

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO 101/2012

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Judgment delivered on: 05.12.2012

RAJENDRA KUMAR SAHU & ORS Appellants

Through : Mr. Subhasish Mohanty, Adv.

versus

INSTITUTE OF MARKETING & MANAGEMENT & ORS

..... Respondents

Through : Mr. H.L. Tiku, Sr. Adv. with
Ms. Yashmeet Kaur, Adv. for R-1 to
4.

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. The appellants have filed the present appeal challenging the impugned order dated 09.02.2012 passed by the learned Addl. District Judge, Delhi whereby the application of the appellants under Order 39 Rule 1 and 2 CPC seeking grant of ad interim injunction restraining the respondents 1 to 4 from holding further proceedings arising out of the joint charge sheet dated 09.08.2011 issued against appellants 1 to 5, joint charge sheet dated 10.08.2011 issued against appellants 6 to 10 and another joint charge sheet dated 11.08.2011 issued against the aforesaid appellants.

2. Briefly, the facts relevant for the disposal of present appeal are as under:-

The appellants are the permanent employees of respondent no. 1 which is a society registered with the Registrar of Societies, Government of NCT of Delhi under the Societies Registration Act, 1860 for imparting education and research in management. The respective posts of appellants have been stated in the plaint. It is alleged that appellants are also the Executing Members/Office Bearers of a Trade union, namely, IMM, Karamchari Sangh registered on 27.02.2008 with the Registrar of Trade Union, under the Trade Union Act, 1926. Through their Trade Union, they had raised various issues concerning the terms and conditions of the service of members of their Trade Union which was not liked by respondent no. 2 to 4 who are holding the post of Executive President, Director General and Registrar with respondent no. 1. Respondent no.2 is also the father of respondent no.3 and 4. It is stated that there is Memorandum of Association and Rules and Regulations of the respondent no. 1 society and respondents 2 to 4 are functioning contrary to the same. It is alleged that the respondents 2 to 4 are working in their individual interest instead of running the affairs of respondent no. 1 as their family business and are misappropriating the funds of society. It is alleged that the appellant complained about the alleged acts of the respondents 2 to 4 to the concerned authorities. The respondent nos. 2 to 4 got annoyed and on 12.08.2011, the appellants 1 to 5 were served with a joint charge sheet dated 09.08.2011 and appellants 6 to 10 were also served with a joint charge sheet dated 10.08.2011 under the signatures of

respondent no. 4. On the same day, all the appellants were also served with suspension order dated 11.08.2011 also on the allegations of resorting to strike w.e.f. 09.08.2011 to 10.08.2011 and other alleged misconduct. They have further alleged that the charge sheet-cum-suspension order mentioned above is vindictive, illegal and suffers from mala fides and that respondent no. 4 had no authority to issue the same. Along with the aforesaid suit, an application under Order 39 Rule 1 and 2 read with Section 151 CPC was made making prayer for grant of ex parte ad interim stay as is stated above. The respondents have filed reply to the said application under Order 39 Rule 1 and 2 CPC and also filed written statement.

3. The respondents have denied the allegations made by the appellants about violations of Rules and Regulations of respondent no. 1 by respondents 2 to 4. It is stated that the court in exercise of its discretionary jurisdiction cannot interfere in the charge sheet and disciplinary proceedings. The ad interim injunction cannot be granted in favour of appellant. The respondents have further taken a stand that once a disciplinary proceeding has been initiated, the same must be brought to its logical end as to whether the delinquent officer is guilty of the charge levelled against him or not.

4. After considering the pleadings of the parties and hearing the learned counsel for the parties, the learned Trial Judge dismissed the application under Order 39 Rule 1 and 2 CPC by observing that there is no prima facie case in favour of the appellants and against the respondents.

5. Aggrieved with the same, the present appeal is filed.

6. Ld. counsel for the appellant has contended that the joint charge sheets referred above have been issued to the appellants by the respondent no. 4 i.e. Registrar. It is contended that as per Rule XXII(1) of Rules and Regulations of respondent no.1, respondent no. 4 has no power to issue the charge sheet. It is submitted that under the aforesaid Rules, only Executive President is authorized to appoint and terminate and accordingly he is the one who can issue the charge sheet as such charge sheets issued are without jurisdiction. It is further contended that charge sheets issued to the appellants, on the face of it, do not constitute misconduct. It is stated that there is a prima facie case in favour of the appellant as charge sheets issued to them are issued by person who has no authority to issue the same. The balance of convenience is also in favour of the appellants as they are likely to succeed in the matter.

7. It is further contended that even the Inquiry Officer is appointed by the Registrar i.e. respondent no.4 who has no authority to appoint the same under the aforesaid Rules. It is further contended that even the Inquiry Officer appointed is an outsider which is not permitted as per the Rules and Regulations of the respondent no.1. Learned counsel for appellant has submitted that the charge sheets issued are without jurisdiction and are wholly illegal as such the court is competent to interfere at the interlocutory stage.

8. On the other hand, learned senior counsel appearing for the respondents has contended that there is no violation of any of the Rules and Regulations of respondent no.1 as is alleged. Learned senior counsel appearing for respondent has contended that it is settled law that a disciplinary inquiry once initiated should be culminated to a logical conclusion and the courts refrain from interfering in the same except in exceptional cases i.e. where the charge sheet issued is without jurisdiction or for some other reason it is wholly illegal. It is contended that the appellants are governed by the 'Service Rules for the Staff' of respondent no.1. The said Service Rules do not prescribe as to who will issue the charge sheet. It is submitted that as per the Rule 18(c) of aforesaid Service Rules, the reply to the charge sheet shall be considered by the Director General of respondent no. 1. It is submitted that in case of appellants, the replies to charge-sheets were considered by Director General of respondent no.1, as such the charge-sheets issued are legal and valid. It is submitted that procedure as laid down in Rule 18(c) of the 'Service Rules for the Staff' has been followed and there is no violation as is alleged. It is submitted that even the Inquiry Officer was appointed as per the aforesaid Service Rules of respondent no.1. The appellants raised objection thereto by contending that the Chief Administrative In-charge of respondent no.1 being a salaried employee cannot be an Inquiry Officer and requested for the appointment of an independent Inquiry Officer. It is submitted that considering their request, an independent Inquiry Officer was appointed and now the appellants are estopped from challenging the same. It is further contended the discretion exercised by the trial court while dismissing the application

for grant of ad interim injunction cannot be said to have been exercised arbitrarily.

