HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.36145 OF 2014

ORDER

This writ petition is filed seeking the following relief:

> "...to issue a writ, order or direction particularly one in the nature of Writ of Mandamus declaring the Impugned Proceedings in Rc.No.Admn/HRD-1/2014-15, dated 11.11.2014 and the action of the 1st respondent in not releasing the arrears of 8 months salary and retirement Benefits from the date of superannuation of the petitioner i.e., 30.11.2009 till date on the basis of the alleged un-communicated order of dismissal said to have been passed by the 2nd respondent on 29.4.2013 as totally illegal, without jurisdiction and violative of Articles 14, 21 and 300-A of Constitution of India and also in violation of principles of natural justice and consequently set aside the impugned dismissal order R.C.No.Admn/HRD-1/29413/2013-14, dt. 29.4.2013 passed by the 2nd respondent and direct the respondents to release and pay the retirement benefits i.e., Gratuity, Leave encashment along with 8 months salary arrears with interest @ 12% from the date of retirement i.e., 30.11.2009 till the date of payment and to pass such and further order or orders in the interest of justice."

Heard Sri S.Rahul Reddy, learned counsel appearing for the petitioner, and Sri C.Hari Preeth, learned Standing Counsel appearing for the respondents.

It is the case of the petitioner that he worked as Paid Secretary with the respondents and while working as such, he was placed under suspension *vide* proceedings dated 26.6.2009 on the ground that he committed certain irregularities in the financial transactions. During the suspension period, he retired from service on attaining the age of superannuation *vide* proceedings dated 30.11.2009.

Learned counsel appearing for the petitioner contended that without initiating disciplinary proceedings and without conducting any enquiry, the respondents have dismissed the petitioner *vide* order dated 29.4.2013 and pensionary benefits were not disbursed to him. It is prayed that appropriate orders be passed in the writ petition directing the respondents to pay the pensionary benefits to the petitioner including leave encashment, eight months salary, by setting aside the dismissal order dated 29.4.2013. It is further contended that the issue raised in this writ petition is squarely covered by the Division Bench judgment dated 26.09.2013 in W.A.No.1911 of 2005, whereunder the issue as to whether disciplinary proceedings can be continued even after retirement in the absence of any Rule or Regulation, was adjudicated. The operative portion of the judgment reads as under:

> "From a perusal of the aforesaid judgments, we find that there is no specific rule or Bye-Law which permits continuance of disciplinary proceedings initiated against a retired employee of the bank. In the absence of any specific provision, the appellant-bank could not have

> withheld the retiral benefits of the respondent/writ petitioner."

Learned counsel placed reliance on the judgment of the Apex Court in *Dev Prakash Tewari vs. Uttar Pradesh Co-operative Institutional Service Board, Lucknow and others*[1] wherein it was observed as under:

> "An occasion came before this Court to consider the continuance of disciplinary inquiry in similar circumstance in Bhagirathi Jena case and it was laid down as follows:
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> Learned Senior Counsel for the respondents also relied upon clause (3)(c) of Regulation 44 of the Orissa State Financial Corporation Staff Regulations, 1975. It reads thus:
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> 44.(3)(c) When the employee who has been dismissed, removed or suspended is reinstated, the Board shall consider and make a specific order:
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> (i) Regarding the pay and allowances to be paid to the employee for the period of his absence from duty, and
>
> (ii)Whether or not the said period shall be treated as a period on duty.'
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> 6.It will be noticed from the abovesaid Regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of the departmental enquiry after superannuation.

[1] (2014) 7 SCC 260

In view of the absence of such a 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 30-06-1995, 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 an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

7.In a subsequent decision of this Court in U.P. Coop.Federation case on facts, the disciplinary proceeding against employee was quashed by the High Court since no opportunity of hearing was given to him in the inquriy and the management in its appeal before this Court sought for grant of liberty to hold a fresh inquiry and this Court held that charges leveled against the employee were not minor in nature, and therefore, it would not be proper to foreclose the right of the employer to hold a fresh inquiry only on the ground that the employee has since retired form the service and accordingly granted the liberty sought for by the management. While dealing with the above case, the earlier decision in Bhagirathi Jena case was not brought to the notice of this Court and no contention was raised pertaining to the

> provisions under which the disciplinary proceeding was initiated and as such no ratio came to be laid down. In our view the said decision cannot help the respondents herein.
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> The question has also been raised in the appeal with regard to arrears of salary and allowances payable to the appellant during the period of his dismissal and upto the date of reinstatement. Inasmuch as the inquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him.
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> The appeals are, therefore, allowed and the judgment and order of the High Court are set aside and the respondents are directed to pay arrears of salary and allowances payable to the appellant and also to pay him his all the retiral benefits in accordance with the Rules and Regulations as if there had been no disciplinary proceeding or order passed therein. No costs."

Learned Standing Counsel appearing for the respondents contended that surcharge proceedings were initiated against the petitioner and in the surcharge proceedings, the petitioner has admitted his guilt of misappropriating the funds and in view of the same, the respondents have dismissed the petitioner from service by order dated 29.4.2013. There are no merits in the writ petition and the same is liable to be dismissed.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered view that the petitioner has retired from service on 30.11.2009

and there is no provision in the service regulations of the respondents to initiate and continue the disciplinary proceedings even after retirement. The respondents have passed the impugned dismissal order dated 29.4.2013 without conducting any enquiry and without giving any opportunity of hearing to the petitioner. Therefore, the impugned dismissal order is liable to be set aside.

Accordingly, the Writ Petition is allowed and the dismissal order dated 29.4.2013 is set aside. The respondents are directed to settle the pensionary benefits of the petitioner including leave encashment, and salary for the period which he has worked. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Date: 15.11.2019
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HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD