
(2001) 04 RAJ CK 0028

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1361 of 2001

Shyam Lal Sankhla

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) 4 RLW 351 : (2002) 1 WLN 171

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The petitioner is L.D.C. working with the respondent No. 3 bank. An F.I.R. was lodged against the petitioner on 6.5.1999 regarding the amount which was received vide receipt No. 2282 to 2300 and receipt No. 19059 of Bank No. 23. The allegation against him is that by collecting amount from poor members of the Bank, he mis-appropriated amount of Rs. 5,81,356/- in all. After investigation, the police filed charge-sheet against him before the competent criminal court. According to the petitioner, the evidence of the prosecution is being recorded before the competent criminal court.

2. It is the case of the petitioner that for the same charges which are levelled against him in the criminal court, the respondent Bank started the departmental enquiry under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short "the Rules") notice of demand of justice was served by the petitioner to the respondent bank through his lawyer on 26.12.1999. The said remained unreplyed, therefore, revision was filed u/s 128 of the Rajasthan Cooperative Societies Act, 1965 (for short "the Act"). After hearing the parties, the learned Additional Registrar dismissed the revision petition on 30.12.2000 (Annex. 6). The same is challenged by the petitioner by way of this petition which is labelled Under Article 226 of the Constitution.

3. Learned Counsel Mr. Singhvi for the petitioner submitted that the learned Additional Registrar committed an error in dismissing his revision petition by relying upon the Supreme Court judgment in case of Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, He submitted that on same material if the court proceedings are going on against the petitioner before the competent criminal court, then it was not open for the respondent Bank to proceed against him by way of departmental enquiry because in the departmental enquiry, he will have to disclose his defence which would prejudice him in the criminal trial. In support of his submissions. Mr. Singhvi has relied upon the judgment of Kusheshwar's case which was relied upon by the Additional Registrar himself while dismissing the revision petition filed by the petitioner. He has also relied upon the recent judgment of the Hon"ble Supreme Court in case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another,

4. In Kusheshwar's case (supra), it was submitted by the learned Counsel that their Lordships should settled the law in a straight jacket formula as judicial opinion regarding status of disciplinary proceedings appeared to be conflicting. However, their lordships of the. Hon"ble Supreme Court clearly stated in para 4 of the said judgment that, "We do not propose to hazard such a step as that would create greater hardship and individual situations may not be available to be met and thereby injustice is likely to ensue.

5. In Kusheshwar's case (supra), after considering several judgments of the Hon"ble Supreme Court, their Lordship held in para 6 that.

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 sated that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid 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.

(emphasis supplied)

6. After observing the aforesaid, on the facts of that case, their Lordships held that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which has been affirmed in appeal.

7. At this stage, I would like to narrate the brief facts of Kusheshwar's case (supra). The appellant Kusheshwar was an employee of Bharat Coking Coal Ltd. working as Helper in 1986. The allegation against him was that he physically assaulted his supervising officer Shri S.K. Mandal. He was subjected to disciplinary proceedings as well as criminal prosecution. On facts of that case, in a suit filed before the Munsif, the proceedings in the disciplinary proceedings were stayed till the final disposal of the criminal case. The appeal filed by the employer before the Appellate Court was also dismissed. The orders passed by the Courts below were challenged in revision before the High Court and the High Court held that the Courts below were in error in granting the injunction. In appeal filed before the Hon'ble Supreme Court on facts of that case, the Hon'ble Supreme Court held that the Courts below were right in staying the disciplinary proceedings and the High Court was not right in interfering with the orders passed by the Courts below.

8. In case of Paul Anthony (supra), the Hon'ble Supreme Court observed in para 22 that,

22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

9. Learned Counsel Mr. Singhvi relied upon the aforesaid Clause (ii) and

submitted that the Additional Registrar was wrong in rejecting the revision petition because the departmental proceedings and the criminal case are based on identical and similar set of facts.

10. In case of Paul Anthony (supra), the Superintendent of Police raided the residential premises of the appellant Anthony and recovered a mining sponge gold ball weighing 4.5 grams and 1276 grams of gold-bearing sand. It was on that basis, a criminal case was launched against him. On the same set of facts, departmental proceedings were initiated. The same was challenged before the High Court and the learned Single Judge allowed the writ petition. However, the Division Bench set aside the order of the learned Single Judge which was challenged in appeal before the Hon'ble Supreme Court. On facts of that case, the Hon'ble Supreme Court held that departmental enquiry cannot be permitted in view of the fact that the appellant Paul Anthony was acquitted by the criminal court in 1987 and he was all throughout undergoing the agony.

11. Thus, in Anthony's case, the Hon'ble Supreme Court quashed the disciplinary proceedings on peculiar facts of that case. However, after considering several judgments of the Hon'ble Supreme Court cited before them, their Lordships made relevant observations in para 22 which I have already reproduced earlier.

12. It is true that in the instant case also, the departmental proceedings and the criminal case are based on almost same set of facts but the charge in the criminal case against the delinquent petitioner is grave. Being L.D.C., he misappropriated lakhs of rupees of poor depositors. On the facts of the case, when the revisional authority found that it does not involve complicated questions of law or fact, then as held by the Hon'ble Supreme Court in para 22(ii) of Anthony's case (supra) itself, it could not be desirable to stay the departmental proceedings till the conclusion of the criminal trial.

13. Before parting I must state that in Anthony's case (supra) in para 22(v), the Hon'ble Supreme Court has observed that, "if the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

14. This Court can take judicial notice of fact that in subordinate courts, lakhs of cases are pending and they are not decided early. In some cases, it takes years together in final conclusion of the cases. If the departmental proceedings are stayed by this Court, then the petitioner may also make an attempt to prolong the proceedings before the criminal court. The same would not be in the interest of justice.

15. Lastly, I must state that this Court is exercising its jurisdiction Under Article 227 of the Constitution and not Under Article 226. The Hon'ble Supreme Court in

case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, has clearly held that the High Court should not interfere with the order of the subordinate court or the Tribunal in its supervisory jurisdiction Under Article 227 even if error of fact or law is committed.

16. Having carefully gone through the order passed by the learned Additional Registrar in revision, it cannot be said that any error was committed by him either on facts or law which is required to be corrected. Even if some error was to be corrected, then also I would not have interfered with such orders in my supervisory jurisdiction Under Article 227 of the Constitution.

17. In view of the above discussion, this petition fails and is dismissed.

18. At this stage, a request is made by learned Counsel Mr. Singhvi that the petitioner is not paid subsistence allowance under the Rules, therefore, he wants to make a proper representation to the respondent Bank.

19. The petitioner can make his representation within one month from today. On receiving the same, the Bank shall decide it as early as possible preferably within three months thereof strictly on merits and in accordance with law.

20. With these observations, this petition is dismissed.

21. Stay petition is also dismissed.