

Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No 3959 of 2020
(Arising out of SLP (C) No 7122 of 2020)

**The Lt Governor through the Chief Secretary
Andaman & Nicobar Islands and Others**

Appellant(s)

Versus

Dr. R. Thulasidasan and Others

Respondent(s)

W I T H

M A No 1933/2020 In MA No 1192/2018 In MA No 239/2017
In
Special Leave Petition (Civil) No 7547 of 2016

&

Contempt Petition (Civil) Diary No 19056 of 2020
In
Special Leave Petition (Civil) No 7547 of 2016

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

- 1 Leave granted.
- 2 The respondent was employed in the Health Services Department of the Union Territory of Andaman and Nicobar Islands. He retired from service in the post of Director of Health Services on 31 March 2016. Prior to his retirement from service, two disciplinary enquiries were initiated against the

respondent for a major penalty. The charge-sheets were issued on 4 March 2015 and 2 March 2016.

- 3 Aggrieved by his not being promoted to the Senior Administration Grade, and consequently, to the post of Director of Health Services, the respondent instituted proceedings before the Central Administrative Tribunal. The order of the Tribunal resulted in proceedings before the Calcutta High Court under Article 226 of the Constitution. The dispute eventually travelled to this court and resulted in a judgment dated 29 March 2016 in Petition for Special Leave to Appeal (Civil) No. 7202 of 2016, instituted by the appellant. By a judgment and order of this Court dated 29 March 2016, a direction was issued to the Administration of the Union Territory to appoint the respondent on an ad-hoc basis as an In charge Officer in the post of Director of Health Services of the Andaman and Nicobar Islands so that he could ultimately retire in that position, subject however to the outcome of the disciplinary proceedings. This Court observed as follows:

“Having considered the respective submissions, we are also convinced that the grievances expressed by the petitioner are genuine while at the same time it may not be appropriate for this Court to reach a definite conclusion that the disciplinary action initiated against the petitioner are not based on any relevant materials or not supported by appropriate material evidence. In such circumstances, we are of the view that interest of justice can be sub-served by directing the respondent-Administration to pass orders appointing the petitioner purely on an ad hoc basis and by posting as In charge Officer in the post of Director of Health Services of Andaman and Nicobar Islands, Port Blair so that he can ultimately retire in the said position subject, however, to the outcome of the disciplinary proceedings already initiated against him in the charge sheet dated 4th March, 2015 and in the one dated 2nd March, 2016, as well as the outcome of the DPC proceedings under

Recruitment Rules of 2013 as directed by the Tribunal and as affirmed by the Division Bench of the High Court. For that purpose, it will be permissible for the Administration of the Andaman & Nicobar Islands to keep the process of retirement of the petitioner beyond 31st March, 2016 pending and also by not allowing him to retire by applying the Rules providing any such course to be adopted. We only direct that in the first instance, the Union Territory of Andaman & Nicobar Islands to proceed with the disciplinary action after getting the reply of the petitioner to the respective charge sheets which the petitioners shall submit within four weeks from today and conclude the inquiry proceedings within a period of three months from today. Depending upon the outcome of the disciplinary proceedings and the final orders to be passed, it will be open for the respondent-Union Territory to proceed with the DPC as directed by the Tribunal under Recruitment Rules of 2013. Again depending upon the outcome of the said proceedings in the event of the petitioner being eligible for SAG and consequent promotion to the post of Director of Health Service, the temporary ad hoc duty charge posting issued to the petitioner as directed in this order shall be confirmed in his favour and whatever benefits accrue to him based on such final orders to be passed shall be granted. In the event of the petitioner not becoming entitled to get the said promotion as of right based on the outcome of the disciplinary action as well as the DPC proceedings under Recruitment Rules of 2013, it is needless to state that whatever consequences that should follow will follow subject, however, to the entitlement of the petitioner to work out his remedies in the manner known to law. "

- 4 Thus, by the above judgment of this Court, a period of three months was granted to conclude the disciplinary proceedings. In the meantime, there was a direction to issue orders for posting the respondent as Director of Health Services on an ad hoc basis till he attained the age of superannuation. In pursuance of the liberty granted by this Court, the disciplinary proceedings which were initiated prior to his retirement were continued against the respondent after his retirement on 31 March 2016.

- 5 Since a period of three months was fixed for the conclusion of the disciplinary proceedings, applications for extension were filed by the Administration of the Union Territory before this Court. An extension of time to complete the disciplinary proceedings was allowed on 5 August 2016, 5 December 2016, 10 April 2017 and 10 December 2017. On a further application, extension of time was refused by an order dated 14 May 2018.

- 6 The respondent then moved the Central Administrative Tribunal seeking to challenge an order dated 25 February 2019 passed by the Chief Secretary of the Andaman and Nicobar Islands declining to release of his service benefits. According to the respondent, the departmental proceedings could not have been pursued after the order of this Court dated 14 May 2018. The OA was occasioned by the fact that after 14 May 2018, enquiry reports were submitted by the enquiry officer on 14 September 2018 and 18 September 2018. The Tribunal by its order dated 5 February 2020 dismissed the OA and allowed the Administration of the Andaman and Nicobar Islands to continue with the two departmental proceedings by extending time by a period of three months. This order was challenged before the Calcutta High Court by the respondent under its writ jurisdiction. By a judgment and order dated 2 March 2020, a Division Bench of the High Court allowed the petition. The High Court held that once an extension of time to conclude the disciplinary proceedings had been refused by this Court on 14 May 2018, it was not open to the Tribunal to pass an order for the extension of time. Consequently, while setting aside the order of the Tribunal, the High Court quashed the disciplinary proceedings and directed the release of all service benefits, including pensionary benefits, to the respondent. That is how the matter has

travelled to this Court at the behest of the Administration of the Union Territory of Andaman and Nicobar Islands.

- 7 During the pendency of these proceedings, an application was filed by the Administration for recalling or modifying the order dated 14 May 2018 passed by this Court and for extension of the period for the completion of the disciplinary proceedings by a period of eight months.
- 8 Ms G Indira, learned counsel appearing on behalf of the appellants submits that the enquiries were initiated validly by the issuance of a charge-sheet prior to the date of the retirement of the respondent. It was urged that in terms of Rule 9 of the Central Civil Services (Pension) Rules, 1972, the enquiry could be continued and concluded after his retirement. Learned counsel submitted that this was the basis of the judgment of this Court in the earlier proceedings when three months' time was granted for the conclusion of the disciplinary enquiries. Learned counsel submitted that the reason why there was a delay on the part of the Administration in concluding the enquiries was not attributable exclusively to the enquiry officer, but, as the Annexures to the application would indicate, there was continuous non-cooperation on the part of the respondent in the disciplinary proceedings. Learned counsel submitted that, as a matter of fact, the enquiries stand concluded and the enquiry reports have been submitted to the Union Ministry of Home Affairs, which in turn, has moved the Union Public Service Commission for seeking its advise. In this backdrop, it was urged that the consequence of the order of the High Court would be to stultify the enquiry proceedings and it would not be in the interest of justice to allow this consequence, when an enquiry has been held into allegations implicating a

major penalty. An extension of time has been sought to complete the proceedings by recalling or modifying the order dated 14 May 2018.

9 On the other hand, Mr Surajit Samanta, learned counsel appearing on behalf of the respondent submitted that by the order of this Court, three months' time was granted to conclude the disciplinary proceedings. He submitted that upon the applications filed by the appellants, the Court extended time on four occasions and, ultimately, on 14 May 2018 declined to allow a further extension. Learned counsel submitted that while opposing the application for extension, the respondent had stated on affidavit that during the previously extended period of six months, only one hearing had taken place before the enquiry officer. Learned counsel submitted that the disciplinary proceedings could not have been held after the refusal by this Court to extend time on 14 May 2018, and in consequence, the disciplinary proceedings are void and unenforceable.

