

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

**The Hon'ble Justice Subrata Talukdar
and**

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 5 of 2021

With

I.A. No. CAN 1 of 2021

**Shyamal Sundar Kundu @ Shyamal Kundu
Vs.**

The State of West Bengal & Ors.

For the Appellant : Mr. Asit Kumar Chakraborty,
Mr. Sunanda Mohan Ghosh,
..... Advocates

For the State-Respondents : Mr. Srijan Nayak,
Ms. Rituparna Moitra,
.....Advocates

For the State-Respondents : Mr. Milan Bhattacharyya,
Ms. Sulagna Bhattacharyya.

.....Advocates for the
Respondent No. 5 & 6

Heard on : 10.03.2021

Judgment on : 17.06.2021

Hiranmay Bhattacharyya, J.:-

The writ petitioner has preferred the instant appeal challenging the order dated December 24, 2020 passed by a learned Single Judge in WPA 10484 of 2020.

The appellant herein was appointed as a driver of the Midnapore Co-operative Milk Producer's Union Limited (for short "the Co-operative Society"). While the appellant was discharging his duties as a driver, two written complaints were made by the employees of the co-operative society before the police alleging misappropriation of money from their provident fund account by the appellant herein. On the basis of the said written complaints, the Investigating Officers submitted charge sheets. The Chief Judicial Magistrate after taking cognizance transferred the case to the concerned Judicial Magistrates. A GR Case No. 871 of 2005 was registered for offences under Section 467/468/471/420 of the Indian Penal Code arising out of Kotawali PS Case No.131 of 2005 on the basis of one of such complaint. On the basis of the other complaint, GR Case No. 1193 of 2005 was registered for offences under Sections 420/467/468/471/34 of the Indian Penal Code.

The appellant was placed under suspension and the co-operative society issued the memorandum of charge sheet on December 16, 2008. In the memorandum of charge sheet it was alleged that the appellant herein withdrew substantial amounts from the provident fund accounts of several employees of the society by making false applications, by forging the signature of applicants, by obtaining the cheques by misrepresentation, by encashing the cheques by false impersonation and false representation which constitutes misconduct on the part of the appellant herein. The appellant duly replied to the charge sheet.

In the meantime, the appellant attained the age of superannuation and retired from service on superannuation on January 31, 2009.

The trial of the criminal cases were concluded after the appellant retired from service. The concerned Judicial Magistrates held that the appellant was not guilty of the offence and acquitted the appellant. Appellant communicated the order passed by the criminal court to the respondent society and requested them to release his retiral benefits but the respondent society did not pay his retiral benefits. Since the respondent society did not release the retiral benefits, the writ petitioner filed the instant writ petition praying for a mandamus directing the respondent authorities to release the retiral benefits in his favour.

The appellant claims to have received an order dated December 17, 2020 wherefrom he came to know that an enquiry officer has been appointed to conduct the disciplinary enquiry afresh with reference to the charges already framed against him.

By the order impugned, the Hon'ble Single Judge directed the respondent society to complete the enquiry within a period of three months from the date of communication of the order and further directed the appellant to participate in the enquiry without seeking any unnecessary adjournment.

Since a fresh point emerged as to the applicability of the West Bengal Services Death Cum Retirement Benefit Rules, 1971 (for

short the “DCRB Rules, 1971)) and particularly Rule 10 thereof, to a co-operative society this Court permitted the parties to exchange affidavits on such limited issue and the respondent nos. 5 and 6 filed an affidavit-in-opposition and the appellant also filed an affidavit-in-reply to such affidavit-in-opposition.

Mr. Chakraborty, the learned advocate for the appellant contended that once the writ petitioner/ appellant herein has been acquitted in the criminal cases, the departmental proceedings cannot continue any further. He contended that in the meantime the appellant herein retired from his service on superannuation resulting in cessation of the employer-employee relationship and the departmental enquiry cannot continue any further as no punishment can be imposed upon a retired employee. He also contended that there is no provision either in the West Bengal Co-operative Societies Act 2006 or the rules framed thereunder for continuation of disciplinary proceedings after an employee of the society retires on superannuation. He further contended that more than 12 years have passed since the issuance of the charge sheet and as such the departmental enquiry is liable to be quashed by this Court on the ground of delay.

Mr. Bhattacharyya, the learned senior advocate for the co-operative society seriously disputed the contentions raised by Mr. Chakraborty. Mr. Bhattacharyya drew the attention of this Court to the judgments of the criminal court and submitted that the acquittal of the appellant herein in the criminal cases cannot be

said to be an honourable acquittal and as such there is no fetter on the part of the Co-operative Society to continue with the departmental enquiry even though the charges relating to the criminal cases and the departmental proceeding arises out of the same offence. Mr. Bhattacharyya placed reliance on the following judgments of the Hon'ble Supreme Court of India in support of his contention that a departmental proceeding can be initiated or continued against a person acquitted in a criminal case which is not an honourable one:

- (1) *General Manager (Operations) State Bank of India and Another vs. R. Periyasamy* reported at (2015) 3 SCC 101.
- (2) *Commissioner of Police, New Delhi and Anr. vs. Mehar Singh* reported at (2013) 7 SCC 685.
- (3) *Shashi Bhushan Prasad vs. Inspector General, Central Industrial Security Force and Ors.* reported at (2019) 7 SCC 797.

Mr. Bhattacharyya further contended that the co-operative society in its 205th Board Meeting held on November 24, 2020 unanimously resolved to adopt Rule 10 of the DCRB Rules, 1971. He contended that Rule 10 of the DCRB Rules, 1971 provides that a departmental proceeding, if instituted while the officer was in service, can be continued and concluded by the authority even after the retirement of such officer. He contended that since the departmental proceeding was initiated prior to the retirement of the appellant herein on superannuation, such departmental proceeding

can be continued and concluded in spite of the fact that the appellant herein has since retired. In support of such contention, Mr. Bhattacharyya placed reliance on the following judgments of the Hon'ble Supreme Court of India:-

- (1) *Secretary, Forest Department and Ors. vs. Abdur Rasul Chowdhury* reported at (2009) 7 SCC 305.
- (2) *State of West Bengal and Ors. vs. Pronab Chakraborty* reported at (2015) 2 SCC 496.
- (3) *Brajendra Singh Yambem vs. Union of India and Anr.* reported at (2016)9 SCC 20.

Mr. Bhattacharyya, next contended that the instant writ petition is liable to be dismissed on the ground of delay and laches alone as the writ petitioner approached the Writ Court only in December, 2020 for release of his retiral benefits when he retired from his service on superannuation with effect from January 31, 2009. In support of such contention, Mr. Bhattacharyya placed reliance upon a judgment of the Hon'ble Supreme Court in the case of *Shiv Dass vs. Union of India and Ors.* reported at (2007)9 SCC 274.

Mr. Bhattacharyya further contended that when the charges are of a grave nature, as would appear from the Memorandum of Charges, mere delay in conclusion of such departmental enquiry is not fatal. In support of such contention he placed reliance upon a judgment of the Hon'ble Supreme Court of India in the case of

Deputy Registrar, Cooperative Societies, Faizabad vs. Sachindra Nath Pandey and Ors. reported at (1995) 3 SCC 134.

By referring to paragraph 21 of the Appendix 2 Chapter V Mr. Bhattacharyya contended that the Board has the power to formulate other conditions of service as may be required from time to time in addition to the conditions of service specifically mentioned in the said Appendix. He further contended that the rule making power is not a limited power and it merely fills up the details. In support of such contention he relied upon a judgment of the Division Bench of this Court in the case of *Rama Mimani and Ors. vs. Canara Bank and Ors.* reported at (2004)2 CHN 287.

Mr. Bhattacharyya also contended that for the purpose of exigencies of administration the concerned authorities under the general power of administration vested in them can formulate other conditions of service even by issuing an executive order. He, thus, contended that the Board was, thus, justified in adopting Rule 10 of the DCRB Rules in its Board meeting. He, further, contended that it is immaterial under what agenda discussions pertaining to such adoption was held and what is of relevance is the decision taken on such issue. In support of his contention that the Board has the power to formulate the condition of service, Mr. Bhattacharyya relied upon a judgment of the Hon'ble Supreme Court of India in the case of *Ramesh Prasad Singh vs. State of Bihar and Ors.* reported at AIR 1978 (SC) 327.

Mr. Bhattacharyya, challenged the maintainability of the instant writ petition as the same was filed against a co-operative society. In support of such contention he relied upon a judgment of the Hon'ble Supreme Court of India in the case of *Supriyo Basu and Ors. vs. W.B. Housing Board and Ors.* reported at (2005)6 SCC 289.

Mr. Bhattacharyya contended that a person must come with clean hands in order to obtain an equitable relief and since the appellant herein has committed offences of grave nature he is not entitled to any relief from the Writ Court.

Mr. Nayak, the learned advocate for the State, however, disputed the applicability of Rule 10 of the DCRB Rules 1971 in case of an employee of the Co-operative Society.

In reply, Mr. Chakraborty, the learned advocate for the appellant contended that the enquiry proceeding against the appellant herein started on March 16, 2009 and the resolution for adoption of Rule 10 of the DCRB Rules, 1971 was taken only on November 24, 2020 i.e. long after the retirement of the appellant from service on superannuation. He, thus, contended that the said resolution dated November 24, 2020 cannot have any retrospective effect. He further contended that the said resolution was adopted only for the purpose of victimizing the appellant herein as the adoption of such rules was made to apply the same only to the case of the appellant herein. He also disputed the applicability of the DCRB Rules, 1971 and particular Rule 10 thereof in the instant case.

We have heard the learned advocates for the parties and have perused the materials on record.

On the basis of the submissions of the respective parties the following questions have cropped up in the instant appeal-

- 1) Whether the acquittal of the appellant can be said to be an honourable acquittal?
- 2) Whether a departmental enquiry initiated while the writ petitioner/ appellant was in service can be continued and completed after he retired from service on superannuation or a fresh disciplinary enquiry can be started after his retirement?

Let us deal with the question no. 1 first.

It is not in dispute that the appellant was arrested in connection with criminal case and was enlarged on bail. It is also not in dispute that the appellant was placed under suspension and a departmental proceeding was initiated by issuance of a charge sheet while he was in service. The appellant retired from service on superannuation on January 31, 2009. Subsequently, the appellant was acquitted by the competent Judicial Magistrates.

After going through the judgment dated 12.06.2014 passed by the Learned Judicial Magistrate in one of the criminal case being GR Case No. 1193/2005 it appears that the Investigating Officer of the case as well as the R.O. were not examined. The formal FIR was also not exhibited. More or less all the witnesses of the prosecution

were declared hostile. In view thereof it was held that the prosecution had badly failed to prove the case against the appellant herein.

From the judgment dated October 27, 2017 passed in the other criminal case being GR Case No. 871 of 2005 it appears that the prosecution did not examine a single witness to prove its case. Although, summons were repeatedly served upon the charge sheet listed witness yet they did not turn up before the Court. Thus, it was a case of no evidence as observed by the learned magistrate and the appellant was accordingly acquitted.

Now this Court is to consider whether the acquittal of the appellant can be said to be an honourable one.

The Hon'ble Supreme Court of India in the case of *Mehar Singh (supra)* explained the meaning of the expression "honourable acquittal". It was held therein that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges leveled against the accused it can possibly be said that the accused was honorably acquitted. The Hon'ble Supreme Court in the said reports held thus-

"25. The expression "honourable acquittal" was considered by this Court in S. Samuthiram. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case.

