(2015) 04 MP CK 0145

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 426 of 2013

J. Srinivasan APPELLANT

Vs

National Thermal Power Costruction Ltd. and Others RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)
Penal Code, 1860 (IPC) — Section 409, 420, 463, 466, 467

Citation : (2015) 04 MP CK 0145

Hon'ble Judges : Rajendra Menon, J;S.K. Gangele, J

Bench : Division Bench

Advocate : N.S. Ruprah, Learned Counsel, for the Appellant; Rajendra Tiwari, Senior Advocate, R.C. Shrivastava and T.K. Khadka, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Seeking exception to an order dated 16-04-2013, passed by the writ court in W.P. No. 5906/2013), dismissing the writ petition filed by the appellant in the matter of staying departmental inquiry on account of pendency of criminal case, this writ appeal has been filed under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005.

2. The appellant herein is under suspension and is Senior Manager (Finance) in the National Thermal Power Corporation Ltd. It is alleged that while working as Manager (Finance) in NTPC Vindhyachal, District Singrauli, on 25-06-2011, he was placed under suspension with immediate effect. Pending inquiry into certain matter of financial irregularities said to have been committed by him while working in Vindhyachal, District Singrauli, a charge sheet was issued to him with regard to certain acts of commission and omission said to have been committed by him vide Annexure R-1 on 21-05-2012. In the statement of articles of charges, it was alleged that while working as Manager (Finance) in the

establishment section of NTPC Vindhyachal, District Singrauli, during the period 2007 to 2011, the appellant dealt with salary payment, disbursement of loans/ advances, official payments, LTC payments P.F. withdrawal etc. and by abusing his official position, he dishonestly manipulated the systems with the ulterior motive and committed defalcation on various counts, totaling to a sum of Rs. 64,94,983/-, accordingly a charge sheet was served upon him, while on suspension the departmental inquiry was contemplated. Simultaneously for the same offence, a FIR was lodged and investigation was conducted and in S.T.. No. 137/2011, which is pending in the Court of Additional District Sessions Judge, Singrauli, criminal charges have been framed against him under sections 409, 420, 467, 468, 470 and 471 of IPC. In the writ petition it was the case of the petitioner that the allegations leveled in the criminal case and in the charge sheet are identical in nature and as both the criminal case and the charge sheet cannot be proceeded together the petition was filed praying for the following reliefs :

"7(i) to quash the charge sheet Annexure P-1.

(ii) to quash the suspension order Annexure P-2 as void ab initio and order the reinstatement of the petitioner with all consequential benefits including arrears of pay and interest thereupon at the rate of 18% p.a.

(iii) This Hon''ble Court be pleased to pass such other orders as it may deem fit under the circumstances of the case.

However, prayer was made by way of interim relief to stay the departmental proceedings during the pendency of the criminal case. The writ court found that the criminal case can proceed simultaneously with the departmental inquiry and after placing reliance on the various judgments namely Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., (1996) 9 AD 651 : AIR 1997 SC 2232 : (1997) 2 LLJ 902 : (1996) 9 SCALE 65 : (1997) 2 SCC 699 : (1997) SCC(L&S) 548 : (1996) 8 SCR 941 Supp : (1997) 1 SLJ 241 : (1997) AIRSCW 2098 : (1997) 1 Supreme 565 and Indian Overseas Bank, Anna Salai and Another Vs. P. Ganesan and Others, AIR 2008 SC 553 : (2008) 2 CLT 597 : (2007) 5 CTC 632 : (2008) 116 FLR 494 : (2007) 13 JT 118 : (2008) 1 LLJ 502 : (2007) 3 SCALE 446 : (2008) 1 SCC(L&S) 275 : (2007) 12 SCR 474 dismissed the writ petition and therefore, this writ appeal.

3. Shri N.S. Ruprah, learned counsel appearing for the petitioner relied upon the material and documents available on record particularly the charges framed in the criminal case, the allegations as made out in the first information report, the allegations leveled in the charge sheet and submitted that the criminal case and the departmental inquiry in the facts and circumstances of the case cannot go together. it was his contention that the allegations leveled in the criminal case and the departmental inquiry are identical in nature and same set of evidence is to be relied in both the cases and as the question involved in the criminal case are complicated question of law and facts proceeded with the departmental

inquiry, which should not only be quashed but departmental inquiry should be stayed till the disposal of the criminal case. He further made a prayer that to harass the petitioner criminal case and the departmental inquiry are conducted on the same date thereby denying opportunity to the appellant to particulate in the departmental inquiry. He further argues that subsistence allowance in accordance to rule is not paid and as departmental inquiry is being delayed, he is entitled to enhance subsistence allowance to 75%. Shri Ruprah, learned counsel for the appellant took us through the allegations made in the charge sheet which forms the basis for departmental inquiry, the allegations leveled in the criminal case and tried to indicate that both arise out the same set of facts and circumstances in both the cases. The allegations are with regard to defalcation of Rs. 64,94,983/- and in view of the law laid down in the case of Stanzen Toyotetsu India P. Ltd. Vs. Girish V. and Others, AIR 2014 SC 989 : (2014) AIRSCW 895 : (2014) 2 JT 462 : (2014) 1 LLJ 702 : (2014) 1 SCALE 506 : (2014) 3 SCC 636 : (2014) 1 SCC(L&S) 641 and Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, AIR 1999 SC 1416 : (1999) 2 CTC 579 : (1999) 82 FLR 627 : (1999) 2 JT 456 : (1999) 1 LLJ 1094 : (1999) 2 SCALE 363 : (1999) 3 SCC 679 : (1999) SCC(L&S) 810 : (1999) 2 SCR 257 : (1999) AIRSCW 1098 : (1999) 3 Supreme 376 , the proceeding in the departmental inquiry is liable to be stayed. By referring to the law laid down in the aforesaid cases, Shri Ruprah argued that all the ingredients necessary for staying the departmental inquiry i.e. complicity of facts and law in the case, both proceedings being based on the same set of facts, evidence and other material being same and non payment of subsistence allowance departmental inquiry is liable to be stayed. He took us through the judgment relied upon as detailed hereinabove to makes out a case in support of this contention.

4. On the other hand Shri Rajendra Tiwari, Senior Counsel assisted by Shri R.C. Shrivastava, Advocate emphasized that it is well settled principle of law that in both the criminal and departmental cases inquiry can progress together there is no legal bar to hold the departmental proceedings and the criminal trial simultaneously. It is indicated by them that the fact of each case has to be evaluated and based on the same the question and factum of advisable, desirable or appropriate for both cases to proceed simultaneously has to be decided. Shri Rajendra Tiwari, learned Senior Counsel emphasized that merely because the proceedings in the criminal case and the departmental inquiry arise out of the same incident that does not mean that the departmental inquiry should be stayed. He tried to demonstrate before us by taking us through the charges framed in the departmental inquiry filed as Annexure R-1 to say that the allegations in the charge sheet pertain to various serious misconduct committed by the appellant in the discharging of his duties as Senior Manager(Finance). It is pointed out that on various occasions between 2007 to 2011, he committed defalcation in the matter of payment of and disbursement of loans/advances, official payments, LTC payments P.F. withdrawal etc. and caused undue loss to the department. It is said that in doing so, he acted with dishonor and committed

dereliction of duties, misused the trust truest imposed upon by the employer and by misusing his position as Senior Manager(Finance) committed the service misconduct and for this he is being proceeded against departmentally. However in the light of the criminal intent behind committed these defalcation and as that amount to criminal offence, he is being proceeded again in the criminal case because. It is said that the requirement of law, proof, evidence and various other factors including burden of proof etc. in criminal case and the departmental inquiry are different and by relying upon the same judgment as referred by Shri N.S. Ruprah, and further taking us through the judgment referred to by the learned Single Judge in his order, Shri Rajendra Tiwari, learned Senior Counsel tried to emphasize that there is no complicity of law and fact, the evidence and witnesses in the departmental inquiry and the criminal case are different, he pointed out that in the departmental inquiry, Management is proposing to examine 26 witnesses and out of these 26 witnesses only 3 witnesses are common who are to be examined in the criminal case. He took us the list of witnesses to be examined in the departmental inquiry as is indicated in the charge sheet, list of witnesses proposed to be examined in the criminal case and argued that the witnesses are entirely different. The documents relied upon in the criminal case as made out from the challan available in the record of writ petition Annexure P-3-A was also referred to by Shri Tiwari to say that even the documents are different. Accordingly he submits that the ingredients necessary for staying the department inquiry in the light of the law laid down by the Supreme Court in the cases referred to by Shri N.S. Ruprah, learned counsel for the appellant are not made out. That apart he invited our attention to a latest judgment of the Supreme Court in the case of State of West Bengal and Others Vs. Sankar Ghosh, (2013) 12 AD 599 : AIR 2014 SC 405 : (2014) 140 FLR 525 : (2013) 15 JT 360 : (2014) LabIC 1579 : (2014) 2 LLN 331 : (2014) LLR 319 : (2013) 14 SCALE 245 : (2014) 3 SCC 610 : (2014) 1 SCC(L&S) 619 : (2014) 3 SCJ 77 : (2014) 1 SCT 580 : (2014) 1 SLJ 273 , to say that no case is made out for staying the departmental inquiry. As far as holding of the departmental inquiry on the same date as the criminal case is concerned, Shri Tiwari, learned Senior Counsel argued that such an error was committed by the respondent only once but now the respondents will take care and ensure that the departmental inquiry and the criminal case are not held on the same date and fair opportunity of hearing in the departmental inquiry shall be granted to the appellant. It was also submitted by Shri Tiwari, learned Senior Counsel that all subsistence allowance as per law shall be granted to the appellant. The appellant himself is delaying the departmental inquiry and therefore, he cannot claim enhanced subsistence allowance. However, Shri Tiwari assures this court that subsistence allowance as per law shall be considered and decision taken.

5. We have heard learned counsel for the parties and we have gone through the principle of law applicable in the matter of simultaneously proceeding with the departmental enquiry and criminal case. If the principle laid down in this regard are analyzed, we find that there is no legal bar if both the departmental enquiry

and criminal case proceed simultaneously. The only ground on the basis of which the departmental proceedings may be stayed because of pendency of criminal case is to ensure that the defence of the employee in the criminal case is not prejudiced and even such a defence or a ground is available if question involved in the criminal case consists of complex question of fact and law, otherwise even this ground is not available.

6. The prayer for staying the departmental enquiry should not be permitted to unnecessarily delay the departmental proceeding. It is held by the Supreme Court in various cases particularly in the case of Girish V. (supra) that it is in the interest of both the delinquent employee and employer to presumably conclude the departmental proceedings at an earlier date. It has been held and the law is to the effect that the proceedings in the departmental enquiry can be stayed only if in both the set of cases i.e., in the criminal case and in the departmental proceedings the facts and evidence are common and identical in nature, this is the well settled principle of law governing holding of criminal case and departmental proceedings simultaneously and in the recent judgment Hon''ble the Supreme Court in the case of Girish V (supra) and after taking note of the principles of law in para 16 wherein law has been crystalized in the following manner :-

"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."

7. That apart in the judgment of Supreme Court in the case of State of West Bengal (supra) the Hon''ble Supreme Court has held that even after acquittal in the criminal case the departmental proceedings can go on.

8. In the case of Capt.M.Paul Anthony (supra) relied upon by Shri N.S. Ruprah, learned counsel for appellant, the same principle is laid down, but in that case it was found that the same witnesses who were examined in the criminal case are examined in the departmental enquiry and same set of documents are to be adduced in both the cases. Another peculiar fact in the case of Capt.M.Paul Anthony (supra) was that the employee had to undergo the agony of 14 years

and despite having been acquitted in the criminal case on the same set of evidence, he was proceeded in the departmental enquiry. We may indicate that the factual aspects of the case of Capt.M.Paul Anthony (supra) is not existing in the present case.

