

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1.

CWP-18341-2022(O&M)

Yogesh Lamba

... Petitioner

Versus

State of Haryana and others

... Respondents

2.

CWP-26882-2022

Yogesh Lamba

... Petitioner

Versus

State of Haryana and others

... Respondents

3.

CWP-28827-2022

Pooja Gera

... Petitioner

Versus

State of Haryana and others

... Respondents

4.

CWP-10231-2023(O&M)

Raghav Wadhawan

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Sumeet Goel, Senior Advocate with
Mr.Manav Bajaj, Advocate,
Mr.Shivam Kaushik, Advocate,
Mr.Aarush Neeraj Vaid, Advocate and
Mr.Mayanak Bajaj, Advocate
for the petitioners in CWP-18341-2022 and CWP-26882-2022.

Mr.Prarthana Duggal, Advocate for
Mr.Namit Khurana, Advocate
for the petitioners in CWP-10231-2023.

Mr.Aman Pal, Advocate and Mr.Madhur Panwar, Advocate
for the petitioners in CWP-28827-2022.

Ms. Rajni Gupta, Addl.A.G. Haryana.

Mr.Puneet Jindal, Senior Advocate with
Mr.Amandeep Singh Meho, Advocate
for respondent-UHBVN.

VIKAS BAHL, J.(ORAL)

1. The present order would dispose of four writ petitions i.e.,
CWP-18341-2022 and CWP-26882-2022 filed by Yogesh Lamba, CWP-
28827-2022 filed by Pooja Gera and CWP-10231-2023 filed by Raghav
Wadhwan as common question of law and facts arise in the said cases.

2. With the consent of the learned counsel for the parties, CWP-
18341-2022 was taken up as the lead case.

3. The petitioners in the above said four petitions have made a
common prayer for the issuance of a direction in the nature of mandamus
directing the respondents especially respondent no.4 Sh.R.P.Bhasin,
Enquiry Officer-cum-District and Sessions Judge (Retired) not to proceed
further in the departmental proceedings/enquiry till the pendency of the
criminal proceedings / trial arising out of FIR no.109 dated 08.02.2022
registered at Police Station Samalkha, District Panipat, Haryana, under
Sections 34,120-B, 201, 409, 420, 467, 468, 471 IPC and Section 13 of the

Prevention of Corruption Act, 1988.

Factual Matrix

4. The case of the petitioner Yogesh Lamba is that he is a permanent employee of the respondent-Uttar Haryana Bijli Vitran Nigam (hereinafter referred to as "UHBVN") and was posted as Divisional Accountant in the office of UHBVN, Bilaspur, District Yamunanagar, Haryana when one FIR no.109 dated 08.02.2022 was registered and the petitioner was arrested in the said FIR on 17.02.2022 and challan/final report under Section 173 Cr.P.C. dated 05.05.2022 (Annexure P-1) was presented by the Panipat Police. A perusal of the challan dated 05.05.2022 (Annexure P-1) would show that two petitioners out of three petitioners who have filed the present writ petitions i.e., Yogesh Lamba and Raghav Wadhawan were shown as accused and Pooja Gera was not shown as accused in the challan dated 05.05.2022 and she was shown as an accused for the first time in supplementary challan dated 03.08.2022, which has not been annexed in any of the writ petitions. The FIR in the present case was registered on the written complaint of Suresh, alleging therein that he had a car which was used as a tourist taxi and in November, 2021 he got introduced to Ajay Sharma and Kamal Sharma, who, in lieu of getting a loan sanctioned for him from SBI, took his account number. It was further alleged that he received Rs.3,78,200/- in his account which the said Ajay Sharma and Kamal Sharma told him that the said amount had been transferred into his account by mistake and therefore, asked the complainant to pay the said money to them by means of cash. It is further alleged by the complainant Suresh that after having made enquiry, it was found that Rs.3,78,200/- were transferred from UHBVN government bank account and that brother-in-law of Ajay Sharma, i.e. Pawan was working as driver of Raghav Wadhawan (petitioner in CWP-10231-2023) who was a Clerk at

UHBVN and all of them in collusion with other UHBVN staff after embezzling money had got the same deposited into his account and thereafter took that money from him and that they had done the same thing with one Krishan alias Rinku son of Jagdish resident of Samalkha and a large number of other persons and had thus embezzled government money. On the said allegation, the FIR in question was registered. During the course of investigation, the involvement of Yogesh Lamba (petitioner in CWP-18341-2022 and CWP-26882-2022) was also found and accordingly, he was arrested. The petitioner Yogesh Lamba had given a confessional statement and recovery of Rs.5 lacs from his house at Basharat Society Red Gate, Yamunanagar had been effected. During further investigation, on 22.03.2022 Raghav Wadhawan (petitioner in CWP-10231-2023) was also arrested and his confessional statement was recorded and recovery of Rs.6,86,000/- from the embezzled amount was recovered. A further recovery of Rs.40 lacs, a scorio car and jewellery was effected from the said Raghav Wadhawan.

5. That on 22.06.2022, the Executive Engineer (S/U Division), UHBVN, Jagadhri issued a charge sheet against the petitioner Yogesh Lamba. A copy of the said charge sheet along with summary of charges, statement of allegations and list of documents/ witnesses has been annexed as Annexure P-5 (alongwith CWP-18341-2022). A perusal of the statement of allegations and summary of charges against Yogesh Lamba, Divisional Accountant would show that special audit of transactions of payment of death-cum-retirement gratuity (DCRG) for the period from 04/2018 to 05/2021 in the office of XEN Sub Urban Division, UHBVN, Jagadhari by a Special Audit Team deputed by Chief Auditor, UHBVN, Panchkula was conducted and in the interim report submitted by them it was found that the

necessary procedures for DCRG payment have not been followed. The necessary procedure which was required to be followed was specifically mentioned and it was observed that the same has not been followed by the petitioner Yogesh Lamba. Charge number 2 against the petitioner Yogesh Lamba is that he has failed to protect the financial interest of UHBVN and also committed a fraud by facilitating fraudulent payment of DCRG to the persons who were not found to be the bonafide retirees/ pensioners of UHBVN and no gratuity payment orders were ever issued by Sr.AO/Pension, UHBVN in the name of the said persons to whom fraudulent payment has been made. Under charge number 3, the details of the fraudulent payments made by the petitioner Yogesh Lamba, Divisional Accountant during his tenure were attached. It is stated that the number of transactions of fraudulent payments worked out to be 189 valuing Rs.12,86,78,761/-. In the said charge sheet, it was alleged against Yogesh Lamba that while performing his duties, he had failed to verify / check all payments vouchers with respect to fake payments made which has resulted in embezzlement of the said amount. Alongwith the said charge sheet, list/name of witnesses were specifically mentioned and three witnesses were named i.e., Sh.N.K.Bhatia, Sr.AO, Sh.Sanjeev Shukla, S.O., and Sh.Surender Singh, Divisional Accountant (Retd.).

6. The petitioner Yogesh Lamba has filed two writ petitions i.e., CWP-18341-2022 which is with respect to the period when he was serving in Jagadhari whereas CWP-26882-2022 is for the period when he was serving in Bilaspur. With respect to the period, he served in Bilaspur, he was issued a separate departmental charge sheet which has been annexed as Annexure P-5 along with CWP-26882-2022. In the statement of allegations with respect to the said charge sheet, it has been stated that the petitioner

Yogesh Lamba while being Divisional Accountant in UHBVN from 09.07.2021 to 09.12.2021 (additional charge) and from 09.12.2021 to 16.02.2022 and also with respect to the period in (OP) S/U Division, UHBVN, Jagadhri from 19.06.2012 to 07.06.2020 had committed acts of omission and commission for which FIR no.109 dated 08.02.2022 had been registered. It was further stated in the said charge sheet that during the course of preliminary enquiry by the XEN (OP) Division, UHBVN, Bilaspur and S/U Jagadhari, it had come to notice that an amount of Rs.18,26,785/- and Rs.25,06,883/- respectively were found to be embezzled and that in the special audit conducted by the office of Chief Auditor, UHBVN, Panchkula for the period 07/2021 to 02/2022 it had come to notice that an amount of Rs.1,46,81,959/- had been suffered by the Nigam due to serious irregularities / fraudulent payments made with malafide intention and investigation by the Vigilance Wing of HPU was in progress and actual amount of embezzlement could be ascertained only after the receipt of the report.

7. Raghav Wadhawan who has filed CWP-10231-2023 and is also shown as an accused in the challan dated 05.08.2022 with respect to FIR no.109 dated 08.02.2022 has also been served with a charge sheet in the departmental proceeding which has been annexed as Annexure P-4 (page 86 of the paper book) along with CWP-10231-2023. In the said charge sheet, it is alleged that Raghav Wadhawan was working in the office of XEN, OP S/U Division, UHBVN, Jagadhri for the period from 13.03.2013 to 06.01.2021 and while performing duties of Pay and Pension Clerk in the office of the Accounts Section of the XEN, OP Sub Urban Division, UHBVN, Jagadhari, has been found responsible for preparing the forged cash vouchers of illegal pension and gratuity which has resulted in

embezzlement of Rs.49.29 crores during the financial year 2018-19 upto 2021-22 as has been pointed out in the Interim Audit Report initiated by Special Audit carried out by the office of the Chief Auditor, UHBVN, Panchkula, covering the audit period for the financial year 2018-19 to 2021-22. The fact that FIR has been registered against Raghav Wadhawan has also been noticed in the charge sheet.

8. That Pooja Gera, who although is not shown as an accused either in the FIR or in the challan dated 05.05.2022 and is stated by her counsel and senior counsel for the respondent-UHBVN to have been shown as an accused for the first time in the supplementary challan dated 03.08.2022 with respect to FIR no.109 dated 08.02.2022 has also been served with a charge sheet, which has been annexed as Annexure P-5 along with CWP-28827-2022 filed by said Pooja Gera. A perusal of the statement of allegations and charges against Pooja Gera would show that it has been alleged against her that while performing the duties of Deputy Superintendent in officiating capacity in the absence of Head Clerk/ Deputy Superintendent of XEN OP Sub Urban Division, UHBVN, Jagadhri, she was found guilty of putting her signatures in fraudulent cash vouchers and for handing over the cheques to Sh.Raghav Wadhawan for the period from 26.02.2018 to 20.08.2018 and the said act of said Pooja Gera along with other accused has resulted in embezzlement of Rs.49.29 crores during the financial year 2018-19 to 2021-22 as is mentioned in the Interim Audit Report prepared by the Special Audit carried out by the office of the Chief Auditor, UHBVN, Panchkula. It would be relevant to note that although it is the admitted case of the parties that the petitioner was named as an accused in the supplementary challan dated 03.08.2022 but the said supplementary challan has not been annexed along with the writ petition nor the same is on

record.

9. In the FIR no.109 dated 08.02.2022, the charges have not been framed and the case is now listed for 25.09.2023 for consideration on charge. In the departmental proceedings, since a coordinate Bench of this Court vide order dated 22.08.2022 had stayed the proceedings, thus, no further effective proceedings after the issuance of charge sheet have taken place. It would be relevant to note that the coordinate Bench while issuing notice of motion vide order dated 22.08.2022 had granted interim order in the same terms as in CWP-28388-2018. The interim order in CWP-28388-2018 was “In the meantime, further departmental proceedings shall be kept in abeyance till further orders”.

Arguments on behalf of the petitioners

10. Learned senior counsel appearing for the petitioner Yogesh Lamba as well as learned counsel for the petitioners Pooja Gera and Raghav Wadhawan have submitted that in the present case, the issue in the FIR and the report under Section 173 Cr.P.C is the same as that in the departmental proceedings and has further submitted that the case is of grave nature and there are complicated questions of facts and law involved with respect to the role/duty of the petitioners and, therefore, the departmental proceedings deserve to be stayed during the pendency of the criminal proceedings. It is further submitted that the summary of charges in the departmental proceedings/enquiry and the report under Section 173 Cr.P.C. would show that the proceedings are based on similar facts and evidence. Reference has been made to the summary of charges as well as the report/challan in support of the said arguments. It is argued that as per law laid down by the Hon’ble Supreme Court of India in ***Capt. M Paul Anthony vs. Bharat Gold***

