
(1998) 06 AP CK 0040

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20349 of 1997

S. Krishnamurthy

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision : 26-06-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1998) 4 ALD 332 : (1998) 4 ALT 367 : (1998) 2 APLJ 428

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Mr. A. Satya Prasad, for the Appellant; Government Pleader, for Co-operation and Mr. B. Adinarayana Rao, for the Respondent

Judgement

1. An important point needs to be decided in this writ petition. The pleadings are complete and the Counsel for the parties were heard at length. Certain facts are admitted and a controversy is raised between the admitted facts of the case.

2. The petitioner was working with the respondents as in charge Manager, Krishna District Co-operative Central Bank, Nagayalanka branch and he retired after attaining the age of superannuation on 31st May, 1997. After his retirement on 21st June, 1997 a Memo was sent to him by which certain charges were levelled against him and a charge-sheet was framed and he was asked to explain his conduct. He sent his reply to the show-cause notice but no further action has been taken in the matter. When the petitioner was waiting to get his pensionary benefits like Gratuity, Provident Fund, Leave salary, Group Insurance etc., he came to know that an order has been passed by the respondents on 17-7-1997 by which the Supervisor of the concerned Society Sri S. Koteswara Rao was placed under suspension. This order has been passed by District Co-operative Officer, Krishna. The main order does not mention petitioner, but while endorsing a copy to the General Manager, Krishna District Co-operative Central Bank Limited, Machilipatnam a request has been made to him in the following terms :

"to stop all pending pensionary benefits in respect of the then Branch Manager

Sri K. Krishna Murthy (Retd.) till the disciplinary process is finalised."

On the basis of this endorsement the pensionary benefits have been stopped to the petitioner and while filing this writ petition the petitioner has challenged the endorsement hereinabove mentioned and also the initiation of enquiry against him under the Co-operative Societies Act.

3. The learned Counsel for the respondents has not been able to justify as to under what law the endorsement was made in the letter dated 17-7-1997. There is no order passed by any competent authority by which the pensionary benefits could have been stopped from being paid to the petitioner. While exercising his powers the District Co-operative Officer, Krishna placed under suspension a person who was the Supervisor of the Society at the relevant point of time. While placing that officer under suspension he gave certain reasons for passing such an order, but while making the endorsement to the General Manager he requested him to stop all pensionary benefits to the petitioner. An officer who is retired from service does not expect to be treated in the way he has been treated now and the General Manager was also not within his powers to stop the payment of pensionary benefits in the absence of a valid order by anybody. In any case the District Co-operative Officer could not direct the General Manager to stop the pensionary benefits to the petitioner. Therefore, he did not pass any order but made a request which was manifestly illegal and arbitrary. Therefore, this Court has no difficulty in quashing the endorsement in the letter dated 17-7-1997 and direct the concerned General Manager to pay the pensionary benefits to the petitioner in accordance with law.

4. Second point which has been raised in this petition is important in its nature. A question is raised, whether the respondents could initiate the enquiry against the petitioner, after he had retired from service, for any misconduct. On more than one occasion this question either directly or indirectly has come up before the Apex Court also, therefore a reference to the judgments of the Supreme Court in this matter is necessary.

5. In 1965 a Constitution Bench of the Supreme Court in *State of Assam and Others Vs. Padma Ram Borah*, has laid down a principle that, the contract of service comes to an end when a servant reaches the age of superannuation. The facts leading to the matter which came up before the Apex Court were as under:

A servant who was working in the Excise Commissioner, Shillong's office was born on January 1, 1906 and was due to superannuate on attaining the age of 55 years from January 1, 1961. He applied for leave preparatory to retirement for four months from September 1, 1960. He did not however actually go on leave till December 22, 1960 and on that date while he was in service he was placed under suspension. The suspension order read as under:

"Shri P.R. Borah, Superintendent of the office of the Commissioner of Excise, Assam is placed under suspension with effect from the date of this order till departmental proceedings to be drawn up against him, are finalised"

A copy of the said order was sent to him which stated that, as he was due to retire with effect from January 1, 1961 his services would be extended beyond that date till completion of the departmental proceedings and necessary orders in that respect would be issued. To continue the enquiry against the officer the department granted him extension in service. The extension order came eventually and his service was extended for a period of three months with effect from 1st January, 1961 or till the disposal of the departmental enquiry whichever was earlier. So, the officer had to continue in service upto 31st March, 1961 or till the enquiry was completed. Enquiry was not completed till 31st March, 1961, no former orders were passed, but on 9th May, 1961 a third notification came to be passed which read as under:

"The term of the services of Shri P.R. Borah, Superintendent (under suspension) of the office of the Commissioner of Excise, Assam, Shillong is extended for a further period of three months with effect from the 1st April, 1961 or till the disposal of the departmental proceedings, whichever is earlier."

