
(2000) 08 MP CK 0050
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2936 of 2000

State of M.P. and others

APPELLANT

Vs

T.N. Verma and another

RESPONDENT

Date of Decision : 16-08-2000

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21
Constitution of India, 1950 — Article 227
Madhya Pradesh Administrative Tribunal (Procedure) Rules, 1988 — Rule 6
Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 9, 9(2)

Citation : (2001) 1 MPHT 118 : (2001) 1 MPLJ 587

Hon'ble Judges : Bhawani Singh, J;A.K. Mishra, J

Bench : Division Bench

Advocate : Shri A.S. Raizada, for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Mishra, J.

The State has come up in the present writ petition aggrieved by an order passed by the State Administrative Tribunal, Bench at Raipur whereby the application filed by a retired employee, T.N. Verma, has been allowed. The Tribunal has quashed the departmental enquiry instituted after retirement of the respondent No. 1 without sanction of the Governor and the pensionary benefits have been directed to be paid to the respondent No. 1.

The facts relevant for the decision of the petition are that, respondent No. 1 was posted at Gwalior in the capacity of Food Controller, Gwalior. He took over charge on 9-12-1992. While he was posted there, the "Gwalior Mela" was organised. 100 M.T. of wheat was allotted for distribution by the Director of Food and Civil Supplies which was considered to be inadequate by the Collector. However, whatever wheat actually received i.e., 271.67 quintals was given in equal shares to two fair price shops for distribution and that was distributed by the fair price shops on 8-1-93 and 9-1-93. Subsequently, price increase order was issued

which was received by the Food Controller on 11 -1 -93 in the evening and the Collector, Gwalior passed the order accordingly for compliance. By the time the order was received, the wheat and the flour were already distributed to the consumers. However, nothing happened thereafter and the respondent No. 1 T.N. Verma retired on July 31, 1994. "No dues certificate" and "No enquiry certificate" were issued by the Collector. Thereafter, all of a sudden after retirement, the respondent No. 1, instead of his retirement dues, received a charge-sheet on 17- 4-1995 issued by the Deputy Secretary, Food & Civil Supplies and the retirement dues were withheld. The respondent No. 1 further submitted that owing to withholding of his retiral dues, he was unable to treat his wife properly and she died due to lack of proper treatment. After retirement from Gwalior, respondent No. 1 settled at Raipur and filed the application before the M.P. State Administrative Tribunal, Bench at Raipur after waiting for four months for his retiral dues having lost his wife in between.

The claim of the respondent No. 1 was contested by the petitioner/ State on the ground that the application is barred by limitation and was not maintainable before the Raipur Bench of the Tribunal. The remedy of the petitioner was to approach the State Administrative Tribunal at Gwalior or Bhopal and since the charge-sheet has been issued the respondent No. 1 is not entitled to settlement of his retiral dues and pension and against the final order, if any, passed in the departmental enquiry, remedy of appeal is available to the respondent No. 1. Hence the respondent No. 1 is not entitled to any relief. The Tribunal has quashed the departmental enquiry and directed to settle the retiral dues together with interest at the rate of 6% per annum.

Learned counsel for the State has assailed the order of the Tribunal in the present writ petition on the ground that Bench of the Tribunal at Raipur had no territorial jurisdiction to interfere with the matter. It is also submitted that the application was barred by limitation having been filed in the year 1998 and the Tribunal ought not to have interfered at the stage of issuance of charge-sheet and ought to have waited for conclusion of departmental enquiry pending against the respondent No. 1.

We find no merit in the submission raised by the learned counsel for the State. The learned counsel was unable to point out that before initiating the departmental enquiry sanction of the Governor was obtained as mandated by the provisions of Rule 9 of M.P. Civil Services (Pension) Rules, 1976. It is transparent from bare reading of Rule 9 (2) (b) that departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment, shall not be instituted save with the sanction of the Governor. The second rider provided by Rule 9 (2) (b) is that such enquiry shall not be in respect of any event which took place more than four years before such institutions. In the instant case, first requirement of sanction of the Governor is not satisfied. Thus, the very institution of the departmental enquiry and subsequent issuance of charge-sheet was wholly unauthorised.

There is no whisper in the memo of writ petition that Governor has sanctioned the holding of departmental enquiry against the retired employee as mandated under Rule 9 (2) (b) of the M.P. Civil Services (Pension) Rules, 1976 which reads thus:

"9. Right of Governor to withhold or withdraw pension.-- (1) The Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

*** ** (2) (a) The departmental proceedings, if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced, in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to [he Governor, that authority shall submit a report regarding its findings to the Governor.

(b) The departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment:

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which look place more than four years before such institution....."

Coming to the other objection raised as to the competence of the Tribunal at Raipur to hear the matter for want of territorial jurisdiction, that is also stated to be rejected. We are of the opinion that the retiral dues are to be paid at Raipur. Similarly, the pension is also payable at Raipur. The retiral dues of the petitioner have been illegally withheld on the basis of wholly unauthorised action of instituting departmental enquiry after retirement of the respondent No. 1 without sanction of the Governor. Thus, cause of action arose within the jurisdiction of Raipur Bench of the Tribunal, and it has not exceeded its territorial jurisdiction while directing payment of retiral dues and also quashing the charge-sheet which was issued from Bhopal for an act allegedly committed at Gwalior as it is consequence of withholding of retiral dues in an illegal manner which has fallen clearly within the jurisdiction of State Administrative Tribunal, Bench at Raipur. It is surprising that the State is taking such technical plea for which there is absolutely no justification and more so in view of the fact that it has not been contended before us that the departmental enquiry was with the sanction of the Governor. We are constrained to observe that the respondent No. 1 ought not

have been put to such harassment as he has been put.

The third objections regarding limitation is also wholly unsustainable. The departmental enquiry is still pending and the retiral dues are still withheld, hence it cannot be said that the application was barred by limitation. The cause of action was recurring, therefore, the application before the Tribunal cannot be said to be barred by limitation.

The order passed by the Tribunal does not suffer from any infirmity. However, the Tribunal has not fixed the time for payment of retiral dues which we do in the present petition. It is directed that the State shall settle all the dues of the respondent No. 1 within a period of two months from the date of this order and shall also pay the pension within the said period, including arrears. The writ petition is dismissed summarily with the aforesaid direction.

Writ Petition dismissed.