

AFR
RESERVED

Court No. - 40

Case :- SPECIAL APPEAL DEFECTIVE No. - 646 of 2021

Appellant :- U.P. Power Corporation Ltd And 4 Others

Respondent :- Anil Kumar Sharma And Another

Counsel for Appellant :- Abhishek Srivastava, Krishna Agarawal, Sr. Advocate

Counsel for Respondent :- C.S.C., R.K. Mishra

Hon'ble Manoj Misra, J.

Hon'ble Jayant Banerji, J.

(Delivered by Hon'ble Jayant Banerji, J.)

1. The application seeking exemption for filing the certified copy of the order is allowed.

2. The appellant-respondents have filed this intra court appeal against the judgement and order of the learned Judge dated 23.7.2021 passed in Writ-A No. 6544 of 2021 (Anil Kumar Sharma Vs. State of U.P. and others) by means of which the writ petition has been allowed holding that denial of pension to the petitioner as well as continuation of departmental proceedings against him by taking recourse to Article 351-A of the Civil Service Regulations¹ is arbitrary.

Background of the case:

3. The aforesaid writ petition was filed seeking directions to the respondents to pay the retiral benefits like Gratuity, G.P.F., Leave Encashment etc. and arrears of pension alongwith interest and to pay the regular pension to the petitioner as and when it is due. Further relief was sought for granting provisional pension.

4. The case of the respondent-petitioner in the writ petition was that he was initially appointed on 4.6.1974 on a permanent regular

¹ CSR

post of Patrolman and was lastly promoted to the post of Junior Engineer in the year 2014. He retired on 31.12.2018 from the post of Junior Engineer from the office of the Superintendent Engineer, Vidyut Vitaran Mandal, Amroha, after attaining the age of superannuation. He did not receive any retiral benefits/dues like GPF, gratuity, leave encashment, pension or even provisional pension. It was submitted that while in service he was suspended by means of the order dated 22.11.2018 passed by the Managing Director of the Paschimanchal Vidyut Vitaran Nigam Limited² on a solitary complaint but, by an order dated 28.12.2018, he was reinstated in service and on 31.12.2018, he retired. Prior to his suspension, a two member committee was constituted for inquiring into the matter, which found no evidence against him. It was stated that post retirement, two chargesheets were served on the petitioner on 7.11.2019 against which the petitioner submitted his reply/explanation on 21.12.2019. On 22.5.2020, the statement of the petitioner was recorded by the inquiry officer, who submitted his report to the higher authority, who was not satisfied with the inquiry report and a re-inquiry was ordered. The petitioner was again asked to submit his statement along with evidence and his statement was again recorded on 23.9.2020. It was stated that the proceedings were pending before the Authorities and he was not being paid his retiral dues despite repeated representations.

5. From perusal of the order-sheet of the writ petition, it appears that on the request of the parties, on 15.7.2021, the learned Judge directed the case to be listed on the next day, that is, 16.7.2021. On 16.7.2021, after hearing the learned counsel for the petitioner and the learned counsel appearing for the respondent nos. 2 and 3, a part of the order was dictated but, subsequently, on request made by the learned counsel for the respondents the learned Judge permitted them to make a mention in the open Court

on 22.7.2021. On 22.7.2021, the matter was taken up on board, the learned counsel were heard and the case was directed to be listed on the next date (23.7.2021) for further arguments. On 23.7.2021, after hearing the learned counsel for the parties, the impugned judgement and order was passed.

6. From the record of the writ petition it appears that on 16.7.2021, a compilation running into 112 pages was filed on behalf of the respondent nos. 4 to 6 enclosing copies of various judgements, inquiry reports, suspension order and records of the departmental proceedings/correspondence. It also appears from the record that that a 'short counter affidavit' running into 162 pages was filed on behalf of the respondent nos. 4 to 6.

7. Before the learned Judge, it was submitted that on the basis of the preliminary inquiry, the petitioner was placed under suspension by an order dated 22.11.2018. The suspension order was revoked on 28.12.2018 specifying that it was being revoked on the account of retirement of the petitioner which was on 31.12.2018. It was submitted by the respondents therein that sanction was accorded by the Managing Director for continuing disciplinary proceedings against the petitioner. By a letter dated 1.5.2019, a show cause notice was served on the petitioner along with two chargesheets. That in terms of circular of the Board dated 21.6.1991 and a resolution of the Board of Directors dated 2.8.2007, the Managing Director was authorized to grant sanction as envisaged under Regulation 351-A of the Civil Service Regulations. It was submitted therein that the petitioner was not entitled to payment of pension and at best he could apply for provisional pension in accordance with Article 351-AA and 919-A of the CSR.

8. The learned Judge, while noticing that the main prayer of the petitioner being for payment of pension, observed that it was

intrinsically linked to the pending disciplinary proceedings against the petitioner and the same could not be decided without considering the merit of the pending disciplinary proceedings viz.-a-viz. the bar created under Article 351-A of the CSR. The Court, further, observed that the validity of the departmental proceedings were considered in the light of the specific defence taken by the counsel for the respondents justifying the withholding of the pension in view of the pending departmental proceedings. While strictly interpreting the phrase 'authority of law' as used in Article 300-A of the Constitution of India, in view of the fact that Article 351-A of the CSR prescribes for deprivation of property of a citizen, and in that sense it is an 'expropriatory' legislation, the learned Judge held that any liberal interpretation given to a law which is basically 'expropriatory' in nature would be in clear violation of Article 300-A of the Constitution of India and would militate against the spirit of that Article. The learned Judge, thus held that on the date of his retirement on 31.12.2018, the petitioner was neither under suspension nor any chargesheet was served upon him or issued to him as the suspension order dated 22.11.2018 stood revoked vide order dated 28.12.2018 and as the chargesheet admittedly was served after the date of retirement, thus, no proceeding could have been initiated against the petitioner except with sanction of the Governor and after satisfying the test of clause (i) to (iii) of proviso (a) to Article 351-A of the CSR.

