

D.V. Kapoor vs Union Of India And Ors on 7 August, 1990

Equivalent citations: 1990 AIR 1923, 1990 SCR (3) 697, AIR 1990 SUPREME COURT 1923, 1990 (4) SCC 314, 1990 LAB. I. C. 1522, (1990) 16 ALL LR 943, (1990) 14 ATC 906, (1990) 2 LAB LN 659, 1991 BRLJ 55, (1990) 2 CURLR 383, (1990) 3 JT 403 (SC), (1990) 61 FACLR 429, 1990 SCC (L&S) 696

Author: K. Ramaswamy

Bench: K. Ramaswamy, L.M. Sharma

PETITIONER:

D.V. KAPOOR

Vs.

RESPONDENT:

UNION OF INDIA AND ORS.

DATE OF JUDGMENT 07/08/1990

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

SHARMA, L.M. (J)

CITATION:

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| 1990 AIR 1923 | 1990 SCR (3) 697 |
| 1990 SCC (4) 314 | JT 1990 (3) 403 |
| 1990 SCALE (2) 175 | |

ACT:

Central Civil Services (Pension) Rules, 1972: Rules 8(5)--Explanation (b) and 9 Pension and gratuity--Withholding of--For absence from duty--Whether valid and legal--`Grave misconduct'--Interpretation of--Disciplinary proceedings initiated while in service--Continued and concluded on voluntary retirement--Whether valid and legal.

Central Civil Services (Conduct) Rules 1964: Rules 3(1)(i) and 3(1)(iii)--Absence from duty--Whether `grave misconduct'--Withholding of pension----Whether permissible.

Words & Phrases: `Grave misconduct'--Meaning of--Rule 8(5), Explanation (b) Central Civil Services (Pension) Rules, 1972.

HEADNOTE:

Disciplinary proceedings were initiated against the appellant for wilful contravention of Rules 3(1)(i) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964 by absenting himself from duty without authorisation and in not reporting to duty at New Delhi office on transfer from London office. Pending proceedings, he was allowed to retire voluntarily but was put on notice that the disciplinary proceedings would be continued under rule 9 of the Civil Services Pension Rules, 1972. Thereafter, on completion of the enquiry, the President of India in consultation with the Union Public Service Commission, decided to withhold the entire gratuity and pension otherwise admissible to the appellant, on permanent basis, as a measure of punishment. The appellant's writ petition challenging the legality of the order was dismissed by the High Court, in limine.

In the appeal by special leave, before this Court, on behalf of the appellant it was contended that since the appellant had been allowed to retire voluntarily, the proceedings stood abated, and the authorities were devoid of jurisdiction to impose the penalty of withholding gratuity and pension as a measure of punishment, and that for awarding the said punishment the appellant must be found to have committed grave misconduct or negligence within the meaning of Rule 8(5), Explanation (b).

698

Allowing the appeal, this Court,

HELD: 1. Rule 9(2) of the Central Civil Services (Pension) Rules, 1972 provided that the departmental proceedings if instituted while the Government servant was in service, whether before his retirement or during his re-employment, should, after the final retirement of the Government servant, be deemed to be proceedings under the rule and should be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service. [701A-B]

In the instant case, merely because the appellant was allowed to retire, the Government is not lacking jurisdiction or power to continue the proceedings already initiated to the logical conclusion thereto. The only inhibition is that where the departmental proceedings are instituted by an authority subordinate to the President, that authority should submit a report recording its findings to the President. That has been done, and the President passed the order under challenge. Therefore, the proceedings are valid in law and are not abated consequent to voluntary retirement of the appellant and the order was passed by the competent authority, i.e. the President of India. [701B-D]

2.1 Public employee holding a civil post or office under the State has a legitimate right to earn his pension at the evening of his life after retirement be it on superannuation or voluntary retirement. It is not a bounty of the State. Equally too of gratuity, a statutory right, earned by him-

Article 41 of the Constitution accords right to assistance at the old age of sickness or disablement. Therefore, when a Government employee is sought to be deprived of his pensionary right which he had earned while rendering services under the State, such a deprivation must be in accordance with law. [701F-G; 702D]

D.S. Nakara & Ors. v. Union of India, [1983] 2 SCR 165, relied on.

