

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 2026/2020

1. Shri Prakash Rambhau Ranbaware
Aged 57 years, occ. Service,
R/o. Saraswati Nagar,
Tukaram Chhowk,
Gorakshan Road,
Akola – 444001. PETITIONER

// VERSUS //

1. The Deputy Commissioner
(Establishment), Amravati
Division, Amravati.
2. The Chief Executive Officer,
Zilla Parishad, Akola,
Dist. Akola.
3. The Executive Engineer
(Construction Department),
Zilla Parishad Akola,
Tah. & Dist. Akola. RESPONDENT(S)

Shri M.D. Lakhey, Advocate for the petitioner
Shri S.M. Ukey, AGP for respondent no. 1
Ms. H.N. Jaipurkar, Advocate for respondent nos. 2 and 3

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED : 07/12/2020

ORAL JUDGMENT : (PER:- SUNIL B. SHUKRE, J.)

1] Heard. **Rule.** Rule made returnable forthwith.

2] Heard finally with the consent of the parties present before the Court.

3] In this case, there is a delay caused in completion of the Departmental Inquiry initiated against the petitioner. As of now, delay appears to be of slightly more than 4 years from the date on which the petitioner was placed under suspension. He was suspended on 23.03.2016, while charge-sheet was issued to him on 06.03.2017. If the date of issuance of charge-sheet is to be considered as the initiation of the inquiry proceeding, the delay would be about 3 years and 9 months.

4] The charge-sheet refers to misconduct of the petitioner and this misconduct is about committing of financial irregularities by the petitioner and misappropriation of Government money. This charge is quite serious but that would certainly not give any licence to the Inquiry Officer to prolong and protract the Departmental Inquiry proceeding. In fact, there is a time limit prescribed under the applicable Departmental Inquiry Rules, 1991 (for short the "Rule of 1991"). Regulation 3.19 of the Rule of 1991 lays down that such Departmental Inquiry must be completed in any case within 6 months and if more time than 6 months is going to be taken, prior approval for continuation of the Departmental Inquiry be obtained from the Authorities stated in Schedule 8 of the Rule of 1991. In the present case, admittedly no prior approval has been obtained. But, question that arises is that whether, in the absence of

prior approval having been obtained, the charge-sheet and the inquiry proceedings be continued or not and if they cannot be continued, whether any interference by this Court in the nature of quashing of charge-sheet and inquiry proceedings would be necessary ?

5] According to Shri Lakhey, learned Counsel for the petitioner, answer to this question is provided not only in Regulation 3.19 of the Rule of 1991, but also in the laws laid down by the Hon'ble Apex Court in the cases of *Prem Nath Bali Vs. Registrar, High Court of Delhi and anr.* reported in *(2015) 16 SCC 415* and *State of A.P. Vs. N. Radhakrisan* reported in *(1998) 4 SCC 154*.

6] Shri Ukey, learned AGP submits that the Regulation on which reliance has been placed by the learned Counsel for the petitioner, does not indicate consequences in the nature of vitiating of the proceedings and their discontinuation are also not stated. He also submits that basically, the petitioner would have to show that the departmental proceedings are vitiated because of unexplained delay. He submits that no such demonstration of vitiating of the proceedings has been laid before this Court by the petitioner.

7] In the Regulation 3.19 of the Rule of 1991, nothing is stated about the consequences of breach of time frame stipulated therein. So, we have to go by the general law of the land and it is here that we can

seek guidance from the principles of law stated by the Hon'ble Supreme Court in the cases of **Prem Nath Bali** (cited supra) and **N. Radhakrisan** (cited supra).

8] Upon careful consideration of the laws laid down by the Hon'ble Supreme Court in the aforesaid cases, we are of the view that ultimately, what consequences an unexplained delay would lead to, is dependent upon facts and circumstances of each case. Basically, it is further seen, delinquent employee is required to demonstrate before the Court that delay is long standing, that delay has resulted in depriving the delinquent employee of his right of effectively defending himself thereby vitiating the proceedings of the inquiry and that the charge which such an employee faces in the inquiry is not so serious as would justify continuation of the inquiry for any unreasonably longer period of time.

9] In the present case, the delay is not so much as was there in the aforesaid cases of **Prem Nath Bali** (cited supra) and **N. Radhakrisan** (cited supra). The delay, if it is calculated from the serving of the charge-sheet, is of about 3 years and 9 months. Then, it is not the case that only the employer is responsible for the delay. There are some communications issued by the inquiry officer to the concerned presenting officer, copies of which have been placed on record by the petitioner. On going through those communications, one can see that there has been at-least few occasions when the delinquent officer i.e. the

petitioner was also not present before the Inquiry Officer. This fact, is of course, strongly denied by the petitioner.

10] Learned Counsel for the petitioner invites our attention to the assertions made by the petitioner in it's communication dated 02.08.2019 addressed to Assistant Commissioner i.e. Inquiry Officer. In the communication dated 02.08.2019, it is not stated that the statement made in the communication dated 04.06.2019 to the effect that even the delinquent employee has remained absent is incorrect. Any way, this is a disputed question of fact and at this juncture, we are unable to resolve it in the absence of any certified copy of Roznama having been filed on record by the petitioner. If one has to go by the communication dated 04.06.2019, and if one is to ignore the statement made therein regarding absence of the petitioner on some occasions in the inquiry, still, we find that the reasons for whatever delay which has occurred in the present case could not be solely attributed to the presenting officer. There are some witnesses of the Zilla Parishad's side and these witnesses have remained absent. Absence of such witnesses, if it is for any longer period of time, would certainly have to be interpreted in favour of the petitioner. But, for such conclusion to be drawn some material is required and that material is not present before us, nor is not available on record and, therefore, such a conclusion cannot be drawn. The petitioner could have produced on record some material on the basis of

which conclusion could have been drawn that this was a case of complete negligence on the part of the officers of the Zilla Parishad in securing presence of there own witnesses before it.

11] Then, most important aspect of the matter is about vitiating of the inquiry proceedings. Nothing has been brought before us from which it could be reasoned by us that the delay itself has resulted in vitiating of the inquiry proceedings. So much, so that now the petitioner as delinquent officer would not be in a position to effectively defend himself in the matter. That material is absent before us.

12] The charge which the petitioner is facing can also not be said to be minor. It relates to commission of financial irregularities and misappropriation of the Government money. In such a cases, some more time is required to be given to the authorities for completion of the inquiry, though it cannot be infinite.

13] In the result, we find that interest of justice would be subserved, if the completion of inquiry is made time bound.

14] Accordingly, the petition is **partly allowed**. The respondents are directed to complete the Departmental Inquiry proceedings, pending against the petitioner, in accordance with law, within a period of 3 months from the date of the appearance of the petitioner before Inquiry Officer.

15] The petitioner shall appear before the Inquiry Officer on **21.12.2020.**

16] If Departmental Inquiry is not concluded within time stipulated under this order, entire dues payable to the petitioner under Assured Career Progression Scheme of Zilla Parishad, Akola shall be paid to him within a period of 15 days from the date on which stipulated period expires and Departmental Inquiry is not completed.

17] Rule is made absolute in the above terms. No costs.

JUDGE

JUDGE