Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 113 of 2018 Date of Decision: 16.11.2020

Dr. Prasanna Kumar Agarwal Vs. State Bank of India & 5 Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K.N. Choudhury, Sr. Adv. with
Mr. R. Dubey, Adv.

For the Respondent(s) : Mr. K. Khan, Sr. Adv. with
Mr. S.K. Hassan, Adv.

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HIGH COURT OF MEGHALAYA

i) Whether approved for reporting in Law journals etc.: No

ii) Whether approved for publication in press: No

1. The instant writ application is before this Court assailing the impugned order dated 01.02.2011 whereby penalty of reduction of lower stage in the time scale of pay for the period of one year coupled with the withholding of increments of pay were imposed upon the petitioner. The petitioner's main prayer in this proceeding is for reconsidering the quantum of punishment in terms of judgment and order dated 19.02.2010 passed by the Gauhati High Court in W.A No. 371/2007, which the petitioner alleges was not done and therefore, in violation of the said order apart from being stigmatic.

2. Heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. R. Dubey, learned counsel for the petitioner and Mr. K. Khan, learned senior counsel assisted by Mr. S.K. Hassan, learned counsel for the respondent.

3. Mr. K. N. Choudhury, learned senior counsel, at the outset has submitted that the petitioner is constrained to approach this Court again in view of the illegal and arbitrary action of the respondents, in failing to reconsider the quantum of punishment to be imposed on the petitioner in terms of the directions issued in the judgment and order dated 19.02.2010 passed in W.A No. 371/2007 and instead in a most arbitrary and perfunctory manner imposed a major penalty on the petitioner vide the impugned order. Learned senior counsel submits that the petitioner who was working as a Medical Officer of the respondent bank was suspended on 17.11.1989, and after his suspension was revoked in the year 2001 was allowed to resume his duty on 07.06.2001 pursuant to an order dated 01.06.2001 passed in W.P(C) No. 261 (SH) 2000. Learned counsel submits that by the judgment and order dated 19.02.2010 passed in the above noted W.A No. 371/2007, the Division Bench had set aside the impugned punishment and had remanded the matter back to the Disciplinary Authority to take a fresh decision, taking into account the fact that the exoneration of the writ petitioner at different stages of the proceedings was too vital a fact to ignore. He submits that even after these observations the respondent bank passed the impugned orders inflicting major penalty upon the writ petitioner. The learned senior counsel vide the written argument has formulated his arguments and challenge to the impugned orders dated 01.02.2011 and 12.09.2011 as follows:

a) Impugned orders are in violation of the rules of natural justice as contemplated in Rule 68(3) (iii) of the service rules.
b) Impugned orders are in violation of proviso to Rule 68(1) (ii) and 68A (8) (ii) as well as the directions of Division Bench in order dated 19.02.2010.
c) Charge of breach of order does not come within the purview of minor penalty, as no pecuniary loss had been caused to the bank but however, major penalty was inflicted upon the petitioner.
d) Certain documents namely PEX-20 and PER-701 relied upon the bank was not provided to the petitioner at the time of issuance of charge sheet but introduced at the stage of disciplinary proceedings, which was fatal to the case of the petitioner, as these documents would have

shown that there was no violation by the petitioner of any direction and as such, he is not liable for any punishment.

e) Period of suspension of almost 12 years was without justification and moreover without payment of proper subsistence allowance which amounted to infliction of major penalty on the petitioner.

f) Withholding of increment from July 1987 to November 1989, amounted to punishment already inflicted on the petitioner even before the initiation of disciplinary proceedings and passing of the suspension order dated 17.11.1989.

g) Arbitrary action of the respondent bank in treating the petitioner for the purpose of the disciplinary proceedings as belonging to Junior Management Grade Scale-I which is governed by the State Bank of India Officer Service Rules when the petitioner should have been considered to be under the Uniform Terms and Conditions of Service (UTCS) as yet served the bank as a Permanent Part Time Medical Officer.

4. Mr. K.N. Choudhury, learned counsel in his submissions has stressed the fact that the Division Bench vide order dated 19.02.2010 passed in W.A No. 371/2007 had only approved part of Charge No. 1 i.e., regarding violation of Rule 50(1) of the rules which pertains to breach of order of superior authority. He submits that even if assuming but not admitting that the petitioner had violated the guidelines, no pecuniary loss has been caused to the bank and that as per Rule 67, and even if any pecuniary loss was caused to the bank for not following directions, the petitioner would have been guilty of only a minor penalty under Rule 67(d). He further submits that though the charges that were levelled against the petitioner in the departmental proceedings were very serious in nature, none of them could be proved and even in the criminal case wherein allegations of serious defalcation of huge sums of money were made against the petitioner, all the allegations were found to be false. As such, he submits it was held by the Division Bench in order dated 19.02.2010, that the petitioner could only be charged for the allegation that as per PEX-2, he had breached the orders of his superior as described in PEX-20.

5. Apart from revisiting, the contentions raised before the Division Bench in the earlier proceedings, Mr. K.N. Choudhury has sought to advance an argument that the direction for which he has found to be in violation of, had been suppressed by the respondent bank. In this regard, he specifically refers to a certain letter No. PER/701 dated 28.09.1983, which he submits that the respondents had stated was in the custody of the CBI and was recorded as such, in an earlier order of the Division Bench dated 18.03.2002 in W.A No. 234 of 2001. Learned senior counsel submits that, had the letter dated 28.09.1983 been placed in the enquiry or before the Division Bench it would have held that there was no violation of the order, and consequently, document PEX-20 being neither an order or a guideline of the superior authority, non-compliance of the same would not be to a breach of Rule 50(1) of the rules, but rather the letter No. PER/701 dated 28.09.1983, which was suppressed by the bank, contained the directions for purchase and storage of medicines to the Medical Officer.

6. The learned senior counsel then, reverts to the fact that the period of suspension was unjustifiable and no consideration was given by the bank to this fact. He submits that this had very serious repercussions because by treating 12 (twelve) long years of suspension as not on duty, amounted to awarding the petitioner major punishment, which detrimentally affected his promotion prospects, salary, increments etc., during the period of suspension which in turn has had a drastic impact on his retirement benefits including pension. Learned senior counsel submits that the respondent bank ought to have taken into consideration, the petitioners exoneration from criminal charges while taking a decision on his suspension period, especially the fact that the petitioner is not even liable or guilty of any offence even for imposition of a minor penalty. In this backdrop he contends, the respondent bank acted arbitrarily in dealing with the petitioner, which was not only in violation of the service rules but also in defiance of the directions passed by the Division Bench in order dated 19.02.2010 in W.A. No. 371/2007.

7. Learned counsel further contended that the petitioner was entitled to 3(three) increments before his suspension and that the pay was revised twice before suspension, the benefits of which was not given to him. He submits

that the respondent bank had caused huge financial loss to the petitioner and had even erred in calculating the subsistence allowance and other allowances payable to the petitioner, and in fact even the benefit to which the petitioner was entitled in terms of a fresh order dated 01.02.2011, has also not been given by the respondent bank.

8. Mr. K. N. Choudhury, learned senior counsel while reiterating the submissions made in the earlier proceedings before this Court submits that in terms of Rule 68(1) (ii) of the rules as well as in terms of the order dated 19.02.2010, it was the Disciplinary Authority which was to decide the punishment and if at all the Disciplinary Authority was of the view that the petitioner needed to be awarded with a major penalty, then it was incumbent upon the Disciplinary Authority to recommend such major penalty to the Appointing Authority who was to finally decide the punishment. Learned counsel submits that in the instant case no such procedure was followed and there was no recommendation of the Disciplinary Authority to impose major penalty upon the petitioner and it was the Appointing Authority as seen in the impugned order dated 01.02.2011, which by itself decided to impose major penalty under Rule 67(f), without affording any opportunity of hearing to the petitioner.

