



GAHC010015352017

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1446/2017

ABDUR RASHID
S/O LT. ABDUL KHALEQUE R/O KEYA PATTI, WARD NO. 1, GOPIKA
BALLAV GOSWAMI ROAD, GOLAGHAT, PIN - 785621, ASSAM.

VERSUS

ASSAM POWER DISTRIBUTION CO. LTD and 2 ORS.
BIJULEE BHAWAN, PALTAN BAZAR, GUWAHATI 01, REP. BY ITS
CHAIRMAN

2:THE CHAIRMAN

ASSAM POWER DISTRIBUTION COMPANY LTD. BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI -01

3:THE MANAGING DIRECTOR

ASSAM POWER DISTRIBUTION COMPANY LTD. BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI 01

Advocate for the Petitioner : MR.N DEKA

Advocate for the Respondent :



BEFORE
HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. B. Chakraborty. Advocate.
For the Respondents : Mr. S. P. Sarma,
Standing Counsel, APDCL.
Date of Hearing : 12.12.2023
Date of Judgement : 12.12.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. B. Chakraborty, learned counsel for the petitioner. Also heard Mr. S. P. Sarma, learned Standing Counsel for the APDCL.
2. The present writ petition is filed seeking a writ of certiorari for setting aside the charge sheet dated 12.05.2015 issued by the Managing Director, APDCL (**Annexure-VIII**), the Enquiry proceedings against the petitioner dated 09.08.2016 (**Annexure-XXII**), the letter dated 05.10.2015 (**Annexure-XIV**) and the appellate order dated 02.11.2016 (**Annexure-XXV**).
3. A further prayer for issuance of a writ of mandamus is also sought to

issue a direction to the respondent APDCL, to pay the full salary to the petitioner till his date of retirement including the increment earned by the petitioner and full pension and gratuity to the petitioner.

4. The brief facts leading to filing of this present writ petition can be summarized as follows:-

I. The respondent employer on 12.05.2015 initiated a departmental proceeding by issuing a charge sheet against the petitioner with the following two charges:-

- a. Charge No. 1: Theft, Fraud and dishonesty in connection with the business of the Company.
- b. Charge No. 2: Breach of the ASEB Officer's (Conduct) Regulation, 1982.

II. Along with the aforesaid charge memo, a statement of allegation, list of documents and list of witnesses were also furnished to the petitioner. The statement of the allegation is quoted herein below:-

“Md. Abdur Rashid, DGM (T), O/o the CGM (Com), APDCL the then CEO, Golaghat Electrical Circle, APDCL (UAR), Golaghat had indulged himself into alleged malpractice as detailed in the following charges, which attracted the provision of Regulation 10 of ASEB (General Service) Regulation (for officers), 1960.

Regulation 10(1) of ASEB (General Service) Regulations (for officers), 1960 lays down that "every officer of the Board (Company) shall discharge the duties assigned to him with integrity, loyalty and promptitude and carry out all lawful orders of his/her superiors in respect of the work allotted to him/her.

Charge No. 1- Theft, fraud and dishonesty in connection with the business of the Company,

The report submitted by CVO dtd. 30.10.2014 revealed that Md. Abdur Rashid the then CEO Golaghat Electrical Circle, APDCL by taking advantage of his official position compelled his subordinate staff namely Sri Nabajyoti Thakur, Sahayak and Sri Lakheswar Chetia, Sr. Sahayak to draw illegal service connection to his residence situated at Kayapatti, Golaghat. This misuse of power created resentment amongst the public and became a subject of criticism of the officers of APDCL by public.

The photographs in the file showing existence of welding machine in the house of Md. Rashid and the existence of a photograph showing the drawn of an illegal connection and the statements recorded by the CVO of the Sahayak, Senior Sahayak including JF/FMF, give strong indication of an illegal act committed by Md. Abdur Rashid, the then CEO, Golaghat Electrical Circle.

From above it is apparent that Md. Rashid, CEO committed the misconduct of theft, fraud and dishonesty in connection with the business of the company which is a misconduct under Regulation 10(1) of the ASEB (General service) Regulations (for officers'), 1960 and hence Md. Abdur Rashid is charged under the said Regulation.

Charge No. 2- Breach of the ASEB officer's (Conduct) Regulations, 1982

The ASEB officer's (Conduct) Regulation, 1982 lays down the "every officer of the Board/Company shall at all times maintain absolute integrity and devotion to duty and do nothing which is unbecoming of an officer of the Board'.

From the above charge it appears that Md. Abdur Rashid has acted dishonestly with malafide intention, which is very much uncalled for an officer in the rank of CEO.

The acts of omission and commissions on the part of Md. Abdur Rashid as



narrated in Charge No. 1 above reveals that Md. Abdur Rashid failed to maintain absolute integrity and his actions were unbecoming of an officer of the company. He, thereby breached the ASEB Officer's (Conduct) Regulations 1982. Breach of the said regulation is a misconduct under Regulation 10(1) (n) of the ASEB (General Service) Regulations (for officers) 1960 and therefore, Md. Abdur Rashid is charged under the said regulation".

