

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

**APO 64 OF 2022
with
WPO 2178 of 2022**

KOLKATA MUNICIPAL CORPORATION & ORS.
Vs.
DILIP KUMAR DAS & ORS.

Before: **The Hon’ble Justice Arijit Banerjee**
 &
The Hon’ble Justice Apurba Sinha Ray

For the Appellants : Mr. Ranajit Chatterjee. Adv.
Mr. Arijit Dey, Adv.

For the Respondent /Writ : Mr. Raghunath Chakraborty, Adv
Petitioner Ms. Amrita De, Adv

For the State : Ms.Tuli Sinha, Adv

CAV On : 27.09.2022

Judgment On : 25.11.2022

Apurba Sinha Ray, J. :-

1. The factual matrix of the case may be narrated as hereunder :

- i) The respondent no. 1 / writ petitioner was an employee of Kolkata Municipal Corporation.
- ii) On 24.02.2012 when the writ petitioner was posted in I and PR department as UDA, he was arrested in connection with a case having a political flavour.
- iii) The said case has no connection with his service.
- iv) The fact of arrest was duly communicated to the controlling officer of the writ petitioner on 15.3.2012.
- v) He was enlarged on bail on 10.05.2012.
- vi) As per office record the writ petitioner was present in his office on the day of occurrence of the alleged offence, that is, on 20.04.2001.
- vii) The allegation in the said criminal proceeding is that on 23.02.2012 at 20.05 hours, the officer in charge Pingla PS, Paschim Medinipur, received a written complaint from one Hena Das, wife of Shashank Das to the effect that on 20/4 /2001 at about 22.00 hours the writ petitioner and others armed with deadly weapons kidnapped her husband Sasanka Das after forcefully entering her house. After receiving the said complaint Pingla PS case number 25/12 dated 23/2/2012 under sections 147/ 148/ 149/ 448/

326/ 364/ 354/ 506 IPC and Section 9(b) Indian Explosive Act has been started against the writ petitioner and others.

viii) After being enlarged on bail the writ petitioner was allowed to join his service on 11.05.2012.

ix) Chargesheet under various Sections IPC was submitted on 31.12.2016.

x) The period during which petitioner was in custody was treated as period under suspension by the office of the writ petitioner, which is still pending.

xi) The writ petitioner was also promoted to the higher post during pendency of the Criminal proceeding, which is still pending.

xii) No disciplinary proceeding was started against the writ petitioner by his office though he was in judicial custody for more than 48 hours.

xiii) The writ petitioner superannuated from service on 31.07. 2021.

xiv) He was not granted full pensionary benefits and he was allowed to have two thirds of his pensionary benefits on the ground that by virtue of Regulation 43 of Corporation of Calcutta (Death Cum Retirement Benefit) Regulation 1982 (DCRB), the writ petitioner is entitled to 2/3rds of his pensionary benefit as criminal proceedings are still pending against him.

xv) The writ petitioner approached the learned Single Judge for release of his full pension.

2. After hearing both sides Learned Single Judge has come to the following conclusion:

“...The regulation which the employer has relied upon mentions about pendency of criminal proceedings involving moral turpitude; it is to be noted that there is no allegation by the employer with regard to moral turpitude of the petitioner. The criminal proceeding which is pending is in no way connected or related with the service of the petitioner. Accordingly provision of regulation 43 has to be interpreted in such a manner that the criminal proceeding referred to therein has to be restricted to his service and not any other criminal proceeding which is pending against the employee.

The offence in which the petitioner is implicated has no nexus with his service and no pecuniary loss has been caused to the employer.

The aforesaid issue has been decided by this Court in the matter of Anadi Prasad Mahato vs State of West Bengal reported in 2014(2) CHN(CAL.) 103 and in the matter of of Gunamoy Mahato versus state of West Bengal reported in 2015 SCC online Cal 7503

In view of the above, instant writ petition is disposed of by directing the Chief Manager, SR & AC being responding no. 5 herein to take steps for disbursing the balance arrear pension of the petitioner at the earliest but positively within a period of eight weeks from the date of communication of this order.

