

Ajit Kumar Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-25-1999

Judge : R.A. Sharma and A.K. Prasad, JJ.

Appeal No. : Letters Patent Appeal No. 207 of 1998(R)

Appellant : Ajit Kumar

Respondent : State of Bihar and ors.

Disposition : Appeal Dismissed

Judgement :

R.A. Sharma, J.

1. The office of the appellant, who was Divisional Forest Officer in the State Trading Division, Gumla, was inspected more than once in November, 1994. On such inspection it was found that there is defalcation of the Government money to the tune of Rs. 32,92,000/- (rupees thirty-two lacs ninety-two thousands). A First Information Report dated 29.11.1994 was filed against the appellant which was registered on 2.12.1994, for an offence under Section 409 of the Indian Penal Code. The Government passed an order dated 29.11.1994 suspending the appellant and this order was served on him on 30.11.1994, on which date he has also retired from service. During further investigation it was discovered that the Government money to the tune of Rs. 1,47,000/-(rupees one lac forty-seven

thousand) has been defalcated. The appellant was charge-sheeted vide charge-sheet dated 12.7.1996 and Shri A.K. Sinha, Chief Conservator of Forest was appointed as the Enquiry Officer. Shri Sinha having died in August, 1996, another Enquiry Officer, Shri A. Kumar, was appointed by the Government vide order dated 23.11.1996. The said order appointing Shri A. Kumar as an Enquiry Officer along with the charges was also sent to the appellant, which is said to have been received by him on 9.1.1997. It is at this stage that the appellant has filed a writ petition, being C.W.J.C. No. 635 of 1997 (R), in this Court challenging the said order dated 23.11.1996. On 6.3.1997 a learned Single Judge passed an interim order in the writ petition staying the departmental proceeding. The writ petition having been dismissed by the learned Single Judge on 23.3.1998 the appellant has filed this appeal under Clause 10 of the Letters Patent.

2. The learned Counsel for the appellant has made two submissions in support of this appeal-

(i) It is not open to the Government to initiate a departmental proceeding against a Government servant after his retirement; and

(ii) As on the same grounds both the criminal case and the departmental proceedings have been initiated against the appellant, the departmental proceedings are liable to be stayed till the criminal case is decided.

3. The departmental proceedings against the appellant have been initiated under Rule 43(b) of the Bihar Pension Rules (hereinafter referred to as the Rules), which provides for such proceedings after retirement of the Government Servant. The said Rule 43 is reproduced below:

43. (a) Future good conduct is an implied condition of every grant of a pension.-- The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.

(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that-

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the proceeding applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with Sub-clause (ii) of Clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.

Explanation--for the purposes of the rule-

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted:

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal Court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a civil Court.

4. It is well settled that it is open to the Government to start departmental proceedings against a Government servant, even after his retirement under the relevant Pension Rules, if the provisions for such proceedings have been made therein. In this connection reference may be made to the State of Maharashtra v. M.H. Mazumdar : (1988)IILLJ62SC , the relevant extract of which is reproduced below:

5. The aforesaid two Rules empower Government to reduce or withdraw a pension. Rule 189 contemplates withholding or withdrawing of a pension or any part of it if the pensioner is found guilty of grave misconduct while he was in service or after the completion of his service. Grant of Pension and its continuance to a Government servant depend upon the good conduct of the Government servant. Rendering satisfactory service maintaining good conduct is a necessary condition for the grant and continuance of Pension. Rule 189 expressly confers power on the Government to withhold or withdraw any part of the pension payable to a Government servant for misconduct which he may have committed while in service. This Rule further provides that before any order reducing or withdrawing any part of the pension is made by the competent authority the pensioner must be given opportunity of defence in accordance to the procedure specified in Note I to Rule 33 of the Bombay Civil Services Conduct, Discipline and Appeal Rules. The State Government's power to reduce or withhold pension by taking proceedings against a Government servant even after his retirement is expressly preserved by the aforesaid Rules. The validity of the Rules was not challenged either before the High Court or before this Court. In this view, the Government has power to reduce the amount of pension payable to the respondent. In M. Narasimhachar v. State of Mysore : (1960)ILLJ798SC and State of Uttar Pradesh v. Brahm Datt Sharma : [1987]2SCR444 , similar Rules authorising the Government to withhold or reduce the pension granted to the Government servant were interpreted and this Court

held that merely because a Government Servant retired from service on attaining the age of superannuation he could not escape the liability for misconduct and negligence or financial irregularities which he may have committed during the period of his service and the Government was entitled to withhold or reduce the pension granted to a Government servant.

The same Rule was reiterated in *State of U.P. and Anr. v. Shri Krishna Pandey* : [1996]3SCR183 , and in *State of Madhya Pradesh and Ors. v. Dr. Yashwant Trimbak* : AIR 1996 SC765 . In *High Court of Punjab & Haryana v. Amrik Singh* 1995 Supp (1) SCC 321, the Apex Court declared that an order of dismissal after departmental enquiry against a retired Government servant is inconsequential and superfluous. It was, however, observed therein that in such a case the proper thing to do is to initiate the departmental proceeding against the retired Government servant under the relevant pension Rules. The First submission of the learned Counsel for the appellant lacks merit and is, accordingly, rejected.

5. The second submission also deserves the same fate. In the departmental proceedings the appellant has been charged with the following misconducts:

(i) Not depositing a sum of Rs. 1,27,81,956.92 in the Government account and thus misappropriated the same;

(ii) Sales Tax, Cess and other taxes were not realised by the appellant from the purchasers giving them undue benefit, causing loss to the Government to the tune of Rs. 12,68,589.44;

(iii) Misappropriation of Rs. 6,30,127.39 by placing false bills/cashmemoes on the Government record;

(iv) Obstructing the inspection by the higher officials and trying to remove the evidence relating to serious financial irregularities and misappropriation of fund:

(v) Remaining absent from the headquarters unauthorisedly; and

(vi) Non-submission of the daily report.

6. As regard the criminal case, only the First Information Report dated 29.11.1994 was lodged, which was registered on 2.12.1994 for offence of misappropriation of the Government money to the tune of Rs. 32,90,000/-under Section 409 of the Indian Penal Code. The matter is still at the investigation stage and no charge-sheet in the criminal Court has been filed against the appellant. The fact that no charge-sheet against him has been filed in the criminal case, has been mentioned by the learned Single Judge also in his judgment saying that the criminal case is at the investigation stage only. In paragraph No. 7 of the L.P.A. which is quoted below, it has specifically been stated by the appellant that no charge sheet has been filed against him:

7. That though the matter is being investigated by the C.I.D. since 1995 but no charge-sheet has been submitted against the appellant till date though preliminary charge-sheet has been submitted against other co-accused persons and even the informant has been named as an accused and sanction of the Government has been sought vide letter dated 12.6.96 in Gumla P.S. Case No. 225 of 1994, dated 2.12.1994.

In paragraph '8' of the memo of appeal it has further been stated that 'the preliminary charge-sheet has been submitted by the C.I.D. against 5 contractors.'

7. When no charge-sheet in the criminal case has been filed against the appellant so far and it is not yet known whether he will or will not be charge-sheeted, the question of staying the departmental proceedings during the pendency of investigation on the basis of the First Information Report is uncalled for. That apart, the allegations made in the First Information Report and the charges contained in the charge-sheet served on the appellant in the departmental proceedings under Rule 43 are not the same though there may be some overlapping. In the departmental proceedings the appellant has been charged with gross irregularities, indiscipline, negligence, dereliction of duty and defalcation of the Government money. Whether he is guilty of those charges is a question liable to be decided in the departmental proceedings. Whether he has committed the offence under Section 409 of the Indian Penal Code is a matter to be decided by the criminal Court if and when such a charge-sheet is filed against him on the

basis of the evidence which may be produced by the parties. The scope and object of the two proceedings-one under Rule 43 and the other under criminal law are different. In view of the facts and circumstances of the case, staying the departmental proceedings initiated under Rule 43 would be highly improper and will also be against the public interest.

8. In this connection reference may be made to *State of Rajasthan v. B.K. Meena and Ors.* : (1997)ILLJ746SC , wherein the apex Court has laid down as under:

14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is 'that the defence of the employee in the criminal case may not be prejudiced'. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, advisability, 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in *D.C.M.* : (1960)ILLJ520SC and *Tata Oil Mills* : (1964)ILLJ113SC is not also an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending consideration is that the disciplinary enquiry cannot be and should not be-delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality inspite of repeated advise and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good

ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good Government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.

It was further observed:

17. There is yet another reasons. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty, of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to

repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.

In *Depot Manager, Andhra Pradesh State Road Transport Corporation v. Mohd. Yousuf Miya etc.* : [1997]3SCR402 , following the law laid down by it in *State of Rajasthan v. B.K. Meena* (supra), the Apex Court reiterated the same rule.

9. The submission of the learned Counsel for the appellant, however, is that as the criminal charges as set out in the First Information Report and some of the charges contained in the charge-sheet are identical, the departmental proceedings must be stayed. In support of this submission he has placed reliance in *Dr. Krishna Kant Kumar v. State of Bihar and Ors.* 1998 (3) PLJR 545, *Kusheshwar Dubey v. Bharat Coking Coal Ltd.* : (1988)IILLJ470SC and *B.J. Shelat v. State of Gujarat and Ors.* : (1978)IILLJ34a SC . It is not possible to accede the said contention.

10. In *Dr. Krishna Kant Kumar v. State of Bihar and Ors.* (supra), a learned Single Judge of this Court relying upon the Apex Court's decision in *Kusheshwar Dubey v. Bharat Coking Coal Ltd.* : (1988)IILLJ470SC (supra), stayed the departmental proceeding on the ground that the charges in the departmental proceedings and the criminal case are verbatim the same. That is not the position in the instant case. The Apex Court in *State of Rajasthan v. B.K. Meena* (supra), has explained its earlier decision in *Kusheshwar Dubey v. B.C.C.L.* (supra), the relevant extract of which has already been reproduced hereinbefore. The third decision in *B.J. Shelat v. State of Gujarat* (supra), does not deal with the controversy as is involved in the present case.

11. The learned Single Judge was fully justified in dismissing the writ petition of the appellant and no exception can be taken to his judgment.

12. This appeal lacks merit and it is, accordingly, dismissed. No. cost.

A.K. Prasad, J.

13. I agree

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