



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2539/2021

Narendra K. Kumbhare,
Aged about 60 yrs. Occ. : Retired,
R/o. F-2, Sai Shiv Apartment, Atharva Colony,
Near Akashwani, Civil Lines, Chandrapur. ----PETITIONER

--VERSUS--

1. The Union of India through its
Secretary Ministry of Personnel,
Public Grievance and Pensions Department
of Personnel and Training, New Delhi.
2. The Chairman-cum-Managing Director,
United India Insurance Co. Ltd.,
HRM Department Head Office 19,
4th Lane Nungambakkam High Road,
Chennai.
3. The General Manger,
United India Insurance Co. Ltd.
Personnel Head Office 19,
4th Lane Nungambakkam High Road,
Chennai.
4. Dy. General Manager,
United India Insurance Co. Ltd.,
HRM Department, Head Office 19,
4th Lane Nungambakkam High Road,
Chennai.
5. The Chief Regional Manager,
United India Insurance Co. Ltd.,
Regional Office, Ambika House,
19 Dharampeth Extn Shankar Nagar Square,
Nagpur 440010. ----RESPONDENTS

Ms. Rashi A. Deshpande, Advocate for Petitioner.

Ms. Ansuli Deshmukh, Advocate h/f. Mr. N. S. Deshpande, Deputy Solicitor General of India for Respondent No.1.

Mr. Atibudden M. Quazi, Advocate for Respondent Nos.2 to 5.

CORAM : A.S.CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.

RESERVED ON : JULY 19, 2023

PRONOUNCED ON : AUGUST 8, 2023.

JUDGMENT (PER : MRS.VRUSHALI V. JOSHI, J.)

1. **Rule.** Rule made returnable forthwith. Heard finally with consent of the learned Counsel for the parties.

2. The petitioner has superannuated on 30.06.2021 as Deputy Manager (Scale II). On the very day a notice was issued calling upon him to show cause as to why departmental action should not be initiated against him under the United India Insurance Company (Conduct, Discipline and Appeal) Rules 2014 for not submitting the Caste Validity Certificate. The lapse/omission according to the respondents constitutes misconduct.

3. The petitioner was appointed on 24.04.1985 as Typist. He was promoted from time to time and at the time of his retirement he was on the post of Senior Branch Manager at Branch Office, Chandrapur. On 30.06.2021 when he was superannuated and retired from services, he received the show cause notice on his WhatsApp calling upon the petitioner to explain as to why departmental action should not be initiated

against him under the United India Insurance Company (Conduct, Discipline and Appeal) Rules, 2014 (for short, “the Rules, 2014). Further he was warned if satisfactory explanation is not submitted before 15 days from the date of receipt of the said letter failing which appropriate action will be taken by the Company.

4. After rendering service of 36 years, he retired from the service on 30.06.2021. During this tenure, he was never served with any notice or charge memo or any departmental proceeding was initiated against him.

5. The learned Counsel for the petitioner has stated that the show cause notice does not amount to initiation of departmental proceedings and departmental proceedings cannot be initiated four years after cause arises and after retirement. The services of the petitioner are governed by the United India Insurance Company (Conduct, Discipline and Appeal) Rules, 2014. As per these Rules, the officer against whom disciplinary proceedings have been initiated by framing of charge sheet and same is pending and continuing on the date of retirement or superannuation of the employee, the departmental enquiry shall not be deemed to be concluded on exit of the employee from the corporation due to retirement or superannuation and shall continue as if the employee is in service until the proceedings are concluded and the final order is passed in

respect thereof. The aforesaid regulation could be invoked only when the disciplinary proceedings have been clearly initiated prior to the petitioner's retirement or superannuation. The terminologies used therein are of seminal importance only when the disciplinary proceedings have been initiated against an officer of company before he ceased to be in service. The departmental proceedings is a trite law, it is not merely initiated by issuance of show cause notice. It is initiated only when charge sheet is issued.