departmental proceedings and the criminal case are based on similar and identical facts and the charge in the criminal case against the delinquent employee is of grave nature which involves complicated questions of law and fact, then it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. It is argued that since all the ingredients as mentioned by the Hon'ble Supreme Court of India are fulfilled in the present case, thus, the said judgment fully supports the case of the petitioners. Specific reference has been to paragraph 22 of the said judgment. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court of India in *State Bank of India and Ors. vs. Neelam Nag and Anr.* reported as **2016(9) SCC 491** and specific reference has been made to paragraph 14 of the said judgment to highlight the fact that in the said judgment, reference was made to the judgment of the Hon'ble Supreme Court of India in *Karnataka SRTC vs. M.G. Vittal Rao*, reported as **(2012) 1 SCC 442** and relevant paragraphs of the said judgment were reproduced, in which it was observed that the only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced and the said ground would be available in case there are complicated questions of facts and law involved. It is submitted that in case the departmental proceedings are not stayed, then it will cause serious prejudice to the case of the petitioners as they would have to disclose their defence while cross examining the witnesses of the management and the same would prejudice their defence in the criminal trial. It is further submitted that in case, the petitioner chooses to lead defence evidence in the departmental proceedings, then the same would also expose the defence of the petitioners in the criminal proceedings. It is argued that in the present case, the FIR was

registered on 08.02.2022 on the basis of a written complaint made by Suresh and although the charge-sheet in the departmental proceedings has been issued on the basis of an internal audit but the said internal audit was also conducted subsequent in point of time to the registration of the FIR as it is by virtue of the registration of the FIR that the alleged scam in question was brought to light. It is further stated that the question whether the petitioners were negligent, had committed a mistake or an error and whether the same is culpable or not would involve complex question of facts and thus, the ingredient, which was required to be met as per the judgment of the Hon'ble Supreme Court in *Capt. M. Paul Anthony's* case (supra), is met in the present case. It is submitted that the controversy in both the criminal case as well as the departmental proceedings revolves around the lack of due procedure followed by the petitioners and their duties resulting in the alleged loss caused to the UHBVN and thus, it is submitted that it cannot be stated that the allegations in the departmental proceedings are different from the allegations in the FIR/report under Section 173 Cr.P.C. It is argued that the petitioners would not like to divulge their defence as the same would prejudice their rights in the criminal case.

Arguments on behalf of the respondent-UHBVN

11. Learned senior counsel appearing for respondent-UHBVN has opposed the present present writ petitions. It is submitted that in the present case, the departmental proceedings have been initiated against the petitioners after the special audit of transactions of payment for the period from 04.04.2018 to 05.05.2021 in the office of XEN, Sub Urban Division, UHBVN, Jagadhri, had been conducted by the Special Audit Team, deputed by the Chief Auditor UHBVN, Panchkula and an interim report had been received, as per which, it has been concluded that the petitioners have not

followed the necessary procedure with respect to maintenance of record of all gratuity payment orders for withdrawal of gratuity by making necessary entries in the gratuity ledger of the division office, issuance of cheques along with schedules/ cash voucher for payment containing names and particulars of bonafide pensioners / retirees. It is submitted that there is a specific charge against the petitioner Yogesh Lamba to the effect that he has failed to protect the financial interest of UHBVN and had committed a fraud by facilitating the fraudulent payment of DCRG to the persons, who are not found to be bonafide retirees/pensioners of UHBVN as no gratuity payment orders were ever issued by the Senior AO/Pension UHBVN, Panchkula in the name of the persons to whom fraudulent payments have been made. It is submitted that another specific charge has been made against the petitioner Yogesh Lamba while he was serving in Jagadhari to the effect that during his tenure, the number of illegal transactions, were 189 valuing Rs.12,86,78,761/- and similar charges are against the other petitioners, whereas the FIR in the present case has been registered on the complaint filed by one Suresh on the allegations that he had received some amount in his account which he ultimately learnt was from the account of UHBVN and the said amount had been taken from him by the accused persons who had informed him that the same had been put in his account by mistake. It is submitted that all the 189 fraudulent transactions are not part of the challan dated 05.05.2022 (Annexure P-1) which has been annexed with the writ petitions and the witnesses in the criminal proceedings as well as in the departmental proceedings are completely different and not even a single witness is the same and for the same, reference has been made to Page-89 of CWP-18341-2022 which contains the list of witnesses in the departmental proceedings and the witnesses as per the same are NK Bhatia Senior AO,

Sanjeev Shukla SO and Surender Singh Divisional Accountant (Retd.) in the case of Yogesh Lamba petitioner in CWP-18341-2022. Reference has also been made to Page 63 of the said writ petition CWP-18341-2022 in which the list of witnesses in the report under Section 173 Cr.P.C. has been mentioned which are 31 in number and none of the witnesses in the departmental proceedings have been mentioned in the said challan and thus, it is submitted that the witnesses are different. It is further submitted that as far as the case of Pooja Gera, petitioner in CWP-28827-2022 is concerned, the said Pooja Gera was not an accused in the challan dated 05.05.2022 and has been shown as an accused in the supplementary challan dated 03.08.2022 and since the said petitioner has not annexed the said challan along with the writ petition, thus, the said petitioner cannot agitate that departmental proceedings and criminal case are based on identical and similar set of facts, which even as per the judgment cited by the petitioners is one of the necessary ingredients for grant of stay. Learned senior counsel for the respondent-UHBVN has, however, very fairly pointed out that one witness i.e, Suresh, who is the complainant in the FIR, has also been shown as a witness in the list of witnesses to be examined in the case of Yogesh Lamba with respect to the charge sheet issued in Bilaspur. It is, however, pointed out that the said Suresh is only to be examined to state that he had got the FIR registered, and that the said Suresh in his complaint to the police, on the basis of which the FIR has been registered, has not made any allegation against Yogesh Lamba and in fact as per the allegations made by Suresh, he had never met Yogesh Lamba and thus, even if the said Suresh is examined in the departmental proceedings for proving that the FIR was registered at his instance, the same would not cause any prejudice to the petitioner Yogesh Lamba. It is submitted that in the present case it cannot

be said that the ingredients as mentioned in the judgment cited by the learned senior counsel for petitioner in *Capt. M. Paul Anthony's case* (supra) are fulfilled. Learned senior counsel for UHBVN has submitted that in the present case, admittedly, no charge has been framed in the criminal case and thus, as per law laid down by the Hon'ble Supreme Court of India in *Indian Overseas Bank, Anna Salai and Anr. vs. P.Ganesan and others* reported as *2008(1) SCC 650* as well as the law laid down by the Hon'ble Division Bench of this Court in *LPA-239-2022* titled as "*Paramjit Kaur Vs. Punjab and Sind Bank and others*" decided on 24.03.2022, the question of raising a plea that the charges in the departmental proceedings and those in the criminal case are based on identical and similar set of facts, does not arise. It is further submitted that at any rate, the entire evidence in the present case is based on documents and thus, it cannot be said that any prejudice would be caused to any person. In support of the said argument, reference has been made to the judgment of *Paramjit Kaur's case* (supra). It is further submitted that even as per the judgment in *Capt. M. Paul Anthony's case* (supra), one of the important considerations is the delay in the criminal case and in case the Court comes to the conclusion that the criminal case is not proceeding then in that situation, even if the departmental proceedings have been stayed, the same are required to be resumed. It is submitted that it is not in dispute that in the criminal case, even charges have not been framed as yet in spite of the fact that the FIR was registered on 08.02.2022 and further there are 31 witnesses in the challan dated 05.05.2022 and there would be additional witnesses in the supplementary challan and thus the criminal trial is likely to take long. It is further submitted that as per zimni orders submitted by the petitioners the exemption applications have been moved by the co-accused on 01.07.2022,

16.12.2022, 06.03.2023, 25.04.2023, 15.05.2023 and 05.07.2023 and that the departmental proceedings have been stayed since 22.08.2022 vide order passed by the Coordinate Bench of this Court and no progress has been made in the same. It is argued that since except one, there are no common witnesses and even the charges have not been framed in the criminal case, thus, the present writ petitions deserve to be dismissed and the stay granted in favour of the petitioners deserves to be vacated and that the same would be in the best interest of everyone as in case the petitioners are found guilty of having embezzled the funds of UHBVN, then it would be in the interest of the department to get rid of them whereas in case the petitioners are not guilty then their honour would stand vindicated. It is submitted that in the present case there is no complicated question of law or fact involved, inasmuch as the issue in the present case is primarily as to whether the petitioners have got the money transferred in fake accounts, which was due on account of retiral benefits of employees of UHBVN department and had then withdrawn the same and the entire material relied upon to prove the same is documentary in nature and thus, it cannot be said that complicated question of law or facts are involved in the present case. Learned senior counsel has further referred to individual cases of all the petitioners and has drawn comparison in the charge sheet issued in the disciplinary proceedings and the report under Section 173 Cr.P.C. which has been placed on record by the petitioners and has tried to highlight that the allegations in the departmental proceedings are much wider than the allegations in the FIR/report under Section 173 Cr.P.C. It is submitted that certain specific aspects including the aspect as to whether the petitioners have failed to protect the financial interest of UHBVN which they were duty bound to protect being employees, would only arise in the departmental proceedings

whereas issues such as recovery of money from Yogesh Lamba to the extent of Rs.5 lacs, from Pooja Gera to the extent of Rs.35 lacs and Rs.78,86,000/- from Raghav Wadhawan are subject matter of criminal trial. Learned senior counsel has submitted that even as per the judgment of the Hon'ble Supreme Court of India in ***Capt. M. Paul Anthony's*** case (supra), several other ingredients are required to be met before the petitioners can pray for grant of stay of departmental proceedings and none of the said ingredients are met in the present case. It is argued that it is a matter of settled law that the departmental proceedings and criminal proceedings can proceed independently and the departmental proceedings should not be stayed as a matter of routine. In support of the said argument, learned senior counsel for UHBVN has relied upon the judgment of the Hon'ble Supreme Court of India in ***Kendriya Vidyalaya Sangathan & Ors. vs. T.Srinivas*** reported as ***2004(7) SCC 442***.

Arguments on behalf of the petitioners in rebuttal

12. Learned senior counsel for the petitioner, in rebuttal, has submitted that the delay in the trial cannot be attributed to the petitioner inasmuch as the department has taken seven weeks to grant prosecution sanction as SP Panipat had sought prosecution sanction on 07.06.2022 but the same was accorded on 01.08.2022. It is further submitted that as per the zimni orders from 06.09.2022 till 18.11.2022, the prosecution sanction had not been presented before the Additional Sessions Judge, Panipat and the matter was accordingly adjourned and that the petitioner has not filed any application for exemption and it is only the co-accused who had filed applications for exemption on six occasions. It is further submitted that it cannot be said that the entire matter is based on documentary evidence

inasmuch as the said documents produced will have to be proved and the

petitioners will also have the right to cross-examine the witnesses with respect to the authenticity and admissibility of the said documents. Learned senior counsel has further submitted that as far as suspension of the petitioner Yogesh Lamba is concerned, it is the department which has suspended him and the petitioner is ready to work so as to justify his salary/ subsistence allowance.

Analysis and Finding

13. This Court has heard learned counsel for the parties and has gone through the paper book.

14. Before adjudicating the matter on merits, it would be necessary to consider the relevant judgments laying down the parameters, to be considered by the Court while granting/continuing an order of stay of departmental proceedings during the pendency of the criminal trial.

15. The first judgment which would be relevant to note is the judgment of the Hon'ble Supreme Court in the case of ***Capt. M.Paul Anthony's*** (supra) which has been relied upon by the learned senior counsel for the petitioner. Paragraph 22 of the said judgment, which has been highlighted by the learned senior counsel, is reproduced hereinbelow:-

“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.

A perusal of the above would show that the Hon'ble Supreme Court after considering various judgments had drawn the conclusion which was given in the abovesaid para. It was held that the departmental proceedings and the proceedings in the criminal case could proceed simultaneously as there was no bar in their being conducted simultaneously. It was further held that departmental proceedings and criminal proceedings if based on identical and similar set of facts and also in case the charge in the criminal case against the delinquent employee is of grave nature which involves complicated questions of law and fact, then in such circumstances, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. Thus, all the ingredients i.e., averments/ allegations being identical, based on similar set of facts and the charge being of grave nature involving complicated questions of law and fact are required to be met so as to consider the case of the employee for grant of stay. In sub clause (iii), reference has been made that the evidence and the material collected during investigation or as reflected in the charge sheet is

to be taken into consideration for the purpose of considering as to whether the nature of charge in the criminal case is grave in nature and complicated questions of law and fact are involved in the case or not. Importantly, as per sub clause (iv) even in a particular case where it is found that ingredients of sub clause (ii) and (iii) do exist even then the same cannot be considered in isolation, to stay the departmental proceedings, but further regard has to be given to the fact that the departmental proceedings cannot be unduly delayed. Sub clause (v) specifically provides that if the criminal case does not proceed or its disposal is being unduly delayed, then even in case stay has been granted, with respect to the department proceedings, the same can be resumed and proceeded with.

