. However, the pension, gratuity, GPF, leave encashment and arrears of salary of the petitioner were withheld by the first respondent-Corporation. Questioning the withholding of the above-mentioned amounts on the ground that an enquiry is pending against the petitioner, the petitioner filed the present writ petition originally with a prayer as follows:

".....to issue appropriate writ, declaring the continuance of disciplinary proceedings beyond 30-6-1994 against the petitioner as void, without jurisdiction, mala fide, unconstitutional and issue a consequential direction to forthwith settle the terminal benefits of pension, gratuity, GPF, leave encashment, arrears of salary etc., and grant such other writ or order as this Hon"ble Court deems fit and proper in the circumstances of the case."

In the meanwhile on 31-1-1997 the first respondent passed an order imposing punishment on the petitioner. The punishment is : reduction of pension @ 10%

and recovery of 15% of the unrecovered dues which according to the Corporation were a consequence of the above-mentioned irregular extension of credit. On passing of such order the petitioner herein filed an application to amend the prayer in the writ petition. He filed an amendment petition in WPMP No.21656 of 1997 on 30-7-1997 with a prayer which is extracted hereunder :

"To issue an appropriate writ more in the nature of Certiorari calling for the records relating to Proc. No.13414/E-1/81-1, dated 31-1-1997 of the first respondent declaring the imposition of punishment after retirement is without authority of law without jurisdiction arbitrary, illegal unconstitutional offending Articles 14, 21, 39, 41 of the Constitution of India and quash the same and pass such other order or orders as this Hon'ble High Court may deem fit and proper in the circumstances of the case."

5. Sri Vedantha Rao G., learned senior Counsel appearing for the petitioner submitted that the continuation of the disciplinary proceedings against the petitioner by the first respondent-Corporation beyond the date of his retirement and imposition of penalty after his retirement is illegal and without any authority of law. Elaborating his submission, Mr. Vedantha Rao submitted that in view of a long chain of authorities pronounced by the Supreme Court and various High Courts ordinarily the master has no authority under law to continue the disciplinary proceedings against his employee after the employment ceased and the only exception to this rule being public service under the Indian Constitution. By express provisions under the rules governing the various services under the Government, the Government is empowered by law to continue the disciplinary proceedings against the public servant even after he reaches the age of superannuation.

6. The learned Counsel relied by way of an illustration on Rule 9 of the Andhra Pradesh Revised Pension Rules, 1980, which authorises the Government to withhold the pension, gratuity or both either in full or in part etc., in case pecuniary loss is caused to the Government by a Civil Servant. Rule 9 reads as follows:

"9. Right of Government to withhold or withdraw pension :--(1) The State Government reserves themselves 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 and to the local authority 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 Andhra Pradesh 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 limit specified in sub-rule (5) of Rule 45 (Subs, by G.O. Ms. No.302, Fin., Dated 30-8-1994).

(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 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:

Provided that where the departmental proceedings are instituted by an authority subordinate to the State Government, that authority shall submit a report recording its findings to the State Government.

Note :--The function of the disciplinary authority is only to reach a finding on the charges and to submit a report recording its findings to the Government. It is then for the Government to consider the findings and take final decision under this rule. In case Government decide to take action under this rule in the light of the findings of the disciplinary authority, the Government will serve the person concerned with the show-cause notice specifying the action proposed to be taken under this rule 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 Andhra Pradesh Public Service Commission. If as a result of such consideration proceedings will be issued in the name of the Government.

(b) The Departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his employment:

(i) shall not be instituted save with the sanction of the Government;

(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 State Government 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) (xxx) (Omitted by G.O. Ms. No.302, Fin., dated 30-8-1994).

(4) In the case of a Government servant who has retired on attaining 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 52 shall be sanctioned.

