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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	13.09.2021
PRONOUNCED ON	07.01.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NOS.18988, 18990 & 18992 OF 2021
AND

W.M.P.NOS.20249, 20252 & 20255 OF 2021

1.P.Ravindran ... Petitioner
in W.P.No.18988 of 2021

2.S.Elango ... Petitioner
in W.P.No.18990 of 2021

3.G.Sivakumar ... Petitioner
in W.P.No.18992 of 2021

Vs

1. The Deputy Inspector General of Police,
Salem Range, Salem.

2. The Superintendent of Police,
Salem District, Salem.

... Respondents in all W.Ps

Prayer in W.P.No.18988 of 2021:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration declaring the proceedings of the first respondent vide proceedings No.Thi.Pa.No.37/H1/2021 dated 24.06.2021 is Null and Void as the same is based upon the same set of facts in C.C.No.2 of 2019 pending on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Salem and consequently forbearing the first respondent from proceedings with the impugned charge memo dated 24.06.2021.



Prayer in W.P.No.18990 of 2021:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration declaring the proceedings of the first respondent vide proceedings No.Thi.Pa.No.38/H1/2021 dated 24.06.2021 is Null and Void as the same is based upon the same set of facts in C.C.No.2 of 2019 pending on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Salem and consequently forbearing the first respondent from proceedings with the impugned charge memo dated 24.06.2021.

Prayer in W.P.No.18992 of 2021:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration declaring the proceedings of the first respondent vide proceedings No.Thi.Pa.No.39/H1/2021 dated 24.06.2021 is Null and Void as the same is based upon the same set of facts in C.C.No.2 of 2019 pending on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Salem and consequently forbearing the first respondent from proceedings with the impugned charge memo dated 24.06.2021.

For Petitioners	: Mr.S.Vijayakumar
(In all W.Ps)	
For Respondents	: Mr.L.S.M.Hasan Fizal
(In all W.Ps)	Government Advocate

COMMON ORDER

The petitioners were placed under suspension from 2018 pursuant to a criminal complaint by the complainant stating that the petitioners had demanded bribe for releasing the motor cycles of the complainant and others who were participated in a cock fight. FIR was also registered against the petitioners which was taken on file in C.C.No.2 of 2019 before the Special Court for Trial of Cases under the Prevention of Corruption Act, Salem.

2. It is the case of the petitioners that the impugned Charge Memo was issued on 24.06.2021 during the pendency of the criminal proceedings. It is submitted that the petitioners cannot be suspended in the light of the decision of the Hon'ble Supreme Court in State Bank of India Vs Neelam Nag in C.A.No.4715 of 2011, wherein, under an identical situation, the Hon'ble Supreme Court held as under:-



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"21. Accordingly, we exercise discretion in favour of the respondent of staying the ongoing disciplinary proceedings until the closure of recording of evidence of prosecution witness cited in the criminal trial, as directed by the Division Bench of the High Court and do not consider it fit to vacate that arrangement straightway. Instead, in our opinion, interests of justice would be sufficiently served by directing the criminal case pending against the respondent to be decided expeditiously but not later than one year from the date of this order. The Trial Court shall take effective steps to ensure that the witnesses are served, appear and are examined on day-to-day basis. In case any adjournment become inevitable, it should not be for more than a fortnight when necessary."

3. Appearing on behalf of the petitioners, the learned counsel for the petitioners drew my attention to the decision of the Hon'ble Supreme Court in the case of CAPT.M.Paul Anthony Vs Bharat Gold Mines Limited and another, 1999 (3) SCC 679, wherein, the Hon'ble Supreme Court has laid down the criteria for proceeding with the departmental and criminal proceedings. Relevant portion from the decision reads as under:-

"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."

4. The learned counsel for the petitioners also drew attention to yet another decision of the Hon'ble Supreme Court in the case of Kusheshwar Dubey Vs Bharat Coking Coal Limited and others, 1988 (4) SC 319, wherein, the Hon'ble Supreme Court held as under:-

"PG NO 824 We would like to point out that there are also authorities in support of the position that there is nothing wrong in parallel proceedings being taken--one by way of the disciplinary proceeding and the other in the criminal court. Reference may be made to decision of this Court in Jang Bahadur Singh v. Baij Nath Tiwari, [1969] I SCR 134 and some decisions of High Courts such as Rama P.C. v. Superintendent of Police, Kolar & Anr., AIR 1967 54 Mysore 220; Ali Mohd. & Ors. v. Chairman T.A. & C. Udampur, [1981] 2 SLR 225; Moulindra Singh v. The Deputy Commissioner & Ors., [1973] LIC 6 1564 and Shaikh Kasim v. Superintendent of Police Office, Chingletut, AIR 1965 Mad. 502.

