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STATE OF UTTAR PRADESH

v.

BRAHMA DATT SHARMA AND ANR.

FEBRUARY 25, 1987

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[A.P. SEN AND K.N. SINGH, JJ.]

*U.P. Civil Service Regulations, Article 470(b): Pension—Whether Government competent to direct reduction—Government Servant—Whether entitled to be heard.*

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*Practice and Procedure:*

*Government servant—Show cause notice issued under statutory provision—Courts to be reluctant to interfere unless issuance palpably without any authority of law.*

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*Service law.*

*Disciplinary proceedings—Whether could be resumed after superannuation.*

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**Article 470(b) of the U.P. Civil Service Regulations provides for reduction in pension amount by the sanctioning authority in cases where the service of a Government servant has not been thoroughly satisfactory.**

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**A number of charges framed against the first respondent were found proved in a departmental inquiry. He was dismissed from service by order dated November 10, 1972. The U.P. Public Service Tribunal upheld the dismissal. In a writ petition filed by him the High Court quashed the said order on August 10, 1984 on the ground that he had not been afforded reasonable opportunity of defence inasmuch as the recommendation of the inquiry officer relating to the quantum of punishment had not been communicated to him. Since the respondent had already retired from service during the pendency of the petition only consequential reliefs were granted.**

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**The State Government issued a notice to him on January 29, 1986 calling upon him to show cause as to why orders for forfeiture of his pension and gratuity be not issued in accordance with Article 470(b) of the Civil Service Regulations as his services have not been wholly satis-**

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factory. It contained allegations of misconduct. The respondent thereupon filed on application in the writ petition which had already been disposed of on August 10, 1984. The High Court held that since departmental proceedings taken against the respondent had already been quashed, it was not open to the State Government to issue show cause notice for imposing reduction in the respondent's pension on the same set of charges.

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Allowing the appeal by special leave, the Court,

**HELD:1.** When a show cause notice is issued to a Government servant under a statutory provision he must place his case before the authority concerned by showing cause. The courts should be reluctant to interfere with the notice at that stage unless it is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the Government servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature. The High Court, therefore, ought not to have interfered with the show cause notice in the instant case. [452H; 453A-C]

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2.1 When proceedings stand terminated by final disposal of a writ petition it is not open to the Court to reopen them by means of miscellaneous application in respect of a matter which provided a fresh cause of action. [453F]

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2.2 In the instant case Respondent's writ petition challenging the order of dismissal having been finally disposed of on August 10, 1984 no miscellaneous application could be filed in the writ petition to revive those proceedings. If the respondent was aggrieved by the notice dated January 29, 1986 he could have filed a separate petition under Article 226 of the Constitution, as it provided a separate cause of action. The High Court, therefore, committed an error in entertaining his application. [453D-E]

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3. After the decision of the writ petition it was open to the State Government to have taken up proceedings against the respondent from the stage at which it was found to be vitiated. Had the respondent not retired from service the State Government could have passed orders awarding punishment to him after issuing a fresh show cause notice. [449D]

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A **4. Merely because a Government servant retires from service on attaining the age of superannuation he cannot escape the liability of misconduct and negligence or financial irregularities. There were serious allegations of misconduct against the respondent which had been proceeded against him during inquiry. Those charges remained alive even after quashing of the dismissal order. Since no disciplinary proceedings could be taken as he had retired from service, the Government proceeded to take action against him under the Civil Service Regulations. [451C; 449F]**

B **5.1 Pension is not bounty, instead it is a right to property earned by the Government servant on his rendering satisfactory service to the State. Article 470(b) of the Civil Service Regulations vests power in the appointing authority to take action for imposing reduction in pension. As the State Government is the appointment authority in the instant case it was competent to issue show cause notice to the respondent. [450F; 452G]**

C **5.2 If disciplinary proceedings against an employee of the Government are initiated in respect of misconduct committed by him and if he retires from service before the completion of the proceedings, it is open to the State Government to direct reduction in his pension on the proof of the allegations made against him. If the charges are not established during the disciplinary proceedings or if the disciplinary proceedings are quashed it is not permissible to the State Government to direct reduction in the pension on the same allegations, but if the disciplinary proceedings could not be completed and if the charges of serious allegations are established, which may have bearing on the question of rendering efficient and satisfactory service, it would be open to the Government to take proceedings against the Government servant and to withhold or reduce the amount of pension in accordance with the statutory rules. If the Government incurs pecuniary loss on account of misconduct or negligence of a Government servant and if he retires from service before any departmental proceedings are taken against him, it is open to the State Government to initiate departmental proceedings, and if in those proceedings he is found guilty of misconduct, negligence or any other such act or commission as a result of which Government is put to pecuniary loss, the State Government is entitled to withhold, reduce or recover the loss suffered by it by forfeiture or reduction of pension. [449H; 450-A-B; D-F]**

