

**F.M.A. 901 of 2023
With
CAN 1 of 2023**

**The West Bengal State Electricity Board
Distribution Company Limited & Ors.
Vs.
Purnima Chowdhury & Anr.**

Mr. Sumit Kr. Panja,
Mr. Sujit Sankar Koley

...for the appellants/WBSEDCL

1. Heard the learned advocate for the appellant Company.
2. The writ petitioner's husband (hereinafter referred as 'employee'), an employee of the appellant company was engaged in work relating to meter reading and collection of revenue. There is an allegation that he defalcated an amount of ₹.6,84,733.72/- by adopting some malpractice specified in the charge-memo dated 27.08.2001.
3. A regular domestic enquiry commenced thereafter which led to passing an order of punishment dated 19.07.2004, dismissing the employee from service. The employee also preferred an appeal before the appellate authority challenging the dismissal order. During pendency of the appeal, the employee passed away. Thereafter, the appeal was also rejected leading to filing of the writ petition by wife of the employee, since deceased.
4. The writ petition was allowed by the learned Single Judge on the ground that the order of

dismissal dated 19.07.2004 was passed subsequent upon superannuation of the employee on 30.06.2004. The Judgement of the learned Single Judge dated 11.04.2023 in the writ petition is the subject matter of the present intra court appeal.

5. The learned advocate for the appellant Company submits that in exercise of powers conferred by Clause C of Section 79 of the Electricity (Supply) Act, 1948, the Board amended the West Bengal State Electricity Board Employees Service Regulations (for short 'Regulations'). Regulation 70A was thus inserted in the Regulations by an amendment dated 23.08.1988. The amendment provides :

“70(A) : (i) The Board reserves to itself the right to Direct continuance of departmental/judicial proceedings in the event of an officer attaining the age of compulsory retirement before the conclusion of such departmental or judicial proceedings.

(ii) The Board reserves to itself the right to institute departmental proceedings/judicial proceedings against an officer after his retirement in respect of any event which took place not earlier than four years before the date of compulsory retirement of such officer if the cause of action arose or the event took place not more than four years before the compulsory retirement of the officer.

(iii) The Board shall have the right to recover in whole or in part from the officer concerned out of the gratuity or death-cum-gratuity any amount (which the officer concerned is found liable at any proceeding) to make good the pecuniary loss caused to the Board by any act of grave misconduct of the officer concerned.

(iv) The aforesaid provisions contained in the foregoing Clause (i) to (iii) shall apply only to those employees who opted out of the provisions of West Bengal State Electricity Board Employees' (Death-cum-retirement) Benefit Regulations, 1985."

6. In view of a specific provision inserted in the Regulation enabling continuance of proceeding beyond the date of superannuation, the Judgement of the learned Single Judge is unsustainable. He submits that from the records of the enquiry, it is apparent that the proceedings continued for about five (05) years, much of the delay being caused by the employee.
7. Under the circumstances, there was no occasion for the learned Single Judge to grant relief to the writ petitioner by interfering with the punishment order passed in a regular domestic enquiry in strict conformity with the principle of natural justice. There is no finding of the learned Single Judge regarding infraction of any procedural prescription in the service regulations. Therefore,

the finding of the learned Single Judge rendered in exercise of limited jurisdiction under Article 226 of the Constitution of India, is unsustainable.

8. We have gone through the records, considered the submission and the amendment dated 23.08.1988.
9. By now it is a very well settled proposition of law that the operation of the service regulations is limited to an employee who is in the service of the State/organisation. The application of the service regulations cannot be extended to a person once the master-servant relationship snaps. After such cessation of master-servant relationship, the person is not covered by or subject to the service regulations. The law, however, is subject to a well recognised exception, where the rule/service regulations provide by a specific provision for continuance of proceeding even after superannuation. Relying upon the amendment dated 23.08.1988, the Company has sought to sustain the dismissal order passed after superannuation of the deceased Government employee.
10. Since the action is sought to be sustained by relying on Regulation 70A, we are of the view that the authorities were required to proceed strictly in compliance with the letter and spirit of Regulation

70A, which reserved the right of the Board to direct continuance of departmental/judicial proceeding in the event of an officer attaining age of compulsory retirement before the conclusion of such departmental or judicial proceeding.

11. No provision is pointed out to show that there is any deemed continuance of the proceeding after superannuation.
12. A plain reading of Regulation 70A leaves no room for doubt that the right of the Board is reserved, but to “**direct**” for continuance of departmental proceeding even after an employee’s superannuation.
13. In the present case, we asked the learned advocate representing the appellants, whether any order was issued directing for continuance of departmental proceeding against the delinquent. He has very fairly submitted that there is no such order directing for continuance of departmental proceeding.
14. He, however, submits that under Regulation 70A, it was open to the authorities to continue with the proceeding even after his superannuation; and issuance of a direction to continue the proceeding was not mandatory. The learned Single Judge has not accepted the submission to this effect.

15. It is by now settled that the relevant rules applicable to the service determines whether and to what extent the proceeding initiated against an employee while in service, will, or will not continue after retirement. Our view is fortified by decision of the Hon'ble Supreme Court of India in the case of **Chairman-cum-Managing Director, Mahanadi Coalfields Limited Vs. Rabindranath Choubey** reported in **(2020) 18 SCC 71**, paragraph 44 of which reads:

“44. On the basis of the abovementioned decisions in the State of Assam v. Padma Ram Borah, State of Punjab v. Khemi Ram, Bhagirathi Jena v. Board of Directors, O.S.F.C., Kirti Bhusan Singh v. State of Bihar and U.P. State Sugar Corpn. Ltd. v. Kamal Swaroop Tandon this court in Anant R. Kulkarni opined that relevant rules governing the service conditions of an employee are the determining factor as to whether or not the domestic inquiry can be held against an employee who stood retired after reaching the age of superannuation. To this extent, there is no problem caused by the aforesaid decision. However, this court made a general observation that if the inquiry had been initiated while the delinquent employee was in service, it would continue even after his retirement, but the nature of punishment would change. The punishment of dismissal, removal from service would not be imposed. The general observation made cannot come in the way of a specific rule and decision cannot be

said to be of universal application and cannot be said to be binding in a case the rules provide legal fiction and continuance of employee in the service as if he had continued in service.”

16. We find the Regulation is explicit in its intent and mandates issuance of a direction to continue the departmental proceeding. In the present case no such direction was issued.
17. The learned Single Judge, therefore, has rightly held the punishment order passed after the petitioner's retirement to be without jurisdiction since the disciplinary authority ceased to have jurisdiction over the employee, subsequent upon his superannuation from service.
18. In our considered opinion, the conclusion of the learned single judge requires no interference.
19. The appeal is devoid of merit and the same is dismissed.
20. Pending application also stands disposed of.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)