

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.7557 of 2007**

Shri Shivchandra Sah S/o. Shri Gosai Sah, aged about 43 years,
Mata Rukhmani Kanya Ashram, Dimrapal, Distt. Bastar (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through its Secretary, Scheduled Caste and Scheduled Tribes and Backward Classes Welfare Department D.K. Bhawan, Raipur (CG)
2. Collector Tribal Department, District Bastar, Jagdalpur (CG)
3. Mata Rukhmani Seva Sansthan, through its Secretary, Mata Rukhmani Seva Sansthan Dimarapal, District Bastar (CG)

---- Respondents

WPS No.1668 of 2008

Om Prakash Ogale, S/o Late Malhar Rao Ogale, aged about 48 years, Mata Rukhmani Kanya Ashram, Mokhpal, Distt. Dantewada (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through its Secretary, Scheduled Caste and Scheduled Tribes and Backward Classes Welfare Department D.K. Bhawan, Raipur (CG)
2. Collector Tribal Department, District Bastar, Jagdalpur (CG)
3. Mata Rukhmani Seva Sansthan, through its Secretary, Mata Rukhmani Seva Sansthan Dimarapal, District Bastar (CG)

---- Respondents

WPS No.1928 of 2008

1. Sushri Thanwarin Kaivart, aged about 56 years, D/o. Shri Sawal Ram Kaivart, Teacher, Kanya Ashram Danora, Tahsil Bijapur, Distt. Dantewada (CG)
2. Sushri Malti Yadav, aged about 57 years, D/o. Late Shri Roopchand Yadav, (Teacher) Superintendent, Kanya Ashram Mutanpal, Block Bastanar, Tahsil Jagdalpur, Distt. Bastar (CG)
3. Kaushal Kishore Pathak, aged about 52 years, S/o. Shri

R.S.Pathak, Teacher, Kanya Ashram Dimrapal, Block Tokapal,
Tahsil Jagdalpur, Distt. Bastar (CG)

4. Smt. Kamlesh, aged about 52 years, W/o. Shri A. Khan, Asst.
Teacher, Kanya Ashram, Mutanpal, Tahsil Jagdalpur, Distt.
Bastar (CG)

---- Petitioners

Versus

1. State of Chhattisgarh through its Secretary, Scheduled Caste
and Scheduled Tribes and Backward Classes Welfare
Department D.K. Bhawan, Raipur (CG)
2. Collector Tribal Department, District Bastar, Jagdalpur (CG)
3. Mata Rukhmani Seva Sansthan, through its Secretary, Mata
Rukhmani Seva Sansthan Dimarapal, District Bastar (CG)

---- Respondents

WPS No.1952 of 2008

Ku. Laxmi Uddey, D/o. Late Jogiram Uddey, aged about 39
years, working as a Asst. Teacher, Kanya Ashram, Dhanora,
Bijapur, Distt. Dantewada (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through its Secretary, Scheduled Caste
and Scheduled Tribes and Backward Classes Welfare
Department D.K. Bhawan, Raipur (CG)
2. Collector Tribal Department, District Bastar, Jagdalpur (CG)
3. Mata Rukhmani Seva Sansthan, through its Secretary, Mata
Rukhmani Seva Sansthan Dimarapal, District Bastar (CG)

---- Respondents

WPS No.2060 of 2008

Sushri Satwanti Bhamra, aged about 57 years, D/o. Late Shri Mohan
Singh, Teacher, Vinoba Adiwadi Kanya Ashram Charama, Tahsil
Charama, Distt. Kanker (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through its Secretary, Scheduled Caste
and Scheduled Tribes and Backward Classes Welfare
Department D.K. Bhawan, Raipur (CG)

2. Collector Tribal Department, District Bastar, Jagdalpur (CG)
3. Mata Rukhmani Seva Sansthan, through its Secretary, Mata Rukhmani Seva Sansthan Dimarapal, District Bastar (CG)

