

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 6337 of 2019**

Sagar Singh Rajput S/o - Late Shri Ramnarayan Singh Aged About 45 Years R/o -Radha Krishna, Ward No. 15, Kawardha, Tahsil And Police Station-Kawardha,district Kabirdham Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Health, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. The Collector, District - Kabirdham Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh
3. Chief Medical And Health Officer, District - Kabirdham Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Prateek Sharma, Advocate.
For State	:	Mr. Chandresh Shrivastava, Dy. A. G.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****21/08/2019**

1. The challenge in the present writ petition is to the Annexure P-1 dated 02.07.2019 and charge-sheet dated 03.08.2019. The challenge to these two orders is on the ground that petitioner being a Class-III post holder working as a Clerk in the office of respondent No. 3 has been made a scape goat while placing him under suspension and for issuance of charge-sheet.
2. According to the petitioner plain reading of the contents of the suspension order as well as charge-sheet would show that it is not the petitioner in any manner responsible for alleged act of

misconduct and he as a Clerk was not having any role to play for those charges. It is the further contention of the petitioner that entire action initiated by the respondent is only with malafide intention for protecting the higher authorities in the department and that is the reason suspension order and charge-sheet has been issued only to the petitioner by making him a scape goat and others have not been proceeded with as of now. He submits that disciplinary proceedings has been initiated at the behest of the Collector, respondent No. 2 himself and there is a clear approval of the entire work executed by the Collector himself. Therefore the petitioner as such is not responsible for commission of the alleged misconduct. Moreover, counsel for the petitioner also has an apprehension since disciplinary proceedings has been initiated by the Collector, there is all possibility that respondent No. 3 would be under too much influence of Collector and petitioner would be somehow implicated and punished for no fault of his.

3. It is also the contention of the petitioner that since entire work against which allegations are made was with the approval of the Collector himself and Committee so constituted by the Collector, there is all likelihood that petitioner would be victimized and he would be denied a fair and reasonable opportunity of defence. It was lastly contended by the petitioner that since the entire work was executed at the behest of the Collector as well as by the Committee so constituted and the disciplinary proceedings also having initiated by the Collector himself, it would amount to violation of basic principles of natural justice as the Collector becomes judge in his own cause and matter deserves to be interfered at this juncture.

4. Counsel for the petitioner relied upon the judgment of the Supreme Court in the case of **A.U.Kureshi V. High Court of Gujarat and Another, 2009 11 SCC 84, Mohd. Yunus Khan V. State of Uttar Pradesh and others, (2010) 10 SCC 539, S. Parthasarathi V. State Of Andhra Pradesh, 1973 AIR 2701 & S. Umrao Singh Vs. Darbara singh and Others, AIR (1969) 2 SC 262.**
5. Having heard the contentions put forth on either side and on perusal of record what cannot be brushed aside is the fact that present writ petition has been filed challenging the order of suspension and charge-sheet. Charge-sheet has been issued only on 03.08.2019. The petitioner has been called upon to give a detailed reply to the charge-sheet. The petitioner also has given a detailed reply to the charge-sheet on 07.08.2019 Annexure P-11. Thereafter, there is no further developments as on now. Reply to the charge-sheet was filed on 08.08.2019 with the respondents and the present writ petition has been filed in less than seven days time i.e. on 14.08.2019. Respondents have not even being given reasonable time to apply their mind on the reply to the charge-sheet to determine whether reply to the charge-sheet that the petitioner has given is satisfactory or not?
6. All the contentions which petitioner has raised in the present writ petition are all carrying presumption that he may be victimized or he may be made a scape goat. At this juncture when it is only on the charge-sheet stage, this Court is of the opinion that interference with the charge-sheet based on the submissions made by the petitioner, would not be appropriate, legal and justified.

7. Moreover, issuance of a charge-sheet and placing a person on suspension is only an administrative action. It is expected that authorities in the administration should apply their mind to the reply to the charge-sheet which the delinquent submits and thereafter to take an appropriate decision whether disciplinary proceedings have to be proceeded with or not?
8. It is by now a well settled proposition of law that High Court for exercise of its powers of issuance of writ jurisdiction under garb of judicial review would not substitute itself as another administrative body of the department to go thread bear into the allegations and averments made by the parties. The very purpose of issuance of charge-sheet is to call for an explanation from the delinquent employee. Once, when the delinquent employee gives a detailed reply denying the allegations and also giving his justifications to the allegations, it is expected that disciplinary authority or the higher authorities in the department would consider each and every contention that delinquent employee so raises in his submission and then would take appropriate decision.
9. 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.

10. 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.”

11. 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.”

12. So far as the judgment which have been cited by the petitioner is concerned, those predominantly revolves around principles of bias which has been laid down by the Supreme Court. There is no dispute so far as the requirement to be followed as laid down by the Supreme Court however when facts of the present case are considered, what cannot be brushed aside is the fact that the stage as of now is only

issuance of charge-sheet. The petitioner has also given a detailed reply. Respondents have to be given reasonable time to consider the contents of the reply and then reach to the conclusion if any, for the department to decide if they intend to proceed further or not?

13. It is also expected that respondent No. 2 as well as respondent No. 3 would also look into the contentions of the petitioner that he is an employee posted in the clerical cadre in the department and he does not have any substantive role to be played in the purchase or in the alleged transactions which have transpired, wherein irregularities if any have been alleged. Authorities concerned are also expected to consider this aspect and at the same time would also consider whether if not the petitioner whether any other person were also responsible for the alleged irregularity or misconduct that is alleged and only thereafter would proceed further with the disciplinary proceedings.
14. In view of the same, judgment so cited by the petitioner would be distinguishable on its facts when compared to the facts of the present writ petition.
15. With the aforesaid observations, the present writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

Rohit