

D. V. Kapoor

Vs

Union of India and Others

Civil Appeal No. 5025 of 1985

(L. M. Sharma, K. Ramaswamy JJ)

07.08.1990

JUDGMENT

K. RAMASWAMY, J. -

1. This appeal by special leave under Article 136 of the Constitution arises against the decision of the Delhi High Court in C.W.P. No. 686 of 1985 dated March 25, 1985. The appellant was working as an Assistant Grade IV of the Indian Foreign Service, Branch 'B' in India High Commission at London. On November 8, 1978 he was transferred to the Ministry to External Affairs, New Delhi, but he did not join duty as commanded, resulting in initiation of disciplinary proceedings against him on August 23, 1979. Pending the proceedings, on February 26, 1980 the appellant sought voluntary retirement from service and by proceedings dated October 24, 1980 he was allowed to retire but was put on notice that the disciplinary proceedings initiated against him would be continued under Rule 9 of Civil Service Pension Rules, 1972 for short 'Rules'. His main defense in the explanation was that his wife was ailing at London and, therefore, he sought for leave for six days in the first instance and 30 days later, which was granted, but as she did not recover from the ailment, he could not undertake travel. So he sought for more leave, but when it was rejected, he was constrained to opt for voluntary retirement. After conducting the enquiry the Inquiry Officer submitted his report dated May 19, 1981. The gravamen of charges as stated earlier are that the appellant absented himself from duty from December 15, 1978 without any authorisation and despite his being asked to join duty he remained absent from duty which is wilful contravention of Rules 3(1)(ii) and 3(1)(iii) of the Civil Services Conduct Rules, 1964. The Inquiry Officer found that "it is however difficult to say whether his absenting himself from duty was entirely wilful". In the concluding portion he says that both the articles of charges have been established, the circumstances in which the appellant violated the rules require a sympathetic consideration while deciding the case under Rule 9 of the Rules. The President, on consideration of the report, agreed with the findings of the Inquiry Officer and in consultation with the Union Public Service Commission decided that the entire gratuity and person otherwise admissible to the appellant was withheld on permanent basis as a measure of punishment through the proceedings dated November 24, 1981. When the appellant challenged the legality thereof, the High Court dismissed the Writ petition in limine on the ground that it would not interfere in its discretionary jurisdiction under Article 226 of the Constitution.

2. The Contention of Mr. Kapoor, learned counsel for the appellant is that the appellant having been allowed to retire voluntarily the authorities are devoid of jurisdiction to impose the penalty of withholding gratuity and pension as a measure of punishment and the proceedings stand abated. We find no measure in the contention. Rule 9(2) of the Rules provided that the departmental proceedings if instituted while the government servant was in service whether before his retirement

or during his re-employment, shall, after the final retirement of the government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the government servant had continued in service. Therefore, merely because the appellant was allowed to retire, the government is not lacking jurisdiction or power to continue the proceedings already initiated to the logical conclusion thereto. The disciplinary proceedings initiated under the Conduct Rules must be deemed to be proceedings under the rules and shall be continued and concluded by the authorities by which the proceedings have been commenced in the same manner as if the government servant had continued in service. The only inhibition thereafter is as provided in the proviso namely "provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President". That has been done in this case and the President passed the impugned order. Accordingly we hold that the proceedings are valid in law and they are not abated consequent to voluntary retirement of the appellant the order was passed by the competent authority, i.e. the President of India.

