IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

WP. No.17518 of 2014
and
MP.No.1 of 2014

R.S.Rajakrishnan ... Petitioner

Vs.

1.The Deputy General Manager/
Disciplinary Authority,
Punjab National Bank,
FGM Office,
No.46-49, Royapettah High Road,
Royapettah,
Chennai – 600 014.

2.The Deputy General Manager,
Punjab National Bank,
Circle Office,
PNB House, 1st Floor,
Kailasapuram,
Trichy – 620 014. ...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondents from proceeding with enquiry based on the charge issued by the first respondent under Regulation 6 of PNB Officer, Employees (D&A) Regulations 1977, in the proceedings No.NIL dated 03.03.2014, till the conclusion of the criminal case in C.C.No.1 of 2014, on the file of the CBI Court, Coimbatore.

For petitioner : Mr.G.Sankaran
For respondents : Mr.Jayaraman

O R D E R

The petitioner has filed the Writ Petition praying to issue a Writ of Mandamus, forbearing the respondents from proceeding with enquiry based on the charge issued by the first respondent under Regulation 6 of PNB Officer, Employees (D&A) Regulations 1977, in the proceedings No.NIL dated 03.03.2014, till the conclusion of the criminal case in C.C.No.1 of 2014, on the file of the CBI Court, Coimbatore.

2.The learned counsel appearing for the petitioner submitted that a sum of Rs.25 Crores was transferred to Intersol Office of Branch Office, Sankari West from Punjab National Bank Branch Office, Rajaji Nagar, Bengaluru as requested by Karnataka Industrial Area Development Board (KIADB) Bangalore, by which two Fixed Deposit (FDRs) of Rs.12 Crores and Rs.13 Crores were opened at Sankari West Branch Office on 17.09.2011 by the Deputy Manager, since the petitioner was on leave on a particular date. On the next day, on returning duty, the petitioner signed the FDRs already prepared. Subsequently, in the month of September, 2012, the petitioner received a letter from Rajaji Nagar Branch Office, Bangalore with two FDRs for Rs.12 Crores and Rs.13 Crores forwarded by KIADB for the purpose of closure of twenty five crores of deposit. On receipt of the same, the petitioner closed Rs.13 Crores FDR but with reference to another FDR for Rs.12 Crores, which was already closed and money was transferred to SBI, Palayamkottai and submitted the details by way of D.O. Letter to Deputy General manager on 17.09.2012 for investigation.

3.The petitioner has received the order of suspension by the proceedings of the second respondent dated 09.10.2012. Thereafter, a criminal complaint was filed by the Deputy Manager with regard to the alleged transfer of money. Based on which the matter was referred to CBI, ACB, Chennai and the same is investigated and the petitioner was arrayed as an accused (A1) for no fault on him. The CBI has also filed a Final Report under Section 173 (2) of the Code of Criminal Procedure before the II Additional District and Sessions Judge and Special Judge for CBI Cases, Coimbatore.

4.According to the petitioner, the respondent has issued a charge memo under Regulation 6 of the Punjab National Bank Officers, Employees (D&A) Regulations 1977 for the very same charges relating to the opening of two FDRs of Rs.13 Crores and Rs.12 Crores at Branch Office Sankari West. Both the cases before the Criminal Court and the Disciplinary Proceedings are identical and similar set of facts. Therefore, the Departmental Proceedings shall be stayed till the conclusion of criminal case, as per the ratio laid down by the Hon'ble Supreme Court of India in the case of Captain M.Paul Anthony Vs. Bharat Gold Mines Ltd., reported in 1999 (3) SCC 679 and filed the present writ petition before this Court.

5.The learned counsel appearing for the respondents would submit that the petitioner was served with a charge memo dated 03.03.2014 framing charges under Regulation 6 of the PNB

Officers, Employees (D&A) Regulations, 1977, that while the petitioner was working as a Senior Manager at Branch Office Sankari West from 18.10.2010 to 08.10.2012, he did not follow the procedure while allowing operations in CC A/cs and also while opening Fixed Deposit Account in the name of Karnataka Industries Area Development Board (KIADB), Bangalore and making payment of Fixed Deposit of Rs.12 Crores, which put the bank's funds in jeopardy. The petitioner was charged that he failed to take all possible steps to ensure and protect the interest of the bank and did not discharge the duties with utmost integrity, devotion and diligence, which constituted misconduct in terms of Regulation 3(1) read with Regulation 24 of the Punjab National Bank Officer Employees' (Conduct) Regulation, 1977. Hence, the Department has framed the charges against the petitioner and the petitioner was placed under suspension, by the respondent Bank. In the counter affidavit filed by the respondent, the respondent denied the allegation of the petitioner that both the criminal proceedings and the Departmental proceedings are one and the same.

6.The learned counsel appearing for the respondents further submitted that on perusal of the charges in criminal case with the charges framed by the bank, will disclose that the charges are not exactly identical and no complicated question of law is involved in the present facts of the case. He further relied upon the decision of the Hon'ble Supreme Court of India in the case of Captain M.Paul Anthony Vs. Bharat Gold Mines Ltd., reported in 1999 (3) SCC 679 and submitted that there is no legal bar for both proceeding to go on simultaneously.

7.The learned counsel appearing for the respondent relied upon the Judgment of the Hon'ble Supreme Court of India in the case of Stanzen Toyotetsu India (P) Ltd. v. Girish V., reported in (2014) 3 SCC 636 : (2014) 1 SCC (L&S) 641 : 2014 SCC OnLine SC 52 at page 642 and the relevant paragraphs are extracted as follow:

> "14.In Paul Anthony [Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679 : 1999 SCC (L&S) 810] this Court went a step further to hold that departmental proceedings can be resumed and proceeded even when they may have been stayed earlier in cases where the criminal trial does not make any headway.
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> 15.To the same effect is the decision of this Court in State of Rajasthan v. B.K. Meena [(1996) 6 SCC 417 : 1996 SCC (L&S) 1455] , where this Court reiterated that

there was no legal bar for both proceedings to go on simultaneously unless there is a likelihood of the employee suffering prejudice in the criminal trial. What is significant is that the likelihood of prejudice itself is hedged by providing that not only should the charge be grave but even the case must involve complicated questions of law and fact. Stay of proceedings at any rate cannot and should not be a matter of course. The following passage is in this regard apposite: (B.K. Meena case [(1996) 6 SCC 417 : 1996 SCC (L&S) 1455] , SCC pp. 422-23, paras 14-15)

"14. … there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard-and-fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that 'the defence of the employee in the criminal case may not be prejudiced'. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. … While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.

15. … Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him.”

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.”

8.In the aforesaid decision of the Hon'ble Supreme Court of India, wherein it is stated 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.

9.Therefore, by considering the facts of the case, the criminal trial is still pending before the Criminal Court and in the light of the aforesaid decisions, this Court is of the view that in the interest of Justice, the Departmental proceedings may go on and the same shall be concluded at an earliest. Hence, there is no ground to entertain the writ petition and consequently the same is liable to be dismissed.

10.In view of the above this writ petition deserves no merits and the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To
1.The Deputy General Manager/
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+1 CC to Mr.S. Jayaraman, Advocate sr 28422.
+1 CC to Mr.G.Sankaran, Advocate sr 28779.

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CA(CO)
SP(19/08/2019)