

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.302 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 4913 of 2001

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1. The Bihar School Examination Board, Patna, through its Chairman.
 2. The Administrator, Bihar School Examination Board, Patna.
 3. The Secretary, Bihar School Examination Board, Patna.
 4. The Additional Secretary, Bihar School Examination Board, Patna.

.... Respondents-Appellant/s

Versus

1. The State of Bihar.
2. Prabhu Nath Tiwary, S/o Late Guru Prasad Tiwary, Resident of Village - Sawanaha, P.S. - Phulwaria, P.O. Bathua Bazar, District - Gopalganj.

Respondent-Respondent.

.... Petitioner-Respondent

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Appearance :

For the Appellants : Mr. Ajay, Advocate

For the Respondent No.2 : Mr. Y. V. Giri, Senior Advocate
Mr. Nikhil Kr. Agrawal, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 08-08-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 28th of July, 2015 whereby, the order of suspension issued by the Additional Secretary, Bihar School Examination Board, Patna (hereinafter referred to as 'the Board') dated 9th of January, 2001 and an order dated 11th of April, 2001 issued by the Administrator of the Board imposing punishment of dismissal from service were set aside.

2. The brief facts leading to the present Letters Patent



Appeal is that the respondent no.2 (for short, 'the petitioner') was charge-sheeted vide charge-sheet dated 15th of January, 2011 for the misconduct on two charges. The first charge was that he had allowed 23 examinees to appear in the Secondary Examination, 1990 without ensuring payment of examination fee. The second charge was that in the year 1992, he had allowed his daughter to appear in the examination illegality without her registration with the Board. After considering the reply, another show cause notice was served on 27th of February, 2001 and order of dismissal was passed on 11th of April, 2001. It is the said order which has been set aside by the learned Single Bench.

3. The learned Single Bench has declined the permission to the disciplinary authority to proceed afresh after finding that the punishment imposed suffers from procedural irregularities.

The Court held as under:-

“10. Normally, the matter would have been remanded back after quashing of the order of dismissal dated 11.04.2001 to the disciplinary authority to proceed afresh from the stage when charges were framed, but in view of the fact that the charge for which the petitioner was proceeded against in the year 2001 related to 1990 and because the petitioner has already attained the age of superannuation during the pendency of the writ application, coupled with the fact that there is no provision for taking disciplinary action after retirement of an employee of the Board, I am of the view that it would be inequitable and unjust to remand the matter back at this stage.”

4. Admittedly, after serving a charge-sheet, no

departmental proceedings were conducted. The second show cause notice was not served. Therefore, the order of punishment imposed violates the principles of natural justice as well as the procedure prescribed in the Bihar School Examination Board Regulations, 1964.

5. In the present Letters Patent Appeal, the argument of learned counsel for the appellants is that even if there were procedural irregularities in the conduct of the disciplinary proceedings, liberty should have been granted to the appellants to proceed against the delinquent. It is contended that the writ petition was filed when the petitioner was in service of the Board. Therefore, the rights of the parties to be examined on the day when the petitioner invoked the jurisdiction of the Court. It is contended that keeping in view the latin maxim actus curiae neminem gravabit, the pendency of the writ petition will not confer any cause to the petitioner to avoid continuation of the disciplinary proceedings.

6. On the other hand, Mr. Y. V. Giri, learned Senior Counsel appearing for the petitioner contended that fresh enquiry should not be held after long lapse of time. He relies upon the judgments of the Supreme Court reported as Union of India and others Versus M. B. Patnaik and others, (1981) 2 SCC 159; R. Parangusam Versus Chief Electrical Inspector and another, (1996) 10 SCC 55; and Canara Bank and others Versus Swapan Kumar Pani and another, (2006) 3 SCC 251. He also relies upon the Supreme Court judgment



reported as Ramesh Chandra Sankla and others Versus Vikram Cement and others, (2008) 14 SCC 58, that in exercise of writ jurisdiction of this Court, the Court not only acts as a court of law but also as a court of equity and that it is the duty of the Court to ensure that power of superintendence must advance the ends of justice and uproot injustice. It is, thus, contended that continuation of the proceedings at this stage in respect of misconduct of the year 1990 is highly prejudicial to the interest of the petitioner and should not be permitted to continue.

