

Court No. - 6

Case :- WRIT - A No. - 4228 of 2024

Petitioner :- Anoop Kumar Singh

Respondent :- State Of U.P. Thru. Prin. Secy. State Tax Deptt. Lko. And Another

Counsel for Petitioner :- Rishi Raj

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin,J.

1. Heard Sri Rishi Raj, learned counsel for the petitioner and Sri Sandeep Sharma, learned Standing counsel appearing on behalf of the State-respondents.

2. With the consent of learned counsel appearing on behalf of the contesting parties, the instant writ petition is being finally decided.

3. Instant writ petition has been filed praying for the following main reliefs:-

"(i) Issue a writ, order or direction in the nature of Certiorari, quashing the inquiry proceedings pending against the petitioner pursuant to the charge sheet dated 22.10.2018, in the ends of justice.

(ii) Issue a writ order or direction in the nature of Mandamus, commanding the opposite parties to consider and promote the petitioner on the post of Deputy Commissioner, State Tax Department w.e.f the date his similarly situated batch mates i.e Trade Tax Officers of 2002 Batch have been promoted and grant him further promotions thereby fixing his seniority at each stage on respective posts with all consequential benefits, in the ends of justice."

4. Bereft of unnecessary details, the contention of learned counsel for the petitioner is that the Division Bench of this Court in Writ-A No. 3074 of 2021 Inre; Anoop Kumar Singh Vs. State of U.P and Ors i.e the petition filed by the petitioner being aggrieved by the judgment passed by the Uttar Pradesh Public Services Tribunal, Lucknow dated 22.10.2020 by which the claim petition preferred by the petitioner against the punishment order dated 04.09.2019 was dismissed, had approached this Court by filing the aforesaid writ petition.

5. The Division Bench of this Court vide judgment and order dated 09.01.2023, a copy of which is annexure 5 to the writ petition allowed the writ petition and set aside the judgment of the learned Tribunal as well as the punishment order

dated 04.09.2019 and the order dated 02.03.2020 by which the review filed by the petitioner had been rejected. The writ Court remitted the matter to the inquiry officer and directed that he shall proceed after giving due opportunity of hearing to the petitioner providing all the documents and an endeavour would be made by the inquiry officer to take the inquiry to its logical conclusion from the date a copy of the order is produced before the competent authority.

6. It is contended that the judgment of the writ Court was served on the competent authority on 11.04.2023. It is contended that despite the aforesaid time frame being fixed by the Division Bench of this Court and the respondents also not having filed any application for extension of time granted by the Division Bench yet are still proceeding with the inquiry.

7. Placing reliance on the Full Bench judgment of this Court in the case of **Abhishek Prabhakar Awasthi Vs. New India Assurance Company Limited and Ors** reported in **2014 (6) ADJ 641**, the contention is that Full Bench of this Court has held that no inquiry proceedings can proceed beyond the time frame as has been fixed by the writ Court for deciding the said proceedings unless and until an application for extension of time has been moved and the same has been allowed by the Court concerned.

8. The contention is that once the time frame fixed by the Division Bench of this Court vide judgment and order dated 09.01.2023 has lapsed as such, the inquiry proceedings pending against the petitioner through the charge sheet dated 22.10.2018 be quashed.

9. On the other hand, Sri Sandeep Sharma, learned Standing counsel appearing on behalf of the State-respondents has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Union of India Vs. Sharvan Kumar** reported in **2022 LiveLaw (SC) 595** to contend that unless the writ Court has given the consequences of not concluding the inquiry within a specified time then the inquiry would not become vitiated in the eyes of law. He further contends that even though no application may have been moved by the respondents before the writ Court seeking extension of time yet considering the

recent judgment of the Apex Court in the case of **Sharvan Kumar (supra)** the inquiry proceedings can still proceed against the petitioner.

10. Heard the learned counsel appearing on behalf of the contesting parties and perused the records.

11. From a perusal of records it emerges that the Division Bench of this Court vide judgment and order dated 09.01.2023 had directed the inquiry officer to make an endeavour to conclude the inquiry pending against the petitioner through the charge sheet dated 22.10.2018 within six months. Admittedly, no application for extension of time has been moved by the respondents and time period as fixed by the Division Bench of this Court has lapsed.

12. The consequences of time frame being fixed by the writ Court for conclusion of inquiry and the same not having been concluded has been set forth in detail by the Full Bench of this Court in the case of **Abhishek Prabhakar Awasthi (supra)** wherein the two questions as referred to the Full Bench and the answer to the said questions are as follows:-

2. The following questions have been referred in the order of the learned Single Judge for determination by the Full Bench:-

"(a) Whether if an inquiry proceeding is not concluded within a time frame fixed by a court and concluded thereafter, without seeking extension from the Court then on the said ground the entire inquiry proceeding as well as punishment order passed, is vitiated in view of the judgment in the case of P.N. Srivastava; and

(b) Whether the law as laid down by a Division Bench of this Court in the case of P.N. Srivastava that if an inquiry proceeding is not concluded within a time frame as fixed by a Court, it stands vitiated is still a good law in view of the judgment rendered by the Supreme Court in the case of Suresh Chandra as well as a judgment dated 27.07.2009 of a Division Bench of this Court in Writ Petition No. 1056 (SB) of 2009 (Union of India and others Vs. Satendra Kumar Sahai and another).

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19. In view of the above discussion, we now proceed to answer the questions which have been referred to the Full Bench.

(A) Question No. (a): We hold that if an enquiry is not concluded within the time which has been fixed by the Court, it is open to the employer to seek an extension of time by making an appropriate application to the court setting out the reasons for the delay in the conclusion of the enquiry. In such an event, it is for the court to consider whether time should be extended, based on the facts and circumstances of the case. However, where there is a stipulation of time by the Court, it will not be open to the employer to disregard that stipulation and an

extension of time must be sought;

(B) Question No. (b): The judgment of the Supreme Court in the case of Suresh Chandra (supra) as well as the judgment of the Division Bench of this Court in the case of Satyendra Kumar Sahai (supra) clearly indicate that a mere delay on the part of the employer in concluding a disciplinary enquiry will not ipso facto nullify the entire proceedings in every case. The court which has fixed a stipulation of time has jurisdiction to extend the time and it is open to the court, while exercising that jurisdiction, to consider whether the delay has been satisfactorily explained. The court can suitably extend time for conclusion of the enquiry either in a proceeding instituted by the employee challenging the enquiry on the ground that it was not completed within the stipulated period or even upon an independent application moved by the employer. The court has the inherent jurisdiction to grant an extension of time, the original stipulation of time having been fixed by the court itself. Such an extension of time has to be considered in the interests of justice balancing both the need for expeditious conclusion of the enquiry in the interests of fairness and an honest administration. In an appropriate case, it would be open to the Court to extend time suo motu in order to ensure that a serious charge of misconduct does not go unpunished leading to a serious detriment to the public interest. The court has sufficient powers to grant an extension of time both before and after the period stipulated by the court has come to an end."

13. From a perusal of the Full Bench judgment of this Court in the case of **Abhishek Prabhakar Awasthi (supra)** it emerges that the Full Bench has held that if an enquiry is not concluded within the time which has been fixed by the Court, it is open to the employer to seek an extension of time by making an appropriate application to the court setting out the reasons for the delay. In such an event, it is for the court to consider whether time should be extended, based on the facts and circumstances of the case. However, where there is a stipulation of time by the Court, it will not be open to the employer to disregard that stipulation and an extension of time must be sought.

14. The Full Bench further held that the court which has fixed a stipulation of time has jurisdiction to extend the time and it is open to the court, while exercising that jurisdiction, to consider whether the delay has been satisfactorily explained. The court can suitably extend time for conclusion of the enquiry either in a proceeding instituted by the employee challenging the enquiry on the ground that it was not completed within the stipulated period or even upon an independent application moved by the employer.

15. Subsequent thereto, the Apex Court in the case of **Sharvan Kumar (supra)** has held as under:-

"7. Having given thoughtful consideration to the rival submissions and having examined the record, we are clearly of the view that neither the approach of the High Court nor its

conclusion could be endorsed. In other words, the propositions of the High Court, treating the proceedings in question as having abated or having been rendered nullity cannot be approved from any standpoint.

9. As noticed, after the respondent was awarded the penalty of removal from service by the order dated 23.02.2006 in conclusion of the disciplinary proceedings, he challenged the same and the Appellate Authority, by its order dated 23.08.2006, altered the penalty to that of downgrading his pay. The Revisional Authority by its order dated 14.03.2007 held that the negligence on the part of the respondent was established and found no reason to interfere. However, the Tribunal, in the earlier round of litigation, while dealing with OA No. 373 of 2007, chose not to examine the other material questions involved in the matter but, disapproved the imposition of penalty on the respondent for the reason that the person acting as the Disciplinary Authority had been one of the members who had earlier submitted the joint enquiry report. In this view of the matter, the Tribunal quashed the orders passed against the respondent but, being conscious of the fact that the disciplinary proceedings were otherwise required to be taken to the logical conclusion, issued directions to ensure that the matter be dealt with by the Disciplinary Authority other than the person who had been a member of the joint enquiry team and the proceedings be taken up from the stage of consideration of representation of the respondent against the report of the Enquiry Officer. **While concluding on the matter, the Tribunal also expected that such afresh exercise be completed within two months of the receipt of the order, after leaving all other contentions open. As noticed, the appellants attempted to seek enlargement of time in view of the fact that the exercise could not be completed within the said period of two months but, this prayer for enlargement was declined by the Tribunal not on its merits but, for a different reason that the particulars like the time-frame laid down by the Railway Board for taking the decision on the enquiry report was not stated before it.** The said order expecting conclusion of the proceedings within two months from the date of receipt of copy of the order was passed on 03.09.2010; the application seeking enlargement was dismissed on 03.01.2011; and the Disciplinary Authority passed its order on 17.02.2011. Thus, the question was about the status of such order so passed by the Disciplinary Authority beyond the period fixed by the Tribunal which had not been enlarged. The Tribunal in its order dated 21.06.2013 held that the proceedings pursuant to the order dated 03.09.2010 would have abated only if it was so directed in specific terms and not otherwise. The Tribunal had been correct in this approach and, in our view, the High Court has unjustifiably interfered with the just and proper order passed by the Tribunal.

9.1. It needs hardly any elaboration to say that fixing of the period of two months by the Tribunal in this case had only been to ensure expeditious proceedings because the matter was being restored for reconsideration in the year 2010, though the disciplinary proceedings related with the incident dated 09.01.2005. **However, the said period of two months did not acquire any status akin to that of a statutory mandate that the disciplinary proceedings would have automatically come to an end with its expiry.** It remains trite that if an Adjudicating Authority in exercise of its jurisdiction could grant or fix a time period to do a particular thing, in the absence of a specific statutory provision to the contrary, the jurisdiction to fix such a time period inhere the jurisdiction to extend the time initially fixed. Such conditional orders have regularly been construed by this Court to be in terrorem so as to put a check on the dilatory tactics by any litigant or to guard against any laxity on the part of the Adjudicating Authority but, the Court is not powerless to enlarge the time even though it had peremptorily fixed the period at any earlier stage. In the case of [Mahanth Ram Das v. Ganga Das](#): (1961) 3 SCR 763, this Court examined the peremptory order of the Court fixing the period of payment of deficit court fees in the backdrop of the fact that the application for extension of time came up for hearing only after the time fixed by the Court had expired and the application was rejected. This Court put the things in perspective while observing, inter alia, as under: -

“5...Such orders are not like the law of the Medes and the Persians. Cases are known in

which Courts have moulded their practice to meet a situation such as this and to have restored a suit or proceeding, even though a final order had been passed...”

9.2. We may elaborate a little. When a conditional order is passed by the Court/Tribunal to do a particular act or thing within a particular period but the order does not provide anything as to the consequence of default, the Court/Tribunal fixing the time for doing a particular thing obviously retains the power to enlarge such time. As a corollary, even the Appellate Court/Tribunal or any higher forum would also be having the power to enlarge such time, if so required. In any case, it cannot be said that the proceedings would come to an end immediately after the expiry of the time fixed.

9.3. ***In the present case, even the order dismissing the application for enlargement of time on a technical ground of not placing before the Tribunal instructions of the Railway Board, had again been not of giving any such status of mandatory and rigid character to the period originally fixed that the proceedings would have abated.***

10. ***We are impelled to observe that while treating the proceedings as having abated and as nullity, the High Court has ignored the fundamental principles that fixing of such time period was only a matter of procedure with an expectation of conclusion of the proceedings in an expeditious manner. This period of two months had not acquired any such mandatory statutory character so as to nullify the entire of the disciplinary proceedings with its expiry.***

10.1. ***Moreover, when no consequence of default was stated in the order dated 03.09.2010, the period as stated therein was only of expectations and not of mandate. We may also observe that very many times, such fixing of time period causes more complications and harm rather than serving the cause of justice. Fixing of such period could only be justified if there are strong and compelling reasons for the same; and if at all such period is proposed to be fixed, not only the reasons for the same but, even the consequences of default are also required to be stated if such period is, for any valid reason, expected to operate with adverse consequences on the defaulter.***

11. ***The upshot of the discussion foregoing is that the proceedings in question neither abated nor could have been considered nullity only because of passage of the expected time period stated in the order of the Tribunal dated 03.09.2010. There was no reason or justification for the High Court to interfere with the just and proper order passed by the Tribunal on 21.06.2013, which deserves to be restored with necessary consequential directions.***

12. ***Before concluding, we also deem it necessary to observe that the High Court in the impugned order proceeded to pass unnecessary strictures against the Disciplinary Authority who had passed the order dated 17.02.2011. As noticed, the displeasure as expressed by the High Court has itself been founded on a wrong premise where the High Court assumed that the proceedings were rendered nullity and as if the Disciplinary Authority could not have touched the same at all after expiry of the expected period of time. We are clearly of the view that even if the High Court were to proceed on the premise that the proceedings should not have continued, there was no justification to observe that the Disciplinary Authority had been disrespectful towards the judicial process. In any case, when the order impugned is not being approved, such observations/strictures shall also stand annulled."***

16. From a perusal of the judgment of the Apex Court in the case of **Sharvan Kumar (supra)** it emerges that the Apex Court has held that the proceedings in question neither abate nor could have been considered nullity only because of passage of the expected time period stated in the order of the learned Tribunal to

conclude proceedings within a specified time when no consequence of default was specified in the order of the Tribunal and as such the time period will only be an expectation and not a mandate.

17. Accordingly, considering the law laid down by the Apex Court in the case of **Sharvan Kumar (supra)** it clearly emerges that even though the time period had been prescribed by the Division Bench of this Court for concluding the inquiry within a period of six months and the inquiry not having been concluded yet as no consequence to the inquiry not being concluded within a period of six months was prescribed as such, it cannot be said that *ipso facto* the inquiry which is proceeding against the petitioner is bad in the eyes of law.

18. As regards the claim for promotion to the post of Deputy Commissioner needless to mention that the respondents would obviously observe the principles of law as laid down by the Apex Court in the case of **Union of India vs. K.V. Janakiraman- (1991) 4 SCC 109** with regard to promotion of the petitioner.

19. Keeping in view the aforesaid discussion as well as the judgment of the Apex Court in the case of **Sharvan Kumar (supra)**, no case for interference is made out. Accordingly, the writ petition is dismissed subject to aforesaid observations.

Order Date :- 30.5.2024
Pachhere/-