

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.11027 of 2022

Bibekananda Pradhan

....

Petitioner

Mr.Upendra Kumar Samal, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. YSP Babu, AGA for State

CORAM:

JUSTICE A.K.MOHAPATRA

ORDER

05.05.2022

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard learned counsel for the Petitioner and learned counsel for the State.
3. The writ petition filed by the Petitioner involves the following prayer:

“It is therefore humbly prayed that this Hon’ble Court may graciously be pleased to:

- i) Admit the Writ Petition;
- ii) Call for the records;
- iii) Issue Rule Nisi calling upon the Opp. Parties to show cause as to why the Departmental Proceeding NO.PR-ENGG-ESTT-0176-2016-12172 dated 07.07.2017 under Annexure-2 shall not be quashed or the departmental proceeding shall not await till disposal of the Criminal case;

And if the Opp. Parties do not shown cause or shown insufficient cause the rules may be made absolute;

And further be pleased to pass any other order/orders, direction/directions as would be deemed fit and proper under the circumstances;

And for this act of kindness, the Petitioner shall as in duty bound ever pray.”

4. It is submitted by learned counsel for the Petitioner that the Petitioner was working as Assistant Engineer, Jhumpura Block in the district of Keonjhar. While working as such, an allegation has been made against the Petitioner for commission of alleged offences under Sections 376/506/34 of I.P.C. r/w. Section 6 of the Indecent Representation of Woman (Prohibition) Act, 1986. Accordingly, an FIR was lodged vide Bariha, Keonjhar P.S. Case No.25 dated 20.04.2016. As a result of which, the Petitioner was suspended from his service and a Departmental Proceeding was initiated against him. Thereafter, the Petitioner was sent to jail custody and subsequently released on bail. After release from jail custody, he was again reinstated in service and is now working as Assistant Engineer in the office of Project Director, DRDA, Malkanagiri. It is submitted by learned counsel for the Petitioner that in the criminal case, charge-sheet has been submitted by the Police. And the case is pending for trial. However, the Authority has proceeded with the Departmental Proceeding against the Petitioner. He further submits that in the event the Petitioner is compelled to appear before the Disciplinary Authority and disclosed his grounds, the trial pending before the Criminal court will be hampered and he will be seriously prejudice. In such view of the matter, learned counsel for the Petitioner submits that it would be desirable and in the larger interest of justice that the Departmental Proceeding may be stayed till a final decision is taken in the Criminal Case.

5. Learned counsel for the State on the other hand submits that there is no bar to proceed in the case of the Petitioner proceeding before Disciplinary Authority merely because a Criminal Case is pending before the Competent Court for trial. In such view of the matter, learned counsel for the State opposes the prayer of the Petitioner at this stage.

6. Having heard learned counsel for the respective parties and considering the material on record, this Court is of the considered view that the nature of allegation made in the Criminal Case alleging involvement of the Petitioner in offences under Sections 376/506/34 of I.P.C. r/w. Section 6 of the Indecent Representation of Woman (Prohibition) Act, 1986, it is only the Competent Criminal Court which can only decide the fate of the said criminal case. Further in the event, the Disciplinary Proceeding is continued on the selfsame issue, the Petitioner would be compelled to disclose the defence, in such event, the Petitioner will be highly prejudiced. Further in the criminal case, the Petitioner cannot be compelled to disclose his defence before the actual trial is commenced. It is, now, a well settled position of law that when both the proceedings are pending against the Petitioner involving self same charges and same set of evidence, the Disciplinary Proceeding should await the final decision in the Criminal Case.

7. Considering the facts and circumstances of the case as well as the aforesaid position of law, this Court deems it proper to direct the Disciplinary Authority not to proceed with the Disciplinary Proceeding under Annexure-2, which is stated to be pending before the Opposite Party No.1. Accordingly, the Disciplinary Proceeding under Annexure-2 shall remain stayed for a period of six months

from today. Further it is open to the Parties in G.R. Case No.83 of 2016, pending before the learned S.D.J.M., Champua, to make a prayer for early conclusion of the trial, if they so desire.

8. With the aforesaid direction, the writ petition stands disposed of.

9. Issue urgent certified copy as per rules.

(A.K. Mohapatra)
Judge

U.K.Sahoo

