

Neutral Citation No. - 2024:AHC-LKO:19712-DB

Case :- WRIT - A No. - 24172 of 2016

Petitioner :- State Of U.P Thru.Prin.Secy.Lok Nirman Vibhag Civil
Sectt Lko

Respondent :- Baliram Sonkar And Anr.

Counsel for Petitioner :- C.S.C

Counsel for Respondent :- C.S.C, Ankit Tripathi, Bhupendra Singh
Bisht, Mahtab Ahmad, Paavan Awasthi, R.N. Shukla

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Brij Raj Singh, J.

- (1) Heard Sri Amitabh Rai, learned Additional Chief Standing Counsel appearing for the petitioners and Sri Paavan Awasthi, learned Counsel appearing for the respondent No.1.
- (2) The writ petition filed by the State has questioned the legality of the impugned judgment and order dated 29.01.2016 rendered by the U.P. Public Services Tribunal whereby the Claim Petition No. 467 of 2013 filed by the respondent No.1 has been allowed and order of dismissal from service dated 05.02.2013 has been set aside. Further, the Tribunal has directed the petitioners herein to re-instate the respondent No.1 in service immediately and provide him all consequential benefits with a stipulation that he shall not be entitled for salary when he remained out of service on the principle of 'No Work No Pay', i.e., from the date of dismissal from service till the date of his reinstatement.
- (3) The case has chequered history and the respondent No.1 is fighting for his cause since 2001. Since then, the respondent No.1 has filed six writ petitions and two claim petitions for different causes. Lastly, the claim petition No. 467 of 2013 filed by the respondent No.1 has been allowed with certain directions as mentioned in paragraph – 2 of the judgment.
- (4) The case of the petitioners is that while respondent No.1 remained posted as Executive Engineer, Provincial Division,

Lok Nirman Vibhag, disciplinary proceedings were initiated under Rule 7 of U.P. Government Servants (Discipline and Appeal) Rules, 1999 vide Office Memorandum dated 09.10.2001. After conclusion of inquiry, the disciplinary authority has passed an order of dismissal from service on 05.05.2005.

- (5) Assailing the punishment order dated 05.05.2005, the respondent No.1 filed Writ Petition No. 40074 of 2005 which came to be allowed vide judgment and order dated 10.04.2008 and set aside the inquiry report dated 11.09.2003 and dismissal order dated 05.05.2005 on the ground of non-compliance of principles of natural justice alongwith other directions.
- (6) In compliance of the judgment and order dated 10.04.2008, the respondent No.1 was reinstated in service vide Office Memorandum dated 16.01.2009 and the petitioners herein initiated disciplinary proceedings afresh from the state of submission of reply by the respondent No.1.
- (7) Challenging the order dated 16.01.2009, the respondent No.1 filed Claim Petition No. 931 of 2009 and the Tribunal while quashing the order dated 16.01.2009 allowed the claim petition vide order dated 31.12.2009. Being aggrieved, the State approached this Court by filing Writ Petition No. 554 (SB) of 2010 which came to be allowed vide judgment and order dated 04.05.2010 and quashed the order passed by the Tribunal. It was also directed the petitioners to conclude the inquiry within four months from the date of passing of the order.
- (8) After conclusion of inquiry and after obtaining necessary permission from the U.P. Public Services Commission, the Disciplinary Authority dismissed the respondent No.1 vide order dated 05.02.2013. The respondent No.1 assailed the dismissal order dated 05.02.2013 before the Public Services

Tribunal by filing Claim Petition No. 467 of 2023 which was allowed vide impugned judgment and order.

- (9) The learned Tribunal while adjudicating upon the claim has *inter alia* gone into the ground of limitation within which the enquiry was to be concluded. A finding has been returned by the Tribunal to the effect that there was a failure on the part of disciplinary authority to conclude the enquiry proceedings as per the mandate of law. The learned Tribunal has also taken into account other aspects impinging upon the procedural requirements. In the totality of circumstances, the Tribunal has proceeded to allow the claim petition on the cumulative grounds made out. The State, feeling aggrieved against the impugned judgment/order, has come up in the present writ petition.
- (10) Before going into the other aspects of the matter, we took up the findings recorded by the Tribunal on the aspect of limitation within which the disciplinary proceeding ought to have been concluded.
- (11) Learned counsel for the State while arguing the matter has placed reliance upon the Full Bench Judgment of this Court rendered in ***Service Single No.7179 of 2009 (Abhishek Prabhakar Awasthi S/o Sri Ram Shanker Awasthi Vs. The New India Assurance Company Ltd. and others)*** wherein the Full Bench having framed the two questions has answered the same in paragraph 19 of the judgment and the same for ready reference is extracted below:-

"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."

- (12) It is evident from the principles embodied in the aforesaid Full Bench judgment that the liberty was available to the State for making an application in the earlier or present proceedings before the Tribunal which admittedly has not been availed of,

by the State. There is equally no explanation in the written statement filed by the State before the Tribunal justifying the delay and the stand cannot be improved at this stage in the present proceedings. Once the State Government has failed to take aid of the principles embodied in the Full Bench judgement, it would be unjust and too in cumbersome for the respondent to keep struggling against the legal department of the State endlessly. There has to be an end to litigation. The Full Bench judgment has held that the Court before which the proceedings are taken up subsequently or where the time schedule was prescribed has an inherent jurisdiction to extend the period of limitation prescribed for conclusion of enquiry but no such effort in the present case was made by the State.

- (13) We equally note that the allegations against the delinquent employee i.e. respondent, even if grave, were open to be probed by praying extension of time which the State has failed to do. After retirement even the financial issues of remote part become irrelevant.
- (14) In the totality of circumstances and looking to the reasons recorded by the Tribunal as a whole, this Court is not satisfied that a case for interference under Article 226 of the Constitution of India is made out.
- (15) The writ petition bereft of any merit is accordingly, **dismissed**.

[Brij Raj Singh, J.] [Attau Rahman Masoodi, J.]

Order Date :- 4.3.2024
Sanjay