

A STATE OF WEST BENGAL & ORS.  
v.  
PRONAB CHAKRABORTY  
(Civil Appeal No. 2641 of 2012 etc.)

B OCTOBER 15, 2014

[JAGDISH SINGH KHEHAR AND ARUN MISHRA, JJ.]

*Service Law:*

C *West Bengal Services (Death-cum-Retirement Benefit)*  
*Rules, 1971 – r.10(1) – Departmental proceedings –*  
*Continuation of – After superannuation of the delinquent*  
*employee – Permissibility – Held: Departmental proceedings*  
*can be continued even after retirement on attaining*  
D *superannuation age.*

**Disposing of the appeals, the Court**

**HELD:** Even in the absence of any pecuniary loss  
caused to the Government, it is open to the employer to  
E continue the departmental proceedings after the  
employee has retired from service. Obviously, if such  
grave misconduct or negligence, entails pecuniary loss  
to the Government, the loss can also be ordered to be  
recovered from the concerned employee. [Para 5] [81-H;  
F 82-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.  
2641 of 2012.

From the Judgment & Order dated 22.12.2010 of the High  
G Court at Calcutta in W.P.S.T. No. 497 of 2010

WITH

C.A. No. 2642, 2643, 2616 of 2012 and 9828 of 2014.

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Kalyan Kr. Bandopadhyay, Anip Sachthey, Shagun Matta for the Appellants. A

Avijit Bhattacharjee, Bikas Kar Gupta, Sarbani Kar, Deba Prasad Mukherjee, Subhasish Bhowmick, S.C. Patel, Nitin Luthra, Vasuman Khandelwal, Gaurav Agrawal for the Respondent. B

The Judgment of the Court was delivered by

J.S. KHEHAR, J. :

CIVIL APPEAL NO. 2641 OF 2012 C

1. The respondent – Pronab Chakraborty was inducted into the employment of the police department of the State of West Bengal, wherein while he was holding the post of Inspector of Police in the Enforcement Branch, he was issued a chargesheet dated 31.07.2007. The charges which were levelled against the respondent, are being extracted hereunder: D

“CHARGE – 1 : While you were a S.I. of Police of Howrah District during the period between 01.01.88 and 31.12.93, you acquired total assets in the shape of land, property and deposit in the Bank to the extent of Rs. 3,44,600/-. Out of the said sum, an amount of Rs. 2,69,246.80 paise for which you could not give any cogent explanation for acquisition of the properties which were subsequently established as disproportionate of asset to your known source of income. E F

CHARGE – 2 : On 21.06.2002 you acquired the asset in the shape of investment in United Bank of India, Sahanpur Branch, Howrah as fixed deposit to the extent of Rs. 5,00,000/- (Rupees Five Lakhs) only vide A.C. No. 401/02 in the name of your son, Partha Pratim Chakraborty and sister-in-law Smt. Krishna Majumder both dependent on you. You could not give any cogent explanation for such acquisition which is disproportionate to your known source of income. G H

A CHARGE – 3 : On 27.07.1988 while you were attached  
with the Howrah District as S.I., acquired immovable  
property in the shape of a plot of land measuring 3 Kathas  
vide Dag No. 538, Khatian No. 678, Mouza Sahanpur,  
District Howrah in the name of your wife, Smt. Sandhya  
B Chakraborty and dependent sister-in-law at the cost of Rs.  
33,600/- vide Deed No. 1-4344/88. You constructed a  
house thereon and subsequently disposed of the house by  
selling the same to Smt. Malati Devi Barnwal at the cost  
of Rs. 3 Lakhs vide Sale Deed No. 1957/96. You did not  
C obtain prior sanction from your appointing authority before  
purchase of land, construction of house and sale of the  
house which is obligatory on the part of a Public Servant.  
As such, you are charged with gross misconduct.

D CHARGE – 4 : On 24.10.2000 and on 19.06.2003 you  
acquired movable properties in the shape of Motor Cycle  
having registered No. WB-124-3924 at the cost of Rs.  
47,000/- and WB-12H-7613 at the cost of Rs. 33,500/- in  
the name of your dependent son Shri Partha Pratim  
Chakraborty. You did not obtain prior permission from your  
E appointing authority before purchase which is obligatory  
on the part of a Public Servant. You are thereby charged  
with grave misconduct.

F CHARGE – 5 : You are charged with misconduct for not  
submitting declaration of assets for the period as they  
stood on and from 01.01.90 to 01.01.99 which were  
revealed from the Memo. No. 3219/DEB dated 19.12.96  
of S.P., D.E.B., Howrah and Memo. No. 118/PER/GA-II/  
PER/GA-II/45-2000 dated 22.01.2001 of Inspector  
G General of Police, Headquarters, West Bengal. Those  
declaration of assets were called for the purpose of  
scrutiny of assets either acquired by you in your own name  
or acquired in the name of other dependence on you.

H CHARGE – 6 : You submitted your declaration of assets  
for the period as they stood on 25.08.99 and 31.01.2000

which should have been submitted on 01.01.99 and 01.01.2000. The declaration of assets bore no date of submission and you did not deliberately disclose the material information regarding acquisition of assets with a malafide intention to suppress the actual assets. You were charged for grave misconduct.”

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2. Soon after the issuance of the above chargesheet, the respondent retired from service on attaining the age of superannuation on 31.01.2008. Dissatisfied with the continuation of the above departmental proceedings (in furtherance of the chargesheet dated 31.07.2007), after the respondent - Pronab Chakraborty had attained the age of superannuation, he approached the West Bengal Administrative Tribunal (hereinafter referred to as 'the Administrative Tribunal') by filing Case No. O.A. 8547 of 2007. In the above case an order dated 05.08.2010 was passed by the Administrative Tribunal, directing the enquiring authority to dispose of the pending departmental proceedings in accordance with the Rules.

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3. The above order dated 05.08.2010 was assailed by the respondent before the High Court of Calcutta (hereinafter referred to as 'the High Court') by filing W.P.S.T No. 497 of 2010. The primary contention of the respondent before the High Court was, that the respondent having retired on attaining the age of superannuation (with effect from 31.01.2008), departmental proceedings initiated against him, could not be allowed to proceed further. The High Court, vide its impugned order dated 22.12.2010, accepted the prayer made by the respondent. The High Court, having interpreted Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (hereinafter referred to as 'the 1971 Rules'), arrived at the conclusion, that departmental proceedings being conducted against an individual employee, could proceed further after the employee's retirement, only when the allegations contained in the charges levelled against him, depict

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A pecuniary loss to the State Government. The High Court further arrived at the conclusion, that since the charges levelled against the respondent herein, did not depict any pecuniary loss to the State Government, proceedings against the respondent could not continue after 31.01.2008.

B 4. The State of West Bengal has assailed the order passed by the High Court on 22.12.2010 by asserting, that Rule 10 of the 1971 Rules had been incorrectly interpreted by the High Court. Therefore, the solitary issue that arises for our consideration in the present Appeal is, the interpretation of Rule 10 of the 1971 Rules. Rule 10(1) aforementioned is extracted hereunder:

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E “10. Right of the Governor to withhold pension in certain cases. - (1) The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence, during the period of his service, including service rendered on re-employment after retirement:

Provided that-

F (a) such departmental proceeding if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the office, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

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H (b) Such departmental proceedings, if not instituted while the office was in service, whether before his retirement or during his re-employment—

(i) shall not be instituted save with the sanction of the Governor; A

(ii) shall not be in respect of any event which took place more than (four years) before such institution; and B

(iii) shall be conducted by such authority and in such place as the Governor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service; C

(c) no such judicial proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than (four years) before such institution....” D