2.2 Under Rule 9(1) of the Central Civil Services (Pension) Rules, 1972, the President has reserved to himself the right to withhold pension in whole or in part, whether permanently or for a specified period, or he can recover from pension of the whole or part of any pecuniary loss caused by the Government employee to the Government subject to the minimum. However, the exercise of the power is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner com-

699

mitted grave misconduct or negligence in the discharge of his duty while in office, as defined in Rule 8(5), Explanation (b), which is an inclusive definition, i.e. the scope is wide of mark, dependent on the facts or circumstances in a given case. In the absence of such a finding, the President is without authority of law to impose penalty or withholding pension as a measure of punishment either in whole or in part, permanently or for a specified period. [702G-H; 704B; 703E-F]

In the instant case, the Inquiry Officer found that though the appellant derelicted his duty to report to duty, at New Delhi on transfer from London, it was not wilful for the reason that he could not move due to his wife's illness and he recommended to sympathetically consider the case of the appellant and the President accepted this finding, but decided to withhold gratuity and payment of pension permanently, in consultation with the Union Public Service Commission. [703G-H; 704A]

The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. There is no provision of law under which the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is illegal and devoid of jurisdiction. Since there is no finding that appellant did commit grave misconduct as charged for, the exercise of the power is clearly illegal and in excess of jurisdiction as the condition precedent, grave

misconduct, was not proved. [704D-G]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5025 of 1985.

From the Judgment and Order dated 25.3.1985 of the Delhi High Court in C.W.P. No. 686 of 1985.

Arun K. Sinha for the Appellant.

N.S Hegde, Additional Solicitor General, T.C. Sharma and Mrs. Sushma Suri for the Respondents.

The Judgment of the Court was delivered by K. RAMASWAMY, J. 1. This appeal by special leave under Art. 136 of the Constitution arises against the decision of the Delhi High Court in C.W.P. No. 686 of 1985 dated March 25, 1985. The appellant was working as an Assistant Grade IV of the Indian Foreign Service, Branch 'B' in Indian High Commission at London. On November 8, 1978 he was transferred to the Ministry of External Affairs, New Delhi, but he did not join duty as commanded, resulting in initiation of disciplinary proceedings against him on August 23, 1979. Pending the proceedings, on February 26, 1980 the appellant sought voluntary retirement from service and by proceedings dated October 24, 1980 he was allowed to retire but was put on notice that the disciplinary proceedings initiated against him would be continued under rule 9 of Civil Serv- ices Pension Rules, 1972 for short 'Rules'. His main defence in the explanation was that his wife was ailing at London and, therefore, he sought for leave for six days in the first instance and 30 days later, which was granted, but as she did not recover from the ailment, he could not undertake travel. So he sought for more leave, but when it was reject- ed, he was constrained to opt for voluntary retirement. After conducting the enquiry the Inquiry Officer submitted his report dated May 19, 1981. The gravamen of charges as stated earlier are that the appellant absented himself from duty from December 15, 1978 without any authorisation and despite his being asked to join duty he remained absent from duty which is wilful contravention of Rule 3(i)(ii) and 3(i)(iii) of the Civil Services Conduct Rule 1964. The Inquiry Officer found that "it is however difficult to say whether his absenting himself from duty was entirely wilful". In the concluding portion he says that both the articles of charges have been established, the circumstances in which the appellant violated the rules require a sympa- thetic consideration while deciding the case under Rule 9 of the Rules. The President, on consideration of the report, agreed with the findings of the Inquiry Officer and in consultation with the Union Public Service Commission decid- ed that the entire gratuity and pension otherwise admissible to the appellant was withheld on permanent basis as a meas- ure of punishment through the proceedings dated November 24,, 1981. When the appellant challenged the legality there- of, the High Court dismissed the writ petition in limine on the ground that it would not interfere in its discretionary jurisdiction under Art. 226 of the Constitution.

2. The contention of Mr. Kapoor, learned counsel for the appellant is that the appellant having been allowed to retire voluntarily the authorities are devoid of jurisdic- tion to impose the penalty of withholding gratuity and pension as a measure of punishment and the proceedings stand abated.

We find no substance in the contention. Rule 9(2) of the Rules provided that the departmental proceedings if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, 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 Government servant had continued in service. Therefore, merely because the appellant was allowed to retire, the Government is not lacking jurisdiction or power to continue the proceedings already initiated to the logical conclusion thereto. The disciplinary proceedings initiated under the Conduct Rules must be deemed to be proceedings under the rules and shall be continued and concluded by the authorities by which the proceedings have been commenced in the same manner as if the Government servant had continued in service. The only inhibition thereafter is as provided in the proviso namely "provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President". That has been done in this case and the President passed the impugned order. Accordingly we hold that the proceedings are valid in law and they are not abated consequent to voluntary retirement of the appellant and the order was passed by the competent authority, i.e. the President of India.

3. His further contention that the appellant must be found to have committed "grave misconduct" or "negligence" within the meaning of Rule 8(5)(2) of the Rules which alone gives power and jurisdiction to the authority to withhold by way of disciplinary measure the gratuity and payment of pension: Public employee holding a civil post or office under the State has a legitimate right to earn his pension at the evening of his life after retirement, be it on superannuation or voluntary retirement. It is not a bounty of the State. Equally too of gratuity, a statutory right, earned by him. Article 141 of the Constitution accords right to assistance at the old age or sickness or disablement. In *D.S. Nakara & Ors. v. Union of India*, [1983] 2 SCR 165 the Constitution Bench of this Court held that pension is not only compensation for loyal service rendered in the past, but also by the broader significance in that it is a social welfare measure rendering socioeconomic justice by providing economic security in the fall of life when physical and mental prowess is ebbing corresponding to ageing process and, therefore, one is required to fall back on savings. One such saving in kind is when one had given his best in the hey-day of life to his employer, in days of invalidity, economic security by way of periodical payment is assured. Therefore, it is a sort of stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus pension is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for one self due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

4. At page 190-D it is stated that pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security from cradle to grave is assured at least when it is mostly needed and least available, namely in the fall of life. Therefore, when a Government employee is sought to be deprived of his pensionary right when he had earned while rendering services under the State, such a deprivation must be in

accordance with law. Rule 9(1) of the rules provides thus:

"The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pensioner of the whole or part of any pecuniary loss caused to the Government, 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 the Union Public Service Commission shall be consulted before any final orders are passed. Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees sixty per mensem."

Therefore, it is clear that the President reserves to himself the right to withhold or withdraw the whole pension or a part thereof whether permanently or for specified period. The President also is empowered to order recovery from a pensioner of the whole or part of any pecuniary loss caused to the Government, if in any, proceeding in the departmental enquiry 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.

Rule 8(5), explanation (b) defines 'grave misconduct' thus: "The expression 'grave misconduct' includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets, Act, 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interest of the general public or the security of the State."

In one of the decisions of the Government as compiled by Swamy's Pension Compilation, 1987 Edition, it is stated that:

"Pensions are not in the nature of reward but there is a binding obligation on Government which can be claimed as a right. Their forfeiture is only on resignation, removal or dismissal from service. After a pension is sanctioned its continuance depends on future good conduct, but it cannot be stopped or reduced for other reasons."

5. It is seen that the President has reserved to himself the right to withhold pension in whole or in part therefore whether permanently or for a specified period or he can recover from pensioner of the whole or part of any pecuniary loss caused by the Government employee to the Government subject to the minimum. The condition precedent is that in any departmental enquiry or the judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service in the original or on re-employment. The condition precedent thereto is that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined in Rule 8(5), explanation (b) which is an inclusive definition, i.e. the scope is wide of mark dependent on the facts or circumstances in a given case. Myriad situations may arise depending on the ingenuity with which misconduct or irregularity was committed. It is not

necessary to further probe into the scope and meaning of the words 'grave misconduct or negligence' and under what circumstances the findings in this regard are held proved. It is suffice that charges in this case are that the appellant was guilty of wilful misconduct in not reporting to duty after his transfer from Indian High Commission at London to the Office of External Affairs Ministry, Government of India, New Delhi. The Inquiry Officer found that though the appellants derelicted his duty to report to duty, it is not wilful for the reason that he could not move due to his wife's illness and he recommended to sympathetically consider the case of the appellant and the President accepted this finding, but decided to withhold gratuity and payment of pension in consultation with the Union Public Service Commission.

6. As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs.60.

7. Rule 9 of the rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Art. 41 of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which, the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction.

8. In view of the above facts and law that there is no finding that appellant did commit grave misconduct as charged for, the exercise of the power is clearly illegal and in excess of jurisdiction as the condition precedent, grave misconduct was not proved. Accordingly the appeal is allowed and the impugned order dated November 24, 1981 is quashed but in the circumstances parties are directed to bear their own costs.

N.P.V.
allowed.

Appeal