
(2007) 10 RAJ CK 0041
In the Rajasthan High Court

Jagdish Prasad

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-10-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 324, 326

Citation : (2008) 2 RLW 1375

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—By way of this writ petition the petitioner, holding the post of senior teacher at Government Secondary School, Dharamdhari (Pali), seeks the reliefs in the nature of (i) annulment of department enquiry on the ground of delay of about 11 years in initiation of proceedings from the date of alleged incident and further for the respondents having failed to conclude the proceedings for 10 years; (ii) restraining the respondents from passing any adverse order for the petitioner having remained in custody for more than 48 hours after his conviction was affirmed by the appellate court; and (iii) for directions to the respondents to consider his representation sympathetically.

2. The relevant facts leading to this petition as noticeable from the averments taken and material placed on record by the petitioner could be summarized thus: The petitioner was accused of offences under Sections 323,324,326 & 307 IPC in an FIR lodged on 26.06.1986; after investigation challan was filed and the matter was committed to the Sessions Court but was remitted to the concerned Magistrate for trial of the petitioner for offences under Sections 323,324 & 326 IPC, after the Sessions Court found that no case was made out u/s 307 IPC; and, after trial in Cr. Regular Case No. 135/1992 (62/1986), the petitioner was convicted by the Additional Chief Judicial Magistrate, Jaitaran on 25.11.2002 for offences under Sections 323,324 & 326 IPC and was awarded varying sentences, including one years" RI with fine of Rs. 2,000/- and in default of payment of fine

to further imprisonment for 3 months for offence u/s 326 IPC. The petitioner preferred an appeal [No. 32/2005 (49/2002)] that came to be rejected by the Additional Sessions Judge (Fast Track) No. 1, Pali, HQ-Jaitaran by the Judgment dated 06.09.2007. The petitioner, thereafter, preferred a revision petition to this Court (S. B. Criminal Revision Petition No. 962/2007) that was admitted on 07.09.2007 and this Court suspended the execution of the sentence awarded to the petitioner. However, the petitioner was detained in custody on 06.09.2007 upon dismissal of his appeal; and, as averred, could be released only on 10.09.2007, for intervening holidays after passing of suspension order by this Court.

3. On the other hand, according to the petitioner, in the year 1997 the Department served him with a charge sheet leveling the allegation of his implication in the criminal case aforesaid. The petitioner has stated in the writ petition that the charge sheet was misplaced and was not available with him for the time being. Be that as it may, according to the petitioner, the Vigilance Committee of the respondents found in the year 1996 that a criminal case has been lodged against him and upon recommendation of the Collector concerned, it was decided to hold a departmental enquiry; an explanation letter dated 04.06.1997 was issued to the petitioner (Annex.1); by another order dated 04.06.1997 he was put under suspension (Annex.2); and after completion of six months, the subsistence allowance was increased to 75% of his pay by the order dated 20.01.1998 (Annex.3); and later, by the order dated 11.02.1999 (Annex.4), his suspension was revoked and he was informed orally that disciplinary proceedings were kept in abeyance till disposal of the criminal case.

4. The petitioner has further averred that after passing of the judgment dated 25.11.2002 by the learned trial court, he received a letter dated 02.06.2003 (Annex.5) from the respondent No. 4 requiring a copy of judgment delivered by criminal court; and he replied on 03.07.2003 (Annex.6) to the effect that the appellate court has suspended the sentence awarded by the trial court. According to the petitioner, after his submission of reply, nothing was heard from the side of the respondents and departmental enquiry initiated against him remained pending; and, for his annual grade increments having been withheld, he has preferred an appeal before the Tribunal for redressal of his grievance.

5. The petitioner has averred that he remained in custody for more than 48 hours for none of his fault and there was likelihood that respondents would terminate his services in pursuance of the departmental enquiry under Rule 13(2) of Rajasthan Civil Services (CCA) Rules, 1958 for his having remained in detention for more than 48 hours upon conviction. The petitioner would submit that his apprehension is not imaginary as he has received a letter dated 12.09.2007 (Annex.8) asking for explanation with regard to his absence from duty for the period 07.09.2007 to 11.09.2007 and regarding his conviction. The petitioner has averred that he submitted a reply on 14.09.2007 (Annex.9) pointing out all the facts and prayed for condonation of absence from 07.09.2007

to 11.09.2007 by sanctioning leave for the said period; and since disciplinary proceedings were earlier kept in abeyance on the ground of pendency of criminal trial, and now the revision petition was pending before the High Court, hence, such disciplinary proceedings should be kept in abeyance till the disposal of revision petition, the charges being similar.

