(2001) 09 CAL CK 0005

In the Calcutta High Court

Case No : W.P.S.T. No. 486 of 2000

State of West Bengal and Others — APPELLANT

Vs

Gobinda Chandra Mukherjee — RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:
Constitution of India, 1950 — Article 41

Citation : 106 CWN 99

Hon'ble Judges : Tarun Chatterjee, J;Hrishikesh Banerji, J

Bench : Division Bench

Advocate : Nigam Kumar Chakraborty and D.N. Ray, for the Appellant; Somen Bose, Murari Mohan Das and Jagat Chandra Basu, for the Respondent

Final Decision : Allowed

Judgement

Tarun Chatterjee, J.—This writ petition is directed against a judgment and/or order dated 15th September. 1999 passed by the West Bengal State Administrative Tribunal (In short "the Tribunal") where by the Tribunal held that the writ petitioners had acted illegally and without jurisdiction in reducing the pension payable to the respondent on the basis of an order dated 25th of November, 1995 and hence the order of reduction of pension was illegal, arbitrary and without jurisdiction. The Tribunal also held that the pension amount deducted be restored to the private respondent and all amounts due with other relief as was admissible under the Rules be paid to the private respondent within three months from the date of communication of the order of the Tribunal by the writ petitioners. The case of the private respondent in the petition filed before the Tribunal, inter alia, was that the private respondent was superannuated from service as Deputy Superintendent of Police, C.I.D., West Bengal on 1st of March, 1982. By a Memorandum of the Home Department, Govt. of West Bengal, dated 30th January, 1984 a disciplinary proceeding was drawn against the private respondent on the following Articles of Charges:

Article of Charge-I. The said Shri Gobinda Chandra Mukherjee, Dy. Supdt. of

Police, Criminal Investigation Department, W.B. (since retired) while functioning as the Chief Law Instructor-I, Police Training College, Barrackpore during the period from 16-5-71 (forenoon) to 2-6-81 demanded on 9-10-80 in the evening at his official quarters from Cadet Sub-Inspector, Shri Subrata Baran Sen a sum of Rs. 6000/- on a false plea that the said amount would be necessary to placate the Dy. Inspector General of Police (Training) and for making necessary arrangements for his passing and also for the passing of Cadet Sub-Inspector, Mr. Rahim and Cadet Sergeant Shri Swapan Roy in the Department Examination and for getting them released from the detention and that pursuant thereto accepted from the said Shri Subrata Baran Sen a sum of Rs. 6000/- on 13-10-80 in the evening at his quarters (official quarters of Chief Law Inspector-I, Police Training College, Barrackpore).

Such conduct of Shri Gobinda Chandra Mukherjee prima facie shows lack of integrity and devotion to duty and is improper and unbecoming of a public servant and as such is violative of Rules 3 and 4 of the West Bengal Government Servants Conduct Rules, 1959 read with Rule 8(2) of the West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980.

Article of Charge. Shir Gobinda Chandra Mukherjee, Dy. Superintendent of Police, Criminal Investigation Department, West Bengal (since retired) while functioning as the Chief Law Inspector-I during the period from 16-5-71 (fornoon) to 2-6-81 further attempted to obtain by way of demanding a sum of Rs. 4,000/- as legal (sic) gratification from Cadet Sub-Inspector, Shri Subrata Baran Sen on the date on condolence meeting of Late P.K. Bose, the then Dy. Inspector General of Police (Training) held at Police Training College soon after re-opening of the College after the Pooja holidays in the year 1980, on the pretext that the said amount would be necessary to please the succeeding Dy. Inspector General of Police (Training).

Such conduct of Shri Gobinda Chandra Mukherjee prima facie shows lack of integrity and devotion to duty and is improper and unbecoming of a public servant and as such is violative of Rules 3 and 4 of the West Bengal Government Servants Conduct Rules, 1959 read with Rule 8(2) of the West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980.

