
(2011) 05 UK CK 0103

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 469 of 2007

Kallu Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Citation : (2012) 132 FLR 773 : (2012) 3 LLJ 143 : (2011) 3 UC 3335 : (2011) 3 UC 2235 : (2011) 1 UD 579

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.—Heard Sri S.K. Shandilya, Advocate for the Petitioner as well as Ms. Beena Pandey, Standing Counsel present for the State of Uttar Pradesh.

2. The Petitioner had filed this writ petition with the prayer to issue a writ order or direction in the nature of Certiorari to quash the order dated 9.3.2007 passed by Respondent No. 3 whereby in a disciplinary proceeding punishment has been imposed on the Petitioner. There are other prayers as well, such as, a direction to the Respondents to release the pension and the entire post retirement benefits to the Petitioner.

3. We must now revert to the Petitioner's past and appreciate the facts pertaining to the present case. It so happened that while the Petitioner was working as a store keeper in the Irrigation Department of the erstwhile State of Uttar Pradesh and was posted at Upper Ganga Canal Modernization Division-III, Roorkee, Haridwar in the year 1990, a disciplinary proceeding was initiated against him, during which he remained suspended as well. Broadly, the charges against him were of cheating, forgery, etc. and for causing financial loss to the Department. An FIR to this effect was also lodged by the Department against the Petitioner on 28.7.1990. From the record, it appears that the Petitioner was

initially convicted by the trial court vide order dated 27.9.2002 but in appeal the judgment of the trial court was set aside and the appeal of the Petitioner was allowed and he was acquitted of all the charges vide order dated 17.12.2003. Subsequently, the State filed a belated appeal against acquittal which was dismissed on grounds of limitation. This Court has been further informed that the State thereafter filed a SLP before the Hon''ble Apex Court in which leave has not been granted to the State and the petition has been dismissed.

4. On the same set of charges, however, a disciplinary proceeding was also initiated against the Petitioner way-back in the year 1990 itself. All the same, there is no explanation by the State of Uttar Pradesh and there is no material available on record which shows that under what compelling circumstances the disciplinary proceedings were stalled for a period of almost 17 years inasmuch as when after the acquittal of the Petitioner, Petitioner moved representation for payment of his pension, as he had reached the age of superannuation and had retired from service it was denied to him. Consequently, he filed a writ petition before this Court being Writ Petition (S/S) No. 865 of 2004 which was disposed of with the direction to the Respondents to decide the representations in accordance with law for providing retirement benefits, etc. to the Petitioner. All the same, when no decision was taken by the Respondents on the representations of the Petitioner inspite of the direction given by a learned Single Judge of this Court, the Petitioner filed a contempt petition being Contempt Petition No. 342 of 2006. It was only after filing of the above contempt petition that the department has now passed the order dated 9.3.2007 (Annexure No. 7 to the writ petition), which has been presently impugned in the writ petition. By this order the Department in the long pending disciplinary proceedings has finally found the Petitioner guilty of all the charges and it has imposed a punishment of stoppage of two annual increments with cumulative effect and further due to the loss caused to the department to the tune of Rs. 4,66,928/-, this amount has to be recovered from the Petitioner. Though it has not been clearly stated, the learned Counsel appearing for the State of Uttar Pradesh Ms. Beena Pande has stated before this Court that this recovery is liable to be made from the post retirement dues of the Petitioner. Undoubtedly, the State proceeded against the Petitioner departmentally and filed an FIR against him and therefore the matter proceeded against him in a criminal court as well as departmentally. It is also well settled that the proceedings before a criminal court and the proceedings before a department are two entirely different proceedings and merely because one proceeding is pending there is no bar for the other to proceed and it is also true that if one has been acquitted in a criminal case, ipso facto one is not liable to be exonerated in a departmental proceeding as the method of appreciation of evidence in the two proceedings are entirely different. Whereas in a criminal court the conviction is only made if the prosecution proves his case beyond reasonable doubt, on the contrary in a departmental proceeding a conviction is made on the basis of preponderance of probability! Therefore, the counsel appearing for the State of Uttar Pradesh Ms. Beena Pande would contend that

merely because the Petitioner has been acquitted on the criminal charges in a Criminal Court, there is no bar on the departmental proceeding against the Petitioner. In fact it is the reasoning the State has adopted while referring to some of the rulings of the Hon"ble Apex Court which broadly state the legal position as referred above that the two proceedings are separate and distinct. Hence the Department proceeded to impose punishment on the Petitioner.

5. It is undoubtedly true and it has already been referred above that two proceedings may go on simultaneously against an employee. All the same, the facts of the present case are unique! The departmental proceedings were initiated against the Petitioner way back on 8.8.1991. Although there was no order of any court restraining the department to proceed against the Petitioner yet it chose to sleep over the matter for more than 15 years and only proceeded with the matter after the contempt notices were issued against the Respondents in a Contempt Petition before this Court. Therefore, this action of the State of Uttar Pradesh cannot be justified. This delay on the part of the State of Uttar Pradesh is fatal in the present case. It has also caused undue hardship to the Petitioner. Learned Counsel for the Petitioner Sri S.K. Shandilya has relied upon a decision of the Hon"ble Apex Court in *Vinayaka Dev, Idagunji and Ors. v. Shivaram and Ors.* reported in (2005) 6 SCC 641. In the said case cited by the counsel for the Petitioner the Apex Court held that in case the departmental proceedings and criminal proceedings are on the same set of charges then if an employee is acquitted in a criminal case the departmental proceeding should follow the same. However, this has not happened in the present case inspite of the same set of charges in a criminal case as well as in departmental proceedings. Learned Counsel for the Respondents Ms. Beena Pande would, however, argue that there are cases by the Apex Court which lay down, and as it has already been referred above, that the two proceedings are different. Indeed the two proceedings are different but in the present case since the inordinate delay in the departmental proceedings has not been explained, the entire proceedings are perverse in nature. Moreover the ruling cited by the counsel for the Petitioner (*Vinayaka Dev, Idagunji and Ors. v. Shivaram and Ors.* (2005) 6 SCC 641) also applies on the facts of the present case as the two set of charges in the present case are identical, and therefore a distinction is drawn here.

6. Consequently, the order dated 9.3.2007 (annexure No. 7 to the writ petition) is liable to be set aside and is hereby set aside. The Respondents are directed to fix the pension of the Petitioner in the light of the directions made above and release the same including the arrears and other post retirement benefits forthwith.

7. Writ petition is allowed.

8. No order as to costs.