



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08 - 06 - 2016

CORAM:

THE HONOURABLE SMT. JUSTICE PUSHPA SATHYANARAYANA

Writ Petition (MD) No. 19148 of 2014

and

M.P. (MD) Nos. 1 of 2014 and 1 of 2015

C. Lazer Jeya Prakash

.. Petitioner

vs.

1. The Deputy General Manager
(Banking and Operation)
Disciplinary Authority
State Bank of India
Maduram Complex
No. 2 Dr. Ambedkar Road
Madurai - 625 002

2. The Chief Manager / Enquiry Officer
State Bank of India
Palayamkottai - 627 001
Tirunelveli District

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the respondents from proceeding with any further enquiry based on the Memorandum issued by the first respondent in DIS.CON/18 dated 25.4.2014 till the conclusion of the criminal case in C.C. No. 1 of 2014, on the file of CBI Court, Coimbatore.

For Petitioner : Mr.F.Deepak
For Respondents : Mr.S.Sethuraman

ORDER

The perennial question which normally crops up in service matters is whether departmental proceedings and proceedings in a criminal case launched on the basis of the same set of facts, can be continued simultaneously.

2. By invoking Article 226 of the Constitution of India, the petitioner seeks for a Mandamus forbearing the respondents from proceeding with any further enquiry based on the Memorandum issued by the first respondent, Deputy General manager (Banking and Operation) / Disciplinary Authority in DIS.CON/18,



dated 25.4.2014 till the conclusion of Criminal Case in C.C. No. 1 of 2014 on the file of the CBI Court, Coimbatore.

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3. The petitioner, who was initially appointed as Clerk in the State Bank of India on 21.6.1999 and promoted as JMG Officer in November 2006, while serving as Branch Manager in Kothanallur Branch, Kanyakumari District, was charged with a criminal case by the CBI, ACB, Chennai, on account of a fraudulent transaction of money through Branch Office to various other Banks, and was arrested on 25.6.2013 consequent to which, he was placed under suspension with effect from 28.6.2013 by the first respondent, by order dated 05.7.2013, in terms of Rule 68A(2) of the State Bank of India Officers Service Rules. Subsequently, a Memorandum dated 25.4.2014 was issued to the petitioner intimating the decision of the Bank to initiate Major Penalty proceedings against him in terms of Rule 68(1) of the State Bank of India Officers' Service Rules on the ground that the irregularities committed by him would tantamount to misconduct in terms of Rule 50(4) of the State Bank of India Officers' Service Rules. In such circumstance, the petitioner has preferred the instant Writ Petition seeking to forbear the respondents from proceeding with any further enquiry based on the said Memorandum.

4. When the Writ Petition was listed for admission, this Court, by order dated 26.11.2014, granted interim stay of the impugned order.

5. Learned counsel appearing for the petitioner contended that the charges in the Departmental Proceedings as well as the charges in the criminal case are identical with reference to the same money transaction, and that, the documents and witnesses shown in the Departmental proceedings are already included in the charge sheet laid down in the criminal case. The further submission of the learned counsel is that the Departmental proceedings are related to the charges framed in the criminal case, and any further enquiry, according to the learned counsel, will be prejudicial to the defence of the petitioner in the criminal case.

6. In this regard, learned counsel for the petitioner seeks in aid the decision of the Hon'ble Supreme Court in **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. [1999 (3) SCC 679]** and sought for deferring of the Departmental proceedings till the conclusion of criminal case.

7. Since the facts are not disputed in the instant case, this Court is not inclined to repeat the same and



straightaway moves on with the records.

WEB COPY 8. From a perusal of the materials available on record, it is seen that the Disciplinary Proceedings was initiated against the petitioner vide Memorandum dated 25.4.2014, and the enquiry proceedings commenced on 13.6.2014 in the presence of Inquiry Authority, Presiding Officer, Charge Sheeted Official, viz., the petitioner, and Defence Representative. Indisputably, the inquiry was completed on 14.10.2014 as is evident from page 56 of the Enquiry Proceedings filed before this Court. In the penultimate portion of the enquiry proceedings, which is found at page 61 of the booklet, it is seen that the inquiry was conducted in a smooth fashion and an endorsement is also found to the effect that "enquiry concluded". Significantly, throughout the proceedings, all the four persons, viz., Inquiry Authority, Presiding Officer, Charge Sheeted Official/the petitioner, and the Defence Representative have been present and all of them have signed in each page of the book relating to the enquiry proceedings. It is also pertinent to note that after completion of the inquiry, the Presiding Officer Mrs. Dhanalakshmi was required to give her written submission within 10 days and on receipt of the same, the Defence Representative was to give his submission within 10 days thereafter. Accordingly, the Presiding Officer submitted her written submission on 01.11.2014 with 16 days' time and the same was forwarded to the Charge Sheeted Official/Defence Representative on 14.11.2014 for submission of his reply.

9. Whiles, the petitioner filed the instant Writ Petition on 25.11.2014 and obtained stay on the very next day, ie., on 26.11.2014. It is further seen that copy of the order of stay was issued to the Bank on 04.12.2014. Therefore, it is crystal clear that only after completion of the inquiry and filing written submission by the Presiding Officer, the petitioner has chosen to file the Writ Petition forbearing the respondents from proceeding with the enquiry. In such circumstance, the prayer sought for by the petitioner to stay the proceedings has, in the opinion of this Court, become infructuous. The Writ Petition is liable to be dismissed as having become infructuous.

10. Moreover, having participated in the inquiry and having allowed the Presiding Officer to file her written submission, the petitioner, at this stage, cannot seek for forbearing the proceedings. On a perusal of above narration of the facts involved in this case, this Court is of the view that the attitude of the petitioner is nothing but to protract the proceedings. If at all the petitioner is aggrieved, it is for him to challenge the proceedings in the manner known to law and not by



way of Writ Petition.

WEB COPY 11. Even on merits, admittedly, investigation was completed and CBI filed a final report / charge sheet under Section 173(2) Cr.P.C. before the II Additional District and Sessions Judge / Special Judge for CBI Cases, Coimbatore, as per which it is seen that the petitioner, by misusing his official position, facilitated opening of current account in the Bank by the accused persons without following the norms and acted on certain cheques and RTGS slips, without verifying the source of money and only based on the final report, the first respondent issued the impugned Memorandum dated 25.4.2014.

12. To identify the principle that it would be desirable to stay the departmental Proceedings till conclusion of the criminal case if they are based on identical and similar set of facts, this Court had a thorough reading of the judgment of the Hon'ble Supreme Court in **Capt. M.Paul Anthony's case** (cited supra), relied on by the learned counsel for the petitioner. While enunciating the principle, their Lordships went a step further holding 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. Therefore, the said decision relied on by the learned counsel for the petitioner cannot be helpful to the petitioner.

13. Further more, in **State of Rajasthan vs. B.K. Meena [1996 (6) SCC 417]**, the Hon'ble Supreme Court reiterated that there was no legal bar for both proceedings to go on simultaneously unless there is a likelihood of the employee suffering prejudice in the Criminal trial.

14. At this juncture, it would not be out of place for this Court to refer to the judgment of the Hon'ble Apex Court in **Stanzen Toyotetsu India P. Ltd. vs. Girish, V. [2014 (6) CTC 108]** wherein the Hon'ble Supreme Court, in paragraph 12 of the judgment, has categorically held as follows:-

"12. 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 leveled 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. 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. To the same effect is the decision of this Court in **State of Rajasthan v. B.K.Meena, 1996 (2) LLN 1269 (SC) : (1996) 6 SCC 417**, where this Court reiterated that there was no legal bar for both proceedings to go on simultaneously unless there is a likelihood of the Employee suffering prejudice in the Criminal trial. What is significant is that the likelihood of prejudice itself is hedged by providing that not only should the charge be grave but even the case must involve complicated questions of law and fact. Stay of proceedings at any rate cannot and should not be a matter of course."

Further, in paragraph 15, Their Lordships have observed in the following lines:-

"15. Disciplinary proceedings cannot remain stayed for an indefinitely long period. Such inordinate delay is neither in the interest of the Appellant-Company nor the Respondents who are under suspension and surviving on Subsistence Allowance. The number of Accused implicated in the case is also very large. We are not suggesting that the incident must be taken to be false only because such a large number could not participate in the incident. But there is a general tendency to spread the net wider and even implicate those, who were not concerned with the commission of the offences or who even though present



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committed no overt act to show that they shared the common object of the assembly or be responsible for the riotous behaviour of other Accused persons. Interest of such Accused as may be innocent also cannot be ignored nor can they be made to suffer indefinitely just because some others have committed an offence or offences."

15. In the light of the above decisions of the Hon'ble Supreme Court, it has to be inferred that stay of proceedings at any rate cannot, and should not be a matter of course in service matters. As such, the petitioner cannot seek for a direction to the respondents to defer the disciplinary proceedings, and the Writ Petition is liable to be dismissed on merits also.

16. In view of the foregoing discussion, the **Writ Petition fails and the same stands dismissed, but in the circumstances of the case, without costs.** As a sequel thereto, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Deputy General Manager (Banking and Operation)
Disciplinary Authority, State Bank of India
Maduram Complex, No. 2 Dr. Ambedkar Road
Madurai - 625 002

2.The Chief Manager / Enquiry Officer
State Bank of India, Palayamkottai - 627 001, Tirunelveli District
+1cc to Mr.F.Deepak, Advocate Sr.No.28985
+1cc to Mr.S.Sethuraman, Advocate Sr.No.28630
gri/VS
AA/SKS-RR/16.06.2016/6p-5c

W.P. (MD) No. 19148 of 2014
08.06.2016