(2013) 07 AHC CK 0274

Allahabad High Court (Lucknow Bench)

Case No: Civil Miscellaneous Writ Petition No. 4987 (S/S) of 2012

Dalveer Shah Shishodiya		APPELLANT
	Vs	
U.P. State Warehousing Corporation, Lucknow and Another		RESPONDENT

Date of Decision: July 3, 2013

Citation: (2013) 3 UPLBEC 1833

Hon'ble Judges: Satyendra Singh Chauhan, J

Bench: Single Bench

Advocate: R.S. Tomar, for the Appellant; R.K. Chaudhary, for the Respondent

Final Decision: Allowed

Judgement

Satyendra Singh Chauhan, J.
Heard learned Counsel for the petitioner and learned Counsel for the opposite parties. Through this petition, the petitioner has challenged non-release of leave encashment.

2. After filing of the writ petition, a counter affidavit has been filed. The petitioner has also filed rejoinder affidavit. In the counter affidavit, it has been stated that some proceedings have been initiated against the petitioner for a loss of Rupees seven lakh and as soon as the said proceedings are finalized, leave encashment of the petitioner would be released.

3. The Court has put a specific query to the Counsel for the opposite parties that whether the Service Rules permit initiation of disciplinary proceedings after retirement of the petitioner. Learned Counsel replied that U.P. Warehousing Corporation Staff Regulation (for short "the Service Rules") in this regard are silent. It has also been stated that Regulation 351-A of the Civil Services Regulations has not been adopted by the Corporation.

4. Learned Counsel for the petitioner has placed reliance upon two judgments rendered in the case of U.P. State Ware Housing Corp. Vs. Brish Bhan Singh and Another, and Ravindra Pal Singh Vs. State of U.P. and Others, . Learned Counsel has submitted that in identical situation, this Court has taken a view that power to initiate disciplinary proceedings is not vested with the opposite parties after retirement of the petitioner. Regulation 351-A of the Civil Services Regulations has not been adopted and Service Rules also do not permit initiation of disciplinary proceedings after retirement. Submission, therefore, is that once this Court has settled the legal position, the action of the opposite parties is wholly illegal and without authority of law and initiation of disciplinary proceedings after retirement cannot be sustained in law. It has also been submitted that no notice whatsoever has been issued or served upon the petitioner. Learned Counsel submits that if any proceedings are going on, then they are ex-parte behind back of the petitioner and without his knowledge.

5. Having heard learned Counsel for the parties, I find that the power to initiate disciplinary proceedings under the Service Rules is not vested with the Corporation. Regulation 351-A of the Civil Services Regulations has also not been adopted by the Corporation. In these circumstances, if the very source of power is lacking, then initiation of disciplinary proceedings after retirement is without authority of law. Reliance has been placed by the learned Counsel for the petitioner upon the case of U.P. State Warehousing Corp., Lucknow (supra), wherein the Division Bench of this Court has held as under:-

7. During the course of argument, learned Counsel for the petitioner admitted that the Service Rules and Regulations of the corporation do not contain any provision to initiate disciplinary proceedings against the retired employee. It has also been admitted that the Board of the corporation has not adopted the provisions contained in Regulation 351-A of Civil Services Regulations to regulate the service conditions of the employees.

8. Keeping in view the admitted facts, the argument advanced by the learned Counsel for the respondents seems to be correct that in absence of any provision, the petitioner has got no right to initiate or continue with the disciplinary proceedings against a retired employee.....

6. In the case of Ravindra Pal Singh, this Court has held as under:-

13. The petitioner was a technician and he retired in the year 2005. After three years of his retirement the memorandum of charge has been issued to him wherein some of the allegations with regard to the alleged loss pertaining to the year 1998-2000, 2002, 2003 & 2004. The respondent Nos. 2 and 3 have initiated disciplinary proceeding even after three years of his retirement. There is no explanation in the counter affidavit that the disciplinary proceeding was not initiated when the petitioner was in service particularly when the charges were pertaining to the year 1998-2000. There is no explanation also initiating the disciplinary proceeding after a lapse of three years of his retirement. A meagre amount has been paid to the petitioner after his retirement. In the counter

affidavit there is no reference that the petitioner''s service record was unsatisfactory and in past he was awarded any adverse entry in respect of negligence or misconduct. The charge sheet also indicates that along with the petitioner, names of some other employees have been mentioned for causing the peculiar loss with the Corporation. It is not clear whether those employees also retired or in the service.

15. Likewise in the case of Lal Babu v. State of U.P. and Another, Writ A No. 24752 of 2012 decided on 22.5.2012, the petitioner was employee of the same corporation and in the said case also after his retirement in the year 2010 the alleged loss caused by him and which was intended to be recovered by the Corporation. A Division Bench of this Court has observed as under:

In our opinion, after the retirement of the petitioner on 31.12.2010 he cannot be proceeded with or held liable for the alleged loss caused to the Corporation more than six years prior to has retirement. The respondents are thus not justified in withholding the amount of leave encashment, contributory provident fund and security.

17. Learned Counsel for the Corporation was unable to point out any provision under the U.P. Warehousing Corporation Staff Regulation which empowers the Management to initiate the disciplinary proceeding after three years of the retirement.

18. For the reasons given here in above, the disciplinary proceeding in pursuance of the charge memo dated 26.4.2008, which relates to the petitioner is quashed.

19. Respondents are directed to pay the entire outstanding dues payable to the petitioner as expeditiously as possible preferably within a period of three months from the date of communication of this order.

7. Case of the petitioner is squarely covered by the aforesaid decisions. Therefore, in these circumstances, I do not find any reason to disallow the prayer made by the petitioner. The writ petition is accordingly allowed A writ in the nature of mandamus is issued directing the opposite parties to release the leave encashment of the petitioner within a period of one month from the date of receipt of a certified copy of this order. It is further directed that it any proceedings have been initiated without any knowledge of the petitioner, the same shall not be processed and be dropped.