10 Having heard the learned counsel appearing on behalf of the rival parties, it must be noticed at the outset that the disciplinary enquiries were initiated prior to the retirement of the respondent from service on 31 March 2016. Consequently, in terms of Rule 9 of the Central Civil Services (Pension) Rules, 1972, the enquiries could have been continued after the date of his retirement. Rule 9 of the Central Civil Services (Pension) Rules, 1972 reads as follows:

“Right of President to withhold or withdraw pension -

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any

pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five (Rupees one thousand nine hundred and thirteen from 1-4-2004- see GID below Rule 49) per mensem.

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-

(i) shall not be instituted save with the sanction of the President.

(ii) shall not be in respect of any event took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service

could be made in relation to the Government servant during his service.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in [Rule 69](#) shall be sanctioned.

5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date ; and

(b) judicial proceedings shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the court." (emphasis supplied)

11 The dispute which had travelled to the Court in the earlier proceedings related to the claim of the respondent for promotion as Director, Health Services. The judgment of this Court noticed that the disciplinary enquiries had already been initiated. The enquiries were validly instituted prior to the retirement of the respondent. Hence, the judgment envisaged that the final decision on the substantive promotion of the respondent would depend on the outcome of the disciplinary proceedings. The point to be noted is that

there was no legal embargo on the continuance of the disciplinary proceedings which had been instituted prior to the retirement of the respondent from service. Originally, in the order of this Court dated 29 March 2016, a period of three months was set down for concluding the disciplinary proceedings. This time limit, it must be understood, was not a statutory fixation of time under the service rules, but was in the backdrop of the claim of the respondent that he was being denied promotion to the post of Director of Health Services. The purpose of setting out a time limit was to facilitate an early decision on the claim of the respondent to promotion, since it was upon the outcome of the disciplinary proceedings that the decision on the claim of the respondent would be conditioned. It was in this backdrop that this Court observed that the respondent may be promoted initially as an In charge Officer in the post of Director of Health Services; that the enquiry be concluded within a period of three months; and, subject to the outcome of the enquiry, a final decision would be taken on the promotion of the respondent.

- 12 Undoubtedly, the Union Territory Administration was unable to conclude the enquiries within the period stipulated. However, the disciplinary proceedings cannot be quashed merely on the ground of delay. The nature of charges, the circumstances surrounding the delay and the conduct of the parties may be such that it would not be in the interests of justice to quash the proceedings.

In **State of Punjab and Ors. v. Chaman Lal Goyal**¹, this Court held:

“9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are-

1 (1995) 2 SCC 570

committed or soon after discovering the irregularities. They cannot be initiated after lapse of 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 allegations of bias, mala fides 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 prejudice 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.”

This Court further observed that certain principles laid down in **A.R. Antulay v. R.S. Nayak**² for quashing a criminal prosecution would be applicable to a plea of delay in concluding disciplinary proceedings and stated:

“11.....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 circumstance of the case.”

More recently, this Court in **Ajay Kumar Choudhary v. Union of India**³ observed:

“21....We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration.”

- 13 It would apposite to carefully evaluate the reasons for the delay, including the conduct of the parties. In **Indian Overseas Bank, Anna Salai and Ors. v. P. Ganesan and Ors.**⁴, the employees against whom a disciplinary inquiry was being conducted kept on seeking adjournments, which were allowed by

2 (1992) 1 SCC 225

3 (2015) 7 SCC 291

4 (2008) 1 SCC 650

the concerned Enquiry Officer. The employees were also simultaneously subject to a criminal proceeding. They moved the High Court of Madras under its writ jurisdiction to stay the disciplinary proceedings until the criminal cases are decided, which was allowed by the court. This Court, while setting aside the judgement of the High Court, observed:

“29. Furthermore, the discretionary writ jurisdiction under Article 226 of the Constitution of India should be exercised keeping in view the conduct of the parties. Respondents made a representation that in the event the order of suspension is revoked, they would cooperate with the Enquiry Officer. They kept on filing applications for extension of time which were allowed. They took benefit thereof. Without, however filing show cause, they moved the High Court. Furthermore, before the Enquiry Officer also, as noticed hereinbefore, although they had appointed the defence counsel, did not cross-examine the witnesses examined on behalf of the Management. A large number of witnesses had already been examined on behalf of the appellants. The disciplinary proceedings, as we have noticed hereinbefore, have proceeded to a great extent. In such a situation we are of the firm view that the discretionary jurisdiction should not have been exercised in favour of Respondents 1 to 4 by the High Court.”