An enquiry was made by the Commissioner of Departmental Enquiries, Vigilance Commission, West Bengal into the aforesaid charges framed against the private respondent after complying with all formalities. After conclusion of the enquiry the private respondent was found guilty of both the charges. In accordance with the Rules, a copy of the report of the enquiry authority was supplied to the private respondent and he was asked to submit within 15 days from the date of receipt of the order of his representation against the proposed punishment of 50% reduction of his pension amount under Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971 (in short "the Rules"). Ultimately by an order dated 23rd November, 1995 the Governor was pleased to order that 50% of the pension admissible to the private respondent be withheld permanently with retrospective effect from 1st March, 1982 i.e. the date from which the pension was admissible. The private respondent made a review application before the Governor of West Bengal under Rule 22 of the West Bengal Services (Classification, Control & Appeal) Rules. 1971 but there was no response from the Governor of West Bengal. Finding no other alternative the private respondent moved the Tribunal for the following amongst other reliefs:

(a) A direction upon the respondents and others to forthwith revoke. cancel, withdraw and/or rescind the purported departmental proceeding including the chargesheet and the final order dated 23rd November, 1995 and the order of the writ petitioner No. 4 dated 6th of March, 1996 and to act in accordance with law;

(b) An appropriate order be passed directing the authorities to pay the amount to the private respondent which was deducted from pension and relief money on the basis of the order dated 23rd November, 1995 and further order be made to pay the money to the private respondent if any deduction is made during the pendency of this application so that the private respondent will get all pensionary benefit;

(c) A direction upon the respondent Nos. 1, 2, 4 and 6 to send up all the relevant records and papers to the Tribunal so that conscionable justice may be done to the applicant; and

(d) Such other order and/or further order or orders and/or direction or directions as the Tribunal may deem fit and proper.

2. The petition filed by the respondent before the Tribunal was opposed by the State/writ petitioners. The allegations and contentions made by the private respondent in the said petition were denied save and except the matters which appeared from'' the records. According to the writ petitioner, the application filed by the private respondent was not maintainable in law before the Tribunal as it was barred by limitation. It was also contended by the State/writ petitioners that the private respondent submitted numerous applications for adjournment of hearing of the case whenever he was called upon to attend the hearing by enquiring authority on the pretext of his ill health. Since the private respondent by one reason or the other sought to adjourn the hearing of the proceedings before the enquiring authority, the enquiring authority found no other alternative but to close the hearing ex parte and submitted its report framed. The Disciplinary Authority considered the report of the enquiring authority and then a final order was passed on 23rd November, 1995. The Public Service Commission, West Bengal was consulted before taking the final decision which was communicated to the private respondent. According to the State/writ petitioners, by imposing penalty of reduction of pension on the private respondent, the State/ writ petitioners had not committed any wrong or error as alleged by the respondent. As noted hereinearlier, the application filed before the Tribunal was allowed by it and against which the present writ application has been moved by the State Authorities.

3. We have heard Mr. Nigam Kumar Chakraborty, the learned Senior Counsel appearing on behalf of the State/writ petitioners and Mr. Somen Bose, learned Senior Counsel with Mr. Murari Mohan Das and Mr. Jagat Chandra Basu appearing on behalf of the private respondent. At the first instance, Mr. Chakraborty contended that the Tribunal erred in holding that since Rule 10 of the Rules was already held to be unconstitutional in a single bench decision of this court in the case of Ram Gopal vs. State of West Bengal, 1987(1) CHN 48 affirmed by a Division Bench of this Court in FMAT No. 413/91 (Ram Mohan. Sinha vs. State of West Bengal), the State had no authority to initiate any proceeding or pass any order on the basis of Rule 10 of the Rules. Mr. Chakraborty thereafter contended that even assuming that the decision rendered on the question of vires of Rule 10 of the Rules as made in the aforesaid Single Bench decision was a correct exposition, then from the single bench decision itself, it would be evident that the learned Single Judge after observing that Rule 10 of the Rules as ultra vires the Constitution of India had proceeded to consider the said case on merit and finally found that Rule 10 of the Rules was not applicable to the facts and circumstances of that case as the learned Judge was of the view that the said Rule could at best be invoked for the purpose of recovery of pecuniary loss caused to the Government by the pensioner because of gross misconduct or negligence during the period of service of the employee. Accordingly, Mr. Chakraborty contended that the Tribunal had wrongly relied on the Single Bench decision of this Court on a misapprehension that Rule 10 of the Rules would only be applicable to a case where the pecuniary loss caused to the Government was involved. Mr. Chakraborty then submitted that the Single Bench decision of this Court reported in 1987(1) CHN 48 (supra) could not be taken to be a decision for the proposition that Rule 10 of the Rules having been declared ultra vires the Constitution of India in the said decision, the State Authority had no authority to proceed against the private respondent on the basis of such a rule in view of the fact that even in that Single Bench decision while making the rule absolute the Learned Single Judge in that decision however, did not declare Rule 10 of the Rules as ultra vires the Constitution of India. Even on merits, Mr. Chakraborty contended that Rule 10 of the Rules would be applicable in the facts and circumstances of the case even where financial loss of the Government was not involved against the private respondent.