---- Respondents

WPS No.3251 of 2008

1. Vasant Kumar Saraf S/o Late Bhuwan Lal Saraf, Aged about 56 years, Assistant Teacher Balak Ashram Orchha Abujhmad, Tahsil Orchha, Distt. Narayanpur, (CG)
2. Smt. Kasturi Saraf W/o Vasant Kumar Saraf, Aged about 56 years, Assistant Teacher, Thakkar Bapa Kanya Ashram Orchha Abujhmad, Distt. Narayanpur (CG)

---- Petitioners

Versus

1. State of Chhattisgarh through its Secretary, Scheduled Caste and Scheduled Tribes and Backward Classes Welfare Department D.K. Bhawan, Raipur (CG)
2. Collector Tribal Department, District Bastar, Jagdalpur (CG)
3. Mata Rukhmani Seva Sansthan, through its Secretary, Mata Rukhmani Seva Sansthan Dimarapal, District Bastar (CG)

---- Respondents

And

WPS No.3629 of 2008

Smt. Dhanlaxmi Kurup, W/o Shri T.V. Mohan Kurup, aged about 50 years, R/o Village-Palli, Post Kumharavan, Tahsil Jagdalpur, Distt. Bastar (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through its Secretary, Scheduled Caste and Scheduled Tribes and Backward Classes Welfare Department D.K. Bhawan, Raipur (CG)
2. Collector Tribal Department, District Bastar, Jagdalpur (CG)
3. Mata Rukhmani Seva Sansthan, through its Secretary, Mata Rukhmani Seva Sansthan Dimarapal, District Bastar (CG)

---- Respondents

For Petitioners	: Mr.Vinod Deshmukh, Advocate
For Respondents No.1&2	: Mr.D.R.Minz, Dy.G.A.
For Respondent No.3	: Mr.Harshal Chouhan, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

8/1/2018

- 1.** Since common question of law and fact is involved in these batch of writ petitions, they are heard together and are being disposed off by this common order.
- 2.** The petitioners were appointed on the post of Upper Division Teacher by respondent No.3 herein. Their services were terminated leading to filing of WP No.1481 of 2000 before this Court. This Court by order dated 2.1.2006 allowed the writ petition filed by the petitioners and quashed the order of termination primarily on the ground that no enquiry was held to terminate the services of the petitioners. Thereafter, the petitioners were served with the show-cause notice dated 9.2.2007 and thereafter regular departmental enquiry was initiated against them on 19.9.2007. The petitioners have challenged the show-cause notice dated 9.2.2007 along with charge-sheet issued by respondent No.3 alleging the same as without jurisdiction and without authority of law.
- 3.** Return has been filed by respondent No.3 opposing the writ petitions stating inter-alia that the writ petitions as framed and filed are not maintainable and pre-mature at this stage. The petitioners may file reply to the charge-sheet and all the available grounds can be raised in the reply to be filed before the competent authority/disciplinary authority.
- 4.** No rejoinder has been filed.
- 5.** Mr.Vinod Deshmukh, learned counsel for the petitioners opening the arguments would submit as under:-

(i) That, the orders of termination passed by respondent No.3 were quashed by this Court by order dated 2.1.2006 and no leave was granted to respondent No.3 to re-open the matter and to further initiate the departmental enquiry against the petitioners. Therefore, fresh departmental enquiry initiated against the petitioners is barred.

(ii) That, show-cause notice has been issued with premeditated mind and as such, further holding of enquiry is an eye-wash to terminate the services of the petitioners.

(iii) That, the charge as framed and served to the petitioners do not constitute the act of misconduct against the petitioners. Therefore, the proceeding is illegal and bad in law and the impugned charge-sheet deserves to be quashed.

(iv) That, the charge-sheet has been issued with an inordinate delay.

6. Mr.Harshal Chouhan, learned counsel appearing for respondent No.3, would submit that orders of termination were quashed by this Court for non-compliance of principles of natural justice, therefore, respondent No.3 is justified in initiating disciplinary proceeding against the petitioners. He would further submit that the petitioners are not estopped from arguing the correctness of the charges in the said departmental enquiry, they may join the departmental enquiry by filing reply and can make all the submissions holding that no charges are made out against the petitioners.

