

(2006) 03 GUJ CK 0069

In the Gujarat High Court

Case No : Special Civil Application No. 7194 of 1996

Chaturbhuj A. Sahu

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2006) 3 GLR 2007

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Sejal K. Mandavia, for the Appellant; Dipen Desai, AGP for Respondents 1-2, for the Respondent

Final Decision : Allowed

Judgement

S.R. Brahmbhatt, J.—This petition is filed under Article 226 of the Constitution of India challenging the chargesheet dated 21st February, 1983 and the order dated 30th September, 1996, wherein, the Inquiry Officer was appointed for conducting the inquiry in the matter of chargesheet dated 21st February, 1983. The petitioner has also prayed that he be permitted to retire voluntarily from the service with effect from 1st December, 1996 and also prayed that all the retiral benefits be accorded to him.

2. The facts in brief deserves to be set out as under:-

2.1 The petitioner was initially appointed as Medical Officer in Gujarat Public Health Service, Class-II vide Office Order dated 9th March, 1971 and was posted at village Rupal. His appointment was made on certain terms and conditions like he was required to apply to the Gujarat Public Service Commission for selection to the post and he was to be treated as a regular appointer on selection by Gujarat Public Service Commission. The order of initial appointment of the petitioner is at Annexure " A to the petition. The petitioner was duly selected by the Gujarat Public Service Commission and he came to be appointed on regular

basis vide order dated 20th March, 1973, which is produced at Annexure " B. The petitioner has stated that during his tenure as Medical Officer, Class-II, Primary Health Centre, Modasa, District : Sabarkantha in the year 1983, he was served with a chargesheet issued by then Director, Health Medical Services and Medical Education (Health) Ahmedabad dated 21st January, 1983. The chargesheet was mainly on the point of negligence, dereliction in duty and lack of vigilance on his part in discharging his duties as Government servant. The chargesheet is produced at Annexure " C, which indicates that the crux of the chargesheet was that of dereliction in duty, negligence and lack of vigilance in his administrative duties. Ofcourse, some of the negligence pertaining to some cash advances also. The petitioner submitted his reply to the chargesheet vide communication dated 22nd November, 1983 denying all the charges levelled against him. The respondents for quite long time seems to have not initiated any action against the petitioner after he submitted the reply to the chargesheet.

2.2 The petitioner applied for voluntary retirement under his communication dated 26th August, 1996 and submitted to the authorities that, this be treated as three month's notice under Rule 161(2) of the BCS Rules, 1959 and as no action was taken thereon, he was constrained to move this Court by filing present petition under Article 226 of the Constitution of India.

3. This court issued notice on 21st September, 1996, which was made returnable on 11th October, 1996. The respondents issued order dated 30th September, 1996 appointing the Inquiry Officer in the matter and the petitioner has by way of amendment, placed the said order on record and added the prayer for quashing and setting aside the order dated 30th September, 1996.

4. The matter was admitted and Rule was issued vide order dated 30th October, 1996. While issuing Rule and granting interim relief, this Court (Coram: Ms. R.M. Doshit, J.) passed the following order :-

Rule.

By way of interim order, it is directed that respondents shall not proceed further with the disciplinary action instituted against the petitioner by issuing chargesheet on 21.2.83. It is further directed that the issuance of the said chargesheet as well as the pendency of the disciplinary action which is sought to be initiated under order dated 30.9.96, shall not be treated as a factor against the petitioner in grant of any service benefits to the petitioner. D.S. Permitted.

5. The matter seems to have been appearing in the board time and again but no reply had been filed by the respondents for quite some time.

6. The petitioner was constrained to file Civil Application No. 11885 of 2000 in Special Civil Application, inter-alia praying therein that the petitioner be permitted to proceed on voluntarily retirement, which came to be disposed of vide order dated 7th November, 2000, whereunder, this Court (Coram: K.M. Mehta, J.) was pleased to issue direction to the respondents to permit the

petitioner to voluntary retire from service of the respondents and the Government was further directed to adjust all the retirement benefits by 30th November, 2001 and the retirement benefits were made subject to the result of this petition.

7. It is important to note that, this order dated 7th November, 2001 made in Civil Application No. 11085 of 2000 remained without its compliance. The petitioner, thus, was not permitted to retire despite there being an order of this Court in Civil Application No. 11085 of 2000 dated 7th November, 2001. The petitioner attained his regular age of superannuation and accordingly, retired on 31st December, 2002. The petitioner was permitted to retire under the provisions of Rule 24 of GCS Rules as the inquiry was pending. The petitioner was not granted retiral dues and benefits and therefore, the petitioner was constrained to move Civil Application No. 6147 of 2003, inter-alia praying that he be granted all the retiral benefits as it is envisaged in earlier order of this Court. This Court (Coram : A.L. Dave, J.) vide order dated 25th February, 2004 was pleased to dispose of the Civil Application by giving direction that the retiral benefits and dues, be given in accordance with Rules.

8. Today, when the matter was taken up for hearing, learned AGP Shri Dipen Desai has tendered the affidavit in reply. The same is taken on record. Mr. Desai has submitted that no delay has occurred in issuance of chargesheet and as the petitioner failed in pointing out any prejudice, the petition deserves to be dismissed.

9. Ms. Sejal Mandavia, learned advocate for the petitioner has vehemently submitted that the incidents of so called irregularities and dereliction in duty were of the year 1980 and issuing chargesheet for them in the year 1983 shows that the respondent authorities is not prompt enough in issuing chargesheet. Ms. Mandavia has further submitted that tenor of the charges enumerated in the chargesheet did not indicate any serious misconduct for which such harsh action is taken. Ms. Mandavia has submitted that the tenor of the chargesheet shows the one and only charge that there was minor lapses on the part of the petitioner and if at all, it can be called as lapses on the part of the petitioner, then, when the petitioner submitted his reply dated 22nd November, 1983, the respondent could have proceeded further with the inquiry. The respondents by their conduct have indicated that the petitioner's reply was satisfactory and nothing further was to be done in the matter. However, when the petitioner was not permitted to voluntarily retire from the service pursuant to his communication dated 26th August, 1996, he had to moved this court by way of present petition. Thus, the delay in issuing the chargesheet and further delay in not concluding the inquiry and even not appointing the Inquiry Officer till the petitioner files this petition, show that there was no reason for continuing the inquiry against the petitioner and appointing of Inquiry Officer was nothing but a counter-blast to the application of the petitioner for voluntary retirement. Ms. Mandavia has also submitted that this inordinate delay in inquiry has resulted into tremendous

mental agony and tension to the petitioner and the petitioner be awarded compensation for suffering the same. Ms. Mandavia has relied upon the decision of the Apex Court in case of P.V. Mahadevan v. Md. T.N. Housing Board reported in (2005) 6 SCC 636 , in support of her contention that inordinate delay either in issuing chargesheet or in concluding the departmental proceeding, resulted into quashing the same as delay in itself is sufficient to indicate the prejudice against the delinquent. Ms. Mandavia has submitted that in the instant case also, the chargesheet came to be issued after a very long time and there is an inordinate delay in appointing the Inquiry Officer, who came to be appointed only after the petitioner filed the present petition. This is sufficient to quash and set aside the chargesheet and order of appointment of Inquiry Officer. She further submitted that the respondents ought to have granted all the retiral dues to the petitioner and he ought to have been permitted to retire in pursuance to his voluntary retirement application and she prayed that in view of the above facts and circumstances, appropriate order of compensation be made against the respondents.

10. Shri Dipen Desai, learned AGP on behalf of the respondents has submitted that the petitioner has not shown as to what prejudice was caused to him even for belated appointment of Inquiry Officer. He has submitted that the petitioner's reply was received by the department on 22nd November, 1983, meaning thereby, no prejudice was likely to be caused to the petitioner in case the inquiry was permitted to continue. Mr. Desai has also submitted that looking to the chargesheet, there was no inordinate delay in issuing the chargesheet. Mr. Desai has further submitted that in case of disciplinary proceedings, no straight jacket formula or settled law is indicated that on the ground of delay the chargesheet is necessarily required to be quashed and set aside. The Court is called upon to examine the case on hand in light of the facts and circumstances present in this case. It can never be an universal rule that whenever, there is a delay in issuing the charge or conducting the matter, the logical result is to quash and set aside the chargesheet. Mr. Desai has also submitted that in view of the reply of the petitioner and in view of the fact that atleast after 1996, the inquiry cannot be proceeded further as there was a stay order of this Court and prayed that the disciplinary proceedings be permitted to be continued further and let the inquiry be completed within a stipulated time. Mr. Desai has submitted that in any case, this being a matter of disciplinary proceedings, the chargesheet may not be quashed on the ground of delay alone.

