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(2006) 11 AHC CK 0207

In the Allahabad High Court

Shri Rajesh Kumar Saxena Retd. Chief Accounts Officer (T.A) APPELLANT

Vs

Bharat Sanchar Nigam Ltd., B.S.N.L. Board, The Chief General Manager, Bharat Sanchar Nigam Ltd. and The General Manager Telecom, Bharat Sanchar Nigam Ltd. RESPONDENT

Date of Decision : 23-11-2006

Acts Referred:

Citation : (2007) 1 ADJ 574 : (2007) 112 FLR 784

Hon'ble Judges : V.C. Misra, J;Amitava Lala, J

Bench : Division Bench

Judgement

This Judgment has been overruled by : B.S.N.L. and Others Vs. Rajesh Kumar Saxena, AIR 2008 SC 2952 : (2008) 117 FLR 382 : (2008) 4 JT 275 : (2008) 4 SCALE 16 : (2008) 11 SCC 213 : (2008) 2 SCC(L&S) 1091 : (2008) AIRSCW 4964

Amitava Lala, J.—The petitioner was suspended on 26th June, 2004. He was relieved from duty on 5th July, 2004. The petitioner was actually retired from service on 31st July, 2004. The allegations relate to the year 2003 on which the order of suspension was passed against the petitioner amongst 30 other officers taking a general stand.

2. Full pensionery benefits alongwith gratuity and leave encashment etc. have not been paid as yet. No charges were framed against the petitioner. No charge sheet has been submitted as yet. Against this background we want to consider the ratio of the judgments of the Hon''ble the apex Court and High Courts cited before us although it is well known that pension is the property of the pensioner.

3. In D.V. Kapoor Vs. Union of India and others, the Hon''ble the apex Court has held that a finding should be recorded either in departmental enquiry or judicial proceedings that the petitioner committed grave misconduct or negligence in the discharge of his duty while in office., subject of the charge. In the absence of such a finding the authority concerned cannot impose penalty of withholding

pension as a measure of punishment either in whole or in part permanently or for a specified period or to order recovery of the pecuniary loss, in whole or in part from the pension of the concerned employee.

4. A Division Bench of Delhi High Court in Than Singh v. Municipal Corporation of Delhi 1998 (1) ATJ66 has held that when till the date of petitioner''s retirement disciplinary proceeding had not commenced, the respondent-authority thereafter ought not to have taken any disciplinary action against the petitioner and that the charge sheet was served even after more than one year of the petitioner''s retirement, the respondent authority cannot take shelter behind the order stated to have been passed after two years of the petitioner''s retirement on the assumption that the petitioner still continued to be in respondent''s service, such disciplinary proceeding is non-est. In the said judgment the respondents were directed to work out and pay the amount of retiral benefits, including pension, provident fund, leave salary, group insurance, C.D.S. amount to the petitioner within a period of two months from the date of receipt of the writ order failing which the respondents were made liable to pay appropriate interest at the rate of 12% per annum.

5. In the case of Mahabir Prasad Sharma v. State of U.P. and Ors. 2001 UPLBEC 2060 a Division Bench of this Court held that if disciplinary inquiry commences before the retirement then it must be completed within six months after the retirement. Further a Division Bench of our High Court in the case of Bangali Babu Misra v. State of U.P. and Ors. (2004 (2) Administrative total Judgments 63) has held that withholding of post retiral benefits may be gratuity, pension or other dues, after the retirement of a Government servant can be done only in accordance with any Rule and in absence of any such Rule or any such law, the post retiral dues cannot be withheld neither the pension can be stopped nor curtailed nor reduced. Therefore, the Division Bench allowed the writ petition by issuing a writ of mandamus upon the respondents to release the entire post retiral dues of the petitioner including gratuity, pension, commutation, leave encashment, Group Insurance etc.

6. Learned Counsel appearing for the respondents contended that the decisions, which have been mentioned hereinabove, are not applicable to the peculiar facts and circumstances available herein. To take certain steps at least for release of gratuity, by showing the Annexure CA-5 to the counter affidavit it has been stated that departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date. Both the parts are disjunctive from each other by incorporating the word ''or''.

7. According to us suspension is not punishment so that the pensionery benefit of the person concerned can be withheld indefinitely. It has to be followed by statement of charges/charge sheet, reply in connection thereto and decision of the disciplinary authority following enquiry. Suspension automatically evaporates

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by the cessation of service. Normally such order is passed to maintain independence of enquiry by keeping the delinquent out of zone. But when a suspended employee retires there is no necessity to keep him aloof from the office. But dire necessity in such case is completion of enquiry. As per Chapter 2 Rule 12 of the relevant Rules i.e. Central Civil Services (Classification Control And Appeal) Rules (hereinafter referred to as ''the CCS (CCA) Rules''), the investigation and the disciplinary proceedings should not ordinarily exceed six months. In the instant case certain allegations are made in the year 2003 when the order of suspension was issued on 26th June, 2004. Till this date neither any statement of charges has been forwarded nor any charge sheet has been issued. Mere order of suspension will not automatically create a situation like forwarding the statement of charges or issuance of charge sheet. No extra ordinary situation arose hereunder not to complete the disciplinary proceeding, if any within the aforesaid prescribed period.

8. Therefore, in the backdrop of these circumstances, the pension of the petitioner cannot be withheld in any manner whatsoever. Thus taking the totality of the matter, we are of the view that not releasing the pensionery benefits to the petitioner in whatever manner, i.e. pension, provident fund, leave salary, group insurance, C.D.S. amount etc. is arbitrary in nature.

9. In such circumstances, the respondents are directed to pay the amount of retiral benefits, including pension, provident fund, leave salary, group insurance, C.D.S. amount etc., to the petitioner within a period of two months from the date of communication of this order. , However, whatever the provisional pension has been fixed and being paid that will be continued to be paid and shall be replaced by monthly regular pension which shall be fixed within a period of two months from the date of communication of this order. It is made clear that in case of failure on the part of the respondents with regard to replacement of regular pension, or withholding provisional pension or clearing post retiral benefits within the prescribed period, as above, the sum will be paid together with interest @ 12% per annum at simple rate. This order is passed with the contemplation that no disciplinary proceeding could be said to be pending in the circumstances or if at all pending should be completed within the prescribed period.

10. With the above observations/directions the writ petition stands disposed of. No order is passed as to costs.

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