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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.558 of 2019**

(Arising out of order dated 19.09.2019 passed in Writ Petition (S) No.7490 of 2019 by the learned Single Judge)

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.

---- Appellant**Versus**

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

---- Respondents

For Appellant : Shri Rajeev Shrivastava, Advocate

For Respondent/State : Shri Gagan Tiwari, Deputy Government Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgement on Board

P. R. Ramachandra Menon, Chief Justice

02.12.2019

1. Whether departmental proceeding could be pursued against a Government Servant when the alleged misconduct is also involving an offence, which is being separately prosecuted by way of appropriate criminal proceeding is the question in this appeal.

2. Heard Shri Rajeev Shrivastava, the learned counsel appearing for the Appellant and Shri Gagan Tiwari, learned counsel representing the State.
3. The minimum factual matrix reveals that, the Appellant herein while working as a District Education Officer, District Kanker in the State of Chhattisgarh was found as involved in various irregularities involving embezzlement of money in respect of the financial year 2011-12. Pursuant to the same, he was suspended from the service and since it involved an offence, a criminal case was also registered against him and investigation was going on. It is conceded by the Appellant that he was arrested in connection with the offence and subsequently, after obtaining bail, he was reinstated in service.
4. The learned counsel submits that the 1st Respondent has ordered departmental enquiry and the same is proceeded in accordance with Chhattisgarh Civil Service (Classification, Control and Appeal) Rules, 1966, which may prejudicially affect the rights and interests of the Appellant, as there is a chance for the defence in a criminal case to be revealed.
5. In the said circumstance, the departmental proceedings were sought to be interdicted by filing the writ petition before the learned Single Judge. The matter was heard elaborately by the learned Judge and placing reliance on the recent verdict passed by Apex Court in **Secretary, Lucy Sequeira Trust and Another v. Kailash Ramesh Tandel and Others, (2019) 6 SCC 155**, it was held that there was absolutely no bar in proceeding with the disciplinary action, insofar as the service of the writ

Petitioner/Appellant was concerned. It was accordingly that the prayer was declined to be granted and the writ petition came to be dismissed, which is sought to be challenged in this appeal.

6. The pleadings and the prayers are sought to be asserted before this Court as well by the learned counsel, pointing out that, the rights and interests would get prejudiced, if the disciplinary proceedings are taken and pursued. The circumstance under which, the proceedings could be pursued departmentally and also by way of appropriate criminal proceedings has been explained by the Apex Court in the decision reported in **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679**, which are considered in the verdict rendered earlier in **State of Rajasthan v. B.K. Meena, (1996) 6 SCC 417**. The Apex Court considered the proceedings substantially as well including as per decision reported in **Kendriya Vidyalaya Sangathan and Others v. T. Srinivas, (2004) 7 SCC 442**.
7. The position came to be dealt with by this Court as well elaborately as per verdict dated **14.11.2019** in **Writ Appeal No.490 of 2019**. The sum and substance of the law is that the very same misconduct may give rise to various situations. It may be a 'misconduct simplicitor', which may warrant disciplinary action alone. It may be involving as offence; under which, it may lead to criminal proceedings as well. If such misconduct has resulted in any loss to the employer, it may result in civil proceeding for recovery of the loss as well. The disciplinary proceeding could be kept in abeyance only in exceptional circumstance, where there was complicity of facts and

evidence as involved in the said proceedings and also in the criminal proceedings with reference to loss of chance defence or to get relief in the course of departmental proceedings.

8. In the instant case, we find that the criminal case that is being pursued against the Appellant is in respect of the offence in connection with the embezzlement of money, whereas the disciplinary proceeding is in respect of the misconduct committed by the employee pursuing an act, which is quite unbecoming of a Government Servant in violation of Rule 3 of the Chhattisgarh Civil Services (Conduct) Rules, 1965. This being the position, this is not a fit case to interdict the disciplinary proceedings and the verdict passed by the learned Single Judge; that too, by placing reliance on the law declared by the Apex Court in **Kailash Ramesh Tandel (supra)** and also the subsequent ruling dated **01.08.2019** in **Civil Appeal No.7130 of 2009**, is perfectly within the four corners of the law and is not assailable under any circumstance.
9. No sustainable ground is raised to interdict the verdict passed by learned Single Judge. The appeal fails and it is dismissed accordingly.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge