

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00137/2017

Date of Reserve: 16.01.2019

Date of Order: 06.02.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Binaya Kumar Das, aged about 56 years, S/o. Late Dinabandhu Das of village – Chhamuja, PS-Jaleswar, Dist-Balasore – presently residing at Flat No.B-404, Moti Apartment, Satyanagar, PS-Kharvela Nagar, Bhubaneswar, Dist-Khurda and presently working as Post Graduate teacher (Chemistry) in K.V.S., Srikakulam, Andhra Pradesh.

...Applicant

By the Advocate(s)-M/s.K.C.Kanungo
B.R.K.Dora

-VERSUS-

Kendriya Vidyalaya Sangathan represented through:

1. Commissioner, Kendriya Vidyalaya Sangathan, Industrial Area, Sahid Jeet Singh Marg, New Delhi-110 016.
2. Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Pragati Vihar Colony, Mancheswar, Bhubaneswar-751 017, Dist-Khurda, Odisha.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Pragati Vihar Colony, Mancheswar, Bhubaneswar-651 017, Dist-Khurda, Odisha.
4. Principal, Kendriya Vidyalaya No. 1 (2nd shift), Unit-IX, Bhubaneswar, Dist-Khurda, Odisha.

...Respondents

By the Advocate(s)- Mr.H.K.Tripathy
ORDER

PER MR.SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Post Graduate Teacher (PGT) (Chemistry) in Kendriya Vidyalaya, Srikakulam, Andhra Pradesh. While working as P.G.T.(Chemistry) in Kdndriya Vidyalaya No.1 (2nd shift) Bhubaneswar, an FIR was lodged by one Umesh Prasad Das alleging sexual

abuse on her daughter reading in Class-XII of K.V.No.1. The applicant was taken to judicial custody by the order of the Sessions Judge, Khurda in P.S.Case No.24 dated 14.01.2016 which was converted to T.R.No.5/2016. Because of his arrest and detention in judicial custody, applicant was placed under deemed suspension with effect from 14.01.2016 vide order dated 18.01.2016. He was thereafter, released on bail vide order dated 11.02.2016. After his release on bail, the applicant submitted a representation dated 17.02.2016 to Respondent No.4 to allow him to resume his duty. Vide order dated 10.03.2016, Respondent No.2 revoked the suspension and posted the applicant at K.V., Srikakulam. While the matter stood thus, applicant was directed to appear before the preliminary enquiry committee on 6.12.2016 for the allegation of sexual abuse on the victim girl Das which was the subject matter of criminal case in T.R.No.5/2016 pending before the Sessions Judge, Khurda. The appearance of the applicant before the Preliminary Inquiry Committee was however deferred to 19.12.2016 on the ground of illness of the applicant. The applicant appeared before the Inquiry Committee on 19.12.2016 and submitted that the matter is *sub judice* before Sessions Judge and his defence in the criminal case will be prejudiced in case his defence in the proceedings under contemplation is disclosed. Thereafter, the applicant received an order dated 4.1.2017 wherein it has been decided to hold summary inquiry and as a sequel to it, Respondent No.3 vide order dated 10.1.2017 directed the applicant to attend summary inquiry on 10.1.2017. According to applicant, since it was not expedient to hold summary inquiry against him under Article 81(b) of the K.V.S. Education Code, he submitted a representation dated 16.01.2017 to Respondent No.1 to issue orders not to proceed with the summary inquiry. While this representation was pending

consideration by Respondent No.1, an office order dated 10.01.2017 (A/8) was issued directing the applicant to attend summary inquiry on 23.1.2017. There being no other alternative, the applicant approached this Tribunal in O.A.No.41 of 2017. This Tribunal vide order dated 20.01.2017 disposed of the said O.A. with direction to Respondent No.1 to consider the representation at his level and communicate the result thereof to the applicant. As an interim measure, it was directed that the summary inquiry under A/8 may be kept in abeyance till the decision of Respondent No.1 is communicated to the applicant. Complying with the aforesaid direction of the Tribunal, the Respondent No.1 passed order dated 23.2.107 (A/11) whereby the applicant was advised to cooperate with the inquiry thus, rejecting his representation. Aggrieved with this, the applicant has approached this Tribunal in the present O.A. seeking for the following reliefs:

- i) ...to admit the Original Application, call for the records and be further pleased to hold that the conduct of summary enquiry in the face of pending criminal case (T.A.No.5/2016) is not permissible in law for the ends of justice;
- ii) ...to quash the Annexure-A/8, A/11 and A/12 in the interest of justice;
- iii) ...to allow any other relief to the applicant or pass any other orders/directions as deemed fit in the circumstances of the case.

2. In support of his claim for reliefs, applicant has mainly taken the grounds as under:

- i) Disclosure of defence in the departmental proceedings will have the prejudicial effect on criminal case which is based on the same set of charges and witnesses, the respondents should wait till the conclusion of the criminal case and to that extent concurrent proceedings is bad in law.

- ii) Order dated 23.2.2017 (A/11) suffers from non-application of mind inasmuch as in the absence of preliminary inquiry being conducted, summary inquiry is not permissible.
- iii) The allegation of holding private tuition by the applicant was at a place which was completely outside the school premises and this being subject matter of the criminal charges cannot again form the basis of charge to proceed against the applicant in the summary inquiry.
- iv) The summary inquiry and the criminal proceedings are based on same set of facts and witness. Besides, the criminal case against the applicant involves complicated question of law and facts. Therefore, the respondents should keep in abeyance the summary inquiry till the conclusion of the criminal case.
- v) The criminal case does not suffer from undue delay as the charge sheet in the criminal case has been filed.
- vi) Whereas in the criminal case the standard of proof required is "beyond all reasonable doubts" in the departmental proceedings, the standard of proof required is preponderance of probability. The authorities in the departmental proceedings act as the quasi judicial authorities and they do not have the expertise. In the summary inquiry the applicant will not get opportunity to cross-examine the witness or the complainant to disprove their credibility. The applicant will be prejudiced by exposing his evidence in the summary enquiry and the prosecution in the criminal case will take advantage of the evidence/statement so exposed by the applicant.

3. Per contra, the respondents have filed their counter. It has been contended by the respondents that while working as PGT(Chem) at KV No.2 (2nd shift), Bhubaneswar during the year 2015-16, the applicant came into physical contact with a girl student at the time of imparting tuition at her residence, touched her private parts and immorally misbehaved her. In the above backdrop, an IFR was lodged by the parents of the girl student on 14.01.2016 which was registered as Kharvelanagar PS Case No.24/2016 and resultantly, the Police arrested him and later on he was sent to the judicial

custody. The applicant was therefore, placed under deemed suspension with effect from 14.01.2016 and subsequently, on his being released on bail, the order of suspension was revoked and he was posted to K.V.Srikakulam.

4. On the point of parallel inquiry, it has been submitted by the Respondents that the Office Memorandum dated 01.08.2007 issued by the DOP&T in pursuance of various decisions of the Hon'ble Supreme Court, it is stated that merely because a criminal trial is pending a departmental inquiry involving the very same charges as is involved in the criminal proceedings is not barred. In Kdenriya Vidyalaya Sangathan & Ors. Vs. T.Srinivas (2004 AIR SCW 4558), the Hon'ble Supreme Court has observed that a departmental inquiry need not be stayed in every case where a criminal trial in regard to the same misconduct is pending. The court should take into consideration the seriousness of the charge and the desirability of continuing the person concerned in service in spite of serious charges levelled against him. Further, it has submitted that Point No.3 thereof stipulates that if the charge in the criminal case is of a grave nature which involves complicated questions of law and facts, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. This will depend upon the nature of offence and the evidence and material collected against the Government servant during investigation or as reflected in the charge sheet. If the criminal case does not proceed or its disposal is being duly delayed, the departmental proceedings, even if they were kept pending on account of 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, if the case so warrants. According to respondents, the

