
(2016) 10 MP CK 0007
In the Madhya Pradesh High Court
Case No : W.P. No. 11130 of 2016

Ajit Narayan

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 MPLJ 300

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : Petitioner in Person, for the Petitioner; D.K. Dixit and Atulanand Awasthi, Advocates, for the Respondent No. 2; J.K Jain, ASG, for the Respondent No. 1

Final Decision : Partly Allowed

Judgement

Sujoy Paul J. - This petition filed under Article 226 of the Constitution takes exception to three orders No.F.No.11/10(1)/649, F.No.11/10(1)/650 and F.No.11/10(1)/651 dated 24.06.2016.

2. Briefly stated, facts are that petitioner was working as Registrar in respondent No.2/Institution. Petitioner's services were absorbed on the post of Registrar of respondent No.2/institution in the year 1992. His services were terminated on 30.6.1993. Pursuant to court's order passed in W.P.No.2726/13, he was reinstated with all consequential benefits. Petitioner was again compulsorily retired from service on 28.09.2007. The said order of compulsory retirement was set aside by the writ court and petitioner was directed to be reinstated with all consequential benefits. Against the said order passed in W.P.No.97/08, W.A.No.975/10 was filed before the Division Bench. The said writ appeal was partly allowed. The order of writ court was partly upheld but it was directed that reinstatement of the petitioner as Registrar of respondent No.2 will not be possible on account of the fact that the institution, during pendency of the proceedings, has already selected and appointed another officer as Registrar.

This order of Division Bench was challenged by the present petitioner before the Apex Court in Civil Appeal No.7718/12. The Apex Court allowed the appeal and modified the order passed by the Division Bench by directing that the petitioner be reinstated as Registrar of the Institution with all consequential benefits as directed by the learned Single Judge in W.P.No.97/08. In turn, petitioner was reinstated in service. The petitioner was due for his retirement on attaining the age of superannuation on 30.6.2016. Six days before his retirement, petitioner was served with the impugned orders. Petitioner is placed under suspension and disciplinary proceeding is instituted against him by issuance of a charge-sheet.

3. Petitioner criticized the suspension order and the charge-sheeted on three counts. Firstly, it is submitted that the Director of respondent No.2/institution, has no authority and jurisdiction to place the petitioner under suspension and issue the impugned charge sheet Annexure P/2. To bolster the aforesaid, reliance is placed on National Institute of Technology Act, 2007 (hereinafter referred to as "the NIT Act"). By placing reliance on section 24 (v) and section 26 of the said Act, it is urged that the Director has no power to place the petitioner under suspension and issue the charge-sheet. Petitioner, for this purpose, relied on CCS (CCA) Rules 1965. He submits that only the appointing authority or the disciplinary authority can place the petitioner under suspension. The Director of respondent No. 2 is not the disciplinary authority. Secondly, it is urged that as per rule 9 of CCS (Pension) Rules, 1972, the charge-sheet could not have been issued for an incident which had taken place more than four years before such institution. Thirdly, it is submitted that the charge sheet is issued after an inordinate delay of about 29 years and, therefore, it is liable to be quashed on the ground of inordinate delay itself. The petitioner submits that for no justifiable reason, petitioner is placed under suspension. The whole exercise is arbitrary and capricious in nature.

4. Per contra, Shri D.K. Dixit, learned counsel for respondent No.2 supported the impugned orders. The stand of respondent No.2 is also based on the NIT act, on which, reliance is placed by the petitioner. It is submitted that the Director is competent to place the petitioner under suspension and institute departmental inquiry by issuance of charge sheet. Shri Dixit urged that the decision to place the petitioner under suspension is taken by the Board of Governors. The decision is filed as Annexure R-1. It is submitted that as per CCA Rules, an employee can be placed under suspension during pendency of an investigation, inquiry or trial. It is submitted that the illegalities on the part of the petitioner were detected at late stage and, therefore, charge sheet was belatedly issued. He placed reliance on the judgment of R. Vishwanatha Pillai v. State of Kerala and others, (2004) 2 SCC 105 and Ram Saran v. IG of Police, CRPF and others-(2006) 2 SCC 541.

5. No other point is pressed by learned counsel for the parties.

6. I have heard the parties at length and perused the record.

7. Before dealing the rival contentions of the parties, it is apt to quote the

relevant provisions on which reliance is placed by the parties. Section 24(v) of the NIT Act reads as under :-

"24. General Terms And Conditions Of Service Of Permanent Employees Permanent employees of the institute shall be governed by the following terms and conditions :-

(i) xx

(ii) xx

(iii) xx

(iv) xx

(v) The employees of the institute shall be governed by the Central Civil Services (Conduct) Rules, 1964."

Section 26(1) and (i) of the said Act reads as under :-

"26. Suspension, Penalties, Disciplinary Proceedings - (I) The Director may place a member of the staff appointed at the institute under suspension:-

(i) where a disciplinary proceeding against him is contemplated or is pending;"

(Emphasis supplied)

8. Rule 10 of CCS (CCA) Rules makes it clear that an employee can be placed under suspension by the appointing authority, by any authority to which the appointing authority is subordinate or by the disciplinary authority. In addition, any other authority empowered in that behalf by the President by general or special order can also place the government employee under suspension.

9. Rule 14(2) and (4) makes it clear that the disciplinary authority may institute an inquiry and may deliver or cause to be delivered to the government servant a copy of articles of charge-sheet.

10. Section 26 of the NIT Act empowers the Director to place an employee under suspension. Thus, the Director, for this purpose, is a disciplinary authority. In view of section 26 of the Act, I am unable to hold that the Director was not the competent authority to place the petitioner under suspension. Being the disciplinary authority, the Director is competent to issue the charge sheet to the petitioner. Thus, the point raised regarding competence of respondent No.2 in issuing the suspension order and charge sheet is decided against the petitioner.

11. The petitioner during the course of arguments relied on Rule 9 of the CCS (Pension) Rules 1972. Rule 9 (2)(b) envisages that the departmental proceedings, if any, not instituted while the government servant was in service, whether before his retirement or during his reemployment, shall not be instituted in respect of any event which took place more than four years before such institution. A plain reading of this provision shows that the argument of the

petitioner in this regard is bereft of merits. This provision is applicable when charge sheet is issued and inquiry is instituted after the retirement of a government servant. This provision cannot be pressed into service when charge-sheet was issued while the government servant was in service.

12. The third contention of the petitioner is regarding delay in issuing the charge sheet. The charge-sheet dated 24.6.2016 contains three articles of charges. It is alleged that the petitioner was appointed as Registrar in the year 1989. His appointment was dehors the relevant rules. The petitioner by misusing his powers as Registrar got destroyed his application in pursuance to his appointment and he did not have eligibility as per the advertisement. In Article II, it is alleged that the petitioner was appointed without fulfilling the conditions of the advertisement. He does not possess the requisite qualification and was not eligible to be appointed as Registrar on the basis of his age at the time of initial appointment. It is seen that Article I and Article II are interconnected and related with date of initial appointment of the petitioner. These allegations of the year 1989 became the subject matter of issuance of the charge-sheet on 24.6.2016, six days before the date of retirement. Petitioner also assailed it on the ground of unreasonable delay on the part of the respondents. In the return, the respondents have not chosen to explain the delay in issuing the charge-sheet. In para-6 of submission on behalf of respondent No.2, a bald statement is made that ".....merely because the fact is disclosed belatedly, neither the action can be faulted with nor can it be said to be vitiatedâ. It is further averred that "even if illegalities on the part of the petitioner are detected at a later stage, he cannot be permitted to enjoy the benefits thereof nor the illegalities be allowed to be perpetuated". The respondents have not chosen to disclose as to how and when such alleged illegalities in securing employment by the petitioner is detected by them. Thus, the respondents have not explained the inordinate delay by giving any justifiable reason.

13. The apex court held that right to speedy trial is a fundamental right flowing from Article 14 and 21 of the Constitution. If no satisfactory explanation for inordinate delay in issuing the charge-sheet is given, it would be unfair to permit the departmental inquiry to proceed. {See : State of Madhya Pradesh v. Bani Singh and another, 1990 (Supp) SCC 738}. In the said case, the charge sheet was issued 12 years from the date of incident.

14. In N.K. Soloman v. Food Corporation of India and another, 1997(2) MPLJ 94, Hon"ble D.M.Dharmadhikari J,(as His Lordship then was) set aside the charge sheet which was issued after 13 years of alleged misconduct.

15. In State of A.P. v. N. Radhakishan, (1998) 4 SCC 154, the apex court held that if the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. It is further held that delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is a proper explanation for delay in conducting the disciplinary proceedings. In the present case, the respondents have not shown any reason whatsoever for

the delay in issuing the charge sheet.

16. It is relevant to note here that in *R. Vishwanatha Pillai (supra)*, the question of delay in issuing the charge sheet was not the question before the Supreme Court. In this case Vishwanatha Pillai was dismissed because caste verification committee found that he does not belong to SC community.

17. In *P.V. Mahadevan v. Md.T.N.Housing Board*, (2005) 6 SCC 636, the Apex court again followed the same ratio decidendi about delay in issuing the charge sheet and opined that where there is no acceptable explanation on the side of the respondents explaining the inordinate delay in initiating the departmental inquiry, interference can be made. The stand taken by the respondents was held to be not trustworthy. It is held that institution of proceedings at this distance of time (ten years in that case) will be very prejudicial to the appellant.

18. In *M.V. Bijlani v. Union of India and others*, (2006) 5 SCC 88, the Apex Court held that delay in initiation of inquiry and discontinuance for seven years, is bad in law. The delay in initiation of inquiry in the case of Bijlani (*supra*) was six years.

19. In *Prafulla Kumar v. State of M.P. and another*, 2009(4) MPLJ 204, this court followed the said principle and opined that inquiry should be initiated without delay and inordinate delay without proper explanation, furnishes ground for quashing the same.

20. In *Anant R. Kulkarni v. Y.P.Education Society and others*, (2013) 6 SCC 515, the apex court opined that the court must take into consideration all relevant facts and balance and weigh the same to determine whether it would be in the interest of justice to terminate the inquiry at the stage of institution.

21. If article of charge-I and II with the explanation of delay given by the employer are examined on the anvil of said judgments, it will be clear that the allegations are for the period when petitioner was initially appointed. Article of charge I and II are for a incident which had taken place 29 years before. As noticed, the respondents have not given any explanation for inordinate delay in issuing the charge sheet. It is trite law that belated prosecution without any justifiable reasons becomes persecution. Thus, for this reason, the charge-sheet to the extent it relates to article I and II, cannot be permitted to stand.

22. So far article III of the charge-sheet is concerned, it is alleged that the petitioner bypassed the directions of the higher authority and received Grade Pay of Rs.10,000/- for which he was not entitled. It is alleged that he got his pay revised in the Pay Band-IV with Grade Pay of Rs.10,000/- on his own and got himself benefited illegally by drawing the higher salary for which he was not entitled. It is alleged that an employee may be placed in the Pay Band of Rs.37400-67000 with Grade Pay of Rs.10,000/- if the then pre-revised pay was in the scale of Rs.16400-450-20900-500-22400 on 01.01.2010. The petitioner was drawing the pay on the crucial date in the pay scale of Rs.10,000-325-15200

and, therefore, he by misusing his powers and suppression of facts, got undeserving benefit. Apart from this, Article II contains an allegation relating to getting of undeserving financial benefits. Such benefit has a recurring effect. In other words, if an employee has procured a higher financial benefit than his entitlement, he gets that higher and undeserving benefit every month and its benefit continues even after his retirement in terms of payment of pension and other retiral dues. Thus, article III of the charge sheet does not suffer from any such inordinate and explained delay. Thus, for this reason, article of charge-III cannot be interfered with. Correctness of the allegations cannot be gone into at this stage by this court. Thus, I find no reason to interfere on the charge-sheet so far article of charge-III is concerned.

23. This is settled in law that an employee is normally placed under suspension to ensure that he does not influence the evidence/ material witnesses etc. In other words, normally power of suspension is exercised to prevent an employee from influencing the material/evidence etc. He is kept under suspension so that he cannot exercise his official position and temper with the documentary evidence etc. In the present case, the petitioner is placed under suspension six days before his retirement. Admittedly, he was due to retire on 30.6.2016. No useful purpose would be served in keeping the petitioner under suspension after his retirement. Thus, in my view, in the peculiar facts and circumstances of this case suspension of the petitioner beyond 30.6.2016 is without any justifiable reason and it is liable to be quashed.

24. In view of aforesaid discussion, it is directed that impugned suspension order will become inoperative after 30.6.2016. The charge-sheet dated 24.6.2016 to the extent it relates to article I and II are set aside. The departmental shall proceed and conclude the inquiry on article of charge-III expeditiously preferably within three months from the date of production of copy of this order. However, the aforesaid period of three months will be subject to cooperation of the petitioner in the inquiry. During pendency of the inquiry, the petitioner will be entitled to get financial benefits as per the provisions of CCS (CCA) Rules and CCS (Pension) Rules, 1972.

25. Petition is partly allowed. No cost.