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(2008) 01 SC CK 0059

In the Supreme Court Of India

Case No : Civil Appeal No. 513 of 2008 (Arising out of SLP (c) No''s. 11599 of 2006)

U.P. State Sugar Corporation Ltd. and Others — APPELLANT

Vs

Kamal Swaroop Tondon — RESPONDENT

Date of Decision : 18-01-2008

Acts Referred:
Central Civil Services (Pension) Rules, 1972 — Rule 3, 31, 9
Constitution of India, 1950 — Article 226

Citation : AIR 2008 SC 1235 : (2008) AIRSCW 1241 : (2009) 2 ALT 6 : (2008) 118 FLR 834 : (2008) 2 LLJ 854 : (2008) 1 SCALE 615 : (2008) 2 SCC 41 : (2008) 1 SCC(L&S) 352 : (2008) 1 UPLBEC 53

Hon'ble Judges : P. Sathasivam, J;C. K. Thakker, J

Bench : Division Bench

Advocate : Rakesh Uttamchandra Upadhyay and Ajay Kumar Rai, for the Appellant; Ravi Prakash Mehrotra and Garvesh Kabra, for the Respondent

Final Decision : Disposed Of

Judgement

C.K. Thakker, J.—Leave granted.

2. The present appeal is filed against the judgment and order passed by the High Court of Judicature at Allahabad (Lucknow Bench) on February 24, 2006 in Writ Petition No. 484 (S/B) of 2000.

3. Necessary facts giving rise to the appeal are that the respondent herein was serving with the appellant- U.P. State Sugar Corporation Ltd. ("Corporation" for short) as Resident Engineer at the Head Office of the Corporation at Lucknow. On January 13, 2000, a show cause notice was issued to him stating therein that a work was allotted to M/s Gupta & Co., Dehradoon for construction of residential houses in Saharanpur. The Contractor had given two Fixed Deposit Receipts (FDRs) towards the security for the work to be done. The details of FDRs were given in the notice. It was alleged that the Corporation suffered loss of Rupees one lakh due to lack of precaution, irregularity, gross negligence and

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carelessness by the respondent. The respondent was, therefore, called upon to submit explanation within three days why disciplinary action should not be taken against him. On January 15, 2000, the respondent submitted his reply denying the allegations and contending that he had not committed any illegality and there was no justification to ask for his explanation. The Corporation was not satisfied with the reply filed by the respondent and decided to hold departmental inquiry against him. On January 31, 2000, therefore, show cause notice was issued to the respondent for the losses caused to the Corporation due to negligence and carelessness on the part of the respondent. It may be noted at this stage that the respondent retired on attaining the age of superannuation (60 years) on the same day, i.e. January 31, 2000. According to the respondent, since he retired from service on January 31, 2000, no proceedings could have been initiated against him and issuance of show cause notice which was received by him after office hours at 6.45 p.m. on January 31, 2000 was illegal as there was no relationship of employer and employee between the Corporation and him. He, therefore, filed a writ petition in the High Court of Allahabad at Lucknow Bench on April 11, 2000. In the petition a prayer was made for quashing charge-sheet and departmental proceedings. During the pendency of the petition, however, two orders came to be passed against the respondent on March 24, 2001 and April 26, 2005. By the first order of March 24, 2001, an amount of Rupees one lakh was ordered to be recovered from the respondent as the Corporation suffered loss of the said amount which was ordered to be adjusted from the gratuity of the respondent. By the second order dated April 26, 2005, an amount of Rs. 73,235-50ps which was = portion of the amount of Rs. 1,46,471.00ps was directed to be recovered as loss had been caused to the Corporation due to negligence of the respondent. The respondent sought amendment in the petition and challenged the above two orders as well.

4. The High Court, by the impugned order, allowed the writ petition holding that the order dated January 31, 2000 commencing disciplinary inquiry against the writ petitioner was illegal as he had retired on that day. No proceedings, hence, could have been initiated against him. Consequently, orders passed in 2001 and 2005 could not have been made and they were liable to be quashed. The Corporation was directed to pay to the writ petitioner all the benefits of gratuity, leave encashment and other dues payable to him with interest @ 8% p.a. from the date of retirement till the date of actual payment. Being aggrieved by the order passed by the High Court, the Corporation has approached this Court.

