
(1998) 02 PAT CK 0047

In the Patna High Court

Case No : Civil Revision No. 504 of 1996 (R)

Hindustan Steel Works Construction, Ltd.

APPELLANT

Vs

Sundar Radha kishan Bhatia

RESPONDENT

Date of Decision : 04-02-1998

Acts Referred:

Citation : (1998) 1 BLJR 609 : (1998) 2 PLJR 1

Hon'ble Judges : Loknath Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Loknath Prasad, J.—This revision is directed against the order dated 5.8.96 passed by Addl. District Judge, Bokaro at Chas in M.A. No. 17/89 thereby and thereunder the temporary injunction granted by the Munsif, Chas in T.S. No. 100/88 was confirmed and it was directed that the defendant of the suit including their men, agent and officers shall not proceed with the departmental proceedings as against the plaintiff Opp-party till the disposal of the criminal case i.e. R.C. Case No. 4/87.

2. The fact in short for the purpose of this application is that opposite party was working under the petitioner which is a Corporate body of the Govt. of India and his services were deputed to another Govt. Company known as British Corporation Ltd. and after termination of lien the Opp-party plaintiff reverted to the petitioner's Company. The allegation in short that the plaintiff Opp-party forged some letters of the company and on that basis had drawn excess salary and other allowances. So a criminal case was also instituted bearing R.C. Case No. 4/87 being investigated by the C.B.I. and also a departmental proceeding was initiated in which the petitioner was noticed and he has prayed that the departmental proceeding may be stayed till the disposal of the criminal case. When it was not allowed aforesaid Title suit was filed with similar prayer and the Munsif at Chas granted injunction restraining the defendant-petitioner from proceeding with the departmental proceeding till the disposal of the criminal

case. Being aggrieved by this order this revision had been filed by the petitioner, the employer of the O.P.

3. So admittedly there is a criminal case as against the petitioner and also a departmental proceeding with an allegation that the petitioner forged some letters and had drawn excess amount as salary and other allowance which amounted to misconduct under the service rule of the Company and also amounts criminal liability. The contention of the O.P. as submitted by the learned Counsel, that the order of the Court below is perfectly justified for the reason that if the departmental proceeding will continue the O.P. will be put to prejudice in disclosing his defence. In that view of the matter, primacy should be of the criminal case and not of the departmental proceeding. At the very out set this much can be said that criminal case and a departmental proceeding are on different status. The criminal case is regarding any criminal action which requires proof to a higher degree and the main question for consideration in a criminal case is if the delect officer has violated any penal provision. There may be situation that negligence may be of not to that standard and degree which can be said to be a criminal negligence. But certainly those negligences can under the purview of misconduct under the rules to be framed by the employer. In a departmental proceeding the only question for consideration is if the delect officer violated some provisions of the Rules which amount to misconduct and he is to be suitably dealt and whether his service is required by the employer in the interest of the service. In that view of the matter, departmental proceeding and criminal case are totally on different footing.

4. Moreover continuation of departmental proceeding will certainly not cause any prejudice because in a criminal case the prosecution is required to proceed and to prove the entire criminality of the delect officer independently. In such a situation staying of the departmental proceeding till the disposal of the criminal case is certainly unwarranted and not even in the interest of the plaintiff-opposite party because if the departmental proceeding will terminate then in that situation there is chance that the criminal prosecution may also terminate. So in my view, both the Courts below erred in restraining the petitioner defendant in proceeding with the departmental proceeding till the disposal of the criminal case. The Supreme Court also expressed similar view in a case reported in JT 1996 (7) SC 433 State of Rajasthan v. B.K. Mina and Ors. and it was held that staying the departmental proceeding pending criminal case is neither advisable nor desirable and an employer is not expected to wait indefinitely for the result of the criminal case because the standard of proof, mode of enquiry and the rules governing the departmental enquiry and the criminal trial are entire distinct and different and such stay should not be a matter of course but a considered position. In such a situation the order of the learned appellate Court or even the trial Court in granting injunction is definitely unsustainable either in law or in fact as no prima facie case for staying departmental proceeding is made out and the balance of convenience is also against restraining the employer from proceeding with the departmental proceeding.

5. So in my opinion, this case is fit to be allowed and the order is liable to be quashed and the departmental proceeding will proceed independently that of the criminal case. However, the learned Counsel for the opposite party submitted that the petitioner is at present posted at Bokaro and departmental proceeding is pending at Bangalore which will definitely cause inconvenience to the opposite party in defending his case. Learned Counsel for the petitioner readily agreed and gave an oral undertaking that departmental proceeding will proceed at Bokaro itself and necessary conducting officer and presenting officer will be appointed in due course.

6. In view of the undertaking also given by the petitioner's Advocate this revision is allowed and the order dated 5.8.96 passed by Addl. District Judge, Bokaro at Chas passed in M.A. No. 17/89 is set aside. Consequently order of the Munsif Cass dated 17.1.1989 passed in T.S. No. 100/88 is also set aside.