

(2012) 09 CAL CK 0002

In the Calcutta High Court

Case No : W.P.S.T. No. 67 2010 with C.A.N. 1985 of 2012

Sri Birendra Kumar Mukherjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Citation : (2013) 2 CHN 14

Hon'ble Judges : Nishita Mhatre, J;Anindita Roy Saraswati, J

Bench : Division Bench

Advocate : Bikash Ranjan Neogi, Mr. A. Guha and Ms. Soma Chakra borty, for the Appellant; Tapan Kr. Mukherjee and Mr. Nilotpal Chatterjee, for the Respondent

Judgement

Nishita Mhatre, J.—The petitioner has approached this Court by preferring the present petition against the order dated 21st August, 2009 in O.A. No. 1890 of 2006. The petitioner's application has been dismissed by the Tribunal. The facts in the present case fall within a narrow compass. The petitioner was employed as an Inspector of Police with the West Bengal Police Service. On the recommendations of the West Bengal Vigilance Commission an enquiry was sought to be instituted against the petitioner while he was in service. A charge sheet was issued on 29th September 2003 to the petitioner alleging that he had acquired assets, which were disproportionate to his known source of income in the year 1992. The second charge was that while he was functioning as a Sub-Inspector he had acquired assets, which were disproportionate to his known source of income and, therefore, showed the lack of integrity and improper and unbecoming conduct. The third charge was that he had not submitted his declaration of assets for the years 1975-1976-1978. The fourth charge imputed against the petitioner was that he had submitted an incomplete declaration of assets for the years 1979-80. The fifth charge was that the petitioner had acquired various plots of land while he was a Sub-Inspector of Police during the period from 1972-84 in the name of his wife without the permission of his appointing authority.

2. Though the aforesaid charge sheet was issued to the petitioner while he was in service in the year 2003 no further action was taken by the respondents to proceed with the enquiry. In fact the petitioner had challenged the issuance of the charge sheet in O.A. No. 1460 of 2003. The Tribunal had directed that the enquiry should be held and the final order be passed.

3. The petitioner retired from service on 31st August 2004 as an Inspector of Police. Two years later, a communication was sent to him on 24th May, 2006 that the Inspector General of Police, West Bengal, proposed to hold an enquiry against him under Rule 10 read with Rule 2 sub-clause 2 of the West Bengal Services (Classification, Control and Appeal) Rules 1971. A charge sheet was served on the petitioner on 5th June, 2006 in which the same charges which were imputed against him in the year 2003 was alleged. Neither the communication nor the charge sheet mentioned any reason as to why it was necessary to issue the charge sheet after the petitioner had retired from service.

4. The petitioner, therefore, challenged the issuance of the charge sheet by preferring O.A. No. 1890 of 2006.

5. From the impugned order it appears that both Original Application No. 1463 of 2003 and Original Application No. 1890 of 2006 filed by the petitioner were decided together by the Tribunal. The Tribunal directed the respondents to complete the enquiry instituted against the petitioner within a period of six months from the date of its order.

6. Being aggrieved by that order the petitioner preferred the present writ petition. By an order dated 8th March, 2010 while directing parties to file an affidavit the Division Bench directed the authorities to maintain status quo with regard to the enquiry proceedings until further orders.

7. An application being CAN No. 1985 of 2012 has been preferred by the respondents on 17th February, 2012 revoking the order of status quo issued on 8th March, 2010 by this Court. With the consent of the parties, we have heard the writ petition itself finally.

8. Principally, three points were urged by Mr. Neogi, the Learned Counsel for the petitioner. He submitted that the respondents had no power to issue a charge sheet to the petitioner once he had retired from service. He further submitted that Rule 10 of the West Bengal Services (Classification, Control and Appeal) Rules 1971 could not be invoked by the respondents after the retirement of the petitioner as the rule had no application in the present case. Mr. Neogi's next submission was that even assuming the West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971 (hereinafter referred to as the DCRB Rules) were sought to be applied as mentioned in the affidavit in opposition, the enquiry could not be constituted against the petitioner after he had retired.

9. On the other hand Mr. Mukherjee, appearing for the State has submitted by referring to various judgments that the respondents are empowered to hold an

enquiry even after retirement in view of the provisions of Rule 10(I) of the West Bengal Services DCRB Rules 1971. According to him the nature of charges alleged against the petitioner was so serious that it was necessary to enquire into those charges even after the petitioner had retired. He further submitted that the enquiry had been completed as directed by the Tribunal however, no final order could be passed against the petitioner in view of the order of the status quo passed by this Court.

10. There is no dispute that a charge sheet had been issued to the petitioner on 29th September 2003 while he was in service. No steps were taken by the authorities to conduct an enquiry and to complete the same despite orders of the Tribunal passed in O.A. No. 1460 of 2003 at the interim stage. No explanation whatsoever has been given in the affidavit-in-opposition filed by the State for issuing a second charge sheet based on the same alleged acts of misconduct. The second charge sheet which was issued in 2006 does not refer to the earlier charge sheet at all. The only reason mentioned in the affidavit-in-opposition for not commencing the earlier enquiry is that both the Enquiry Officer and the Presenting Officer who was appointed for conducting the enquiry pursuant to the charge sheet issued on 29th September, 2003 has been transferred or superannuated. However, this would not in our opinion give a right to the respondents to issue a fresh charge sheet on same charges when the proposed earlier enquiry had been abandoned. We have also perused the application filed by the respondents in order to ascertain whether there was any reason contained in that application for abandoning the earlier enquiry. Except for reiterating that the Enquiry Officer and Presenting Officer were transferred and superannuated respectively, no other explanation has been given by the respondents. In these circumstances in our opinion no charge sheet could have been issued to the petitioner once he had retired from service, based on allegations contained in a charge sheet which was issued to the petitioner while he was in service and for which no enquiry was held.