5. On July 28, 2006, notice was issued by this Court. Since contempt proceedings were initiated by the writ petitioner in the meantime, who succeeded before the High Court, this Court stayed those proceedings. Counter- affidavit and affidavit-in-rejoinder were filed thereafter and the matter was ordered to be placed for final hearing. That is how the matter has been placed before us.

We have heard the learned Counsel for the parties.

6. The learned Counsel for the appellant- Corporation contended that the High

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Court was wholly wrong in quashing departmental proceedings and consequential orders passed by the authorities which were legal, valid and in consonance with law. It was submitted that show cause notice was issued on January 13, 2000 well in time before the writ petitioner retired asking for an explanation as to why proceedings should not be initiated against him. It was further submitted that even charge-sheet was issued on January 31, 2000 and it was within power of the Corporation to issue such charge-sheet and the High Court ought not to have set aside the inquiry proceedings and consequential orders. It was urged that it is settled law that relationship of employer and employee continues to remain so long as all retiral benefits have not been paid to the employee. Since the amount of gratuity, leave encashment and other pensionary benefits were yet to be paid to the employee, the tie continued and proceedings initiated against the writ petitioner were in accordance with law and should not have been interfered with. That apart, under the U.P. State Sugar Corporation Ltd. General Service Rules, 1988 (hereinafter called "the Rules"), such proceedings could have been initiated even after an employee has retired since they related to the recovery of losses caused to the Corporation by the respondent-employee. Since the present proceedings were for recovery of loss caused to the Corporation, such an action could have been taken under the Rules and the High Court was wrong in holding that the proceedings could not have been held. Finally, it was submitted that it was the case of the Corporation that because of acts and omissions of the respondent-employee, loss had been caused to the Corporation. When the amount of loss was sought to be recovered from the employee, the High Court ought not to have exercised discretionary and equitable jurisdiction under Article 226 of the Constitution and on that count also, the impugned action deserves to be set aside. On all these grounds, it was submitted that the impugned order of the High Court is liable to be set aside and the writ petition filed by the writ-petitioner should be ordered to be dismissed by allowing the appeal.

7. The learned Counsel for the respondent, on the other hand, supported the order of the High Court. He submitted that the date of issuance of show cause notice was totally irrelevant. Charge-sheet was issued only on January 31, 2000 and a finding was recorded by the High Court that it was received by the respondent after office hours of January 31, 2000. By the time, the tie was broken and there was no relationship of employer and employee between the Corporation and the writ-petitioner. No departmental proceedings, therefore, could have been initiated against the writ-petitioner and they were liable to be quashed. When the proceedings were without jurisdiction, orders passed in 2001 and 2005 which were consequential, were obviously without power, authority or jurisdiction on the part of the Corporation in passing them. The High Court was, therefore, fully justified in quashing those orders also. Since the order passed by the High Court is legal, valid and proper, it calls for no interference by this Court and the appeal deserves to be dismissed.

8. From the facts noted above, it is amply clear that two orders which were passed against the respondent-employee related to recovery of certain amount

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from the respondent-employee on the ground that there was carelessness, negligence or omission on his part in the discharge of his duties which resulted in loss to the Corporation. By the order dated March 24, 2001, an amount of Rupees one lakh which was financial loss suffered by the Corporation was ordered to be adjusted against the gratuity of the employee. Likewise, by order dated April 26, 2005, an amount of Rs. 73,235.50 p. [= of Rs. 1,46,471.00] was ordered to be adjusted against the amount of gratuity and encashment of earned leave which was also the financial loss suffered by the Corporation as a result of negligence of the respondent. It is in the light of the above facts that we have to consider whether such an action could have been taken against the respondent-employee by the appellant-Corporation.

