

**Vanshidhar Vs. State of U.P.**

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**Court :** Allahabad

**Decided On :** Apr-30-1997

**Reported in :** (1999)IIILLJ515All

**Judge :** D.S. Sinha and ;R.K. Singh, JJ.

**Acts :** Civil Service Regulations - Regulations 351A and 470

**Appeal No. :** C.M.W.P. No. 36551/1992

**Appellant :** Vanshidhar

**Respondent :** State of U.P.

**Advocate for Def. :** Standing Counsel

**Advocate for Pet/Ap. :** G.C. Bhattacharya, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**R.K. Singh, J.**

1. Petitioner Banshidhar has filed this writ petition under Article 226 of Constitution of India for the following reliefs:

- ' 1. An order, direction or writ in the nature of certiorari quashing impugned orders dated May 12, 1991 and February 13, 1992 (Annexures 3 and 5 to the petition);
2. An order direction or writ in the nature of mandamus commanding the respondent to pay the petitioner his full pension and gratuity alongwith arrears and interest thereon;
3. Any other suitable order, direction or writ which this Hon'ble Court may deem fit and proper under the circumstances of the case;
4. An order for the costs to the petitioner.'

2. For appreciation of merit of the prayer the following facts which stand undisputed need be noted:--

Petitioner Banshidhar is a Provincial Civil Servant in the service of the Government of Uttar Pradesh. He was posted between 1984 and October 31, 1987 as special Land Acquisition Officer, Agra. He retired from service on October 31, 1987. While he was posted as Special Land Acquisition Officer, Agra he prepared a revised compensation award for two tube wells said to have stood in the acquired land of Gata Nos. 103 and 104 area 1.58 acres of Village Sarai Neem Tahsil Jaleshar, District Etah for Rupees 1,75,937.64 paisa and after obtaining approval of District Magistrate, Etah, made payments of the revised compensation amount on October 30, 1987 to Atul Pratap who received the compensation amount for Gajraj Singh son of Nahar Singh. The Government served a notice (Annexure-I) on the petitioner Banshidhar dated July 28, 1990 alleging that the said revised compensation award was manipulated by the petitioner for non-existent two tube wells and made irregular payment causing loss to the State of Uttar Pradesh and on that account the petitioner's services have not been found thoroughly satisfactory and so there is proposal to reduce the petitioner's pension to 50%. The petitioner filed his reply (Annexure-II) dated September 24, 1990. By the order dated May 18, 1991 (Annexure-III) the petitioner's reply was not found satisfactory and accordingly Government rejected the same and ordered for 50% reduction in the petitioner's pension under the provisions of Regulation 470 (b) of the Civil Service Regulations. The petitioner preferred appeal (Annexure-IV) dated

October 7, 1991 which was also rejected and the petitioner was communicated the result; of appeal through the letter dated February 13, 1992 (Annexure V).

3. The petitioner has assailed the order dated May 18, 1991 (Annexure-III) and the communication letter dated February 13, 1992; (Annexure-V) on the ground that the orders are violative of Regulation 351 -A of the Civil Service Regulations as the petitioner did not get opportunity to adduce evidence in support of his defence and no departmental proceedings was initiated against the petitioner's grievance rests on the ground that the allegation of fabricated revised compensation award causing loss to the State by the petitioner, has not been substantiated in regular departmental proceedings in which the petitioner could have got an opportunity to adduce evidence in his defence.

4. The petitioner has in ground No. 3 alleged that the provisions of Regulations 351-A and 351-AA of the Civil Service Regulations are violative of Articles 14 and 21 of the Constitution as well' as Article 31(1) of the Constitution but during the course of argument learned counsel Mr. G.C. Bhattacharya did not press this ground and frankly made a statement that he does not wish to press this ground.

5. The question to be decided for just decision of the matter is -- if the impugned order (Annexure-III) is in accordance with the provisions of Regulation 470 (b) of the Civil Service Regulations and if injustice has been caused to the petitioner by non initiation of departmental proceedings against him for holding him guilty for causing pecuniary loss to the State by the petitioner's act of revised compensation award for two tube wells.

6. The relevant Regulations 470 (a) and 470 (b) read as follows:--

#### AWARD OF FULL PENSION '

470 (a) The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved (see Appendix 9)

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

7. Regulation 351-A makes the provisions for circumstances to withhold pension or any part of it. This regulation reads as under:--

'351-A. The Governor 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 Government, if the pension is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:

Provided that-

(a) Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment-

(i) Shall not be instituted save with the sanction of the Government,

(ii) shall be in respect of an event which took place and more than four years before the institution of such proceedings, and

(iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

(b) judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment shall have been instituted in accordance with such- Clause (ii) of Clause (a), and

(c) the Public Service Commission, U.P. shall be consulted before final orders are passed.

