

(2009) 02 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7274 of 2008

K. Muthili Rani

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173
Hindustan Petroleum Management Employees (Conduct, Discipline and Appeal) Rules, 1976 — Rule 13(1)
Prevention of Corruption Act, 1988 — Section 13(1)

Citation : (2009) 4 ALD 477 : (2009) 5 ALT 435

Hon'ble Judges : Sanjay Kumar, J; Ghulam Mohammed, J

Bench : Division Bench

Advocate : J.R. Manohar Rao, for the Appellant; B. Narasimha Sarma, SC for Income Tax, for the Respondent

Judgement

Ghulam Mohammed, J.—This writ petition is filed seeking a writ of certiorari to quash the order dated 17.12.2007 passed in O.A.No.1106 of 2004 by the Andhra Pradesh Administrative Tribunal, Hyderabad and to direct the respondents not to proceed with the disciplinary proceedings initiated against the petitioner vide charge memo dated 19.04.2004 issued by the second respondent till conclusion of the criminal proceedings in C.C. No. 12 of 2004 on the file of the Special Court for CBI Cases, Hyderabad.

2. The petitioner, while working as Commissioner of Income Tax at Hyderabad, was suspended from service for having found in possession of assets and pecuniary resources disproportionate to her known sources of income, and a charge memo dated 19.04.2004 was issued to her. The Central Bureau of Investigation (hereinafter referred to as "CBI") also filed a case against her u/s 173 Cr.P.C. and u/s 13(1)(e) of Prevention of Corruption Act, 1988 and the same was registered as C.C. No. 12 of 2004. Thereafter, the petitioner filed representations dated 12.05.2004 and 28.07.2004 requesting the second respondent to keep the departmental proceedings in abeyance till disposal of said

criminal case and for supply of copies of the documents relied upon in the charge sheet, but without passing any orders on the said representations, disciplinary proceedings were initiated and an Inquiry Officer was appointed by the second respondent, vide order dated 24.09.2004, and the date of hearing of the preliminary enquiry was fixed as 01.11.2004. Therefore, the petitioner filed O.A. No. 1106 of 2004 seeking a direction to the respondents to keep in abeyance the disciplinary proceedings initiated by the second respondent vide charge memo dated 19.04.2004 till conclusion of the criminal proceedings in C.C. No. 12 of 2004, but the said O.A. was dismissed, vide order dated 17.12.2007. Aggrieved by the same, she filed the present writ petition.

3. The second respondent filed counter-affidavit stating that as the criminal case filed against the petitioner is pending disposal from the year 2004, now, seeking stay of the disciplinary proceedings till conclusion of the said criminal case is untenable. It is stated that the disciplinary proceedings, which were initiated against the petitioner in the year 2004, are required to be concluded expeditiously in the administrative interest of the department, more so when the scope of disciplinary proceedings in view of Article 2 of the Charges being different from the subject matter of criminal case pending against her. It is further stated that in view of the interim stay granted by this Court, undue delay and prejudice is causing to the departmental proceedings.

4. Learned Counsel for the petitioner vehemently contended that when the oral and documentary evidence relied upon by the respondents in C.C.No.12 of 2004 and the departmental proceedings initiated vide charge memo dated 19.04.2004 are similar and identical, it is not desirable to proceed with the disciplinary proceedings. He further contended that the respondents have not supplied with the documents and the statements of witnesses cited in the charge memo to the petitioner and therefore, the entire proceedings will be vitiated. He also contended that a false case has been foisted against the petitioner by adding the assets belonging to her father and husband. He has drawn the attention of this Court to the judgment in G.M. Tank Vs. State of Gujarat and Another, wherein it was held as under;

Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction in any way fettered.

5. Learned Counsel for the second respondent contended that if the disciplinary proceedings are stayed till conclusion of the criminal case, wherein about 300 witnesses have to be examined, it would cause undue delay and serious prejudice to the department. He further contended that the Tribunal has rightly dismissed the O.A. by following the judgments of the Apex Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, and State of Rajasthan Vs. B.K.

