

STATE OF MAHARASHTRA

v.
M.H. MAZUMDAR

FEBRUARY 24, 1988

[E.S. VENKATARAMIAH, K.N. SINGH AND N.D. OJHA, JJ.] B

*Bombay Civil Services Rules, 1959: Rules 188 and 189—
Pension—Reduction/withdrawal—Whether permissible.*

*Government servant—After retirement of attaining the age of
superannuation—Whether liable to departmental action for misconduct,
negligence or financial irregularities committed during service period—
Whether pension can be reduced.*

The respondent retired from State Government service on September 1, 1987, on attaining the age of superannuation. About a year after his retirement, the respondent was served with a chargesheet containing allegations of misconduct and negligence for the period he was in service. Enquiry into the charges was held and respondent was afforded full opportunity to defend himself. On the conclusion of the enquiry a report was submitted by the Collector, holding that one of the two charges was established while the other charge was partly proved, and that the respondent's action was helpful to one of the parties which amounted to a serious default on his part as a Government servant, and it was recommended that since the respondent has already retired from service, a lenient view should be taken and reduction in pension to the extent of Re. 1 per month be made. The State Government accepted the findings and issued orders reducing the amount of pension payable to the respondent by 50% permanently under Rule 188 of the Bombay Civil Services Rules.

The respondent challenged the validity of the Government order before the High Court. A Division Bench of the High Court allowed the writ petition and quashed State Government's order on the ground that the State Government had no authority in law to take any disciplinary proceedings against respondent as he had already retired from service and the initiation of disciplinary enquiry and the order of punishment were unauthorised and illegal.

Allowing the appeal by the State, partly,

A

B

C

D

E

F

G

H

A HELD : 1.1 Rule 188 of the Bombay Civil Services Rules empowers the Government to reduce the amount of pension of a Government servant whose service has not been thoroughly satisfactory. Rule 189 expressly confers power on the Government to withhold or withdraw any part of the pension payable to Government servant for misconduct which he may have committed while in service, after giving opportunity of defence in accordance with the procedure specified in Note I of Rule 33 of the Bombay Civil Services Conduct Discipline and Appeal Rules. The State Government's power to reduce or withhold pension by taking proceedings against Government servant even after retirement is thus expressly preserved by the aforesaid rules. [34C, F-H]

C 1.2 The High Court committed a serious error in holding that the State Government had no authority to initiate any proceedings against the respondent. The purpose of the enquiry was not to inflict any punishment, and the proceedings were initiated for determining respondent's pension. The proceedings were taken in accordance with the Rules 188 and 189 of the Rules. [35C-E]

D 1.3 The Government had power to reduce the pension payable to the respondent but having regard to the facts and circumstances of the case, the reduction of pension by 50% was too harsh and disproportionate to the misconduct proved against the respondent. The State Government should have taken into consideration the fact that the respondent had retired from service and the reduction of pension by 50% would seriously affect his living. The order of the High Court and the State Government's order reducing pension by 50% are set aside and the State Government is directed to reconsider the question of reduction of respondent's pension. [35E-F; 36E-G]

F *B.J. Shelet v. State of Gujarat & Ors.*, [1978] 2 SCC 202, distinguished.

G *M. Narasimhachar v. The State of Mysore*, [1960] 1 SCR 981 and *State of Uttar Pradesh v. Brahm Datt Sharma & Anr.*, [1987] 2 SCC 179, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 573 of 1988

H From the Judgment and Order dated 13.2.1987 of the Bombay High Court in W.P. No. 613 of 1984.

A.M. Khanwilkar and A.S. Bhasme for the Appellant. A

B.N. Singhvi and A.K. Gupta for the Respondent.

The Judgment of the Court was delivered by

SINGH, J. Special leave granted. B

This appeal raises an important question of law whether a Government servant after his retirement on attaining the age of superannuation is liable to be dealt with departmentally for any misconduct, negligence or financial irregularities committed by him during the period of his service. C

Necessary facts giving rise to this appeal are that M.H. Mazumdar, the Respondent was in the service of the State of Maharashtra as Supply Inspector and he retired from service on attaining the age of superannuation on September 1, 1977. After his retirement the respondent was served with a charge-sheet on October 16, 1978 containing allegations of misconduct and negligence against him for the period he was in service. Enquiry into those charges was held and the respondent was afforded full opportunity to defend himself. On the conclusion of the enquiry the State Government issued orders on December 4, 1982 reducing the amount of pension payable to the respondent by 50 per cent permanently under Rule 188 of the Bombay Civil Services Rules. The respondent challenged the validity of the Government's order by means of a writ petition under Article 226 of the Constitution before the High Court of Bombay. A Division Bench of that Court allowed the writ petition and quashed the State Government's order dated December 4, 1982 on the ground that the State Government had no authority in law to take any disciplinary proceedings against the respondent as he had already retired from service. Placing reliance on a decision of this Court in *B.J. Shelet v. State of Gujarat & Ors.*, [1978] 2 SCC 202 the High Court held that the initiation of disciplinary enquiry and the order of punishment was unauthorised and illegal. The State of Maharashtra has preferred this appeal against the judgment of the High Court. G

There is no dispute that the respondent had retired from service on attaining the age of superannuation on September 1, 1977 and charges were served on him on October 16, 1978 after about a year of his retirement. Undisputedly the proceedings against the respondent were initiated after the respondent ceased to be in service of the State H

A Government. The proceedings culminated into an order of the State Government reducing the respondent's pension by 50 per cent. The question is whether the State Government was competent to take action against the respondent by reducing his pension. Conditions for grant of pension to a Government servant of the State of Maharashtra are regulated by the Bombay Civil Services Rules (hereinafter referred to as the Rules). Rule 184 provides for grant of pension admissible under the rules to Government servant who is borne on its establishment. Rules 188 and 189 relevant for our purpose are as under:

C "188. Government may make such reduction as it may think fit in the amount of the pension of a Government servant whose service has not been thoroughly satisfactory."