6. After such averments, the petitioner has submitted that it was crystal clear that the departmental enquiry initiated against him suffers from delay and laches as the same was initiated after 11 years from the date of lodging of criminal case and was pending for last 10 years for none of his fault. The petitioner would, therefore, conclude that the respondents are not interested in terminating departmental enquiry; and urge that if now the respondents are allowed to continue with the delayed disciplinary proceedings or allowed to take any action on the "pretext" of his conviction and detention for a period more than 48 hours, serious prejudice would be caused to him.

7. On the propositions aforesaid, the petitioner has chosen to prefer this petition for writ seeking the reliefs that initiation of departmental enquiry after lapse of 11 years from the date of incident be held fatal; the respondents be held to have failed to conclude the departmental enquiry for a prolonged period of 10 years and such delay has vitiated the entire proceedings; the respondents may be restrained from passing any order of removal against the petitioner; it be held that there was no fault on the part of petitioner for being in jail for more than 48 hours because the bail bonds in pursuance of the order dated 07.09.2007 could not be executed immediately on account of public holidays next two days; and it be also ordered that the reply submitted by the petitioner to the letter dated 12.09.2007 be considered sympathetically by the respondents and absence for the period 07.09.2007 to 11.09.2007 may be condoned and be treated as leave.

8. Arguing for the petitioner, learned Counsel has vehemently contended that the enquiry proceedings having been initiated after an inordinate delay and then having been kept pending for further prolonged period cannot be proceeded further and delay itself being fatal, the proceedings deserve to be quashed. Learned Counsel submitted that the petitioner never sought any adjournment, there was no fault on his part, and yet, the Department kept the matter pending and such pending proceedings cannot now be continued further. Learned Counsel submitted that the Department had never been serious in conducting the departmental enquiry though the fact of conviction of the petitioner was in its knowledge earlier too. Learned Counsel has relied upon the decisions of the Hon''ble Supreme Court in the case of P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, and in the case of State of Andhra Pradesh Vs. N. Radhakishan, and has also relied upon the principles laid down in the case of Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., as quoted by the Hon''ble Supreme Court in N. Radhakishan's case (supra).

9. Having given a thoughtful consideration to the submission made on behalf of the petitioner, having perused the material placed on record, and having

examined the law applicable to the case, this Court is clearly of opinion that this writ petition does not merit admission.

10. A comprehension of the averments taken by the petitioner makes it clear that the petition has been preferred at this stage only in order to somehow avoid and wriggle out of the obvious fall-outs and after-effects of conviction of the petitioner by the trial court as maintained by the appellate court. It is rather strange that on one hand the petitioner would seek the relief on the specious ground that there had been delay in conclusion of departmental proceedings; and on the other hand, the petitioner would suggest to the Department that the proceedings be kept pending, as were kept so pending earlier, because of pendency of the criminal case before the courts. The petitioner has specifically made a prayer in his reply-cum-representation (Annex.9) that,-

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11. The petitioner has sought the relief in this writ petition that his aforesaid representation Annexure-9 be ordered to be considered sympathetically for the purpose of condoning his absence from duty from 07.09.2007 to 11.09.2007 but has attempted to avoid the fact of his being aware of the position that the Department has kept the proceedings in abeyance for pendency of the criminal case before the courts and then, the petitioner himself sought that such proceedings be kept in abeyance.

12. The petitioner seeks annulment of the departmental proceedings only on the ground of delay and learned Counsel would repeatedly emphasize that the departmental proceedings are vitiated for having been initiated belatedly in the year 1997 in relation to an incident of the year 1986 and then, for having been kept pending for 10 years; that the department had never been serious about taking the proceedings against the petitioner and now at this length of time, such delay ought to be considered fatal to the proceedings. This Court is unable to agree; and the petitioner is not entitled to be extended any advantage for such delay.

13. Noteworthy it is that all such contentions against the competence of departmental proceedings have come up from the petitioner only after his conviction was maintained by the appellate court; and then, there had been the position where he remained in custody beyond 48 hours. If at all the petitioner was aggrieved of initiation of departmental proceedings in the year 1997, nothing prevented him from challenging the same at the relevant time. Noteworthy further it is that though the petitioner has chosen not to file the relevant memorandum of charges served by the Department, but it is indicated in the letter dated 04.06.1997 (Annex.1) that the petitioner earlier remained in custody from 29.06.1986 to 30.08.1986 and got sanctioned half-pay leave for that period; and got selected in review promotion proceedings for the year 1995-96 as senior teacher with concealment of fact regarding pendency of criminal proceedings. The allegations against the petitioner are not only of being

involved in criminal prosecution but also of having concealed such fact from the Department while obtaining promotion. The nature of charges makes it clear that their gravity cannot be considered having been whittled down for delay in conclusion of departmental proceedings nor the petitioner appears to have suffered any prejudice for pendency of these proceedings. On the contrary, it appears that the Department, in order to avoid prejudice to the petitioner, particularly in his defence during trial of the criminal case, has chosen to keep the enquiry proceedings in abeyance. It is further borne out from the letter dated 02.06.2003 (Annex.5) from the respondent No. 4 that the Department sought not only a copy of judgment delivered by criminal court but also enquired about the proceedings adopted by the petitioner in defence; and the petitioner, though did not supply the copy of judgment but replied on 03.07.2003 (Annex.6) only to the effect that the appellate court has suspended the sentence awarded by the trial court. In the overall circumstances of the case, this Court is unable to find that the Department was not serious about the proceedings or has unnecessarily kept them pending or that the present one is a case of such nature where delay be considered fatal to the proceedings.

14. In the given set of facts where firstly, the petitioner seems to have concealed the facts regarding criminal case from the Department; and secondly, he was accused of various offences including that u/s 326 IPC and the case was pending before the court, it cannot be said that the Department was not interested in proceedings against the petitioner or kept the matter pending for inexplicable reasons. In the fact situation of this case, there is no question of any prejudice having been caused to the petitioner and there appears no reason wherefor delay be considered fatal. Whatever has been the delay, it has only worked to the advantage of the petitioner and not to his prejudice.

15. In any case, there appears no reason to interfere with the matter now at this stage when the conviction of the petitioner has been upheld by the appellate court. Even though the criminal revision petition is pending before this Court, noticeable it is that this Court has only suspended the execution of the sentence by the order dated 07.09.2007. There appears no reason as to why in this matter departmental proceedings should not proceed further?

16. Learned Counsel has laid repeated emphasis on the expression "fatal" to submit that for inordinate delay, the departmental proceedings deserve to be annulled and has referred to the decisions of the Hon''ble Supreme Court aforesaid in that regard. The submission is not well founded on principles as noticeable from the following observations of the Hon''ble Supreme Court in N.Radhakishan's case (supra):

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 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 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 its 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.

17. Thus, there is no rule of universal application that delay alone is fatal to the departmental proceedings; or that the department stands debarred from proceeding against an employee, if otherwise there are grounds to proceed, only because of delay in proceedings. Each case is required to be examined on its individual facts and surrounding circumstances to find if for delay alone the proceedings are required to be annulled.

18. In the present case it seems that departmental proceedings were kept in abeyance, to the advantage of the petitioner, for the trial and then appeal against conviction being pending. Though this Court is of opinion that the Department would have been discreet if proceeded with departmental enquiry at least after conclusion of trial, but looking to the nature of charges against the petitioner, there appears no reason why the Department cannot now proceed with enquiry or take other appropriate proceedings as countenanced by law.

19. With the appeal having been dismissed, and conviction and sentence having been affirmed, the petitioner in the first place suggested that the departmental proceedings be kept in abeyance yet, as noticed hereinbefore; and it seems that now when the petitioner is certain of the Department proceeding further, this petition has been filed seeking the relief that the proceedings may be annulled on the ground of delay. Looking to the overall fact situation of the case, this Court is unable to find any reason or any justification to debar the department from proceeding in accordance with law.

20. The other part of the relief claimed in this case, apparently the fundamental

reason for filing of this petition, remains totally baseless. The petitioner has referred to the order likely to be passed against him under Rule 13(2) of the Rules of 1958 for detention in custody beyond 48 hours and has sought the relief against the respondents for prohibition against passing any such order. In the first place, it is required to be noticed that the order to be passed under Rule 13(2) of the Rules of 1958 relates to suspension of an employee and not of termination of service as alleged; and such an order is nothing but only the declaration of a consequence as envisaged by the said provision. Secondly, the concerned Department has power and authority to adopt all suitable and necessary proceedings as sanctioned by law, and there is no question of the Department adopting any proceeding under any "pretext" as alleged. This Court would not issue a writ prohibiting the authority from proceeding in accordance with law.

21. In relation to the reply-cum-representation made by the petitioner (Annex.9), as to what decision is to be taken thereupon is again a matter for the authority concerned to ponder over. In any case, there appears no reason or ground for any interference in extra-ordinary writ jurisdiction.

22. The petition fails and is, therefore, rejected.