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**(1998) 08 J&K CK 0039**

**In the Jammu And Kashmir High Court**

**Case No : Others Writ Petition (OWP) No. 462 of 1998**

Naseema Firdous, Dr.

APPELLANT

Vs

State of J&K and Others

RESPONDENT

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**Date of Decision :** 12-08-1998

**Acts Referred:**

**Citation :** (2000) KashLJ 126 : (1999) 2 SriLJ 440 : (1999) SriLJ 440

**Hon'ble Judges :** T.S.Doabia, J

**Bench :** Single Bench

**Advocate :** M.Abdul Qayoom, J.A.Kawoosa, Advocates appearing for the Parties

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## **Judgement**

1. One day by the name of Mst Shakeelawas admitted in Lal Ded Hospital Srinagar. She was so admitted on 16.3.1998. She died on 19.3.1998.

Her husband lodged an FIR. This was to the effect that death of the wife was caused on account of negligence of Doctothers attending on his wife.

Petitioners are said to be Doctothers who were so attending.

2. The matter remained under investigation. Chief Judicial Magistrate Srinagar took cognizance of the matter. He expressed an opinion that the

police authorities are not conducting investigation properly. Certain directions were given. These are contained in the order passed by the C JM

Srinagar. This order is dated 28.7.1998.

3. The further fact which has given rise to the filing of this petition is that the respondent authorities have decided to hold a departmental inquiry with'

regard to the above incident. A preliminary inquiry was held. In this inquiry Head of the Department of Gynaecology and Obstetrics Govt. Medical

College Srinagar is said to have been associated The name of said Doctor is Dr. Bilquees Jamila. Further action is also in contemplation. It is this

step taken by the respondent authorities to proceed departmentally against the petitioners which is subject matter of challenge in this writ petition.

4. Learned counsel for the petitioners has placed reliance on the decision reported as *Kusheshwar Dubey Vs. M/S Bharat Cooking Coal Limited*,

*AIR 1988 SC 2118*, *Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan* *AIR 1960 SC 806* and *Food Corporation of India Vs. George*

*Varghere* *AIR 1991 SC 1115*. On the basis of aforementioned decisions of the Supreme Court of India, it is urged that when the matter is being

looked into by a criminal court then Departmental proceedings should not be permitted to be continued. The assertion made is that the petitioners

may have to disclose their defence and this may prejudice their case before the criminal court.

5. The question as to whether departmental proceedings are required to be stayed merely because a criminal case stands registered against the

delinquent or because cognizance has been taken by a criminal; court has been subject matter of several decisions. The preponderance of view is

that facts of each case should be taken note of and after taking into consideration the nature of the allegations appropriate decisions be taken.

6. In *Delhi cloth and General Mills Ltd. v. Kushal Bhan* *AIR 1960 SC 806*, it was laid down that principles of natural justice do not require that an

employer must await the decision of the criminal Court before initiating departmental proceedings against an employee. In para 3 of the judgment it

was observed:

It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair, but we cannot say that principles

of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee.

7. After noticing the decision by the Labour Appellate Tribunal in the case of *Shri Bimal Kanta Mukherjee V. Messrs. Newman's Printing Words*,

*1956 Lab AC 188*. it was further observed:

We may, however, add that if the case is of a grave nature or involves questions of fact or law which are not simple, it would be advisable for the

employer to await the decision of the trial court so that the defence of the employee in the criminal case may not be prejudiced.

8. In the above case i.e *Kushal Bhan* case, it was found that the allegations

made; against the employee were too simple in nature and there was no violation of principles of natural justice. The same view was reiterated by the Supreme Court in the case of *Tata Oil Mills Co. Ltd. V. The workmen* AIR 1965 SC 155. It was held that there is no general proposition that domestic enquiry must be stayed during the pendency of criminal trial. What was highlighted was that the facts of each case should be taken note of. Gajendragadkar C.J speaking for the Court observed under:

It is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court, the employer should stay the domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course where the charge against the workman is of a grave character, because in such a case it would be unfair to compel the workman to disclose the defence which he may take before the criminal court. But to say that domestic enquiries may be stayed pending criminal trial is very different from anything that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or mala fide".

9. The case reported as *Jang Bahadur Singh Vs. Baij Nath Tiwari*, AIR 1969 SC 30 deals with the somewhat similar proposition. The argument which was advanced in this case was that holding of domestic enquiry regarding misconduct against an employee during pendency of a parallel enquiry by the domestic tribunal would be bad. This argument was negatived. The relevant observations contained in para 3 of the above judgment may be noticed in this regard.

'The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a court. But the pendency of the court proceeding does not bar the taking of disciplinary action. The power of taking such action is vested in the disciplinary authority. The civil or criminal court has no such power. The initiation and continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending court proceeding. The employee is free to move the Court for an order

restraining the continuance of the disciplinary proceedings. If he obtains stay order, willful violation of the order would of course amount to contempt of court. In the absence of a stay order disciplinary authority is free to exercise its lawful powers"". See also *Tukaram Gaokar Vs. S.N.Shukla* AIR 1968 SC 1050.

10. In *Re. Shri Mehra* AIR 1962 Madh Pra 72 Madhya Pradesh High Court held that bona fide holding of a departmental enquiry on a charge of misappropriation against the government servant would not amount to contempt of court.

11. A Division Bench of Punjab and Haryana High Court speaking through S.S.Sodi, J (latter Chief Justice of Allahabad High Court ) in the case

of *B.S.Choudhry Vs. Punjab University Chandigarh* (1988)4 Legal Reports and Statutes (ph) 209, after taking note of the decisions of Supreme

Court of India observed:

.....Taking an overall view of the circumstances and the situation as obtained in the present case no exception can be taken to the initiation and

continuance of disciplinary proceedings against the petitioner nor is there warrant for staying them during the pendency of the criminal trial against him"".

12. The decision on which reliance is being placed by the petitioners may now be adverted to. Two of these decisions were taken note of by the

Supreme Court of India in a latter case reported as *State of Rajasthan Vs. B.K.Meena* AIR 1997 SC 13. No only aforementioned two decisions

but some other decisions including one reported as *Jang Bhadur Vs. Baij Nath* AIR 1969 SC 30 were also taken note of. The Supreme Court of

India took note of the fact that it is possible ""in some cases, charges are levelled with oblique motive. But these possibilities do not detract from the

desirability of early conclusion of these proceedings. Indeed in such cases it is all the more in the interest of the charged officer that the proceedings

are expeditiously concluded. Delay in such case really works against him"".

13. Notwithstanding the above observations it was ultimately observed that there is no absolute principle which provide for staying the

departmental proceedings. What was said in paragraph 16 and 17 is relevant and is being noticed:

'The charges against the respondent are very serious. They pertain to misappropriation of public funds to the tune of more than rupees one crore". It was further observed that: "It is in his interest and in the interest of good administration that the truth or falsity of the charges against him is determined promptly. To wit if he is not guilty of the charges his honour should be vindicated early and if he is guilty he should be dealt with appropriately without any avoidable delay. The criminal court may decide whenever it does whether the respondent is guilty of the offences charged and if so what sentence should be imposed upon him. The interest of administration, however, cannot brook any delay in disciplinary proceedings for the reasons indicated hereinabove.

There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment as the case may be whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code if any) are established and if established what sentence should be imposed upon him.

The standard of proof the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings to repeat should not be a matter of course but a considered decision. Even if stayed at one stage the decision may require reconsideration if the criminal case gets unduly delayed.

14. The aforementioned decision was noticed in latter decision reported as Depot Manager, Andhra Pradesh State Road Transport Corporation

Vs. Mohd Yousuf Miya AIR 1997 SC2232. It was observed:

'The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of Commission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible.

When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules of law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in 'that behalf in not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of Evidence Act. The evidence required in the departmental enquiry is not regulated by Evidence Act".

15. If above is the position then the argument raised by the learned counsel for the petitioner that departmental proceedings are required to be stayed cannot be accepted. In any case no case has been made to stay departmental proceedings in this case.

16. Another argument that Dr. Bilquees Jamila is being also associated with the departmental enquiry be also noticed. It is said that this doctor is interested in the guilt being put on the shoulders of petitioner so that she may escape responsibility.

17 It be seen that so far as preliminary enquiry is concerned, it is a fact finding enquiry. As a matter of fact findings recorded in preliminary enquiry need not to be made known to the delinquents. The requirements of giving them copy of the proceedings of preliminary enquiry arises only if it is to be relied upon and is to be used against the delinquents. Therefore, merely because Dr. Bilquees has been associated with the enquiry it is not be possible to say with definiteness that ultimately charge sheet is going to be vitiated In any case respondent authorities would look into this aspect of

the matter and if the aforementioned lady doctor was in any way associated with treatment given to Mst Shakeela then she be not associated with the holding of departmental enquiry.

18 It is thus held that there is no bar to the holding of departmental enquiry when criminal proceedings are pending. The view expressed by the Supreme Court in the cases noted above is categoric. This is not a case where departmental proceedings are required to be stayed. This petition is found to be without merit and is dismissed.

19. At the time of hearing it was stated that as wide publicity was given to the incident in the newspaper and the cause of the petitioners has suffered. It is directed that hereafter no publicity would be given of this case in any newspaper.