He would also submit that in the show-cause notice, no opinion has been expressed. Therefore, there is no ground to quash the charge-sheet and as such, the writ petitions deserve to be dismissed.

7. I have heard learned counsel for the parties, considered their rival submissions made herein-above and also gone through the records with utmost circumspection.
8. First, I will take up the ground that no leave was granted by this Court to initiate departmental enquiry against the petitioners. Earlier orders of termination were passed terminating the services of the petitioners, against which, the petitioners have preferred the writ petition jointly. That writ petition was allowed principally on the ground that no enquiry was held to come to the conclusion that any irregularity with regard to the age or eligibility condition was held in the case of any of the petitioners. It has also been held that services of the delinquent employee cannot be terminated without following the due procedure of law.
9. Recently, in the matter of **Vipulbhai Mansingbhai Chaudhary Vs. State of Gujarat and another**¹ the Supreme Court has held that when order passed in exercise of power conferred by statute, is set aside on ground of non-compliance of principles of natural justice, such power can once be exercised by complying with principles of natural

¹ AIR 2017 SC 2340

justice. It was observed **Vipulbhai Mansingbhai Chaudhary**

as under:-

“35. Any statutory power could “be exercised from time to time as occasion requires”. Such a principle is recognised by Section 14 of the General Clauses Act, 1897 and Section 14 of the Gujarat General Clauses Act. Power conferred on Courts to adjudicate the rights and obligations of the parties is an exception to the principle. The doctrines of res-judicata and double jeopardy prohibit the repeated invocation of the jurisdiction of the Civil Courts or repeated attempts to prosecute a person on the same set of facts constituting an offence. Whether power conferred by a statute on a body other than a judicial body (i) could be exercised repeatedly? or (ii) are there any legal limitations thereon? and (iii) if there are limitations thereon what are they? are questions which require further examination. But for the purpose of this case these questions need not be examined. It is already held by this Court that where an order passed in exercise of a power conferred by a statute is set aside on the ground that such an order was passed in breach of the principles of natural justice, the power could once again be exercised by complying with the principles of natural justice. ”

10. The orders of termination were set aside by this Court only on the ground of non-compliance of principles of natural justice, therefore, respondent No.3 is justified in considering the case of the petitioners afresh and taking decision on the question of holding departmental enquiry and for that, earlier orders passed by this Court setting aside the termination of the petitioners would not come in the way of respondent No.3 in the light of principle of law laid-down by the Supreme Court in **Vipulbhai Mansingbhai Chaudhary** (supra).

11. So far as delay is concerned, the orders of termination were set aside by this Court on 2.1.2006, show-cause notices

were issued on 9.2.2007 and thereafter departmental enquiry has been initiated on 19.9.2007, as such, no ground of delay is available to the petitioners.

12. Annexure P/6 is said to be show-cause notice issued by respondent No.3 with premeditation of mind. It is only show-cause notice as to why their services should not be terminated and it was issued seeking explanation of the petitioners for proceeding further. Therefore, it cannot be held that show-cause notice has been issued with premeditated mind. That ground is also not available to the petitioners.

13. This would bring back me to the submission that the charges are not made out against the petitioners and there is no misconduct on the part of the petitioners.

14. The scope of interference in the departmental enquiry at the initial stage is very limited.

15. In the matter of **AIR India Limited Vs. M. Yogeshwar Raj**², Their Lordships of the Supreme Court have held that this Court (High Court) should not interfere in the interlocutory stage unless jurisdiction of the disciplinary authority to issue the chargesheet is questioned. Para 8 of the report states as under:-

“8. It appears from a copy of the writ petition that the respondent has not questioned the jurisdiction of the disciplinary authority to issue the impugned show-cause notice. The two issues of the respondent's caste and whether he had adequately explained the production of the bogus certificate of 4.10.98 are yet to be decided by the disciplinary authority. Both the issues are primarily issues of fact. The High Court

should not have pre-empted a factual decision of the disciplinary authority on the issues. Nor should the High Court have stayed the proceedings on a prima facie finding on the subject matter of enquiry particularly when the competence of the disciplinary authority was not in doubt.”

