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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 439/2017 & CM APPLs. 23017-18/2017**

NATIONAL SCHEDULED TRIBES FINANCE AND DEVELOPMENT CORPORATION Appellant

Through: Ms.Pinky Anand, ASG with Mr.Rakesh Sinha, Mr. Jeemon & Mr. K.S.Savdamini Sharma, Advocates.

versus

SS NAYAGAM Respondent

Through: Mr.Sahil Mallick with Mr.Bikram Singh, Advocates.

+ **LPA 444/2017 & CM APPL.23477/2017**

NATIONAL SCHEDULED CASTES FINANCE AND DEVELOPMENT CORPORATION Appellant

Through: Ms.Pinky Anand, ASG with Mr. Rakesh Sinha, Mr.Jeemon & Mr. K.S.Savdamini Sharma, Advocates.

versus

NAND KISHORE Respondent

Through: Mr.Sahil Mallick with Mr.Bikram Singh, Advocates.

+ **LPA 445/2017 & CM APPL. 23480/17**

NATIONAL SCHEDULED CASTES FINANCE AND DEVELOPMENT CORPORATION Appellant

Through: Ms.Pinky Anand, ASG with Mr. Rakesh Sinha, Mr. Jeemon & Mr. K.S.Savdamini Sharma, Advocates.

versus

DR S P RAM & ANR.

..... Respondents

Through: Mr.Saurabh Rastogi, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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26.11.2018

Dr. S. Muralidhar, J.:

1. The challenge in these appeals is to the common impugned order dated 27th March 2017 of the learned Single Judge disposing of the three writ petitions filed by the Respondents in these three appeals i.e. Dr. S. P. Ram (the Petitioner in WP (C) No.3053 of 2010), Mr.Nand Kishore (the Petitioner in WP (C) 13320 of 2009) and Mr. Nayagam (the Petitioner in WP (C) 1898 of 2010) with directions to the Appellant, National Scheduled Castes Finance Corporation (NSCFC) to issue fresh show cause notices ('SCNs') to the said persons on the question of penalty that was imposed upon them pursuant to a disciplinary enquiry held by the NSCFC.

2. The facts in brief are that between April, 1998 and July, 1999, the NSCFC invested Rs.15 crores in Punjab Wireless Systems Ltd. ('PWSL'). This was done pursuant to the decisions taken by the Investment Committee of NSCFC, which at the relevant time, comprised of Mr. P.T. Wangdi, the then Chairman and Managing Director ('CMD'), Dr. S.P. Ram, who was then the Executive Director, Mr. S.S. Nayagam, the then Deputy General Manager

(Finance). This Investment Committee functioned from 2nd April 1998 to 30th September 1999. Mr. Nand Kishore, who was then Manager (Finance) acted as a coordinator for the said Investment Committee. He submitted office notes for consideration by the Investment Committee.

3. According to NSCFC, the said investments were made in flagrant violations of the systems and procedures and with utter disregard to the financial position and repaying capacity of PWSL. As a result, the said sum of Rs.15 Crores, which belonged to NSCFC, was unable to be recovered by it.

4. NSCFC filed both criminal proceedings and a winding up petition against PWSL in an effort to recover the funds. Despite this, no money could be recovered from PWSL as its assets, as evaluated by the Official Liquidator ('OL'), were inadequate to settle its liabilities towards even its secured creditors.

5. Pursuant to the directions received from the Ministry of Social Justice and Empowerment (MSJE), a preliminary investigation was carried out and a fact-finding report was sent which revealed *prima facie* involvement of Mr. Wangdi and the three Respondents who formed part of the Investment Committee of NSCFC during the relevant period.

6. On 31st January, 2002, Mr. Wangdi retired from his services from his parent Department of the Central Government on attaining the age of superannuation. A letter dated 7th August, 2003 was sent by the Joint

Secretary and Central Vigilance Officer of the MSJE to NSCFC conveying the decision, in consultation with the Central Vigilance Commission ('CVC') to refer the matter to the Department of Personnel and Training (DoPT) for taking necessary action against Mr. Wangdi under the All India Services (Death-cum-Retirement Benefit) Rules, 1958.

7. By a separate letter dated 14th August 2003 MSJE intimated the advice of the CVC to initiate major penalty proceedings against the three Respondents herein. It must be noted that as far as the three Respondents are concerned, they were still in service at the relevant time. It was only much later that two of them superannuated - Dr.S.P.Ram on 31st July 2007 and Mr. Nayagam on 31st July 2009. As far as Mr. Nand Kihore is concerned, his date of superannuation was 31st January 2019.

8. While Dr.S.P.Ram and Mr.Nand Kishore were governed by the Rules of NSFC, Mr. Nayagam was an official of the National Schedule Tribes Finance Development Corporation ('NSTFDC') which had been set up as a separate Corporation having been bifurcated from NSCFC in 2001. However, he was also governed under similar conduct and disciplinary rules as that of NSCFC.

9. A joint inquiry was, therefore, proposed against the three Respondents and major penalty charge-sheets were issued to them on 28th October, 2003 with two specific articles of charge in relation to their conduct while being part of the Investment Committee in taking decisions which resulted in "reckless and unsound investments with the PWSL" as a result of which Rs.

15 crores of the surplus funds of NSCFC was lost.

10. The departmental proceedings commenced on 6th February 2004 and a full-fledged inquiry took place. The inquiry report found the three officers to be guilty of the charges. Meanwhile on 17th March 2004, a letter was sent by the MSJE to the Appellant Corporation intimating that a charge-sheet against Mr. Wangdi, the former CMD of the Appellant Corporation had been issued by the DoPT and that response from him was awaited.