9. Further, discarding the contention of the learned counsel for the respondents that in view of the relevant circulars and the resolution of the Board of Directors of the company, the word 'Governor' specified under Article 351-A of the CSR was substituted by the 'Board' and thereafter by the 'Managing Director', the learned Judge held that the CSR has been framed in

pursuance of the powers conferred under Article 309 of the Constitution of India and can be modified/amended only by the amendment in the CSR and not by issuance of circular or by a company resolution and, therefore, the sanctioning authority specified as 'Governor' in the CSR cannot be read as 'Managing Director' of a corporation except when it is amended in accordance with law. The learned Judge, thus, held that no disciplinary proceeding was instituted against the petitioner prior to the date of his retirement and no sanction of Governor as required under Article 351-A of the CSR exists for initiating disciplinary proceedings against the petitioner after his retirement. A mandamus was accordingly issued.

10. We have heard Shri G.K. Singh, learned Senior Advocate assisted by Shri Abhishek Srivastava and Shri Krishna Agrawal for the appellants; Shri R.K. Mishra for the respondent no. 1; and the learned Standing Counsel for the proforma respondent no. 2 and perused the record.

Submissions of the learned counsel:

11. The contention of the learned Senior Advocate appearing for the appellant-respondents is that in the writ petition, there was no prayer for quashing the departmental proceedings or challenging the order dated 22.12.2018, whereby, the suspension of the petitioner was conditionally revoked. Therefore, the Court ought not to have dwelt on the issue of the validity of the sanction and the enquiry proceeding itself, without calling upon the appellant-respondents to file a comprehensive counter affidavit. He contends that the order of suspension was passed and the charge-sheet was issued by the competent authority and that due sanction as envisaged under Article 351-A of the CSR was granted by the Managing Director of the Uttar Pradesh Power Corporation

Limited³. He contends that there was adequate material on record to demonstrate that PVVNL is a company subsidiary to UPPCL and incorporated under the Companies Act, 1956. UPPCL was itself incorporated as a company pursuant to Section 13 of Chapter IV of the Uttar Pradesh Electricity Reforms Act, 1999⁴. It is contended that licence has already been granted by the Uttar Pradesh Regulatory Commission (established under Section 3 of the Reforms Act) to PVVNL under sub-section (5) of Section 13 of the Reforms Act. It is stated that U.P. State Electricity Board was constituted under Section 5 of the Electricity Supply Act, 1948⁵. Under Section 23 of the Reforms Act, the Board's properties, powers, functions, duties and personnel were transferred and vested in the State Government pursuant to sub-section (1) thereof. Thereafter, the same have been re-vested by the State Government in the UPPCL in accordance with a Scheme known as the Uttar Pradesh Electricity Reforms Transfer Scheme, 2000⁶. It is contended that the Transfer Scheme was framed pursuant to sub-section (4) of Section 23 of the Reforms Act. Under sub-section (7) of Section 23 of the Reforms Act, the terms and conditions of the transferred personnel are to be determined in accordance with the Transfer Scheme. It is contended that the petitioner-respondent was transferred and absorbed in UPPCL in terms of the Transfer Scheme. That under sub-clause (10) of clause 6 of the Transfer Scheme, till such time Regulations governing the conditions of service of personnel transferred under the Transfer Scheme are framed, the existing service conditions of the Uttar Pradesh State Electricity Board⁷ shall *mutatis mutandis* apply. It is contended that the Uttar Pradesh State Electricity Board (Officers and Servants)

3 UPPCL

4 Reforms Act

5 Supply Act, 1948

6 Transfer Scheme

7 Board

(Conditions of Service) Regulations, 1975⁸ govern the conditions of service of officers and servants of the Board and since fresh Regulations are yet to be framed, the Regulations of 1975 govern the service conditions of the personnel employed under the UPPCL and PVVNL. He contends that in view of the Regulation of 1975, the authority competent to sanction departmental proceedings post retirement of the petitioner-respondent is the Managing Director of UPPCL. That after the constitution of the UPPCL and the vesting of properties etc. of the Board by the State Government under the provisions of the Reforms Act, the UPPCL and the PVVNL, being Companies incorporated under the Companies Act, are corporate and independent entities entitled to take decisions and delegate powers by way of resolutions passed in meetings of the Board of Directors of the respective Companies. He contends that no statutory amendment is required in Article 351-A of the CSR for replacing the word “Governor” by the “Managing Director”. It is his further contention that the order revoking the suspension of the petitioner-respondent on 28.12.2021 was conditional and given the provisions of Article 351A of the CSR, since the petitioner-respondent was placed under suspension prior to date of his retirement, departmental proceedings were deemed to have been instituted against the petitioner-respondent prior to his retirement. It is, therefore, contended that on both counts, the learned Judge has not decided the writ petition correctly.

12. In support of his contentions, the learned counsel has relied upon judgments of the Supreme Court in the case of **Prahlad Sharma vs. State of U.P. & Ors.**⁹ and **State of Uttar Pradesh & Ors. vs. Z.U. Ansari**¹⁰ as well as a Division Bench judgment of this Court in **Rajeev Kumar Jauhar vs. State of**

⁸ Regulation of 1975

⁹ (2004) 4 SCC 113

¹⁰ (2016) 16 SCC 768

U.P.¹¹.

