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

% ***Date of Decision: 17.02.2022***

\+ W.P.(C) 6928/2020 and CM No.23758/2020 (stay)

DR. LOKESH SHARMA ..... Petitioner
Through: Ms. Sangita Rai, Advocate.

versus

UNION OF INDIA & ANR. ..... Respondents
Through: Mr. Siddharth Khatana, Senior Panel Counsel for R-1.
Mr. Yashpal Singh, Advocate for R-2.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

1. Present writ petition has been preferred by the Petitioner seeking quashing of Memorandum dated 28.10.2019 as well as order dated 19.12.2019, whereby sanction to initiate departmental proceedings against the Petitioner was accorded by Chairman, Delhi Library Board (hereinafter referred to as 'DLB'). Challenge is also laid to Charge Memorandum dated 19.12.2019 and consequential orders and proceedings including order dated 07.08.2020, whereby Inquiring Authority was appointed by DLB, to inquire into the charges framed against the Petitioner.

2. The grievance raised by the Petitioner is primarily structured on the applicability of the CCS (CCA) Rules, 1965 (hereinafter, referred to as

'CCA Rules') and the CCS (Conduct) Rules, 1964 (hereinafter referred to as 'Conduct Rules') as well as the CCS (Pension) Rules, 1972 (hereinafter referred to as 'Pension Rules'), to a contractual appointment, as in the present case.

3. Shorn of unnecessary details, facts relevant to the dispute between the parties to the *lis* are that Delhi Public Library/Respondent No.2 herein invited applications for the post of Director General in Pay Band-4 with Grade Pay of Rs.10,000/-, on deputation (including short term contract)/ contract basis, through an advertisement published in the Employment News dated 10-16th December, 2016. Petitioner applied for appointment to the said post and was recommended by the Selection Committee. Respondent No.2 sought his vigilance clearance from the University of Delhi (hereinafter referred to as 'University'), which was received vide letter dated 17.05.2017. Letter offering appointment was issued on 13.10.2017, which was accepted by the Petitioner on 16.10.2017 and he joined Respondent No.2.

4. Relevant would be at this stage to note that Petitioner, prior to his applying for the aforesaid post, was working as Deputy Librarian with the University, wherefrom he superannuated on 31.08.2016.

5. As per the offer of appointment, appointment of the Petitioner with Respondent No.2 was on contract, for a period of three years from the date of assumption of charge of the post or until further orders, whichever was earlier. Pay and allowances were to be fixed as per Rules and Regulations of the Government of India. Petitioner's performance was subject to review from time to time and the appointment was liable to be terminated on one month's notice on either side, without assigning any

reason. Respondent No.2, however, reserved the right to terminate the services before expiration of the stipulated period of notice by making payment of a sum equivalent to the contractual amount, in lieu of notice period. It was specified in the offer of appointment that as a Director General, Petitioner shall be the Chief Executive of the Delhi Public Library System and the Member Secretary of DLB. The responsibilities that the Petitioner was required to shoulder were stipulated in the offer letter, which list was inclusive and not exhaustive.

6. Appointment of the Petitioner was with the approval of Appointments Committee of the Cabinet (ACC). Petitioner was declared as Head of the Department, the highest administrative position in Respondent No.2 and by the order of appointment itself, he was delegated various Financial and Administrative powers of the Head of Department and Member Secretary, in accordance with the provisions of Delegation of Financial Power Rules, General Financial Rules ('GFR') and CCA Rules.

7. Petitioner submitted his resignation on 23.08.2019, which was accepted by Respondent No.2 on 26.08.2019, with the condition that since an inquiry was being conducted by the Respondents, Petitioner shall be bound to appear in the inquiry, as and when required by the Respondents.

8. On 28.10.2019, a Memorandum was issued by Respondent No.2 alleging financial and administrative irregularities and response was sought from the Petitioner. Order dated 19.12.2019 was issued by Respondent No.2, whereby the Chairman, DLB accorded sanction for initiating the departmental proceedings against the Petitioner invoking

Rule 9(2)(b)(i) of Pension Rules. It was alleged that the Petitioner, while functioning as Director General from 16.10.2017 to 23.08.2019, indulged in procedural lapses in regard to purchases and recruitment. It was further directed that the departmental proceedings shall be conducted in accordance with the procedure laid down in Rules 14 and 15 of the CCA Rules, by the Inquiring Authority, to be nominated by the Chairman, Delhi Public Library. Charge Memorandum was issued on 19.12.2019 enclosing Statement of Imputations and List of Documents and Witnesses.

9. Petitioner replied to the Memorandum on 20.01.2020, objecting to the applicability of Pension Rules on the ground that his appointment was on contract basis and governed by the terms of the Contract Agreement dated 13.10.2017. Memorandum dated 10.02.2020 was received by the Petitioner, in response to his reply, wherein it was stated that Petitioner was an ex-employee and pensioner of the University. Suitable action against a contractual employee can be taken in case he has committed a misconduct/irregularity/misappropriation of funds, etc. during his tenure as a contractual employee. He can also be booked under the Pension Rules. It was further stated that being the retired employee of any University/autonomous body, Petitioner was required to display a conduct which sets an example of a good citizen. Petitioner was called upon to submit his reply in response to the charges, within 15 days of issuance of the said Memorandum, failing which it was to be presumed that he had nothing to say in the matter.

10. Petitioner replied to the Memorandum dated 10.02.2020 and reiterated his objections to the applicability of the Conduct Rules and the

Pension Rules. Vide Memorandum dated 18.03.2020, Respondent No.2 gave further opportunity to the Petitioner to reply to the charges within seven days, failing which the proceedings were to be conducted *ex- parte*. Petitioner responded to the Memorandum on 23.03.2020 and stated that his earlier replies along with the judgments referred to therein, should be considered as his reply to the Memorandum dated 18.03.2020. Finally, on 07.08.2020, Respondent No.2 appointed Dr. S.K. Pachauri, Retired Secretary to the Government of India as Inquiring Authority, to inquire into the charges framed against the Petitioner, as per the procedure laid down in Rule 14(2) of the CCA Rules.

