

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 3305 of 2013

Order:

Heard, learned counsel for the petitioner and the learned Standing Counsel for the respondents.

The petitioner was appointed as Clerk-cum-Cashier-cum-Typist in the year 1998 in Bank of Baroda and subsequently he was promoted as Head Cashier in the year 2001. While he was working as Head Cashier in Ananthapur branch, the in-charge Branch Manager of the Bank gave a complaint against the petitioner alleging that he committed certain irregularities while performing his duty. On the basis of the said complaint, a case in Crime No.293 of 2011 was registered under Sections 409, 380 and 477(A) IPC. After completion of investigation, the police filed a charge sheet before the Additional Judicial Magistrate of First Class, Ananthapur and the same was registered as Calendar Case No.503 of 2012. The charge sheet was filed alleging that the petitioner stealthily removed money from the cash bundles and misappropriated an amount of Rs.37,52,800/-. It was also alleged that in order to cover up the said misappropriation, he made false entries in the cash book. In respect of the said allegations, disciplinary proceedings were also initiated and memo of charges was issued on 07.08.2012 containing four allegations. An Enquiry Officer was appointed. The petitioner submitted a representation for staying the departmental enquiry till the conclusion of trial in the criminal case. The third respondent issued a letter on 29.01.2013 stating that the representation of the petitioner was rejected by the first respondent. At that stage the present Writ Petition was filed challenging

the continuance of the departmental proceedings by the first respondent during the pendency of the criminal proceedings.

This Court, by an order dated 05.02.2013, granted interim stay and seeking vacation of the same the respondents filed WVMP No.3533 of 2013 along with a counter affidavit. It was stated in the counter affidavit that the petitioner is a workman within the definition of Industrial Disputes Act, 1947 and he has to approach the Labour Court. The fact of registering a crime against the petitioner and pendency of CC No.503 of 2012 was admitted. The allegation of the petitioner that the departmental enquiry was initiated against him on the same set of allegations was denied. It is stated that the proceedings initiated under criminal process are different from the charges framed against the petitioner. It was further stated that on 07.08.2012 the charge sheet was served on the petitioner and an Enquiry Officer was appointed.

Learned counsel for the petitioner relied on Clause 4 of the Terms of the 'Memorandum of Settlements dated 10.04.2002/27.05.2002 on disciplinary action and procedure therefor' and submitted that if the employee was not put on trial within a year of the commission of the offence after steps have been taken to prosecute him, the management may proceed departmentally. Alternatively, he submitted that the charges in the charge sheet and the departmental enquiry are one and the same and in the absence of conclusion of trial in the criminal proceedings he would be prejudiced if departmental proceedings are allowed to continue.

Learned Counsel for the respondents submitted that the charges in the criminal case are different and the departmental proceedings are initiated for misconduct and both can go on independently. She further

submitted that the criminal proceedings are delayed for various reasons including the CrI.M.P.No.325 of 2014 filed by the petitioner seeking reinvestigation of the case. She relied on a decision of the Hon'ble Supreme Court in State Bank of India v. Neelam Nag (Civil Appeal No.4715 of 2011, dated 16.09.2016) and submitted that the present case is covered by the said decision.

The charges framed against the petitioner in the departmental proceedings are as follows.

“Charges:

The Bank charges you as under for the gross misconduct in terms of memorandum of settlement on disciplinary action and procedure therefore for workmen signed between IBA and Workmen Unions on 10.04.2002.

(a) Willful damage or attempt to cause damage to the property of the bank or any of its customers, which is a gross misconduct as per para 5(d) of the settlement dated 10.04.2002.

(b) Gross negligence or negligence involving or likely to involve the Bank in serious loss, which is a gross misconduct as per para 5(j) of the settlement dated 10.04.2002.

(c) You have misappropriated and misused the Bank's funds for Rs.37,52,800/- which amounts to doing an act prejudicial to the interest of the Bank, which is a gross misconduct as per para 5(j) of the settlement dated 10.04.2002.”

Thus, the charges were framed under para 5(d)(j) of Settlement dated 10.04.2002. The charge sheet was filed under Sections 380 and 409 IPC alleging that the petitioner stealthily removed money from the cash bundles and misappropriated the bank money amounting to Rs.37,52,800/- and in order to cover up the misappropriation, he made false entries in the cash book and thus he is liable to be punished under Section 477-A IPC.

The Hon'ble Supreme Court after elaborately considering various decisions in Stanzen Toyotetsu India Private Limited v. Girish V.¹, 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 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.”

In the said case the Hon'ble Supreme Court did not want to disturb the stay granted by the three Courts below in respect of the disciplinary proceedings and directed the Criminal Court to conclude the proceedings as expeditiously as possible but within a period of one year from the date of the order.

The very Clause 4 of the Settlement relied on by the learned counsel for the petitioner came up for consideration in the recent decision of the Hon'ble Supreme Court in Neelam Nag's case (supra) and after considering the Stanzen's case (supra), the Hon'ble Supreme Court accepted the contention of the appellants that the pendency of criminal case against the respondent cannot be the sole basis to suspend the disciplinary proceedings initiated against the employee for an indefinite

¹ (2014) 3 SCC 636

period and in larger public interest the order passed in Stanzen's case (supra) was required to be followed in order to balance the equities. While considering Clause 4 of the Memorandum of Settlement, the Hon'ble Supreme Court observed as follows.

"13. The next question is: whether Clause 4 of the Settlement would denude the appellants from continuing with the disciplinary proceedings pending against the respondent. Clause 4 of the Settlement reads thus:

"4. If after steps have been taken to prosecute an employee or to get him prosecuted, for an offence, he is not put on trial within a year of the commission of the offence, the management may then deal with him as if he had committed an act of "gross misconduct" or of "minor misconduct", as defined below; provided that if the authority which was to start prosecution proceedings refuses to do so or comes to the conclusion that there is no case for prosecution it shall be open to the management to proceed against the employee under the provisions set out below in Clauses 11 and 12 infra relating to discharge, but he shall out below in Clauses 11 and 12 infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privileges for such period. In the event of the management deciding, after enquiry, not to continue him in service, he shall be liable only for termination with three months' pay and allowances in lieu of notice as provided in Clause 3 above. If within the pendency of the proceedings thus instituted is put on trial such proceedings shall be stayed pending the completion of the trial, after which the provisions mentioned in Clause 3 above shall apply."

(emphasis supplied)

14. Ordinarily, the scope of Clause 4 of the Memorandum of Settlement pressed into service would be a matter of an Industrial Dispute, to be adjudicated by the competent Forum, if the respondent can be termed as a workman. The respondent herein was appointed in a clerical cadre of the appellant-bank; but when the alleged misconduct was committed on 29th May 2006, she was working as Assistant (Clearing). Neither before the learned Single Judge, the Division Bench nor before us any argument has been canvassed on the factum of whether the respondent can be treated as a workman within the meaning of the Industrial Disputes Act, 1947. Both sides, however, have relied on the said Clause and invited us to spell out its purport.

15. On the plain language of Clause 4, in our opinion, it is not a stipulation to prohibit the institution and continuation of disciplinary proceedings, much less indefinitely merely because of the pendency of criminal case against the delinquent employee. On the other hand, it is an enabling provision

permitting the institution or continuation of disciplinary proceedings, if the employee is not put on trial by the prosecution within one year from the commission of the offence or the prosecution fails to proceed against him for want of any material.

16. As can be culled out from the last sentence of Clause 4, which applies to a case where the criminal case has in fact proceeded, as in this case, for trial. The term "completion of the trial" thereat, must be construed as completion of the trial within a reasonable time frame. This clause cannot come to the aid of the delinquent employee - who has been named as an accused in a criminal case and more so is party to prolongation of the trial."

Accordingly, it granted stay of the disciplinary proceedings until the closure of recording of evidence of prosecution witnesses cited in the criminal trial and directed the Criminal Court to complete the trial within one year.

In the instant case also, as per the papers filed by the parties, when the case was coming up for examination, the petitioner filed CrI.M.P. No.325 of 2014 seeking a direction to the respondents to reinvestigate the case fairly under the supervision of a Deputy Superintendent of Police, Ananthapur and the said application is not yet disposed of. The trial in the criminal case is not yet commenced and it is posted to 15.11.2016. The charge sheet was filed on 30.03.2012 and cognizance was taken in April 2012. For the last four years the trial has not commenced for various reasons. As many as 18 witnesses are listed in the charge sheet. The departmental proceedings were stayed in February 2013. Thus, there is no progress either in the criminal proceedings or in the departmental proceedings. In view of the pendency of the application of the petitioner in the pending criminal case it is unlikely that the trial of the criminal case would come to an end even if the ratio of Stanzen's case (supra) and Neelam Nag's case (supra) is followed. In the circumstances, it is not in public interest to stay the departmental proceedings any further and

accordingly, this Court sees no ground to stay the departmental proceedings.

The Writ Petition is, accordingly, dismissed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any pending in this Writ Petition, shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 18th October, 2016
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