



2026:AHC:140448-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 524 of 2014

State of U.P. and 3 Ors.

.....Appellant(s)

Versus

Raj Narain Yadav Constable

.....Respondent(s)

Counsel for Appellant(s)	: A.k.roy S.C.
Counsel for Respondent(s)	: Atipriya Gautam, Vijay Gautam, Vinod Kumar Mishra

A.F.R.

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.

1. This Special Appeal is directed against the judgment and order dated 03.10.2013 passed by Hon'ble Mr. Justice Sudhir Agarwal, whereby the writ petition filed by the respondent was allowed, the order dated 25.07.2006 impugned therein set aside, and the respondent directed to be reinstated in service with consequential benefits; liberty was granted to the appellants to pass a fresh order in accordance with law.

2. The crux of the matter is that the respondent was dismissed from service by the disciplinary authority in exercise of power under Rule 8(2)(a) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 ('the Rules of 1991'), on the ground that he stood convicted in Sessions Trial No. 202/1999 under Sections 304-B, 201, 498-A of the Indian Penal Code and Section 3/4 of the Dowry

Prohibition Act, where the maximum term awarded was ten years rigorous imprisonment. The learned Single Judge, while allowing the writ petition, proceeded on the principle that where a disciplinary authority passes an order of dismissal, removal or termination from service on the ground of the conduct which has led to conviction of the employee on a criminal charge, without itself having considered that conduct, such an order cannot be sustained.

3. The learned Single Judge placed particular reliance on the decision of the Supreme Court in the case of **Union of India v. Tulsiram Patel**, AIR 1985 SC 1416, and, more pointedly, on the Division Bench decision of this Court in **Shyam Narayan Shukla v. State of U.P.**, (1988) 6 LCD 530.

4. In *Shyam Narayan Shukla (supra)*, it was held that a government servant convicted of an offence cannot be dismissed from service *ipso facto* merely on the ground of such conviction. The disciplinary authority is under obligation to consider the conduct of the employee which led to the conviction. It was further held that, in considering such conduct and the quantum of punishment, the employee need not be heard, but the decision has to be arrived at by the disciplinary authority independently, without participation of the employee, as laid down by the Supreme Court. The learned Single Judge also placed reliance upon the Division Bench decision of this Court in **Sadanand Mishra v. State of U.P.**, 1993 LCD 70.

5. Learned counsel for the appellants urged, firstly, that Criminal Appeal No. 1954 of 2005, preferred against the respondent's conviction, is still pending and, therefore, the conviction recorded by the trial court subsists; and, secondly, that the writ petition came to be filed after a delay of about seven years from the date of the order of dismissal dated 25.07.2006, and was, therefore, barred by laches.

6. The learned Single Judge allowed the writ petition after condoning the delay, on the ground that the respondent had been prevented from approaching this Court earlier, as he remained continuously incarcerated,

suffering the sentence of ten years rigorous imprisonment, and that he instituted the writ petition immediately upon his release.

7. The issue of delay and laches in instituting the writ petition are being examined in the peculiar facts of this case that the respondent-writ petitioner was prevented from challenging the order impugned therein within a reasonable time. It is no more *res integra* that irrespective of the length of delay, the sufficiency of the cause of delay is to be tested.

8. In the case of **HD Bora vs. the State of Maharashtra, (1984) 2 SCC 337**, the Supreme Court condoned a massive delay of 30 years by ruling that technical pleas, like laches, cannot be utilized to defeat substantive rights. There is no such assertion on behalf of the State that the respondent-writ petitioner is right. The cardinal principle of condonation of delay is that the cause of delay is to be examined and not the duration of delay. Said differently, the delay can be condoned regardless of duration if the cause of delay inspires confidence.

9. In the case of **Mool Chandra vs Union of India and another, 2024 INSC 577**, the Supreme Court emphasised the cause rather than the period of delay for deciding the question of delay. The relevant excerpt is extracted as under:

“No litigant stands to benefit in approaching the courts belatedly. It is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is the cause for delay which has been propounded will have to be examined. If the cause for delay would fall within the four corners of “sufficient cause”, irrespective of the length of delay same deserves to be condoned. However, if the cause shown is insufficient, irrespective of the period of delay, same would not be condoned.”

10. Delay of a few days cannot be condoned if sufficient cause is not disclosed explaining it, but even a massive delay may be condoned if reasons pass the muster of sufficiency of cause.

11. A Bench of this Court in the case of **Ganga Singh vs. State of UP. (Neutral Citation – 2018:AHC143164-DB)** has succinctly summarised the principles of law qua laches and delay in institution of writ proceedings, where the relevant remarks of their Lordships read:

“30. The principle of law laid down in the aforesaid judgements of Hon'ble Supreme Court can be summarized as follows :-

(a) There is no period of limitation prescribed by any law for filing a writ petition under Article 226 of the Constitution of India.

(b) No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. In any case, the test is not to physical running of time.

(c) The discretion of the Courts under Article 226 of the Constitution of India must be exercised fairly and justly so as to promote justice and not to defeat it.

(d) The validity of the party's defence must be tried upon principles substantially equitable and if the claim made by the applicant is legally sustainable and the illegality is manifest the petitioner cannot be denied relief on the sole ground of laches as power under Article 226 of the Constitution of India is exercised to effectuate the rule of law and not to abrogate it.

(e) Delay in filing the writ petition would be relevant where the delay can be treated as equivalent to a waiver of the right by the petitioner or by his conduct, the petitioner has done that which might fairly be regarded as equivalent to a waiver of it.

(f) Delay would be important and relevant in refusing a remedy to the petitioner if because of delay the opposite parties in the case had altered their possession to their detriment so as to make any interference to the grant in favour of the petitioner inequitable or unreasonable. The Courts would also refuse to interfere under Article 226 of the Constitution of India in favour of the petitioner where parallel third party rights are created due to delay in filing the writ petition.

(g) If the matter in issue before the Courts shocks the judicial conscience, the Court should exercise the discretion more so, when no third party interest is involved.

(h) The petitioner cannot be denied relief under Article 226 of the Constitution of India on the sole ground of delay in filing the writ petition if, for the relief prayed by them, they are relying on a previous judgement of the Court given in similar circumstances which is a judgement in-rem obliging the State Authorities to act in a particular manner in a particular given situation and the grievance of the petitioners in the writ petition, in effect is, that the State Authorities are not acting in the manner stated in the aforesaid judgement. The aforesaid is not a complete exposition of law relating to laches and the circumstances in which a relief may be granted or refused by the Courts under Article 226 of the Constitution of India when a defence of delay in filing a writ

petition is raised but a summary of law only to the extent it is relevant for a decision of the present cases.”

12. It is the duty of Constitutional Courts to remove injustice and overlook delay and laches where they are not attributable to a lack of bona fides or gross negligence on the part of the litigant.

13. Since the respondent-writ petitioner remained incarcerated throughout the period while serving his sentence in a criminal case, he was definitely prevented from approaching this Court during that period. If a litigant was prevented from approaching the Court of law for reasons beyond his control, such reasons and explanations are definitely sufficient cause for condoning delay and laches.

14. We find no infirmity in the view taken by the learned Single Judge in condoning the delay and laches and entertaining the writ petition on the merits; no error of principle is shown to have crept into the exercise of discretion. Thus, we would refrain from taking a different view insofar as condonation of delay and laches by the learned Single Judge is concerned.

15. The order impugned in the writ petition, dismissing the respondent from the post of Constable, was passed in exercise of the power conferred by Rule 8(2)(a) of the Rules of 1991. Rule 8 of the Rules of 1991 is reproduced below:

“8. Dismissal and removal.—(1) No Police Officer shall be dismissed or removed from service by an authority subordinate to the appointing authority.

(2) No Police Officer shall be dismissed, removed or reduced in rank except after proper inquiry and disciplinary proceedings as contemplated by these rules:

Provided that this rule shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that, for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry; or

(c) where the Government is satisfied that, in the interest of the security of the State, it is not expedient to hold such enquiry.

(3) All orders of dismissal and removal of Head Constables or Constables shall be passed by the Superintendent of Police. Cases in which the Superintendent of Police recommends dismissal or removal of a Sub-Inspector or an Inspector shall be forwarded to the Deputy Inspector General concerned for orders.

(4)(a) The punishment for intentionally or negligently allowing a person in police custody or judicial custody to escape shall be dismissal, unless the punishing authority, for reasons to be recorded in writing, awards a lesser punishment.

(b) Every officer convicted by a Court for an offence involving moral turpitude shall be dismissed, unless the punishing authority, for reasons to be recorded in writing, considers it otherwise.”

