

**A.F.R.**

Neutral Citation No. - 2024:AHC:199622

**Court No. - 7**

**Case :-** WRIT - A No. - 14564 of 2024

**Petitioner :-** Ram Bali Ram

**Respondent :-** State of U.P. and Another

**Counsel for Petitioner :-** Gulab Chandra Tiwari, Uday Shankar Tiwari

**Counsel for Respondent :-** C.S.C.

**Hon'ble Neeraj Tiwari, J.**

1. Heard learned counsel for petitioner and Sri P.K. Shahi, learned Additional Chief Standing Counsel for State-respondents.

2. Present petition has been seeking following relief:-

*"I. a writ, order or direction in the nature of mandamus and commanding, directing to the respondent no. 2 to pay arrears of salary and allowances payable to the petitioner and also to pay him his all the retiral benefits accordance with the rules and regulations.*

*II. a writ, order or direction in the nature of mandamus and commanding, directing to continuance of disciplinary proceeding after his retirement, made an application dated 21.04.2024 before respondent no. 2 for retiral benefits to the petitioner."*

3. Case was heard on 24.09.2024 and Court has passed following order:-

*"The petitioner was a Gram Panchayat Adhikari and was scheduled to retire on 31.12.2009, that is to say the date he would superannuate peacefully. The petitioner was suspended pending inquiry on 29.12.2009, two days before his scheduled retirement. He was served with a copy of the charge sheet also on the said date. The contention of the petitioner is that till date neither the disciplinary proceedings have proceeded or concluded nor the petitioner paid a penny of his post retiral benefits.*

*Let the District Panchayat Raj Officer, Ghazipur show cause by his own affidavit on or before 01.10.2024, why disciplinary proceedings against the petitioner have not been concluded during the past 15 years and why on the ground of this inordinate delay alone, the proceedings be not quashed.*

*Lay as fresh on 01.10.2024.*

*Let this order be communicated to the District Panchayat Raj Officer, Ghazipur through the Chief Judicial Magistrate, Ghazipur by the Registrar (Compliance) within 24 hours."*

4. In personal affidavit dated 30.09.2024 filed by respondent no. 2, there is no explanation as to why inquiry has not been completed even after 15 years from the date of service of charge sheet. It is also stated in the affidavit that in compliance of order dated 25.07.2012 passed in Writ-A 35799 of 2012, almost entire provisional pension as well as GPF has been paid to the petitioner, but inquiry has yet not been completed.

5. The issue of delay in departmental proceeding was before the Apex Court in the matter of *State of A.P. vs. N. Radhakishan; (1998) 4 Supreme Court Cases 154* in which Court has held that 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. Relevant paragraph no. 19 is being quoted below:-

“19. 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 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

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”

6. Again, Apex Court in the matter of ***Government of A.P. and Ors. vs. V. Appala Swamy; Appeal (Civil) 393 of 2007***, has taken same view. Relevant paragraph nos. 12 to 15 are being quoted below:-

“ 12. So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard and fast rule can be laid down therefor. Each case must be determined on its own facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are:

- (1) Where by reason of the delay, the employer condoned the lapse on the part of the employee;
- (2) where the delay caused prejudice to the employee.

Such a case of prejudice, however, is to be made out by the employee before the Inquiry officer.

13. This aspect of the matter is now squarely covered by the decisions of this Court in *Secretary to the Govt. Prohibition & Excise Deptt. v. L. Srinivasan*, [1996] 3 SCC 157; *P.D. Agrawal v. State Bank of India and Ors.*, (2006) 5 SCALE 54; *Deputy Registrar, Co-op Societies. Faizabad . v. Sachindra Nath Pandey & Ors.*, [1995] 3 SCC 134.

14. Learned Counsel appearing on behalf of the respondent, however, placed strong reliance on a decision of this Court in *M.V. Bijlani v. Union of India & Ors.*, [2006] 5 SCC 88. That case was decided on its peculiar facts. In that case, even the basic material on which a departmental proceedings could be initiated was absent. The departmental proceedings was initiated after 6 Years and continued for a period of 7 years. In that fact situation, it was held that the appellant therein was prejudiced.

15. *Bijlani (supra)* therefore, is not an authority and, in fact, as would appear from the decision in *P.D. Agrawal (supra)*, for the proposition that only on the ground of delay the entire proceedings can be quashed without considering the other relevant factors therefor.”

7. In present case, there is no explanation as to why departmental proceeding has not been concluded even after completion of 15 years. Therefore, under the facts of the case, once charge sheet was served upon petitioner on 29.12.2009 and till date, departmental proceeding has not been completed, there is no occasion for the Court to permit respondent-authorities to continue with departmental proceeding initiated pursuant to the charge sheet dated 29.12.2009. Accordingly, departmental proceeding stands terminated.

8. With the aforesaid observations, writ petition is ***allowed***.

9. No order as to costs.

10. Respondent-authorities are directed to pay all post retiral benefits due to the petitioner on the date of his retirement i.e. 31.12.2009. All post retiral benefits shall be paid to the petitioner along with arrears, maximum within a period of four months from the date of production of certified copy of this order along with 6% interest from due date to the date of actual payment.

11. In case amount is not paid within the time given, same shall be paid alongwith penal interest of 12% from due date to the date of actual payment.

**Order Date :- 20.12.2024**

Sartaj