

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 3896 of 2004

CHANDRA PRAKASH
V/S
STATE & ANR.

Mr. ANIL KUMAR SINGH, for the appellant / petitioner

Date of Order : 29.9.2004

HON'BLE SHRI N P GUPTA, J.

ORDER

Heard learned counsel for the petitioner, and perused the orders, and also perused the Judgment cited by learned counsel for the petitioner reported in 1997(2) WLC(Raj.),63 [Amrit Lal Tanwar Vs. Central Bank of India and ors.].

Of course in Amrit Lal's case (supra), temporary injunction was granted by this court restraining the employer from proceeding with the Departmental Enquiry pending decision of criminal case/prosecution. However, a look at Judgment of Amrit Lal's case (supra) shows that, there in earlier judgment of this court in P.J.Sunder Rajan Vs. Unit Trust of India reported in [1993(3) SLR,21], and judgment of Hon'ble Apex Court in Kusheshwar Dube Vs. M/s. Bharat Cooking Coal Ltd. and ors. reported in [AIR 1988, SC,2118] etc. were considered.

In Kusheshwar Dube's case (supra), Hon'ble Apex Court had clearly laid down 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. Likewise, it was also held in that case that, there could be no legal bar for simultaneous proceedings being taken, and question whether in the facts and circumstances of a particular case, there

should, or should not, be such simultaniery 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.

In that view of the matter, each case has to be considered on its own circumstance. On close reading of Amrit Lal's case (supra), it transpires that principal ground that worked with this court, was that two respondents therein, being respondent nos. 2 and 3, who were the Enquiry Officers, were also produced as prosecution witnesses in the criminal case and, therefore, it was expressed that it would be difficult to expect impratcial inquiry, then following Kusheshwar Dube's case (supra), it was noticed that it would depend on facts and circumstances of each case, and then injunction was granted. In the present case, this eventuality is not shown about the persons conducting inquiry, being suffering from any such disability. On the other hand, it is also informed by learned counsel for the petitioner, that criminal case has not registered any material progress for the last three years.

Only apprehension then expressed was, that if the petitioner is held guilty and punished in the departmental enquiry, finding recorded here in, could prejudice his case in criminal trial.

In my view, the apprehension can be taken care of by expressly directing that no finding, that may be recorded in Departmental Enquiry against the petitioner, shall be taken into consideration by the learned trial court trying the criminal case. It is different story that even otherwise also, these findings do not constitute evidence against the petitioner in criminal case. However, looking to the apprehension of petitioner, aforesaid direction is being given. Otherwise also, having considered the impugned orders, I do not find any error in the impugned

orders requiring interference by this court. The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

/Srawat/