

Kiritkumar D. Vyas Vs. State and anr.

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Court : Gujarat

Decided On : Dec-18-1981

Reported in : (1982)2GLR79

Judge : M.P. Thakkar, C.J. and; D.C. Gheewala, J.

Appellant : Kiritkumar D. Vyas

Respondent : State and anr.

Judgement :

D.C. Gheewala, J.

1. Summary dismissal of a petition challenging the legality and validity of an order of dismissal from service of a class IV employee serving as a Nayak in the office of the Inspector General of Prisons, after 15 years of service had led to this Letters Patent Appeal under Clause 15 of the Letters Patent.

2. The appellant was appointed as a Nayak in the office of the Inspector General of Prisons in the month of March 1961. On 12-5-1975, he was arrested in connection with a prohibition offence, which ended in his conviction on 23-12-1975. He was sentenced to undergo imprisonment till rising of the court and to pay a fine of Rs. 100/- i d. S.I. for 20 days. The Inspector General of Prisons by an order dated 25-2-1976 dismissed the appellant from service without holding any inquiry relying solely upon his conviction by the Magistrate's Court and without

even affording any opportunity to the appellant to have his say even regarding the quantum of punishment. No show cause notice was issued before passing the said order of dismissal. The appellant preferred an appeal albeit after the lapse of considerable time to the Gujarat Civil Services Tribunal which was numbered as Appeal No. 461/79. The said appeal was fixed for hearing on 5-11-79 and the Tribunal by a cryptic order dismissed the appeal on the ground of non-explanation of the delay which was occasioned in filing the said appeal. The petitioner thereafter in the month of December 1980 moved the High Court by way of Special Civil Application No. 3550/80 under Article 226 of the Constitution. The learned Single Judge by an order dated 12-12-1980 rejected the said petition in limine on the ground that the appellant had approached the court after a delay of about 4 1/2 years from the date of original order of dismissal from service. The learned Judge, however, observed that the order of the High Court would not come in the way of the petitioner in making a representation to the Inspector General of Prisons for considering the appellant's case on sympathetic grounds. The petitioner accordingly made a representation but it met the same fate and it was rejected on 28-1-1981. The appellant, therefore, being aggrieved by the order of the learned Single Judge has preferred the present Letters Patent Appeal.

3. Mr. Rana, the learned Advocate appearing for the appellant raised the following five contentions for our consideration:

(1) No employee can be dismissed without a show cause notice being issued and the order of dismissal passed by the Inspector General of Prisons without issuing such a show cause notice was violative of Article 311(2) of the Constitution.

(2) Rule 14(2) of the Gujarat Disciplinary Conduct Rules enjoins a duty on the disciplinary authority to consider the circumstances of the case before passing the final order of punishment and of necessity imports the rules of natural justice and makes it obligatory to hear the delinquent in regard to the quantum of punishment.

(3) The offence for which the appellant was convicted was not one involving moral turpitude.

(4) Mr. Rana urged that the said order of dismissal having been passed in violation of principles of natural justice would be void ab initio and as such it would be honest and hence there would be no question of limitation; and lastly.

(5) Since the impugned order of dismissal was void ab initio the petition could not have been dismissed on the ground of mere delay. More particularly because the delay had caused no prejudice at all to the State whereas the petitioner himself had suffered the misery on that account-worse come to worse he could be denied backwages for the period of delay so that there was no detriment to the State and the petitioner alone suffered detriment on account of delay.

4. Mr. M.B. Shah, the learned Counsel appearing for the Respondents on the other hand urged that as there was delay of four years the learned Single Judge had rightly refused to exercise his discretion under Article 226 of the Constitution of India.

5. Before dealing with the rival contentions it will be necessary to advert to the relevant rules of Gujarat Civil Services (Discipline and Appeal) Rules. Rule 8 deals with the authority to institute proceedings and Rule 9 provides for the procedure for imposing major penalties. Rule 10 provides for action on the inquiry report. Rule 11 provides for procedure of imposing minor penalties and Rule 12 provides for communication of orders to the delinquent. Rule 14, however, provides special procedure in certain cases and the said rule reads as under:

14 Special Procedure in certain cases (1) Nothing contained in rules' or 9 shall apply:

(i) where a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules, or

(iii) where the Government is satisfied that in the interest of the security of the State, it is not expedient to follow such procedure.

(2) In cases to which the provisions of Sub-rule (1) shall apply, the Disciplinary Authority may consider the circumstances of the case concerned and pass such order thereon as it deems fit,

Provided that the Commission shall be consulted before passing such orders in any case in which such consultation is necessary.

Mr. Shah, the learned Counsel for the Respondents heavily banked upon Clause (1)(i) of the above Rule 14 and urged that as the appellant was convicted on a criminal charge, the procedure provided under Rules 8 and 9 need not have been followed by the Disciplinary authority before passing the order of dismissal and hence the said order is unassailable. We shall, therefore, have to see whether the said Rule 14(1)(i) gives a blanket licence to the disciplinary authority for straightaway passing the order imposing the penalty, merely on the Government servant being convicted on a criminal charge without even affording an opportunity to the Government servant to show cause against the quantum of punishment. In a case reported at Service Law Reporter 1975(1) p. 277, which was decided by one of us (Thakkar, J. as he then was), the question of interpreting a similar Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968 came up for consideration. Before extracting the said Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968, which is almost *pari materia* with Rule 14 of the Gujarat Civil Servants (Discipline and Appeal) Rules, 1971, it may be mentioned that in the said case also a Railway servant after 37 years of service was dismissed by a similar order without giving him any opportunity by the General Manager Western Railway, who was the disciplinary authority. Rule 14 of the Railway Servants (Disciplinary and Appeal) Rules, 1968 reads as under: '14 Special Procedure in certain cases.

Notwithstanding anything contained in Rules 9 to 13:

(i) Where any penalty is imposed on a railway servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner

provided in these rules, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules; the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule.

The learned Single Judge, before whom the legality and the validity of the said order was challenged, in terms observed in paragraph 7 of the judgment as under:

Rule 14(ii) at the highest may authorise dispensing with an inquiry in the sense of examination of witnesses and bearing the defence. However, it does not dispense with the requirement of Rules 9(2), 9(3) and 9(4) to the extent that they oblige the disciplinary authority to furnish to the railway servant concerned with a statement of relevant facts on the basis of which the imputations are made. It also obliges the disciplinary authority to afford an opportunity to the railway servant concerned, to state his case or to explain in his written statement the circumstances appearing against him. It is, therefore, clear that in so far as these requirements are not dispensed with by Rule 14(ii) there is non compliance on the part of the respondents and impugned order deserves to be nullified and quashed. Examining the matter from the other end there is nothing in Rule 14(ii) which authorises the disciplinary authority from dispensing with the requirement as regards affording of opportunity to show cause against the proposed penalty. Now, this is a very valuable right conferred by Rule 10(5). A right to make a representation to the disciplinary authority that even if he is found guilty of the fault alleged against him, there are extenuating circumstances which would justify imposing of a different or lesser penalty than the penalty proposed by the authority concerned, is an invaluable right. The railway servant may be able to show that having regard to the nature of the fault, the attendant circumstances, his length of service, the nature of the service put in the personal circumstances of the servant concerned, and having regard to other penalty a lenient view deserves to be taken.

It may be noted that in the said case also no inquiry was held and the order of dismissal was purported to have been passed in exercise of the powers vested in the disciplinary authority under Rule 14 (ii) of the Railway Servant (Discipline and Appeal) Rules. One of the grounds of challenge was that the impugned order was nullity inasmuch as it was not a speaking order both from the stand point of dispensing of the inquiry in the purported exercise of the powers under Rule (ii) as also from the point of punitive order imposing penalty of dismissal. The impugned order of dismissal in the present case has been passed on similar lines. The only difference being that the appellant was convicted for a criminal offence by the court of competent jurisdiction. The learned Single Judge in the said case went on to observe:

It must be realised that quantum of punishment is a very delicate question which requires to be resolved by the competent authority, be it a judge presiding over a criminal court or a disciplinary authority exercising disciplinary jurisdiction. The punishment imposed must neither be too excessive nor too lenient. It must be just, proper adequate; at the same time not too harsh nor too lenient. It has either to be deterrent or reformative. And in the absence of a representation of the other side, it would be impossible for the disciplinary authority to take a just decision on the question of quantum of sentence. It must be emphasised that nothing turns on the aspect that circumstances oblige the disciplinary authority to dispense with the inquiry. It cannot be contended that if no inquiry is held there is no purpose or point in extending the opportunity to show cause against the proposed penalty. The finding of guilt has nothing to do with the quantum of punishment. The quantum of punishment must depend upon the surrounding circumstances specified earlier. The right to show cause against the proposed penalty can be meaningfully availed of, even if no opportunity is afforded to the railway servant concerned to participate in the inquiry. He can show that even if he is guilty he is entitled to a more lenient treatment than proposed to be meted out to him having regard to the extenuating circumstances which are known to him alone and which he alone can place before the disciplinary authority.

The learned Judge in the course of his judgment also considered the implications of not giving opportunity to a servant who might have been convicted for a criminal

offence, and observed as under:

There is nothing in Sub-rule (1) of Rule 14 to show that it authorises the disciplinary authority to dispense with the requirements regarding affording opportunity to state his defence or to show cause against the proposed penalty. All that it authorises the officer concerned is to pass appropriate orders to the effect that having regard to the fact that there is a conviction by a criminal court, it is sufficient to obtain the comments of the servant concerned on the point of guilt and on the point of quantum of punishment. In Rule 14(i) also the emphasis is only on the aspect of dispensation with the inquiry and not with the requirements from the stand point of other rules. So Sub-rule (1) of Rule 14 in terms refers to the passing of appropriate orders in the context of an expediency to hold an inquiry against the servant concerned in the manner prescribed by the rule. Here also what is dispensed with is the strict compliance with the manner preserved by the rules and not with the entire inquiry. And at any rate it also makes no reference to the requirement relating to affording an opportunity to show cause against the penalty proposed to be inflicted.

Apart from the aforesaid decision of this High Court, there is high authority for the proposition even if a Government servant is convicted by a court, if disciplinary action is intended to be taken against him in regard to the act for which he was convicted, he must be afforded an opportunity to be heard in regard to the quantum of punishment. No penalty can be imposed on him for the alleged misconduct without giving him reasonable opportunity to show cause against the penalty proposed to be inflicted on him. The Supreme Court has made an authoritative pronouncement on this question and has imported the rules of natural justice in the rule in the decision referred to next hereinafter.

6. The scope and ambit of the Rule 14 (i) of the Railway Servants (Discipline & Appeal) Rules, 1968 was also on the anvil, in a case reported at 1975 S.C.P. 2216 (Divi. Personnel Officer v. T.R. Challappan) and the Supreme Court in para 21 observed as under:

The concluding part of Rule 14(1) merely imports a rule of natural justice in enjoining that before taking final action in the matter the delinquent employee

should be heard and the circumstances of the case may be objectively considered. The word 'consider' in the last part of Rule 14(1) merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. This provision confers power on the disciplinary authority to decide whether in the facts and circumstances of a particular case what penalty, if at all, should be imposed on the delinquent employee.

These observations also make it clear that mere conviction on a criminal charge would not dispense with the requirement of atleast an application of mind on the part of the disciplinary authority on the question of quantum of punishment after affording reasonable opportunity to the delinquent to be heard in regard to the quantum of punishment. Mere conviction, therefore, cannot be utilised for passing an order of dismissal blindfoldedly without bearing the delinquent on the question of sentence. Needless to add that this would be so even in case where the disciplinary authority exercises powers under Rule 14 of the Gujarat Civil Service (Discipline and Appeal) Rules.

7. In H.P. Thakore v. State of Gujarat 20 GLR 109 very important guidelines for consideration of disciplinary authority were laid down before the authority proceeded to inflict the punishment. The learned Judge in the said case also observed that disciplinary authority has to determine just penalty-neither too lenient nor too harsh, and he must make an honest attempt to ascertain just penalty. It is, therefore, clear that the disciplinary authority even for its own benefit to arrive at a just decision has to afford an opportunity to the delinquent to have his say, on the quantum of punishment. This circumstance would only be within the knowledge of the delinquent and without having the benefit of the same the disciplinary authority would be unable to strike a balance between too harsh a punishment and too lenient a penalty. In the instant case the Disciplinary authority had denied himself the said benefit.

8. The third contention of Mr. Rana was that the offence for which the appellant was convicted was not one involving moral turpitude. We would, however, refrain

from expressing ourselves on the said contention inasmuch as it is unnecessary to do so having regard to the view we are taking on the first two submissions. The trump-card which the respondents have been successfully flourishing so far, is that of delay and Mr. Shah, the learned Counsel for the Respondents who had no answer on merits has strongly banked upon the same arsenal before us as well. Mr. Shah, vehemently urged that if the appellant had rushed to the Tribunal within 45 days after the order of dismissal was served on him as he was required to do then the respondents would have passed suitable orders after issuing notice to him and when the appellant had approached the High Court after a delay of 41/2 years, this would not be a proper case to interfere with the discretion exercised by the learned Single Judge. In support of his contention, Mr. Shah drew our attention to some decided case viz. State of Madhya Pradesh v. Bhailal Bhai Ors. : [1964]6SCR261 ; Lachhman Dass v. Union of India : 1977 CriLJ1574 and P.S. Sadasivaswamy v. State of Tamil Nadu : [1975]2SCR356 . But for the reasons to be recorded hereinafter we must say that the Respondents are not entitled to succeed on the ground of delay.

