

(2011) 07 AHC CK 0318
In the Allahabad High Court
Case No : C.M.W.P. No. 35324 of 2011

Akhilesh Chandra Sharma

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 354
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2011) 5 AWC 5057 : (2011) 131 FLR 407

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Birendra Singh, learned counsel for the petitioner and learned standing counsel for the respondents.

2. Learned standing counsel states that he does not propose to file counter-affidavit and the writ petition may be heard and decided at this stage on the basis of material available on record.

3. The present writ petition is directed against the suspension order dated 29.4.2011 whereby the petitioner has been placed under suspension in a contemplated departmental enquiry on the allegation that he was prima facie found guilty of misbehaving with a Class VIII student in the concerned primary school.

4. Learned counsel for the petitioner could not show that the impugned suspension order is contrary to Rules or passed by an authority who is not competent.

5. However, he contended that criminal proceedings are going on pursuant to an F.I.R. being Case Crime No. 23 of 2011, u/s 354, I.P.C. and Section 3(1)(xi) of S.C./S.T. Act and, therefore, the criminal proceedings as well as departmental

proceedings cannot proceed together.

6. The question as to whether during the pendency of criminal proceeding, departmental proceeding should be stayed depends upon the facts and circumstances of individual case. In *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, the Apex Court said that procedure followed in both the cases as well as the subject-matter of departmental enquiry and criminal proceeding has different scope and it cannot be said that when a criminal proceeding is going on a particular criminal charge, in that regard, the departmental proceeding cannot be allowed to proceed. The same view has been reiterated subsequently, in *Chairman/Managing Director T.N.C.S. Corporation Ltd. and others v. K. Meerabai JT 2006 (1) SC 444* ; *Suresh Pathrella Vs. Oriental Bank of Commerce, and Union of India (UOI) and Others Vs. Naman Singh Sekhawat*,

7. Referring to *Capt. M. Paul Anthony (supra)*, recently the Apex Court in *The Managing Director State Bank of Hyderabad and Another Vs. P. Kata Rao*, observed that the legal principle enunciated to the effect that on the same set of facts, the delinquent shall not be proceeded in a departmental proceeding and in a criminal proceeding simultaneously has been deviated from. It is also said that the dicta laid down by the Apex Court in *Capt. M. Paul Anthony (supra)*, though has remained unshaken but its applicability has been found to be dependent on the facts and situations obtained in each case.

8. Similarly, in the case of *Noida Entrepreneurs Assn. Vs. Noida and Others*, , the Court has reproduced the following conclusion deducible from various judgments as noticed in para 22 of the judgment in *Capt. M. Paul Anthony (supra)*, namely :

(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 involved 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, the administration may get rid of him at the earliest.

9. Similar view has also been taken in *Indian Overseas Bank, Anna Salai and Another Vs. P. Ganesan and Others*, and the Court held, where a prayer is made that so long as criminal proceedings are going on, departmental proceeding may not be proceeded, the Court must record a finding that non-grant of stay on departmental proceeding would not only prejudice the delinquent officer, but the matter also involve a complicated question of law. Nothing of that sort has been shown by the learned counsel for the petitioner in the case in hand.

10. This Court is not making any comment on the correctness of the allegations against the petitioner but, suffice it to mention that, at this stage the Court has to proceed as if allegations are true. A bare reading of the allegations show its seriousness. The petitioner is a Head-master in a primary school and is going to attain age of retirement, i.e., 62 years just within two days. If such serious allegations have been levelled against him and if it is true, there could not be anything more shocking and disturbing than this one. With regard to conduct and moral expected from the teachers and that too of a primary school, this Court in *Civil Misc. Writ Petition No. 50316 of 2003 Sri Sanjay Kumar Dwivedi Vs. State of U.P., Basic Shiksha Adhikari and C/M Pandit Nehru Madhyamik Vidyalay*, decided on 18.1.2007, has held as under :

The Court is conscious of the fact that a teacher in Indian society has been elevated as "God" namely (sic) A teacher creates knowledge, learning, wisdom and equip the students, girls or the boys with ability, knowledge, discipline and intellect to enable them to face the challenges of their life. He is preserver of learning and destroys ignorance. Therefore, as a member of noble teaching profession he should be a role model and either individually or collectively as a community of teachers should regenerate dedication with the bend of spiritualism in broader perspective to establish quality, competence, character and capacity of the students for successful working of democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities. Without a dedicated and disciplined teacher even the best education system is bound to fail. Therefore, it is the duty of teacher to take care of pupils as a careful parent would take of its children. In Indian society education amongst girls even after independence is wanton due to various factors including rural culture and other factors. Education to the girls children is national asset and foundation of fertile human resources and disciplined family management apart from their equal -participation in socio-economic and political democracy. Of late people have realized and started sending their girl children to coeducational institutions under the care of proper management to look after the welfare and safety of the girls. Therefore, greater responsibility is thrust on the

management of the school and college to protect young children in particular the chastity of girls bringing them up in discipline and dedicated pursuit of excellence and to protect them from all kinds of evils in the institution as well as outside. The teachers who are kept in-charge bear higher responsibilities and should be more careful. His character and conduct should be alike Rishi and as loco parentis. It goes thus without saying where a teacher fails to maintain such high standard is not befitted to his status.

11. In the absence of any legal or otherwise error pointed out by learned counsel for the petitioner in the impugned order of suspension, I have no reason to interfere therewith at this stage. However, it is made clear that the observation, if any, made herein shall not be construed as an expression of opinion on merits and the matter with respect whereto departmental enquiry is contemplated against the petitioner, the competent authority shall proceed in the matter independently.

12. With the above observation, the writ petition is dismissed.