13. Shri R.K. Mishra, learned counsel for the petitioner-respondent has vehemently argued that under the facts and circumstances of the present case, the pension of the petitioner-respondent cannot be withheld and administrative Circulars and resolutions do not have the force of law and as such the learned Judge has correctly decided the writ petition. In support of his argument, the learned counsel has referred to a judgment of the Supreme Court in the case **Dr. Hira Lal vs. State of Bihar & Ors.**¹².

Discussion:

14. While considering the judgment passed by the learned Judge, we deem it fit to proceed with the discussion on the following points :-

- (i) Whether the learned Judge ought not to have proceeded with the matter without there being proper reliefs sought in the petition and without calling for a detailed counter affidavit?
- (ii) Whether the Managing Director of the UPPCL was competent to sanction departmental proceedings under the provisions of Article 351-A of the CSR? And,
- (iii) Whether the appellant-respondents were justified in initiating the departmental proceedings against the petitioner-respondent in view of Article 351-A of the CSR?

Point No.(i)

15. As far as the first point is concerned, it is evident from the record that the issue of payment of pension and other retiral dues or the entitlement thereof is intrinsically linked to the departmental proceedings that were initiated against the petitioner-respondent.

¹¹ (2007) 2 AWC 1726

¹² (2020) 4 SCC 346

The validity of the sanction accorded by the Managing Director of the UPPCL is an issue of jurisdiction which goes to the root of the matter and, therefore, the consideration of the case by the learned Judge on the limited aspect of the validity of the sanction is appropriate. Whether the cause to sanction existed, could only have been seen after analyzing whether departmental proceedings could be deemed to have been instituted in view of the Explanation to Article 351-A of the CSR. As stated above, the appellant-respondents had filed a short counter affidavit and a compilation of several documents pertaining to the departmental proceedings and judgements of various courts. It has not been pointed out what other document was required to be 'filed' for adjudication apart from what was already on record of the writ petition. Under the circumstances, the learned Judge had correctly proceeded to decide the case on the basis of material on record.

Point No.(ii)

16. Coming to the second point regarding the competence of the Managing Director of UPPCL to sanction the departmental proceedings, the background leading to the constitution of the corporate entities, namely, UPPCL and PVVNL is required to be seen.

17. Under the Supply Act of 1948, the State Electricity Boards were required to be constituted under Section 5 thereof. The term of office and conditions of service of the members of the Board were specified in Section 8 and removal or suspension of members of the Board was provided in Section 10. The Board was ordained to be a body corporate, by the name notified, under Section 12 having perpetual succession and a common seal with power to acquire and hold property both movable and immovable and could sue and be sued by the said name. Section 79 of the Supply Act of 1948 enabled the Board, by notification in the official gazette, to

make Regulations with respect to the matters specified therein, sub-section (c) of which reads as follows:-

“79. Power to make regulations.- The Board may, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to provide for all or any of the following matters, namely : -

(a)

(b)

(c) the duties of officers and other employees of the Board, and their salaries, allowances and other conditions of service;

.....

.....

.....”

18. The Regulations of 1975 were made in exercise of the power conferred by sub-section (c) of Section 79 of Supply Act of 1948 on the Board. Regulation 2 of the Regulations of 1975 reads as follows:-

“2. All matters relating to conduct and discipline (including matters relating to punishment) and to termination, reversion and compulsory retirement of persons appointed:

(a) to the Board,

(b) Government servants who were originally employed under the State Government and after resignation were absorbed in the service of the Board in pursuance of State Government order No.3670-E/71-XXIII-PB, dated July 1, 1971, the Board may initiate or recommence any disciplinary proceedings in respect of their acts and omissions during the period when they were employed under the State Government except in cases where disciplinary proceedings were finally concluded on merits while they were so employed under the Government.

(c) Such servants of the Board as are workman employed in any industrial establishment under the control of the Board, notwithstanding any thing contained in any other law for the time being in force;

shall be regulated mutatis mutandis and subject to any other regulation for the time being in force (including Regulations 1-A and above and 3, 4 and 6 below) by rules and orders for the time being in force and applicable to corresponding categories of Government Servants under the rule making control of the Governor of Uttar Pradesh with the substitution of references in such rules to the Governor or the State Government by reference to the Board.” (emphasis supplied)

19. Relevant provisions of Section 23 of the Reforms Act are as follows:-

“23. Transfer of the Board's properties, powers, functions, duties and personnel. - (1) On and from the date specified in a transfer scheme, prepared and notified by the State Government, to give effect to the objects of this Act, hereinafter referred to as the appointed date in this Act, all properties, and all interests, rights and liabilities of the Board therein shall vest in the State Government.

(2) The properties, interest, rights and liabilities vested in the State Government under sub-section (1), shall be re-vested by the State Government, in the Power Corporation and in a generating company in accordance with the transfer scheme so notified along with such other property, interest, rights and liabilities of the State Government, as may be specified in such scheme, on such terms and conditions as may be determined by the State Government.

.....

(4) The State Government may, after consultation with the generating company or the power corporation, hereinafter referred to in this section as transferor, may, require transferor to draw up a transfer scheme to vest in a person hereinafter referred to in this section as transferee, any of the functions including distribution function, property, interest, right or liability which may have been vested in the transferor under this section and notify the same as statutory transfer scheme under this Act. The transfer scheme to be notified under this sub-section shall have the same effect as the transfer scheme under sub-section (2).

.....

