State of Punjab

Vs

Kailash Nath

State of Punjab and Others

Vs

Mangal Singh Minhas and Others

Criminal Appeals Nos. 422-24 of 1988

(B. C. Ray, N. D. Ojha JJ)

22.11.1988

JUDGMENT

OJHA, J. –

1. These appeals raise an identical question of law and can conveniently be decided by a common order. Kailash Nath, respondent in Criminal Appeal No. 422 of 1988, was working as Executive Engineer in Public Works Department in the State of Punjab in the year 1979. On various dates in that year, he placed orders for the purchase of sign boards which were required by the Department to avoid accidents on roads and for traffic safety. The requisite sign boards were purchased in pursuance of the aforementioned orders. In the year 1980 some complaints were received in the Department against the respondent pertaining to the purchase of the sign boards. A vigilance enquiry was instituted by the Vigilance Bureau to enquire into the complaints and ultimately a first information report was lodged on August 27, 1985 against the respondent under sub-sections (1) and (2) Sections 5 of the Prevention of Corruption Act, 1947. In the meantime, the respondent had retired from the post of Executive Engineer with effect from October 31, 1982.

2. The aforesaid first information report was challenged by the respondent in the High Court of Punjab and Haryana in Criminal Miscellaneous No. 5837-M of 1985 on the ground that the same having been lodged about three years after his retirement and about six year after the event of purchase of sign boards in 1979 was in the teeth of Rule 2.2 of the Punjab Civil Service Rules, Volume II and consequently was liable to be quashed. The plea raised by the respondent found favour with the High Court which relying on an earlier decision of that Court in Des Raj Singal v. State of Punjab ((1986) 1 Punj LR 82 (P&H HC)) quashed the first information report by its order dated February 12, 1986.

3. Mangal Singh Minhas, the respondent in Criminal Appeal Nos. 423-424 of 1988, was posted in the Industrial Supply Section of the Directorate of Industrial where various types of raw materials including wax and import licences are dealt with. A first information report was lodged against the respondent on June 19, 1980. It appears that the respondent applied in the High Court of Punjab and Haryana for quashing of the first information report on account of which challan could not be filed and it was only when the challenge to the first information report was repelled by the High Court

that the challan was filed on August 28, 1985. In the meantime, the respondent retired as Superintendent, Directorate of Industries, Punjab, on September 30, 1983. On the challan being filed the respondent again made an application in the High Court for quashing of the prosecution against him. This prayer has been allowed by the High Court by its order dated September 4, 1986 and the prosecution against the respondent has been quashed relying on the aforesaid decision in the case of Des Raj Singal v. State of Punjab ((1986) 1 Punj LR 82 (P&H HC)). The present appeals have been filed by the State of Punjab against the aforesaid orders passed on the applications of Kailash Nath and Mangal Singh Minhas respectively.

4. It has been urged by learned Counsel for the appellant that Rule 2.2 of the Punjab Civil Service Rules has been misinterpreted by the High Court in holding that the said rule placed an embargo on initiating judicial proceedings for prosecution of a government servant on the expiry of four years of the cause of action or the event referred to in the said rule and the High Court committed an error of law in taking the said view. Learned Counsel for the respondents, on the other hand, submitted that the view taken by the High Court was correct and in view of Rule 2.2 the first information report against Kailash Nath and the prosecution as against Mangal Singh Minhas were rightly quashed. In order to appreciate the respective submissions made by learned counsel for the parties with regard to the scope and interpretation of Rule 2.2, it would be useful to extract the relevant portion of sub-rule (b) of Rule 2.2. It reads :

> (b) The government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or a part of any pecuniary loss caused to government if, in a departmental or a judicial proceeding, the pensioner is found guilty or grave misconduct or negligence during the period of his service, including service rendered upon re-employment, after retirement.
>
> #Provided that :(1) * * *(2) * * *##
>
> (3) No such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution :

Explanation. - For the purpose of this rule :

> #(a) * * *##
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> (b) a judicial proceeding shall be deemed to be instituted
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> (i) in the case of a criminal proceeding on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance is made; .....

5. There is no dispute that Punjab Court Service Rules have been framed by the Governor in exercise of the power conferred on him by Article 309 of the Constitution and that Rule 2.2 occurs in Chapter II of Volume II of the Rules dealing with "Ordinary Pension". It has been urged by the learned counsel for the appellant that keeping in view the scope of Article 309 as also the purpose of Rule 2.2, the said rule cannot be interpreted to be a rule placing an embargo on prosecution of a government servant on the expiry of a period of four years from the date of cause of action or event

mentioned therein.

6. Having heard learned counsel for the parties, we find substance in the submission made by learned counsel for the appellant. Article 309 empowers making of rules regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any State. On the plain language of Article 309, the proposition that any rule framed under this article has to be confined to recruitment and conditions of service of persons mentioned therein admits of no doubt. The rule in question certainly does not purport to regulate recruitment. The question which, therefore, presents itself for answer is whether the said rule if it is to be interpreted as one placing an embargo on institution of judicial proceedings as against a person referred to therein for prosecution in respect of a cause of action which arose or an event which took place more than four years before such institution, as has been held by the High Court, can be treated to be a rule regulating the condition of service of such a person. Learned Counsel for the respondents asserts that the embargo aforesaid is a condition of service calculated to ensure a person mentioned in the said rule peace of mind after retirement. According to learned counsel for the respondent every employer wants his employee to be efficient and to achieve this object, various incentives are given. Consequently, according to learned counsel an assurance to an employee that he shall not be prosecuted after his retirement, even though guilty of committing a grave misconduct or negligence during the period of his service, after the lapse of particular time, which has been fixed in the instant case as four years would fall within the purview of "conditions of service" as contemplated by Article 309. We find it difficult to agree with the submission. As explained by this Court is State of Madhya Pradesh v. Shardul Singh ((1970) 1 SCC 108 : (1970) 3 SCR 302) and reiterated in I. N. Subba Reddy v. Andhra University ((1977) 1 SCC 554 : 1977 SCC (L&S) 178 : (1976) 3 SCR 1013), the expression "conditions of service" means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it, in matters like pension etc.

7. In the normal course what falls within the purview of the terms "conditions of service" may be classified as salary or wages including subsistence allowance during suspension, the periodical increment, pay scale, leave, provident fund, gratuity, confirmation, promotion, seniority, tenure or termination of service, compulsory or premature retirement, superannuation, pensions, changing the age of superannuation, deputation and disciplinary proceedings. Whether or not a government servant should be prosecuted for an offence committed by him obviously cannot be treated to be something pertaining to conditions of service. Making a provision that a government servant, even if he is guilty or grave misconduct or negligence which constitutes an offence punishable either under the Penal Code or Prevention of Corruption Act or an analogous law should be granted immunity from such prosecution after the lapse of a particular period so as to provide incentive for efficient work would not only be against public policy but would also be counter-productive. It is likely to be an incentive not for efficient work but for committing offences including embezzlement and misappropriation by some of them at the fag end of their tenure of service and making efforts that the offence is not detected within the period prescribed for launching prosecution or manipulating delay in the matter of launching prosecution. Further, instances are not wanting where a government servant may escape prosecution at a initial stage for want of evidence but during the course of prosecution of some other persons evidence may be led or material may be produced which established complicity and guilt of such government servant. By that time period prescribed, if any, for launching prosecution may have expired and in that event on account of such period having expired the government Servant concerned would succeed in avoiding prosecution even though there may be sufficient evidence of an offence having been committed by him. Such a situation, in our opinion, cannot be created by framing a rule under Article 309 of the Constitution

laying down an embargo on prosecution as a condition of service.

8. There is another cogent ground on account of which the submission that giving a government servant peace of mind after his retirement in his old age can be a good ground to grant him immunity from prosecution cannot be accepted. This would on the face of it be discriminatory and thus arbitrary in as much as if peace of mind in old age can be a good ground for immunity from prosecution for offences committed by a person, there seems to be no reason why such immunity may not be available to all old persons and should be confined only to government servants. On the face of it, the government servants cannot constitute a class by themselves so as to bring their case within the purview of reasonable classification, if the purpose of granting immunity from prosecution is ensuring peace of mind in old age.

