

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Arindam Sinha
And
The Hon'ble Justice Suvra Ghosh

M.A.T. 213 of 2021
With
I.A. no. CAN 1/2021

Rabindra Kumar Bharti
Vs.
Eastern Coalfields Limited & Ors.

For appellant : Mr. Siddhartha Banerjee, Adv.
Mr. Swapan Banerjee, Adv.
Mr. Kunal Ganguly, Adv.

For respondents : Mr. Manik Das, Adv.

Heard on : 25.02.2021 and 04.03.2021.

Judgment on : 04.03.2021.

Arindam Sinha J.: Mr. Banerjee, learned advocate appears on behalf of applicant/appellant while Mr. Das, learned advocate appears on behalf of respondents. Submission at the Bar is that the appeal can be taken up for hearing and disposal on papers available and dispensation of all formalities. Mr. Das waives service of notice of appeal.

Mr. Banerjee draws attention to communication dated 14/15th September, 2015 made by respondent employer on revoking order of suspension. He relies on extract therefrom as below.

*“Keeping in view the above, your suspension is hereby
revoked w.e.f. 15/09/2015. The charges levelled against
you under Clause 26.1, 26.2 and 26.33 as mentioned in
the charge-sheet vide No.PARB-AO/PERS/O-6, 15/1213*

dated 1/3.8.2015 will remain in force and pending till final decision/judgment of the Hon'ble Special (CBI) Court, Asansol, Burdwan."

He submits, above was basis for interim order dated 29th June, 2017, whereby respondents were at liberty to proceed with the departmental enquiry but were not to pass final order without leave of Court. He submits, this was because on the same set of facts, relating to same allegations, departmental proceeding was launched with criminal proceedings already underway. Hence, prayer in the writ petition for stay of departmental proceeding, initiated in connection with CBI criminal case. The first Court, in such circumstances, erred in finding that the writ petition had lost its force on his client having participated and allowed the enquiry to continue, since there was no appeal preferred against said interim order. Witness action has commenced in the criminal proceeding. He relies on view expressed by a learned single Judge of this Court in **Dibakar Das vs. Registrar General, Appellate Side, High Court** reported in **(2006) 2 CHN 48** that on the fact of the criminal cases being at stage of recording evidence, it became apparent that petitioner (accused in the criminal proceedings) is not responsible for delay in the trial.

He submits, the first Court did not correctly appreciate judgment of Supreme Court in **Capt. M.Paul Antony vs. Bharat Gold Mines Ltd.** reported in **(1999) 3 SCC 679**. The first Court did not appreciate that since the facts and evidence in both the proceedings are same, distinction easily drawn between departmental proceeding and criminal case on basis of approach and burden of proof, cannot be made applicable. The departmental proceeding could not have been allowed to proceed to final order in disposing of the writ petition, as done by impugned order.

Mr. Das submits, pursuant to impugned order there was issued final order dated 2nd March, 2021 dismissing appellant from service. Mr.

Banerjee submits, his client has not yet received it. Mr. Das submits further, there is distinction between subject matter of the departmental proceeding and the criminal case. He refers to impugned order to submit, the first Court noticed this distinction. Following from impugned order is set out below.

“It is clear from the submissions of the learned counsel for the applicant ECL that there is also a charge of being absent from his post without leave. This is not the subject matter of the criminal proceedings.”

He relies on judgments of Supreme Court:

- i) **Sashi Bhushan Prasad vs. Inspector General, Central Industrial Security Force** reported in **(2019) 7 SCC 797**, paragraphs 17 to 19 and 21. He submits, this decision is applicable on facts being that, according to him, subject matter of the two proceedings are different.
- ii) **State of Rajasthan vs. B.K. Meena** reported in **(1996) 6 SCC 417**, paragraphs 11, 14 and 15. He submits, the first Court correctly evaluated the situation on desirability, whether advisable or appropriate and propriety, to dispose of the writ petition and allow the disciplinary proceeding to continue. The proceeding has culminated in aforesaid order of dismissal from service. There should be no interference.

Final order dated 2nd March, 2021 could not have been part of the writ petition. We have perused the order on it handed up, though we do not treat it as additional evidence in the appeal. We notice that there is nothing, in the order, said separately regarding the charge of appellant being absent from his post without leave, the charge not subject matter of the criminal proceeding.

We find, by said communication dated 14/15th September, 2015 the suspension was revoked and respondents themselves had said that the

charge-sheet would remain in force and pending till final decision/judgment of the criminal Court. Still, appellant suffered said interim order in his own writ petition! Respondents didn't appeal either, on being aggrieved by a restriction placed on the disciplinary proceeding by said interim order. The disciplinary proceeding proceeded pursuant thereto but final order was not passed. On contents of said communication dated 14/15th September, 2015 and effect of said interim order, it is clear that parties accepted the position to be that subject matter of both the proceedings are substantially same.

In context of above situation we have looked at **Capt. M. Paul Anthony** (supra), for its application to the case. Supreme Court therein had concluded as deducible from various earlier orders of said Court, inter alia, that if the departmental proceeding and criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature, which involves complicated questions of law and fact, it would be desirable to stay the departmental proceeding till the conclusion of the criminal case. Paragraphs 34 and 35, relied upon by appellant, were said in relation to peculiar facts of that case. The charged employee had been acquitted in the criminal case. The disciplinary proceedings proceeded against the charged employee ex parte because adjournment, on his inability to appear by reason of illness, was not granted. The disciplinary proceeding returned finding on the charges therein as had been proved. The evidence in the departmental proceeding was by those witnesses, who had also deposed in the criminal case wherein verdict returned was of acquittal. In those facts said Court also set aside direction of the High Court to initiate fresh departmental proceedings against the employee. It is clear that the facts in **Capt. M. Paul Anthony** (supra) were different from the facts here, inasmuch as, in this case subject matter of the two proceedings is substantially same, there being one additional charge in the departmental proceeding, but the criminal proceeding is still pending.

Though we have not taken cognizance of the final order as additional evidence but we cannot ignore the information given to us that appellant has been dismissed from service. We have no material before us to show that charge of unauthorized absence can by itself attract major penalty of dismissal from service. Accordingly, we enquired of Mr. Das whether in event the criminal proceeding returns verdict of acquittal, consequence or effect on the order of dismissal, whether it can be undone thereby? In the circumstances and by our reasoning, we think fit to direct that the final order passed, as informed to us, be stayed till disposal of the criminal case. The order will become operative on the criminal proceeding culminating in order of conviction. In making this direction we are persuaded by view taken in **Dibakar Das** (supra) that where witness action has commenced in the criminal proceeding, appellant cannot be said to delay it. We make this direction in exercising power of Court of appeal, provided in order 41 rule 33 in Code of Civil Procedure, 1908. Impugned order is varied to the extent aforesaid.

The application and the appeal are both disposed of. We make it clear that we have not interfered with the observation, made in impugned order, giving liberty to appellant regarding the disciplinary proceeding resumed during pendency of the writ petition.

Mr. Das prays for stay of operation of the judgment dictated in Court. We have considered the prayer and reject it.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)