
(2013) 04 P&H CK 0199
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7079 of 2013

Garib Dass

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Citation : (2013) 2 PLR 792

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—Petitioners have approached this Court praying for quashing of the details of allegations issued to them, copies of which have been appended as Annexures P-10 to P-17, charge-sheet (Annexures P-23 to P-30) and the subsequent proceedings arising therefrom on the ground that the incident is common, out of which the allegations have been culled out for which criminal cases have also been registered which are pending trial. Prayer has also been made for staying the departmental proceedings during the pendency of the criminal trial. Counsel for the petitioners contends that it came to light that some of the employees of District Police Office, S.B.S. Nagar, Accounts Branch, in connivance with the Treasury Officer, S.B.S. Nagar, had embezzled crores of rupees from the General Provident Fund of the police officials. The case is of a very serious nature. The Deputy Superintendent of Police, Sub Division, Nawanshahr was directed by the Sr. Superintendent of Police, to conduct preliminary investigation in this case so that the truth may come to light and the detailed report be submitted to him regarding the officials and employees involved in the case. It was also ordered that if any embezzlement is found to have been committed, the period thereof be also highlighted therein.

2. On an enquiry conducted by the Deputy Superintendent of Police (D), S.B.S. Nagar, it came to light that Head Constable Satwinder Kumar, Head Constable Tirath Singh, Head Constable Gurdeep Singh, Head Constable Lal Chand-

petitioner No. 3 (Cashier), who were deputed in District Jalandhar, in connivance with the employees of the Treasury Office, Nawanshahr, under a planned conspiracy, by forging numbers and names of the police officers withdrew the amount of General Provident Fund under these names and numbers, prepared forged document and put forged signatures of the concerned Authority on these forged documents, took these forged bills to the Treasury Office by hand. One Narinder Kumar Babbar, employee of the Treasury Office used to issue cheque in respect of these bills and handed over the same to them which were got encashed by these police officials from the State Bank of India, Nawanshahr and they distributed the amount withdrawn amongst themselves. Thereafter, S.I. Garib Dass (petitioner No. 1), Head Constable Charanjit Ram (petitioner No. 3), Head Constable Kamal Kumar (petitioner No. 2) came to know about this embezzlement and they also joined the earlier mentioned police officials and started getting share of the embezzled money. In this way, an amount of Rs. 1,40,74,350/- was withdrawn from the Treasury. But later on, when these employees came to know that the fraud has come to the notice of the Department, they collected the amount and deposited it back in the State Bank of India. This amount relates to the period for the years 2006 to 2009. On the basis of this enquiry report, FIR No. 31 (Annexure P-6) dated 7.5.2012 Police Station City S.B.S. Nagar, stands registered. Another FIR No. 56 (Annexure P-7) dated 22.6.2012 stands registered in Police Station City S.B.S. Nagar against the petitioners and others, according to which the amount involved in the fraud is Rs. 9,75,00,000/-. The allegations against the petitioners by and large are the same as in FIR No. 31. On the basis of these FIRs, petitioners were placed under suspension. After investigation, the challans, copies of which have been appended as Annexures P-8 and P-9, stand submitted in the Competent Court. Without waiting for the outcome of the criminal case, a list of allegations along with the list of witnesses has been served upon the petitioners, copies of which have been appended as Annexures P-10 to P-17, which reveals that the charges are with regard to the same incident and the witnesses are also almost the same. The witnesses in the departmental proceedings are also witnesses in the criminal case; rather there are much more witnesses to be examined in the criminal Court than in the departmental proceedings and further evidential circumstances are also the same. Charge-sheets have also been issued to the petitioners, copies of which have been appended as (Annexures P-23 to P-30), where again the charges and the basis for the charges are the same. On the basis of these factual assertions, counsel for the petitioners submits that the departmental enquiry should be stayed by the respondents till the conclusion of the criminal trial as the petitioners would be prejudiced in the criminal case, which is pending against them, by disclosing their defence in the departmental enquiry, which is continuing against them. He contends that the disciplinary proceedings continuing against the petitioners deserve to be kept in abeyance till the conclusion of the criminal trial and in support of this contention, he places reliance upon the judgments passed by the Hon'ble Supreme Court in the cases of Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, , Capt. M. Paul

Anthony Vs. Bharat Gold Mines Ltd. and Another, and G.M. Tank Vs. State of Gujarat and Another, .

