(1999) 12 CAL CK 0001

Calcutta High Court

Case No: Writ Petition No. 926 of 1999

Krishnendu Narayan Ghosh		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: Dec. 10, 1999

Acts Referred:

- Payment of Gratuity Act, 1972 - Section 4

Citation: (2000) 86 FLR 566 : (2000) 1 LLJ 1543

Hon'ble Judges: Barin Ghosh, J

Bench: Single Bench

Advocate: Arunava Ghosh and Soumya Majumdar, for the Appellant; Swapan Garai, for Respondent No. 1, Anindya Mitra, Arijit Chowdhury, Amitesh Benerjee and K. Chanda for Respondent No. 2 to 4, for the Respondent

Final Decision: Allowed

Judgement

Barin Ghosh, J.

The petitioner was the Director (Finance) of the Hindustan Copper Ltd. being the respondent No. 6. With effect from September 1, 1995 until further orders the petitioner was appointed as Acting Chairman-cum-Managing Director of the respondent No. 6. While he was discharging the duties and functions of the Director (Finance) as well as Acting Chairman-cum-Managing Director, the petitioner was informed by a letter dated February 13, 1998 that he would continue as Director (Finance) from February 1, 1998 to February 28, 1998 i.e., the date of superannuation of the petitioner. On February 16, 1998 the petitioner received a charge-sheet dated February 13, 1998 issued under the provisions of Hindustan Copper Limited (Conduct, Discipline and Appeal) Rules, 1979. On February 23, 1998 the petitioner was served with another charge-sheet dated February 20, 1998. By the charge-sheet dated February 13, 1998 the petitioner was asked to submit his: written statement within 15 days of the receipt of the charge-sheet, i.e., after the date of his superannuation since the charge-sheet was received by the petitioner on

February 16, 1998 and the petitioner superannuated on February 28, -1998. Similarly by the charge-sheet dated February 20, 1998 the petitioner was asked to file his written statement within 15 days of receipt of the charge-sheet, i.e., after his superannuation. In the charge-sheet dated February 13, 1998 it was stated that the petitioner while functioning as Acting Chairman-cum-Managing Director approved a proposal on November 11, 1995 unmindful to three points mentioned in the charge-sheet and because of petitioner''s negligence and inaction to sort out the issues in advance, the Letter of Intent was issued on November 11, 1995 without reducing the premium from US$ 70 to US$ 65 and order was also confirmed by the then D.G.M. (Commercial), Head Office on November 13, 1995 before the vital points mentioned in the charge-sheet could be sorted out resulting in financial loss to the respondent No. 6. In the Articles of Charge also it was mentioned that by reason of inaction complained of the petitioner caused financial loss to the respondent No. 6. No such allegation was, however, made in the charge-sheet dated February 20, 1998. On February 28, 1998 on attaining the age of superannuation, the petitioner handed over charge and such handing over was accepted. By a letter dated March 4, 1998 the petitioner answered the first charge-sheet dated February 13, 1998. By another letter dated March 30, 1998 the petitioner answered the charge-sheet dated February 20, 1998. Thereafter on December 1, 1998 an Enquiry Officer was appointed to enquire into the charges. In the meantime the retiral benefits of the petitioner were not released. He, thus, applied for release of the same. In the meantime he also applied for permitting him to take assistance of a legal practitioner in the disciplinary proceedings.

2. By a letter dated March 22, 1999 the petitioner was refused permission to take assistance of a legal practitioner and he was intimated that release of his dues withheld by the respondent No. 6 will be considered after the completion of the disciplinary proceedings against the petitioner. The petitioner then by a letter dated April 10, 1999 contended that continuation of disciplinary proceedings after the superannuation of the petitioner is bad in law and accordingly requested for release of all retiral and other benefits. That letter has not been replied and hence this writ petition. In this writ petition the petitioner is seeking quashing of the orders both dated December 1, 1998, by which Enquiry Officer was appointed to enquire into charges framed against the petitioner by the charge-sheets dated February 13, 1998 and February 20, 1998 as well as the order of the Enquiry Officer dated April 5, 1999 whereby the Enquiry Officer desired to proceed with the enquiry as also release of the retiral dues of the petitioner.

3. It appears that the claim of the petitioner on account of retiral dues are as follows:-

(i) Gratuity

(ii) Balance in the petitioner''s Provident Fund Account comprising the balance of the employer''s contribution.

(iii) Leave encashment.

4. The main contention of the petitioner is that, there is no dispute that the petitioner was permitted to superannuate on February 28, 1998 and the Rules governing the service conditions of the petitioner do not permit continuation of disciplinary proceedings against the petitioner after his superannuation.

The petitioner contended that if disciplinary proceedings could not be continued after the petitioner''s superannuation, question of withholding the petitioner''s above retiral dues cannot arise.

5. It appears that in the writ petition on April 22, 1999 while directions for filing affidavits were given respondents were directed not to proceed with the disciplinary proceedings against the petitioner. In the affidavit-in-opposition it has been contended that the respondent No. 6 is entitled to continue the enquiries against the petitioner by virtue of Hindustan Copper Ltd. Employees (Payment of Gratuity) Rules. It has not been denied that the above retiral benefits of the petitioner have not been paid and on the other hand it has been stated that the petitioner is not entitled to the release of his gratuity while enquiries against him are pending by virtue of the said Rules.

