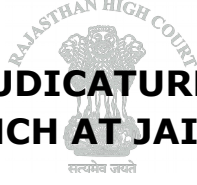


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Special Appeal Writ No. 659/2015

Braj Mohan Singh Bareth S/o Shri B.D. Bareth, aged about 76 years, R/o 277, Prem Nagar, Jagatpura, Jaipur

----Appellant

Versus

1. State of Rajasthan through Secretary, Department of Personnel, Secretariat, Jaipur.
2. Director Pensions Department, Government Of Rajasthan, Jaipur.

----Respondents

For Appellant(s) : Mr. Tribhuvan Narayan Singh
For Respondent(s) : Mr. Yash Joshi &
Mr. Pulkit Bhardwaj on behalf of
Mr. Vigyan Shah, AAG

**HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

Order

REPORTABLE

11/09/2024

1. Heard.
2. The order passed by the learned Single Judge is assailed in this appeal. The learned Single Judge, by the impugned order, has dismissed the writ petition filed by the appellant in the matter of challenge to the order dated 08.12.2000, by which the competent authority directed withholding 100% pension of the appellant on the basis of charges of negligence/misconduct in a departmental enquiry, which was initiated before retirement while the appellant/delinquent employee was in service.
3. Quintessential facts necessary for deciding instant appeal and the legal issues arising for consideration are that while the

appellant was continuing in services of State Government as member of RAS (Selection Scale), a charge-sheet was issued to him on 30.03.1993, levelling as many as nine charges. After appointment of Enquiry Officer, the enquiry continued. However, before it could be concluded, the appellant retired upon attaining the age of superannuation on 29.02.1996. The Enquiry Officer submitted his enquiry report to the disciplinary authority on 31.07.1996. During the period after the date of retirement, the appellant was getting provisional pension from 01.03.1996. The Enquiry Officer found the charges proved and the disciplinary authority proceeded to issue a show-cause notice to the appellant on 12.11.1997, requiring the appellant to show cause against proposed penalty/punishment of withholding 100% pension for five years. The appellant submitted his reply to the show-cause notice. Thereafter, a fresh show-cause notice came to be issued on 10.04.1999, which now proposed withholding of 100% pension for lifetime. The appellant again replied to the show-cause notice. However, the competent authority, dissatisfied with the reply and concurring with the findings of the Enquiry Officer on various charges levelled against the appellant, passed order of penalty on 08.12.2000. Aggrieved by the said order, the appellant preferred writ petition, which came to be dismissed by the impugned order, giving rise to instant appeal.

4. Learned counsel for the appellant, assailing correctness and validity of the order passed by learned Single Judge as also by the Governor, contends that the impugned order is liable to be set aside on the ground that necessary satisfaction required to be arrived at to invoke power under Rule 170 of the Rajasthan

Service Rules, 1951 (for short 'the Rules of 1951', as it existed on the date of exercise of power), has not been recorded by the disciplinary authority much less any reasons for such satisfaction. It is argued that power under Rule 170 of the Rules of 1951 could be invoked to withhold pension fully or in part, only when there is a satisfaction recorded by the competent authority that it is a case of grave misconduct or grave negligence, upon which the competent authority exercise powers to withhold pension, fully or in part and may also direct recovery of any pecuniary loss caused to the Government. Neither the charges alleged it to be a case of grave misconduct or grave negligence nor was any such finding recorded by the Enquiry Officer. The competent authority also did not record any finding based on any material on record to reach to a conclusion that it was a case of either grave misconduct or grave negligence. Therefore, the order impugned is in excess of jurisdiction conferred under the law.

5. Second submission of learned counsel for the appellant is that the power conferred under Rule 170 of the Rules of 1951 is in essence, power reserved to the Governor to withhold pension only in order to recover pecuniary loss caused to the Government and unless there are charges and finding of pecuniary loss caused to the Government, only because the delinquent employee is found guilty of misconduct or negligence, the power of withholding pension fully or in part, could not be invoked.

6. Third submission of learned counsel for the appellant is that even in the charges and the findings recorded by the Enquiry Officer, there is no mention of any pecuniary loss caused to the

Government because of the alleged misconduct/negligence on the part of the appellant.

