

2024:PHHC:030866

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-3164-2024

Reserved on : 13.02.2024

Pronounced on : 05.03.2024

Gagandeep Singla @ Gagandeep

.....Appellants

Versus

Ministry of Consumer Affairs and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Tahaf Bains, Advocate for the petitioner.

Mr. Paul S. Saini, Senior Panel Counsel
for respondent No.1-UI.

Mr. Sunish Bindlish, Advocate with
Ms. Ridhi Bansal, Advocate for respondent No.2.

Mr. Manbir Singh Bath, Advocate for respondent No.3.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ of certiorari for quashing the show cause notice dated 12.12.2023 (Annexure P-32) issued by respondent No.3-PUNSUP under Rule 10 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 (for short 'the 1970 Rules'), on the ground that the matter relating to storage gain is sub-judice before this Court and further in the absence of any statutory rule governing the issue of storage gain to be delivered on wheat stocks and yet the respondent-Corporation has issued the said show cause notice.

2. It is the case of the petitioner that he has joined Respondent No.3 on 31.10.2011 and posted as Inspector Grade-I, PUNSUP Rampure, Bathinda. He has been issued show cause notice/charge-sheet dated 12.12.2023 regarding less storage gain/assured gain in wheat stocks for the crop year 2019-20 for the period pertaining from June 2016 to October 2021 at PUNSUP Storage Centre Rampure-I. He further submits that there are no storage norms for the said period for the FCI to make deductions from the bills of the Corporation and resultantly coercive recovery from the employees by initiating disciplinary proceedings against them and for filing of the charge-sheets is untenable as it have been issued in total contravention of the judgments, policies, documents and hence the charge-sheets itself are violative of the statutory provisions of the rules, regulations and policies governing the conditions of service of the petitioner and no evidence has been adduced by the Corporation on which the claims has been vested. He further submits that the matter relating to storage gain in wheat stocks and storage loss in rice stocks is sub-judice before this Court in CWP No.27725 of 2013 along with bunch of petitions, which is pending for 24.05.2024. There are no scientific norms on the basis of which charge-sheet has been issued, therefore, the action of the respondents in issuing the show cause notice dated 12.12.2023 (Annexure P-32) is totally illegal and arbitrary and the same may be quashed. He has placed reliance upon certain interim orders passed in other cases by this Court Annexures P-31 to P-31D, whereby the respondents were restrained to proceed ahead with charge-sheet/show

cause notice.

3. I have heard learned counsel for the petitioner as well as opposite counsel, who have appeared on the strength of advance notice of the petition and perused the record.

4. Admittedly, the petitioner is challenging the show cause notice dated 12.12.2023 (Annexure P-32) which has been issued under Rule 10 of the 1970 Rules, wherein it has been alleged as under :-

“Sh. Gagandeep, Inspector Grade-1, PUNSUP, Bathinda was deputed as Centre Incharge at PUNSUP Centre, Rampura-1, District Bathinda vide order Endst. No.E-1/2019/5782 dated 27.03.2019 by the District Office, PUNSUP, Bathinda for the storage of the crop year 2019-20. Being the Centre Incharge it was his duty to undertake the preservation of the stock.

As per the report of the District Office, PUNSUP, Bathinda, the total of 228552.00.00 qtls. of Crop Year 2019-20 was stored at PUNSUP Centre Rampura-1. During which from the period of June, 2016 to October, 2021 a total of 229851.98.000 qtls. wheat was dispatched. As per the norms of the Corporation 2014.49 qtls. was required to be given as per the instructions No.Addl. M. (S) 04/12264-82 dated 26.10.04, but during the dispatch of the stock only 1551.89 qtls. of gain was delivered. In this manner, during the dispatch of a shortage of 462.60 qtls. of less gain was delivered, due to which the Corporation suffered a financial loss of Rs.13,58,146/-. He being the Centre Incharge is liable for causing this loss.

Being the Centre Charge it was the duty of Sh. Gagandeep, Inspector Grade-1, PUNSUP, Bathinda that he properly maintain the health of the stock and to deliver the gain as per the prescribed norms, but he did not do so and being the Centre Incharge he is liable to make good the loss of Rs.13,58,146/- suffered by the Corporation during the dispatch of the wheat stock for the crop year 2019-20 stored at PUNSUP Centre Rampura-1 and this amount is liable to be recovered from him.

From the above it is clear that Sh. Gagandeep, Inspector Grade-1, PUNSUP Centre, Rampura-1 did not

deliver the required gain during the dispatch of the wheat stock for the crop year 2019-20 and is a negligent, careless employee who did not perform his duties and caused financial loss to the Corporation and did not comply with Rule 3 (1) (ii) of the Punjab Employees Conduct Rules, 1966 for which reasons he has rendered himself liable for departmental action under Rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970.”