9. Even on a plain reading of Rule 2.2, it is apparent that the intention of framing the said rule was not to grant immunity from prosecution to a government servant, if the conditions mentioned therein are satisfied. As seen above, Rule 2.2 is in Chapter II of the Punjab Civil Service Rules which deal with ordinary pension. There can be to manner of doubt that making provision with regard to pension falls within the purview of "conditions of service". The embargo on prosecution spelt out by the High Court is not to be found in the main Rule 2.2 but in the third proviso to the said rule. It is the third proviso which enjoins that no judicial proceedings, if not instituted while the officer was in service, whether before his retirement of during his re-employment, shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution. The scope of a proviso is well-settled. In M/s. Ram Narain Sons Ltd. v. Asst. CST ((1955) 2 SCR 483 : AIR 1955 SC 765 : (1955) 6 STC 627), it was held : (SCR p. 493)

It is cardinal rule of interpretation that a proviso to a particular provision of statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.

10. The same view was reiterated in Abdul Jabar Butt v. State of Jammu & Kashmir ((1957) SCR 51 : AIR 1957 SC 281 : 1957 Cri LJ 404) where it was held that a proviso must be considered with relation to the principal matter to which it stands as a proviso.

11. With regard to scope of a proviso, it was urged by the learned counsel for the respondents relying on the decision of this Court in Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai ((1966) 1 SCR 367 : AIR 1966 SC 459) that even though the proper function of a proviso is to except of qualify something enacted in the substantive clause which but for the proviso would be within that clause, there is no rule that the proviso must always be restricted to the ambit of the main enactment. It may at times amount to a substantive provision. This submission too does not advance the case of the respondent in as much as even if in a given case a proviso may amount to a substantive provision, making of such a substantive provision will have to be within the framework of Article 309. If a rule containing an absolute or general embargo on prosecution of a government servant after his retirement for grave misconduct or negligence during the course of the service does not fall within the purview of laying own conditions of services under Article 309, such a provision cannot in the purported exercise of power under Article 309, be made by either incorporating it in the substantive clause of a rule or in the proviso thereto. In view of what has been said above and keeping in mind the scope of rule making power under Article 309 of the Constitution, the third proviso to Rule 2.2 cannot be interpreted as laying down an absolute or general embargo on prosecution of a government servant if the conditions stated therein are satisfied. Even if on first impression the said rule may appear to be placing such an embargo it has to be interpreted by taking

recourse to the well-settled rule of reading down a provision so as to bring it within the framework of its source of power without, of course, frustrating the purpose for which such provision was made. Clause (b) of Rule 2.2 which can be called the substantive clause reserves to the government the right of withholding or withdrawing a pension or any part of it, whether permanently or for specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to government if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement.

12. The purpose of the third proviso thereto is, as is the scope of proviso, to carve out an exception to the right conferred on the government by the substantive clause if the conditions contemplated by the proviso are fulfilled. This purpose can be achieved if the said proviso by adopting the rule of reading down is interpreted to mean that even if a government servant is prosecuted and punished in judicial proceedings instituted in respect of cause of action which arose or an event which took place more than four years before such institution the government will not be entitled to exercise the right conferred on it by the substantive provision contained in clause (b), with regard to pension of such a government servant. The word "such" in the beginning of the third proviso also supports this interpretation.

13. At this place, it may be pointed out that an analogous provision contained in Article 351-A of the Madras Pension Code came up for consideration before the Madras High Court in P. V. Venkatavaradan v. State of Tamil Nadu by the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Vellore ((1979) 23 MLJ (Cri) 275 (Mad HC). Article 351-A in so far it is relevant for the purpose of this case is reproduced hereunder :

> 351-A. Government further reserve to themselves the right of withholding withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to government, if, in a departmental of judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement :
>
> Provided that -
>
> #(a) * * *(b) * * *##
>
> (c) no such judicial proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or an event which took place more than four years such institution; .....