11. Finally, on receipt of letter dated 08.09.2020, requiring the Petitioner to appear before the Inquiry Officer on 24.09.2020, present petition was filed. Vide order dated 24.09.2020, Court passed an interim order staying the disciplinary proceedings, pursuant to the Charge Memorandum dated 19.12.2019.

<u>CONTENTIONS ON BEHALF OF THE PETITIONER</u>

12. Appointment of the Petitioner was on contract basis, which is evident from the newspaper publication as well as the offer of appointment. The employment was for a period of three years, terminable by one month's notice on either side. Being a contractual appointment, the same was regulated only by the terms and conditions of the Contract Agreement. Neither in the advertisement nor in the offer of appointment, was it stipulated that the Petitioner would be governed by the Pension Rules and thus, the Order sanctioning the initiation of disciplinary proceedings and the Charge Memorandum, both dated 19.12.2019, issued

by Respondent No.2, exercising power under Rule 9(2)(b)(i) of the Pension Rules, are without jurisdiction and deserve to be quashed.

13. Charge memorandum has been issued against the Petitioner for alleged violation of the Conduct Rules, however, the said Rules are not applicable to the Petitioner. Rule 2(b) of Conduct Rules defines 'Government servant' as any person appointed by the Government to any civil service or post in connection with the affairs of the Union and includes a civilian in a Defence Service. Petitioner does not fall into any of these categories and thus, his actions/conduct are not regulated by the Conduct Rules.

14. Respondent No.2 has initiated disciplinary proceedings against the Petitioner invoking the provisions of the Pension Rules. However, Rule 2 thereof, which deals with the applicability of the said Rules, by its plain reading leaves no doubt that the Rules apply to Government servants appointed on or before 31st day of December, 2003. Even otherwise, provisions of Rule 2(g) clearly exclude persons employed on contract except where the contract provides otherwise. In the present case, the Contract Agreement dated 13.10.2017 did not provide that Petitioner's services will be governed by the Pension Rules. Since the Pension Rules do not apply to the Petitioner, the disciplinary proceedings initiated, under Rule 9 thereof, are *void ab initio* and deserve to be set aside.

15. Petitioner is a pensioner of the University and, therefore, only the Competent Authority prescribed under the relevant University Statutes, vested with the power to withhold or withdraw pension, can exercise such power, if the pensioner is found guilty of a grave misconduct or negligence, committed while in service of the University or during

re-employment after retirement, from the University. No other Authority, including the President of India under Rule 9 of the Pension Rules, can exercise power to withhold or withdraw pension or gratuity, which it does not grant.

CONTENTIONS ON BEHALF OF RESPONDENT NO.2

16. Petitioner was appointed as Director General of Respondent No.2, after approval by the ACC and was delegated various Administrative and Financial Powers of Respondent No.2. Nature of the appointment was 're-employment' on contract basis for a period of three years, subject to termination by one month's notice on either side. Petitioner was the Head of the Department, which is the highest administrative post in Respondent No.2. During his tenure as Director General, he made various purchases without completing codal formalities and also made recruitments, without approval of the Competent Authority. There are serious allegations of diversion of funds received from the Ministry of Culture, for payment to the pensioners, which resulted in non-payment of pension arrears/ pension to the retirees, prompting them to litigate. On coming to know that an inquiry was contemplated, Petitioner submitted his resignation. Resignation tendered by the Petitioner was accepted but with a condition that he would co-operate and participate in the inquiry, as and when called. Respondent No.1 constituted a Committee to inquire into the financial and administrative irregularities during the tenure of the Petitioner and after sanction was granted, in exercise of powers conferred under Rule 9(2)(b)(i) of the Pension Rules, disciplinary proceedings were initiated against the Petitioner. It is settled law that the Courts should

refrain from interfering in disciplinary matters, at the stage of issuance of chargesheet and permit the employer to conduct an inquiry into the alleged charges. The writ petition is thus premature and deserves to be dismissed, on this short ground.

17. The principal contention raised by the Petitioner that Pension Rules are not applicable to him, is completely misconceived. Heavy reliance is placed by the Petitioner on Rule 2 of the Pension Rules to contend that by virtue of sub-Rule (g), being employed on contract basis, Petitioner is excluded from the applicability of the Pension Rules. However, the said exception in sub-Rule (g) does not aid the Petitioner, inasmuch as, the exception has to be read in the light of the substantive part of the Rule, which provides a cut-off date. By virtue of Rule 2 of the Pension Rules, the same are applicable to those appointed on or before 31.12.2003 and both regular and contract appointments relate to the said date, i.e. the exception to contractual appointment would apply only to those appointed on contract basis, prior to 31.12.2003. Additionally, Petitioner was employed with the University as a regular employee and after his superannuation, was 're-employed' with Respondent No.2 and thus cannot seek the benefit of exception provided in Rule 2(g).

18. Rule 9 of the Pension Rules empowers the President of India to withhold or withdraw pension, in full or in part, if the pensioner is found guilty of grave misconduct or negligence, in any departmental or judicial proceedings, during the period of service, including service rendered upon re-employment after retirement. Under the Government of India (Allocation of Business) Rules, 1961, business of the Government of India shall be transacted in Ministries, Departments, etc. Under the

Pension Rules, 'Government' means the Central Government and, therefore, the power to initiate disciplinary proceedings against a pensioner vests with the Central Government, irrespective of the department from where he retires or where he is re-employed. Delhi Public Library functions under the aegis of the Ministry of Culture/Government of India and Petitioner, being re-employed, is subject to disciplinary action by Respondent No.2. Additionally, the University is a Central University which is controlled by the University Grants Commission (hereinafter referred to as 'UGC'). Pension of the retirees of the University including the Petitioner is funded by the UGC, which in turn receives grant from the Consolidated Fund of India. Thus, the Pension Rules would clearly govern the present case and it is not open to the Petitioner to even argue that the said Rules are inapplicable, more so in view of the fact that his appointment was made with the approval of the ACC.

19. It was further contended that the Appointing Authority of the Petitioner was the Chairman of Respondent No.2, who in turn was nominated by the Minister of Culture and thus, being the Chairman of the Apex Body (DLB), he was competent to accord sanction for initiating disciplinary proceedings. Petitioner was appointed on contractual basis, after his superannuation from Ratan Tata Library, University of Delhi. Vigilance clearance was obtained from the University and importantly, pay of the Petitioner while working with Respondent No.2, was fixed as per CCS (Fixation of Pay of Re-Employed Pensioners) Orders, 1986, on the principle of 'pay minus pension'.

20. Benefit of pension is given to an employee for rendering long, faithful and unblemished service. However, if the pensioner is found guilty of grave misconduct, the impact must fall on the retiral dues and which is why Rule 8 of the Pension Rules provides that future good conduct is an implied condition for grant of pension and its continuance and Rule 9 is an enabling provision, empowering the President of India to withhold or withdraw pension, in full or in part, in case of proven grave misconduct. Reliance was placed on a judgement of the Division Bench of this Court in ***Union of India v. S.K. Mathur, 2010 SCC OnLine Del 3673***.

21. Appointment of the Petitioner was made in accordance with Recruitment Rules for the post of Director General, notified in the Gazette Notification [Part II – Section 3(i)] on 29.10.2016 (hereinafter referred to as 'RRs'). The RRs provide for filling up the post by deputation (including short term contract)/contract. It is specifically stipulated in 'Note 3' under the Heading 'Contract', that in case of appointment on contract basis, the terms and conditions of service of the incumbent of the post shall be as applicable to a Group 'A' officer of the Central Government holding analogous post. Group 'A' officers in the Central Government are governed by the Central Civil Service Rules, including the Conduct Rules and the Pension Rules and, therefore, by virtue of the RRs under which the Petitioner was appointed, the said Rules would apply and govern the service conditions of the Petitioner. This is more so, on account of the fact that like the other Group 'A' officers holding analogous posts, Petitioner was appointed with the approval of the ACC and delegated various Financial and Administrative

powers of the Head of Department and Member Secretary of the DLB, under the provisions of CCA Rules, Delegation of Financial Power Rules and GFR. Petitioner cannot, therefore, claim exemption from the applicability of the Pension Rules and the disciplinary proceedings have been rightly initiated invoking Rule 9 of the Pension Rules.

CONTENTION ON BEHALF OF THE PETITIONER IN REJOINDER

22. Reliance of Respondent No.2 on the Gazette Notification dated 18.10.2016, i.e. the RRs, is misplaced inasmuch as the Petitioner was appointed on contract basis, with the approval of ACC and with a clear stipulation by Respondent No.1/Ministry of Culture in its letter dated 13.10.2017 that contractual appointment of the Petitioner is by 'keeping the Recruitment Rules aside'. Attention of the Court was drawn to the contents of the letter dated 13.10.2017, which is appended as Annexure R-1 to the reply filed by the Petitioner to the additional submissions filed by Respondent No.2, to emphasise the point that contractual appointment of the Petitioner was from the open market and he is a pensioner under the University, governed by separate Statutes, as regards pension and stands on a different pedestal as compared to Group 'A' Officers, retired from the departments of or under the Central Government, where Pension Rules apply.

23. No counter affidavit was filed on behalf of Respondent No.1/Ministry of Culture. Learned counsel appearing on behalf of Respondent No.1 adopted the arguments made on behalf of Respondent No.2.

24. I have heard the learned counsels appearing for the respective parties and examined their rival contentions.

ANALYSIS AND CONCLUSION

25. Challenge in the present petition is laid to the order according sanction for initiating disciplinary proceedings against the Petitioner as well as the Charge Memorandum and the order appointing an Inquiring Authority for holding an inquiry in accordance with the procedure laid down under Rules 14 and 15 of the CCA Rules. The vexed question that arises for consideration before this Court is whether Respondent No.2 was entitled to invoke the provisions of Rule 9(2)(b)(i) of the Pension Rules and initiate disciplinary proceedings, to be held in accordance with the procedure prescribed under Rules 14 and 15 of the CCA Rules.

26. Pithily put, Petitioner has laid a challenge to the very applicability of the Pension Rules and invocation of provisions of Rule 9 thereof, on the grounds that: (a) nature of appointment of the Petitioner with Respondent No.2 was purely contractual; and (b) Petitioner is a pensioner under the University Statutes, issued under the Delhi University Act, 1922. Contrary to the stand of the Petitioner, sum and substance of the stand of Respondent No.2 is that: (a) Petitioner was 're-employed' on contract basis with Respondent No.2; (b) by virtue of the RRs of the post in question, all terms and conditions of service of Group 'A' Officers of the Central Government, holding analogous posts, shall be applicable to the incumbent of the post; (c) sub-Rule (g) of Rule 2 of Pension Rules would not come to the aid of the Petitioner as the exception will apply to those appointed on contract but on or before 31.12.2003; (d) Pension

Rules are applicable to persons drawing pension from Consolidated Fund of India and pension of the Petitioner is disbursed by UGC, which in turn is funded from the said Fund; and (e) there are serious allegations against the Petitioner and the President of India under Rule 9 of the Pension Rules has the power to withhold or withdraw, in whole or in part, the pension and gratuity, if the pensioner is found guilty of grave misconduct/ negligence during the period of service or on re-employment after retirement.