6. The petitioner having superannuated without institution of any disciplinary proceedings, the Rules, 2014 were not attracted. Thus, the impugned action of the respondents must be held to be illegal and without jurisdiction. The petitioner has retired from United India Insurance Company Limited being a Subsidiary Company of General Insurance Corporation of India on 30.06.2021. The retired employees of the United India Assurance Company Limited are governed by the General Insurance (Employees) Pensions Rules Scheme, 1995 and this, Pension Scheme is applicable to the petitioner. Rule 3(a) read with Rule 29 of General Insurance (Employees) Pension Scheme, 1995 is applicable for the purpose of settlement of retiral dues and also regular monthly pension. Further by virtue of Rule 55 (Residuary Provision) contained in Chapter IX (General Condition) of the said scheme it is provided that the matters relating to pension and other benefits in respect of which no express

provision has been made shall be governed by corresponding provisions of Central Civil Service (Pension) Rules, 1972. As per the aforesaid provision of relevant provisions of law, the petitioner is immediately entitled for all pensionary benefits and emoluments available to him as per Rules contained in the scheme. The respondents without any reason have withheld Gratuity, Leave Encashment, Group Insurance and probably Regular Pension and other retiral emoluments.

7. By mentioning Rule 45 of the Pension Scheme the petitioner has stated that the provisional pension can be paid only in the event of there being departmental/judicial proceedings pending against the employee on the date of his retirement. However, in the instant case of the petitioner no departmental proceedings or judicial proceedings were pending against him. Thus, depriving the right to receive regular pension is against the provisions of law. He has further submitted that the pension payable after a superannuation is not a bounty payable at the whims and fancies of the respondents. It is his right and it does not depend upon the discretion of the respondents but is governed by the Rules and the employee coming within those Rules is entitled to claim the pension. The learned Counsel for the petitioner further argued that the right to receive pension is property under Article 31(1) and by mere of executive order, the respondents have no power to withhold the same. Similarly, the said

claim is also property under Article 19(1)(f) and it is not saved by Sub-Article (5) of Article 19. Therefore, denying the petitioner's right to receive full Pension, Gratuity, Leave Encashment etc. on being superannuated affects the fundamental rights of the petitioner granted under Articles 19(1), 31(1) and 21 of the Constitution of India. The pension includes Gratuity and Pension and Gratuity cannot be withheld or forfeited only if the employee is found guilty of grave misconduct or is convicted of serious crime. That until and unless conviction on misconduct is not recorded in the criminal or the departmental proceedings withholding of pension and Gratuity is not permissible.

8. The respondents have opposed the petition stating that the petitioner was appointed as a Typist by the respondent Company and later the services of the petitioner were confirmed. He was appointed under the Scheduled Tribe Reservation Policy and subsequently was promoted availing the benefits under the said Reservation Policy throughout his career. All the promotions were gained by the petitioner availing the benefits under the Reservation Scheme drafted for the benefits of the Scheduled Tribes. Hence, it is clear that the petitioner has availed the benefits of his alleged backward caste throughout his career. The respondents were constrained to ask the petitioner to produce or procure a Caste Validity Certificate from relevant Authority as the office received the

Circulars. The respondents have issued various letters to the petitioner in the light of said Circulars asking him to produce or to apply for Caste Validity Certificates. Each time the petitioner prayed for more time and avoided submitting his documents for verification before Caste Scrutiny Committee citing one or other reasons. The petitioner has incorrectly insisted that once a verification has been performed, the respondents may not seek another verification of the caste status. In the reply, the petitioner has asserted that an Office Memorandum No.57/1/1/SCTC/2019 dated December 24, 2020 precludes him from any process of caste verification.

9. He has further argued that upon repeated non-compliance with the requests and incorrect and downright frivolous legal propositions being cited by the petitioner, the respondents initiated a departmental enquiry and issued a show cause notice on 30.06.2021. The show cause notice was issued at 2.14 p.m. i.e. before 5.00 p.m. and hence, the show cause notice was served upon the petitioner well before his retirement, which precludes to disciplinary action. The petitioner issued a letter through his Advocate informing the respondents of pendency of the instant writ petition and hence, the process of institution of the departmental enquiry, stands awaited, pending the adjudication before this Court. The show cause notice which was well served before the

petitioner retired from his services is maintainable as per Section 25 of the Rules, 2014. Chapter IX titled General Conditions of the General Insurance (Employees) Pensions Scheme, 1995, goes into the details of conditions of the pension which are as under :

“41. Pension subject to future good conduct – Future good conduct shall be an implied condition of every grant of pension and its continuance under this scheme.

42. Withholding or withdrawal of Pension - Th competent authority may by order in writing, withhold or withdraw pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct :

Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension per mensem payable under this scheme.”

