

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 15th OF MAY, 2024

WRIT APPEAL No. 2009 of 2023

BETWEEN:-

**MANAGING DIRECTOR, M.P. STATE CIVIL SUPPLIERS
CORPORATION, HEAD OFFICE, BHOPAL (MADHYA
PRADESH)**

.....APPELLANT

(SHRI ABHISHEK TUGNAWAT, COUNSEL FOR THE APPELLANT).

AND

**TOOFAN SINGH RAGHUVANSHI S/O LATE SHRI KAMAL
SINGH, AGED 59 YEARS, OCCUPATION: NIL R/O 24-A
RAGHUVANSHI COLONY MARIMATA INDORE
(MADHYA PRADESH)**

.....RESPONDENT

(MS. KIRTI PATWARDHAN, COUNSEL FOR THE RESPONDENT).

WRIT APPEAL No. 2047 of 2023

BETWEEN:-

**MANAGING DIRECTOR M.P. STATE CIVIL SUPPLIERS
CORPORATION, HEAD OFFICE BHOPAL (MADHYA
PRADESH)**

.....APPELLANT

(SHRI ABHISHEK TUGNAWAT, COUNSEL FOR THE APPELLANT).

AND

**TOOFAN SINGH RAGHUVANSHI S/O LATE SHRI KAMAL
SINGH, AGED 59 YEARS, OCCUPATION: NIL R/O 24-A
RAGHUVANSHI COLONY MARIMATA INDORE
(MADHYA PRADESH)**

....RESPONDENT

*(MS. KIRTI PATWARDHAN, COUNSEL FOR THE RESPONDENT).***Reserved on : 02.04.2024****Pronounced on : 15.05.2024**

These appeals having been heard on admission and reserved for judgment, coming on for pronouncement this day, Justice Sushrut Arvind Dharmadhikari passed the following:

JUDGMENT

These writ appeals have been filed under Section 2(1) of the Madhya Pradesh Uchha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 assailing the common order dated 29.09.2023 (Annexure P/1) passed in Writ Petitions No. 2098 of 2010 and 3202 of 2012 whereby the writ petitions have been finally disposed of. The appeals are heard analogously and being decided by this common order.

2. The brief facts of the case are that the respondent/employee was serving in the appellant Department as District Manager from the year 1986. He was served with a charge-sheet dated 14.03.2005 in respect of irregularities in the sale and purchase of *Moong* (lentil) and loss to the tune of Rs. 18,52,000/-. The respondent filed reply to the charge-sheet. A detailed enquiry was conducted and charge No.1 was partially found to be proved, however, rest of the charges were not proved. The disciplinary authority did not agree with the findings recorded by the Enquiry Officer and passed an order of dismissal of the respondent from service with recovery to the tune of Rs. 13,38,000/-. The aforesaid order was assailed by way of Writ Petition No. 4950 of 2007. The

said writ petition was allowed and the matter was remanded to the disciplinary authority to first issue a show-cause notice to the respondent specifying the reasons for disagreement with the Enquiry Officer.

3 . During the pendency of enquiry, respondent attained the age of superannuation and retired from the service on 30.06.2010. The respondent approached this Court again by way of Writ Petition No. 2098 of 2010 seeking direction to the appellant to supply documents. Vide interim order dated 23.04.2010, this Court restrained the appellant to proceed further with the departmental enquiry. In spite of the interim order, appellant continued with the enquiry and passed a punishment order whereby respondent was compulsorily retired. When the appellant did not pay the retiral dues, respondent filed Writ Petition No. 3202 of 2012 seeking direction to the appellant to release his retiral dues.

4. Learned Single Judge disposed of both the writ petitions by passing the impugned order. The operative portion of the order is reproduced hereunder:

"07. So far as supply of documents to the petitioner is concerned, the petitioner participated in the entire Departmental Enquiry, but did not demand any such documents, however, in the show-cause notice, the disciplinary authority relied on various documents and communications in order to record the disagreement with the Enquiry Officer. Therefore, these documents are liable to be supplied to the petitioner as demanded by him. As per the return, the petitioner was permitted to inspect these documents, but since there was an interim order, therefore, without leave of this Court, the respondent ought not to have concluded the enquiry in this matter. This Court was required to examine whether the documents demanded by the petitioner were permitted to be inspected or were necessary to be supplied. Without waiting for adjudication for the Departmental Enquiry, the disciplinary authority has passed the order. Admittedly, this order was not disclosed in the return as well as by way of reply in W.P. No.3202 of 2012. Therefore, this order is an anti-dated order and was not passed at that relevant point of time. This petition is pending since 2010 and no efforts were made by the respondent to get the stay vacated. Therefore, the retiral

dues of the petitioner are wrongly withheld. No purpose would be served at this stage to direct the respondent to supply the documents and conclude the enquiry as no provision of law has been brought on record to show that the enquiry can be concluded after retirement.

08. Since the punishment order is passed during the pendency of this petition in which stay is operating in favour of the petitioner, hence, the order is non-est in law. The respondent has acted in disobedience of the interim passed by this Court. Accordingly to the petitioner, enquiry has been completed and punishment has been imposed on the petitioner. But the petitioner did not submit any reply to the show-cause notice because the documents as demanded by the petitioner were not supplied and there is stay operating in his favour. Therefore, now no liberty can be granted to the respondent to conclude the enquiry after 12 years. Now all the enquiry pending against the petitioner is treated to be dropped. His retiral dues be paid to him.

08. Writ Petition stands disposed of to the extent indicated above. The order passed by this Court in the present case shall govern the connected the petition also, therefore, the connected writ petition also stands disposed of to the same extent."

5. Being aggrieved by the above order, the appellant Department has filed the present appeals contending that the learned Single Judge erred in dropping the proceedings and directing to pay the retiral dues in as much as the enquiry which was initiated during the service is liable to be continued after retirement under the provisions of Pension Rules and that the order of punishment was passed before the retirement, which is not the subject matter under challenge. Therefore, the learned Single Judge ought to have dismissed the writ petitions having been rendered infructuous.

6. Per contra, learned counsel for the respondent submitted that, there is no such provision for proceeding further with the departmental enquiry after retirement. Therefore, the learned Single Judge has rightly dropped the enquiry and directed to release the retiral dues without making any recovery.

7. Heard learned counsel for the parties. Perused the record.

8 . There is hardly any cavil on the issue that after retirement, an

employee can be proceeded in a departmental enquiry provided under Rule 9 of the MP Civil Services (Pension Rules) 1976. The permission to continue with the departmental enquiry is to be taken from the Governor. In this case, no such procedure was followed.

9. In case of *Dev Prakash Tewari v. Uttar Pradesh Cooperative Institutional Service Board, Lucknow and others*, (2014) 7 SCC 260, the issue that is involved here came up before the Supreme Court. In the regulations also, there was no provision at the time for initiation or continuation of disciplinary proceedings against a retired employee. The employer in *Dev Prakash Tewari (supra)* initiated disciplinary proceedings against an employee of theirs, whose earlier punishment order was quashed on grounds of violation of principles of natural justice with a direction to reinstate. Liberty was, however, granted to pursue fresh proceedings. Pending those proceedings, the employee retired. It was in the context of these facts that in *Dev Prakash Tewari (supra)*, it was held that :

"5. There is no provision in the Uttar Pradesh Cooperative Societies Employees' Service Regulations, 1975, for initiation or continuation of disciplinary proceeding after retirement of the appellant nor is there any provision stating that in case misconduct is established a deduction could be made from his retiral benefits.

6. An occasion came before this Court to consider the continuance of disciplinary inquiry in similar circumstance in **Bhagirathi Jena case [Bhagirathi Jena v. Orissa State Financial Corpn., (1999) 3 SCC 666 : 1999 SCC (L&S) 804]** and it was laid down as follows: (SCC pp. 668-69, paras 5-7)

"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:

‘44. (3)(c) 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 30-6-1995, 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 a subsequent decision of this Court in **U.P. Coop. Federation case [U.P. Coop. Federation Ltd. v. L.P. Rai, (2007) 7 SCC 81 : (2007) 2 SCC (L&S) 598]** 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. While dealing with the above case, the earlier decision in Bhagirathi Jena case [**Bhagirathi Jena v. Orissa State Financial Corpn., (1999) 3 SCC 666 : 1999 SCC (L&S) 804**] 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.

8. 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.

9. 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 up to 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."

10. The decision of the Supreme Court in case of *Dev Prakash Tewari (supra)* clinches the issue. It has not at all been suggested or urged by the appellant that there is indeed any provision in the Rules empowering them to continue proceedings against a retired employee. This Court on perusal of the said Rules has not found any provision enabling the appellant to continue pending disciplinary proceedings against a retired employee.

11. In view of the aforesaid, the learned Single Judge has rightly come to the conclusion that the proceedings deserves to be dropped and the retiral dues be paid to the respondent. Accordingly, finding no apparent error, this Court is not inclined to interfere with the order passed by the learned Single Judge in the writ petitions. Resultantly, these writ appeals being bereft of merit and substance, are hereby dismissed.

12. Let a copy of this order be retained in the connected appeal.

No order as to cost.

(S. A. DHARMADHIKARI)
JUDGE

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(GAJENDRA SINGH)
JUDGE

