
(1992) 02 RAJ CK 0045

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3314 of 1991

Ghanshyam Lal

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-02-1992

Acts Referred:

Citation : (1992) WLN 22

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—While the petitioner was working as Upper Division Clerk in Printing and Stationery Department, Government of Rajasthan, there shortage of stationery worth Rs. 25,026.82 was found in the Government Press, Udaipur, where the petitioner was working. Vide order dated 5.8.1974 Ex. 2, the petitioner was placed under suspension in contemplation of disciplinary proceedings against him under Rule 16 of the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as "the C.C.A. Rules") on 13th July, 1975. The petitioner was served with a charge-sheet and statement of allegations. While the inquiry was under progress, a criminal case was also registered against the petitioner in respect of the same charges and the trial in this connection is pending in the court of Judicial Magistrate, Udaipur. The petitioner represented vide his application dated 10.10.1984 that till the criminal proceedings in the court of Judicial Magistrate, Udaipur in respect of the same charges is pending, no inquiry proceedings be held departmentally. However, this request of the petitioner has not been acceded to and the inquiry has yet not been completed.

2. The petitioner has further stated that the petitioner was given an annual increment prior to date he was suspended, in the pay scale of Upper Division Clerk upto 1.1.1974. Thereafter, the suspension order was revoked by order dated 29.6.1983, however, it was decided that till decision of the criminal

proceedings as also of the departmental inquiry is taken, the petitioner will continue to be paid same pay as he was getting prior to his suspension, that is, to say, for the period of suspension he will not be paid any thing except what has been paid to him as subsistence allowance and thereafter he will not be eligible for annual grade increment. In pursuance of that order, the petitioner has not been paid annual grade increments since 1.1.1974 nor he has been given the benefit of being fixed in the revised pay scale which has come into existence from time to time. Likewise, the petitioner has not been considered for further promotion on account of pendency of criminal case and departmental inquiry against him. In these circumstances, the petitioner has prayed for the following reliefs:

(1) To quash the charge-sheet, statement of allegations and memorandum and to declare that the inquiry against the petitioner cannot proceed with and to restrain the respondents from holding such inquiry.

(2) That the respondents be directed to release all the Annual Grade Increments to the petitioner and pay to the petitioner which became due to him with interest at the rate of 18% p.a. on and from as and when the amount became due till this is paid.

(3) That the Hon''ble Court may be pleased to declare that the petitioner stands promoted with effect from 1986, from the date the person junior to him were promoted and the respondents may be directed to pay arrears to accrued to him, with interest at the rate of 18% per annum with effect from the date as and when same become due to him, until the same is paid.

3. So far as the first relief is concerned, law is well settled that there is no legal bar for simultaneous proceedings being taken in respect of the same charge, in the criminal course as well as by way of departmental proceedings. However, without laying down any straight-jacket formula, the consensus of judicial opinion is that if the main ingredients of the charges under investigation before the criminal court and the departmental inquiry are the same, then the departmental inquiry ought to be stayed by the court until the decision of the criminal proceedings. Reference in this connection may be made to *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, where their Lordships of Supreme Court after reviewing earlier decisions in - *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, , *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, and *Jang Bahadur Singh Vs. Baij Nath Tiwari*, , observed as under:

...while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decided in the given

circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.

In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal.

4. The facts in this case are not disputed that the petitioner is facing trial on the same charges on which departmental inquiry is being conducted against him. It has also been informed by learned Counsel for the State that the criminal trial is likely to be conducted shortly within a period of 2-3 months from henceforth. This fact has also not been disputed that the departmental inquiry has not been concluded.

5. It has been contended by Mr. Mridul, learned Counsel for the petitioner that since the departmental inquiry has not been concluded within a period of 5 years from the date of its commencement, the charges itself should be dropped and the inquiry ought to be quashed. He places reliance on R.L.W 1986. 289 Hukam Singh v. State of Rajasthan. After careful consideration of Hukam Singh's case (supra), I am of the opinion that it does not lay down as a principle that whenever inquiry continued for long period it ought to be quashed. It was in the circumstances where the inquiry continued for good 7 years, and thereafter no notice was issued as was required to be issued before imposing punishment. The Court observed that - if after initiating the action, the power is not exercised within a reasonable time then that too would be taken as an arbitrary and unreasonable exercise of the power. However, in the present case, the petitioner is facing the criminal trial on the same charges, which are subject matter to the departmental inquiry, decision of which is still awaited. The petitioner himself has been making representation for staying the departmental inquiry during this period and notwithstanding the fact no order of staying the proceedings has been communicated to the petitioner, the fact remains that the respondents have desisted from making any final order in the departmental inquiry and are awaiting the decision, of the criminal trial pending against him.

6. The petitioner is facing grave charge of criminal breach of trust and embezzlement. It is not a fit case in which the inquiry should be quashed even before awaiting the decision of the criminal trial. It may be that after the decision of the criminal trial is given, the authorities may review the entire situation afresh before proceeding further with the inquiry on the basis of decision rendered therein, or to pass appropriate orders in the case. However, in the facts

and circumstances of the case, I deem it just and proper to direct the respondents to stay further proceedings in the departmental inquiry until the termination of the criminal trial. It will be open for the respondents to consider the desirability and necessity of proceedings further with the departmental inquiry in the light of findings in criminal proceedings.

7. So far as second relief is concerned, reliance is placed on 1989 (4) S.L.R. 763 Kan Singh v. The State of Rajasthan, that even during the period of suspension, the contract of service subsists and the annual grade increment shall ordinarily be drawn as a matter of course unless it is withheld by a specific order. The Court observed as under:

An order of suspension is not an order imposing punishment on a person found to be guilty. It is an order made against him before he is found guilty to ensure smooth disposal of the proceedings initiated against him. Such proceedings should be completed expeditiously in public interest and also in the interest of the government servant concerned. The contract of service subsists during the period of suspension and an employee remains in service and he is entitled to all benefits of service, even though he is not expected to work during the period of suspension. Subsistence allowance is paid by the government to that the government servant against whom an order of suspension is passed on account of the pendency of any disciplinary proceedings or a criminal case instituted against him, could maintain himself and his dependents, until the departmental proceedings or the criminal case as the case may be, comes to an end and the appropriate orders are passed against the government servant by the government regarding his right to continue in service etc. depending upon the final outcome of the proceedings instituted against him or the trial of the case. A Government servant cannot engage himself in any other activity to earn his bread during the period of suspension. The amount of subsistence allowable and payable to the government servant concerned should, therefore, be reviewed from time to time where proceedings drag on for a long time, even though there may be no express rule insisting on such review. In doing so, the authority concerned no doubt has to take into account whether the government servant is in any way, responsible for the undue delay in the disposal of the proceedings initiated against him. In the present case, the petitioner was suspended vide order dated 25.2.1985 and he was further directed to mark his attendance in the office of the Director General cum Insp. General of Police and was not supposed to leave headquarters without obtaining prior permission and was allowed to draw subsistence allowance to the extent of an amount equal to the leave salary which he would have drawn if he had been leave on half pay during the period of his suspension and dearness allowance etc. as admissible on such pay. This subsistence allowance was later on raised to 75%. Leave salary means the monthly amount paid by the government to a Government servant on leave whereas pay is defined to mean the amount drawn monthly by a government servant including technical pay, special pay, personal pay or any other emoluments which may be substantially classed as pay by the Government which

has been sanctioned for a post held by him substantially or in officiating capacity to which he is entitled by reason of his position in a cadre. The rules quoted above in the earlier part of this order do not envisage that the petitioner will not be entitled to any annual grade increment which is due in usual course. The annual grade increments shall ordinarily be drawn as a matter of course unless it is with-held by a specific order. Stoppage of annual grade increment is itself is a minor penalty as provided under Rule 14 of the Rules of 1958 and therefore, if a government servant who is suspended is denied the annual grade increment it will amount to a penalty without any determination of his guilt.

8. Learned Addl. G.A. distinguishes this case on the ground that as alleged by the petitioner himself, a specific order was passed with-holding the allowance of annual grade increments to the petitioner and he is referred to the averments made in para C/2 of the writ petition. In my opinion, the respondents have totally mis-interpreted the averments made in the writ petition. Vide order dated 29.6.1983, the suspension order was revoked, that is to say, the petitioner remained under suspension only for a period from 5.8.1974 to 28.6.1983. It is not the case of the respondents that during the period of suspension there was any order denying the grant of annual grade increments, therefore, even during the period of suspension the contract of service continues and in terms of decision referred here in above, the petitioner was entitled to release of annual grade increments during the period of suspension and revision of subsistence allowance accordingly. However, once the petitioner was reinstated there remains no ground whatsoever to deny him annual grade increments as and when the same becomes due to him, because, after the suspension order was revoked there was not even suspension of employee-employer contract. In this view of the matter, there is no reason that during the pendency of the inquiry the annual grade increments which are otherwise available to the petitioner, on account of his being continuing in the services be stopped. Stopping the annual grade increments while the contract of service subsists amounts to punishing him without establishment of guilt. The petitioner, is, therefore, entitled to release of annual grade increments which have not been released to him since 1.1.1974 and also to be fixed in the revised pay scale as and when revision of pay scale has taken place.

9. Since the petitioner is continuing in services of the respondents, no guilt has been established against him so far, and he is discharging his regular duties, the petitioner cannot be kept out of consideration for promotion as and when his case falls in the eligibility zone of consideration for promotion to next higher post. At best, the actual orders of promotion may be deferred until the conclusion of the inquiry, so as to give him the relief if ultimately he is exonerated without any further delay.

10. In view of the aforesaid, the petition is allowed. The respondents are directed to Stay the further proceedings in departmental inquiry until decision of criminal case pending against the petitioner. However, after the criminal trial is over, the

respondents will be free to proceed in accordance with the decision taken. In the light of findings recorded by the criminal court. The respondents are further directed to release annual grade increment to the petitioner since 1.1.1974 as and when same became due and to fix him in the revised pay scales from time to time when the revised pay scales came into existence. The respondents will also re-fix the subsistence allowance which was payable to the petitioner during the period he remained under suspension as a result of release of annual grade increments during that period. All arrears which become due to the petitioner as a result of revision of pay on account of release of annual grade increments and fixation in the revised pay scale should be paid to the petitioner within a period of six months from today. The respondents are also directed to consider the case of the petitioner for promotion as and when the cases of persons junior to the petitioner were considered for next promotion and recommendations of such consideration should be kept in a sealed cover, effect to which be given after the result of criminal proceedings and the departmental inquiry, and subject to final outcome thereof.

11. There will be no order as to costs.