

Naresh Chand Mathur Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Nov-06-2008

Reported in : RLW2009(2)Raj1795; 2009(3)SLJ151(Raj)

Judge : H.R. Panwar, J.

Appellant : Naresh Chand Mathur

Respondent : State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

H.R. Panwar, J.

1. By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the order Annex.1 and Annex.2 dated 24.07.2002 and 02.04.2003 respectively.

2. The facts and circumstances giving rise to the instant writ petition are that an inquiry was conducted against the petitioner under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short 'the CCA Rules' hereinafter). He was served with a memorandum of allegation. The inquiry officer found the charges proved against the petitioner and by order Annex.1 dated 24.07.2002 imposed the penalty of withholding of two annual grade increments

without cumulative effect. The order imposing penalty Annex. 1 came to be challenged by the petitioner by way of an appeal. The appeal filed by the petitioner came to be dismissed by order Annex.2 dated 02.04.2003. Hence this writ petition.

3. A reply to the writ petition has been filed by the respondents contending therein that an inquiry under Rule 17 of the CCA Rules was conducted by following the procedure prescribed and there is no procedural error in conducting the inquiry as also the conclusion arrived at by the inquiry officer and the inquiry officer on the basis of the material available before it found the charges proved against the petitioner and accordingly the petitioner was visited with the penalty of stoppage of two annual grade increments without cumulative effect. The charge against the petitioner was that he was negligent and inefficient in discharging his duties resulting in adversely affecting the income of the respondent Corporation. It was also contended that the writ petition suffers from delay and laches inasmuch as the petitioner has challenged the order Annex.1 dated 24.07.2002 and order Annex.2 dated 02.04.2003 almost after five years without there being any explanation forthcoming for filing a belated writ petition. Learned Counsel for the respondents has relied on number of decisions of Hon'ble Supreme Court referred hereinafter.

4. It is contended by learned Counsel for the petitioner that though at the relevant time, the petitioner was Chief Manager of the Sirohi depot of the respondent Rajasthan State Road Transport Corporation (for short 'the Corporation' hereinafter) but it was beyond his control to fetch the income to the expectation of the Corporation by plying the buses from the said Depot, however, failed to explain any reason for filing the writ petition almost after five years from the date of the orders impugned. Learned Counsel for the petitioner failed to point out any procedural error or illegality in holding the inquiry, however, contended that the allegation made in the memorandum of allegation do not fall within the ambit of the expression 'Misconduct' as envisaged Under Rule 17 of the CCA Rules.

5. Learned Counsel for the respondents submits that in the charge sheet, it was mentioned with clarity and precision that the petitioner was negligent and inefficient in discharging his duties and due to the omission and inaction on the

part of the petitioner, the income of the Corporation has adversely affected under his charge and such omission and negligency on the part of the petitioner amounts to misconduct. Learned Counsel for the respondents has relied on a decision of Hon'ble Supreme Court in Nauratan Mal Chaurasia v. M.R. Murli : AIR 2004 SC2440 wherein while construing the word 'Misconduct', the Hon'ble Supreme Court observed as under:

Misconduct', inter alia, envisages breach of discipline. It is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, improper behaviour, intentional wrongdoing or deliberate violation of a Rule or standard of behaviour. It is a violation of a definite law.

6. Learned Counsel for the respondents further submits that the scope of judicial review in the conclusion arrived at by the inquiry officer/disciplinary authority and the appellate authority is very limited. He has relied on decisions of Hon'ble Supreme Court in B.C. Chaturvedi v. Union of India and Ors. : (1996)ILLJ 1231 SC , in R.S. Saini v. State of Punjab and Ors. : (1999)ILLJ 1415 SC and in Canara Bank v. V.K. Awasthy : (2005)ILLJ461SC .

7. I have given my thoughtful consideration to the rival submissions made by counsel for the parties.

8. In State of Madhya Pradesh and Anr. v. Bhailal Bhai and Ors. AIR 1964 SC 1006, the Constitution Bench of Hon'ble Supreme Court observed as under:

It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these

cases on or shortly after January 17, 1956 the delay in making these applications, should be considered unreasonable. If on the other hand, as Mr. Andley seems to argue, that the mistake discovered much later this would be a controversial fact which cannot conveniently be decided in writ proceedings. In either view of the matter we are of the opinion the orders for refund made by the High Court in these seven cases cannot be sustained.

9. In *Tilokchand and Motichand and Ors. v. H.B. Munshi and Anr.* : [1969]2SCR824 , another Constitution Bench of the Hon'ble Supreme Court by majority held that a claim based on the infraction of fundamental rights ought not to be entertained if made beyond the period fixed by the Limitation Act for the enforcement of the right by way of suit. As the petitioners have come to this Court after the date when they could have filed a suit, the application must be rejected. It was further held that there is no law which prescribed a period of limitation for such petition. The party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblance of delay. The analogy of the Chancery Court of England can be invoked. No period can be indicated for bringing the action. The question as to when the Supreme Court should entertain the claim depends on the nature of the fundamental right alleged to have been infringed and the remedy claimed. There is no question of a mistake of law entitling the petitioner to invoke analogy of the Article in the Limitation Act. The petitioner not having taken the right ground in the writ petition filed in the High Court and not having pursued the matter in appeal to the Supreme Court, analogy of the Limitation Act cannot be applied for giving him relief. The power of this Court to exercise its discretion in the matter of laches exist under Article 32 and on these premises, the petition was dismissed.