6. The Hindustan Copper Ltd. Employees (Payment of Gratuity) Rules, hereinafter referred to as the said "Rules", provide that the provisions of Payment of Gratuity Act with effect from April 6, 1973 will apply to all employees excluding Government Servants employed on deputation and foreign technicians on special contract of service where such contracts do not provide for payment of gratuity. It further provides that all the employees shall be eligible for payment of gratuity under the said rules without any wage limit and the maximum amount of gratuity payable to all the employees shall be Rs. 3,50,000 and that the quantum of gratuity shall be computed in terms of the provisions of the Gratuity Act. The said Rules then referred to certain clarifications. One of them is an extract of the Government, Order dated August 29, 1985 which provides that an employee against whom disciplinary actions/proceedings are contemplated or pending at the time of resignation/retirement etc. will not be paid gratuity unless the action/proceedings against him have been finalised and that on finalisation of the disciplinary proceedings the release of payment of amount of gratuity will depend on the final outcome of the disciplinary proceedings and keeping in view the order of the Disciplinary Authority and gratuity will not be admissible to an employee whose services are terminated for misconduct, insolvency or inefficiency. The respondent No. 6 has relied on certain other office orders and amendments but the same are not relevant for the purpose of this writ petition.

7. The question, therefore, is two-fold, namely, (i) whether by virtue of the Government Order dated August 19, 1985 having been made part of the said Rules the respondent No. 6 can continue disciplinary proceedings against the petitioner

after his superannuation and (ii) if not, can it withhold release of payment of gratuity to the petitioner until completion of the disciplinary action on the basis thereof. No attempt was made by the respondent No. 6 in the affidavit-in-opposition or in course of argument as to how it could withhold payment of the other retiral benefits of the petitioner, namely, his provident fund, comprising of the balance of the employer''s contribution and his leave encashment.

8. From a bare reading of the said Government Order dated August 29, 1985 it appears that by virtue thereof payment of gratuity payable to an employee against whom disciplinary action/proceeding is contemplated or pending at the time of his resignation or retirement can be withheld but the same does not provide continuation and completion of disciplinary action/proceeding against an employee after his resignation or retirement. Assuming resignation/retirement etc. includes superannuation, it does not appear that the said Government Order authorises initiation or continuation of disciplinary action/proceeding against an employee who has superannuated. In view of this difficulty the learned counsel for the respondent No. 5 referred to Hindustan Copper Limited (Conduct, Discipline and Appeal) Rules, 1979, hereinafter referred to as the "Conduct Rules". In Clause 3.1 of the Conduct Rules it has been stated that ''employee'' means a person in the employment of the company and includes an employee whose services are temporarily placed at the disposal of the Central Government or State Government or any other public sector enterprises or any other authority, but does not include a casual employee or work charged or contingent staffer a workman as defined in the Industrial Employment (Standing Orders) Act, 1946, and also a person on deputation to the company from the Central Government or a State Government or any other public sector enterprise or any other authority. Clause 23.1 of the Conduct Rules provides that amongst others a minor penalty may be imposed on an employee for misconduct committed by him or for any other good and sufficient reason by recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the respondent No. 6 by negligence or breach of order. Clause 27.1 of the Conduct Rules provides that where it is proposed to impose any of the minor penalties, the employee concerned shall be informed in writing of the imputations of misconduct or misbehaviour against him and given an opportunity to submit his written statement of defence within a specified period not exceeding 15 days and the defence statement, if any, submitted by the employee shall be taken into consideration by the Disciplinary Authority before passing orders. Clause 25 of the Conduct Rules and various sub-clauses thereunder provides the procedure for imposing major penalties prescribed.

9. Be it mentioned here that the charge-sheets dated February 13, 1998 and February 20, 1998 were issued under Rule 25 of the Conduct Rules. The procedure laid down in Clause 25 of the Conduct Rules provides that the charges against the employee must be enquired either by the Disciplinary Authority or by an Enquiring Authority to be appointed by the Disciplinary Authority. It provides elaborate

procedure of enquiry, preparation of Enquiry Report and submission thereof. It, however, does not provide specifically whether enquiry proceedings can go on or cannot go on after the employee ceased to be an employee by reason of his superannuation. The major penalties, for imposition whereof the subject charge-sheets were issued, are reduction to a lower grade or post or to a lower stage in the time-scale or removal from service or dismissal. If an employee has already superannuated, question of reducing him to a lower grade or post or to a lower stage in a time-scale or removing him from service or dismissing him, in the common parlance does not arise. Therefore, apparently Clause 25 of the Conduct rules is applicable to an employee who is still in service and in any case who has not superannuated.