9. The submissions made have been considered.

10. The charge sheets issued against the appellants are at Page Nos. 194, 195, 197 and 199 of the paper book wherein the allegations against them are of holding dharna and instigating others to continue their dharna, stoppage of work, instigating other employees to leave their duty and gather at main gate, strike, etc. The details of which are given in the aforesaid charge sheets.

11. The appellants have already been suspended pursuant to the respective charge sheets issued against them. It is also admitted position that the inquiry is almost at the completion stage. It is settled law that normally, courts do not interfere at the initial stage of the disciplinary proceedings, when charge-sheet is issued and the matter is pending before the inquiry officer or the disciplinary authority. In a very rare and exceptional case court can interfere if it is found to be without jurisdiction or the proceedings are wholly illegal.

12. The Supreme Court in the case of **Union of India vs. Kunisetty Satyanarayana; (2006) 12 SCC 28** has held as under:-

“14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

13. In the present case, the main stand of the appellant is that the Registrar i.e. respondent no.4 has no authority to issue the charge sheet

under the Rules and Regulations of respondent no.1, as such whole proceedings are without jurisdiction. Learned counsel for appellant has relied upon Rule XXII of aforesaid Rules which is reproduced as under:-

**“XXII. POWERS OF EXECUTIVE
PRESIDENT AND SECRETARY GENERAL**

The Governing Council may confer any of the powers vested in itself, on the Executive President and/or Secretary General. They shall be the Executive Head and Deputy Head respectively of the Institute and shall have generally the following powers (although the Executive President, shall be over and above the Secretary General, in all respects, and his orders, if necessary, shall be followed by the Secretary General):

- (1) To appoint, terminate or dismiss employees, drawing basic salary not exceeding Rs.10,000/- per month of the Institute and to fix their wages or remuneration and with any powers and functions and to terminate or dismiss them.

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14. The aforesaid Rule is silent as to who will issue the charge sheet. In any event, it is not the stand of the appellants that the charge sheets have been issued by a person junior to them. On the other hand, learned counsel for the respondent has relied upon Rule XVIII(c) of Service Rules for the staff of respondent no.1. The same is reproduced as under:-

“Rule XVIII. PUNISHMENTS :

(c) Procedures to prove offences for Teaching & Non-Teaching Staff

An employee will be issued memo for his/her offence and written reply will be sought from employee to allow him to present his case. In case Director General/Director is not satisfied with the reply of the employee Domestic Inquiry will be conducted by the Administration Incharge of IMM, as the Inquiry Officer. Inquiry officer will submit his report to the Director General/Director. On the basis of report of IO, Director General/Director will take appropriate action against the employee.”

15. The aforesaid Rule is also silent as to who will issue memo/charge sheet. It only prescribes that memo/charge sheet is to be issued and the Director General of respondent no. 1 will consider the reply of the employee and if the Director General is not satisfied with their reply, the domestic inquiry will be conducted by the Administrative In-charge of the respondent no. 1 as the Inquiry Officer. Inquiry Officer will submit his report to Director General. In the present case reply of appellants is considered by the Director General.

16. The other stand of the appellant is that the Inquiry Officer is an outsider as such he is not competent to conduct the inquiry proceedings. In this regard, it is seen that under the Rule XVIII(c) of Service Rule, the Chief Administrative In-charge of the respondent no. 1 has to conduct the inquiry. In the present case, the respondents vide their letter dated 12.09.2011 had appointed the Chief Administrative In-charge of the respondent no. 1 to conduct the inquiry. However, the appellants vide their letter dated 16.09.2011 and 20.09.2011 objected to his appointment by contending that the Chief Administrative In-charge is a salaried employee of respondent no. 1 and as such cannot be the Inquiry Officer and requested for appointment of independent Inquiry Officer. Accordingly, at their request the respondent no. 1 had appointed independent Inquiry Officers, namely, Sh. Sunil Mohan Tyagi and Sh. S.C. Dhingra to inquire into the charges. It is on their demand that the outsider was appointed as the Inquiry Officer as such the appellant cannot challenge the same. Further, the appellants have suppressed the material fact that on their request the inquiry officer was changed as such they are not entitled for any relief.

17. As regards allegation that there is no misconduct, the charge sheets referred above have been perused. Reading the same, it cannot be said that the alleged charges do not prima facie constitute misconduct, as is alleged.

18. The trial court has exercised its discretion in refusing to grant the ad interim injunction in favour of appellants by considering the material on record. Considering the entire material on record, it cannot be said that the trial court has exercised its discretion in an arbitrary manner.

19. No illegality is seen in the impugned order which calls for interference of this court. In view of the above discussion, the appeal is dismissed. It is clarified that nothing stated herein shall have any bearing on the merits of the case. The trial court shall be free to decide the case uninfluenced by observation made hereinabove.

The trial court record be sent back.

CM No. 4209/2012 (stay)

In view of the order on the main appeal, no further orders are required on this application.

The same stands disposed of accordingly.

VEENA BIRBAL, J

DECEMBER 05, 2012

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