

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

+ W.P.(C) No.8136/2014 and C.M. No.3944/2015

% **5th March, 2015**

GIANWATI TAXAK Petitioner

Through: Mr.Sunil Mathews with Ms.Reeja
Varghese, Advocates.

versus

THE UNIVERSITY OF DELHI & ORS. Respondents

Through: Mr.J.S.Rupal, Advocate for R-1.
Mr.Rajinder Dhawan and
Mr.B.S.Rana, Advocates for R- 2 to 4.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner, an employee of the respondent no.2/Sri Aurobindo College (Evening) impugns the departmental proceedings commenced against her in terms of the charge-sheet dated 02.9.2014. The petitioner prays for quashing of the departmental proceedings. The petitioner also prays for quashing of her suspension in terms of the order of the respondent no.2/College dated 02.4.2014.

2. So far as the challenge to suspension is concerned, as per the existing writ petition, the petitioner's claim for quashing of the suspension is on the ground of applicability of the Central Civil Services (Classification, Control & Appeal) Rules, 1965- CCS(CCA) Rules which require that the suspension cannot be extended after a period of 90/180 days. Reliance is placed by the petitioner upon the CCS(CCA) Rules, Part IV, Rule 10(6) in this regard. The petitioner has not pleaded in the writ petition any other ground challenging the extension of the suspension order, but by an interim application which is coming up for the first time today being C.M.No.3944/2015, the petitioner questions the extension of suspension in terms of the ratio of the Supreme Court in the judgment in Civil Appeal No.1912/2015 titled as *Ajay Kumar Choudhary Vs. Union of India through its Secretary & Anr.* dated 16.1.2015 wherein *inter alia*, it is held that within 90 days of the suspension order, a charge-sheet must be served to give validity to the order of suspension, and it is also held in this judgment that reasons must be given for extension of the suspension. It is noted that the observations which were made by the Supreme Court in *Ajay Kumar Choudhary's* case (*supra*) pertained to a case where departmental proceedings were commenced by the Union of India and not by an employer which is a College, as is in this case. Since the cause of action as pleaded in

this writ petition does not in any manner fall within the ratio of the judgment of the Supreme Court in the case of *Ajay Kumar Choudhary (supra)*, therefore in the absence of pleadings, an interim application cannot be allowed to expand the scope of the writ petition, and therefore with respect to fresh grounds based on the judgment of the Supreme Court in the case of *Ajay Kumar Choudhary (supra)*, for the petitioner to question the suspension, the writ petition is dismissed with liberty to the petitioner to file appropriate independent proceedings alleging the fresh grounds and the fresh cause of actions on the basis of which the petitioner can question the suspension itself or the extension of the suspension. C.M.No.3944/2015 will stand disposed of accordingly.

3. That takes us to the limited issue as to whether the suspension has been extended within a period of 90/180 days, inasmuch as the petitioner alleges that it has not been done, and therefore extension of suspension is not justified.

4. In the present case, the first order of suspension is dated 02.4.2014, and therefore first extension of suspension in terms of Rule 10(6) of the CCS(CCA) Rules had to be before the expiry of 90 days from the effective date of suspension. The effective date of suspension would be when the suspension order dated 02.4.2014 is communicated to the

petitioner/employee. The petitioner claims that she received the suspension order on 02.4.2014 itself. In terms of Section 12(1) of the Limitation Act, 1963 in computing the period of limitation, the date from such period is to reckon has to be excluded, and therefore the date 02.4.2014 will have to be excluded and the period of 90 days will commence from 03.4.2014. The extension of suspension thereafter was made in terms of the order dated 02.7.2014, and which is within a period of 90 days, and therefore the petitioner cannot argue that the extension of suspension is beyond the period of 90 days for the extension to be invalid.

5. The second/further extension of suspension was given vide order dated 26.11.2014, and which as per Rule 10(6) of the CCS(CCA) Rules can be within 180 days of the first extension i.e within 180 days from 03.7.2014. 26.11.2014 is within 180 days from 03.7.2014, and therefore the second extension is also within the period of limitation, and the petitioner accordingly cannot question the suspension or extension of suspension on the ground of violation of Rule 10(6) of the CCS (CCA) Rules as relied upon by her.

6. I may at this stage hasten to add that the case of the respondent no.2/College however is that the CCS(CCA) Rules do not apply, and nothing has been filed before this Court on behalf of the petitioner to show

that how the CCS(CCA) Rules will automatically apply to the employment of the petitioner with the respondent no.2/College. The petitioner and respondent no.2 will be governed by the terms and conditions of service and the rules as applicable between the employee/petitioner and the employer/respondent no.2/College, and no such rules are however relied upon besides nothing being shown as to how the CCS(CCA) Rules extend to the relationship of employee/petitioner and employer/respondent no.2/College. Therefore, this is another reason as to why the petitioner cannot claim invalidity of the suspension and extension of suspension on the basis of Rule 10(6) of the CCS(CCA) Rules.