9. On the question of delay and laches, learned senior counsel submits that the considerable delay in filing the present writ petition is mainly attributable to ill-health and in this context, has placed reliance on the medical records of the petitioner which are annexed at Annexure-7 to the writ petition. Learned senior counsel also submits that as the petitioner has alleged violation of his fundamental rights by the respondent bank in passing the impugned orders, the issue of delay laches should be considered in a liberal way in favour of substantive justice and also the fact that no third party rights are involved. In support of this contention, the learned senior counsel has relied upon the cases of *Assam Sanmilita Mahasangha vs. Union of India, (2015) 3 SCC 1* and *Basanti Prasad vs. Bihar School Examination Board, (2009) 6 SCC 791*.

10. Mr. K. Khan, learned senior counsel in reply to the contentions and arguments put forth by the petitioner submits that the petitioner had already

in the earlier proceedings challenged the punishment that was inflicted upon him. He submits that in view of the order dated 19.02.2010 passed in W.A. No. 371/2007, the quantum of punishment had been reconsidered and re-decided by order dated 01.02.2011 by the Appointing Authority and that the representation dated 03.05.2010 submitted by the petitioner to the respondent bank was duly considered while re-deciding the quantum of punishment. Learned senior counsel also submitted that the writ petitioner had preferred an appeal before the appellate authority and the same was rejected after consideration and finding that the punishment was awarded in compliance with the said order dated 19.02.2010 passed by the Division Bench. The fact that the writ petitioner had agitated all his grievances against the respondents which has culminated in W.A. No. 371/2007, which was disposed of accordingly in accordance with law was highlighted by the learned counsel. He submits that pursuant to the order dated 19.02.2010, the Appointing Authority vide order dated 01.02.2011 reconsidered and re-decided the quantum punishment and the same was reduced from two years to a one-year period of reduction of one stage lower in the time scale of pay.

11. Mr. K. Khan, learned senior counsel also submitted that the impugned order is not stigmatic and to support this argument has placed reliance on the case of *Pavanendra Narayan Verma vs. Sanjay Gandhi P.G.I of Medical Sciences and Ors. reported in AIR 2002 SC 23*. With regard to the issue that the petitioner had been acquitted of the criminal charges pertaining to the subject matter of the case, learned senior counsel asserts that the same is irrelevant, inasmuch as, an order of dismissal can be passed even if the petitioner had been acquitted of criminal charges, and in this context, has cited the judgment of *Southern Railway Officers Association & Ors. vs. The Union of India & Ors. reported in AIR 2010 SC 1241*, wherein he submits, it has been held that acquittal in a criminal case cannot be a ground for interfering with an order of punishment imposed by the Disciplinary Authority. Learned senior counsel then advances the point that it is settled law that the court is not a court of appeal to go into the question of imposition of punishment and that even if one of the charges is held to be proved and sufficient for imposition of penalty, the court would be loath to interfere with that part of the order. In support of this contention, learned counsel has cited

the case of *State of U.P & Ors. vs. Nand Kishore Shukla reported in AIR 1996 SC 1561=(1996) 3 SCC 750*. As such he submits, that the punishment order dated 22.10.2003 and subsequent order dated 01.02.2011, imposing the re-decided penalty was in full compliance with the order dated 19.02.2010 passed in W.A No. 371/2007, and the same being in conformity with the principles of natural justice and within the authority as provided in the State Bank of India Officers Service Rules 1992, no interference is called for. The learned senior counsel submits that the only limited issue surviving for adjudication in the present writ petition is with regard to the proportionality of punishment imposed by the respondents in compliance with order dated 19.02.2010 passed in W.A No. 371/2007.

12. Coming back to the challenge of the writ petitioner that the impugned order is stigmatic, learned counsel submits that this issue has become irrelevant and inconsequential, inasmuch as, the petitioner has since retired and has not offered himself as a prospective candidate for any further future employment wherein, the observations in the impugned order dated 01.02.2011, has caused his candidature to be rejected on the ground of the stigmatic charge. On the point raised by the petitioner, relating to the powers and functions of the Appointing Authority and the Disciplinary Authority, learned counsel submits that this issue has also become irrelevant, since the petitioner has accepted the position and had never raised this point in the earlier rounds of litigation, and further, that an appropriate recourse should have been by assailing the same before a higher forum. To entertain this plea at this stage, he submits, will amount to interfering with the order dated 19.02.2010 passed by the Division Bench, which has since attained finality. To bolster this argument, learned senior counsel refers to the said order dated 19.02.2010, and submits that the direction was given to the respondents at paragraphs- 23 and 25, specifically to re-decide the appropriate measure of penalty that should be imposed on the petitioner in the light of the findings recorded in the said order and other relevant facts and circumstances as indicated.

13. Learned senior counsel submits that it is not the case of the petitioner that the directions contained in paragraphs – 23 and 25 of the order dated

19.02.2010, have not been complied with which would have touched the merit of proportionality of punishment imposed by the order dated 01.11.2011, but rather the writ petitioner's case is that non-compliance resulted in the stigmatization of the writ petitioner. Learned counsel further contends that there are no averments made to enable this Court to discern as to whether there exist any factual disputes to warrant interference on the issue of proportionality of the punishment imposed by the order dated 01.11.2011, and the only limited issue that remains for any sort of adjudication is the power of judicial review on the question of procedure followed in imposing the re-decided penalty.

14. Learned senior counsel in continuation of his submissions has drawn the Court's attention to the relevant provisions for penalties as contained in the State Bank of India Officers Service Rules 1992, at Rule 67. For the sake of convenience, the relevant extract is quoted herein below:

> ***"67****- Without prejudice to any other provisions contained in these rules, any one or more of the following penalties may be imposed on an officer for an act of misconduct or for any other good and sufficient reason to be recorded in writing:*
>
> ***Minor penalties***
>
> *(e) Reduction to a lower stage in time-scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting the officer's pension.*
>
> ***Major Penalties***
>
> *(f) save as provided for in (e) above, reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the officer will earn increments to pay during the period of such reduction, and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;"*

Learned counsel submits that a plain reading of the above provisions shows that Rule 67 (e) and (f) have to be read into each other, together and also both the sub clauses come within the classification of minor penalties as well as major penalties. It is submitted that, when the initial impugned order dated 22.10.2003, was passed both clauses (e) and (f) were invoked and the reduction to one stage lower in the time scale of pay for a period of two years was imposed. It is also submitted that the rules prescribe a period of three years as upper limit but does not prescribe any number of years as a lower limit period, which therefore, in compliance with order dated 19.02.2010, the respondents on the basis of facts and circumstances had revisited and re-decided and reduced the quantum of punishment to one year by the impugned order. Learned counsel submits that there has been no violation of law nor any of the provisions of the State Bank of India Officers Service Rules 1992.

15. Learned counsel in conclusion submits that, apart from the delay and laches in preferring the instant writ petition, on merits also, no case has been made out to warrant any interference, nor invocation of the powers of judicial review on the issue of quantum of punishment as the same has been done following the procedure established by law.

16. Having heard the learned counsels, it is noted that the instant matter has had a long innings which had culminated in the order dated 19.02.2010, wherein the entire controversy and challenge had been adjudicated and the respondent bank directed to re-decide the appropriate measure of penalty to be imposed upon the petitioner. The respondent bank in compliance thereto vide order dated 01.02.2011, which is impugned herein, reduced the reduction of lower stage in the time-scale of pay to a period of one year instead of two as had been earlier imposed. The petitioner has now come against this order before this Court but after a long and considerable delay, to assail the revised penalty which he contends is stigmatic and passed in a mechanical manner.

