

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+ WRIT PETITION No.5961 of 2017

% 8.3.2017

T Ranjeeth Singh S/o Heeralal
Admn Officer, S S Government Polytechnic,
Zaheerabad, Sangareddy district

... Petitioner

Vs.

\$ State of Telangana
Rep by its Additional Chief Secretary,
Higher Education Department,
Secretariat , Hyderabad and others

.... Respondents

!Counsel for the petitioner : Sri D Goverdhanachary

Counsel for the Respondents : GP for Services –I (TG)
GP for Higher Education (TG)

<Gist :

>Head Note:

? Cases referred:
(2006) 12 SCC 28
(2012) 11 SCC 565
(2013) 6 SCC 530



**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

WRIT PETITION No.5961 of 2017

Between :

T Ranjeeth Singh S/o Heeralal
Admn Officer, S S Government Polytechnic,
Zaheerabad, Sangareddy district

.... Petitioner

And

State of Telangana
Rep by its Additional Chief Secretary,
Higher Education Department,
Secretariat , Hyderabad and others

.... Respondents

JUDGMENT PRONOUNCED ON : 8.3.2017

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : YES
Be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : YES
To Law Reporters/Journals :
3. Whether Their Ladyship/Lordship wish to : YES
See fair Copy of the Judgment ? :

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.5961 of 2017

Date : 8.3.2017

Between :

T Ranjeeth Singh S/o Heeralal
Admn Officer, S S Government Polytechnic,
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Rep by its Additional Chief Secretary,
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Respondents

The Court made the following:



HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.5961 of 2017

ORAL ORDER:

Petitioner was earlier working as Administrative Officer of Jawaharlal Nehru Government Polytechnic college, Ramanthapur, Hdyderabad. He was served with charge memo dated 26.11.2015 containing two charges. The sum and substance of the first charge is that he was repeatedly affronting superiors with disobedience, misdemeanor, insubordination, disrespectful attitude , irregular and negligent towards his duties. The sum and substance of second charge is that he was not following financial norms and involved in financial irregularities, incorrect calculations of income tax of teaching staff, irregular drawal and disbursement of retirement/death benefits and non remittance of undisbursed amounts.

2. Not satisfied with the explanation, Enquiry Officer was appointed. The Enquiry Officer conducted enquiry and submitted his report vide letter dated 25.11.2016. After submission of the report of the Enquiry Officer, petitioner was served with show cause memo dated 21.1.2017, impugned in the writ petition, calling upon the petitioner to submit his explanation as to why punishment should not be imposed based on the findings of the Enquiry Officer. At this stage, this writ petition is filed.

3. Learned counsel for petitioner contended that the Enquiry Officer has not followed the mandate of Rule 20 of APCS (CCA) Rules, 1991 to conduct enquiry. The witnesses were not examined and no opportunity of cross examination was given to the petitioner. Witnesses were supplied with questionnaire and replies furnished by them were taken into consideration. The relevant and important documents which have a bearing to hold the charges were not supplied. He would

therefore submit that based on illegal enquiry conducted, the present show cause memo is issued. Since enquiry was not conducted in accordance with the mandate of the Rules, 1991 the consequential action is not legal and therefore the show cause memo is liable to be set aside.

4. Having regard to these submissions, learned Government Pleader was directed to produce the original record of enquiry. On production of the record, the Government Pleader was directed to go through the same and explain to the Court whether the allegations made by the counsel for petitioner are true; whether there was no examination of witnesses as required and that the relevant documents are not furnished to petitioner.

5. Learned Government Pleader, on perusal of the records, submitted that relevant documents were enclosed to reply furnished by the Principal to the printed questionnaire and documents were not furnished to the petitioner. He also submitted that recording of evidence was not made as required by the CCA Rules.

6. Ordinarily, Writ Court is not inclined to entertain the writ petition challenging the show cause notice. The principle of law on maintainability of writ petition against a show cause notice is well settled.