16. The provision contained in Rule 8(2)(a) of the Rules of 1991 is pari-materia with the second proviso appended to Article 311(2) of the Constitution of India, which is reproduced below:

“311. (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges: Provided that where it is proposed, after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry, and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that, for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that, in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

16. The expression “on the ground of conduct which has led to his conviction on a criminal charge” fell for interpretation before the Supreme Court in *Tulsiram Patel (supra)*, where it was held as follows:

“.....The paramount thing, however, to bear in mind is that the second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311(2) is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable, and the government servant is not entitled to an enquiry...”

17. The issue as to whether conviction in a criminal case would automatically lead to dismissal of the employee from service has been examined in the case of *Tulsiram Patel (supra)* while interpreting clause (a) to the second proviso of Article 311 (2) of the Constitution of India in following words:-

*“127. Not much remains to be said about clause (a) of the second proviso to Article 311(2). To recapitulate briefly, where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case and the various factors set out in *Challappan* case. This, however, has to be done by it *ex parte* and by itself. Once the disciplinary authority reaches the conclusion that the government servant’s conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in*

rank of the concerned government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service the court will also strike down the impugned order."

18. In **Shankar Dass v. Union of India**, 1985 (2) SCR 358, the Supreme Court, while considering the scope of the power conferred under clause (a) of the second proviso to Article 311(2) of the Constitution of India, observed as follows:

"Be that as it may, that power, like every other power, has to be exercised fairly, justly and reasonably."

19. Having regard to the law laid down by the Supreme Court in **Tulsiram Patel (supra)**, **T.R. Chellappan (supra)** and **Shankar Dass (supra)**, the disciplinary authority, while dismissing the respondent from service, was obliged to first consider the conduct that had led to his conviction in the Sessions trial. Such consideration was a condition precedent to the competent authority acquiring jurisdiction to impose the punishment of dismissal. The order impugned in the writ petition, however, is conspicuously silent on this aspect and nowhere reflects any application of mind to the respondent's conduct underlying his conviction. Before passing the order of dismissal, the disciplinary authority was required to weigh such conduct and only thereafter settle upon the appropriate punishment. As this exercise was admittedly never undertaken, we concur with the learned Single Judge that the impugned order dated 25.07.2006 deserves to be set aside and cannot be sustained.

20. It may be noted that the major penalties which may be imposed under the Rules of 1991 are: (i) removal from service, (ii) dismissal from service, and (iii) reduction in rank, including reduction to a lower scale. Where more than one major penalty is available, conduct that has led to conviction on a criminal charge, even where terminal in character, requires scrutiny by the disciplinary authority in order to reasonably and fairly choose between the penalties available, having regard to considerations of proportionality. The liberty already granted by the learned Single Judge to the appellants to pass a fresh order in accordance with law shall accordingly remain available to them.

21. The powers of the learned Single Judge and those available to the Bench on appeal are co-extensive, and errors on principles alone can be examined by the appellate court in our corrective jurisdiction. In **Baddula Lakshmaiah and others vs. Sri Anjaneya Swami Temple and others**, (1996) 3 SCC 52, the Supreme Court held that *"it is the internal working of the High Court which splits it into different 'Benches' and yet the court remains one. A letters patent appeal, as permitted under the letters patent, is normally an intra-court appeal whereunder the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench."*

22. It is now well settled law, that the Single Bench and Division Bench of High Court exercise same jurisdiction under Article 226 of the Constitution of India. Thus, in the intra-Court appellate jurisdiction interference is only warranted where the judgment or order under challenge is demonstrably erroneous or suffers from perversity. Such jurisdiction ought not be invoked merely because another view is possible on the same set of facts, particularly, when the view adopted by the Single Judge is a plausible and reasonable one. In other words, an intra-court appellate bench ought not substitute its own view merely because the Bench considers its view to be better than the one taken by the Single Judge. So long as the view taken by the Single Judge is a plausible one, interference should be eschewed.

23. For the reasons recorded above, we find no merit in this Special Appeal. It is, accordingly, **dismissed**. There shall be no order as to costs.

24. Needless to say that consequential benefits payable to the respondent shall abide by the fresh decision to be taken by the disciplinary authority upon due consideration of the conduct of the respondent which led to his conviction.

25. Registrar (Compliance) is directed to communicate this order to the parties.

(Indrajeet Shukla,J.) (J.J. Munir,J.)

July 13, 2026
Mohit