17. As referred to above, the Division Bench in its order dated 19.02.2010, had gone into the various aspects of the matter including the findings of the enquiry and had conclusively ruled in para-19 as follows:

> *"19. While Rule 52(3)(iii) of the Rules may not have been violated by the appellant in view of the clear disclosure made to the Bank with regard to the appellant's relationship with Agarwal Pharmacy, it appears from the report of the Enquiry Officer that a note dated 22.3.85 (PEX-20) containing the prevailing practice of purchase of medicine for the Bank's Clinics was an admitted document of both sides. It also appears from the materials on record that under the norms in force laid down in the said document, the Medical Officer is only to prepare an indent of the medicine required by a Clinic, orders for which are to be placed by the Chief Regional Manager. Rule 50(1), therefore, will appear to have been clearly breached by the action of the appellant in preparing the PEX-2 document."*
>
> *[Emphasis Supplied]*

18. This Court sitting in the Single Bench cannot re-enter into the findings arrived at by the above noted order and even if the instant writ application is considered on merits notwithstanding the long delay of many years would be confined to the proportionality of punishment imposed in compliance with the order dated 19.02.2010, and even this too will be within an extremely narrow compass as to whether, this Court can interfere taking into account the scope of judicial review on the quantum of punishment.

19. On the question of delay and laches, the writ petitioner has sought to explain the delay in approaching this Court in para- 12 of the writ petition by maintaining that the delay was unintentional and was caused due to illness. A perusal of the medical certificates which has been annexed to support his contention which has staggered over the period from 2008 to 2017, however, do not adequately make out sufficient cause, inasmuch as, though a writ court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution undoubtedly, has a power to condone delay if the same is satisfactorily explained, will however not do so, if the person has slept over his rights before taking further legal action. The petitioner it is noted, had immediately on passing of the impugned order dated 01.02.2011, filed an appeal before the Appellate Authority which had rejected the same vide order dated 12.09.2011, but thereafter, did not take any steps to seek further legal remedy and it was only after approximately seven years that he came knocking on the doors of this Court again.

20. The doctrine of laches in Courts of Equity cannot be said to be a technical doctrine and has to be examined on the peculiar facts and circumstances of each case. Delay cannot be taken to be an absolute bar in such cases but the validity of the defence for the delay must be examined and if not satisfactorily explained a Court can decline to interfere and grant relief in exercise of its writ jurisdiction. As discussed, the rule of laches of delay cannot be given a rigid definition, and interference would be called upon only if compelling circumstances exist to warrant the same. In the case at hand, a factor that starkly stands out is the implied waiver, and acceptance of the penalty as imposed, by the petitioner, who chose to not pursue further remedy after the Appellate Authority had rejected his appeal by order dated 12.09.2011, and instead waited for seven long years before filing the instant writ application. Even, if delay is occasioned, the same should be within reasonable limit or time and justified as such. In the case of *Veerayee Ammal vs. Seeni Ammal reported in (2002) 1 SCC 134*, the Supreme Court at para-13 held as follows:

> ***"13**. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which*

the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

21. In this context, it would be also apposite to refer to another judgment which is extracted herein below on the aspect of delay and laches, in the case

of *Karnataka Power Corpn. Ltd. & Anr. vs. K. Thangappan & Anr.* reported in *(2006) 4 SCC 322*, wherein in para-6 it has been laid down as follows:

> ***"6**. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Chief Controller of Imports and Exports. Of course, the discretion has to be exercised judicially and reasonably."*

22. Though, the learned senior counsel for the petitioner has urged that the delay and laches should be considered in a liberal manner in favour of substantive justice and also the fact that no third party rights are involved, the waiver of the petitioner and his acquiescence to the penalty imposed after seven long years, after review of the quantum of punishment cannot be ignored by this Court. The judgments on which reliance has been placed also do not come to the aid of the petitioner and the explanation afforded cannot adequately justify the long delay.

23. For the reasons aforestated, after careful consideration the instant case does not merit further consideration on the ground of inordinate delay and laches on the part of the petitioner. Being situated thus, this Court declines to examine the matter on its other merits and as such, the writ petition is dismissed and disposed of.

24. In the facts and circumstances of the case, there shall be no order as to costs.

Judge

Meghalaya
16.11.2020
"D.Thabah-PS"