4. This submission of Mr. Chakraborty was disputed by Mr. Somen Bose, the learned Senior Counsel appearing for the private respondent According to Mr. Bose, in the aforesaid single bench decision of this Court it was correctly held by the Judge that Rule 10 of the Rules was ultra vires the Constitution of India. Mr. Bose contended that this question could not be germane for decision in this case as the said Single Bench decision of this Court had already been affirmed by a Division Bench of this Court in F.M.A.T. No. 413 of 1991 (Ram Mohan Sinha vs. State of West Bengal) which was taken note of by the Tribunal in the impugned judgment.

5. Before we proceed further in this case, we may here and now state that in the

order of the Tribunal, it has been observed that the Division Bench while considering the aforesaid Single Bench decision of this Court only observed that they were not aware as to whether the judgment of the Single Bench was reversed in appeal or not. This Division Bench decision of this Court was however, not relied on or produced before us by either of the Learned Counsel for the parties. Therefore, we are unable to have a glimpse of this judgment In any view of the matter, it is evident from the Single Bench decision of this Court itself that even after observing that Rule 10 of the Rules is ultra vires the Constitution of India, the Single Bench proceeded to consider the said case on merits and came to a conclusion that Rule 10 of the Rules was not applicable to the facts and circumstances of that case. That apart, although an observation was made in the Single Bench decision that Rule 10 was ultra vires the Constitution of India, but from penultimate portion of the Single Bench judgment, it would appear that such a declaration was not made by the Learned Single Judge of this Court. In any view of the matter, the Learned Single Judge of this Court in the case reported in 1987(1) CHN 48 (supra) had not at all considered another Single Bench decision of this Court in the case of Satya Ranjan Chaudhury vs. Commissioner of Police, Calcutta. 87 CWN 1009 which was delivered by Chittotosh Mukherjee, J. (As His Lordship then was) in the year 1983 long before the aforesaid Single Bench decision of this Court was delivered. Chittotosh Mukherjee, J. (as His Lordhsip then was) proceeded to consider the aforesaid Rule and decided the matter on merits. No question was raised as to the vires of Rule 10 of the Rules. That apart, question of vires of Rule 10 of the Rules was also not a prayer made by the private respondent in his application before the Tribunal and in view of our discussions made hereinabove and in view of the admitted fact that in the case reported in 1987(1) CHN 48 (supra) Rule 10 of the Rules was not declared ultra vires the Constitution of India in the penultimate portion of the said judgment and in fact the same was decided on merits, we are unable to hold at this stage that Rule 10 of the Rules must be held to be unconstitutional.

