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than 8 days infringes the principles of natural justice, as no opportunity was given to the workman to explain his conduct. These and other related matters have yet to be examined by the Court on the basis of evidence led by the respective parties. Any comment on the merits of the various contentions raised by the respective counsel would indeed prejudice the case of one or the other party. All the same, there is no manner of doubt that the various points canvassed by the learned counsel for the petitioner need close scrutiny and so, the matter ought to have been referred by the Government to an appropriate Industrial Tribunal for its adjudication. Accordingly, while accepting the writ petition, we direct the respondent-Government of Haryana to refer the dispute for adjudication before an appropriate Labour Court within two months from the date of passing of this order. No costs.

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J.S.T.

*Before Hon'ble A. P. Chowdhri & Swatanter Kumar, JJ.*

SARITA KUMARI & OTHERS,—*Petitioners.*

*versus*

THE PUNJAB STATE ELECTRICITY BOARD AND  
OTHERS,—*Respondents.*

C.W.P. No. 13299 of 1994.

15th December, 1994.

*Constitution of India, 1950—Arts. 226/227—Stay of Departmental proceedings during pendency of criminal trial—Guidelines for stay stated—Where scope of charge-sheet and penal proceedings is different, Stay of domestic enquiry is unwarranted—Both proceedings can run simultaneously where such proceedings do not prejudice the criminal trial.*

*Held*, that no principles of natural justice are violated nor they require that an employer must await for the decision of the criminal Court, before taking action against an employee. We have seen that the same set of facts are not the basis in the present case for lodging of F.I.R. and initiation of departmental proceedings by serving the said charge-sheet. The charge-sheet mainly refers to overlooking the wrong entries made in the C.C.R. Book, avoiding purposely the reconciliation total of S.C.A. register entries during the relevant period and not getting the daily totals of the C.C.R. book. It is indicated in the charge-sheet that the petitioners have been avoiding their prime duties and these acts constitute misconduct and it has

also caused huge losses to the Board. Thus, it will not be proper to close the doors of the disciplinary authority to look into the alleged acts of conduct at this stage. The criminal courts are concerned with the limited jurisdiction as to whether the accused are liable to be convicted for the offences for which F.I.R. was registered against them. The negligence or the above mentioned misconduct may even not fall within the scope of proceedings before the criminal Court.

(Para 6)

*Further held*, that an employer is free to exercise its lawful powers and act fairly in holding of departmental proceedings and need not necessarily wait for the conclusion of the proceedings pending before the criminal Court. However, the situation will be different if the same set of facts gave rise to the lodging of F.I.R. and intiation of departmental proceedings. An identical question arises for determination before the authorities as well as the Court. The Courts have expressed unanimity in their judgments that it is 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.

(Para 8)

*Further*, held that there can be no legal bar for simultaneous proceedings being taken against delinquent employee i.e. disciplinary as well as criminal action. Thus we feel that it may be appropriate to specify certain basic conditions or criteria which the Courts may consider while dealing with the cases specially of the present nature. These are intended to be general guiding factors and are not exhaustive. Thus, the Courts may have to consider the existence of the following conditions in their right perspective to determine and decide whether the stay may or may not be granted in a given case :—

- (i) *The criminal action and the disciplinary proceedings are grounded upon the same set of facts ;*
- (ii) *Identical and or similar question(s) arise for determination before the criminal Court of competent jurisdiction and the disciplinary enquiring authority ;*
- (iii) *The complexity of the merits of the case, that is to say, the case is of grave nature and involves questions of fact or law which are not simple and normally should be decided by a Court of law alone; and*
- (iv) *Whether it will be unfair to the delinquent employee, to permit continuation of simultaneous proceedings because it would prejudicially affect the case of the said employee, or the delinquent employee would face serious prejudice in his criminal trial because of continuation of disciplinary proceedings.*

(Para 11)

*Further*, held that in the present case we have already discussed above that the scope of the charge-sheet served upon the petitioners is different than the scope of the F.I.R./criminal proceedings pending before the Court. The case does not involve any complex question of facts and law. On the contrary the disciplinary action is sought to be taken primarily on negligence of duty. No prejudice would be caused to petitioners No. 2 and 3 as no criminal proceedings are pending against them. The identical or same set of facts are not the basis of both the proceedings.

(Para 13)

G. S. Bal, Advocate, for the Petitioners.

R. L. Sharma, Advocate with Sandeep Chopra, Advocate, for the Respondents.

#### ORDER

*Swatanter Kumar, J.*

(1) The Petitioners have approached this Court by way of the present civil Writ Petition under Articles 226/227 of the constitution of India praying for the quashing of the charge-sheet dated 22nd December, 1992 and further praying for stay of disciplinary proceedings during the pendency of the case instituted against them, which is pending in the Criminal Court of competent jurisdiction.

(2) The facts are that the petitioners are working in Punjab State Electricity Board, hereinafter referred to as the Board. Petitioner No. 1 is working as Audit Clerk and petitioners No. 2 and 3 are working as Revenue Accountant and Cashier respectively. They were working on these posts even during the relevant period. During the audit inspection of accounts of Daresi Road Sub-Division, certain irregularities in the maintenance of accounts were detected and the Board lodged an F.I.R. bearing No. 87 dated 19th September, 1991 in the Police Station, Division No. 4, Ludhiana, F.I.R. was registered under Sections 167/201/409/467/468/120-B of the Indian Penal Code against 14 employees which included all the three petitioners. The Board placed all these persons including the three petitioners under suspension,—*vide* order dated 13th December, 1991, except petitioner No. 1 who was on maternity leave at that time. As stated, during the investigation, petitioners No. 2 and 3 were found to be innocent and were discharged by the order of the learned Judicial Magistrate 1st Class, Ludhiana, dated 26th February, 1992. Application was filed by the prosecution to get these two petitioners discharged, while petitioner No. 1 was not discharged and the proceedings are pending even presently before the said

Court. Suspension orders against petitioners No. 2 and 3 were withdrawn by the orders of the competent authority on 11th March, 1992 and 20th May, 1992 respectively. The Board had served a charge-sheet upon all the 14 employees who were involved earlier in the criminal case, but no steps were taken in these proceedings till 21st April, 1994 when the Board appointed Shri Jagjit Singh, Chief Engineer Enforcement of the Board, as Enquiry Officer, to hold an enquiry against all those 18 persons including all the three petitioners. Petitioner No. 1 appears to have made a representation to the authorities on 25th August, 1994 submitting therein that the departmental proceedings should be stayed against him till the pendency of the criminal case. The F.I.R. which was lodged on behalf of the Board on 14th September, 1991 stated that the instructions of the Board were systematically violated, with ulterior motive of embezzling the funds of the Board by the officials concerned and amounts had been collected from the consumers more than what were deposited in the Board's accounts. It was further stated that false documents were prepared and records were misplaced in conspiracy with each other and consequently the F.I.R. was registered against them under the above mentioned provisions of the Indian Penal Code. The petitioner No. 1 has challenged the commencement and criteria of the disciplinary proceedings as well as prayed for quashing of the charge-sheet, while petitioners No. 2 and 3 have restricted their relief to the quashing of the charge sheet dated 22nd December, 1992.

(3) In the reply filed on behalf of the respondents it has been submitted that the allegations as set out in the charge-sheet are different and distinct to that of the allegations as set out in the F.I.R. registered against these persons. The charge-sheet relates to certain omissions and negligence which necessarily may or may not constitute any offence attracting the provisions of the Indian Penal Code. The allegations in the charge-sheet have been detailed in the reply which reads as under :—

“The allegations in the charge-sheet are :—

- (a) Purposely overlooking the wrong entries made in the C.C.R. book ;
- (b) purposely not getting the book-wise cash received totalled in the ledger ;
- (c) purposely avoiding the reconciliation in the totals ;

(d) indulgence in reduction in the consumer bills ;

(e) unauthorisedly not forwarding the daily total of C.C.R. book every month to the competent authority.”

(4) No replication has been filed on record. Before dealing with the case of petitioner No. 1 it will be appropriate to discuss the case of petitioners No. 2 and 3, who were admittedly discharged by the learned Judicial Magistrate 1st Class,—*vide* his order dated 26th February, 1992 at the request of the prosecution. They were discharged and not acquitted on the merits of the case. The discharge was given to them by the Magistrate on a concession of the prosecution which had stated that they were found innocent, and could not substantiate the criminal offences, as stated in the F.I.R. against them before Court. The discharge of these petitioners by the learned Magistrate cannot, therefore, give them advantage and entitled them to a relief of quashing of the charge-sheet. In any case, the charge is not identical to that of the contents of the F.I.R.