9. However we may now proceed to examine the facts of the present case to see whether the principle laid down by the Hon''ble Supreme Court in the case of Girish V (supra) are existing in the present case, so as to warrant stay of departmental enquiry. It is a common ground that in the departmental enquiry the appellant has not till date accepted the chargesheet, he has not received the chargesheet, he has not submitted his explanation to the chargesheet and even after receiving notice of the departmental enquiry he has not appeared instead he has prayed for quashing of the chargesheet. If the allegations levelled in the chargesheet are taken note of, it would be seen that while the appellant was working as Deputy Manager (Finance) in the establishment of NTPC, Vindhyachal during 2007 to 2011 he was dealing with payment of salary to the employees, disbursement of loan and various advances of LTC payment, provident fund withdrawal and various other payment to employees. It was found that by abusing his official position and showing total disregard to the official notifications and guidelines, he manipulated the system to his own advantage, misused the authorization through various transactions and made fraudulent payment and unauthorized transactions. In the matter of grant of loan to various employees withdrawal of LTC for himself, committed various financial irregularities in the matter of making payment to various agencies, because of which chargesheet has been issued to him and about 52 instances of irregularity committed has been indicated in the chargesheet. In the annexures to the chargesheet a list of 26 witnesses and 7 set of documents have been indicated in Annexure A-3 and Annexure A- 4 respectively. The documents are mainly the bank accounts of the appellant and various other beneficiaries in whose accounts the amount was credited and certain report of Finance Department. The witness are officers of Finance Department. As far as criminal case is concerned even though the financial transaction as indicated in the chargesheet are the same, but the documents and witnesses in the criminal case are entirely different. In the challan filed under section 173 of Cr.P.C., alongwith the final report Annexure P-3-A of the writ petition, it is seen that the list of documents consists of about 59 documents, on the basis of which prosecution has alleged and list of witnesses consists of 9 witnesses. If the list of witnesses to be examined in the criminal case and departmental enquiry is analyzed, except for 3 witnesses the witness in the departmental enquiry and criminal case are totally different. The common witnesses are only Shri K.V. Prasad, Additional General Manager (Finance) who filed the FIR. Shri Sameer Kumar Bhattacharya and Nagendra Kumar Mishra, Manager (Finance) NTPC Vindhyachal. In the chargesheet Nagendra Kumar Mishra is shown as witness with regard to merit of transaction, but in the criminal case he is witness to the seizure of documents. It is therefore clear from the material available on record that the witness to be examined in

the departmental enquiry and criminal case are different. The documents are also different. That apart the charges framed by the Sessions Court as seen from Annexure R-6 pertains to various criminal acts of the appellant in committing the irregularity in the transaction by manipulating the system and therefore amounting to offence punishable under section 409, 420, 463 and 466 of IPC respectively.

10. We have analyzed the entire matter and we find that except that the incident in question are identical in nature, the nature of enquiry and criminal trial are entirely different. That apart in the criminal case out of 9 witnesses indicated according to appellant''s own showing only 4 witnesses are examined and now only the investigation officers and other police officer who have prepared the seizure memo and written the FIR are to be examined. That apart we find that the question involved in the criminal case and departmental enquiry do not involve any complex question of law and fact. In fact the enquiry is with regard to simple transaction undertaken by the appellant in the matter of payment of LTC to himself and disbursement of loan and other facilities to certain other persons. The transactions are based on factual matters produced from system mainly the computer system from which the transaction has been done, withdrawn of the amount and its deposit in various accounts. That apart criminal case has progressed and according to the appellant''s own showing, we find that this is not a case where the ingredients necessary for staying the departmental enquiry is made out in the facts and circumstances of the case. That apart if the prayer made in the writ petition as reproduced hereinabove is taken note of appellant has prayed for quashing of chargesheet and stay of departmental enquiry as interim relief. When serious allegations are levelled in the chargesheet and when allegations levelled in the chargesheet do constitute act which can be termed as misconduct in discharging of an employee and when the act of the employee unbecomes an act of the employee, departmental enquiry is necessary. Looking to the quantum and nature of financial implication, it is not appropriate to quash the chargesheet without an enquiry. In the totality of facts and circumstances we see no reason to interfere in the matter. It is not a case where the question involved and material available show that the departmental enquiry should be stayed.

11. Accordingly we see no reason to interfere in the proceedings and quashing the chargesheet and see that the learned writ court has not committed any error in dismissing the writ petition.

12. As far as departmental enquiry and criminal case should not be held on the same day is concerned, Shri Rajendra Tiwari, learned Senior Advocate appearing on behalf of respondents has already assured us that this will not be done and we assure that the departmental authority will ensure that there is sufficient time gap in holding departmental enquiry and on the date on which criminal case are held.

13. As far as the payment of subsistence allowance and enhancement of

subsistence allowance, we find that no prayer was made in the writ petition for such relief and even such a question was not raised before the writ Court. As the claim for payment of subsistence or enhancement of subsistence allowance was not a subject matter of the writ Court, we see no reason to go into the question now. However we grant liberty to the appellant to raise any claim before the departmental authority in case he has grievance with regard to the payment of subsistence allowance or enhancement of subsistence allowance and we are hopeful that the competent authority shall look into the matter and take a decision in accordance with law.

14. With the aforesaid observation we find no reason to interfere in the matter. The appeal is therefore dismissed.