11. I have heard the learned advocates for the parties at length and perused the papers. The tenor of the chargesheet though indicate some financial irregularities but the main imputation of the chargesheet is not in respect of integrity or honesty of the delinquent. The chargesheet revolved around the misconduct or dereliction of duty or negligence in duty. This factum deserves to be borne in mind while examining the rival contentions of the parties.

12. It is an admitted fact that after the petitioner submitted his reply to the

chargesheet on 22nd November, 1983, no action whatsoever had been initiated by the department. The department had to wake up from its slumber only when the petitioner filed petition and department received notice of the court and at that time the department thought it fit to issue the order dated 30th September, 1996 appointing the Inquiry Officer. Even before that, the petitioner had submitted an application for proceeding on voluntary retirement but without any avail. Ms. Mandavia is right and justified in submitting that there is an inordinate delay in concluding the proceeding after issuance of the chargesheet. The chargesheet dated 21st February, 1982 had not been proceeded at all till 30th September, 1996, i.e. only after the petitioner moved this Court. This inertia evinced by the department can well be described by dubbing it as an inordinate delay in conducting the disciplinary proceedings. The pendency of the disciplinary proceedings and inordinate delay in conducting the same, in itself is a great prejudice to the petitioner. The petitioner need not point out any independent prejudice because of delay in disciplinary proceedings. There are no averments in the memo of reply affidavit pointing out any act or omission on the part of the petitioner resulting in prolonging the disciplinary proceedings. It is true that the petitioner was not in any way responsible for such an inordinate delay in appointing the Inquiry Officer after the issuance of the chargesheet, which was dated 21st February, 1983. The inordinate delay on the part of the department is required to be deprecated. The ruling of the Apex Court cited by Ms. Mandavia in case of Mahadev (supra) as well as the Apex Court ruling in case of State of Andhra Pradesh Vs. N. Radhakishan, and State of M.P. v. Bani Singh reported in 1990 SCC 738 respectively are applicable to the facts and circumstances of the case. The instant case is not merely that of delay in issuance of chargesheet but it is a case of absolute inertia on the part of respondent department in not taking any action on the chargesheet dated 21st February, 1983 upto 30th September, 1996. The reply affidavit is blissfully silent and do not say about the action taken by the department from 21st February, 1983 upto 30th September, 1996. There is no whisper much less any justification coming forward in the affidavit in reply for such inertia from 21st February, 1983 upto 30th September, 1996, thus, the inordinate delay and the fact that the petitioner has attained the age of superannuation and looking to the charges of dereliction in duty and negligence do not deserve to be permitted to stand in the way of the petitioner in realizing his dues. The facts remained to be noted that the stay order came to be granted only in the year 1996 but from 21st February, 1983 upto September 30, 1996, there was absolutely no impediment in the way of the respondents in conducting the inquiry. As it is stated herein above, the affidavit-in-reply does not disclose any justifiable reason for not even appointing the Inquiry Officer or concluding the inquiry proceedings against the petitioner. The inordinate delay resulting into protracting the Disciplinary Proceedings is an omission amounting to arbitrariness hit by Article 14 of the Constitution of India. The non-completion of inquiry proceedings against the petitioner for long period of about 13 years in itself is an arbitrary omission on the part of the respondents. The arbitrariness is directly hit by the provisions of Article 14 of the Constitution of India. In the instant case,

therefore, this court has no hesitation in coming to the conclusion that the chargesheet dated 21st February, 1983 and order dated 30th September, 1996 appointing the Inquiry Officer deserves to be quashed and set aside as they are contrary to the principles enshrined in Articles 14 and 16 of the Constitution of India.

13. In the result, this petition is allowed. The chargesheet dated 21st February, 1983 and the order of appointment of Inquiry Officer dated 30th September, 1996 are hereby quashed and set aside. The respondents are hereby directed to accord all the retiral benefits to the petitioner, as if, the impugned chargesheet and order of appointing Inquiry Officer dated 30th September, 1996 had never been issued at all and pay to the petitioner the consequential benefits after deducting the amount, that might have been paid to the petitioner by way of provisional pension. The amount, if any, which becomes payable to the petitioner, shall be paid to the petitioner within a period of four months from the date of receipt of the certified copy of the order. Ms. Mandavia submits that the petitioner will cooperate and will remain present for signing the necessary documents etc. as and when called upon by the respondent authorities. Rule is made absolute in above terms with no costs.