

(2008) 01 AHC CK 0092

Allahabad High Court

Case No: None

Ram Rakhan Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Jan. 8, 2008**Citation:** (2008) 117 FLR 211 : (2008) 1 UPLBEC 840**Hon'ble Judges:** B.S. Chauhan, J; Arun Tandon, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

B.S. Chauhan and Arun Tandon, JJ.

The petitioner was appointed as Assistant Sales Tax Officer in the Trade Tax Department of the State of Uttar Pradesh. It is stated that the petitioner attained the age of superannuation and actually retired on 31-01-01. On 18th January, 2002, the petitioner was served with a charge-sheet bearing the date as 29th December, 2001. On receipt of the charge-sheet, the petitioner made an application dated 20th September, 2002 stating therein that the enquiry proceedings were liable to be revoked.

2. However, the disciplinary proceeding initiated against the petitioner were continued and on 15/16th January, 2003 a show cause notice was issued to the petitioner along with an enquiry report dated 8th March, 2002. The petitioner submitted his reply dated 18th January, 2003 to the second show cause notice and vide letter dated 5th April, 2003, he has requested for revocation of the entire proceedings.

3. By means of the impugned order dated 22nd November, 2005 the petitioner has been informed that the Governor of U.P. in exercise of powers under Article 351-A of Civil Services Rules has been pleased to grant permission for continuation of the disciplinary proceedings against the petitioner, even after his retirement. It is against this order and for quashing the departmental proceedings that this petition has been filed.

4. On behalf of the petitioner, it is contended that permission to continue the disciplinary proceedings under Article 351-A of Civil Services Rules against a government servant can be granted by the Governor only in respect of an incident which has taken place not more than four years prior to the date of retirement of the government servant. He clarifies that having regard to the date of retirement i.e. 31st January, 2001 and the date on which the Governor is said to have granted the permission, as communicated under letter dated 22nd November, 2005, it is apparently clear that this prescribed period of four years has expired in between. In the alternative he submits that under explanation to Article 351-A of the Civil Services Rules, the departmental proceedings are said to have been initiated on the service of the charge-sheet. The service of the charge-sheet itself had been affected upon the petitioner subsequent to his retirement i.e. 31st January, 2001 to be precise on 18th January, 2002 only and that to without there being any approval of the Governor of the State as required under Article 351-A of Civil Services Rules. Therefore, the entire departmental proceedings are vitiated and are liable to be quashed by this Court.

5. Learned Standing Counsel in reply submits that permission to initiate the departmental enquiry against the petitioner was obtained from the Minister concerned in accordance with the Business Regulation on 11-01-01, this sanction of the Minister is deemed to be on behalf of the Governor, in view of the Business Rules/Regulation, no further permission from the Governor in the facts of the case was required. It is, therefore, submitted that the letter dated 22nd November, 2005 is superfluous and the proceedings initiated against the petitioner do not warrant any interference. Reliance for the purpose has been placed upon the judgement of the Hon"ble Supreme Court reported in (2007) 1 UPLBEC 56 State of U.P. and Ors. v. Harihar Bhole Nath.

6. We have heard learned Counsel for the parties and have gone through the records of the present writ petition.

7. In view of the facts, as noted herein above, it is apparent that the petitioner has been served with the charge-sheet subsequent to his retirement without there being an order of the Governor permitting the initiation of the departmental enquiry against the petitioner. It is further established that on the date, the Governor is stated to have granted the permission under Article 351-A of the Civil Services Regulations i.e. 22-11-2005 the period of more than four years after retirement of the petitioner had already lapsed.

8. Consequently on simply reading of Regulation 351-A the Governor could not have granted permission for any departmental proceedings being instituted against the petitioner, as has been done in the facts of the case.

9. Legal position in this regard has been settled under the judgement and order of Hon"ble Supreme Court in the case of [State of U.P. and Another Vs. Shri Krishna Pandey](#), and in the case of State of U.P. v. R.C. Misra 2007 UPLBEC (2) 1329.

