Takhatray Shivadattray Mankad

Vs

Stat of Gujarat

(G. L. Oza, S. R. Pandian JJ)

05.05.1989

JUDGMENT

RATNAVEL PANDIAN, J. –

1. This is an appeal by special leave from the judgment of the Gujarat High Court dismissing the appeal made in Letters Patent Appeal No. 145 of 1978 arising from the order passed in Special Civil Application No. 268 of 1978 of the said High Court.

2. As this case has a chequered history spreading over decades, we feel that the relevant facts that are necessary for the disposal of this appeal are to be stated in brief. The appellant was born on January 15, 1909 and he obtained the degree of Bachelor of Engineering (Civil). He joined the service of the erstwhile State of Junagadh in Saurashtra region on August 1, 1934. While the appellant was in the service of Junagadh State, he was governed by the Junagadh State Pension & Parwashi Allowances Rules of 1932 (hereinafter called as "Junagadh Rules") which had been published in the official Gazette of that State and which were subsequently codified and published in the Junagadh State Account Code. Rule 241-A of the aforesaid Junagadh Rules provided for pension and Parwashi allowances. The State of Junagadh was integrated into the State of Saurashtra on January 20, 1949. Thereafter the appellant was absorbed in the service of the State of Saurashtra. The supplementary Covenant which brought about the integration read with Article 16 of the main Covenant expressly protected the conditions of the service of the absorbed servants and the protection was also statutorily recognised by the Saurashtra Ordinance 3 of 1949 read with Ordinance 1 of 1948. A proclamation providing a guarantee that the conditions of service could not be varied to the disadvantage of the covenanting State servants was also issued in that behalf of January 20, 1949 which was the date of the merger of the State into the State of Saurashtra.

3. Based on the decision of this Court in Bholanath J. Thakar v. State of Saurashtra (AIR 1954 SC 680 : (1955) 1 LLJ 355), wherein it was held that the rules as regards the age of superannuation which prevailed in the covenanting State which in that case was the State of Wadhwan, continued to cover those government servants who had come from that State and had been absorbed in the services of the State of Saurashtra. The State of Saurashtra made the Saurashtra Covenanting State Servants (Superannuation Age) Rules, 1955 (hereinafter called as "Saurashtra Rules") in exercise of the powers conferred by Article 309 of the Constitution of India. Rule 3(i) provided :

> "A government servant shall, unless for special reasons otherwise directed by government retire from service on his completing 55 years of age."

4. After the integration of the Saurashtra State into the State of Bombay a resolution was passed by the government on January 7, 1957 applying the old Bombay Civil Services Rules, 1959 (hereinafter called the "Bombay Rules") were promulgated under Article 309 of the Constitution.

Clause (c)(2)(ii)(1) of Rule 161 is as follows :

> "Except as otherwise provided in this sub-clause, government servants in the Bombay Service of Engineers, Class I, must retire on reaching the age of 55 years, and may be required by the government to retire on reaching the age of 50 years, if they have attained to the rank of Superintending Engineer."

The appellant was compulsorily retired from service under the above rule by an order passed by the State of Gujarat on October 12, 1961 with effect from January 12, 1962 when he had completed the age of 53 years. This order of retirement was unsuccessfully challenged by the appellant before the Gujarat High Court by a writ petition under Article 226 of the Constitution. Not being satisfied, the appellant took up the matter before this Court which by its judgment dated April 9, 1969 allowed the appeal and declared (SCC p. 125, para 10) "that the appellant was entitled to remain in service until he attained the age of 55 years and that the impugned order directing his retirement was invalid and ineffective". This judgment is reported in Takhatray Shivdatrai Mankad v. State of Gujarat ((1969) 2 SCC 120 : 1969 SLR 572 : AIR 1970 SC 143). As per this decision, the appellant had the right to continue in service till he attained the age of 55 years.

5. It may be noted that the appellant had already completed the age of 55 years by the time the judgment was pronounced by the Supreme Court. In due compliance of the above judgment of this Court, the Government of Gujarat by its order dated August 4, 1969 intimated the appellant that he should be deemed to have remained in service up to the date on which he attained the age of 55 years, that is up to January 14, 1964. In other words, by this order the appellant was retired on his attaining the age of 55 years on January 14, 1964. Prior to this decision of the Supreme Court, the age of superannuation for Government servants of the Government of Gujarat was raised to 58 years with reservation of power to the State Government to compulsorily retire a government servant at 55 years by serving a notice. The appellant in order to avail of this benefit of the changed circumstances filed a Special Civil Application No. 70 of 1970 before the High Court of Gujarat, but became unsuccessful. Being dissatisfied with that judgment of the High Court, he filed a Special Leave Petition No. 977 of 1975 before this Court which by its order dated July 21, 1975 declined to interfere with the decision of the High Court under Article 136 of the Constitution of India. The resultant effect is that the matter came to a finality to the effect that the appellant was not entitled to continue in service beyond the age of 55 years.