(7) The State Government, may provide in any of the transfer schemes framed under this section for the transfer of personnel to the Power Corporation or a company subsidiary to the Power Corporation or a generating Company, on the vesting of properties, rights and liabilities in the Power Corporation or a company subsidiary to the Power Corporation or a generating company, as a part of the undertakings transferred under this section and on such transfer the personnel shall hold office or service under the Power Corporation or a company subsidiary to it or a generating company, as the case may be, on terms and conditions that may be determined in accordance with the transfer scheme subject however to the following namely :

(a) terms and conditions of service of the personnel shall not be less favourable to the terms and conditions which were applicable to them immediately before the transfer;

(b) the personnel shall have continuity of service in all respects; and

(c) all benefits of service accrued before the transfer shall be fully recognised and taken into account for all purposes including the payment of any or all terminal benefits :

Provided that, notwithstanding anything contained in any other law for the time being in force, and except as provided in the transfer scheme and in this Act, the transfer shall not confer any right on the personnel so transferred to any compensation or damages :

Provided further that the posts in the Board of all the personnel whose services are to be so transferred shall stand abolished with effect from the date of transfer.

Explanation. - For the purposes of this section and the transfer scheme, the expression "personnel" means all persons who on the appointed date are the employees of the Board and who under the transfer scheme are given the option to join service under the control of the transferee."

20. In exercise of powers conferred under sub-sections (1) and (2) of Section 23 of the Reforms Act, the Transfer Scheme was framed. Under sub-clause (h) of Clause 2 of the Transfer Scheme, the transferee has been defined to mean the UPPCL, the U.P.

Rajya Vidyut Utpadan Nigam Limited¹³ and the U.P. Jal Vidyut Utpadan Nigam Limited, in whom the undertaking or undertakings are vested in terms of the provisions of sub-sections (2) and (7) of Section 23 of the Reforms Act. With regard to transfer of personnel, sub-clause (1) of clause 6 of the Transfer Scheme makes it subject to the terms and conditions contained in sub-section (7) of Section 23 of the Reforms Act. Sub-clause (5) of Clause 6 of the Transfer Scheme reads as follows:-

“The personnel classified in Schedule-G shall transferred to and absorbed in UPPCL on as is where is basis, namely, that they will continue to serve in the place where they are posted on the date of the transfer and they will become an employee of UPPCL.”

21. Schedule-G of the Transfer Scheme names the Units wherein the personnel of the specified offices of the Board alongwith all personnel of subordinate offices and Units of the Board would stand transferred to UPPCL on the date of the transfer.

22. Sub-clause (10) of Clause 6 of the Transfer Scheme reads as follows:-

“Subject to the provisions of the Act and this Scheme, the Transferree shall frame regulations governing the conditions of service of personnel transferred to the transferee under this Scheme and till such time, the existing service conditions of the Board shall mutatis mutandis apply.”

23. On consideration of the aforesaid provisions of the Supply Act of 1948, Regulations of 1975, Reforms Act, and the Transfer Scheme, it is evident that the conditions of service of officers and servants of the Board and the UPPCL/PVVNL are regulated by the Regulation of 1975 which is in force as provided under sub-clause (10) of Clause 6 of the Transfer Scheme framed under the Reforms

Act, and, by rules and orders for the time in force and applicable to the corresponding categories of government servants under the rule making control of the Governor of Uttar Pradesh with the substitution of references in such rules to the Governor or the State Government by reference to the Board / UPPCL / PVVNL.

24. It is pertinent to mention here that in the Electricity Act, 2003, the Reforms Act is saved by virtue of sub-section (3) of Section 185 thereof.

25. The term '*mutatis mutandis*' has been explained by the Supreme Court in the case of **Prahlad Sharma** (supra). In that case before the Supreme Court, challenge was made to a judgment and order passed by the High Court which had allowed the writ petition preferred by the appellant. The Managing Director of the U.P. State Agro Industrial Corporation had imposed the penalty of dismissal against Prahlad Sharma. The appellate authority of the Corporation had partly allowed the appeal and ordered reinstatement with observations. Against the order of the appellate authority directing reinstatement, the Corporation invoked the revisional power of the State by filing a revision under Rule 13 of the Government Servant (Discipline and Appeal) Rules, 1999¹⁴ which was allowed. The High Court observed that by means of a resolution, the Corporation had *mutatis mutandis* adopted the Rules, 1999 and hence the State Government had power to entertain the revision under Rule 13 of the Rules, 1999. The order of the High Court as well as the order passed by the State Government in revision were set aside by the Supreme Court after analysing the term '*mutatis mutandis*' appearing in the resolution of the Corporation whereby the Rules, 1999 were adopted. The Supreme Court observed as follows:-

“11. The expression "mutatis-mutandis", itself implies applicability of any provision with necessary changes in points of detail. The rules

14 Rules, 1999

which are adopted, as has been done in the present case, make the principles embodied in the rules applicable and not the details pertaining to particular authority or the things of that nature. In the present case, we find that the High Court has found that the U.P. Rules of 1999 have been adopted mutatis-mutandis. Therefore, in our view, the revisional power which has been vested in the state government in respect of the employees of the State may be exercisable by an authority parallel or corresponding thereto in the Corporation in regard to employees of the Corporation..”

26. Therefore, in terms of sub-clause (10) of clause 6 of the Transfer Scheme, the Regulations of 1975 would, mutatis mutandis, apply to the personnel of UPPCL / PVVNL. Accordingly, the reference to the Governor of the State appearing in Article 351-A of the CSR, would, in the case of the appellant-respondents, be referable to the Managing Director of the UPPCL.