The writ petition is disposed of. ”

3. Arguments from the Bar in connection with this Appeal

(a) Learned Counsel appearing on behalf of the KMC/ appellant has vehemently submitted that the order under appeal is not tenable in law and the same is required to be set aside. According to him, if the said order is allowed to stand, many unscrupulous employees would unnecessarily get the retiral benefits from their employers though they are guilty of committing offences involving moral turpitude. Learned Counsel also pointed out that the provisions of Death-cum-Retirement Benefit Regulations, 1982 by Regulation 43 has clearly stated that the employee against whom criminal proceeding is pending at the time of his superannuation, can be given 2/ 3rd of his pensionary benefits during such pendency, and if he is found guilty, he will not be given any pension. The Learned Single Judge has failed to interpret the provisions in its proper perspective and as such the impugned order is required to be set aside in this appeal.

(b) In support of his contention, learned Counsel has relied on the following case laws: 2014 SCC online Cal 18566 (Abdul Bari Khan vs. State of West Bengal and (2010) 8 Supreme Court cases 573 (Sushil Kumar Singhal vs. Regional Manager, Punjab National Bank). An unreported decision in connection with Misc. Single Number 28344 of 2018 of Allahabad High Court and another unreported decision in connection with writ petition number 2260 of 2012 and CM number 4848 of 2012 passed by the High Court of Delhi in the case of Nawab Khan versus Government of NCT of Delhi and others were also referred to show what is meant by the

words 'moral turpitude'. Learned counsel has also pin-pointed that words, phrases and punctuations which are not in the statute, cannot be added to the provisions unless the same is absolutely necessary.

(c) Per Contra, Learned Counsel, appearing on behalf of the respondent/writ petitioner stated that the respondent was subjected to a politically motivated case which was registered as an FIR, after a prolonged delay, and the investigation officer has submitted chargesheet in connection with the offences which have no bearing on his service as an employee of the Kolkata Municipal Corporation. There is no immediate chance of conclusion of trial and the Learned Single Judge has very rightly observed that the writ petitioner is entitled to full pensionary benefits since the matter in connection with the criminal proceedings has no nexus with his service or service records.

(d) Learned Counsel has relied on several judgements in support of his contention and they are: 2015 SCC online Cal 7503 (Gunamay Mahato versus State of West Bengal and others), 2016 (4) CHN (CAL) 139 (Shiv Singh Meena versus Union of India), 1993 (1) CLJ 371 (Mrinal Kanti Chakraborty versus State of West Bengal), (2019) 18 Supreme Court Cases 135 (State Bank of India and others vs P.Soupramaniane), 2007(2) L.L.N. 852 (Amit Biswas vs. State of West Bengal), 2014(4) CHN 702 (Surajit Roy vs. Registrar General, High Court at Calcutta), 2022 Live Law (SC) 785 State of Rajasthan and others vs O.P. Gupta). Learned Counsel has also drawn the

attention of this Court to the provisions of Calcutta Municipal Corporation (Classification, Control and Appeal) Regulations 1985 in support of his contention that when criminal proceedings against the employee are not related to the official position of an employee, his pensionary benefit should not be curtailed. Moreover he has also referred to a decision reported in **2013(12) Supreme Court Cases 210, State of Jharkhand & Ors. v. Jitendra Kumar Srivastava and Anr.** to the effect that 'law' does not include executive instructions, orders, circulars etc. In this regard, he argued that Calcutta Corporation Services (Classification, Control and Appeal) Regulations, 1985 is not 'law' in view of the above decision and as such, there is no reason for the appellant not to grant entire pensionary benefits to the respondent.

Decision with reasons

4. It is well settled that law is dynamic and not static. Different kinds of situation may arise in our daily lives but law has to deal with them in such a manner that justice can be done to each of the concerned persons. In our constitutional era, two words, such as, 'reasonableness' and 'fairness' have become significantly important. It is trite that an action to become 'fair' must be 'reasonable' one or, in other way round, a 'reasonable action' is more likely to be 'fair' in the realm of law.

5. In this case we have to go back to the history of this case to ascertain whether the impugned action of the appellant is reasonable and fair so far as the issue of the present writ petitioner/respondent No. 1 is concerned. It is alleged that one FIR was lodged on 23.12.2012 alleging that the incident occurred on 20.04.2001 at about 22.00 hours. From the charge sheet the reasons for such significantly delayed FIR do not appear. It further transpires that the writ petitioner had to undergo custodial detention from 23.02.2012 to 09.05.2012 and charge sheet in connection with Pingla PS Case No. 25 of 2012 dated 23.02.2012 under Sections 147/ 148/ 149/ 448/ 326/ 364/ 354/ 506 IPC and 9(b) Indian Explosive Act was submitted on 31.12.2016 i.e. more than four and half years from registering the case. The trial is not yet complete and no one can say with any certainty as to when the trial will reach its logical conclusion.

6. It is needless to mention that the fundamental rights of a citizen include his right to get justice speedily or, in other words, right to speedy trial has become a fundamental right in view of penumbra theory of law which has its origin in the American Judicial system and adopted by our Hon'ble Apex Court in several judicial decisions with approval.

7. If a person has failed to get justice speedily not for his faults, then, the State cannot shrug off its responsibility under the constitutional law. I would say even at the cost of repetition that the offences alleged to have been committed on 20.04.2001 and for which the FIR was lodged on

23.02.2012 and, thereafter, charge sheet was submitted on 31.12.2016, but the case is still pending even in the year of 2022. Who shall take the responsibility of this prolonged protraction of the case? Is it proper to deny pensionary benefits to a retired employee on the ground that criminal proceeding is pending which does not relate to his past service and particularly when he has no role to protract the said criminal proceeding? In *Ranjan Dwivedi Vs. CBI Tr. Director General*, (delivered on 17.08.2012), the Hon'ble Supreme Court has reiterated the principles enunciated in *Kartar Singh Vs. State of Punjab*, reported in 1994 SCC (3) 569 as hereunder:

“the concept of speedy trial read into Article 21 is an essential part of the fundamental right and liberty granted and preserved under our constitution. The right to speedy trial begins with the actual resistance imposed by arrest and consequent incarceration and continues at all stages namely, the stage of investigation, enquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from time of commission of the offence till it consummates into a finality can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.” (para 86)

8. Needless to mention, expeditious disposal of disciplinary proceedings or criminal proceedings has become a settled principle of law in Indian legal system.

The Hon'ble High Court at Delhi in *Union of India and others versus Yateendra Singh Jafa*, judgement delivered on 2nd July 2012, has quoted the observation of the Hon'ble Supreme Court in connection with the case

law reported in 1998 SCR 693 [State of AP vs N.Radhakrishnan] wherein the Hon'ble Apex Court held that whether a disciplinary proceeding is to be quashed on the ground of delay is to be determined according to the facts and circumstances of each case and that the essence of the matter is that the Court has to take into consideration all the relevant factors, to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after the delay particularly when the delay is abnormal and there is no explanation for the delay.

9. The Hon'ble Supreme Court has also laid down in the said judgement that :

"It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated .Each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice

to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employees. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.”

10. The Hon’ble Supreme Court has also observed in *State of M.P versus Bani Singh*, 1990 (Supp) SCC 738 at page 740, that the subject matter of irregularities had allegedly taken place in 1975-77 and the department was aware of the said irregularities. The investigation was allegedly going on since then. The Apex Court held that it is unreasonable to think that the department would have taken more than 12 years to initiate the disciplinary proceedings. In para 4 of the said judgment, the Hon’ble Supreme Court observed as hereunder:

“The appeal against the order dated December 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975- 77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them, even in April 1977 there was

doubt about the involvement of the officer in the said irregularities and investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's order and accordingly we dismiss the appeal."

11. In A R Antulay versus R S Nayak and another, AIR 1992 SC 1701, the Hon'ble Apex Court's Constitution Bench in paragraph 54 of the judgment considered the propositions emerging from several decisions and observed that "ultimately, the Court has to balance and weigh several relevant factors- "balancing test" or "balancing process"- and determine in each case whether the right to speedy trial has been denied in a given case. It has also been held that ordinarily speaking, where the Court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges or the conviction, as the case may be, will be quashed. At the same time, it has been observed that that is not the only course open to the Court and that in a given case, the nature of the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice. In such a case, it has been observed, it is open to the Court to make such other appropriate order as it finds just and equitable in the circumstances of the case.

12. Similarly, in the case of *State of Punjab and others vs. Chaman Lal Goyal* (1995) 2 SCC 570, the delay was taken into consideration and the principles enunciated in the case of *AR Antulay* (supra) were reiterated and it was held that—

“It is trite to say that such disciplinary proceedings must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after the lapse of a considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegation of bias, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudices to the delinquent officer in defending himself, the enquiry has to be interdicted, wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the Court has to indulge in a process of balancing.” (para 9)

13. It is true that in our case no disciplinary proceeding has been started though the writ petitioner was detained in custody for more than 48 hours. On the contrary, the writ petitioner was promoted to the next higher post by the employer, whose intention is very much clear that as the criminal proceedings were not related to the service of the writ petitioner, his promotion was not to be withheld or denied. His period of detention in custody has been treated as his period of suspension. Therefore, in the facts and circumstances, the employers of the writ petitioner did not consider it fit

to start disciplinary proceeding against him but waited for the result of the criminal proceedings.

