

Shardindu Vs. the State of U.P. and Others

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SooperKanoon Citation : sooperkanoon.com/918013

Court : Allahabad

Decided On : Dec-23-2010

Judge : Sunil Ambwani; Mrs. Jayashree Tiwari, JJ.

Appeal No. : CIVIL MISC. WRIT PETITION NO.11863 OF 2010

Appellant : Shardindu

Respondent : The State of U.P. and Others

Advocate for Pet/Ap. : Shri. Ashok Khare

Judgement :

1. We have heard Shri Ashok Khare, Senior Advocate assisted by Shri Anil Bhushan for the petitioner. Shri R.B. Pradhan, Additional Chief Standing Counsel appears for the respondents.

2. The petitioner retired on attaining the age of superannuation on 31.10.2008. By this writ petition, he has prayed for quashing the order dated 5.2.2010 passed by the State Government under Regulation 351-A of the Civil Services Regulation, deducting 10% of his pension with permanent effect. The order has been passed by the Governor of Uttar Pradesh in consultation with the U.P. Public Services Commission communicated by the Secretary, Education Department-13, Government of U.P., Lucknow.

3. The petitioner was appointed in U.P. Educational Service (Junior Scale) on 01.10.1973. In the year 1997 he was promoted as Director of Education and until 21.1.2004 he functioned as Director, State Council for Educational Research and Training, U.P. For a short period in between he also functioned as Director of Urdu and Oriental Language, U.P. The Government of India by the order dated 31.12.2003 appointed him on the recommendations of a Search Committee as Chairperson, National Council for Teachers Education, New Delhi for a period of four years. He joined on 22.1.2004 and functioned as Chairperson, National Council for Teachers Education dated January, 2008. On completion of his tenure he was posted and retired from the post of Director, State Institute of Educational Management and Training, Allahabad.

4. The petitioner was placed under suspension by the State Government on 19.9.2005 during the pendency of departmental proceedings instituted against him. In the Writ Petition No. 63227 of 2005 Sardindu vs. State of UP and others, an interim order was passed by this Court on 26.9.2005. The interim order was continued on 2.1.2006.

5. A departmental charge sheet was issued to the petitioner on 6.7.2006 calling for his reply to the nine charges relating to BTC Entrance Examination-2001 conducted under petitioner's supervision as Director, State Council for Educational Research and Training, U.P. (SCERT). The substance of the allegations in nine charges against the petitioner were failure to carry out the instructions of the State Government in Government Order dated 26.11.2001 for BTC Entrance Examination-2001 whereby at every stage of examination beginning from filling up of the forms, issuance of the admit card, conduct of the examination, preparation and declaration of result; serious irregularities were carried out for which the State Government had to cancel the entire examination on 20.9.2005. The charge no. 2 relates to relaxation in annexing certificates of education qualifications; caste and residence as a necessary condition along with the forms notified without taking approval of the State Government, whereas in the previous notification it was made necessary for the candidates to annex these certificates. The power of relaxation was only with the State Government; the provisional admit cards of the examination were issued by the Registrar, Departmental Examination from the

office of the petitioner vide his letter dated 12.1.2002 issued on the same day; only 15 days gap was given from the date of last date of the application form and the examination. The allotted firms (service providers) had expressed its inability to process the application forms and to verify the photographs, scanning, issuing of admit cards and separating the demand drafts of 5,87,000 candidates during this short period. The petitioner was charged with failing to take care and taking any decision in this regard on account of which the incomplete applications could not be cancelled nor the candidates could be properly identified resulting into 25000 candidates appearing in the examinations without depositing the examination fees, causing the loss to Rs. 25 lacs to the State Government.

6. The petitioner was also charged with failing to distribute the admit cards properly for the examination. He had taken decision to issue the admit cards through District Institutes of Education and Training but, it is alleged that sufficient arrangements were not made for distribution of the admit cards on which the admit cards were not issued in time resulting into postponement of the examination several times affecting the reputation of the State Government; all the Principals of the DIET were under petitioner's control; since sufficient arrangements were not made for distribution of the admit cards, the petitioner it is alleged illegally pressurised the Registrar, Departmental Examination to issue provisional certificates only on the basis of original copy of the dak receipts vide his letter dated 12.1.2002 and in this manner the candidates appeared in the examination without depositing the requisite bank drafts causing loss of Rs. 25 lacs. The petitioner engaged five computer firms, A, B, C, D and E for carrying out the functions of BTC Entrance Examination-2001 and exercised undue pressure upon the Registrar, Departmental Examination to cooperate in the examination against the Rules of the public services.

7. The petitioner was also charged with failing to cancel about 1, 11, 136 incomplete application forms. These candidates were allowed to appear in the examinations. Some of these were also selected. About 21,219 candidates were issued provisional admit cards whereas only 760 applicants out of these had applied and 84 were selected. Thousand of candidates with less than 33% marks in High School and Intermediate were allowed to appear in the examination, out of

which 25000 had not deposited the examination fees. Lastly, it was alleged that by Government Order dated 20.10.2005, on account of the aforesaid illegalities and irregularities the BTC Entrance Examination-2001 was cancelled. The High Court approved the cancellation in several writ petitions. The Government Orders dated 26.11.2001; 20.10.2005; the newspaper reports; the letters issued by the office of the petitioner on 12.1.2002, the letters given by the allotted firms, expressing their inability to complete the process within 15 days dated 24.12.2001, the report of the Vigilance Enquiry dated 23.7.2005 were proposed to be used as evidence during the departmental enquiry.

8. On receipt of the charge sheet the petitioner in his representation dated 18.7.2006 requested for enquiry report submitted by the Vigilance Establishment on 23.7.2005; copy of the noting on the report leading to the passing of the Government Order dated 20.10.2005; documents in support of the allegations levelled on charge No. 4 namely the letters written by the firms complaining of insufficiency of time to process the applications and the details of the computation of loss to the State Government alleged to the tune of Rs. 25 lacs as also details of the amount as actually received by the State Government.

9. It is submitted by Shri Ashok Khare that no response was given to the representation dated 18.7.2006 demanding the aforesaid documents, inspite of the repeated reminders. The last reminder was sent on 20.7.2007. In the correspondence the Vigilance Establishment sent a communication dated 2.4.2007 stating that the investigation at the level of Vigilance Establishment was in process on account of which it was not possible to make the documents available. Shri Khare submits that the enquiry officer did not fix any date for conducting the enquiry. In fact no enquiry proceeding was conducted, at all. A copy of the enquiry report was sent to the petitioner along with the show cause notice dated 4.3.2008 calling for the petitioner to submit his objection to which detailed objections were filed by the petitioner on 20.3.2008 accompanying by several enclosures. In his reply after reiterating the demand made by the petitioner for the documents which according to him was not supplied, it was stated that the ex-parte enquiry report was prepared without supplying the documents relied upon in the enquiry report to the petitioner.

10. The petitioner submitted in his reply that he had truthfully carried out his duties for conducting BTC Entrance Examination-2001 in accordance with the Government Order dated 26.11.2001. Necessary instructions were issued to officers at each level of the districts including all District Magistrates; Senior Superintendents of Police & Superintendents of Police. The instructions were also given to the officers of the educational department including Basic and Intermediate for giving necessary cooperation to hold the examinations. The question papers were kept in double locks in the treasuries of the district headquarters and that the examinations were successfully held on 28.4.2002 in the entire State. The Registrar, Departmental Examination, U.P. was responsible for preparing the results. He was also given oral and written instructions by the petitioner. The Registrar, however, adopted his own independent procedure for which the petitioner reminded the State Government on 28.5.2003 to transfer him and to post a competent person to hold the examinations.

11. So far as vigilance enquiry is concerned, the Superintendent of Police (Vigilance Establishment), Allahabad informed on 19.7.2005 that the enquiry into the irregularities was being conducted on priority, in which the petitioner's statement has to be recorded. The petitioner received the letter on 21st July for recording the statement on 22nd July. He was on leave on 21st July and 22nd July, 2005 and it was not possible for him to leave the headquarters at Delhi. The General Body meeting of the National Council of Teachers Education was fixed on those dates. The petitioner contacted the Superintendent of Police on telephone and told him that he had given all information both to the Superintendent of Police and Deputy Inspector General of Police on 1.8.2005. He was not informed with regard to any other issues or the questions to be asked from him, nor was given any documents or letters. The petitioner made a statement before him only from his memory. It appears that before the petitioner could give the entire explanation the report was submitted by the Vigilance Establishment on 23.7.2005.

12. The petitioner further submitted in his reply that after conducting the examination successfully on 28.4.2002 the answer sheets were sent to the identified computer firms for processing. Shri C.L. Chaurasia, Registrar, Departmental Examination was posted upto 18.1.2003, after which Dr. Mohd.

Sayeed was appointed as Registrar, Departmental Examination. The result of BTC Entrance Examination-2001 could not be prepared on account of the postponement of the process of selection of Group 'C' posts in the year 2001. The directions to declare the results were issued by the Personnel Department of the State Government on 25.4.2003 and thereafter the Registrar was asked to notify the results. The Registrar informed him on 17.5.2003 that it is necessary to examine the documents before declaring the result, and that efforts were being made to declare the result within one week. The petitioner unsuccessfully tried to contact the Registrar, Departmental Examinations, Allahabad from 19th May to 28th May, 2003. He was not taking interest for declaring the result of examination on which the petitioner requested the State Government that some responsible person may be asked to perform the work. The State Government by its letter dated 28.5.2003 extended the period for two weeks. After examining the documents and giving direction to the Registrar, the Registrar again did not carry out the directions, on which the result of the examination could not be declared within time limit, causing difficulties to District Institutes of Education and Training in taking admissions. In para-14 of his reply the petitioner accused Dr. Mohd. Sayeed the Registrar, Departmental Examination for not taking sufficient interest and in causing delay in declaring the results. On the charges the petitioner gave a para-wise reply alleging that the report of the Vigilance Enquiry was submitted without examining and assessing the role of the Director of the Parishad. The examinations were conducted successfully. The arrangements were so elaborate and meticulous, that there was no complaint of any mismanagement. The request of the petitioner to change the Registrar, Departmental Examination on 28.5.2003 was not accepted; instead direction was given to declare the result within two weeks.

13. On the charge of allowing applications to be made without enclosing documents certifying the educational qualifications, caste and residence the petitioner submitted in his reply that in the Government order dated 26.11.2001, there was no requirement to annex the certificate along with the application; on the contrary a letter was received from the U.P. Secretariat Gazetted Officers Union addressed to the Principal Secretary in which a request was made to give up the requirement of the residence certificate in the BTC examination. The Government

discussed the matter and thereafter a publication to that effect, was made in the newspapers on 12.12.2001. There was no objection raised by any person on the publication on which by Government order dated 26.11.2001 an amendment was made only to the effect that the certificates of educational qualification alone should be included with the application. The decisions in this regard were not taken by the petitioner.

14. On the charge of issuing provisional admit cards from his office the petitioner submitted in his reply that there was nothing in the Government Order dated 26.11.2001 to allow a candidate not to appear, if he did not get the admit card. In all the examinations in the State of UP arrangements are made for issuing provisional admit cards. The petitioner did not commit any illegality or breach of the conditions of the examination in the Government Order dated 26.11.2001. The petitioner alleged that the computer firms were engaged for processing the application. The examination fee was to be sent by demand draft in the name of Registrar, Departmental Examination and the amount was deposited in his account. The petitioner was not informed by the Registrar with the number of applications received and the amount deposited in the account, of the Registrar, nor the accounts were tallied. The details of the examination fees can be collected from the office of the Registrar and without examining these documents he cannot be held responsible in the alleged loss of Rs. 25 lacs.

15. On the allegations of negligence in making the requisite arrangements for distribution of the admit cards the petitioner submitted that he was regularly informing the State Government with the difficulties faced in the entrance examination. There was nothing in the Government Order dated 26.11.2001 to seek permission of the State Government for fixing the date of the examination. The examination was held successfully on a single day on 28.4.2001 in the entire State without any untoward incident. No one had made any complaint against the arrangement or management of the entrance examination nor there was any allegation of irregularities either on the date of examination or thereafter. With regard to the allegations, that provisional admit cards were issued without verifying that the bank drafts were deposited, the petitioner submitted that the Registrar was required to account for and to tally the number of the examinees, the admit cards

issued and the amount deposited in his office. The petitioner was not responsible to maintain the accounts and to prepare a reconciliatory statement. The results were prepared with the help of the computers and that the Registrar, Departmental Examination had prepared the select list. The Registrar was responsible for taking approval of the declaring the result. He was negligent in declaring the result without consulting or taking approval from the petitioner. The petitioner strictly carried out the instructions given by the State Government in the Government Order. There is absolutely no allegations that the petitioner had exercised any undue influence on any person or any irregularity was committed in engagement of firms or in preparing the result. The Registrar, Departmental Examination in-charge of holding examination was required to cancel 1, 11, 136 application forms, if they were found incomplete.