Two material witnesses turned hostile. Referring to the judgment of this Court in RBI v. Bhopal Singh Panchal, where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions "honourable acquittal", "acquitted of blame" and "fully exonerated" are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression "honourably acquitted". This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

After going through the judgments of the Criminal Court and applying the law laid down in *Meher Singh* (supra), this Court is of the considered view that the acquittal of the appellant by the Criminal Court cannot be said to be a clean acquittal on merit after a full-fledged trial. Thus, the acquittal of the appellant cannot be said to be an honourable one.

Now after answering the first question in favour of the respondent, let us deal with the question no. 2 which runs thus-

Whether a departmental enquiry initiated while the appellant was in service can be continued and completed after he retired from service on superannuation or a fresh disciplinary enquiry be started after his retirement?

The Hon'ble Supreme Court of India in the case of *Periyasamy (supra)* held that a departmental proceeding can proceed even though a person is acquitted when the acquittal is other than honourable. The Supreme Court has held thus-

“13. While dealing with the question as to whether a person with doubtful integrity ought to be allowed to work in a government department, this Court in Commr. of Police v. Mehar Singh, held that while the standard of proof in a criminal case is proof beyond all reasonable doubt, the proof in a departmental proceeding is merely the preponderance of probabilities. The Court observed that quite often the criminal cases end in acquittal because witnesses turn hostile and therefore, such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. The long-standing view on this subject was settled by this Court in R.P. Kapur v. Union of India, whereby it was held that a departmental proceeding can proceed even though a person is acquitted when the acquittal is other than honourable. We are in agreement with this view.”

The Hon'ble Supreme Court in *Shashi Bhushan (supra)* while dealing with the scope of departmental enquiry and judicial proceedings and the effect of acquittal by a Criminal Court held that acquittal by a Judicial Magistrate does not *ipso facto* absolve him from the liability under the disciplinary jurisdiction of the employer.

“ 18. The exposition has been further affirmed by a three-Judge Bench of this Court in Ajit Kumar Nag v. Indian Oil Corpn. Ltd. This Court held as under: (SCC p. 776, para 11)

“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise

permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

Thus, in view of the law laid down by the Hon'ble Supreme Court of India in *Periyasami* (supra) and *Shashi Bhushan* (supra), this Court holds that mere acquittal of the person from a criminal case do not operate as a bar in conducting disciplinary enquiry against him. However, this Court is to consider now as to whether

disciplinary enquiry can proceed against the appellant herein after his superannuation.

Section 157 of the West Bengal Co-operative Societies Act, 2006 (for short, the “2006 Act”) provides that the State Government may after previous publication in the Official Gazette, make rules for carrying out the purpose of the 2006 Act for the whole or any part of West Bengal or for any co-operative society or class of co-operative societies. In terms of the power conferred by Section 157 of the 2006 Act, the State Government framed the West Bengal Co-operative Societies Rules, 2011 (for short, “2011 Rules”) for carrying out the purpose of the 2006 Act.

Rule 106 of the 2011 Rules provides that the method of recruitment and conditions of service of the officers and employees of co-operative societies other than co-operative credit structure entities shall, subject to the terms of specific contract enforceable by law and the provisions of any law for the time being in force, be as enunciated in the Appendix-2, Chapter V.

The proviso to the said Rule states that if any particular matter is not covered in the specific contract, the matter shall be guided by the method of recruitment and conditions of service as indicated in the Appendix-2, Chapter V.

Paragraph 14(a) of the Appendix-2, Chapter V provides that the act of theft, fraud, misappropriation or dishonesty in connection with employer’s business or property or otherwise constitute

misconduct of an employee of a co-operative society. Paragraph 14(b) of the said Appendix provides the nature of the penalties which may be imposed on an employee for the misconduct mentioned in paragraph 14(a) by the disciplinary authority. The nature of penalties mentioned therein indicates that the same can be imposed only upon an employee while he is in service.

Paragraph 19 of the said Appendix provides that the employees of a co-operative society shall be eligible to payment of gratuity as per the provisions of the Payment of Gratuity Act. It, further, provides that an employee of a co-operative society who retires on superannuation or otherwise shall be eligible to receive cash equivalent of pay in respect of earned leave standing to his credit provided that the quantum of leave encashable shall not exceed three hundred days.

Paragraph 21 of the said Appendix provides that besides the conditions of service as mentioned under 2011 Rules the Board may formulate other conditions of service as may be required from time to time.

The society in its affidavit-in-opposition have admitted that it has not framed any independent service rules. The society claims to be governed by Appendix-2 Chapter V and contends that the Board has the power to formulate other conditions of service as required from time to time in view of paragraph 21 of the Appendix-2 Chapter V. Thus, it has been argued by Mr. Bhattacharyya, that the gap in the service conditions has been filled up by the Board vide

resolution dated November 24, 2020 by way of adoption of Rule 10 of the DCRB Rules, 1971 for applying the same to the appellant. In other words, according to Mr. Bhattacharyya, the departmental enquiry against the appellant herein can be proceeded with even after the retirement of the appellant from service on superannuation by taking aid of Rule 10 of DCRB Rules 1971.

Rule 10(1) of the DCRB Rules, 1971 empowers the disciplinary authority to continue with the disciplinary proceeding even after the retirement of such employee only if such disciplinary proceeding was initiated during the service tenure of such employee. Thus, the said provision prevents such proceeding to lapse upon retirement of the employee.

The terms and conditions of service of the appellant was governed by the 2006 Act and the 2011 Rules. There is nothing on record to indicate that Rule 10 of the DCRB Rules, 1971 was applicable to the employees of the respondent society as on the date of superannuation of the appellant. The employer-employee relationship between the co-operative society and the appellant ceased to exist upon the superannuation of the appellant. The statutory provisions governing the service conditions of the appellant, which were in force as on the date of his superannuation, did not empower the society to continue with the disciplinary enquiry after his superannuation even for the purpose of imposing any reduction in the retiral benefits payable to the appellant herein. Accordingly, the disciplinary proceeding which was initiated against

the appellant herein stood automatically lapsed upon the superannuation of the appellant. Furthermore, the terms and conditions of the service of an employee cannot be altered and/or varied and/or modified by way of amendment of the service rules governing such employee after his retirement.

The Co-operative Society in its meeting held on November 24, 2020 under Agenda no. 10 took a decision to adopt Rule 10 of the DCRB Rules, 1971. The purpose behind adoption of such Rules was to revive a departmental enquiry which stood automatically lapsed upon superannuation of the appellant herein. Though, by taking aid of Rule 10 of the DCRB Rules, 1971 a disciplinary proceeding initiated while an employee was in service can be continued even after his retirement on superannuation but the said provision do not in any way allow revival of a lapsed disciplinary proceeding or starting a disciplinary enquiry *de novo* after superannuation of such employee.

Thus, for the reasons as aforesaid this Court is of the considered view that the said decision taken in the Board meeting held on November 24, 2020 cannot in any manner come to the aid of the co-operative society to conduct the disciplinary enquiry *de novo* after the superannuation of the appellant herein.

This aspect of the matter can also be looked into from a different angle.

The decision with regard to adoption of Rule 10 of the DCRB Rules 1971 was taken in the Board meeting held on November 24, 2020 under Agenda no. 10 which relates to miscellaneous items. In the words of *Shackleton on the Law and Practice of Meetings*, items of special importance should be set out prominently, and should preferably be accompanied by a note of explanation. It is usual that only matters of an informal or unimportant nature could be transacted under the agenda "Any other business".

The issue relating to adoption of Rule 10 of DCRB Rules 1971 for employees of the co-operative society cannot by any stretch of imagination fall under matters of an informal or unimportant nature. Such matter is of special importance and the same ought to have been set out prominently under specific agenda.

It is evident from the minutes of the said meeting that there was no regular agenda for the purpose of taking a decision as to the adoption of DCRB Rules, 1971 or Rule 10 thereof for the employees of the Co-operative Society as a whole but while holding discussion on the issue of departmental enquiry relating to the appellant herein under Agenda No. 10, a decision regarding adoption of Rule 10 of DCRB Rules, 1971 was taken. Thus, it is evident that the said adoption was made with an oblique motive of revival of the departmental enquiry which stood automatically lapsed upon retirement of the appellant herein on superannuation.

The Co-operative Society has the authority to adopt a particular Rule applicable for the State Government employees to

apply the same for the employees of such society. But adoption of such rule only for the purpose of applying the same to a particular retired employee exhibits an arbitrary exercise of power by the said society.

Admittedly, the disciplinary proceedings against the appellant herein was initiated on the basis of the Model Service Rules as indicated in the Appendix-2 Chapter V. There is no specific provision in the said Appendix for deducting any amount from the retiral benefits of an employee of co-operative society consequent to any misconduct determined in the departmental enquiry nor there is any provision made in the said Appendix for continuance of the departmental enquiry or starting a disciplinary enquiry *de novo* after superannuation.

The right to get retiral benefits vested upon the appellant herein upon his retirement from service on superannuation as per the 2006 Act and the rules framed thereunder. Such vested right cannot also be taken away by passing a resolution long after the date of superannuation of the appellant.

For the reasons as stated hereinbefore, this Court is of the considered view that adoption of Rule 10 of DCRB Rules, 1971 is not valid in the eye of law. This Court therefore, holds that the DCRB Rules, 1971 and more particularly Rule 10 has no manner of application to the facts of the instant case.

This Court accordingly holds that neither the disciplinary proceeding initiated against the appellant herein can be continued and completed after his retirement nor a *de novo* disciplinary enquiry be started after his retirement. Thus, the question no. 2 is answered in favour of the appellant herein.

In *Supriyo Basu* (supra) the Hon'ble Supreme Court of India held that the society is undisputedly not a department of the State and is also not a creature of a statute but merely governed by a statute. It was, further, held therein that only if it is established that a mandatory provision of a statute has been violated by a co-operative society a writ petition would be maintainable.

Paragraph 19 of Appendix 2 Chapter V specifically provides for payment of retirement benefits to an employee of a co-operative society upon his retirement on superannuation. Admittedly, the society has not released the retirement benefits in favour of the writ petitioner/appellant herein after he retired from service on superannuation. After the appellant was acquitted by the Criminal Court, he prayed for release of his retiral benefits. It appears from the record that the society by a letter dated June 5, 2018 directed the appellant herein to submit the original certified copies of the judgment of the Criminal Court which was duly complied with by the appellant herein. The appellant through his learned advocate demanded justice from the Assistant Registrar of Co-operative Societies and requested him to direct the society to pay the arrear salary, as well as retiral benefits to the appellant. The co-operative

society instead of releasing the retiral benefits sought to reopen the disciplinary enquiry by passing an order dated December 17, 2020 appointing an enquiry officer to hold the disciplinary enquiry against the appellant herein. Feeling aggrieved, the appellant herein thereafter filed the writ petition in the month of December 2020.

Thus, this Court cannot agree with the contention of Mr. Bhattacharyya that the appellant is guilty of delay and laches. This Court is of the considered view that the Co-operative Society failed and neglected to perform the duties cast upon it by the statute and the instant writ petition filed for enforcement of such statutory public duty is maintainable as held by the Hon'ble Supreme Court of India in *Supriyo Basu* (supra).

The Society issued the memorandum of charges alleging misconduct on the part of the appellant herein. The disciplinary proceeding though initiated while the appellant was in service, stood lapsed upon his retirement from service on superannuation. The charges leveled against the appellant herein are yet to be proved. The appellant approached the Writ Court for release of his retiral benefits as he has already retired from service on superannuation. It does not appear to this Court that the appellant approached the Writ Court with a pair of dirty hands as argued by Mr. Bhattacharyya.

In the instant case the claim of the petitioner is for release of the retiral benefits. The cause of action for retiral benefits is a continuous one as held by the Hon'ble Supreme Court of India in

Shiv Dass (supra). The Society failed to perform its statutory duty by not releasing the retiral benefits to the appellant herein immediately after the same became due and payable. The Society cannot take advantage of its own wrong and contend that the appellant approached the Court belatedly. As such the appellant herein is entitled to get his retiral benefits released.