D **5.3 Art. 311(2) of the Constitution is not attracted, nonetheless the Government servant is entitled to opportunity of hearing before order for reduction in pension is issued, as it would affect his right to receive full pension. [452B]**

5.4 It would be open to the State Government to consider the respondent's reply to the show cause notice and proceed with the matter in accordance with law. [453G]

*State of Punjab v. K.R. Erry and Sobhag Rai, Mehta, [1973] 2 SCR 405; Deokinandan Prasad v. State of Bihar & Ors., [1971] Suppl. SCR 634; D.S. Nakara and Ors., v. Union of India, [1983] 2 SCR 165; M. Narasimhachar v. State of Mysore, [1960] 1 SCR 981 and State of Punjab & Anr. v. Iqbal Singh, [1976] 3 SCR 360, referred to.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 481 of 1987.

From the Judgment and Order dated 11.7.1986 of the Allahabad High Court in W.P. No. 8249 of 1980.

Anil Dev Singh and Mrs. S. Dikshit for the Appellant.

Ashok Grover and Pramod Dayal for the Respondents.

The Judgment of the Court was delivered by

SINGH, J. Leave granted.

This appeal is directed against the order of the High Court of Allahabad quashing the State Government's Notice dated 29.1.86 issued under Art. 470(b) of the Civil Service Regulations calling upon the respondent to show cause as to why his pension and gratuity be not forfeited.

Relevant facts giving rise to this appeal are necessary to be recapitulated. Brahm Datt Sharma was employed as an Executive Engineer in the Irrigation Department of the State of Uttar Pradesh. A number of charges were framed against him and after departmental inquiry charges were found proved consequently. He was dismissed from service by the State Govt.'s Order dated November 10, 1972. He unsuccessfully challenged the validity of the Order before the U.P. Public Service Tribunal. Therefore he filed a writ petition under Art. 226 of the Constitution before the High Court challenging the order of dismissal. A single Judge of the High Court Allahabad by his Order dated 10.8.84 set aside the order of the Tribunal and quashed the State Government's Order dismissing the respondent from service on the ground that he had not been afforded reasonable opportunity of

A defence in as much as the recommendation made by the inquiry officer relating to the quantum of punishment against the petitioner had not been communicated to him. While allowing the writ petition the learned single Judge made the following observations:

B "I am informed by the learned counsel for the petitioner that the petitioner has now reached the age of superannuation during the pendency of the petition in the High Court, consequently no reinstatement can be ordered today. The petitioner will, however, be entitled to receive all the benefits which he would be entitled treating him as having been in service from the date of dismissal till the date of superannuation. The petitioner will also be entitled to receive the pensionary benefits which will be admissible to him as if he continued in service till the date of superannuation. It will be open to the respondents to draw fresh proceedings if it is permissible to do so."

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D The respondent had already retired from service during the pendency of the petition before the High Court. On attaining the age of superannuation disciplinary proceedings could not be taken against him. The State Govt. however issued a notice dated 29.1.86 to him calling upon him to show cause as to why orders for forfeiture of his pension and gratuity be not issued in accordance with Art. 470(b) Civil

E Service Regulation as his services have not been wholly satisfactory. The notice contained allegations of misconduct against the respondent regarding financial irregularities committed by him. The respondent submitted a reply to the notice but before the same could be examined or a decision could be taken by the Govt. he filed an application before the High Court in Writ Petition No. 82449 of 1980 which had already

F been finally disposed of on 10.8.84. By his Order dated July 11, 1986 the learned single Judge of the High Court held that since the departmental proceedings taken against the respondent had already been quashed, it was not open to the State Govt. to issue show cause notice under Art. 470(b) of Civil Service Regulations, on those very allegations which formed charges in the disciplinary proceedings. The

G Learned single Judge quashed the show cause notice and directed the State Govt. to pay arrears of salary, pension and other allowances to the respondent.