7. It is also argued that there was inordinate delay in issuing the charge-sheet; therefore, the charge-sheet should have been quashed by the learned Single Bench. The petitioner is entitled for quashing the charge-sheet in the present Letters Patent Appeal. Reliance is placed upon Supreme Court judgments reported as State of M.P. Versus Bani Singh and another, 1990 (Supp) SCC 738; and P. V. Mahadevan Versus Md., T. N. Housing Board, (2005) 6 SCC 636.

8. We have heard learned counsel for the parties and find that the order passed by the learned Single Bench refusing to grant liberty to the appellants to continue with the disciplinary proceedings cannot be sustained.

9. Firstly, we shall take up the argument raised by Mr. Giri, learned Senior Counsel appearing for the petitioner, that the charge-sheet should have been quashed by the learned Single Bench



and that the petitioner is entitled to such relief in the present Letters Patent Appeal. The fact is that the learned Single Bench has not quashed the charge-sheet in the order under appeal. In fact, there was no prayer for quashing of the charge-sheet in the writ application as well. Once the particular relief was not claimed or granted, the petitioner as the respondent in the present Letters Patent Appeal cannot ask for such relief. A Respondent can support the judgment on one or the other ground, but the relief, which has not been granted by the learned Single Bench, cannot be granted to the respondent in the present Letters Patent Appeal.

10. The order of punishment was passed on 11th of April, 2001. The petitioner attained the age of superannuation in the year 2003. The writ petition was filed before this Court in the year 2001. The rights of the parties have to be examined on the day when the jurisdiction of the Court is invoked. Mere pendency of the writ application before this Court will not prejudice the rights of any parties in view of the doctrine of actus curiae neminem gravabit. Such is the view taken by the Constitution Bench of the Hon'ble Supreme Court reported as Sarah Mathew v. Institute of Cardio Vascular Diseases and others, (2014) 2 SCC 62. The Court held as under:-

“39. As we have already noted in reaching this conclusion, light can be drawn from legal maxims. Legal maxims are referred to in *Bharat Damodar Kale v. State of A.P.*, (2003) 8 SCC 559, *Japani Sahoo v. Chandra Sekhar Mohanty*, (2007) 7 SCC 394 and



Vanka Radhamanohari v. Vanka Venkata Reddy, (1993) 3 SCC 4. The object of the criminal law is to punish perpetrators of crime. This is in tune with the well-known legal maxim *nullum tempus aut locus occurrit regi*, which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in the Latin maxim *vigilantibus et non dormientibus, jura subveniunt*. Chapter XXXVI CrPC which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim. But, even certain offences such as Section 384 or 465 IPC, which have lesser punishment may have serious social consequences. The provision is, therefore, made for condonation of delay. Treating date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Code is supported by the legal maxim *actus curiae neminem gravabit* which means that the act of court shall prejudice no man. It bears repetition to state that the court's inaction in taking cognizance i.e. court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter XXXVI thus presents the interplay of these three legal maxims. The provisions of this Chapter, however, are not interpreted solely on the basis of these maxims. They only serve as guiding principles."

11. Therefore, the finding recorded by the learned Single Bench that since the petitioner has attained the age of superannuation during the pendency of the writ application will not result into abatement of disciplinary proceedings initiated against the petitioner when he was in service.

12. The judgments referred to by Mr. Giri that after long lapse of time, the matter cannot be remitted for fresh enquiry is

not tenable. In M. B. Patnaik and other (supra), the Court found that suffering disciplinary proceedings for such a long time would be a mockery of justice if after the lapse of so many years, the enquiry commences on the same charges. Similar is a line of reasoning given in the other judgments referred to by Mr. Giri.

13. Whether long lapse of time should frustrate an enquiry proceedings has been examined by Hon'ble Supreme Court in Anant R. Kulkarni v. Y.P. Education Society and others, (2013) 6 SCC 515:

14. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is dehors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question must be carefully examined taking into consideration the gravity/magnitude of the charges involved therein. The court has to consider the seriousness and magnitude of the charges and while doing so the court must weigh all the facts, both for and against the delinquent officers and come to the conclusion which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration that the said proceedings are allowed to be terminated only on the ground of delay in their conclusion. (Vide *State of U.P. v. Brahm Datt*

Sharma, (1987) 2 SCC 179, State of M.P. v. Bani Singh, 1990 Supp SCC 738, State of Punjab v. Chaman Lal Goyal, (1995) 2 SCC 570, State of A.P. v. N. Radhakishan, (1998) 4 SCC 154, M.V. Bijlani v. Union of India (2006) 5 SCC 88, Union of India v. Kunisetty Satyanarayana, (2006) 12 SCC 28, Ministry of Defence v. Prabhash Chandra Mirdha, (2012) 11 SCC 565 and LIC v. A. Masilamani, (2013) 6 SCC 530.)

14. In another judgment reported as Secretary, Forest Department and others versus Abdur Rasul Chowdhury, (2009) 7 SCC 305, the Supreme Court held that the delay in concluding the domestic enquiry proceedings is not fatal to the proceedings. It was held as follows:-

“15. In the present case, while the delinquent employee was in service, the departmental enquiry proceedings had been instituted by the employer by issuing the charge memo and the proceedings could not be completed before the government servant retired from service on attaining the age of superannuation and in view of Rule 10(1) of the 1971 Rules, the employer can proceed with the departmental enquiry proceedings though the government servant has retired from service for imposing only punishment contemplated under the Rules.

16. The next issue is with regard to delay in concluding disciplinary proceedings. In our view the delay in concluding the domestic enquiry proceedings is not fatal to the proceedings. It depends on the facts and circumstances of each case. The unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary enquiry proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should be permitted to continue.

17. This Court in *Registrar, Coop. Societies v. Sachindra Nath Pandey, (1995) 3 SCC 134*, has explained the various

circumstances when the departmental proceedings can be directed to be closed, it is worthwhile to refer to the observation made by this Court in this regard: (SCC p. 135, para 5)

“5. The learned counsel for the appellant submits that in this case the first respondent adopted a course of total non-cooperation and procrastination and that in spite of repeated opportunities being given he did not respond or participate in the inquiry. The first respondent did not even care to file an explanation or reply to the memo of charges. In the circumstances, the authorities had no option but to hold that the charges are proved. Even after the report of the inquiry officer was submitted, a number of opportunities were given which he again failed to avail of. It is submitted that though the whole history of the case has been set out in the counter-affidavit filed in the High Court, the learned Judge did not notice any of those facts and yet allowed the writ petition on an untenable ground. It is further contended that according to Regulation 68 of the Cooperative Federal Authority (Business) Regulations, 1976, it was not obligatory upon the inquiry officer to record the evidence of the witnesses where the first respondent did neither submit a reply nor an explanation to the memo of charges. Though he was apprised of the inquiry, he did not care to attend in spite of repeated opportunities. In such a situation, he cannot complain of not recording the evidence of witnesses and other evidence....”

15. Though all departmental proceedings should be concluded within a reasonable time, but mere fact that the proceedings were pending for long time will not be a ground to not grant liberty to the Board to proceed against the delinquent when the allegation, *prima facie*, appears to be quite grave.

16. As a result thereof, the present Letters Patent Appeal is allowed. The order passed by the learned Single Bench as contained in paragraph-10 and the order imposing cost is set aside. It shall be open to the appellants to proceed with the departmental proceedings from the stage of serving of charge-memo in accordance with law. We hope that the appellants shall be able to conclude the disciplinary proceedings expeditiously without any further delay, preferably within a period of six months.

17. Since as a result of this order, the disciplinary proceedings are deemed to be pending against the petitioner, the petitioner shall be paid provisional pension not exceeding the amount of pension after withholding gratuity and other retiral dues in accordance with the Regulations.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

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