3. His further contention is that in the enquiry proceedings, petitioners are not being supplied the statements of the witnesses which are recorded because of which they are unable to effectively cross-examine the witnesses produced by the Department in the enquiry proceedings. The Inquiry Officer is in great haste and the way he is proceeding in the enquiry, it appears that he has already made up his mind to give a finding against the petitioners. Ample opportunities are not being given to the petitioners, thus, violating the principles of natural justice which is not sustainable. In support of this contention, reliance has been placed upon the judgments passed by the Supreme Court in the cases of Union of India (UOI) and Others Vs. Naman Singh Sekhawat, and State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan, AIR 1961 Supreme Court 1623.

4. I have considered the submissions made by the counsel for the petitioners and with his assistance have gone through the records of the case.

5. It is true that the incident out of which the criminal case has arisen as also the departmental proceedings have been initiated against is more or less same but merely because the incident is one cannot be a ground for coming to a conclusion that the petitioners would be prejudiced in case the departmental enquiry is held against them before the conclusion of the criminal trial. By now, it is well settled principle of law that merely because criminal proceedings for the same incident is pending against an employee that does not abrogate or foreclose an option for holding of departmental proceedings against those employees during the pendency of the criminal trial so as to give such an employee a free hand to continue with such misconduct in service till the conclusion of the trial in the criminal case.

6. Petitioners being members of the disciplined force are expected to act in a responsible and decent manner apart from being a role model for others in the efficiency, honesty and integrity. The allegations leveled against the petitioners do not prima facie reflect that the petitioners have conducted themselves in a manner which would behoove of police officials. Merely because the criminal proceedings are pending, would not in the considered view of this Court, make any difference as far as the holding of the departmental proceedings are concerned. Although the witnesses are alleged to be the same in both the proceedings but a close scrutiny of the challan and the allegations levelled against the petitioners would show that there are some witnesses who are common but not all. In the departmental proceedings, there are hardly seven witnesses in one set of allegations and five witnesses in other set of allegations whereas in the criminal case, there are 142 prosecution witnesses. There are some similarities in the two proceedings but that is not enough to persuade this Court to stay the departmental proceedings initiated against the petitioners.

7. It would not be out of way to mention here that the ambit and mandate as

also the approach and objective of both the criminal and departmental proceedings are different. In the disciplinary proceedings, the question is whether the delinquent employee is guilty of conduct as would merit punishment under the Service Rules whereas in the criminal proceedings the question is whether the offence registered against him, if established, what sentence should be imposed upon him. The standard of proof, mode of enquiry and the rules governing the enquiry and trial are quite distinct and different. Continuance of the departmental proceedings against the petitioners would not prejudice the right of the petitioners in the criminal case as the consequences are different and will not have an effect on each other as held by the Supreme Court in the case of *Kendriya Vidyalaya Sangathan and Others Vs. T. Srinivas, and NOIDA Entrepreneurs Association v. NOIDA and others*, 2007 (2) R.S.J. 504 where most of the judgments which had been relied upon by the counsel for the petitioners were duly considered and explained.

8. Even in the judgments which have been relied upon by the counsel for the petitioners, it has been held that there cannot be any hard and fast rule with regard to the applicability of the principle of staying the departmental proceedings whenever a criminal case is alleged against an employee which relate to the same incident or is a fall out thereof. What has been held is that it is for the competent authority to consider staying the departmental proceedings during the pendency of the criminal trial and thereafter for the competent Court whether such a step would be required keeping in view the prejudice, if any, to be caused to the concerned employee.

9. This Court is refraining itself from going into the details of the factual gamut of the matter and expressing its opinion on merits of the case, lest the interest of the petitioners is prejudiced in any manner, suffice it to say that this Court is not convinced that present is a case where the interest of the petitioners would be prejudiced in the criminal case, in case the departmental proceedings are allowed to continue against the petitioners simultaneously. In view of the above, finding no merit in the present writ petition, the same stands dismissed.