

**113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.2158 of 2017 (O&M)
Date of decision : February 06, 2017**

Mulakh Raj

..... Petitioner

Versus

Punjab State Civil Supplies Corporation Limited and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vipin Mahajan, Advocate for the petitioner.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Heard.

The contention of the learned counsel for the petitioner is that he retired from service on 31.03.2014. After his retirement, an FIR No.116, dated 02.07.2014, under Sections 409 IPC and 13(1) (c) of the Prevention of Corruption Act, 1988 registered at Police Station Civil Lines, Batala. It is stated that with the same charges, a charge-sheet (Annexure P-12) was issued to the petitioner on 15.05.2015. The same evidence is to be led and same witnesses are to be examined. Therefore, the defence of the petitioner will be prejudiced. The prayer is for staying the departmental proceedings, relying the authority of the Apex Court delivered in “*Capt. M. Paul Anthony v Bharat Gold Mines Ltd*”, 1999 AIR(SC) 1416, wherein the Apex Court arrived at the following five conclusions, which are as under:

“The conclusions which are deducible from various decisions of this Court referred to above are :

(i) Departmental proceedings and proceedings in a

criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) 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.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.”

Now, this Court has to see whether the case of the petitioner is covered under the aforesaid five guidelines.

There is no bar in conducting the criminal case as well as the departmental proceedings simultaneously. In the FIR in question (Annexure P-9), the charge has been levelled regarding the embezzlement of 14271 wheat crop bags valued to ₹1,44,66,609/- and on that basis, the charges under Section 409 and 13(1)(c) of the Prevention of Corruption Act, 1988 have been framed. A perusal of the departmental charge-sheet dated 15.05.2015 (Annexure P-12) shows that though one of the charges i.e. charge No.2 is same but the charge No.1 pertains to misconduct by not appearing before the Departmental Committee. Charge No.3 is regarding negligence in not taking steps for disposal of the wheat stock lying under his charge at M/s Khosla Open Plinth, Batala. Charge No.4 is regarding irresponsibility, negligence and inefficiency.

I am of the view that in this case, there is alleged huge embezzlement. Three of the charges are different from the charges levelled in FIR. There is no absolute bar in conducting the criminal case as well as the departmental inquiry simultaneously, though some of the charges may be same. But keeping in view the entirety of the facts and circumstances and applying the principal laid down by the Apex Court, I am of the view that it is not a fit case, where the departmental proceedings should be stayed, so as to unnecessarily delay the said proceedings for indefinite period, as department is to also affect the recovery of huge loss caused to it. Therefore, there is no ground to stay the proceedings in the charge-sheet.

As such, the present petition is dismissed.

(KULDIP SINGH)
JUDGE

February 06, 2017

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

No