PUNJAB AND HARYANA HIGH COURT

Des Raj Singal, Ex-Chief Engineer

Vs

State of Punjab

Criminal Misc. Side Criminal Misc. No. 338-M of 1985

(M.M. Punchhi, J.)

03.09.1985

JUDGMENT

M.M. Punchhi, J.

1. This petition under section 482 of the Code of Criminal Procedure, raises an important question of limitation in the matter of prosecuting the retired government servants for offences alleged to have been committed by them while still in service of re-employment.

2. The petitioner Des Raj Singhal was employed as a Chief Engineer in the PWD Public Health Department, Punjab, at Patiala. On September 6, 1975, a functionary of the Vigilance Department got recorded an F.I.R. against him under section 5(1)(a) read with Section 5(2) of the Prevention of Corruption Act, 1947, on the allegation that he had in his possession pecuniary resources and immoveable and movable properties, detailed therein, which he cannot satisfactorily account and were dis proportionate to his known source of income. The petitioner was allowed to retire from service on October 31, 1979, without the case registered against him being any where close being presented in a Court of law. Nearly 4-1/4 years after his retirement, prosecution was launched against the petitioner on January 23, 1984, inasmuch as the challan or the police report was put in before the special Judge, Patiala, for taking cognizance of the matter. The petitioner, when put up for trial, raised the question of limitation and pleaded that the trial was barred in view of rule 2.2 of the Punjab Civil Service Rules, Volume-II where under limitation of four years had been prescribed computable from the date of the event which was spelled out as an offence. Shri R.L. Anand, the learned counsel Judge, Patiala, by a detailed order, repelled the objection which has given rise to the present petition.

3. Mr. K.P. Bhandari, learned counsel for the petitioner, has drawn my attention to the relevant rule 2.2. of the Punjab Civil Service Rules, Volume-II, which figures in the chapter ear-marked for 'pensions' and Chapter-II thereof, wherein rule 2. 2 occurs, is meant for 'Ordinary Pensions'. The relevant extract of sub-rule (b) thereof provides as follows :-

> "(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 of part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty or grave mis-conduct 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) ... ...

(b) a judicial proceeding shall be deemed to be instituted -

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

A plain reading of the afore-extracted rule puts a fetter that no criminal proceeding can be instituted in respect of an event which took place more than four years before the date on which a complaint or report of a police officer, on which the Court takes cognizance, is made, keeping apart whether the officer was in service or retired or re-employed at that time. The embargo on institution of a criminal proceeding, though occurring in the Chapter meant for 'pension', apparently reserves the right to the Government of withholding or withdrawing a pension or part of it if the pensioner is found guilty of grave misconduct or negligence during the period of service or reemployment. The learned special Judge, when confronted with the obstacle took the view that the fetter put on the institution of criminal proceedings had a narrow purpose, for, it was only to regulate the release withholding or withdrawing of pension and had nothing to do with the power of the Court to try offence under section 5(1)(e) read with section 5(2) of the Prevention of Corruption Act.

4. Now the source of the Punjab Civil Service Rules is Article 309 of the Constitution. That it is so is beyond challenge. That these rules came into operation after the enforcement of the Constitution is also beyond challenge. That they are legislative in character is also beyond challenge in view of *B.S. Yadav and others v. State of Haryana and others*[1], and in particular for the observations made by the Supreme Court, which are reproduced below :-

"That the Governor possesses legislative power under our Constitution is controvertible and, therefore, there is nothing unique about the Governor's power under the proviso to Article 309 being in the nature of a legislative power. By Article 158, the Governor of a

> State is a part of the legislature of the State. And the most obvious exercise of legislative power by the Governor is the power given to him by Article 213 to promulgate Ordinances when the legislature is not in Session. Under that Article, he exercises a power of the same kind which the legislature normally exercises, the power to make laws. The heading of the Chapter IV of Part VI of the Constitution in which Article 213 occurs, is significant: "Legislative Power of the Governor". The power of the Governor under the proviso to Article 3209 to make appropriate rules is of the same kind. It is legislative power Under article 213, he substitutes for the legislature because the legislature is in recess. Under the proviso to Article 309, he substitutes for the legislature because the legislature has not yet exercise its power to pass an appropriate law on the subject."

On the touch-stone of the aforesaid authoritative pronouncement, rule 2.2 is a legislative measure enacted under the legislative power of the Government. Now in the context of the rule, it is discernible that pension is alterable to the detriment of the pensioner if he is found guilty of grave misconduct or negligence in a judicial proceeding. But a criminal judicial proceedings mandatorily is required to be instituted, in respect of an event within four years of its taking place, reckoned on the date on which the Magistrate takes cognizance on the police report or complaint, as the case may be. Thus, the narrow point required to be determined is whether the embargo is put for the limited purpose of pension or does it enure to the benefit of the accused-pensioner, objecting to the continuance of trial being a proceeding in violation thereof.

5. As said before, the rule being a law with all the strength and efficacy of the law of a legislature, wisdom to the legislature need be attributed that it thought that so far as a pensioner is concerned, he should not be kept in a state of lurking fear about an event, for which he is answerable, for more than four years from the date when it took place, and that the pensioner should quietly and safely keep his earned rest and peace well preserved. This seems to me in keeping with the well recognised, of repeated saying of Job Vote who said with singular felicity that controversies are limited to a fixed period of time lest they be immortal while men are mortal. The life expectancy in this country being what it is, ranging between 60 to 70 years, and a government servant under the Punjab Civil Service Rules normally retiring on attaining the age of superannuation at 58, the rule cannot be said to be of limited application to pensions only and not to the government's powers in prosecuting the pensioners. It is equally true that the bar of limitation merely bars the remedy and does not destroy the right and that in the matter of interpretation courts must lean in favour of the availability of limitation, yet the intention of the Governor in providing limitation in the rule, as it is clear, was to serve a dual purpose. And the purpose was, as disclosed earlier, not to put the pensioner to trial beyond the specified period. And if timely brought to trial on a grave misconduct or negligence, pension could be withheld or withdrawn on the establishment of the charge. The rule thus serves both purposes and I hold it accordingly.