7. Learned counsel for the respondents, on the other hand, would submit that the required satisfaction, as envisaged under Rule 170 of the Rules of 1951, was duly recorded by the competent authority. He would submit that after receipt of the enquiry report, when it was found that the appellant had already retired upon attaining the age of superannuation, the enquiry was conducted under Rule 170 of the Rules of 1951, which is applicable in the case of a retired government servant and a show-cause notice was given to the appellant proposing to impose penalty having concurred with the findings of the Enquiry Officer. After receipt of the reply, when the authority applied its mind, present was found to be a case where "looking to the gravity of misconduct/negligence", it was considered just and proper to withhold entire pension during lifetime of the appellant. For this purpose also a show-cause notice was given to him and thereafter, the competent authority, after applying its mind to the reply submitted by the appellant and having found it to be a case of grave misconduct, proceeded to exercise powers under Rule 170 of the Rule of 1951.

8. Learned counsel for the respondents would further submit that as the competent authority had concurred with the findings of guilt recorded by the Enquiry Officer qua all the charges levelled against the appellant, it was not necessary for the competent authority to independently record finding of guilt on each and every charge. The authority has clearly recorded in the impugned order that the decision has been taken to withhold entire pension

for lifetime taking into consideration the gravity of charges. Therefore, there is no jurisdictional illegality or perversity in passing the order impugned and the learned Single Judge has rightly upheld the order.

9. The only issue arising for consideration in this appeal is whether the competent authority was justified in law in invoking its power under Rule 170 of the Rules of 1951, so as to withhold entire pension for lifetime.

10. Normally, when a government servant is alleged to have committed an act of misconduct and/or negligence while in service, the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short 'the Rules of 1958') lay down the procedure, as also the penalty which could be imposed. Rule 14 of the Rules of 1958 enlist nature of penalties which could be imposed on a delinquent employee, once he is found guilty of misconduct/negligence.

11. However, in a case where a departmental enquiry is initiated, but is not concluded and the delinquent employee retires upon attaining the age of superannuation, the Rules which regulate conduct of department enquiry, as provided under the Rules of 1958 do not apply, but in such cases, Governor reserves to itself the power to withhold pension fully or in part, as also to order recovery against pecuniary loss caused to the Government. This scheme of withholding pension is provided under Rule 170 of the Rajasthan Service Rules, 1951 (Volume I – Part-B). The aforesaid part of the Rajasthan Service Rules exclusively dealt with the pension matters, under the caption "Pension Rules". After an employee retires, he can be proceeded against only under Rule

170 of the Rules of 1951. The rule being relevant for decision of the present case, is extracted hereinbelow:-

"170. Recoveries of losses from the pension.-The Governor further reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:-

(a) provided that such departmental proceeding, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(b) such department proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment,-

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which took place more than 4 years before such institution; and

(iii) shall be conducted by such authority and in such place as the Governor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service;

(c) no such judicial proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or an event which took place more than 4 years before such institution; and

(d) The Rajasthan Public Service Commission shall be consulted before final orders are passed."

12. Rational and logical interpretation of the aforesaid provision instantly reveals that the power is reserved to the Governor to withhold or withdraw a pension or any part of it, whether permanently or for specified period and also the right of ordering the recovery from pension of the whole or part of any pecuniary loss caused to the Government, if in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or grave negligence during the period of his service including services rendered upon re-employment after retirement.

13. The first proviso attached to the aforesaid Rules also clarifies that such department proceedings, if instituted while the officer was in service whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this Rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service.

14. It would thus be clear that once an employee retires from service before the departmental enquiry initiated against him is concluded, enquiry can be proceeded further only in the manner, as prescribed under Rule 170 of the Rules of 1951 and not under the Rules of 1958.

15. Furthermore, the order that could be passed under Rule 170 of the Rules 1951 has also been clearly specified by the Rule Making Authority. It could be either withholding or withdrawing a pension or any part of it either permanently or for a specified period and at the same time, in appropriate cases, where it is found that any pecuniary loss has been caused to the Government, the recovery can also be ordered. It would thus be

seen that the nature of orders which could be passed upon proof of misconduct or negligence, are completely different and distinct from the nature of penalties, which could be otherwise imposed under Rule 14 of the Rules of 1958 in those cases where the delinquent employee continues in service and has not attained the age of superannuation.

16. The Rule Making Authority in its wisdom, has provided in no uncertain terms under Rule 170 of the Rules of 1951 that in order to deprive a pensioner of his pension fully or in part, or to direct the recovery towards any loss caused to the Government, a satisfaction has to be recorded that the retired employee is guilty of grave misconduct or grave negligence, that too committed during the period of his service including services rendered upon re-employment after retirement. Therefore, the requirement of law is that a satisfaction is to be arrived at that a grave misconduct or grave negligence has been committed. It is not sufficient to invoke power under Rule 170 of the Rules of 1951 that a retired employee, in a departmental enquiry, is found guilty of misconduct or negligence. In order to invoke power under Rule 170 of the Rules of 1951, something more than an ordinary misconduct or negligence is required to be seen. The provisions clearly oblige the competent authority to record its own satisfaction that it is not merely a case of committing misconduct or negligence. It is not only a case where the delinquent employee has been found guilty of misconduct or negligence, but something over and above that, in the nature that it is a case of grave misconduct or grave negligence. The object of the Rule seems to be not to deprive the pensioner of his pension, which is a serious

matter and involves serious civil consequences, unless he is found guilty of grave misconduct or grave negligence.

17. There is nothing in Rule 170 of the Rules of 1951, either read in isolation or in conjunction with provisions contained in the Rules of 1958, which obliges the Enquiry Officer to record such findings because in the very nature of the proceedings, a situation of this nature would arrive only after a Government servant has retired from service. Therefore, on rational construction of the provision, we have to hold that the satisfaction which is envisaged under Rule 170 of the Rules of 1951, has to be recorded by the Authority who takes decision to withhold pension or to direct recovery of pecuniary losses. Moreover, keeping in view the serious consequences which ensue where a pensioner is deprived of his pension or suffers an order of recovery after his retirement, the requirement of recording satisfaction that it is a case of grave misconduct or grave negligence is not empty formality. The competent authority is obliged in the spirit of the law to record a finding based on material attending circumstances to come to a definite conclusion on consideration which are not extraneous in nature but relevant to the case that the case partakes the nature of grave misconduct or grave negligence and not limited to an ordinary case of misconduct or negligence.

18. In somewhat similar circumstances, where an order of withholding pension under *para materia* Rule 9 of Central Civil Services (Pension) Rules, 1972 (for short 'the Rules of 1972') was assailed, the Hon'ble Supreme Court recorded categorical finding that finding of grave misconduct has to be recorded by the



competent authority and not by the Enquiry Officer. Following are the observations:-

“14. Having perused Rule 9 of the 1972 Rules, it is not possible for us to accept the first contention advanced by the learned counsel for the appellant. The responsibility vested on an enquiry officer is limited to the determination of the innocence or guilt of a delinquent employee, with reference to charges levelled against him. It is on the establishment of the charges (if any), that the punishing authority will record a finding, whether the conclusions lead to the further inference, that the delinquent has committed acts of "grave misconduct" or "grave negligence". It is on such determination by the punishing authority that Rule 9 of the 1972 Rules can be invoked, in case the delinquent employee has, in the meantime, retired on attaining the age of superannuation. It is not a matter of dispute that when the punishment was inflicted upon the appellant by an order dated 30.11.2005, the appellant had already retired from service having superannuated on 30.06.2002. We therefore find no merit in the first contention advanced at the hands of the learned counsel for the appellant.”

19. The responsibility vested on Enquiry Officer is, therefore, limited to the determination of the innocence or guilt of a delinquent employee, with reference to the charges levelled against him. An obligation is cast on the punishing authority to record a clear finding whether the conclusion lead to further inference that a delinquent employee has committed an act of “grave misconduct” or “grave negligence”.

20. We shall now turn to the contents of the show cause notices dated 12.11.1997 and 10.04.1999 to find out whether, it reflects application of mind by the competent authority on the aspect, as to whether present is a case of grave misconduct or grave negligence in the light of the nature of charges and the extent of misconduct/negligence allegedly committed by the appellant. A

perusal of the two show causes notices only show that the competent authority referred to enquiry report and its conclusion and thereafter, proposed the order to be passed requiring the appellant to submit his reply. In the first show cause notice dated 12.11.1997, withholding of entire pension for five years was proposed, but in the second show cause notice dated 10.04.1999, the proposal was to withhold entire pension for lifetime. In both the show cause notices, the competent authority did not record any reason based on any material or consideration as to why the authority considers present to be not only a case of committing misconduct and/or negligence, but a case of grave misconduct or grave negligence. The appellant submitted his reply and thereafter, the impugned order of withholding pension came to be passed on 08.12.2000.

21. If we read the said order, there is hardly any consideration by the competent authority why present should be treated to be a case of a grave misconduct and if so, what are the supporting reasons and the attending circumstances to justify such satisfaction or conclusion.

22. The submission of learned counsel for the respondents that the order indicates that the authority invoked the power taking into consideration the gravity of charges, in our consideration, does not satisfy the legal requirement or satisfaction, as envisaged under Rule 170 of the Rules of 1951.

23. We find that at one or two places in the order, all that has been stated is "taking into consideration the gravity of charges". That by itself does not satisfy the legal requirement of recording satisfaction. It was only a passing reference made by the



competent authority without entering into any discussion, though in brief, as to why present is considered to be a case of grave misconduct or grave negligence. In sum and substance, the competent authority has proceeded to accept the report of Enquiry Officer as it is. The charges, nine in number, which were levelled against the appellant mostly relate to an allegation of negligence or an allegation that he recklessly exercised his judicial power while deciding appeals. In none of the findings recorded by the Enquiry Officer with reference to each of the charges, there is anything which indicates that even in the opinion of the Enquiry Officer, it was a case of grave misconduct.

24. In view of the decision of the Hon'ble Supreme Court in the case of **H.L. Gulati Vs. Union of India & Ors. (Civil Appeal Nos.8224-8225 of 2011)**, it was all the more an obligation under the law cast on the competent authority to consider this aspect with more seriousness than what has been done in the instant case. A passing reference that "looking to the gravity of charges", is not enough.

25. We have also looked into various charges which were framed and were found proved. Except two charges, other charges relate to allegations of negligence and broadly speaking, it appears that the subordinate officer had passed certain orders and the allegation against the present appellant is more of a negligence. Moreover, the other two charges related to exercise of quasi-judicial power as an appellate authority. It is settled legal position that ordinarily exercise of judicial power does not constitute misconduct.



26. In the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad & Ors.**, reported in **(2012) 4 SCC 407**, however, the Hon'ble Supreme Court has culled out exceptions when even exercise of quasi-judicial function may be classified and categorized as misconduct. In case of **Ravi Yashwant Bhoir (supra)**, the principle was explained as below:-

"**13.** Mere error of judgment resulting in doing of negligent act does not amount to misconduct. However, in exceptional circumstances, not working diligently may be a misconduct. An action which is detrimental to the prestige of the institution may also amount to misconduct. Acting beyond authority may be a misconduct. When the office-bearer is expected to act with absolute integrity and honesty in handling the work, any misappropriation, even temporary, of the funds etc. constitutes a serious misconduct, inviting severe punishment."

27. In the present case, we find that even the Enquiry Officer has not looked into these legal aspects and has sat over the correctness and validity of the judicial order to hold it to be a case of misconduct.

28. On totality of the circumstances and nature of charges, finding recorded by the Enquiry Officer and complete lack of any consideration on attending circumstances or material to reach to a satisfaction that present is a case liable to be classified as grave misconduct or grave negligence, in our opinion, the impugned order withholding entire pension of the appellant, that too for his lifetime is clearly in excess of jurisdiction vested under the law. The order suffers from excess of power and cannot be sustained in law.

29. This legal aspect was not properly appreciated by the learned Single Judge, therefore, the order of the learned Single Judge is liable to be interfered with and is set aside.

30. The impugned order dated 08.12.2000 is, accordingly, set aside. The next question which arises for consideration is as to what relief should be granted to the appellant at this stage. The record speaks that while the enquiry was pending, the appellant retired from service upon attaining the age of superannuation on 29.02.1996 and he was paid provisional pension up to 30.11.2000. Obviously, as there was an order of withholding pension passed on 08.12.2000, his pension was stopped thereafter. 24 years have passed by. Had it not been a case of long pendency of this case, we would have remanded the matter again to the competent authority for consideration afresh and pass fresh orders. However, at this juncture of time, it would not serve the interest of justice, if the matter is remanded and the authorities are again directed to pass any order in respect of the case of the appellant who is nearing 90 years of age and has remained deprived of his pension for last 24 years. Therefore, in order to strike balance, we are inclined to put quietus to the matter here itself without further remand.

31. In the circumstances of the case, we direct that the appellant would be entitled to 50% of the pension which he would have earned but for the impugned order. From the date of this order, he would be entitled to full pension without there being any bar, as stated in the order dated 08.12.2000, which no longer survives in the light of the order which we have passed. Necessary exercise be done within a period of three months.



32. The appeal is allowed and the writ petition filed by the appellant is also, accordingly, partly allowed in the manner and to the extent stated above.

33. No order as to costs.

(ASHUTOSH KUMAR),J

(MANINDRA MOHAN SHRIVASTAVA),CJ

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