



2025:AHC:139198

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 19158 of 2024

Anand Swaroop Dohre

.....Petitioner(s)

Versus

State Of Up And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Archana Singh, Bramh Narayan Singh
Counsel for Respondent(s)	:	C.S.C.

Court No. - 4

HON'BLE AJIT KUMAR, J.

1. Heard Shri Bramh Narayan Singh, learned counsel appearing for petitioner and learned Standing Counsel representing State respondents.
2. By means of this petition filed under Article 226 of the Constitution petitioner has prayed for a writ of certiorari for quashing the order dated 22.04.2024 passed by the Finance Controller, U.P. Police Headquarter, Lucknow directing for withholding of the pension payment order/ gratuity payment order in contemplation of a permission to be granted by the Hon'ble Governor in exercise of power vested under Article 351-A of the Civil Service Regulations.
3. It is argued by learned counsel for petitioner that there is no such law which permits respondents to issue charge sheet to a retired employee without seeking permission from the Governor within the meaning of Article 351-A of the Civil Service Regulations, and hence, the charge-sheet itself is *null and void*. He submits that petitioner got superannuated on 30.01.2024 and charge-sheet came to be issued on 01.05.2024, which therefore, was *per se* bad as the government rules do not provide for

institution of any disciplinary enquiry against an employee who has attained the age of superannuation except with the prior approval of the Governor. It is, therefore, contended that in the event rules provides for prior approval, any order without seeking prior approval is liable to be held *null and void* for want of lawful authority.

4. Learned Standing Counsel who has obtained instructions in the matter has placed the same before the Court today, a copy of which is also supplied to the learned counsel for petitioner.

5. From the instructions that have been furnished to the Court, it clearly transpires that the petitioner was issued with the charge-sheet on 01.05.2024 levelling charges to set into motion the disciplinary proceedings taking recourse to the provisions as contained under Regulations 14 (1) of the U.P. Police Officer of Subordinate Rank (Punishment and Appeal) Rules, 1991 and I further notice that subsequently a letter is written on 22.04.2024 to the Assistant Police Commissioner, Commissionerate, Headquarter Agra for taking necessary steps to process the papers for permission under Article 351-A of the the Civil Service Regulations to withhold the gratuity and pension as per regulation 351-AA with 919-A of the Civil Service Regulations.

6. It is contended by learned Standing Counsel that on the date when petitioner attained the age of superannuation a preliminary fact finding enquiry was underway and hence in continuation thereof, a charge sheet has come to be issued and hence, the charge-sheet cannot be invalidated, inasmuch as, he submits, an inquiry officer also came to be appointed on 31.01.2024 the last day of the service of the petitioner.

7. Having heard learned counsel for the parties and having perused the records, the question that arises for consideration of the Court is as to

whether the post retirement dues of an employee serving under the government can be withheld without there being any permission to institute disciplinary proceedings under Article 351-A of the Civil Service Regulations and whether in contemplation of permission, gratuity and pension amounts can be withheld taking recourse to the provisions contained under Article 351-AA read-with 919 A of the Civil Service Regulations.

8. The impugned action is sought to be defended by the learned Standing Counsel on the ground that a preliminary fact finding enquiry was already pending against the petitioner on the date of his retirement hence, appointment of inquiry officer and issuance of charge sheet would be taken as sequel to the same and, therefore, in anticipation of permission under Article 351-A of the Civil Service Regulations, approval can be granted for withholding pension and gratuity and such exercise of power would be void within the meaning of Section 351-AA read with 919 AA of the Civil Service Regulations. Petitioner's ground for challenge is institution of any disciplinary proceeding can be only with the issuance of charge sheet and once the employee has attained the age of superannuation, no charge-sheet can be issued in anticipation of permission. It has been argued that the charge-sheet could have only been issued only after prior sanction was accorded.

9. In order to test the rival submissions to find answers to the questions framed above, I now proceed to examine the relevant provisions contained under the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991. The U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 exhaustively lays down not only the punishments that can be imposed but also the

procedure to be followed in the matter of disciplinary proceedings. Rule 2 of those rules clearly provide that these rule shall apply to all the police officers of subordinate ranks below the rank of Deputy Superintendent of Police, meaning thereby the rules are made applicable only to those who are in service and not those who have retired. Rule 3 provides for definition and rule 3(g) defines Police Officers as “Police Officers of the Subordinate Rank below the rank of Deputy Superintendent of Police”. Any prudent man would conclude that the police officer means a working officer and not a retired officer because a retired officer does not remain police officer for no more being member of police establishment. Rule 5 provides for procedure for award of punishment by holding an enquiry as per rule 14(1) against the police officer. Rule 6 provides for place of enquiry and rule 7 provides for power of punishment vested as against certain officers. Rule 13 provides officer who are not competent to conduct disciplinary proceedings while Rule 14 (1) lays down the procedure. Rule 14 (1) becomes relevant, hence, for the purposes of this case is being reproduced hereunder:

“ **14. Procedure for conducting departmental proceedings.** (1) Subject to the provisions contained in these Rules the departmental proceedings in the case referred to in sub-rule (1) of Rule 5 against the Police Officers may be conducted in accordance with the procedure laid down in Appendix I”.

10. Upon a plain reading aforesaid provisions, I do not find from any of the words and expression used therein which may entitled police to hold a preliminary fact finding enquiry as a part of disciplinary enquiry so as to justify an action based thereupon. It only refers to the regular enquiry to be held as per appendix-1 which is reproduced hereunder:

“PROCEDURE RELATING TO THE CONDUCT OF DEPARTMENTAL PROCEEDINGS
AGAINST POLICE OFFICER

[See Rule 14(1)]

Upon institution of a formal enquiry such Police Officer against whom the inquiry has been

instituted shall be informed in writing of the grounds on which was proposed to take action and shall be afforded an adequate opportunity of defending itself. The grounds on which it is proposed to take action shall be used in the form of a definite charge or charges as in Form 1 appended to these Rules which shall be communicated to the charge Police Officer and which shall be so clear and precise as to give sufficient indication to the charges Police Officer, of the facts and circumstances against him. He shall be required, within a reasonable time, to put in, a written statement of his defence and to state, whether he desires to be heard in person. If he so desires, or if the Inquiry officer so direct an oral enquiry shall be held in respect of such of the allegation as are not admitted. At that enquiry such oral evidence will be recorded as the Inquiry Officer considers necessary. The charge Police Officer shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called as he may wish:

Provided that the inquiry officer may for sufficient reasons to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the finding and the ground thereof. The inquiry officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Police Officer.”

11. Regular enquiry means enquiry after the issuance of charge sheet to the police officer. So the three elements become relevant (i) the police officer must be a serving officer. (ii) The officer to issue charge sheet must not be incompetent within the meaning of Rule 13 and (iii) The officer competent must be of a higher rank. Now coming to the appendix-1 of the Regulation, I find that the enquiry contemplated is a regular oral enquiry to be held like in any other department of a government establishment. A detailed procedure is laid down and that also does not refer to any preliminary fact finding enquiry. It is, therefore, clear that the preliminary fact finding enquiry is held by the department only in order to find a *prima facie* case to form a view that charges are made out and to substantiate and prove, then a regular domestic enquiry is liable to be held and also to find out whether the delinquent employee is guilty of alleged misconduct or misappropriation of public money as the case may be. Hence a preliminary fact finding enquiry is not part and parcel of any enquiry contemplated and prescribed for under the relevant Rules. Therefore, the argument advanced by learned Standing Counsel that

issuance of charge-sheet, may be after attaining the age of superannuation to an employee, would be valid and will not get invalidated for want of proper sanction, is a highly misplaced and deserves to be rejected. No such provision is there that may empower disciplinary authority to issue charge sheet to a retired employee on its own.

12. Now coming to the question whether even after retirement such charge-sheet could have been issued and post retirement dues could have been withheld in anticipation of approval of the Governor. In order to appreciate this I proceed to examine the relevant provisions contained under the Civil Service Regulation 351-A which is reproduced hereunder:

“**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 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 proceeding; 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, U.P. shall be consulted before final orders are passed.

