

Court No. - 33

Case :- WRIT - A No. - 19256 of 2023

Petitioner :- Prem Kumar Tripathi

Respondent :- The State Of Uttar Pradesh And Another

Counsel for Petitioner :- Anupam Kulshreshtha, Sanjay Mishra

Counsel for Respondent :- C.S.C., Chandra Bhan Gupta, Sanjai Singh

Hon'ble Neeraj Tiwari, J.

1. Supplementary counter affidavit filed today be taken on record.
2. Heard Sri Anupam Kulshreshtha, learned counsel for petitioner, Sri Devesh Vikram, learned Additional Chief Standing Counsel for State-respondents and Sri Chandra Bhan Gupta, learned counsel for respondent no. 2.
3. Present petition has been filed seeking following reliefs:-
 - a) To issue a writ, order or direction in the nature of certiorari quashing the impugned show cause notice dated 07.11.2014, served by the petitioner on 25.11.2014 (Annexure No. 1 to the writ petition) as well as the impugned show cause notice dated 08.08.2022 (Annexure No. 4 to the writ petition);
 - b) To issue a writ, order or direction in the nature of Mandamus directing the respondents to drop the disciplinary proceedings initiate against the petitioner pursuant to the impugned show cause notices dated 07.11.2014 and 08.08.2022, in view of the fact that the disciplinary proceedings are not permissible to be initiated under the provisions of Uttar Pradesh Rajya Sahkari Bhumi Vikas Bank Employees Service Rules, 1976 after retirement of an employee;
 - c) To issue a writ, order or direction in the nature of Mandamus directing the respondents to pay all post-retirement dues, namely; earned leave encashment, gratuity, security, etc., along with interest @ 8% per annum accruing to the petitioner.”
4. Brief facts of the case are that petitioner was working as Assistant Field Officer in Uttar Pradesh Sahkari Gram Vikas Bank Ltd. at Bhogaon Branch, Mainpuri and he was superannuated on 31.07.2013.

5. Learned counsel for petitioner submitted that after retirement of petitioner, a show cause notice dated 07.11.2014 (served on 25.11.2014) was issued to the petitioner proposing the punishment of recovery of Rs. 2,74,380/- from him. The service of petitioner is governed by Uttar Pradesh Rajya Sahkari Bhumi Vikas Bank Employees Service Rules, 1976 (hereinafter referred to as, 'Rules, 1976'). Apart from other grounds, in his reply dated 05.12.2014, petitioner has taken specific ground that after retirement, no such show cause notice may be issued as Rules, 1976 is having no such provisions for issuance of show cause notice or departmental proceeding against a retired employee. After submission of reply, no action has been taken against the petitioner by the respondent-Bank. Again, a show cause notice dated 08.08.2022 i.e. after around eight years was issued to the petitioner for recovery of 50% of Rs. 6,47,187/-. Petitioner has replied the same vide letters dated 06.09.2022 & 11.03.2023. In these replies too, petitioner has taken specific ground that after retirement, no such show cause notice may be issued. Pursuant to the show cause notices dated 07.11.2014 & 08.08.2022, till date, no decision has been taken and gratuity has also been paid to the petitioner retaining the amount of leave encashment and security. He pointed out that service of petitioner is not pensionable. In lack of provisions of Rules, 1976, impugned order is bad and liable to be set aside. In support of his contention, he has placed reliance upon the judgments of Apex Court as well as this Court in the matters of *Dev Prakash Tewari vs. U.P. Cooperative Institutional Service Board; (2014) 7 SCC 260*, *Smt. Luxmi Devi and another vs. State of U.P. and others; 2022 (11) ADJ 170*, *Brahmannad Tyagi vs. State of U.P. and others; 2022 (8) ADJ 624*.

6. Per contra, Sri Chandra Bhan Gupta, learned counsel for respondent-Bank submitted that service of petitioner is governed under the provisions of Uttar Pradesh Co-operative Society Employees Service Regulation, 1975 (hereinafter referred to as, 'Regulation, 1975'), but he could not demonstrate any provision in Regulation, 1975 authorizing the respondent-Bank to initiate departmental proceeding or show cause notice after retirement. He

further submitted in light of judgment of Apex Court in the matter of *U.P. State Sugar Corp. Ltd. vs. Kamal Swaroop Tondon; (2008) 2 SCC 41*, even after retirement, show cause notice may be issued, but he could not dispute that in the present case, no departmental proceeding has ever been initiated against the petitioner till his retirement and the impugned show cause notices are based upon general inquiry against some other persons.