6. Even before he was compulsorily retired by the government's order dated October 12, 1961, a departmental enquiry on the ground of slackness of supervision had been initiated on February 6, 1961. Thereafter, a second departmental enquiry was ordered against the appellant on charges of over-payment to contractors and consequent loss to the government on April 11, 1963. A third enquiry was ordered against him on August 17, 1963 on charges of payment in advance before the receipt of goods. Thus there were three departmental enquiries before his retirement on attaining the age of 55 years, that is on January 14, 1964. These enquiries were pending against the appellant till 1971.

7. Be that as it may, the appellant filed a Special Civil Application No. 504 of 1971 before the High Court of Gujarat seeking issue of a writ of mandamus against the State of Gujarat to direct the State to pay the appellant all the outstanding salary, allowances as well as the revised pay and allowances including increment subsequent to the stage of efficiency bar falling due from January 12, 1962 to January 14, 1964 together with interest @ 6 per cent annum from the date of payment withheld till the date of actual payment thereof to him. The State defended this action of withholding the pension

on the ground that the departmental enquiries initiated against him were pending. The appellant, therefore, filed Civil Application No. 2304 of 1972 in the abovesaid Special Civil Application No. 504 of 1971 for interim relief, which application he withdrew subsequently. According to the appellant, he withdrew the application on the representation made on behalf of the respondent therein that the departmental enquiries had become infructuous consequent upon the retirement of the appellant.

8. In the meanwhile, the State of Gujarat issued a show-cause notice dated July 17, 1971 to the appellant informing him that the Government had considered that his service had not been found thoroughly satisfactory on account of the reasons mentioned in the said show-cause notice, and therefore, the government had proposed to make reduction of 50 per cent both in the amount of pension and death-cum-retirement gratuity admissible to him. We shall now reproduce the relevant portion of the show-cause notice (Annexure 'C') :

> "Government therefore proposes, in exercise of the powers vested in it under : (i) Para 241(E)(3) and (3) of the Junagadh Account Code or (ii) Rule 76 of the Ex-Saurashtra Pension Rules, as contained in Saurashtra Government Resolution, Finance Department No. 121/40 dated October 19, 1949 or (iii) Rule 188 of Bombay Civil Services Rules, as may be applicable to you, to make a reduction of 50 per cent (fifty per cent) both in the amount of pension and Death-cum-Retirement Gratuity admissible to you."

9. The appellant submitted his reply and the proceedings went on before the government for a considerable length of time. Ultimately, the final order was passed on November 15, 1977 reducing the pension and gratuity by 50 per cent. Being aggrieved by the said order, the appellant filed Special Civil Application No. 268 of 1978 before the High Court of Gujarat for quashing the order reducing his pension and gratuity. The learned Single Judge of Gujarat High Court rejected the said civil application in limine by his order dated March 8, 1978 concluding : "In the present case the government recorded reasons why it came to the conclusion that the petitioner's service were unsatisfactory and, therefore, put a proportionate cut on the petitioner's right to pension. No case of discrimination is made out".

10. As against this order, the appellant filed the Letters Patent Appeal No. 145 of 1978 before a Division Bench of the High Court contending that he was governed by the Junagadh Rules and he continued to be governed by those rules in spite of the fact that the Bombay Rules were sought to be made applicable to him. In the alternative it was submitted that even if the Bombay Rules were to be made applicable, so far as the question of payment was concerned, inasmuch as they were not less advantageous on compulsory retirement, proportionate pension was payable to the appellant under the Bombay Rules of 1959. The Division Bench examined both the alternative contentions with reference to the concerned rules and ultimately concluded thus :

> "Under either set of rules, therefore, it was open to the State Government to reduce the amount of pension payable to the petitioner since his service had not been found satisfactory by the State Government under the Junagadh State Rules or, in the alternative, under the Bombay Civil Services Rules, his service has not been found thoroughly satisfactory. In view of these conclusions, we agree with the conclusion reached by A. D. Desai. J. though he did not examine the alternative case from the point of view of the Bombay Civil Services Rules."

11. On the basis of the above findings, the appeal was dismissed. Hence the present appeal.

12. Shri B. K. Mehta, learned counsel appearing on behalf of the appellant assailed the impugned judgment of the Division Bench of the High Court inter alia contending (1) that the High Court had clearly gone wrong in upholding the impugned order of reduction in pension made in the purported exercise of power under Rules 188 and 189 of the Bombay Rules in view of the finding of this Court in C. A. No. 409 of 1966, Takhatray Shivdatrai Mankad case ((1969) 2 SCC 120 : 1969 SLR 572 : AIR 1970 SC 143) wherein it was held that the Bombay Rules could not be made applicable to the appellant; (2) that the appellant is not governed by the Saurashtra Rules because the said rules do not provide for compulsory retirement as pointed out by the Supreme Court in C. A. No. 409 of 1966 ((1969) 2 SCC 120 : 1969 SLR 572 : AIR 1970 SC 143) and (3) that the State Government has not specifically stated in the show-cause notice dated July 17, 1971 (Annexure C) as well as in the impugned order for reducing the pension (Annexure A) as to under what set of rules, namely, whether under the Junagadh Rules or the Saurashtra Rules or the Bombay Rules they were exercising the power for reducing the pension and gratuity.

13. It has been further urged that clauses (3), (13) and (15) of Rule 241-A of Junagadh Rules operate in different fields in that while clause (3) applies to cases of normal superannuation, clauses (13) applies to cases of compulsory retirement and, therefore, the observation of the Division Bench of the High Court in the Letters Patent Appeal approving the view taken by the learned Single Judge that clause (3) controls clause (13), would practically render clause (13) as ultra vires Article 311 of the Constitution of India, since compulsory retirement together with reduction of pension would amount to penalty in the absence of procedural safeguards. Further it is urged that during the pendency of the appeal (C.A. No. 409 of 1966 ((1969) 2 SCC 120 : 1969 SLR 572 : AIR 1970 SC 143)) before this Court, the Bombay Rules were extended to the Saurashtra State covenanting servants and the superannuation age was raised to 58 years and therefore the appellant in any case was entitled to continue up to 60 years of age under the Junagadh Rules or up to 58 years of age under the Bombay Rules. When it was so, the retirement of the appellant on attaining the age of 55 years should be construed as a case of compulsory retirement before the normal age of superannuation which coupled with the order of reduction in pension would amount to penalty which could not have been imposed without following the prescribed procedure under the Conduct, Discipline and Appeal Rules. In support of this last submission, reliance was placed on the decision of this Court in Dalip Singh v. State of Punjab ((1963) 1 SCR 88 : AIR 1960 SC 1305), and Moti Ram Deka v. General Manager, N.E.F. Railways ((1964) 5 SCR 683 : AIR 1964 SC 600 : (1964) 2 LLJ 467).

14. In the alternative, he submitted assuming that the Bombay Rules apply to the case of the appellant, the enquiry as prescribed under Rule 189 of the Bombay Rules was not followed. Further if the case of the appellant is to be governed by the Saurashtra Rules, there was no provision for compulsory retirement as pointed out by the Supreme Court in C.A. No. 409 of 1966 ((1969) 2 SCC 120 : 1969 SLR 572 : AIR 1970 SC 143). Finally he submitted that the impugned order for reduction of pension is bad in law and void because (1) no enquiry for the reasons as contemplated under Rule 189 of the Bombay Rules has been conducted and (2) admittedly the State had Stated before the High Court in the course of hearing of the civil application on October 24, 1972 that the departmental enquiry had become infructuous and was dropped as the appellant had already retired. In any case, no enquiry could be held in pursuance to the show cause notice dated July 17, 1971 after a lapse of 4 years in view of the prohibition under proviso (b)(ii) of Rule 189-A of the Bombay Rules. Therefore, the reduction of pension and gratuity by 50 per cent is wholly unreasonable, unwarranted and arbitrary.

