

Court No. - 20

Case :- WRIT - A No. - 7608 of 2023

Petitioner :- Abhaiy Chandra Maurya

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt.
Panchyati Raj Lko And 7 Others

Counsel for Petitioner :- Azhar Ikram, Krishna Kumar
Vishwakarma, Rishabh Kapoor

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.

2. Petition has been filed challenging suspension order dated 18.11.2022, charge sheet dated 02.05.2023 and 17.08.2023, enquiry report dated 15.09.2023 and show cause notice dated 20.09.2023 with further prayer being made for permitting petitioner to discharge his functions and to provide consequential benefits pursuant to quashing of disciplinary proceedings.

3. On 06.10.2023, the following order had been passed:-

"1. Heard learned counsel for petitioner and learned State Counsel appearing on behalf of opposite parties.

2. Petition has been filed challenging various orders including suspension, charge-sheet, inquiry report and show cause notice pertaining to inquiry instituted against petitioner holding the post of Secretary, Gram Panchayat.

3. It has been submitted that aforesaid inquiry has been instituted in terms of Section 27 of the U.P. Panchayat Raj Act, 1947 read with Rules 256 and 257 of the Rules framed thereunder. It has been submitted that the aforesaid proceedings as well as orders and notices are being challenged primarily on the ground of lack of jurisdiction inasmuch as, a Division Bench of this Court in the case of Dinesh Kumar & Ors versus State of U.P. & Ors, Writ C No.28230 of 2022 has clearly held that with regard to the said post, it is only the Chief Audit Officer or his delegatee who is empowered to institute such an inquiry. It is submitted that impugned orders having been passed by an authority other than the Chief Audit Officer and his delegatee therefore suffer from vice of jurisdictional

error.

4. Leaned State counsel seeks time to obtain instructions in this case.

5. List this case on 10.10.2023, as fresh.

6. Prima facie, in view of submissions advanced by learned counsel for petitioner, it is directed that till next date of listing, no further steps shall be taken in pursuance of show cause notice dated 20.09.2023."

4. It has been submitted by learned counsel for petitioner that earlier suspension order dated 18.11.2022 was challenged in Writ - A No. - 322 of 2023 along with notice dated 25.11.2022 issued under Section 27 of the U.P. Panchayati Raj Act, 1947 along with other consequential orders. The said petition was dismissed vide judgment and order dated 17.01.2023. It is submitted that since the suspension order has been passed one year ago, challenge to same would be a recurring cause of action in view of delay in conclusion of enquiry proceedings. It is also submitted that in fact, enquiry proceedings initiated against petitioner are clearly based on a report dated 09.11.2022 submitted by a three-member Committee constituted by the District Magistrate concerned. It has been submitted that aforesaid enquiry was instituted in terms of Section 27 of the U.P. Panchayati Raj Act, 1947 read with Rules 256 and 257 of the Rules framed thereunder and is therefore without jurisdiction since aforesaid enquiry could have been done by Chief Audit Officer or his delegatee. That having not been done, the very inception of disciplinary proceedings against petitioner is without jurisdiction.

5. It has also been submitted that even the enquiry proceedings under Uttar Pradesh Government Servant (Discipline & Appeal) Rules, 1999 has not been held in accordance with Rule 7 thereof inasmuch as the procedure indicated in aforesaid Rules has not been followed.

6. Learned counsel has also adverted to show cause notice dated

20.09.2023 to submit that aforesaid notice is completely vague in nature and therefore incapable of effective reply since no proposed punishment has been indicated therein.

7. Mr. Aniruddh Singh, learned State Counsel has refuted the submissions advanced by learned counsel for petitioner with submission that petitioner has already challenged suspension order dated 18.11.2022 earlier before this Court with such challenge being rejected and, therefore so far as the said prayer is concerned, the present petition would amount to a second writ petition and would be barred in terms of Chapter XXII Rule 7 of the Rules of this Court. With regard to recurring cause of action, it has been submitted that now since enquiry proceedings have already culminated by enquiry report, there is no further delay due to which aforesaid prayer should not be granted. It has also been submitted that even otherwise since the matter is pending consideration regarding final orders to be passed on the basis of enquiry report, there is no occasion for this Hon'ble Court to interfere with the orders impugned since submissions of learned counsel for petitioner could be adverted to only once final orders are passed.

8. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, It is evident that petitioner had earlier also challenged suspension order dated 18.11.2022 in Writ - A No. - 322 of 2023 which was dismissed as indicated herein above. The aspect of recurring cause of action regarding delay in conclusion of enquiry proceedings cannot in considered opinion of this Court be entertained at this stage particularly since enquiry report dated 15.09.2023 has already been furnished and show cause notice to petitioner has been issued.

9. So far as challenge to charge sheet is concerned, it is the

submission of learned counsel for petitioner that since the initiation of disciplinary proceedings against petitioner was on the basis of a report dated 09.11.2022, the same being without jurisdiction, the very inception of enquiry proceedings being based on said report itself is erroneous.

10. With regard to aforesaid, it is evident that in pursuance of charge sheet, enquiry proceedings have been held against petitioner and the enquiry report dated 15.09.2023 has already been furnished. In considered opinion of this Court, the stage of challenge to initiation of enquiry proceedings was when petitioner had received the charge sheet and not at the stage when enquiry report has already been submitted. Even otherwise, since no final order has been passed pursuant to enquiry report, at this stage, it cannot be assumed that final order would even advert to report dated 09.11.2022. Due to lack of such assumption, it would not be expedient for this Court to interfere with disciplinary proceedings at this stage.

11. So far as show cause notice dated 20.09.2023 issued in pursuance of enquiry report is concerned, a perusal of same does indicate the fact that it is completely vague in nature without any specific particulars being spelled out which would require petitioner to give an effective reply to the same. The show cause notice also does not indicate the proposed punishment upon petitioner.

12. Hon'ble the Supreme Court in **Oryx Fisheries Private Limited v. Union of India and others**, reported in (2010) 13 SCC 427 has held as follows:-

31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation

which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice

13. A coordinate Bench of this Court in **Pankaj Kumar Pandey v. State of U.P and others** [Writ - A No. - 10603 of 2004] has also held as follows:-

"7. Exposition of law spelt out from the above discussion is that ordinarily under Article 226 of Constitution, Court should not interfere with a show-cause notice but where show cause notice is challenged on the ground that it is without jurisdiction or barred by law or suffers from any patent illegality, Court is bound to examine these aspects and if finds such challenge to be sustainable, to interfere with such show-cause notice which is without jurisdiction or beyond parameters of law. Court can also interfere with a show cause notice under Article 226 if it is vague, devoid of particulars, incapable of effective reply for the reason that such a show cause notice cannot be a proper show cause notice as the person supposed to give reply would not be in a position to understand as to what he has to reply and in absence thereof it cannot be said that show cause notice answers and satisfies the requirement of compliance of natural justice. None of these conditions are available in the case in hand and petitioner, therefore, has remedy to show cause and no interference in writ jurisdiction at this stage is called for."

14. Upon applicability of aforesaid judgments in present facts of the case, it is quite evident that impugned show cause notice dated 20.09.2023 is completely vague in nature and does not specify the aspects on which petitioner is required to give an effective reply. The show cause notice also does not indicate proposed action to be taken against petitioner. Absence of any such aspect also would not enable petitioner to give an effective reply.

15. Impugned show cause notice dated 20.09.2023, being against the principles of law indicated herein above, is therefore quashed by issuance of a writ in nature of Certiorari granting liberty to competent authority to issue a fresh notice adhering to principles of law as discussed herein above.

16. With aforesaid observations and directions, the writ petition stands partly **allowed** to aforesaid extent. The parties to bear their own costs.

Order Date :- 11.10.2023

kvg/-