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HIGH COURT OF PUNJAB AND HARYANA

v.

AMRIK SINGH

NOVEMBER 23, 1994

B

[K. RAMASWAMY AND K. JAYACHANDRA REDDY, JJ.]

Service law

C

Central Civil Services Pension Rules—Rule 9—Punjab and Haryana Civil Services Manual, Vol II—Rule 2.2—Disciplinary Proceedings—Proceedings validly initiated should be continued till appropriate orders passed—Proceedings do not abate consequent on retirement of delinquent—Order to be passed when delinquent already retired—Power of competent authority to withhold pension.

D

Central Civil Services Pension Rules—Rule 9—Punjab and Haryana Civil Service Manual, Vol II—Rule 2.2—Employee attained superannuation—Re-employment—Charges of embezzlement of funds—Disciplinary proceedings—Expiry of period of re-employment—Employee allowed to retire—Finding of embezzlement recorded—Order of dismissal from service—Whether valid in law—Order of giving effect to order of dismissal from date of its order—Superfluous as employee no longer in service on that date—Power of competent authority to withhold pension.

E

F The respondent, while working as a Selection Grade Superintendent in the High Court had attained his superannuation. His tenure was extended by two years and thereby he was to retire after the expiry of re-employment period on August 31, 1982. During his re-employment a charge sheet was issued against the respondent on the grave charges of embezzlement. On expiry of two years he was allowed to retire. After conducting the enquiry, the respondent was dismissed from service by orders dated June 7, 1983 and August 31, 1983 with immediate effect. On appeal, the order of dismissal from service was confirmed. Writ petition filed against the order was allowed by the High Court and the institution of the disciplinary proceedings and imposition of penalty of dismissal from service against the respondent were declared void. This appeal has been filed against the said order of the High Court.

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The appellant contended that once disciplinary proceedings have been initiated according to the Rules while the employee was in office, either before his attaining superannuation or on expiry of the period of re-employment, the departmental proceedings would be continued till the final orders were passed. In view of the proved grave misconduct of the embezzlement of the funds of the High Court, the Chief Justice dismissed the respondent from service with immediate effect from the date of the passing of the order, and that the Division Bench was not right in holding that the order is void.

The respondent contended that, though the disciplinary authority had power to continue the proceedings, after the delinquent had attained superannuation, and was allowed to retire, the Chief Justice had no power to pass the order of dismissal; and that it would be open only to pass appropriate order under the Pension Rules and no other.

In the instant case the question for consideration was whether the order of dismissal was valid in law or what would be the appropriate order that could be passed in the circumstances of the case.

Allowing the appeals, this Court

HELD: 1.1 The disciplinary proceedings validly initiated against the delinquent officer should be continued till the appropriate orders are passed by the competent authority, though the delinquent had retired, during the pendency of the enquiry and the proceedings were not abated, consequent on the retirement. Several options are open to the appointing authority. Before the delinquent reaches superannuation, the enquiry should be got expedited and appropriate order passed on the basis of the findings reached by the disciplinary authority. In case it is not possible to complete the enquiry or to pass the final order, the suspension should be extended and re-employment ordered or the later extended appropriate orders during the extended period. In case it is found that either of those courses, neither is feasible nor possible and allowed the delinquent to retire, it would be open to the disciplinary authority to record in its order that "but for the retirement he would have passed an order of dismissal or removal from service." Since the delinquent had retired the disciplinary authority would record in the order that the delinquent "committed grave misconduct of the proved charge" and suitable order be made.

[10 D to H, 11A & B]

D.V. Kapoor v. Union of India and Ors., [1990] 4 SCC 314, relied on.

A 1.2. 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 including the service rendered upon re-employment after retirement. On recording such a positive finding, the competent authority has been empowered to withhold the pension in whole or in part or to recover the pecuniary loss, if any, caused to the Government. These orders are only consequent to the finding of the guilty or grave misconduct or negligence in the discharge of the duty during the period of his service including the service rendered upon re-employment after retirement. [11E & F]

C 1.3. In the instant case, the Chief Justice of the High Court, on the administrative side, while passing the order of dismissal agreed with the enquiry officer's finding that the respondent committed embezzlement and mentioned that the order of dismissal would come into immediate effect from the date of the order. He appeared to have intended to say that the order of dismissal will be operative from the date of the order of the dismissal. But it would appear that the Chief Justice was not apprised that the delinquent had already retired from service on completion of two years period of extended service of re-employment. Therefore, the order of giving effect to the order of dismissal from the date of its order was of no consequence and became superfluous as he was no longer in service as on that date. However, he has the power either under Rule 2.2 of the Punjab and Haryana Civil Service Manual, Vol II or Rule 9 of the Central Civil Service Pension Rules to take appropriate action as was made applicable to the staff of the High Court of Punjab and Haryana as the case may be.

[11G & H, 12A]

F CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2343-45 of 1994.

From the Judgment and Order dated 23.7.93 of the Punjab and Haryana High Court in C.W.P. Nos. 5629-31 of 1984.

G D.D. Thakur, Mrs. Kawaljit Kochar, N.N. Bhatt and Mrs. Rani Chhabra for the Appellant.

D.V. Sehgal, Ms. Rekha Palli, Anant Palli, Deepak Singh and Ms. Monika Gusain for the Respondent.

H The following Order of the Court was delivered :

These appeals by special leave are from the judgment of the High Court of Punjab & Haryana in C.W.P. Nos. 5629, 5630 and 5631 of 1984 dated July 23, 1993. The respondent, while was working as a Selection Grade Superintendent in the High Court of Punjab & Haryana, had attained his superannuation after reaching 58 years of age on August 31, 1980. The Chief Justice of the High Court had extended his tenure by two years and thereby he was to retire after the expiry of re-employment period on August 31, 1982. During his re-employment, it had come to the knowledge of the Chief Justice that the respondent had committed misconduct of embezzling the funds of the High Court. Therefore, he was kept under suspension on December 17, 1981 and a charge-sheet was issued after enlistment of three specific charges against the respondent on the grave charges of embezzlement. On expiry of two years he was allowed to retire. After conducting the enquiry by the Dist. Judge and on receipt of the report in that behalf complying with clause 2 of Article 311 of the Constitution and the relevant statutory rules, the Chief Justice on the administrative side dismissed the respondent from service by his orders dated June 7, 1983 and August 31, 1983 with immediate effect. On appeal, as per the Rules, the Division Bench on the administrative side confirmed the order on January 24, 1984. The respondent challenged the orders in three Civil Writ Petition Nos. 5629, 5630 and 5631/84. The Division Bench by judgment dated July 23, 1993 declared thus :

“For the reasons stated above, C.W.P. No. 5629/84 is allowed. The initiation of the disciplinary proceedings and imposition of penalty of dismissal from service against the petitioner are declared void. The orders of dismissal from service dated June 7, 1983 passed by the disciplinary authority and of the Appellate authority dated August 24, 1984, which are under challenge in C.W.P. Nos. 5630, 5631 of 1984, are quashed. However, we leave it open to the disciplinary authority, which in this case is the Chief Justice of this Court, to take appropriate action under Rule 9 of the Pension Rules, if he so desires.”

This order is now under challenge by leave of this Court.

Shri D.D. Thakur, learned senior counsel for the appellant has contended that it is settled law that once disciplinary proceedings have been initiated according to the Rules while the employee was in office, either before his attaining superannuation or expiry of the period of re-employment, the logical consequence would be that the departmental

- A proceedings would be continued till the final orders are passed. Final order would be either exoneration of the delinquent of the charges or to pass an appropriate punishment in accordance with Rules. In this case, in view of the proved grave misconduct of the embezzlement of the funds of the High Court, the Chief Justice dismissed the respondent from service with immediate effect from the date of the passing of the order. The Division
- B Bench was not right in holding that the order is void. Consequential to the order of dismissal, appropriate action would be taken under the Pension Rules either under section 9 of the Central Rules or under Rule section 2 (2) (b) of the Punjab Civil Services Rules, Volume II. Shri Sehgal, learned Senior counsel for the delinquent contended that, though the disciplinary authority has power to continue the proceedings, after the delinquent had
- C attained superannuation, and was allowed to retire, the Chief Justice had no power to pass the order of dismissal. It would be open only to pass appropriate order under the Pension Rules and no other.

- The respective contentions gives rise to the question whether the orders of dismissal is valid in law or what would be the appropriate orders that
- D could be passed in the circumstances of the case. In *D.V. Kapoor v. Union of India and Ors.*, [1990] 4 SCC 314, considering Rule 9 of the Central Pension Rules, this Court held that the initiation of the 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
- E Government servant has been continued in service. In that case, since the prior approval of the President was required to be obtained, it was held that the requirement has been complied with. Accordingly, it was held that the proceedings validly initiated against the delinquent officer should be continued till the appropriate orders are passed by the competent authority,
- F though the delinquent had retired, during the pendency of the enquiry and the proceedings were not abated, consequent on the retirement. The same ratio would apply to the facts of this case. Several options are open to the appointing authority and in case the disciplinary authority also happens to be the appointing authority. Before the delinquent reaches superannuation, the enquiry should be got expedited and appropriate order passed on the
- G basis of the findings reached by the disciplinary authority. In case the delinquent attempts to drag the proceedings or he does not co-operate in the completion of the enquiry, after giving necessary warning in writing, suitable course appropriate to the facts is required to be adopted. In case it is not possible to complete the enquiry or to pass the final order, the suspension should be extended and re-employment ordered or the later
- H extended and to pass appropriate orders during extended period. In case it is

found that either of those courses, neither is feasible nor possible and allowed the delinquent to retire from service, it would be open to the disciplinary authority to record in its order that "but for the retirement he would have passed on order of dismissal or removal from service." Since the delinquent had retired the disciplinary authority would record in the order that the delinquent "committed grave misconduct of the proved charge" and suitable order be made.

Rule 2 (2) of the Pension Rules, Clause (b) clearly mentions thus:

"2 (2) (b) The Government further reserves to themselves the right to withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and right of ordering the recovery from the pension of the whole or part of any pecuniary loss caused to 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*". (emphasis supplied)

A reading thereof clearly indicates 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 including the service rendered upon re-employment after retirement. On recording such a positive finding, the competent authority has been empowered to withhold the pension in whole or in part or to recover the pecuniary loss, if any, caused to the Government. These orders are only consequential to the finding of the guilty of grave misconduct or negligence in the discharge of the duty during the period of his service including the service rendered upon re-employment after retirement.

It is seen that the learned Chief Justice of the High Court, on the administrative side, while passing the order of dismissal agreed with the enquiry officer's finding that the respondent committed embezzlement and mentioned that the order of dismissal would come into immediate effect from the date of the order. In other words, he appears to have intended to say that the order of dismissal will be operative from the date of the order of the dismissal. But it would appear that the Chief Justice was not apprised that the delinquent had already been retired from service on completion of two years period of extended service of re-employment with effect from August 31, 1982. Therefore, the order of giving effect to the order of

- A dismissal from the date of its order was of no consequence and became superfluous as he was no longer in service as on that date. However, it would be clear that he has the power either under Rule 2.2 of the Punjab & Haryana Civil Service Manual, Vol. II or Rule 9 of the Central Civil Services Pension Rules to take appropriate action as was made applicable to the staff of the High Court of Punjab & Haryana as the case may be.
- B Therefore, it would be open to him to take such action as is open to him under law. The impugned order of the High Court is set aside, and the writs are issued with the above modification. The appeals are allowed. No costs.

A. G.

Appeals allowed.