

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.269 OF 2017

K. Henry Daniel,
s/o K.V.R. Daniel,
aged 58 years,
r/o Flat No.8, Block A, type E,
Goa Medical College Campus
Bambolim Tiswadi Goa.

... Petitioner

Versus

1. State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Bardez Goa,
2. Directorate of Skill Development
And Entrepreneurship
Formerly (Directorate of Craftsmen and
Training)
Through its Director,
Shramshakti Bhavan,
Patto Plaza, Tiswadi,
Panaji Goa.
3. The Disciplinary Authority,
Directorate of Skill Development
And Entrepreneurship
Formerly (Directorate of Craftsmen and
Training)

Shramshakti Bhavan,
Patto Plaza, Tiswadi,
Panaji Goa.

... Respondents

Mr. D. Pangam, Advocate for the Petitioner.

Mr. Pravin N. Faldessai, Additional Government Advocate for respondent no.1.

***Coram : R. M. Borde &
Prithviraj K. Chavan, JJ.***

Date : 10th December 2018.

Oral Judgment (Per R. M. Borde, J):

Heard. Rule with the consent of the parties.

2. The petition is taken up for final disposal at the admission stage. The petitioner is a retired employee and is praying for issuance of writ of certiorari seeking quashment of the Office Memorandum dated 16th February 2017 and for directing the respondents to stay the departmental proceedings initiated against the petitioner until the disposal of the pending criminal trial. The petitioner though was in employment with respondent no.2 -Directorate of Skill Development has retired on attaining the age of superannuation. The charge- sheet

was served on the petitioner while he was in employment and simultaneously he is placed under suspension. The petitioner contends that the allegations levelled against him in the departmental proceedings as well as in the criminal proceedings initiated against him are identical. It has been pointed out that the FIR No.6/2014 has been registered against him and on conclusion of the investigation, the trial is pending in the Court of the Judicial Magistrate First Class, Panaji (Criminal Case No.242/2015/A) and the SPL/TRAP/Case No.1/2018 is also pending in the Court of the Additional Sessions Judge, Panaji. The petitioner submits that the trial against him in both the criminal proceedings initiated against him and the charges levelled in the departmental proceedings initiated against him are based on identical allegations and moreover, the witnesses cited in the criminal case as well as the departmental proceedings are also likely to be common. It would not be prudent to proceed with departmental proceedings before commencement of the criminal prosecution. The continuance of the departmental proceedings before the completion of the criminal trial is likely to cause prejudice and as such the petitioner contends that the departmental proceedings initiated against him deserve to be stayed till the conclusion of the criminal trial referred to above i.e. in the criminal case pending before the Court of the Judicial Magistrate First Class, Panaji as well as the case pending before the

Additional Sessions Judge, Panaji. Placing reliance on the judgment in the matter of *State Bank of India and others Vs Neelam Nag and Another*¹, it is contended that the relief claimed by the petitioner deserves to be granted. It is appropriate to refer to the observations of the Supreme Court recorded in paragraphs 14 and 15 and also paragraph 29 of the judgment, we quote-

“14. This Court in Karnataka SRTC vs. M.G.Vittal Rao (2012) 1 SCC 442 has summed up the same in the following words: (SCC pp 449-50, paras 16-17)

“(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.”

(emphasis supplied)

¹ (2016) 9 SCC 491

15. The recent decision relied on by the appellant in the case of Stanzen (supra), has adverted to the relevant decisions including the case of M.G.Vittal Rao (supra). After adverting to those decisions, in paragraph 16, this Court opined 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. 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.”

(emphasis supplied)

29. If the trial is not completed within one year from the date of this order, despite the steps which the Trial Court

has been directed to take, the disciplinary proceedings against the respondent shall be resumed by the enquiry officer concerned. The protection given to the respondent of keeping the disciplinary proceedings in abeyance shall then stand vacated forthwith upon expiry of the period of one year from the date of this order.”

3. There is no dual opinion as regards the facts. The charges framed against the petitioner in the departmental proceedings are identical to the allegations levelled against him in the criminal trial and the continuance of the disciplinary proceedings is likely to cause prejudice since the petitioner will be required to disclose his defence before the criminal Court. It would be necessary therefore to draw a balance between the need for a fair trial to the petitioner on the one hand and continuation of ongoing disciplinary proceedings on the other hand. It would also be necessary in the circumstances to direct the Trial Court i.e. the Judicial Magistrate First Class, Panaji before whom the Criminal Case No. 242/2015/A is pending for trial as well as the Additional Sessions Judge, Panaji, before whom SPL/TRAP/Case No.1/2018 is pending, to complete the criminal trial in both the cases referred to above as expeditiously as possible and preferably within a period of one year from today. The concerned trial Court shall take effective steps to ensure that the witnesses are served,

appear and are examined on day-to-day basis. In case any adjournment become inevitable, it should be fortnightly whenever it is necessary. The respondent/State as well as the petitioner shall extend cooperation to the Trial Court for early disposal of the trial. The trial in respect of offence for which the petitioner is charged i.e. Criminal Case No. 242/2015/A pending before the Judicial Magistrate First Class, Panaji and SPL/TRAP/Case No.1/2018 pending before the Additional Sessions Judge, Panaji, shall be completed within a period of one year from the date of this order. In the meanwhile, the departmental proceedings initiated against the petitioner shall stand stayed for a period of one year from today. The protection granted to the petitioner as above of keeping the disciplinary proceedings in abeyance shall continue only for a period of one year and the same shall stand vacated after the expiry of one year from the date of this order, in the event of failure by the Trial Court to complete the criminal trial initiated against the petitioner referred to in detail as above. Rule is accordingly made absolute to the extent as specified as above. There shall be no order as to costs.

Prithviraj K. Chavan , J.

R. M. Borde , J.

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