14. The purpose of expeditious disposal of any proceedings, either disciplinary or criminal, concerning any employee, is to protect the employee from any unnecessary harassment, mental agony, monetary loss etc. as already mentioned above. No person is guilty, either in the disciplinary or criminal proceeding, unless proven so. Unfortunately, though there is no disciplinary proceeding against the writ petitioner, he is being denied his full pensionary benefit for unending criminal proceedings which were instituted in 2012 for offences allegedly committed in the year 2001. The action of the State and the employer of the writ petitioner cannot be said to be 'fair' and 'reasonable'. The case law referred in **(2010) 8 SCC 573**, or unreported cases as referred to by the appellant above, are not applicable in this case as the writ petitioner has not yet been convicted of any serious crime or of moral turpitude.

15. In my considered view, as the State has failed to discharge its constitutional obligation in concluding the criminal proceedings against the writ petitioner/respondent No. 1 within a reasonable time frame, the pensionary benefits of the writ petitioner/respondent No. 1 should not be withheld for an indefinite period by the Corporation, which is regarded as an arm or agency or instrumentality of the state, merely on the ground that criminal proceeding is pending against the writ petitioner. As the case in our

hand shows, the criminal proceeding against the writ petitioner is pending for more than 10 years for offences which were allegedly committed 21 years ago. The case law reported in 2014 SCC Online Cal 18566 is in my view, not applicable in the facts and circumstances of this case.

16. It is true that the observation of the Learned Single Judge that the word 'criminal proceeding' in Regulation 43 of death-cum-retirement benefits Regulations 1982 of Corporation of Calcutta shall mean only criminal proceeding arising out of the services rendered by the concerned employee, is a debatable issue, since Regulations 44, 45 of the Regulations 1982 have separately laid down provisions for disciplinary proceedings and judicial proceedings initiated against an employee. The case law reported in (2008) 12 SCC 364 has rightly been referred to in this regard by the appellant.

17. However, to strike a balance between the conflicting interests of the principal parties in this appeal, it is apt to refer to Regulation 40 of the Regulations 1982 which provides:

"Withholding of pension in case of conviction and misconduct-

1) Future good conduct shall be an implied condition of every grant of pension. The pension sanctioning authority may, by order in writing, withhold or withdraw a pension or part thereof whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct...."

18. It gives ample power to the concerned authority to the effect that in certain circumstances the pension of a retired employee or part thereof may

be withheld or withdrawn, permanently or for a specified period, if, the pensioner is convicted of a serious crime or is found guilty of misconduct. Therefore, there is a provision in DCRB that on certain grounds the Authority can curtail, reduce, withhold or withdraw the amount of pension or part thereof, in respect of any retired employee who is on pension roll.

19. In my opinion, when the State has been given ample opportunity to conclude the trial within a reasonable time frame, but has failed to do so, the writ petitioner's pension should not be curtailed particularly when the said criminal proceedings are not related to the service rendered by the writ petitioner as an employee of KMC. The State got sufficient time to conclude the said criminal trial but in vain. However, considering the provisions under 40 of the Regulation 1982 by which the Authority has the power to withdraw or withhold the pension or part thereof, of a retired employee on the grounds, inter alia, of conviction of a serious crime, I direct the KMC authority to release all the admissible pensionary benefits to the writ petitioner/respondent No. 1 subject to the final decision in the criminal proceeding as aforesaid, treating the suspended period, as if the petitioner were on his earned leave, after obtaining an undertaking, supported by an affidavit-cum-indemnity bond, from the writ petitioner/respondent No. 1, that in case the writ petitioner is found guilty in the relevant criminal proceeding, he shall return the financial benefit without interest, which will become inadmissible to the writ petitioner on account of being found guilty of such offences under Regulation 40 and 43, within three months from an

appropriate order being passed by the Corporation in that regard, failing which the same shall be recovered from him as public debt. The order of the Learned Single Judge dated 15.07.2022 is modified to the above extent.

20. The Chief Manager, SR & AC having office at the Kolkata Municipal Corporation, 5, S.N. Banerjee Road, Kolkata – 700 013 is directed to comply with the above order within two months from the date of communication of this order.

21. The appeal is dismissed but without any order as to costs.

22. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)