

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 8018 of 2018

Ramesh Kumar Sinha S/o Durga Das Sinha Aged About 62 Years R/o Dubey Colony, Mova, Raipur, District - Raipur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Medical Education Department, Mahanadi Bhawan Mantralaya, New Raipur, Chhattisgarh.
2. The Director, Directorate of Medical Education, Chhattisgarh, Raipur Chhattisgarh.
3. The Dean Pt. Jawaharlal Nehru Smriti Chikitsa Mahavidyalaya, Raipur Chhattisgarh.
4. Dr. A. K. Chandrakar Dean, Pt. Jawaharlal Nehru, Smriti Chikitsa Mahavidyalaya, Raipur Chhattisgarh.
5. The Upper Secretary Medical Education Department, Mahanadi Bhawan, Mantralaya, New Raipur Chhattisgarh.
6. The Presenting Officer Dr. Nirmal Verma Community Medicine Department, Pt. Jawaharlal Nehru, Smriti Chikitsa Mahavidyalaya, Raipur Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Goutam Khetrapal, Advocate
For State	:	Mr. Syed Majid Ali, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/12/2018

1. Heard on I.A. No.1, which is an application for exemption from filing typed copy. On due consideration, I.A. No.1 stands allowed. Accordingly, the petitioner is exempted from filing the typed copy.
2. With the consent of the parties the present writ petition is heard and finally decided at the motion stage itself.
3. The present writ petition has been filed seeking for the following relief:-

10.1 That, this Hon'ble Court may kindly be pleased to issue an appropriate writ, thereby setting aside/ quashing the entire charge sheet issued against the petitioner by letter dated 01.09.2016, with all further orders/action taken pursuant to impugned charge-sheet.

4. The facts of the case is that the petitioner, who was working as an Assistant Office Superintendent under the respondent No.3, was issued with a charge-sheet on 01.09.2016. The charge against the petitioner is that the petitioner on 22.07.2016, at around 1:10 p.m. is said to have blocked the entry of the respondent No.4, the Dean of the respondent No.3 establishment and is said to have used obscene language and also has threatened the respondent No.4 of dire consequences and also threatened them of his life and petitioner also is said to have assaulted him and acted in an indecent manner, which falls within the definition of misconduct under the Conduct Rules of 1965.
5. The present writ petition has been filed by the petitioner on the ground that from the same set of allegations at the instance of the respondent No.4, an FIR also has been lodged and which has been registered as Crime No. 108/2016 at the Maudahapara Police Station at Raipur. The FIR has been lodged on the same day i.e. on 22.07.2016 and a case has been registered for the offence punishable under Sections 341, 294 & 506 of the Indian Penal Code.
6. The contention of the petitioner is that the nature of allegations in the FIR, the witnesses cited in the criminal case and the nature of charges in the charge sheet and also the witnesses to support the charges in the departmental enquiry are same and if at this juncture, the petitioner is subjected to disciplinary proceedings, his defence would be disclosed in

the criminal case, which is pending and which would adversely prejudice or affect his criminal case and thus prayed for the staying of the departmental enquiry till the finalization of the criminal case.

7. Per contra, the counsel for the State opposing the petition submits that the two proceedings are entirely different. The departmental enquiry and the criminal case can be conducted simultaneously and the standard of proof required for both the proceedings are different. According to the State counsel, in the departmental enquiry the standard of proof required is preponderance of probability and in the criminal case, with which the offence could be proved is proof beyond reasonable doubt. Thus, there is no substantial material available for the petitioner to stay the criminal proceedings at this juncture. He further submits that the petitioner it appears has got only few years time for retirement and if the inquiry proceedings are not concluded before retirement, the petitioner may take an advantage at a later stage of dropping the proceedings in the light of the petitioner's having superannuated from service.
8. At this juncture, the counsel for the petitioner submits that he has specific instructions from the petitioner that even after the petitioner crosses the age of superannuation, he would not take up a plea that the proceedings have to be dropped on the ground of his having superannuated. The said undertaken of the petitioner's counsel is accepted.
9. Now coming to the question of the prejudice which the petitioner may suffer from, undisputedly from the plain reading from the contents of the FIR as also the charge sheet, it would reveal that nature of allegations in both the charge sheets are similar, if not identical. The witnesses

required for proving the charges in both the proceedings are also the same. The criminal case has already proceeded further and it is reached the stage of evidence and one of the prosecution witnesses has already been examined. The charge sheet has till date not been further proceeded with, though the same was issued as early as on 01.09.2016. Till date the inquiry officer has not held a single proceeding. Recently vide Annexure P/7, which is a collective documents of the notice issued by the Presenting officer to the different witnesses to appear before the Inquiry officer on different dates for recording their statements.

10. This Court does not find any good reason, why the Presenting officer has noticed the witnesses for appearing before the Inquiry officer, whereas it should had been issued by the Inquiry officer. The counsel for the petitioner specifically makes a statement that apart from the notice of the Presenting officer, he has till date not received any official communication in respect of the sittings conducted by the Inquiry officer after the issuance of the charge sheet from the Enquiry Officer.
11. It appears that now the department has suddenly woken up from their slumber and they want the departmental enquiry to be concluded in a haste.
12. At this juncture, it would be relevant to refer to a recent decision rendered by this Court in the case of **“Sandip Kumar Singh v. Chhattisgarh Rajya Gramin Bank & Ors.” (WPS No. 2377/2018)** decided on 27.03.2018, wherein this Court relying upon the decision of the Hon'ble Supreme Court in the case of **“State Bank of India & others v. Neelam Nag & another” (2016) 9 SCC 491** and also

“Karnataka SRTC v. M.G. Vittal Rao” (2012) 1 SCC 442 allowed a writ petition of similar nature and ordered that the departmental enquiry/proceedings should be kept in abeyance till the finalization of the criminal case or else the petitioner's right to defence would get adversely prejudice.

13. It would be relevant at this juncture to refer to the order passed in the case of **“Sandip Kumar Singh”** (supra), wherein in paragraph No.9, this Court held as under:-

“9. Likewise, if we peruse the decision rendered in Neelam Nag (Supra), it would reveal that the Supreme Court in the said case also initially had taken note of the fact that charges which have been levelled against the petitioner in the criminal case and also in the disciplinary proceeding, if not identical, almost are on similar set of facts and witnesses also relied upon before the two forums being similar, the disciplinary action against the petitioner was stalled for a period of one year. The period of one year was perhaps for the reason that the proceedings before the criminal court was going on since long, whereas, in the instant case the departmental proceedings have been initiated recently. Therefore, at this juncture, it would be in the interest of justice that the departmental proceedings against the petitioner be stalled till the criminal case is finally concluded and thereafter the respondents would be at liberty to proceed further from the stage the inquiry proceedings are fixed as on date.”

14. The aforesaid view of this Court stands fortified from the ratio laid down by the Hon'ble Supreme Court in the case of **“M.G. Vittal Rao”**

(supra), wherein the Hon'ble Supreme Court in paragraphs No. 16-17 has held as under:-

“(i) There is no legal bar for both the proceedings to go on simultaneously.

(ii) The only valid ground for claiming that the disciplinary proceedings may be stated would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts or law.

(iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(iv) Departmental proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common.”

15. Subsequently, the same view was further reiterated by the Hon'ble Supreme Court in the case of ***“Stanzen Toyotetsu India (P) Ltd. v. Girish V.” (2014) 3 SCC 636***, wherein in paragraph No.16, the Hon'ble Supreme Court has held as under:-

“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.”

16. The view taken by the Hon'ble Supreme Court in the aforesaid two decisions has been further reiterated by the Hon'ble Supreme Court in the case of ***“State Bank of India & others v. Neelam Nag & another”*** (2016) 9 SCC 491.
17. In view of the same, this Court is of the firm view that considering the facts and circumstances of the case, particularly taking note of the fact that in the criminal, the evidence has already started and in the departmental enquiry, till date no evidence has been recorded, though the charge sheet was issued more than 2 ½ years ago, ends of justice would serve if the departmental enquiry initiated against the petitioner is kept in abeyance till the finalization of the criminal case.
18. It is made clear that on the culmination of the criminal case, the respondents would be at liberty to proceed further with the departmental enquiry and conclude the same, irrespective whether the petitioner has superannuated or not?
19. With the aforesaid observations, the writ petition accordingly stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge