

19.05.2021
Item No. 03
Ct. No. 04
PG

W.P.A. 2086 of 2020
With
I.A. no. C.A.N. 1 of 2020
(Via Video Conference)

Manash Kumar Choudhury
Vs.
University of Burdwan & Ors.

Mr. Debabrata Saha Roy
Mr. Neil Basufor petitioner

Mr. N.C. Bihani.....for Burdwan University

Mr. Saha Roy, learned advocate appearing for petitioner refers to impugned letter dated 20th January, 2020 and submits, his client's retiral benefits, keeping apart the sum as security, should be directed to be paid to him since no disciplinary proceeding was initiated against him. The show cause notice was issued by a person much below rank of his client's disciplinary authority. He relies on judgment of a division Bench of this Court reported in **2007 (2) CLJ (Cal.) 156 (Union of India vs. Shri Saied Meera)** paragraph 21.

Mr. Bihani, learned advocate appears on behalf of the University and submits, University Grants Commission (UGC) had by correspondence, required holding back of entire retiral benefits as step

taken by the University pursuant to petitioner causing over payment to the contractor. Mr. Saha Roy submits, UGC is not a party and cannot have any role to play because his client's employer is the University. Mr. Bihani submits, since in the reply to the show cause notice petitioner had admitted the excess payment, no disciplinary proceeding was or is required. He relies on judgments of Supreme Court reported in **(2009) 11 SCC 222 (H.P. RTTC v. Hukam Chand)** paragraphs 12 and 13, **(2008) 5 SCC 569 (Chairman & Managing Director V.S.P. v. Goparaju Sri Prabhakara Hari Babu)** paragraphs 16 and 20 and **(2006) 2 SCC 269 (L.K. Verma v. HMT Ltd.)** paragraph 15. On query from Court with reference to impugned letter dated 20th January, 2020 Mr. Bihani submits, the contractor also admitted the excess payment but did not refund the same citing lack of funds.

There is no dispute the University was employer of petitioner and during the period of service there was no disciplinary proceeding initiated against him.

In **Shri Saied Meera** (supra) a Division Bench of this Court said in relied upon paragraph 21, delinquent constables had admitted their guilt in course of preliminary inquiry. That admission is the best piece of evidence against the person making it, is

well settled principle of law. However, it is always open to the person making the admission to show why the admission is not to be acted upon. In that case, after charge sheet was issued, the charges were denied.

Moving on to judgments of Supreme Court relied upon, in paragraph 13 of **Hukam Chand** (supra), law declared was as follows:

“13. On the other hand, if there is an admission of misconduct, or if the employee pleads guilty in respect of the charge, or if the employee consents to the alteration of any terms and condition of service, or where the employee himself seeks the alteration in the conditions of service, there is no need for holding an enquiry or for giving an opportunity to the employee to be heard or show cause. Holding an employee guilty of a misconduct on admission, or altering the conditions of service with consent, without enquiry or opportunity to show cause, does not violate principles of natural justice.”

In this case there was no finding of guilt based on admission

Facts in **V.S.P** (supra) were that the respondent, in his explanation in answer to the charge sheet, pleaded guilty admitting the charges. Said Court applied section 58 in Evidence Act, 1872. The provision says facts admitted need not be proved.

What is important is that the admission was made in answer to the charge sheet in the disciplinary proceeding. **L.K. Verma** (supra) does not come to aid of the University since challenge to suspension order reached the Supreme Court and in the mean time there was initiated disciplinary proceeding against the appellant.

While view of the Division Bench was relied upon to contend that admission can subsequently be explained, the rival contention of no necessity to initiate disciplinary proceeding on admission made in response to show cause notice, does not find support from the authorities relied upon. No authority has been relied on to show law declared as being that in a case where there is admission in response to a show cause notice, without finding of guilt or initiation of disciplinary proceeding, punishment can be awarded. What appears to be is that there was a mistake made by petitioner, as said in his reply to the show cause notices, both dated 13th August, 2019 issued by the University Engineer (in charge). Text of reply dated 20th August, 2019 to the show cause notices is reproduced below.

“Dear Sir,

With reference to above, this is to inform you that during the period of execution of that very project I was under tremendous pressure in

carrying out excess responsibility of different job such as preparation of estimates alongwith supervision entrusted to me and most of the projects were time bound, either UGC funding or State Govt. as a result of which some unintentional mistakes were happened while putting entry of items in Measurement Book which should have been cared on my part being as a supervisor.

Under such circumstances I am confessing my unintentional mistakes and beg unconditional apology for this. I will be highly obliged if you kindly consider my case sympathetically as an unintentional error due to excessive work load which I had to carry on during that period of execution.

With regards,”

The inference of mistake is reinforced by submission made on behalf of the University that the contractor too acknowledged the excess payment but did not refund it pleading lack of funds.

Considering that in the facts and circumstances the University did not return finding of guilt against petitioner nor initiated disciplinary proceeding but allowed him to retire on achieving age of superannuation, it must be presumed that the case of mistake stood accepted. This presumption is

fortified by clause (iii) in impugned letter dated 20th January, 2020.

“iii. That unless and until Dolphin Enterprise deposit the excess amount of Rs.12,07,996/- (Rupees twelve lakh seven thousand nine hundred ninety six) only and Rs.2,19,806/- (Rupees two lakh nineteen thousand eight hundred six) only paid to him as excess is deposited, the pension and other retirement benefits of Sri Manas Kumar Chaudhury, SAE (Grade-III), B.U. be withheld;”

It is significant to note the University was interested in rectification of the mistake by recovery, pursuant to petitioner having retired. On perusal of the show cause notices, reply thereto, impugned letter and pleadings in the petition, it does not appear that mistake on part of petitioner leading to excess aggregate payment of Rs.14,27,802/- (Rs.12,07,996+2,19,806) is disputed. In the circumstances, the University is directed to deduct Rs.14,27,802/- from retiral benefits of petitioner and disburse the balance to him within 4 weeks from date of communication of this order. In event the University realizes said aggregate sum from its contractor in future, either by way of refund or by recovery from payment(s) due in other or future contracts, the University will refund the same to petitioner.

The writ petition is disposed of as above.

(Arindam Sinha, J.)