15. Mr. G. A. Shah, learned counsel appearing on behalf of the respondent, stoutly opposed the submissions made on behalf of the appellant stating that the appellant was directed to retire on attaining the age of 55 years as per the judicial pronouncement of this Court in C. A. No. 409 of 1966 ((1969) 2 SCC 120 : 1969 SLR 572 : AIR 1970 SC 143) fixing his age of retirement at 55 years and hence the appellant cannot be permitted to be heard that his retirement at the age of 55 should be construed as compulsory retirement, in view of the fact that the age of retirement was increased to 60 years under the Junagadh Rules and 58 years under the Bombay Rules. According to Mr. Shah after the dismissal of the Special Civil Application No. 70 of 1970 by the Gujarat High Court holding that the right of the appellant to continue in service was judicially determined by this Court and so it cannot be said that the State Government had discriminated the appellant, which decision of the High Court was upheld by this Court by the order of dismissal of the special leave petition on January 21, 1979. It is urged by the learned counsel for the respondent that the appellant's retirement having been a normal one, he was entitled to pension under Rule 241-A of the Junagadh Rules and as such the State Government in exercise of the powers under the said rules had passed the order dated November 15, 1977 reducing the pension and gratuity to 50 per cent after affording an opportunity to him by issuing a show-cause notice alleging several acts of misconduct to which notice the appellant did not give any explanation in spite of several opportunities afforded for over 6 years. Hence the order of the government reducing the pension and gratuity to 50 per cent on the finding that the allegations of misconduct are proved is justified. According to him Rules 188 and 189 of the Bombay Rules are inapplicable to the case of the appellant. Moreover, these rules are in pari materia to Rule 241-A of the Junagadh Rules and therefore as held by the Division Bench of the High Court under either of the rules, the government is competent to reduce the pension for misconduct. Coming to Rule 189-A which was introduced on October 29, 1971 after the issue of show-cause notice in the case, it is said that this rule provides that the proceedings already initiated shall be deemed to be a proceedings under this rule and continued and concluded by the authority. In the present case, the proceedings were initiated even while appellant was in service and they were dropped after his retirement. Therefore, the appellant is not justified in contending that those proceedings relate to misconduct which had occurred 4 years prior to the institution and therefore they are not sustainable as per proviso (b)(ii) of Section 189-A of the Bombay Rules.

16. We shall scrutinize the respective contentions of the learned counsel with reference to the facts of this case and the position of law with reference to the relevant rules and the various judicial pronouncements of this Court in a series of decisions dealing with powers vested in the appointing authority to reduce the pension and gratuity on proof of allegations of misconduct or negligence committed by the employee or on the proof of inefficiency and unsatisfactory service. The appellant who was retired compulsorily on January 12, 1962 in pursuance of the order of the Public Works Department, State of Gujarat dated October 12, 1961 under the Bombay Rules when he had completed the age of 53 years, successfully contested that matter and obtained the order in his favour from this Court in C.A. No. 409 of 1966 ((1969) 2 SCC 120 : 1969 SLR 572 : AIR 1970 SC 143) by the judgment dated April 9, 1969 ((1969) 2 SCC 120 : 1969 SLR 572 : AIR 1970 SC 143) quashing the order of compulsory retirement and declaring "that the appellant was entitled to remain in service until he attained the age of 55 years."

17. In pursuance of the above judgment of this Court, the government passed the following order on August 4, 1969, the relevant portion of which reads as under :

> "Shri T. S. Mankad should be deemed to have remained in service as Executive Engineer up to the date on which he had attained the age of 55 years i.e. up to January 14, 1964 (A.N.).

"The orders issued in Government Order, Public Works Department No. DPA 1861-E dated October 12, 1961 should be treated to have been cancelled."

The aforesaid order was challenged by the appellant in Special Civil Application No. 70 of 1970 before the Gujarat High Court with a prayer to declare this order dated August 4, 1969 as illegal, void, ultra vires, bad in law and inoperative and the same was not binding on the appellant, besides challenging the constitutional validity of the latter part of the amended Rule 161(c)(ii)(1) of the Bombay Rules. But this Special Civil Application No. 70 of 1970 was rejected holding that the right of the appellant to continue in service was judicially determined by this Court and that judicial determination was given effect to by the State Government by its order dated August 4, 1969. As against this judgment, the appellant preferred special leave petition before this Court which was dismissed on January 21, 1979. Thus the controversy was put to an end and the result was that the appellant was not entitled to continue in service beyond 55 years of age. Hence the contention of the learned council for the appellant that the appellant is entitled to avail the benefit of the increase of age of superannuation fixing it at 60 years under the Junagadh Rules or at 58 years under the Bombay Rules cannot be accepted. The further submission made on behalf of the appellant that his retirement should be construed only as compulsory retirement coupled with the order of reduction in pension and gratuity amounting to penalty without following the procedures prescribed under the Conduct, Discipline and Appeal Rules, is also equally to be dismissed as devoid of any merit since the appellant was retired only in accordance with the pronouncement of this Court.