- 16.** Way back in the year 1995 in a decision reported in the matter of **Union of India Vs. Ashok Kacker**³, Their Lordships of the Supreme Court have held that delinquent has to file reply first and to raise all such available plea before Disciplinary Authority by holding as under:-

“4. Admittedly, the respondent has not yet submitted his reply to the charge-sheet and the respondent rushed to the Central Administrative Tribunal merely on the information that a charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondent's application at that premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondent made no attempt to support. The respondent has the full opportunity to reply to the charge-sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the respondent to adopt is to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had rushed to the Tribunal, we do not consider it necessary to require the Tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him.”

- 17.** Likewise, in a decision reported in the matter of **Deputy Inspector General of Police Vs. K.S. Swaminathan**⁴, it has been held that correctness of charges cannot be gone into at the stage of charge. It was observed as under:-

³ 1995 Supp (1) SCC 180

⁴ (1996) 11 SCC 498

"4. It is settled law by catena of decisions of this Court that if the charge memo is totally vague and does not disclose any misconduct for which the charges have been framed, the Tribunal or the Court would not be justified at that stage to go into whether the charges are true and could be gone into, for it would be a matter on production of the evidence for consideration at the enquiry by the enquiry officer. At the stage of framing of the charge, the statement of facts and the charge sheet supplied are required to be looked into by the Court or the Tribunal as to the nature of the charges, i.e., whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct. The Tribunal, therefore, was totally unjustified in going into the charges at that stage. It is not the case that the charge memo and the statement of facts do not disclose any misconduct alleged against the delinquent officer. Therefore, the Tribunal was totally wrong in quashing the charge memo. In similar circumstances, in respect of other persons involved in the same transactions, this Court in appeals arising out of SLP (C) Nos.19453-63 of 1995 had on 9-2-1996 allowed the appeals, set aside the order passed by the Tribunal and remitted the matter holding that:

"This is not the stage at which the truth or otherwise of the charges ought to be looked into. This is the uniform view taken by this Court in such matters."

- 18.** Their Lordships of the Supreme Court in the matter of **State of Punjab Vs. Ajit Singh**⁵ have further been held that examining the merits of charges and setting aside of charges in the writ petition is improper. Para 3 of the report states as under:-

"3. We do not find any ground to interfere with the judgment of the High Court insofar as the quashing of the order of suspension is concerned. We are, however, of the view that the High Court was in error in setting aside the charge-sheet that was served on the respondent in the disciplinary proceedings. In doing so the High Court has gone into the merits of the allegations on which the charge-sheet was based and even though the charges had yet to be proved by evidence to be adduced in the disciplinary proceedings. The High Court, accepting the

⁵ (1997) 11 SCC 368

explanation offered by the respondent, has proceeded on the basis that there was no merit in the charges levelled against the respondent. We are unable to uphold this approach of the High Court. The allegations are based on documents which would have been produced as evidence to prove the charges in the disciplinary proceedings. Till such evidence was produced it could not be said that the charges contained in the charge-sheet were without any basis whatsoever."

- 19.** Following the principles of law laid-down by the Supreme Court in the aforesaid judgments (supra), if the facts of the present case are examined, it is quite vivid that the petitioners' submission that the alleged act does not constitute misconduct on their part and no charges are made out cannot be decided by this Court at this stage. I do not find any ground to quash the impugned charge-sheet issued by respondent No.3. However, the petitioners are at liberty to raise all the grounds by filing reply before the competent authority/disciplinary authority and that will be considered by the authority concerned strictly in accordance with law. The competent authority/disciplinary authority shall conclude the departmental enquiry expeditiously looking to the fact that it is pending since 19.9.2007.

- 20.** The writ petitions are disposed of accordingly. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-