

Court No. - 8

Case :- WRIT - A No. - 4756 of 2023

Petitioner :- Dilip Kumar Yadav

Respondent :- State Of U.P. Thru. Prin. Secy. (Homes) Lko. And 2 Others

Counsel for Petitioner :- Abhishek Pratap

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh,J.

1. Heard Sri Jitendra Kumar Singh, learned counsel appearing for the petitioner and Sri Rajeev Singh, learned Additional Chief Standing Counsel appearing for the State.

2. Present petition under Article 226 of the Constitution of India has been filed seeking quashing of the order dated 11.04.2023 whereby the petitioner has been placed under suspension pending disciplinary proceedings against him.

3. The petitioner has sought quashing of disciplinary proceedings initiated against him under Section 14(1) of the Uttar Pradesh Police Officer of Subordinate Ranks (Punishment and Appeal) Rules, 1991 and charge-sheet dated 06.05.2023 issued against him in the departmental proceedings.

4. An audio recording purportedly between the petitioner and one Sub-Inspector-Brijesh Kumar Singh went viral for distribution of bribe amount. Said audio recording was handed over to the Circle Officer, who played it on the computer and when he was sure that it was the voice of the petitioner and S.I. Brijesh Kumar Singh, an FIR No.0425 of 2023 under Section 7/13(1)(a), 13(1)(b) of the Prevention of Corruption Act came to be registered at Police Station Kotwali District Barabanki against the petitioner Head Constable and S.I. Brijesh Kumar Singh.

5. Investigation in the FIR is still on. Charge sheet is yet to be submitted. Looking at the misconduct of accepting bribe for which audio recording was available with the Circle Officer, the petitioner has been placed under suspension in contemplation of the departmental proceedings. The petitioner got arrested in the said FIR, and he has been enlarged on bail by this Court at Allahabad vide order dated 26.05.2023 passed in Bail No.22525 of 2023.

6. Learned counsel appearing for the petitioner submits that the departmental proceedings cannot go on when they are based on same facts and same evidence for which criminal proceedings have also been instituted against the delinquent employee till the conclusion of criminal proceedings. In support of this submission, he has placed reliance on the judgments of the Supreme Court in the cases of **Capt. M. Paul Anthony vs Bharat Gold Mines Ltd & Anr : (1999) 3 SCC 679** and **Eastern Coalfields Limited & Ors vs Rabindra Kumar Bharti : (2022) 12 SCC 390**. He, therefore, submits that placing the petitioner under suspension and initiating departmental proceedings before conclusion of the criminal proceedings is against the law and the same should be set aside.

7. On the other hand, learned Additional Chief Standing Counsel submits that *prima facie* the petitioner is guilty of gross misconduct, which may entail major penalty of dismissal against him. Scope of the departmental proceedings and criminal proceedings are different. In departmental proceedings, charge(s) has to be proved on preponderance of the probabilities whereas in criminal proceedings, charge(s) has to be proved by the prosecution beyond reasonable doubt. There is no bar for proceeding simultaneously in criminal proceedings and departmental proceedings. He further submits that charge-sheet has not been filed. The Court has not taken cognizance, therefore, submission of learned counsel appearing for the petitioner that the criminal proceedings and departmental proceedings cannot go together, is also not correct on facts of the case inasmuch as criminal proceedings have not yet started.

8. I have considered the submissions of learned counsel appearing for the petitioner and learned Additional Chief Standing Counsel.

9. The Supreme Court in the case of Capt. M. Paul Anthony (*supra*) has held that it would be desirable to keep the departmental proceedings at abeyance till the finalization of the criminal proceedings. The Supreme Court has not held that both the proceedings cannot go together. Para 22 of the aforesaid judgment would read as under:-

"22. The conclusions which are deducible from various decisions of this Court referred to above are:

- (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their

being conducted simultaneously, though separately.

- (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
- (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.
- (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
- (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

10. In para 13 of the *Eastern Coalfields Limited* (supra), it has been said that there is no absolute embargo on conducting the criminal proceedings and departmental proceedings simultaneously. Para 13 of the said judgment reads as under:-

"13. We would notice that this is a case where there is a criminal case against the respondent. The appellant(s) as employer also launched disciplinary proceedings. It is undoubtedly true that this Court has taken the view that when the charges are identical and give rise to complicated issues of fact and law and evidence is the same, it may not be appropriate to proceed simultaneously in disciplinary proceedings, along with the criminal case. The rationale behind the principle largely is that the employee who is facing the disciplinary proceeding would necessarily have to take a stand. This in turn would amount to revealing his defence and therefore prejudice the employee in the criminal proceedings. No

doubt, this Court has laid down that it is not an absolute embargo and the principle is one to be applied based on the facts of each case."

11. In view thereof, I find no substance in the submission of learned counsel appearing for the petitioner that criminal proceedings and departmental proceedings cannot go simultaneously. However, in the present case, criminal proceedings have not yet started inasmuch as charge-sheet has not been filed. Looking at the misconduct allegedly committed by the petitioner, this Court finds no ground to interfere with the impugned order of suspension and charge-sheet. This writ petition being devoid of merit and substance is hereby ***dismissed***.

(Dinesh Kumar Singh, J.)

Order Date :- 4.7.2023
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