

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:6232-DB

Reserved

Court No. - 1

Case :- WRIT - A No. - 13538 of 2018

Petitioner :- Dharmendra Mishra

Respondent :- U.P. State Public Services Tribunal And Ors.

Counsel for Petitioner :- Rajendra Prasad Shukla, Rakesh Kumar
Agarwal, Saksham Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

(Per Om Prakash Shukla, J.)

(1) The instant writ petition under Article 226 of the Constitution of India has been filed by the petitioner, **Dharmendra Mishra**, assailing the judgment/order dated 20.03.2018 passed by the State Public Services Tribunal, Lucknow (hereinafter referred to as “**the Tribunal**”), whereby the claim petition No. 137 of 2016 filed by the petitioner against the order of punishment/dismissal dated 12.05.2015 and appellate order dated 30.11.2015, has been dismissed.

(2) The brief facts of the case are that in the year 2005, the petitioner was posted as Constable in 32nd Battalion, P.A.C., Lucknow. On 15.05.2015, he had gone to his home after getting the Earned Leave of fifteen days sanctioned i.e. till 01.06.2005, however, he came back on his duty on 04.06.2005 instead of 01.06.2005. Thereafter, on 25.06.2005 again, he had gone to his home after getting the Earned Leave of twenty days sanctioned i.e. till 25.06.2005, however, he did not report for

duty on 25.06.2005. On account of the absence from duty, he was placed under suspension vide order dated 14.02.2006 and an inquiry was instituted against him. A charge-sheet was issued against him, however, it was alleged by the petitioner that the said charge-sheet was not served upon him. In the absence of reply to the charge-sheet, the Inquiry Officer had conducted the inquiry *ex parte and* submitted its *ex parte* inquiry report dated 20.11.2007 to the disciplinary authority. On receipt of the said inquiry report dated 20.11.2007, the disciplinary authority dismissed the petitioner from service vide order dated 24.03.2008.

- (3) Aggrieved by the aforesaid order of dismissal dated 24.03.2008, the petitioner had preferred an appeal under Rule 20 of the U.P. Police Officers Subordinate Rank (Punishment & Appeal) Rules, 1991 (hereinafter referred to as '**Rules, 1991**'), which was rejected vide order dated 08.08.2008. Against the order of dismissal dated 24.03.2008 and appellate order dated 08.08.2008, the petitioner had preferred revision, which too was rejected vide order dated 20.12.2012.
- (4) The petitioner, thereafter, has challenged the order of dismissal dated 24.03.2008, appellate order dated 08.08.2008 and revisional order dated 20.12.2012, before the Tribunal by instituting Claim Petition No. 129 of 2013. It is the case of the petitioner before the Tribunal that since all of a sudden, he became mentally ill and was admitted in Mental Hospital,

Rajendra Institute of Medical Science, Ranchi, w.e.f. 20.06.2005 to 23.07.2008, he could not join his services on the said date and also did not participate in the inquiry and the punishment of dismissal was passed in utter violation of natural justice as no charge-sheet had ever been served upon him nor any opportunity of hearing was provided to him. The learned Tribunal, after hearing the parties and examining the record, allowed the claim petition vide judgment/order dated 23.04.2014. The operative portion of the judgment/order dated 23.04.2014 reads as under :-

*“The claim petition succeeds. The impugned order dated 24.03.2008 (Annexure no.1), appellate order dated 08.08.2008 (Annexure no.2), revisional order dated 20.12.2012 (Annexure no.3) and the order dated 28.01.2013 (Annexure no.4) are quashed. The opposite parties are given liberty to process afresh if they so desire and if the decision to proceed fresh is taken within two month then the inquiry shall be started from the stage of issuing of fresh charge-sheet and the Inquiry Officer shall conduct the inquiry in accordance with procedure prescribed in Appendix-I of Rule 14 (1) of U.P. Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991. **The whole inquiry shall be concluded expeditiously preferably within six months. The petitioner shall be under obligation to co-operate in the inquiry. Any time consumed by the petitioner shall be excluded from the period prescribed by this Tribunal. The petitioner shall be reinstated for the purpose of inquiry only and will be kept under suspension and shall be paid subsistence allowance.** The consequential service benefits shall be subject to final outcome of the inquiry. If no decision is taken within two month to proceed afresh then the consequential service benefits shall be released in favour of petitioner which was*

withheld on account of the punishment order.”