10. The learned counsel for the respondent No. 6 joined issue there. He submitted that if at the conclusion the disciplinary authority decides that the proven charges are such that the petitioner would have been dismissed or removed from service and an order to that effect would have been passed but for the superannuation that itself would prevent the petitioner from claiming gratuity in terms of the provisions of the Payment of Gratuity Act, 1972 and therefore, once the disciplinary proceedings has been initiated that should be continued for reaching a conclusion, whether in the meantime the petitioner has superannuated or not. The learned counsel gave example that if a Bank Cashier on the day of his superannuation takes out a bundle of cash from the teller of the bank dishonestly without giving an opportunity to the employer bank to initiate a disciplinary proceeding against such a delinquent banking official, it cannot be said that the employer bank would be required to pay gratuity to such a delinquent banking official as the Payment of Gratuity Act does not contemplate payment of gratuity to such a dishonest employee.

11. I would, therefore, refer to Section 4 of the said Act, which is as follows:

"4. Payment of Gratuity - (i) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, -

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor shall be

deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation - For the purpose of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days'' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, employer shall pay the gratuity at the rate of seven days'' wages for each season.

Explanation - In the case of a monthly rated employee, the fifteen days'' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed two lakhs and fifty thousand.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement, shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced,

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in Sub-section (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited -

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

12. The learned counsel for the respondent No. 6 submitted that when the Service Rules provide a procedure to be followed for dismissing an employee such procedure has to be followed. He further submitted that when the procedure provides a departmental enquiry to be conducted for such dismissal, the same has to be conducted and therefore, when the disciplinary proceedings had been initiated against the petitioner during the course of his employment his subsequent superannuation would not stand in the way of disentitling the petitioner from receiving gratuity, if such disciplinary proceedings come to the conclusion that the petitioner''s services would have been terminated, but for the superannuation, he having caused damage or loss to or destruction of property belonging to the respondent No. 6 and that presupposes that despite superannuation of the petitioner the disciplinary proceedings are required to be completed to entitle the petitioner to receive gratuity,

13. The terms and conditions of an employment are governed by the terms and conditions contained in the Contract of Employment. The effect of such terms and conditions comes to an end the moment the contract comes to an end. It cannot be disputed that on death or superannuation a contract of employment comes to an end as the person ceased to be an employee. If the contract provides that the employee shall include ex-employee for certain purposes, then for those purposes contract remains alive even after the employee ceased to be an employee. In the instant case no such provision has been made in the Contract of Employment contained in the Rules referred to above. The terms and conditions contained in the Contract of Employment may stand altered by imposition of terms by legislative mandate and also by administrative instructions. Apart from the Payment of Gratuity Act there appears to be no other statutory mandate imposing any terms in the Contract of Employment in question. There is also no administrative instruction imposing a term in the subject Contract of Employment.

14. The Contract of Employment as it stands, without taking into consideration the conditions imposed by the Payment of Gratuity Act, though provides measures and methods to discipline an employee, but does no provide that measures to discipline can be taken by following any method after the Contract of Employment has come to an end upon superannuation of the employee in question.

15. The learned counsel for the respondent No. 6 submitted that by the Payment of Gratuity Act itself a term has been incorporated in the subject Contract of Employment that the disciplinary proceedings initiated shall be continued even after termination of the contract of employment. In this connection the learned counsel for the respondent No. 6 relied on a Division Bench judgment of the Andhra Pradesh High Court in D.K. Savitramma Vs. Anantapur District Co-operative Central Bank and

Another, In that case an enquiry was initiated while the employee was alive and was concluded after his death. During the lifetime of the employee his services were not terminated and the same stood terminated automatically on his death. The legal representatives of the deceased employee went to the Tribunal claiming gratuity and bonus payable to them as heirs of the deceased employee. The Tribunal held that if the amount due to the Bank by the employee is more than the gratuity and bonus payable to the employee, the Bank need not pay the amount to the legal heirs of the employee as the Bank can appropriate the gratuity u/s 4(6) of the Payment of Gratuity Act. Against that direction of the Tribunal the matter came up before the High Court. Before the High Court the main contention was that, it is in the event of termination of service only, the question of appropriating the gratuity u/s 4(6) of the Payment of Gratuity Act arises. The Court held that no provision has been made in the Payment of Gratuity Act that in the event of death of an employee the amount found to have been misappropriated during the course of employment can or cannot be recovered. The Court then proceeded to give certain examples and ultimately concluded that by virtue of the death of the employee the Court is not expected to convert the misfortune into one of windfall and the Court has to strike out equitable balance, so that either party may not suffer. It also observed that though the matter could not go to the Tribunal, but, however, as the proceedings were pending since a long time and as no proper enquiry had been conducted by the Authorities in the presence of the legal representatives after the death of the employee, the Tribunal thought it fit to give a direction to pay the amount of gratuity and bonus after the disposal of the matter with regard to misappropriation alleged to have been committed by the employee while he was in service and therefore, it refused to interfere with the order of the Tribunal with an observation that if the amount due on account of gratuity as per Rules has to be paid immediately without settling the amount misappropriated, it amounts to causing prejudice to the employer in recovering the amount found to have been misappropriated. With due respect the High Court in that judgment did not go into the question whether by reason of the provisions contained in the Payment of Gratuity Act, the disciplinary proceedings initiated against the employee could be continued and concluded after he ceased to be an employee by reason of his death.

16. It was submitted by the learned counsel on behalf of the respondent No. 6 relying on the aforementioned judgment in the case of D.K. Savitramma (supra) that the Act implies that deduction can be made. For that proposition one need not refer to the said judgment of the High Court. The Act itself makes it abundantly clear that deduction can be made but at the same time it states when and how such deduction can be made. I shall deal with this aspect of the matter later but for the present I must state in the said judgment, although it has been stated that a disciplinary proceedings can be continued and concluded after the Contract of Employment came to an end and if on such conclusion anything is found due to the employer the gratuity amount to that extent can be refused, but it does not give any reason as to

how such disciplinary proceedings could continue after the Contract of Employment came to an end.

17. The next judgment on which reliance was placed by the learned counsel for the respondent No. 6 is a judgment of a learned single Judge of Karnataka High Court in B.L. Gopalakrishna v. Karnataka Soaps and Detergents Ltd. reported in 1996 LIC 140. In that case before the employee superannuated a charge-sheet was issued against him. On superannuation the employee was relieved subject to the provisions of Rule 19(ii) of the applicable rules. Rule 19(ii) of the said Rules provided that the domestic enquiry proceedings if instituted against an employee in service shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in the services of the company even after the retirement of such employee. The said Rule further provided that no gratuity shall be paid to the employee until conclusion of such proceedings and issue of final orders. In that case, therefore, there was a specific provision in the Contract of Employment for continuing and concluding a disciplinary proceeding even after the retirement of the employee. That case has no application insofar as the present case is concerned.

18. The learned counsel for the respondent No. 6 then relied on the judgment of the Supreme Court in High Court of Punjab and Haryana Vs. Amrik Singh, In that case the employee of the High Court attained his superannuation after reaching 58 years of age on August 31, 1980 (sic). The Chief Justice of the High Court then extended his tenure by 2 years and therefore the employee concerned was to retire after the expiry of the re-employment period on August 31, 1982. During his re-employment if came to the knowledge of the Chief Justice that the employee concerned had committed misconduct and accordingly he was suspended on December 17, 1981 and a charge- sheet was issued. On expiry of 2 years the employee was allowed to retire. After conducting the enquiry the Chief Justice dismissed the employee concerned from service by his orders dated June 7, 1983 and August 31, 1983 with immediate effect. On appeal, as per the Rules, the orders of the Chief Justice were confirmed. The employee concerned then challenged the said orders in three writ petitions. The High Court declared that initiation of the disciplinary proceedings and imposition of penalty of dismissal from service against the employee in question are void. The High Court then quashed the orders of dismissal as well as the order of the appellate authority. The High Court, however, left it open to the disciplinary authority to take appropriate action under Rule 9 of the Pension Rules, if it so desired. In that case it was conceded by the concerned employee before the Supreme Court that the disciplinary authority had power to continue the proceedings after the delinquent had attained superannuation and was allowed to retire, but he contended that the disciplinary authority i.e., the Chief Justice had no power to pass the order of dismissal. It was also urged on behalf of the employee in question that the disciplinary authority could only pass appropriate order under Pension Rules and no other. Therefore, the question that arose in that case was

whether the orders of dismissal are valid in law. While answering that question the Supreme Court referred to its own judgment in D.V. Kapoor Vs. Union of India and others, and held that initiation of disciplinary proceedings against the delinquent must be deemed to be proceedings under the Pension Rules and shall be continued and concluded by the authority by which the proceedings have been commenced in the same manner as if the Government servant had been continued in service and in case the delinquent attempts to drag the proceedings or he does not co-operate in the completion of the enquiry and for that if it is not possible to complete the enquiry or to pass the final order, the suspension should be extended along with the re- employment order or the latter should be extended and to pass appropriate order during the extended period but in case it is found that either of those courses, is neither feasible nor possible, it would be open to allow the delinquent to retire from service and to record in the order that but for the retirement the disciplinary authority would have passed an order of dismissal or removal from service. This case has no application insofar as the present case is concerned inasmuch as there the Rule permitted continuation of the disciplinary proceedings. Furthermore, the Supreme Court noted Rule 2.2 of the Pension Rules and in particular Clause (b) thereof where a right has been reserved to the Government to withhold pension and also ordering recovery from the pension of the whole or part of any pecuniary loss caused to the Government, if, in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement. The Supreme Court, thus, reading the said Clause held that the disciplinary authority, consequent upon the result of the departmental or judicial proceedings, should record a finding whether the delinquent has committed grave misconduct or negligence, ''during the period of his service and on recording such a positive finding the competent authority would be entitled to withhold the pension or to recovery of pecuniary loss and therefore, the order of the Chief Justice, i.e., the disciplinary authority, was a must to take steps and in terms of the said Pension Rules. As stated above, if the Rules permitted continuation of disciplinary proceedings then the matter would have gone in a different way altogether. In the instant case, I have been called upon to find out whether by the Payment of Gratuity Act itself it can be contemplated that a disciplinary proceeding initiated should be concluded after superannuation of the employee in question despite there being no Rule to continue arid to conclude such disciplinary proceeding.

