

Court No. - 17

Case :- WRIT - A No. - 6708 of 2023

Petitioner :- Hira Lal Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy. / Prin. Secy. Housing and Urban Planning Deptt. Lko.

Counsel for Petitioner :- Birendra Kumar Yadav, Satendra Jaiswal

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner, learned State Counsel for opposite parties.
2. Petition has been filed challenging initiation of disciplinary proceedings vide charge-sheet dated 11.07.2017 in view of fact that the same has not been concluded within the time prescribed by this Court. Further prayer for a direction to opposite parties for payment of all pensionary benefits has also been made.
3. It has been submitted that earlier petitioner had filed Writ-A 1809 of 2023 seeking pensionary benefits. The said petition was disposed of vide order dated 21.03.2023 with a direction to opposite parties for passing of final orders by the disciplinary authority within maximum period of two months from the date a certified copy of the order was produced before the said authority. It is submitted that thereafter a copy of the judgment and order was submitted before opposite parties by means of representation dated 24.03.2023 sent through speed post but despite the same, the inquiry proceedings are yet pending consideration.
4. Learned counsel therefore submits that petitioner's case is covered by judgment rendered by Full Bench of this Court in the case of **Abhishek Prabhakar Awasthi versus New India Assurance Company Ltd.** reported in **2014 (6) ADJ 641**.
5. Learned State Counsel on the basis of counter affidavit admits that such directions had been issued by this Court in the aforesaid writ petition but since the proposed punishment is pending approval by the Public Services Commission, no final decision could be taken with regard to petitioner although the disciplinary authority has already concluded the proceedings.
6. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that earlier petitioner had filed Writ-A No. 1809 of 2023

in which vide order dated 21.03.2023, the specific direction had been passed for final order to be passed by the disciplinary authority within a maximum period of two months from the date a certified copy of the order was produced before him. A certified copy was submitted before the concerned authority by means of representation dated 24.03.2023 sent through speed post on 25.03.2023.

7. There is also no averment by opposite parties that petitioner has failed to cooperate in the inquiry proceedings. On the contrary the order dated 21.03.2023 passed in earlier writ petition clearly indicates the fact that Inquiry Officer had submitted his report on 10.01.2019 whereafter a show cause notice was also issued to petitioner on 12.02.2019 and despite all formalities having been completed the inquiry was not concluded.

8. A perusal of the counter affidavit also indicates the fact that proceedings were initiated against petitioner by issuance of charge-sheet and during pendency of proceedings, petitioner superannuated on 31.01.2019 whereafter relevant orders under Article 351-A of the Civil Service Regulations were also issued on 01.03.2019 whereafter another inquiry was instituted the same provisions on 17.09.2020.

9. In the Full Bench decision in the case of **Abhishek Prabhakar Awasthi (supra)**, consequences of not adhering to the time frame indicated by this Court, have clearly been enunciated. The Full Bench decision has clearly adverted to the effect that in case, time frame as directed by this Court cannot be adhered to, the employer has to file an application seeking extension of time for conclusion of such inquiry proceedings. In paragraph 21 of the writ petition, it has been specifically averred that despite expiry of time frame for conclusion of the inquiry proceedings, no application for extension of time has been sought by opposite parties. The contents of paragraph 21 of the writ petition, have not been denied in the counter affidavit.

"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."

10. In view of aforesaid facts and particularly admission on part of opposite parties as indicated in the counter affidavit that final orders have not been passed even till today, this Court is of the considered opinion that the opposite parties cannot take benefit of their own wrong. Although, in the counter affidavit, it has been indicated that the matter has thereafter been referred to the Public Services Commission for its advice/opinion, but no date of any such letter has been indicated.

11. In view of aforesaid discussions, it is evident that continuation of inquiry proceedings against the petitioner is against the dictum of Full Bench of this Court in the case of **Abhishek Prabhakar Awasthi (supra)**.

12. Considering the facts and circumstances, the disciplinary inquiry initiated against petitioner vide charge-sheet dated 11.07.2017 is hereby declared null and void. Consequently, a writ in the nature of mandamus is issued commanding the opposite parties to ensure payment of post retiral benefits to petitioner within a period of two months from the date a certified copy of this order is produced before the concerned authority.

13. Resultantly, the petition succeeds and is **allowed**. Parties to bear their own cost.

Order Date :- 21.2.2024/Satish