

(1996) 03 AHC CK 0007
In the Allahabad High Court
Case No : C.M.W.P. No. 20123 of 1995

Zafar Ahmad Ahrari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-03-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Government Servants (Conduct) Rules, 1956 — Rule 3, 3(1), 3(2), 4, 8

Citation : (1996) 03 AHC CK 0007

Hon'ble Judges : D.S. Sinha, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant;

Final Decision : Allowed

Judgement

D.S. Sinha, J.—Requisite affidavits have been exchanged between the parties, though the petition has not been admitted formally.

2. Shri Ashok Khare, learned Counsel for the Petitioner and Shri R. C. Yadav, learned Standing Counsel representing the Respondents, Jointly pray and agree that the petition may be disposed of finally. Accordingly, after hearing the learned Counsel for the parties, at length and in detail, the Court proceeds to dispose of the petition.

3. By means of this petition under Article 226 of the Constitution of India, the Petitioner, a retired District Survey Officer of the department of Basic Education of the State of Uttar Pradesh, seeks to challenge the legality of the order dated 28th April, 1995 (Annexure-6 to the petition) and prays for quashing thereof. The further prayer of the Petitioner is that the Respondents may be commanded to pay the entire amount of gratuity payable to him alongwith interest at the rate of 24% per annum, apart from payment of the full pension.

4. The impugned order purports to direct deduction of the monthly pension of

the Petitioner by 25% permanently.

5. Undisputed and relevant facts emerging from the pleadings contained in the petition are these:

The Petitioner was appointed as Sub-Deputy Inspector of Schools in the said education service of the State in the year 1958. In 1984, he was promoted as District Basic Education Officer. Later, in the year 1988, he was promoted to the post of District Survey Officer from which post he retired on attaining the age of superannuation with effect from 30th June, 1988.

6. During the period between 1st July, 1988 and 30th June, 1989, he was paid provisional pension. Thereafter the payment of provisional pension was stopped which led the Petitioner to file a writ petition in this Court. The petition was disposed of by the Court finally vide its order and judgment dated 7th September, 1992 directing the disposal of the representation of the Petitioner raising grievance about the non-payment of the pension.

7. It appears, as a consequence of the Petitioner's approach to this Court and disposal of his writ petition, as aforesaid, the payment of provisional pension to the Petitioner was resumed with effect from May, 1993 and he was also paid his arrears. But the payment of provisional pension was again stopped from May, 1995, presumably, on account of the impugned order.

8. Prior to the passing of the impugned order, the Petitioner was served with the notice dated 13th April, 1993 (Annexure-2 to the petition) purporting to be under Regulation 470 (b) of the Civil Service Regulations, as applicable in the State of Uttar Pradesh, hereinafter called the Regulations, containing certain allegations regarding some irregularities alleged to have been committed by the Petitioner in connection with the purchase of stationery during the year 1985-86 while he was posted as District Basic Education Officer at Ballia. The notice called upon him to show cause why his monthly pension be not reduced by 40% and gratuity be not withheld. The Petitioner submitted his reply dated 15th June, 1993 (Annexure-3 to the petition).

9. The Petitioner was issued yet another notice dated 23rd June, 1993 (Annexure-4 to the petition) calling upon him to show cause as to why his monthly pension be not reduced by 40% and gratuity be not withheld. This notice was founded on the same allegations upon which the notice dated 13th April, 1993 was based.

10. By means of the communication dated 16th July, 1993 (Annexure-5 to the petition), the Petitioner replied that he had already submitted his reply vide communication dated 15th June, 1993 and the same be treated as reply to the show cause notice dated 23rd June, 1993, aforesaid.

11. Eventually, on 23rd April, 1995 the impugned order was passed and served on the Petitioner on 18th May, 1995.

12. The impugned order records a finding that the service of the Petitioner was not wholly satisfactory by holding him guilty of violation of (a) Sub-rules (1) and (2) of Rule 3 of the U.P. Government Servants' Conduct Rules, 1956 (hereinafter called the Conduct Rules), and (b) Rules 4 and 8 of Appendix 18 and Rules 4 and 9 of Appendix 19 of the Financial Hand Book Vol. V, Part I inasmuch as he had not obtained the sanction from the District Purchase Committee for making the purchase in question and the purchases had been made in contravention of the Rules and Departmental order.

13. Shri Ashok Khare, learned Counsel for the Petitioner, contends that the impugned order does not contain any reason for the finding. He also contends that for coming to the conclusion that the service of the Petitioner was not wholly satisfactory, the service record of the Petitioner was not considered, which was sine qua non for invoking provisions of Regulation 470 (b) of the Regulations. Further contention of Shri Khare is that though the order purports to have been passed in exercise of powers under Regulation 470 (b) of the Regulations, it has in fact been passed in exercise of powers under Regulation 351A of the Regulations inasmuch as the impugned order is founded upon alleged misconduct of the Petitioner as is evident from the impugned order holding the Petitioner to be guilty of violation of Rule 3 of the Conduct Rules which obliges every Government servant to maintain absolute integrity and devotion of duty to conduct himself in accordance with the specific or implied orders of the Government regulating the behaviour and conduct which may be in force.

14. Shri R. C. Yadav, learned Standing Counsel representing the Respondents, combats the contention of Shri Khare by submitting that the impugned order was passed after taking into consideration the material facts and totality of the circumstances.

15. For the proper appreciation of the controversy involved herein, it would be opposite to notice the provisions of Regulations 351A and 470B of the Regulations as well as of Rule 3 of the Conduct Rules which are as follows:

Regulations :

351A. The Governor reserves to himself the right of withholding 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 department or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on reemployment after retirement:

Provided that:

(a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment:

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

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings, and

(iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

(b) judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of Clause (a); and

(c) the Public Service Commission, U.P. shall be consulted before final orders are passed:

Provided further that if the order passed by the Governor relates to a case dealt with under the Uttar Pradesh Disciplinary Proceedings, (Administrative Tribunal) Rules, 1947, it shall not be necessary to consult Public Service Commission.

Explanation.--For the purposes of this article:

(a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted;

(i) in the case of criminal proceedings, on the date on which complaint is made, or a charge-sheet is submitted, to a Criminal Court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to a Civil Court.

Note.--As soon as proceedings of the nature referred to in this article are instituted, the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned.

470. (a) The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper:

Provided that in cases where the authority sanctioning pension is other than the appointing authority, no order regarding reduction in the amount of pension shall be made without the approval of the appointing authority.

Note.--For the purpose of this Article "appointing authority" shall mean the authority which is competent to make substantive appointment to the post or service from which the officer concerned retires.

(Emphasis added)

Conduct Rules :

Rule 3. General.--(1) Every Government Servant shall at all time maintain absolute integrity and devotion to duty.

(2) Every Government servant shall at all times conduct himself in accordance with the specific or implied orders of Government regulating behaviour and conduct which may be in force.

(Emphasis supplied)

16. Obviously, the power under Regulation 351A of the Regulations can be exercised if the pensioner is found to have been guilty of grave misconduct or to have caused pecuniary loss to the Government by misconduct or negligence during his service, including service rendered on re-employment after retirement in a departmental or judicial proceedings. The departmental or judicial proceedings holding the Petitioner to be guilty is a condition-precedent. Further, departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment (a) shall not be instituted save with the sanction of the Governor, (b) shall be only in respect of an event which took place not more than four years before the institution of such proceedings; and (c) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to the proceedings on which an order of dismissal from service may be made. To be precise, initiation of departmental proceedings under Regulation 351A against the retired employee will require sanction of the Governor, the event sought to be enquired must have taken place within preceding four years of the date of the institution of such proceedings and the procedure to be adopted by the concerned authority must be the same as applicable with regard to the proceedings relating to dismissal from service. Sub-clause (ii) of Clause (a) of the proviso to Regulation 351A clearly prescribes the period of limitation for initiation of departmental proceedings against the retired employee and impliedly prohibits initiation of such proceedings after the expiry of the stipulated period.

17. The power under Regulation 470 (b) of the Regulations can be exercised only if the service of the employee has not been found thoroughly satisfactory by the sanctioning authority. Needless to say that the finding of the sanctioning authority that the service of the employee has not been thoroughly satisfactory has to be based on the relevant material. It cannot be gainsaid, service record of an employee is the most relevant material for assessing whether his service has been thoroughly satisfactory. Any finding regarding thoroughly unsatisfactory service of an employee for the purpose of exercising power under Regulation 470 (b) of the Regulations without considering the service record of the employee cannot be sustained.

18. Rule 3 of the Conduct Rules ordains every Government servant to maintain absolute integrity and devotion to duty and to conduct himself in accordance with specific or implied orders of Government regulating the behaviour and conduct

which may be in force at all times. Impliedly, non-adherence to the provisions of Rules 3 renders the Government Servant to be guilty of misconduct. Such misconduct, if grave, may form basis of action under Regulation 351A of the Regulations.

19. For holding the service of the Petitioner to be wholly unsatisfactory, the impugned order clearly and unequivocally relies upon the alleged misconduct of not maintaining absolute integrity and of violating the orders of the Government regarding obtaining sanction from the District Purchase Committee and the departmental orders and rules. Specific mention of the violation of the provisions of Rule 3 of the Conduct Rules and of the provisions of Financial Hand Book Vol. V Part I has been made and direction for deduction of monthly pension of the Petitioner by 25% permanently has been given on that footing.

20. Power of withholding pension on the ground of misconduct is traceable only in Regulation 351A of the Regulations. Power under Regulation 470 (b) of the Regulations can be exercised only on the ground of service of the Government Servant being wholly unsatisfactory on the basis of service-record. The impugned order, though it professes to have been passed in exercise of power under Regulation 470 (b) of the Regulations, is, in fact, under Regulation 351A of the Regulations. Therefore, it could have been exercised only if the Petitioner had been found guilty of grave misconduct in a departmental or judicial proceedings held in accordance with the provisions of Regulation 351A and within the period of limitation prescribed therein, namely, four years. In the instant case, indisputably, the event which was the substratum of the alleged misconduct and sought to be enquired into took place more than four years ago from the date of institution of the departmental proceedings. The proceedings were, therefore, clearly barred by Sub-clause (it) of Clause (a) of the proviso to Regulation 351A. Consequently, the impugned order is illegal.

21. On merits, the Petitioner has in paragraphs 16, 25, 28, 29, 30 and 31 of the writ petition specifically pleaded that all the purchases in question were made after obtaining the sanction from the District Purchase Committee and in accordance with the Rules and specific approval of the higher authorities in the department. These pleadings have not been effectively controverted by the Respondents. Reply to the aforesaid pleadings is contained in paragraph 17 of the counter-affidavit which merely states that paragraphs 21 to 33 of the writ petition are wholly incorrect and misconceived. Thus, the finding that for making the purchase in question, the Petitioner did not obtain sanction from the District Purchase Committee and that he had made purchases in contravention of rules and departmental orders cannot be sustained.

22. With regard to the finding in the impugned order that the service of the Petitioner was not thoroughly satisfactory, in paragraphs 4 and 5 of the writ petition the Petitioner has pleaded that during the entire period of service career, his work and conduct had been fully satisfactory, which is apparent from the fact that he was granted regular promotions, last being to the post of District Survey

Officer granted on 30th March, 1988. Further plea of the Petitioner is that during the entire service career, he was never awarded any adverse entry nor was he subjected to any disciplinary proceeding or any punishment. On the contrary, he was awarded regular increments and permitted to cross efficiency bars also. These averments are substantially un rebutted. With reference to aforesaid, the pleadings contained in paragraphs 4 and 5 of the petition, in paragraphs 4 and 5 of the counter-affidavit it is stated that a disciplinary enquiry was pending and in that connection Annexures I and II to the counter-affidavit have been relied upon. Annexure I is a letter dated 29th June, 1988 from the Director of Education of Uttar Pradesh, Allahabad addressed to the District Inspector of Schools, Gorakhpur and Annexure II is a letter dated 1st August, 1988 from the Joint Secretary, U.P. Government addressed to Director of Education (Basic), Uttar Pradesh, Allahabad/Lucknow. These communications do not support the suggestion of initiation or pendency of departmental proceeding against the Petitioner. These letters merely indicate that the question of institution of enquiry against the Petitioner was under consideration of the Government. Institution of a regular departmental inquiry commences with the appointment of enquiry officer and serving of the charge-sheet upon the delinquent employee. No material has been placed before the Court to demonstrate that the alleged departmental enquiry was so instituted. On the contrary, in paragraphs 3 and 4 of his rejoinder-affidavit, the Petitioner has categorically stated that no departmental inquiry had been initiated against him and that it was wholly incorrect to assert that any departmental proceedings were pending against him. This statement is unrefuted. In the circumstances, the finding that the service of the Petitioner was wholly unsatisfactory is clearly based on no material and, therefore, perverse.

23. It is pertinent to notice that the impugned order merely recites the allegations against the Petitioner and soon thereafter, records the finding holding his service to be wholly unsatisfactory. It does not give any reason for arriving at the finding. Lack of reasons in the impugned order in support of the finding regarding the Petitioner's service being wholly unsatisfactory betrays non-application of mind and renders it invalid.

24. In similar circumstances, a Division Bench of Patna High Court had allowed the petition of an employee of the State of Bihar against the order withholding a part of his pension and the decision of the High Court was upheld by the Hon'ble Supreme Court of India vide its decision rendered in the case of State of Bihar and others Vs. Mohd. Idris Ansari, .

25. The foregoing discussion leads to an irresistible conclusion that the impugned order cannot be sustained either under Regulation 470 (b) or Regulation 351A of the Regulations. The order is clearly illegal and must perish.

26. With regard to the payment of gratuity to the Petitioner, nothing has been brought to the notice of the Court which may justify withholding thereof. The Petitioner is, therefore, entitled to the payment of gratuity amount together with

interest without any further delay.

27. In the result, the petition succeeds and is allowed. The impugned order dated 28th April, 1995, a copy whereof is Annexure "6" to the petition, is quashed. The Respondents are commanded jointly and severally to grant and pay to the Petitioner full pension admissible to him in accordance with law and also to pay him the entire gratuity amount together with interest thereon at the rate of 12% per annum as early as possible, but not later than four months, to be computed from today. There is no order as to costs.