Mr. Jain contended that we should settle the law in a straight jacket formula as judicial opinion appeared to be conflicting. We do not propose to hazard such a step as that would create greater hardship and individual situations may not be available to be met and thereby injustice is likely to ensue.



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In the Delhi Cloth & General Mills' case (supra), it was pointed out by this Court:

"It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. In Shri Bimal Kanta Mukherjee v. M/s. News man's Printing Works, [1956] LAC 188, this was the view taken by the Labour Appellate Tribunal. We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced " .

In Tata Oil Mills' case (supra), Gajendragadkar, CJ, spoke for a three Judge Bench thus:

"There is yet another point which remains to be considered. The Industrial Tribunal appears to have taken the view that since criminal proceedings had been started against Raghavan, the domestic enquiry should have been stayed pending the final disposal of the said criminal PG NO 825 proceedings. As this Court has held in the Delhi Cloth and General Mills Ltd. v. Kushal Bhan, it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court, the employer, should stay the domestic enquiry pending the final disposal of the criminal case". In Jang Bahadur's case (supra) this Court said: "The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a court. But the pendency of the court proceeding does not bar the taking of disciplinary action. The power of taking such action is vested in the disciplinary authority. The civil or criminal court has no such power. The initiation and continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending court proceeding. The employee is free to move the court for an order restraining the continuance of the disciplinary



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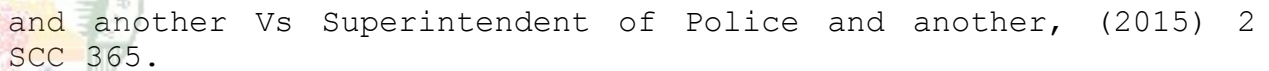
proceedings. If he obtains a stay order, a wilful violation of the order would of course amount to contempt of court. In the absence of a stay order the disciplinary authority is free to exercise its lawful powers.

The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken. yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case In the latter class of cases it would be open to the delinquent-employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual-situation. For the disposal of the present case, we do not think it necessary to say, anything more, particularly when we do not intend to lay down any general guideline.

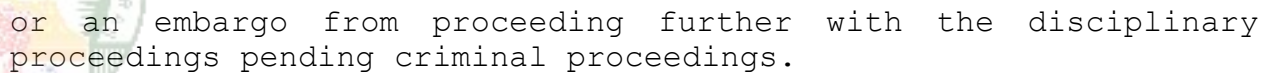
PG NO 826 In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal.

The appeal is allowed and the order of the High Court is vacated and that of the trial court as affirmed in appeal is restored. The appellant shall be entitled to costs. Hearing fee is assessed at Rs.2,000."

5. The learned counsel for the petitioners also drew my attention to the decision of the Hon'ble Supreme Court in the case of M/s.Stanzen Toyotetsu India Private Limited Vs Girish V and others, (2014) 3 SCC 636 and in the case of S.Bhaskar Reddy



10. The decisions cited by the learned counsel for the petitioners themselves state that, there is no bar or impediment



Charge
Preven

17. In the light of the above discussions, I do not find any merits in the present writ petitions. These writ petitions deserve to be dismissed and are accordingly dismissed. The respondents are therefore directed to complete the disciplinary



proceedings initiated against the petitioners and bring a closure to the same preferably within a period of one year from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Judge,
The Special Court for Trial Cases under the
Prevention of Corruption Act, Salem
2. The Deputy Inspector General of Police,
Salem Range, Salem.
3. The Superintendent of Police,
Salem District, Salem.
4. The Public Prosecutor,
High Court, Madras.

+3ccs to Mr.S.Vijayakumar, Advocate, S.R.No.1763,1764,1762

W.P.Nos.18988, 18990 & 18992 of 2021
and
W.M.P.Nos.20249, 20252 & 20255 of 2021

MT(CO)
PM/17/02/2022