
(2009) 12 MP CK 0014

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10439 of 2007

Gulab Chandra Vishwakarma

APPELLANT

Vs

South Eastern Coalfields Ltd. and Others

RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Penal Code, 1860 (IPC) — Section 420, 467, 468

Citation : (2010) ILR (MP) 413 : (2010) 2 MPHT 324

Hon'ble Judges : S.C. Sinho, J;Arun Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arun Mishra, J.—Writ petition has been filed as against an order passed by the trial Court which has been affirmed by the appellate Court refusing to grant injunction restraining the departmental enquiry during pendency of the criminal case.

2. Plaintiff/Petitioner has filed the suit. It is averred that he was employed as Senior Clerk, his duty was to clear the medical bills. On enquiry, it was found that payment was cleared of medical bills of 600 persons without following the due process. Fraud was played intentionally and financial loss was caused to the employer. The act amounted to gross indiscipline and misconduct. Earlier Petitioner had travelled to this Court seeking decision on the question whether departmental enquiry could have been proceeded during pendency of criminal case under Sections 420, 467, 468 IPC registered at Crime No. 105/05. The prayer was rejected by the department hence in civil suit which has been filed interim injunction was prayed on the ground that the charges relate to the same matter in both the cases. Application was resisted by the employer on the ground that High Court has also not passed any order staying the departmental enquiry, direction was given only to consider the prayer. Scope of criminal proceeding as well as that of departmental enquiry was different. The trial Court vide Order

dated 6.3.07 held that no prima facie case was made out so as to stay the departmental enquiry. Order has been affirmed by the appellate Court vide Order dated 16.7.07, hence this writ petition has been preferred.

3. Shri K.C. Ghildiyal, learned Counsel appearing for Petitioner has submitted that considering the facts and circumstances of the case during pendency of the criminal case, the departmental enquiry ought to have been stayed. However, he has conceded that except framing of the charges, nothing has happened in the criminal case so far, evidence has not yet commenced, whereas in departmental enquiry three witnesses have been examined. Learned Counsel has prayed for staying of the departmental enquiry during pendency of the criminal case as Petitioner's case may be prejudiced in case he discloses the defence.

4. Shri A. Nair, learned Counsel appearing for Respondents has supported the orders.

5. After hearing learned Counsel for the parties, for various reasons, we are not inclined to stay departmental enquiry due to pendency of the criminal case, firstly the scope of departmental enquiry is different than the criminal case, purpose of the departmental enquiry is also different. Criminal case is not going to come to an end for more than a decade, nothing has happened so far, evidence has not yet been recorded.

6. The Apex Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, has culled out the principles by which the Courts are to be governed in the matter of grant of stay of departmental proceeding. It has been observed that proceedings in a criminal case and departmental proceedings can go on simultaneously as there is no bar in their being conducted simultaneously, though separately. Only if there are complicated questions of law and facts, it may be desirable to stay the departmental proceedings. However, said factor cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that that departmental proceedings cannot be unduly delayed, the departmental proceedings, even if they were stayed on account of pendency of 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. In the instant case, the Petitioner has reached to the verge of superannuation and the criminal case may not come to an end for about a decade. Departmental enquiry cannot be kept pending in such circumstances till eternity Both the Courts below have exercised the discretion in not granting the injunction. There is no jurisdictional error in the orders. Both the Courts below have rightly found no prima facie case in favour of Petitioner. It is not invariable rule to stay the departmental enquiry. Scope of interference in the discretionary orders passed under Order 39 Rule 1-2 Code of CPC in writ jurisdiction is narrow.

7. In G.M. Tank Vs. State of Gujarat and Another, there was acquittal in criminal

trial, departmental enquiry and criminal proceedings were based on same set of facts, charges, evidence and witnesses. No evidence against the employee to hold him guilty was adduced, employee was honourably acquitted in the criminal trial during pendency of proceedings challenging dismissal, finding to the contrary recorded in departmental enquiry was set aside. This stage has not reached in the instant case so far. Case cannot be taken to be an authority that during pendency of criminal case departmental enquiry should be stayed.

8. The Apex Court in *Indian Overseas Bank, Annasalai and Anr. v. P. Ganesan and Ors.* (2008) 1 SCC 650 observed that there is no rule of automatic stay of departmental enquiry during pendency of criminal proceedings. Only where complicated question of law and facts were involved, discretion may be exercised. In the instant case, it is not shown by the Petitioner's Counsel that complicated question of law and facts are involved in the instant case Charge has already been framed. The employee has disclosed his defence by refuting the charge in toto. Thus, in our opinion no prejudice is going to be caused while conducting the departmental enquiry.

9. Resultantly, we find no merits in the petition, same is hereby dismissed. No costs.