

## Jang Bahadur Singh vs Baij Nath Tiwari on 26 April, 1968

**Equivalent citations:** 1969 AIR 30, 1969 SCR (1) 134, AIR 1969 SUPREME COURT 30, 1969 LAB. I. C. 194, 1968 ALL. L. J. 1008, (1968) 2 ANDH L T 280, 1968 ALLCRIR 362, 1968 S C D 913, 1969 REN C R 128, 1969 (1) SCR 134, 1968 S C D 9L3, (1968) 2 S C J 955, 1968 B L J R 939, 17 FAC L R 300, ILR 1968 2 ALL 527

**Author:** R.S. Bachawat

**Bench:** R.S. Bachawat, S.M. Sikri

PETITIONER:

JANG BAHADUR SINGH

Vs.

RESPONDENT:

BAIJ NATH TIWARI

DATE OF JUDGMENT:

26/04/1968

BENCH:

BACHAWAT, R.S.

BENCH:

BACHAWAT, R.S.

SIKRI, S.M.

CITATION:

1969 AIR 30                      1969 SCR (1) 134

CITATOR INFO :

RF                      1974 SC 642 (6)

R                      1988 SC2118 (5)

ACT:

Contempt of Court-Writ Petition pending to quash suspension order-Stay vacated--Service of charge-sheet in respect of disciplinary proceedings-If amounts to contempt.

HEADNOTE:

Pending an inquiry into the conduct of the respondent-Principal of a college in respect of certain allegations, the respondent was suspended. The respondent filed a writ petition in the High Court to quash the order of suspension and also obtained ex-parte stay against the continuation of

the inquiry. The ex-parte stay was vacated. Thereafter the appellant-manager of the college, served a charge-sheet on the respondent and called upon him to explain the allegations. The respondent moved the High Court for holding the appellant guilty of- contempt of Court. The High Court held the appellant guilty of contempt of Court. In appeal, this Court.

HELD:The appeal must be allowed.

An authority holding an inquiry in good faith in exercise of the powers vested in it by statutory regulations is not guilty of contempt of Court, merely because a parallel inquiry is imminent or pending before a Court. The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a Court. But the pendency of the court proceeding does not bar the taking of disciplinary action. The power of taking such- action is vested in the disciplinary authority. The civil or criminal court has no such power. The initiation and continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending court proceeding. The employee is free to move the court for an order restraining the continuance of the disciplinary proceedings. If he obtains a stay order, a wilful violation of the order would of course amount to contempt of court. In the absence of a stay order the disciplinary authority is free to exercise its lawful powers. [137D--G]

In this case, after the stay order was vacated by the High Court, the appellant bona fide believed that the disciplinary proceedings could be continued, and the charge-sheet was served in good faith and was not intended or calculated to, interfere with the court proceedings. Rather the respondent instituted the contempt proceedings with ulterior motives to indefinitely hold up the inquiry after having failed to obtain the stay order. [139 E-F]

Tukaram Gaokar v. S. N. Shukla, [1968] 3 S.C.R. 422, Reg, v. Gray, [1900] 2 Q.B. 36, Arthur Reginald Perors v. The King [1951] A.C. 482, 488, Re : Shri Mehra A.I.R. 1962 M.P. 72; Saibal Kumar Gupta v. B. K. Sen [1961] 3 S.C.R. 460; Delhi Cloth and General Mills Ltd., v. Kaushal Bhan, [1960] 3 S.C.R. 227; Tata Oil Mills Co., Ltd.. v. The Workmen, A.I.R. 1965 S.C. 155; The King v. Parmanand, A.I.R. 1949 Pat. 282; D. J. Shield v. Ramesam, A.T.R. 1955 Andhra Pradesh, 156 referred to.

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 187 of 1965.

Appeal by special leave from the judgment and order dated August 3, 1965 of the Allahabad High Court in Criminal Misc. Contempt Case No. 7 of 1965.

U. P. Singh and D. N. Mishra, for the appellant. Sobhagmal Jain, S. P. Singh and J. P. Goyal, for the respondent.

The Judgment of the Court was delivered by Bachawat, J.-The appellant is the manager of Hiralal Memorial Intermediate College, Bhaurauli, in the District of Azamgarh. The respondent was the principal of the College. On December 14, 1963 the respondent drew from the Boys' Fund of the college two sums of Rs. 189 for payment of scholarship to the two Harijan students for, the period from May to November 1963. On withdrawal of the monies he sent to the Harijan. Tatha Samaj Kalyan Adhikari a form called Form No. 14 to the Adhikari containing a receipt of the scholarship signed by the two students and counter-signed by himself. The Adhikari wrote to the appellant informing him of the complaint. made by the students that in spite of the submission of Form No. 14 they had not received the scholarship. On March 24, 1964 the District Inspector of Schools visited the College and on finding that the scholarships had not been paid called for an explanation for nonpayment. On April 10, 1964 the appellant forwarded the Inspector's letter of March 24 to the respondent and asked him to give an, explanation. The respondent sent a reply stating that payments were made to the students on March 31, 1964 and that the delay in payment was due to the absence of the students from the College and the fact that the register on which receipts had to be obtained were with the Inspector from December. 8, 1963 to March 10, 1964. A meeting of the managing committee was called on April 14, 1964 to consider the Inspector's letter and the respondent's explanation. According to the appellant, on April 19, 1964 the managing committee met and resolved to take disciplinary action against the respondent. On April 21, 1964 the appellant passed an order suspending the respondent pending the inquiry. The order stated that it was passed in exercise of the power vested in the appellant by the rules and the resolution of the managing committee dated April 19, 1964. A copy of the resolution was attached. On April 24, 1964 the respondent filed a writ petition in the High Court of Allahabad praying for appropriate writs quashing the order of suspension. He alleged that the appellant had no authority to pass the order and that the order was made in bad faith. On the same date the respondent obtained an ex parte order from the High Court staying the, operation of the suspension order. On July 22, 1964 after hearing both the parties the High Court vacated the stay order. On December 25, 1964 the appellant served a charge, sheet on the respondent. Charge No. (IV) was as follows "The scholars hip amounts of Rs. 216/25 and Rs. 216/25 of Sri Karam Deo Ram and Sri Jai Raj Ram students of Class XII for the months of May 1963 to November 1963 were withdrawn by you on 14-12-1963 but the same have neither been disbursed to the students concerned nor refunded to the, Treasury. Thus you are guilty for misappropriation of the aforesaid amount.

Evidence which is proposed to be considered in support of the charge :

1. Letter of D.J.O., dated 24-3-1964.
2. Letter of H.W.O., dated 31-3-1964.

### 3. Statement of students.

Thus it is evidently clear that you being entrusted -with the aforesaid money have dishonestly misappropriated the amount for your own use and the poor students have been put to loss by your misconduct. As such you have committed criminal breach of trust dishonestly punishable under sec. 406 I.P.C." The respondent was required to submit his explanation by January 24, 1965. Instead of submitting his explanation the respondent filed a petition in the High Court asking for committal of the appellant for contempt of court. His contention was that the aforesaid charge was the subject matter of inquiry in the pending writ petition, and that as the respondent had launched a parallel inquiry in the matter he had committed contempt of court. The High Court accepted the contention and held that the respondent 'was guilty of contempt of court and directed him to pay a fine of Rs. 500 and costs. The respondent has filed this appeal after obtaining special leave from this Court. The conditions of service of the teachers in the College are governed by sec. 16 G of the Intermediate Education Act, 1921. (U.P. Act 11 of 1921) and the Regulations framed thereunder. Regulations 31 to 45 provide for punishment, inquiry and suspension. The Committee of Management is the punishing authority. The punishments of dismissal, removal, discharge and reduction in rank and diminution in emoluments require prior approval of the Inspector. If it is decided to take disciplinary action against an employee, the inquiry is made by an authority appointed by the committee. The ground on which it is proposed to take action is reduced in the form of definite charges. The charges are communicated to the employee, who is required to submit a written statement of his defence. If the employee or the inquiring authority so desires, an oral inquiry takes place. The inquiring authority then makes a report. On receipt of the report the punishing authority takes its decision on the case. On receipt of the decision of the committee the Inspector gives his decision. The Committee then implements the decision of the Inspector. The Regulations indicate definite time limits for the communication of the charge, submission of the written statement of defence, completion of the inquiry, the making of the report by the inquiring authority, the taking of decisions by the punishing authority and the Inspector and the implementation of the decision. Pending the inquiry and final orders, the employee may be suspended by the committee. The power of suspension may be exercised by the manager if it is delegated to him under the rules of the institution. The employee under suspension is paid a subsistence allowance of an amount equal to half his pay.

The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a court. But the pendency of the court proceeding does not bar the taking of disciplinary action. The power of taking such action is vested in the disciplinary authority. The civil or criminal court has no such power. The initiation and continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending court proceeding. The employee is free to move the court for an order restraining the continuance of the disciplinary proceedings. If he obtains a stay order, a wilful violation of the order would of course amount to contempt of court. In the absence of a stay order the disciplinary authority is free to exercise its lawful powers.

