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

+ W.P.(C) 6121/2013

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31st October, 2013

DR. SUDHIR KUMAR GOYAL Petitioner
Through Mr. K.K. Rai, Sr. Advocate with Mr. P.K.
Mishra, Advocate

versus

UNIVERSITY OF DELHI & ORS. Respondents
Through Ms. Manpreet Kaur, Advocate for Mr.
Arun Bhardwaj, Advocate for respondent No.
1/University of Delhi.
Mr. Sudhir Nandrajog, Sr. Advocate with Mr.
Mohd. Faraz, Ms. Jagrity Ahuja, Advocates for
respondent Nos. 2 to 5.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition impugns the departmental proceedings initiated against the petitioner as per the article of charges dated 21.5.2013. These article of charges read as under :

“Statement of Articles of Charge framed against Dr. Sudhir Kumar Goyal

Charge 1

That you Dr. Sudhir Kumar Goyal were appointed as the Presenting Officer to the Justice S.K.Mahajan Enquiry Committee, constituted by the

Governing Body, Satyawati College, to look into the irregularities, if any, in college administrations under Sports Quota. In the said enquiry, you conducted/carried out official work pertaining to confidential matters concerning the Justice S.K.Mahajan Enquiry Committee from your residence instead of using the room allotted to you in the college premises exclusively for the said purpose, without even informing/taking permission from the competent authority/Governing Body, Satyawati College. Further, as per your own admission, you had called the stenographer at your residence for typing work related to some enquiry work thereby exceeding your brief. These acts of yours amount to gross misconduct unbecoming on the part of any person appointed as a Presenting Officer of an enquiry of such a sensitive nature.

Charge II

That you Dr. Sudhir Kumar Goyal, being the Presenting Officer of the Justice S.K.Mahajan Enquiry Committee, were facilitated with an advance grant of Rs.30000 for meeting the expenses relating to the said enquiry. The said amount of Rs.30000 was drawn by you but you had then subsequently failed to deposit any bill/receipt in the college regarding the expenses incurred by you with respect to the enquiry in question soon after the conclusion of the said enquiry. Such acts of commission and omission amount to gross misconduct and also amount to criminal breach of trust as enshrined under Section 405 IPC. These acts are unbecoming on the part of any person appointed as the Presenting Officer of an enquiry.

Charge III

That you Dr. Sudhir Kumar Goyal, being the Presenting Officer of the Justice S.K.Mahajan Enquiry Committee even after being facilitated with an advance of Rs.30000/- for meeting expenses with respect to the said enquiry, failed to purchase a pen drive to store the data relating to the enquiry, and further, without the authority/permission of the Governing Body, Satyawati College, you stored confidential data of such sensitive nature in your alleged personal pen drive as has been admitted by you in various communications. Such an act on your part amounts to gross misconduct and is also an offence of data theft and, as such is unbecoming on the part of any person appointed as a Presenting Officer of an enquiry of such a sensitive nature.

Charge IV

That you Dr. Sudhir Kumar Goyal, being the Presenting Officer of the Justice S.K.Mahajan Enquiry Committee, was facilitated with an advance grant of Rs.30000/- for meeting expenses in relation to the said enquiry. The said amount was drawn by you but, for reasons best known to you, you had then failed to submit any expenditure account with respect to the

expenses incurred by you in relation to the said enquiry and, as such, you have misappropriated Rs.30000/- from the college fund granted to you for a specific purpose. Such an act amounts to gross misconduct and is unbecoming on the part of any person appointed as a Presenting Officer of an enquiry and also on the part of any employee of the college.

Charge V

That you Dr. Sudhir Kumar Goyal, being the Presenting Officer of the Justice S.K.Mahajan Enquiry Committee, were provided a computer for carrying out the work of the enquiry. But you did not utilize the said computer for reasons best known to you and instead, carried out all the enquiry related work on your personal computer without even informing/taking permission from the Governing body/competent authority of the college. Such an act amounts to gross misconduct and is unbecoming on the part of any person appointed as the Presenting Officer of an enquiry of such a sensitive nature.

