

Court No. - 4

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Case :- SPECIAL APPEAL DEFECTIVE No. - 360 of 2021

Appellant :- Rasool Ahmad

Respondent :- State Of U.P.Thru Prin.Secy. Revenue Deptt. Lucknow & Ors.

Counsel for Appellant :- Anuj Dayal,Manish Srivastava,Mukesh Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy,J.

Hon'ble Manish Kumar,J.

(C.M. Application No.127746 of 2021)

This is an application seeking condonation of delay in filing the appeal.

Heard.

The cause shown for the delay in filing the appeal is sufficient. The application is allowed and the delay in filing the appeal is condoned.

(Special Appeal Defective no.360 of 2021)

This is an intra-court appeal against the judgment dated 11.08.2021 passed by the writ court. The facts of the case in brief are that the petitioner herein who was working as Lekhpal in the Revenue Department of Government of Uttar Pradesh was tried for the offence under Section 7 read with Section 13 of the Prevention of Corruption Act, 1988 (in short 'the Act, 1988') wherein he was convicted by the trial court vide judgment dated 17.08.2013 and sentenced to undergo imprisonment of one year with fine of Rs.2,000/-. He preferred an appeal against the said judgment under the provisions of the Code of Criminal Procedure which was dismissed on 06.09.2014. Consequent thereto, an order was passed under Regulation 351 of the Civil Services Regulation as applicable in the

State of Uttar Pradesh withholding the entire pension of the petitioner. This order was dated 25.05.2017 which was communicated to the petitioner by another order dated 26.05.2017. Both these orders were put to challenge by the petitioner in Writ Petition No.7896 (S/S) of 2018. The writ petition has been dismissed vide order dated 11.08.2021 and it is this judgment which is the subject matter of this intra-court appeal. Before the writ court, the case of the petitioner-appellant was that Regulation 351 Civil Services Regulation applies only in the case of serious offences and a full bench judgment of this Court in the case of '**Shivagopal vs. State of U.P.**' reported in 2019 (37) LCD 1859 has explained as to what is meant by the term 'serious crime' as used in Regulation 351. Learned counsel for the petitioner relied upon paragraph no.39 of the said judgment which reads as under:

"39. The expression 'serious crime' has to be understood in the context of service jurisprudence involving the government servant. It may be any act or omission which in the opinion of the competent authority is serious enough and calls for punitive action in terms of Article 351. It has no bearing with the quantum of sentence but with the nature of the offence and the degree of involvement of the government servant in the commission/ omission of the crime."

It is contended that seriousness of the crime does not depend upon the quantum of sentence but it is concerned with the nature of the offence and the degree of involvement of the government servant in the commission/ omission of the crime. Learned counsel invited our attention to the orders which were the subject matter of the writ petition to contend that the said order was passed under Regulation 351 only on account of conviction of the petitioner in the criminal case as referred hereinabove without considering the seriousness of the crime which was *sine qua non* for withholding of entire pension of the petitioner under Regulation 351. He then took us through the judgment of the writ court and contended that even the writ court did not consider the alleged seriousness of the crime but presumed that the same had been considered by the competent

authority which, in fact, it had not done. These are the only two points which have been pressed by learned counsel for the appellant before us.

Regulation 351 reads as under

“351. Future good conduct is an implied condition of ever grant of a pension. The State Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner be convicted of serious crime or be guilty of grave misconduct.

The decision of the State Government on any question of withholding or withdrawing the whole or any part of pension under this regulation shall be final and conclusive.”

Regulation 351 provides that future good conduct is an implied condition of ever grant of a pension. The State Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner be convicted of serious crime or be guilty of grave misconduct. The decision of the State Government on any question of withholding or withdrawing the whole or any part of pension under the Regulation shall be final and conclusive.

Paragraph 39 of the full bench decision in **Shivagopal’s case (supra)** has already been quoted by us hereinabove, according to which, the seriousness of the crime is to be determined not merely with reference to quantum of sentence but with the nature of the offence and the degree of involvement of a government servant therein.

When we peruse the orders passed by the concerned authority forfeiting the entire pension of the petitioner, we do not find a detailed and reasoned consideration as to the seriousness of the crime and the said order proceeds on the premise of his conviction under the Act, 1988. Possibly, the fact that the petitioner was a government servant, a Lekhpal, who had taken bribe from a small farmer and was convicted by the trial court prevailed upon the concerned authority in passing the said order but the authority should have discussed the matter in the light of the term ‘serious crime’ as used in Regulation 351 in greater detail than what has

been done. Thereafter, when we peruse the order of the writ court, we find that the writ court has also not discussed the term 'serious crime' in the light of the facts of the case in detail. It has opined that the concerned authority has already done so. The writ court also seems to have been persuaded by the fact that the petitioner was found guilty of corruption under the provisions of the Act, 1988 which for a government servant was apparently a serious crime.

Now, when we consider the conviction of the petitioner-appellant under Section 7 read with Section 13 of the Act, 1988 in the light of the appellate court's judgment as the trial court judgment is not before us and has not been filed, we find that the complainant Vedram moved an application before the Superintendent of Police, Prevention of Corruption Organization, Lucknow, alleging therein that he is a small farmer in Village Virahimpur, Police Station Pali, Tehsil Sahabad District Hardoi. He got an allotment of land bearing no.154. The area of the allotted land was lesser than the mentioned in the document, therefore, he moved an application for its inspection and measurement before the Sub-Divisional Magistrate, Sahabad. On this application, the Sub Divisional Magistrate, Sahabad, ordered for measurement of the said plot to Tehsildar, Sahabad. On 05.12.1992, the complainant again moved an application to this effect to the Tehsildar Sahabad on which the Bhumi Nirikshak was directed to measure the land and to handover the possession of the land to the complainant. On 05.12.1992, Bhumi Nirikshak authorized the appellant Rasool Ahmad, who was Lekhpal at the relevant time for the measurement of the allotted plot and the complainant several times met Rasool Ahmad but he made a demand of Rs.400/- as bribe and ultimately he agreed for an amount of Rs.300/-. The complainant, in the presence of one Avadhesh Singh and Rampal, gave Rs.100/- to the appellant about one and half month prior to the incident. Even thereafter he continued his demand for remaining bribe of Rs.200/- and declined to measure the plot unless the said amount is paid to him. The complainant was not willing to

give the bribe, therefore, he reported this matter to the Superintendent of Police, Prevention of Corruption Organization, Lucknow, and thereafter, a trap was laid after completing all formalities. On 30.03.1993 near sweat shop of Jaideo Pandit situated in Tehsil Sahabad, the present appellant was arrested in trap proceedings and four treated notes of Rs.50/- each were recovered from his possession. The post trap formalities were also completed. After investigation of the case, the charge sheet was filed against the appellant. Thereafter, the trial was held in which the offence with which the petitioner was charged under Section 7 read with Section 13 of the Act, 1988, was proved. The appeal against the said conviction has been dismissed as already noticed. We may mention at this stage that as per appellate court's judgment dated 06.09.2014, learned counsel for the petitioner-appellant did not press the appeal on merits but contended that the incident had taken place in the year 1993 and the appellant has already undergone the trauma of criminal appeal for about 21 years, he was aged 65 years, the only allegation is of receiving bribe of Rs.200/-, a petty amount, for which the appellant has already undergone detention of about two months and in these circumstances it was submitted that the appellant may be sentenced with the period already undergone by him. The contention was repelled by the appellate court and his conviction as also sentence by the trial court was maintained in appeal.

The State of Uttar Pradesh is largely an agrarian State. Lekhpals have been assigned duties under the revenue laws relating to measurement etc of land. They provide requisite assistance to higher authorities in this regard. Most of the farmers in the State are small or marginal. In the case at hand, the complainant as is borne out from the appellate court's judgment, was a small farmer who was claiming his right under the revenue laws for getting his land measured as the land as shown in the record was more whereas the land/ plot on the spot was less. The Revenue Inspector authorized the petitioner-appellant before us, Rasool Ahmad, who was Lekhpal at the relevant time for measurement of the allotted plot

and the complainant met the appellant herein several times but the appellant demanded Rs.400/- as bribe and ultimately, he agreed for an amount of Rs.300/-. It has come in the order of the appellate court in the criminal appeal that the complainant in the presence of one Avadhesh Singh and Rampal gave Rs. 100/- to the appellant. Even thereafter the appellant continued to demand the remaining bribe of Rs.200/- and declined to measure the plot unless the said amount is paid to him. The court only empathizes with the humiliation and trauma which the said small farmer/ complainant must have undergone that too for claiming his rights under the law and not for any illegal act. The petitioner was a government servant who was under obligation to perform his duty but he demanded bribe for carrying out his rightful obligations. The seriousness of the offence is apparent on the face of the record. Merely because, the concerned authority who has passed the order under Regulation 351 has not discussed this aspect of the matter in detail and the writ court may also not have done so accordingly, can be no ground for allowing the appeal of the appellant against the order of the writ court. The facts of the case speak for themselves and do not need any further elaboration. Corruption is the bane of our society. One who suffers corruption alone can feel the pinch of it. As already stated, small farmers, when they are compelled to pay bribe in the manner in which the appellant compelled the complainant, it is most unfortunate thing to happen even after 75 years of independence. Seriousness of the crime being self-evident and apparent and as we have considered the same, none of the grounds raised by the appellant's counsel before us persuade us to take any other view of the matter.

Accordingly, we **dismiss** this appeal.

(Manish Kumar,J.) (Rajan Roy,J.)

Order Date :- 2.11.2021

Shanu/-