3. His further contention is that he appellant must be found to have committed "grave Misconduct" or "negligence". within the meaning of Rule 8(5)(2) of the Rules which alone gives power and jurisdiction to the authority to withhold by way of disciplinary measure the gratuity and payment of pension; Public employee holding a civil post of office under the State has a legitimate right to earn his pension at the evening of his life after retirement, be it on superannuation or voluntary retirement. It is not a bounty of the State. Equally too of gratuity, a statutory right, earned by him. Article 41 of the Constitution accords right to assistance in cases of old age or sickness or disablement. In *D. S. Nakara v. Union of India* ((1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165), the Constitution Bench of this Court held that pension is not only compensation for loyal service rendered in the past, but also by the broader significance in that it is a social welfare measure rendering socio-economic justice by providing economic security in the fall of life when physical and mental prowess is ebbing corresponding to ageing process and, therefore, one is required to fall back on savings. One such saving in kind is when one had given his best in the hey-day of life to his employer, in days of invalidity, economic security by way of periodical payment is assured. Therefore, it is a sort of stipend made in consideration of past service or a surrender of rights or emoluments to one retire from service. Thus pension is earned by rendering long and efficient service and therefore can be said to be deferred portion of the compensation for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

4. At page 190-D (SCC p. 327, para 36) it is stated that pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security from cradle to grave is assured at least when it is most needed and least available, namely in the fall of life.

Therefore, when a government employee is sought to be deprived of his pensionary right which he had earned while rendering services under the State, such a deprivation must be in accordance with law. Rule 9(1) of the Rules provides thus :

"9. (1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused

to the government if, in any 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 :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed;

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not reduced below the amount of rupees sixty per mensem

5. Therefore, it is clear that the President reserves to himself the right to withhold or withdraw the whole pension or a part thereof whether permanently or of specified period. The President also is empowered to order recovery from a pensioner of the whole or part of any pecuniary loss caused to the government, if in any proceeding in the departmental enquiry 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.

6. Rule 8(5), explanation (b) defines 'grave misconduct' thus :

"The expression 'grave misconduct' included the communication or disclosure of any secret official code or password or any sketch, plan model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the government) so as to prejudicially affect the interest of the general public of the security of the State."

7. In one of the decisions of the government as compiled by Swamy's Pension Compilation, (1987 edn.) it is stated that :

"Pensions are not in the nature of reward but there is a binding obligation on government which can be claimed as a right. Their forfeiture is only on resignation, removal or dismissal from service. After a pension is sanctioned its continuance depends on future good conduct, but it cannot be stopped or reduced for other reasons."

8. It is seen that the president has reserved to himself the right to withhold pension in whole or in part thereof whether permanently or for a specified period or he can recover from pension of the whole or part of any pecuniary loss caused by the government employee to the government subject to the minimum. The condition precedent is that in any departmental enquiry or the judicial proceedings, the pensioners is found guilty of grave misconduct or negligence during the period of his service of the original or on re-employment. The condition precedent thereto is that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined in Rule 8(5), Explanation (b) which is an inclusive definition, i.e. the scope is wide of the mark dependent on the facts and circumstances in a given case. Myriad situations may arise depending on the ingenuity with which misconduct or irregularity is committed. It is not necessary to further probe into the scope and meaning of the words 'gave misconduct or negligence' and under what circumstance the findings in this regard are held proved. It is suffice that charge in this case are that the appellant was guilty of wilful misconduct in not reporting to duty after his transfer from India High Commission at London to the office of External Affairs Ministry, Government of India, New Delhi. The Inquiry Officer found that though the appellant derelicted his

duty to report to duty, it was not wilful for the reasons that he could not move due to his wife's illness and he recommended to sympathetically consider the case of the appellant and the President accepted this finding, but decided to withhold gratuity and payment of pension in consultation with the Union Public Service Commission.

9. As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs. 60.

10. Rule 9 of the Rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure or deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to put notice under which, the President is empowered to withhold gratuity as well, after his retirement as measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction.

11. In view of the above facts and law that there is no finding that appellant did not commit grave misconduct as charged for, the exercise of the power is clearly illegal and in excess of jurisdiction as the condition precedent, grave misconduct was not proved. Accordingly the appeal is allowed and the impugned order dated November 24, 1981 is quashed, but in the circumstances parties are directed to bear their own costs.

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