

State of Maharashtra

Vs

Keshav Ramchandra Pangare and Another

Criminal Appeal No. 1169 of 1999

(K. T. Thomas, M. B. Shah JJ)

01.11.1999

JUDGMENT

SHAH, J.-

1. Leave granted.

2. Respondent 1 was serving as a Deputy engineer, PWD in the State of Maharashtra. On 13-10-1990, Charge-sheet No. 247 of 1990 was filed against the respondent and several other officers of the Department before against the respondent and several other officers of the Department before the special court, state, and the case was numbered as Special Case No. 5 of 1990. The respondent retired on 31-12-1987 as a Deputy engineer. Necessary sanction for prosecuting the respondent for the offences punishable under Sections 120-B, 406, 420, 465, 466, 467, 468, 471, 477 and 109 IPC and Section 5(1)(C), (d) read with section 5(2) of the prevention of corruption act, 1947 was obtained. The judge of the special court took cognizance of the of the Special court took cognizance of the offences and issued process against the respondent.

3. Thereafter the respondent filed criminal Writ Petition No. 484 of 1991 before the High court of judicature at Bombay for quashing the criminal proceedings on the ground that the complaint was filed beyond the period of four years from the date of commission of the offence and therefore, it was barred by Rule 27(3) of the Maharashtra Civil Service (pension) Rules, 1982 (hereinafter referred to as "the Pension rules"). The High court accepted the plea and held that Rule 27 of the Pension Rules was directly applicable and it is mandatory that prosecution should be launched within four years from the date of commission of offence. Hence, the Court allowed the writ petition and quashed the proceedings in special Case No. 5 of 1990 against the respondent. The said judgment of the learned single judge is being challenged now.

4. On the basis of the aforesaid rule, learned counsel for the appellant submitted that in view of the provisions of the Criminal Procedure code (for short "the Code"), the bar contained in Pension Rule 27 cannot be invalid and it cannot have any overriding effect on the provisions of the code. Even on merits, sanction to prosecute was received on 25-8-1989 and therefore also, the submission of the charge-sheet before the Court on 30-10-1990 was within time. It was alternatively contended that rule 27 of the Pension Rules would not apply to prosecution in a criminal court.

5. In our view, the contention raised by the learned counsel for the appellant requires consideration. Section 4 of the code specifically provided that all offences under the India Penal code shall be investigated, enquired into, tried and otherwise dealt with according to the provisions contained therein. Admittedly, against Respondent 1 charge-sheet is filed for the offences punishable under the

Indian Penal code and the prevention of Corruption Act and he is to be tried as per the procedure prescribed under CrPC. Chapter XXXXXVI containing sections 467 to 473 deals with limitation for taking cognizance of certain offences. Section 468 provides for a bar for taking cognizance of an offence after the expiry of period of limitation prescribed under sub-section (2) thus:

"468. (2) The period of limitation shall be-

- a. six months, if the offence is punishable with fine only;
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
- (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years."

6. Period of three years is provided for an offence punishable with imprisonment for a term exceeding one year but not exceeding three years. If the offence is punishable with imprisonment for a term exceeding three years then there is no period of limitation prescribed under the criminal Procedure Code. Further sub-section (3) of section 470 excludes the time required for obtaining sanction where the previous sanction of the Government or any other authority is required for the institution of any prosecutor for an offence. Hence, it is apparent that as the offences for which Respondent 1 is charge-sheeted are punishable with an imprisonment for a term exceeding three years there is no period of limitation prescribed under Section 468 CrPC. In any case, where the period of limitation is required to be taken for consideration, sub-section (3) of Section 470 CrPC excludes the period required for obtaining previous sanction for institution of prosecution. In the present case, sanction of prosecution was obtained on 25-8-1989. Hence, if at all the period of limitation is applicable, the time required for obtaining sanction is to be excluded. Therefore, it cannot be stated that the prosecution instituted against the respondent is barred by any period of limitation.

7. The next question is- what would be the effect of the Pension Rules which prescribe a period of limitation? For considering the contentions urged by learned counsel for the parties, it would be necessary to refer to the relevant part of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, which reads as under:

"27. Right of Government to withhold or withdraw pension. -(1), if Government may, by order in writing, withhold or withdraw a pension or any part of it, whether, permanently or for a specified period, and also order the recovery form such pension the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the period of his service including service rendered upon re-employment after retirement:

Provided.....

Provided.....

(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 has continued in service.

(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 Government,

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

(iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the government servant during his service.

(3) No Judicial proceedings, if not instituted while the government servant 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 in respect of an event which took place more than four years before such institution.

(4)-(6) * * *"

8. Similar contention was dealt with by this Court in *State of Punjab v. Kailash Nath*¹ wherein the Court considered similar Service Rule 2.2. of the Punjab Civil Service Rules. The court held that 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; therefore, making a provision that a government servant, even if he is guilty of grave misconduct or negligence which constitutes an offence punishable either under the Penal code or the 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 the incentive for efficient work would not only be against public policy but would also be counterproductive. Such a situation cannot be created by framing a rule under Article 309 of the constitution laying down an embargo on prosecution as a condition of service. The Court further held (in paras 11 and 12) as under: (SCC pp. 329-30)

"11. 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 condition of the service does not fall within the purview of laying own conditions of service 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 there to. 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 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 a specified period and the right of ordering the recovery from a pension of the whole or part of

any pecuniary loss caused to the 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 there to is, as is the scope of a 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."

9. Similarly, in the present case, rule 27(1) provides the right of Government to withhold or withdraw a pension and in that context the said rule is to be interpreted. Under the said rule, the Government may, inter alia, order withholding or withdrawing a pension or any part thereof, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. It also empowers the Government to order the recovery from such pension of whole or part of any pecuniary loss causes to the Government if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. In the context of the second part of sub-rule (1), (3) is to be read and interpreted. If something is to be recovered from the pension payable to the employee then the judicial proceeding or departmental enquiry is required to be started within the period prescribed under sub-rule (2) or sub-rule (3) but that would not debar the prosecuting agency from launching the prosecution for the offence of grave misconduct. This rule is to be read with previous Rule 26 which provided that future good conduct shall be an implied condition of every grant of pension and the Government may withhold or withdraw a pension or part thereof, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct. But Pension rules 26 and 27 do not lay down any period of limitation for prosecution or could not supersede the period of limitation prescribed under CrPC. Rule 27 is only meant for the purpose of granting, withholding or withdrawing the pension and hence its operation would be in the limited field of granting or withholding pension to the government employees.

10. Relying upon the decision in *Kailash Nath*¹ the learned Single Judge of the Bombay High Court in *Prabjekar Govind Sawant v. State of Maharashtra*² rejected the contention that the prosecution was barred under Rule 27 of the Pension rules as it was launched after the period of four years. In that case, the learned judge also referred to article 254 of the constitution and held that the provisions of the Criminal Procedure code shall have an overriding effect and shall prevail notwithstanding any provision in the Pension Rules framed by the State government. It is unfortunate that the attention of the learned Single Judge, instead of jumping to a conclusion solely based on Rule 27 of the pension rules should have examined the relevant provisions of the Code before axing down the criminal prosecution in respect of serious offences.

11. In the result, the appeal is allowed. The impugned order dated 18-9-1998 passed by the High Court in Criminal Writ Petition No. 484 of 1991 is quashed and set aside. The trial court is directed to proceed with the matter.