- (5) The aforesaid judgment/order dated 23.04.2014 was served upon the department by the petitioner on 08.05.2014. Pursuant to the aforesaid judgment/order dated 23.04.2014, the petitioner was reinstated in service, however, he was kept under suspension and an inquiry was instituted against petitioner vide order dated 21.08.2014. A charge-sheet dated 15.09.2014 was issued upon the petitioner requiring him to submit his reply by 22.09.2014. On receipt of the charge-sheet dated 15.09.2014, the petitioner, vide letter dated 22.09.2014, had sought ten days additional period for submitting reply and also for supplying copy of the certain documents. In response to the letter dated 23.09.2014, the Inquiry Officer had accorded ten days further time to file reply to the aforesaid charge-sheet and also supplied the required documents to the petitioner. Subsequently, the petitioner had again sought 10 days further time for filing reply to the charge-sheet, which was accorded by the Inquiry Officer on 03.10.2014. Thereafter, the petitioner had submitted his reply to the charge-sheet on 09.10.2014. The Inquiry Officer, after examining the reply of the petitioner and adducing the evidence of the witnesses, had submitted its report dated 13.01.2015 to the disciplinary authority, holding guilty of unauthorized absence of the petitioner from duty w.e.f. 01.06.2005 to 04.06.2005 and 25.06.2005 to 24.03.2008.

- (6) The disciplinary authority, on receipt of the aforesaid inquiry report dated 13.01.2015, had issued show cause notice to the petitioner along with the inquiry report dated 13.01.2015, requiring him to submit his reply. The petitioner, thereafter, vide letter dated 03.02.2015, had sought 15 days further time for submitting his reply, which was accorded him. Thereafter, the petitioner had submitted his reply dated 12.02.2015 to the show cause notice. The disciplinary authority, after examining the inquiry report dated 13.01.2015 and the reply of the petitioner dated 12.02.2015 as well as record available before him, had passed the punishment order dated 12.05.2015, dismissing the petitioner from service. Aggrieved by this order of dismissal dated 12.05.2015, the petitioner had filed an appeal, which was dismissed vide order dated 30.11.2015.
- (7) Feeling aggrieved, the petitioner had preferred Claim Petition No. 137 of 2016 before the Tribunal. The learned Tribunal, after hearing the parties and examining the record, dismissed the claim petition vide judgment/order dated 20.03.2018. It is this judgment/order dated 20.03.2018 as well as dismissal order dated 12.05.2015 and appellate order dated 30.11.2015, which have been assailed in the instant writ petition.
- (8) Heard learned Counsel for the petitioner and learned Standing Counsel and gone through the record available before this Court.

- (9) Learned counsel for the petitioner has strenuously argued that in view of the mandate of the previous order of the Tribunal dated 23.04.2014 (supra), the Disciplinary Authority was duty bound to decide the matter within six months, but the Disciplinary Authority had failed to do so. According to the learned counsel, the order passed by the Disciplinary Authority on 12.05.2015 dismissing the petitioner from service is a nullity in the eyes of law, for the stipulated period of time, as provided for by the Tribunal, having expired and no extension having been sought nor granted by the Tribunal.
- (10) The learned Counsel for the petitioner has submitted that the Courts and Tribunals have inherent powers to prescribe time limits to conduct proceedings and any such prescription remains binding on the authority conducting the proceedings. According to the learned counsel, if such directions are not properly and punctually complied with, the proceedings would come to an end with the expiry of the time fixed by the Court or the Tribunal. Thus, learned counsel has contended that the view taken by the learned Tribunal remains unjustified and calls for interference. In this regard, he has placed reliance upon the decision of Full Bench in **Abhishek Prabhakar Awasthi Vs. The New India Assurance Company Limited and others:** 2013 SCC OnLine All 14267.

- (11) Per contra, learned Standing Counsel has submitted that though in the earlier proceedings when order of dismissal dated 24.03.2008 was set-aside on the ground of violation of principles of natural justice, time period was given within which the disciplinary authority was supposed to complete the enquiry, which they could not for the reason of non-cooperation of the petitioner. According to the learned Standing Counsel, inquiry has not been concluded within the prescribed time because the petitioner had consumed twice time for filing reply to the charge-sheet and further has sought once time by the petitioner for filing reply to the show cause notice and the petitioner had not co-operated with the inquiry. According to learned Counsel, not concluding the inquiry within the prescribed time would not be a ground for setting aside impugned order of dismissal. Moreso, learned Tribunal, in earlier proceeding while setting-aside the order of dismissal, specifically provided that any time consumed by the petitioner shall be excluded from the period prescribed by this Tribunal. In this backdrop, he has submitted that if the time consumed by the petitioner for filing reply to the charge-sheet and for filing reply to the show-cause notice be counted, then, the enquiry proceedings can safely be said to be concluded within the prescribed time. Thus, the learned Tribunal has rightly dismissed the claim petition vide impugned judgment and the instant writ petition is liable to be dismissed.

(12) Having given thoughtful consideration to the rival submissions and having examined the record available before this Court, it is required to be noted herein that in the case of **Abhishek Prabhakar Awasthi Vs. New India Insurance Company Ltd. and Ors.** (supra), the Full Bench of this Court has held as under :-

"18. These judgments of the Supreme Court consequently recognize that the delay in concluding a departmental enquiry would not ipso facto vitiate the proceedings or render it invalid or non est. The Court has to take into consideration and balance all the relevant factors. The Court must consider in that balance the need for preserving the sanctity of the administration. On the other hand, fairness towards the delinquent employee requires that disciplinary proceedings should be concluded expeditiously. Hence, the nature of the charge, its complexity and the reasons for that delay are all relevant considerations which have to be borne in mind. Where the court has stipulated a period of time within which an enquiry has to be concluded, the direction of the Court, particularly in the form of a mandamus, has to be duly observed. It would not be open to the employer to willfully disregard the fixation of a time limit as a matter of no consequence. However, the fixation of a period within which a disciplinary enquiry has to be concluded, in an order of the Court, does not deprive the court of its jurisdiction to extend time in an appropriate case having due regard to all the facts and circumstances which have been noted above. Whether the time should be extended on a consideration of the relevant circumstances is for the court to determine.

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) When considered the issue involved in the instant writ petition on the touchstone of the aforesaid Full Bench decision, we find that no doubt, the disciplinary proceedings against the petitioner could not be completed within the period of six months

prescribed by the learned Tribunal vide judgment/order dated 23.04.2014 in earlier proceeding. However, from perusal of the order of dismissal dated 12.05.2015 reveals that the disciplinary authority, after examining the record available before it, had narrated the reasons for not concluding the inquiry within the prescribed period. It is stated in the impugned order of dismissal itself that though the learned Tribunal in earlier proceeding, in addition to other direction, also directed the petitioner to co-operate in the inquiry and excluded any time consumed by the petitioner from the period prescribed by the Tribunal, however, even then the petitioner had not co-operated in the inquiry inasmuch as the petitioner had sought twice time to file reply to the counter affidavit and sought once time to file reply to the show cause notice and as such, the inquiry proceedings could not be completed within the prescribed period. In this backdrop, learned Tribunal has returned to a finding that the delay in concluding the inquiry proceedings had occurred due to the petitioner as well as due to the witnesses of the defence, which were produced before the inquiry officer belatedly.

- (14) At this juncture, it would be apt to mention that in **Union of India and others Vs. Sharvan Kumar** : 2022 LiveLaw (SC) 595, the Apex Court has held as under :-

“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 inheres 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.”

(emphasis supplied)

- (15) Keeping in mind the aforesaid legal proposition and having regard to the facts and circumstances of the case, what we find is that delay in concluding the inquiry proceedings in pursuance of the earlier order passed by the learned Tribunal was on account of the petitioner and the delay in conclusion of the inquiry proceedings have satisfactorily been explained by the respondent.
- (16) For the aforesaid reasons, we are of the view that the learned Tribunal has rightly dismissed the claim petition filed by the petitioner and there is no error in the impugned judgment/order.
- (17) The writ petition lacks merit and is, accordingly, **dismissed**. However, there shall be no order as to costs.

(Om Prakash Shukla, J.) (Attai Rahman Masoodi, J.)

Order Date :- 23rd January, 2024

Ajit/-