9. The learned Counsel for the appellant is right when he submitted that show cause notice was issued to the respondent-employee on January 13, 2000 when he was very much in service. The respondent submitted his explanation on January 15, 2000 which was not found to be satisfactory. A regular show cause notice was, therefore, issued by the Corporation on January 31, 2000 and was served upon the respondent-employee on the same day. The notice was also sent by registered post which was received by the employee on February 11, 2000. But it is clear from the documents that show cause notice was issued and replied. A regular show cause notice as to departmental inquiry was also served upon the respondent- employee on the last day of his service which was January 31, 2000. In our opinion, therefore, it could not be said that the proceedings had been initiated against the respondent-employee after he retired from service.

10. Now it is well settled that retiral benefits are earned by an employee for long and meritorious services rendered by him/her. They are not paid to the employee gratuitously or merely as a matter of boon. It is paid to him/her for his/her dedicated and devoted work.

11. In The Garment Cleaning Works Vs. Its Workmen, , the relevant clause of the Gratuity Scheme provided that if a workman was dismissed or discharged for misconduct causing financial loss to the employer, gratuity to the extent of loss should not be paid to the workman concerned. It was contended on behalf of the employer that the retrenchment benefit and gratuity were payable to the employee for his long and meritorious services and if he was dismissed by misconduct, he would not be entitled to claim retrenchment benefits or gratuity and the benefits could be denied to him.

12. Dealing with the argument and the basis of payment of gratuity, this Court, speaking through P.B. Gajendragadkar, J. (as His Lordship then was), said:

5. On principle if gratuity is earned by an employee for long and meritorious service it is difficult to understand why the benefit thus earned by long and meritorious service should not be available to the employee even though at the end of such service he may have been found guilty of misconduct which entails his dismissal. Gratuity is not paid to the employee gratuitously or merely as a

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matter of boon. It is paid to him for the service rendered by him to the employer, and when it is once earned it is difficult to understand why it should necessarily be denied to him whatever may be the nature of misconduct for his dismissal. Then, as to the definition of retrenchment in the Industrial Disputes Act, we are not satisfied that gratuity and retrenchment compensation stand exactly on the same footing in regard to the effect of misconduct on the rights of workmen. The rule of the provident fund scheme shows not that the whole provident fund is denied to the employee even if he is dismissed but it merely authorises certain deductions to be made and then too the deductions thus made do not revert to the employer either. Therefore we do not think that it would be possible to accede to the general argument that in all cases where the service of an employee is terminated for misconduct gratuity should not be paid to him. It appears that in award which framed gratuity schemes sometimes simple misconduct is distinguished from gross misconduct and a penalty of forfeiture of gratuity benefit is denied in the latter case but not in the former, but latterly industrial tribunals appear generally to have adopted the rule which is contained in Clause (ii)(b) of the present scheme. If the misconduct for which the service of an employee is terminated has caused financial loss to the works, then before gratuity could be paid to the employee he is called upon to compensate the employer for the whole of the financial loss caused by his misconduct, and after this compensation is paid to the employer if any balance from the gratuity climbable by the employee remains that is paid to him.

(emphasis supplied)

13. In Calcutta Insurance Co. Ltd. Vs. Their Workmen, , this Court considered the concept of gratuity. It referred to Garment Cleaning Works and other cases. It noted that the opinion expressed in those cases was that gratuity was earned by an employee for "long and meritorious service" and consequently it must be given to him even though at the end of such service, he may have been found guilty of misconduct entailing his dismissal.

14. The Court then said;

In principle, it is difficult to concur in the above opinion. Gratuity cannot be put on the same level as wages. We are inclined to think that it is paid to a workman to ensure good conduct through out the period he serves the employer. "Long and meritorious service" must mean long and unbroken period of service meritorious to the end. As the period of service must be unbroken, so must the continuity of meritorious service be a condition for entitling the workman to gratuity. If a workman commits such misconduct as causes financial loss to his employer, the employer would under the general law have a right of action against the employee for the loss caused and making a provision for withholding payment of gratuity where such loss caused to the employer does not seem to aid to the harmonious employment of labourers of workmen. Further, the misconduct may be such as to undermine the discipline in the workers - a case in which it would be extremely difficult to assess the financial loss to the employer.