(5) Certain acts of omission and commission may not constitute a criminal offence in law but still may be sufficient and fully justifiable for initiation of departmental proceedings. Normally the Courts would not interfere in the disciplinary proceedings and quashing of charge-sheet(s). The adequacy and sufficiency of material for serving a charge-sheet primarily falls in the domain of the disciplinary authority and it is only in exceptional circumstances that Courts may be inclined to interfere at this stage of disciplinary proceedings. All that the Board has done is to initiate disciplinary proceedings against all the petitioners and no prejudice is likely to be caused to petitioners No. 2 and 3, as no case is pending against them and, in any case, the F.I.R. and the charge-sheet are based on different set of facts. They cannot be permitted to avoid the disciplinary action on the ground that they have been discharged by the criminal Court. No material has been placed on record before us which would substantiate the arguments of learned counsel for these two petitioners. In addition to these reasons, the discussion here-after would also show that petitioners No. 2 and 3 are not entitled to any relief in this petition and their petition is liable to be dismissed.

(6) The case of petitioner No. 1 is that charge-sheet dated 22nd December, 1992 should be set aside and in any case the disciplinary proceedings should be stayed during the pendency of the criminal proceedings before the Court of learned trial Magistrate. If the

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submission of the learned counsel for the petitioners is accepted, the irresistible conclusion thereof would be that in every case the court would have to stay the departmental proceedings where an F.I.R. is lodged by the employer against the employee(s). This contention of the learned counsel for petitioners cannot be accepted for the simple reason that there is no legal bar in taking of departmental proceedings and criminal proceedings simultaneously. Further no principles of natural justice are violated nor they require that an employer must await for the decision of the criminal Court, before taking action against an employee. We have been that the same set of facts are not the basis in the present case for lodging of F.I.R. and initiation of departmental proceedings by serving the said charge-sheet. The charge-sheet mainly refers to overlooking the wrong entries made in the C.C.R. Book, avoiding purposely the reconciliation total of S.C.A. register entries during the relevant period and not getting the daily totals of the C.C.R. book. It is indicated in the charge-sheet that the petitioners have been avoiding their prime duties and these acts constitute misconduct and it has also caused huge losses to the Board. Thus, it will not be proper to close the doors of the disciplinary authority to look into the alleged acts of conduct at this stage. The criminal Courts are concerned with the limited jurisdiction as to whether the accused are liable to be convicted for the offences for which F.I.R. was registered against them. The negligence or the above mentioned misconduct may even not fall within the scope of proceedings before the criminal Court.

(7) The Hon'ble Supreme Court in the case of *Delhi Cloth and General Mills Ltd. v. Kushal Bhan* (1), while considering the contention of the employers that they were not bound to await the result of the trial in the criminal Court and they could proceed with the matter and conduct a fair enquiry held as under :—

“It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair, but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. In *Shri Bimal Kanta Mukherjee v. Messrs. Newsman's Printing Works*, 1956 Lab. A.C. 188, this was the view taken by the Labour Appellate Tribu-

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(1) A.I.R. 1960 S.C. 806.

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nal. We may however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced."

(8) An employer is free to exercise its lawful powers and act fairly in holding of departmental proceedings and need not necessarily wait for the conclusion of the proceedings pending before the criminal Court. However, the situation will be different if the same set of facts gave rise to the lodging of F.I.R. and initiation of departmental proceedings. An identical question arises for determination before the authorities as well as the Court. The Courts have expressed unanimity in their judgments that it is not 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.

In *Kusheshwar Dubey v. M/s Bharat Coking Coal Ltd. and others* (2), the Supreme Court while accepting the appeal against the order of the Patna High Court held as under

"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 for should not be such simultaneity of he 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 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.

In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view 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 had been affirmed in appeal."

(9) A Division Bench of this Court in the case of *Rajinder Singh v. The State of Haryana and others* (3), after discussing some law on the subject held :—

"It should also be pointed out that it is well settled position in law that the nature and scope of criminal proceedings is entirely different from disciplinary proceedings against a Government servant. The final result of a departmental proceedings can be the imposition of penalty by the master in the exercise of his powers whereas the result of a criminal trial would be that if a civil servant is convicted of the offence with which he is charged, penalty as prescribed by the law of the land would be imposed upon him. Even if a Government servant is acquitted by a criminal court, disciplinary proceedings can thereafter be instituted against him, in respect of the conduct which were considered as constituted as offence, if such a conduct also constitutes misconduct, for imposing penalty in the departmental proceedings."

(10) In a very recent judgment pronounced by another Division Bench of this Court in *Gurmeet Singh v. The State of Punjab and others*, Civil Writ Petition No. 15893 of 1993, the Court, after considering the judgment of the Supreme Court in *P. J. Sunderrajan and another v. Unit Trust of India and others* (4), which is the judgment relied upon by the learned counsel for the petitioner in the present case as well, held :—

"After going through the decision in *Rajinder Singh* (supra) we find that the question is squarely covered by the said

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(3) 1993 (1) Recent Services Judgement 580.

(4) 1993 (3) S.L.R. 21 (S.C.).



decision and the ruling relied on by learned counsel for the petitioner, namely, *P. J. Sunderrajan* (supra) was in the nature of a direction in the peculiar facts and circumstances of that case and no rule of general application was laid down."

Justice A. P. Chowdhri speaking on behalf of the Bench held that *P. J. Sunderrajan's* case was in peculiar facts and circumstances of that case. We may also point out that in *P. J. Sunderrajan's* case (supra) the Hon'ble Supreme Court has not discussed its earlier judgments and probably has not intended to lay-down the law in the manner as suggested by the learned counsel for the petitioner. It is difficult to accept the proposition that lodging of an F.I.R. shall, in all circumstances, would mean that no departmental proceedings can be commenced by the disciplinary authority. If it is so accepted, it would certainly cause many problems for the employer. Even in the present case the F.I.R. was lodged on 19th September, 1991 and the charge-sheet, admittedly, was served upon the petitioners on 22nd December, 1992, but they have filed this petition before this Court on or about 16th September, 1994. It is a settled rule of law that the departmental proceedings would be deemed to have commenced upon serving of the charge-sheet and in fact upon despatch of the charge-sheet to the delinquent employee. Thus, the petition of the petitioners is also hit by laches.

(11) It is true that Courts may not be able to evolve any hard and fast rule or formula on the basis of which stay of departmental proceedings can or cannot be granted in cases of simultaneous invocation of remedies by an employer. Equally true is the position of law that emerges from various other pronouncements including the judgments referred to supra that there can be no legal bar for simultaneous proceedings being taken against delinquent employee i.e. disciplinary as well as criminal action. Thus, we feel that it may be appropriate to specify certain basic conditions or criteria which the Courts may consider while dealing with the cases specially of the present nature. These are intended to be general guiding factors and are not exhaustive. Thus, the Courts may have to consider the existence of the following conditions in their right perspective to determine and decide whether the stay may or may not be granted in a given case :—

- (i) The criminal action and the disciplinary proceedings are grounded upon the same set of facts ;
- (ii) Identical and or similar question(s) arise for determination before the criminal Court of competent jurisdiction and the disciplinary enquiring authority ;

(iii) The complexity of the merits of the case, that is to say, the case is of grave nature and involves questions of fact or law which are not simple and normally should be decided by a Court of law alone; and

(iv) Whether it will be unfair to the delinquent employee, to permit continuation of simultaneous proceedings because it would prejudicially affect the case of the said employee, or the delinquent employee would face serious prejudice in his criminal trial because of continuation of disciplinary proceedings.

(12) In the present case we have already discussed above that the scope of the charge-sheet served upon the petitioners is different than the scope of the F.I.R./criminal proceedings pending before the Court. The case does not involve any complex question of facts and law. On the contrary the disciplinary action is sought to be taken primarily on negligence of duty. No prejudice would be caused to petitioners No. 2 and 3 as no criminal proceedings are pending against them. The identical or same set of facts are not the basis of both the proceedings.

(13) In view of our discussion above, we dismiss the writ petition filed by all the petitioners. However, in the circumstances of the case, there shall be no orders as to Costs.

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R.N.R.

Before Hon'ble S. S. Grewal, A. S. Nehra & J. L. Gupta, JJ.

M/S SHEO PARSHAD RAJIV KUMAR MODI & OTHERS,  
—Petitioners.

versus

THE STATE OF PUNJAB & OTHERS,—Respondents.

C.W.P. No. 4199 of 1991

20th December, 1994

Constitution of India, 1950—Arts. 226/227—Punjab Agricultural Produce Markets Act, 1961 (23 of 1961)—S. 7 (2)—Punjab General Clauses Act—Ss. 12 & 19—Ample power conferred on State Government to establish markets but also power to disestablish or denotify principal market yard into sub market or to completely abolish market yard in public interest.