(2015) 08 BOM CK 0247

In the Bombay High Court

Case No : Writ Petition No. 219 of 1999

Tapan Kumar Singh and Others APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 4, 4(6), 7(4)

Citation : (2015) 08 BOM CK 0247

Hon'ble Judges : B.P. Dharmadhikari, J;P.N. Deshmukh, J

Bench : Division Bench

Advocate : Jayant Mokadam, for the Appellant; Rohit Deo, Assistant Solicitor General of India, Advocates for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J—Petitioner in this petition under Article 226 of the Constitution of India seeks relief of quashing memorandum of charges dated 28.2.1998 and inquiry proceedings conducted on its basis and as noted in daily order-sheet dated 8.10.1998 and 8.11.1998. The petitioner was a Chief General Manager (W) in employment of respondent No. 4-Western Coal Fields Limited. Respondent No. 3 before this Court is its holding Company, while respondent No. 5 is the Commissioner who conducted the departmental enquiry. Respondent No. 1 is the Union of India and respondent No. 2 is the Ministry of Coal, Government of India.

2. This Court on 5.2.1999 issued rule and made it returnable early. It also directed parties to maintain status-quo. This status-quo was vacated on 28.2.2001 and thereafter the inquiry proceedings have been conducted.

3. We may point out here that the petitioner has raised two grounds. First one is, petitioner was never supplied the charges i.e. charge sheet and, therefore, did not get opportunity to reply to it. Second contention is departmental enquiry could not have been conducted after his superannuation. The original petitioner -

Tapan Kumar Singh expired and as per order of this Court dated 21.11.2006 his wife along with son and daughters have been brought on record.

4. Advocate Mukadam submits that the petitioner reached the age of superannuation on 28.2.1998 and on that day stood superannuated in the afternoon i.e. 1.30 p.m. as it was a Saturday. He invites attention to communication dated 2.9.1997 informing petitioner of his superannuation on 28.2.1998.

5. In this background, he submits that according to the employer, the charge sheet was prepared on 24.2.1998 i.e. just four days"' prior to superannuation of petitioner, but petitioner never received it. No charge sheet was served upon the petitioner after this Court vacated the interim order dated 28.2.2001, hence the order of punishment dated 11.1.2005 passed by the appointing authority, namely, the President of India is in breach of principles of natural justice and unsustainable.

6. He further argued that as no charge sheet was served before superannuation, departmental proceedings cannot be said to be initiated before that date and hence cannot continue after 28.2.1998. Therefore, commencement of proceedings after 28.2.2001 and its holding earlier on 8.10.1998 or 3.11.1998 is without any legal sanction and void.

7. He points out that by impugned order dated 11.1.2005 the punishment of withholding 25% of the gratuity payable to the petitioner has been imposed and for that purpose a "deemed termination" has been invoked to show the said punishment fits in the provisions of Section 4 sub-section (6) of the Payment of Gratuity Act, 1972. He states that when petitioner superannuated on 28.2.1998, such an order passed on 11.1.2005 ordering deemed termination with retrospective effect is unsustainable.

8. He, therefore, seeks quashing of said order dated 11.1.2005 and consequential directions so that departmental proceedings including charge sheet cannot survive. He also points out that though the petitioner has in parallel proceedings initiated under Section 7(4) of the Payment of Gratuity Act, 1972 recovered full gratuity, the other terminal benefits have not been paid and for those terminal benefits Writ Petition No. 3055/1999 has been separately filed. It is to be heard after adjudication of present matter. He submits that in that petition the amount due to petitioner towards leave encashment, salary for period of suspension from 1991 to 1994 and the arrears on account of wage revision have been demanded. He has also taken us through the relevant provisions of the Conduct, Discipline and Appeal Rules, 1978, which governed the service conditions of the petitioner.

9. We have also heard learned A.S.G.I. Shri Rohit Deo for respondent Nos. 1 and 2 and Advocate A.M. Ghare for respondent Nos. 3 and 4.

10. Shri Ghare has pointed out that he has received papers recently and from

the record he finds that there is no reply to the petition as amended in terms of Court order dated 26.9.2005.