- 14 It is also relevant to consider if a satisfactory explanation has been provided for the delay in concluding the departmental enquiry. In **Bharat Coking Coal Ltd. v. Bibhuti Kumar Singh and Ors.**⁵, this Court stated:

“14....We are also of the view that considering the seriousness of the charges, the explanation offered by the appellant for the delay in concluding the enquiry, which cannot be said to be unsatisfactory and the fact that the enquiry has proceeded to some length the High Court ought not to have rejected the reasonable prayer of the appellant for extension of time.”

- 15 Relevant correspondence and orders in the disciplinary proceedings have been annexed to the application filed by the Administration for extension of time and for recall/modification of the order dated 14 May 2018. The record

⁵ 1995 SCC (L&S) 185.

indicates that there were changes in the enquiry officers, as a result of their transfers or re - posting. More significantly, the respondent himself did not cooperate in the conclusion of the disciplinary proceedings and his conduct was responsible in a large measure for the delay. For instance, as and by way of illustration, upon being informed by a letter dated 8 September 2016 of the appointment of the enquiry officer, the respondent by his letter dated 9 September 2016 stated that he was not bound to appear unless he received an original copy of the order of the Lieutenant Governor appointing the inquiring authority. On 24 October 2016, the appointment order was forwarded to the respondent. On 1 December 2016, the respondent was absent in the course of the enquiry. In the meantime, he addressed a letter to the Lieutenant Governor seeking a change of the enquiring authority on grounds of bias. On 15 December 2016, the Administration of the Union Territory issued a communication recording that the Lieutenant Governor as the disciplinary authority had rejected the representation of the respondent alleging bias against the enquiry officer. On 19 December 2016, the Administration wrote to the enquiring authority seeking day to day proceedings in view of the prior extension which had been granted by this Court. On 18 January 2017, the enquiry was fixed for 31 January 2017. On 2 March 2017, the respondent was absent in the course of the enquiry. The respondent was again absent on 4 May 2017 and requested the enquiry to be adjourned. The proceedings thereafter took place before the enquiry officer on 15 June 2017. On 20 June 2017, the enquiry officer was relieved of his posting in the Union Territory. On 5 July 2017, another enquiry officer was appointed. On 13 July 2017, the enquiry officer noted with reference to the inspection of documents, that the respondent had simply intimated on 8 July

2017 that he would be available for inspection of documents and hearing after 16 July 2017. On 22 September 2017, the respondent was absent and was accordingly granted an option to cross-examine PW 7 by sending him a questionnaire. We have referred to some of the aspects of the record, because they indicate that while some delay occurred in the course of the disciplinary enquiry as a result of the change in the enquiring officer, equally it is evident that the respondent did not himself cooperate in the early disposal of the disciplinary proceedings. In this backdrop, it would be inappropriate to allow a situation or consequence where the disciplinary enquiries stand stultified. The respondent did not co-operate in the early conclusion of the enquiries. To accept the contention that the disciplinary proceedings must now ipso facto stand quashed will result in a miscarriage of justice. In fairness to the Calcutta High Court, it must be appreciated that it was constrained by the fact that the extensions were granted by this court. This will however not constrain the jurisdiction of this court to extend time, even after it has come to an end. This is not a case where an enquiry has lapsed under the service rules. On the contrary, the rules envisage that an enquiry which has been initiated prior to superannuation can be continued and concluded thereafter.