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(emphasis supplied)

15. In M. Narasimhachar Vs. The State of Mysore, , an amount of Rs. 5,215/- was deducted from pension of the Government servant. The action was challenged by the employee. Considering the relevant provisions of the Rules, this Court held that the Government had reserved to itself the right to order the recovery from pension and compassionate allowances of the Government servant of any amount on account of losses found to have been caused to Government by negligence or fraud of such officer during his service.

16. Again, in Jarnail Singh Vs. The Secretary, Ministry of Home Affairs and others, , this Court considered the provisions of Central Civil Services (Pension) Rules, 1972. The definition of 'pension' included gratuity under Rule 3. Rule 9 conferred on the President power to withhold or withdraw pension in certain circumstances. An order was passed against an employee withholding pension and the entire amount of death-cum-retirement gratuity otherwise admissible to him. The direction was given on account of serious irregularities found to have been committed by the workman. The workman challenged that order unsuccessfully and thereafter approached this Court. His contention was that an amount of gratuity could not have been withheld.

17. Negativing the contention, this Court held that the power to withhold gratuity was conferred on the President and such action could not be said to be illegal. It was ruled that the Government could adjust its dues against the amount of death-cum-retirement gratuity otherwise payable to Government servant.

18. In State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, , this Court held that it was open to Government to reduce, forfeit, withhold or recover pension, after affording hearing to the affected person, on ground of unsatisfactory service based on proved findings of serious misconduct or causing pecuniary loss to the Government. Such proceedings can be initiated even after retirement for misconduct, negligence or financial irregularity. Where Government servant was found guilty of misconduct or negligence resulting in financial loss to the Government, it was competent to the Government to direct reduction in pension.

19. Interpreting Article 470 of U.P. Civil Service Regulations, this Court observed that the said provision stated that full pension would not be awarded as a matter of course to a Government servant on his retirement. It was awarded to him if service rendered by him was satisfactory. In case of absence of 'thoroughly satisfactory' service, the authority was competent to reduce the amount of pension. Referring to Deokinandan Prasad Vs. The State of Bihar and Others, , State of Punjab Vs. K.R. Erry and Sobhag Rai Mehta, and D.S. Nakara and Others Vs. Union of India (UOI), , the Court held that pension was not a 'bounty' and an employee was entitled to pensionary benefits, but proceeded to state that a Government employee would earn pension by rendering long and efficient service. Considering Narasimhachar, the Court held that the employer had right

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to reduce pension of an employee if services rendered by him were found to be unsatisfactory. Only thing is that in such cases before taking any action, principles of natural justice must be observed.

20. In State of Maharashtra Vs. M.H. Mazumdar, , the Court held that departmental inquiry can be instituted against a Government servant after superannuation and pension can be reduced on proved charges of misconduct, negligence or financial irregularity committed during the period of service. Following Narasimhachar and Brahm Datt Sharma, and distinguishing B.J. Shelat Vs. State of Gujarat and Others, , the Court held that when financial loss was caused to the Government by any act or omission on the part of its employee, the purpose of inquiry was not to inflict any punishment, but to determine the pension of an employee. Such an action, in our view, can be taken so that the Government may not have to suffer financially.

21. Reference was also made to a leading decision in Union of India Vs. K.V. Jankiraman, etc. etc., . In Jankiraman, the question which came up for consideration before this Court related to promotion of an officer and adoption of "sealed cover procedure". It was held that consideration of case of an employee for promotion could not be withheld merely on the ground of pendency of any departmental inquiry/criminal investigation against him. It could, however be resorted to once charge memo/charge-sheet is issued.

22. It was submitted by the learned Counsel for the Corporation that in the case on hand, not only notice was issued to the respondent-employee on January 13, 2000, but even regular show cause notice was issued on January 31, 2000 and hence the proceedings could have been continued on the basis of law laid down in Jankiraman.

23. In UCO Bank and Others Vs. Sanwar Mal, , the Court held that two concepts; (i) resignation; and (ii) retirement were different and employed for different purposes and in different contexts. Resignation brings about complete cessation of master and servant relationship, but retirement does not do so. In case of retirement, master and servant relationship continues for grant of retiral benefits.