9. There cannot be any blanket rule and as such there is none that a delay of a particular period should be considered to be unreasonable irrespective of the facts of a particular case. Unreasonable delay is a relative concept and what may be considered to be unreasonable delay in one case may not be so in the facts of a circumstances of another case. And we are fortified in our above inference by the observation of the Supreme Court in a case reported at : (1974)ILLJ221SC (R.S. Deodhar v. State of Maharashtra). In the said case, there was a delay of more than 10 or 12 years in filing the petition since the accrual of the cause of the complaint and it was contended by the Respondents in the said case as it was contended by Mr. Shah before us that this unreasonable delay was sufficient to disentitle the petitioner to any relief in a petition under Article 32 of the Constitution. While repelling the said contention the Supreme Court observed:

The Rule which says that a Court may not inquire into belated or State claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. The question is one of discretion

to be followed on the facts of each case.

It may also be noted that the principle on which the Court proceeds in refusing reliefs to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there was reasonable explanation for the delay. It may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Article 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a sentinel on the qui me for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like.

10. Again, the court will frown upon delay and laches on the part of the aggrieved party, if in the meanwhile the rights of innocent persons have intervened. And howsoever just the grievance of the aggrieved party may be if by condoning the delay, rights of other innocent persons were to be adversely affected or jeopardized then the court would be reluctant to brook such delays. In the instant case, we do not feel that the petitioner who was only class IV servant i.e. on the lowest rung of the ladder and who claims nothing more than reinstatement, (he does not claim backwages for the duration of the period of delay) is likely to adversely affect the rights of any innocent third person.

11. Again, in a case reported at : [1969]2SCR824 (Tilokchand Motichand v. H.B. Munshi), while dealing with question of delay, the Supreme Court in para 11 of the judgment observed as under:

The question is one of discretion for this Court to follow from case to case. This court need not necessarily give the total time to the litigant to move this Court under Article 32, even though he may be within statutory limitation. Similarly in a suitable case this Court may entertain a petition even after limitation. It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose.

It is true that in the instant case, the appellant has not approached the Tribunal within time. But then the Tribunal could well have taken a broad view and

condoned the delay on condition that he would not be paid backwages for the period of delay even if he succeeds. Taking into consideration the fact that the impugned order to dismissal was by itself an order which was null and void being violative of the principles of natural justice coupled with the fact that the petitioner was on the lowest rung of the socio-economic hierarchy we feel that he has been a victim of a grave injustice, the redressal of which need not be blocked merely on the score of delay. Chill penury and stark deprivation were his lot after his summary dismissal and if this Court were to disown him only on the ground of delay, it would be setting its seal on an indefensible and unsustainable act of injustice. We, therefore, feel that in the instant case, despite the delay, this Court need not be slow in exercising its jurisdiction under Article 226 for redressing an injustice. The Special Civil Application preferred by the petitioner must be treated as one challenging the original order of dismissal from service since the Tribunal refused to entertain the appeal. The order passed by the learned Single Judge also shows that it was treated as a petition under Article 226 directed against the impugned order of dismissal (that is why there is a reference of 4 1/2 years of delay). We feel that the appellant (Ori. Petitioner) need not be denied justice in the facts and circumstances of the case since delay will hurt only the petitioner and will not occasion any prejudice and detriment to the State by what we propose to do. The petitioner will not get any backwages for the period of delay. Once we totally deny him backwages for the period of delay there can be no prejudice or detriment to the State. Thus by our order delay will cause prejudice and will solely hurt the petitioner. In this view of the matter the petitioner need not be obliged to submit to a void order of dismissal. All that he will get is an opportunity to work and earn his bread at the sacrifice of backwages which he will have to forego on account of the delay in approaching the court.

The appeal is therefore allowed. The order dismissing the petition is set aside. The impugned order of dismissal dated February 25, 1976 as per Annexure-B is held to be null and void and is quashed and set aside. The petitioner will be treated as having continued in service throughout without any break. The petitioner shall be given posting latest by January 15, 1982.

12. With regard to backwages, having regard to the fact that the petitioner-appellant himself was responsible for delay in approaching the court, the petitioner shall not be entitled to backwages for the period preceding the date of the institution of the petition giving rise to the appeal viz. December 9, 1980. He will, however, be paid backwages with effect from that date i.e. with effect from December 9, 1980 till the date of reinstatement. The computation shall be made latest by February 15, 1982 and payment shall be made by the end of February 1982.

13. Having regard to the fact that the petitioner has suffered for a very long time and the punishment already suffered in connection with loss of backwages is a considerable one and having regard to the attendant circumstances, the respondents will not be permitted to institute a fresh inquiry on the same charges.

14. In computing the backwages and fixing the salary of the petitioner, as per the aforesaid directions, increments that the petitioner would have earned in due course shall be taken into account along with all other consequential benefits. The leave that he would have earned if the impugned order had not been passed shall, however, not be credited to his leave account. The failure to comply with any of the aforesaid orders may be treated as contempt of Court. Rule made absolute to the aforesaid extent.