5. The petitioner has submitted reply to the show cause notice on 27.12.2023 as averred in the petition and further submitted additional submissions dated 07.02.2024 (Annexure P-33). However, copy of the reply dated 27.12.2023 has not been placed on record and instead of waiting the outcome to the reply(s) filed by the petitioner, the instant writ petition has been prepared and filed on 09.02.2024.

6. The issue which arises for consideration before this Court is as to whether show cause notice/charge-sheet can be challenged in a writ petition. The said issue is not res integra as it has been held by the Hon'ble Supreme Court and by this Court in various judgments that the scope of interference by this Court in the cases like the present one is very limited. Firstly, if the show cause notice has been issued by the incompetent authority, other than the disciplinary authority and secondly, if it is issued due to mala fide intention of the authority concerned. The present show cause notice has not been challenged on these two grounds as it is not the case of the petitioner that the show cause notice has been issued by the incompetent authority or due to mala fide intention of the issuing authority i.e. the Managing Director of the PUNSUP. Moreover, writ does not lie against a charge-sheet or show-cause notice as it does not give any cause of action. Unless some

adverse order is passed in pursuance to the said charge-sheet, employee has no right to invoke the jurisdiction of the High Court or the Civil Court to impugn the charge-sheet. The Hon'ble Supreme Court in ***The Special Director and another Vs. Mohd. Ghulam Ghouse and another : 2004(1) S.C.T. 671*** has held that ordinarily no writ lies against the show-cause notice and the writ petition cannot be entertained as a matter of routine. The relevant portion from the said judgment is as under: -

*“5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show causes notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. **Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine,** and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may*

not be finally granted in the writ petition is accorded to the writ petitioner even at the threshold by the interim protection, granted.”

7. To the same effect is the judgment of the Hon’ble Supreme Court in ***Union of India and another Vs. Kunisetty Satyanarayana : 2007(1) S.C.T. 452***, wherein the Hon’ble Supreme Court has held as under: -

*“12. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide **Executive Engineer, Bihar State Housing Board v. Ramdesh Kumar Singh and others, JT 1995(8) SC 331, Special Director and another v. Mohd. Ghulam Ghouse and another, 2004(1) SCT 671 (SC) : AIR 2004 Supreme Court 1467, Ulagappa and others v. Divisional Commissioner, Mysore and others, 2001(10) SCC 639, State of U.P. v. Brahm Datt Sharma and another, AIR 1987 Supreme Court 943 etc.***

13. 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 lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. 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.

14. 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.

15. 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 wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

8. A Division Bench of this Court in ***Ved Pal Gupta Vs. Punjab and Haryana High Court, Chandigarh : 2014(2) S.C.T. 793*** has held as under: -

“15. In Secretary, Ministry of Defence and others v. Prabhash Chandra Mirdha, 2012 (4) RSJ 484, it has been laid down by the Supreme Court that ordinarily a writ application does not lie against a charge sheet 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, charge sheet 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 charge sheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. It was further held that normally a charge sheet is not quashed prior to the conclusion of the inquiry on the ground that the facts stated

in the charge sheet are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority. It was also held that neither the disciplinary proceedings nor the charge sheet should be quashed at an initial stage as it would be a premature stage to deal with the issues. The position prevailing at present in the department inquiry is that a sitting Judge of the High Court on the Administrative side is seized of the inquiry and proceedings are going on. Evidence is being recorded. The petitioner would have every right to submit his point of view in accordance with law before the inquiry officer. Therefore, at this stage, it would be wholly inappropriate to interfere in the inquiry that is going on at an intermediary stage and nullifying or in any case keep in abeyance the proceedings that are going on. At this stage it would in fact even be inappropriate to comment one way or the other on the charges that have been levelled and the reply that has been filed by the petitioner to the same. This is solely domain of the Inquiry Officer who is seized of the matter.

16. *The learned Senior counsel for the petitioner has, however, referred to the case **State of Punjab v. V. K. Khanna, 2001(1) S.C.T. 933 : AIR 2001 Supreme Court 343**. In the said case the learned Senior counsel has laid emphasis on the aspect wherein it has been held that while it is true that justifiability of charges at the stage of initiating a disciplinary proceedings cannot possibly be delved into by any Court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide motive involved in the matter of issue of a charge sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law*

*courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion. There is no dispute to said proposition, however, the same would more appropriately apply in case there is a charge of mala fide. In the present case though it has been alleged that the issuance of charge sheet and subsequent proceedings arising therefrom are completely mala fide, baseless and against the record, however, the allegations of mala fide have been made in a vague manner. In **State of Punjab v. Chamal Lal Goyal, 1995(2) S.C.T. 343 : JT 1995 (2) SC 18** with respect to the charge of mala fide, it was observed that the said charge was made in a vague manner. It was not specified which officer was ill-disposed towards the respondent (delinquent official in the said case) and in what manner did he manage to see that the charges are served upon him when his case was to come up for consideration for promotion. It was held that in the absence of any clear allegation against any particular official and in the absence of impleading such person eo nomine so as to enable him to answer the charge against him, the charge of mala fide cannot be sustained. The ratio of the said judgment applies in the present case and in the absence of specific allegations of mala fide, the averment is unfounded and would not warrant any consideration.”*

9. The other argument advanced by learned counsel for the petitioner vis-a-vis interim orders passed in other cases, cannot be countenanced with as the same have no binding effects to be followed in

all subsequent cases. Reliance is placed upon the judgment passed by Hon'ble Supreme Court in ***Empire Industries Ltd. and others Vs. Union of India and others : 1985(3) SCC 314***, wherein it has been held as under :-

“58. Good deal of arguments was canvassed before us for variation or vacation of the interim orders passed in these cases. Different Courts sometimes pass different orders as the Courts think fit. It is a matter of common knowledge that the interim orders passed by particular Courts on certain consideration are not precedents for other cases may be on similar facts. An argument is being built up now-a-days that once an interim order has been passed by this Court on certain factors specially in fiscal matters, in subsequent matters on more or less similar facts, there should not be a different order passed nor should there be any variation with that kind of interim order passed. It is submitted at the Bar that such variance creates discrimination. This is an unfortunate approach. Every Bench hearing a matter on the facts and circumstances of each case should have the right to grant interim orders on such terms as it considers fit and proper and if it had granted interim order at one stage, it should have right to vary or alter such interim orders. We venture to suggest, however, that a consensus should be developed in matter of interim orders.”

10. To the same effect is the judgment passed by the Division bench of this Court in ***Maneta Automotive Components Pvt. Ltd. Vs. Commr. of C. Ex., Rohtak : 2014(310) ELT 663***, wherein it has been observed as under :-

“4. After hearing learned counsel for the appellant, we do not find any merit in the appeal. In the matter of interim

orders, no strict rules of precedents are applicable. However, in the present case, the Tribunal while directing the appellant to deposit Rs. 40 lacs as a pre-deposit for hearing of the appeal has noticed as under:-

*“It is admitted fact that duty free raw material was imported by appellant in terms of Customs Notification above. Had the raw material not been imported, the appellant would have been at par with domestic players. Peculiarly appellant availed customs duty exemption at the cost of exchequer. Scrap was inbuilt in the duty free material imported. Ignorance of Customs duty forgone on the scrap aspect would place domestic players in disadvantageous position and shall run counter to the principle laid down in **Hyderabad Asbestos Cement Products – 2000 (115) ELT 20 (SC)**. Therefore, as a course of equality before law, we direct the appellant to make deposit Rs.40 lakhs within four weeks from today and make compliance on 26-02-2014. We may add that an interim order has no precedential value and we are guided by the ratio laid down by Apex Court in the case of **Empire Industries – 1985 (20) ELT 179 (SC)**, **Dunlop India Ltd. - 1985 (19) ELT 22 (SC)**, **Benara Valves Ltd. 2006 (204) ELT 513 (SC)** and **Vijay Prakash D. Mehta – 1989 (39) ELT 178 (SC)**.”*

5. *In the present case, the appellant has been required to pre-deposit Rs. 40 lacs on demand of duty and penalty of Rs. 3 crores which is about 13.33% which cannot be said to be unreasonable. Even otherwise, from the argument of the learned counsel for the appellant, it would emerge that on combined liability of two periods of Rs. 8 crores, the appellant would be depositing Rs. 50 lacs only*

which cannot be held to be excessive in any manner. The quantum required to be pre-deposited would vary if the total demand increases.

6. *Adverting to the judgment in Vishnu Traders's case (supra) relied by the learned counsel for the appellant, it was in the facts and circumstances of that particular case that the observations were noticed by the Hon'ble Supreme Court and was also held that in the matters of interlocutory orders, the principle of binding precedents do not apply. No help can be derived by the appellant from the aforesaid pronouncement.”*

11. Another argument has been raised by learned counsel for the petitioner that if the proceedings in pursuance to the show cause notice are allowed to be proceeded further, then the respondents are likely to pass order of punishment especially of recovery. The said argument is pre-emptive and cannot be accepted at this stage. In any case, even if, any order of recovery is ultimately passed by the respondents, after holding a regular departmental enquiry, the same can always be challenged by the affected employee in accordance with law and may pray for stay of the said recovery.

12. In view of the above, no case to quash the show cause notice dated 12.12.2023 (Annexure P-32) is made out and the present petition is accordingly, dismissed as premature.

05.03.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No