

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 5590 of 2023

Subodh Kumar Son of Late Tetar Prasad, Resident of Village - Chakfatma,
P.O.- Baijani, P.S.-Jagdishpur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The I.G. of Police, Trihut Range, Muzaffarpur
4. The Superintendent of Police, Sheohar.
5. The Sr. Superintendent of Police, Patna.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Ram Hriday Prasad, Advocate
Ms.Maruti Kumari, Advocate
For the Respondent/s : Mr. Manish Kumar (GP-4)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 19-03-2024

1. The present writ petition has been filed for directing the respondents to stay the ongoing departmental proceeding till final disposal of a criminal case, bearing Buddha Colony P.S. Case No. 628 of 2022, dated 07.12.2022.

2. The learned counsel for the petitioner has submitted that a departmental proceeding has been initiated against the petitioner by issuance of a chargesheet dated 29.03.2023, which is based on the allegations levelled in the aforesaid criminal case. It is further submitted by the learned counsel for the petitioner that the departmental proceeding as also the criminal



proceeding are based on same and similar set of facts, hence it would be in the interest of justice that the departmental proceeding in question is stayed till conclusion of the criminal proceeding. The learned counsel for the petitioner has relied on a judgment dated 24.12.2021, passed by this Court in CWJC No.1936 of 2021 (Shashi Bhushan Kumar Vs. The State of Bihar and Ors.), reported in 2022 (2) BLJ 100. The learned counsel for the petitioner has referred to paragraph no.6 of the said judgment, rendered in the case of Shashi Bhushan Kumar (Supra), which is reproduced herein below:-

“6. Without going into the details of all the judgments referred to herein above by me, it would suffice to reproduce paragraph nos. 13 to 18 and 27 of the judgment rendered by the Hon’ble Apex Court in the case of Neelam Nag (supra) herein below:-

“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 & criminal trial simultaneously. However, no straitjacket 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 v. M.G. Vittal Rao [Karnataka SRTC v. 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)

15. The recent decision relied on by the appellant in Stanzen [Stanzen Toyotetsu India (P) Ltd. v. Girish V., (2014) 3 SCC 636], has adverted to the relevant



decisions [Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry, (2005) 10 SCC 471; Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679; A.P. SRTC v. Mohd. Yousuf Miya, (1997) 2 SCC 699 and State of Rajasthan v. B.K. Meena, (1996) 6 SCC 417] including M.G. Vittal Rao [Karnataka SRTC v. M.G. Vittal Rao, (2012) 1 SCC 442]. After adverting to those decisions, in para 16, this Court opined as under:

“16. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defence before the criminal court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing



demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.”

(emphasis supplied)

16. The Court then went on to examine the facts of that case and observed in para 18 as follows:

“18. ... The charge-sheet, it is evident from the record, was filed on 20-8-2011. The charges were framed on 20-12-2011. The trial court has ever since then examined only three witnesses so far out of a total of 23 witnesses cited in the charge-sheet. Going by the pace at which the trial court is examining the witnesses, it would take another five years before the trial may be concluded. The High Court has in the judgment [Stanzen Toyotetsu India (P) Ltd. v. Girish V., 2012 SCC OnLine Kar 8817] under appeal given five months to the trial court to conclude the trial. More than fifteen months has rolled by ever since that order, without the trial going anywhere near completion. The disciplinary proceedings cannot remain stayed for an indefinitely long period. Such inordinate delay is neither in the interest of the appellant Company nor the respondents who are under suspension and surviving on subsistence allowance.”

(emphasis supplied)



*In para 19, the Court proceeded to conclude thus:
(SCC p. 644)*

“19. In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three courts below have exercised their discretion in favour of staying the ongoing disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the trial court will take effective steps to ensure that the witnesses are served, appear and are examined. The court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to cooperate with the trial court for an early completion of the proceedings. We say so because experience has shown that the trials often linger on for a long time on account of non-availability of the defence lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In



case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the trial court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the inquiry officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order.”

17 [Ed.: Paras 17 and 18 corrected vide Order dated 9-11-2016.]. Reverting to the facts of the present case, indisputably, the alleged misconduct has been committed as far back as May 2006. The FIR was registered on 5-12-2006 and the charge-sheet was filed in the said criminal case on 6-2-2007. The contents of the charge-sheet are indicative of involvement of Respondent 1 in the alleged offence. Resultantly, the criminal court has framed charges against Respondent 1 as far back as 12-6-2007. The trial of that case, however, has not made any effective progress. Only 3 witnesses have been examined by the prosecution, out of 18 witnesses cited in the charge-sheet filed before the criminal court. Indeed, listing of criminal case on 133 different dates after framing of charges is not solely attributable to Respondent 1. From the information made available by the Additional Superintendent of Police on affidavit, it does indicate that at least 26 adjournments are directly



attributable to the accused in the criminal case. That is not an insignificant fact. This is in spite of the direction given by the Division Bench on 28-6-2010, to the criminal court concerned to proceed with the trial on day-to-day basis. The progress of the criminal case since then, by no means, can be said to be satisfactory. The fact that the prosecution has named 18 witnesses does not mean that all the witnesses are material witness for substantiating the factum of involvement of Respondent 1 in introducing the co-accused for opening a new bank account, to misplace the clearing instruments relating to various customers or for the payment released to the undeserving customer causing huge financial loss to the Bank. The charge in the criminal case is for the offences under Sections 409 and 34 IPC, one of criminal breach of trust by a public servant.

18 [Ed.: Paras 17 and 18 corrected vide Order dated 9-11-2016.]. *In the peculiar facts of the present case, therefore, we accede to the contention of the appellants that the pendency of the criminal case against the respondent cannot be the sole basis to suspend the disciplinary proceedings initiated against Respondent 1 for an indefinite period; and in larger public interest, the order as passed in Stanzen case [Stanzen Toyotetsu India (P) Ltd. v. Girish V., (2014) 3 SCC 636] be followed even in the fact situation of the present case, to balance the*



equities.

27 [Ed.: Paras 23, 24, 25 and 27 corrected vide Order dated 9-11-2016.]. Accordingly, we exercise discretion in favour of Respondent 1 of staying the ongoing disciplinary proceedings until the closure of recording of evidence of prosecution witnesses 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 straightaway. Instead, in our opinion, interests of justice would be sufficiently served by directing the criminal case pending against Respondent 1 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 becomes inevitable, it should not be for more than a fortnight, when necessary.”

3. Per contra, the learned counsel for the respondent-State has submitted by referring to the memo of charge dated 29.03.2023, framed against the petitioner as well as the FIR, i.e. Buddha Colony P.S. Case No. 628 of 2022, lodged against the petitioner that the same are not based on same and similar facts inasmuch as while the departmental proceeding has been initiated on the allegation of obtaining employment by forging documents and suppressing material facts, the aforesaid criminal



case in question has been lodged, alleging commission of fraud and forgery by the petitioner with a view to change his caste from Yadava to Scheduled Caste. It is also submitted that in the departmental proceeding, the petitioner has to prove that he had obtained employment in a genuine manner whereas in the criminal case he has to establish beyond all reasonable doubt that he has not committed any forgery, for the purposes of changing his caste. In fact, the Ld. counsel for the respondents also seeks to rely upon the same paragraph i.e. para no.6 of the aforesaid judgment, rendered in the case of Shashi Bhushan Kumar (Supra) to buttress the stand of the respondent State.

4. I have heard the learned counsel for the parties and gone through the materials on record. A bare perusal of the memo of charge dated 29.03.2023, would show that the departmental proceeding has been initiated pursuant to the direction of the Director General of Police, Bihar, Patna on the allegation that the petitioner has tampered with the Government documents, engaged in fabrication and has suppressed material facts, for the purposes of obtaining employment in question.

5. As far as the aforesaid criminal case is concerned, the same has been lodged in pursuance to letter dated 07.02.2022, written by the P.T.C, Appointment Section, Police Line, Patna,



wherein it has been alleged that one Gaurav Kumar, resident of District-Bhagalpur has levelled allegation against the petitioner to the effect that in the year 1999, he had engaged in impersonation, by falsely projecting that he belongs to the Scheduled Caste category and obtained employment as a Scheduled Caste category candidate, although he belongs to Yadava Caste, by tampering the Candidates' Register.

6. This Court finds that the law with regard to the issue under consideration is no longer res integra inasmuch as the same has been settled by the Hon'ble Apex Court in a catena of judgments, which are being referred to herein below:-

*“(i) Judgment rendered in the case of **Depot Manager, A.P. SRTC v. Mohd. Yousuf Miya**, reported in (1997) 2 SCC 699.*

*(ii) Judgment rendered in the case of **State of Rajasthan v. B.K. Meena and ors.**, reported in (1996) 6 SCC 417.*

*(iii) Judgment rendered in the case of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.**, reported in (1999) 3 SCC 679.*

*(iv) Judgment rendered in the case of **Stanzen Toyotetsu India Private Ltd. v. Girish V. and Ors.**, reported in (2014) 3 SCC 636.*

*(v) Judgment rendered in the case of **SBI v. Neelam***



Nag, reported in (2016) 9 SCC 491.”

7. Now adverting to the judgment, rendered by the Hon’ble Apex Court in the case of **Karnataka State Road Transport Corporation Vs. M.G. Vittal Rao**, reported in (2012) 1 SCC 442, the principles have been summed up in the following manner:-

“(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.”

8. In fact, the aforesaid principles enunciated by the Hon’ble Apex Court in the case of M.G. Vittal Rao (supra) have



also been reiterated in the case of ***Stanzen Toyotetsu India Private Limited*** (supra) and in the case of ***Neelam Nag*** (supra).

9. Now, coming back to the present case, this Court is of the view that the charges levelled against the petitioner, whether it be the departmental proceeding or it be the criminal proceeding, does not involve complicated question of law or facts. This Court, further finds, as informed by the learned counsel for the petitioner that chargesheet has not been filed in the aforesaid criminal case, hence at the moment, this Court is clueless about the nature of evidence which would be adduced, either oral or documentary in the criminal proceeding. Moreover, the allegations levelled in the departmental proceeding vis-à-vis the criminal proceeding, as demonstrated by the learned counsel for the respondent-State, which has been noted in the preceding paragraphs, are also different.

10. The Hon'ble Apex Court, in the case of ***Neelam Nag*** (supra) has categorically held that there is no legal bar for both the proceedings i.e the departmental proceeding as well as the criminal proceeding to go on simultaneously, however, the only valid ground for stay of the disciplinary proceeding, during the pendency of a criminal proceeding is to ensure that the defence of the employee in a criminal case may not be prejudiced, but



then the said ground would be available only in cases involving complex question of law or facts. In the present case, this Court finds that no complex question of law or facts are involved.

11. Having regard to the facts and circumstances of the case and for the foregoing reasons, this Court is of the view that at this juncture, it would not be proper to stay the departmental proceeding in question, hence, the present writ petition stands dismissed, being bereft of any merit.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2024
Transmission Date	NA

