

THE HON'BLE SRI JUSTICE DILIP B.BHOSALE

AND

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT APPEAL No. 1376 of 2006

- **JUDGMENT:** (per the Hon'ble Sri Justice Dilip B.Bhosale)

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This writ appeal is directed against the order, dated 26.07.2006, whereby a writ petition filed by respondent No.1 has been disposed of observing that there is nothing to decide therein. In the writ petition, respondent No.1 had prayed for declaring the charge sheet, dated 17.08.1998, issued by appellant No.2, as illegal, arbitrary, unjust, void and violative of Article 21 of the Constitution of India, and consequently for quashing and setting aside the same.

The learned Judge while deciding the writ petition, did not examine the same in the light of relief/prayer made therein and disposed it of observing that unless there are specific Rules for continuance of the disciplinary proceedings after retirement of an employee, the enquiry initiated cannot be continued after his retirement.

Disciplinary proceedings against respondent No.1 was initiated by issuing charge sheet dated 17.08.1998 on the allegation that in the application form for employment in ECIL and in the attestation form, dated 29.09.1969, submitted by him at the time of joining falsely declared that he belongs to Scheduled Caste/Tribe (Valmiki) community and based on such declaration, he was appointed as Tradesman B Trainee in

1969. Subsequently, it was revealed that he neither belongs to Scheduled Caste nor Scheduled Tribe community and hence, he was charged for the misconduct in terms of Rule 5 (1) (i) and (iv) of the Conduct, Discipline and Appeal Rules effective from 01.04.1978 (for short 'the Rules'). On initiation of the enquiry, respondent No.1 filed the writ petition for the reliefs as stated above.

This Court *vide* order, dated 14.10.1999, admitted the writ petition and granted interim stay on WPMP No.26960 of 1999. In the meanwhile, on 30.06.2006, respondent No.1 retired from service and in view thereof, the learned Judge disposed of the writ petition observing thus:

"In the absence of any clause, this Court is of the view that the said disciplinary proceedings automatically get terminated by virtue of the petitioner attaining the age of superannuation. This view of mine is fortified by the judgment of the Apex Court in **BHAGIRATHI JENA v. BOARD OF DIRECTORS.O.S.F.C.[1]**, wherein the Apex Court has taken identical view. The relevant paragraph is as follows--

"In view of the absence of such provision in the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-95, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

Having regard to these circumstances, this Court sees nothing to decide in this writ petition. Accordingly, the writ petition is closed.”

After service of notice in the writ petition, the appellants filed WVMP No.1687 of 2000 on 10.07.2000 for vacating the interim order passed on 14.10.1999.

We have perused the order sheet of the writ petition. We did not find any order passed on WVMP No.1687 of 2000. It appears that on 23.04.2001, learned Single Judge had directed to place writ petition for final hearing on 10.09.2001. Since then, till the writ petition was disposed of by the impugned order, 26.07.2006, we did not find that the appellants made any efforts either for getting the interim order, dated 14.10.1999, vacated or for getting the writ petition itself disposed of finally. As a result thereof, respondent No.1 continued in service till his retirement on 30.06.2006.

In this backdrop, on last occasion, we had directed learned counsel appearing for the appellants to produce original records for our perusal, so as to find out whether there is any substance in the charge framed against respondent No.1 for allowing them to conduct disciplinary proceedings against him even after his retirement.

Learned counsel for the appellants despite our direction, has not produced original record before us. It is not in dispute that respondent No.1 all through out worked and except the charge as mentioned above, he never indulged in any misconduct nor was any proceedings initiated against him for any misconduct.

We would like to make reference to the Rules, in particular, Rule 34-A of the Rules, which, undoubtedly, empowers the disciplinary authority to continue the disciplinary proceedings even after retirement of an employee, if the same was initiated before his retirement in respect of a grave misconduct. We have also perused Rule 32 of the Rules and major penalties mentioned therein. The major penalties, which could be imposed if the charge of grave misconduct is proved, are as follows:

- i. Reduction to lower grade or post or to a lower stage in time scale;
- ii. Removal from service not amounting to a disqualification for future employment;
- iii. Dismissal.

Learned counsel appearing for respondent No.1, on the other hand, placed a copy of the Rules provided to respondent No.1 by the appellants and submitted that Rule 34-A was subsequently inserted in the Rules. In other words, he submitted that Rule 34-A did not exist in the Rules at the relevant time and therefore, it cannot be stated that there exists Rule allowing the disciplinary authority to continue with the disciplinary proceedings initiated before retirement. To this, learned counsel for the appellants could not and did not give any satisfactory reply. He could not place before us any material to show whether there was any amendment to the Rules after 1978 and/or whether Rule 34-A was in existence in the Rules at the relevant time i.e. when the disciplinary proceedings were initiated against respondent No.1 and when he retired from the service.

It is in this backdrop, we are of the opinion that no useful purpose will be served if the disciplinary proceedings are allowed to be continued and ends of justice would be met, if the writ appeal is dismissed keeping it open to the appellants to raise the contention based on Rule 34-A of the Rules in appropriate proceedings.

Writ appeal is accordingly dismissed. No order as to costs.

Consequently, miscellaneous petitions, if any, also stand disposed of.

DILIP

B.BHOSALE,J

A.RAMALINGESWARA

RAO,J

Dt:04.02.2015

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