(2012) 05 AHC CK 0264

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25711 of 2010

Surendra Pal Singh — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 04-05-2012

Acts Referred:

Citation : (2012) 7 ADJ 326 : (2012) 6 AWC 6508

Hon'ble Judges : Virendra Vikram Singh, J;Vineet Saran, J

Bench : Division Bench

Advocate : Siddharth Singh, for the Appellant;

Final Decision : Allowed

Judgement

1. The petitioner was appointed as Assistant Sales Tax Officer on 15.10.1976. He was served with a charge-sheet on 13.6.2007, to which the petitioner submitted his reply on 27.9.2007. Thereafter the Enquiry Officer submitted his report dated 19.12.2007 exonerating the petitioner in 5 out of 6 charges and one charge No. 2 was partially proved against the petitioner. A show-cause notice was issued to the petitioner on 22.1.2008, to which the petitioner submitted his detailed reply on 14.2.2008. However, no order of punishment was passed against the petitioner by the Disciplinary Authority and in the meantime on 31.3.2009 the petitioner has retired from the post of Deputy Commissioner Trade Tax. However, after six months of the retirement, an additional charge-sheet dated 8.10.2009 was issued to the petitioner. After two months on 18.12.2009, the petitioner was served with a letter indicating that the Governor has been pleased to direct that the disciplinary proceedings against the petitioner dated 13.6.2007 will continue even after his retirement.

2. By means of this writ petition the petitioner has prayed for quashing of the Additional Charge-sheet dated 18.10.2009 as well as the communication of the order dated 18.12.2009 mentioning that the disciplinary proceedings will continue.

3. It has further been prayed that the directions be issued to the respondents to conclude the disciplinary proceedings instituted on 13.6.2007 in terms of the enquiry report dated 19.12.2007 and to pay to the petitioner his pension and other retiral dues.

4. It is specifically stated that when the writ petition was filed in May, 2010, an interim order was passed on 7.5.2010 directing the respondents to pay the petitioner his provisional pension regularly and that the entire amount of the provident fund and the remaining amount of gratuity, leave encashment and other dues shall be subject to the decision of the writ petition or the departmental enquiry.

5. It is submitted by the Learned Counsel for the petitioner that it is stated in the counter-affidavit that in compliance of the said interim order dated 7.5.2010, the provisional pension for six months was paid to the petitioner besides the payment of 90% of the GPF amount. After the initial payment of provisional pension for six months, no further payment has been made by the respondents and two years have passed since the passing of the interim order.

6. We heard Shri Siddharth Singh, Learned Counsel for the petitioner and learned Standing Counsel for the respondents and perused the record.

7. The first question to be decided in the petition is as to whether the fresh charge-sheet can be issued against the petitioner regarding same instance, which took place more than four years prior to the retirement of the petitioner. Admittedly, the petitioner retired on 31.3.2009.

8. The other question to be decided is as to whether the as per the U.P. Pension Cases (Submission, Disposal and Avoidance of Delay) Rules, 1995, the pending departmental proceeding as against the retired employee must be competed within six months after retirement.

9. The admitted position is that the petitioner retired from service on 31.3.2009. Prior to that the petitioner had been exonerated in 5 out of 6 charges vide the enquiry report dated 19.12.2007. In respect of one charge, it was said to be partly proved against the petitioner, to which the petitioner submitted his reply on 14.2.2008 and no order has been passed by the Disciplinary Authority. The additional charge-sheet dated 8.10.2009 was not with regard to same instances on which the initial charge-sheet dated 13.6.2007 had been issued.

10. As such the contention of the Learned Counsel for the petitioner that the same amounts to initiation of fresh departmental proceedings against the petitioner, has force. Rule 351-A of the Civil Service Regulations provides that no departmental proceedings can be instituted against the officer after his retirement without the sanction of the Governor.

11. It further provides that no such departmental proceedings can be instituted in respect of an event which took place not more than four years before the institution of such proceedings.

12. In the present case the additional charge-sheet was issued to the petitioner after his retirement on 8.10.2009 whereas the sanction of the Governor for continuance of the disciplinary proceedings dated 13.3.2007 was obtained on 18.12.2009, which was more than two months after the issuance of the charge-sheet.

13. A perusal of the additional charge-sheet dated 8.10.2009 goes to show that all the charges against the petitioner related to the year 2002-2003, which were of more than four years prior to retirement of the petitioner or the issuance of the additional charge-sheet dated 8.10.2009.

14. Further the U.P. Pension Cases (Submission, disposal and Avoidance of Delay) Rules, 1995 provides for the time schedule in which the inquiry is to be completed. As per Rule 17, the pending departmental proceeding as against the retired employee must be completed within six months after his retirement. As such, the disciplinary proceedings or enquiry, if any, on the basis of the charge-sheet dated 13.6.2007 should have been concluded up to six months after the retirement of the petitioner, which would be up to 30th September, 2009. Further the sanction was granted by the Governor after the said date on 18.12.2009, which was in contravention of the aforesaid Rules.

15. In view of what has been stated in the foregoing paragraphs, the issuance of the additional charge-sheet dated 8.10.2009 is liable to be quashed, being violative of Rule 351-A of the Civil Service Regulation. Further the order dated 18.12.2009 is also liable to be quashed being in contravention of Rule 17 of U.P. Pension Cases (Submission, Disposal and Avoidance of Delay) Rules, 1995.

16. Accordingly the writ petition is allowed. The additional charge-sheet dated 8.10.2009 and the order dated 18.12.2009 are hereby quashed. In view of the fact that the proceedings in pursuance of the charge-sheet dated 13.6.2007 have not been concluded even after six months from the date of retirement of the petitioner, the same shall stand dropped. The respondents are directed to pay the entire retiral dues to the petitioner within three months from the date of filing of a certified copy of this order before them. The respondents are also liable to pay interest to the petitioner at the rate of 10% on the amount when it actually falls due till the actual payment is made. Respondents are also directed to pay pension to the petitioner regularly, month by month.