16. The second judgment which is relevant to note is the judgment of the Hon'ble Supreme Court in *Kendriya Vidyalaya Sangathan's* case (supra) in which the Hon'ble Supreme Court had observed that there should be special facts in a case so as to persuade the Court to stay departmental proceedings and every case where departmental proceedings and criminal trial with regard to the same misconduct is pending is not to be stayed. It was also observed in the said judgment that the approach and the objective of the criminal proceedings and the disciplinary proceedings are altogether distinct and different inasmuch as in the disciplinary proceedings, the question is as to whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment as the case may be, whereas in the criminal proceedings, the question is as to whether the offences which the employee is alleged to have committed, are established or not, and if so established the sentence to be imposed. It was further observed that the standard of proof, the mode of enquiry and the rules governing the enquiry and the trial in both the cases are distinct and

different. In the said case, the Tribunal had come to the conclusion that two articles of charge in the criminal proceedings and the departmental proceedings were identical and the third charge was inter connected and accordingly, the Tribunal had stayed the departmental proceedings till the time the applicant therein disclosed his defence in the criminal trial. The writ petition against the said order was also dismissed and the Hon'ble Supreme Court after considering the law on the point, set aside the said orders and observed that the Tribunal and the High Court had proceeded on an erroneous principle to the effect that grant of stay of disciplinary proceedings is a must in every case where there is a criminal trial on the same charges. The relevant portion of the said judgment is reproduced hereinbelow:-

4. *The respondent herein challenged the said decision of the appellants to hold a departmental enquiry while a criminal trial on identical facts was pending against him before a competent court. This challenge was made before the Central Administrative Tribunal, Hyderabad Bench at Hyderabad. The tribunal by its order dated 2.7.2003 came to the conclusion that the first two Articles of charges are identical to the charge levelled against the petitioner before the special court under the provisions of the Prevention of Corruption Act and the third Article of charge though not a subject matter of the trial is an inter-connected charge with charges 1 and 2, hence it allowed the application of the respondent and directed the appellant that proceedings pursuant to the charge memo be stayed till the applicant discloses his defence in the pending criminal trial. It, however gave permission to the appellant to proceed with the disciplinary proceedings after the disclosure of the defence by the respondent which in effect would mean that the disciplinary proceedings will stand stayed almost till the disposal of the trial before the criminal court.*

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11. *In the instant case, from the order of the tribunal as also from the impugned order of the High Court, we do not find that the two forums below have considered the special facts of this case which persuaded them to stay the departmental proceedings. On the contrary, reading of the two impugned orders indicates that both the tribunal and the High Court*

proceeded as if a departmental enquiry had to be stayed in every case where a criminal trial in regard to the same misconduct is pending. Neither the tribunal nor the High Court did take into consideration the seriousness of the charge which pertains to acceptance of illegal gratification and the desirability of continuing the appellant in service inspite of such serious charges levelled against him. This Court in the said case of State of Rajasthan (supra) has further observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It held that in the disciplinary proceedings the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him are established and, if established, what sentence should be imposed upon him. The court in the above case further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. On that basis, in the case of State of Rajasthan the facts which seems to be almost similar to the facts of this case held that the tribunal fell in error in staying the disciplinary proceedings.

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14. We are of the opinion that both the tribunal and the High Court proceeded on an erroneous legal principle without taking into consideration the facts and circumstances of this case and proceeded as if the stay of disciplinary proceedings is a must in every case where there is a criminal trial on the very same charges.....”

17. The third judgment on the issue, which is relevant to note, is the judgment of the Hon’ble Supreme Court of India in ***Indian Overseas Bank, Anna Salai and another’s*** case (supra). In the said case, it was observed by the Hon’ble Supreme Court of India that it was not sufficient for the High Court to note only the existence of identical facts and the evidence in the matter but it was also required to take into consideration the questions whether the charges levelled against the delinquent officers, both in the criminal case as well as disciplinary proceedings were the same and that apart from other issues, whether the matter also involves a complicated question of law. It was further observed that if there is any additional charge

against the delinquent officer, then the departmental proceedings should not be stayed and that the stay of departmental proceedings cannot be and should not be a matter of course. In the said case, the Division Bench of the High Court had disposed of the appeals on the ground that there was no dispute that the criminal action and the disciplinary proceedings were founded on the same set of facts and that disciplinary proceedings were solely based upon the criminal complaint lodged by the President of a rival union and that the Bank had not conducted any independent enquiry before initiating the impugned departmental proceedings and thus, the departmental proceedings were postponed till the time the criminal cases were decided. The said order was set aside by the Hon'ble Supreme Court. It would be relevant to note that in the present case as would be detailed hereinafter, the respondent-UHBN has conducted special audit and independent enquiry. The relevant portion of the said judgment is reproduced hereinbelow:-

“11. Writ appeals preferred by the appellants against that order were disposed of by a Division Bench of the Court by reason of the impugned judgment opining :-

14. In the instant case, there is no dispute that the criminal action and the disciplinary proceedings are founded upon the same set of facts. In fact, the disciplinary proceedings are solely based upon the criminal complaint lodged by the president of a rival union, who is also facing prosecution with regard to the same incident. It has been conceded before us that the bank had not conducted any independent enquiry before initiating the impugned departmental proceedings.

15. In our opinion, in the peculiar facts and circumstances of the case on hand, fair play requires that postponing of the departmental proceedings till the criminal cases are decided. We are, therefore, of the view that the prayer made by the petitioners for deferring the departmental proceedings till the conclusion of the criminal trial has to be accepted and it is ordered accordingly.

18. Legal position operating in the field is no longer res integra. A departmental proceedings pending a criminal proceedings does not warrant an automatic stay. The superior courts before exercising its discretionary jurisdiction in this regard must take into consideration the fact as to whether the charges as also the evidence in both the proceedings are common and as to whether any complicated question of law is involved in the matter.

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22. The issue came up for consideration yet again in *T. Srinivas (supra)* where this Court while analyzing *B.K. Meena (supra)* and *Capt. M. Paul Anthony (supra)* held that :-

“10. From the above, it is clear that the advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This judgment also lays down that the stay of departmental proceedings cannot be and should not be a matter of course.”

23. The High Court, unfortunately, although it noticed some of the binding precedents of the Court failed to apply the law in its proper perspective. The High Court was not correct in its view in concluding that the stay of the departmental proceedings should be granted in the peculiar facts and circumstances of the case without analyzing and applying the principle of law evolved in the aforementioned decisions. It, therefore, misdirected itself in law. What was necessary to be noticed by the High Court was not only existence of identical facts and the evidence in the matter, it was also required to take into consideration the question as to whether the charges levelled against the delinquent officers, both in the criminal case as also the disciplinary proceedings, were same. Furthermore it was obligatory on the part of the High Court to arrive at a finding that the non stay of the disciplinary proceedings shall not only prejudice the delinquent officers but the matter also the matter involves a complicated question of law.

24. The standard of proof in a disciplinary proceedings and that in a criminal trial is different. If there are additional charges against the delinquent officers including the charges of damaging the property belonging to the bank which was not the subject matter of allegations in a criminal case, the departmental proceedings should not have been stayed.”

18. The Hon’ble Division Bench of this Court in ***Paramjit Kaur’s*** case (supra) has held as under:-

“2. The learned Single Judge, after taking into consideration the facts of the case as well as the decision of the Supreme Court, relied upon by the appellant, in *Captain M. Paul Anthony Vs. Bharat Gold Mines, 1999(3) SCC 679*, dismissed her petition, upon reaching a conclusion that decision in *Captain M. Paul Anthony (supra)* does not lay down any absolute principle of law that in all those cases where a criminal trial is pending, the departmental proceedings must be kept in abeyance. Rather, the question, whether, in the given situation, the departmental proceedings are required to be stayed, would be determined taking into account multiple factors: if the departmental proceedings and criminal trial are based on similar set of facts; the charge in the criminal trial against the delinquent employee is of a grave nature and involved complicated questions of law and fact. Whereas, upon due consideration of the matter in issue, the learned Single Judge recorded that it was not the case in the matter at hands. It was observed that the charges against the appellant in the departmental proceedings were that she had been siphoning off the funds/amount from the accounts of the bank’s customers in the name of her own relatives since 2005. Further, upon being confronted with this fact, she has made three deposits refunding certain amount. And, significantly, the learned Single Judge also recorded that the entire material that was to be relied upon and produced against the appellant was documentary in nature and was either prepared by her or under her supervision, being Manager of the branch.

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5. Upon being pointedly asked, if the charges have been framed in the criminal trial against the appellant and, if yes, whether the charge sheet was produced/placed before the learned Single Judge? Learned counsel fairly concedes that though charges have already been framed but the charge sheet was not placed before the learned Single Judge. In such circumstances, it is evident that the contention of the appellant that basis of the departmental proceedings and criminal trial is the same, is neither substantiated nor established. Even otherwise, as indicated above, the charges against the appellant are based on record and do not involve any complicated questions of law and facts, least a charge that could be termed as grave.”

A perusal of the above judgment would show that in the said case, the charges against the appellant therein were on some aspects similar to the charges against the petitioners in the present case, as they pertained to

siphoning off the funds from the accounts of the bank’s customers. The

Hon'ble Division Bench while dismissing the appeal and upholding the order of the Single Bench dismissing the writ petition observed that the learned Single Judge had taken into consideration the fact that the entire material which was relied upon and produced against the appellant therein was documentary in nature and that the charges / charge sheet in the criminal case was not placed before the learned Single Judge and that thus, the contention of the appellant therein that the basis of the departmental proceedings and criminal trial were the same, was neither substantiated nor established. It was also observed that in the said circumstances, no complicated questions of law and facts were involved.

19. The Hon'ble Supreme Court in ***State Bank of India and Ors vs. Neelam Nag and Anr.***'s case (supra), which has been relied upon by the learned senior counsel for the petitioner, has observed as under:-

“13. We have heard the learned counsel for the parties at some length. The only question that arises for consideration, is no more res-integra. It is well-settled that there is no legal bar to the conduct of the disciplinary proceedings and criminal trial simultaneously. However, no straight jacket formula can be spelt out and the Court has to keep in mind the broad approach to be adopted in such matters on case to case basis. The contour of the approach to be adopted by the Court has been delineated in a series of decisions.

14. This Court in Karnataka SRTC vs. M.G.Vittal Rao (2012) 1 SCC 442 has summed up the same in the following words:

“(i) There is no legal bar for both the proceedings to go on simultaneously.

(ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts or law.

(iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(iv) Departmental proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common.

(emphasis supplied)”

In the above judgment, apart from reiterating the fact that it is a matter of settled law that there is no legal bar on conducting the disciplinary proceedings and criminal trial simultaneously, reliance was also placed upon the judgment of Hon’ble Supreme Court in ***Karnataka SRTC vs. M.G. Vittal Rao***, in which it was observed that the ground for seeking stay would be available only in cases involving complex questions of law and facts and where the departmental proceedings are not unnecessarily delayed and while drawing the said exception it was observed that the facts and the “evidence” in both the proceedings should be common. The Hon’ble Supreme Court in ***Union of India vs. Sitaram Mishra*** reported as **2019 AIR (SC) 3534** has observed that a disciplinary enquiry is governed by a different standard of proof than that which applies to a criminal case and the purpose of a disciplinary enquiry is to enable the employer to determine as to whether an employee has committed a breach of service rules and the fact that an employee is acquitted in the course of criminal trial cannot *ipso facto* operate as a ground for vitiating the finding of misconduct which has been arrived at during the course of the disciplinary proceedings. The relevant portion of the said judgment is reproduced hereinbelow:-

“13. The second ground, which has weighed with the High Court, is equally specious. A disciplinary enquiry is governed by a different standard of proof than that which applies to a criminal case. In a criminal trial, the burden lies on the prosecution to establish the charge beyond reasonable doubt. The purpose of a disciplinary enquiry is to enable the employer to determine as to whether an employee has committed a breach of the service rules.....

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*14.....The fact that the first respondent was acquitted in the course of the criminal trial cannot operate ipso facto as a ground for vitiating the finding of misconduct which has been arrived at during the course of the disciplinary proceedings. The High Court, in our view, has drawn an erroneous inference from the decision of this Court in **Capt M Paul***

Anthony v Bharat Gold Mines Ltd. (1999) 3 SCC 679.

20. The Hon'ble Division Bench of this Court in ***Dr. Balwinder Kumar Sharma vs. Hon'ble Punjab and Haryana High Court through Registrar General, CWP-7539-2021*** decided on 28.05.2021 has held as under:-

"The reason for initiation and early conclusion of departmental proceedings in such cases seems to be three-fold:

(i) To weed out an employee whose integrity / character has been put to doubt, prima facie, on account of some criminal proceedings having been initiated against him/her.

(ii) At the same time, when an employee is suspended, he/she is entitled to atleast half of the pay that it was drawing before being suspended and thus, any inordinate delay in conclusion of departmental proceedings, where charges are of very serious nature, would unnecessarily entail burden on exchequer and thus will be against public interest.

(iii) The departmental proceedings is to maintain discipline in the service and efficiency of public service and thus, its initiation and conclusion as expeditiously as possible is in public interest.

In the present case, it is not disputed that challan was presented in the year 2019 and charges were framed on 31.01.2020 (P-11), however till date no progress has been made in the criminal trial on account of one reason or the other. Although, the delay in criminal trial cannot be attributed to the petitioner, at the same time, the department cannot be expected to wait endlessly for the trial to conclude as held in Capt. M. Paul Anthony's case (supra).

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Further, it is to be noted that charges under Sections 409, 420, 120-B and 201 IPC have been framed on the basis of documentary and other evidence collected by the SIT during the course of investigation. How the paper was leaked and the manner it was further supplied for prosecution / Department to prove, which otherwise is within the special knowledge of the accused. Therefore, there is no question of any disclosure of defence in the departmental proceedings. As far as the various provisions of Prevention of Corruption Act, 1988 are concerned, most of the provisions are to be proved by the prosecution during the course of trial except the one concerning "known sources of income",

which again is within the special knowledge of accused-petitioner. Hence, there seems to be no justification in the prayer made by petitioner for staying of disciplinary proceedings.”

In the abovesaid judgment, the reasons for early conclusion of departmental proceedings have been highlighted and it has been further observed that the department cannot wait endlessly for the criminal trial to conclude irrespective of the fact that the delay in the criminal trial is attributed to the employee or not. It has also been observed that where the case is based on documentary evidence, there is no question of any disclosure of defence regarding the same in the departmental proceedings and that the cases registered under the Prevention of Corruption Act, 1988 are to be proved by the prosecution during the course of trial and thus, there is no justification for staying the disciplinary proceedings. The SLP i.e., SLP no.8279 of 2021 filed against the said judgment was dismissed as withdrawn on 17.10.2022.

21. This Court, on the basis of law laid down in the abovesaid judgments and after considering the facts of the present case, has come to the conclusion that the present writ petitions deserve to be dismissed and the stay of departmental proceedings ordered by the coordinate Bench of this Court vide order dated 22.08.2022 does not deserve to be continued and the reasons for the same are detailed hereinunder:-

- i) In the present case, it is not in dispute that the FIR was registered on 08.02.2022 and in spite of lapse of 1 year and 7 months even the charges have not been framed and the case is now fixed for framing of charge on 25.09.2023. A perusal of the challan dated 05.05.2022 would show that there are as many as 31 witnesses cited in the same and since there is a supplementary challan also in which

certain additional witnesses are also there, thus, the criminal trial is likely to take time. In the said circumstances, it would not be in the interest of justice to keep the departmental proceedings in abeyance. The Hon'ble Supreme Court of India in the case of ***Capt. M. Paul Anthony's*** (supra), which has been relied upon by learned senior counsel for the petitioner, has in paragraph 22 sub clause (v), which has been reproduced hereinabove, observed that in case the criminal case does not proceed, then departmental proceedings, even if they have been stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to be concluded at an early date and the same would be in the interest of all, inasmuch as in case the petitioners are found guilty, then the department should get rid of them as early as possible and in case they are not guilty then the honour of the petitioners should be vindicated. The Hon'ble Division Bench of this Court in ***Dr. Balwinder Kumar Sharma's*** case (supra), the SLP against which has been withdrawn and the relevant portion of which has been reproduced herienabove, had stated that an early conclusion of the departmental proceedings was very necessary in order to weed out an employee whose integrity / character has been put to doubt on account of initiation of criminal proceedings and since the purpose of the said proceedings is to maintain discipline in the service and efficiency of public service. It was also observed that during the pendency of said proceedings, since the employee is suspended, thus, the said employee would get some part of pay without doing work which would amount to unnecessarily entailing burden on exchequer and would be against public interest and that the department cannot be expected to wait endlessly for the trial to

conclude and in the said circumstances, it would not be relevant as to whether the delay is attributed to the petitioner or not. In the present case, the charge sheet in the departmental proceedings was issued in June / July 2022 and the proceedings have come to a stand still since 22.08.2022 i.e., the date on which stay was granted. In case the prayer of the petitioner is accepted, then since the criminal trial is likely to take long, the departmental proceedings would have to be stayed for a long time.

ii) A perusal of the list of witnesses in the chargesheet issued to the petitioner -Yogesh Lamba in CWP-18341-2022 for the period when he was in Jagadhri would show that UHBVN proposes to examine three witnesses i.e., N.K. Bhatia, Senior Assistant, Sanjeev Shukla, SO and Surender Singh, Divisional Accountant (Retired) (at page 89 of the paper book in CWP-18341-2022). A perusal of the challan (Annexure P-1) dated 05.05.2022 (at page 63) would show that in the criminal proceedings, there are 31 witnesses and none of the above three witnesses are shown as witnesses in the said challan. The issue in the present case is primarily as to whether the petitioners have got the money, which was due on account of retiral benefits of employees of UHBVN department, deposited in fake accounts and had then withdrawn the same or got the money illegally through persons who were not retirees and the material relied upon to prove the same is substantially documentary in nature and also the three witnesses i.e., N.K. Bhatia, Sanjeev Shukla and Surender Singh are the witnesses, who are primarily to be examined in the departmental proceedings to prove the said documentary record, thus, it cannot be said that any prejudice would be caused to the petitioner, requiring

this Court to continue the grant of stay of departmental proceedings which has been granted by the coordinate Bench of this Court vide order dated 22.08.2022. Reference in this regard is made to the judgment of the Hon'ble Supreme Court of India in ***State Bank of India and Ors. vs. Neelam Nag and Anr.'s*** case (supra) relied upon by the learned senior counsel for the petitioner themselves, relevant part of which has been reproduced hereinabove, in which one of the requirement for grant of stay of proceedings is stated to be common "evidence". Reference be also made to the judgment of the Hon'ble Division Bench in ***Paramjit Kaur's*** case (supra) on the aspect of evidence being primarily documentary in nature. Learned senior counsel appearing for UHBVN has very fairly stated that the complainant in the FIR i.e. Suresh has been made a witness with respect to the departmental proceedings initiated against Yogesh Lamba while he was working in Bilaspur, which charge sheet is subject matter of CWP-26882-2022 but it has also been highlighted that the said Suresh is only to be examined to state that he has got the FIR registered. Further perusal of the challan dated 05.05.2022 which contains the statement of Suresh, on the basis of which FIR was registered, would show that there is no allegation made by Suresh to the effect that he ever met Yogesh Lamba and thus, even if the said Suresh is examined in the said departmental proceedings for proving that he had got the FIR registered, the same would not cause any prejudice to the petitioner so as to to continue the stay of departmental proceeding granted vide order dated 22.08.2022.