10. In *Durga Prashad v. Chief Controller of Imports and Exports* : [1969]2SCR861 , Hon'ble Supreme Court held that the persons aggrieved should approach the High Court with utmost expedition. A similar view was also taken by Hon'ble Supreme Court in *Rup Diamonds and Ors. v. Union of India and Ors.* : 1989(40)ELT226(SC) .

11. In *Municipal Corporation of Greater Bombay v. Bombay Tyres International Ltd. and Ors.* : AIR 1998 SC1629 , the Hon'ble Supreme Court held that the present case is not one where the provisions of the rule which enabled the levy of water charges was struck down on the ground that it was incompetent but on a ground that such rule had been framed inarticulately and was not clear enough. Payments made by the petitioner should be treated as having been made by mistake but once a declaration of law had been made by the Bombay High Court on 16.09.1987, it was open to the petitioner to claim for recoveries and the same should have been made within a reasonable time thereafter. In ascertaining what is the reasonable time for claiming refund, the courts have often taken note of the period of limitation prescribed under the general law of limitation for filing of suits for recovery of amount due to them. In the present case also the standard adopted by the High Court is the same in ascertaining whether there had been laches on the part of the appellant in seeking relief in due time or not. The finding clearly recorded was that long after the charges had been paid and law had been declared by the Court, the writ petition was filed and, therefore, such a refund should not be allowed. Such a view taken by the High Court does not call for interference under Article 136.

12. In *Municipal Council, Ahmednagar and Anr. v. Shah Hyder Beig and Ors.* : AIR 2000 SC671 , the Hon'ble Supreme Court held that it is now a well-settled principle of law that while no period of limitation is fixed but in the normal course of events, the period the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely 'delay defeats equity' has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-by to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise.

13. In *Nauratan Mal Chaurasia v. M.R. Murli* (supra) while construing the word 'Misconduct', the Hon'ble Supreme Court observed as under:

'Misconduct', inter alia, envisages breach of discipline. It is wide* enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, Improper behaviour, intentional wrongdoing or deliberate violation of a Rule or standard of behaviour. It is a violation of a definite law.

14. In *R.S. Saini v. State of Punjab and Ors.* (supra), the Hon'ble Supreme Court held that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings. The Hon'ble Supreme Court further held that scope of judicial review in matters of this nature being restricted, the High Court had to consider the challenge to the impugned order with a limited degree of scrutiny that was called for.

15. In *B.C. Chaturvedi v. Union of India and Ors.* (supra) the Hon'ble Supreme Court held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as

defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case. The Hon'ble Supreme Court further held that the disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. The Hon'ble Supreme Court also held that the High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare, cases, impose appropriate punishment with cogent reasons in support thereof. .

16. In Bhoop Singh v. Union of India and Ors. : (1993)ILLJ260SC , the Hon'ble Supreme Court, observed as under:

Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that behalf. This is more so in service matters where

vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated is a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence and we are unable to construe *Dharampal (Lt. Governor of Delhi v. Dharampal : (1991)ILLJ605SC*) in the manner suggested by the petitioner. Article 14 or the principle of nondiscrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. In our opinion, grant of the relief to the petitioner, in the present case, would be inequitable instead of its refusal being discriminatory as asserted by learned Counsel for the petitioner. We are further of the view that these circumstances also justify refusal of the relief claimed under Article 136 of the Constitution.

17. In *State of Orissa v. Lochan Nayak : (2003)10SCC678* , the Commissioner, in exercise of his power revoking the allotment of land in the year 1984, against which order the respondents therein filed a petition before the Orissa High Court in the year 1986. The High Court remanded the matter to the Revenue Officer and the Sub-Divisional Magistrate for deciding the matter afresh. In the same year, the Revenue Officer cancelled the allotment again. The respondents therein filed a petition against the said order in the year 1992. In the aforesaid facts and circumstances, the Hon'ble Supreme Court held that due to inordinate delay in filing the petitions, the High Court ought not to have entertained the writ petitions.

18. In *Shiv Dass v. Union of India : (2007)ILLJ212SC* , the Hon'ble Supreme Court held that the delay in filing the writ petition cannot be overlooked. It would depend upon the facts of each case. If petition is filed beyond a reasonable period say three years, normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.

19. In *New Delhi Municipal Council v. Pan Singh and Ors. (supra)*, the Hon'ble, Supreme Court held that it is trite that the discretionary jurisdiction may not be exercised in favour of the those who approach the Court after a long time. Delay

and laches are relevant factors for exercise of equitable jurisdiction. Similar view was taken by the Hon'ble Supreme Court in *Government of West Bengal v. Tarun K. Roy and Ors.* : (2004)ILLJ421SC and in *Karnataka Power Corporation Ltd. Through its Chairman & Managing Director and Anr. v. K. Thaogappan and Anr.* : (2006)IILLJ421SC .

20. In the instant case, the orders Annex.I dated 24.07.2002 and Annex.2 dated 02.04.2003 respectively came to be challenged by the petitioner almost after lapse of period of five years and therefore, keeping in view the various decisions referred hereinabove of the Hon'ble Supreme Court, the writ petition suffers from the delay and laches and therefore, the writ petition is not entertainable at such a belated stage when the petitioner has utterly failed to explain such a long delay in approaching this Court and thus, I am not inclined to exercise discretionary jurisdiction of this Court under Article 226 of the Constitution of India.

22. In this view of the matter, the writ petition is dismissed. There shall be no order as to costs.