

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15039 of 2015

=====

Satish Prasad S/o Late Puna Prasad Resident of Village Musnapar, P.S.
Gaurichak, District Patna.

.... Petitioner/s

Versus

1.The State of Bihar through Principal Secretary, Department of
Agricultural, Bihar, Patna.
2.The Director, Department of Agricultural, Bihar, Patna.
3.The Joint Director (Engineering), Department of Agricultural, Bihar,
Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Tiwari, Adv

For the Respondent/s : Mr. AAG2-D.K. Sinha

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

2 28-09-2015

Heard learned counsel for the parties.

The petitioner, himself is in jail custody and has got this writ application filed through his wife, who has sworn the affidavit in support of the facts mentioned in the writ application. Such facts therefore, cannot be taken to be perfectly correct because the petitioner on account of his being handicapped had authorized his wife to file the writ application but the wife while swearing affidavit does not claim that the content of the writ application was read over to the petitioner in jail.

It is in this background, the Court will have to go

into the reliefs, prayed for, in this writ application:-

“To quash the memo of charge (Prapatra-K) framed against the petitioner above named, by the Joint Agriculture Director (Engineering), Bihar, Patna vide office order bearing Memo No. 380 dated 01.08.2015.

To direct the respondent authorities not to proceed further in the departmental proceeding initiated against the petitioner till the culmination of Criminal Prosecution as there being a criminal case (arising out of Jakanpur P.S. Case No. 227/15) pending for the same set of charge which is under stage of investigation.”

As would be found from the averments made in the writ application, the petitioner was a clerk in the office of Joint Agriculture Director (Engineering) and had been specifically entrusted with the job of not only keeping the cheque-book under his custody but also maintaining the cash-book and getting the pass book updated from the Bank. The allegation against the petitioner, in fact, revolves round misconduct in relation to all these duties, inasmuch as, it has been found that a sum of Rs. 85,67,452/- was fraudulently withdrawn by use of two cheques bearing no. 016674 and 016675 in the date of 18.05.2015 and 29.05.2015. In fact, the materials which have come on record, would go to show that in all five leaves of cheque books kept under custody of the



petitioner bearing no. 016673, 016674, 016675, 016677 and 016678 were missing and out of which only two cheques bearing no. 016674 and 016675 were found to be encashed by way of fraudulent withdrawal.

For all these huge amount of fraudulent withdrawal, initially a criminal case was lodged under the written report given of Mr. Ravindra Kumar Verma, Joint Agriculture Director (Engineering) on 01.07.2015, giving rise to Jakkanpur P.S. Case No.227 of 2015 on 01.07.2015 for the offences punishable under Sections-420, 409, 120B/34 of the Indian Penal Code, in which the petitioner was made the main accused. Subsequently, while the petitioner was taken into custody and in fact still remains in custody, he has been subjected to disciplinary proceeding by way of framing of memo of charge dated 01.08.2015, in relation to the same incident.

Learned counsel for the petitioner has initially submitted that continuation of departmental proceeding during the pendency of the criminal case should not be



allowed. This Court would find it difficult to accept this submission in view of long line of cases on this issue. A Division Bench of this Court in the case of **Ram Lakhan Singh vs State of Bihar & Ors** reported in **1996 (1) PLJR 516**, has directly gone into the issue and has held that at the stage of investigation of criminal case there would be no question of any prejudice in case of a departmental proceeding being conducted on the same set of allegation.

That apart, the normal rule is that the departmental proceeding and the criminal case being made for two different purposes, there is also no bar in their being conducted simultaneously. Reference in this connection may be usefully made to the judgment of the Apex Court in the case of **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd**, reported in **(1999) 3 SCC 679**, wherein, the law had been laid down by the Apex Court in the following terms:-

- “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, administration may get rid of him at the earliest.”*

As a matter of fact, when this Court would find that misconduct on the part of the petitioner namely, he being the custodian of the cheque-books and out of five leaves of cheque-book, three were missing, out of whom, two were used for fraudulent withdrawal of more than Rs. 85 lacs, the petitioner having not updated the cash-book after 13.03.2015 and also not getting the bank pass-book updated after 09.04.2015, he cannot ask for the



departmental proceeding to be stayed, only on the ground of pendency of the criminal case. These were part of duties assigned to the petitioner and therefore, even if the amount in question has now been traced to have been withdrawn fraudulently by M/S Vikash Traders, in whose account, such amount had been deposited, the misconduct on the part of the petitioner, for the aforesaid lapses, can still be made subject matter of departmental proceeding.

This Court, however, must take into account, one ancillary submission made by learned counsel for the petitioner that the informant, Ravindra Kumar Verma being the Drawing and Disbursing Officer and Signatory of the cheques and the finding that till date, the signature of Mr. Verma was not forged, the petitioner should not be made scape-goat for the laches on the part of Mr. Ravindra Kumar Verma. In other words, he also submits that since the memo of charge has been issued by Mr. Ravindra Kumar Verma, who was also informant in the police case, the petitioner will not get fair hearing in

course of departmental proceeding.



This part of submission of learned counsel for the petitioner, therefore, has to be always kept in mind by the inquiry officer and in fact Mr. Ravindra Kumar Verma, should always be kept away from the departmental proceeding of the petitioner and if necessary the Director, Agriculture, should himself henceforth take each and every decision, whether interlocutory or final, in the matter of departmental proceeding against the petitioner.

As noted above, the petitioner is still in jail custody, the departmental proceeding can be only held after he being released from jail custody. Since, the petitioner, can file writ application while remaining in jail custody, he is directed to submit his written statement of defence to the memo of charge, in which he may raise all the issues including the role of Mr. Verma, within a period of one month from today, but then the departmental proceeding against the petitioner shall commence, only after, he is granted bail in the criminal

case. As noted above in the departmental proceeding, there would be no role of Mr. Ravindra Kumar Verma, the Joint Agriculture Director (Engineering) save and except that if the department wants to cite him as witness, the petitioner will also have full right to cross-examine him.

It is also made clear that in order to eliminate the plea of official bias and the fact that Mr. Ravindra Kumar Verma was Joint Agriculture Director (Engineering), this Court would direct the Director, Agriculture that only such an inquiry officer be appointed to conduct enquiry against the petitioner, who is not only senior but above in rank to Mr. Ravindra Kumar Verma, Joint Agriculture Director (Engineering).

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

Ranjan/-
U

--	--	--	--