
(2006) 11 AHC CK 0075
In the Allahabad High Court

Pooran Chandra Jain

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 1 ADJ 30 : (2007) 2 UPLBEC 62

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri K.K. Dubey, learned Counsel for the petitioner and learned Standing Counsel for the respondents.

2. This writ petition is directed against the orders dated 10.10.2002 passed by the District Magistrate, Lalitpur holding petitioner guilty of grave misconduct causing loss to the Government and therefore reducing his family pension to 40%, and, dated 22.11.2002 whereby the order dated 10.10.2002 has been partly modified by substituting the word "family pension" to "pension".

3. The brief undisputed facts giving rise to this petition are that the petitioner was appointed as Amin on 19.10.1970 and was posted in the office of Special Land Acquisition Officer, Jhansi wherefrom he was transferred to Lalitpur on 22.4.1984. On 19.10.1987 he was placed under suspension, a charge sheet was issued and after holding inquiry he was reinstated with the punishment of reduction of 10% of salary during the period of suspension. Thereafter vide order dated 19.6.1991 his annual increment for the year 1991 was withheld with the cumulative effect and his representation against the aforesaid punishment was rejected on 31.3.1998. Thereafter he was allowed to cross efficiency bar by order dated 24.4.1999 w.e.f. 1.1.1992. The petitioner attained the age of superannuation on 29.2.2000 and retired on the said date. After retirement a charge sheet was issued on 11.5.2000 under Article 470(b) of Civil Service

Regulations (hereinafter referred to as "CSR") containing charges of causing loss to the Government Revenue, doubtful integrity and misappropriation. The petitioner submitted reply to the charge sheet on 5.6.2000 whereafter Additional District Magistrate (Finance & Revenue), Lalitpur was appointed as Inquiry Officer who conducted an oral inquiry and submitted his report dated 28.8.2002 holding charges proved against him. The appointing authority i.e. the Collector, Lalitpur thereafter passed punishment order dated 10.10.2002 reducing family pension of the petitioner by 40% which order was modified by subsequent order dated 22.11.2002 and instead of "family pension" it was made "pension".

4. The learned Counsel for the petitioner vehemently contended that after retirement, inquiry proceedings could not have been held except in accordance with the procedure prescribed under Article 351-A of CSR and since the charges relates to four years prior to the date of retirement and no sanction was obtained from the Hon'ble Governor, hence, the entire proceedings as well as the impugned orders are vitiated of law.

5. The learned Standing Counsel however, disputing the contention submitted that Article 351-A of CSR has no application in this case since proceedings were initiated under Article 470(b) of CSR which requires only approval of the appointing authority and no approval of Governor is needed thereunder, therefore the entire proceedings are in accordance with law and the writ petition deserve to be dismissed.

6. In the light of the rival submissions the only question required to be answered in this case is whether the proceedings in question were rightly initiated under Article 470(b) of CSR and whether Article 351-A of CSR has any application or not.

7. The inter-relationship of Article 351-A and 470(b) of CSR came up for consideration before a Full Bench in *Murli Sharan Sahai Sinha v. The State of Uttar Pradesh and Ors.* 1976 Labour & Industrial Cases, 1734 and it was held that Article 351-A and 470(b) are not actually exclusive but are overlapping to some extent. Where a civil servant is found to have caused pecuniary loss to Government or guilty of grave misconduct or negligence, the authority empowered under Article 470(b) of CSR can resort to exercise such power under that Article. Similarly on the same set of facts if the departmental inquiry would have been initiated and an order of reduction of pension could not have been passed under Article 351-A, there is no reason to deduce that such an order may not be passed by resorting to Article 470(b) of CSR. Para 13 of the judgment which for the purpose of present case in my view is relevant may be reproduced as under:

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.

8. The aforesaid judgment therefore leave no doubt where an inquiry and order of reduction of pension can be passed under Article 351-A, the same could have been passed under Article 470(b) of CSR. The problem however arise where the proceedings are barred under Article 351-A for example if the charges, whereagainst it intends to conduct inquiry are anterior to four years from the date of retirement and no proceedings can be held under Article 351-A, whether even in such case Article 470(b) would be attracted. It would be appropriate at this stage to reproduce Article 351-A and 470 of CSR:

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 petitioner is found in departmental or judicial proceedings to have been guilty of grave mis-conduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment 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.

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 (see Appendix 9),

(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 reading reduction in the amount of pension shall be made without the approval of the appointing authority.