7. In view of the above, the petitioner has no case for challenging her suspension or extension of suspension. So far as merits for challenging suspension is concerned, it is noted that the courts ordinarily do not interfere with a suspension order because as per the law laid down by the Supreme Court, an employee who is guilty of infraction of service rules, should not feel that simply because departmental proceedings are pending, such an employee during the pendency of departmental proceedings can go away scot free. This is stated by the Supreme Court in its judgment in the case of *State of Orissa Vs. Bimal Kumar Mohanty (1994) 4 SCC 126*. The relevant

observations of the Supreme Court in the said judgment are contained in para 13, and which read as under:-

“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 inputted 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 enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry 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 enquiry 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 enquiry or contemplated enquiry 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 enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.” (underlining added)

8. In view of the above, the challenge of the petitioner to her suspension or extension of suspension is therefore misconceived and hence dismissed. It is noted that there are serious charges of insubordination etc against the petitioner.

9. Now the issue with respect to the quashing of the charge-sheet dated 02.9.2014 will have to be examined. The petitioner claims that the respondent no.4/Officer on Special Duty (OSD) of the respondent no.2/College cannot be both a complainant as also the disciplinary authority, and the charge-sheet shows that with respect to charges no.6 and 10, the respondent no.4/OSD is a complainant as also the disciplinary authority, inasmuch as respondent no.4/OSD was a part of the Governing Body Meeting which passed the Resolution on 08.3.2014 to commence disciplinary proceedings against the petitioner.

10. Counsel appearing for the respondent no.2/College at this stage very fairly states that since the charge-sheet contains as many as 10 charges against the petitioner, and the charges other than charges no. 6 and 10 are totally and wholly independent of the factual contents of charges no. 6 and 10, it is conceded by the respondent no.2/College that with respect to charges no. 6 and 10, the charge-sheet will not be proceeded with, however, liberty is prayed for and granted to initiate fresh proceedings against the petitioner, of course in accordance with law, with respect to charges no.6 and 10 contained in the charge-sheet dated 02.9.2014, and for taking which action, the respondent no.4/OSD will not be a part of the Governing Body Meeting which is the disciplinary authority to commence disciplinary proceedings against the petitioner and respondent no.4/OSD will not be a party to any future disciplinary action and any other proceedings on the basis of which they are initiated with respect to charges no.6 and 10. Of course, I take on record the statement of the counsel for respondent no.2/College that if there are meetings of the Governing Body, then respondent no.4/OSD with respect to those items in the agenda which will pertain to charges no.6 and 10 contained in the charge-sheet dated 02.9.2014 will recuse himself and that respondent no.4/OSD will not be a part of the Governing Body Meeting with respect to such issues.

11. In view of the stand of the counsel for respondent no.2/College, and in view of the fact that the other charges contained in the charge-sheet dated 02.9.2014 have no connection with the factual contents of the charges no.6 and 10, I therefore do not find any reason as to why the departmental proceedings against the petitioner with respect to other charges should not continue.

12. I may at this stage note that self-serving averments of bias cannot lead to quashing of the charge-sheet because it is not unnatural, and in fact invariably argued in most of the proceedings where the employee is proceeded with in the departmental proceeding, that the charged employee starts uttering the mantra of 'bias' against him. I may state that, of course, there may be cases of *ex facie* bias, and which will persuade the court to quash the departmental proceedings with liberty to initiate the fresh proceedings which will not be affected by bias, however, in the present case, I do not find that merely because there are allegations and counter-allegations, the petitioner has made out a case of bias, more so because in a case such as the present, factual issue with respect to bias results in a disputed question of facts and which will have to be decided in the departmental proceedings and cannot be decided by this Court at this stage. It has been repeatedly observed by the Supreme Court that issuing of a

charge-sheet does not in any manner affect the right of the employees, and merits have to be heard and decided by the enquiry officer and employees cannot rush to the courts to question the issuing of the charge-sheet. A charge-sheet can only be questioned when the charge-sheet is issued by an authority without jurisdiction or on some other nearly strong ground, and not otherwise. I have had an occasion to consider this aspect in the judgment in the case of *Dr. Muhammad Iqbal Vs. Union of India and Ors.* in W.P.(C) No.4222/2013 decided on 08.7.2013, and the relevant para nos.2, 3, 4 & 5 of which 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.”

13. In view of the above, while directing that the departmental proceedings should not proceed with respect to charges no.6 and 10, the departmental proceedings will however now be allowed to continue with respect to other charges which are being enquired into against the petitioner, inasmuch as it is before the departmental authority that all factual aspects and merits have to be pleaded and decided.

14. I may also at this stage note that the counsel for the respondent no.2/College has brought to the notice of the Court that in the affidavit filed

by the respondent no.2, it is stated that in spite of over dozens of hearings in the departmental proceedings, the petitioner has failed to participate in the same.

15. In view of the above, this writ petition is dismissed, subject to the aforesaid observations and with liberty to the petitioner to challenge the suspension of the petitioner on fresh grounds in an independent proceeding.

MARCH 05, 2015
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VALMIKI J. MEHTA, J