
(1994) 07 MP CK 0019

In the Madhya Pradesh High Court

Case No : Writ Petition No. 806 of 1994

Ramkrishna Chaurasia

APPELLANT

Vs

M.P.S.R.T.C. and Others

RESPONDENT

Date of Decision : 25-07-1994

Acts Referred:

Bina Ticket Yatra Ki Rok Adhiniyam, 1974 — Section 7, 9
Constitution of India, 1950 — Article 226, 227

Citation : (1995) 40 MPLJ 612 : (1995) MPLJ 612

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

Bench : Single Bench

Advocate : J. Maheshwari, for the Appellant; A.K. Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Doabia, J.

This is a petition under Articles 226 and 227 of the Constitution of India. The prayer made by the petitioner is that departmental proceedings initiated against him should remain in abeyance because a criminal case with regard to the very facts which are going to form part of departmental proceedings has been registered against him.

When the matter was taken up for motion hearing Shri A. K. Shrivastava, Advocate was asked to take notice of the petition and he has appeared on behalf of respondents.

3 The brief facts are as under :

The petitioner is a Conductor in Madhya Pradesh Road Transport Corporation. On 16th June, 1992 the petitioner was on duty with bus No. 1420 attached with Gwalior Depot. While this bus was on its way from Lahar to Gwalior, the inspecting staff found that tickets to thirtyseven-and-half passengers had not been issued. Accordingly a case under Sections 7 and 9 of the Bina Ticket Yatra

Ki Rok Adhiniyam, 1974 was registered against the petitioner. A challan has since been presented against the petitioner in the above case before the Special Motor Vehicle Magistrate, Gwalior. The copy of the challan so presented has been placed on the record of this case as Annexure P-1. The petitioner has also been served with a charge sheet in the departmental proceedings. The copy of the same is Annexure P-2.

The petitioner contends that the departmental proceedings should remain in abeyance as cognizance has since been taken by the criminal Court. He has placed reliance on a decision given by a Division Bench of the Karnataka High Court in *A.R. Ravi v. Karnataka Agro Industries and Ors.* 1993 LLR 482. He has also placed reliance on a decision given by the Supreme Court of India reported as *P. J. Sunderrajan and Anr. v. Unit Trust of India* and another 1993 LLR 461. He has placed reliance upon another judgment of Supreme Court reported as *Kusheshwar Dubey v. M/s Bharat Coal Co. Ltd.* (1988) 1 MPWN 144,

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 taking into consideration the nature of the allegations appropriate decision be taken. Thus in *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, it was laid down that principles of natural justice do not require that an employer must wait for the decision of the criminal Court, before taking departmental action 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."

After noticing the decision by the Labour Appellate Tribunal in the case of *Shri Bimal Kanta Mukherjee v. Newsman's Printing Works*, 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."

In the above case it was found that the allegations made against the employee were of 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. Vs. Its Workmen*, and 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 as 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 (sic) 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."

Another case which deals with the subject-matter is reported as Jang Bahadur Singh Vs. Baij Nath Tiwari, 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 before a Court would amount to contempt of court. It was argued that parallel enquiries by the domestic tribunal cannot be held. 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 a stay order, wilful violation of the order would of course amount to contempt of court. In the absence of a stay order the disciplinary authority is free to exercise its lawful powers."

See also Tukaram G. Gaokar Vs. R.N. Shukla and Others,

In Re: Shri Mehra, Senior Supdt. of Post Offices and Another, this court held that bona fide holding of a departmental inquiry on a charge of misappropriation against the government servant would not amount to contempt of court.

A Division Bench of Punjab and Haryana High Court speaking through S. S. Sodhi, J. - now Chief Justice of Allahabad High Court----- in the case of B. S. Chaudhry v. Punjab University, Chandigarh, (1988) 4 Legal Reports and Statute (Pb) 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 any warrant for staying them during the pendency of the criminal trial against him."

The decisions cited by the learned counsel for the petitioner may now be noticed. In the case of P. J. Sunderrajan (*supra*), the Court took the view that departmental enquiry should be stayed till the completion of the trial and the fact that the trial was nearing completion was taken note of. The decision given by the Karnataka High Court in A R. Ravi's case (*supra*), was based on the peculiar facts of that case. Again in Kusheshwar Dubey's case an injunction was granted by the trial court restraining the employer from holding departmental proceedings. This order was upheld by the appellate Court. The High Court vacated the order. It was on these facts the Supreme Court held that High Court should not have interfered in the matter.

Thus the view discernable from the aforesaid judgments of Supreme Court and other judgments is that the question as to whether departmental enquiry requires to be stayed or not is a question of fact to be decided by taking into consideration as to how much complicated the case is. The holding of a domestic enquiry where the facts are not complicated merely because a criminal case is pending is not a ground to stay the departmental proceedings.

I have considered the facts of this case. The facts in this case do not disclose determination of any complicated question of fact or law. I do not deem it proper to exercise jurisdiction under Article 226 of the Constitution of India. The petition is without any merit and is dismissed.