27. In order to decide the primordial question of applicability of the Pension Rules, the foremost issue that becomes relevant and needs consideration, is the nature of appointment of the Petitioner with Respondent No.2. It is an undisputed position between the parties herein that Petitioner superannuated from the University as a Deputy Librarian on 31.08.2016 and is a pensioner of the University. Respondent No.2, an autonomous body under the Ministry of Culture, issued an advertisement in the Employment News on 10-16th December, 2016, inviting applications for the post of Director General in Respondent No.2 in Pay Band-4 with Grade Pay of Rs.10,000/-. The mode of appointment was deputation (including short term contract)/contract basis. Relevant part of the advertisement is as under:-

> "***Delhi Public Library***
> ***(An Autonomous Body under Ministry of Culture)***
> ***S.P. Mukherjee Marg***
> ***Delhi – 110006***
>
> ***Notice for Appointment to the Post of Director General, DPL.***
>
> *Applications are invited for the post of DIRECTOR GENERAL, in DPL in the pay band PB-4, Rs.37400-67000 +*

*Grade Pay Rs. 10000 on deputation (including short term contract)/**contract basis.***
xxx xxx xxx xxx"

(emphasis supplied)

28. Petitioner was recommended for appointment by a Selection Committee, whereafter Respondent No.1 requested Respondent No.2 to verify from the University if any vigilance proceedings were pending or contemplated against the Petitioner or any penalty was imposed. Relevant part of the letter dated 21.04.2017, seeking verification, is extracted hereunder:-

"*Sub:- Proposal for appointment to the post of Director General in Delhi Public Library on **contract basis.***
Madam,
xxx xxx xxx
2. Since, Dr. Sharma has retired only in 2016, it may please be got certified whether any Vigilance Proceedings are pending or contemplated against the officer and the details of any penalty imposed on the officer may also be obtained from the concerned Library/University and sent to this Ministry at the earliest for consideration of the proposal by ACC."

(emphasis supplied)

29. University informed Respondent No.2 that Petitioner was clear from vigilance angle as per the record, up to the date of his superannuation. Offer of appointment was given to the Petitioner on 13.10.2017, wherein it was clearly stipulated that the appointment was on 'contractual basis' for a period of three years from the date of assumption of charge of the post or until further orders, whichever was earlier. It was further provided that the pay and allowances will be fixed as per Rules

and Regulations of the Government of India. Para 5 of the offer of appointment provided the methodology of termination of the contractual appointment by one month's notice on either side, without assigning any reason, reserving right with the DLB to terminate the Petitioner's services, before expiration of the notice period by paying the contractual amount in lieu of the notice period. Relevant paras of the offer of appointment are as follows:-

*"**DELHI PUBLIC LIBRARY***
(Govt. of India Organisation, Ministry of Culture)

File No. A-12024/1/2013-Estt./2422 Dt. 13.10.2017

Dr. Lokesh Sharma
Flat No. 56, Pocket-2, Block-A, Sector-18, Rohini
Delhi – 110089

Sub: Appointment of Dr. Lokesh Sharma to the post of Director General, Delhi Public Library (DPL) Delhi on contractual basis.

Sir,

*The undersigned hereby offers to Dr. Lokesh Sharma a post of Director General in the pay scale of Rs. 37400-67000/- with grade pay of Rs.10000 (pre-revised) on **contractual basis** for a period of 3 years from the date of assumption of charge of the post or until further orders, whichever is earlier.*

2. His pay and allowances will be fixed as per the rules and regulations of Govt. of India.

3. xxx xxx xxx xxx

4. xxx xxx xxx xxx

*5. **The contractual appointment** is liable to be terminated on one month notice on either side, without assigning any reasons. The Delhi Library Board, however, reserves right to terminate the services before expiration of the stipulated period of notice by making payment of a sum*

> *equivalent to the contractual amount in lieu of period of notice.*"
>
> *(emphasis supplied)*

30. Vide letter dated 16.10.2017, Petitioner accepted the offer of appointment on the terms and conditions stipulated in the offer letter and assumed charge in the forenoon of 16.10.2017. From a bare reading of the advertisement, the letter dated 21.04.2017 seeking verification and the letter dated 13.10.2017, offering appointment, it is explicit that appointment of the Petitioner was contractual in nature. This is further fortified by the subsequent correspondence/memorandum/orders, wherein the appointment of the Petitioner is referred to as contractual and at no place is there even a mention of 're-employment'. On 19.12.2019, order was issued by Chairman, DLB, according sanction for initiation of departmental proceedings against the Petitioner, invoking Rule 9(2)(b)(i) of the Pension Rules, followed by a Charge Memorandum of the same date and it is mentioned in the first paragraph of the Order that Petitioner was functioning as Director General on contract from 16.10.2017 to 23.08.2019. Relevant part of the order is as under:-

> "***ORDER***
>
> *WHEREAS it has been made to appear that Dr. Lokesh Sharma while functioning as Director General* ***(on contract)*** *from 16.10.2017 to 23.08.2019 in DPL who is a retired Dy. Librarian, Ratan Tata Library, Delhi University had done various procedural lapses in regard to purchases and recruitment………………………………………………..*"
>
> *(emphasis supplied)*

31. Petitioner responded to the said order vide his reply dated 20.01.2020, objecting to the applicability of the Pension Rules, on the

ground that he was appointed under a contract and referred to Rule 2(g) of the Pension Rules in this regard, which excludes applicability of Pension Rules to contract employees, unless the contract provides otherwise. Interestingly, Chairman DLB replied to the said letter and reiterated that the appointment of the Petitioner was on contract basis because of his experience with the University, from where he was drawing pension and categorically stated that suitable action against a contractual employee can be taken in case of misconduct, etc. by invoking the Pension Rules. Relevant part of the letter is as under:-

