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(2014) 09 AHC CK 0056

In the Allahabad High Court

Case No : C.M.W.P. No. 11023 of 2013

Ranveer Singh Rathore — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 419, 420, 467, 468, 471

Citation : (2014) 11 ADJ 485 : (2015) 4 ALJ 180 : (2015) 108 ALR 74 : (2015) LabIC 2963

Hon'ble Judges : Suneet Kumar, J

Bench : Single Bench

Advocate : Prahlad Kumar Khare and A.C. Mishra, Advocates for the Appellant; R.K. Sachan, Sanjay Singh and Neeraj Kumar Pandey, Advocates for the Respondent

Judgement

Suneet Kumar, J.—The petitioner is a clerk working with the respondent-Punjab National bank, an F.I.R. was lodged against the petitioner on 31.1.2004 by Premwati for solemnizing several marriages with different ladies. A case was registered against the petitioner, being Case Crime No. 42 of 2004, under sections 419, 420, 467, 468 and 494 I.P.C., Police Station Dataganj, District Badaun. In the mean time, disciplinary proceedings was initiated against the petitioner by issuing charge-sheet on 25.3.2004 for submitting forged High School certificate, thus, procuring promotion. The petitioner submitted his reply on 10.5.2004 denying the charges levelled against him but the respondent-bank did not proceed further. In the mean time, Premwati Devi filed Writ Petition No. 40337 of 2004 for taking action against the petitioner under the disciplinary rules. The petition was disposed of on 27.10.2005 directing there-despondent-bank to enquire into the complaint. The Branch Manager of Usawan Branch, served another charge-sheet on 8.4.2005, containing six charges, including charge for solemnizing several marriages by fraud and misrepresentation, forging high school certificate thus procuring promotion by fraud and misrepresentation.

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In the pending criminal case, the Trial Court framed charges against the petitioner on 3.3.2006 under sections 419, 420, 467, 468 and 471, I.P.C. in Case No. 715 of 2004.

2. The subsequent disciplinary proceedings culminated with the termination of the petitioner on 24.4.2006, initiated vide charge-sheet dated 8.4.2005. Aggrieved, the petitioner filed writ petition No. 63874 of 2006 which was allowed by the Court on 6.1.2012. The operative portion of the order is as follows:

"I, therefore, allow the writ petition and set aside the orders impugned dated 3.4.2006 and 24.4.2006 passed by the disciplinary authority and order dated 13.9.2006 passed by the appellate authority and respondents are directed to reinstate the petitioner in service. In case the respondents intended to hold fresh enquiry against the petitioner, the observation made here-in-above shall not effect the outcome of said inquiry."

3. The petitioner preferred a Contempt Petition No. 1708 of 2012 for non compliance of order dated 6.1.2012, accordingly, the petitioner was re-instated on 13.5.2012 and immediately thereafter by the impugned order dated 6.7.2012 respondent-bank decided to pursue the earlier disciplinary proceedings initiated vide charge-sheet dated 25.3.2004, the Senior Manager Branch Office, Sarafa Bazar, Badaun was appointed the enquiry officer requiring him to proceed on day to day basis and conclude the enquiry within maximum period of three months as per the regulations contained in bipartite settlement dated 10.4.2002.

4. The petitioner is assailing the order dated 6.7.2012.

5. It is submitted on behalf of the petitioner that prosecution and disciplinary proceedings cannot go on simultaneously, for the same charge or allegation as would amount to double jeopardy, Clause 3(a) Bipartite Settlement restricts the respondent-authorities from initiating the departmental enquiry for the allegations for which the petitioner is being prosecuted, and therefore, the disciplinary proceedings be kept in abeyance pending criminal case No. 715 of 2004.

6. Learned Counsel for the petitioner in support of his submission has relied upon Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, and State Bank of India and Others Vs. R.B. Sharma, .

7. Sri Sanjay Singh, learned Counsel for the respondents, in rebuttal, submits that Premwati is the legally wedded wife of the petitioner, on her complaint, as well as, the Principal of the college by letter dated 16.1.2004 informed the Senior Regional Manager, Punjab National Bank that the mark-sheet of the petitioner is a forged and fabricated document. The enquiry pertaining to the charge-sheet dated 25.3.2004 was kept in abeyance as the petitioner was dismissed from service in another proceedings initiated vide charge-sheet dated 8.4.2005. The enquiry was recommenced, in order to, extract the truth of imputation of the allegations against the petitioner. The pending criminal case has no bearing on

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the disciplinary proceedings as the F.I.R. was lodged by a private person and not by the bank, the charges framed in the criminal proceedings are entirely different from the allegations contained in the charge-sheet dated 25.3.2004 which pertains to fake high school certificate on the basis of which petitioner procured promotion.

8. In support of his submission, learned Counsel for the respondents relied upon judgment dated 30.7.2013 passed in Writ Petition No. 41119 of 2013, Anita Agarwal v. Punjab National Bank.

9. Submissions fall for consideration.

10. In a relatively recent decision of the Hon''ble Supreme Court in The Divisional Controller, KSRTC Vs. M.G. Vittal Rao, , is a timely reminder of the principles that are applicable in such situations, succinctly summed up, in the following words:

"(i) There is no legal bar for both proceedings to go on simultaneously.

(ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.

(iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(iv) Departmental Proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common."

[Refer Capt. M. Paul Anthony (supra) and R.B. Sharma (supra)]

11. In Hindustan Petroleum Corporation Ltd. and Others Vs. Sarvesh Berry, , the respondent was charged with possessing assets disproportionate to his known sources of income. The question was whether disciplinary proceedings should remain stayed pending, a criminal charge being examined by the competent criminal Court. Allowing the appeal of the employer Corporation the Supreme Court held:

"8. ....So, a crime is an act of commission in violation of law or of omission 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 enquiry and trial of a criminal case unless the charge in the criminal trial is of a grave nature involving

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complicated questions of fact and law......Under these circumstances, what is required to be seen is whether the departmental enquiry would, seriously prejudice the delinquent in his defense at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

(Emphasis supplied)

12. 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 defense 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 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 on-going disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen to be in the interest of the employees.

13. Applying the law in the facts and circumstances of the case in hand, no prima facie case has been made out by the petitioner for interference under Article 226 of the Constitution of India.

14. It is made clear that no other ground was pressed by the learned Counsel for the petitioner.

15. The writ petition is, accordingly, dismissed. No order as to cost.

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