[Provided further that of the order passed by the Governor relates to a cash dealt with under the Uttar Pradesh Disciplinary Proceedings, (Administrative Tribunal) Rules, 1947, it shall not be necessary to consult Public Service Commission].

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 and 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.

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. "

13. Upon a bare reading of the aforesaid regulation, it is clear that government reserves its right to withhold post retirement dues, etc permanently or for a time being or in part, either for an employee being found guilty of misconduct or for his conviction in the criminal case or for loss of public money. The proviso to the said rules becomes very relevant which provides for holding enquiry if not instituted either before retirement or after even during re-employment, if any, only with the prior sanction of the Governor. It therefore, becomes apparently clear that any initiation or institution of enquiry will be only with the prior sanction of the Governor.

14 It is a settled legal proposition that the enquiry only gets initiated with the issuance of the charge sheet and issuance of chage-sheet without the sanction of Governor becomes bad for being *de hors* the procedure prescribed. The authority which may be competent is not vested with any right to issue a charge sheet to a government servant or police officers who has already retired and is no more member of service without having prior sanction from the Governor or competent authority parallel to the Governor which the rules may permit or which the State may delegate upon a public sector authority or Corporation etc. Hence, on this analogy also as discussed above, the charge-sheet issued to the petitioner on 01.05.2024 was *void ab initio*.

15. Now the power that is vested under Regulations 351-AA and 919-A if

read together, respondent State Government is permitted to withhold pension and gratuity, provided of course, after the age of superannuation a departmental or judicial proceedings or any enquiry before the tribunal is pending. Articles 351-AA and 919-A of the Civil Service Regulations are reproduced hereunder:

“351-AA. 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 any enquiry by Administrative Tribunal is pending on the date of retirement or is to be instituted after retirement a provisional pension as provided in Article 919-A may be sanctioned”

“[919-A (1) In case referred to in Article 351-AA the Head of Department authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant or if he was under suspension on the date and retirement upto the date immediately preceding on the date on which he was placed under suspension.

(2) The provisional pension shall be authorised for the period commencing from the date of retirement upto and including the date on which after conclusion of departmental or judicial proceeding or the enquiry by the administrative Tribunal; as the case may be, final orders are passed by the competent authority.

(3) No death-cum-retirement gratuity shall be paid to the Government servant until the conclusion of the departmental proceedings or the enquiry by the Administrative Tribunal and issue of final orders thereon.

(4) Payment of provisional pension made under clause (1) above shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of the proceedings or enquiry referred to in clause (3) but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or withheld either permanently or for specified period.”

(emphasis added)

16. In view of the above, therefore, the respondents would have been justified in withholding pension and gratuity even after the issuance of the pension payment order and gratuity payment order provided there was a lawfully instituted enquiry pending against the petitioner. It is admitted to the respondents that there is no judicial proceedings or any proceedings by virtue of an order of administrative tribunal pending against the petitioner. It is only pursuant to an illegal charge sheet issued on 01.05.2024 that on 22.04.2024 the Assistant Accounts Officer of the Police Headquarter of the Department of Finance Controller came to pass

an order for withholding pension and gratuity which according to me, is absolutely illegal order in view of the findings arrived above that there was no prior sanction by the Governor to institute disciplinary proceedings against the petitioner which has resulted in holding charge-sheet to be null and void. The entire instructions is silent as to whether any letter has been written to the State Government seeking prior approval from the Governor.

17. In view of the above, the respondents are held to be unjustified in withholding pension and gratuity of the petitioner.

18. Thus this writ petition succeeds and is allowed. The order passed dated 22.04.2024 at the behest of Finance Controller U.P. Police Headquarter, Lucknow directing for withholding of pension and gratuity of the petitioner is hereby quashed.

19. Respondents are directed to immediately release the entire post retirement dues including gratuity without any deduction within a maximum period of six weeks from the production of certified copy of this order failing which they shall be liable to pay interest at the rate of 12% from the date of his retirement till the actual payment is made.

(Ajit Kumar,J.)

August 14, 2025

Nadeem