

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 7149 of 2018**

Smt. Preeti Shende W/o Shri Ajay Shende, Aged About 38 Years
Reader, District Court Ambikapur, District- Surguja, Chhattisgarh

---- Petitioner**Versus**

1. District Judge Ambikapur, District- Surguja, Chhattisgarh
2. State Of Chhattisgarh Through Principal Secretary Law, Mahanadi Bhawan, Mantralaya Naya Raipur, District- Raipur, Chhattisgarh

... Respondents

For Petitioner	:	Shri T. K. Jha, Advocate
For State	:	Shri Ratan Pusty, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****27/11/2018**

The challenge in the present writ petition is to the charge sheet dated 04.08.2018 (Annexure P-1) issued by respondent no.1 against the petitioner for some alleged misconduct.

2. The ground of challenge to the charge sheet is that a plain reading of the charges would reveal that it would not amount to a misconduct and that the petitioner has unnecessarily been subjected to disciplinary proceedings and the entire charges that have been levelled are pursuant to an explanation that the petitioner has provided to a show cause notice given to her.

3. A plain reading of the charges which have been levelled against the petitioner itself would reveal that the charges are one which can be safely

brought under the provisions of misconduct which are reflected under the Chhattisgarh Civil Services (Conduct) Rules, 1965.

4. So far as the scope of interference by the High Court in a disciplinary proceeding is concerned, this Court recently in the case of Smt. Meenu Rathore Vs. State of Chhattisgarh and others decided on 31.07.2018 in WPS No. 4613/18 referring to a couple of judgments of the Supreme Court has held as under:

6. The Supreme Court in the case of ***State of Uttar Pradesh v. Brahm Datt Sharma & Anr. [1987 2 SCC 179]*** dealing with the scope of judicial interference in disciplinary matters was of the opinion that, “the purpose of issuing show cause notice is to afford an opportunity of hearing to the Government servant and once cause is shown and is open to the Government to consider the matter in the light of the facts and submissions placed by the Government servant, only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature and the Hon'ble Supreme Court went on holding that, the High Court in our opinion ought not have interfere with the show cause notice.

1. Again, the Hon'ble Supreme Court in the case of Secretary, Ministry of Defence & Ors. v. Prabhash Chandra Mirdha [2012 11 SCC 565] in paragraph 8, 10 & 12 has held as under:-

“8. The law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon.

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.

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.”

7. From the aforesaid legal position as it stands it is clear that, the Supreme Court has been of the view that, the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India would interfere with the disciplinary proceedings only in the event of there been a total lack of competency in the holding of enquiry proceedings by the enquiry officer or the enquiry proceedings are barred for any reason or where the charges have been already enquired upon and has been concluded.

9. In the instant case, the contention of the petitioner is neither questioning the competency or the power of the authorities in issuing the same and the petitioner has filed the petition assailing chargesheet more on the ground that, the same does not fall within the ambit of misconduct and therefore it should be quashed.

10. This aspect can also be looked into by the disciplinary authority on the petitioner submitting a detailed reply to the chargesheet.”

5. Given the aforesaid legal position as it stands and considering the nature of allegations levelled, this Court is reluctant to entertain the present writ petition and interfere with the disciplinary proceeding initiated against the petitioner.

6. The writ petition thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge