

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.39361 of 2017

ORDER

The petitioner was initially appointed as Mechanical Chargeman on 10.12.1986 and after successive promotions, he was promoted as Depot Manager on 7.6.2010. When he was working as Depot Manager at Nidadavole, on a complaint lodged by a contractor of an out sourcing agency, the Anti Corruption Bureau rushed to the office of the petitioner on 22.08.2017, arrested him and registered a criminal case under Sections 7, 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988, which is pending trial before the Special Judge for SPE and ACB cases, Vijayawada. The petitioner was kept in judicial remand for 14 days and was released on bail *vide* order dated 19.09.2017 in CrI.M.P.No.1684 of 2017, pending investigation. The second respondent issued a charge sheet on 23.08.2017 on the basis of the said incident of taking bribe of Rs.5,000/- from the contractor and placed him under suspension on 23.08.2017. The petitioner submitted his explanation on 25.09.2017. But without considering the same, departmental enquiry was proceeded against the petitioner and he participated in the said departmental enquiry. However, a show cause notice dated 30.10.2017 was issued

proposing the punishment of removal from service based on the enquiry report. Hence, the present writ petition is filed.

Learned counsel for the petitioner submits that the 2nd respondent ought not to have continued the departmental enquiry in view of pendency of criminal proceedings as the charges involved in the criminal case and in the departmental proceedings are one and the same and in any event, till finalization of the criminal proceedings, the 2nd respondent ought to have waited for appropriate action. Learned counsel relied on the decision of the Supreme Court in *Stanzen Toyotetsu India Private Limited vs. Girish v. and others*¹ & also in *State Bank of India and others vs. Neelam Nag and another*². In Girish's case (1 supra), the Supreme Court reiterated the principles relating to continuance of departmental proceedings while criminal proceedings are pending.

While considering the said case, the Supreme Court considered the decision in *APSRTC v. Mohd. Yousuf Miya*³, wherein it was held that the purpose underlying the departmental proceedings is distinctly different from the

¹ (2014) 3 Supreme Court Cases 636)

² (2016) 9 Supreme Court Cases 491

³ (1997) 2 SCC 699

purpose behind prosecution of offenders for commission of offences by them. Ultimately, the Supreme Court held as follows:

"In *APSRTC v. Mohd Yousuf Miya*, this Court declared that the purpose underlying departmental proceedings is distinctly different from the purpose behind prosecution for an offence is launched for violation of a duty that the offender owes to the society, departmental enquiry is aimed at maintaining discipline and efficiency in service. The difference in the standard of proof and the application of the rules of evidence to one and inapplicability to the other was also explained and highlighted only to explain that conceptually the two operate in different spheres and are intended to serve distinctly different purposes.

But, in the facts and circumstances of that case, the Supreme Court declined to vacate the order passed by the trial Court, and directed the Court to deal with the criminal charges and conclude the proceedings as expeditiously as possible.

In *Neelam Nag's* case (2 *supra*), the Supreme Court while considering the jurisdiction of the High Court regarding granting of stay of disciplinary proceedings initiated by the appellant-Bank against the respondents, thought it fit not to vacate the stay of disciplinary proceedings.

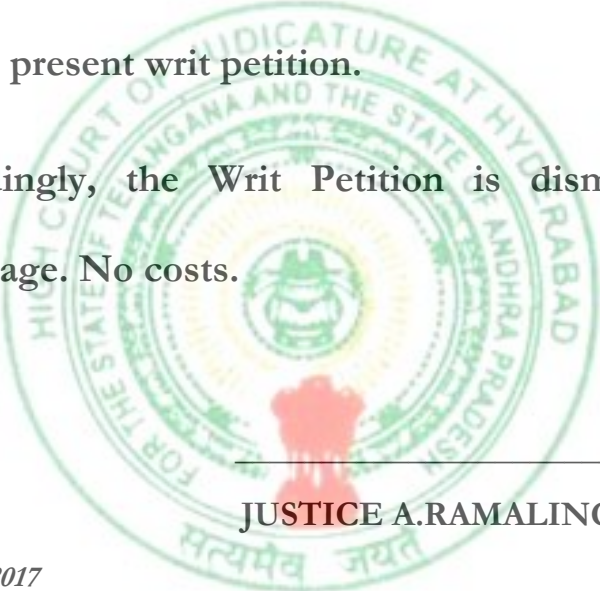
In the instant case, no order was passed by the Court staying neither the departmental proceedings nor the criminal

proceedings. The petitioner faced the departmental proceedings and only when action was sought to be taken pursuant to the submission of the enquiry report, he filed the present writ petition.

In the affidavit filed in support of the present writ petition, the petitioner nowhere stated with regard to the stage of the criminal proceedings.

In the circumstances, this Court is not inclined to entertain the present writ petition.

Accordingly, the Writ Petition is dismissed at the admission stage. No costs.



JUSTICE A.RAMALINGESWARA RAO

23rd November, 2017

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