
(2015) 03 AHC CK 0179

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4514 of 2012

Zahid Hussain

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Citation : (2015) 7 ADJ 515

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Yogesh Agarwal, for the Appellant; Amrish Sahai, P.K. Singh and S.K. Mishra, Advocates for the Respondent

Final Decision : Allowed

Judgement

B. Amit Sthalekar, J—List has been revised. None appears on behalf of the respondents. Sri Yogesh Agarwal, learned counsel for the petitioner is present and has been heard and the documents on records have been perused. This writ petition has been filed by the petitioner seeking quashing of the chargesheet dated 30.8.2011.

2. Briefly stated the facts of the case are that the petitioner was working on the post of Head Clerk and retired from service on 30.9.2011. However, just before his retirement he was served with a charge-sheet dated 30.8.2011 issued by the Chairman Nagar Palika Parishad, Fatehpur. These charges have been levelled against the petitioner but it is not necessary to examine the same on its merit since this case involves a legal question as to whether upon the retirement of the petitioner the charge-sheet could be said to be still alive and whether disciplinary proceedings thereunder could be continued against the petitioner.

3. A preliminary point has been raised by Sri Yogesh Agarwal that after the retirement of the petitioner the departmental proceedings in pursuance of the charge-sheet dated 30.8.2011 could not have been continued and the charge-sheet cannot be said to be still alive after the retirement of the petitioner. The

submission is that the petitioner is not a Government Servant and rather is an employee of the Nagar Palika Parishad, Fatehpur and the provisions of Article 351-A of the Civil Service Regulations have no application to the employees of the Nagar Palika Parishad and therefore once the employee retires on attaining the age of superannuation and no action has been taken on the basis of the charge-sheet or departmental proceedings concluded, the departmental proceedings after the date of such retirement shall automatically lapse.

4. A specific averment has been made in paragraph 9 of the writ petition that in the absence of anything to the contrary in the Rules it is not open for the employer to continue disciplinary proceedings after the retirement of the delinquent employee. The averments of paragraph 9 of the writ petition have been replied in paragraph 11 of the counter-affidavit filed on behalf of the respondent Nos. 5 and 6.

5. Paragraph 9 of the writ petition reads as follows:

"9. That it is pointed out that the Hon"ble Court have repeatedly held that in the absence of Rules, it is not open for the employer to continue disciplinary proceedings after the retirement of the incumbent and his post retiral benefits cannot be adversely affected on the basis of any disciplinary proceedings alleged to have been lodged against the incumbent during his service."

6. Paragraph 11 of the counter-affidavit reads as under:

"11. That the contents of paragraphs No. 8 and 9 of the writ petition are wholly false hence denied and in reply thereto, it is stated here that the charges leveled against the petitioner are based on documentary evidence and with proof. It is wrong to say that after retirement no disciplinary proceeding can be initiated against a guilty employee."

7. A counter-affidavit has also been filed on behalf of the State Respondents by the learned Standing Counsel and therein it has not been denied that there are no Rules under which departmental proceedings can be continued after retirement of an employee by the Nagar Palika Parishad.

8. Paragraph 9 of the counter-affidavit of the State reads as under:

"9. That the allegations made in paragraph 9 of the writ petition are incorrect and denied. It is incorrect to suggest that the disciplinary proceedings cannot be continued after retirement of the incumbent and the post retiral benefits cannot be adversely affected on the basis of any disciplinary proceeding. The disciplinary proceedings in the present case have been instituted much before the retirement of the petitioner and the charge-sheet alongwith the documentary evidence had been served on the petitioner much prior to his retirement and as such the same has to be taken to its logical end. It is relevant to point out that the petitioner's retiral benefits have not at all been adversely affected due to pendency of the disciplinary proceeding in as much as he has been given the retiral dues. In this connection the true copies of the letter dated 3.2.2014 alongwith chart showing

the payment of pension in the account of the petitioner, copy of provident fund ledger are annexed herewith and are marked as ANNEXURE-NO. CA-4 to this affidavit collectively."

9. Thus, it has not been denied by the respondents that there are no Rules *pari materia* or similar to or equivalent to Article 351-A of the Civil Service Regulations which provide that departmental proceedings may be continued after the retirement of an employee of a Nagar Palika Parishad with the sanction of the Governor or some other authority in that regard.

10. Reliance has been placed by Sri Yogesh Agarwal upon the judgment of the Supreme Court in *Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others*, AIR 1999 SC 1841 : (1999) 88 CLT 564 : (1999) 82 FLR 143 : (1999) 3 JT 53 : (1999) 1 LLJ 1236 : (1999) 2 SCALE 545 : (1999) 3 SCC 666 : (1999) SCC(L&S) 804 : (1999) 2 SCR 354 : (1999) AIRSCW 1442 : (1999) 4 Supreme 9 of the said judgment of the Supreme Court reads as under:

"6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of departmental enquiry after superannuation.

7. In view of the absence of such provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95. there was no authority vested in the Corporation or continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

11. Thus on the facts of the case and in view of the law laid down by the Supreme Court in *Bhagirathi Jena (Supra)* the departmental proceedings in pursuance of the charge-sheet dated 30.8.2011 could not have been continued against the petitioner after his retirement on 30.9.2011.

12. In this view of the matter the writ petition deserves to be allowed and is accordingly allowed. The charge-sheet dated 30.8.2011 is quashed. There shall be no order as to cost.