

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.5650 of 2010

Ku. Charulata Gajpal, D/o Shri G.S. Gajpal, aged about 30 years, presently posted as PTI, Forest School, Mahasamund, Mahasamund Forest Division, R/o 2 B, Street No.7, Sector X, Bhilai, District Durg (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Forest, Mantralaya, D.K.S. Bhavan, Raipur (C.G.)
2. Chief Conservator of Forest (Administration/Non Gazetted), Chhattisgarh, Raipur (C.G.)
3. Chief Conservator of Forest (HRD/IT), Chhattisgarh, Raipur (C.G.)
4. Conservator of Forest, Raipur Circle, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Kashif Shakeel, Advocate.
For Respondents/State: Mrs. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/02/2017

1. In a duly conducted recruitment process, the petitioner was appointed on the post of Physical Training Instructor on 2-3-2009. Immediately after her appointment, one complainant T. Ningraj Reddy, who stood second in the merit list, made complaint to the higher authorities about various irregularities in the selection process and ultimately, the complaint was inquired into and the petitioner was issued with a show cause notice dated 31-8-2010 feeling aggrieved against which this writ

petition under Article 226 of the Constitution of India has been filed.

2. Mr. Kashif Shakeel, learned counsel appearing for the petitioner, would submit that the show cause notice runs into three pages and in paragraph 4, the Chief Conservator of Forests has clearly recorded a finding holding that the petitioner's appointment is void and ten reasons have been assigned to hold that the appointment of the petitioner is contrary to law. He would further submit that in the end of paragraph 2, the authority had made up his mind that the appointment of the petitioner is void and further, in paragraph 3 only, notice has been issued to the petitioner as to why she be not removed from service by declaring her appointment void. He would also submit that such a notice is without jurisdiction and without authority of law, as without holding departmental enquiry, an opinion has been formed to remove the petitioner from service and as such, it is a mere eyewash just to remove the petitioner from service.
3. Mrs. Astha Shukla, learned State counsel, would submit that the petitioner has been directed to file her reply and as such, it is a bare show cause notice and the writ petition is not maintainable.
4. I have heard learned counsel appearing for the parties and given thoughtful consideration to the contentions raised herein and also gone through the material available on record with

utmost circumspection.

5. It is well settled law that the writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless it is without jurisdiction and without authority of law, but it is equally well settled that when the notice is issued with premeditation, the writ petition would be maintainable against the show cause notice.
6. In the matter of **Siemens Ltd. v. State of Maharashtra and others**¹, Their Lordships of the Supreme Court have held that the writ petition against show cause notice would be maintainable when notice is issued with premeditation and observed as under: -

“9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including [State of U.P. v. Brahm Datt Sharma](#)², [Special Director v. Mohd. Ghulam Ghouse](#)³, and [Union of India v. Kunisetty Satyanarayana](#)⁴, but the question herein has to be considered from a different angle viz. when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See [K.I. Shephard v. Union of India](#)⁵). It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as

1 (2006) 12 SCC 33

2 (1987) 2 SCC 179 : AIR 1987 SC 943

3 (2004) 3 SCC 440

4 (2006) 12 SCC 28

5 (1987) 4 SCC 431 : AIR 1988 SC 686

also in its purported show-cause notice.

10. The said principle has been followed by this Court in [V.C. Banaras Hindu University v. Shrikant](#)⁶, stating: (SCC p.60, paras 48-49)

"48. The Vice-Chancellor appears to have made up his mind to impose the punishment of dismissal on the respondent herein. A post-decisional hearing given by the High Court was illusory in this case.

49. In *K.I. Shephard v. Union of India* (supra) this Court held: (SCC p. 449, para 16)

'It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.' "

(See also *Shekhar Ghosh v. Union of India*⁷ and *Rajesh Kumar v. D.C.I.T.*⁸)"

7. Similar is the proposition of law laid down by the Supreme Court in the matter of **State of U.P. v. Arezzo Developers Ltd.**⁹ holding that when any show-cause notice is issued without jurisdiction, writ petition would be maintainable.

8. A careful perusal of the impugned show cause notice would show that complaint of T. Ningraj Reddy was got inquired into by the State Government by the Chief Conservator of Forests and the Chief Conservator of Forests in the impugned show-cause notice has recorded ten reasons for holding the appointment of the petitioner as bad and also formed an opinion that the appointment of the petitioner is void and

6 (2006) 11 SCC 42 : (2006) 6 Scale 66

7 (2007) 1 SCC 331 : (2006) 11 Scale 363

8 (2007) 2 SCC 181 : (2006) 11 Scale 409

9 (2016) 12 SCC 530

thereafter, notice has been issued for her removal from service. Therefore, the Chief Conservator of Forests had already made up his mind while issuing show-cause notice to remove the petitioner from service. It is seems that the impugned show-cause notice has been issued to the petitioner after forming a clear cut opinion that the appointment is void and with premeditation. The petitioner is probationer and at that very point of time, she was undergoing the period of probation.

9. In the case in hand, though the petitioner at the relevant point of time was undergoing probation, but no departmental enquiry has been conducted and even copy of the enquiry report conducted beyond her back has not been submitted to her. A finding has already been recorded that her appointment is void and only for removal of service which is in the shape of an order has been issued to the petitioner.
10. In a recent decision in the matter of **Ratnesh Kumar Choudhary v. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others**¹⁰, service of a probationer was terminated without holding departmental enquiry and Their Lordships of the Supreme Court have held that where termination is based or founded upon misconduct, it would be punitive, but it would be termination simpliciter or case of motive where employer on basis of some prima facie facts without going into their veracity, decides merely not to continue a dubious employees. Their Lordships observed as under: -

10 AIR 2016 SC 467

“28. In the case at hand, it is clear as crystal that on the basis of a complaint made by a member of the Legislative Assembly, an enquiry was directed to be held. It has been innocuously stated that the complaint was relating to illegal selection on the ground that the appellant did not possess the requisite qualification and was appointed to the post of Chest Therapist. The report that was submitted by the Cabinet (Vigilance) Department eloquently states about the conduct and character of the appellant. The stand taken in the counter affidavit indicates about the behaviour of the appellant. It is also noticeable that the authorities after issuing the notice to show cause and obtaining a reply from the delinquent employee did not supply the documents. Be that as it may, no regular enquiry was held and he was visited with the punishment of dismissal. It is well settled in law, if an ex parte enquiry is held behind the back of the delinquent employee and there are stigmatic remarks that would constitute foundation and not the motive. Therefore, when the enquiry commenced and thereafter without framing of charges or without holding an enquiry the delinquent employee was dismissed, definitely, there is clear violation of principles of natural justice. It cannot be equated with a situation of dropping of the disciplinary proceedings and passing an order of termination simpliciter. In that event it would have been motive and could not have travelled to the realm of the foundation. We may hasten to add that had the appellant would have been visited with minor punishment, the matter possibly would have been totally different. That is not the case. It is also not the case that he was terminated solely on the ground of earlier punishment. In fact, he continued in service thereafter. As the report would reflect that there are many an allegation subsequent to the imposition of punishment relating to his conduct, misbehaviour and disobedience. The Vigilance Department, in fact, had conducted an enquiry behind the back of the appellant. The stigma has been cast in view of the report received by the Central Vigilance Commission which was ex parte and when that was put to the delinquent employee, holding of a regular enquiry was imperative. It was not an enquiry only to find out that he did not possess the requisite qualification. Had that been so, the matter would have been altogether different. The allegations in the report of the

Vigilance Department pertain to his misbehaviour, conduct and his dealing with the officers and the same also gets accentuated by the stand taken in the counter affidavit. Thus, by no stretch of imagination it can be accepted that it is termination simpliciter. The Division Bench has expressed the view that no departmental enquiry was required to be held as it was only an enquiry to find out the necessary qualification for the post of Chest Therapist. Had the factual score been so, the said analysis would have been treated as correct, but unfortunately the exposition of factual matrix is absolutely different. Under such circumstances, it is extremely difficult to concur with the view expressed by the Division Bench.”

11. Thus, the petitioner, who was a probationer, was served with show-cause notice after forming a clear cut mind by the competent authority that her appointment is void and contrary to law, as enquiry conducted beyond her back, and is liable to be removed from service. Such a notice cannot sustain, as no regular departmental enquiry was held. The notice Annexure P-1 alleged to have been given is a mere formality, rather an eyewash to complete the process of formality to remove the petitioner from the post which he was holding at that time. Therefore, the impugned notice Annexure P-1 is hereby quashed. However, the respondents are at liberty to proceed, in accordance with law.

12. The writ petition is allowed to the extent indicated herein-above.

No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge