

(2013) 12 AHC CK 0158

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. (S/S) 7179 of 2009

Abhishek Prabhakar Awasthi

APPELLANT

Vs

New India Assurance Company Ltd.

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2014) 3 UPLBEC 1812

Hon'ble Judges : Dhananjaya Yeshwant Chandrachud, C.J.; Ritu Raj Awasthi, J.; Devendra Kumar Arora, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

Dr. Dhananjaya Yeshwant Chandrachud, C.J., Devendra Kumar Arora and Ritu Raj Awasthi, JJ.—The reference before the Full Bench has been occasioned as a result of a referring order dated 30.9.2013. Essentially, the issue which arises before the Full Bench can be summarized briefly as follows: Where a Court has prescribed time for the disposal of a disciplinary enquiry and the enquiry is not concluded within the time so fixed, would the consequence in law be to vitiate the enquiry proceedings resulting in rendering the penalty imposed as being without jurisdiction? The following questions have been referred in the order of the learned Single Judge for determination by the Full Bench:-

"(a) Whether if an inquiry proceeding is not concluded within a time frame fixed by a Court and concluded thereafter, without seeking extension from the Court then on the said ground the entire inquiry proceeding as well as punishment order passed, is vitiated in view of the judgment in the case of P.N. Srivastava; and

(b) Whether the law as laid down by a Division Bench of this Court in the case of P.N. Srivastava that if an inquiry proceeding is not concluded within a time frame as fixed by a Court, it stands vitiated is still a good law in view of the judgment rendered by the Supreme Court in the case of Suresh Chandra as well as a

judgment dated 27.7.2009 of a Division Bench of this Court in Writ Petition No. 1056(SB) of 2009 (Union of India and others v. Satendra Kumar Sahai and another).

2. The petitioner was appointed as an Assistant Clerk in New India Assurance Company Ltd. on 10.7.1986. He was suspended on 19.3.2008 in contemplation of a disciplinary proceeding. As the charge sheet was not served, he moved a representation to the disciplinary authority to revoke the order of suspension under the General Insurance (Conduct, Discipline and Appeal) Rules, 1975. In a petition filed under Article 226 of the Constitution of India, this Court directed, by an order dated 4.11.2008, that the representation of the petitioner be disposed of by a speaking order. On 7.11.2008, a memorandum of charges was served. On 19.2.2009, the representation submitted by the petitioner for the revocation of suspension was rejected. Aggrieved, the petitioner filed a writ petition in which, by an order dated 30.3.2009, a direction was issued to the disciplinary authority to conclude the enquiry within a period of four months from the date of receipt of a certified copy of the order. The certified copy of the order was received by the employer on 6.4.2009. The enquiry report is dated 17.8.2009 and was remitted to the employee under a covering letter dated 15.10.2009. The enquiry report was actually remitted on 6.11.2009 and was received by the petitioner on 11.11.2009.

3. As a matter of first principle, when a mandamus is issued by a Court to complete an act within a stipulated period, the binding direction of the Court has to be complied with. A litigating party cannot ignore or disregard a mandamus of the Court. Hence, when a stipulation as to time is made in an order of the Court directing the conclusion of a disciplinary enquiry, the direction of the Court binds the parties and must be observed.

4. In M.L. Sachdev Vs. Union of India and another, , a direction was issued by the Supreme Court for the constitution of the Monopolies and Restrictive Trade Practices Commission within a stipulated period. The direction was not duly observed and contempt proceedings were initiated. In that context, the Supreme Court held that since the direction was not complied with by the date stipulated, it was the obligation of the contemnor to approach the Court for a further extension of time or to receive such directions as the Court, in its discretion, thought it appropriate to make. A similar principle was followed by the Supreme Court in the case of State of Bihar and others Vs. Subhash Singh, where an order of costs was imposed. The Supreme Court observed that when the High Court had directed that the case of the writ petitioner should be considered and disposed by a reasoned order within a period of two months, it was expected that the authorities shall discharge their duty expeditiously in accordance with the directions. Having failed to do so, the authorities were required to furnish an explanation to the Court of the circumstances in which they could not comply with the directions or if there was any unavoidable delay, further time for compliance should have been taken. In these circumstances, since no steps were

taken by the officer, an order of costs was imposed.

5. In the context of disciplinary proceedings, the High Court in the exercise of its writ jurisdiction under Article 226 of the Constitution may in appropriate cases fix a stipulation in regard to the conclusion of an enquiry within a stipulated period. Such an order may be passed in several situations, such as when an employee moves a petition challenging an order of suspension and the Court considers it appropriate, in the interests of justice, to direct that the disciplinary proceeding should be expeditiously disposed of. Such directions are issued in other appropriate instances to obviate a delay in disposing of disciplinary proceedings. The basis and rationale for these orders is to ensure that an employee is not prejudiced by an undue delay in the conclusion of a disciplinary proceeding. Where the Court stipulates a period of time during which an enquiry must be completed, such a stipulation has to be observed. Clearly, it is not open to the employer to act in disregard of the orders of the Court and it cannot possibly be asserted that notwithstanding the time fixed by the Court, the employer is at liberty to conclude the enquiry at its own whims and fancy disregarding the stipulation of time.

6. Having said this, it is equally true that there may be a variety of circumstances which may arise in the course of a disciplinary proceeding and despite all reasonable efforts, a disciplinary proceeding is not completed within the time fixed by a Court. We do not intend to make an exhaustive enumeration of those circumstances but set out only some by way of illustration. Some times, it may well happen that "the complexity of the case may result in prolongation of the enquiry. Besides the nature of the case, the number of witnesses to be examined may be so large that it may not be possible to conclude the enquiry despite genuine and bona fide efforts within the stipulation so, fixed. However, it may well happen that the delay in the conclusion of the enquiry is due to the conduct of one of the two parties. When the employee himself is guilty of a delay which has resulted in a protraction of the enquiry, it would be manifestly contrary to the interests of justice to assert that notwithstanding the conduct of the employee, the jurisdiction to hold an enquiry has come to an end upon the expiry of the period fixed by the Court. On the contrary, it is not open to the employer to use the enquiry as a measure of harassment and to hold a hanging sword on the head of the employee indefinitely. All these aspects assume significance when the issue arises as to whether there were justifiable reasons as to why the enquiry could not be concluded within the period which has been stipulated by the Court. The seriousness of the charge is of vital importance when it falls for determination by a Court as to whether there were valid and cogent reasons on the basis of which the enquiry could not be concluded within the time stipulated. But, in either view of the matter, it is necessary that the Court, which has fixed the stipulation of time, should be moved for an extension of time which has been so fixed. The Court, which has fixed the time for conclusion of the enquiry, also has the inherent jurisdiction under Article 226 of the Constitution of India *ex debito justitiae* to exercise the power to extend time in appropriate cases. In this

background, it would now be necessary to consider the precedents emanating from this Court on the subject.

7. In *P.N. Srivastava Vs. State of U.P. and others*, a Division Bench noted that in that case a concession of the revival of a disciplinary enquiry was extended on the condition that it would be completed within a period of four months of the judgment of the Court. The Division Bench referred to those cases where statutory rules prescribe a period of limitation for holding an enquiry in which, as a consequence, it has been held that the departmental enquiry must be concluded before the lapse of the period prescribed from the date the misconduct had taken place. The Division Bench held that the direction issued by the Court must stand on the same footing as a period of limitation which has been prescribed by the Statute or the Rules and since the directions of the Court are required to be complied with, disobedience would amount to a contempt of the order of the Court. However, the Division Bench has also noticed that in case the departmental enquiry cannot be concluded within the date so fixed, the Court can be moved for extension of time.