H The question which falls for consideration is whether notice dated 29.1.86 was invalid and liable to be quashed. The learned single Judge of the High Court quashed the notice on the sole ground that the

allegations specified in the show cause notice were the same which had been the subject matter of departmental inquiry resulting in the respondent's dismissal from service, and since dismissal order had been quashed in the writ petition, it was not open to the State Govt. to take proceedings for imposing any cut in the respondent's pension on the same set of charges. We do not agree with the view taken by the High Court. While quashing the order of dismissal the learned Judge did not quash the proceedings or the charges instead; he had quashed dismissal order merely on the ground that the respondent was not afforded opportunity to show cause against the proposed punishment as the recommendation with regard to the quantum of punishment made by the Inquiry Officer had not been communicated to him. In fact while allowing the writ petition the learned single Judge himself observed in his order dated 10.8.84 that it would be open to the State Govt. to draw fresh proceedings if it was permissible to do so. The High Court did not enter into the validity of the charges or the findings recorded against the respondent during the inquiry held against him. After the decision of the writ petition, it was open to the State Govt. to have taken up proceedings against the respondent from the stage at which it was found to be vitiated. Had the respondent not retired from service on attaining the age of superannuation it was open to the State Govt. to pass order awarding punishment to him after issuing a fresh show cause notice and supplying to him a copy of the recommendation made by the Inquiry Officer. There was no legal bar against the State Govt. in following such a course of action. There were serious allegations of misconduct against the respondent which had been proceeded against him during inquiry, those charges remained alive even after quashing of the dismissal order and it was therefore open to the State Govt. to take action against the respondent in accordance with the rules. No disciplinary proceedings could be taken as the respondent had retired from service, the Govt. therefore considered it appropriate to take action against him under Art. 470 of Civil Service Regulations. The Regulation vests power in the appointing authority to take action for imposing reduction in the pension, as the State Govt. is the appointing authority it was competent to issue show cause notice to the respondent. The notice specified various acts of omissions and commissions with a view to afford respondent opportunity to show that he had rendered throughout satisfactory service and that the allegations made against him did not justify any reduction in the amount of pension. If disciplinary proceedings against an employee of the Govt. are initiated in respect of misconduct committed by him and if he retires from service on attaining the age of superannuation, before the completion of the proceedings it is open to the State Govt. to direct deduc-

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A tion in his pension on the proof of the allegations made against him. If the charges are not established during the disciplinary proceedings or if the disciplinary proceedings are quashed it is not permissible to the State Govt. to direct reduction in the pension on the same allegations, but if the disciplinary proceedings could not be completed and if the charges of serious allegations are established, which may have bearing

B on the question of rendering efficient and satisfactory service, it would be open to the Govt. to take proceedings against the Govt. servant in accordance with rules for the deduction of pension and gratuity. In this view the High Court committed error in holding that the show cause notice was vitiated.

C Grant of pension to employees of the State Government is regulated by the Civil Service Regulations which have statutory character. Article 348-A provides that pension shall be granted subject to the conditions contained in the Regulations. Article 351-A empowers the Governor to withhold or withdraw pension or any part of it, whether permanently or for a specified period and also to order

D recovery from pension of the whole or part of the pension for any pecuniary loss caused to the Government if the pensioner is found guilty in departmental or in judicial proceedings for any misconduct or negligence during his service. Article 353 lays down that no pension shall be granted to an officer dismissed or removed from service for misconduct, insolvency or inefficiency, but compassionate allowance

E may be granted on special consideration. The claim of pension is determined by length of service, as provided by Article 474 to 485. Full pension is admissible under the rules not as a matter of course but only if the service rendered by the Government employee is approved. The Regulations empower the authority sanctioning the pension to make such reduction in the amount of pension as it may think proper. These

F provisions indicate that a Government servant is entitled to pension but the claim of pension is determined in accordance with the statutory rules. No doubt pension is no more a bounty; instead it is a right earned by the Government servant on the basis of length of service, nonetheless grant of full pension depends on the approval of service rendered by the employee. In other words if the service rendered by

G the Government servant has not been satisfactory he would not be entitled to full pension and it would always be open to the Govt. to withhold or reduce the amount of pension in accordance with the statutory rules. If the Government incurs pecuniary loss on account of misconduct or negligence of a Govt. servant and if he retires from service before any departmental proceedings are taken against him, it

H is open to the State Govt. to initiate departmental proceedings, and if

in those proceedings he is found guilty of misconduct, negligence or any other such act or omission as a result of which Govt. is put to pecuniary loss, the State Govt. is entitled to withhold, reduce or recover the loss suffered by it by forfeiture or reduction of pension. These provisions ordain the Govt. servant to perform his duties faithfully and honestly. Honest and devoted service rendered by a Govt. servant ensures efficiency in public administration. The statutory rules therefore contain provisions for the forfeiture and deduction in the pension of Govt. servant who have not rendered satisfactory service or who have been found guilty of misconduct or negligence resulting in pecuniary loss to the Govt. Merely because a Govt. servant retires from service on attaining the age of superannuation he cannot escape the liability of misconduct and negligence or financial irregularities.

