

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1678 OF 2018

The State of Maharashtra and ors.	...Petitioners
Versus	
Jagdish M Wagh	...Respondent

Mr. C.P. Yadav, AGP for the State / Petitioner.
Mr. Vikram V. Pai for the Respondent.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE OF RESERVING THE JUDGMENT	: 10 th JULY 2018
DATE OF PRONOUNCING THE JUDGMENT	: 17 th JULY 2018.

JUDGMENT:

- 1] Heard learned counsel for the parties.

- 2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

- 3] The challenge in this petition is to the judgment and order dated 12.7.2016 made by the Maharashtra Administrative Tribunal (MAT), Mumbai allowing O.A. No. 415 of 2016 instituted by the respondent seeking for a stay on the departmental enquiry until such time as the criminal prosecution against the respondent is disposed of.

4] Mr. Yadav, learned AGP for the petitioners - State, submits that the MAT failed to appreciate the decision of the Hon'ble Supreme Court in case of **Cap. St. Paul Anthony Vs. Bharat Gold Mines Limited - (1999) 3 SCC 679** does not lay down the law of universal application and therefore, the MAT without appreciating the facts, charges and nature of evidence etc., was not at all justified in staying the departmental enquiry against the respondent. He points out that the scope of departmental proceeding and criminal prosecution is entirely different. He submits that even where an officer is acquitted from criminal prosecution that by itself, is no bar to initiation or conclusion of a departmental proceeding. He points out that the standard of proof in the two proceedings is quite different and distinct. He submits that the MAT, without consideration of all these aspects, but by mechanically applying the ruling in *Capt. M. Paul Anthony (supra)* has stayed departmental proceeding. He submits that the impugned judgment and order is clearly in excess of jurisdiction and therefore, the same may be set aside. He relies upon the ruling upon this court in case of **Mr. Rammani Tripathi vs. The Union of India and anr.**

(Civil Writ Petition No. 1381 of 2014 decided on 8.3.2016). For all these reasons, Mr. Yadav submits that the impugned judgment and order may be set aside.

5] Mr. Vikram Pai, learned counsel for the respondent, submits that the proposed departmental enquiry and the criminal prosecution is on identical sets of facts. He submits that in such a situation, the principle in case of *Capt. M. Paul Anthony (supra)*, clearly applies on the MAT, which was bound by the said decision has quite correctly stayed the departmental enquiry until the conclusion of the criminal prosecution. He submits that there is no jurisdictional error in the impugned judgment and order and therefore, this petition may be dismissed. He relies upon the ruling in *Capt. M. Paul Anthony (supra)* in support of his submission.

6] The rival contentions now fall for our determination.

7] The MAT, in making the impugned judgment and order, has merely transcribed the conclusions recorded by the Hon'ble Supreme Court in paragraph 22 of its decision in *Capt. M. Paul Anthony (supra)* and without any

investigation into the factors indicated by the Hon'ble Supreme Court itself in the same ruling, stayed departmental enquiry against the respondent. In our opinion, this is not a correct approach.

8] There is no discussion as to whether the charges are identical. Mr. Yadav points out that the charge-sheet is based on two charges. One concerns the transaction, where a trap was laid in the office of the respondent and the respondent was found accepting bribes. The second charge relates to possession of assets disproportionate to the known source of income. No doubt, there is some overlapping, at least, insofar as the first article of charge is concerned. However, this does not mean that the charges in the departmental enquiry and the criminal prosecution proceed on the identical facts.

9] Further, in terms of the ruling in *Capt. M. Paul Anthony (supra)* for staying departmental enquiries, it is not sufficient that the charges in the departmental proceedings and in the criminal prosecution are identical and similar, but further, it is necessary to investigate whether charges

involved complicated questions of fact and law so as to make it desirable to stay the departmental proceedings until the conclusion of the criminal trial. From the perusal of the impugned judgment and order, it is clear that the MAT has not at all even adverted to this aspect, much less considered the same.

10] Then again, in *Capt. M.Paul Anthony (supra)* itself, the Hon'ble Supreme Court has held that 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 chargesheet. The Hon'ble Supreme Court has held that the factors mentioned at (ii) and (iii) at paragraph 22 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. Further, in the said ruling, it is made clear that 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, the administration may get rid of him at the earliest.

11] The MAT, without considering all these aspects, but by merely directing the respondent to file an undertaking that he will not do anything unnecessarily to protract the criminal trial, had stayed the temporary enquiry against him. According to us, the view taken by the MAT is not even consistent with the law laid down by the Hon'ble Apex Court in case of *Capt. M. Paul Anthony (supra)*.

12] Besides, it is possible that the MAT did not have the benefit of the law laid down by the Hon'ble Apex Court in case of ***Divisional Controller, Karnataka State Road Transport Corporation vs. M.G. Vittal Rao - (2012) 1 SCC 442***, in which, the Hon'ble Supreme Court has itself restricted its earlier ruling in *Capt. M. Paul Anthony (supra)* by observing thus:

“24. Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in a criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. The judgment of this court in Capt. M. Paul Anthony does not lay down the law of universal application. Facts, charges and nature of evidence, etc., involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry.”

(emphasis supplied)

13] In **Deputy Inspector General of Police and anr vs. S. Samuthiram - (2013) 1 SCC 598**, the issue arose as to whether even an acquittal in a criminal case, said to have been based on the said set of facts as on which the departmental proceedings were undertaken, entitles an employee to exoneration in the departmental proceedings. The Hon'ble Supreme Court, upon consideration of its earlier ruling in *Capt. M. Paul Anthony (supra)*, *Karnataka SRTC vs. M.G. Vittal Rao (supra)* and several other rulings has held that mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the department. Further, the Hon'ble Supreme Court has held that in absence of any provisions in service rules for reinstatement, even if an employee is honourably

acquitted by a criminal court, no right is conferred upon the employee to claim any benefit including reinstatement. Reason is that the standard of proof is required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceedings is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where the service rules themselves provide that in respect of domestic enquiry, if the criminal court acquits the accused honourably, he could be reinstated. In other word, the issue whether an employee has to be reinstated or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right.

14] In the present case, the respondent had neither shown to the MAT nor to us any provision in the service rules,

which entitles him to reinstatement upon honourably acquitted in the criminal prosecution launched against him. If this is the position, then no useful purpose will be served by simply staying the departmental proceeding. The MAT, has not stayed the departmental proceedings on the ground that any prejudice will occasion the respondent in his defence to the criminal prosecution. The MAT has merely quoted the conclusion in paragraph 22 of *Capt. M. Paul Anthony (supra)* and without ascertaining the existence of the factors set out in the very same paragraph, granted relief to the respondent and stayed the departmental enquiry. As noted earlier, such a decision is contrary to the ruling in *Capt. M. Paul Anthony (supra) itself*. Besides, the MAT has failed to take note of subsequent rulings of the Hon'ble Supreme Court on the subject.

15] In *Rammani Tripathi (supra)*, no doubt, one of the factors which wade with this court was that the departmental proceedings were at an advance stage. However, that was not the sole consideration for dismissing Writ Petition No. 1381 of 2014. This court has also considered the aspect that the scope as well as objective of

criminal prosecution and departmental proceedings are distinct and different. This court has also considered the law laid down in *Capt. M. Paul Anthony (supra)* that the stay on the departmental proceedings is to be granted only upon satisfaction that the charges are identical or similar and further, where charges of grave nature and complicated question of law and factors are involved. The MAT, without going into all such aspects, was not at all justified in staying the departmental proceedings.

16] On perusal of the O.A. instituted by the respondent before the MAT, we find that vague averments have been made therein to the effect that if the departmental enquiry is allowed to continue, the defence of the respondent in criminal case "*is most likely to be prejudiced*". The respondent has neither demonstrated identity of the charges nor as the respondent pleaded or established that the charges involve complicated question of law and fact nor has the respondent demonstrated any serious prejudice. Further, from the perusal of the main relief applied for by the respondent in the O.A., it is clear that there was no relief for mere stay of the enquiry but the respondent had in fact

sought for an appropriate order or direction that the departmental enquiry initiated against him *“be quashed and set aside in view of pendency of the criminal case under the provisions of Sections 7,12,13 (1)(d) r/w 13(2) of the provisions of Prevention of Corruption Act, 1988”*. It is only by way of interim relief that a stay was sought on the departmental enquiry. The main relief applied for in the O.A. was entirely misconceived, as mere pendency of criminal prosecution is certainly not a ground to set aside the departmental proceedings.

17] For all the aforesaid reasons, we set aside the impugned judgment and order dated 12.07.2016 and make the Rule absolute in terms of prayer clause (b) of the petition. There shall however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

Dinesh
Sadanand
Sherla

Digitally signed
by Dinesh
Sadanand Sherla
Date: 2018.07.17
14:43:23 +0530