

**THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**WRIT PETITION No.13612 of 2019**

**ORDER:**

With the consent of both the parties, this Writ Petition is being disposed of at the admission stage itself.

This Writ Petition is filed for the following relief:

“.....to issue Writ of Mandamus by declaring the impugned show cause memo No.SE/JCR/DLIS/C/WGL/ES/EC2/2018-19/1201/S, dated 27.06.2019, with a prejudged mind to remove the petitioner from service as illegal, arbitrary, high handed and subversive of Article 311 of the Constitution of India and contrary to APCS (CC&A) Rules, 1991, and cannot be justified in the eye of law and consequently direct the respondents to drop all further action against the petitioner in the interest of justice .....”

Heard Sri Ch.Srinivas, learned counsel for the petitioner, and the learned Government Pleader for Services-II.

It has been contended by the petitioner's counsel that the petitioner is working as a Typist and has been discharging his duties to the satisfaction of his superiors and everyone concerned. While so, the respondents have issued a charge memo to the petitioner on 16.11.2017 alleging that he got employment by suppressing his previous employment, thereby cheated the Department and that the appointment of the petitioner is contrary to Act 2 of 1994. Petitioner has submitted an explanation to the said charge memo. Being

not satisfied with the said explanation, the disciplinary authority has initiated disciplinary action by appointing an Enquiry Officer, who conducted a regular enquiry. After conducting regular enquiry, the respondents have issued a show cause notice on 27.06.2019 seeking the explanation of the petitioner, within fifteen days from the date of the show cause notice, as to why he should not be removed from service.

Counsel for the petitioner further submits that the disciplinary authority has issued the show cause notice duly enclosing the Enquiry Officer's report and invited objections from the petitioner. A perusal of the impugned show cause notice discloses that the disciplinary authority has already prejudged the issue and came to the conclusion of imposing the major punishment of removal. When once the disciplinary authority has come to the conclusion of imposing the penalty of removal, any kind of explanation, even if the petitioner submits, would be of an empty formality. Therefore, issuance of said show cause notice indicating the punishment is contrary to law as laid down by the Hon'ble Supreme Court reported in **H.L.TREHAN v. UNION OF INDIA**<sup>1</sup>. Thus, the counsel for the petitioner submits that the impugned show cause notice is liable to be set aside as the said show cause notice has been issued with a predetermined mind.

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<sup>1</sup> 1998 Law Suit (SC) 665

Learned Government Pleader appearing for the respondents fairly conceded that the impugned show cause notice is a pre-determined exercise. Therefore, the respondents would recall the said show cause notice and issue a fresh show cause notice in accordance with Rules and appropriate action would be initiated against the petitioner in accordance with the Rules.

In ***H.L.Trehan (supra)***, the Hon'ble Supreme Court held as under:

“The view that has been taken by this Court, in the above observations is that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. Thus, even if any hearing was given to the employees of CORIL after the issuance of the impugned circular, that, would not be any compliance wt rules of natural justice or avoid the mischief of arbitrariness as contemplated by Art.14 of the Constitution. The High Court, in our view, was perfectly justified in quashing the impugned circular.”

Having regard to the rival submissions made by the parties and the ratio laid down by the Hon'ble Supreme Court in ***H.L.Trehan (supra)***, this Court is of the considered view that the impugned show cause notice, dated 27.06.2019, is liable to be set aside as the same would indicate the predetermined mind of the disciplinary authority.

Accordingly, the impugned show cause notice, dated 27.06.2019, is set aside. However, liberty is given to the respondents to proceed from the stage of furnishing Enquiry Officer's report to the petitioner without indicating the punishment, inviting objections from him and conclude the enquiry proceedings against the petitioner within a period of two (2) months from the date of receipt of a copy of this order.

With these observations, the Writ Petition is disposed of.  
No costs.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

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**ABHINAND KUMAR SHAVILI, J**

04.07.2019  
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