6. Let us, therefore, consider this case on merits. Following the aforesaid Single Bench decision of this court reported in 1978(1) CHN 48 (Ram Gopal vs. State of West Bengal) the Tribunal held that the pension of the private respondent could not be withheld or directed to be paid 50% of it on the basis of Rule 10 of the said Rules. Mr. Chakraborty appearing on behalf of the writ petitioner after drawing our attention to Rule 10 of the said Rules submitted before us that even after the retirement of the respondent it was open to the State Government to launch a disciplinary proceeding under Rule 10(1)(b) of the said Rules. This submission of Mr. Chakraborty was, however, hotly contested by Mr. Bose, Mr. Bose contended that in view of the aforesaid decision of this court in the case of Ram Gopal vs. State of West Bengal 1987(1) CHN 48 affirmed by a Division Bench of this Court in F.M.A.T. No. 413 of 1991 (Rain Mohan Sinha vs. State of West Bengal) it is no longer res integra that after the retirement of the pensioner no disciplinary proceeding could be initiated nor any steps could be taken under

Rule 10 of the said Rules for the purpose of withholding pension or any part thereof by exercising the power conferred under the said Rules. After hearing the learned Counsel for the parties and after carefully examining Rule 10 of the said Rules, we are of the view that Mr. Chakraborty was right in his submission that even after retirement of the pensioner it was open to the State Government to initiate a disciplinary proceeding and thereafter in the event the pensioner is found to be guilty in respect of the charges framed against him, it would be open to the State Government to withhold the pension or any part thereof in the exercise of its power under Rule 10(1)(b) of the said Rules. In order to understand the rival contentions of the learned Counsel for the parties it would be necessary to quote Rule 10 of the said Rules which reads as under:

Rule 10 Right of the Governor to withhold pension in certain cases.-

(1) The Governor reserves to himself the right of witholding 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 the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence, during the period of his service, including service rendered on reemployment after retirement:

Provided that--

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

(b) such departmental proceedings, if not instituted while the officer was in service, whether before his retirement or during his reemployment--

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

(ii)..................

(ill)............:...

(c) no such judicial proceeding, if not instituted while the officer was in service, whether before his retirement or during his reemployment 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.

7. It is not in dispute that the claim of a pensioner to get pension is regulated by the said Rules. It is now also well settled that the right of a pensioner to receive pension is no longer a matter of grace and pension is not a bounty payable on the sweet will and pleasure of the Government. It is also well known that the right to receive pension is a valuable right vested in a Government servant. It is also now equally well settled that the right to receive pension flows from the said

Rules. There is no dispute that in the present case the obligation of the State Government to pay pension and the right of the private respondent to receive pension are regulated by the said Rules. Rules 8 to 10 of the said Rules provide for withholding of pension in different cases. We have carefully examined Rule 10 of the said Rules. After carefully examining the said Rules and after hearing the learned Counsel for the parties we are of the view that the Governor under Rule 10(1) of the said Rules has reserved to himself the right of withholding or withdrawing a pension or any part thereof whether permanently or for a specified period. It is also open to the Governor of the State of West Bengal under Rule 10(1) of the said Rules to pass an order directing recovery from a pension of the whole or part of any pecuniary loss caused to the Government by the pensioner. In our view the said rights of the Governor under Rule 10(1) of the said Rules to withhold pension or to order recovery from pension could only be exercised only in case where the pensioners are found in a departmental or a judicial proceeding to the effect that the pensioners were guilty of grave misconduct or negligence at the time he was or they were in service. Rule 10(1) of the said Rules, in our view, contemplates two kinds of departmental proceedings. We make it clear at this stage that in the present case we are not concerned with any judicial proceeding: (1) a departmental proceeding which was instituted while the officer was in service [vide clause (a) to the proviso to Rule 10(1) of the Rules] and (2) a departmental proceeding instituted after retirement with the sanction of the Governor in respect of any event which took place not more than four years before such institution. Therefore, from a plain reading of Rule 10 of the said Rules it cannot be disputed that a departmental proceeding can be instituted under Rule 10(1)(b) even after retirement with the sanction of the Governor in respect of any event which had taken place not more than four years before such institution. That being the position, let us look into the facts of this case. Admittedly, the pensioner/respondent retired in the year 1982. The departmental proceeding was launched against him in the year 1984. That being the position, it cannot be held that no such departmental proceeding can be instituted against the pensioner/respondent after his retirement as the period of limitation as indicated to Rule 10(1)(b) of the said Rules had not expired i.e. to say the departmental proceeding was instituted within the time prescribed in Rule, 10(1)(b) of the said Rules i.e. within two years from the date of his retirement. The second question is whether any sanction was obtained from the Governor of State of West bengal before initiating such proceeding. From the records it does not appear nor point was taken by the pensioner/respondent as to whether such sanction of the Governor of State of West Bengal was taken or not. Since no such question was raised by the pensioner/respondent in his original application filed before the Tribunal on the question whether the sanction was obtained from the Governor of State of West Bengal to initiate or launch a disciplinary proceeding against the respondent, we are of the view that at this stage we are unable to permit the pensioner/ respondent to raise such question of limitation. Such being the stand taken by the pensioner/respondent in the application filed by him before the Tribunal, we must presume that sanction of the Governor of the State of West Bengal was duly obtained by the authorities to proceed or launch a disciplinary proceeding against the pensioner/respondent. Therefore, we must hold that under Rule 10(1)(b) of the said Rules it was open to the State of West Bengal to launch a disciplinary proceeding against the pensioner/respondent even after his retirement. It was contended by Mr. Bose appearing on behalf of the respondent that the Tribunal also, after relying on the aforesaid single bench decision of this court reported in 1987(1) CHN 48 (Ram Gopal vs. State of West Bengal), erred in holding that Rule 10 of the said Rules would be applicable only in cases where financial loss was caused to the Government due to grave misconduct or negligence of an employee during his service. We are unable to accept this contention of Mr. Bose also. In our view. Rule 10 of the said Rules would be applicable in cases of employees against whom disciplinary proceeding was started in which he was found to have been guilty of grave misconduct or negligence during the period of his service.

8. In the case of Union of India and Others Vs. Shri B. Dev, ; this view has been expressed. In this connection paragraph 11 of the said Supreme Court decision would be material for our purpose and accordingly we quote the said paragraph, which is as follows:

Rule 9 gives to the President the right of--(1) withholding or withdrawing a pension or part thereof, (2) either permanently or for a specified period, and (3) ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government. This power can be exercised if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. The power, therefore can be exercised in all cases where the pensioner is found guilty of grave misconduct or negligence during the period of his service. One of the powers of the President is to recover from pension, in a case where any pecuniary loss is caused to the Government, that loss. This is an independent power in addition to the power of withdrawing or withholding pension. The contention of the respondent, therefore, that Rule 9 cannot be invoked even in cases of grave misconduct unless pecuniary loss is caused to the Government, is unsustainable.

(Emphasis supplied)

9. We have carefully examined the aforesaid observation of the Supreme Court made in the said decision. It is true that the aforesaid observation was made by the Apex Court of our country while it was considering Rule 9 of the CCS (Pension) Rules, 1972. We have carefully compared Rule 10(1) of the said Rules with Rule 9 of the CCS (Pension) Rules, 1972. There is no hesitation in our mind that the words used in the aforesaid two Rules were practically the same. Therefore, we find no difficulty in applying the aforesaid principles laid down in the aforesaid decision of the Supreme Court in the present case. Accordingly, we are of the view that under Rule 10 of the said Rules, if it is found that the pensioner/respondent was guilty of grave misconduct or negligence during the period of his service, it would be open to the authorities to recover from him

from his pension irrespective of any pecuniary loss being caused to the Government. It would also be evident from the aforesaid decision of the Supreme Court that the power of the State authorities to recover from pension in a case where any pecuniary loss was caused to the Government, that loss. This is an independent power in addition to the power of withdrawing or withholding pension or any part thereof. Such being the position, we are unable to accept the reasonings given by the learned Single Judge in the aforesaid decision that Rule 10 of the said Rules have a narrow and limited application and accordingly, unless and until financial loss was caused to the Government by a pensioner, question of applying Rule 10 of the said Rules his retirement could not be appa.

10. In U case of State of Maharashtra Vs. M.H. Mazumdar, , the Supreme Court while considering the provisions of Rules 188 and 189 of the Bombay Civil/ Services Rules, observed in paragraph 6 as follows:

The High Court in our view committed serious error in holding that the State Government had no authority to initiate any proceedings against the respondent. In B.J. Shelat Vs. State of Gujarat and Others, , disciplinary proceedings had been initiated against the Government servant for purposes of awarding punishment to him after he had retired from service. The ratio of that decision is not applicable to the instant case as in the present case the purpose of the enquiry was not to inflict any punishment; instead the proceedings were initiated for determining the respondent''s pension. The proceedings were taken in accordance with Rules 188 and 189 of the Rules. It appears that the attention of the High Court was not drawn to these Rules.

11. From the aforesaid observation and also after considering the decision in detail we are of the view that the Supreme Court in the said decision has clearly held that the power of the State Government to reduce or withhold pension by taking proceeding against the Government servant even after his retirement was expressly preserved by Rules 188 and 189 of the Bombay Civil Services Rules. In that decision it was held that merely because of a Government servant retired from service on attaining the age of superannuation he could not escape the liability for misconduct and negligence or financial irregularities which might have committed during the period of his service and the Government was entitled to withhold or reduce the pension granted to a Government servant.

12. Mr. Somen Bose, the Learned Senior Counsel appearing with Mr. Das for the pensioner/respondent, however, sought to distinguish the aforesaid decision of the Supreme Court by relying on paragraph 5 of the same in which the Supreme Court observed that Rule 189 of the Bombay Civil Services Rules clearly contemplates withholding or withdrawing of the pension or any part of it if the pensioner is found guilty of grave misconduct while he was in service or after the completion of his service. According to Mr. Bose, in the present case Rule 189 of the Bombay Civil Services Rules cannot be said to be in pari materia with the present Rule with which we are concerned i.e. Rule 10 of the said Rules. In the said decision the Supreme Court held that under Rule 189 of the Bombay Civil

Services Rules, the power of the State Government to reduce or withhold pension by taking proceedings against the Government servant even after his retirement is expressly preserved by the aforesaid Rules. For the purpose of considering the fact whether the principles laid down in the aforesaid decision of the Supreme Court which dealt with Rules 188 and 189 of the Bombay Civil Services Rules would be applicable in cases where Rule 10 of the said Rules was in vogue. For this purpose we have carefully examined Rules 188 and 189 of the Bombay Civil Services Rules and Rule 10 of the said Rules. In view of our discussions made hereinearlier, we have no hesitation in our mind to hold that the principles laid down in the aforesaid decision of the Supreme Court would be squarely applicable to the facts and circumstances of the case which concerned Rule 10 of the said Rules and accordingly, applying the principles laid clown in the aforesaid decision of the Supreme Court we are also of the view that under Rule 10 of the said Rules the power of the State Government to withdraw or withhold pension by launching disciplinary proceeding against a Government servant even after his retirement is expressly preserved by the aforesaid Rules. That being the position, we are of the view that under Rule 10 of the said Rules also the State Government has been empowered to withdrawn or withhold pension by launching or initiating a disciplinary proceeding against a Government servant even after his retirement as the same was expressly preserved under it. That apart, as noted herein-earlier. Rule 10(1)(b) of the said Rules would be applicable in the case of a pensioner and a proceeding can be launched against him if the said proceeding was instituted with the sanction of the Governor and within four years before the institution of the disciplinary proceeding in respect of any event which had taken place not more than four years before such institution. Therefore, from a plain reading of Rule 10(1)(b) of the said Rules it is made clear that the departmental proceeding could also be instituted and concluded against a pensioner who had already retired if the aforesaid conditions are satisfied. Reading Rule 10(1)(b) of the said Rules It is therefore, clear that a limitation has been imposed to launch a proceeding against a retired Government servant after four years in respect of the event which had taken place during his service.

