



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.07.2017

Pronounced on : 20.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A. [MD].No.916 of 2017

and

C.M.P. [MD]No.6140 of 2017

1.The Commissioner of Most Backward Classes
and De-notified Community,
Chepauk, Chennai - 600005.

2.The Joint Director of Most Backward Classes
And De-notified Community,
Collector Office,
Madurai- 625 020

... Appellants

Vs.

A.Saravanan

... Respondent

PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order dated 30.10.2013 in W.P.(MD)No.17789 of 2013 on the file of this Court.

Prayer in WP(MD) . 17789/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to keep in abeyance all further proceedings on the 17(b) Charge Memo No.B1/5674/2012 dated 12.04.2013 issued by the 1st respondent to the petitioner till the final disposal of the Criminal Case registered in FIR No.38/2012 dated 23.11.2012 on the file of the District Crime Branch Police, Dindigul.

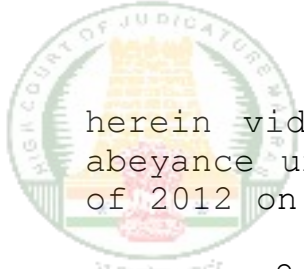
For Appellants : Mr.T.S.Mohamed Mohideen, AGP

For Respondent : Mr.A.Thirumurthy
for M/s.Victory Associates

JUDGMENT

[Judgment of the Court was delivered by G.R.SWAMINATHAN, J.]

The instant writ appeal has been filed questioning the order dated 30 October 2013 made in W.P.(MD) No.17789 of 2013, wherein the appellants herein were directed to keep the enquiry into the disciplinary proceedings initiated against the respondent



herein vide charge memo No.B1/5674/2012, dated 12 April 2013 in abeyance until the conclusion of the criminal case in crime No.38 of 2012 on the file of the District Crime Branch, Dindigul.

2.The writ petitioner, Headmaster, then working in Government Kallar Reclamation Higher Secondary school, Anaipatti, Dindigul District was implicated as first accused in crime No.38 of 2012 on the file of the District Crime Branch, Dindigul under Section 120(b), 409, 420, 465, 468 and 471 of I.P.C. One Sivakumar, Junior Assistant working in the same school was made as second accused. F.I.R. Was registered on 23 November 2012. Charge memo was served on the writ petitioner on 12 April 2013. The allegation in the charge memo is that the writ petitioner Saravanan and the said Junior Assistant S.Sivakumar misappropriated the Government money to the tune of Rs.19,85,428/-. Since the Government initiated disciplinary proceedings against the writ petitioner, he filed W.P.(MD) No.17789 of 2013, seeking stay of the disciplinary proceedings till the conclusion of the criminal case. The learned Judge relied on the decision reported in (1999) 3 SCC 679 - **Captain M.Paul Anthony Vs. Bharat Gold Mines Ltd., and another** and allowed the writ petition. Aggrieved by the same, the Department is on appeal.

3.We have heard the learned Additional Government Pleader appearing for the appellants and Mr.A.Thirumurthy, learned counsel appearing for the respondent.

4.It is true that in **Captain M.Paul Anthony's** case, the Hon'ble Supreme Court held that if the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. Whether the nature of the charge in the criminal case is grave and whether complicated questions of law and fact are involved in that case will depend upon the nature of the offences, nature of the case launched against the employee on the basis of the evidence and material collected against him during investigation as reflected in the charge sheet.

5.We find that in the present case, the said principles have been set out and the writ has been allowed straightaway. This, in our respectful view, cannot be said to be the correct approach. There must be an independent application of the aforesaid principles to the factual matrix obtaining on hand. Without satisfying that the said principles are applicable, the question of granting stay of departmental proceedings cannot arise.



6. The learned Judge has merely observed that facts involved in both the proceedings are same and most of the witnesses are likely to be common. This does not meet the standard set out in **Captain M. Paul Anthony** 's case. The charge in the criminal case against the delinquent employee must be a grave nature and involving complicated questions of law and fact. Then and then alone it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. Even though such an approach was not undertaken in the instant case, we are not inclined to interfere with the order of stay of departmental proceedings for the reason that it was passed as early as on 30 October 2013. The instant writ appeal has come up for admission before us after a lapse of more than 45 months.

7. Now the question is whether the departmental proceedings can be indefinitely stayed. We are informed that the second accused Sivakumar is absconding. We direct the police to conclude the investigation expeditiously and file the final report within three months from the date of receipt of a copy of this order. If the accused is not available, it is always open to the investigating officer to file an absconding charge sheet. If the police file the final report including the writ petitioner herein as an accused, the criminal Court shall complete the trial within a period of 12 months from the date of taking cognizance of the criminal case. If need be, the criminal Court should split the case and proceed against the writ petitioner/accused alone. The writ petitioner/accused shall extend full co-operation to the trial Court for an early disposal of the case. If the trial is not completed within the stipulated period, despite the steps, which the trial Court has been directed to take, disciplinary proceedings against the respondent/writ petitioner, shall be resumed by the enquiry officer. The direction given in favour of the writ petitioner/respondent for keeping the disciplinary proceedings in abeyance shall stand vacated forthwith upon the expiry of the said period of 15 months. The trial Court shall take effective steps to ensure that the witnesses are served and are examined without delay. In case, any adjournment becomes inevitable, it should not be for more than a fortnight when necessary. We have adopted the course of action mentioned above in view of the decision of the Hon'ble Supreme Court of India reported in **2016(9) SCC 491 S.B.I and Others Vs. Neelam Nag.**

8. This writ appeal is disposed of on the terms set out above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)



To

1.The Commissioner of Most Backward Classes
And De-notified Community,
Chepauk, Chennai - 600005.

2.The Joint Director of Most Backward Classes
And De-notified Community,
Collector Office,
Madurai- 625 020

+1cc to M/S.A.THIRUMURTHY, Advocate SR.No.66643

Arul/skm

MAS/KP/SAR2:27.07.2017:4P-4C

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and
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