

(1978) 11 KL CK 0013

In the High Court Of Kerala

Case No : Writ Appeal No's. 281 and 294 of 1974

R.P. Nair and Another

APPELLANT

Vs

Kerala State Electricity Board and Others

RESPONDENT

Date of Decision : 14-11-1978

Acts Referred:

Constitution of India, 1950 — Article 309
Kerala Service Rules, 1958 — Rule 3

Citation : AIR 1979 Ker 135 : (1979) 38 FLR 236

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;V. Balakrishna Eradi, J;George Vadakkal, J

Bench : Full Bench

Advocate : George Varghese Kannanthanam, Thomas V. Jacop, Abraham Vakkanal, S. Narayanan Poti and S. Sankarasubban, for the Appellant; N. Raghava Kurup and A.G., for the Respondent

Final Decision : Allowed

Judgement

Gopalan Nambiyar, C.J.—These writ appeals were referred to a Full Bench to consider the question whether disciplinary proceedings started while an employee was in service can be continued after his retirement or termination of service. As the question has important and far-reaching effects on the service conditions of employees and disciplinary proceedings to be pursued against them, it was felt desirable and necessary that the matter should be considered and pronounced upon by a Full Bench. We shall first examine the facts in W. A. No. 294 of 1974 in which the main arguments were advanced. W. A. No. 294 of 1974:

The appellant (writ petitioner) was a Superintending Engineer of the Kerala State Electricity Board, who entered on 450 days' leave and retired voluntarily at the end of it on 15-1-1969. Normally he should have retired on 30-7-1970. By Ext. P4 memo dated 16-12-1969 issued by the Board he was called upon to answer certain charges of misconduct. Ext. P5 dated 13-1-1970 is a copy of his reply in

answer. By Ext. P6 order dated 1-9-1971 the Government referred the charges to the Tribunal for disciplinary proceedings under Rule 3 of Part III, Kerala Service Rules, (K. S. R. for short) for enquiry and report. Ext. P7 is a copy of the summons issued by the Tribunal to the appellant. His writ petition was to quash Exts. P6 and P7, which was dismissed by the learned Judge. The learned Judge was of the view that am "employee" for purposes of Regulation 9 of the Kerala State Electricity Board (Employees" Disciplinary Proceedings Tribunal) Regulations 1969 (referred to as the Regulations, for short) included an "ex-employee" and that Rule 3 Part III of the K. S. R. only supported this conclusion.

2. On behalf of the petitioner two contentions were raised : first that the petitioner having already retired on 30-7-1970 the proceedings commenced against him while in service could not be continued either under the Regulations of 1969 or under the Disciplinary Proceedings Tribunal Rules, (the Tribunal Rules, for short). Next, that in any event the Board, under the Regulations is the competent authority to decide the question of referring the case to the Disciplinary Tribunal and of requesting the Government to formally make the reference; and that no such decision by the Board and no request to the Government to formally make the reference had been formed or made in compliance with the Regulations.

3. Rule 2 of the Regulations states these rules apply to all regular employees in the service of the Board.

4. Rule 6(b) and (c) of the Regulations read:

"6(b) The Board may, after examining the records and after making such consultation as may be deemed necessary decide whether the case shall be proceeded with and if so whether it shall be tried by the Tribunal.

(c) If the Board decide that the case shall be tried by a Tribunal the Board through its secretary shall forward all the records to Government with a specific request to refer the case to the Tribunal for trial and Government in turn shall refer the case to the Tribunal and call upon the Board to render such assistance as is required unless for specific reasons to be advised to the Board, the Government find that it is a case not fit for reference to the Tribunal."

From the above clauses, it would be seen that the decision whether the case shall be proceeded with by the Tribunal has to be taken by the Board; and after the Board has taken the decision on the point, it is to make a specific request for reference of the case to the Tribunal by the Government. Ext. P6 order of the Government refers as Item No. 6 recited at the top of it, to a letter dated 33-3--1970 from the Board to the Government. Referring to the said letter the Government recited in paragraph 1 of Ext. P6 that the Board had recommended to the Government that the case against the appellants in the two writ appeals before us, and others, be referred to the Tribunal for Disciplinary Proceedings as contemplated in 1969 Regulations.

If Ext. P6 embodies a correct statement of the position, there would be due compliance with the provisions of the Regulations. We have examined the letter dated 23-3-1970, which was made available to us from the files by the learned Advocate-General. The said letter completely belies the statement in Ext. P6. That letter of the Board points out that in answer to an earlier letter dated 1-1-1970 of the Board, the Government had pointed out that certain charges against the appellants in the two Writ Appeals and others were pending criminal investigation and it would be Inadvisable to have parallel enquiry by way of disciplinary proceedings before the Tribunal. The Board was therefore asked to consider whether the reference to the Tribunal was really necessary in the context. This was strictly within the power of the Government, as would be seen from the concluding words in Clause (c) of Rule 6 of the Regulations.

In answer thereto, the Board stated (by their letter dated 23-3-1970) that they would leave the matter to the Government to be dealt with. The Board also stated its view that it was not desirable to allow parallel proceedings to go on before the Disciplinary Tribunal while criminal investigations were proceeding. This surely, cannot be regarded as due compliance with the provisions of Regulation 6(c). There is neither a decision by the Board to refer the case to the Tribunal, nor any specific request by the Board to the Government to formally refer the matter. The Board did not take any decision to refer to the Tribunal it expressed itself against a reference while investigations on the criminal side were pending, and left it to the Government to take such action as it might deem fit to take. This does not satisfy the requirements of Regulation 6(c).

5. We shall examine the position from the point of view of Rule 3, Part III, Chapter I of the K.S.R. That rule reads:

"3. The Government reserve to themselves 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 in a 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 -

(a) Such departmental proceeding, if instituted while the employee was in service, whether before his retirement or during his re-employment, shall after the final retirement of the employee, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced (in) the same manner as if the employee had continued in service;

(b) such departmental proceeding, if not instituted while the employee was in service, whether before his retirement or during his re-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 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 employee during his service;

(c) no such judicial proceeding, if not instituted while the employee was in service whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution; and

The Rule does not authorise the continuance of disciplinary proceedings as such, against a Government Servant after his retirement. Both on principle and on authority, such a position cannot be easily countenanced. It allows only a limited type of enquiry to be proceeded with, namely an enquiry in regard to withholding or withdrawing pension, or of ordering recovery from pension by reason of any misconduct or negligence during the period in service of the employee. Under Clause (a) of the proviso to the Rule, the departmental proceeding, if instituted during the service of the employee is to be deemed to be a proceeding under the Rule and may be continued and completed even after his retirement. To this limited extent alone is provision made under the rule for continuance of a disciplinary enquiry beyond retirement. That too is by transmuting it by fiction to be an enquiry under the Rule. Beyond this, we cannot understand the rule as in any way permitting the authorities either to launch or to continue disciplinary proceedings after the retirement of the employee. That would be destructive of the concept of relationship of employer and employee which has come to an end by reason of the retirement of the employee, beyond which, disciplinary control cannot extend. In *S. Pratap Singh Vs. The State of Punjab*, it was pointed out by the Supreme Court (at p. 81) :

"We should, however, add that we should not be taken to have accepted the interpretation which Dayal J. has placed on each one of the several rules which he has considered. Besides, we should not be taken to have accepted the submission of the learned Attorney-General who appeared for the respondent-State, that the provision in Article 310(1) of the Constitution that "members of a Civil Service of a State hold office during the pleasure of the Governor", conferred a power on the State Government to compel an officer to continue in service of the State against his will apart from service rules which might govern the matter even after the age of superannuation was reached, or where he was employed for a defined term, even after the term of his appointment was over. We consider that to construe the expression "the pleasure of the Governor" in that manner would be patently unwarranted besides being contrary to what this Court said in *State of Bihar v. Abdul Majid*, 1954 SCR 786 at p. 799 : (AIR 1954 SC 245 at pp. 249-250)."

