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BHAGIRATHI JENA

v.

BOARD OF DIRECTORS, O.S.F.C. AND ORS.

MARCH 31, 1999

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[M. JAGANNADHA RAO AND S.S. MOHAMMED QUADRI, JJ.]

Orissa Financial State Corporation Staff Regulations, 1975 : Regulation 44.

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Service Law—Disciplinary proceedings continuance after superannuation—permissibility of—Power of employer to make reduction in retiral benefits.

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Orissa State Financial Corporation—Employee—Alleged misconduct—Suspension—Departmental enquiry—Superannuation before conclusion of enquiry—Continuation of proceedings subsequent to superannuation and reduction of retiral benefit—Writ Challenging—Dismissal of—Appeal—Held in the absence of a provision in the regulations the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant or to conduct disciplinary enquiry after retirement of the appellant—In the absence of such authority the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement—Direction to the Corporation to pay arrears of salary and allowances payable to him during the period of suspension upto the date of superannuation after deducting the suspension allowance paid to him for the said period.

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T.S. Mankad v. State of Gujarat reported in, [1989] Suppl. 2 SCC 110, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2101 of 1999.

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From the Judgment and Order dated 13.02.98 of the Orissa High Court in O.J.C. No. 531 of 1995.

Ms. Indira Jaisingh, Bharat Sangal, Anand Pandey and Ms. Asha Pathak for the Appellant.

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S.S. Javali and Ms. Kirti Misra for the Respondents.

The following Order of the Court was delivered :

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Special leave granted.

This is an appeal preferred by the appellant who was an employee of the respondent Corporation. The appellant joined as a Junior Clerk in 1962 and by the year 1986 he was working as Joint General Manager. He was issued a charge sheet on 22.7.92 in respect of various items of alleged misconduct. The disciplinary proceedings were initiated on the same day under Regulation 44 of the Orissa Financial State Corporation Staff Regulations, 1975 and the appellant was suspended with immediate effect. For various reasons, which it is not necessary to mention here, the disciplinary enquiry was not concluded before the date of the appellant's superannuation, which took place on 30th June, 1995.

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The appellant was relieved on 1st July, 1975 by the Corporation "without prejudice to the claims of the Corporation." Thereafter the question arose in regard to the continuance of the disciplinary enquiry for the purpose of reduction of retiral benefits payable to the appellant. The appellant filed a writ petition in the High Court of Orissa contending that once the appellant had retired on 30.6.95, the disciplinary proceedings could not be continued even for the purpose of making reduction of the retiral benefits inasmuch as there were no statutory regulations made by the Corporation for such reduction of retiral benefits. The High Court of Orissa dismissed the writ petition by judgment dated 30.6.98. Thereafter the appellant has filed this appeal by special leave.

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Learned senior counsel for the respondent Corporation invited our attention to the Regulation-17 of the Orissa State Financial Corporation Employees Provident Fund Regulations, 1959. It reads thus ;

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"The sum standing to the credit of a subscriber shall become payable on the termination of his/her service or on his/her death, provided that there may if the Board so directs the Administrators, be deducted there from and paid to the Corporation-

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(a) any amount due under a liability incurred by the subscriber to the Corporation up to the total amount contributed by the Corporation to his/her account, including the interest credited in respect thereof."

Learned senior counsel for the respondents also relied upon Clause (3) (c) of the Regulation-44 of the Orissa State Financial Corporation

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A Staff Regulations, 1975. It reads thus ;

“When the employee who has been dismissed, removed or suspended is reinstated, the Board shall consider and make a specific order :-

B (i) Regarding the pay and allowances to be paid to the employees for the period of his absence from duty, and

(ii) Whether or not the said period shall be treated as a period on duty.”

C It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of departmental enquiry after superannuation.

D In view of the absence of such provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95, there was no authority vested in the Corporation or continuing the departmental enquiry even for the purpose of imposing any
E reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

F Learned senior counsel for the respondent placed reliance on the judgment of this Court in *T.S. Mankad v. State of Gujarat* reported in, [1989] Suppl. 2 SCC 110. It is true that that was a case of imposing a reduction in the pension and gratuity on account of unsatisfactory service of the employee as determined in an enquiry which was extended beyond the date of superannuation. But the above decision cannot help the respondent inasmuch as in that case there was a specific rule namely Rule 241-A of the Junagadh State Pension and Parwashi Allowance Rules, 1932 which enabled the
G imposition of a reduction in the pension or gratuity of a person after retirement. Further, there were rules in that case which enabled the continuance of departmental enquiry even after superannuation for the purpose of finding out whether any misconduct was established which could be taken into account for the purpose of Rule 241-A. In the absence of a similar provision
H with Regulations of the respondent Corporation, the above judgment of

Mankad's case cannot help the respondent.

The question has also been raised in the appeal in regard to the payment of arrears of salary and other allowances payable to the appellant during the period he was kept under suspension and upto the date of superannuation. Inasmuch as the enquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him after deducting the suspension allowance that was paid to him during the abovesaid period.

The appeal is therefore allowed directing the respondent to pay arrears of salary and allowances payable to him during the period of suspension upto the date of superannuation after deducting the suspension allowance paid to him for the said period and also to pay the appellant, all the retiral benefits otherwise payable to him in accordance with the rules and regulations applicable, as if there had been no disciplinary enquiry or order passed therein.

In the circumstances the judgment and order of the High Court is set aside. The writ petition of the appellant is allowed in terms of the directions given above. No order as to costs.

T.N.A.

Appeal allowed.