

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8697 of 2015

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Sudeshwar Sah, S/o Late Gaya Sah, Resident of Village- Gopalpur, P.S.-
Naubatpur, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. Director, Primary Education, Department of Education, Bihar, Patna.
3. Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
4. District Programme Officer, Establishment, Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Advocate
: Mr. Ram Hriday Prasad, Advocate
For the Respondent/s : Mr. Vikash Kumar, AC to AG

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 05-01-2016

Heard learned counsel for the petitioner and the respondents.

2. The petitioner seeks stay of the departmental proceeding pending final disposal of Vigilance P.S. Case no. 25 of 2014 dated 01.04.2014.

3. The relief of the petitioner is founded on the premise that the disciplinary proceeding should await the final outcome of the criminal case in cases of grave charge involving complicated question of facts, as the disclosure in departmental proceeding may prejudice defence in the criminal case.

4. During the pendency of the writ application, the petitioner has filed I.A. No. 9664 of 2015, challenging the second

show-cause notice, dated 18.05.2015 (Annexure-7), seeking his response to the findings recorded in the enquiry report. I.A. No. 9664 of 2015 was allowed on 16.12.2015 observing that the relief sought for in the application would form part of the main writ application.

5. Before I consider the grounds on which the relief of the petitioner is founded, it would be relevant to notice the facts of the case in brief:

The petitioner was appointed as Block Education Officer on 22.10.1992. The petitioner was posted as Block Education Officer, Samastipur in the year 2014. A complaint was lodged against him by Sunil Kumar Jha before the Superintendent of Police, Vigilance Investigation Bureau for demand of bribe in lieu of submitting a favourable report relating to upgradation of a middle school within his block. A trap team was formed and the petitioner was allegedly caught red handed accepting bribe amount of Rs.25,000/- on 01.04.2014. A Vigilance case, bearing Vigilance P.S. case no. 25 of 2014 was instituted under Section 7/13(2) read with Section 13 (1) (d) of the Prevention of Corruption Act. The petitioner was taken into custody. The Director Primary Education vide order dated 29.04.2014 suspended him w.e.f. 01.04.2014. He was subsequently released on bail. His suspension was accordingly revoked vide order dated 26.09.2014 of Director, Primary Education



w.e.f. 11.08.2014. He was again suspended vide order dated 26.09.2014 in contemplation of departmental proceeding. Five charges were framed on 15.12.2014 and he was departmentally proceeded for those charges. Charge no.1 relates to demand of bribe of Rs.50,000/-. Charge no.2 states that the petitioner was caught red handed while accepting bribe of Rs.25,000/-. Charge nos. 3, 4 and 5 relate to corrupt practice, negligence in discharge of official responsibility and acting in breach of Government Servant Service Conduct Rules. A copy of charge Memo is annexed as Annexure-4.

6. The petitioner filed his reply on 18.02.2015 denying the charge and also sought stay of the Departmental proceeding till disposal of Vigilance P.S. case no. 25 of 2014, instituted on 01.04.2014. However enquiry continued and the enquiry officer submitted his report on 10.03.2015. The petitioner was exonerated of charge nos. 1, 3, 4 and 5. As far as charge no.2 is concerned, the enquiry officer observed that it would be appropriate to defer the enquiry with respect to the charge, till final disposal of Vigilance case. A copy of the enquiry report dated 10.03.2015 is annexed as Annexure-6. On 18.05.2015, the Director, Primary Education issued second show-cause along with a copy of the enquiry report.

7. The petitioner seeks stay of the departmental



proceeding awaiting conclusion of the vigilance case. The relief of the petitioner is founded on the ground that the departmental proceeding and the criminal proceeding is based on same set of facts and the allegations are common. He submits that the disclosure of his defence in the departmental proceeding would prejudice his criminal case. Furthermore, the second show-cause asking his response is defective, as the same is in his favour. The show-cause notice in no way indicates that the disciplinary authority is in disagreement with the findings recorded by the enquiry Officer. In support of his submission, the petitioner relied upon the case of **Lav Nigam Vs. Chairman & M.D., I.T.I. Ltd. and others**, reported in (2006) 9 SCC 440.

8. The counsel for the State has justified the impugned actions. He submits that a criminal proceeding generally takes a long time and on that ground a departmental proceeding need not be stayed indefinitely. He further submits that the standard of proof in the disciplinary proceeding is not the same, as required in a criminal proceeding. The guilt in the departmental proceeding is judged on preponderance of probability, whereas the strict proof of charge is to be established in a criminal case.

9. I have heard the learned counsel for the parties and perused the materials on record. One of the issue before this Court is

whether the second show-cause noticed issued by the disciplinary authority is defective and invalid.

10. In order to appreciate the matter, it will be relevant to notice the facts of the case. The second show-cause notice dated 18.05.2015 contained in Annexure-7 sought petitioner's response to the findings recorded in the enquiry report within a specified period, failing which appropriate decisions would be taken in the matter. The enquiry officer examined four charges, except charge no.2. He exonerated the petitioner of all the four charges. With respect to charge no.2, the enquiry officer opined that it can be best proved only after conclusion of the criminal case, as the allegations are based on same set of charges. The power of disciplinary authority to differ with the findings of the enquiry officer is not in dispute. However, the said power is subject to some limitations. In case, the disciplinary authority differs with the opinion of the enquiry officer, it has to give a notice, setting out his tentative reasons for the disagreement and forward a copy of the enquiry report along with its view to provide an opportunity to the delinquent to make his representation with respect to the same.

11. In the instant case, the findings of the enquiry officer is in favour of the petitioner. In such circumstances asking petitioner to submit his representation with respect to the findings



recorded in the enquiry report is meaningless and redundant, as there would be nothing for him or her to explain. A person ought not be asked to submit one's explanation, when the findings are in favour. As noticed above, it was well within the authority or the appointing officer to differ with such findings, setting out its tentative reasons for disagreement, which is lacking in the present case. Reference can be made to para 19 of judgment in case of Punjab National Bank and others Vs. Kunj Behari Misra, reported in (1998) 7 SCC 84, which was approvingly quoted in para 11 of judgment in case of Lav Nigam Vs. The Chairman and MD, ITI Ltd. and another, reported in (2006) 9 SCC 440. Para 11 of the judgment in case of **Lav Nigam** (supra) is quoted herein below:

“**11.** In Punjab National Bank V. Kunj Behari Misra a Bench of this Court considered Regulation 7 (2) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. The Regulation itself did not provide for the giving of any notice before the disciplinary authority differed with the view of the enquiry officer. This Court held: (SCC p.97, para 19)

The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the inquiry authority on any article of



charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

12. In view of the discussions made above and the law laid down by the Hon’ble Apex Court, the impugned notice is unsustainable in law and is accordingly set aside.

13. This takes me to the next issue whether the departmental proceeding should be stayed pending criminal proceeding. The issue is no longer res-integra. The Hon’ble Supreme Court in case of State of Rajasthan Vs. B.K. Meena and others, reported in AIR 1997 SC 13 observed that it is not possible to



enumerate the entire circumstances of facts, for and against the stay of disciplinary proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course and all the relevant factors should be considered before a decision is taken to stay the proceeding. In case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Another, reported in (1999) 3 SCC 679, the Hon'ble Apex Court observed that if the criminal case does not proceed or its disposal is being unduly delayed, then the departmental proceedings, even if were stayed on account of 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, the administration may get rid of him at the earliest.

14. In recent time, the issue came up for consideration in case of Stanzen Toyotetsu India Private Limited Vs. Girish V. and others, reported in (2014) 3 SC 636. Reiterating the broad principles, as laid down in case of State of Rajasthan Vs. B.K. Meena and others, reported in AIR 1997 SC 13 and Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Another, reported in (1999) 3 SCC 679 for and against the stay of departmental proceeding, the Hon'ble Apex Court in case of **Stanzen Toyotetsu India Private Limited** (supra) in paragraph 16 of the judgment observed as follows:

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



to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of the 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.”

15. Recently a learned Single Judge after considering the conspectus of decision of the Hon’ble Apex Court summarized the broad principles for and against stay of departmental proceeding pending criminal case, in C.W.J.C. No. 437 of 2014 in case of Shiv

Nandan Sah Vs. The State of Bihar & others heard analogous with other cases disposed of on 10.10.2014, which is quoted herein below:

“13. After having noticed the judicial pronouncements of the Hon^{ble} Apex Court on departmental proceedings vis-à-vis criminal proceedings and after taking into consideration the entire factual matrix of this batch of writ petitions, the principles regarding staying the departmental proceedings on the ground of pendency of criminal proceedings can be summarized as under :-

(a) Normally, the departmental proceedings and the criminal proceedings can proceed simultaneously, as there is no legal bar in conducting both of the proceedings simultaneously, though separately.

(b) If the departmental proceeding and the proceeding in a criminal case are based on identical and common sets of the facts and the evidence, and further if the charge in the criminal case against the delinquent is of grave nature involving the complicated questions of fact and law, then in that case it would be desirable to stay the departmental proceeding for a reasonable period of time but not indefinitely, so that, in the meantime, the criminal trial is concluded.

(c) There cannot be any straitjacket formula for staying the departmental proceeding during the pendency of the criminal case, but it depends upon



the gravity and nature of charge in a criminal case. If in the criminal case pending against the delinquent, complicated question of fact and law are involved and disclosure of his defence in the departmental proceeding will adversely affect his defence in the criminal trial, then in such cases, departmental proceeding may be kept in abeyance for a reasonable period of time, allowing the criminal trial to be proceeded and concluded on priority basis.

(d) If a delinquent is adopting a dilatory approach for delaying the disposal of the criminal trial pending against him, then his prayer for stay of the departmental proceeding during pendency of the criminal trial cannot be entertained. Even if the departmental proceedings were stayed earlier on account of pendency of the criminal case and despite all efforts made by the trial court, the criminal trial has not concluded on account of dilatory approach of the accused, then after a reasonable period of time, which this court considers it to be one year from the date of framing of charge, the departmental proceeding can be resumed and proceeded with, so that it is concluded at an early date and if the employee is found not guilty, his honour as also status is vindicated and if he is found guilty, the Administration may get rid of him at the earliest.

(e) If the departmental proceedings and the



criminal proceedings are based on same sets of fact and evidence, under the provisions of [PC Act](#), relating to disproportionate assets from known source of income of the employee, wherein delinquent is required to explain the valid source of his income for acquiring the properties, then in such cases, the departmental proceeding is not required to be stayed, and the both proceedings can proceed simultaneously, but separately, as in such cases, there is no question of any disclosure of the defence in the departmental proceeding, but the accused/delinquent is required to prove the source of acquisition of such properties.

16. In the light of law laid down by the Hon'ble Apex Court, summarized above, I would now examine the plea of the petitioner for stay of departmental proceeding. Charge no.2 alleges that the petitioner was caught red handed while accepting bribe of Rs.25,000/- by Flying Squad and Vigilance Department. The criminal proceeding is also with respect to same charge.

17. I thus find that the departmental proceeding and the criminal case with respect to charge no.2 is based on same set of facts and evidence. Charge no.2 is grave and involves complicated questions of facts and law. The enquiry officer too observed that charge no.2 can be proved only after conclusion of Vigilance case, which is based on same set of facts. However, in the facts of the case



the petitioner cannot possibly claim that the disclosure of defence in disciplinary proceeding would prejudice his case in criminal proceeding, as he has already opened his defence in his written statement as well as in the proceeding before the enquiry officer. But still, there is another aspect to the matter. The enquiry officer has opined that the charge no.2 should be taken up only after conclusion of the Vigilance case pending in the court of law. In my view, the disciplinary authority would be now required to take a decision whether it would be appropriate to direct further enquiry with respect to said charge or to proceed with respect to the other four charges in respect of which enquiry officer has also already recorded its findings, which is in favour of the petitioner.

18. Coming to the 2nd show-cause notice dated 18.05.2015 contained in Annexure-7, I find that the disciplinary authority without tentatively disagreeing with the conclusion of the enquiry officer has called upon the petitioner to submit his representation. The enquiry report is in favour of the petitioner. The second show-cause notice dated 18.05.2015 of the disciplinary authority is in teeth of the law laid down by the Hon'ble Apex Court. In case of Punjab National Bank and others Vs. Kunj Behari Misra and Lav Nigam Vs. The Chairman & MD, ITI Ltd. and another (supra), which mandates that if disciplinary authority disagrees with

the views of the enquiry officer or with respect to the findings recorded in the enquiry, it must set out its tentative conclusion for such disagreement, which is not the situation in the instant case.

19. In the result, the impugned notice is not sustainable and is accordingly set aside with liberty to proceed afresh in accordance with law and observations made in foregoing paragraphs.

(Samarendra Pratap Singh, J.)

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