> ***"Memorandum***
>
> ***Sub:- Reply of Dr. Lokesh Sharma to the Memo issued by the DPL on 19.12.2019- regd.***
>
> *With reference to his letter dated 20.1.2020 pertaining to subject mentioned above, Dr. Lokesh Sharma, Ex-Director General of DPL is informed that* ***his appointment as DG on contract basis*** *w.e.f 16.10.2017 in the DPL was only because he had an experience of working in Delhi University/Ratan Tata Library and was an ex-employee of the Delhi University. He is a pensioner of Delhi University and therefore, it was within the knowledge of the undersigned that he had been drawing pension from Delhi University.* ***Suitable action against a contractual employee can be taken, in case he had done misconduct/irregularities/ misappropriation of funds or any offence during his tenure as a contractual employee.*** *By doing such type of misconduct, any retired Govt. servant/employee of autonomous organisations/institutions can also be booked under the CCS (Pension) Rules. He is further informed that being the retired employee of any University/Autonomous Bodies, he is required to display his conduct in such a way so that it should be an example of good citizen and should not do any misconduct which may cause unnecessary criticism in the public."*
>
> *(emphasis supplied)*

32. Petitioner reiterated his objections vide letter dated 25.02.2020 and in response, a Memorandum was issued by Chairman, DLB on 18.03.2020, stating therein that Respondent No.2 was fully aware of the Rules and Regulations under which action can be taken against a contractual employee and Petitioner was called upon to reply to the Articles of Charges. Relevant part of the letter dated 18.03.2020, is as under:-

> *"**Memorandum***
>
> ***Sub:- Charges framed against Dr. Lokesh Sharma Ex-Director General, DPL and his reply dated 25.2.2020.***
>
> *With reference to his reply dated 25.2.2020 pertaining to the subject mentioned above, Dr. Lokesh Sharma is informed that the **DPL is fully aware about the rules and regulations under which action can be taken against a contractual employee and there is no need to repeat the same thing again and again.** It has been observed from his various replies received in the office that he was asked to give specific replies in regard to the various irregularities/ misappropriation of funds done by him during his tenure as DG in DPL, but he is avoiding to give reply.*"
>
> *(emphasis supplied)*

33. Finally, vide order dated 07.08.2020, Inquiring Authority was appointed to inquire into the charges framed against the Petitioner, despite the objection of the Petitioner to the applicability of the Pension Rules. What emerges from a reading of the above documents is that Respondent No.2 had taken a consistent position that the appointment of the Petitioner was on contract basis and it was never its case that Petitioner was 're-employed' with Respondent No.2. In view of the plethora of documents, as aforementioned, the inevitable conclusion is

that the appointment of the Petitioner was on contract basis. While the nature of an appointment can be best inferred from the advertisement and the offer of appointment, which in the present case clearly reflect that appointment of the Petitioner was purely contractual, additionally, contrary to the stand of Respondent No.2, even various other documents, as aforementioned, issued from the office of Respondent No.2, fortify the stand of the Petitioner, in this regard.

34. Despite the above position, Respondent No.2, in complete contrast to the above stand, for the first time in the counter affidavit, averred that the Petitioner was re-employed on contract basis, which in my view, was a desperate attempt to escape the rigours of Rule 2(g) of the Pension Rules and to bring the case within the four corners of Rule 9 thereof. This stand of Respondent No.2 cannot be countenanced for more than one reason. Firstly, at the cost of repetition, neither the advertisement or the offer of appointment nor the subsequent letters/orders even remotely indicate or suggest that Respondent No.2 ever took a position that the appointment was on re-employment basis. In this view of the matter, Respondent No.2 cannot be permitted to take a new stand for the first time in the counter affidavit, at complete variance with the initial stand. It has been held by the Supreme Court in ***Mohinder Singh Gill and Another vs. The Chief Election Commissioner, New Delhi and Others, (1978) 1 SCC 405,*** that where a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court, on account of a challenge, get validated by

additional grounds, later brought out. This is precisely what Respondent No.2 is attempting to do, i.e. a clear case of contractual appointment is being camouflaged as a case of re-employment.

35. Secondly, it is evident from the letter dated 13.10.2017, filed by the Petitioner, the authenticity of which was not disputed by learned counsel for Respondent No.2, that the ACC had approved the proposal/ recommendation for 'appointment' of the Petitioner on 'contract basis'. It needs no emphasis that it is this approval which translated into an offer of appointment of the Petitioner on contract basis. While this Court does not have the benefit of the exact proposal placed before the ACC, however, the only logical inference that can be drawn from the letter dated 13.10.2017 read with the letter offering appointment to the Petitioner, is that the proposal was not for re-employment. Additionally and importantly, the modes of appointment provided in the RRs for the post in question are deputation (on short term contract) or contract and not re-employment. As held by a Co-ordinate Bench of this Court in ***E. Sreedharan v. Union of India,*** **2008 SCC OnLine Del 1309**, the ACC being the Apex body for approval of appointments would not use the word 'appointment' if it was approving 're-employment'. Letter dated 13.10.2017 is extracted hereunder for ready reference:-

"*F.No. 32-2/2017-Lib*
Government of India
Ministry of Culture
Library Section

CSL Building, Shastri Bhavan, New Delhi
Dated the 13th October, 2017

To

The Deputy Director,

Delhi Public Library,
S.P. Mukherjee Marg,
Opposite Old Delhi Railway Station,
Delhi-110006

Subject:- Appointment of Dr. Lokesh Sharma to the post of Director General, Delhi Public Library (DPL), Delhi on ***contractual basis***

Madam,

I am directed to refer to your letter No. A-12024/1/2013-Estt/2422 dated 05.09.2017 on the subject mentioned above and to convey the approval of the Appointments Committee of the Cabinet for appointment of Dr. Lokesh Sharma to the post of Director General in the Delhi Public Library (DPL), Delhi in the scale of pay of Rs.37,400-67,000/- with Grade Pay of Rs.10,000 (pre-revised), ***on contract basis****, for a period of three years from the date of his assumption of charge of the post, or until further orders, whichever is earlier, by keeping the RRs aside.*

Yours faithfully,
Sd/-
(N.K. Sinha)
Under Secretary to the Govt. of India
Tel 23382539"

(emphasis supplied)

36. It is amply clear from the documents referred to above, that Petitioner's appointment as Director General of Respondent No.2 was not 're-employment' in a Civil Service or a civil post in connection with the affairs of the Union Government and, therefore, the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986, shall not be applicable to the present case and thus, this contention of Respondent No.2 also merits rejection.

