

IN THE HIGH COURT OF PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

Civil Writ Petition No.1281 of 2021
Date of decision:27.01.2021

Baljeet Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Lalit Singla, Advocate
for the petitioner.

Mr. T.P.S.Chawla, DAG, Punjab

ANIL KSHETARPAL, J.

Through this writ petition under Article 226/227 of the Constitution of India, the petitioner prays for issuance of a writ in the nature of mandamus directing the respondent-department not to proceed with the disciplinary proceedings against the petitioner as on similar allegations FIR No.347 dated 16.07.2020 under Section 221 IPC and Section 7 of the Prevention of Corruption Act, 1988 has been registered.

Learned counsel for the petitioner contends that the parallel proceedings i.e. disciplinary proceedings as well as criminal prosecution on the same set of allegations cannot continue. He relies upon a judgment passed by the Hon'ble Supreme court in Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr. (1999) 3 SCC 679.

This court has heard learned counsel for the petitioner and with his able assistance perused the paper book.

It may be noted here that FIR No.347 was registered against the petitioner and another police officials with the allegations that the petitioner

and Pawan Kumar, ASI on receiving bribe of Rs.3,00,000/-, have allowed notorious criminals to go, although, they were brought to the Police Station. In the order dated 04.12.2020, passed by the learned Additional Sessions Judge, while allowing bail to the petitioner, has recorded that an amount of Rs.1,05,000/- was recovered on the disclosure of Pawan Kumar, whereas Rs.1,45,000/- was recovered on the disclosure statement of the petitioner

At this stage, it would be relevant to note that Hon'ble Supreme Court in **Capt. M. Paul Anthony's case (Supra)** has categorically held that merely because criminal trial as well as departmental proceedings are based on same allegations would not sufficient to stay the departmental proceedings during the pendency of criminal trial. The court held that the departmental proceedings can be stayed only in exceptional cases. The stay of departmental proceedings can only be ordered, if the delinquent employee proves that he shall be required to disclose his defence in the departmental proceedings in violation of Article 20 of the Constitution of India. Paragraph 13 and 22 are extracted as under:-

“13. As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in the those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a

criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.

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22. The conclusions which are deducible from various decisions of this Court referred to above are :-

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the 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 proceedings till the conclusion of the criminal case.

(iii) 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 charge sheet.

(iv) The factors mentioned at (ii) and (iii) above 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.

(v) 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, administration may get rid of him at the earliest.”

It may be noted here that the petitioner except alleging in paragraph 10(viii) of the petition that he shall be required to disclose his defence and therefore he will suffer prejudice, has failed to draw attention of the court to such material and substantiate the same. It may be noted here

that as an abstract proposition of law, merely because the departmental proceedings and criminal trial are on same allegations does not *ipso facto* result in stay of departmental proceedings . In the present case, the petitioner has been issued brief of allegations on 20.07.2020. The petitioner has failed to disclose the current status of the departmental proceedings. Still further, the petitioner has also failed to disclose the current status of criminal trial arising from FIR No.347 dated 16.07.2020.

Keeping in view the aforesaid facts, this court is not inclined to issue the writ as prayed for.

Hence, dismissed.

27th January, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No