

(2004) 08 AHC CK 0099
In the Allahabad High Court

Santosh Kumar Shukla

APPELLANT

Vs

Director of Agriculture and Another

RESPONDENT

Date of Decision : 19-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 5 AWC 5094 : (2005) 105 FLR 15

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Judgement

Devi Prasad Singh, J.—Heard learned Counsel for the parties.

2. The short matrix of the case is that petitioner was appointed in Subordinate Agriculture Services Group-III on the post of Assistant Agriculture Inspector of Government Seed Store, Digharua, district Fatehpur by opposite party No. 2 w.e.f. 24th January, 1978.

3. The submission of the learned Counsel for the petitioner is that for certain period petitioner was on medical leave. Thereafter, a department charge-sheet dated 3rd October, 1983 was issued by the Farm Management Officer, Allahabad to the petitioner with the allegation that the petitioner was guilty of unauthorized absence from duty as well as embezzlement or causing loss to the Government property for an amount of Rs. 80,000. A copy of charge-sheet has been filed as Annexure-1 to the writ petition. According to petitioner's Counsel the charge-sheet was served on the petitioner on 5th January, 1985. Petitioner had submitted reply to the charge-sheet in the year 1986.

4. For the same charges an F.I.R. was lodged at the police station concerned. After due inquiry, a charge-sheet was submitted to the competent Court for petitioner's trial. The case was registered as Criminal Case No. 1277 of 1985. The charges contained in the First Information Report is the same which has been indicated in the charge-sheet. After due trial and after recording evidence, IIIrd Additional Mansif Magistrate, Fatehpur had acquitted the petitioner as no

charge established against the petitioner by judgment and order dated 6th May, 1989. According to petitioner's Counsel against acquittal of the petitioner, an appeal was preferred by the respondents-State, which was dismissed by the High Court by judgment and order dated 22.5.1992 in Government Appeal No. 1756 of 1989, a copy of which has been filed as Annexure-9 to the writ petition. Accordingly, the judgment and order of Learned Trial Court attains finality.

5. After submission of reply to the charge-sheet by the petitioner nothing has been done and since the inquiry was not concluded by the opposite parties within a reasonable period, the present writ petition was filed in the year 1998 for quashing of charge-sheet on account of delay in inquiry proceeding. Counter-affidavit has been filed by the respondents-State.

6. While defending the State action the respondents-State had given three main reasons for delay in inquiry proceedings:

(a) The Enquiry Officer has been transferred from time to time.

(b) The petitioner himself avoided to take charge-sheet and also not submitted the reply of the charge-sheet within reasonable period.

(c) The third ground seems to be reflected from counter-affidavit is that the relevant document could not be provided to the petitioner on account of pendency of criminal case.

7. Relying upon the counter-affidavit, the submission of the learned Standing Counsel is that the inordinate delay in inquiry proceedings has been caused because of unavoidable reason. Argument advanced by learned Standing Counsel seems to be misconceived. Counter-affidavit was filed by the respondents slated in September, 2003. As discussed hereinabove, the petitioner had submitted a reply to the charge-sheet in the year 1986 and the criminal case resulted into acquittal in the year 1989. Reply to the charge-sheet was also submitted in the year 1986. Accordingly, there is nothing on record which may explain the delay caused in pendency on inquiry after year 1989 or 1990. There is no explanation in the counter-affidavit why after 1990 the opposite parties had failed to conclude the inquiry even after lapse of 14 years. From the material on record it is evident that atleast after 1989 i.e. judgment of criminal case by the competent Criminal Court the records were available to the respondents to supply the petitioner. No explanation of delay relating to the pendency of inquiry for last 14 years shows fault on the part of respondents'-State. The allegations contained in the charge-sheet relates to year 1981-82. Accordingly, at the face of record the inquiry is pending since last more than 22 years. The opposite parties while filing the counter-affidavit have failed to show reasonable explanation of delay relating to the pendency of inquiry so far.

