

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.3262 of 2016
and
WMP.Nos.2689 & 2690 of 2016

R.11lavenil

... Petitioner

Vs

1. District Elementary Educational Officer,
Nagapattinam
Nagapattinam District.
2. Assistant Elementary Educational Officer,
Vedaranyam,
Nagapattinam District.
3. Secretary, School Committee
Ambal Aided Primary School,
Mudukkuveli,
Thethakudi South,
Vedaranyam Taluk,
Nagapattinam District.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the charge memo issued by the 3rd Respondent in Proceedings No.132/2015 dated 14.11.2015 and quash the same.

For Petitioners : Mr.C.Selvaraj
Senior Counsel
for M/s.C.S.Associates

For Respondents : Mr.V.Jayaprakash Narayanan
Special Government Pleader

O R D E R

By consent, the writ petition is taken up for final disposal at the admission stage itself.

2. Facts in nutshell:-

The petitioner was appointed as Secondary Grade Teacher in the third respondent school on 12.03.2012. The appointment was approved by the department with effect from 12.03.2012. The third respondent gave a complaint to the Inspector of Police, Vedaranyam against the petitioner, which was registered in Crime No.200/2015 on 03.05.2015. After the registration of the criminal case, the petitioner was placed under suspension by an order dated 22.05.2015 with effect from 03.05.2015. The third respondent issued a charge memo containing 10 charges. The writ petition has been filed to quash the charge memo.

3. Mr.C.Selvaraj, learned Senior counsel appearing for the petitioner would submit that the petitioner was appointed as Secondary Grade Teacher where the wife of Correspondent/Secretary of the school is functioning as Headmistress and she always entrusted her work for preparation of monthly returns to the petitioner. In this regard, there was misunderstanding between the Correspondent/Secretary and the petitioner. So, the Correspondent/Secretary took it as a prestige issue and threatened the petitioner with dire consequences. While so, on 03.05.2015 when the petitioner was in Bazaar street, the Correspondent/Secretary abused him in unparliamentary words and at that time, the petitioner's father and brother came there and questioned him. The wordy altercation snow balled, resulting in registration of the criminal case.

4. The learned Senior Counsel would further submit that the third respondent has now issued a charge memo containing 10 charges. The charges 1 to 5 and 10 are relating to late attendance to the school and other minor lapses where as the charges 6 to 9 are identical to that of the criminal case. So, the departmental proceedings have to be deferred till the conclusion of the criminal case. In support of his contention, the learned Senior counsel relied upon the decision of the Hon'ble Supreme Court reported in (i). AIR 1988 SC 2118 (Kusheshwar Dubey V. M/s.Bharat Coking Coal Ltd., and others (ii) 1993 LLJ SC 168 (P.J.Sunderrajan and Another Vs. Unit Trust of India and Another).

5. In the case of Kusheshwar Dubey V. M/s.Bharat Coking Coal Ltd., and others(AIR 1988 SC 2118), the employer initiated departmental and criminal proceedings against the employee alleging that he physically assaulted the supervisor of the company. The employee filed a civil suit praying for injunction against the disciplinary action pending criminal trial. The learned trial Court made an order of stay and on appeal the order was confirmed by the appellate Court. The High Court held that there is no bar for an employer to proceed

with the departmental proceedings with regard to the same allegation for which a criminal case is pending. However, when the matter went before the Hon'ble Supreme Court, it was held as follows:

"6. The view expressed in the three cases of this Court seen to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent-employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.

7. In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial Court's order of injunction which had been affirmed in appeal."

6. In the decision of P.J.Sunderrajan and Another Vs. Unit Trust of India and Another (1993 LLJ SC 168), the Hon'ble Supreme Court has held that the departmental enquiry should be stayed till the trial, before the Court of the Chief Metropolitan Magistrate, Madras, is completed. In that case, the Hon'ble Supreme Court has not elaborated the facts of the case and in one paragraph of the order, the departmental proceedings were stayed.

7. In Indian Overseas Bank, Annasalai and Another, Vs. P.Ganesan and Others 2008 (1) SCC 650, in similar facts the Hon'ble Supreme Court has observed as under:-

"18. Legal Position operating in the field is no longer res integra. A departmental proceedings pending a criminal proceedings does not warrant an automatic stay. The superior courts before exercising its discretionary jurisdiction in this regard must take into consideration the fact as to whether the charges as also the evidence in both the proceedings are common and as to whether any complicated question of law is involved in the matter."

23. The High Court, unfortunately, although it noticed some of the binding precedents of the Court failed to apply the law in its proper perspective. The High Court was not correct in its view in concluding that the stay of the departmental proceedings should be granted in the peculiar facts and circumstances of the case without analysing and applying the principle of law evolved in the aforementioned decisions. It, therefore, misdirected itself in law. What was necessary to be noticed by the High Court was not only existence of identical facts and the evidence in the matter, it was also required to take into consideration the question as to whether the charges levelled against the delinquent officers, both in the criminal case as also the in disciplinary proceedings, were same. Furthermore it was obligatory on the part of the High Court to arrive at a finding that the non-stay of the disciplinary proceedings shall not only prejudice the delinquent officers but the matter also involves a complicated question of law.

24. The standard of proof in a disciplinary proceedings and that in a criminal trial is different. If there are additional charges against the delinquent officers including the charges of damaging the property belonging to the bank which was not the subject-matter of allegations in a criminal case, the departmental proceedings should not have been stayed."

8. In the case on hand, the memo contains the following charges:-

CHARGE No.1

As per the guidance of the Government, though the delinquent had the knowledge that there is no permission to go out of the compound of the school from 9.00 a.m. till 4.15 p.m. and though permission was refused to go out of the school during the lunch break, he continuously goes out and comes back daily; that on 28.03.2015 and 30.03.2015 respectively, he, having gone out at 12.40 hours, had returned at 2.00 p.m. and on 08.04.2015, he, having gone out at 12.40 p.m., had returned only by 2.30 p.m., and thereby he is charged of having returned belatedly and having abandoned himself from duty;

CHARGE No.2

On 23.02.2015, the delinquent, having come late by 55 minutes at 9.55 a.m. and on 02.03.2015, having come late by 1 hour at 10.00 a.m., is charged of having caused work load to other teachers;

CHARGE No.3

Apart from neglecting the directives issued by the Government not to use cell phones during the school timings, despite the Headmaster had condemned the same by pointing out his act, he is charged of not having obeyed it and had continuously talked over cell phone during the school hours;

CHARGE No.4

On 26.04.2015, during the school timings, he had thrown the register/book upon the students as against the safety and security of the students and he is also charged of having beat the students often and continuously.

CHARGE No.5

As per the complaint received from the couple Mr.C.Kumar and Mrs.K.Malliga, he is charged that on 27.05.2015, he had beat their daughter Ms.Swathi on 24.04.2015 to the extent that blood was oozing out of her nose and had threatened her parents to seek transfer certificate.

CHARGE NO.6

The delinquent is charged of having caused disrespect to the School Committee by having assaulted Mr.Durai Masilamani,

Secretary of the School, by using a wooden log with the assistance of his father Mr.Rajaram and his brother Mr.R.Backiyaraj at Mudukkuveli Kadai Street on 02.05.2015.

CHARGE NO.7

He is charged of having been involved in criminal conspiracy and having assaulted Mr.Durai Masilamani, Secretary with a wooden log in a public place, thereby First Information Report No.200/2015 having been filed for committing offences under Sections 294(b), 342, 324 and 506(ii) I.P.C. and as per Final Report No.72/15, a case is pending on the file of the Court of Judicial Magistrate, Vedaranyam.

CHARGE NO.8

He is charged of having been involved in misbehaviour and having caused disrespect among the society and having created lack of confidence among the parents and having caused bad name and shame to Ambal Primary School which is a Government aided school.

CHARGE NO.9

He is charged of having violated to maintain the dignity expected of a teacher by violating the disciplinary conduct rules and also the disciplinary control of the School, as he had involved himself in a crime.

CHARGE NO.10

He is charged of having lost his control and having violated the duty of a teacher to be role model to the students in maintaining disciplinary conduct both inside the school during the school hours as well as outside the school compound.

9. It is not in dispute that the third respondent has issued a charge memo containing 10 charges. Indisputably, charges 1 to 5 and 10 have no relevance to the pendency of the criminal case against the petitioner. The Hon'ble Supreme Court, in the judgement reported in Indian Overseas Bank, Annasalai and Another Vs.P.Ganesan and others (cited supra) has categorically held that if there are additional charges against the delinquent officer, which was not the subject matter of allegations in the criminal case, the departmental proceedings should not be stayed. In the light of the subsequent judgment, this court is of the considered opinion, the judgements relied on by the learned counsel for the petitioner have no applications to the facts of this case.

10. Keeping in mind the principles laid down in the judgment referred above, I do not find any merit in the writ petition. Hence, the writ petition fails.

In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sms

To

1. The District Elementary Educational Officer,
Nagapattinam
Nagapattinam District.
2. The Assistant Elementary Educational Officer,
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3. The Secretary, School Committee
Ambal Aided Primary School,
Mudukkuveli,
Thethakudi South,
Vedaranyam Taluk,
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+1cc to M/s.C.S.Associates, Advocate, S.R.No.10013
+1cc to the Government Pleader, S.R.No.9990

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CA(16/03/2016)

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