(5) Where the State Government 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 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; and

(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 cognizance, is made; and

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

7. A perusal of the Rule discloses that sub-rule (2)(a) creates a legal fiction, whereby notwithstanding the fact that the Government servant had retired from service if the disciplinary proceedings were instituted while he was in service, the same shall be continued and concluded as if the Government servant had continued in service. The learned Counsel for the petitioner submits that the petitioner being an employee of a Corporation, the Andhra Pradesh Revised Pension Rules, 1980 have no application to his case, as, under Rule 2 of the said Rules, those Rules are made applicable only to the specified categories of persons enumerated therein and the service under the first respondent-Corporation is not one of the enumerated categories under Rule 2. The learned Counsel further submits that the continuation of the disciplinary proceedings against the petitioner after he retired from service is totally illegal and not supported by any authority of law.

8. On the other hand, the first respondent filed a counter-affidavit. In paragraph 15 of the counter-affidavit, the first respondent states as follows:

"I state that the proceedings pending against the petitioner can be continued under Rule 9 of the A.P. Revised Pension Rules of 1980, which clearly empowers the competent authority entitled to sanction pension to proceed under Rule 9 and also impose cut in pension subject to condition and limitation prescribed in sub-rule (5) of Rule 45."

Nothing further is stated in the counter-affidavit to show as to how the Andhra Pradesh Revised Pension Rules, 1980 are applicable to the service under the first respondent. However, certain additional material papers were filed in the Court at the stage of hearing, without any supporting affidavit.

9. The learned Counsel for the first respondent sought to place reliance on the xerox copy of (which purports to be) and extract of the resolution passed at the 60th Board Meeting dated 2-9-1986 which reads as follows:

"Item No. 22(5) :

Extract of the Resolution passed at 60th Board Meeting dated 2-9-1986.

APSMPDC Application of Pension and Pensionary Benefits as in Government to the Absorbed Employees of the Corporation Proposal submitted-

The Board has discussed the implications of the judgment of the Hon"ble High Court dated 14-7-1986/15-7-1986 in WP Nos.10233 of 1984; 8565 of 1983; 10276 of 1983 and 4375 of 1984 filed by certain absorbed employees of the Corporation with regard to their pension and pensionary benefits, with reference to the legal option given by the Legal Advisor of the Corporation thereon. It has been decided and resolved, keeping in view the spirit of the Hon"ble High Court Judgment in the context of first Board's Resolution No.9 of 1977 dated 3-11-1977, that the pension and pensionary benefits may be extended to the absorbed employees (who were eligible for Government pension on the date of their absorption in the Corporation) as per the A.P. Revised Pension Rules, 1980 by adopting the same as "Corporation Pension Rules", subject to certain modifications and alterations, if any in terms of the first Board's Resolution No. 9 of 1977 dated 3-11-1977.

It is also resolved to constitute a pension fund for the above purpose with the LIC of India by way of trust and the LTC of India will monitor and operate the pension scheme on behalf of the Corporation. The Managing Director is authorised to take necessary further action in this regard.

The Board also agrees with the proposal of the Managing Director to settle and pay the pension and pensionary benefits in respect to the widows of the deceased employees for the service rendered in the Corporation till the date of their demise, as per the directives of the Hon"ble High Court.

"True copy"

Sd/- Administrative Officer."

10. Basing on the above document, the learned Counsel for the respondents submitted that the Board of the first respondent-Corporation resolved to adopt the Andhra Pradesh Revised Pension Rules, 1980 to the service of the employees who are absorbed from the Government and therefore by such an adoption, the Board has a necessary legal authority under Rule 9 of the Andhra Pradesh Revised Pension Rules, 1980 to continue the enquiry pending against the petitioner by the date of his retirement notwithstanding the fact of his retirement.

11. It is a settled position of law that the relationship of "Master" and "Servant" is a contractual relationship and the conditions of the employment depend on the terms either express or implied in the contract.

12. Like any other contract, the contract of employment also is subject to "law". The Legislature may, dealing with a particular class of contracts provide for certain conditions which are to be compulsorily part of the contract. In the absence of any such legislative stipulation, the parties to the contract are at

liberty to choose the terms of the contract which are mutually agreed upon. The "interse" relationship of the parties to a contract is regulated by the terms of the contract during its subsistence. Once the contract lapses either by afflux of time or for any other reason recognised by any law, the relationship between the parties to the said contract comes to an end, neither of the parties to the said contract would have any legal rights or obligations, towards the other party under the said contract save those expressly recognised by the law.

