

# **SUPREME COURT OF INDIA**

Dev Prakash Tewari

Vs.

U.P. Cooperative Institutional Service Board, Lucknow

C.A.Nos.5848-49 of 2014

(T.S.Thakur and C.Nagappan JJ.)

30.06.2014

## **JUDGMENT**

### **C. NAGAPPAN, J.**

1. Leave granted.

2. These appeals are preferred by the appellant who was working as Assistant Engineer with respondent No.2. A disciplinary proceeding was initiated under Rule 85 of the Uttar Pradesh Co-operative Employees Service Regulations, 1975, against him by serving a charge-sheet and after inquiry he was dismissed from service by order dated 27.4.1988. The appellant sought for quashing the said order by filing a writ petition in Writ Petition No.4328(S/B) of 1988 on the file of the High Court of Judicature at Allahabad and the High Court held that the inquiry was not conducted in accordance with the procedure stipulated in the Regulation 85 since no opportunity was given to cross-examine the witness and there is violation of principles of natural justice and quashed the disciplinary proceeding by allowing the Writ Petition on 10.1.2006. The order also directed for reinstatement and payment of back wages in accordance with the Rules. Liberty was also granted to conduct a fresh disciplinary inquiry in accordance with the Regulations. Pursuant to the order the appellant joined duty on 26.4.2006. Fresh disciplinary proceeding was initiated by order dated 7.7.2006, appointing Shri G.S. Srivastava, Mukhya Abhiyanta as Inquiry Officer and it was pending. Meanwhile the appellant reached the age of superannuation and retired

from service as Assistant Engineer on 31.3.2009.

3. The appellant challenged the continuance of disciplinary proceeding after his retirement by filing Writ Petition No.1919(SB) of 2009 on the file of High Court of Judicature at Allahabad, Lucknow Bench. The High Court relying on the decision of this Court in U.P. Cooperative Federation Ltd. and Others Vs. L.P.Rai [(2007) 7 SCC 81] held that there is no ground to interfere with the disciplinary proceeding and directed to complete it within four months by the impugned order dated 18.12.2009. The appellant filed Review Petition No.139 of 2010 and the High Court dismissed the same by order dated 29.3.2010. Challenging both the orders the appellant has preferred the present appeals.

4. The learned counsel for the appellant contended that the disciplinary proceeding was not completed for more than three years and in the absence of any provision in the Regulations providing for continuation of disciplinary proceedings after retirement of the employee, the respondents could not continue the disciplinary proceeding against the appellant after his superannuation. It is his further contention that the High Court has failed to appreciate the law laid down by this Court in similar circumstances in the decision reported in Bhagirathi Jena vs. Board of Directors, O.S.F.C. and Others [(1999) 3 SCC 666] and for the said reason the impugned order is liable to be set aside.

5. Per contra the learned counsel appearing for the respondents contended that pursuant to the liberty given by the High Court in its order dated 10.1.2006 fresh disciplinary proceeding was initiated and as held by this Court in its decision rendered in U.P. Coop. Federation Ltd. case (supra) the right of the employer to hold a fresh inquiry cannot be denied on the ground that the employee has since retired from service and the impugned order is sustainable.

6. We have carefully considered the rival submissions. The facts are not in dispute. The High Court while quashing the earlier disciplinary proceedings on the ground of violation of principles of natural justice in its order dated 10.1.2006 granted liberty to initiate the fresh inquiry in accordance with the Regulations. The appellant who was reinstated in service on 26.4.2006 and fresh disciplinary proceeding was initiated on 7.7.2006 and while that was pending, the appellant attained the age of superannuation and retired on 31.3.2009. There is no provision in the Uttar Pradesh Co-operative

Employees Service Regulations, 1975, for initiation or continuation of disciplinary proceeding after retirement of the appellant nor there is any provision stating that in case misconduct is established a deduction could be made from his retiral benefits. An occasion came before this Court to consider the continuance of disciplinary inquiry in similar circumstance in Bhagirathi Jenas case (supra) and it was laid down as follows:

5. Learned Senior Counsel for the respondents also relied upon Clause (3) (c) of Regulation-44 of the Orissa State Financial Corporation Staff Regulations, 1975. It reads thus :

"When the employee who has been dismissed, removed or suspended is reinstated, the Board shall consider and make a specific order :-

(i) Regarding the pay and allowances to be paid to the employee for the period of his absence from duty, and

(ii) Whether or not the said period shall be treated as a period on duty."

6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of the departmental enquiry after superannuation.

7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95 there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

7. In the subsequent decision of this Court in U.P. Coop. Federation case (supra) on

facts, the disciplinary proceeding against employee was quashed by the High Court since no opportunity of hearing was given to him in the inquiry and the management in its appeal before this Court sought for grant of liberty to hold a fresh inquiry and this Court held that charges levelled against the employee were not minor in nature, and therefore, it would not be proper to foreclose the right of the employer to hold a fresh inquiry only on the ground that the employee has since retired from the service and accordingly granted the liberty sought for by the management.

8. While dealing with the above case, the earlier decision in Bhagirathi Jenas case (supra) was not brought to the notice of this Court and no contention was raised pertaining to the provisions under which the disciplinary proceeding was initiated and as such no ratio came to be laid down. In our view the said decision cannot help the respondents herein.

9. Once the appellant had retired from service on 31.3.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits.

10. The question has also been raised in the appeal with regard to arrears of salary and allowances payable to the appellant during the period of his dismissal and upto the date of reinstatement. Inasmuch as the inquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him.

11. The appeals are, therefore, allowed and the judgment and order of the High Court are set aside and the respondents are directed to pay arrears of salary and allowances payable to the appellant and also to pay him his all the retiral benefits in accordance with the rules and regulations as if there had been no disciplinary proceeding or order passed therein. No costs.