

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1848 of 2016

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Sunil Kumar Son of Late Sri Krishna Resident of House No.- M.I.G. H-250,
Lohiya Nagar, Kankarbagh, Post- Lohiya Nagar, P.S.- Kankarbagh, District- Patna.
.... Petitioner

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
 2. The Principal Secretary, Education Department, Bihar, Patna.
 3. The Director (Administration)-cum-Additional Secretary, Education Department,
Bihar, Patna. Respondents
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Appearance :

For the Petitioner/s : Mr. Nandlal kr.Singh, M.Kumar, AK Sinha and
Madhuri Lata, Advocate

For the Respondent/s : Mr. Saroj Kr.Sharma, AC to AAG 5

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 01-03-2016

The petitioner was serving as the Deputy Secretary (In-charge, Joint Secretary), Bihar School Examination Board, Patna in the year 2015. On 20.5.2015 he was arrested by the Vigilance Squad accepting bribe of Rs.15,000/- from one Madan Bihari Singh who was seeking affiliation of his institution with the Board. The arrest gave rise to institution of Vigilance case no. 40 of 2015 dated 20.5.2015 under sections 7 and 13 of the PC Act. The petitioner was remanded to judicial custody on the date of his arrest itself.

2. A departmental proceeding was also started against vide resolution dated 12.10.2015 (Annexure 3). Two charges were framed against him, making accusation that (a) he sought illegal gratification from Madan Bihari Singh for assuring affiliation to his

institution and (b) that he was caught red handed while accepting bribe on 20.5.2015.

3. The petitioner seeks stay of departmental proceeding pending criminal prosecution. He submits that the departmental proceeding has been started for the same accusation for which criminal case is continued against him. In support of his submission that criminal case be stayed pending departmental proceeding, the petitioner has placed reliance upon order dated 26.5.2014, passed in C.W.J.C.No. 5408 of 2014 which in turn has relied upon decision in case of Capt. M.Paul Anthony Vs. Bharat Gold Mines Ltd., reported in (1999) 3 SCC 679; Kusheshwar Dubey Vs. M/S Bharat Coking Coal Ltd., reported in AIR 1988 Supreme Court 2118; and Kapil Muni Rai Vs. State of Bihar and others, reported in 2011(1) PLJR 123.

4. Counsel for the State submits that there is no bar to continuance of criminal prosecution as well as departmental proceedings, as the former proceeds on basis of culpability, whereas latter proceeds on basis of misconduct. He submits that the entire accusation for which the petitioner has been proceeded in departmental proceeding is not similar to one for which criminal case has been instituted.

5. I have heard learned counsel for the parties.



6. It would appear from the pleadings that the criminal case was instituted by Madan Bihari Singh for accepting bribe for favour of securing affiliation to his institution. The departmental proceeding is substantially also for the offence of accepting bribe from said Madan Bihari Singh. As such, I am of the considered view that the petitioner is being virtually proceeded for the same offence, both in the criminal case and the departmental proceeding. The issue is whether the departmental proceeding should be stayed pending criminal proceeding. The matter recently came up for consideration in case of Stanzen Toyotetsu India Private Limited Vs. Girish V. and others, reported in (2014)3 Supreme Court Cases 636. After considering the catena of judgments on the issue, the Hon'ble Apex Court observed that there is no legal bar to continuance of disciplinary proceedings and criminal trial, simultaneously. It has been further observed that while seriousness of charge levelled against employee is an important consideration since continuance of disciplinary proceedings is likely to prejudice defence before criminal court, but same by itself is not sufficient unless case also involves complicated questions of law and fact.

7. I find that the issue involves complex question of both law and fact, in view of nature of allegation. However, even in such circumstances, Hon'ble Apex Court observed that a departmental

proceeding cannot be stayed indefinitely till the criminal prosecution comes to an end. In this view of the matter, this court would only stay the departmental proceeding for a limited period of nine to ten months. In case, the vigilance case is not disposed of within the aforesaid period, respondents may consider continuing departmental proceeding.

8. The writ petition stands disposed of with the aforesaid observations and directions.

(Samarendra Pratap Singh, J)

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