Explanation: For the purposes of this article-

(a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or, if the officer has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted;

(i) in the case of criminal proceedings, on the date on which a complaint is made, or a charge sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

Note:-- As soon as proceedings of the nature referred to in this article are instituted the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned. 'In the case of a Government Servant who retires on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings or an enquiry by administrative tribunal is pending on the date of retirement, a provisional pension as provided in Article 919-A may be sanctioned.'

8. From the reading of Regulations 351-A and 470 (b) it is clear that both have independent provisions to deal with appropriate cases. It cannot be accepted that unless Regulation 351 -A is put in operation Regulation 470 (b) cannot be used. The provisions of the rules are very specific detailing the cases of different kinds in which employees' pensionary benefits can be adversely affected. The facts of the case noted above disclose that the allegations against the petitioner was that he got a fabricated revised compensation award prepared for two non existent tube wells for Rs. 1,75,937.64 paisa and paid the same on October 30, 1987. The notice (Annexure-I) detailed the allegations against the petitioner to which he explained through his show cause (Annexure-II), the reasons given by the authority in the order (Annexure-III) are quite convincing. The petitioner preferred appeal against the order (Annexure-III) and the appeal was also rejected. The fact comes out that the authorities did not agree with the petitioner that he was not responsible for the pecuniary loss suffered by the State due to the alleged fabricated revised compensation award of Rs. 1,75,937.64 paisa. There was no case that actually two tube wells existed on the plots in Gata Nos. 103 and 104 for which the revised compensation award could have been justified. The authorities have taken a cogent view in rejecting the show cause filed by the petitioner (Annexure-II).

9. Learned counsel for the petitioner has taken help of a decision of this Court dated March 20, 1996 given in Civil Miscellaneous. Writ Petition No. 20123 of 1995 Zafar Ahamad Ahrari v. State of U.P., reported in 1996 All LJ 843 and the decision of this Court dated December 6, 1996 passed in Civil Miscellaneous Writ Petition No. 5440 (S/S) of 1995 Sureshwar Dutt Pandey v. State of U.P. reported in 1997 1 UPLBEC 299.

10. In Zafar Ahamad Ahrari (supra) the facts of the case was that the writ petitioner retired on June 30, 1988 as District Survey Officer of the Department of Basic Education after getting regular promotion from his initial appointment as Sub Deputy Inspector of Schools in the year 1958. The Court has allowed the petition in the background of the fact that within the statutory period of four years after retirement, no departmental proceeding was initiated, and the Court held that if the statutory period of four years has passed, the employer will be debarred from taking departmental proceedings against the retired employees and in such circumstances recourse of Rule 470 (b) cannot be taken for getting the same result. In the present case the notice to the respondent has been issued well within time. So the view taken by this Court in Zafar Ahamad Ahrari is of no help to the petitioner.

11. In Sureshwar Dutt Pandey (supra) the Court observed that the impugned order dated March 23, 1993 to withhold the pension was passed in anticipation of the sanction of the Governor without complying with the principles of natural justice and the issuance of show cause notice is illegal and without jurisdiction. In the present case the writ petitioner was served with the show cause notice (Annexure-I) to which he submitted his reply and after considering his reply the authorities passed the impugned order (Annexure-III). Thus there is no weakness in complying with the principles of natural justice. The petitioner does not appear to have been prejudiced in any way in the present case.

12. The Division Bench of this Court in Civil Miscellaneous Writ Petition No. 19368 of 1986 Mathura Rai v. State of U.P. reported in 1989 1 UPLBEC 22 has observed, 'To put with differently an employee should be paid his full pension unless something is so glaring or thundering that there is no option but to reduce

his pension.' The present case alleges a fabricated revised compensation award against the petitioner who was then Special Land Acquisition Officer. The pecuniary loss caused to the state to the tune of more than Rs. 1,75,000/- was specifically attributed to the petitioner. Thus the allegation which the State has found material to hold that the petitioner's service was not thoroughly satisfactory, is of glaring and thundering nature. In this background the impugned orders Annexures III and V cannot be seen to be whimsical.

13. The writ petitioner does not disclose any illegality or irregularity in the impugned orders Annexures III and V to justify interference under Article 226 of the Constitution.

14. We are, therefore, not inclined to hold that injustice has been done to the petitioner in this case.

15. The writ petition fails and the same is accordingly dismissed.

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