9. A bare reading of Article 351-A shows that the Governor has reserved to himself all the right of withholding and withdrawing a pension or any part of it, whether permanently or for a specified period and also the right of ordering 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 guilty of grave misconduct or to have caused pecuniary loss by misconduct or negligence during his service. However, Article 470(b) empowers the appointing authority to pass an order for reduction of pension if the service of the Government servant has not been thoroughly satisfactory. In the case of. Article 351-A the order can be passed by the Governor while under Article 470(b) the order can be passed by the appointing authority. It is thus clear that in order to attract Article 470(b) of CSR, appointing authority have to record its conclusion that the service of the retired employee was not thoroughly satisfactory. It is true that to some extent both the Articles are overlapping and may run parallel but still the issues require to be considered under the two provisions are slightly of different magnitude. Where on account of any individual or particular act or omission constituting grave misconduct or negligence causing loss of the Government servant, the appointing authority intend to exercise power under Article 470(b), it has to record a finding that the service has not been thoroughly satisfactory. It is not open to the appointing authority to bypass the provision and where the proceedings are otherwise barred under Article 351-A, to circumvent the same or to resurrect the closed issued, it may resort to Article 470(b) without recording any finding that the service has not been thoroughly satisfactory. It is a settled legal exposition where something is required to be done in a particular manner and in specified contingencies, the action has to be taken strictly in accordance therewith and any deviation thereto shall vitiate the proceedings. In other words it can be said that where a single act or more than that may constitute a grave misconduct or negligence or having caused loss to the Government justifying order under Article 351-A of CSR, the same would not justify an order under Article 470(b) of CSR unless and until the competent authority formed a conclusion that such act or omission constituting misconduct or negligence or loss results in making the entire service thoroughly unsatisfactory.

10. A perusal of the entire order would show that the appointing authorities have nowhere mentioned that the service of the petitioner is thoroughly unsatisfactory. The Full Bench in *Murli Sharan Sahai Sinha (Supra)* approved the proposition that for the same set of misconduct, order can be passed in either of the provisions but made it clear that such an order can be passed subject to fulfillment of other conditions under that Article. The answer to question No. 3 by the Full Bench in *Murli Sharan Sahai Sinha (Supra)* as contained in para 15(3) is reproduced as under:

15(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 fulfillment of other conditions under that Article. In respect of same misconduct, action can also be taken under Article 470(b) subject to fulfillment of other conditions under that Article.

11. In *Vishwanath Prasad Vs. U.P. Service Tribunal No. IV and Others*, a Single Judge of this Court while considering Article 470(b) of CSR observed that discretion conferred on the authority under Article 470(b) though wide cannot be exercised without assuming thorough satisfaction about the petitioner's service. In para 14 of the judgment, the court held:

In Article 470(b), the discretion of reduction of pension can be exercised only if it is proved that the service of the pensioner has not been thoroughly satisfactory during his tenure as employee under the State. The finding with regard to question of service not being satisfactory of any employee is not left to the whim of the authority....

Further in para 16, the Court observed:

For invoking Article 470(b) by any authority for the purpose of ordering reduction of pension, two considerations are inherent in the said Article. Firstly, the authority has to satisfy itself on the basis of material, that the services of a person who claims pension, were not thoroughly satisfactory. Secondly, while arriving at a conclusion that the service of an employee was not thoroughly satisfactory, the authority has to furnish material, evidence or any report on which he has formed his opinion, to the person concerned who is likely to be affected by his order under Article 470(b) of C.S.R. If these considerations are not expressly incorporated in the said Article, that would not mean that the authority, empowered to operate the said Article, has to omit to consider the aforesaid considerations, before he issues an order of reduction of pension in respect of an employee. These two considerations are inherent in the said Article and without taking these two considerations implicit in the Article, the Article itself would become arbitrary and violative of Article 14 of the Constitution. In order to make this Article 470(b) workable it is necessary that unfettered discretion conferred by this Article or an authority is exercised within the limits of

law and satisfaction about the service of an employee not being satisfactory thoroughly is assumed on the basis of evidence and before that evidence is acted upon, employee, likely to be affected by the order in that section is given opportunity of being heard. These are the rudimentary requirements which are to be followed before the discretion u/s 470(b) is exercised by any authority.

12. A perusal of the entire order impugned in the writ petition shows that the appointing authority nowhere has mentioned its satisfaction that the service of the petitioner was not thoroughly satisfactory. Therefore, it is evident from the entire facts, circumstances and perusal of the record that though the appointing authority has mentioned and referred to Article 470(b) of CSR in order to pass the impugned order but in fact has sought to exercise powers under Article 351-A without conforming to the conditions of those provisions. The orders impugned in the writ petition are thus ex-facie unsustainable either under Article 470(b) or 351-A of CSR.

13. In the result, the writ petition succeeds and is allowed. The impugned orders are quashed and it is declared that the petitioner shall be entitled for all consequential benefit. There shall be no order as to costs.