18. We have now to examine whether the propositions of law expatiated in the decisions cited by Mr. B. K. Mehta can be made applicable to the facts of this instant case. In Dalip Singh v. State of Punjab ((1961) 1 SCR 88 : AIR 1960 SC 1305), the appellant therein namely, Dalip Singh was retired from service for 'administrative reasons'. He brought a suit on a plea that order of his retirement amounted to removal from service within the meaning of Article 311(2) of the Constitution. The trial court decreed the suit in his favour. On appeal by the State, the High Court dismissed the suit holding that the order of compulsory retirement in that case did not amount to removal from service within the meaning of Article 311 of the Constitution. As against this, Dalip Singh approached this Court. This Court held that there were no basis for saying that the order of retirement contained any imputation or charge against the officer and that he had been allowed full pension as provided in Rule 278 of the Patiala State Regulations, on the strength of which Dalip Singh was retired and that the order of retirement was hardly by way of punishment. In that view, this Court agreed with the view taken by the High Court and dismissed the appeal.

19. In Moti Ram Deka v. General Manager, N.E.F. Railways, Maligaon, Pandu ((1964) 5 SCR 683 : AIR 1964 SC 600 : (1964) 2 LLJ 467) the only question for consideration was whether the termination of services of a permanent railway servant (civil) under Rules 148(3) and 149(3) of the Indian Railway Establishment Code amounted to removal under Article 311(2) of the Constitution of India. Majority of the seven Judges bench having regard to the facts therein held that the termination of services of a permanent servant otherwise than on ground of superannuation or compulsory retirement, must per se amount to his removal and if by Rule 148(3) or Rule 149(3), such a termination is brought about, the rule clearly contravenes Article 311(2) and so it must be held to be invalid. On carefully going through both the decisions, we are of the firm view that these two decisions cannot be of any assistance to the case of the appellant since in the present case, the appellant's retirement on attaining the age of 55 years, pursuant to the declaration of this Court was a normal retirement on reaching the age of superannuation and not compulsory retirement by way of punishment for misconduct as contended by the appellant.

20. Next we shall deal with the respective contentions of both the parties with reference to the Junagadh Rules and the Bombay Rules. It may be mentioned here that the appellant himself under the ground (h) of his special leave petition had stated that his services were to be governed by the Junagadh Rules. It was also urged on behalf of the respondent that the appellant's retirement being a normal one, he is entitled to pension under Junagadh Rules and the State Government in exercise of the power vested in it had passed the order dated November 15, 1977 reducing the pension and gratuity to 50 per cent. As pointed out by the Division Bench of the High Court, under the scheme of the Junagadh Rules as per clause (10) of Rule 241-A, the pensions are admissible for superior service of not less than 10 years and they are divided into 4 classes, namely, (1) compensation pension; (2) invalid pension; (3) superannuation pension; and (4) retiring pension. As we are concerned only with the superannuation pension in the present case, we would refer to the relevant clause which reads as follows :

> "(13) Superannuation pension is admissible only on attaining the age of 60 years, except in cases in which the authorities consider it desirable in the interest of the State an officer should retire on attaining the age of 55 years or at any time thereafter on such superannuation pension as he may have earned at the time of retirement."

21. A bare perusal of the above clause shows that superannuation pension is admissible to the State Government servant on his attaining the age of 60 years, save in cases in which the authorities consider it in the interest of the State to retire an officer in attaining the age of 55 years or at any time thereafter on such superannuation pension as he may have earned at the time of his retirement.

22. Clause (15) of Rule 241-A deals with the proportionate pension. As clause (3) of Rule 241-A is material for our purpose, that clause is reproduced hereunder :

> "(3) The full amount of pension or gratuity admissible under the rules will not be granted unless the service is proved from State records on receipt of an application for pension or gratuity from the retired officer in Form No. 53 and will be liable to reduction in the absence of such proof or if the service is not reported by the Head of the Department to have been satisfactory."

As per this clause, the government servant will be entitled to full amount of pension or gratuity only if his service is proved from the records satisfactory lest the pension will be liable to reduction. A combined reading of clauses (3), (13) and (15) shows that clause (3) is an exception to the general scheme laid down in clauses (13) and (15). On careful consideration of this rule, we see no merit in the submissions made by the learned counsel that these clauses operate in different fields and therefore observations of the High Court that clause (3) controls clause (13) would render clause (13) as ultra vires Article 311 of the Constitution of India, since compulsory retirement together with reduction of pension would amount to penalty in the absence of the procedural safeguards. The government in its detailed order dated November 15, 1977 has set out the reasons for reducing the amount of pension and gratuity. The relevant portion of the order reads thus :

> "Government is satisfied that the services of Shri T. S. Mankad, Executive Engineer have not been found to be thoroughly satisfactory. Accordingly government hereby orders that the pension and Death-cum-Retirement Gratuity, which may be accepted by the Accountant-General, Ahmedabad as admissible under the rules shall be reduced by the specified extents as under :

(i) Amount of reduction in pension = 50 per cent (Fifty per cent)

(ii) Amount of reduction in gratuity = 50 per cent (Fifty per cent)".

According to the respondent, the appellant instead of giving a proper explanation to the show-cause notice dated July 17, 1971 entered into long correspondence with respondent raising all sorts of irrelevant questions and seeking several adjournments thereby adopting delay tactics and further the appellant though informed the authorities that he would inspect certain documents in the department for making his reply, he did not do so and therefore according to the learned counsel it was in those circumstances, the government was constrained to pass this order dated November 15, 1977 after a lapse of more than 6 years taking into consideration that his service had not been found thoroughly satisfactory for the reasons mentioned in the show-cause notice to which he had not given any reply. We see much force in the above submission, made by Mr. Shah, the learned counsel appearing for the respondent.

23. In view of the above position, we are of the view that the impugned order dated November 15, 1977 cannot be said to contravene the Junagadh Rules.

24. Now we shall pass on to the alternative contention on the assumption that Bombay Rules would apply to the case of the appellant. The relevant rules are Rules 188 and 189 which are reproduced below :

"188. Government may make such reduction as it may think fit in the amount of the pension of a government servant whose service has not been thoroughly satisfactory.

189. Good conduct is an implied condition of every grant of pension. Government may withhold or withdrawn a pension or any part of it if the pensioner be convicted of serious crime or be found to have been guilty of grave misconduct either during or after the completion of his service, provided that before any order to this effect is issued, the procedure referred to in Note 1 to Rule 33 of the Bombay Civil Services (Conduct, Discipline and Appeal) Rules shall be followed."

25. An examination of Rule 188 shows that the Government may reduce the amount of pension of a government servant as it may think fit if the service of the government servant has not been thoroughly satisfactory. As per Rule 189 the government may withhold or withdraw a pension or part of it if the petitioner is convicted of serious crime or found to have been guilty of misconduct during or after the completion of service provided that before any order to this effect is issued, the procedure referred to the Bombay Civil Services (Conduct, Discipline and Appeal) Rules are followed. These rules, thus, have expressly preserved the State Government's power to reduce or withhold pension by taking proceedings against a government servant even after his retirement. The validity of these rules has not been challenged. These two rules came for interpretation before this Court in State of Maharashtra v. M. H. Mazumdar ((1988) 2 SCC 52 : 1988 SCC (L&S) 436 : (1988) 6 ATC 876) and this Court expressed its view with reference to these rules as follows : (SCC pp. 55-56, para 5)

"The aforesaid two rules empower government to reduce or withdraw a pension. Rule 189 contemplates withholding or withdrawing of a pension or any part of it if the pensioner is found guilty of grave misconduct while he was in service or after the completion of his service. Grant of pension and its continuance to a government servant depend upon the good conduct of the government servant. Rendering

> satisfactory service maintaining good conduct is a necessary condition for the grant and continuance of pension. Rule 189 expressly confers power on the government to withhold or withdraw any part of the pension payable to a government servant for misconduct which he may have committed while in service. This rule further provides that before any order reducing or withdrawing any part of the pension is made by the competent authority the pensioner must be given opportunity of defence in accordance with the procedure specified in Note I to Rule 33 of the Bombay Civil Services (Conduct, Discipline and Appeal) Rules. The State Government's power to reduce or withhold pension by taking proceedings against a government servant even after his retirement is expressly preserved by the aforesaid rules. The validity of the rules was not challenged either before the High Court or before this Court. In this view, the Government has power to reduce the amount of pension payable to the respondent. In M. Narasimhachar v. State of Mysore ((1960) 1 SCR 981 : AIR 1960 SC 247 : (1960) 1 LLJ 798) and State of Uttar Pradesh v. Brahm Datt Sharma ((1987) 2 SCC 179 : (1987) 3 ATC 319), similar rules authorising the government to withhold or reduce the pension granted to the government servant were interpreted and this Court held that merely because a government servant retired from service on attaining the age of superannuation he could not escape the liability for misconduct and negligence or financial irregularities which he may have committed during the period of his service and the government was entitled to withhold or reduce the pension granted to a government servant."

