

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 116 of 2022

The State of West Bengal & Ors.

Vs.

Sri Asim Kumar Bhattacharyya

For the State-Petitioners

: Mr. T.M. Siddique,

Ld. Sr. Advocate & Ld. AGP

Mr. Avisek Prasad

For the Respondent

: Mr. D.N. Ray

Mr. S. Ghosh

Mr. M.N. Roy

Mr. B. Nandy

Mr. R.K. Shah

Heard on : August 28, 2023

Judgment on : August 28, 2023

DEBANGSU BASAK, J.:-

1. The writ petition is at the behest of the State.
2. State assails an order dated July 12, 2022 passed by the West Bengal Administrative Tribunal in OA-259 of 2018.
3. By the impugned order, the Tribunal arrived at a finding that, withholding of the entire amount of gratuity

permanently and imposition of 34 per cent cut in pension permanently with regard to the retiral benefits of the respondent, on a proved charge of bigamy in a disciplinary proceeding was shocking to the conscience of the Court. Tribunal, therefore, remanded the matter to the disciplinary authority for fresh consideration of the quantum of punishment.

4. Aggrieved, the State is before us complaining that, the Tribunal misconstrued and misapplied the doctrine of proportionality.
5. Learned Advocate appearing for the petitioners submits that, the respondent was an employee of the State Government. The respondent was governed under the provisions of the West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980, West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 and West Bengal Services (Classification, Control and Appeal) Rules, 1971 amongst others. He submits that, a charge of bigamy was levelled as against the respondent in a disciplinary proceeding which was proved. The disciplinary authority

passed a final order of punishment dated June 9, 2017 which was assailed before the Tribunal resulting in the impugned order.

6. Learned Advocate appearing for the petitioners submits that, the respondent assailed the second show-cause notice before the Tribunal by way of O.A. 699 of 2015. The Tribunal granted liberty to the State to continue with the disciplinary enquiry subsequent to the superannuation of the respondent. Such order was assailed by way of a writ petition being WP.ST 223 of 2016 which was disposed of by an order dated January 25, 2017.
7. Learned Advocate appearing for the State referring to the order dated January 25, 2017 passed in WP.ST 223 of 2016 submits that, the High Court returned a finding that, the charges as against the respondent were grave in nature and that the disciplinary proceeding should be concluded at the earliest.
8. Learned Advocate appearing for the State draws the attention of the Court to the provisions of Section 17 of the Hindu Marriage, Act, 1955 and contends that, bigamy is a

- punishable offence. He refers to Rule 5 (4) and Rule 9 of the Rules of 1980 as well as Rule 8 and Rule 10 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 and submits that, a punishment of withholding of gratuity permanently as also reduction of the pension as done by the order of the disciplinary authority dated June 9, 2017 was permissible. He submits that, Rule 8 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 should also be considered in such context.
9. Relying upon *(1994) 2 Supreme Court Cases 37 (State of W.B. and Others vs. Prasenjit Dutta)*, *(2015) 8 Supreme Court Cass 439 (Khursheed Ahmad Khan vs. State of Uttar Pradesh and Others)*, *(2020) 18 Supreme Court Cases 71 (Chairman-cum-Managing Director, Mahanadi Coalfields Limited vs. Rabindranath Choubey)* and *(2022) 7 Supreme Court Cases 475 (Union of India and Others vs. M. Duraisamy)*, learned Advocate appearing for the State submits that, withholding of Gratuity and reduction in the pension was permissible after a government employee superannuates from his service. He contends that, the Tribunal misplaced and

misconstrued the doctrine of proportionality in the facts and circumstances of present case.

10. Learned Advocate appearing for the respondent draws the attention of the Court to the contents of the impugned order. He submits that, the Tribunal considered the charge of bigamy and proceeded to find that, imposition and the quantum of penalty was shocking to the conscience of the Court. He submits that, withholding the entirety of gratuity benefits and the payment of the pensionary benefits was in excess of the charge established. He refers to the conduct of the respondent during his service period. He submits that, the respondent despite the disciplinary proceedings obtained a promotion which was granted by the authorities. The respondent rendered gratuitous service to the authorities and was, therefore, entitled to gratuity. Moreover, the Tribunal merely remanded the portion of the quantum of punishment to be decided by the disciplinary authority. Therefore, the Writ Court should not interfere.
11. Learned Advocate appearing for the respondent relies upon *(2016) 6 Supreme Court Cases 303 (Delhi Police, Through*

Commissioner of Police and Others vs. Sat Narayan Kaushik)

for the proposition that, a Court can intervene with regard to the quantum of punishment imposed.