D "189. Good conduct is an implied condition of every grant of pension. Government may withhold or withdraw a pension or any part of it if the pensioner be convicted of serious crime or be found to have been guilty of grave misconduct either during or after the completion of his service, provided that before any order to this effect is issued, the procedure referred to in Note I to Rule 33 of Bombay Civil Services Conduct, Discipline and Appeal Rules shall be followed."

E The aforesaid two Rules empower Government to reduce or withdraw a pension. Rule 189 contemplates withholding or withdrawing of a pension or any part of it if the pensioner is found guilty of grave misconduct while he was in service or after the completion of his service. Grant of pension and its continuance to a Government servant

F depend upon the good conduct of the Government servant. Rendering satisfactory service maintaining good conduct is a necessary condition for the grant and continuance of pension. Rule 189 expressly confers power on the Government to withhold or withdraw any part of the pension payable to a Government servant for misconduct which he may have committed while in service. This Rule further provides that

G before any order reducing or withdrawing any part of the pension is made by the competent authority the pensioner must be given opportunity of defence in accordance to the procedure specified in Note I to Rule 33 of the Bombay Civil Services Conduct, Discipline and Appeal Rules. The State Government's power to reduce or withhold pension by taking proceedings against a Government servant even after his retirement is expressly preserved by the aforesaid Rules.

H

The validity of the Rules was not challenged either before the High Court or before this Court. In this view, the Government has power to reduce the amount of pension payable to the respondent. In *M. Narasimhachar v. The State of Mysore*, [1960] 1 SCR 981 and *State of Uttar Pradesh v. Brahm Datt Sharma & Anr.*, [1987] 2 SCC 179 similar Rules authorising the Government to withhold or reduce the pension granted to the Government servant were interpreted and this Court held that merely because a Government servant retired from service on attaining the age of superannuation he could not escape the liability for misconduct and negligence or financial irregularities which he may have committed during the period of his service and the Government was entitled to withhold or reduce the pension granted to a Government servant.

The High Court in our view committed serious error in holding that the State Government had no authority to initiate any proceedings against the respondent. In *B.J. Shelat v. State of Gujarat & Ors.* disciplinary proceedings had been initiated against the Government Servant for purpose of awarding punishment to him after he had retired from service. The ratio of that decision is not applicable to the instant case as in the present case the purpose of the enquiry was not to inflict any punishment; instead the proceedings were initiated for determining the respondent's pension. The proceedings were taken in accordance with Rules 188 and 189 of the Rules. It appears that the attention of the High Court was not drawn to these Rules.

The State Government had power to reduce the pension payable to respondent but having regard to the facts and circumstances, of the case we are of the opinion that the reduction of pension by 50 per cent was disproportionate to the charges proved against the respondent. Two charges were framed against the respondent which are as under:

"Charge No. 1.

He has made a farce of an enquiry, collected 6 permits from the Kolhapur Central Co-operative Consumers Stores including the permit No. 007314 issued to Shri K.P. Khatavane with *malafide* intention after passing a receipt thereof to the Godown Keeper, of the said stores on 12.6.1974 and thereby tried to shield Shri K.P. Khatavane and his sons Baban Khatavane from criminal prosecution.

Charge No. 2.

He has deliberately and intentionally denied to have made

A

B

C

D

E

F

G

H

A any enquiry regarding unauthorisedly lifting of 10 bags of Sugar on bogus or forged permit by Shri Baban Khatavane even though he was deputed for such enquiry by Shri A.R. Mane District Supply Officer, Kolhapur and he had actually recorded the statement of Shri S.L. More, Godown Keeper of the said stores and Shri Hari Santu Pande, Cart driver and also collected above mentioned 6 permits from Shri More after passing a receipt thereof. By denying the above fact he has helped Shri A.R. Mane, District Supply Officer, Kolhapur for suppressing the case. His failure in this regard leads to belief that he has conspired with Shri K.P. Khatavane and his son Shri Baban Khatavane with some ulterior motive and abatted them in the disposal of sugar in black market.”

B

C

D On conclusion of the enquiry charge No. 1 was found to have been established while charge No. 2 was partially proved. In his report to the State Government the Collector of Kolhapur held that the respondent's action was helpful to Shri Khatavane to sell the sugar in the black market, and it amounted to a serious default on his part as a Government servant. He recommended that since the respondent had already retired from service a lenient view should be taken and reduction in pension to the extent of Re.1 per month be made. The State Government accepted the findings and passed the impugned order reducing the pension by 50 per cent. In our view the reduction of pension 50 per cent was too harsh and disproportionate to the misconduct proved against the respondent. The State Government should have taken into consideration the fact that the respondent had retired from service and the reduction of pension by 50 per cent would seriously affect his living.

E

F

G Accordingly, we allow the appeal partly, and set aside the order of the High Court dated February 13, 1987, and the State Government's order dated December 4, 1982 and direct the State Government to reconsider the question of reduction of respondent's pension. There will be no order regarding costs.

N.P.V.

Appeal allowed.