In case, the pensioner is considered guilty before passing of final order, the respondents have power to withhold the parts of emoluments of the petitioner and hence the part of benefits withheld along with certain emoluments is a validly executed and legally sanctioned Act. Hence, prayed to dismiss the petition.

10. Heard both the learned Counsel for the parties.

11. The pensionary benefits of the petitioner are withheld as the show cause notice dated 30.06.2021 was issued on the date of his retirement and therefore, according to the respondents, the enquiry stands initiated. As per provisions, the respondents can withhold the gratuity during the pendency of the enquiry. It is, therefore, necessary to consider first whether issuance of show cause notice amounts to initiation of enquiry ?

12. The Hon'ble Apex Court in *Union of India Vs. K. V Jankiraman* reported in *AIR 1991 SC 2010* has observed that it is only when a charge-memo in a disciplinary proceedings is issued to the employee it can be said that the departmental proceedings is initiated against the employee. In the case in hand, only show cause notice is issued on the date of his retirement calling upon the petitioner to explain why departmental action should not be initiated for failure to submit the validity certificate. Mere issuance of such show cause notice would not amount to initiation of the departmental enquiry.

13. Rule 45 of the Pension Scheme states as under :

“45. Provisional Pension -

1) An employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where

departmental proceedings are continued, a provisional pension equal to the maximum pension which would have been admissible to him would be allowed subject to adjustment against final retirement benefits sanctioned to him, upon conclusion of the proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld etc, either permanently or for a specified period.

2) In such cases the gratuity shall not be paid to such an employees until the conclusion of the proceedings against him. The gratuity shall be paid to him on conclusion of the proceedings subject to the decision of the proceedings. Any recoveries to be made from an employee shall be adjusted against the amount of gratuity payable.”

14. On plain reading of this Rule, it reveals that the Gratuity and pensionary benefits can be withheld only if the departmental or judicial proceedings are instituted against the said person. The petitioner was promoted from time to time and thereafter superannuated. There was no disciplinary enquiry initiated against him while in service. As per Rule 45, the Gratuity can be withheld only in the event of there being departmental/judicial proceedings are pending against the employee on the date of his retirement. However, there is no departmental or judicial proceedings pending against the petitioner, therefore, the question of payment of provisional pension and withholding of the benefits does not arise.

15. The petitioner has relied on the judgment of the Principal Seat of this Court in *Dr. Dipak Vishwanathrao Muley Vs. State of Maharashtra Through its Secretary, Higher Education Department and Ors.* reported in *2022 SCC Online Bom 114*, wherein it has observed in paragraph Nos.52, 53 and 54 as under :

“52. Rule 27(6) as set out above unequivocally states that for the purpose of Rule 27, the departmental proceedings shall be deemed to be instituted on the date on which the Statement of Charges is issued to the pensioner. In this case, the Articles of Charges dated 28th August 2018 were issued to the Petitioner on 29th August, 2018 which is after the date with effect from which Petitioner had superannuated.

53. The decision in the case of Janakiraman (supra) relied upon by Petitioner lends credibility to this view. In the case of Jankiraman (supra) the Hon'ble Supreme Court was called upon to answer the question as to the date from which it could be said that disciplinary/criminal proceedings are pending against an employee. The Hon'ble Supreme Court affirmed the view of the full bench of the tribunal that it is only when a charge memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. Paragraph-16 of the said decision is relevant and is quoted as under :-

"16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is

initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other.

54. *The decision of the Hon'ble Supreme Court in the case of Rajinder Lal Capoor (Supra) also supports the aforesaid view. Not only that it also lays down that departmental proceeding is not initiated merely by issuance of a show cause notice, it is initiated only when a chargesheet is issued.*

Paragraphs 21 and 22 of the said decision are relevant and are quoted as under:-

*"21. The aforementioned Regulation, however, could be invoked only when the disciplinary proceedings had clearly been initiated prior to the respondent's ceasing to be in service. The terminologies used therein are of seminal importance. Only when a disciplinary proceeding has been initiated against an officer of the bank despite his attaining the age of superannuation, can the disciplinary proceeding be allowed on the basis of the legal fiction created thereunder, i.e., continue "as if he was in service". Thus, only when a valid departmental proceeding is initiated by reason of the legal fiction raised in terms of the said provision, the delinquent officer would be deemed to be in service although he has reached his age of superannuation. The departmental proceeding, it is trite law, is not initiated merely by issuance of a show-cause notice. It is initiated only when a charge-sheet is issued (See *Union of India v. K.V. Jankiraman*). This aspect of the matter has also been considered by this Court recently in *Coal India Ltd. v. Saroj Kumar Mishra* wherein it was held that date of application of mind on the allegations levelled against an officer by the competent authority as a result whereof a charge-sheet is issued would be the date on which the disciplinary proceedings are said to have been initiated and not prior thereto. Pendency of a preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause 20 of the Regulations. Albeit in a different fact situation but involving a similar question of law in *Coal India Ltd.* (supra) this Court held :*

