(2013) 3 ALJ 238 : (2013) 2 AWC 1621 : (2013) 1 UPLBEC 186

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 66161 of 2010

Inamul Haque		APPELLANT
	Vs	
State of U.P. and Another		RESPONDENT

Date of Decision: Dec. 3, 2012

Citation: (2013) 3 ALJ 238 : (2013) 2 AWC 1621 : (2013) 1 UPLBEC 186

Hon'ble Judges: Tarun Agrawala, J

Bench: Single Bench

Advocate: Ajay Srivastava and Sri. Tarun Srivastava, for the Appellant;

Final Decision: Dismissed

Judgement

Tarun Agarwala, J.
Heard the learned Counsel for the petitioner and the learned standing Counsel appearing for the State. The petitioner has filed the present writ petition for the quashing of the order dated 17.11.2008, passed by the Collector, Allahabad recommending deduction of 50% of his pension for a period of 5 years for causing loss to the State Exchequer for an incident which had taken place on 31.5.1996.

2. The facts leading to the filing of this writ petition is, that on the basis of an incident dated 31.5.2001, a disciplinary proceeding was initiated against the petitioner. A charge sheet was issued on 1.12.2001 and a supplementary charge sheet was issued on 3.3.2003. The petitioner contested the charges levelled against the petitioner. The inquiry officer submitted his report. In the meanwhile, before any order could be passed on the basis of the inquiry report, the petitioner retired in the year 2007. The Collector, by the impugned order dated 17.11.2008, recommended a deduction of 50% of his pension for a period of 5 years. The State Government considered the matter and issued an order dated 31.1.2010 directing stoppage of 10% of the pension for a period of 5 years instead of 50%. The petitioner, being aggrieved, by the aforesaid orders, has filed the present writ petition.

3. The only contention raised by the learned Counsel for the petitioner is, that under Regulation 351-A of the Civil Service Regulations, no proceeding could be initiated against the petitioner after the expiry of four years from the date of the incident. The petitioner contends, that the incident occurred on 31.5.1996 and a charge sheet was served on 30.7.2001, after the expiry of four years, and consequently, under Regulation 351-A, these proceedings were barred and therefore, the entire order was without jurisdiction and was liable to be quashed. In support of his submission the learned Counsel has placed reliance upon a decision of a Division Bench of this Court in Ram Rakhan Singh Vs. State of U.P., .

4. For facility Regulation 351-A of the Civil Service Regulations is extracted hereunder:

351-A. 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 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:

Provided that-

(a) Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during reemployment-

(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, UP 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 purpose 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.

5. Having heard the learned Counsel for the parties, the Court finds, that the submission of the learned Counsel for the petitioner is patently erroneous and is not tenable. The decision relied upon does not help the petitioner. The period of four years for initiation of the proceedings is only contemplated where a person retires from service. The embargo of four years is not contemplated where the petitioner is in service, as is clear from the decision of the Supreme Court in State of U.P. and Another Vs. Shri Krishna Pandey, , State of U.P. v. R.C. Misra, in which it was held:-

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.

6. In the State of U.P. and Others Vs. R.C. Misra, , the Supreme Court held:

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 of 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 reemployment 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 on 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.

7. From a perusal of the aforesaid, it is clear that the proceedings are required to be initiated against the delinquent officer before retirement and, in the event, a delinquent officer has retired, proceedings have to be initiated within four years from the date of the incident as per Regulation 351-A.

8. In the instant case, the proceedings were initiated prior to his retirement and consequently, the embargo of four years contemplated under Regulation 351-A is not applicable. In the light of the aforesaid, the Court does not find any error in the impugned.

The writ petition fails and is dismissed.