(1989) 01 PAT CK 0025

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 57 of 1989

Ratindra Kumar Singh APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 17-01-1989

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (1992) 1 BLJR 383 : (1989) PLJR 420

Hon'ble Judges : N.P. Singh, J;N. Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.P. Singh and N. Pandey, JJ.

This writ application has been filed on behalf of the petitioner for quashing an order of suspension (Annexure-1) and for a direction that pending the criminal case, which has been lodged against the petitioner, the departmental proceeding should be stayed.

2. When this application was taken up for admission, the learned Counsel, appearing for the petitioner, took a stand that he is not pressing the application so far the order of suspension is concerned. He, however, urged that as the charges levelled against the petitioner in the criminal case and the departmental proceeding are identical, the departmental proceeding should await till the Criminal Court gives its verdict in respect of the allegations made against the petitioner. ''It was pointed out on behalf of the petitioner that the main charge which has been levelled against the petitioner in the departmental proceeding is that the loan had been sanctioned to the different persons named therein, who are members of Schedule Caste and Schedule Tribes, but they were actually paid much less than what had been sanctioned for them and this petition along with others deducted amounts between 3,000 to 5,000 from different applicants, it was urged that in respect of the aforesaid charge a first information report has

also been lodged.

3. The learned Advocate-General, appearing for the respondent-Bihar State Co-operative Land Development Bank Ltd. and its Administrator, pointed out that the Criminal case has been lodged against the petitioner only for having deducted and misappropriated substantial amounts from local sanctioned to different persons, but in the departmental proceeding five charges have been levelled against the petitioner.

4. It is true that charge No. 1 in the departmental proceeding relates to the cut from the amounts given as loan to different applicant''s which is also subject-matter of investigation by police, but the remaining four charges relate to dereliction of duty on the part of the petitioner while managing the affairs of the Bank as the Branch Manager of Bermo Branch of the Bank.

5. On behalf of the petitioner reference was made to a recent judgment of the Supreme Court in the case of Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, , where the Supreme Court considered the question as to whether when a criminal case as well as a departmental proceeding both arc pending, whether departmental proceeding should be stayed till the disposal of the criminal case. After referring to the earlier judgments of the Supreme Court it was observed as follows:

The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent-employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valied for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.

Of course, in the facts and circumstances of the case before the Supreme Court disciplinary proceeding way stayed on the finding that not only a criminal trial was pending in respect of the charge, which was framed in the departmental proceeding, but even civil Court had granted injunction restraining the employer from proceeding with the departmental proceeding, which order had been affirmed in appeal as well. In the instant case, as we have pointed above, out of the five charges framed in the departmental proceeding only charge No. 1 is subject-matter of investigation i.e. misappropriation of a substantial amount granted as loan to the loanees by the petitioner as the Branch Manager of the bank in question.

6. Learned Counsel for the petitioner urged that even charge No. 2 should be held to be subject-matter of investigation in the criminal case. Charge No. 2 in the departmental proceeding says that while granting loan the directions and orders issued had been violated and loans were sanctioned in an illegal manner. In our opinion, this allegation may be taken into consideration while investigating the criminal case, but that by itself cannot form a subject-matter of criminal charge. As such, it has to be held that in the facts and circumstances of the present case, subject-matter of investigation and the charges levelled in the departmental proceeding are not identical in nature so that this Court should exercise its power of under Articles 226 and 227 of the Constitution staying the departmental proceeding till the conclusion of the criminal case.

7. It will not be out of place to mention that the Supreme Court in the aforesaid judgment has said about pendency of a criminal trial. In the instant case, the allegation is still at the stage of investigation. In the meantime, we do not find that there is any bar on the part of the employer to examine those allegations on the administrative side as well. It is well-known that any charge levelled in the criminal case may not be proved beyond reasonable doubt because of which the person so charged may be acquitted, but such an employee can be held guilty in a departmental proceeding for any lapse on his part or dereliction of his duty because of which any over-payment has or under payment been made.

8. It was pointed out that in the copy of the charges served on the petitioner the Administator of the Bank in the end has observed that this petitioner has been found to be guilty of the charges levelled against him. Perhaps, the Administrator meant that a prima facie case has been made out against ''the petitioner. There is no question of petitioner being held guilty unless those charges are proved at the departmental proceeding. Accordingly, the last paragraph of the charge, where it has been said that the petitioner has been found guilty, is quashed.

9. Subject to the order passed in respect of the last paragraph of the charge this writ application is dismissed.

