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Court : Jharkhand

Decided On : Dec-01-2004

Reported in : [2005(1)JCR111(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : Service Law; [Constitution of India](#) - Article 226

Appeal No. : W.P. (S) No. 6155 of 2004

Appellant : Krishna Mohan Prasad

Respondent : Central Coalfield Ltd. and ors.

Advocate for Def. : Ananda Sen, Adv.

Advocate for Pet/Ap. : S. Arun,; S. Saurabh,; K. Shankar,;

Disposition : Application dismissed

Judgement :

ORDER

M.Y. Eqbal, J.

1. Petitioner is Personal Assistant under the respondent authority. In 2004 a criminal case was instituted against the petitioner under Prevention of Corruption Act being R.C. case No. 11A/2004 on the charges of receiving illegal gratification.

Petitioner was, then put under suspension and a departmental proceeding has been initiated and the charge-sheet of the departmental proceeding has been served upon him, On the first sitting of the departmental proceeding on 14.9.2004 petitioner requested for the assistance of co-worker which was accepted. Petitioner then made representation for staying the departmental proceeding against him on the ground of pendency of the criminal case on the same set of charges. The said representation was rejected by the respondents by passing the impugned order. Petitioner has challenged the said order whereby the respondent-authorities refused to stay the departmental proceeding till conclusion of criminal case.

2. Mr. A.K. Sinha, learned senior counsel appearing on behalf of the petitioner assailed the impugned order as being illegal and wholly without jurisdiction. Learned counsel relied upon a decision of this Court in the case of *Ranjit Kumar Dey v. BCCL*, 2001 (2) JCR 3 (Jhr) : (2001) 1 JLJR 246 and also decision of the Supreme Court in the case of *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr.*, (1999) 3 SCC 679.

3. Mr. A.K. Mehta, learned counsel appearing on behalf of the respondents on the other hand submitted that there is no bar in proceeding with the departmental inquiry merely because pendency of the criminal case. Learned counsel in this regard relied upon the decision of the Supreme Court in the case of *Kendriya Vidyalaya Sangathan and Ors. v. T. Srinivas*, (2004) 7 SCC-442.

4. In the case of *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.* (supra) their Lordship of the Supreme Court after considering the earlier decision came to the following conclusion:

'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, 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.'

5. In the case of *Ranjit Kumar Dey, v. BCCL*, (supra) this Court following the aforesaid principles of law and considering the gravity of the charges held that the departmental proceeding should be stayed till conclusion of the criminal trial. However, it was further held that if the criminal case does not proceed and in any event if the criminal case is not concluded within a period of two years, the departmental proceeding against the petitioner can be resumed and proceeded with.

6. Recently the Supreme Court in the case of *Kendriya Vidyalaya Sangathan and Ors., v. T. Srinivas*, (Supra) considered the earlier decision rendered to herein above and observed as under:

In the instant case, from the order of Tribunal as also from the impugned order of the High Court, we do not find that the two forums below have considered the special facts of this case which persuaded them to stay the departmental proceedings. On the contrary, a reading of the two impugned orders indicates that both the Tribunal and the High Court proceeded as if a departmental enquiry had to be stayed in every case where a criminal trial in regard to the same misconduct is pending. Neither the Tribunal nor the High Court did take into consideration the seriousness of the charge which pertains to acceptance of illegal gratification and the desirability of continuing the respondent in service in spite of such serious charges levelled against him. This Court in the said case of State of Rajasthan has further observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It held that 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 offenses registered against him are established and, if established, what sentence should be imposed upon him. The Court in the above case further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. On that basis, in the case of State of Rajasthan the facts which seem to be almost similar to the facts of this cases, held that the Tribunal fell in error in staying the disciplinary proceedings.'

'We think the above ratio of law laid down by this Court applies aptly to the facts of the present case also. It is also to be noted that in Capt. M. Paul Anthony case this Court has accepted the principle laid down in Rajasthan case,

'As stated above, in the case in hand both the Tribunal and the High Court proceeded as if a departmental enquiry and a criminal trial could not proceed simultaneously, hence, they stayed the departmental enquiry which by itself, in our opinion, is contrary to the principles laid down In the above cited cases.

7. It is well settled proposition of law that in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be

decided. A word or a clause or a sentence in the judgment cannot be regarded as full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents. Their Lordships of the Supreme Court in the case of 'Union of India v. Dhanwanti Devi, (1996) 6 SCC 44 observed:

'A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein.

8. In the light of the principles of law laid down by the Supreme Court, in my considered opinion the ratio decided in *Kendriya Vidyalaya* case (Supra) applies aptly to the facts of the present case inasmuch as in that case the charge against the employee was taking illegal gratification while in *Capt. M. Paul Anthony* case (Supra) the charge against the employee was not of taking illegal gratification rather in that case certain gold was recovered from the house of the employee on the raid being conducted by the Superintendent of Police.

9. Having regard to the facts of the present case and following the ratio decided by the Supreme Court in *Kendriya Vidyalaya* case (supra), I am of the view that the impugned order passed by the respondents refusing to stay the departmental proceeding needs no interference by this Court.

10. This writ application is, accordingly dismissed.