12. A charge sheet dated March 2, 1991 was issued as against the respondent while he was in service. At that material point of time, the respondent had rendered about 13 years of service. The primary charge was one of bigamy as against the respondent. The enquiry officer found the respondent guilty of such charge. The disciplinary authority issued a second show-cause notice to the respondent on February 11, 1992 calling upon the respondent to reply to the proposed punishment of dismissal from service.
13. The respondent challenged the second show-cause notice by way of a writ petition which was registered as C.O. No.3704 of 1992. An interim order was passed in such writ petition on April 27, 1992 directing that though further proceedings could be continued, no final order can be passed without the leave of the Court. The writ petition was dismissed for default in 2002. It was restored on September 15, 2006. Thereafter, the writ petition was transferred to the West

Bengal Administrative Tribunal and was renumbered as T.A. 4 of 2007.

14. Tribunal disposed of T.A. 4 of 2007 on March 4, 2010 recording that, the writ petition became infructuous.
15. The respondent superannuated from service on January 31, 2015. His retiral benefits were not disbursed to him. He approached the Tribunal by way of O.A. 503 of 2015. At that stage, State initiated further proceedings in the pending departmental proceedings in accordance with the provisions of Rule 10(1a) of the West Bengal (Death-cum-Retirement Benefit) Rules, 1971. An order dated June 25, 2015 was issued recording that, the departmental enquiry would continue as against the respondent as if he was still in service.
16. Tribunal did not grant any relief to the respondent in O.A. 503 of 2015.
17. The respondent approached the High Court by filing a writ petition. Such writ petition was also disposed of as the departmental enquiry was still pending.

18. On receipt of the order dated June 25, 2015 for revival of the disciplinary proceedings, the respondent approached the Tribunal again by way of O.A. 699 of 2015. The respondent contended that, the departmental proceedings cannot be continued in view of his superannuation.
19. Tribunal, disposed of O.A. 699 of 2015 by holding that, the departmental proceedings can continue despite the superannuation of the respondent.
20. Assailing such order, respondent filed a writ petition before the High Court by way of WP.ST 223 of 2016. Such writ petition was disposed of by an order dated January 25, 2017 which required the State to complete the disciplinary proceedings within June 9, 2017.
21. The disciplinary authority passed an order dated June 9, 2017 as against the respondent. By such order, the disciplinary authority imposed a penalty of pension cut of 34 per cent of basic pension permanently and withholding of entire amount of admissible gratuity permanently.

22. The respondent assailed the order of the disciplinary authority dated June 9, 2017 by way of OA-259 of 2018 which was disposed of by the impugned order.
23. The respondent was proceeded against departmentally for bigamy. The charge of bigamy was established beyond reasonable doubt. It is not the contention of the respondent that, the charge of bigamy was not proved in the disciplinary proceedings.
24. The respondent is governed by the Rules of 1980, West Bengal Services (Death-cum Retirement Benefits) Rules, 1971 and West Bengal Services (Classification, Control and Appeal) Rules 1971.
25. Rule 5 (4) and Rule 9 of the Rules of 1980 are as follows:

“.....

(4) no Government employee who has a wife/husband living shall contract another marriage without obtaining previously the dissolution of the first marriage in accordance with any law for the time being in force notwithstanding such second marriage is permissible under any personal law of the community to which he or she belongs;

.....

9. Any violation or infringement of these rules shall be deemed, to be a good and sufficient reason within the meaning of rule 8 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971, for imposing penalties.”

26. Rule 8 and 10 of the West Bengal Services (Death-cum-Retirement Benefit) Rules of 1971 are as follows:

“8. Withholding of pension in cases of conviction and misconduct-

(1) Future good conduct shall be an implied condition of every grant of pension. The pension sanctioning authority may, by order in writing, withhold or withdraw, either in full or in part, a pension or gratuity or both either permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct where a part of the pension is withheld or withdrawn, the amount of such shall not be reduced below rupees four hundred per mensem:

Provided that no order shall be passed under this clause by an authority subordinate to the authority competent to make an appointment to the post held by the pensioner immediately before his retirement from service.

