

(2016) 01 AHC CK 0060
In the Allahabad High Court
Case No : Service Single No. 8773 of 2011

Prabhat Kumar S/O Late Shyam Lal	APPELLANT
Vs	
U.P. State Ware Housing Corp. Thr Its M D Lko. & 3 Ors.	RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Citation : (2016) 1 UPLBEC 377

Hon'ble Judges : Dr. Devendra Kumar Arora, J.

Bench : Single Bench

Advocate : Ramesh Kumar Srivastava, Advocate, for the Appellant; U.N. Misra, Rakesh Kr. Chaudhary, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Dr. Devendra Kumar Arora, J. - Heard Sri Ramesh Kumar Srivastava, learned Counsel for the petitioner and Sri Rakesh Kr. Chaudhary, learned Counsel appearing for respondents-Corporation.

2. By means of the instant writ petition, the petitioner has sought for quashing of the punishment order dated 19.10.2011 passed by the Managing Director, U.P. State Warehousing Corporation, Lucknow, as also the appellate order dated 19.10.2011.

3. According to the petitioner's Counsel, the petitioner while working on the post of Warehouse Superintendent attained the age of superannuation on 31.7.2010 and prior to his superannuation, a charge sheet dated 19.3.2008 was served upon the petitioner with respect to causing loss to the Corporation to which petitioner submitted his reply on 3.4.2008 indicating therein that the petitioner had worked as Go-down Superintendent at the relevant time but except the natural loss no loss had accrued in any manner to the Corporation. Thereafter the Inquiry Officer submitted its report on 24.4.2008 to the Competent Authority but no final order was passed and the matter remained pending. In the interregnum, the petitioner attained the age of superannuation on 31.7.2010 and

retired from service. Ultimately, on 17.2.2011, impugned order of punishment has been passed for recovery of RS. 2,97,184.77/- from the petitioner. It is submitted that a sum of RS. 2,40,000/- was deducted from the amount of leave encashment and the petitioner has been asked to deposit the remaining amount.

4. Learned Counsel for the petitioner while pointing the defects in the impugned orders vehemently argued that in the U.P.State Warehousing Staff Regulations, there is no provision of conducting inquiry or continue inquiry after retirement of an employee.

5. Further, provisions of Article 351-A of the Civil Services Regulations also do not apply to the employees of the State Warehousing Corporation.

6. Apart from above, neither the copy of the inquiry report was ever furnished to the petitioner nor any show cause notice was issued to the petitioner before passing the impugned order. In these circumstances, the impugned order of punishment suffers from legal infirmities and it also vitiates the appellate order.

7. Having heard learned Counsel for the parties, it may be mentioned that the controversy as involved in the instant writ petition has been settled by the Apex Court in the case of Dev Prakash Tiwari v. U.P.Cooperative Institutional Service Board, Lucknow and others, (2014)7 SCC 260 wherein the Apex Court relying upon its earlier decision in the case of Bhagirathi Jena v. Board of Directors, OSFC and others (1999) 3 SCC 666 has held that no disciplinary proceedings can be continued in the case of such employees after retirement. In the case of Chatter Sen v. State of U.P. and others (Writ-A No. 42967 of 2015 decided on 3.8.2015) the petitioner, who was also an employee of U.P.State Warehousing Corporation Challenged the order dated 19.8.2010 whereby damages were sought to be recovered from the petitioner, who had attained the age of superannuation and retirement from service much earlier on 31.12.2006. The learned Single Judge of this Court relying upon the aforesaid judgment of the Apex Court in Dev Prakash Tiwari's case [supra] held that no departmental proceedings can be initiated or continued against the petitioner after his retirement and quashed the order of punishment.

8. In view of the above-said settled legal position, the impugned order of punishment/recovery passed against the petitioner after retirement from the Corporation suffers from the legal infirmities and cannot be sustained.

9. For reasons aforesaid, the writ petition is allowed. The order of punishment dated 19.10.2011 passed by the Managing Director, U.P.State Warehousing Corporation, Lucknow, as also the appellate order dated 19.10.2011 are hereby quashed.

10. The petitioner will be entitled to payment of entire leave encashment amount and such payment shall be made by respondents to the petitioner within two months from the date of receipt of a certified copy of this order.