19. The learned counsel for the respondent No. 6 submitted that if a statute appears to be absurd, while reading the same the Court can modify the grammatical and ordinary sense of the word of the statute and can also modify the structure of the sentence. In this connection the learned Counsel referred to the judgments of the Supreme Court in Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others, and in Tirath Singh Vs. Bachittar Singh and Others, There cannot be any dispute to the propositions of law enunciated in the said judgments of the Supreme

Court. Although in Sub-section (6) of Section 4 of the Payment of Gratuity Act the catch words are "have been terminated" which denotes termination is complete, the same may be read "would have been terminated but for the superannuation" but then such a reading would not be of any help to the respondent No. 6 because Payment of Gratuity Act does not provide any mechanism for termination of service either in praesenti or in future of an employee. In any event the Payment of Gratuity Act does not provide that for termination of service of an employee any procedure has to be followed. If the procedure applicable to a delinquent entails continuation of the proceedings to terminate the services of a delinquent even after his superannuation, then of course it may be said that before a final order is passed taking recourse to such procedure, simply because the delinquent has superannuated, he should be paid his gratuity, although there is still a chance of holding that the wilful omission or negligence of the delinquent was such that rendered his services to be terminated and in such case it may be said that the delinquent has to wait until final outcome of the proceedings initiated in accordance with such procedure to get his gratuity. The Payment of Gratuity Act, however, does not impose anything in the procedure for terminating the services of a delinquent and similarly it does not curtail any right or privilege of any of the parties amenable to such procedure. One, therefore, has to look at the procedure for terminating the services of a delinquent, and if the procedure does not permit the proceeding initiated in pursuance therewith to continue after superannuation, it cannot be said that procedure can be continued inasmuch as the procedure being part of the contract comes to an end the moment the relationship of employer and employee comes to an end. In the instant case as aforesaid, the procedure does not permit continuation of the proceedings to terminate the services of an employee after his superannuation, i.e., after the contract of employment has come to an end.

20. In State of Assam and Others Vs. Padma Ram Borah, cited by the learned counsel appearing for the petitioner, a Government servant was to retire from service on and from January 1, 1961. Before that on December 22, 1960 he was placed under suspension pending the departmental enquiry started against him. The suspension order was followed by another order passed on January 6, 1961 extending the term of service of the petitioner for a period of three months from January 1, 1961. Under that order the service of the servant came to an end on March 31, 1961. The departmental enquiry not having been concluded, the State Government passed an order on May 9, 1961 extending the service of the servant for a further period of 3 months with effect from April 1, 1961. The Supreme Court considered Rule 56 of the Rules made by the Governor of Assam u/s 241(2)(b) of the Government of India Act, 1935, which provided that the date of compulsory retirement of the Government servant is the date on which he attained the age of 55 years and he may be retained in service after this age with the sanction of the Provincial Government on public grounds, which must be recorded in writing and proposals for the retention of the Government servant in service after this age

should not be made except in very special circumstances. The Supreme Court then considered the order of suspension dated December 22, 1960 and found that the same has two-fold effect, firstly to place the delinquent under suspension and secondly, to retain the delinquent in service till departmental proceedings against him were finalised and that the same was an order under Fundamental Rule 56. The Supreme Court then observed the said order having been passed before the retirement of the delinquent, the same cannot be said to be bad on the ground of retrospectivity. The Supreme Court then considered the order dated January 6, 1961 and found that the same modified the earlier order dated December 22, 1960 inasmuch as the order dated January 6, 1961 fixed a period of three months from January 1, 1961 or till the disposal of the departmental proceedings whichever is earlier for retaining the delinquent in service. The Supreme Court noted that the three months fixed by the order dated January 6, 1951 expired on March 31, 1961 and that the effect of the said order was that the service of the delinquent would come to an end on March 31, 1961 unless the disciplinary proceedings were disposed of at a date earlier than March 31, 1961. As a fact the Supreme Court found that the departmental proceedings were not concluded before March 31, 1961 and thus, it held that the service of the delinquent came to an end on March 31, 1961. It then said that the State Government had no jurisdiction to pass an order on May 9, 1961 as the services of delinquent the came to an end on March 31, 1961 and the State Government could not by unilateral action create a fresh contract of service to take effect from April 1, 1961. It also observed that if the State Government wished to continue the service of the delinquent for a further period, it should have issued a notification before March 31, 1961 under Fundamental Rule 56. It, thus, declared the order dated May 9, 1961 a mere nullity. This judgment shows that once a contract of employment has come to an end, the Rules applicable to the contract of employment ceases to apply. On the same analogy it should be held, as I hold, that the procedure applicable to an employee is not applicable to an ex-employee unless the Rule specifically and consciously makes the same applicable and in the instant case the Conduct Rules do not do so.

