C. Surender Reddy Vs. Managing Director, A.P. Dairy Development Co-operative Federation Ltd.

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SooperKanoon Citation : sooperkanoon.com/440481

Court : Andhra Pradesh

Decided On : Aug-16-2004

Reported in : 2004(5)ALD603; 2004(6)ALT44; [2005(104)FLR431]

Judge : V. Eswaraiah, J.

Acts : Constitution of India - Article 226

Appeal No. : WP No. 8403 of 2004

Appellant : C. Surender Reddy

Respondent : Managing Director, A.P. Dairy Development Co-operative Federation Ltd.

Advocate for Def. : N. Rajeswar Rao, Adv.

Advocate for Pet/Ap. : J. Sudeer, Adv.

Disposition : Petition allowed

Judgement :
ORDER

V. Eswaraiah, J.

1. Heard both the Counsel appearing for respective parties.

2. The petitioner filed this writ of mandamus to declare the show-cause Notice No. 1844/Admn.IV/DC-3/82 dated 16-3-2004 issued by the respondent as to why certain amounts towards the short accounting of raw material/feed worth of Rs. 1,84,747/- shall not be recovered from the terminal benefits of the petitioner, as illegal, arbitrary and without jurisdiction and direct the respondent to release all pensionary benefits.

3. The petitioner was appointed as Manager Grade-It in the year 1973 and was promoted as Grade-I Manager in the year 1980. He was transferred from Mahabubnagar to Gadwal on 5-1-1982 and while he was working at Gadwal, a charge-sheet dated 14-9-1983 was issued on the allegation that he did not conduct physical verification of stock at the time of taking charge from his predecessor. He submitted his explanation on 25-11-1983. Having not satisfied with the explanation, after a period of 7 months, an Enquiry Officer was appointed vide letter dated 4-6-1984 and after calling him for a couple of times, the Second Enquiry Officer was appointed on 2-12-1991 and he did not conduct any enquiry. Later on, the Third Enquiry Officer was appointed on 24-12-1992 and he also did not conduct any enquiry before his retirement. Again after a period of 10 years, the Fourth Enquiry Officer was appointed vide proceedings dated 26-2-2001. In the meanwhile the petitioner was retired from service in October, 2000.

4. The case of the petitioner is that the continuation of proceedings are illegal and he was allowed to retire without any condition and therefore, he is entitled for the entire terminal benefits. He has made several representations but the respondents have not issued the terminal benefits. The Fifth Enquiry Officer was appointed on 26-4-2003 i.e., after 20 years of issuance of the charge-sheet, the said Enquiry Officer submitted his enquiry report and based on enquiry report, the impugned show-case notice dated 16-3-2004 has been issued.

5. The petitioner submits that the delay in finalizing the disciplinary proceedings are only attributable to the respondent but not to the petitioner and any rate, the petitioner was allowed to retire unconditionally and there is no provision in any of the regulations or bye-laws of the respondent Corporation for continuation of the

enquiry proceedings by withholding retrial benefits after his retirement.

6. The respondent filed its counter admitting that the charge-sheet issued on 14-9-1983 for the alleged misconduct of short accounting of raw material/feed etc., worth Rs. 1,84,747/- and the Enquiry Officer was appointed on 4-6-1984 . Since he was keeping ill health, another Enquiry Officer was appointed on 9-10-1985, as he could not complete the enquiry. Third Enquiry Officer was appointed on 26-2-2001. Unfortunately, he was expired and therefore, 4th Enquiry Officer was appointed on 2-9-2003. It is further stated that the Enquiry Officer who conducted the enquiry found that the charges are proved. Therefore, the respondent issued only show-cause notice to recover loss sustained by it and the writ petition is not maintainable against the show-cause notice and it is always open for the petitioner to submit his explanation for the show-cause notice.

7. Admittedly the petitioner was allowed to retire in October, 2002 unconditionally. He was not kept under suspension and he was relieved from his service and therefore, the relationship between the employer and the employee ceased with effect from November, 2000 and therefore, it is submitted that the departmental enquiry was illegally continued and the respondent is not entitled to act upon on the said enquiry report. In support of the said contention, the learned Counsel appearing for the petitioner relied on a judgment of the Apex Court in Bagirathi Jena v. Board of Director, O.S.F.C., : (1999)ILLJ 1236 SC . In the said case also a charge-sheet issued in 1992 in respect of various items of alleged misconduct and disciplinary proceedings were initiated but the same could not be concluded before the date of his superannuation, which took place on 30-6-1995. It was the case of the employee that the disciplinary proceedings would not have been withdrawn for the purpose of making reduction of retiral benefits inasmuch as there was no statutory regulations made by the Corporation for such reduction of retiral benefits. Though the High Court did not accept the plea of the employee, the Supreme Court held that in the absence of any such provision, the regulations of the Corporation as such, deducation of retiral benefits cannot be deducted and accordingly the Apex Court allowed the appeal directing to pay the salary and other allowances payable after the date of the superannuation after deducting subsistence allowance thereto.

8. The learned Counsel for the petitioner also relied on another judgment of Apex Court in State Bank of India v. A.N. Gupta and Ors., : (1997)8SCC60 . Wherein the Apex Court held that continuation of departmental enquiry after retirement is not permissible and the employee ceased to be in service of the Bank. It is held that the disciplinary proceedings in the absence any specific provision to that effect in the relevant rules is illegal and unsustainable and therefore, the amounts payable to the employee cannot be withheld. The Division Bench of this Court in C.H. Sarayya v. Nizam Sugars Limited, Hyderabad, : (2000)IILLJ554AP (DB), held that if an employee is permitted to retire on attaining the age of superannuation and without keeping him in service for the purpose of disciplinary action, such disciplinary action initiated after retirement is unsustainable.

9. It is not in dispute that the petitioner is allowed to retire after attaining age of superannuation in October, 2000 and the services of the petitioner was not placed under suspension or he was continued to be in service for the purpose of continuation of disciplinary proceedings. Therefore, I am of the view that the relationship of the employer and the employee ceased after the retirement of the petitioner from the service. Therefore, continuation of disciplinary proceedings are illegal and unsustainable and there is no regulations, bye-laws or rules have been placed before this Court for continuation of such disciplinary proceedings so as to enable the Corporation to withhold the retiral benefits for shortage of material said to have been caused by reason of misconduct of the petitioner. Accordingly I hold that the enquiry conducted after retirement of the petitioner and the enquiry report submitted by the Enquiry Officer after his retirement is illegal. The consequential show-cause notice is also unsustainable, without any authority of law and accordingly the same is set-aside.

10. Accordingly, the writ petition is allowed directing the respondent to release all pensionary benefits payable to the petitioner within two months from the date of receipt of copy of the order. No order as to costs.