

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 371 of 2012

With

IA No.: CAN 1 of 2022

Shri Narendra Kumar Sharma @ Upriti

Vs.

State of West Bengal & Ors.

For the petitioner : Mr. Saptangsu Basu, Ld. Sr. Advocate
Mr. Ujjal Ray
Mr. Arpa Chakraborty

For the State : Mr. Pantu Deb Roy, Ld. AGP
Mr. Subrata Guha Biswas

Heard on : June 28, 2023

Judgment on : June 28, 2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated August 31, 2012 passed in OA-597/2012 by the West Bengal Administrative Tribunal.
2. Affidavit in opposition filed in Court be taken on record.

3. Learned Advocate appearing for the writ petitioner submits that, the charges as against the writ petitioner are stale. He submits that, the charges related to a period of 1983 to 1996. The charge sheet was made available to the writ petitioner in 2012. The date of the charge sheet is January 19, 2012. The writ petitioner retired on July 31, 2012.
4. Learned Senior Advocate appearing for the writ petitioner relies upon *AIR 1990 SC 1308 (N.K. Soloman vs. Food Corporation of India and Another)*, *(1998) 1 Cal LJ 200 (Gour Narayan Barat vs. State of West Bengal & Ors.)*, *AIR 1925 Cal 87 (L.W. Middleton vs. Harry Playfair)*, *1990 (Supp) Supreme Court Cases 738 (State of Madhya Pradesh vs. Bani Singh and Another)* and *(2005) 6 Supreme Court Cases 636 (P.V. Mahadevan vs. Md, T.N. Housing Board)* in support of his contention that, in view of the delay not being explained, the entire disciplinary proceedings should be quashed.
5. Learned Advocate appearing for the State draws the attention of the Court to the contents of the affidavit-in-opposition. He submits that, the authorities received an anonymous complaint as against the writ petitioner in 1990 and that

vigilance proceedings were initiated then. Due to the transfer of various officials in the department and due to the writ petitioner taking time in the vigilance proceedings, the vigilance enquiry could not be completed and, therefore, there was the delay. He submits that the delay was adequately explained in the affidavit-in-opposition.

6. Learned Advocate appearing for the State submits that, the writ petitioner should be allowed to face the departmental proceedings on merits and that, it would be premature to quash the proceedings at this stage.
7. Learned Senior Advocate in reply submits that, the State authorities are now seeking to supplement the ground of delay through the affidavit-in-opposition. The State authorities should not be permitted to do so.
8. The writ petitioner before us was working as an Executive Engineer, Darjeeling Division, Public Health Engineering Directorate, Darjeeling when he received the charge sheet dated January 19, 2012.
9. In the charge sheet dated January 19, 2012, it was alleged as against the writ petitioner that, he was unable to give any

cogent explanation for a sum of Rs.1,63,609/- in respect of purchase of land in his own name and in name of his dependent. It was also alleged that, there was prima facie lack of integrity and, therefore, he was guilty of improper and unbecoming conduct of a public servant which was in violation of Rule 3(2) of the West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980.

10. The Supreme Court in *Bani Singh & Another (supra)* dealt with a departmental proceeding which was initiated with a delay of 12 years. In that case, no satisfactory explanation for the inordinate delay in issuing the charge sheet was given by the department. It was held in such factual matrix that it would be unfair to permit the departmental enquiry to proceed at that late stage. The departmental proceeding was quashed.
11. Again in *P.V. Mahadevan (supra)*, the Supreme Court dealt with a departmental proceeding which was initiated with an inordinate delay of 10 years. Again, no convincing explanation was given by the authorities with regard to the delay. In such circumstances, the Supreme Court held that to proceed

further with the departmental proceedings would be prejudicial to the delinquent. The charge memo issued as against the delinquent was quashed.

12. The Madhya Pradesh High Court in *N.K. Soloman (supra)* found the employer to be guilty of inexcusable and unexplained delay in not holding the departmental proceedings for 13 years on the alleged commission of misconduct. It noted a decision of the Supreme Court which indirectly supported the view taken by the High Court. The departmental proceeding therein was quashed.
13. In *L.W. Middleton (supra)*, our High Court held as follows:

“6. If a master on discovering that his servant has been guilty of misconduct which would justify a dismissal, yet elects to continue him in his service, he cannot at any subsequent time dismiss him on account of that which he has waived or condoned”
14. In *Gour Narayan Barat (supra)*, our High Court noted the well-settled principle of law that an employer cannot be allowed to proceed with the departmental proceedings which became stale.

15. Ordinarily a Court is slow to interfere with a show cause notice or a charge-sheet as no right of the delinquent had been infringed by the same. However, if a delinquent is in a position to establish that his rights have been violated by the Authority issuing the show cause notice or the charge-sheet then a writ petition would lie to redress such a situation. Courts have intervened at a charge-sheet stage when it has been established that the Disciplinary Authority assumed jurisdiction when none existed or when the charge-sheet was patently illegal or when the Disciplinary Authority was acting with a closed and prejudged mind rendering further proceedings as a ritual. Delay in initiating Departmental Proceeding has also been recognized as one of the grounds where a Writ Court can intervene in a given facts and circumstances of a case.
16. In the facts of the present case, the charge memo is dated January 19, 2012 in respect of allegations of misconduct for the period of 1983 to 1996. Even taking the last year of the period of the alleged misconduct, that is, 1996, a period of 16

years already elapsed. In the facts of the present case also, there is no cogent explanation for the delay.

17. In the affidavit-in-opposition, the department sought to rely upon initiation of vigilance proceedings of 1990. The department is yet to demonstrate that such vigilance proceedings ultimately culminated in the manner as claimed. Moreover, the vigilance proceedings itself took inordinately long time to conclude. The explanation of the delay in conclusion of the vigilance proceeding also is unacceptable. Transfer of officials and the alleged non-cooperation of the writ petitioner in the vigilance proceedings are cited as reasons for the delay. No particulars of the alleged non-cooperation by the writ petitioner is forthcoming in the affidavit-in-opposition. Particulars of transfer of officials are also conspicuously absent in the affidavit-in-opposition.
18. On a holistic reading of the affidavit-in-opposition, we are afraid, we are unable to subscribe to a view that the inordinate delay of 16 years in initiating the departmental proceedings stood adequately explained.

19. In the facts of the present case, we are of the view that, the departmental proceedings stand vitiated due to inordinate, inexcusable and unexplained delay of 16 years. We, therefore, set aside the impugned order of the learned Tribunal and quash the departmental proceedings initiated as against the writ petitioner. We direct that the writ petitioner be paid his retiral benefits within a period of four weeks from date.
20. With the aforesaid observations, **WP.ST 371 of 2012** along with all connected applications are disposed of without any order as to costs.

(Debangsu Basak,J.)

21. I Agree.

(Md. Shabbar Rashidi, J.)