A similar submission as has been made by the learned counsel for the respondents in the instant cases was made in the case of Venkatavaradan ((1979) 23 MLJ (Cri) 275 (Mad HC)) also. S. Natarajan, J., as his Lordship then was repelled the submission and held :

> The other point urged was that as per Article 351-A of the Madras Pension Code, the right of the government to withhold the pension of a government servant will not cover events of grave misconduct or negligence committed by the government

servant more than four years prior to the institution of the departmental proceedings. As the offences alleged to have been committed by the petitioner are referable to the years 1968 and 1969, the petitioner contends, the filing of a charge-sheet on December 5, 1973 against him was beyond the period of four years contemplated under Article 351-A of the Madras Pension Code and, therefore, the proceedings were vitiated. Even this contention must fail, for, a prosecution under Section 161 and/or Section 165, Indian Penal Code, read with Section 5 (1)(a) and 5(2) of the Prevention of Corruption Act, is not controlled or restricted or trammeled in any manner by the Madras Pension Code. The provisions of the Pension Code. The provisions of the Pension code may, if at all, be relied on only for safeguarding the pension, and cannot be pressed into service to defeat a prosecution on the threshold itself.

14. The decision of this Court in State of Punjab v. Charan Singh ((1981) 2 SCC 197 : 1981 SCC (Cri) 407 : (1981) 2 SCR 989) also throws some light on the principle involved in the instant cases. In that case Rule 16.38 of the Punjab Police Rules, 1934 came up for consideration. The Punjab Police Rules laid down the procedure to be followed in imposing punishment on a Police Officer found guilty of misconduct or a criminal offence and made an exhaustive provision for departmental inquiries. Rule 16.38 laid down the guidelines to be followed by the Superintendent of Police in dealing with a complaint about the commission of a criminal offence by a Police office in connection with his official relations with the public. The respondent Charan Singh in that case was a Police Officer and was convicted and sentenced of an offence under Section 5(1)(d) read with Section 5 (2) of the Prevention of Corruption Act. His conviction as well as sentence was set aside and he was acquitted by the High Court on the ground that there was non-compliance with the provisions of Rule 16.38. Setting aside the order of acquittal and remanding the case to the High Court for fresh disposal in accordance with law, this Court held that Rule 16.38 was not designed to be a condition precedent to the launching of a prosecution in a Criminal Court; it was in the nature of instructions to the Department and was not meant to be of the nature of sanction or permission for a prosecution, nor could it override the provisions of the Code of Criminal Procedure, and the Prevention of Corruption Act.

15. We may also point out that the correctness of the judgment of the High Court of Punjab and Haryana in the case of Des Raj Singal ((1986) 1 Punj LR 82 (P&H HC)), relying upon which the orders appealed against in the instant cases have been passed, was challenged by the State of Punjab in this Court in Criminal Appeal No. 40 of 1987. The question of law raises in the appeal was, however, not gone into and was left open to the decided in an appropriate case in as much as this Court on the facts of that case, in its order dated April 15, 1987 took the view that it would be a futile exercise to consider the question of law involved in the appeal for the reason that the respondent had retired as long ago as on December 13, 1979.

16. We now proceed to consider the other submissions made by learned Counsel for the respondents. It was urged that since government had the power to make suitable amendments even retrospectively in Rule 2.2 of the Punjab Civil Service Rules in order to bring home its intention, it was not open to it to challenge the validity of Rule 2.2. Suffice it to say, so far as this submission is concerned, that the purpose of the State of Punjab in filing these appeals is really to get the interpretation made by the High Court of Rule 2.2 reversed and to have the interpretation made by the trial Court in the case of Des Raj Singal ((1986) 1 Punj LR 82 (P&H HC)), restored and not to get the said rule declared ultra vires.

17. It was also urged by the learned Counsel for the respondents that the third proviso to clause (b) of Rule 2.2 was for the benefit of a government servant and virtually incorporates the principle underlying Article 21 of the Constitution by fixing four years as the limit of initiating prosecution. In support of the submission reliance was placed on a Full Bench decision of the Patna High Court in Madheshwardhari Singh v. State of Bihar (AIR 1986 Pat 324 : 1986 Cri LJ 1771 : 1986 Pat LJR 767). In that case, it was held that in all criminal prosecutions, the right to a speedy public trial is now an inalienable fundamental right of the citizen under Article 21 of the Constitution and it extends to all criminal proceedings for all offences generically irrespective of their nature. It was also held that giving effect to fundamental right of a speedy public trial, therefore, would not in any way conflict with the provision of the Code of Criminal Procedure and that unless the fundamental right to speedy trial is to be whittled down into a mere pious wish, its enforceability in Court must at least be indicated by an outer limit to which an investigation and the trial in a criminal prosecution may ordinarily extend.