27. Another judgment cited by the learned counsel for the appellant-respondents in the matter of **Rajeev Kumar Jauhari** (supra) can be referred with profit. In that case, the issue was before the High Court whether the U.P. Rajya Vidyut Utpadan Nigam Absorption Regulations, 2006 framed by the UPRVUNL was illegal, arbitrary and ultra vires. One of the issues urged on behalf of the petitioner therein was that UPRVUNL can only change the conditions of service by framing statutory Regulations and not the Regulations, which are non-statutory. While rejecting that argument, the Court observed as follows:

“32. Sri Khare lastly sought to argue that Section 23(7) of the Reforms Act, 1999 read with Clause 3 (10) of the Transfer Scheme, 2000 use the word 'Regulation' and therefore, UPRVUNL can only change the condition of service by framing statutory Regulations and not the Regulations, which are non statutory In our view, this submission is to be noted for rejection only. UPRVUNL is not a statutory body, but a Company registered under the Companies Act. It is not

disputed that the employment and contract of the petitioners which was earlier with a statutory autonomous body, namely, UPSEB, stood transferred to UPRVUNL and now it is UPRVUNL, who is empowered to determine the conditions of service of its employees. The manner in which such provision can be made would be governed by the Article of Association of such Company and when the Company itself is not statutory, to expect such company to frame statutory Regulations for governing its employees is wholly untenable. The effect of transfer of service from statutory body to a non statutory body, namely, a company registered under the Company Act, would deprive the statutory protection available to the employees and now the matter would be governed by ordinary law of contract. Normally, the transfer of contract involves the consent of the employees also, but in the present case, the petitioner's contract has been transferred to UPRVUNL by statute itself and, therefore, the employees have no role and their consent is not required. The only rider on the power of transferee employer is that the service condition whenever changed would not be less beneficial and will not deprive past benefits accrued to the transferred employees before transfer, that is, to the extent provided under Section 23(7) of the Reforms Act, 1999. The protection under Section 23(7) neither continue the status of the transferred employee with the new companies as statutory nor otherwise has any other role except to prevent employer from exercising its ordinary powers available in Common Law, which would be contrary to the protection given under Section 23(7) of the Reforms Act, 1999. For all other purposes, the transferee company is free to formulate its policies and enter into contract or lay down terms and conditions of its employees in the manner, it find best suited for the efficient functioning of the company. Merely for the reason that the State Government is 100% share holder of the company does not identify the company itself with the State Government. In *Shrikant v. Vasantrao*¹⁵, the Court held in para 24 (sic) that in the matter of a company where the entire share capital is held by the State Government, yet it cannot be identified with the State Government and is always entitled to act and proceed in a manner a company function. This principle was recognized as long back as in 1970

15 (2006) 2 SCC 682

also by a Constitution Bench in *R.C. Cooper v. Union of India*¹⁶, and at page 584, the Apex Court held- "A company registered under the Companies Act is a legal person, separate and distinct from its individual members. Property of the Company is not the property of the shareholders. A shareholder has merely an interest in the Company arising under its Article of Association measured by a sum of money for the purpose of liability, and by a share in the profit. "

.....

34. Thus we hold that a Company can determine terms and conditions of its employees as provided under Article of Association but since the Article of Association of a Company is neither a Rule nor Regulation and has no statutory force the conditions determined thereunder would also be not statutory. The UPRVUNL thus have the power to determine terms and conditions of its employees by making provisions in exercise of powers under provisions of Article of Association read with Companies Act.”

28. Another case that was cited by the learned counsel for the appellant-respondents was a judgment of the Supreme Court in the case of **Z.U. Ansari** (supra). The issue therein was whether the powers vested in a Governor for sanctioning departmental proceedings by Regulation made under Article 309 of the Constitution of India can be delegated to a Minister under Rules for Allocation of Business framed under Article 166(3) of the Constitution of India. However, no reliance can be placed upon that case inasmuch as due to the difference in opinion between the two Judges, the matter was referred to a Larger Bench.

29. Reference, at this stage, may be made to Article 309 of the Constitution of India:

“309. Recruitment and conditions of service of persons serving the Union or a State :

Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of

16 AIR 1970 SC 564

persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.”

30. Under Article 309 of the Constitution, authority has been given to the Governor of the State or to such person, he may direct in the case of service and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of person appointed, to such service and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under that Article, and any rules so made shall have effect subject to the provisions of any such Act. However, the authority to the Governor has been given by means of a proviso. Article 309 itself enables Acts of the appropriate Legislature to regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State, which is subject to the provisions of the Constitution of India and qualified by the proviso.

31. Article 351-A of the CSR reads as follows:

“**351-A.** 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 departmental or judicial proceedings to have been guilty of grave mis-conduct, or to have caused, pecuniary loss to government by misconduct or negligence, during his service, including service rendered on re-employment after retirement;

Provided that--

(a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment--

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

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings, and

(iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

(b) judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a), and

(c) the Public Service Commission, U.P., shall be consulted before final orders are passed.

Provided further that of the order passed by the Governor relates to a cash dealt with under the Uttar Pradesh Disciplinary Proceedings, (Administrative Tribunal) Rules, 1947, it shall not be necessary to consult Public Service Commission.

Explanation-- For the purposes of this article--

(a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or, if the officer has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted :

(i) in the case of criminal proceedings, on the date on which a complaint is made, or a charge-sheet is submitted to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

Note:- As soon as proceedings or the nature referred to in this article are instituted the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned.”

32. On record is the so-called 'sanction' accorded by the Managing Director of UPPCL to the departmental proceedings to be initiated against the petitioner-respondent. Therefore, taking into account the provisions of the Supply Act of 1948, the Regulations of 1975, the Reforms Act and the Transfer Scheme, it is clear that UPPCL and PVVNL are separate corporate entities and are entitled to conduct their business by means of duly passed resolutions in the meetings of the Board of Directors. It is iterated that the UPPCL is empowered to frame Regulations relating to conditions of service of its personnel under sub-clause (10) of Clause 6 of the Transfer Scheme and till such time the Regulations are not framed, the Regulations framed by the erstwhile Board (including the Regulations of 1975) shall *mutatis mutandis* apply. Therefore, the finding of the learned Judge cannot be sustained, whereby it was held that the resolution authorising the Managing Director to exercise the powers relating to Article 351-A of the CSR cannot be accepted as the CSR can be modified/amended by amendment in the CSR in respect of the service in the State and not by issuance of Circulars or Company resolutions.

33. The judgment cited by the learned counsel for the petitioner-respondent in the matter of **Dr. Hira Lal** is not applicable under the facts and circumstances of the present case. That judgment refers to administrative Circulars and a Government resolution issued by the State of Bihar for withholding part of pension, whereas the Bihar Pension Rules 1950 did not prohibit payment of full pension and gratuity to a retired government servant against whom criminal proceedings were pending. The Supreme Court noticed that the Bihar Pension Rules were amended on 19.07.2012 by the Governor of Bihar in exercise of powers under Article 309 of the Constitution. It was held that the pension amount that was withheld after superannuation of the officer till 19.07.2012 is liable to be paid to the appellant. In that case before the Supreme Court,

the authority of any Corporation to frame Regulations by means of resolutions was not in issue and, therefore, the aforesaid case is distinguishable on facts and is of no assistance to the petitioner-respondent.

34. Thus, under the circumstances, there was no occasion to obtain sanction of the Governor and no question of delegation of power by the Governor in favour of the Managing Director of the UPPCL for the Managing Director to exercise his discretion to sanction in exercise of power Article 351-A of the CSR. Moreover, with regard to the case in hand, given the statutory provisions narrated above, the observation of the learned Judge that the sanctioning authority specified as 'Governor' in the CSR cannot be read as 'Managing Director' of a corporation except when it is amended in accordance with law cannot be sustained. Therefore, the judgment and order of the learned Judge, to this extent, is **set aside**.

Point No. (iii)

35. Now we may examine the third point that whether the appellant-respondents were justified in initiating the departmental proceedings against the petitioner-respondent in view of Article 351-A of the CSR.

36. The order of suspension dated 22.11.2018 as well the order dated 22.12.2018 conditionally reinstating the respondent-petitioner are on record of the writ petition. It is admitted that the age of superannuation of the respondent-petitioner was 31.12.2018. The order of suspension of 22.11.2018 was passed by the Managing Director, PVVNL, Meerut in his capacity as the Competent Authority. The letter dated 22.12.2018 whereby the suspension of the respondent-petitioner was conditionally revoked, which appears on page 214 of the affidavit, is an office

memorandum signed by the Managing Director of PVVNL, Meerut in which the allegations against the respondent-petitioner are cited and the second paragraph of the office memorandum, which is the operative part, is as follow:-

“श्री अनिल कुमार तत्कालीन अवर अभियन्ता (निलम्बित), विद्युत नगरीय वितरण खण्ड-अष्टम, नोएडा सम्बद्ध सम्प्रति विद्युत वितरण मण्डल, अमरोहा के दिनांक 31.12.2018 को सेवानिवृत्त होने के दृष्टिगत एतद्वारा सेवा में पुर्नपदस्थापित कर कार्यालय मुख्य अभियन्ता (वितरण), मुरादाबाद क्षेत्र, मुरादाबाद में इस प्रतिबन्ध के साथ तैनात किया जाता है कि प्रचलित जांच प्रक्रिया में जो भी निर्णय लिया जायेगा, उन पर लागू होगा।”

“Shri Anil Kumar, former Junior Engineer (under suspension), Electricity Urban Distribution Division- 8, NOIDA, presently attached to Electricity Distribution Division, Amroha, in view of his retirement on 31.12.2018, is hereby restored to his post in service and is being posted in the office of the Chief Engineer (Distribution), Moradabad Circle, Moradabad with the condition that in the ensuing inquiry proceeding whatever decision is taken, it would be applicable to him.”

(translated to English by Court)

37. It is an admitted fact that no chargesheet was served upon the petitioner before his retirement on 31.12.2018. Therefore, it is required to be seen whether the condition imposed in the revocation of suspension of the petitioner, by means of the office memorandum dated 22.12.2018 could be construed as deemed suspension.

38. Article 351-A of the CSR enables the Governor to withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and, 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 the departmental or judicial proceedings

to have been guilty of grave misconduct, or to have caused, pecuniary loss to Government by misconduct or negligence during his service, including service rendered on re-employment after retirement. This enabling provision is qualified by the first proviso, Clause (a) of which provides three mandatory conditions, in order to institute departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment. The first condition prohibits the institution of such departmental proceedings save with the sanction of the Governor. The second condition is that the departmental proceedings should be in respect of an event which took place not more than four years before the institution of such proceedings. The third condition is that such departmental proceedings should be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to the proceedings on which the order of dismissal from service may be made. The purport of Clause (a) of the first proviso is that each of the aforesaid three conditions have to be satisfied for instituting departmental proceedings where the employed person has retired. Explanation (a) to the Article 351-A of the CSR creates a legal fiction with regard to the date of institution of disciplinary proceedings, the purport of which is that the departmental proceedings shall be deemed to have been instituted when (i) the charges framed against the pensioner are issued to him, or, (ii) if the officer has been placed under suspension from an earlier date, on such date.