(iii) It is not in dispute that in the present case, the charges have not been framed by the criminal Court. For the Court to even consider the

granting / continuance of stay of the departmental proceedings, it is necessary for the petitioner to clinchingly show that identical and similar set of facts are involved in the departmental proceedings and in the criminal case. Even if the same is proved, then also there are several other factors which have to be taken into consideration for granting / continuance of stay in favour of the petitioner. It was observed by the Hon'ble Division Bench of this Court in ***Paramjit Kaur's*** case (supra) that since the charges / charge sheet had not been placed before the learned Single Judge, thus, the contention of the employee to the effect that identical and similar set of facts arise in the departmental proceedings and criminal trial were neither substantiated nor established. Even the Hon'ble Supreme Court in ***Indian Overseas Bank, Anna Salai' and another'*** case (supra) in paragraph 23 used the term "charges" while observing that it is the charges both in criminal case as well as in disciplinary proceedings which are required to be same. Since the charges have not been framed in the criminal case in FIR number 109, thus, the plea of the petitioner to the effect that identical and similar set of facts are involved in both the departmental and criminal proceeding does not stand substantiated. It would also be relevant to note that the FIR, in the present case, was registered on the basis of the statement made by one Suresh whereas the departmental proceedings in the present case have been initiated on the basis of special audit carried out for transactions of payment of DCRG (Gratuity) for the period from April, 2018 to 05.05.2021. FIR was registered on the allegations made by Suresh that an amount of Rs.3,78,200/- had been transferred into his bank account which he ultimately found to be transferred

from the account of UHBVN and Ajay and Kamal Sharma had earlier told him that the amount has been transferred into his account by mistake and accordingly, the said amount was paid by him to Kamal Sharma in cash and it was also found by him that the said persons have been embezzling money of UHBVN. During investigation of the criminal case, the scope of the said FIR has apparently widened. On the other hand, in the disciplinary proceedings, specific reference has been made to a detailed special audit conducted for a period from April, 2018 to 05.05.2021 and by virtue of interim audit report, it was found that the petitioners had not followed the necessary procedure for making payment of gratuity and specific charges were framed against each petitioner. In the case of Yogesh Lamba, while he was working in Jagadhri, a specific charge was made that during his tenure, the number of fraudulent transactions were 189 amounting to Rs.12,86,78,761/-. It is not disputed before this Court that in the departmental proceedings, enquiries have been conducted by the department and also special audit has been conducted and reliance is not primarily on the basis of the investigation conducted in the criminal case and that the scope of the disciplinary proceeding is much wider than the criminal case. In the said facts and circumstances, it is not possible for this Court to come to a positive conclusion that the departmental proceedings and the criminal case are based on identical and similar set of facts and charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact.

(iv) That with respect to Pooja Gera petitioner in CWP-28827-2022, it would be further relevant to note that said Pooja Gera has not

been shown as an accused in the challan dated 05.05.2022 and has been shown as an accused in the supplementary challan dated 03.08.2022. The supplementary challan dated 03.08.2022 has not been annexed with the writ petition filed by her to even remotely show that the allegations against the said Pooja Gera in the criminal case are identical and similar to the one in the disciplinary proceedings.

v) Another necessary ingredient, which needs to be established by the petitioners before the Court considers granting stay of departmental proceeding, is that the case involves complicated question of law and facts. The sole argument raised on behalf of the petitioners on the said aspect is that since the issue as to whether the petitioners were merely negligent / had committed a mistake and whether the same was culpable or not, making the petitioners liable for a criminal offence, would involve complicated question of facts and law. No law has been cited by the learned counsel for the petitioners in support of the said submission. Moreover, the said issue would arise in several criminal cases and thus, merely on account of the fact that a Court is required to adjudge as to whether the act done by the accused / employee would amount to a criminal act or not, would not, in the understanding of this Court, come within the meaning of “complicated question of law and fact”. The issue in the present case is primarily as to whether the petitioners have got the money, which was due on account of retiral benefits of employees of UHBVN department, deposited in fake accounts and had then withdrawn the same and for proving the same, the material relied upon is substantially documentary in nature. The Hon’ble Division

Bench of this Court in *Paramjit Kaur's* case (supra) in which the allegations were somewhat similar to the case in hand inasmuch in the case of *Paramjit Kaur*, the allegations against the appellant therein were that she had siphoned off the funds / amounts from the accounts of the bank's customers in the name of her own relatives and that the material relied upon and produced against her was also documentary in nature and the Division Bench in the said facts and circumstances had observed that the charges against the appellant therein were based on record and did not involve any complicated question of law and facts.

vi) That the Hon'ble Supreme Court of India in *Kendriya Vidyalaya Sangathan's* case (supra) had observed that the grant of stay by the Tribunal and the High Court only by taking into consideration the fact that the criminal trial and the disciplinary proceedings were based on same charges was illegal, as neither the High Court nor the Tribunal had mentioned any special facts which had persuaded them to stay the departmental proceedings. In the present case as has been detailed hereinabove, even the fact that the criminal trial and the disciplinary proceedings are based on same charges, has not been substantiated nor there is any special fact which would persuade this Court to continue with the stay of departmental proceedings which has continued for a period of more than 1 year and 1 month since 22.08.2022.

22. Keeping in view the above said facts and circumstances, finding no merit, all the writ petitions are dismissed.

September 15, 2023.

Davinder Kumar

Whether speaking / reasoned
Whether reportable

(VIKAS BAHL)
JUDGE

Yes/No
Yes/No