11. Respective counsel for the respondents states that after this Court vacated status-quo on 28.2.2001, petitioner appeared before the inquiry officer and effectively participated in it. He tendered the documents in defence and has also examined two witnesses in defence. Our attention has been drawn to finding recorded by the inquiry officer to show that the petitioner was fully aware of the charges and, therefore, no prejudice has been caused to him in the matter.

12. Our attention is also drawn to the provisions of Rule 34(2) of the above mentioned Conduct, Discipline and Appeal Rules, 1978 to state that these Rules permit completion of departmental enquiry even after superannuation if it is initiated before superannuation. Efforts made by administration to serve charge sheet upon the petitioner after 24.2.1998 are also pointed out by inviting our attention to reply affidavit tendered by respondent Nos. 3 and 4.

13. It is submitted that after getting knowledge of charge sheet petitioner left the place of employment and thereafter was not available even at his residence. Attention is invited to a document filed in Writ Petition No. 3055/1999 to urge that the so called charge relinquishment has been forwarded by speed post by the petitioner on 2.3.1998. In this situation, respective counsel submit that as the departmental enquiry has been conducted validly and for a proved grave misconduct the punishment has been inflicted, this Court should not interfere.

14. Perusal of order of punishment reveals that the services of the petitioner are deemed to have been terminated in terms of Section 4(6) of the Payment of Gratuity Act and his gratuity is found liable to be forfeited. Though the order stipulates that entire amount of gratuity deserved to be forfeited, it mentioned that the Hon''ble President has taken a lenient view and forfeited only 25% of the gratuity amount. It is not in dispute that even this 25% of the amount could not be ultimately forfeited and in proceedings instituted under Section 7(4) of the Payment of Gratuity Act petitioner has recovered it. That order passed by the competent authority functioning under the Payment of Gratuity Act has attained finality. As such, the order of punishment could not be implemented in case of the petitioner.

15. However, the inquiry officer as also Discipline Authority has found that charge No. 2 has been fully established while charge No. 3 has been partly established. It is, therefore, necessary to consider the grievance of the petitioner on merits.

16. The Conduct, Discipline and Appeal Rules, 1978 in its Chapter III deal with aspect of discipline. Rule 27.1 is on Nature of Penalties and as per its clause (d), recover from pay or gratuity of the whole of or any part of pecuniary loss caused to the Company by negligence or breach of orders or trust, is stated to be a minor penalty. The procedure for imposing major penalty is prescribed in Rule 29 and Rule 31 deals with procedure for imposing minor penalty. Rule 29.3 requires Disciplinary Authority to serve upon Charged Officer charges, together with

statement of allegations, on which they are based, a list of documents by which and a list of witnesses through whom, the articles of charges are proposed to be sustained. Charged Officer is then obliged to submit his defence. Rule 31 requires that, employee concerned should be informed in writing of the imputations of misconduct or misbehavior against him and should be given an opportunity to submit his or her written statement of defence, such statement in defence is then to be looked into by disciplinary authority before passing order. Here admittedly the minor punishment has been inflicted. However, the inquiry report made available on record by the petitioner shows that the preliminary hearing was conducted on 7.3.2002 at New Delhi and thereafter a brief hearing at Nagpur on 13.2.2013 where Charged Officer remained absent. Regular hearing was held on 13.3.2003 and 25.4.2003 at Nagpur. The Charged Officer defended his case himself. During inquiry 11 management documents were marked as Exh.-M1 to M11 and were taken on record. The Presenting Officer produced two management witnesses. Defence produced 14 defence documents, which were marked as Exh.-D1 to Exh.D14, Charge Officer produced two defence witnesses, however, he did not offer himself as a defence witness and the inquiry officer examined him generally. Thereafter, written brief from Presenting Officer and Charged Officer were received on 17.6.2003. On the strength of this material inquiry report has been prepared.

17. Perusal of inquiry report shows that Article 2 i.e. charge No. 2 was about a misconduct which resulted in loss of Rs. 4,47,234/- during the year 1995-96. Charge No. 3 was for causing loss of Rs. 2,13,023/- to respondent No. 3. As first charge or Article I is found to be not established, it is not necessary for us to look into it. The inquiry officer has in paragraph 5 of his report mentioned case of prosecution chargewise, thereafter in paragraph 6 he has mentioned case of defence. Various contentions raised by Charged Officer find narration in that paragraph and ultimately, after evaluating rival contentions inquiry officer has arrived at finding. Copy of this inquiry report was received by the petitioner along with memorandum dated 25th August, 2004 on 11.9.2004. He has replied to it on 21st September, 2004. This reply/representation dated 21.9.2004 is looked into by disciplinary authority while passing final order on 11th January 2005.

