

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 2344 of 2023

Reserved On: 06.02.2023
Date of Decision: 09.02.2023

Navdeep Singh

... Petitioner(s)

Versus

State of Punjab and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. D.S.Patwalia, Senior Advocate
with Mr. Gaurav Rana, Advocate
for the petitioner(s).

Mr. D.K.Singal, Additional Advocate General,
Punjab.

Anil Kshetarpal, J.

1. Through this writ petition, filed under Article 226/227 of the Constitution of India, the petitioner prays for the following substantive reliefs:-

“(i) to issue an appropriate writ, order or direction including a writ in the nature of Certiorari quashing chargesheet dated 30.05.2022 (P-9) issued vide Memo No.WR-IRP1019/22/2022-3IP1/250 and chargesheet dated 30.05.2022 (P-10) issued vide IRP1019/23/2022-3IP1/251 by respondent no.1 whereby petitioner herein has been chargesheeted w.r.t. works executed in the year 2015-16 and the works qua which completion certificate stands duly issued, as the same is completely arbitrary

and wrong inasmuch as the respondents have failed to take into consideration the fact that the inspection/checking which has been made the basis for issuance of chargesheet is itself wrong, arbitrary and against the procedure and further the said inspection/checking has already been held to be wrong/unjustified by Chief Engineer Vigilance vide its letter/report dated 08.01.2020 (P-7).

(ii) Alternatively, it is prayed that this Hon'ble Court may be pleased to issue and an appropriate writ, order or direction quashing the order dated 30.06.2022/01.07.2022 (P-13B) whereby respondent no.2 has been appointed as inquiry officer and further issuing appropriate directions directing the respondents to appoint a new inquiry officer, as the current inquiry officer i.e. respondent no.2 is more than 75 years of age and is unable to carry out the proceedings in a proper manner and further directing the respondents to conduct the proceedings afresh, while affording an effective opportunity of hearing to the petitioner.

(iii) It is further prayed that this Hon'ble Court may be pleased to issue any other appropriate writ, order or direction directing the respondents to supply the requisite documents to the petitioner as in the absence of the same petitioner is unable to defend himself in a proper manner

and thereafter grant appropriate opportunity to petitioner to put forth his defence, while permitting him to lead requisite evidence as may be required in reference to the documents so repeatedly sought by the petitioner from respondent-Authorities, which admittedly, till date have not been supplied to the petitioner.

(iv) It is further prayed that this Hon'ble Court may be pleased to issue any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the peculiar facts and circumstances of the present case.”

2. Heard the learned senior counsel representing the petitioner at length and with his able assistance, perused the paper book.

3. Before analyzing the arguments of the learned senior counsel representing the petitioner, it is considered appropriate to note the relevant facts, in brief, in order to understand the controversy involved in the writ petitions.

4. The petitioner, who was, at the relevant time, working as a Sub Divisional Engineer (Civil), was deputed to the Punjab Health System Corporation (hereinafter referred to as “the PHSC”) as an Executive Engineer for a period of one year which was being extended from time to time. During the period of his deputation, the repair and renovation of the Girls Hostel-I and II at Government Rajindra Medical College, Patiala, was carried out in the year 2015-16. The petitioner claims that on completion of the work, the hostels were handed over to the Warden on 12.05.2016 and he

was repatriated to his parent department on 06.11.2018, and on the same day, he was promoted as an Executive Engineer. On 01.05.2019, the Punjab Health System Corporation forwarded a draft memorandum accompanied by the Statement of Article of Charges sought to be framed against the petitioner to the Principal Secretary, Water Resources, Mines and Geology. The petitioner filed his representation and the file was then being examined by the various authorities. He also claims that the then Special Secretary had recommended that the proposal to charge-sheet the petitioner be closed. However, the Principal Secretary did not agree with the above said proposal of the Special Secretary. Ultimately, the charge sheet was issued to the petitioner on 30.05.2022. The petitioner filed his reply to the charge-sheet. However, the department being dissatisfied with his reply, appointed the respondent No.2 as the Inquiry Officer in terms of Rule 8(2) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. Now, the proceedings are stated to be pending before the Inquiry Officer.

5. The learned senior counsel representing the petitioner contends that there is a delay of 7-1/2 years in issuance of the charge sheet, hence, in view of the law laid down in *State of A.P. v. N. Radhakishan (1998) 4 SCC 154* and *P.V.Mahadevan v. M.D., Tamil Nadu Housing Board (2005) 6 SCC 636* and *Ajit Singh v. The Food Corporation of India 1995(3) SCT 244*, such delay in issuance of the charge sheet is fatal and the petitioner has been seriously prejudiced. He further contends that the Inquiry Officer is nearly 78 years old and a very large number of similar inquiries are pending before him.

6. From the reading of the file, it is evident that the Executive Engineer (the petitioner) on completion of the repair and renovation work of

the Girls' Hostels submitted the final bill of the contractor on 23.03.2017. Thereafter, the measurement book was demanded by the head office and on receipt thereof, the physical verification was done on 16.06.2018 and 31.08.2018. It was reported that the details mentioned under the head of wood-work in the measurement book were different from the quality of work executed at site. On comparison, it was found that the wood-work actually performed at the spot is inferior in quality and lesser in quantity, though, the entries in the measurement book project otherwise. It was also seen that the old wooden doors, almirahs, windows, door frames etc. which already existed at the site at the commencement of the work have been mentioned as "installed new" in the measurement book. In fact, the old wooden doors, windows, cupboards etc. have only been painted. In view of the aforesaid position, a draft memorandum of charge sheet was sent by the PHSC to the Principal Secretary, Water Resources, Mines and Geology, on 01.05.2019. At this stage, it is evident that there is no unnecessary delay in the issuance of the charge sheet calling for intervention by this Court. After 01.05.2019, the matter remained pending on account of the representation of the petitioner and the file was being examined by the different authorities including the concerned Minister. The petitioner, though, has made the allegation that he is seriously prejudiced by the delay, however, has failed to substantiate the same.

7. It is evident that in *N. Radhakishan's case (supra)*, the Supreme Court was examining the appeal filed by the State of Andhra Pradesh against the judgment passed by the Administrative Tribunal, Hyderabad. In the aforesaid case, the Tribunal allowed the respondent's

petition while directing his promotion to the category of Director, Town and Country Planning in the existing vacancy while ignoring the charge memo issued against him. The Court further found that the charge memo was served on the employee just before the meeting of the Departmental Promotion Committee. In that context, the Supreme Court held as under:-

“19. It is not possible to lay down any pre-determined 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 relevant factors and to balance and weight 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 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 s 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 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 disciplinary authority is serious in pursuing the charges against its employee. 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 its 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 or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.”

8. It is evident that the Supreme Court has not laid down any pre-determined principle applicable to all such cases. The cases are required to be decided in accordance with the peculiar facts of individual cases. The appeal filed by the State of Andhra Pradesh was dismissed in the facts of the aforementioned case.

9. In ***P.V.Mahadevan’s case*** (*supra*), the Court found that there was a delay in the issuance of the charge memo for a period of ten years which was fatal particularly when he was due to retire shortly. This is a short order passed by the Court while relying upon the judgment passed in ***N. Radhakishan’s case*** (*supra*). The former judgment shall also not be applicable in the facts of the present case.

10. In ***Ajit Singh’s case*** (*supra*), a Division Bench of this High

Court was directly examining the issue involved in the present case. On reading of para 14 of the said judgment, it is evident that the Court held that mere delay in issuance of the charge-sheet or in conclusion of the disciplinary proceedings shall not by itself be a sufficient ground to quash the disciplinary proceedings. In para 14, it was held that if the delinquent official can establish that the delay has caused him serious prejudice, only then the disciplinary proceedings would be liable to be quashed. The relevant discussion is extracted as under:-

“14. From the above, it can be concluded that the preponderance of judicial opinion seems to be that mere delay in the issuance of charge-sheet or concluding the disciplinary proceedings would not by itself be sufficient ground to quash the disciplinary proceedings. However, if the delinquent official can establish that delay has caused him prejudice, the disciplinary proceedings would be liable to be quashed. The learned counsel for the petitioners had not laid any foundation in the pleadings or brought any material at the time of arguments to show that the petitioners are likely to be prejudiced or deprived of a fair trial because of delay. Prejudice has to be established before challenging the inquiry on the ground of delay and laches. No such prejudice has been shown.”

11. Thus, it has been consistently held by various judicial opinions that there exists no definitive period or grounds entitling the delinquent official to seek the quashing of the charge sheet. Each case depends on the

peculiar facts involved in it. At the cost of repetition, it is evident that the head office of the PHSC, on being reported about the allegation in the month of August, 2018, forwarded a copy of the draft charge sheet to the Head of the Department of the Principal Secretary, Water Resources, Mines and Geology, on 01.05.2019. Thereafter, on account of the representation filed by the petitioner, the period of nearly three years has elapsed in deciding the same, hence, the delay, in fact, is attributed to the petitioner himself. In these circumstances, this Court does not find it appropriate to quash the charge memo, solely on the ground of delay

12. As regards the next argument, it is considered appropriate to request the competent authority to form an opinion on such matter. This Court does not have the complete information with regard to the physical and mental health as well as the workload of the learned Inquiry Officer. In these circumstances, while leaving the aforesaid question open, the writ petition is dismissed.

(Anil Kshetarpal)
Judge

February 09, 2023
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No