

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

+ **W.P.(C) No. 943/2015 & CM Nos.1653-1654/2015**

% **30th January, 2015**

SUBHA KUMAR DASH

..... Petitioner

Through: Mr. Kartik Prasad with Ms. Reeja
Varghese, Adv.

versus

THE UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: Mr. Mohinder J.S. Rupal, Advocate
for R-1/University of Delhi.
Mr. A. Mariarputham, Sr. Advocate
with Mr. Romy Chacko, Advocate for
R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No.1654/2015 (Exemption)

Exemption as prayed for is allowed subject to just exceptions.

The application stands disposed of.

W.P.(C) 943/2015

1. This writ petition under Article 226 of the Constitution of India is filed by the petitioner, who is an employee of the respondent No.2/college, essentially, impugning the issuing of the charge-sheet dated 31.12.2014 and the suspension order of the same date.

2. Before I turn to the facts of the present case, it needs to be mentioned that a charge-sheet which is issued in departmental proceedings cannot be challenged at the initial stage except on the limited ground of lack of authority in the person/authority issuing the charge-sheet or such other fundamental ground. Merits of the matter have to be looked into by the departmental authorities and this Court at the stage only of issuing of charge sheet will not examine the factual aspects and merits of the matter which is in the realm of duties of the departmental authorities. In a way, a charge-sheet can be quashed, by applying in same manner the principles of Order VII Rule 11 of the Code of Civil Procedure, 1908 as per which a plaint is rejected only when the suit is barred by law or on the admitted facts the plaint does not disclose a legal cause of action.

3. I have had an occasion to examine the issue with respect to the jurisdiction of the courts to interfere with the charge-sheets in the case of ***Dr. Muhammad Iqbal Vs. Union of India & Ors.*** in W.P.(C) No. 4222/2013 decided on 8.7.2013. The relevant paras of this judgment read as under:-

“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.”

4. Let us now therefore examine the facts of the present case as to whether there exists necessary pleadings, and which have been substantiated,

for showing that the charge-sheet has been issued to the petitioner by an authority without jurisdiction.

5. The petitioner has urged the following grounds to seek quashing of the charge-sheet:-

- (i) Though the Governing Council Resolution dated 19.12.2014 passed by the respondent no.3 which decided issuing of charge-sheet against the petitioner stated that the decision was unanimous, however, three members of the Governing body have dissented.
- (ii) The Chairman of the respondent No.3/Governing body of the college could only be the Bishop of the Diocese of Delhi, but since respondent No.5 is not the Bishop of the Diocese of Delhi, the meeting held of the Governing Council which decided issuance of the charge-sheet against the petitioner, headed by respondent No.5 as Chairman is therefore illegal.
- (iii) There is malice against the petitioner by the respondent Nos.4 and 5, and consequently, the respondent No.2/college should not be entitled to continue with the departmental proceedings against the petitioner.
- (iv) The three members of the Governing Council who have passed the

resolution for departmental proceedings against the petitioner, are in fact witnesses, and therefore the decision taken by the respondent No.3/governing body is liable to be quashed.

6. All the arguments urged by the petitioner are without merit and are dealt with hereinafter.

7. The first ground urged on behalf of the petitioner that the resolution of the Governing body dated 19.12.2014 is not a unanimous resolution, and therefore it cannot be accepted, is an argument which in fact is not logical in law and therefore is not 'understood' by this Court. No rule has been pointed out to me of the University of Delhi or of the constitution of respondent No.2/college or of the respondent No.3/governing body, that, a resolution cannot be passed unless it is unanimous. Obviously, in every body when there exists more than one member, such a body functions on the principles of majority. Existence of dissent is only an indication of democratic working, however, existence of dissent cannot mean that the majority cannot pass a resolution and which majority is in law entitled to pass a resolution because a governing body functions on the basis of the decision of majority of its members. First argument thus urged on behalf of the petitioner is therefore rejected.

8. The second argument urged on behalf of the petitioner that respondent No.5 is not a Bishop of Diocese of Delhi because he is only the Bishop of Diocese in Rajasthan, is an issue which intends to take these proceedings collaterally on an issue of elections or appointment to a Diocese of Delhi. Assuming this Court can go into the same, detailed pleadings were required as to how the Bishop of Diocese of Delhi is appointed, what are the applicable rules or laws, how those rules and laws have been violated so that it can be urged that respondent No.5 is not the Bishop of Diocese of Delhi etc etc, but a reference to the writ petition shows that there is not even a whisper as to how respondent No.5's appointment as the Bishop of Diocese of Delhi is illegal on account of any violation of any law or any rules or any regulations etc. etc. Therefore, in the absence of any pleadings, much less that pleadings supported by requisite documents to show that respondent No.5 is not the Bishop of Diocese of Delhi, such arguments urged on behalf of the petitioner thus cannot be accepted, and is accordingly rejected.

9. The third argument urged on behalf of the petitioner that there is malice against him, is also an argument which in the facts of this case does not arise at this stage. The averments of malice at this stage can only be labeled as self-serving averments. A reference to the charge-sheet shows

that all the charges against the petitioner are factual in nature. The headings of the charges are as under:-

“1. You failed to act as per the directions of the Bursar and also failed to comply with directions of the Principal of the College.

2. You made allegations of misappropriation of funds by the Principal of the College and other college officials and when asked to furnish details, did not substantiate the same.

3. You made allegations against the Principal of the college that he tried to convert you to Christianity, which you have not been able to substantiate.

4. That you used language in your SMS-es and correspondences that is inappropriate and unbecoming of a responsible employee of the college holding a position of trust.

5. On internal matters, you communicated with persons other than the competent authorities and also persons outside the college and your allegations tend to bring the college into disrepute.”

The aforesaid headings of charges are supplemented by detailed imputations of misconduct, and, different facts; instances, dates and events

are given, and which factual aspects on merits obviously will have to be decided by the departmental authorities and not by this Court. Malice in the present case urged on behalf of the petitioner is not an issue of law but an issue of fact, and this Court cannot go into a disputed question of fact which will be examined during the departmental proceedings. If the petitioner feels that he can show malice in fact against the respondent Nos.4 and 5, then the petitioner can urge such a ground in the departmental proceedings and that ground along with what is the effect of the same in the departmental proceedings, will be examined by the departmental authorities. This Court cannot examine the factual aspects by converting this writ petition in a suit and decide disputed questions of fact without trial. This ground, therefore, urged on behalf of the petitioner is also rejected with liberty to the petitioner to urge the same in the departmental proceedings.

10. The fourth argument urged on behalf of the petitioner of three members of respondent no.3 who decided to issue the charge-sheet etc is to be rejected *in limine* for the reason that there is not even a whisper in the pleading of the facts with respect to this argument, and which is only orally urged on behalf of the petitioner. No argument which does not have any basis in pleadings, can be looked into by this Court.

11. So far as the relief claimed of challenge to the suspension order is concerned, the statement of charges against the petitioner shows various facts of insubordination and indiscipline as per the respondent No.2/college. Today, at this stage, I have to take the charges, as stated *prima facie*, as correct inasmuch as nothing otherwise is on record, and once that is so, the law with respect to suspension is very clear that courts do not interfere with the suspension orders passed by the employers inasmuch as one of the object of a suspension order is that a recalcitrant employee should not feel that he can continue his services, much less in the case of present nature, inspite of his being charged with indiscipline and insubordination and simply because inquiry proceedings are pending/going on. The law in this regard is stated by the Supreme Court in the case of *State of Orissa v. Bimal Kumar Mohanty, (1994) 4 SCC 126*. The relevant para of this judgment is reproduced hereunder:-

“13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on

application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge.” (underlining added)

12. Therefore, the petitioner also has no case to challenge the suspension order dated 31.12.2014 passed against him.

13. The writ petition is accordingly dismissed.

CM No.1653/2015 (stay)

Dismissed.

VALMIKI J. MEHTA, J

JANUARY 30, 2015/srb