24. If it is so, the appellant- Corporation, in our opinion, is right in submitting that the proceedings could have been continued after the retirement of the respondent-employee as far as the financial loss caused to the Corporation because of negligence on the part of employee and the benefit claimed by the respondent-workman on his terminal benefits.

25. Strong reliance was placed by the learned Counsel for the respondent on P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, . In that case, there was inordinate delay of ten years in initiating departmental proceedings against an employee. In absence of convincing explanation by the employer for such inordinate delay, this Court held that the proceedings were liable to be quashed.

26. In our opinion, Mahadevan does not help the respondent. No rigid, inflexible

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or invariable test can be applied as to when the proceedings should be allowed to be continued and when they should be ordered to be dropped. In such cases there is neither lower limit nor upper limit. If on the facts and in the circumstances of the case, the Court is satisfied that there was gross, inordinate and unexplained delay in initiating departmental proceedings and continuation of such proceedings would seriously prejudice the employee and would result in miscarriage of justice, it may quash them. We may, however, hasten to add that it is an exception to the general rule that once the proceedings are initiated, they must be taken to the logical end. It, therefore, cannot be laid down as a proposition of law or a rule of universal application that if there is delay in initiation of proceedings for a particular period, they must necessarily be quashed.

27. In the present case, the High Court has not quashed the proceedings on the ground that there was inordinate and unexplained delay on the part of the Corporation in initiating such proceedings against the respondent. According to the High Court, since the respondent retired on January 31, 2000, the proceedings could not have been continued against him. From the case law referred to by us hereinabove, it is clear that such proceedings could have been continued since they were initiated for the recovery of losses sustained by the Corporation due to negligence on the part of the respondent-employee. Such loss caused to the Corporation could be recovered from the respondent from the retiral benefits of the respondent.

28. The learned Counsel for the appellant- Corporation also referred to the Rules. Chapter IV titles 'Fundamental Duties of Service'. Rule 31 expressly states that an employee of the Corporation would be 'whole time employee'. Chapter VIII (Rules 93 to 107) deals with 'Disciplinary Proceedings'. Rule 93 is material and relevant part thereof reads thus;

93. The following penalties may, for good and sufficient reason and as hereinafter provides, be imposed on an employee.

A. MINOR PENALTIES

(i) Censure

(ii) With-holding of annual increment(s), including stoppage of an efficiency bar/ assessment stage with or without cumulative effect.

(iii) Recovery from pay or from such other amounts as may be due to the employee of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders on his part;

B. MAJOR PANALTIES

(iv) reduction to a lower grade or post or to a lower stage in a time scale;

(v) removal from service which does not disqualify from future employment,

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(vi) dismissal from service which ordinarily disqualifies from future employment.

(emphasis supplied)

29. Rule 102 prescribes procedure before starting enquiry. Rule 103 provides for major penalties. Rule 109 lays down procedure for imposition of minor penalties and is another important provision which may be quoted in extenso.

109. (1) Whenever the punishing authority is satisfied that good and sufficient reasons exist for adopting such a course it may impose the penalty of

(i) Censure, or

(ii) Stoppage at an efficiency bar.

Provided that it shall not be necessary to frame formal charges against the employee concerned but his explanation may be called and considered before imposing such a penalty.

(2) In all cases where the punishing authority imposes the penalty of-

(i) Withholding of increments in the time scale at stages where there is no efficient bar.

(ii) Recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders.

Formal proceedings embodying statement of the offence or fault, the explanation of the person concerned, and the reasons for punishment shall be recorded.

Provided that it shall not be necessary to record such proceedings in cases where an employee's increment in the time scale of his pay at any stage other than an efficiency bar is stopped due to his integrity remaining uncertified.

(emphasis supplied)

30. It is, therefore, clear that so far as minor penalty is concerned, it is not necessary for the Corporation to follow detailed and lengthy procedure laid down for imposition of major penalties. In the instance case, the proceedings had been initiated by the appellant-Corporation against the respondent- employee for recovery of pecuniary loss caused to the Corporation by negligence on his part. The proceedings, hence, could be instituted by issuing notice which was done on January 13, 2000. The said action, therefore, could not have been held bad or without power, authority or jurisdiction on the part of the Corporation. As we have already observed earlier, even regular show cause notice was served on January 31, 2000 which was also during the employment of respondent. The High Court, in our view, was wrong in quashing the proceedings and setting aside orders dated March 24, 2001 and April 26, 2005. The impugned order of the High Court, therefore, deserves to be set aside.

31. Finally, the learned Counsel for the appellant-Corporation is right in

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submitting that the High Court was exercising discretionary and equitable jurisdiction under Article 226 of the Constitution. It is well- settled that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that Article can be exercised by the High Court to reach injustice wherever it is found.

32. In Veerappa Pillai Vs. Raman and Raman Ltd. and Others, , the Constitution Bench of this Court speaking through Chandrasekhara Aiyar, J. observed that the writs referred to in Article 226 of the Constitution are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice.

33. Again, in leading case of Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, , dealing with the ambit and scope of powers of High Courts under Article 226 of the Constitution, Bose, J. stated;

That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not, and should not, act as courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognized lines and not arbitrarily; and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case.

(emphasis supplied)

34. Recently, in Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warrier, an employee of Oil and Natural Gas Commission (ONGC) unauthorisedly retained an official accommodation after his retirement. When penal rent was charged and sought to be recovered from retiral benefits of the employee, he filed a petition invoking Article 226 of the Constitution. The High Court allowed the petition and directed the Corporation to release all the benefits to which the employee was entitled. The High Court observed that it was open to the Corporation to take appropriate proceedings for recovery of the dues claimed by the Corporation. Aggrieved ONGC approached this Court.

35. Allowing the appeal, setting aside the order passed by the High Court and considering the relevant decisions on the point, one of us (C.K. Thakker, J.) observed;

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As already adverted to by us hereinabove, the facts of the present case did not deserve interference by the High Court in exercise of equitable jurisdiction under Article 226 of the Constitution. The respondent-petitioner before the High Court-, was a responsible officer holding the post of Additional Director (Finance & Accounts). He was, thus, "gold collar" employee of the Commission. In the capacity of employee of the Commission, he was allotted a residential quarter. He reached the age of superannuation and retired after office hours of February 28, 1990. He was, therefore, required to vacate the quarter allotted to him by the Commission. The Commission, as per its policy, granted four months time to vacate. He, however, failed to do so. His prayer for continuing to occupy the quarter was duly considered and rejected on relevant and germane grounds. The residential accommodation constructed by him by taking loan at the concessional rate from the Commission was leased to Commission, but the possession of that quarter was restored to him taking into account the fact that he had retired and now he will have to vacate the quarter allotted to him by the Commission. In spite of that, he continued to occupy the quarter ignoring the warning by the Commission that if he would not vacate latest by June 30, 1990, penal rent would be charged from him. In our judgment, considering all these facts, the High Court was wholly unjustified in exercising extraordinary and equitable jurisdiction in favour of the petitioner 'respondent herein' and on that ground also, the order passed by the High Court deserves to be set aside.

(emphasis supplied)

36. Considering the facts and circumstances in their entirety, in our considered opinion, the High Court was wrong in holding that the proceedings were initiated after the respondent retired and there was no power, authority or jurisdiction with the Corporation to take any action against the writ-petitioner and in setting aside the orders passed against him. In our judgment, proceedings could have been taken for the recovery of financial loss suffered by the Corporation due to negligence and carelessness attributable to the respondent-employee. The impugned action, therefore, cannot be said to be illegal or without jurisdiction and the High Court was not right in quashing the proceedings as also the orders issued by the Corporation. The appeal, therefore, deserves to be allowed by setting aside the order of the High Court.

37. For the foregoing reasons, the appeal is allowed and the order passed by the High Court is set aside. But since the High Court has allowed the petition only on the ground that the proceedings could not have been instituted against the writ-petitioner, it would be appropriate if we remit the matter to the High Court so as to enable it to consider the rival contentions of the parties and take an appropriate decision on merits. We may clarify that we may not be understood to have expressed any opinion one way or the other on the controversy involved in the case and as and when the High Court will take up the writ petition, it will decide the same without being influenced by any observation made in this judgment. On the facts and in the circumstances of the case, the parties will bear

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their own costs.

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