

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 2866 of 2018

Sudarsana Mallick

.....

Petitioner

Mr. B.S. Tripathy, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. J.P. Pattnaik, GA

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

21.09.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. B.S. Tripathy, learned counsel for the petitioner and Mr. J.P. Pattnaik, learned Government Advocate appearing for the State-opposite parties.

3. The petitioner has filed this writ petition not to proceed with the disciplinary case bearing Proceeding No.6 of 2018 until final disposal of the criminal case bearing Jagatpur P.S. Case No.163 of 2017.

4. Mr. B.S. Tripathy, learned counsel for the petitioner emphatically submitted that since criminal case arising out of Jagatpur P.S. Case No.163 of 2017 is pending for trial, the disciplinary proceeding initiated against him vide Proceeding No.6 of 2018 should not be allowed to continue, as both the proceedings contained selfsame charges.

5. Mr. J.P. Pattnaik, learned Government Advocate appearing for the State-opposite parties contended that even if departmental and criminal proceeding are continuing for the selfsame charges, that itself cannot preclude the authority to proceed with the disciplinary proceeding and conclude the same.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that a criminal proceeding arising out of Jagatpur P.S. Case No.163 of 2017 is continuing against the petitioner and, as such, for the selfsame charges, Disciplinary

Proceeding No.6 of 2018 was also initiated against the petitioner. At that stage, the petitioner had approached the tribunal and vide order dated 05.12.2018 the tribunal passed interim order to the extent that the departmental proceeding shall proceed as usual, but final order shall not be passed without leave of the Tribunal, and that the petitioner is to cooperate with the disciplinary authority. As stated by learned State Counsel, in the meantime, though the disciplinary proceeding has already been concluded, but because of the interim order passed by the tribunal, no final order is passed. It is contended by learned counsel for the petitioner that since the criminal case has not been concluded, if any order is passed in the disciplinary proceeding, it will cause prejudice to the petitioner. But fact remains, for the selfsame charges, simultaneously criminal and disciplinary can continue and even if some order is passed in disciplinary proceeding, that will not influence the criminal proceeding, because the nature of proof in both the cases is different. Therefore, this Court is of the considered view that the authority shall proceed with the disciplinary proceeding and pass final order in Departmental Proceeding No. 6 of 2018, without awaiting the result of the criminal proceeding arising out of Jagatpur P.S. Case No.163 of 2017, which is pending for trial.

7. Accordingly, the writ petition stands disposed of permitting the opposite parties to pass final order in Departmental Proceeding No. 6 of 2018 as expeditiously as possible.

Issue urgent certified copy as per rule.

(DR. B.R. SARANGI)
JUDGE

Ashok