

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 7490 of 2019

M.R. Khandey S/o Dhaniram Khandey Aged About 61 Years Occupation - Service, Presently Posted As Principal, Byte, Borgaon, District Kondagaon, Chhattisgarh, R/o Village And Post - Boargaon, Tahsil Pharasgaon, District Kondagaon Chhattisgarh., District : Kondagaon, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Education, Mantralaya, Mahanadi Bhawan, Atal Nagar, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. District Education Officer Kanker, District North Bastar Kanker Chhattisgarh., District : Kanker, Chhattisgarh
3. The Collector District Kondagaon Chhattisgarh., District : Kondagaon, Chhattisgarh
4. Station House Officer Of Police Station Kanker District North Bastar Kanker Chhattisgarh., District : Kanker, Chhattisgarh

---Respondents

For Petitioner	:	Mr. Malay Shrivastava, Advocate on behalf of Mr. Rajeev Shrivastava, Advocate
For State	:	Ms. Ishwari Ghritlahare, P.L.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/09/2019

1. The claim in the present writ petition is for staying of the departmental enquiry pending the criminal case which has been initiated against the petitioner.
2. The facts of the case is that the petitioner was working as a District Education Officer at District Kanker and there is an allegation of the petitioner having misused his official capacity and has committed financial irregularities to the tune of crores of rupees. An FIR was lodged against the petitioner on 12.03.2014 for an offence under Section 409 of the Indian Penal Code. The criminal case has already been registered and the charge-sheet has also been filed in the criminal case and the trial is going on. The

petitioner was placed under suspension and subsequently after revocation of suspension, the petitioner has been issued with two charge-sheets one on 16.04.2014 and the another on 05.08.2014 and vide Annexure P/1 dated 25.07.2019, the respondents have appointed an Inquiry officer and a Presenting Officer for conducting a departmental enquiry.

3. The contention of the petitioner is that the petitioner's defence would get disclosed, if the evidence is adduced before the departmental enquiry and that may have an adverse barring on the criminal case, which is going on and therefore the departmental enquiry be stayed till the criminal case is finally decided.
4. Having heard the contentions put forth on either side and on perusal of record what is admittedly clear is that the petitioner was issued with two charge-sheets on 16.04.2014 & 05.08.2014. The criminal case also was lodged roughly during the same period. There does not seem to be any substantial progress in the criminal case, which has been initiated and from the records available with the writ petition the total witnesses cited in the criminal case is 101. That as of now and the petitioner is about aged 61 years and has got a very short tenure of service left for his superannuation. Realizing the fact that the petitioner has got a short tenure of service left and there could be serious complications if the disciplinary proceedings initiated is not concluded before his retirement, the Department seems to have now issued Annexure P/1 appointing an Inquiry officer as well as the Presenting Officer.
5. Considering the aforesaid facts and circumstances of the case, this Court is of the opinion that there does not seem to be a strong case made out calling for an interference with the appointing of the Inquiry officer and the Presenting Officer. What has to be construed is the fact that the standard of

proof required for the criminal case as also in the departmental enquiry are entirely different.

6. Recently, there is a judgment of the Hon'ble Supreme Court in the case of **“Secretary, Lucy Sequeira Trust & Another v. Kailash Ramesh Tandel & Others” 2019(6) SCC 155**, wherein in paragraph No. 17, the Hon'ble Supreme Court has held as under:

“It is well settled that a departmental proceeding and proceedings in a criminal court are completely different. The purpose is different, the standard of proof is different and the approach is also different. The initiation of the process in a departmental proceeding, specially on charges with which we are concerned in the present matter can never be said to be amounting to contempt of court even if the criminal proceedings were pending. The allegations made against Respondent No.1 were of such level and dimension that an immediate action on the departmental front was required to be undertaken and such action by its very nature had to be completely independent. Whether any criminal trial was pending or not would not be having any bearing on the pending issue before the Inquiry Committee. We have, therefore, no hesitation in observing that the approach of the Nominee of Respondent No.1 and of the State Awardee Teacher was completely wrong and unsustainable.”

7. The said view has been further reiterated by the Hon'ble Supreme Court again in Civil Appeal No. 7130/2009 decided on 01.08.2019.
8. Considering the gravity of the offence leveled against the petitioner in the charge-sheets and the facts that the respondents for five years did not take any effective steps against the petitioner so far as the departmental enquiry is concerned. Now, if the Department visualizing the short tenure of service left for the petitioner to retire, if they have initiated the disciplinary proceedings by appointing the Inquiry officer and the Presenting Officer, it cannot be in any manner said to be prejudicial in the interest of justice, nor would it be prejudicial to the interest of the petitioner. The petitioner would have all the rights and liberties available to cross-examine the witnesses who would be examined, which from the total list of witnesses of 101 cited

in the criminal case, only two witnesses are those whose names appear in the departmental enquiry from among the 101 cited in the criminal case. This is also one of the reasons for this Court to be reluctant in entertaining the writ petition.

9. For the aforesaid reasons, this Court does not find any merit, the writ petition thus stands rejected.
10. Any observation made in this order should not come in the way of the petitioner in availing other remedies.

Sd/-
(P. Sam Koshy)
Judge

Ved