

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2015

CORAM:

THE HONOURABLE MR. JUSTICE D. HARI PARANTHAMAN

W.P.No.18599 of 2015

M.P.Nos.1 to 3 of 2015

P.Prem Kumar

... Petitioner

v.

1. The General Manager I/C (RS),
Indian Oil Corporation Limited,
No.139, Uttamar Gandhi Salai,
Nungambakkam, Chennai 600 034.

2. The General Manager, (HR)
Indian Oil Corporation Limited,
No.139, Uttamar Gandhi Salai,
Nungambakkam, Chennai 600 034.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records, pertaining to the issue of the impugned order Ref.No.HR/IR/1461/1014, dated 30.04.2015, passed by the 1st respondent, quash the same and further to direct the respondents to assign any duty to the petitioner other than TARMARC duty at AFS.

For Petitioner : Mr.K.N.Pandian

O R D E R

The petitioner has been in employment from 1983 onwards. He was given various promotions. Now, he is the Assistant Manager in Aviation Department at Chennai. He was issued with an impugned charge sheet, dated 30.04.2015, by the 1st respondent, viz., The General Manager (I/c) (Regional Services), SR & The Competent Disciplinary Authority, levelling four allegations against him and those allegations are as follows:

"Article-1: That Shri.P.Prem Kumar has failed to carry out the assigned duties from time to time, at Meenambakkam AFS, inspite of specific advice from his Controlling Officer/Location In Charge.

Article-2: That Shri.P.Prem Kumar has failed to report for duty w.e.f. 30.12.2014 and the remaining absent unauthorisedly which affected normal functioning and smooth operations of Meenambakkam AFS.

Article-3: That Shri.P.Prem Kumar has failed to submit the application in proper form for qualifying Quality Control Signatory (QCS) inspite of specific advice from the Controlling Officer, which is a mandatory requirement for officer working in filed at Meenambakkam AFS.

Article-4: That Shri.P.Prem Kumar has failed to attend training programmes on two occasions inspite of specific advice.

In view of the above, Shri.P.Prem Kumar, has allegedly acted in violation of the following clauses of Conduct, Discipline and Appeal Rules, 1980, as amended from time to time, of the Corporation apart from 6(1)(b):-

7(5) - Acting in a manner prejudicial to the interests of the Corporation,

7(6) - Wilful insubordination or disobedience whether or not in combination with other of any lawful and reasonable order of his superior,

7(7) - Absence without leave or over staying the sanctioned leave,

7(9) - Neglect of work or negligence in the performance of duty,

7(26) - Levelling malicious or false allegations."

2. Apart from making the aforesaid Article of Charges in Annexure-I, Annexure-II of the charge sheet, deals with statement of imputations of misconduct, in connection with the Article of Charges. Annexure-III of the charge sheet contains the list of documents, that are relied on, in support of the charges. Annexure-IV contains list of witnesses. To the above charges, the petitioner has submitted a detailed explanation on 15.05.2015. I am not going into the details of the explanation. Writ Petition is filed, questioning the aforesaid charge sheet, dated 30.04.2015.

3. Learned counsel for the petitioner vehemently contended that the charges are vague and the same was issued, due to mala fide and vindictive action of Mr.M.Mohan Kumar, Chief Manager (Aviation) and Mr.Sanjeev Wasnik, Deputy General Manager (Aviation). He further took me through the complaints made by the petitioner, against those two officials, as to how, those officers have harassed him.

4. Though the petitioner has stated in his explanation, about the alleged harassment of those officials and in this regard, there were so many letters and correspondences between them, which are elaborately argued by the learned counsel for the petitioner, they were not enclosed in the explanation to the charge sheet. Now, when the matter is before the disciplinary authority, viz., 1st respondent herein, who shall decide the explanation, the petitioner has rushed to this Court, questioning the charge sheet, stating that the explanation was not considered.

5. It is well settled in catena of decisions that this Court cannot entertain a writ petition, against the charge sheet. More particularly, the Apex Court in *Union of India v. Kunisetty Satyanarayana*, reported in 2006 (12) SCC 28, held that,

"14. 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 vs. Ramdesh Kumar Singh and others* JT 1995 (8) SC 331, *Special Director and another vs. Mohd. Ghulam Ghouse and another* AIR 2004 SC 1467, *Ulagappa and others vs. Divisional Commissioner, Mysore and others* 2001(10) SCC 639, *State of U.P. vs. Brahm Datt Sharma and another* AIR 1987 SC 943 etc. 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.

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 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."

6. As held by the Apex Court, it is premature for the petitioner to come to this Court, at this stage. Now, he has submitted an explanation to the 1st respondent and it is not even known, as to whether, the 1st respondent has accepted or rejected the same. Even if the enquiry is conducted, the petitioner could be given an opportunity.

7. Now, the learned counsel for the petitioner sought to argue that the charges are vague. He has also relied on a decision of this Court in P.Shaheen v. State of Tamil Nadu reported in 2014 (5) CTC 444. I have looked into the article of charges. By reading of the article of charges, I am not in agreement with the submissions of the learned counsel for the petitioner that the charges are vague. It may be true that the charge sheet could have been given as a counter measure for his complaint. But all those things are to be decided only by the concerned authority, but not in this writ petition, at this point of time.

8(i). As far as the judgment reported in P.Shaheen's case, which is heavily relied on, by the learned counsel for the petitioner, it is useful to extract the charges, that were made against the petitioner in P.Shaheen's case (cited supra),

"(i) failed to maintain absolute integrity and devotion to duty and has done everything which is/are unbecoming members of the service.

(ii) has/have failed to ensure duty integrity and devotion to duty among students.

(iii) failed to perform the task assigned to him/her/them."

8(ii). Learned counsel for the petitioner also placed heavy reliance on Paragraph 10 of the above reported judgment. The relevant passage in Paragraph 10 is also extracted hereunder,

"In that connection while considering the question as to what amounts to misconduct it was observed that an act or omission or lack of efficiency or failure to attain highest standard of administrative ability may not by itself amount to or constitute misconduct. Error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct."

8(iii) In the context of the said charges, this Court held that the charges were vague. Hence, the said judgment would have no application to the present case.

9. The main grievance of the learned counsel for the petitioner is that the petitioner is victimised by two officials, viz., Mr.M.Mohan Kumar, Chief Manager (Aviation) and Mr.Sanjeev Wasnik, Deputy General Manager (Aviation), more particularly, when he made a request to extend the sick leave, it was denied, without assigning any reasons. As he could not bear the harassment, he sought for transfer to some other department. But according to him, his cry was never heard off. His complaints were not acted upon, but the charge sheet was given, alleging that he was unauthorisedly absent.

10. In view of the judgment of the Apex Court in Kunisetty Satyanarayana's case (cited supra), I am of the view that it is premature to entertain this writ petition, questioning the charge sheet. The first respondent shall consider the explanation submitted by the petitioner, on merits. The petitioner is at liberty to submit his further explanation, including the relevant documents, which is enclosed in the typed set of papers, in this writ petition.

11. Hence, the Writ Petition is disposed of, with the aforesaid observation. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

skm

To

1. The General Manager I/C (RS),
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1 cc to Mr.K.N.Pandian, Advocate, Sr. 32307

W.P.No.18599 of 2015

NM (CO)
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