This order came to be challenged before the Supreme Court and the Supreme Court while relying on the judgment of the Privy Council held that the first order of extension was valid as it had been passed while the petitioner was in service but second order of extension had been passed when the contract between the parties has ceased because by first extension the petitioner in that case had to retire by 31st March, 1961 and the second extension came after that i.e., on 9th May, 1961 when the concerned officer was not at all in the service of the respondent. The Supreme Court laid down:

"(7) Let us proceed on the footing, as urged by learned Counsel for the appellant, that the order dated December 22, 1960 itself amounts to an order retaining the respondent in service till departmental proceedings to be drawn up against him are finalised. We shall also assume that the finalisation of the departmental proceedings mentioned in the order is a public ground on which the respondent could be retained in service. As the order was passed by the State Government itself, no question of taking its sanction arises and we think that the High Court was wrong in holding that the absence of sanction from the State Government made the order bad. Therefore, the effect of the order dated December 22, 1960 was two-fold; firstly, it placed the respondent under suspension and secondly, it retained the respondent in service till departmental proceedings against him were finalised. We treat the order as an order under Fundamental Rule 56 which order having been made before January 1, 1961, the date of respondent's retirement, cannot be bad on the ground of retrospectivity. Then, we come to the order dated January 6, 1961. That order obviously modified the earlier order of December 22, 1960 inasmuch as it fixed a period of three months from January 1, 1961 or till the disposal of the departmental proceedings, whichever is earlier, for retaining the respondent in service. The period of three months fixed by this order expired on March 31, 1961. Thus the effect of the order of January 6, 1961 was that the service of the respondent

would come to an end on March 31, 1961 unless the departmental proceedings were disposed of at a date earlier than March 31, 1961. It is admitted that the departmental proceedings were not concluded before March 31, 1961. The clear effect of the order of January 6, 1961 therefore was that the service of the respondent came to an end on March 31, 1961. This was so not because retirement was automatic but because the State Government had itself fixed the date up to which the service of the respondent would be retained. The State Government made no further order before March 31, 1961, but about a month or so after passed an order on May 9, 1961 extending the service of the respondent for a further period of three months with effect from April 1, 1961. We do not think that the State Government had any jurisdiction to pass such an order on May 9, 1961. According to the earlier order of the State Government itself the service of the respondent had come to an end on March 31, 1961. The State Government could not by unilateral action create a fresh contract of service to take effect from April 1, 1961. If the State Government wished to continue the service of the respondent for a further period, the State Government should have issued a notification before March 31, 1961. In AIR 1937 27 (Privy Council) , their Lordships of the Privy Council were dealing with a case in which a Sub-Inspector of Police was charged with certain irregular and improper conduct in the execution of his duties. After the Sub-Inspector had retired on invalid pension and his pension had been paid for three months, the matter was reopened and an order was made removing the Sub-Inspector from service as from the date on which he was invalidated. Lord Roche speaking for the Board said:

"It seems to require no demonstration that an order purporting to remove the appellant from the service at a time when, as their Lordships hold, he had for some months duly and properly ceased to be in the service, was a mere nullity and cannot be sustained."

The position is the same here. The respondent had ceased to be in service on March 31, 1961 by the very order of the State Government. An order of retention in service passed more than a month thereafter, was a mere nullity and cannot be sustained."

6. On the other hand the petitioner has also relied on another judgment of Supreme Court in B.J. Shelat v. State of Gujarat AIR 1978 SC 1109, wherein the Supreme Court has categorically laid down that the appointing authority has no jurisdiction to take disciplinary proceedings against a Government servant who had effectively retired. This observation has been made after considering the relevant rules which were applicable to the case which was before the Apex Court. Therefore, one can safely say that the principle of law laid down by the Supreme Court is that, after a Government servant effectively retires no disciplinary proceedings against him can be initiated unless and until rules of service permit such a course.

7. In view of the judgments of the Supreme Court, I am convinced that there is

no scope of initiating the disciplinary proceedings against a person who has effectively retired on attaining the age of superannuation. He cannot be subject to the control of the department, of course except if the rules of service provide. I have gone through the rules which have been produced. My opinion gets further cemented by going through the rules because under the rules at best the petitioner can be charged of misconduct as the allegations attributable to him constitute misconduct in terms of the rules. If the department decides to proceed against him departmentally, what are the punishments that can be given to him are given under the rules. The rules dealing with disciplinary proceedings are in Chapter XIII and lays down:

"(v) An employee found guilty of gross misconduct may-

(a) be dismissed without notice; or

(b) be warned or censured, or have an adverse remark entered against him; or

(c) be fined; or

(d) have his increment stopped; or

(e) have his misconduct condoned and merely discharged."

I do not know even in the departmental proceedings against the petitioner what kind of punishment could be given to him under these rules as he has ceased to be servant of the respondent.

8. My attention has been drawn to the judgment of Supreme Court reported in State of Maharashtra Vs. M.H. Mazumdar, . This is a judgment delivered by three Judges of the Supreme Court. In the first instance, the judgment of the Constitutional Bench of 1965, State of Assam and Others Vs. Padma Ram Borah, , was not before the Supreme Court when the judgment was delivered. Secondly the case before the Supreme Court in the above judgment was altogether different. The initiation of enquiry though started after the concerned person had retired, had not been challenged before the Supreme Court. Only the punishment given to the person concerned had been challenged. His pension had been reduced and the Supreme Court found that there were rules viz., Rule 33 of Bombay Civil Services (Conduct, Discipline and Appeal) Rules, under which the employer in that case was empowered to reduce the pension even after retirement. Since a rule was in existence which enabled the employer to reduce pension of a retired employee, therefore an enquiry could be initiated against the delinquent official even after his retirement. But, no such rule has been shown to me that would govern the petitioner in the present case.

9. For all these reasons, I allow this writ petition, quash the show-cause notice issued to the petitioner and also the endorsement on letter dated 17-7-1997 by which his pensionary benefits have been stopped. Respondents are directed to release the pensionary benefits to the petitioner forthwith. It may not be out of place to note that, since the charges levelled against the petitioner are of

misappropriation of funds therefore I have no doubt in my mind that if the department wants they can deal with him under the normal law. If the guilt of the petitioner is proved he can even be punished under the ordinary law applicable to every citizen in the State.

10. With these observations this writ petition is allowed. Costs Rs.1,000/-.