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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2016

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.(MD)No.2863 of 2016

and

W.M.P.(MD)No.2529 of 2016

K.Mathivanan

.. Petitioner

Vs.

The District Elementary Educational Officer,
District Elementary Education Officer,
Pudukkottai,
Pudukkottai District.

.. Respondent

Writ petition is filed under section 226 of the Constitution of India for issuance of a writ of Mandamus directing the respondent to defer the departmental proceedings mentioned in the order dated 28.01.2016 in the proceedings of reference in Na.Ka.No.1650/Aa3/2015, until disposal of the case in Crime No.183 of 2015 on the file of Ganesh Nagar Police Station, Pudukkottai District.

For Petitioner : Mr.N.Ananthapadmanabhan

For Respondent : Mr.T.S.Md.Mohideen
Additional Government Pleader

ORDER

The writ petition has been filed for issuance of a writ of mandamus directing the respondent to defer the departmental proceedings, dated 28.01.2016 until disposal of the case in Crime No.183 of 2015 on the file of Ganesh Nagar Police Station, Pudukkottai District.

2.The writ petitioner was appointed as a Secondary Grade teacher in 1997 at Kummupatti, Pudukkottai District and was subsequently promoted as Head Master of Elementary School, Nemmelipatti in 2010 and was transferred to Rayapatti in the year 2011. While he was working in Rayapatti, a teacher by name Bhuvaneswari self immolated herself on 07.05.2015 and died of 100% burn injuries. Her father had lodged a police complaint at Ganesh Nagar Police station, Pudukkottai that his daughter had stomach ailment for a long time and that was the cause for her suicide and the same was registered in Crime No.183 of 2015. The petitioner as a Head Master of the school had also attended the funeral of the said teacher. During the funeral rites, the petitioner had informed the husband of the teacher that on 30.04.2015 the teacher had not signed the attendance register, which triggered into filing of another police complaint against the petitioner, which necessitated



the petitioner to obtain an anticipatory bail from this Court. Thereafter, a charge memo was issued contemplating departmental proceedings under Section 17(b) of the Tamil Nadu Government Servants (Discipline and Appeal) Rules on the basis of the same set of allegations made in Crime No.183 of 2015. The order of suspension passed, subsequently was kept in abeyance without revoked, as the criminal case is pending against the petitioner. The petitioner seems to have moved this Court in CrI.O.P.(MD)No.29 of 2016 directing the Ganesh Nagar Police to finalize the investigation and submit a final report. This Court by order, dated 06.01.2016, had closed the said CrI.O.P.(MD)No.29 of 2016, recording the statement of the learned Government Advocate (crl. Side) that the investigation has been completed and final report has been filed on 20.09.2015. While so, the respondent had issued the impugned order, dated 28.01.2016 in the proceedings in Na.Ka.No.1650/Aa3/2015 calling for explanation to the charges framed against him.

3.In these circumstances, the writ petition is filed by the petitioner stating that the charges 1 to 5 in the impugned order are identical and same, as that of the allegation being investigated by the Ganesh Nagar Police Station in Crime No.183 of 2015.

4.According to the petitioner he is innocent and he has not done anything with respect to the alleged crime. It is the contention of the learned counsel for the petitioner that the same set of witnesses, who are to be examined as witnesses in the departmental proceedings, are witnesses in the criminal prosecution. If the departmental proceedings is allowed to continue simultaneously, the petitioner has to face the same set of witnesses in the criminal proceedings also. Therefore, the witnesses will have advantage of knowing the defence available to the petitioner. Hence, the petitioner prays for deference of the departmental proceedings, till the disposal of the case in Crime No.183 of 2015.

5.It is settled principle that there is no legal bar to proceed the departmental proceedings and the criminal proceedings simultaneously. Even when the charge is found to be serious and complicated questions of fact and law involved, the departmental proceedings cannot be suspended indefinitely or delayed. However, the advisability, desirability or propriety as the case may be has to be determined in each case by considering the facts and circumstances of the same. Considering the earlier precedents of the Hon'ble Supreme Court in **CAPT. M.PAUL ANTHONY v. BHARAT GOLD MINES LTD.**

<https://hcservices.pctel.gov.in/hcselwscs/> 1999 (2) LLN 640 (SC); in **DIVISIONAL CONTROLLER, KARNATAKA STATE ROAD TRANSPORT CORPORATION v. M.G.VITTAL RAO**



reported in **2012 (2) LLN 328 (SC)** and in **STATE OF RAJASTHAN v. B.K.MEENA** reported in **1996 (2) LLN 1269 (SC)**, in the recent Judgment in **STANZEN TOYOTETSU INDIA P.LTED v. GIRISH, V.** reported in **2014 (6) CTC (SC)**, the Hon'ble Supreme Court has held that the stay of proceedings at any rate cannot and should not be a matter of course and the Courts have to bear in mind the complexity of the facts or law. It would be useful to extract the following paragraphs of the said Judgment:-

"15. That apart the respondents have already disclosed the defense in the explanation submitted by them before the commencement of the departmental enquiry in which one witness has been examined by each of the Enquiry Officers. The charge sheet, it is evident from the record, was filed on 20th August, 2011. The charges were framed on 20th December, 2011. The Trial Court has ever since then examined only three witnesses so far out of a total of 23 witnesses cited in the charge-sheet. Going by the pace at which the Trial Court is examining the witnesses it would take another five years before the trial may be concluded. The High Court has in the judgment under appeal given five months to the Trial Court to conclude the trial. More than fifteen months has rolled by ever since that order, without the trial going anywhere near completion. 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 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.

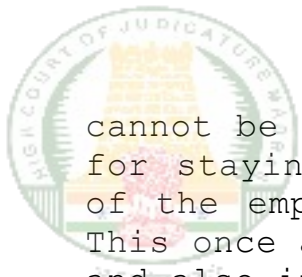
16. In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three Courts



below have exercised their discretion in favour of staying the on-going disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the Trial Court will take effective steps to ensure that the witnesses are served, appear and are examined. The Court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to co-operate with the trial Court for an early completion of the proceedings. We say so because experience has shown that trials often linger on for a long time on account of non-availability of the defence lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the Trial Court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the Inquiry Officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order."

The above conclusion is based on the Judgment in **STATE OF RAJASTHAN v. B.K.MEENA** reported in **1996 (2) LLN 1269**.

6. In view of the above proposition laid, in the case on hand, the disciplinary action has been initiated based on the crime No.183 of 2015. In a disciplinary proceedings, the seriousness of charges levelled against the employee is the consideration. However, the same is not by itself sufficient, unless it involves complicated questions of law and fact. The crime is an act of commission in violation of law while a departmental enquiry is to maintain discipline in the service. Therefore, each case has to be considered on the merits of its own and there is no bar to proceed simultaneously both the departmental enquiry and the criminal trial. Departmental proceedings cannot be suspended indefinitely or delayed unnecessarily as stay of proceedings cannot be a matter of course. The granting of stay in departmental proceedings depends upon facts and circumstances of each case and there



cannot be any hard and fast rule. The only aspect suggested for staying the disciplinary proceedings is that the defence of the employee in the criminal case may not be prejudiced. This once again depends on cases having charges that are grave and also involve complicated question of law and fact.

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7. In this case, it is stated that the petitioner had filed CrI.O.P.(MD)No.29 of 2016 and the same has been closed, as already final report has been filed. As the petitioner is a Head Master at the time of suspension, the interest of justice would be served, if the criminal charge against the petitioner is tried first and concluded as expeditiously as possible, however, not beyond a period of six months. The criminal Court also shall take up the case on a day-to-day basis and complete the trial. It is made clear that no further extension of time would be granted in this regard. The petitioner, who is the accused in the criminal case to co-operate in the completion of trial. The departmental proceedings can be kept in abeyance for the said six months period and the departmental enquiry can resume at the end of the sixth month irrespective of the fact that the criminal Court trial is completed or not.

8. With these observations, the writ petition is disposed of. No order as to costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/

Assistant Registrar

/True Copy/

Sub Assistant Registrar

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To

The District Elementary Educational Officer,
District Elementary Education Officer,
Pudukkottai,
Pudukkottai District.

+1cc to M/s.N.Ananthapadmanaban, Advocate in Sr.No.13841

+1cc to Special Government Pleader in Sr.No.13787

CN/SKS-SK/15.03.2016/5P-4C

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