8. Learned Counsel for the petitioner while assailing the impugned order submitted that for the same charges the criminal proceedings as well as the departmental proceedings should not have been initiated. The submission of the

learned Counsel for the petitioner is that since there is no reasonable explanation of delay of almost 15 years then the impugned charge-sheet should be quashed.

9. So far as the first submission of the learned Counsel for the petitioner, Shri R.C. Bajpai is concerned, the case laws cited by himself shows that for the same charges the criminal proceedings as well as departmental proceedings can run concurrently.

10. Hon''ble Supreme Court in a case in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , held that since two proceedings i.e. criminal proceeding and departmental proceeding are different in nature and stands on different leg they can continue independently. However, it has been further held in Captain M. Paul's case (supra) that in case an employee is charged for the same sets of fact which were sought to be proved by same witnesses i.e. police and departmental witnesses then the acquittal in criminal case may have weight to set aside the departmental proceedings. Hon''ble Supreme Court summarizing the judgment of Captain M. Paul's case (supra) had proceeded to hold as under:

22. The conclusions which are deducible from various decision of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact" and law are involved in that case will depend upon the nature of offence the nature of the case launched against the employees on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed, and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

11. Learned Counsel for the petitioner had relied upon another case in State of Andhra Pradesh Vs. N. Radhakishan, , where Hon''ble Supreme Court had-held

that in case there is no reasonable explanation of delay relating to pendency of inquiry, the charge-sheet may be quashed. However/while quashing the charge-sheet it should be kept in mind that it should not affect the administration and also may not result into retention in service of an officer who can be held or faces serious charges. For convenience Para 19 of the State of Andhra Pradesh's case (supra) is reproduced as under:

It is not possible to lay down any predetermined 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 the 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 a delay particularly when the 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 the 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. 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 their 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 consideration.

12. While defending the chargesheet, learned Standing counsel had invited attention in a case in T.V. Balakrishnan Vs. State of T.N. and Others, and submit that the order of cancellation of charge-sheet should be passed as the charges relates to subject-matter of inquiry. In the case as Raj Kishore (supra) does not seem to be applicable under the above facts and circumstance of case of the present case. In this case petitioner WAS suspended in the year 1984 and charge-sheet was served in the year 1988 The Tribunal had quashed the charge-sheet sometimes in the year 1993. Accordingly, Hon''ble Supreme Court held that the Tribunal had traveled beyond its jurisdiction and quashed the charge-sheet itself. I have doubt whether the judgment of Raj Kishore (supra) is applicable to the facts and circumstance of the present case more so when this Court exercising jurisdiction under extraordinary power of Article 226 of the Constitution of India. In the present case inquiry proceedings is pending since more than two decades i.e. about 22 years, power of Tribunal may be limited but

the power of this Court conferred by Article 226 of the Constitution of India is not to exercise within same periphery which has been exercised by Tribunals. Wherever injustice is mused this Court had ample power to provide justice to the litigant. Accordingly, the case of Raj Kishore (supra) is not applicable under the facts and circumstance of the case.

13. Since the inquiry proceedings is for more than 22 years and atleast there is no reasonable explanation of delay relating to pendency of inquiry since last 15 years, I find no reason to permit the respondents to proceed with the inquiry proceedings more so when for the same charges the petitioner has been acquitted by the competent Criminal Court. Relying upon the judgment of Apex Court in Captain M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. case (supra) as well as State of Andhra Pradesh v. N. Radhakishan's case (supra) writ petition deserves to be allowed.

14. In view of above, writ in the nature of certiorari is issued, quashing the impugned charge-sheet dated 3rd October, 1983 as contained in Annexure-1 to the writ petition with all consequential benefits. The opposite parties are directed to provide all consequential benefits to the petitioner forthwith.

15. Writ petition is allowed accordingly. No order as to costs.