7.1.1 In **UNION OF INDIA Vs KUNISETTY SATYANARAYANA**¹ the employee challenged the charge memo dated 23.12.2003. In the said charge memo, it was alleged that the employee claimed reservation against ST roster point in the promotional post, though he did not belong to said category. Instead of replying to the aforesaid charge, the employee filed O.A., before the Central Administrative Tribunal. The Tribunal disposed of O.A. directing the employee to submit his reply to the charge memo. Instead of filing reply,

¹ (2006) 12 SCC 28

he filed writ petition before the High Court and High Court allowed the writ petition. The Union of India preferred appeal before the Supreme Court.

7.1.2. On review of the precedent decisions, Supreme Court held as under:

“13. 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. Ramesh Kumar Singh* [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , *Special Director v. Mohd. Ghulam Ghouse* [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , *Ulagappa v. Divisional Commr., Mysore* [(2001) 10 SCC 639] , *State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.

14. 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 petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. 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.”

(emphasis supplied)

7.2.1. In **SECRETARY, MINISTRY OF DEFENCE AND OTHERS Vs PRABHASH CHANDRA MIRDHA**² the employee was served with charge memo alleging that he demanded bribe and accepted.

² (2012) 11 SCC 565

Challenging the said charge memo, employee filed O.A. before the Central Administrative Tribunal, alleging that the charge memo was issued by subordinate to the appointing authority; the O.A was allowed by the Tribunal on the ground that the charge memo was issued by authority subordinate to the appointing authority. Writ Petition preferred on behalf of Union of India was dismissed. On behalf of Union of India, appeal was preferred before the Supreme Court.

7.2.3. Supreme Court held as under:

“10. 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. (Vide *State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , *Bihar State Housing Board v. Ramesh Kumar Singh* [(1996) 1 SCC 327] , *Ulagappa v. Commr.* [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , *Special Director v. Mohd. Ghulam Ghouse* [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and *Union of India v. Kunisetty Satyanarayana* [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] .)

11. In *State of Orissa v. Sangram Keshari Misra* [(2010) 13 SCC 311 : (2011) 1 SCC (L&S) 380] (SCC pp. 315-16, para 10) this Court held that ***normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority.*** (See also *Union of India v. Upendra Singh* [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200] .)

12. Thus, the law on the issue can be summarised to the effect that the charge-sheet 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 charge-sheet 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.”

(emphasis supplied)

7.3.1. In **CHAIRMAN, LIFE INSURANCE CORPORATION OF INDIA AND OTHERS Vs M.MASILAMANI**³, it was alleged that there were certain irregularities and deviations in construction of house by the employee and the housing loan was obtained, upon non disclosure of the facts, charge sheet was drawn on 6.1.1998; employee filed his reply; not satisfied with the reply, domestic enquiry was ordered. Based on the report of the enquiry, penalty of reduction in the basic pay was imposed on the employee. The appeal as well as memorial were rejected. Challenging the order of punishment, employee preferred writ petition. Writ petition was allowed observing that witnesses were examined in violation of the statutory rules and principles of natural justice; that employee was not accorded adequate opportunity to cross examine the witnesses; that appellate authority failed to observe that there were procedural violations by the enquiry officer as well as by the disciplinary authority. It was also held that mere concurrence by the appellate authority with the findings recorded by the enquiry officer and without adequate reasoning cannot be said to amount to adequate application of judicial mind by the appellate authority. The appeal filed by the corporation was dismissed. Aggrieved thereby, appeal was preferred before the Supreme Court.

7.3.2. Dealing with various contentions, the Supreme Court observed as under:

“18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as ***such a power is de hors the limits of judicial review.*** In the event that the court/tribunal exercises such power, ***it exceeds***

³ (2013) 6 SCC 530

its power of judicial review at the very threshold.

Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion. (Vide *State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , *State of M.P. v. Bani Singh* [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514 : AIR 1990 SC 1308] , *Union of India v. Ashok Kacker* [1995 Supp (1) SCC 180 : 1995 SCC (L&S) 374 : (1995) 29 ATC 145] , *Prohibition & Excise Deptt. v. L. Srinivasan* [(1996) 3 SCC 157 : 1996 SCC (L&S) 686 : (1996) 33 ATC 745] , *State of A.P. v. N. Radhakishan* [(1998) 4 SCC 154 : 1998 SCC (L&S) 1044 : AIR 1998 SC 1833] , *M.V. Bijlani v. Union of India* [(2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006 SC 3475] , *Union of India v. Kunisetty Satyanarayana* [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] and *Ministry of Defence v. Prabhash Chandra Mirdha* [(2012) 11 SCC 565 : (2013) 1 SCC (L&S) 121 : AIR 2012 SC 2250] .)”

(emphasis supplied)

7.4. The principles deducible from the above decisions are:

- (i) Ordinarily writ does not lie against show cause notice/charge memo;
- (ii) entertaining writ petition against show cause notice/ charge memo is dehorse the limit of judicial review/ exceeds the power of judicial review at the threshold;
- (iii) issuance of show cause notice/charge memo, does not adversely affect/infringe the rights of the employee; does not amount to an adverse order;
- (iv) normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous as determination of correctness or truth of the charge is the function of the disciplinary authority. It would be premature to deal with the issues;

- (v) in only very rare and exceptional cases, if it is found to be wholly without jurisdiction or for some other reason, if it is wholly illegal, Court can exercise power of judicial review at the stage of show cause notice/ charge memo;
- (vi) discretion under Article 226 should not ordinarily be exercised to quash charge sheet/ show cause notice.

8. Guided by the above principles, it is necessary to consider the contentions urged in the writ petition.

9. Rule 20 of A.P Civil Service (Classification, Control and Appeal) Rules (for short CCA Rules) prescribe procedure for imposing major penalties. Sub Rules 8 to 18 prescribe detailed procedure as to how the enquiry officer should conduct the enquiry and submit his report.

10. As per the records produced before this Court, it is clear that enquiry was not conducted as required by the Rules, 1991; witnesses were not examined; documents based on which charges were leveled and relied upon during the course of enquiry were not furnished to the petitioner. There is extensive reference to the statements of the witnesses to hold the charges as proved but as per the record, the persons were not examined during the course of enquiry and opportunity of cross examination was not offered to the petitioner. Enquiry officer circulated printed questionnaire, elicited information from the Principal and other persons and based on the said replies furnished by them recorded his conclusions.

11. A bare perusal of these provisions would make it clear that all the documents relevant should be supplied to the delinquent employee, the evidence of witnesses on behalf of the prosecution should be recorded in the presence of delinquent employee and he should be afforded opportunity to cross examine them. After closure of the

recording of evidence on behalf of the prosecution, opportunity should be afforded to the delinquent employee to present his evidence.

12. Therefore, the procedure followed by the enquiry officer is illegal. Accepting the said report of the enquiry officer, show cause notice is issued calling for explanation why punishment can not be imposed. The contentions urged go to the root of the matter. When procedure followed by the Enquiry Officer is wholly illegal and palpable, the delinquent employee need not be subjected to the rigmarole of submission of explanation, inviting a decision by the disciplinary authority and then resorting to legal recourse. This case, falls into the exceptional category wherein Court is inclined to entertain the writ petition and set aside the show cause notice at this stage itself and relegate to the stage of conducting enquiry afresh. Such course is also in public interest.

13. Rule issued. The impugned show cause memo No. C2/2866/2015 dated 21.1.2017 is set aside and the matter is remitted to the stage of conducting enquiry based on the charge memo dated 26.11.2015. If the respondents decide to proceed with the disciplinary action, they shall conduct and complete the disciplinary proceedings as expeditiously as possible, preferably within a period of three months from the date of receipt of copy of this order by strictly observing the mandate of CCA Rules. It is needless to observe that before commencement of the enquiry proceedings, all the documents relied by the disciplinary authority and the documents based on which charges are leveled, shall be supplied to the petitioner.

14. In the result the writ petition is allowed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 8.3.2017
TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO



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Date : 8.3.2017

