

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OA) No. 2420 of 2018

Trinath Bariki

.....

Petitioner

Mr. N. Rath, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Standing Counsel S&ME

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

20.09.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. N. Rath, learned Counsel appearing for the Petitioner and Mr. N. Jena, learned Standing Counsel for School and Mass Education Department.

3. The Petitioner has filed this Writ Petition seeking to quash the Memorandum of Charge under Annexure-4 and 5 dated 02.01.2017 and further seeks for direction to the Opposite Parties to regularize the period of suspension of the Petitioner as duty pay.

4. Mr. N. Rath, learned Counsel appearing for the Petitioner contended though a Departmental Proceeding was started against the Petitioner, but for the self same charges, a Vigilance Case is also continuing bearing V.G.R Case No. 83 of 2016 before the learned Special Judge, Vigilance, Bhubaneswar. That itself cannot be a ground not to conclude the proceeding departmentally which was initiated against him, depriving the petitioner to get the benefits as due and admissible in accordance with law.

5. Mr. N. Jena, learned Standing Counsel for School and Mass Education Department appearing for the State contended that since V.G.R. Case No. 83 of 2016 is pending before the learned Special Judge,

Vigilance, Bhubaneswar, therefore, the Departmental Proceeding which was initiated against the Petitioner is being awaited for disposal of such Criminal Case and as such, in the event the Petitioner is convicted in the Criminal Case, he may not get the benefit as claimed in the Writ Petition.

6. Having heard learned Counsel for the parties and after going through the record, it appears that the Petitioner has been visited with a Departmental Proceeding by framing the charge under Annexure-4 and 5. He has also been facing the Criminal Case bearing V.G.R. Case No. 83 of 2016, which pending before the learned Special Judge, Vigilance, Bhubaneswar. In the Counter Affidavit it has been stated that since there is a financial loss to the government, then a criminal prosecution will be of no help, as the remedy can be obtained only through a Departmental proceeding or a civil suit. In such a case it may be permissible to run the Departmental Proceeding concurrently with the criminal case provided that if there be any action, which may or is likely to cause embarrassment to the accused and tends to prejudice the fair and impartial trial of the criminal case the Departmental Proceeding will have to be stayed. As the VGR case is subjudice, the Departmental Proceeding will be finalized after final judgment of the Court.

7. Since the nature of proof in both the cases are totally different, in that case, the pendency of the Criminal Case cannot stand as a bar to conclude the Departmental Proceeding. This Court in W.P.(C) No. 35773 of 2021 disposed of on 22.11.2022 observed as follows:-

“Considering the submission that during pendency of the criminal trial, filing of defence by the petitioner in the disciplinary proceeding will jeopardize the prospect of the delinquent petitioner involving the criminal case, this Court finds support of the submission of learned counsel and also the support of decision of the Hon’ble apex Court reported in AIR 1999 SC 1416, decided taking support of the old decision of the Hon’ble apex Court reported in AIR 1965 SC 155. This Court accordingly disposes of the writ petition directing stay of the Disciplinary Proceeding vide C.P. H.Q Proceeding No. 02 of 2016 under Annexure-2 involving the petitioner till finalization of the Criminal Trial vide Bhubaneswar Vigilance P.S. Case

No.06 of 2016 pending in the court of Special Judge, Vigilance, Order No. 1 Page 2 of 2 Bhubaneswar. This Court also directs the trial involving Bhubaneswar Vigilance Case No. 06 of 2016 be expedited.

8. In view of the above, this Court disposes of the Writ Petition directing for stay of the Departmental Proceeding initiated under Annexure-4 and 5 till finalization of the Vigilance Case initiated vide V.G.R. Case No. 83 of 2016, pending before the learned Special Judge, Vigilance, Bhubaneswar. This Court also directs that the V.G.R. case be expedited and finalized.

Issue urgent certified copy as per rules.

Ashok

(DR. B.R. SARANGI)
JUDGE

