

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.5129 OF 2019**

Jitendra Kumar Jha S/o Digamber Jha Aged About 34 Years Posted As Rural Agricultural Extension Officer, Posted At Bhaiyathan, R/o Qtr. No. 1 - B / 135, Bishrampur, District Surajpur Chhattisgarh.

...Petitioner(s)**Versus**

1. State of Chhattisgarh Through the Secretary, Agriculture Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur Chhattisgarh.
2. Director, Agriculture, Indrawati Bhawan, Atal Nagar, Raipur, District Raipur Chhattisgarh.
3. Additional Director General of Police (Confidential) Special Branch, Police Head Quarter, Ground Floor, Block No. 1, New Raipur, District Raipur Chhattisgarh.
4. Additional Director (Agriculture) Directorate, Agriculture, Indrawati Bhawan, Atal Nagar Raipur District Raipur Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri Praveen Dhurandhar, Advocate.
For Respondent-State	:	Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****15.07.2019**

1. Challenge in this petition is to the show cause notice dated 29.03.2019 (Annexure P/1) whereby an explanation has been called from the petitioner so far as non disclosure of the fact that the petitioner had been subjected to criminal prosecution twice which the petitioner did not disclose to the department inspite of petitioner having been pin pointedly asked in this regard in the year, 2015.
2. The counsel for the petitioner assailing the impugned show cause notice submits that one of the offence was of the period prior to the appointment and another offence is of the period subsequent to the appointment. So far

as earlier proceeding i.e. of the year, 2001 is concerned, there the petitioner was subjected to only preventive proceeding under Sections 107 and 116 CrPC. This according to the petitioner is not one which would fall within the ambit of moral turpitude as per circulars of the State Govt. itself. Moreover, according to the petitioner, the respondents authorities are liable to verify the gravity of the criminal offence for which he has been prosecuted before the department decides whether he should be continued in employment or not, as is required under the circular of the State dated 20.12.2007.

3. So far as second charge is concerned, according to the petitioner, since that was a proceeding which was initiated much after the petitioner came in employment, there was no occasion for him to have disclosed it at the time of his appointment and the same cannot be said to be a misconduct or suppression of facts of the petitioner. Moreover, the petitioner has been acquitted of the said charges. For this reason also, the show cause notice deserves to be set aside/quashed.
4. All said and done, what is to be taken note of is that the impugned order dated 29.03.2019 (Annexure P/1) is only a show cause notice issued by the respondent No.3. The petitioner has been called upon by the respondent No.3 to explain his conduct in respect of the allegations which are levelled therein. The petitioner is expected to submit a detailed reply to the show cause notice along with whatever justification and the document that he intends to take in his defence. On the petitioner submitting a detailed reply, the respondents are expected to take a decision on the show cause notice in accordance with service rules governing the field.
5. So far as law on the issue of interference of the High Court in a show cause proceedings it is by now well settled, 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.

6. A similar view has been taken by the Supreme Court in case of Union of India Vs. Kunisetty Satyanarayana, reported in 2006 (12) SCC 28, the Supreme Court held that:-

“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 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,ordinarliy the High Court should not interfere in such a matter.”

7. 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 10 & 12 has 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.”

8. Considering the aforesaid legal position as it stands, this court is of the opinion that ends of justice would meet if the writ petition at this juncture is disposed of directing the petitioner to submit a detailed reply or explanation to the impugned show cause notice and the respondents, in turn, are directed to consider the same in accordance with circular of the State dated 20.12.2007 and also keeping in view the nature of the offence lodged against the petitioner and its gravity and the final outcome.
9. Needless to mention that the direction given by this court would come into play only in the event if the respondents have not finalized the proceedings on the show cause notice.
10. Another aspect which would be borne in mind by the respondents is that they would not be, in any manner, influenced by the wordings of the show cause notice and they are expected to take a decision purely in accordance with circular of the State Govt. governing the field.
11. The writ petition accordingly stands disposed of.

Sd/-

(P. Sam Koshy)
Judge