

(2003) 07 AHC CK 0256
In the Allahabad High Court
Case No : C.M.W.P. No. 35865 of 2000

Puttu Lal Sashtri	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Basic Education Staff Rules, 1973 — Rule 5

Citation : (2003) 5 AWC 4543

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Anil Bhushan, for the Appellant; P.D. Tripathi, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. By means of this writ petition, the order dated 22.4.2000 passed by the District Basic Education Officer, Shahjahanpur dismissing the Petitioner from service w.e.f. 30.6.1987 has been challenged.

3. The brief facts of the case are that the Petitioner was initially appointed as Assistant Teacher in Primary Pathshala, Nahlora Buzurg, district Shahjahanpur. He was promoted as Head Master in 1951. Thereafter he was appointed as Assistant Teacher as Junior High School, Dhaka Ghanshyam Khand, Banda district Shahjahanpur in 1955. He was placed under suspension on 15.3.1978 by the District Basic Education Officer and a charge-sheet was served on him dated 4.4.1979 levelling following charges.

4. The Petitioner submitted his reply on 15.4.1979 to the charge-sheet and the enquiry did not proceed thereafter. He retired from service as suspended employee on 30.6.1987 after attaining the age of superannuation. The retiral benefits of the Petitioner were not paid to him after his superannuation. By letter

dated 24.5.1997, i.e., after period of more than 10 years the Petitioner demanded his retiral benefits when the District Basic Education Officer did not pay. He thereafter filed Writ Petition No. 3951 of 2000 praying for a direction to the Respondents to make payment of his retiral benefits.

5. In the meantime, the District Basic Education Officer vide letter dated 11.4.2000 directed the Petitioner to appear before him regarding finalization of his retiral benefits. It is alleged that the copy of the order was not served upon the Petitioner and vide order dated 22.4.2000 the Petitioner was dismissed from service w.e.f. 30.6.1987 the date of superannuation of the Petitioner from service.

6. The contention of the Petitioner is that after attaining the age of superannuation on 30.6.1987 the order of suspension would automatically lapse after retirement. It is submitted that the disciplinary enquiry cannot continue after the retirement of an employee in view of the judgment in Bhagirathi Jena v. Board of Directors, O.S.F.C. and Ors wherein the Apex Court has held that disciplinary proceedings could not be continued even for the purpose of making reduction of the retiral benefits inasmuch as there was no statutory regulations made by the Corporation for such reduction from the retiral benefits. From the facts of the case as appear from the judgment the Apex Court was of the view that there was no specific provision for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of departmental enquiry after superannuation and, as such, the corporation had no legal authority to make any reduction to the retiral benefits of the Appellant. It has further been held that there was also no provision for conducting a disciplinary enquiry after retirement of the Appellant and nor any provision that a deduction could be made from retiral benefits. The Apex Court held that:

Once the Appellant had retired from service on 30.6.1995, there was no authority vested in the corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the Appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the Appellant was entitled to full retiral benefits on retirement.

7. In Writ Petition No. 3829 of 1996, Dr. R. B. Agnihotri v. State of U.P. and Ors. it was also held that the disciplinary enquiry cannot continue after retirement. The relevant Paragraph Nos. 6 and 7 of the judgment are as under:

6. On the materials on the record, this much is crystal clear that the Vice-Chancellor had passed his order according approval to the resolution terminating the services of the Petitioner on 27th August, 1999 that is to say much after the statutory superannuation of the Petitioner. The ratio laid down by the Supreme Court is binding on us.

7. Accordingly, we hold that in the absence of any express provision the departmental enquiry could not have continued after the superannuation of the Petitioner on 30th June, 1998 and thus it lapsed.

8. Counter-affidavit has been filed by the State. It is admitted to the standing counsel that the Petitioner was suspended and the enquiry is pending in the charges as stated above. The standing counsel submits that the enquiry was conducted against the Petitioner and the U.P. Public Services Tribunal has found the Petitioner guilty in the judgment given in Case No. 387 (1)/1989, Sri Ramendra Shastri v. Deputy District Basic Education Officer and Ors. district Shahjahanpur. He submits that because the charges were found to be proved by the U.P. Public Services Tribunal and even in the enquiry proceedings also as such he was rightly dismissed from service and he is not entitled to any salary for the period of suspension.

9. It is lastly submitted that the Petitioner had a remedy of appeal under Rule 5 of the U.P. Basic Education Employees Rules, 1973 but he has not taken recourse to the remedy available to him and this writ petition has been filed by concealing the material facts. From the order dated 22.4.2000, it appears that the authority has passed this order on the basis that charges against the Petitioner were found to be proved by the U.P. Public Service Tribunal vide order dated 4.5.1996 in Claim Petition No. 387 (1) of 1989, Raihend Shastri v. Deputy District Basic Education Officer, Shahjahanpur. The authority by its order dated 22.4.2000 has held that in such circumstances the Petitioner could not have been reinstated in service and, as such, he was dismissed from service w.e.f. 30.6.1987. However, the authority accorded approval for payment of retiral benefits to the Petitioner. Thus, the controversy is confined only to the payment of salary to the suspension period as to whether the Petitioner should be treated on duty or not during the aforesaid period. From the records it appears that the Petitioner remained on suspension till he attained the age of superannuation.

10. For the reasons stated above, the authority has rightly held that the Petitioner is not entitled to any relief as the charges levelled against the Petitioner were found to be proved and he has not worked. In so far as the order dated 30.6.1987 is concerned, the authority has accorded approval for grant of retiral benefits and as such this order had virtually no effect whether the Petitioner had been dismissed from service or not.

11. The case law cited by the learned Counsel for the Petitioner is clearly distinguishable on facts, as the charges have been found to be proved against the Petitioner in the enquiry as well as by the U.P. Public Services Tribunal.

12. There is no illegality or infirmity in the order impugned in the writ petition. It is not a fit case for interference under Article 226 of the Constitution of India and is dismissed. No order as to cost.