

**27.02.
2023**

Ct. No. 04

Ab

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.**

WP.ST 4 of 2023

**Sandip Kumar Paul
Vs.**

The State of West Bengal and others.

**Mr. Kumar Jyoti Tewari,
Ms. Rajlakshmi Ghatak,
Mr. Aniruddha Tewari,
Mr. Amrit Sinha.**

... for the petitioner.

**Mr. Raja Saha,
Mr. S. P. Lahiri.**

... for the State respondent.

Both the criminal proceeding and the departmental proceeding are launched on serious charges relating to outraging of modesty of a woman and the approach is made to the Tribunal seeking stay of the departmental proceeding pending the criminal case.

Admittedly, on the basis of FIR lodged by the lady, a police case was registered and after investigation culminated into the final report/charge-sheet against the petitioner. Since the petitioner is holding the responsible post in the police administration, the departmental proceeding is also initiated on misconduct and the moment it is sensed that the departmental proceeding would continue, initially an approach was made to the Tribunal by filing OA 493 of 2022 alleging that the grievance raised before the authority has not been considered. The said application was disposed of directing the competent authority i.e. the Deputy Commissioner of Police (Headquarter) to pass a reasoned

order and communicate the same to the petitioner. Despite the said order having been communicated, the petitioner approached the Tribunal for the second time and sought for interim order of stay of the departmental proceeding pending the criminal case.

Counsel for the petitioner strongly relied upon a judgment of the Apex Court rendered in case of **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another**, reported in **(1999) 3 SCC 679** for the proposition that the moment the criminal as well as the departmental proceeding is initiated on the same set of facts based upon the same evidence and identical witnesses, it would not be proper to continue with the departmental proceeding. The relevant portions of the said judgment is quoted as under:

“22. 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.”

Though it has been held in the said report that if both the departmental and criminal proceedings are founded on common and similar set of facts involving charges of grievous nature and the complicated questions of fact and law, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. But in paragraph (iv), it is further indicated that the aforesaid factum should not be considered in isolation to secure the stay of the departmental proceeding, but due regard is to be given that the departmental proceeding cannot be unduly delayed.

The ratio laid down in the said judgment cannot be applied in an abstract manner but depends upon the given facts. In the case it was found that there is an identity of fact, evidence and the witness and, therefore, it was observed that it would operate harshly upon the delinquent in the event the departmental proceeding is proceeded with until conclusion of a criminal case.

The judgment of the **Capt. M. Paul Anthony (supra)** is again considered by the subsequent Bench of the Supreme Court in case of **G.M. Tank vs. State of Gujarat and others**, reported in **(2006) 5 SCC 446**, wherein the Apex Court held:

“30. The judgments relied on by the learned counsel appearing for the respondents are not

distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

The petitioner has disclosed in the pleadings made in the instant writ petition in order to impress upon us that there are similar and identical facts involved in the instant case including the same set of witnesses and the evidences, but we find that there is a gross disparity in the witnesses mentioned in the charge-sheet submitted against the petitioner and the witnesses examined by the Enquiry Officer in pursuit of the departmental proceeding. However, the witnesses whose statements are recorded by the Enquiry Officer are not included in the witnesses shown in the charge-sheet and the number of witnesses in the charge-sheet appears to be more than the witnesses recorded by the Enquiry Officer.

The similarity in the facts may be presumed, but the other factors, namely, the same set of witnesses and the evidences, do not appear to be so and, therefore, we do not think that the principles of law laid down in the above noted reports can be of any assistance to the petitioner herein. It is to be remembered that the manner of proving the charge in the criminal proceeding and the departmental proceeding is different as in the former case it is decided on a proof beyond any reasonable doubt whereas the later case is decided on preponderance of probability.

Such being the distinction, which cannot be blurred on the given facts and, therefore, we do not think there is any infirmity in the order of the Tribunal declining to stay the departmental proceeding pending the final adjudication of the tribunal application.

The writ petition is, thus, dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