A perusal of Rule 10(1) extracted hereinabove reveals, that two different kinds of punishments are contemplated thereunder. Firstly, “... the right of withholding or withdrawing a pension ...” which the delinquent employee is entitled to, permanently or for a specified period. And secondly, “... the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government ...”. The above two punishments can be inflicted on a delinquent, even after he retires on attaining the age of superannuation, provided he is found guilty of “... grave misconduct or negligence ...” during the period of his service. E F

5. It is therefore apparent, that it is not only for pecuniary loss caused to the Government that proceedings can continue after the date of superannuation. An employee can be proceeded against, after the date of his retirement, on account of “... grave misconduct or negligence ...”. Therefore, even in the absence of any pecuniary loss caused to the Government, G H

- A it is open to the employer to continue the departmental proceedings after the employee has retired from service. Obviously, if such grave misconduct or negligence, entails pecuniary loss to the Government, the loss can also be ordered to be recovered from the concerned employee. It was therefore not right for the High Court, while interpreting Rule 10(1) of the 1971 Rules to conclude, that proceedings after the date of superannuation could continue, only when the charges entailed pecuniary loss to the Government.

C 6. In view of the above, we hereby set aside the impugned order passed by the High Court. We reaffirm the order passed by the Administrative Tribunal on 05.08.2010.

7. Civil Appeal is allowed, with no order as to costs.

D **CIVIL APPEAL NO. 2616 OF 2012**

E Learned senior counsel and learned counsel for the rival parties agree that the controversy in this Appeal is squarely covered by the decision rendered by this Court in *State of West Bengal & Ors. Vs. Pronab Chakraborty* (Civil Appeal No. 2641 of 2012 decided on October 15, 2014).

2. The instant Civil Appeal is, accordingly, allowed, in terms of order passed in Civil Appeal No. 2641 of 2012. No costs.

F **CIVIL APPEAL NO. 2643 OF 2012**

G Learned senior counsel and learned counsel for the rival parties agree that the controversy in this Appeal is squarely covered by the decision rendered by this Court in *State of West Bengal & Ors. Vs. Pronab Chakraborty* (Civil Appeal No. 2641 of 2012 decided on October 15, 2014).

H 2. The instant Civil Appeal is, accordingly, allowed, in terms of order passed in Civil Appeal No. 2641 of 2012. No costs.

**CIVIL APPEAL NO. 2642 OF 2012**

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Learned senior counsel and learned counsel for the rival parties agree that the controversy in this Appeal is squarely covered by the decision rendered by this Court in *State of West Bengal & Ors. Vs. Pronab Chakraborty* (Civil Appeal No. 2641 of 2012 decided on October 15, 2014).

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2. The instant Civil Appeal is, accordingly, allowed, in terms of order passed in Civil Appeal No. 2641 of 2012. No costs.

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**S.L.P.(CIVIL) NO. 9015 OF 2014**

1. Delay condoned.

2. Leave granted.

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3. The proposition of law wherein the State Government had preferred the present special leave petition, has been accepted by us while disposing of the case titled as *State of West Bengal & Ors. Vs. Pronab Chakraborty* (Civil Appeal No. 2641 of 2012 decided on October 15, 2014). In fact, for the above reason, the instant matter came to be tagged with Civil Appeal No. 2641 of 2012.

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4. The decision rendered by us in Civil Appeal No. 2641 of 2012 does not go into the merits of the controversy, but it only examines the permissibility of the continuation of the departmental proceedings after the superannuation of the concerned employee.

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5. Therefore, even as against the respondent herein we hold, that the departmental proceedings can be continued even after his retirement on attaining the age of superannuation (with effect from 31.01.2007). Viewed thus, we consider it just and proper to relegate the matter back to the High Court for adjudication of the controversy raised by the respondent on merits in accordance with law. The High Court shall examine

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A the merits of the controversy, besides the issue which we have settled while disposing of Civil Appeal No. 2641 of 2012.

6. Civil Appeal is disposed of as above, with no order as to costs.

B Kalpana K. Tripathy

Appeals disposed of.