Memorandum dated 02.12.2016 issued by the Preliminary Inquiry Officer is not only regarding sexual abuse towards the girl student, but for violation of Para-19 of Article-59 of K.V.S. Education Code, as the applicant was imparting private tuition to the girl student at her residence. Respondents have pointed out that the departmental proceedings and the criminal case though based on the same facts, are in fact, two separate proceedings. According to them, Hon'ble Supreme Court in S.S.Venkataraman vs. Union of India (AIR 1954 SC 375) and (Capt.M.Paul Anthony vs. Bharat Gold Mines (199(3) SCC 679) has held that taking recourse to both does not amount to double jeopardy and both the proceedings can be held simultaneously. Relying on this, the respondents have pointed out that the allegation of sexual harassment to a girl student while imparting private tuition at her residence amounts to moral turpitude on the part of a teacher and it is therefore, necessary to enquire about the circumstances under which the applicant was going to the house of the victim girl student to teach her in violation of Para-19 of the Article-59 of KVS Education Code. With these submissions, respondents have submitted that the O.A. being devoid of merit is liable to be dismissed. In the end, they have stated that since both the victim girl was a student of K.V.No.1 in which the applicant was the teacher, it cannot be said that the incident had taken place outside the school premises notwithstanding the fact that the applicant was imparting tuition at the residence of the girl student.

5. Applicant has filed a rejoinder to the counter in which it has been submitted that the authorities can resort to the procedure of summary enquiry under Article 81 (B) of Education code on the allegation of sexual abuse on a girl student by her teacher even if that has happened outside the school premises. At the same time, the applicant made it conspicuous that

even conceding for a moment but not accepting the applicant was holding private tuition in violation of Clause-19 of Article 59 of KVS Education Code, the same cannot be amenable to the provisions of Article-81(B) of Education Code necessitating the respondents for conducting a summary inquiry. It has been submitted that the allegation of prosecution in the criminal case is that the applicant was imparting tuition to the victim girl where he sexually harassed and therefore, the private tuition is the basis where the criminal case emanates. It is the prosecution which has to prove beyond all reasonable doubts that the applicant was going for private tuition failing which, as a corollary, the other charges will stand nullified by consequence. This being the position, the applicant has emphasized that the private tuition which is said to be violative of Clause- 19 of Article 59 of Education Code cannot be independently enquired into by the respondents. In other words, it has been submitted that if at all imparting private tuition is a misconduct under Clause-19 of Article-59 of the Code, the respondents are at liberty to proceed against the applicant under CCS(CCA) Rules, 1965 and not certainly under Article-81(B) of KVS which prescribes that summary inquiry can be done where the allegation of sexual harassment is brought against the teacher and in that event the regular inquiry under CCS(CCA) Rules can be dispensed with. Therefore, the allegation of private tuition cannot form the subject matter of summary inquiry either independently or jointly on the allegation of sexual harassment by the Respondents.

6. We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submissions and various decisions filed by the respective parties.

7. It appears that the Respondent No.1 in pursuance of the directions of this Tribunal in O.A.No.41/2017 considered the representation of the applicant and passed order dated 23.02.2017 (A/11) rejecting the request of the applicant to withhold the proceedings till conclusion of the criminal case.

The main thrust of the order reads as under:

"6. As per DOP&T Office Memorandum No.11012/06/2007-Estt. A dated 01.08.2007, Point No.3 clearly shows that "if the charge in the criminal case 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. This will depend upon the nature of offence and the evidence and material collected against the Government servant during investigation or as reflected in the charge-sheet. If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were kept pending on account of the pendency of 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, if the case so warrants".

8. The above being the position, office order dated 8.03.2012 (A/12) was issued by the Respondents which reads as under:

"In supersession to the order No.F.150350/2015-KVS(BBS) dated 20.1.2017, the postponed summary enquiry on alleged sexual abuse of girl child by Shri B.K.Das, PGT(Chem) of KV No.1 Bhubaneswar (now posted at K.V. Srikakulam), now will be held at 15.00 hrs. On 14.3.2017 at KV No.3 Bhubaneswar.

All members of the committee are requested to attend the meeting. The Principal, KV No.1 Bhubaneswar is directed to inform venue, time & date of enquiry meeting to all concerned-complainant, victim, witness (if any etc.) by way of written communication appealing them to appear before the committee to provide evidence/documents to substantiate their versions on the issue on the above said date time".

9. Grievance of the applicant is that undertaking private tuition being violative of Clause-19 under Article-59 of Code of Conduct cannot be the subject matter of summary inquiry under Article-81(B) of KVS Code. In this connection, he drew our attention to Chapter-VI (Code of Conduct) (A/14) which deals with Article 59 for Teachers. The very introductory part of Article-59 reads as under:

"The provisions of CCS(Conduct) Rules, 1964 shall apply mutatis mutandis to all the employees of the Kendriya Vidyalaya Sangathan. In addition to this, the following code of conduct shall also be applicable to teachers. Violation of these shall make an employee liable for action under the CCS(CCA) Rules, 1965".

10. Clause – 19 under Article-59 states as follows:

"19.No teacher shall undertake private tuition or private employment or otherwise engage himself in any business".

11. From the above, it is clear that if any of the teachers infringes the provision of Clause-19 under Article-59 of the Code of Conduct is liable to the proceeded against under the CCS(Conduct) Rules, 1964 and not under Article-81 (B) of the Code. Be that as it may, there is nothing on record to show that the respondents are contemplating to proceed against the applicant under Article-81 (B) of the Code on the ground of he having undertaken private tuition thereby violating the provisions of Clause-19 under Article-59 of the Code of Conduct. In our considered view, this apprehension of the applicant is based on conjecture and surmises.

12. The next point to be considered is whether during the pendency of criminal case the departmental proceeding or the summary proceeding, as the case may be, could resume. We have gone through the decisions cited by both the sides. In Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd. & Another

[(1999) 3 SCC 679], the Hon'ble Supreme Court has laid down the law as under:

"There is a consensus of judicial opinion on a basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common. Basis for this proposition is that proceedings in a criminal case and departmental proceedings operate in distinct and different jurisdictional areas. In departmental proceedings, factors operating in the mind of the disciplinary authority may be many, such as enforcement of discipline, or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt.

Conclusions which are deducible from various decisions of the Supreme court (referred to in para 14 to 22 of the judgment) on this point, are as follows: (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 criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it is desirable to stay the departmental proceedings till conclusion of the criminal case; (iii) Whether the nature of 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 the 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) Factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay departmental proceedings but due regard has to be given to the fact that departmental proceedings cannot be unduly delayed, the departmental proceedings, even if they were stayed on account of pendency of criminal case, can be resumed and proceeded with, so as to conclude them at an early date. The purpose is that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest".

13. As is apparent, in pursuance of the above decision of the Hon'ble Supreme Court, the DOP&T has issued Office Memorandum

No.11012/06/2007-Estt.A dated 01.08.2007 regarding holding of departmental proceedings during pendency of the criminal case and from this, it is luculent that there is no bar in simultaneous proceedings of criminal case and the disciplinary proceedings though separately, subject to fulfilment of the ingredients as quoted in (ii) and (iii) of Para-12 above. At the same time, the whole purpose of resuming departmental during pendency of criminal case cannot be brushed aside. The purpose is that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest. Viewed from this angle, order dated 23.02.2017 (A/11) passed by the Respondent No.1 in pursuance of the direction of this Tribunal in O.A.No.41 of 2017 which is impugned in this O.A. calls for no interference.

14. Having regard to what has been discussed above, the O.A. is held to be without any merit and the same is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(A)

(GOKUL CHANDRA PATI)
MEMBER(J)

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