"12[13]. It is not the case of the appellants that pursuant to or in furtherance of the complaint received by the Vigilance Department, the competent authority had arrived at a satisfaction as is required in terms of the said circulars that a charge-sheet was likely to be issued on the basis of a preliminary enquiry held in that behalf or otherwise.

13[14]. The circular letters issued by the appellants put restrictions on a valuable right of an employee. They, therefore, are required to be construed strictly. So construed, there cannot be any doubt whatsoever that the conditions precedent contained therein must be satisfied before any action can be taken in that regard."

It was further more observed that :

"18[20]. A departmental proceeding is ordinarily said to be initiated only when a chargesheet is issued."

(See also Union of India v. Sangram Keshari Nayak (2007) 6 SCC 704 : (2007) 6 Scale 348)

22. The Respondent, therefore, having been allowed to superannuate, only a proceeding, inter alia, for withholding of his pension under the Pension Regulations could have been initiated against the respondent. Discipline and Appeal Regulations were, thus not attracted. Consequently the charge-sheet, the enquiry report and the orders of punishment passed by the disciplinary authority and the appellate authority must be held to be illegal and without jurisdiction".

16. It is not the case of the respondents that at the time of entry in service, the petitioner played any fraud or obtained a certificate by playing fraud.

17. With regard to the submission that the caste claim of the petitioner has been invalidated and departmental enquiry has been initiated, the learned Counsel for the respondent Nos.2 to 5 Mr. Quazi has relied on the judgment of the Hon'ble Supreme Court in the case of

Chairman and Managing Director, Food Corporation of India and Ors. Vs. Jagdish Balaram Bahira and Ors. [(2017) 8 SCC 670], wherein in paragraph No.69.7, it has observed thus :

“69.7. Withdrawal of benefits secured on the basis of a caste claim which has been found to be false and is invalidated is a necessary consequence which flows from the invalidation of the caste claim and no issue of retrospectivity would arise.”

The aforesaid decision is about invalidation of caste claim. In case in hand, the caste claim is not invalidated. The verification of caste claim is not done but merely a show cause notice has been issued.

18. The learned Counsel for the respondents also relied on the following judgments :

- 1] ***Chief Regional Officer, Oriental Insurance Company Ltd. Vs. Pradip and Another [(2020) 11 SCC 144].***
- 2] ***S. Ulaganathan Vs. State of Tamil Nadu and Ors [Writ Petition No.15666/2014].***
- 3] ***R. Prabhuraj Vs. The Reserve Bank of India and Anr. [Writ Petition No.32407/2018].***

After going through all these judgments, we find that in all these judgments, the caste claim was invalidated and in some of the cases the disciplinary enquiry was initiated which is not the situation in the case

in hand. The caste claim was not invalidated and till the date of his superannuation, the enquiry was not initiated.

19. It is not disputed that the petitioner entered in service on being appointed as Typist on the reserved post for the Scheduled Tribe. The petitioner has not forwarded his caste claim for verification. However, till the superannuation, the petitioner was not placed on supernumerary post. In these facts, when the petitioner was not placed on supernumerary post, there does not appear to be any justification for withholding the petitioners retiral benefits.

20. No departmental proceedings were held against the petitioner prior to his superannuation on the basis of which he could be deprived of his pensionary benefits. The impugned communication also does not speak of depriving the petitioner to such retiral benefits. Thus, as the petitioner has superannuated without being placed on supernumerary post, there is no reason to withhold his pensionary benefits. In that view of the matter, the petitioner is entitled for the relief of grant of retirement benefits. Accordingly, the writ petition is allowed by directing the respondents to finalize the pension case of the petitioner within a period of two months from today and release such benefits to the petitioner in accordance with law.

21. Rule is made absolute in the aforesaid terms with no order as to costs.

(MRS.VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

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