16. There is absolutely no evidence nor any record to establish any irregularity in preparation of results. The irregularities, if any, were committed by the Registrar, Departmental Examination for which the Director could be held responsible. The petitioner had no role to play in preparing the result of the examination. On the last charge the petitioner submitted in his reply that the Government Order had clearly provided the declaration through computers. The petitioner was not responsible for preparing the results nor was any amendment made in the Government Order. The cancellation of result by the State Government on 20.10.2005, was made on its own.

17. Shri Ashok Khare submits that none of the documents asked for by the petitioner was supplied to him. Some correspondence entered between the enquiry officer and the vigilance establishment. In the course of such correspondence the vigilance establishment sent a communication dated 2.4.2007, that the investigation at the level of vigilance establishment was under way on account of which it was not possible for providing the documents. The enquiry officer did not fix any date for conduct of enquiry nor any such date was intimated to the petitioner. In fact the enquiry officer conducted no enquiry proceedings. Without conducting any enquiry he proceeded to submit an enquiry report on 6.11.2007 on which a show cause notice was given and to which the petitioner gave his reply on 20.3.2008.

18. Shri Khare submits that the petitioner retired on attaining the age of superannuation on 31.10.2008. The Governor of Uttar Pradesh passed an order to continue enquiry under Rule 351-A of the Civil Services Regulations communicated to the petitioner on 30.1.2009. The petitioner made a representation on 16.2.2009 alleging that an ex-parte enquiry report has been submitted to the State Government and a copy of which was received by the petitioner on 11.3.2008, to which he has submitted a reply on 20.3.2008. He pointed out some points with regard to the departmental enquiry. The appointing authority of the petitioner is the Governor of U.P.. The charge sheet should have been approved by the Principal Secretary or the Secretary of the Government, whereas in his case the then Special Secretary Shri H.L. Gupta had approved the charge sheet dated 6.7.2006. The enquiry should have been conducted by an officer at least two level higher than the petitioner, whereas the enquiry officer was of the same level as of the petitioner. The petitioner made a request on 18.7.2007 and gave several reminders but that documents were not made available to him and that his request to postpone the enquiry proceeding, until the Vigilance Establishment completes the enquiry, was not accepted. The petitioner requested that the enquiry should be dropped.

19. In the order dated 5.2.2010 punishing the petitioner it is recorded that the petitioner did not reply to the charge sheet within the period of ten days given to him. He did not cooperate in the enquiry and did not appear to inspect the documents for which he was repeatedly asked by the enquiry officer. He had not cooperated in the enquiry and has caused unreasonable delay. The charges, against him for having committed gross irregularities in the BTC Entrance Examination-2001 on which he has full control and supervision, were established by the material on record. He unauthorisedly declared result of the examination of the candidates who had, without enclosing the education qualification, caste and residence certificates with the applications, appeared in the entrance examination. He has kept only 15 days time between the last date of receiving the application forms, and the examination. He did not take any decision on the objections raised by the computer firms and allowed 25000 candidates to appear without paying the examination fees. About 1, 11, 136 forms were found incomplete and 21219 candidates were issued provisional admit cards.

20. The State Government provided an opportunity to the petitioner for hearing in the office of Principal Secretary, Secondary Education. During the proceeding of the enquiry it was found that on the recommendation of Shri C.L. Chaurasia, the then Registrar, Departmental Examinations without taking approvals of the State Government, the petitioner had decided to engage five computer firms and had directly sent the applications from the office of the Registrar to the computer firms without maintaining on record and feeding the details. There was no cross-checking on account of which several irregularities were conducted which were pointed out by Dr. Sayeed the then Registrar, Departmental Examinations on 23.5.2003 to the petitioner. Instead of appreciating the difficulties the petitioner mechanically gave directions to declare results without any error, within 15 days. He did not take care to resolve the difficulties and to ensure the error free preparation of results. He did not prepare any working plan nor made any arrangement to solve the difficulties which were coming in the way of the Registrar, Departmental Examinations. He left the matter entirely to the Registrar, Departmental Examinations on which Shri C.L. Chaurasia got the pre-examination and post examination result changed according to his convenience. The difficulties faced by Dr. Sayeed were also not resolved by the petitioner. The petitioner also did not ensure to keep the five CDs obtained from the computer firms and to give them to Incharge Dr. Sayeed and in this manner all the charges have been proved against him.

21. Shri R. B. Pradhan, learned Standing Counsel submits that the petitioner was responsible for gross irregularities in the examinations and displayed complete lack of responsibility in conducting the examinations. He was placed under suspension which was stayed by the High Court. His entire retiral dues have been paid. So far 90% GPF has been sanctioned to him. The leave encashment, leave pay due to him and other pensionary benefits were released on 11.11.2010 after the orders were passed by the Court. On merits it is submitted by learned Standing Counsel that the Writ Petition No. 63227 of 2007, in which the suspension order was stayed, on 26.9.2005, was finally decided on 25.5.2010 with directions to complete enquiry within three months but prior to that the final decision was already taken by the State Government by the order dated 5.2.2010 for deduction of 10% amount from the pension of the petitioner permanently as he

was found guilty in the proceedings.

22. Shri Pradhan submits that full opportunity was given to the petitioner to defend himself. The enquiry officer has clearly observed in his report that the petitioner was called several times to examine the documents. The letters were sent to him on 22.11.2006 informing that since the vigilance enquiry report is confidential, a copy cannot be given to him and that he may appear in the office of the enquiry officer to examine it. With regard to the note sheets dated 20.10.2005 he was informed by letter dated 21.11.2006 that since documents of which copy has been sought, are highly confidential, he may appear in the office of the enquiry officer to examine them. All the three delinquent officers, namely the petitioner, Shri Chaurasia and Shri Sayeed were asking for the documents. They never appeared before the enquiry officer to examine the documents, which were available in his office. The petitioner made applications under (The) Right to Information Act on 2.1.2007 on which he was informed that the Joint Secretaries; Fateh Narain Srivastava and Shri Ramesh Chandra Ghildiyal are the Public Information Officer and that he can ask for information from them. The Vigilance Establishment was also asked to make the documents available to the petitioner. He was again informed on 9.3.2007 to appear in the office of the enquiry officer and a reminder was sent on 2.4.2007 to Superintendent of Police, Vigilance Establishment, Varanasi to send the documents. The petitioner did not cooperate in the enquiry at all. Since he did not appear on any date to see the records and the enquiry was being delayed, he was finally informed on 6.7.2006 to submit his explanation to the charges. In this letter he was again informed that he can appear in Room No. 34, Navin Bhawan Secretariat which is the office of the enquiry officer to examine the documents but that he did not choose to cooperate in the enquiry. His entire attempt was to keep the enquiry pending; in the circumstances the enquiry officer concluded the enquiry and submitted a report to which the petitioner gave a reply.

23. Shri Pradhan submits that the enquiry was conducted strictly in accordance with procedure prescribed under the U.P. Government Servants (Discipline and Appeal) Rules, 1999, and that after petitioner's retirement the enquiry continued after getting approval of the competent authority and were converted into the proceedings under Rule 351-A of C.S.R. Rules. The petitioner , who was overall

incharge of the examinations, had committed gross irregularities causing severe inconvenience and difficulties to the candidates. The result of the entrance examination was cancelled on account of gross irregularities. The State Government, however, subsequently taking into consideration that the fact that the candidates, who were selected, had completed two years' training, decided to declare the result of those, who had secured 33% marks, for appointment as Assistant Teachers in the schools run by the U.P. Basic Education Board. The order dated 29.12.2008 finally concluded the uncertainty which had clouded the BTC Entrance Examination 2001 after several years.

24. The pension is a right and cannot be arbitrarily denied. The deduction of pension by way of penalty after disciplinary enquiry can be made only in accordance the statutory rules, which must be strictly followed. The deduction can be made by the Governor only in the cases of grave misconduct or causing pecuniary loss to the Government by such misconduct or negligence during service including the service rendered in re-employment. In Gopi Chand Bisnoi vs. State of UP and others 2007 (4) AWC 3591 this Court held:-

"12. There is another aspect which is also very important to be noticed herein. Article 351-A of CSR is attracted where a retired government servant is found guilty of grave misconduct or to have caused pecuniary loss to government by misconduct or negligence during his service including service rendered in re-employment after retirement. Enquiry report shows that the Enquiry Officer did not find the petitioner guilty either of any grave misconduct or of any pecuniary loss caused to the government by his misconduct or negligence. In the punishment order issued by respondent No. 1, the conduct of the petitioner has not been found to be of grave misconduct though it is said that the allegation of making irregular appointment is of serious nature. It also nowhere says that the petitioner has caused any pecuniary loss to the government on account of his misconduct or negligence though it says that appointment has caused unnecessary expenses on the revenue.

The charges therefore, levelled against the petitioner do not satisfy the requirement of Article 351 of CSR. In our view an act on under Article 351A is permissible only when charges against the retired government servant are found provide, which are either in the nature of grave misconduct or have caused pecuniary loss on account of misconduct or negligence of government servant and not otherwise. In these circumstances the impugned order cannot be justified by reference to Article 351A of CSR."

25. We have considered the respective submissions. The entrance examination with more than five lac candidates was to be conducted by the Registrar, Departmental Examinations under overall supervision of the petitioner; for which directions were issued by the State Government from time to time. The candidates, who had applied for the examinations, were issued admit cards. Provisional admit cards were issued to those, who could not get the admit cards in time. The examination was conducted peacefully in the entire State on a single day on 28.4.2002. The results were prepared after some delay. There was no complaint by any candidates with regard to the conduct of the examination. The complaints, if any, were made from within the department for scrutiny of the applications and the defects in the application forms including the defects of the non-enclosure of the examination fees. The vigilance establishment and the enquiry officer did not care to find out whether the allegation of acceptance incomplete examination forms, without the demand drafts of 25000 candidates of Rs. 25 lacs, was actually substantiated. The enquiry officer did not care to tally the accounts, before recording the finding that the Government has suffered loss of Rs. 25 lacs.

26. There are allegations of serious irregularities but neither the Vigilance Establishment nor the enquiry officer has recorded to any specific finding on acceptance of incomplete application forms without annexing the requisite certificates, and in some cases demand drafts, and in allowing the candidates to appear in the entrance examination. The petitioner had issued instructions for holding entrance examination within time. The OMR sheets were examined by the computer firms and the CDs were retained for declaring the results. There was no

allegation against the petitioner nor any proof of any irregularity in preparing the results. All the allegations relate to the process of the examination, and not the result thereof.

27. The examination of the magnitude of which the petitioner was made responsible required the help of the computers in processing the application forms and the OMR answer sheets for preparing the results. There is no charge against the petitioner that any candidate who had applied, was not allowed to appear in the examination or that any illegality was committed by the computer firms in either preparing the data base for the candidates who had appeared in the examinations, or in checking the OMR answer sheets and in preparation of the results. There was no allegation of leakage of the examination paper. No one had made any complaint of unsatisfactory conduct of the examination.

28. We have gone through the records and find that when the departmental enquiry was initiated against the petitioner, the Vigilance Establishment had not completed the enquiry and the criminal case. All the documents were in possession of the Vigilance Establishment. They were not informed that any departmental enquiry is pending against the petitioner and the Registrar of the Departmental Examinations. The petitioner was not given the documents in support of the charges. He was called to appear in the chambers of the enquiry officer, and was later informed by the Vigilance Establishment that the records are not with the enquiry officer.

29. The enquiry officer has not referred to a single document other than the Government Orders and the correspondence with the Registrar, Departmental Examinations and the State Government in arriving at the findings in proof of the charges. The enquiry officer did not examine the CDs in which the data of the applicants was stored nor did he examine the result sheets. He also did not care to call for the details of accounts from the office of the Registrar, Departmental Examination and the bank reconciliatory statement establishing the loss of Rs. 25 lacs. The findings of the enquiry officer are based on speculations on which the State Government had cancelled the result. The State Government ultimately had to accept the fact that the applicants who had completed the BTC training were

entitled to be declaration of result and appointment in the schools run by the Basic Shiksha Parishad.

30. Article 351-A of the Civil Services Regulation provides:-

"351A. 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 pensioner 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 Governor.

ii) shall be in respect of an event which took place not 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 Sub-clause(ii) of Clause (a); and

(c) The Public Service Commission, UP shall be consulted before final orders are passed.

Explanation - For the purpose 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 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."

31. Article 351-A of the Civil Services Regulation reserves right of the Governor to withhold or withdraw the pension either permanently or for specified period, if the petitioner is found in departmental or judicial proceedings to be guilty of grave misconduct or to have caused pecuniary loss to the Government by misconduct or negligent during his service. The expression 'grave misconduct' is something more than a misconduct defined under Section 3 of the U.P. Government Servants Conduct Rules 1956. A retired employee can be punished for being found guilty of grave misconduct and not a misconduct simplicitor. He may also be punished, if he had caused pecuniary loss to the Government resulting out of such misconduct or negligence during his service, including the service rendered on re-employment after retirement. The finding of the pecuniary loss is thus essential, if there is a charge to that effect, and which has been found established.

32. In the present case, we find that there is no allegation that any candidate, who was not eligible, was allowed to appear in the entrance examination and to be selected for training. In fact, there was no complaint against the examination which

could be relied upon by the enquiry officer to record the finding of grave misconduct. About 5,87,000 candidates had applied for B.T.C. Entrance Examination. Their forms were received and handed over to the computer firms for processing. The examination procedure did not provide, nor it was practically feasible to have entered and the applications in the registers of the Registrar, Departmental Examinations before sending them to the computer firms for processing and preparing a data base within such a short time. There were no complaint with regard to the data base prepared by the computer firms. Further there were no complaints with regard to the setting up or linkage of the question papers, or any mechanical figure in the scanning of the answer sheets. The entire allegations were based upon holding the examinations hurriedly and postponing the results in which result of 1, 11, 136 candidates was found to be erroneous. Further the finding that out of 21219 candidates with provisional admit cards only 760 had actually applied and 84 were selected, was not based upon any inspection of records which was shown to the petitioner. The enquiry officer did not mention in his letter that these records were actually available with him. We find substance in the contention of Shri Ashok Khare, learned counsel for petitioner, that since the enquiry officer did not have these records, he took the plea of their confidentiality. The vigilance department did not hand over these records to the enquiry officer, nor was it aware of any department proceedings pending against the petitioner and the Registrar of Departmental Examinations.

33. The State has not given any reason as to why the result of entrance test was cancelled. The State, however, has admitted that all the selected candidates were by that time, admitted to the District Institutes of Education and Training, and has successfully completed two years' training for which the State Government ultimately decided to declare the result on 29.3.2008 and modified the Government Order cancelling the results dated 20.10.2005.

34. The penalty of 10% deduction of pension with permanent effect, though not prescribed in the Rules of 1999, has an effect of pecuniary loss of a lasting effect. It can, thus be classified as a major penalty for which the entire procedure prescribed under Rule 7 of the U.P. Government Servants (Punishment and Appeal) Rules, 1999 had to be followed by the State Government. When the proof

of allegations of grave misconduct and financial loss to the Government have to be established before directing deduction from pension, the departmental enquiry has to be treated an enquiry for minor punishment. Rule-7 not only requires that the documents relied upon in the charge sheet should have been supplied to the delinquent officer, but also oral hearing in which the delinquent officer was required to be given opportunity of cross examination of the witnesses produced by the department and to lead evidence in defence after the department had proved the charges with the help of the evidence.

35. In the present case the enquiry officer did not fix any date after fixing the only date on which the petitioner was required to appear in his office to examine the records. There is nothing on record to show that any officer in the department had proved the documents or that any dates were fixed allowing the petitioner to cross examine such persons and to lead evidence in his defence. It is not denied that no date was fixed thereafter. The enquiry proceeded ex-parte against the petitioner, when he did not appear to examine the documents. The enquiry officer did not fix any date for evidence or for defence evidence.

36. The petitioner held the post of Director, State Institute of Education and Management and Training, Allahabad. He was also recommended on his exemplary services and was selected by the Search Committee to head the National Council of Teachers Education, which is the highest body of the education research, and training in the country. The petitioner served the entire term of his appointment as the Chairman of the National Council of Teachers Education, and retired from the post of Director, SIEMT, Allahabad on attaining the age of superannuation of 60 years on 31.10.2008.

37. On the aforesaid discussions, we are of the opinion that the charges framed against the petitioner were entirely vague. He was neither offered nor allowed inspection of the documents on the basis of which the charges were to be proved against him. The enquiry officer did not either get the documents proved by officer of the department nor fixed any date for allowing the petitioner to produce the evidence in his defence. The petitioner's reply to the enquiry officer was not considered before holding him guilty of grave misconduct and loss caused to the

State Government in the BTC Entrance Test-2001. The Government had cancelled the selections on 20.10.2005, but thereafter modified the order allowing all the candidates who were admitted to the District Institute of Education and Training with minimum 33% marks to be declared successful for appointment as Assistant Teachers in the Schools run by the Basic Education Board, U.P.

38. The writ petition is allowed. The impugned order dated 5.2.2010 passed by the State Government is set aside. The deductions, if any, made from the pension of the petitioner, shall be returned to him, expeditiously.

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