11. The next issue which requires our consideration is whether a charge sheet could be issued to the petitioner after he had retired from service on 31st July 2004. The respondents in their affidavit-in-opposition have stated that an enquiry could be instituted against a retired employee under the West Bengal Services DCRB Rules 1971 and the provisions of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 were inadvertently mentioned in the memorandum issued to the petitioner enclosing the charge sheet.

12. Assuming the contention of the respondents is correct that Rule 10 that the West Bengal Services (Classification, Control and Appeal) Rules, 1971 had been inadvertently mentioned it would be necessary for us to examine whether an enquiry could have been instituted against a retired employee. The West Bengal Services DCRB Rules 1971 apply to all Government servants except-

(a) persons paid at daily rates;

- (b) Government Servants not in wholetime employment;
- (c) members of the All-India Services;
- (d) members of the West Bengal Higher Judicial Service;
- (e) persons for whom special provision is made-
 - (i) by or under any law for the time being in force, or
 - (ii) by any agreement made with them.

13. Indisputably the police personnel the State of West Bengal are governed by the Police Regulations of Bengal and the Jail Manual. Therefore, in view of Clause e (1) of Rule 2 of the West Bengal Services DCRB Rules 1971 the aforesaid rules are not applicable to police personnel.

14. Rule 10 speaks of the right of the Governor to withhold pension in certain cases. Such pension can be withheld either wholly or in part if a pecuniary loss is caused to the Government on account of grave misconduct or negligence of an employee during the period of his service. However where a departmental proceeding is instituted while an officer is in service, and is continued after his retirement, such a proceeding would be deemed to be a proceeding under Rule 10 and can be completed in the same manner as if the officer charged had continued in service. Proviso (b) to Rule 10 stipulates that if no departmental proceeding was instituted while the officer was in service then such a proceeding cannot be instituted without the sanction of the Governor. Furthermore, such a proceeding cannot be instituted in respect of any event, which took place more than four years prior to such institution.

15. The petitioner retired in 2004. Thus if at all the respondents desired to institute an enquiry against him, the enquiry could only be in respect of events which occurred between the period 2000 to 2004. No event, which transpired prior to that period, could be considered for charging the employee. In the present case the petitioner has been charged for incidents which took place in 1982 and 1986. Obviously, therefore, these incidents cannot be considered in view of Rule 10 of the West Bengal Services DCRB Rules 1971. Apart from this, there is no explanation as to why the charge sheet, which was issued in 2003 to the petitioner, was abandoned and, therefore, the enquiry in respect of those charges could not be continued by taking refuge under proviso to Rule 10.

16. We have already considered the fact that the petitioner was charged with having committed misconduct under the West Bengal Services (Classification, Control and Appeal) Rules, 1971. Rule 10 of those Rules is in no way applicable to the facts of the present case. Assuming it is that rule which is applicable then such an enquiry can be instituted only while the delinquent employee is in service. Having failed to continue with the charge sheet of 2003, the respondents cannot now invoke the provisions either of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 or the West Bengal Services

DCRB Rules 1971 against the petitioner as he has retired from service.

17. The West Bengal Services DCRB Rules 1971 can be invoked against a retired employee only when the Governor finds his pension should be stopped because he has caused a pecuniary loss to the Government. There must be specific sanction from the Governor to institute departmental proceedings after the Government servant retires. In the present case there is no such sanction accorded by the Government. The main thrust of the argument on behalf of the State has been that the petitioner who had committed various acts of misconduct should not be allowed to go scot-free when the allegations against him were serious. This submission in our opinion is untenable. If the Government was serious about taking action against the petitioner it would not have abandoned the charge sheet of 2003. From the material on record it appears that the Government has suddenly awoken from its slumber in 2006, two years after the petitioner retired and has felt the need to enquire into the alleged acts of misconduct.

18. Apart from this the West Bengal Services (Classification, Control and Appeal) Rules, 1971, which have been invoked in the charge sheet are not applicable at all to the petitioner as these Rules do not cover the services of persons in the Police Force who are of the rank of Inspector of Police and below. Since the petitioner was employed as an Inspector of Police he would not be covered by those Rules. It is apparent, therefore, that the respondents having realised their error in invoking the provisions of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 have stated in their affidavit that those rules were inadvertently mentioned in the charge sheet. The respondents have further stated in their affidavit that the rules applicable are the death-cum-retirement benefit rules. We dealt with the applicability of the West Bengal Services DCRB Rules to the present case earlier.

19. In our opinion, therefore, the Tribunal has committed a grave error by directing the completion of the enquiry when the rules under which the enquiry has been instituted are not applicable to the petitioner.

20. The impugned order is, therefore, set aside. The charge sheet issued to the petitioner in 2006 is also set aside. The petitioner shall be paid pension in accordance with the Rules forthwith. All arrears shall be paid to him within four months from today.

21. In the facts and circumstances of the present case, there will be, no order as to costs. Urgent certified photocopies of this order, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.