6. The matter can be viewed from another angle also. The Prevention of Corruption Act was enacted in the year 1947. Clause (e) to sub-section (1) of Section 5, however, was inserted in the year 1964. When the original Act came, its object was for the more effective prevention of bribery and corruption, as goes the preamble Section 5(1) given out a list of criminal misconducts committed by a public servant, though one provided in clause (e), regarding property in possession of a public servant, which he cannot satisfactorily account, was added to

the list of criminal misconducts at a time when the CSR Rules were in force. There is no period of limitation prescribed in the prevention of Corruption Act, but a trial thereunder is to be governed by the Code of Criminal Procedure subject to certain modifications as envisaged under section 7-A. Section 5 of the Code of Criminal Procedure specifically provides that nothing in the Code shall, in the absence of a specific provision to the contrary, effect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. Law of limitation is undoubtedly a part of the law of procedure. It is now idle to contend that law of limitation has no place in criminal proceedings for the employment of limitation principles have found their way in the Code of Criminal Procedure, 1974, but to a limited extent, in Chapter XXXVI-Sections 467 to 473. The offence does not get washed off or even the right to prosecute the offender. It is the remedy of getting him punished which is taken away by law of limitation. It is for that reason advisedly in all penal statutes, as also in the one in hand, the act is made 'punishable' for a term of imprisonment provided. Nowhere has the expression been used that he shall be punished'. The employment of the word 'punishable' conveys the cardinal principle of criminal law that the accused is punishable if he is capable of being punished, and otherwise deserves the punishment on proven guilt. But when the bar of limitation takes away the remedy, the ability of the Court to punish him is taken away by the express provision of law. Thus without doing any violence to the penal statute the law creating limitation bars the remedy of having the offender punished and thereby does not suffer from the vice of repugnancy. The decisions cited by the Mr. Bhandari on the point of repugnancy of statutes on the touch-stone of Article 254 of the Constitution, do not appear to me, relevant in the case, for the matter seems to my crystal clear on the strength and efficacy of rule 2.2 of the Punjab Civil Service Rules.

7. There is considerable case law on the subject that when a stale and old prosecution is launched superior Courts have interfered and quashed prosecutions. To illustrate there are cases : *State of U.P. v. Kapil Deo Shukla*[2], *State of Bihar v. Uma Shankar Kotriwal and others*[3], *Prithvi Raj and another v. State of Haryana*[4], *B.N. Gangoo v. State of Himachal Pradesh*[5], where prosecutions launched after a considerable delay, or even when launched, their delayed continuance, was given a nail by various High Courts anu in the aforesaid two Supreme Courts cases the view of the respective High Courts was affirmed. Those cases are on their own facts and cannot on the arithmetic of passage of years as a matter of law term any prosecution to be stale or delayed. To that list, however, the instant case too can be added on its own facts. Now here, to recall the allegations against the petitioner, he was found on September 6, 1975, in possession of movable and immoveable property which he could not satisfactorily account for from his known sources of income. The act complained of had been committed and the F.I.R. had been lodged by an officer of the Vigilance Department. It would be legitimate to assume that before the F.I.R. was recorded some vigilance enquiry must have been undertaken as is the normal procedure in that department. If none was undertaken it makes matter worse for the officer acted with no sence of responsibility. It did not in any case require nearly 8-1/2 years to keep the matter investigated. One of the considerations which weighed with their Lordships of the Supreme Court in Kapil Deo Shukla's case (supra) was the uncertainty of the memory of witnesses, assuming that they were still available to depose at the trial. The accused in that case was kept under suspense of a trial for more than 20 years and it is in that context that this consideration weighed with their Lordships. What could legitimately be said of prosecution witnesses in that case, can with equal effectiveness be said for the accused, especially in a crime like the present one, where on shifting of onus he is required to satisfactorily explain that the assets movable and immoveable with him

were acquired by him from his pecuniary resources and his known sources of income. All these are matters of detail and his memory too cannot be expected to keen in shape to discharge the burden when called upon to do so after a protracted trial. In this context the specific language of section 5(1)(e) of the Prevention of Corruption, Act is pertinent as the offence is of the public servant not being able to satisfactorily account for the properties in his possession, and that of section 7, where under the law recognises him to be a competent witness for the defence giving evidence on oath in respect of the charges made against him. Thus, in the peculiar facts of the present case when the petitioner retired at the age of 58 on October 31, 1979, and is now in his sixty-fourth year, letting the trial commence and then putting him to defence at an age when his memory is likely to have got blurred and uncertain would, to mind, be an abuse of the process of the Court causing serious prejudice to the accused in his defence.

8. Thus, for the aforesaid reasons, I have come to the considered view that the proceedings against the petitioner need be and are hereby quashed.

Cases Referred.

1AIR 1981 SC 561
2AIR 1973 SC 494
3AIR 1981 SC 641
41981 Cri L.J. 984
51983(1) C.L.R. 301