The same principle was restated in *The State of West Bengal Vs. Nripendra Nath Bagchi*, . We find the same principle being also repeated in *B. J. Shelat v. State of Gujarat* AIR 1978 SC 1109

6. In *State of Punjab Vs. Khemi Ram*, and also in *V.P. Gidroniya Vs. The State of Madhya Pradesh and Another*, the Supreme Court stated the principle that if disciplinary action is to be taken against an employee it must be taken before he retires from the service, and that the proper course to follow is to suspend the employee before his retirement and refuse to permit him to retire so as to complete the disciplinary proceedings. We may quote the relevant observations from the earlier of these decisions (at p. 217):

"There can be no doubt that if disciplinary action is sought to be taken against a Government servant it must be done before he retires as provided by the said rule. If a disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the Government is to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such enquiry is completed and a final order is passed therein."

In *Somasekhara Menon v. State of Kerala* 1978 KLT 696: 1978 LabIC 1751 a Division Bench of this Court, to which one of us (Eradi, J.) was a party, had occasion to consider the position. It was remarked that a formal disciplinary enquiry under Rule 15 of the Civil Services (Classification, Control and Appeal) Rules for the imposition of a major penalty against a person who retired from service was not contemplated by Chapter I, Rule 3, Part III of the Kerala Service Rules.

7. These are the decisions which have discussed the principle of initiating or continuing disciplinary proceedings against a person after his retirement from service. Having regard to the principle expounded in them, and particularly to the fact that action taken has not been in conformity with Regulation 6 of the Board's Regulations, we are of opinion that Exts. P6 and P7 cannot be sustained.

8. The learned Advocate-General argued with reference to the provisions of Rule 3, Part III, Chapter I of the K. S. R. that for the limited purpose of the enquiry contemplated by the said Rule even an "ex-employee" must be deemed to be an "employee". We are unable to go so far. We cannot agree with the learned single Judge who was pre-pared to make this extension on the ground that there was nothing in the Rule against excluding an ex-employee. That would not be a correct approach in defining the scope and content of the Rule. Even assuming that Rule 3 of Part III, Chapter I of the K. S. R. can be stretched to this extent, we certainly cannot make any such extension in respect of the provisions of the Regulations in view of the clear and categoric provisions of Regulation 2.

9. We allow this writ appeal and set aside the judgment of the learned Judge and direct that O. P. No. 4483 of 1971 will stand allowed and Exts. P6 and P7 will stand quashed. There will be no order as to costs. W. A. No. 281 of 1974:

10. It will be enough to notice the facts in the writ appeal, as this case seems to stand on a stronger footing than the previous writ appeal, which we have just disposed of, and is governed by the same principle as was involved in the previous appeal. The appellant before us was the Chief Engineer of the Kerala State Electricity Board, who retired on 17-10-1968 on superannuation. Some time before his retirement viz. on 1-5-1967, he had been appointed Chairman of the Electricity Board for a term of two years, which would expire on 30-4-1969. After the expiry of the said term, Ext. P1 memo of charges dated 8-1-1970 was served on him for explanation in respect of certain misconduct alleged to have been committed during his term as Chief Engineer under the Board. He submitted his explanation and by Ext. P2 order dated 1-9-1971 (same as Ext. P6 in the other writ appeal) the Government referred the case to the Tribunal. As we indicated while dealing with the other Writ Appeal, the Government's order of reference is a common order covering the appellants in the two Writ Appeals and some others.

11. For reasons which we have indicated while dealing with Writ Appeal No. 394 of 1974 we are of opinion the order cannot stand. The case stands on a stronger footing than the previous writ appeal, as the very initiation of proceedings against the appellant was subsequent to his retirement, namely, only on 8-1-1970. The initiation itself was completely without jurisdiction as a disciplinary proceeding. A reference to the Tribunal was wholly incompetent by reason of the infirmities pointed out while dealing with the earlier Writ Appeal.

12. In addition there is the further strong ground that under Regulation 2, the Regulations themselves apply only to those under the service of the Board. They cannot have application to those like the appellant who had retired and were no longer in service of the Board. The result is that the proceedings started against the appellant in this writ appeal are wholly void. We allow this Writ Appeal and set aside the judgment of the learned Judge. O. P. No. 4513 of 1971 will stand allowed and Ext. P2 order of the Government will stand quashed. There will be no order as to costs.