- 16 We are, therefore, inclined to grant an extension of time to conclude the enquiry, by recalling and modifying the previous order dated 14 May 2018. At the same time, we must also take note of the grievance of the respondent, which has been put forth by Mr. Surajit Samanta, learned counsel that the respondent would be put to hardship consequent upon the fact that the enquiry was concluded after 14 May 2018 without the respondent availing of

his right to defend the charges. While we have remedied the situation by deciding to extend time for the conclusion of the disciplinary proceedings, equally the order of the Court should not deprive the respondent of the opportunity to participate in the disciplinary proceedings. We hence direct in the exercise of the jurisdiction conferred by Article 142 of the Constitution that the enquiry proceedings shall be restored to the position immediately before 14 May 2018 and shall be taken forward from that stage. Accordingly, we issue the following directions:

- (i) In modification of the order dated 14 May 2018 passed by this Court, we extend time for the conclusion of the disciplinary proceedings by a period of eight months ending on 31 July 2021;
- (ii) The Administration of the Union Territory of Andaman and Nicobar Islands shall ensure that if the enquiry officer who was appointed for the enquiries is not available, a fresh enquiry officer shall be appointed within a period of four weeks from the date of receipt of a certified copy of this order;
- (iii) The disciplinary proceedings shall be continued from the stage which had been reached immediately prior to the passing of the order of this Court dated 14 May 2018;
- (iv) As a consequence of (iii) above, the steps which have been taken after the order of this Court dated 14 May 2018 for concluding the disciplinary enquiry are set aside, with liberty granted to the Administration of the Union Territory of Andaman and Nicobar Islands to

conclude the departmental enquiries from the stage which had been reached immediately prior to the passing of the order dated 14 May 2018 in accordance with law; and

(v) The respondent shall cooperate in the disciplinary enquiries and if he fails to do so, the Administration would be at liberty to proceed in accordance with law.

17 The civil appeal is accordingly allowed in the above terms.

18 The miscellaneous application filed on behalf of the Administration of the Union Territory of the Andaman and Nicobar Islands for recall/modification of this Court's order dated 14 May 2018, is allowed. The contempt petition filed on behalf of the respondent shall stand dismissed.

19 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Indira Banerjee]

New Delhi;
December 03, 2020
CKB

ITEM NO.15+6

Court 3 (Video Conferencing)

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.7122/2020

(Arising out of impugned final judgment and order dated 02-03-2020 in WPCT No. 075/2020 passed by the High Court of Calcutta Circuit Bench at Port Blair)

THE LT. GOVERNOR THROUGH THE CHIEF
SECRETARY & ORS.

Petitioner(s)

VERSUS

R. THULASIDASAN & ORS.

Respondent(s)

(With appln.(s) for I.R. and IA No.50316/2020-PERMISSION TO FILE LENGTHY LIST OF DATES, IA No. 50316/2020 - PERMISSION TO FILE LENGTHY LIST OF DATES and IA No. 85844/2020 - RECALLING THE COURTS ORDER)

WITH MA 1933/2020 in MA 1192/2018 in MA 239/2017 in SLP(C) No. 7547/2016 (XVI)

(With appln.(s) for IA No.96549/2020-RECALLING/MODIFICATION THE COURTS ORDER and IA No.104052/2020-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 104052/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No. 96549/2020 - RECALLING THE COURTS ORDER)

CONTEMPT PETITION (C) DIARY NO.19056/2020

(With appln.(s) for C/DELAY IN REFILEING/CURING DEFECTS AND PERMISSION FOR DISPENSATION OF PROCEDURE)

Date : 03-12-2020 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDU MALHOTRA (NOT PARTICIPATED)
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s)

Ms. G. Indira, AOR

CP(C) D.19056/2020 **Mr. Surajit Sengupta, Adv.**
Mr. Bijan Kumar Ghosh, AOR

For Respondent(s) **Mr. Surajit Sengupta, Adv.**
Mr. Bijan Kumar Ghosh, AOR

Mr. Gurmeet Singh Makker, Adv.
Mr. B.V. Balaram Das, Adv.
Mr. Divyansh H Rathi, Adv.
Mr. Akshay Amritanshu, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Delay condoned.
- 2 Leave granted.
- 3 The civil appeal and the miscellaneous application are allowed and the contempt petition is dismissed in terms of the signed order.
- 4 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Court Master

(Signed order is placed on the file)