

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 7619 of 2019

Sangeeta Tiwari W/o Shri Arun Tiwari Aged About 39 Years R/o Quarter No.6, Kanya Shiksha Parisar, Ambikapur, District- Surguja, Civil and Revenue District Surguja, Chhattisgarh.

---- Petitioner(s)

Versus

- 1.** State of Chhattisgarh Through Its Secretary, Public Education Department, Capital Complex, Mahanadi Bhawan, New Raipur, Police Station Rakhi, Civil and Revenue District- Raipur, Chhattisgarh.
- 2.** Zila Panchayat Ambikapur Through Its Chief Executive Officer, Ambikapur, Chhattisgarh.
- 3.** Commissioner Surguja Division, Ambikapur, School Road, Guru Nanak Chowk, Ambikapur, District- Surguja, Chhattisgarh.
- 4.** Principal Kanya Shiksha Parisar Kanya Shiksha Parisar, Ambikapur, District- Surguja, Chhattisgarh.
- 5.** Smt. Sukanya Soni W/o Santosh Soni Ambikapur Posted as Teacher, Zoology In Kanya Shiksha Parisar, Ambikapur, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Bhaskar Pyasi, Advocate.
For State	:	Shri P. Acharya, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17.09.2019

- 1.** Challenge in the present writ petition is to the issuance of charge sheet dated 14.08.2019.
- 2.** The challenge is on the ground that the petitioner is being made victim of being a witness to one of the sexual assault case in the institution where the petitioner is working.
- 3.** The further apprehension that the petitioner has, which has led to the filing of the present petition is that, the Principal of the institution where the petitioner is working has already recommended to transfer the petitioner and other 5-6 Teachers of the institution and in all likelihood the petitioner may be transferred and which would adversely affect the investigation and the trial so far as sexual assault on the children in that establishment is concerned.

4. During the course of argument, it has been revealed that the petitioner has already filed a detailed reply to the charge sheet only on 03.09.2019 and the present writ petition has been filed on 12.09.2019 i.e. in less than 10 days time. The respondents have not been given breathing time to consider the reply that the petitioner has submitted to the charge sheet. The authorities also have till date have not taken any decision as to whether they intend to hold a Departmental Enquiry against the petitioner or not and whether they are satisfied with the reply that the petitioner has submitted or not and further whether sufficient material is available for proceeding further against the petitioner or not.
5. Given the aforesaid facts, this court is not inclined to entertain the writ petition at this juncture for the reason that law is well settled by now that at charge sheet stage the High Court, particularly under Article 226 of the Constitution of India would not interfere with the charge sheet as a matter of routine.
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.

7. 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, ordinarily the High Court should not interfere in such a matter.”

8. 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.”

9. The respondents, in the meanwhile, are also expected to take into consideration the reply that the petitioner has submitted to the charge sheet and on due consideration of the reply would take an appropriate decision whether departmental enquiry is to be conducted and whether any prima facie case is made out against the petitioner or not.

10. The writ petition therefore being devoid of merit deserves to be and is hereby rejected.

Sd/-
(P. Sam Koshy)
Judge