8. In *Surendra Kumar Srivastava and Others Vs. State of U.P. and Others*, a Division Bench of this Court noted the element of public interest which is involved, in the following observations:-

"6. The delay on the part of the State Government in not concluding the enquiry within the time provided by the High Court some times makes out a case for staying the operation of suspension order or for quashing the same, though there may be charges against a Government servant, which require inflicting of punishment upon him. Simply because of the delay on the part of the State Government, the orders are passed in favour of delinquent officers, who otherwise, would have been awarded punishment. This also encourages indiscipline in service."

Consequently, in that case, the petition was disposed of with a direction to conclude the action within a stipulated period.

9. In another judgment of a Division Bench of this Court in *Union of India & Ors. v. Satyendra Kumar Sahai & Anr.*, (W.P. No. 1056 (SB) of 2009, the principle of law was stated as follows:-

"We also feel that though when a Court or Tribunal prescribes any time limit for concluding the enquiry or for doing a particular act, the government or its functionaries are not at liberty to violate that order, but whether the delay which has occurred is such so as to nullify the entire proceedings, will be a question which may be considered in the facts and circumstances of each and every case. It is also to be considered that when a Court or Tribunal directs for concluding the enquiry within the time prescribed, it would be obliged to consider the reasons for delay and if it is found that the delay has occurred because of any genuine and unavoidable reason, the delay deserves to be condoned.

We, therefore, find that merely because some delay has occurred in passing the present order of punishment, the entire punishment order was not liable to be set aside in the facts and circumstances of the present case."

10. In a judgment of a learned Single Judge in Mohd. Abbas Vs. Settlement Officer, Consolidation and Another, it was held that once a direction was issued by the Court to conclude an enquiry within a stipulated period, no enquiry could have been held after the period had been over and the report of the enquiry would be non est in the eyes of law.

11. In another judgment in Ajeet Kumar Singh Vs. Hardoi District Co-Operative Bank Ltd. and Another, it has been emphasized that once a Court has fixed certain period for conclusion of a departmental enquiry, it could not have been continued after the stipulated period without seeking permission from the Court.

12. Undoubtedly, where the Court has stipulated a period of time by which a departmental enquiry has to be concluded, the stipulation as to time has to be observed. But it must be emphasized that the failure on the part of the employer to conclude the enquiry within the period so stipulated will not result in a situation where the enquiry must, in all cases, and for whatever reason, be regarded as being rendered without jurisdiction or a nullity upon the expiry of that period. The Court which fixes time for completion of an enquiry equally has jurisdiction to extend time for compliance. A stipulation of time in an order of the Court is not akin to a statute of limitation. In each case, it is for the Court to determine as to whether the facts and circumstances are such as would warrant the grant of a further extension of time. The circumstances which would weigh with the Court would include the nature and complexity of the charge, the efforts which have been made for the conclusion of the enquiry, the reasons for the delay and the conduct of the parties in the course of the disciplinary proceedings. In *Suresh Chandra v. State of M.P. & Anr.*, (2005) 12 SCC 355, a SLP was filed before the Supreme Court against a judgment of the High Court setting aside an order of the Administrative Tribunal. The High Court had held that the disciplinary authority could not proceed with the enquiry after the lapse of the period granted to it by the Tribunal and that period having expired on 15.5.1999, the disciplinary authority could not proceed further with the enquiry. The Supreme Court set aside the judgment of the High Court and held that it was only fair to remand the matter to the Inquiry Officer to resume the disciplinary proceedings from the stage which was reached on 15.5.1999. The Supreme Court clarified that all proceedings taken before that date shall remain as they are and the disciplinary authority will proceed further to examine evidence and submit its report within the extended period as stipulated in the order of the Supreme Court. Thereafter, a period was fixed for the disciplinary authority to pass its orders from the date of submission of the enquiry report. The judgment of the Supreme Court in *Suresh Chandra's* case recognizes the power which inheres in the Court to extend the time which has been fixed for the completion of an enquiry for valid and cogent reasons.

13. We now advert to the judgments of the Supreme Court in which the issue as to whether a delay in the conclusion of a disciplinary enquiry will vitiate the proceedings has been considered.