10. The Hon^{ble} Supreme Court in the case of Sri Krishna Pandey (supra), has held in paragraph 6 as under:

6. It would thus be seen that proceedings are required to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue on re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision that the proceedings be initiated as disciplinary measure and the action initiated earlier would remain unabated after retirement. If Rule 351-A is to be operative in respect of pending proceedings, by necessary implication, prior sanction of the Governor to continue the proceedings against him is required. On the other hand, the rule also would indicate that if the officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty, then proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the events of misconduct etc. which may have resulted in the loss the Government or embezzlement, i.e., the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four years from the date on which the event of misconduct etc. had taken place. Admittedly, in this case the officer had retired on March 31, 1987 and the proceedings were initiated on April 21, 1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provisions of Rule 351-A of the Rules. This order does not preclude proceeding with the investigation into the offence and taking action thereon.

The Hon^{ble} Supreme Court in Sri State of U.P. v. R.C. Mishra (supra) in paragraph 5 has laid down as under:

5....

The Substantive part of Regulation 351-A confers the power upon the Government of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right or ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental 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 re-employment after retirement. There is a proviso appended to the Regulation which circumscribes the power conferred by the substantive part of the Regulation. Clause (a) of the proviso with which we are concerned here uses the expression if not instituted while the officer was on duty either before retirement or during reemployment. Clause (a) of the proviso will, therefore, get attracted only when the departmental proceedings are instituted against the officer after his retirement or when he

is not in re-employment If the departmental proceedings are instituted before an officer has attained the age of superannuation and before his retirement, proviso (a) can have no application. In order to remove any doubt regarding the date of institution of enquiry or the judicial proceedings an Explanation has been appended after the proviso. According to Explanation (a), departmental proceedings shall be deemed to have been instituted (i) when the charges framed against the officer are issued to him, or (ii) if the officer has been placed under suspension from an earlier date, on such date. By incorporating the explanation, the rule framing authority has notionally fixed two dates as the date on which the departmental proceedings shall be deemed to have been instituted against an officer. A combined reading of the proviso and the explanation would show that there is no fetter or limitation of any kind for instituting departmental proceedings against an officer if he has not attained the age of superannuation and has not retired from service. If an officer is either placed under suspension or charges are issued to him prior to his attaining the age of superannuation, the departmental proceedings so instituted can validly continue even after he has attained the age of superannuation and has retired and the limitations imposed by Sub-clause (i) or Sub-clause (ii) of Clause (a) of proviso to Regulation 351-A will not apply. It is only where an officer is not placed under suspension of charges are not issued to him while he is in service and departmental proceedings are instituted against him under Regulation 351-A after he has attained the age of superannuation and has retired from service and is not under re-employment that the limitations imposed by Sub-clauses (i) and (ii) of proviso (a) shall come into play.

In view of the law, as laid down by the Hon"ble Supreme Court, the departmental proceedings initiated against the petitioner are non est.

11. At this stage, we may also refer to the judgement relied upon by the Standing Counsel in the case of State of U.P. v. Harihar Bhole Nath (2007) 1 UPLBEC 56 which according to the facts involved herein is clearly distinguishable for the following reasons:

12. In the aforesaid case, as noticed by Hon"ble Supreme Court in paragraph 12 of the judgement, the employee had been placed under suspension, before he attained the age of superannuation. Departmental proceedings were not only initiated against the petitioner, an Enquiry Officer was also appointed, subsequently the order of suspension was stayed under a judicial order.

13. The Hon"ble Supreme Court, therefore, proceeded to hold that the legal fiction created with regard to the point of time when the enquiry proceedings would be deemed to have been commenced, was not affected. The Hon"ble Supreme Court proceeded to hold that under the facts and circumstances of the case, the proceedings stand initiated and other permission of the Governor is not required to be obtained for continuation of such proceedings. Therefore, in paragraph 14 of the said judgement the Hon"ble Supreme Court proceeded to clarify as follows:

Proviso appended to Regulation 351-A merely controls the main proceedings. The same would apply in the exigencies of the situation envisaged therein, namely, even the proceedings were initiated after retirement and not prior thereto.

14. The writ petition is allowed. The order dated 22nd November, 2005 as also disciplinary proceedings initiated against the petitioner are hereby quashed. Respondents are directed to ensure the payment of all retiral benefits including the arrears thereof strictly in accordance with the law at the earliest possible.