In compliance with the principle of natural justice requiring an opportunity of hearing to be afforded to a government servant before an order affecting his right is passed and in accordance with the procedure specified in Note I to Rule 33 of the Bombay Civil Services (Conduct, Discipline and Appeal) Rules a show-cause notice as pointed out earlier had been issued to the appellant on July 17, 1971 calling upon him to show-cause within 30 days from the date of the receipt of the notice as to why the proposed reduction should not be made in the pension and death-cum-retirement gratuity. But the appellant failed to avail that opportunity to disprove the allegations and satisfy his appointing authority that he rendered satisfactory service throughout. It was in those circumstances the appointing authority taking into consideration the serious allegations levelled against him in the disciplinary proceedings had though it fit to impose reduction in the pension and gratuity in accordance with Rules 188 and 189 of the Bombay Rules on the ground that the appellant had not rendered satisfactory service. The appellant is not entitled to take advantage of clause (b)(ii) of the proviso to Section 189-A of the Bombay Rules since the proceedings had been instituted long before his retirement. Further as per clause (a) of the said proviso, the proceedings already instituted while the government servant was in service could be continued and concluded even after his retirement. Hence for the reasons stated above the impugned order dated November 15, 1977 reducing the pension and gratuity cannot be said to contravene the Bombay Rules.

26. At the risk of repetition, we may point out that three departmental proceedings containing serious allegations of misconduct were instituted against the appellant of which one was instituted even before he was compulsorily retired on January 12, 1961 and other two proceedings were instituted in the year 1963 that is much earlier to the appellant attaining the age of superannuation on January 14, 1964. These departmental proceedings are stated to have become infructuous consequent upon the retirement of the appellant on attaining the age of superannuation. To the show-cause notice dated July 17, 1971 proposing to inflict reduction in pension and gratuity the appellant, instead of giving a proper reply, disproving the charges and satisfying the appointing authority that he rendered satisfactory service throughout had delayed the matter for over a period

of six years. It was in that situation that the impugned order dated November 15, 1977 happened to be passed.

27. The learned counsel for the appellant strenuously contended that after the disciplinary inquiries had been dropped on the ground that they had become infructuous, the government was not right and justified in reducing the pension and gratuity on the same charges which were the subject matter of the enquiries. This argument of the learned counsel, in our opinion, does not merit consideration because the charges against the appellant were not made use of for awarding any punishment after his retirement from service but only for determining the quantum of the appellant's pension in accordance with the rules relating to the payment of pension and gratuity. In his connection it would be apposite to refer the observation of the Supreme Court in State of Uttar Pradesh v. Brahm Datt Sharma ((1987) 2 SCC 179 : (1987) 3 ATC 319) which we quote below : (SCC p. 184, para 5).

> "If disciplinary proceedings against an employee of the government are initiated in respect of misconduct committed by him and if he retires from service on attaining the age of superannuation, before the completion of the proceedings it is open to the State Government to direct deduction in his pension on the proof of the allegations made against him. If the charges are not established during the disciplinary proceedings or if the disciplinary proceedings are quashed it is not permissible to the State Government to direct reduction in the pension on the same allegations, but if the disciplinary proceedings could not be completed and if the charges of serious allegations are established, which may have bearing on the question of rendering efficient and satisfactory service, it would be open to the government to take proceedings against the government servant in accordance with rules for the deduction of pension and gratuity."

The above principle laid down in that case squarely applies to the facts of the present case.

28. For all the reasons hereinbefore stated we hold that the order of the State Government dated November 15, 1977 reducing the amount of pension and the gratuity on the ground that the service of the appellant had not been found thoroughly satisfactory by the appointing authority cannot be assailed. In that view of the matter we see no reason to interfere with the impugned judgment of the High Court. In the result, the appeal is dismissed but without any order as to costs.

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