(2) Where the pensioner is convicted of a serious crime by a court of law, action under sub-rule (1) shall be taken in the light of the judgment of the court relating to such conviction.

(3) In a case not falling under sub-rule (2) if the pension sanctioning authority under sub-rule (1) considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order under sub-rule (1)

(a) serve upon the pensioner a notice specifying the action proposed to be taken and calling upon him to submit within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal and

(b) take the representation, if any, submitted by the pensioner under clause (a) into consideration.

- (4) Where the authority competent to pass an order under clause (1) is the Governor, the Public Service Commission, West Bengal, Shall be consulted before passing the order.
- (5) An appeal against an order under clause (1) passed by any authority other than the Governor shall lie to the Governor and the Governor shall, in consultation with the Public Service Commission, West Bengal, pass such order on the appeal as he deems fit.

.....

(10) Right of the Governor to withhold pension in certain cases.

(1) The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence, during the period of his service, including service rendered on re-employment after retirement:

Provided that---

- (a) such departmental proceeding if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding during this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;
- (b) Such departmental proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment---
- (i) shall not be instituted save with the sanction of the Governor;
- (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 Governor 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 officer during his service;
- (c) no such judicial proceeding, if not instituted while the officer 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 an event which took place more than [four years] before such institution; and
- (d) the Public Service Commission, West Bengal shall be consulted before final order are passed.

Explanation- For the purpose of this article

- (a) a departmental proceeding shall be deemed to have been instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and
- (b) a judicial proceeding shall be deemed to have been instituted-
 - (i) in the case of criminal proceeding, on the date on which the complaint or report of police officer, on which the Magistrate take cognizance, is made, and
 - (ii) in the case of a civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is made to a civil court.

(2) Where any departmental or judicial proceeding is instituted under sub-rule (1) or where a departmental proceedings is continued under clause (a) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding, final orders are passed, a provisional pension not exceeding the maximum pension which would have

been admissible on the basis of his qualifying service up to the date of retirement, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension; but no gratuity of death-cum-retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon.

(3) Payment of provisional pension made under clause (2) shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceeding but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Note- The grant of pension under this rule shall not prejudice the operation rule 65 when final pension is sanctioned upon conclusion of the proceeding.”

27. Rule 8 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 is as follows:

“8. Penalties.- the following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on Government servant, namely:-

- (i) censure;
- (ii) withholding of increments or promotions;
- (iii) recovery from pay of the whole or part of any pecuniary loss-caused to the Government by negligence or breach of order.
- (iv) reduction to lower stage in the time-scale of pay for a specified period with further direction as to whether or not the Government-servant will earn increments of pay during the period of such reduction mid whether on the expiry of such period the

- reduction will or will not have the effect of postponing the future increments of his pay;
- (v) reduction to a lower time scale of pay grade, post or service which shall ordinarily be a bar to the promotion of the Government.”

28. Rule 5(4) of the Rules 1980 imposes an obligation upon a government employee such as the respondent not to contract another marriage during the subsistence of the first marriage without obtaining the dissolution of the first marriage in accordance with law.
29. Rule 9 of the Rules 1980 prescribes that any violation or infringement of the Rules 1980 shall be deemed to be a good and sufficient reason within the meaning of Rule 8 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 for imposing penalties.
30. Rule 8 of the West Bengal Services (Death-cum-Retirement benefit) Rules, 1971 allows withholding of pension in cases of conviction and misconduct. Rule 8(1) allows the pension sanctioning authority to withhold the gratuity permanently. Rule 10 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 allows the Governor the right to

- withhold pension if the pensioner in a departmental proceeding is held to be guilty of grave misconduct.
31. Rule 8 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 prescribes the penalty which can be imposed on a government servant in a disciplinary proceeding.
 32. *Prasenjit Dutta (supra)* considered Rule 5(4) of the Rules of 1980 and a charge of bigamy. It observed that, the departmental authorities are not precluded from examining the question of second marriage for the limited purpose of departmental action. In the facts of the present case in the departmental proceedings the charge of bigamy stood established.
 33. *Khursheed Ahmed Khan (supra)* considered the issue of proportionality of the punishment of dismissal on a charge of bigamy being established. It observed that, the penalty of removal from service cannot be held to be shockingly disproportionate on the charge of bigamy being established on judicial parameters.

34. *Rabindranath Choubey (supra)* considered the issue of withholding of gratuity after superannuation. The majority view observed that, both major and minor punishment including dismissal from service can be imposed besides recovery of pecuniary loss caused by the delinquent even after superannuation. The minority view observed that, punishment of forfeiture of gratuity commensurate with the nature of guilt may be imposed as against a delinquent subsequent to his superannuation from service.
35. *M. Duraisamy (supra)* considered a question of judicial review of punishment imposed by the disciplinary authority. It observed that, unblemished service of the delinquent apart from the charge proved, is not a criteria so as to render a punishment imposed by the disciplinary authority as disproportionate to the charge established. It observed that, the jurisdiction of a Court in questioning the proportionality of an order of departmental authority is limited. A Court cannot set aside a well-reasoned order only on the ground of sympathy and sentiments. Once the Court finds that all procedural requirements were complied with, it should not

ordinarily interfere with the quantum of punishment imposed. If the decision of an employer is found within the legal parameters, the doctrine of proportionality should not ordinarily be invoked when the misconduct stood proved.

36. In *Sat Narayan Kaushik (supra)*, the Supreme Court observed that, the High Court in its exercise of the writ jurisdiction is empowered to interfere with the quantum of punishment imposed and in particular cases, the High Court should take into consideration the totality of the facts and circumstances of the case such as nature of charges levelled against the employee, its gravity, seriousness, whether proved and if so, to what extent, entire service record, work done in the past, remaining tenure of the delinquent left, if any and other parameters.
37. In the facts of the present case, as adumbrated above, the charge of bigamy stood established. The respondent approached the High Court against the second show-cause notice and stalled the departmental proceedings successfully over a period of time. It was ultimately directed to be disposed of by the High Court. It was disposed of within the

- time period stipulated. No procedural irregularity in the departmental proceedings is brought to the notice of the Court by the respondent. Legal parameters in arriving at the final decision were satisfied. In the event, the departmental proceeding was allowed to be completed within the service tenure of the respondent, there was every possibility of a punishment of dismissal from service being imposed. In such an eventuality, the entire pensionary benefits and gratuity would stand forfeited.
38. The Tribunal proceeded on the basis of “bigamy not involved with the service conditions”. The Tribunal also took into consideration that before his superannuation the respondent was granted promotion. On these two grounds the Tribunal came to the finding that the quantum of punishment was shocking to the conscience of the Court.
39. With respect, the Tribunal misunderstood the issue of bigamy as provided under the Rules governing the service conditions of the respondent.
40. Bigamy was a serious offence and it was prohibited under the service conditions of the respondent. That bigamy was a

serious offence was noted by the High Court in its order dated January 25, 2017.

41. Grant of a promotion or the gratuitous service that the respondent rendered was not of much consequence in the teeth of the charge established in view of the ratio laid down in *M. Duraisamy (supra)*. It observed that what was required to be considered is the gravity of the misconduct.
42. In the facts of the present case, the gravity of the misconduct is such that, the delinquent was liable to be dismissed from service if the proceedings was concluded prior to his superannuation. Dismissal from service would obviously entail forfeiture of the pension as well the gratuity.
43. In such circumstances, therefore, quantum of punishment by withholding of 34 per cent of pension and the entirety of the gratuity benefits permanently, was not of such a nature so as to be classified as shocking to the conscience of the Court. It was certainly not disproportionate to the charge established. The final order of punishment was arrived at after compliance of all legal parameters.

44. In such circumstances, we set aside the impugned order of the Tribunal dated July 12, 2022 passed in OA-259 of 2018. We restore the order of the disciplinary authority dated June 9, 2017.
45. **WP.ST 116 of 2022** is allowed without any order as to costs.

(Debangsu Basak,J.)

46. I Agree.

(Md. Shabbar Rashidi, J.)