Art. 470 of the Civil Service Regulation reads as under:

“470(a) The full pension admissible under the Rules is not to be given as a matter of course, or unless the service rendered has been really approved (See Appendix 9)

(b) If the service has not been thoroughly satisfactory the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

Provided that in cases where the authority sanctioning pension is other than the appointing authority, no order regarding reduction in the amount of pension shall be made without the approval of the appointing authority.

Note: For the purpose of this Article ‘appointing authority’ shall mean the authority which is competent to make substantive appointment to the post or service from which the officer concerned retires.”

A plain reading of the regulation indicates that full pension is not awarded as a matter of course to a Govt. servant on his retirement instead, it is awarded to him if his satisfactory service is approved. If the service of a Govt. servant has not been thoroughly satisfactory the authority competent to sanction the pension is empowered to make such reduction in the amount of pension as it may think proper. Proviso to the regulation lays down that no order regarding reduction in

A the amount of pension shall be made without the approval of the appointing authority. Though the Regulations do not expressly provide for affording opportunity to the Govt. Servant before order for the reduction in the pension is issued, but the principles of natural justice ordain that opportunity of hearing must be afforded to the Govt. servant before any order is passed. Art. 311(2) is not attracted,

B nonetheless the Govt. servant is entitled to opportunity of hearing as the order of reduction in pension affects his right to receive full pension. It is no more in dispute that pension is not bounty; instead it is a right to property earned by the Govt. servant on his rendering satisfactory service to the State. In *State of Punjab v. K.R. Erry and Sobhag Rai Mehta*, [1973] 2 SCR 405 this Court held that the State Govt. could not direct cut in the pension of officers without giving a reasonable opportunity of hearing to them. In *Deokinandan Prasad v. State of Bihar & Ors.*, [1971] Suppl. SCR 634 it was held that pension is not bounty payable at the sweet will and pleasure of the Govt.; instead the right to pension is valuable right vested in a Govt. servant. Again in *D.S. Nakara and Ors. v. Union of India*, [1983] 2 SCR 165 this Court held that payment of pension does not depend upon the discretion of the Govt. but it is governed by the rules and Govt. servant coming under those rules is entitled to claim pension. A Govt. employee earns his pension by rendering long and efficient service, the claim of pension is regulated by rules, which provide for reduction in the amount of pension if the Govt. servant has failed to render efficient service. In *M. Narasimhachar v. State of Mysore*, [1960] 1 SCR 981 this Court upheld the order of the State Govt. in reducing pension of a Govt. employee as the rules regulating the grant of pension made provision for reduction of pension on account of his having rendered unsatisfactory service. Rule 6.4 of Punjab Civil Pension Rules provides for the reduction in the amount of pension if the service of the Govt. employee has

F not been thoroughly satisfactory. The State Govt.'s order directing reduction of pension of the employee of State of Punjab were set aside by this Court in *State of Punjab v. K.R. Erry and Sebhag Rai Mehta* (Supra) and in *State of Punjab & Anr. v. Iqbal Singh*, [1976] 3 SCR 360 on the ground that the orders imposing deduction in the pension had been passed in violation of principles of natural justice as the affected

G employees had not been afforded opportunity of hearing. These decisions leave no scope for any doubt that the State Govt. is competent to direct reduction in pension after affording opportunity of hearing to the Govt. servant.

H The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Govt. servant under a

statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature. The High Court in our opinion ought not have interferreded with the show cause notice.

The High Court's order is not sustainable for yet another reason. Respondents' writ petition challenging the order of dismissal had been finally disposed of on 10.8.1984, thereafter nothing remained pending before the High Court. No miscellaneous application could be filed in the writ petition to revive proceedings in respect of subsequent events after two years. If the respondent was aggrieved by the notice dated 29.1.86 he could have filed a separate petition under Art. 226 of the Constitution challenging the validity of the notice as it provided a separate cause of action to him. The respondent was not entitled to assail validity of the notice before the High Court by means of a miscellaneous application in the writ petition which had already been decided. The High Court had no jurisdiction to entertain the application as no proceedings were pending before it. The High Court committed error in entertaining the respondent's application which was founded on a separate cause of action. When proceedings stand terminated by final disposal of writ petition it is not open to the Court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed there would be confusion and chaos and the finality of proceedings would cease to have any meaning.

We accordingly allow the appeal, set aside the order of the High Court dated 10.8.84. It would be open to the State Government to consider the respondents reply to the show cause notice and proceed with the matter in accordance with law. In the circumstances of the case parties shall bear their own costs.