14. In *State of Andhra Pradesh Vs. N. Radhakishan*, the Supreme Court has observed as follows:-

"It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred, if the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations."

15. A similar principle has been laid down in a decision of the Supreme Court in *Government of Andhra Pradesh & Ors. v. V. Appala Simmy*, (2007) 14 SCC 49, as follows:-

"So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard-and-fast rule can be laid down therefore. Each case must be determined on its own facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are:

(1) where by reason of the delay, the employer condoned the lapses on the part of the employee;

(2) where the delay caused prejudice to the employee.

Such a case of prejudice, however, is to be made out by the employee before the inquiry officer."

16. The same principle has been reiterated in the judgment of the Supreme Court in *The Secretary, Forest Department and Others Vs. Abdur Rasul Chowdhury*, where it was observed as follows:-

"The next issue is with regard to delay in concluding disciplinary proceedings. In our view the delay in concluding the domestic enquiry proceedings is not fatal to the proceedings. It depends on the facts and circumstances of each case. The unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary enquiry proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should be permitted to continue."

17. These judgments of the Supreme Court consequently recognize that the delay in concluding a departmental enquiry would not ipso facto vitiate the proceedings or render it invalid or non est. The Court has to take into consideration and balance all the relevant factors. The Court must consider in that balance the need for preserving the sanctity of the administration. On the other hand, fairness towards the delinquent employee requires that disciplinary proceedings should be concluded expeditiously. Hence, the nature of the charge, its complexity and the reasons for that delay are all relevant considerations which have to be borne in mind. Where the Court has stipulated a period of time within which an enquiry has to be concluded, the direction of the Court, particularly in the form of a mandamus, has to be duly observed. It would not be open to the employer to willfully disregard the fixation of a time limit as a matter of no consequence. However, the fixation of a period within which a disciplinary enquiry has to be concluded, in an order of the Court, does not deprive the Court of its jurisdiction to extend time in an appropriate case having due regard to all the facts and circumstances which have been noted above. Whether the time should be extended on a consideration of the relevant circumstances is for the Court to determine.

18. In view of the above discussion, we now proceed to answer the questions which have been referred to the Full Bench.

(A) Question No. (a): We hold that if an enquiry is not concluded within the time which has been fixed by the Court, it is open to the employer to seek an extension of time by making an appropriate application to the Court setting out the reasons for the delay in the conclusion of the enquiry. In such an event, it is for the Court to consider whether time should be extended, based on the facts and circumstances of the case. However, where there is a stipulation of time by the Court, it will not be open to the employer to disregard that stipulation and an extension of time must be sought;

(B) Question No. (b): The judgment of the Supreme Court in the case of *Suresh Chandra* (supra) as well as the judgment of the Division Bench of this Court in

the case of Satyendra Kumar Sahai (supra) clearly indicate that a mere delay on the part of the employer in concluding a disciplinary enquiry will not ipso facto nullify the entire proceedings in every case. The Court which has fixed a stipulation of time has jurisdiction to extend the time and it is open to the Court, while exercising that jurisdiction, to consider whether the delay has been satisfactorily explained. The Court can suitably extend time for conclusion of the enquiry either in a proceeding instituted by the employee challenging the enquiry on the ground that it was not completed within the stipulated period or even upon an independent application moved by the employer. The Court has the inherent jurisdiction to grant an extension of time, the original stipulation of time having been fixed by the Court itself. Such an extension of time has to be considered in the interests of justice balancing both the need for expeditious conclusion of the enquiry in the interests of fairness and an honest administration. In an appropriate case, it would be open to the Court to extend time suo motu in order to ensure that a serious charge of misconduct does not go unpunished leading to a serious detriment to the public interest. The Court has sufficient powers to grant an extension of time both before and after the period stipulated by the Court has come to an end.

We, accordingly, dispose of the reference in the aforesaid terms. The petition shall now be placed before the regular Court for disposal in light of the observations made hereinabove.