7. I have considered rival submissions advanced by learned counsel for parties and perused the records as well as judgment cited above. It is undisputed that in Rules, 1976 as well as Regulation, 1975, there is no provision for initiating any disciplinary proceeding or issuing show cause notice against the employee after retirement. This fact is also undisputed that against the petitioner, no inquiry has ever been instituted till his retirement. Now, by two show cause notices dated 07.11.2014 & 08.08.2022, direction has been issued to recover Rs. 2,74,380/- and 50% of Rs. 6,47,187/- from the petitioner. The question is as to whether, such show cause notices can be issued to petitioner in absence of any provisions in Rules, 1976 and Regulations, 1975.

8. Learned counsel for petitioner has placed reliance upon the judgment of Apex Court in the matter of *Dev Prakash Tewari (Supra)*. Relevant paragraphs of the said judgment is quoted below:-

“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.”

9. In the matter of *Smt. Luxmi Devi (Supra)*, this Court after following the law laid down by Apex Court in the matter of *Dev Prakash Tewari (Supra)*, has taken the same view. Relevant paragraphs of the said judgment is quoted below:-

“10. This Court has carefully considered the judgment rendered by the Supreme Court in *Dev Prakash Tewari (supra)* where the Supreme Court had followed the judgment rendered by it earlier in *Bhagirathi Jena Vs. Orissa State Financial Corporation [(1999) 3 SCC 666]* where it was held that in the absence of any provision in the Regulations governing the service of an employee providing for continuation of disciplinary proceedings after retirement, the respondent cannot continue the disciplinary proceedings after the employee's superannuation.

11. The State of U.P., no doubt notified the XXII Amendment to the Regulations of 1975 but it provided the date of enforcement as the date of publication in the Gazette. Publication was made only on 27.08.2018 in the official Gazette. Hence, no retrospective operation can be given to the Regulations and the Registrar could not have given sanction on 09.02.2021 for initiation of disciplinary proceedings against the husband of the petitioner no.1.

12. This Court has also considered the Division Bench judgment in the case of *Rajya Krishi Utpadan Mandi Parishad (supra)*, while placing reliance upon the judgment rendered in *Bhagirathi Jena (supra)*, the Division Bench observed that the post of contesting respondent being non pensionable, Article 351-A of Civil Services Regulation was not applicable. After the date of superannuation, the disciplinary proceedings could not go on in the absence of any specific provision. The Court also held that contesting respondent was entitled to interest on the amount payable to him.

13. Having considered the judgments rendered by this Court and by the Supreme Court and the facts as mentioned in the pleadings on record regarding which there is no dispute, this Court is of the considered opinion that the disciplinary proceedings initiated against late husband of the petitioner no.1 is without jurisdiction as he retired on 31.07.2018 much before the amendment in the Regulation was notified with prospective effect.

14. The proceedings initiated against late Ram Nazar Singh being without jurisdiction are liable to be quashed and are quashed. The writ petition is allowed.

15. Consequential benefits shall be available to the petitioners. Recovery of Rs.11,80,363/- from the gratuity and other services benefits of late Ram Nazar Singh, if the same has been deducted, shall be refunded to the petitioners along with 6% compound interest as had the amount been deposited in a Bank by the petitioners on its receipt in time, they would have been entitled to bank's rate of interest on such deposit.”

10. I have perused the judgment of this Court passed in *Brahannad Tyagi(Supra)*. Relevant paragraphs of the said judgment is quoted below:-

“From perusal of the judgments of the Apex Court as well as this Court, it is very much clear that once there is no rule occupying the field for disciplinary proceeding against an employee after retirement, proceeding so initiated or continued after retirement, is not sustainable as it de-hors the rules and liable to be set aside.

In the present case too, petitioner was retired on 30.04.2018 thereafter disciplinary proceeding was initiated vide order dated 07.07.2021 and charge sheet was served upon him on 07.04.2022 i.e. undisputedly disciplinary proceeding was initiated after retirement of the petitioner whereas Regulations 1984 does not provide any disciplinary proceeding against a retired employee. Even in case of adoption of rules applicable to the State Government employees under Regulation 43 of Regulations 1984, once the service is not pensionable under Regulation 47 of Regulations 1984, no action can be taken against him under Article 351-A of CSR or any other rule adopted by respondents under Regulation 43 of Regulations 1984. Therefore, impugned order dated 07.07.2021 and subsequent charge sheet dated 07.07.2022 are bad in law and liable to be set aside.”

11. I have also perused the judgment of Apex Court passed in ***Kamal Swaroop Tondon(Supra)*** relied by Sri Chandra Bhan Gupta, learned counsel for respondent no. 2. The facts of the case is summarized in paragraph no. 13 of the said judgment, which is quoted below:-

“The learned counsel for the appellant is right when he submitted that show cause notice was issued to the respondent-employee on January 13, 2000 when he was very much in service. The respondent submitted his explanation on January 15, 2000 which was not found to be satisfactory. A regular show cause notice was, therefore, issued by the Corporation on January 31, 2000 and was served upon the respondent-employee on the same day. The notice was also sent by registered post which was received by the employee on February 11, 2000. But it is clear from the documents that show cause notice was issued and replied. A regular show cause notice as to departmental inquiry was also served upon the respondent- employee on the last day of his service which was January 31, 2000. In our opinion, therefore, it could not be said that the proceedings had been initiated against the respondent-employee after he retired from service.”

12. Now, Court has expressed its view in paragraph nos. 28, 29 & 40, which are also quoted below:-

“If it is so, the appellant-Corporation, in our opinion, is right in submitting that the proceedings could have been continued after the retirement of the respondent-employee as far as the financial loss caused to the Corporation because of negligence on the part of employee and the benefit claimed by the respondent-workman on his terminal benefits.

Strong reliance was placed by the learned counsel for the respondent on ***P.V. Mahadevan v. MD. T.N. Housing Board***, (2005) 6 SCC 636 : JT 2005 (7) SC 417. In that case, there was inordinate delay of ten years in initiating departmental proceedings against an employee. In absence of convincing explanation by the employer for such inordinate delay, this Court held that the proceedings were liable to be quashed.

Considering the facts and circumstances in their entirety, in our considered opinion, the High Court was wrong in holding that the proceedings were initiated after the respondent retired and there was no power, authority or jurisdiction with the Corporation to take any action against the writ-petitioner and in setting aside the orders passed against him. In our judgment, proceedings could have been taken for the recovery of financial loss suffered by the Corporation due to negligence and carelessness attributable to the respondent-employee. The impugned action, therefore, cannot be said to be illegal or without jurisdiction and the High Court was not right in quashing the proceedings as also the orders issued by the Corporation. The appeal, therefore, deserves to be allowed by setting aside the order of the High Court.”

13. From the perusal of judgments relied upon by learned counsel for petitioner, it is apparently clear that after retirement, in case of lack of provisions in Rules or Regulations, neither departmental proceeding nor any show cause notice can be issued for recovery of any amount. Present case, during the course of service, no inquiry has even been initiated against the petitioner fixing the liability.

14. The judgment of *Kamal Swaroop Tondon (Supra)* relied by learned counsel for respondents is based upon entirely different facts. In that case, show cause notice was issued to petitioner on 13.01.2000 when he was in service, reply was also submitted on 15.01.2000, which was not found satisfactory. Thereafter, regular show cause notice was issued on 31.01.2000 and served upon the employee on the very same date, therefore, Court was of the view that proceeding had been initiated against the employee before his retirement. So far as present case is concerned, without any dispute, first and second show cause notices have been issued to the petitioner much after his retirement, therefore, ratio of law of *Kamal Swaroop Tondon (Supra)* shall not be applicable in the present case.

15. Here the case is entirely different as undisputedly, after 15 months from the date of retirement, first show cause notice dated 07.11.2014 has been issued to the petitioner proposing the punishment of recovery of Rs. 2,74,380/- and surprisingly, even after submission of reply of show cause notice on 05.12.2014, no action had been taken by the respondent-Bank. Now, after around eight years, in the year 2022, again a show cause notice dated 08.08.2022 was issued to the petitioner directing to submit his reply as

to why 50% of Rs. 6,47,187/- may not be recovered from him, but till date, final decision has not been taken except detaining the leave encashment and security amount.

16. In the light of facts of law discussed hereinabove, this Court is of the considered view that in lack of provisions in rules and regulations, after retirement, no show cause notice or departmental proceeding can be initiated against any employee. Further, in case a show cause notice has been issued by the department, duly replied by the employee and no action has been taken for a long time, it is not open for the department to issue another show cause notice at a very belated stage for same cause of action after.

17. In the present case, under Rules, 1976 and Regulation, 1975, there is no provision to issue show cause notice or initiate departmental proceeding after retirement, therefore, issuance of show cause notice in lack of provisions is bad after retirement. Further, first show cause notice was issued in the year 2014 and for the same cause of action, another show cause notice was issued in the year 2022, which is also not permissible. Therefore, in view of aforesaid facts and circumstances, impugned show cause notices dated 07.11.2014 and 08.08.2022 are bad and hereby quashed.

18. With the aforesaid observations, writ petition is ***allowed***.

19. No order as to costs.

20. Respondents are directed to pay all post-retirement dues, namely; earned leave encashment, security, etc., along with interest @ 7% per annum from due date to the date of actual payment.

Order Date :- 18.3.2024

Sartaj