37. For all the foregoing reasons, this Court comes to a conclusion that Petitioner was 'appointed' on 'contract basis' and was not 're-employed'. The service conditions of the Petitioner would thus be governed by the terms of the contract, wherein there is no clause applying the Pension Rules and the reason for absence of such a provision is simple. In a contractual appointment for 3 years, Petitioner was not entitled to Pension from Respondent No.2 and there was thus no requirement of applying Pension Rules, enabling Respondent No.2 to withhold or withdraw the same. Contention of the Respondents that Pension Rules apply to the present case thus deserves to be rejected.

38. Examined separately under the provisions of the Pension Rules also, the contention merits rejection. Rule 2 of the Pension Rules deals with the applicability of the said Rules and provides that the Rules shall apply to 'Government servants', appointed on or before 31.12.2003, including 'civilian Government servants in the Defence Services', appointed substantively to civil services and posts in connection with the affairs of the Union, which are borne on Pension Establishments. Petitioner neither falls into any of the above categories nor was appointed with Respondent No.2 before the cut-off date, i.e. 31.12.2003. Consequently, on both the parameters, the Pension Rules are wholly inapplicable and the initiation of disciplinary proceedings invoking Rule 9 is without jurisdiction.

39. In the wake of the argument of the Petitioner that persons employed on contract are exempted from the applicability of the Pension Rules, by virtue of Rule 2(g) of the said Rules, learned counsel for Respondent No.2 canvassed an argument that since the first part of Rule 2

provides that the Pension Rules shall apply to Government servants appointed on or before 31.12.2003, the exception in Sub-Rule (g) will apply to appointees on contract basis prior to the said cut-off date and not thereafter. To this extent, learned counsel for Respondent No.2 is right, however, ironically, the argument goes against Respondent No.2. Since the Petitioner was not appointed before the said cut-off date and Pension Rules *per se* do not apply to him, Petitioner need not even labour to bring his case in the exception in Rule 2(g) of the Pension Rules. It is obvious that Respondent No.2 had invoked Rule 9 of the Pension Rules and in these circumstances, Petitioner had sought to take support of the exception carved out in sub-Rule (g) of Rule 2.

40. Be that as it may, though it is irrelevant to consider Rule 2(g) on account of the above conclusion, however, its plain reading only fortifies the stand of the Petitioner that the intent of the framers of sub-Rule (g) of Rule 2 of the Pension Rules was to exclude persons employed on contract from the purview of provisions of the Pension Rules except where the contract provides otherwise. In the present case, the offer of appointment does not provide that the Pension Rules would apply to the Petitioner, although Respondent No.2 took the trouble of categorically mentioning that his pay and allowances will be fixed as per the Rules and Regulations of the Government of India. Absence of the said stipulation only shows that Respondent No.2 was conscious of the fact and rightly so that Pension Rules were inapplicable, where the service was contractual and non-pensionable.

41. Contention of the Petitioner that Respondent No.2 cannot resort to proceedings which may ultimately result in taking away pension granted

by another Authority under a different Statute regulating pension also has merit. While framing the Pension Rules, the framers were conscious of this distinction and clearly Rule 2(h) of the Pension Rules excludes from applicability of the said Rules persons whose terms and conditions of service are regulated by 'any other law for the time being in force'. In the present case, it is an undisputed position between the parties that Petitioner was an employee of the University and superannuated from the post of Deputy Librarian, Ratan Tata Library on 31.08.2016. It is equally undisputed that the Petitioner is in receipt of pensionary benefits under Statute 28-A of the Statutes of the University. University is constituted under the University of Delhi Act, 1922, as amended from time to time. Section 28 of the said Act provides for Statutes, Ordinances and Regulations for the matters enumerated therein. Statute 28-A provides for GPF-cum-pension-cum-gratuity scheme under Appendix-A. Section 46 of the Act mandates that the University shall constitute for the benefit of its Officers, etc. in such manner and subject to such conditions, as may be prescribed by the Statutes, such pension, insurance and provident funds, as it may deem fit. Therefore, the University of Delhi Act and the Statutes thereunder specifically provide for and deal with pensionary benefits of the retiring employees of the University, both teaching and non-teaching.

42. It is further significant to note that a complete mechanism is provided in Clause 14 of Appendix-A to Statute 28-A, aforementioned, for withholding or withdrawing pension, in whole or in part, of a pensioner, if found guilty of grave misconduct or negligence, during the period of his service including service rendered upon re-employment

after retirement. The power enabling withholding or withdrawing pension as also recovering from pension the pecuniary loss caused to the University vests in the Vice-Chancellor of the University. Relevant paras of Clause 14 read as follows:-

> *"14. Pension:*
>
> *In addition to the General Provident Fund as provided in the foregoing provision of this Statute, every person governed by the provisions of this Section of Appendix 'A' shall be entitled to a pension according to the rules provided hereinafter.*
>
> *Subject to such rules as may be applicable to the categories of pension set out below, no person shall be eligible for pension unless he has put in a minimum of ten years of qualifying service in the University; provided that minimum age after which service counts for pension shall be eighteen (18) years. In case the qualifying service falls below ten years, a gratuity as in Schedule 'C' shall be admissible.*
>
> *(1) The Vice-Chancellor reserves to himself the right of withholding for specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the University, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement.*
>
> *Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in the proviso under Clause 16.*
>
> *(2)(a) The departmental proceedings referred to in Sub-Clause (1), if instituted while the University employee was in service whether before his retirement or during his re-employment, shall, after the final retirement of the University employee, be deemed to*

be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the University employee had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the Vice-Chancellor, that authority shall submit a report recording its findings to the Vice-Chancellor.

(b) The departmental proceedings, if not instituted while the University employee was in service, whether before his retirement or during his re-employment:

(i) shall not be instituted save with the sanction of the Vice- Chancellor;

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the Vice-Chancellor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the University employee during his service.

