

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP no. 17/2013
CMA no. 23/2013

Date of order: 19.02.2013

K. V. S and Ors v. G. C. Rajgatra and anr

Coram:

**Hon'ble Mr. Justice M. M. Kumar, Chief Justice
Hon'ble Mr. Justice Hasnain Massodi, Judge**

Appearing counsel:

For the Petitioner(s) Mrs. Neeru Goswami, Advocate.

For the respondent(s)

- i) Whether to be reported in Press, Journal/Media : Yes/No
ii/ Whether to be reported in Digest/ Journal : Yes/No
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M. M. Kumar, CJ

1. A short issued raised in the instant writ petition filed under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir, is whether the revisional jurisdiction could be exercised by an authority without regard to any time limit. The issue has emerged from the impugned order passed by the Central Administrative Tribunal, Chandigarh, (Circuit Bench) at Jammu, in OA no. 942-JK of 2010 decided on 27.08.2012.

2. The original applicant was found guilty of some charges in a regular departmental enquiry. The Inquiry Officer had submitted his report on 21.04.2006 which was supplied to the original applicant-respondent on 02.05.2006 to enable him to make a representation. After taking into account the findings of

the Inquiry Officer and the representation of the original applicant the disciplinary authority passed an order on 16.01.2007, imposing the penalty of reduction of nine stages from Rs. 5000 to Rs. 4100 in the time scale of Rs. 4000-100-6000 for a period of five years. The original applicant was also not to earn the increments of pay during the period of reduction and on the expiry of that period of reduction it was not to have the effect of postponing the future increment of his pay. The intervening period from 14.02.2003 to 09.10.2003 was treated as *dise non* for all purposes. The original applicant did not file any appeal against the order of the disciplinary authority. However, the Commissioner, Kendriya Vidyalaya Sangathan-petitioner no.1, *suo moto* initiated proceedings for revision under Section 29 (iv) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (for brevity ‘the 1965 Rules’) and issued show cause notice dated 28.04.2010 to the original applicant. He submitted his reply to the notice. After taking into consideration the reply the penalty imposed by the Disciplinary Authority was converted to that of compulsory retirement and recovery of Rs. 60,710/- from him was ordered vide order dated 21.10.2010.

3. The question which emerges for consideration is whether the order dated 16.01.2007 could be revised on 21.10.2010.

The Tribunal has taken the view that although the petitioner was competent to exercise revisional jurisdiction under Rule 29 (iv) of the 1965 Rules, however, such a power was to be exercised within a reasonable period of three years. The view of the Tribunal is discernible from paragraph nos. 10 and 11 of the order, which reads thus:-

" 10. As far as the competence of Respondent no.1 is concerned, he is competent to undertake revision in terms of Rule 29 (iv) of CCS (CCA) Rules, 1965. This Rule provides that revision can be undertaken by the Head of Department at any time. The applicant contends that the action of suo moto revision is belated and that too at a stage when the applicant has already undergone the major portion of the penalty imposed by the disciplinary authority. In this connection the learned counsel for the applicant has drawn our attention to the Judgment rendered in O.A. No. 239 of 1996 in the case of S. P. Gautam and ors v. Union of India and ors, decided on 16.8.2001 by the Lucknow Bench of this Tribunal, in which it was held that the words' may at any time' can be stretched only upto a reasonable time. In the instant case, the disciplinary authority had passed impugned order on 16.1.2007 and the order of the revisional authority is dated 21.10.2010.

11. We find the applicant has already undergone substantial portion of the punishment and accepted it without filing an appeal. Therefore, it would be unreasonable to change the punishment after more than three and half years."

4. We have heard the learned counsel for the petitioner and have perused the impugned judgment and the paper book.
5. It is now well settled that if the time limit for exercising the revisional jurisdiction has not been fixed in the Rules then such powers could be exercised only within a reasonable time. In that regard the Tribunal has rightly placed reliance on the view

taken by the Lucknow Bench of the Tribunal in S.P.Gautam's case (*supra*). Their Lordships of Hon'ble the Supreme Court had the opportunity to consider the issue concerning the period within which revisional jurisdiction could be exercised in case of **State of Punjab and ors v. Bhatinda District Co-op. Milk P. Union Ltd (1007) 11 SCC 363**. It was held that the period of three years would be reasonable period and revisional jurisdiction should ordinarily be exercised within that period. The principle laid down is that what should be the reasonable period would depend upon the nature of the Statute, rights and liabilities there under and other relevant factors. The observations have been made in the context of Section 21 of the Punjab General Sales Tax Act, 1948 which clothe the Commissioner with revisional jurisdiction and it does not provide for any fixed period for exercise of such jurisdiction.

6. In the present case we are concerned with Rule 29(iv) of the 1965 Rules which clothe the Head of the Department directly under the Central Government to exercise revisional jurisdiction and the relevant part of the Rule reads as under:-

“29. (iv) the head of a department directly under the Central Government, in the case of a Government Servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such head of a department; or”

7. A perusal of the aforesaid Rule would show that the head of the Department could exercise revisional jurisdiction, confirming, modifying or setting aside the order under revision. However, the unnumbered proviso imposes a restriction on exercise of such power unless the authority which made order in appeal or the authority to which the appeal would lie, where no appeal has been preferred is subordinate to the Head of the Department. In other words it is the order of inferior authority which can be set aside, modified or confirmed by a superior authority like the Head of the Department. The second limitation for exercising of revisional power contemplated by Rule 29 (ii) is that no proceedings for revision is to be initiated till the expiry of period of limitation for an appeal or disposal of the appeal where any such appeal has been preferred.

8. Rule 25 provides for a period of 45 days for preferring an appeal from the date on which a copy of the order in appeal is delivered. The period is relaxable if sufficient cause is shown. If for filing an appeal the period provided is 45 days, which could be relaxed, the reasonable period for exercising revisional jurisdiction should not exceed ordinarily one year. We say so for the reasons that in Bhatinda District Co-op. Milk P. Union Ltd's case (*supra*) the period of 3 years for passing an order of assessment has been provided under sub-section (1) of

Section 11 of the Punjab General Sales Tax, Act, 1948. Earlier this period was 5 years. It was on the basis of the aforesaid statutory provision concerning assessment that Hon'ble the Supreme Court imported the same period of limitation for exercising revisional jurisdiction under Section 21 of the Punjab General Sales Tax, Act, 1948. This period has been expanded because recovery of tax is to be effected. In the present case the order of the disciplinary authority was passed on 16.01.2007 and appeal could have been filed within 45 days as per Rule 25 of the Rules. This period is extendable for sufficient reasons. Therefore, following the same analogy the power of revision in the present case must be exercised within one year. Moreover, learned counsel could not show how the view of the Tribunal in S.P. Gautam's case is erroneous and whether the order has been set aside in writ petition by the High Court. Thus there is no ground for admission of the writ petition.

9. As a sequel to the above discussion the writ petition does not warrant admission and the same is hereby dismissed.

(Hasnain Massodi)
Judge

(M. M. Kumar)
Chief Justice

JAAMU:
19.02.2013
Anil Raina, Secy.

