



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

WRIT PETITION NO.7068 OF 2023

The State of Maharashtra,
through its Additional Chief Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai and others. **... Petitioners**

Versus

Chandrakant Keshaorao Borkar **... Respondent**

Shri M.K. Pathan, Assistant Government Pleader for Petitioners.

CORAM : DEVENDRA KUMAR UPADHYAYA, CJ., AND
A.S. CHANDURKAR, J.

DATE : 19th OCTOBER, 2023

PER COURT :

1. Heard the learned Assistant Government Pleader for the petitioner-State Authorities and perused the record available before us on this writ petition.

2. The petitioner-State Authorities by instituting this petition under Article 226 of the Constitution of India have assailed the judgment and order dated 29th June, 2022 passed by the Nagpur Bench of the Maharashtra Administrative Tribunal (for short, hereinafter referred to as 'the Tribunal'), whereby the Original

Application bearing No.755 of 2020 filed by the respondent has been allowed and the chargesheet/Inquiry No.34 of 2016 initiated against him has been quashed.

3. It has been vehemently argued by the learned Assistant Government Pleader that the judgment passed by the Tribunal, which is under challenge in this writ petition, is vitiated for the reason that though it is based on the law laid down by the Hon'ble Supreme Court in the case of ***Prem Nath Bali Versus Registrar, High Court of Delhi, AIR 2016 SC 101***, however, the principles laid down in the said judgment have not been appropriately appreciated by the Tribunal; rather the same have been misconstrued. The submission, in this regard, of the learned Assistant Government Pleader is, firstly, that the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 do not prescribe any time-limit for conclusion of the enquiry and, secondly, that in any case the enquiry was completed on 6th November, 2020, which fact was suppressed by the respondent before the Tribunal.

4. It has also been argued on behalf of the petitioners that every delay in conducting the enquiry will not vitiate the enquiry or make it void and since in this case the enquiry was completed on 6th November 2020, i.e. before the Tribunal pronounced the

judgment, the ground on which the Tribunal has quashed the disciplinary proceedings against the respondent was not available. It has also been urged by the learned Assistant Government Pleader that the decision of the Hon'ble Supreme Court in the case of ***Prem Nath Bali*** (supra) is an opinion and, therefore, the reliance placed by the Tribunal on the said decision is misconceived.

5. We have given our conscious consideration to the submissions made by the learned Assistant Government Pleader representing the petitioner-State Authorities.

6. The respondent was appointed on the post of Naib Tahsildar in the year 1990, whereafter he was promoted on the post of Tahsildar in the year 1997. He was promoted further on the post of Deputy Collector/Sub Divisional Officer in the year 2008 and on attaining the age of superannuation, he retired from service on 31st August, 2015.

7. On 28th August, 2015, a chargesheet levelling certain allegations against the respondent was drawn, which was served upon him only on the day he retired from service, i.e. on 31st August, 2015. The respondent submitted his reply to the chargesheet on 13th October 2015. However, the Enquiry Officer to conduct the enquiry was appointed almost after an year from

the day the respondent retired, i.e. on 30th July, 2016. Even the Presenting Officer to conduct the enquiry against the respondent on behalf of the State Authorities was appointed on 10th August, 2016.

8. When the enquiry was not completed, the respondent instituted the proceedings of Original Application No.755 of 2020 before the Tribunal with the prayer that on account of inordinate delay which has occurred at the instance of the petitioner-State Authorities in conducting the enquiry, the proceedings of the disciplinary enquiry are vitiated and hence the same are liable to be quashed. The Tribunal having considered the entire matter placed before it came to the conclusion, by passing the impugned judgment, that the enquiry being conducted, the respondent suffered from the vice of inordinate delay and hence the enquiry proceedings have been quashed.

9. The Tribunal while relying upon the judgment of the Hon'ble Supreme Court in the case of ***Prem Nath Bali*** (supra) has also returned a finding in the judgment under challenge in the instant writ petition that the charges against the respondent into which the departmental enquiry was being held, entail minor penalty. It has also been held by the Tribunal in the impugned

judgment that prolonging the enquiry proceedings for such a long period of about seven years, that too in relation to the charges entailing minor penalty, cannot be approved of and hence has quashed the proceedings against the respondent by passing the impugned judgment.

10. Learned Assistant Government Pleader has emphatically argued that the enquiry against the respondent was completed on 6th November, 2020 and the enquiry report was served on him on 22nd February, 2021, however, this fact was suppressed by the respondent before the Tribunal. He has thus stated that the enquiry having been completed on 6th November, 2020, i.e. much before the judgment was pronounced by the Tribunal on 29th June, 2022, was a relevant factor which the Tribunal has not taken into consideration while passing the impugned judgment.

11. The aforesaid submission made by the learned Assistant Government Pleader on behalf of the petitioner-State Authorities is completely misconceived. The completion of disciplinary proceedings does not mean preparation of enquiry report by the Enquiry Officer. It is not that in the instant case the departmental proceedings were completed on 6th November, 2020; rather it is the enquiry report which was prepared by the Enquiry Officer on 6th November, 2020, which

was served upon the respondent on 22nd February, 2021. The completion of departmental proceedings and submission of enquiry report by the Enquiry Officer are two different things and both appear to have been misunderstood by the learned Assistant Government Pleader as one.

12. It is also to be noticed that the chargesheet in this case was prepared only three days prior to the retirement of the respondent, which was served upon him on the day he retired. It is also noticeable that the charges against the respondent, as reflected from the chargesheet, entail only minor penalty in the event they are proved for the reason that the charges are not grave enough to attract any of the major penalties. It is true, that the Hon'ble Supreme Court in the case of ***State of A.P. Versus N. Radhakishan, (1998) 4 SCC 154***, has held that there are no predetermined principles to hold that the departmental proceedings are vitiated on account of delay in all situations, however as to whether the departmental proceedings are vitiated on account of delay has to be inferred on the basis of the facts of each case. So far as the facts of the instant case are concerned, which are not in dispute, the chargesheet contained minor charges, the chargesheet was prepared against the respondent only three days before his retirement, it was served upon him on

the day he retired and further, even time of one year was taken by the State Authorities to appoint the Enquiry Officer and the Presenting Officer.

13. Having regard to the aforesaid facts and submissions, dragging departmental proceedings in respect of minor allegations for a period of seven years after the Government servant retires, cannot be approved of. As already noticed above, the date on which the enquiry report was prepared and submitted, i.e. on 6th November, 2020, cannot be said to be the date of completion of the departmental proceedings. In this view, the submission made by the learned Assistant Government Pleader that the respondent had suppressed any material fact is not tenable. Even, till the pronouncement of the judgment by the Tribunal, final decision was not taken in the departmental proceedings drawn against the respondent.

14. The delay in conducting the enquiry which has occurred in this case has naturally caused sufferings to the respondent who retired way back on 31st August, 2015. As held by the Hon'ble Supreme Court in the case of ***Prem Nath Bali*** (supra), it is the duty of the employer to ensure that the departmental enquiry initiated against a delinquent employee is conducted within the shortest possible time by taking priority measures. Such

observations of the Hon'ble Supreme Court assume more significance in case the departmental proceedings are to be drawn against a retired employee, that too, for enquiring into the allegations which are not so grave rather are minor in nature.

15. For the aforesaid reasons, we do not find any good ground to interfere with the judgment passed by the Tribunal, which is under challenge in this writ petition.

16. The writ petition is, thus, hereby dismissed. However, there will be no order as to costs.

(A.S. CHANDURKAR, J.)

(CHIEF JUSTICE)