Meena and others, . He has drawn the attention of this Court by relying upon the judgment in Hindustan Petroleum Corporation Ltd. and Others Vs. Sarvesh Berry, wherein it was held as under:

Officials of the Central Bureau of Investigation (in short "CBI") raided the house of the respondent (hereinafter referred to as the "employee") on 13.03.1998 and found that he was in possession of assets disproportionate to his known sources of income and consequently a case was registered on 05.05.1998. After completion of investigation charge sheet was filed. In the meantime, departmental proceedings were initiated against the respondent and charge sheet was issued. The employee filed a writ petition before the Andhra Pradesh High Court taking the stand that departmental proceedings should be stayed till completion of the criminal case. It was specifically stated that once sanction has been granted to launch criminal prosecution nothing further warrants initiation and continuance of departmental proceedings as the issues involved in both the departmental inquiry and the criminal case are identical. The appellants filed counter-affidavit stating that the raid was conducted in the year 1998 and after completion of investigation, CBI requested appellant 1 employer to sanction prosecution on 21.12.2000 and on 19.06.2001 sanction had been accorded to prosecute the employee for the criminal charges. Though CBI had filed the charge-sheet there was no noticeable progress for four years. The employer initiated disciplinary proceedings on the ground that continuation of the employee in service of the employer corporation would not be in the public interest. Learned Single Judge dismissed the writ petition holding that there is no legal bar on departmental proceedings and criminal case continuing simultaneously even though they are based on identical or similar set of facts. Reference was made to a decision of this Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, . Matter was carried in appeal by the employee before the Division Bench of the High Court in writ appeal and by the impugned judgment the High Court held that there were three charges indicated in the charge sheet. The first related to possession of assets disproportionate to the known sources of income and the other two related to misconduct in (a) not filing correct property returns and /or (b) not filing return at all for some years as required under Rule 13(1)(c) of the Hindustan Petroleum Management Employees (Conduct, Discipline and Appeal) Rules, 1976 (in sort "the Rules"). The third charge related to failure of the respondent employee to file property returns for the years 1991-92, 1994-95, 1995-96, 1996-97 and 1997-98. The High Court stated that though charges 2 and 3 related to non-disclosure or non-submission of property returns they are relatable to the first charge relating to possession of assets disproportionate to the known sources of income. It would not be safe to permit the appellants to continue the departmental proceedings till completion of criminal case. However, an opportunity was given to take steps for early disposal.

He further relied upon the judgment of the Apex Court in Indian Overseas Bank, Annasalai v. P. Ganesan (2008) 1 SCC 650, wherein it was held as under: "Capt.

M. Paul Anthony's case (2 supra) also deserves to be noticed. This Court therein held that the departmental proceedings need not be stayed during pendency of the criminal case save and except for cogent reasons. The Court summarized its findings as under:

22. (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 involves 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.

In State of Rajasthan Vs. B.K. Meena and others, the Apex Court held as under:

...The staying of disciplinary proceedings, it is emphasized, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that "the defence of the employee in the criminal case may not be prejudiced. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, "advisability, desirability or "propriety" as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case.

6. Heard both sides and perused the material available on record.

7. From a perusal of the material on record, it is to be seen that the disciplinary proceedings initiated against the petitioner are in progress since the Inquiry Officer was appointed vide order dated 24.09.2004 and the date of hearing was fixed as 01.11.2004, whereas the criminal case filed against the petitioner is pending from the year 2004 and there has been no considerable progress even after a lapse of five years. It is a settled proposition of law that the criminal and departmental proceedings are entirely different and that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. Further, as held by the Apex Court, unless complicated questions of fact and law are involved in the matter, the question of staying the departmental proceedings does not arise. In the instant case, no such complicated questions of fact and law are involved. Since there is undue delay in conclusion of the criminal case, wherein about 300 witnesses have to be examined, the disciplinary proceedings are required to be concluded in the administrative interest of the department and they cannot be stayed. The Tribunal has rightly dismissed the O.A and we do not find any jurisdictional error in the impugned order warranting interference by this Court.

8. The Writ Petition is devoid of merit and the same is accordingly dismissed. No costs.