21. The next judgment cited by the learned counsel for the petitioner is that of a Division Bench judgment of this Court delivered in the case of Dena Bank v. Amiya Kumar Dey, reported in 1988 (1) CLJ 373. In that the employee of the bank was charge-sheeted preceded by an order of suspension but the departmental proceedings did not commence. Subsequently a criminal case was started in which the employee was a co-accused. While the criminal case was still pending the petitioner was to superannuate. He thus, moved a writ petition seeking a direction to complete the disciplinary proceedings without delay. The writ petition was disposed of with a direction to complete the enquiry within 3 weeks and in default the order of suspension and charge-sheet would stand set aside and quashed. An appeal preferred against the said judgment and order was considered by the Division Bench. The Division Bench held that even when on the self-same

allegations, the criminal trial has been initiated, there is no bar for completing the disciplinary proceedings. Justification on the part of the bank to wait for the finalisation of the criminal trial may be there, but when such criminal trial was not completed by more than 10 years from the date of submission of the report by the C.B.I. and when the delinquent was scheduled to retire by the end of February, 1987 it was the paramount duty of the bank to complete the disciplinary proceedings before the delinquent retired. The Division Bench further held on retirement of the delinquent the relationship of master and servant has come to an end and there is no statutory provision under which the departmental proceedings initiated against a retired employee can be continued and that after the delinquent reaches the age of superannuation there is no further scope in the departmental proceedings to make any finding against the delinquent inspite of levelling charges against him in the departmental proceedings. This judgment of the Division Bench of this Court, which is binding on me, stated that unless the terms of the contract of employment, which terms may be contractual or statutory or otherwise a binding, (sic) no departmental proceedings can be continued after the term of employment has come to an end by reason of superannuation.

22. The next judgment cited by the learned counsel appearing for the petitioner is also of a Division Bench of this Court delivered in the case of Mrinal Kanti Chakraborty Vs. State of West Bengal and Others, In that the terms and conditions of service of the delinquent did not provide for continuation of departmental proceedings after his retirement. The Court held that if the power of the employer to continue with the departmental proceedings even after the retirement is conceded, it would be destructive of the concept of employer and employee, which comes to an end by reason of retirement of the employee, beyond which disciplinary control cannot be extended. Therefore, conclusion arrived at by me that unless the terms of the contract which may be contractual or statutory or otherwise binding, provide continuation of departmental proceedings after superannuation, no such departmental proceedings can be continued is supported by two Division Bench judgments of this Court.

23. The next judgment that was cited by the learned counsel for the petitioner is that of the Supreme Court in the case of State Bank of India Vs. A.N. Gupta and Others, In this case the Supreme Court held that continuation of departmental proceedings after retirement is not permissible unless there is a specific provision to that effect in the relevant rules. In that case two employees of the State Bank of India retired from services of the bank. They claimed Pension and Provident Fund. These were denied on the ground that there was certain lapses on the part of such employees while in service and that under the provisions of the relevant Rules, as applicable, these amounts could be withheld. The Bank relied on Rules 11 and 20 of the applicable Rules. Rule 11 provided that the retirement of all officers of the bank shall be subject to the sanction of the Executive Committee of the Central Board and the retirement of all other employees of the bank shall be subject to the sanction of

the Executive Committee or the Local Board concerned with their employment. It further provided that any officer or other employee who shall leave the service without sanction shall forfeit all claims upon the fund for pension. Rule 20 provided that when a member resigns or retires from the service of the bank he shall, if he has served the bank for a period of five years or more, be entitled to receive the balance at this credit in the fund. It further provided that when any member resigning or retiring from service of the bank is under a liability incurred by him to the bank, the trustees shall, irrespective of the duration of his service pay to the bank out of the balance at his credit in the fund any amount due by him to the bank. One of the employees of the bank in the said case was to retire on April 3, 1970. Prior thereto the bank extended his service upto April 3, 1972. On July 27, 1971 the said employee was suspended and on October 26, 1971 he was charge-sheeted. There was no further proceedings in the matter. He was, however, asked by the bank by a letter dated March 22, 1972 to resign failing which he would be dismissed. The employee did not resign. The bank did not pass any order of dismissal. On April 3, 1972 the employee retired. The employee then requested the bank to pay pension and provident fund, which was not paid and accordingly the employee approached the Court. The High Court directed the bank to pay pension and nine per cent of the same by way of damage and provident fund with interest and damage. The matter then went before the Supreme Court. Before the Supreme Court reliance was placed on Rules 10, 14 and 19 of the Pension Rules. Rule 10 provided that an employee dismissed from the bank''s service for wilful neglect or for fraud shall forfeit all claims upon the fund for pension. Rule 14 provided that if an employee who is entitled to pension wishes to accept employment within 2 years from the date of retirement, he should obtain the previous sanction and if he undertakes such employment without sanction it shall be competent for the trustees to withdraw the pension either in whole or in part at their discretion. Rule 19 provided that an employee retiring from the bank''s service after having completed 20 years of service shall be entitled to pension provided he has attained the age of 50 years. It further provided that if an employee has served 20 years and if he satisfies the authority competent to sanction his retirement by approved medical certificate or otherwise that he is incapacitated for further active service, he shall be entitled to pension irrespective of age. It further provided that an employee who has attained the age of 55 years or who shall be proved to the satisfaction of the authority competent to sanction his retirement to be permanently incapacitated by bodily or mental infirmity from further active service may, at the discretion of the trustees be granted a proportionate pension. The. Supreme Court noted that in a judgment of the Andhra Pradesh High Court and also in a Judgment of the Bombay High Court it was decided that Rule 11 applied to all retirements and the bank would be entitled to withhold sanction only in circumstances similar to Rule 10 and for this the bank would be required to hold a fair and honest enquiry which could be held even after the employee had retired. The Supreme Court held that proceeding in the garb of disciplinary proceedings cannot be permitted after an employee has ceased to be in