39. There is no dispute about the fact that the stringent provisions of Article 351-A of the CSR purport to enable the authority concerned to impose major penalty on a pensioner whereby the pensioner is visited with grave civil consequences. As such, given the mandate of Article 300-A of the Constitution of

India there is little scope of interpreting the provisions of Article 351-A of the CSR liberally or equitably. The appellant-respondents have proceeded on the presumption that once the respondent-petitioner was placed under suspension during the period of his service then, even if the suspension is revoked prior to retirement, the provisions of Explanation (a) of the CSR would enure to their benefit. In our opinion, this presumption and interpretation is fallacious. It has been held by the Supreme Court that a legal fiction is created only for some definite purpose and it is to be limited for the purpose for which it was created and should not be extended beyond that legitimate field¹⁷. For Explanation (a) of the CSR to be applicable the incumbent must be under suspension from a date prior to his retirement and continue to be under suspension till the date of his retirement.

40. To further test the extent of operability of the aforesaid Explanation (a), a situation may arise where the charges framed against a pensioner are issued to him during his service and thereafter, those charges are withdrawn conditionally prior to his retirement and a fresh chargesheet is issued after retirement, and it is claimed by the employer that since charges framed against the pensioner were issued on a date prior to his retirement, therefore, the departmental proceedings would be deemed to have been instituted. That situation also would result in absurdity which cannot be the purpose of the legal fiction created in Explanation (a) to Article 351-A of the CSR.

41. Under the circumstances, we find that the learned Judge was justified in holding that on the date of his retirement on 31.12.2018, the respondent-petitioner was not under suspension and, so as a corollary, departmental proceedings could not be deemed to have been instituted against the respondent-petitioner.

¹⁷ Bengal Immunity Co. Ltd. Vs. State of Bihar (AIR 1955 SC 661)

42. We may now proceed to look into the three conditions appearing in Clause (a) of the first proviso to Article 351-A of the CSR, having regard to the fact situation of the present case. Annexure No. 2 to the writ petition was a letter dated 5.11.2019 issued to the respondent-petitioner by the Inquiry Officer-cum-Superintendent Engineer stating that the copies of the approved charge-sheets were being enclosed and directing that detailed and clear reply/submissions to the charge-sheets along with the evidence be submitted within 15 days of the receipt of the letter. A perusal of the enclosures to the aforesaid letter dated 5.11.2019 reveals that it contains note sheets containing office orders and other enclosures. The office comments and orders are on consecutive pages which also includes narration of two charge-sheets. The first charge-sheet appears on page 94 of the affidavit filed alongwith this appeal. The first charge against the respondent-petitioner is that he had concealed correct facts and had obtained appointment under the dying in harness rules to the post of Patrolman and joined on 04.06.1975 by playing fraud. That he was well aware that minimum age of appointment was 18 years whereas the entries in the service book and the date of birth reflected in his High School certificate was 15.12.1958 and at the time of his appointment, his age was less by 1 year 6 months and 11 days than the minimum prescribed age and that he was not eligible for the post. The second charge is that the respondent-petitioner and his brother Yogendra Sharma, by concealing material facts, both obtained appointment under the dying in harness rules whereas only one person of the family could be granted appointment. The second charge-sheet contains five charges, each of which pertain to theft of electricity and other charges, apparently pertaining to his periods of posting from 1.10.2017 to 2.1.2018 and from 3.1.2018 to 20.11.2018.

On perusal of the aforesaid note sheet it appears that the notings/comments therein and narration of the charge-sheets were made with a view to obtain sanction of the competent authority for departmental proceedings.

43. On page 98 of the affidavit is a note put up by various officials for obtaining sanction for departmental proceedings. However, a fresh proposal was sought as is evinced from a hand written note on that page of 12.4.2019. Thereafter, a fresh note dated 15.4.2019 was put up in which it was stated that the authority who could grant sanction for departmental proceedings against the retired respondent-petitioner, was the Managing Director of UPPCL in view of Article 351-A of the CSR. The last paragraph of this note that appears on page 99 of the affidavit is marked on the margin with the Devanagari alphabet “क”. After referring to the two charge-sheets, the aforesaid last paragraph on page 99 of the affidavit states that after obtaining sanction under Article 351-A of the CSR from the Managing Director of the UPPCL, the same be sent to the Managing Director under the directions of the Corporation with regard to the final proceedings against the respondent-petitioner, and that the matter be placed as soon as possible before the Director of UPPCL. Below this note, there is a handwritten note of an Under Secretary dated 5.4.2019 stating "कृपया उपरोक्त पाशोक्ति अंश 'क' पर विचार कर प्रवन्ध निदेशक महोदया का अनुमोदन प्राप्त करना चाहे।" Translated it reads to the effect that please deliberate over the aforesaid part marked as “क” and obtain the sanction of the Managing Director. Below this note are several signatures, apparently by some officials, as well as the signature of the Managing Director of UPPCL which was appended on 24.4.2019. It is clear from this document that the signature of the Managing Director of UPPCL, who is the Authority competent to

sanction the disciplinary proceedings under condition (i) of Clause (a) of the first proviso to Article 351-A of the CSR, has been made only on the basis of bald signatures of subordinate officials and some brief recommendations. There appears nothing on record to demonstrate that the Managing Director of the UPPCL had accorded sanction either by approving the note put before him or by recording sanction. The signature of the Managing Director appears to have been made by the authority as a perfunctory duty rather than as a mark of sanction after due application of mind.