11. After discussing the enquiry report in relation to the three Respondents, the Board of NSCFC decided to forward the case of Mr. Nayagam to the NSTFDC for further action. As far as Mr. Wangdi was concerned, the Union Public Service Commission ('UPSC') on going through the enquiry report in his case, concurred that the articles of charge against him stood established and that they constituted 'gross misconduct'. The UPSC then recommended that the ends of justice would be met in his case if the penalty of (i) withdrawing of the entire amount of pension of permanent basis and (ii) forfeiture of his entire gratuity imposed upon him. Ultimately, by an order dated 11th June 2007, the DoPT issued an order imposing on Mr. Wangdi the aforementioned penalties.

12. As far as the three Respondents herein are concerned, in their case the Competent Disciplinary Authority of both NSCFC as well as the NSTFDC decided to impose major penalty. In the case of Mr. Nayagam, an order was passed on 27th December 2005 dismissing him from service. In the case of Mr. Nand Kishore an order of dismissal from service was passed on 28th July

2006. In case of Dr.Ram, the order of removal from service was passed on 22nd June 2007. The Court is informed that on Mr. Nand Kishore filing a review petition, his penalty was also converted into one of removal of service.

13. What is significant is that in all three cases, the orders were passed while they were still in service whereas in Mr. Wangdi's case, that occasion did not arise for a simple fact that even before an enquiry against him could commence, he had already superannuated and the only possible punishment that could be inflicted on him was in relation to his pension and gratuity.

14. In the impugned order, the learned Single Judge has not interfered with the report of inquiry holding the Respondents guilty of the charges. The learned Single Judge has interfered only with regard to the penalty imposed on the Respondents. The learned Single Judge was persuaded by the argument of the Respondents, based on the decisions in *Man Singh v. State of Haryana 2008 (12) SCC 331* and *Rajender Yadav v. State 2013 (3) SCC 73* that when the delinquent officers are charged with the same acts of misconduct, there cannot be a differential treatment on the question of penalty. It is on this basis that the learned Single Judge proceeded to set aside the orders of removal from service imposed as penalty on the three Respondents and directed NSCFC/ NSCFTDC to issue fresh SCNs on that aspect to the Respondents; proceed to pass orders in accordance with law and impose "appropriate punishments" upon the Respondents "which would have parity to the extent possible with the punishment imposed on Mr Wangdi."

15. When these appeals were first listed for hearing in the Court on 5th July 2017 while directing notice to be issued, the operation of the impugned judgment was stayed.

16. This Court has heard the submissions of Ms. Pinky Anand, learned ASG and Mr. Rakesh Sinha, learned counsel appearing for NSCFC and Mr. Sahil Mallick, learned counsel appearing for the Respondents.

17. The learned Single Judge, in the considered view of this Court, overlooked the clear distinction that could be drawn in the case of Mr. Wangdi on the one hand and the three Respondents on the other. No doubt Mr. Wangdi was the CMD of NSCFC and was heading the Investment Committee at the relevant point in time. Therefore, the acts which were complained of viz., making the investment of Rs.15 crores of the funds of the NSCFC in PWSL “in flagrant violations of the systems and procedures and with utter disregard to the financial position and the repaying capacity of PWSL” would be equally attributable not only to Mr. Wangdi, but to the three Respondents as well. They all were part of the Investment Committee at the relevant point in time and on this there was no dispute.

18. The distinction was in the central fact that by the time the disciplinary proceedings were commenced, Mr. Wangdi had already superannuated. It will be recalled that he was an Officer of the Central Government who had come on deputation as CMD of the Appellant Corporation and, therefore, in order to proceed against him, prior sanction had to be obtained from the

Central Government. In other words, different rules had to be pursued. In fact, such sanction was so obtained and in his case, and the disciplinary proceedings ended with the UPSC examining his case and recommending the penalty of withholding of his entire amount of pension as well as gratuity. For a person who has already superannuated and who has been proceeded against with disciplinary proceedings after his superannuation, perhaps the maximum possible punishment in the said proceedings could be that of withholding the entire pension and gratuity. That is what happens when in fact an employee is dismissed from service that he gets no benefit of any retiral monetary compensation. In that sense, therefore, the Court is unable to perceive any grave distinction between the penalty imposed on Mr. Wangdi and that imposed on the Respondents.

19. In fact, as far as Respondents are concerned, there is a distinction between the punishments of dismissal from service and removal of service. In the case of Respondents, they would still be entitled to the retrial benefits that are permissible to the employees of NSCFC and of NSTFDC who are removed from service. The Court is informed that there is no scheme of pension payable to former employees of either NSCFC or NSTFDC.

20. The learned Single Judge, therefore, erred in drawing parity between the cases of the Respondents and of Mr. Wangdi. At the time the disciplinary proceedings commenced, the Respondents were still in service whereas Mr. Wangdi was not. The question of imposing a penalty of removal from service on Mr. Wangdi was not feasible and, therefore, no parallel could be drawn by the Respondents with his case. The gravity of the charges was

equally serious and all of them have rightly been found guilty of the relevant charges. The learned Single Judge rightly did not interfere with this part of the disciplinary proceedings. However, for the reasons discussed, interference with the penalty imposed on the Respondents was unwarranted. The penalty of removal from service was commensurate with the proven guilt for the charges for which the Respondents were proceeded against.

21. In that view of the matter, the impugned judgment of the learned Single Judge is hereby set aside. The appeals are allowed. There will be no order as to costs. The pending applications are also disposed of.

CM 23020/2017 (delay) in LPA 439/2017

22. For the reasons stated therein, the application is allowed and the delay of 13 days in filing the appeal is condoned.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 26, 2018

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