13. Employment under the "State" is also a matter of contract. However, the "State" is empowered in exercise of its powers conferred on it by the Constitution under Article 309 etc., to regulate the terms of the contract by framing various rules or by legislative enactments, as the case may be, for the purpose of achieving uniformity in the matter of public employment and to avoid arbitrariness. Such stipulation being legislative in character, the "State" has enormous amount of pliability, of course, subject to the constitutional limitations. In exercise of such power, rules/statutory provisions are made dealing with the public employment. Having regard to the fact that persons who are in public employment, are entrusted with the public affairs and monies they ought to be accountable to the society in their dealings with such public affairs and monies while they had an opportunity to deal with them as such. To safeguard the larger interests of the society, the rules/statutory provisions dealing with the various kinds of service under the "State" provide for various kinds of disciplinary action to be taken against the persons in public employment if they are found to have misconducted themselves in discharging their duties during the course of the employment. Necessarily the inflictment of punishment requires certain rational procedure to be followed before the "State" comes to a conclusion to award punishment to a public servant, which includes a reasonable opportunity being given to the person concerned. The adherence to the well-established principles of procedural requirements in awarding punishments, to persons in public service is time-consuming process.

14. In a given case, even if such process is initiated, while the employee is still in service, the process may not be completed before the point of time at which the public servant retires from service in accordance with the rules/ statutory provisions applicable to his case. In such cases, the question arises whether the disciplinary proceedings could be continued against the employee, after his retirement. As a general proposition of law, it appears the "State" has no jurisdiction to take disciplinary proceedings against the servant who had effectively retired from service (*B. J. Shelat v. State of Gujarat*, AIR 1978 SC 1109 and *State of Uttar Pradesh Vs. Brahm Datt Sharma and Another*, . However, the relevant statutory provisions or rules dealing with the subject may provide otherwise.

15. Their Lordships of the Supreme Court had an occasion to deal with a case where the relevant rules of the State of Assam provided for the extension of the service of an employee beyond the period of the normal age of superannuation

on "public grounds" State of Assam and Others Vs. Padma Ram Borah, . The State Government proposed to initiate disciplinary proceedings against the employee a few days before his retirement. In fact, he was kept under suspension before the due date of the retirement. However, the actual order extending the service of the employee was passed 6 days after the actual date of retirement of the employee, extending the service by three months. As the enquiry could not be completed within the stipulated three months, his service was once again sought to be extended by the State Government for a further period of three months, but the later order was passed not before the expiry of the originally extended three months, but about a month after the originally extended period came to an end. Dealing with the question, a Constitutional Bench of the Supreme Court assumed that the relevant rules authorised the continuation of the service of the employee pending a disciplinary enquiry" to be on "public ground", but having regard to the fact that the second extension order was not passed while he was in service. Their Lordships came to the conclusion that such an order would amount to creation of a unilateral contract of service and therefore they found the second extension order a nullity and consequentially continuation of the disciplinary proceedings as illegal.

16. Two propositions clearly emerge from the above decision; firstly, that the employer even if it happens to be the "State", cannot be by a unilateral action create a contract of employment unless expressly authorised by law. Secondly, in the absence of any subsisting relationship of "master" and "servant, disciplinary action could not be taken against the employee by his master.

17. Dealing with another aspect of employment i.e., the authority of the master to suspend an employee during the subsistence of a contract of employment, Their Lordships of the Supreme Court in The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers" Union, , held as follows (at paragraph 10):

"..... It is now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in in an ordinary contract between master and servant, and that such a power can only be creature either of a statute governing the contract," or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. These principles of the ordinary law of master and servant arc well settled and have not been disputed before us by either parry....."

18. However, the relationship of "master" and "servant" during the period of the

suspension of an employee, once again depends on either the terms of the contract or on any relevant law applicable to such employment. It was held so in *Balvantray Ratilal Patel Vs. The State of Maharashtra*, observed as follows:

".....It is equally well settled that an order of interim suspension can be passed against the employee while an inquiry is pending into his conduct even though there is no such term in the contract of appointment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which it could be withheld. In this connection it is important to notice the distinction between suspending the contract of service of an officer and suspending an officer from performing the duties of his office on the basis that the contract is subsisting. The suspension in the latter sense is always an implied term in every contract of service. When an officer is suspended in this sense it means that the Government merely issues a direction to the officer that so long as the contract is subsisting and till the time the officer is legally dismissed he must not do anything in the discharge of the duties of his office. In other words, the employer is regarded as issuing an order to the employee which, because the contract is subsisting, the employee must obey.

(4) The general principle therefore is that an employer can suspend an employee pending an inquiry into his misconduct and the only question that can arise in such suspension will relate to payment during the period of such suspension. If there is no express term relating to payment during such suspension or if there is no statutory provision in any enactment or rule the employee is entitled to his full remuneration for the period of his interim suspension. On the other hand, if there is a term in this respect in the contract of employment or if there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension the payment will be made in accordance therewith. This principle applies with equal force in a case where the Government is an employer and a public servant is an employee with this qualification that in view of the peculiar structural hierarchy of Government administration, the employer in the case of employment by Government must be held to be the authority which has the power to appoint the public servant concerned. It follows therefore that the authority entitled to appoint the public servant is entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding which may eventually result in a departmental enquiry against him. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or statutory rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. On general principles therefore the Government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings, this may be called interim suspension. The Government may also proceed to hold a

departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. As we have already pointed out, the question as to what amount should be paid to the public servant during the period of interim suspension or suspension as a punishment will depend upon the provisions of the statute or statutory rules made in that connection."

As can be seen from the above two decisions, that ultimately, every aspect of the relationship of master and servant is either governed by the terms of the contract of employment, either express or implied; or any other "law" dealing with such employment.

19. Therefore, it can be seen from the above judgments that the power to conduct enquiry into the, conduct of an employee during the subsistence of the contract of employment is always granted by necessary statutory authority to the "State" in the larger interests of the affairs of the "State" and "public" and such power would include the power to continue such an enquiry even after the contract of an employment ceases-subject to the limitations as noticed in the above judgments. Whether the same power can be said to reside in an employer, who does not share the sovereign power of the "State" is a question which falls for consideration in the instant case.

20. No doubt, the first respondent-Corporation satisfies the definition of the expression "State" within the meaning of Article 12 of the Constitution of India, for certain purposes. That does not automatically invests the first respondent-Corporation with all the concomitant attributes of the expression "State" in the jurisprudential sense and of it being a sovereign law making body. A body, such as the first respondent, which is created under the authority of a statute is bound by the terms of the enactment under which it is created. The legal rights and obligations of such a body depend upon the terms of the statute under which such body is created. It can have no claim to any modicum of the sovereign power.

21. In the absence of any such sovereign power, the terms of the employment between the bodies such as the first respondent and its employees are strictly governed by the terms of the contract. Nothing is brought to my notice to show that the contract of the employment between the petitioner and the first respondent reserved any such power in favour of the first respondent to continue a disciplinary enquiry pending against the petitioner, even after, the petitioner reaching the age of superannuation, or retirement.

22. The doubtful fact that the provisions of the Andhra Pradesh Revised Pension Rules, 1980 have been adopted by the first respondent-Corporation and therefore by virtue of the Rule 9 of the Andhra Pradesh Revised Pension Rules, 1980, the first respondent-Corporation has the necessary legal power to continue the disciplinary proceedings against the petitioner even after his retirement, cannot be accepted, for the reason, first of all, the fact that such a resolution

was passed, has not been affirmed before me on oath. Even assuming for the sake of arguments, that such a resolution was passed by the first respondent-Corporation's Board, the further fact that the resolution is given effect to, has not been demonstrated. Assuming further that such a resolution has been acted upon, it becomes an unilateral declaration on the part of the employer to create a fresh condition of the service. There is nothing on the record, either in the pleadings or in the material papers to show that such a condition was accepted by the employee. In the absence of any such agreement and in the absence of any legal authority in the first respondent-Corporation to enforce such a condition unilaterally, I am of the opinion that Rule 9 of the Andhra Pradesh Revised Pension Rules, 1980 cannot be called in aid by the first respondent-Corporation to justify its action of continuance of the enquiry against the petitioner after he retired from service. If the relationship of the petitioner and the first respondent as the servant and master, came to an end, a body like the first respondent cannot effect the rights of the persons with whom they have no subsisting contract thereafter. In my view, such an action is wholly illegal and unauthorised by law and no Court of law would take cognizance of such an action.

23. Assuming further that the Andhra Pradesh Revised Pension Rules, 1980 are applicable to the case of the petitioner, under the first proviso to sub-rule (1), before any decision is taken to withhold the pension either in full or in part, consultation with the Andhra Pradesh Public Service Commission, appears to be mandatory. Nothing is placed before me to show that the Andhra Pradesh Public Service Commission is consulted in this regard nor any other material to show that the Corporation while adopting the Andhra Pradesh Revised Pension Rules, 1980 made any amendment dispensing with the requirement of consultation with the Andhra Pradesh Public Service Commission. The whole exercise of adopting the Andhra Pradesh Revised Pension Rules, 1980 by the Corporation, appears to be a very shabby one, to say, the least.

24. I am conscious of the fact that the Supreme Court drew a distinction between an enquiry for the purpose of imposing punishment on an employee and proceedings for the purpose of withholding or reducing pension, on the ground that generally pension is the outcome of "satisfactory service". Therefore, notwithstanding the fact that no disciplinary action can be taken against an employee after his retirement for his misconduct during the course of the employment, proceedings could be continued for the purpose of deciding whether he is entitled for receiving the pension either in full or in part State of Maharashtra Vs. M.H. Mazumdar, . But even in such a case a clear legal right must exist on the part of the employer either under the contract or law, as pension is held to be property of the employee.

25. It is alleged that the first respondent entered into some arrangement with the second respondent for the purpose of making the payments of the retirement benefits of the employees of the first respondent-Corporation and therefore the second respondent would actually be the person to make the payment of the

retirement benefits of the petitioner. However, the second respondent filed a counter raising a dispute about the subsistence of the said arrangement between the first respondent and the second respondent, though they admitted at some point of time prior, such an arrangement existed, but they submitted that the arrangement ceased subsequently by virtue of certain lapses on the part of the first respondent. However, it must be stated that this fact of the arrangement having lapsed, has not been stated on oath before me, but only by an oral submission by the learned Counsel for the second respondent. Whatever be the arrangement between the respondents 1 and 2 and whether it is now in existence or not, the primary responsibility of making the payment of the amount due to the petitioner is legally with the first respondent.

26. The learned Counsel for the petitioner made a submission that in view of the fact that the first respondent-Corporation illegally withheld the payments for a long period of more than four years, it would be just to award interest to the petitioner. On the other hand, the learned Counsel for the first respondent submitted that the first respondent has become a sick Corporation and its financial position would not permit the payment of any interest. The learned Counsel for the petitioner relied on a judgment of this Court in Writ Petition No.23990 of 1995 dated 26-4-1996, reported in P.C.H. Jogi Raju v. State Bank of India, 1997 (1) Service Cases To-day 243, wherein in similar circumstances, this Court was pleased to direct to pay the interest at 18% per annum. However, having regard to the fact, the first respondent-Corporation has become a sick Corporation, I deem it fit to award interest at the rate of 12% per annum on various amounts due to the petitioner from the date of the said dues, till the date of payment.

27. For all the above-mentioned reasons, I am of the opinion that the action of the first respondent-Corporation in seeking to continue the disciplinary proceedings against the petitioner beyond the period of his service, is illegal and unauthorised by law and is required to be declared as such. Consequently, the action of the first respondent in seeking to impose a penalty by its order dated 31-1-1997 on the petitioner by way of reduction of 10% of the pension and recovery of 50% undecreed dues of the Corporation of the first respondent, must be held to be illegal and the petitioner is therefore entitled to receive all the arrears of pay and other retirement benefits as if such an order of punishment were never passed. The first respondent is therefore directed to pay the amounts due to the petitioner as directed above with interest at 12% per annum, within a period of eight weeks from the date of receipt of the copy of this order.

28. In the result, the writ petition is allowed, but in the circumstances, without costs.