Now, let us deal with the other judgments relied upon by Mr. Bhattacharyya.

In *Abdur Rasul* (supra) the respondent was in government service under the State of West Bengal. The departmental proceeding was initiated while the petitioner was in service and during the pendency of such proceeding the respondent retired from service. The DCRB Rules, 1971 was applicable to such employee. On such facts the Hon'ble Supreme Court held that in view of Rule 10(1) of 1971 Rules, the employer can proceed with the departmental enquiry proceedings though the government servant has retired from the service for imposing punishment only as contemplated under the rules.

In *Pranab Chakraborty* (supra) respondent was in employment of the police department of the State of West Bengal. Soon after the issuance of the charge sheet, the respondent retired from service attaining the age of superannuation. On such facts the Hon'ble Supreme Court held that the departmental proceedings can be continued even after his retirement on attaining the age of superannuation in view of Rule 10(1) of the DCRB Rules, 1971.

In the instant case this Court has already held that DCRB Rules 1971 has no manner of application. As such the judgments of the Hon'ble Supreme Court of India in the case of *Abdur Rasul* (supra) and *Pranab Chakraborty* (supra) do not have any manner of application to the facts of the instant case.

In *Brajendra Singh* (supra) the memorandum of charges were issued after the appellant retired from service in respect of offences which took place more than four years before institution of disciplinary proceedings. The facts of the said case is completely different from the facts of the instant case and as such the judgment of the Hon'ble Supreme Court in *Brajendra Singh* (supra) is not applicable to the facts of the instant case.

In *Ramesh Prasad Singh* (supra) the Hon'ble Supreme Court of India held that in the absence of rules, qualifications for a post can validly be laid down in the self same executive order creating the service or post and filling it up according to those qualifications. It was, further, held therein that any situations where exigencies of administration required immediate creation of service or posts and any procrastination in that behalf can prove detrimental to the proper and efficient functioning of public departments, the authorities concerned would have the power to appoint or terminate administrative personnel under the general power of administration vested in them. The facts of the said reported case do not have any manner of application to the instant case as no case of administrative exigencies have been made out by the society and

also that the issue involved herein is whether the terms and conditions of service of an employee can be altered after his superannuation.

In *Rama Mimani* (supra) the question which fell for consideration before the Division Bench of this Court was whether the transfer of a flat was in accordance with the West Bengal Co-operative Societies Act and the Rules framed therein. The Hon'ble Division Bench held that the property of a member of a co-operative society can be transferred only upon obtaining the prior permission of the Registrar as prescribed under the rules in addition to a written consent of the society which is a requirement under the said act. It was, further, held herein that the said rules only filled up the details of the terms and conditions of transfer.

Though the Board has the power to formulate the other conditions of service besides the conditions of service mentioned in the 2011 Rules, but the manner of formulation of such conditions is to be taken into consideration prior to arriving at a finding as to the applicability of such service conditions in case of the appellant herein.

For the reasons as stated herein before this Court holds that the appellant is entitled to full retiral benefits on superannuation.

The Hon'ble Single Judge without returning any finding as to the applicability of Rule 10 of the DCRB Rules, 1971 to the Co-operative Society directed the writ petitioner/ appellant herein to

participate in the enquiry which shall have to be completed within a specified time frame. The impugned order thus, suffers from infirmity for the reasons as stated hereinbefore and the same is accordingly set aside and quashed.

MAT no. 5 of 2021 thus, stands **allowed**. The respondent nos. 5 and 6 are directed to release all the retiral dues including arrear salary, if any, provident fund amount, gratuity amount and leave encashment amount to the appellant forthwith and positively within a period of four weeks from the date of this Order.

CAN 1 of 2021 is accordingly **disposed of**.

There shall be, however, no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Subrata Talukdar, J.)

(Hiranmay Bhattacharyya, J.)