- III. Thereafter, the petitioner submitted a written statement on 15.06.2015 against the charge sheet denying the charges leveled against him.
- IV. After completion of departmental proceeding, an Enquiry Report was submitted by the Enquiry Officer on 08.03.2016, whereby, it was held that Charge No. 'a' was not proved and the Charge No. 'b' was proved.
- V. A second show cause notice was also served along with the aforesaid Enquiry Report on 11.03.2016 upon the petitioner, to which the petitioner filed his reply on 21.03.2016.
- VI. Subsequently, by an order dated 09.08.2016, a punishment of compulsory retirement with deduction of two-third pension/gratuity was imposed upon the petitioner.
- VII. Being aggrieved, the petitioner preferred an appeal under the Extant Service Regulation on 19.08.2016. The Appellate Authority dismissed such appeal by upholding the punishment by its order dated 02.11.2016.
- VIII. Being aggrieved, the present writ petition is filed before this Court.

5. Mr. Chakraborty, learned counsel for the petitioner while pressing his case argues the following:-
- I. He has instruction from his client that as the compulsory retirement was issued two months prior to his actual retirement, therefore, at this stage, the petitioner shall not assail the order of compulsory retirement.
 - II. Coming to the other part of direction of deduction of pension and gratuity, the learned counsel argues that there is no scope under the Assam State Electricity Board Employees Service Regulation, 1960, as amended up-to-date, to direct deduction of pension and gratuity as has been done in the present case.
 - III. It is also the contention of the learned counsel that even in terms of the Rule 40 of the CCS (Pension) Rules, 1972, (in short referred to as Rules, 1972) the employer is not within its jurisdiction to make the deduction in the manner as has been done in the present case. According to the learned counsel for the petitioner, it is not mandatory always to make such deduction inasmuch as under Rule 40 of the Rules, 1972, a discretion has been given to the employer to make a deduction within a specific range. It cannot be said that it is a mandate of Rule 40 that a deduction in pension and gratuity is necessarily to be directed when punishment of compulsory retirement is imposed.
 - IV. Referring to Rule 9 of the Rules, 1972, Mr. Chakraborty, learned

counsel submits that the Rule 40 of the Rules, 1972 cannot be read in isolation and same is to be read along with Rule 9 of the Rules, 1972, which prescribes the condition necessary to withhold a pension. Therefore, in absence of any pecuniary loss, the respondent authority could not have directed for such recovery more particularly when there was neither any charge of loss to the department or there is any finding that for the conduct of the petitioner, loss has been caused to the department.

V. Mr. Chakraborty, learned counsel referring to the Rule 4 (6) of the Payment of Gratuity Act, 1972 further contends that to recover gratuity, the employer ought to have the satisfaction as mandated under the said rule and in absence of any materials to have such satisfaction, the respondent authorities were not within its power and jurisdiction to direct the recovery as has been done in the present case.

VI. According to Mr. Chakraborty, learned counsel, there must be harmonious reading of Rule 9 of the Rules, 1972, Section 4(6) of the Payment of Gratuity Act, 1972 and Rule 40 of the Rules, 1972. Accordingly, he submits that the impugned order so far relating to the deduction of pension and gratuity is required to be interfered.

6. Per contra, Mr. S. P. Sarma, learned Standing Counsel for the APDCL submits the following:-

I. The respondent APDCL is within its competence and jurisdiction to inflict the punishment of compulsory retirement in the given facts

of the present case.

- II. The respondent authority has been following the procedure as laid down under the CCS (CCA) Rules, 1965 as a practice and therefore, when a person is asked to retire compulsorily as a penalty, then the authority shall be within its jurisdiction to direct a deduction/recovery as mandated under Rule 40 of the Rules, 1972.
- III. As the authority is having a power to make a deduction and when the authority has made such deduction strictly in terms of the Rule 40 of the Rules, 1972 there cannot be any question of judicial review of such decision.
- IV. Rule 40 of the Rules, 1972 mandates that when a compulsory retirement is directed, withholding of pension and gratuity is required to be directed within the range prescribed by Rule 40. Therefore, when the authority has inflicted the penalty of compulsory retirement, it is having no scope but to pass an order of withholding of pension and gratuity in terms of Rule 40 of the Rules, 1972.
- V. Mr. Sarma, learned counsel submits that the conduct of the petitioner in paying back the excess load itself proves his involvement in the case and loss caused to the department and it further proves his misconduct. Therefore, this is not a case to interfere with the decision of the authorities by this Court in exercise of power of judicial review. Such payment of excess load, according to Mr. Sarma, learned counsel, itself establishes that the allegation made against the petitioner regarding fraud and misconduct is proved beyond any

doubt.

VI. Further, it is the contention of Mr. Sarma, learned counsel that theft alleged is established in terms of the Electricity Act, 2003.

VII. The charge No. 'b' is proved beyond reasonable doubt and therefore, the authority has rightly imposed the penalty of compulsory retirement and the moment penalty is inflicted which is not being challenged by the petitioner, the department cannot be faulted with on the 2nd part of the punishment whereby a direction was made for withholding of pension and gratuity in terms of Rule 40 of the Rules, 1972.

7. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties.

8. On a reading of Rule 40 of the Rules, 1972, it is clear that a Government servant compulsorily retired from service as a penalty, may be granted, by the authority, pension or gratuity or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to the employee on the date of his compulsory retirement. From the reading of the aforesaid Rule, it is further clear that the intention and object of the Rule is that a person, on whom the penalty of compulsory retirement is imposed, should ordinarily be granted full compensation pension and retirement gratuity admissible on the date of compulsory retirement. However, if the circumstances of a particular case so warrant, the authority competent to impose the penalty for compulsory retirement may make such deduction in the pensionary/gratuity benefit within the limit

prescribed in the Rule 40 of the Rules, 1972. Thus, the employer is having power under the said Rule to deduct pension or gratuity or both when a penalty of compulsory retirement is imposed. The underline principle of Rule 40 of the Rules, 1972, in the considered opinion of this Court is that when a penalty of compulsory retirement is imposed, generally the delinquent should be granted full compensation pension and retirement gratuity on the date of his compulsory retirement. This court also cannot be unmindful of the settled proposition of law that the provision of Pension Rule is required to be interpreted taking note of the beneficial intent of such legislation controlling the payment of pension.

9. This Court while interpreting the rule cannot lose sight of mandate of Rule 9 of the Rules, 1972, inasmuch as power to withhold pension is envisaged in the said Rule 9 of the Rules, 1972.
10. Rule 9 of the Rules, 1972 empowers the President to withhold or withdraw pension. In the case in hand, the person is not an employee under State/Union but under a Corporation. The corporation has made the Rules, 1972 applicable to it's employees, as submitted by the learned counsel for the APDCL and therefore, in the context of an employee of the Corporation, such power of President shall necessarily mean the power of the competent authority i.e. the Board.
11. Such power to withhold pension can be exercised under Rule 9 of the Rules, 1972 when it is established that a loss has been caused to the employer and that in any departmental proceeding or judicial proceeding, the employee is found guilty of grave misconduct or negligence during the period of service.



12. However, in the case in hand, more particularly, if one looks into the charges and the enquiry report and also the appellate order, it is abundantly clearly that there is neither any charge of grave misconduct or negligence rather the allegation is theft, fraud and dishonesty in connection with the business of the company and breach of ASEB Officer's (Conduct) Regulations, 1982. The further charge is breach of integrity in terms of Regulation 10.1. of the Assam State Electricity Board Employees' Service Regulation 1960 (hereinafter referred to as Regulation, 1960) as disclosed in the Charge No. 2.
13. Regulation 10.1 of Regulation 1960, prescribes that every officer of the Board shall discharge duties assigned to him with integrity, loyalty and promptitude and carry out all reasonable and lawful orders of his superiors in respect of the work allotted to him.
14. Under the pre amended Regulation 10 of the Regulation 1960, a power was given to the competent authority to make recovery from the pay of the employee for loss caused to the Board for negligence or breach of orders. However, such rule was subsequently repealed by way of an amendment. Such amended rule was applicable to the petitioner inasmuch as the amended rule did not have any provision empowering the competent authority to make recovery.
15. From the aforesaid, it is clear that neither the petitioner was charged to the effect that loss has been caused to the corporation/Board for conduct of the petitioner nor the petitioner was found guilty of grave misconduct or negligence. Therefore, in the context of the Regulation, 1960 and Rule 9 of the Rules, 1972, in the considered opinion of this Court, the respondents

are not within its competence to pass an order under Rule 40 of the Rules, 1972 directing deduction of pension and gratuity for the reason of absence of the condition precedent under Rule 9 of the Rules, 1972.

16. Yet another aspect of the matter is payment of gratuity. Section 4(6) of the Payment of Gratuity Act, 1972 empowers recovery from the gratuity, when an employee is terminated for any act, wilful omission or negligence causing any damage or loss to or destruction of property belonging to the employer, subject to the condition that service of such employee has been terminated for the reason of commission of an offence involving moral turpitude, provided such offence is committed by him in the course of his employment.
17. In the case in hand, neither any of such charges has been leveled in the Charge Memo nor it is the case of the respondent that the petitioner has committed an offence involving moral turpitude during the course of his service or that his service was terminated. In absence of aforesaid, it is not permissible under law to withhold the gratuity.
18. In that view of the matter, this Court is of the unhesitant view that the employer has exercised his discretion/power under Rule 40 of the Rules, 1972 without any application of mind and without having any basis to issue such direction as discussed hereinabove.
19. Accordingly, the present writ petition is allowed to the following extent. Accordingly, the following directions are issued:-
 - I. The impugned decision dated 09.08.2016 (**Annexure-XXII**) so far the same relates to deduction of 2/3rd pension/gratuity is set aside



and quashed without interfering with the decision to impose compulsory retirement to the petitioner.

II. Accordingly, the petitioner be paid the aforesaid amount from the date of his compulsory retirement.

III. Such direction be implemented within a period of four weeks from the date of receipt of certified copy of this order to be furnished by the petitioner before the competent authority.

20. This writ petition stands disposed of.

JUDGE

Comparing Assistant