

DEV PRAKASH TEWARI

v.

U.P. COOPERATIVE INSTITUTIONAL SERVICE BOARD,  
LUCKNOW & ORS  
(Civil Appeal Nos. 5848-5849 of 2014)

JUNE 30, 2014

[T.S. THAKUR AND C. NAGAPPAN, JJ.]

*Uttar Pradesh Cooperative Employees Service Regulations, 1975: Disciplinary proceedings – Continuance of, after superannuation – Held: There is no provision in the Service Regulations, 1975, for initiation or continuation of disciplinary proceeding after retirement nor there is any provision stating that in case misconduct is established a deduction could be made from retiral benefits – In the instant case, the appellant retired from service – Therefore, after his retirement there was no authority vested with respondent for continuing disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant – In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits – Service law – Disciplinary proceedings.*

**The appellant was working as Assistant Engineer with Respondent No. 2. A disciplinary proceeding was initiated under Rule 85 of the Uttar Pradesh Cooperative Employees Service regulations, 1975 and after enquiry, he was dismissed from service. Aggrieved, the appellant filed a writ petition. The High Court quashed the disciplinary proceeding on the ground that inquiry was vitiated as no opportunity was given to the appellant to cross-examine the witness and, therefore, there was violation of principle of natural justice. The High Court directed for reinstatement and payment of back wages**

A and granted liberty to conduct a fresh disciplinary inquiry in accordance with law. Fresh disciplinary proceeding was conducted and while it was pending, the appellant reached the age of superannuation and retired from service.

B The appellant filed a writ petition challenging the continuance of disciplinary proceedings after his retirement. The High Court held that there was no ground to interfere with the disciplinary proceeding and directed to complete it within 4 months. The instant appeal was  
C filed challenging the order of the High Court.

Allowing the appeals, the Court

D HELD: 1. The High Court while quashing the earlier disciplinary proceedings on the ground of violation of principles of natural justice in its order dated 10.1.2006 granted liberty to initiate the fresh inquiry in accordance with the Regulations. The appellant was reinstated in service on 26.4.2006 and fresh disciplinary proceeding was initiated on 7.7.2006 and while that was pending, the  
E appellant attained the age of superannuation and retired on 31.3.2009. There is no provision in the Uttar Pradesh Co-operative Employees Service Regulations, 1975, for initiation or continuation of disciplinary proceeding after retirement of the appellant nor there is any provision  
F stating that in case misconduct is established a deduction could be made from his retiral benefits. [Para 6] [15-D-G]

2. Once the appellant had retired from service on  
G 31.3.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had  
H lapsed and the appellant was entitled to get full retiral

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benefits. Inasmuch as the inquiry had lapsed, it is the A  
appellant would have to get the balance of the  
emoluments payable to him. The respondents are  
directed to pay arrears of salary and allowances payable  
to the appellant and also to pay all the retiral benefits in B  
accordance with the rules and regulations as if there had  
been no disciplinary proceeding or order passed therein.  
[Paras9 to 11] [17-D-G]

*U.P. Cooperative Federation Ltd. and Ors. vs. L.P. Rai*  
(2007) 7 SCC 81 – held inapplicable. C

*Bhagirathi Jena vs. Board of Directors, O.S.F.C. and Ors.*  
(1999) 3 SCC 666: 1999 (2) SCR 354 – referred to.

**Case Law Reference :**

(2007) 7 SCC 81	held inapplicable	Para 3	D
1999 (2) SCR 354	referred to	Para 4	

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.  
5848-5849 of 2014. E

From the Judgment and Order dated 18.12.2009 in WP  
No. 1919/2009 dated 29/03/2010 in RP No. 139/2010 of the  
High Court of Judicature at Allahabad.

Anurag Srivastava, T. Mahipal for the Appellant. F

Sunil Kumar Jain, Pawanshree Agrawal, Reeta  
Chaudhary for the Respondents.

The Judgment of the Court was delivered by

**C. NAGAPPAN, J.** 1. Leave granted. G

2. These appeals are preferred by the appellant who was  
working as Assistant Engineer with respondent No.2. A  
disciplinary proceeding was initiated under Rule 85 of the Uttar  
Pradesh Co-operative Employees Service Regulations, 1975, H

A against him by serving a charge-sheet and after inquiry he was  
dismissed from service by order dated 27.4.1988. The  
appellant sought for quashing the said order by filing a writ  
petition in Writ Petition No.4328(S/B) of 1988 on the file of the  
B High Court of Judicature at Allahabad and the High Court held  
that the inquiry was not conducted in accordance with the  
procedure stipulated in the Regulation 85 since no opportunity  
was given to cross-examine the witness and there is violation  
of principles of natural justice and quashed the disciplinary  
proceeding by allowing the Writ Petition on 10.1.2006. The  
C order also directed for reinstatement and payment of back  
wages in accordance with the Rules. Liberty was also granted  
to conduct a fresh disciplinary inquiry in accordance with the  
Regulations. Pursuant to the order the appellant joined duty on  
26.4.2006. Fresh disciplinary proceeding was initiated by order  
dated 7.7.2006, appointing Shri G.S. Srivastava, Mukhya  
D Abhiyanta as Inquiry Officer and it was pending. Meanwhile the  
appellant reached the age of superannuation and retired from  
service as Assistant Engineer on 31.3.2009.

3. The appellant challenged the continuance of disciplinary  
E proceeding after his retirement by filing Writ Petition  
No.1919(SB) of 2009 on the file of High Court of Judicature at  
Allahabad, Lucknow Bench. The High Court relying on the  
decision of this Court in *U.P. Cooperative Federation Ltd. and  
Others Vs. L.P.Rai* [(2007) 7 SCC 81] held that there is no  
F ground to interfere with the disciplinary proceeding and directed  
to complete it within four months by the impugned order dated  
18.12.2009. The appellant filed Review Petition No.139 of  
2010 and the High Court dismissed the same by order dated  
29.3.2010. Challenging both the orders the appellant has  
G preferred the present appeals.

4. The learned counsel for the appellant contended that the  
disciplinary proceeding was not completed for more than three  
years and in the absence of any provision in the Regulations  
providing for continuation of disciplinary proceedings after  
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retirement of the employee, the respondents could not continue the disciplinary proceeding against the appellant after his superannuation. It is his further contention that the High Court has failed to appreciate the law laid down by this Court in similar circumstances in the decision reported in *Bhagirathi Jena vs. Board of Directors, O.S.F.C. and Others* [(1999) 3 SCC 666] and for the said reason the impugned order is liable to be set aside. A B

5. Per contra the learned counsel appearing for the respondents contended that pursuant to the liberty given by the High Court in its order dated 10.1.2006 fresh disciplinary proceeding was initiated and as held by this Court in its decision rendered in U.P. Coop. Federation Ltd. case (supra) the right of the employer to hold a fresh inquiry cannot be denied on the ground that the employee has since retired from service and the impugned order is sustainable. C D

6. We have carefully considered the rival submissions. The facts are not in dispute. The High Court while quashing the earlier disciplinary proceedings on the ground of violation of principles of natural justice in its order dated 10.1.2006 granted liberty to initiate the fresh inquiry in accordance with the Regulations. The appellant who was reinstated in service on 26.4.2006 and fresh disciplinary proceeding was initiated on 7.7.2006 and while that was pending, the appellant attained the age of superannuation and retired on 31.3.2009. There is no provision in the Uttar Pradesh Co-operative Employees Service Regulations, 1975, for initiation or continuation of disciplinary proceeding after retirement of the appellant nor there is any provision stating that in case misconduct is established a deduction could be made from his retiral benefits. An occasion came before this Court to consider the continuance of disciplinary inquiry in similar circumstance in *Bhagirathi Jena's* case (supra) and it was laid down as follows: E F G

" 5. Learned Senior Counsel for the respondents also relied upon Clause (3) (c) of Regulation-44 of the Orissa H

A State Financial Corporation 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 :-

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

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

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6. 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 the departmental enquiry after superannuation.

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7. In view of the absence of such a 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 for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

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8. In the subsequent decision of this Court in *U.P. Coop. Federation* case (supra) on facts, the disciplinary proceeding against employee was quashed by the High Court since no opportunity of hearing was given to him in the inquiry and the management in its appeal before this Court sought for grant of

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liberty to hold a fresh inquiry and this Court held that charges levelled against the employee were not minor in nature, and therefore, it would not be proper to foreclose the right of the employer to hold a fresh inquiry only on the ground that the employee has since retired from the service and accordingly granted the liberty sought for by the management. A  
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9. While dealing with the above case, the earlier decision in Bhagirathi Jena's case (supra) was not brought to the notice of this Court and no contention was raised pertaining to the provisions under which the disciplinary proceeding was initiated and as such no ratio came to be laid down. In our view the said decision cannot help the respondents herein. C

10. Once the appellant had retired from service on 31.3.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits. D

11. The question has also been raised in the appeal with regard to arrears of salary and allowances payable to the appellant during the period of his dismissal and upto the date of reinstatement. Inasmuch as the inquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him. E  
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12. The appeals are, therefore, allowed and the judgment and order of the High Court are set aside and the respondents are directed to pay arrears of salary and allowances payable to the appellant and also to pay him his all the retiral benefits in accordance with the rules and regulations as if there had been no disciplinary proceeding or order passed therein. No costs. G