
(2001) 11 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : SWP 2059 Of 2000

Ranjana Vaishishtha

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) KashLJ 575

Hon'ble Judges : A.M.Mir, J

Bench : Single Bench

Advocate : R.K.Gupta, Neeru Goswami, Advocates appearing for the Parties

Judgement

1. This petition seeks the indulgence of this court for grant of a writ of prohibition restraining respondent No.4 from proceeding ahead and

continuing the departmental proceedings against the petitioner, as was contemplated in terms of letter No. F.EO(I) 2000KVS(JR)2950 dated

25.8.2000. Vide this communication departmental proceedings were sought to be initiated against the petitioner in terms of Rule 14

CCS(CCA)Rules 1965. The petitioner was also called upon to appear before the Inquiry Officer and also to nominate her Defence Assistant, if

she so wished. On issuance of aforesaid letter the petitioner approached this court with this petition on 10.10.2000. This Court on 19.10.2000

admitted the petition to hearing and while disposing of CMP No.2211/2000 restrained the respondents from pronouncing the final order.

Obviously the final order arising out of the departmental proceedings has not so far passed.

2. The facts in brief are that the petitioner was employed as a Laboratory Attendant in Kendriya Vidyalay Sangathan in the year 1984. An

advertisement was floated by the Sapgathan for filling up the posts of primary teachers in general category. The petitioner also applied for such

appointments. Passing of B.Ed. was one of the preconditions for the appointments. The petitioner represented that she was eligible as she had

passed her B.Ed, examination. She produced a qualification certificate which, according to her, was issued by Gandhi Hindi Vidaya Pith, Allahbad.

The selection committee after going through her testimonials found her eligible for appointment, as teacher and appointed her. Assistant

Commissioner K.V.S. Jammu region vide his No. F(151)/90KVS(JR) dated 30.1.1992 also confirmed the services of the petitioner along with

others. Subsequently, though after a lapse of some years, respondents came to find that the certificate relied upon by the petitioner was fake. They

started a departmental inquiry and issued an order on 22.6.2000, by virtue of which her appointment as a teacher was cancelled. The Petitioner

approached this Court with SWP No. 1007/2000. A coordinate Bench of this court found that the order of appointment had been passed prior to

the date fixed for filing objections to the show cause notice, therefore, the Court vide its judgment dated 3.10.200 set aside the order dated

22.6.2000 and left the respondent free to continue with the inquiry and pass appropriate orders, after affording reasonable opportunity of being

heard to the petitioner. It was in compliance of this order that fresh inquiry was sought to be initiated and respondent No 2 was appointed as

Inquiry Officer, who issued the impugned communication dated 25.8.2000.

However, after initiation of departmental proceedings on 17.6.2000 Central Bureau of Investigation of their own also registered a case under No.

RC9 (S) 2000 JMU under section 420, 467, 468 and 471 RPC the petitioner. This was done on 15.9.2000.

3. The main ground agitated in the writ petition is that during the course of investigation of a criminal case, departmental inquiry on the same facts

could not be initiated. In order to support this ground the petitioner has tried to raise the plea of malafides against respondent No.3.

4. The reply filed by the respondents have vehemently rebutted the plea of malafides and have pleaded that on having come to know that the B.Ed.

certificate produced by the petitioner was fake, they checked up the record of the office and found that the petitioner had never proceeded on

leave for obtaining such a training. They started inquiry about the genuineness or otherwise of the certificate said to have been issued by Gandhi

Hindu Vidya Pith Allahabad. They found that the certificate was fake. A case was subsequently registered by CBI of their own. Thus both

continued simultaneously for some time. According to the respondents there is no bar for both proceedings to run concurrently.

5. I have heard the learned counsel for the parties at length and have gone through the pleadings.

6. In my opinion the only object sought to be achieved by the respondent Sangthan is to find out the exact genesis of the so called B.Ed. certificate

produced and relied upon by the petitioner. They wanted the C.B.I to find out the truth. C.B.I has furnished its report to the Sangathan on

30.3.2001. the report of the Investigating agency reads as under

Investigation also disclosed that SG College Ambala city through which Smt. Ranjan Vashisath shown to have appeared in examination for B.Ed.

conducted by Gandhi Hindu Vidya pith Prayag (UP) in 1984 was also a self styled college situated in 2 rooms which was only a coaching centre

and the Principal/owner if this college was Sh. Shiv Kumar Anoja of Ambala but at present so called college is closed.

During investigation IO also visited so called Gandhi Hindi Vidyapith Prayag (Allahabad) which was situated in the house of late Dr. M.R. Ansari

at 60, Daira Azmal Shah, Allahbad and now it is closed. The record pertaining to the issue of B.Ed Degree Certificate could not be produced.

Only one incomplete application from Smt. Ranjana Kumari could be made available. The investigation revealed that though the B.Ed Certificate of

Smt. Ranjana Kumari has been issued by the institution, i.e. Gandhi Hindu Vidyapith which is itself not recognized institution/University by the

University Grant Commission. Govt. of India, Moreover B.Ed, certificate of Smt. Ranjana Kumari is not a B.ed Degree Certificate. It is a training

in basis education certificate as explained by Shri V.K. Shrivastava. Education Officer of KVs Regional Office Jammu.

Para 10 of the report is also reproduced as under:""10Allegation proved/not proved: The allegation of the cheating/forgery etc. could not be proved

against her. She has, however, committed gross misconduct"".

7. It is pertinent to observe here that as on today there is no criminal proceeding

pending before the C.B.I for investigation. The case of forgery/cheating has been closed by the Investigating agency. Thus the plea of impropriety of the departmental inquiry running parallel to the criminal proceedings is misconceived. However, this court, while passing an interim direction on 19.10.2000 has restrained the respondents from passing the final order which implies that the propriety and legality of the departmental enquiry before closure of the case by C.B.I be commented upon. The question that thus requires to be answered is as under:

Is there any bar to go ahead with a departmental enquiry during the investigation/trial of a criminal case?

8. The point came up for consideration in a case titled State of Rajasthan vs B.K. Meena reported in (1996) SCALE 363 and Kusheshwar

Dubey's case reported in 4SCC 319. Their Lordships held as under:

It would be evident from the above decision that each of them starts with the indisputable proposition that there is no legal bar for both

proceedings to go on simultaneously and then say that in certain situation, it may not be 'desirable' 'advisable' or 'appropriate' to proceed with the

disciplinary proceedings, when a criminal case is pending on identical charges. 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 decision 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 case

of grave nature involving questions of facts and law. In our respectful opinion, it means that not only the charges must be grave but that the case

must involve complicated question of law and facts. 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. The ground indicated in D.C.M. and Tata Oil Mills is not also an

invariable rule. It is only a factor which will go into the scales which judging the divisibility or desirability of staying disciplinary proceedings. One of

the contending consideration is that the disciplinary inquiry cannot be and should not be delayed unduly. So far as criminal cases are concerned it is

well known that they drag on endlessly where high officials or person holding high public offices are involved. They get bogged down on one or the other ground. They hardly reach even a prompt conclusion. That is the reality inspite of repeated advise and admonitions from this court and the High courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary inquiry, even where the disciplinary proceedings are held over at an early stage. The interest of administration and good government demands that the proceedings are concluded expeditiously. It must be remembered that these proceedings are concluded expitiously. It must be remembered that the undesirable elements are thrown out and any charge of misdemeanour is inquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad element. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration, that persons accused of serious misdemeanour should be continued in office indefinitely, i.e. for long period awaiting the result of criminal proceedings. It is not in the interest of administrative. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long period pending criminal proceedings. Stay of disciplinary proceedings cannot be and should not be a matter of course. All the relevant factors for and against should be weighed and a decision taken keeping in view the various principles laid down in the decision referred to above.

There is a yet another reason. The approach and objectives 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 inquiry and the rules governing the inquiry 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 consideration, if the criminal case gets unduly delayed.

9. Subsequently in case titled Depot Manager A.P. State Road Transport Corporation Vs Mohd. Yousuf Miya, in civil appeal No, 1542022 of

1996, relied upon the above observations in B.K. Meena's case and reiterated as under:

We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct

aspects. 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. It is not, therefore, desirable to lay down any guidelines as

inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case, against the delinquent officer. Each

case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with

departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and

law. Offence generally implies infringement of public, as distinguished from mere private right punishable under criminal law. 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 inquiry in a departmental proceedings relates to conduct of breach of duty of the delinquent

officer to punish him for his misconduct defined under the relevant statutory rules or law. That under the standard of proof or applicability of the

Evidence Act stands excluded in a settled legal position. The enquiry in the departmental proceedings relate to the conduct of the delinquent officer and proof in that behalf is 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 the criminal trial. The evidence is different from the standard point of Evidence Act. The evidence required in the departmental inquiry is not regulated by Evidence Act. Under these circumstances what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case pending on its own facts and circumstances. In this case we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under section 304A and 339 I.P.C. Under these circumstances the High Court was not right in staying the proceedings.

10. Similar view was reiterated by the Apex court in a case titled Capt. M. Paulanthony Vs Bharat Gold Mines reported in 1999(3SCC) 679. In all the above referred cases consensus was that there is absolutely no bar in initiation of departmental proceedings during the pendency of a criminal case. However, when the case is hedged into important questions of fact or law and the evidence in both the proceedings is the same, the court may, on specific circumstances, stay the proceedings, but that decision has to be determined one arising out of a judicial disposition.

Pendency of investigation in a criminal case, in facts and circumstances of the case, should not create any bar for continuation of a departmental inquiry. The anxiety of the respondents is to see as to whether or not the certificate produced by the petitioner was genuine, while deciding SWP No. 1206/2000 titled Ghulam Ahmed Bhat Vs Life Insurance Corporation of India, where the employer disbanded a person who had obtained an order of appointment on basis of a fake certificate, this court observed as under

Here the petitioner has applied for appointment on the strength of a qualification certificate obtained from a definite institution. That document was found to be fake. Therefore, the appointment itself gets blurred because of this circumstance. This is not an order punitive in nature. What has been done by the impugned order is to bring to an end the employment of the petitioner which is procured through a fake certificate. Whenever a fake certificate is produced, the process of selection is defrauded. Therefore, as and when the factum of fakeness or forgery come to light the employer is justified in withdrawing the order of appointing or discharging the person. Such a person cannot invoke the writ process of this court exercisable in terms of Article 226 of the Constitution because this provides for an equitable relief which cannot be granted to a person who does not come to the court with clean hands.

11. By responding to the above judgment I do not intend to pass any verdict on genuineness or otherwise of the certificate in hand. It is for the inquiry officer to come to a finding. These observations are only meant to remind ourselves of the obligations cast upon the court. Whenever a case of forgery or fraud is brought to light. These observations however, should not prejudice to the mind of the inquiry officer also.

12. In the present case the allegation is that the petitioner obtained her employment as a teacher on the basis of a certificate which was not genuine.

It is also alleged that this was not a B.Ed. certificate, Now, if the respondent Sangathan wants to hold or has held a departmental inquiry, that attempt should not be allowed to be forestalled by undue intervention of the Court. This is particularly so when the investigation has since concluded.

13. Thus I find no merit in this petition, which is dismissed with no order as to costs. Interim direction issued on 19.10.2000 is vacated.