

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-19048-2023 IN/AND
CWP-20539-2023 (O&M)
Date of decision: 02.12.2023

Tarsem Singh

... Petitioner

VS.

UHBVNL & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Vijay Kumar Jindal, Sr.Advocate with
Mr. Akshay Jindal, Ashutosh Kaushik, Pankaj Gautam,
Advocates, for the petitioner

Mr. Puneet Jindal, Sr.Advocate with
Mr. Rahul Bansal, Advocate for the respondents

Sandeep Moudgil, J.

CM-19048-2023

Allowed as prayed for.

Written statement filed by the respondents is taken on record.

CRM stands disposed of.

Main case

(1). The petitioner has filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *mandamus* directing the respondents to keep the departmental proceedings in abeyance issued pursuant to charge-sheet dated 23.06.2023 (Annexure P3) till the time criminal case against the petitioner is concluded as charge-sheet is based on same facts on which FIR No.30 dated 19.10.2022 (Annexure P1) was lodged, in the light of Supreme Court decision in **Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd. & Anr. (1999) 3 SCC 679.**

(2). Learned counsel for the petitioner submitted that the petitioner is working as Sub Divisional Officer presently posted at Dhulkote, and is specially abled person. He submits that the petitioner was falsely implicated in FIR No.30 dated 19.10.2022 under Section 7 of Prevention of Corruption Act, 1988 registered at Police Station SVB, Ambala on the basis of a disclosure statement and in the said FIR, challan has been presented and list of witnesses has been provided (Annexure P2) and that the petitioner is presently on regular bail granted by this Court.

(3). It is further submitted that a charge-sheet has been issued against the petitioner on 23.06.2023 (Annexure P3) wherein the allegation of demanding illegal gratification has been leveled against the petitioner. Reliance has been placed on **Capt.M.Paul Anthony's** wherein the Apex court considered the perennial question which crop up in service matters as to whether departmental proceedings and proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously and it was held that departmental proceedings initiated by competent authority should be stayed.

(4). Notice of motion was issued on 15.09.2023 and the matter was ordered to be heard along with identical petition i.e. CWP-18341-2022 and further departmental proceedings was ordered to be kept in abeyance till further orders.

(5). In the written statement dated 06.11.2023 filed by respondents No.1 & 2, it has been averred that the above-mentioned CWP-18341-2022, on the basis of which, departmental proceedings have been kept in abeyance, has since been dismissed by this Court. It is submitted that the petitioner was

found flouting the rules and causing financial loss to the Nigam and the list of witnesses and documents attached with the charge-sheet are entirely different than that of the FIR got lodged by the private complainant/State Vigilance Bureau, Ambala.

(6). Learned senior counsel further contended that the issue sought to be raised by the petitioner is no more *res integra* since various courts have held that the departmental proceedings and criminal proceedings operate in distinct and differential jurisdictional areas and the standard of proof required in those proceedings is also different than what is required in a criminal case inasmuch as the **departmental proceedings** are based on '*preponderance of probabilities*' whereas the charges are required to be proved by the prosecution '*beyond reasonable doubt*' in a **criminal proceedings**.

(7). He further vehemently contended that the reliance placed on **Capt.M.Paul Anthony's** case is nothing but sheer misreading and misinterpretation of the judgment of the Apex Court as the *ratio decidendi* of the said judgment in fact strengthens the case of the respondent-Nigam. He relied upon **Indian Overseas Bank & Anr. Vs. P.Ganeshan & Ors. (2008) 1 SCC 650**, wherein the Supreme Court, while discussing **Capt.M.Paul Anthony's** case, explained as to in which circumstances, the departmental proceedings and criminal proceedings can be carried out simultaneously. It is then urged that the petitioner was arrested in pursuance to an FIR lodged on the basis of a private complaint, and as such grant of stay on departmental proceedings would give delinquent official the opportunity to linger on criminal trial.

(8). Heard learned counsel for the parties and gone through the record.

(9). Undoubtedly, there is a consensus of judicial opinions on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. The basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many, such as enforcement of discipline, or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in the those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.

(10). On this question, the first pronouncement rendered by the Supreme Court was **in Delhi Cloth & General Mills Ltd. vs. Kushal Bhan AIR 1960 SC 806**, in which it was observed as under:-

"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... 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."

(11). The Supreme Court in **Kusheshwar Dubey vs. M/s Bharat Coking Coal Ltd. & Ors. 1988 (4) SCC 319** reviewed its decisions which indicated that though it would not be wrong in conducting two parallel proceedings, one by way of disciplinary action and the other in the criminal court, still it would be desirable to stay the domestic inquiry if the incident giving rise to a charge framed against the employee in a domestic inquiry is being tried in a criminal court. It was thus laid down as under:-

"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 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 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, strait-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...

...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."

(12). There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted in the office of the petitioner on 19.10.2022 in the allegation of demand of Rs.2 lakhs as illegal gratification for shifting of power line from the complainant's field'. A perusal of the challan/Kalandra as well as the charge-sheet would indicate that the charges framed against the petitioner were sought to be proved by the complainant and other Police Officers, who had raided the office of the petitioner and had effected recovery. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.

(13). For the reasons stated above, this writ petition is allowed and the respondents are directed to keep the departmental proceedings in pursuance to the charge-sheet dated 23.06.2023 (Annexure P3), in abeyance, till the criminal proceedings are concluded.

(14). Ordered accordingly.

02.12.2023

V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No

Yes/No