It is noticed that in the notings there is no discussion or deliberation whatsoever with regard to the fact whether the departmental proceedings against the petitioner could be instituted in view of the first proviso to Article 351-A of the CSR. The 'comments and orders' appearing on the note sheets are mere narrations of the undated complaint received against the petitioner with regard to his initial appointment, the misconduct committed by him by illegally energizing tubewells, etc.; the various letters issued by the authorities; and the narration of the two charge-sheets along with the evidence pertaining to each charge-sheet. It was, therefore, incumbent on the Managing Director to apply her mind to the fact whether departmental proceedings could be initiated against the petitioner in view of the first proviso to Article 351-A, which, was evidently not done.

44. In the ninth edition of the Black's Law Dictionary the verb 'sanction' is defined as to approve, authorize or support. Clause (a) (i) of the first proviso to Article 351-A of the CSR places a complete bar on institution of departmental proceedings without the sanction of the Governor (in the present case, the Managing Director of UPPCL). That is to say that the authority has to apply its mind and deliberate on the matter, on the basis of the facts appearing on record, whether to grant sanction or not, for

institution of departmental proceedings. Therefore, the import of the word 'sanction' so appearing actually indicates a decision authorising departmental proceedings after consideration of the material on record and application of mind thereon. It does not mean that the sanctioning authority has to see the material and evidence threadbare and pass judgement. The authority has only to be satisfied that the basis for departmental proceedings exist entailing sanction. Therefore, in the present case, the Managing Director was required to consider, prima facie, not only the charges framed and the evidence available, but also whether the departmental proceedings were in respect of an event which took place not more than four years before the institution of the proceedings {Clause (a) (ii) of the first proviso to Article 351-A of the CSR}. The Managing Director, while according sanction, may direct that the departmental proceedings shall be conducted by which authority and in which place or places {Clause (a) (iii) of the first proviso to Article 351-A of the CSR}, the mandate, however, being that the departmental proceedings shall be conducted in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

The contents of the first charge-sheet reveal that it pertains to an alleged mis-conduct of the petitioner at the time of his initial appointment. Therefore, there cannot be any valid sanction to the departmental proceedings in respect of the first charge-sheet against the petitioner. The consolidated notings pertained to both the charge-sheets and a single signature of the sanctioning authority appears at the end, which without anything further, cannot imply sanction.

45. The word 'sanction' has been used in statutes on criminal law, for example, in Section 197 of the Code of Criminal Procedure and in Section 19 of the Prevention of Corruption Act.

Though seeking aid of statutes pertaining to criminal law in interpreting a word in service law is fraught with pitfalls, however, for want of other appropriate aids to construction, some judgements may be referred to.

46. In the case of **State of Bihar and another Vs. P.P. Sharma, IAS and another**,¹⁸ while referring to the sanction for prosecution to be accorded under Section 197 of the Cr.P.C., this Court held as follows:

“67. It is equally well settled that before granting sanction the authority or the appropriate Government must have before it the necessary report and the material facts which prima facie establish the commission of offence charged for and that the appropriate Government would apply their mind to those facts. The order of sanction only is an administrative act and not a quasi-judicial one nor is a lis involved. Therefore, the order of sanction need not contain detailed reasons in support thereof as was contended by Sri Jain. But the basic facts that constitute the offence must be apparent on the impugned order and the record must bear out the reasons in that regard. The question of giving an opportunity to the public servant at that stage as was contended for the respondents does not arise. Proper application of mind to the existence of prima facie evidence of the commission of the offence is only a precondition to grant or refuse to grant sanction.”

47. Similarly, in the case of **Manshukhlal Vithaldas Chauhan Vs. State of Gujrat**¹⁹, the Court has held as under:

“19. Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever

18 1992 Supp (1) SCC 222

19 (1997) 7 SCC 622

or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

48. While considering the requisites of validity sanction under Section 19 under the Prevention of Corruption Act, 1988, the Supreme Court in the case of **State (Anti-Corruption Branch), Govt. of NCT of Delhi and another Vs. Dr. R.C. Anand and another**²⁰, opined that the sanctioning authority has only to see whether the facts disclosed in the complaint prima facie disclose commission of an offence or not, and, that all the relevant facts has been considered by the sanctioning authority which implies application of mind. The Supreme Court went on to observe that the order of sanction must ex-facie disclose that the sanctioning authority had considered the evidence and other material placed before it.

49. A perusal of page 99 of this appeal on which reliance is placed by the appellant in an attempt to show sanction of the departmental proceeding, does not ex-facie disclose that the Managing Director had applied its mind to the material on record in the light of the first proviso to Article 351-A of the CSR and had sanctioned departmental proceedings. The sanction as envisaged in Article 351-A of the CSR dons the Managing Director of UPPCL with the mantel of the Governor to accord sanction to such departmental proceedings after noticing that the ingredients for institution of such departmental proceedings exist. It should not be, as in the manner it appears on the record of the present case. Here the Managing Director has neither accepted the proposal for departmental enquiry nor has approved or sanctioned the departmental enquiry. He had just put his signature on the page, which by itself cannot be taken as grant of sanction in view of the

20 (2004) 4 SCC 615

fact situation of the instant case.

Conclusion:

50. Having considered the case in its entirety and after perusal of the record, in our opinion on the basis of the discussion above, the alleged sanction for departmental proceedings granted by the Managing Director of UPPCL under Article 351-A of the CSR is no sanction in the eyes of law and is, therefore, declared invalid.

51. However, this cannot preclude the appellant-respondents from instituting departmental proceedings after obtaining a valid sanction if so permissible in law. But till a valid sanction is granted for departmental proceedings, the directions issued by the learned Judge for payments of retiral dues, etc. calls for no interference.

52. Subject to the above, the appeal is **dismissed**.

Order Date :- 23.10.2021
A. V. Singh/SK