18. It is, therefore, apparent that the departmental enquiry has been held in accordance with Conduct, Discipline and Appeal Rules, 1978. Petitioner has not urged any procedural violation except for non-service of charge sheet and denial of chance to reply to it. Though the petitioner has urged that copy of the charge sheet was not served upon him and, therefore, he could not file any reply to it, petitioner has not pointed out resultant prejudice. On the contrary, he has participated fully in departmental enquiry, tendered documents in defence and also examined witnesses in defence. He has thereafter received inquiry report and represented against it to disciplinary authority. As such it is apparent that alleged non-compliance by itself is not sufficient to vitiate inquiry. The petitioner has not advanced any argument to demonstrate prejudice caused to him in the

process. The Hon''ble Apex Court in the case of State Bank of Patiala and others Vs. S.K. Sharma, (1996) 3 AD 349 : AIR 1996 SC 1669 : (1996) 3 JT 722 : (1996) 2 LLJ 296 : (1996) 3 SCALE 202 : (1996) 3 SCC 364 : (1996) 3 SCR 972 : (1996) 2 UJ 338 , laid down the principles to determine whether such departmental enquiry is conducted validly or can be said to be vitiated. We find that here the inquiry cannot be said to be vitiated.

19. The petitioner no doubt received a memo dated 2.9.1997 informing him that he would reach the age of superannuation on 28.2.1998 and stand superannuated on that day. However, he has not produced any document to show that he was actually superannuated and relieved on that day. On the contrary, document to which our attention has been drawn as annexure of return of respondent employer in Writ Petition No. 3055/1999 shows that the petitioner though present on 28.2.1998, he did not hand over charge and did not get himself relieved. He sent his own assertion that he had been relieved through post which employer got on 2.3.1998. It is a unilateral relinquishment of charge, which he has sent by speed post and received in the office of respondent No. 3 on 2.3.1998.

20. The respondent No. 3 employer has in return pointed out steps taken after 24.2.1998 to serve charge sheet upon the petitioner. It is mentioned that the petitioner was out of station from 25.2.1998 to 27.2.1998 as he had gone to Patharkheda area. In the morning on 28.2.1998, Peon was sent to his office room for delivery of memo of charge. Peon reported that the petitioner was not available in his office room at 10.30 a.m. He, therefore, had gone to residence of petitioner, but petitioner was not available at residence also. Persons at his residence were not aware about his whereabouts. Peon went again, at 12.15 p.m. and reported that the petitioner was not available either in the office or at his residence. Copy of Peon dak book, containing the report made by Peon on 28.2.1998 are also produced as part of said return. It is further stated that even executive secretary to the petitioner was not available in the office.

21. In this situation, charge sheet was sent to residential address of petitioner by R.P.A.D. vide receipt No. 5049 on 28.2.1998 itself. The postal receipt is also produced on record as part of said return. This envelope was received back by the respondent No. 4 employer with an endorsement "Not Claimed". On 28.2.1998 was the day of Saturday and office was working only upto 1.30 p.m. and as the petitioner remained absent from office as well as from his residence, the said memo of charge was required to be dispatched by R.P.A.D. These facts along with memo declaring relinquishment of charge forwarded by the petitioner through speed post clearly reveal an attempt by him to avoid service of charge sheet.

22. Provision, of Rule 34.2 of the Conduct, Discipline and Appeal Rules, 1978 show that the departmental proceedings if instituted while employee was in service are deemed to be proceeding after his retirement and are to be continued and concluded by the authority by which it was commenced.

23. It is, therefore, apparent that the departmental proceedings against the petitioner were commenced when charge sheet was issued on 24.2.1998. Petitioner, therefore, could not produce any relieving order to show that in pursuance of notice of retirement dated 2.9.1997, he handed over charge to successor and was actually permitted to superannuate on 28.2.1998.

24. We, therefore, do not find any substance in both the grounds raised on behalf of the petitioner.

25. Writ Petition is accordingly dismissed.

26. Rule is discharged. No costs.