18. We are informed that special leave has been granted by this Court against the aforesaid judgment and its correctness is thus sub-judice. That apart, even if the soundness of the principle that there should be speedy trial may not be disputed, the said principle cannot be invoked by the respondents in support of their interpretation of the third proviso to clause (b) of Rule 2.2 framed under Article 309 of the Constitution whose purpose, as already indicated above, is not to place an embargo on prosecution. It is always open to quash a prosecution on the ground of unexplained unconscionable delay in investigation and prosecution on the facts of a given case.

19. It was then urged by the learned Counsel for the respondents that the third proviso to clause (b) of Rule 2.2 is in the nature of a beneficent legislation and in case of doubt has to be interpreted in favour of the person for whose benefit the rule has been framed. In our opinion, keeping in view the scope of the power to frame a rule under Article 309 and the purpose of Rule 2.2, there is no doubt with regard to the interpretation of the said rule. By applying the rule of interpretation with regard to a beneficent legislation, a benefit never intended to be conferred cannot be conferred.

20. Learned Counsel for the respondents also submitted that the State enjoys plenary power in the matter of prosecution for an offence and if the government in its wisdom thought it fit that a government servant after his retirement should not be prosecuted for grave misconduct or negligence committed during the period of service if the cause of action arose or the incident took place more than four years before the institution of judicial proceedings for prosecution, no exception can be taken to that power. In this connection, apart from relying on various sections of the Code of Criminal Procedure such as Sections 197, 321, 432, 433 and 468 and the power of the Governor to grant pardon, learned Counsel for the respondents also relied on Harold J., Laski's A Grammar of Politics for the proposition that every government has a power to decide not to prosecute or, prosecution having been commenced to decide upon its discontinuance. We are of opinion that this submission too does not help the respondents in these appeals for the simple reason that the third proviso to clause (b) of Rule 2.2 has not been framed for a different purpose but has been framed for a different purpose, namely to provide an exception to the power of the government in the matter of withholding or withdrawing etc. of pension of a retired government servant contained in clause (b) of Rule 2.2

21. Lastly, it was urged by learned Counsel for the respondents in these appeals that on the same principle on which Criminal Appeal No. 40 of 1987 in the matter of Des Raj Singal ((1986) 1 Punj LR 82 (P&H HC)) was dismissed, these appeals also deserve to be dismissed. So far as this submission is concerned, we find substance as regards the appeal against Kailash Nath. The first

information report in this case was lodged on August 27, 1985, that is, after about six years of the accrual of the cause of action or taking place of the events which took place in 1979 and after about three years even from October 31, 1982 when the respondent retired from service. Now in 1988 it would be pursuing a stale matter. In this view of the matter, we are of the opinion that the order of the High Court quashing the first information report as against Kailash Nath, respondent in Criminal Appeal No. 422 of 1988, deserves to be maintained though on a different ground.

22. The facts of the case, with regard to Mangal Singh Minhas, respondent in Criminal Appeal No. 423-24 of 1988, however, are different. In this case, as seen above, first information report was promptly lodged on June 19, 1980. The filing of challan, however, was delayed on account of the steps taken by the respondent for getting the first information report quashed. He retired about three years after lodging of the first information report and during the pendency of the proceedings in the High Court for quashing of the said first information report. Since the High Court quashed the prosecution of Mangal Singh Minhas on one ground alone based on its earlier decision in the case of Des Raj Singal ((1986) 1 Punj LR (P&H HC)) and did not consider other grounds, if any, that may have been raised by him for quashing of the prosecution, we are of the opinion that after setting aside the orders appealed against in this case, the High Court should be required to decide afresh the petition made by Mangal Singh Minhas for quashing of the prosecution on grounds, if any, other than those which have already been considered above.

23. In view of the foregoing discussion, Criminal Appeal No. 422 of 1988 as against Kailash Nath is dismissed and the order quashing the first information report in his case is maintained even though on another ground; whereas Criminal Appeal Nos. 423-24 of 1988 as against Mangal Singh Minhas are allowed and the orders appealed against passed by the High Court are set aside. The High Court shall, however, decide the petition made by Mangal Singh Minhas afresh in accordance with law in the light of the observations made above.

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