

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OA) No.2357 of 2019

Sahu Meher

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

11.10.2022

Order No

- 01.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. Nihal Rath, learned Counsel appearing for the Petitioner and Mr. Ch. S. Mishra, learned Additional Government Advocate appearing for the State.
3. The Petitioner has filed this Writ Petition seeking to quash the Memorandum of Charge under Annexure-4 dated 21.01.2017 and further seeks for direction to the Opposite Parties to regularize the period of suspension of the Petitioner as duty pay and also sanction the increments within a stipulated time.
4. Mr. Nihal 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 Vigilance Case No. 48 of 2016 before the learned SDJM, Sambalpur. 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. Mishra, learned Additional Government Advocate appearing for the State contended that since Vigilance Case No. 48 of 2016 is pending before the learned SDJM, Sambalpur, 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. He has also been facing the Vigilance Case bearing Vigilance Case No. 48 of 2016, which pending before the learned SDJM, Sambalpur. 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 GR 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 till finalization of the Criminal Case initiated vide Vigilance P.S. Case No. 48 of 2016, pending before the learned SDJM, Sambalpur. This Court also directs that the Vigilance case be expedited and finalized. Issue urgent certified copy as per rules.

(Biraja Prasanna Satapathy)
Judge

Sneha