

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 14.11.2016)

DATED : 18.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.33642 of 2016

and

W.M.P.No.29010 of 2016

S.Santhosh

... Petitioner

Vs.

1.The Chief Security Commissioner,
O/o.the Railway Protection Force,
ICF,Chennai-600 038.

2.The Assistant Security Commissioner,
O/o.the Railway Protection Force,
ICF, Chennai-600 038.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to suspend the departmental inquiry initiated by them against the petitioner in Ref.No.P/X/D&AR/R.153/09/2016, dated 12.09.2016 for the alleged offence of cheating, until the completion of the criminal proceedings in F.I.R.No.396/2016, which is pending investigation.

For Petitioner : Mr.V.Deenadayalan
for M/s.Kavitha Deenadayalan

For respondents : Mr.P.T.Ramkumar

* * * * *

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Mandamus, directing the respondents to suspend the departmental inquiry initiated against the petitioner in Ref.No.P/X/D&AR/R.153/09/2016, dated 12.09.2016, for the alleged offence of cheating, until the completion of the criminal case in F.I.R.No.396/2016, which is pending investigation against the petitioner.

2. In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows_

2-1. The petitioner was appointed as Constable in the Railway Protection Force on 01.02.2005. The petitioner was initially posted at ICF-Furnishing Division. At present, the petitioner is working at ICF-Shell Division, Chennai. The petitioner has put in eleven years of unblemished service. While so, on 08.03.2016 on a false complaint received from one Mr. Suresh Kumar S/o. Thomasan Nadar, who incidentally is a very close relative of the petitioner, a FIR was registered by Aryanadu Police Station, Trivandrum Rural in Crime No. 396/2016, against the petitioner for the alleged offence under Section 420 r/w Section 34 of IPC, wherein the petitioner was arrayed as the 1st accused, along with 3 others. The allegation in the said complaint is that the petitioner along with three others received a huge sum from the defacto-complainant by promising to secure job for him in RPF. The petitioner was shocked to gather information regarding the false complaint and immediately he obtained anticipatory bail on 07.06.2016 from the Sessions Court at Thiruvananthapuram. In the order granting anticipatory bail to the petitioner, the learned Session Judge has observed that from the CD file it is revealed that the amount had been deposited in the account of the accused 2 & 3.

2-3. According to the petitioner, it is apparent that he was not involved in the above said alleged offence. The investigation in the said criminal case is pending. While so, the respondents initiated department enquiry against the petitioner. The petitioner received a charge-memo dated 12.09.2016 in Ref.No.P/X/D&AR/R.153/09/2016, from the 2nd respondent on the same set of allegation in the criminal case which is under investigation by the Police Officials. The date of hearing for the enquiry on the charges was fixed on 17.09.2016 without affording any opportunity to the petitioner to submit his written statement of defense.

2-4. It is further stated by the petitioner that the petitioner has to contest the false criminal complaint before the Court concerned and the criminal case is under investigation. Under such circumstances, the initiation of the departmental proceedings based on the FIR is causing immense mental trauma and hindrance to the petitioner to contest the case before the Criminal Court. According to the petitioner, since the present case squarely falls within the ambit of criminal offence i.e cheating, the respondents ought not to have initiated departmental proceedings against the petitioner pending finality of the criminal proceedings. The petitioner has already given a representation to the respondents on 19.09.2016 to suspend the departmental proceeding till the completion of the criminal case. However, the petitioner's representation was not considered by the respondents. Hence, the petitioner has come forward with the present writ petition before this Court seeking to suspend the departmental inquiry till the completion of the criminal proceedings.

3. When the matter was taken up for consideration, it is submitted by the learned counsel for the petitioner that now the petitioner is working as Constable in ICF-Shell Division, Chennai. Based on the false complaint received from one Suresh Kumar, a criminal case has been registered in Crime No.396 of 2016 on the file of the Arya Nadu Police Station, Trivandrum, against the petitioner and three others for the alleged offence under Section 420 r/w 34 of IPC, wherein the petitioner has been arrayed as 1st accused. Pursuant to the registration of FIR, the petitioner has obtained Anticipatory Bail from the Sessions Court at Thiruvananthapuram on 07.06.2016. The learned counsel appearing for the petitioner, by inviting the attention of this Court to the order dated 07.06.2016 passed by the learned Sessions Judge, Thiruvananthapuram, submitted that while granting anticipatory bail to the petitioner, the learned Sessions Judge has observed that *from the CD file it is revealed that the amount had been deposited in the account of the accused 2 & 3.* Thus, the learned counsel for the petitioner would submit that it is evident from the order of the learned Sessions Judge that the petitioner was not involved in the said criminal offence.

4. The learned counsel for the petitioner would further submit that now, the investigation in the said criminal case is pending. While so, for the same set of allegation, a charge-memo has been issued to the petitioner by the 2nd respondent. According to the learned counsel for the petitioner, if the departmental proceedings are initiated before the conclusion of the criminal case, the petitioner will have to go through two separate proceedings and further the documents and evidences which the petitioner might rely upon in the criminal proceedings will be used against him by the departmental authorities to rigorously build their case and prepare documents accordingly. In support of his contention, the learned counsel for the petitioner has also relied upon a decision of the Hon'ble Supreme Court in the case reported in (2012) 13 SCC 142 [Avinash Sadashiv Bhosale Vs. Union of India], wherein it has been held that departmental proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common. For the same proposition, the learned counsel for the petitioner has also relied upon the decision of this Court in W.P.No.3262 of 2016, dated 16.02.2016 (R.Illavenil Vs. District Elementary Educational Officer, Nagapattinam and others). Thus, by relying upon the above said decision, the learned counsel for the petitioner sought for a direction to the respondents to suspend the departmental proceedings till the completion of the criminal case against the petitioner.

5. Per contra, the learned counsel appearing for the respondents, by filing a detailed counter, would contend that the petitioner was appointed as Constable 230/Shell Employment No.829935 in Railway Protection Force on 12.05.2006 and after completion of training from 01.08.2005, he was posted to the Furnishing Division at Integral Coach Factory. On his request, he was placed under sick leave from 04.12.2015. During the sick leave period, an

employee has to report periodically at ICF Hospital. But, the petitioner did not report as required and later he was discharged for non attendance with effect from 15.12.2015. Since he did not turn up for duty and absented himself unauthorizedly from 15.12.2015 and no intimation was received from him, a communication was sent instructing him to report for duty. The said communication/letter sent through registered post to his residence at his native place was returned as door locked. In spite of sending the communication, the petitioner remained absent from duty unauthorizedly without any intimation to his controlling authority. He has been issued with a charge memo vide No.P/X/D&AR/R.153/5/16, on 07.06.2016 for unauthorized absence from 15.12.2015 to 07.06.2016 and the same was served on 27.06.2016 at Trivandrum. Meanwhile, FIR in Crime No.0396/2016 for offence under Section 420 r/w 34 of IPC was registered against the petitioner on 08.03.2016 by Aryanadu Police Station, Trivandrum Rural, based on a complaint given by one Suresh Kumar. A complaint was also given to Inspector General of Police, Railway Protection Force, on 16.03.2016 by one Suresh Kumar and Thambi, stating that the petitioner has collected an amount of Rs.15,60,000/- from them and other persons promising to get job in Railway Protection Force and cheated them. Based on the said complaint, FIR was registered against the petitioner in Aryanadu Police Station, which was also brought to the knowledge of the Inspector General of Police, Railway Protection Force. Under such circumstances, the petitioner was placed under suspension vide order dated 03.06.2016 in Ref.No.P/X/829935. The suspension order could not be served on him, since his whereabouts were unknown until 27.06.2016. One Assistant Sub-Inspector of Railway Protection Force and a Constable were deputed to the petitioner's residence at Kerala to serve the suspension order dated 03.06.2016. The petitioner's father was residing at his native place and he informed that he did not see his son (petitioner) for the past seven months. Thereafter, the petitioner was contacted over phone and informed about the suspension order. Thereafter, the suspension order was served on the petitioner on 27.06.2016 at Trivandrum Railway Station. On receipt of the suspension order, the petitioner reported at RPF/ICF/Shell Post on 28.06.2016 for attendance purpose since he was under suspension. The petitioner has collected huge amount from various persons and deposited the money in the bank accounts of the petitioner as well as his wife. The receipt of huge amount by the petitioner is evident from the Bank Accounts of the petitioner bearing A/c.No.67182506146, State Bank of Travancore, Vallanad and another in A/c.No.60082180032292 of Syndicate Bank, Mugappair, Chennai. The petitioner has failed to intimate the department authorities about the huge transactions done in his name and in the name of his wife as required under Rule 18(3) of the Railway Services (Conduct) Rules, 1966. The petitioner by misusing his official capacity and misusing the name of his higher officials, has received huge amount from various persons by promising to get job for them and cheated them. Hence, the departmental action has been taken against the petitioner under Rule 146.4 of RPF Rules 1987 and Rule 3(1)(i) & (iii) of the Railway Services (Conduct) Rules, 1966.

6.The learned counsel for the respondents would further contend that the charge-memo issued to the petitioner in the departmental proceedings contains additional facts and details apart from the contents mentioned in the FIR registered against the petitioner. Further, the criminal case registered against the petitioner is only at FIR stage and chargesheet has not been filed before the concerned Court. Hence, there cannot be any impediment in proceeding with the departmental proceedings against the petitioner. In this regard, the learned counsel for the respondents has also relied upon the following decisions_

i) 2010(1) SLR 481 [Sri Radha Kanta Sarkar Vs. State of West Bengal]

ii) (1996) 6 SCC 417 [State of Rajasthan s. B.K.Meena and others]

iii) (2008) SCC 650 [Indian Overseas Bank VS. P.Ganesan]

iv) Unreported judgment of a Division Bench of this Court in W.A.Nos.1559 to 1570 of 2014, dated 25.02.2016 [K.Rengarajan and others Vs. Indian Overseas Bank].

7. I have carefully heard the submissions made on either side and perused the materials available on record.

8.It is the main submission of the learned counsel appearing for the petitioner that the petitioner is working as Constable in Railway Protection Force. Based on a complaint given by one Suresh Kumar, a FIR in Crime No.396/2016 was registered on the file of the Aryanadu Police Station, Trivandrum Rural, against the petitioner under Sections 402 r/2 34 of IPC, on the false allegation that the petitioner and three others received huge money from various persons promising to get job in Railway Protection Force. While the investigation in the said criminal case is pending, on the same set of allegations, the 2nd respondent has issued a charge-memo dated 12.09.2016. Therefore, according to the learned counsel for the petitioner, if the departmental proceedings are initiated before the conclusion of the criminal case, the petitioner will have to go through two separate proceedings and further the documents and evidences which the petitioner might rely upon in the criminal proceedings will be used against him by the departmental authorities to rigorously build their case and prepare documents accordingly.

9.Per contra, it is the submission of the learned counsel appearing for the respondents that the criminal case registered against the petitioner is only at the FIR stage and no chargesheet has been filed in the said criminal case before the concerned Court so far. Apart from that, the 5th charge framed against the petitioner in the departmental proceedings is an additional charge, which is in respect of the misconduct committed by the petitioner that he had failed to inform the transactions made in the Bank Accounts of the petitioner as well as his wife as required under Rule 16(3) of the Railway Services (Conduct) Rules, 1966. When there

is an additional charge, there cannot be any impediment in proceeding with the departmental enquiry against the petitioner.

9. In this regard, a reference could be made in the decision relied upon by the learned counsel for the respondent, reported in 2010(1) SLR 481 [Sri Radha Kanta Sarkar Vs. State of West Bengal], wherein it has been held by the Calcutta High Court as follows_

"4. The criminal case is admittedly at the investigation stage. Hence, I do not find any merit in the contention that the charges in the departmental proceedings and the charges framed in the criminal case are identical. In the criminal case cognizance is yet to be taken. No body knows when the charge sheet will be submitted, or whether any charge sheet will at all be submitted. This being the position, I am unable to see how it can be said that the department proceedings have been initiated on the same charges on which the criminal case has been instituted. The college has only lodged an FIR, it has not instituted a criminal case by filing a complaint. Under the circumstances, in my opinion, it will be absolutely unjust to say that the college, the petitioner's employer, should not be permitted to proceed with the departmental proceedings. This is not a fit case where departmental proceedings should be stayed during trial of a criminal case on same charges."

The dictum laid down in the above decision is squarely applicable to the present facts of the case. Even in the instant case, investigation has not been completed in the criminal case instituted against the petitioner and it is only at the FIR stage. Hence, it is not necessary to wait for the completion of the criminal case, to proceed with the departmental enquiry. Moreover, there is an additional charge framed against the petitioner in the departmental enquiry with regard to non-intimation of the transactions made in the bank accounts of the petitioner as well as his wife, as required under Rule 18(3) of the Railway Services (Conduct) Rules, 1966. Under such circumstances, as contended by the learned counsel for the respondents, there cannot be any impediment in proceeding with the departmental enquiry against the petitioner. I do not find any merit in the writ petition and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

ssv

Sd/-
Assistant Registrar (CS-)

/TRUE COPY/

To

- 1.The Chief Security Commissioner,
O/o.the Railway Protection Force,
ICF,Chennai-600 038.
- 2.The Assistant Security Commissioner,
O/o.the Railway Protection Force,
ICF, Chennai-600 038.

+1 CC Mr.P.T.Ramkumar Advocate SR.No.67803

in

W.P.33642 of 2016

and

W.M.P.No.29010 of 2016

EV [CO]

MSI 02/01/2017



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