the service of the bank as service rules do not provide for continuation of disciplinary proceedings after the death or superannuation. It further provided that sanction of the bank is required only if the retirement of an employee is by any other method except superannuation, it expressed that it does not think that the decision of the Andhra Pradesh High Court and that of the Bombay High Court have laid down good law. The Supreme Court then upheld the decision of the Division Bench but finding that pension fund and the provident fund carry interest deleted the word ''damage'' as was granted by the High Court. This judgment delivered by three members Bench of the Supreme Court clearly lays down that unless Rules permit to proceed with the disciplinary enquiry after superannuation, no disciplinary proceedings can be proceeded with.

24. The learned counsel for the petitioner lastly cited the judgment of the Supreme Court in Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, In that case disciplinary proceedings were initiated against the appellant under Regulation 44 of the Orissa Financial State Corporation Staff Regulations, 1975 when the petitioner was in service but the proceedings could not be completed until retirement. The petitioner was relieved on his retirement without prejudice to the claims of the Corporation. The appellant contended that neither enquiry could be continued, nor any amount deducted from his provident fund after his retirement. The Supreme Court found that there was no provision in the concerned rules for conducting a disciplinary enquiry after the appellant''s retirement and there was no authority to continue departmental enquiry even for the purpose of imposing any reduction in retiral benefits. The Supreme Court held 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.

25. From the aforementioned decisions, it is, therefore, crystal clear that in the event the Rules do not permit continuation of disciplinary proceedings after superannuation of the delinquent, the same lapses on the superannuation of delinquent. This aspect of the matter was not considered by the Andhra Pradesh High Court in D.K. Savitramma, (supra). If the Rules permit such continuation then despite retirement or superannuation the relationship of employer and employee subsists for the purpose of completion of the disciplinary proceedings. In other words that would deem that such proceeding has been concluded at or before the superannuation of the delinquent although he has by that time superannuated. If such a departmental proceeding conclude that the wilful omission or negligence complained of against the delinquent is such that the same not only caused damage or loss to or destruction of property belonging to the employer to the extent determined but also made the services of the delinquent liable to be terminated, then to the extent of such determined damage or loss the gratuity may be forfeited by the employer. Then again if such conclusion suggests termination of the services of the employee for riotous or disorderly conduct or any act of violence or for having committed an offence involving moral turpitude in course of his employment, then

the gratuity payable to him may be wholly or partially forfeited. That much and no further can be read in Sub-section (6) of Section 4 of the Payment of Gratuity Act. It, however, cannot be read in any of the provision of the Payment of Gratuity Act that even after retirement or superannuation of an employee, a disciplinary proceeding can be continued or initiated against an employee to terminate his service.

26. The provision contained in the said Rule to the effect that an employee against whom disciplinary action/proceedings is contemplated or pending at the time of resignation/retirement etc. will not be paid gratuity unless the action/proceedings against him have been finalised, is only an embargo to the payment of gratuity unless the disciplinary action/proceedings against the employee in question have been finalised but the same does not authorise continuation of the disciplinary proceedings after retirement/superannuation of an employee for the purpose of terminating his services and unless the services of an employee is terminated for the reason mentioned in Sub-section (6) of Section 4 of the Payment of Gratuity Act no portion of the gratuity payable to the employee can be withheld. The embargo so created without there being a provision for continuation of the disciplinary proceedings after retirement or superannuation to terminate the services of an employee, the final outcome whereof, as stated above, would relate to at or immediately prior to the superannuation, is of no effect in terms of Section 14 of the Payment of Gratuity Act which provides that the provisions of the Act or any Rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Payment of Gratuity Act or in any instrument or contract having effect by virtue of an enactment other than the Payment of Gratuity Act.

27. As stated above, no argument was advanced on behalf of the respondent No. 6 to establish any right to withhold other retiral benefits of the petitioner, namely, his provident fund dues and dues on account of leave encashment.

28. It was urged on behalf of the respondent No. 6 that the writ petition is not maintainable as the respondent No. 6 is not a State within the meaning of Article 12 of the Constitution of India, although no such specific plea was taken in its affidavit. It had been contended that the respondent No. 6 is a Government of India Undertaking discharging functions similar to and/or like any other commercial organisation and thus cannot by any stretch of imagination be termed to be a State within the purview of Article 12 of the Constitution and accordingly the respondent No. 6 is not amenable to writ jurisdiction of this Court. In this connection reference was made to a judgment of the Supreme Court in Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], . In that the Supreme Court held that Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression "State", but then it added that a wide enlargement of the meaning must be tempered by a wise limitation. It stated that the State control does

not render such bodies as "State" under Article 12 and that State control, however, vast and pervasive is not determinative. It added that financial contribution by the State is also not conclusive. It stated that the combination of State aid coupled with an unusual degree of control over the management and policies of the body and rendering of an important public service being the obligatory functions of the State may largely point out that the body is "State". In the instant case there is no dispute that the respondent No. 6 is wholly owned by the Central Government. In paragraph 12 of the affidavit-in-opposition affirmed by Smt. Aditi S. Ray on March 31, 1999 on behalf of Union of India it has been stated that the petitioner was responsible for acts of omissions/commissions resulting in financial loss worth Rs. 240 crores, which adversely affected the interest of the respondent No. 6 and the Government. There is no dispute that the petitioner was originally an employee of Steel Authority of India Ltd. and he was transferred to the respondent No. 6, with the approval of the President of India. On August 30, 1995" in terms of Article 70 of the Articles of Association of the respondent No. 6 President of India was pleased to appoint the petitioner as Acting Chairman-cum-Managing Director of the respondent No. 6. The Deputy Secretary of the Government of India by a letter dated February 13, 1998 directed continuation of the petitioner as Director (Finance). The Charge-sheet dated February 13, 1998 was issued by the order and in the name of the President of India by the Joint Secretary and Chief Vigilance Officer to the Government of India. Similarly is the case in respect of the second charge- sheet. By the order of the President, the Director, Government of India, Ministry of Steel and Mines, Department of Mines on December 1, 1998 appointed the enquiry officer. Therefore, it is crystal clear that not only absolute control of the respondent No. 6 vests in the Central Government but the Central Government is also affected financially by reason of the actions of the respondent No. 6 and its officers. In the said judgment it has been pointed out that if the Government operate behind a corporate veil, carrying out Governmental activity and Governmental functions of vital public importance, there may be little difficulty in identifying the body as "State" within the meaning of Article 12. In the instant case the Central Government is acting behind the corporate veil of the respondent No. 6 and carrying out Governmental activity which includes Copper Mining Operations and it cannot be said that such activity of the Government is not of vital public interest as no one else is permitted to do so, as I was informed during the course of submissions. It was submitted that Payment of Gratuity Act, 1972 is not applicable to the petitioner. As the aforesaid Clause (3) of the said Rules provide that the provisions of Payment of Gratuity Act will with effect from April 6, 1973 apply to all employees excluding the Government servants employed on deputation and foreign technicians where contracts did not provide for payment of gratuity. Therefore, there is no substance in such contention.

29. Lastly relying upon the judgment of Supreme Court in Rajahmundry Electric Supply Corporation Ltd. Vs. A. Nageswara Rao and Others, , it was submitted that a proceeding which is valid cannot become non-maintainable by reason of

subsequent retirement. In that case the Supreme Court was construing the provisions contained in the Companies Act, 1913 and the Supreme Court after construing the provisions contained in the said Act held that a winding up application filed u/s 162 of the said Act must be judged on the facts as they were at the time of its presentation and a petition which was valid when presented cannot, in the absence of the provisions to that effect in the statute, cease to be maintainable by reason of events subsequent to its presentation. That case has no bearing in so far as the present case is concerned.

30. Lastly it was submitted that an employer has inherent right to initiate disciplinary proceedings against its employee. In this connection reliance was placed on the judgment of a Learned Single Judge of this Court in Probodh Kumar Bhowmick v. University of Calcutta and Ors. reported in 1994 (2) CLJ 456. I was told that an appeal has been preferred against the said judgment and the Appeal Court has delivered its own view but the judgment of the Appeal Court was not produced before me. Assuming what has been stated in the said judgment to be correct, it is not said there that an employer has inherent right to initiate disciplinary proceedings against an employee. After a person ceases to be an ex-employee, question of disciplining him does not arise. It has to be kept in mind that the proceedings are disciplinary proceeding aimed at disciplining an employee. After an employee ceases to be an employee, there is no scope to discipline him.

31. For the reasons recorded above I allow the writ petition declaring that the disciplinary proceedings initiated against the petitioner lapsed on his superannuation and accordingly notices of enquiry being Annexures H and M to the petition are of no effect. Consequently I direct the respondent No. 6 to forthwith, but not later than one month from the date hereof, to release all retiral dues of the petitioner together with interest. The amount payable on account of Provident Fund shall carry interest at the rate payable under the provisions contained in Provident Fund Act, the amount payable on account of gratuity shall carry interest at the rate payable under the Payment of Gratuity Act and the amount payable on account of Leave Encashment will carry interest at the rate of 9% per annum. Such interest shall be paid from the date of superannuation of the petitioner till the actual payment is made.

32. There shall be no order as to costs.

33. If certified xerox copy of this judgment is applied for, the same be made available to the parties so applying within a period of seven days from the date of such application. Stay prayed for is refused.