13. Before parting with this aspect of the matter we may also refer to a decision of the Supreme Court in the ease of D.V. Kapoor Vs. Union of India and others, . The Supreme Court in that decision, while considering the validity of the Rules 3(i), (ii), (iii), 8(5) and 9(1) of the Civil Services Conduct Rules, 1964 in paragraph 2 categorically held that the proceedings initialed against a pensioner was valid in law and they could not abate consequent to voluntary retirement of the pensioner and the order was passed. In paragraph 10 of the said decision the Supreme Court clearly says that Rule 9 of the Civil Services Conduct Rules, 1964 empowers the President only to withhold or to order recovery of pecuniary loss caused to the State Govt. in whole or in part subject to minimum. In that decision the Supreme Court held that the measure of deprivation must be correlative to or commensurate with the gravity of the grave misconduct or

irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution. From the aforesaid decision it is also clear that the principle to the effect that the departmental proceeding can be initiated even after retirement of the pensioner to withhold pension or gratuity only when some financial loss was caused by the petitioner due to his minsonduct or irregularity while he was in service, was not the law enuntiated by the Supreme Court in the aforesaid decision and also in the decision reported in Union of India and Others Vs. Shri B. Dev, as noted hereinearlier.

14. In view of our discussions made hereinabove, the decisions cited at the Bar reported in Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, would not be of help to the pensioner/respondent. In that decision the Regulation Nos. 17 and 44 of the Orissa Financial State Corporation Staff Regulations. 1975 were in issue. From a careful reading of the said decision of the Supreme Court two things can be said to have emerged; first, in the Orissa Financial State Corporation Staff Regulations, 1975 there was no specific provision existing for deducting any amount from the provident fund consequent to any misconduct determined in departmental proceeding, nor was there any provision for continuance of departmental enquiry after superannuation. In that context the Supreme Court observed that in the absence of any such provisions, it must be held that the Orissa Financial State Corporation Staff Regulations. 1975 had no legal authority to make any reduction in the retrial benefits of its employees. So far as the present case is concerned, there is no dispute that Rule 10 of the said Rules clearly makes provision for deducting; any amount from the pension payable to the pensioner consequent to any misconduct determined in the departmental enquiry and there is also a specific provision for continuation of departmental enquiry after superannuation. Apart from that, the said decision of the Supreme Court was dealing with the case of withholding provident fund amount of the pensioner; whereas in the present case we are concerned with withholding of pension or any part of it under Rule 10 of the said Rules. In this connection another decision of Supreme Court in the case of State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, could also be considered. In that decision it was also held that if the disciplinary proceeding against an employee of the Government initiated in respect of misconduct committed by him and he retires from service on attaining the age of superannuation before completion of the proceeding it is open to the State Government to launch a disciplinary proceeding and to direct deduction in his pension on the proof of the allegations made against him. If the charges are not established during the disciplinary proceeding or if the disciplinary proceedings are quashed, it is not permissible to the State Government to direct reduction in the pension on the same allegations but if the disciplinary proceedings could not be completed and if the charges of serious allegations are established which may have bearing on the question of rendering efficient and satisfactory service, it would be open to the State Government to take proceedings against the Government servant in accordance with the said Rules for reduction of pension and gratuity. Although in that

decision the Supreme Court was considering Article 470(b) of the Civil Service Regulations even then in view of our discussions made hereinearlier we are clearly of the view that it was open to the State Government to launch or initiate disciplinary proceeding against the pensioner/respondent in accordance with Rule 10 of the said Rules for the purpose of withholding or withdrawing pension the whole or in part thereof after the retirement of the pensioner/respondent.

15. For the reasons aforesaid we are of the view that the impugned order of the Tribunal is liable to be set aside and the application filed by the pensioner/ respondent before the Tribunal is liable to be rejected. In view of our aforesaid discussions and findings made by us, we need not go into the other submission of Mr. Chakraborty that the application filed before the Tribunal must be held to be barred by limitation as the Tribunal had decided the matter on merits and without going into the question of litation and we also have decided the matter on merits. No other submission was made by the learned Counsel for the parties. For the reasons aforesaid the impugned order of Tribunal is set aside. The writ application filed before us stands allowed. The order of the Governor withholding pension in the manner indicated above is hereby affirmed.

There will be no order as to costs.

Hrishikesh Banerjee, J.

I agree.