(3) No judicial proceedings, if not instituted while the University employee was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose, or of an event which took place, more than four years before such institution.

(4) In the case of a University employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under Sub- Clause (2) above, a provisional pension not exceeding the pension which would have been admissible on the basis of the qualifying service up to the date of retirement of the

University employee, or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension, shall be sanctioned.

(5) Where the Vice-Chancellor decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a University employee.

(6) For the purpose of this Clause:

(a) Departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the University employee or pensioner, or if the University employee has been placed under suspension from an earlier date, on such date; and

(b) Judicial proceedings shall be deemed to be instituted;

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made; and

(ii) in the case of civil proceedings, on the date of the complaint is presented in the court.

With effect from 01.01.1986, the service gratuity for qualifying service of less than ten years shall be calculated at uniform rates of half month's emoluments for every completed 6 monthly period of service instead of at the rates specified in Schedule 'C'."

43. Thus, Statute 28-A governs the field relating to grant of pension to the Petitioner, including the mechanism to withhold or withdraw the same and applying the underlying principle and rationale of Rule 2(h) of the

Pension Rules, once the field is covered by the said Statute, Pension Rules in any case would have no applicability. It needs no gainsaying that if the Pension Rules are inapplicable, Respondent No.2 is not entitled to invoke Rule 9 for taking disciplinary action against the Petitioner.

44. In view of the aforesaid conclusions, it is not necessary to separately delve into the applicability of Rule 9 of the Pension Rules, *albeit* when independently examined, in my view, even on this score, the arguments of Respondent No.2 cannot be accepted.

45. Rule 9(1) of the Pension Rules is an enabling provision which empowers the President of India to withhold or withdraw pension and/or gratuity, either in full or in part, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence, during the period of service including service rendered upon re-employment after retirement. Sub-Rule (2)(a) provides that if the departmental proceedings referred in Sub-Rule (1) are instituted during the service or re-employment of the Government Servant, they shall be deemed to be proceedings under Rule 9, after retirement of the Government Servant and shall be continued and concluded as if the Government Servant had continued in service. Sub-Rule (2)(b) goes a step forward and provides for instituting the departmental proceedings, even after the retirement of the Government Servant, if not instituted while he was in service, whether before retirement or during his re-employment, with a rider that such proceedings shall only be instituted with the sanction of the President and shall not be in respect of any event which took place more than 4 years before such institution.

46. It is clear that Rule 9 operates in different fields but the common thread in all the provisions is that if a Government Servant is found guilty of a grave misconduct/negligence, the mere supervening event of retirement should not prevent the Government from taking action. What emerges is that in order to invoke Rule 9, certain conditions must exist viz.: (a) Retired employee sought to be proceeded against was a Government servant; (b) alleged act of grave misconduct or negligence was committed during the period of service or during re-employment, after retirement, in a department of or under the Central Government; and (c) pension is paid from the Government Fund. Only when these conditions co-exist, President of India can exercise the power under Rule 9 of the Pension Rules and not where pension is granted to a retiree by an Organisation, which is different and distinct from the Central Government and where such an Organisation has a separate statutory regime of pension that lays down a mechanism for granting as well as withdrawing or withholding pension.

47. From a plain reading of Statute 28-A, more particularly Clause 14 in Appendix-A thereto, it is clear that for a proven act of grave misconduct or negligence by a pensioner of the University, it is only the Competent Authority of the University, i.e. the Vice-Chancellor, who has the power to withhold or withdraw pension, in whole or in part. The misconduct or negligence could be while the employee of the University was in service or during his re-employment after retirement. 'Re-employment' has been categorically defined in Rule 6 of University Non-Teaching Employees (Terms and Conditions of Service) Rules, 2013 and can only be with the University. Therefore, what emerges is that

pension received by a pensioner of the University can be withheld or withdrawn: (a) by the Vice-Chancellor of the University; (b) for grave misconduct or negligence; and (c) during service of the University or upon re-employment with the University, after retirement. It needs no gainsaying that pension is not a bounty of the State and is granted to an employee who retires after a dedicated and unblemished service, completing the qualifying service required for grant of pension. As a corollary, only the Authority which grants pension can exercise the power to withhold or withdraw the same, if and when the pensioner is found guilty of grave misconduct or negligence.

48. In the present case, Petitioner is drawing pension sanctioned by the Competent Authority in the University and it hardly needs a mention that it is on account of his unblemished service with the University. It bears repetition to state that before the Petitioner was appointed with Respondent No.2, his credentials were duly verified by Respondent No.2 and the concerned Authority in the University had informed that there was no pending or contemplated vigilance case against the Petitioner. Therefore, Rule 9 of the Pension Rules cannot be invoked by Respondent No.2 to initiate disciplinary proceedings against the Petitioner. This conclusion is strengthened by the use of the words 'withholding' and 'withdrawing' in Rule 9(1) of the Pension Rules. P. Ramanatha Aiyar Advanced Law Lexicon defines the word 'withholding' as 'to hold back; to keep back; to restraint or to decline to grant'. The Supreme Court in the case of ***Lalita Jalan v. Bombay Gas Co. Ltd., (2003) 6 SCC 107*** *albeit* in the context of Section 630 of the Companies Act, 1956, held that holding back or keeping back is not an isolated act but is a continuous

process by which the property is not returned or restored to the Company and the Company is deprived of its possession. Therefore, the word 'withhold' clearly connotes that the Authority concerned is holding back something which it possesses. Similarly, dictionary meaning of the word 'withdraw' as defined in Advanced Law Lexicon (3rd Edition, 2005) is to take back or away something that has been given or allowed. P. Ramanatha Aiyar Advanced Law Lexicon defines 'withdraw' as 'to take back or a way something that has been given, allowed, possessed, experienced or enjoyed; to draw away'. The act of withdrawal thus pre-supposes a grant by the Authority which seeks to withdraw the benefit. A perusal of these definitions leads to the inevitable conclusion that no authority is legally entitled to withhold or withdraw something that has either not been given by it or, in a particular case, has been given by a third party. The nature of employment of the Petitioner with Respondent No.2 was purely contractual for a period of 3 years and was not pensionable. The appointment was not re-employment in the same Department or different Departments under the Central Government. In this view, disciplinary proceedings initiated under Rule 9 of Pension Rules cannot be permitted to proceed as this may end in withholding or withdrawing pension granted by the University, which is a power not vested in Respondent No.2, in the present case.

49. The next plank of the argument was that by virtue of Note 3 incorporated in the RRs with regard to appointment on contract, the terms and conditions of the incumbent of the post shall be as applicable to Group 'A' Officers of the Central Government holding analogous post. The contention, in my view, is wholly misconceived and deserves to be

rejected. The only possible interpretation of the said Note can be with regard to applicability of other conditions of service, such as fixation of pay and allowances, etc. but the Note cannot by any stretch of imagination be interpreted to mean that the Pension Rules shall apply, especially in light of the Rule 2 thereof, which determines the applicability of the said Rules. Once the Pension Rules have carved out exceptions in Rule 2 and excluded certain categories from the applicability of the Pension Rules, such as a person appointed on contract, unless the contract provides otherwise, as also a person governed by any other law for the time being in force, the Pension Rules cannot be made applicable to a person who falls in the excluded category(s). In any case, the Note cannot override the substantive provision of Rule 2 which makes the Pension Rules applicable to those appointed on or before 31.12.2003.

50. Respondent No.2 also contended that Petitioner was an employee of the University, a Central University, receiving grant and controlled by UGC, funded by the Central Government from the Consolidated Fund of India and is thus governed by the Pension Rules. In this context, it would be relevant to examine the source of pension of the Petitioner and the nature of fund of UGC. The University Grants Commission Act, 1956, was enacted to make provision for coordination and determination of standards in Universities. Section 16 of the said Act provides that the Commission shall have its own fund and all sums which 'may', from time to time, be paid to it by the Central Government shall be carried to the Fund and all payments by the Commission shall be made therefrom. Section 12 of the Act deals with functions of the Commission and

Sub-Section (e) provides that the Commission shall advise the Central Government or any State Government of the allocation of any grants to the Universities for any general or specified purpose out of the Consolidated Fund of India or of the State, as the case may be. A Full Bench of this Court in ***Mohd. Khan Durrany (Dr.) v. Principal (Tulsi Ram) Shivaji College, 1970 SCC OnLine Del 235***, held that UGC is a Statutory body created under the UGC Act and distinct from the Government of India. Under Section 16 of the said Act, the Fund of the Commission is separate from the Consolidated Fund of India. Relevant para is as follows:-

> "*On the petitioner's own admission however Shivaji College is maintained to the extent of 95 per cent of its expenses on grants made by the University Grants Commission and only to the extent of 5 per cent of its expenses by the Delhi Administration. Learned counsel for the petitioner urged that this amounted to the maintenance of the College by the Government of India. But the University Grants Commission is a statutory body created by the University Grants Commission Act, 1956. It is therefore distinct from the Government of India. Under section 16 of the University Grants Commission Act, 1956, the fund of the Commission is separate from the Consolidated Fund of India which contains the Government funds proper under Article 266 of the Constitution. The expenditure incurred by the University Grants Commission in payment of grants to different institutions is an expenditure, out of the Fund of the Commission and not out of the Consolidated Fund of India. It is true that under section 15 of the University Grants Commission Act it is the Central Government which finances the Commission after due appropriation is made by the Parliament. It is also true that under section 17 of the said Act, the budget prepared by the Commission is sent to the Central Government so that the Central Government*

> *may obtain vote of the Parliament for that expenditure. Nevertheless, in the eye of law the University Grants Commission is different from the Central Government. It is only a College maintained by the Government funds coming out of the Consolidated Fund of India that could be considered to be a Government maintained College. According to the petitioner, there is no such College in Delhi which is so maintained. This may be the reason why Ordinance XIX which formerly dealt with Government maintained Colleges was found to be of no use as there was no Government maintained College in Delhi. This was perhaps why Ordinance XIX was repealed in 1951.*"

51. In view of the provisions of the UGC Act and the observations of the Full Bench, as aforesaid, it cannot be argued on behalf of Respondent No.2 that the Petitioner is drawing pension from the Consolidated Fund of India and is governed by the Pension Rules.

52. Insofar as the judgment of ***Union of India v. S.K. Mathur (supra)*** relied upon by learned counsel for Respondent No.2 is concerned, in my view, the same does not apply to the controversy involved in the present case. In the said case, the issue before the Division Bench of this Court was with regard to a challenge to the sanction granted by the President of India for initiation of departmental proceedings against the Respondent therein on the ground that it pertained to events which took place more than 4 years before the institution of departmental proceedings, which was in violation of Rule 9(2)(b)(ii) of the Pension Rules. The judgment, therefore, does not come to the aid of Respondent No.2.

53. For all the aforesaid reasons, having examined the matter from different angles, it is held that Respondent No.2 was not entitled to invoke Rule 9 of the Pension Rules to initiate departmental proceedings

against the Petitioner. Accordingly, order dated 19.12.2019 according sanction for disciplinary proceedings, Charge Memorandum dated 19.12.2019 and order dated 07.08.2020 appointing the Inquiring Authority are quashed and set aside.

54. However, keeping in view the allegations levelled against the Petitioner, liberty is granted to the Respondents to resort to such other remedies that may be available in law to proceed against the Petitioner, if so advised. In view thereof, Memorandum dated 28.10.2019, which refers to *prima facie* allegations against the Petitioner based on the findings of a Committee constituted for investigation, is not interfered with.

55. It is made clear that this Court has not gone into the merits of the allegations levelled against the Petitioner.

56. Writ petition is partially allowed in the above terms. Pending application is disposed of accordingly. No orders as to costs.

JYOTI SINGH, J.

FEBRUARY 17th, 2022
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