

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2969 of 2015

- Bihari Lal Banjare S/o Late Ghasiya Dau Banjare Aged 52 years
R/o New Police Line, Durg. Chowki Padmnabhpur, Durg, Ps. Durg,
District Durg, Chhattisgarh.

---- Petitioner

Versus

1. The State Of Chhattisgarh Through - The Secretary, Department
Of Home (Police), Mantralaya, Mahanadi Bhawan, Naya Raipur,
Chhattisgarh.
2. The Superintendent Of Police, District Durg, Chhattisgarh.
3. The Enquiry Officer, Additional Police Superintendent (HQ),
District Durg, Chhattisgarh.

---- Respondent s

For Petitioner	Mr. Kalyan Kalamkar, Advocate
For Respondent/State	Mr. Shashank Thakur, Government Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

14/08/2015

Heard.

(2) The petitioner has preferred this writ petition under Article 226 of the Constitution of India to seek stay of the Departmental Enquiry constituted against him by the Superintendent of Police, Durg (respondent No.2) on 01.06.2015.

(3) Learned counsel for the petitioner would argue that on the same set of facts, a criminal case is also registered against the petitioner bearing Crime No.2/15 at Police Station , Amleshwar District Durg for

the offence under Section 354 A (1) (i) and Section 354 D (1) (i) of IPC, therefore, if the petitioner is compelled to disclose his defence in the Departmental Enquiry, his case would be seriously prejudiced in the Criminal Court. Thus, the proceedings in the Departmental Enquiry deserves to be stayed.

(4) In the matter of **Stanzen Toyotetsu Inida Private Limited vs. Girish V. and others**, (2014) 3 SCC 636, the Supreme Court, after referring to its earlier decisions in the matters of A.P. SRTC v. Mohd. Yousuf Miya¹, Karnataka SRTC v. M.G. Vittal Rao², M. Paul Anthony v. Bharat Gold Mines Ltd³ and Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry⁴, has held thus in para 13, 14 & 16 :

13. It is unnecessary to multiply decisions on the subject for the legal position as emerging from the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity. It is also evident that while seriousness of the charge levelled against the employees is a consideration, the same is not by itself sufficient unless the case also involves complicated questions of law and fact. Even when the charge is found to be serious and complicated questions of fact and law that arise for consideration, the court will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly.

14. In *Paul Anthony (supra)* this Court went a step further to hold that departmental proceedings can be resumed and proceeded even when they may have been stayed earlier in cases where the criminal trial does not make any headway.

16. Suffice it to say that while there is no legal bar to the

1 (1997) 2 SCC 699

2 (2012) 1 SCC 442

3 (1999) 3 SCC 679

4 (2005) 10 SCC 471

holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defence before the criminal court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.

(5) In the case at hand, the petitioner has allegedly molested a lady, for which, a criminal case is pending against him. There is no serious or complicated question of law or fact involved in the criminal trial, therefore, in view of the law laid down by the Supreme Court in the matter of **Stanzen Toyotetsu Inida Private Limited (supra)**, it is not a fit case, where, the Departmental Enquiry deserves to be stayed by this Court in exercise of its powers under Article 226 of the Constitution of India.

(6) Accordingly, the writ petition fails and the same is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)