Charge VI

That you Dr. Sudhir Kumar Goyal, being the Presenting Officer of the Justice S.K.Mahajan Enquiry Committee, were conducting/carrying out the enquiry related work from your residence and that it was done by you without seeking permission from the competent authority. During one such occasion, Mr. Ataullah Khan who was appointed by the college to assist you in the enquiry had, as alleged by you, taken away with him without informing you the pen drive in which confidential data relating to the enquiry was stored. Accordingly, you made a complaint to the Chairman, Governing Body, Satyawati College on 26.02.2012. However, prior to this, on 25.02.2012 you had already filed a complaint with the local police station regarding alleged theft of Pen Drive without even informing or taking permission from the competent authority of the college.

Despite knowing that the pen drive in question contained data relating to the enquiry, as admitted by you, you did not inform the competent authority/Governing Body of the College and take its permission before initiating any action with the local police. Such an act amount to gross misconduct and is unbecoming on the part of any member of the college staff.

Charge VII

That you Dr. Sudhir Kumar Goyal were aware of the fact that the pen drive in question had been returned by Mr. Ataullah Khan to the college authorities on 05.03.2012. On that very day, you passed communal remarks against Mr. Ataullah Khan and the whole Muslim community and also verbally abused him using filthy, derogatory and abusive language in the presence of the then Acting Principal and two other senior colleagues of the

college. This fact has been established in the fact finding report submitted by Ms. Bharti Sud on 25.9.2012. Despite having knowledge of the fact that the pen drive was in the safe custody of the college, you went ahead in getting a criminal case registered against Mr. Ataullah Khan, a permanent employee of the college deputed to assist you in the Justice S.K.Mahajan Enquiry Committee. Such acts on your part amount to gross misconduct unbecoming of any member of the college staff.

Charge VIII

That you Dr. Sudhir Kumar Goyal, being a member of the teaching staff, have been bringing with you a personal armed guard inside the college premises without taking permission of the competent authority of the college, in complete disregard to the accompanying practical implications that may ensue. You also failed to submit any authorisation letter entitling/permitting you to have an armed guard with you inside the college premises. Further, you have also failed to inform the college authorities as to what the reasons were for your being accompanied by an armed guard inside the college premises. Considering the practical implications and consequences of carrying guns in educational institutions as experienced across the world, your act of bringing an armed guard inside the college premises amounts to gross misconduct on your part and is also an act which endangers the lives of the students and staff of the college.

Charge IX

That you Dr. Sudhir Kumar Goyal, being a teacher yourself in the college, tried to implicate three teachers of the same college, namely Dr. S.Islam, Mr. Shailender Saxena and Ms. Mona Das in the criminal case initiated unilaterally by you, by filing an application on 28.02.2013 before the Court of Chief Judicial Magistrate, Gautam Budh Nagar, U.P. Although you were aware that the alleged pen drive was handed over to the Court by the Legal Counsel of Dr. Satender Kumar Joshi, the Principal/OSD of the college, and which fact had also been reflected earlier in the Court order dated 27.02.2013, even then you filed a frivolous application implicating the said three teachers. Further, you also had knowledge that the three teachers were only functioning as witnesses to the handing over of the pen drive. Such an act of your part amounts to a deliberate attempt to vitiate the work place environment against the academic interest of the college and, therefore, constitutes gross misconduct on your part and unbecoming of any member of the college staff.”

2. The law with respect to the challenge to departmental proceedings from the stage of inception, ie at the stage of issuance of the article of charges, is now well settled and I have had an occasion to consider this aspect in the judgment of ***Dr. Muhammad Iqbal Vs. Union of India and Ors.*** in W.P.(C) No.4222/2012 decided on 8.7.2013 wherein I have held that unless the issues raised are issues of jurisdiction or such similar issues, continuation of departmental proceedings cannot be stayed. The relevant paras of this judgment read as under:-

“2. Before I set out the arguments urged on behalf of the petitioner, it would be necessary to refer to the relevant case laws as to what is the scope of hearing in a Court before which enquiry proceedings are challenged right at the outset.

3. The Supreme Court in the case of ***State of Uttar Pradesh Vs. Brahm Datt Sharma and Anr. (1987) 2 SCC 179*** has held the following in para 9 of its judgment:-

“9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature. The High Court in our opinion ought not have interfered with the show cause notice.” (underlining added)

A reference to the aforesaid para shows that truth or falsity of the allegations cannot be determined by a Court before whom enquiry proceedings are challenged at the outset and an entitlement to challenge the enquiry proceedings arises only when there is found lack of jurisdiction.

4. The Supreme Court in its recent judgment in the case of ***Secretary, Ministry of Defence and Ors. Vs. Prabhash Chandra Mirdha 2012 (11) SCC 565*** has similarly so held by referring to various earlier judgments including the judgment in the case of ***Brahm Datt Sharma (supra)***. Paras 10 to 12 of the said judgment read as under:-

“10. Ordinarily a writ application does not lie against a chargesheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, chargesheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a chargesheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide; **State of U.P. v. Brahm Datt Sharma, Bihar State Housing Board v. Ramesh Kumar Singh, Ulagappa and Ors. v. Div. Commr., Mysore and Ors., Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr. and Union of India and Anr. v. Kunisetty Satyanarayana**).

11. In **State of Orissa and Anr. v. Sangram Keshari Misra** (SCC pp. 315-16, para 10) this Court held that normally a chargesheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority. (See also **Union of India v. Upendra Singh**).

12. Thus, the law on the issue can be summarised to the effect that chargesheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established

that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the chargesheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.”
(underlining added)

5. It is therefore clear that a Court can only interfere with continuation of enquiry proceedings when there is complete lack of jurisdiction in holding of the enquiry proceedings by the authority which is holding the enquiry, or because the authority did not have the power to initiate the enquiry or the enquiry may be barred by principle of res judicata or double jeopardy or that on the face of the show cause notice even if facts are accepted as correct no charges are made out or there is no cause of action or no violation of any law or rules etc etc.”
3. Effectively, what has been held by this Court in many judgments as also by the Supreme Court is that the truth or falsity of the factual averments in the show cause notice have to be determined by the enquiry officer inasmuch as merits of the matter are decided by the enquiry officer and not by this Court. It is, therefore, clear that a Court can only interfere with continuation of departmental proceedings only when there are issues of inherent lack of jurisdiction or some similar issues because truth or falsity of the factual aspects cannot be gone into by the Courts at the inception stage of issuing of charge-sheet and such truth or falsity is to be decided only by

the enquiry officer and not by this Court.

4. On behalf of the petitioner, it was very strenuously sought to be contended that entire exercise against the petitioner is mala fide, and therefore, only on this ground itself the charge sheet ought to be quashed. I do not agree. May be, in certain extreme cases of mala fides which ex facie show either lack of jurisdiction or total falsity of the charges on the face of it, may be on the principle equivalent to rejection of a plaint under Order 7 Rule 11, the impugned charge-sheet can be quashed on the ground of mala fides. However, in my opinion, in the present case issues of facts have to be decided by the enquiry officer and not by this Court as per the article of charges reproduced above which are factual in nature. For the sake of argument even if I assume that there were mala fides against the petitioner by the College, however, if actually the charges are found to be true and there is infraction of the rules of the organization then merely on the ground of mala fides, although the employee is otherwise found guilty, the charge-sheet cannot be quashed. Also aspects of mala fides are factual aspects and, therefore, these disputed questions of facts can only be decided after trial and such disputed questions of facts may be only after the enquiry officer's report is received argued as a basis to prove mala fides and not in the facts

of this Court at the present stage. Mala fides may include any aspect with respect to certain aspects of principles of natural justice being violated, however, merely and simply on the ground of allegation of charges being mala fide, at this stage itself ie at the stage of issuance, the charge sheet in the present case cannot be quashed. Now let us look at the issue as to whether the charges make out an issue of lack of jurisdiction or similar issues.

5. So far as the charge No. 1 is concerned, the very fact that official work ought to have been done in the official room and should not have been done at a private place, is an aspect which needs to be enquired into because of course in certain cases certain official work on account of exigencies of circumstances can be extended to the residential place, however, it cannot be that official work will be done only at a residential place and not in the official room which is provided to an employee. Therefore, factual aspects with respect to charge No. 1, consequences thereof, extent of violations thereof, existence of exigencies to do the work only at residence and what should be the consequent effect, will have to be necessarily determined during the enquiry proceedings and not at the inception stage in this Court. There is no issue of lack of jurisdiction so far as charge no.1 is concerned.

6. So far as the charge No. 2 is concerned, the same is relatable to charge No. 4 and which charges pertain to petitioner taking a sum of Rs. 30,000/- for expenses and thereafter failing to deposit bills and failing to submit any expenditure account. Learned senior counsel for the petitioner wanted this Court to go through the bills and decide that the bills have been submitted in order to judge the validity of the charge, however, I do not find any admitted position or an ex facie position only and only in favour of the petitioner emerging for this Court today at the stage of issuing of charge-sheet to give a finding in favour of the petitioner with respect to charges being false. Therefore, factual aspect whether all the bills are submitted, whether these bills totalled to Rs. 30,000/-, whether complete expenditure account has been submitted or not and so on are issues which will be decided in the departmental proceedings.

7. Charge No. 3 pertains to using of a personal pen drive to store confidential data of a sensitive nature which belonged only to the College. Maybe, in exigent circumstances personal effects of a petitioner can be used, however, if the petitioner has chosen to use his personal effects such as a pen drive and put official data of the enquiry proceedings of Justice S.K. Mahajan Committee in the pen drive, and which is an admitted position of

official data existing in the personal pen drive of the petitioner, then therefore, it cannot be said that ex facie the College or its agent/ employee, namely, Mr. Ataullah Khan has no right to take the pen drive. Once the pen drive contained official data of the college it cannot be argued that the possession and entitlement thereof would only be of the petitioner, and that right petitioner waived by himself putting official data in his personal pen-drive. Therefore, the aspect of whether or not there is any violation by the petitioner by putting official data into a personal pen drive are issues which have necessarily to be examined with respect to their effect in the enquiry proceedings and such charge cannot be quashed at the outset.

8. Charge No. 5 relates to not carrying out the work on the official computer allotted by the office but done on the personal computer. The discussion given while dealing with charge No. 1 will also apply with respect to this charge.

9. So far as the charge No. 6 is concerned it pertains to petitioner filing a criminal complaint case on account of one Mr. Ataullah Khan, an employee of the College appointed to assist the petitioner, taking away pen drive. Petitioner has filed a criminal complaint inter alia for the reason that the pen drive was personal to the petitioner which could not have been taken away

by Mr. Ataullah Khan. In my opinion and as already observed above once the personal pen drive contains confidential data belonging to the College it prima facie cannot be said that the pen drive thereafter remains only personal to the petitioner. Therefore, at this stage of only issuing of the charge-sheet it cannot be said that the complaint made by the petitioner against Mr. Ataullah Khan was totally justified in law by all applicable aspects. An unjustified complaint made for unjustifiable reasons and its consequent effect on the discipline of the University and the other related aspects can surely be enquired into the departmental proceedings. There is no law that the examination of this charge/issue must necessarily await the result of the criminal case, and which may take a long period of time.

10. So far as the charge No. 7 is concerned it pertains to factual aspects of the petitioner using filthy, derogatory and abusive language as also making communal remarks. These are therefore factual aspects and not issues of jurisdiction which can be enquired at this stage for quashing of the charge sheet.

11. So far as charge No. 8 is concerned learned senior counsel for the college on instructions states that this charge is not being pressed.

12. So far as the charge No. 9 is concerned, the same pertains to again

endeavour of the petitioner to falsely implicate three teachers in a criminal case. Part of the discussion given with respect to charge No.6 will be applicable qua this charge also. Further, whether the said teachers are or are not falsely implicated, need not await the result of the criminal case which will take many many years and if there is any mala fide implication of an employee in a criminal case, and that issue relates to the issue of 'personal' pen drive which is already referred above, this aspect will concern the attempt to vitiate the environment at the work place by bringing false pressure upon the employees and therefore these are not issues of jurisdiction which can be looked into and decided at this stage. Therefore, there is no reason why this charge also cannot be enquired into.

13. I may state that I am forced to discuss each of the charges which have been alleged against the petitioner because the said charges were argued to be false and mala fide. Of course, I have given my observations with respect to each of the charges, but I make it clear that I have not made final observations one way or the other on the merits of the charge, factually or legally, for and against any party herein and finality of the truth or falsity of the charges will be decided in the enquiry proceedings. Observations have been made by me with respect to the charges only to show that these charges

did not ex facie show that they are false or they do not need any factual enquiry to be conducted or that they are not issues of jurisdiction as was being argued on behalf of the petitioner.

14. I may state that this case was adjourned on 25.9.2013 and 23.10.2013 in order to bring out an amicable settlement which will bring peace of mind to both the parties as also retain dignities of each of the persons involved, however, I note that counsel for the petitioner on instructions states that petitioner is not interested in compromising the issues with the respondent-college which was ready, and petitioner wants to pursue the present case on merits. Of course, not entering into a compromise, is an entitlement of any party and this Court can only decide the case as per the legal and factual position prevailing.

15. In view of the above, the writ petition being without any merit is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

OCTOBER 31, 2013
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