An authority holding an inquiry in good faith in exercise of the powers vested in it by statutory regulations is not guilty of contempt of court, merely because a parallel inquiry is imminent or pending before a court. In *Tukaram Gaokar v. S. AT. Shukla*(1) this Court held that the initiation and continuance of proceedings for imposition of penalty on the appellant for his alleged complicity in the smuggling of gold under sec. 112(b) of the Sea Customs Act, 1962 did not amount to a contempt of court though his trial in a criminal court for offences under sec. 135(b) of that Act and other similar offences was imminent and identical issues would arise in the proceedings before the customs authorities and in the trial before the criminal court. This Court observed (1) [1968] 3 S.C.R. 422.

"To constitute contempt of court, there must be involved some 'act done or writing published calculated to bring a court or a judge of the court into contempt or to lower his authority' or 'something calculated to obstruct or interfere with the due course of justice or the lawful process of the court.' *Reg. v. Gray*(1) *Arthur Reginald Perors v. The King*(2). The customs officers did nothing of this kind. They are acting bona fide discharging their statutory duties under ss. 111 and 112. The power of adjudicating penalty and confiscation under those sections is vested in them alone. The criminal court cannot make this adjudication. The issue of the show cause notice and proceedings there- under are authorised by the Act and are not calculated to obstruct the course of justice in any Court. We see no justification for holding that the proceedings amount to contempt of court."

In *Re: Shr Mehra*(3) the High Court of Madhya Pradesh held that the bona fide holding of a departmental inquiry on a charge of misappropriation against a government servant did not amount to contempt of court merely because a criminal prosecution on the same charge was pending against him. A fortiori the inquiry cannot amount to contempt of court if it is not a parallel investigation on a matter pending before a court, see *Saibal Kumar Gupta v. B. K. Sen*(4). In *Delhi Cloth and General Mills Ltd. v. Kaushal Bhan*(5) and *Tata Oil Mills Co., Ltd., v. The Workmen*(6) the Court held that a domestic inquiry by the employer into the charges against a workman was not vitiated because it was held during the pendency of a criminal trial into the same or similar charges. It may be desirable to stay the domestic inquiry pending the final disposal of the criminal case but the inquiry could not be characterised as mala fide merely because it was held during the pendency of the criminal proceedings.

In *The King v. Parmanand*(7) a Full Bench of the Patna High Court held that the giving or withholding of consent to the withdrawal of the prosecution under sec. 494 of the Code of Criminal Procedure was a judicial act and it was improper for the court to permit withdrawal of the prosecution on orders of the Government without making any attempt to exercise its discretion, that the power to grant adjournments of pending proceedings under s. 344 of the Code and the power to call for records in a pending or completed case under secs. 423, 435 of the (1) [1900] 2Q.B.36. (2) [1951] A.C.482.488. (3) A.I.R, 1962 M.P.72. (4) [1961] 3 S.C.R. 460. (5) [1960] 3S.C.R.227. (6) A.I.R. 1965 S.C. 155. (7) A.I.R. 1949 Pat 282.

Code and the general rules and circular orders were vested in the court and not in executive officers. Those questions do not arise for decision in this case. Narayan, J. in a separate judgment observed that in an inquiry with regard to a matter which is sub judice was bound to interfere with the even and ordinary course of justice and a parallel inquiry of this kind would amount to opening the door for contempt. In that case the executive officers were issuing orders to the criminal court calling for its records and asking it to adjourn the proceedings and to consent to the withdrawal of the prosecution and on those facts it might be possible to hold that the officers were guilty of contempt. But we cannot agree with the broad observation that a parallel inquiry on a matter pending before a court necessarily amounts to a contempt of court. We think that an inquiry by a domestic tribunal in good faith into the charges against an employee does not amount to contempt of court merely because an inquiry into the same charges is pending before a civil or criminal court. In *D. J. Shield v. Ramesam* (1) the Andhra Pradesh High Court agreed with the observations of Narayan, J. but the decision is distinguishable because the court found that the inquiry by the Collector into the charges against a sub-magistrate was not a parallel inquiry and did not amount to contempt of court.

After the High Court vacated the stay order the appellant bona fide believed that the disciplinary proceedings could be continued. The service of the charge-sheet on the respondent was made in good faith and was not intended or calculated to interfere with the court proceedings. We are inclined to think that the respondent instituted the contempt proceeding with ulterior motives. He was under

suspension and was drawing half pay for doing nothing. His intention was to delay the inquiry into the charges against him. Having failed to obtain the stay order he launched the contempt proceeding so that the inquiry might be indefinitely held up. In view of the order under appeal he has successfully delayed the inquiry so far. In the result, we allow the appeal, set aside the judgment and order of the High Court dated August 3, 1965 and dismiss the petition filed under the Contempt of Courts Act.

Y.P.                                      Appeal allowed-  
(1) A. 1. R. 1955 A. P. 156.