

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 4519 of 2020

Pramod Kumar Jangde S/o Shri Shiv Prasad Jangde Aged About 36 Years
R/o New Risda, Bhadrapara, Bargad, Chowk, Balco Nagar, Korba Posted
As Manager Raigarh Chhattisgarh.

---Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Food and Civil Supplies, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh
2. Chhattisgarh State Civil Supplies Corporation Limited Through Chairman, Hitwad Parisar, Avanti Vihar Colony, Head Office, Raipur District Raipur Chhattisgarh
3. Managing Director Chhattisgarh State Civil Supplies Corporation Limited, Hitwad Parisar, Avanti Vihar Colony, Head Office, Raipur District Raipur Chhattisgarh

---Respondents

For Petitioner	:	Shri Sourabh Dangi, Advocate.
For Respondent-State	:	Shri Rahul Jha, Govt. Advocate.
For Respondents 2&3	:	Shri Vivek Ranjan Tiwari, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

17/11/2020

1. The challenge in the present writ petition is to the charge sheet dated 03.10.2020 issued by the respondents.
2. Perusal of the writ petition would show that in the entire writ petition the substantive challenge to the charge sheet is the same being issued at a belated stage and therefore the initiation of the

disciplinary proceeding deserves to be quashed only on the ground of delay in initiating disciplinary proceedings.

3. The facts in nutshell is that an advertisement was issued on 30.07.2012 calling for applications for filling up of the post of Assistant Manager. The petitioner participated in the same, stood meritorious and got an appointment on the said post on 19.11.2012. The petitioner was appointed on the probation for a period of two years and has not yet been confirmed on the said post. Initially the petitioner and all the persons appointed along with the petitioner on the post of Assistant Manager were terminated on the ground of non following of the reservation roster required for the recruitment. The termination order was challenged by all before the High Court and the Division Bench of this High Court allowed the writ petition setting aside the order of termination and ordering for reinstatement with back wages. The order of the Division Bench also got affirmed by the Supreme Court in a SLP. Thereafter, the petitioner came back in service. Meanwhile, on the basis of the complaint received by the department initially a charge sheet was issued on 27.01.2020. However, subsequently the same was not proceeded further with and was dropped. Now a fresh charge sheet has been issued on 03.10.2020 alleging that the petitioner was not having requisite qualification as per the instructions and the recruitment rules for being denied on the said post of Assistant Manager.
4. It was also the contention that the first charge from the materials submitted along with his application are the experience certificate

that he has enclosed along with his application which shows that during the said period the petitioner has served under two different employers. It is said that the petitioner has not filed any reply to the said charge and has filed the present writ petition seeking quashment of the same.

5. The contention of the petitioner is that he was initially appointed in 2012 and now the charge sheet has been issued after about eight years time and therefore the charge sheet suffers from delay laches and the same deserves to be quashed. According to the petitioner, from the admitted factual position there is no suppression of facts whatsoever that the petitioner has made and the allegations made in the charge sheet were known to the respondents right from the stage of his having submitted his application and the respondents knowing fully well of the credentials of the petitioner granted appointment to the petitioner and now after eight years the respondents cannot question the same to be illegal in any manner. The petitioner cannot be blamed for any of the charges which was primarily disclosed by the petitioner at the first instance itself, yet the respondents found him fit for employment and therefore the same now cannot be subjected to scrutiny nor can the petitioner be subjected to disciplinary proceeding on this aspect.
6. According to the petitioner, the act on the part of the respondents is with malafide intention for the reason that recently the petitioner had filed a writ petition i.e. WPS No.4901 of 2018 seeking confirmation/regularization in service and in this writ petition the

notices were issued by this court which has annoyed the respondents leading to issuance of the charge sheet.

7. The contention of the petitioner is that firstly there is no suppression of facts by the petitioner, secondly the respondents having earlier issued a charge sheet and having dropped the same, they cannot be permitted to re-agitate the same again and again detrimental to the service career of the petitioner. It was also the contention of the petitioner that having permitted the petitioner to work for all these eight years, the respondents now are estoppel from starting any proceeding against the petitioner as by efflux of time the petitioner is age barred for any other recruitment process and on this ground also the respondents should not have initiated any disciplinary proceeding against the petitioner. The petitioner relied upon the judgments of Supreme court in cases of State of Andhra Pradesh Vs. N. Radhakishan, 1998(4)SCC 154, The State of Madhya Pradesh Vs. Bani Singh and Another, 1990 (Supp.)SCC 738, M.S. Mudhol and Another Vs. S.D. Halegkar and Others, 1993(3)SCC 591, PV Mahadevan Vs. M.D. Tamil Nadu Housing Board, 2005(6)SCC636, State of Punjab & Others Vs. Chaman Lal Goyal, 1995(2) SCC 570 and Vikas Pratap Singh & Others Vs. State of Chhattisgarh & Others, 2013(14)SCC 494.
8. Relying upon the aforesaid judgments, the counsel for the petitioner submits that it is not a case where the petitioner's service was in any manner unsatisfactory as ACRs of the petitioner would show that he has been discharging his duties quite efficiently. The employer were

fully aware of the petitioner's qualification and credentials and that there were nothing for which the petitioner can be blamed and having kept mum for eight years the respondents now cannot be allowed to initiate disciplinary proceedings against the petitioner. Thus, prayed for quashment of the entire disciplinary proceedings initiated against the petitioner.

9. The State counsel on the contrary opposing the writ petition submits that the challenge is only to the charge-sheet. The petitioner has all the rights to give a reply to the charges and if cogent plausible reply and satisfactory reply is given by the petitioner, there is still a chance that the Disciplinary Authority can drop the proceedings there alone. According to the State counsel, this is not the stage where the writ jurisdiction has to be invoked testing the veracity of the allegations leveled in the charge-sheet. The further contention of the State counsel also is that even otherwise the charge-sheet is in respect of the petitioner not having the requisite qualification prescribed for the post in which he has been appointed. Therefore since the issue goes to the root of the appointment itself, it cannot be looked into by this Court by exercising the writ powers at this stage as it would require evidences to be led on either side before deciding the issue.
10. Having heard the contentions put forth on either side and on perusal of record, admittedly the petitioner in the instant case was appointed on the post of Assistant Manager on 19.11.2012. However, subsequently his appointment was terminated on the ground of it being violative of the Roster system in the course of following the

reservation policy. The termination was questioned by the petitioner before the High Court, which allowed the writ petition setting aside the order of termination. The order passed in the writ petition was affirmed in the writ appeal and was further confirmed by the Hon'ble Supreme Court in an SLP. Meanwhile, it appears that there were still complaints received by the Department in respect of the petitioner not having the basic qualification for appointment to the said post. The Department initially issued a charge-sheet, however subsequently the same was dropped and now a fresh charge-sheet has been issued on 03.10.2020, which is under challenge in the present writ petition.

11. As regards, the issue of delay raised by the petitioner, this Court is of the opinion that since it is a question of petitioner not being qualified for the post to which he has been appointed, the said fact cannot be brushed aside on the ground of delay on the part of the Department in initiating the proceedings. Another aspect, which needs consideration is that the delay part also gets justified for the reason that immediately after coming into service, his appointment got cancelled and thereafter he was out of employment for a considerable period of time, while he was litigating before the High Court as also before the Hon'ble Supreme Court, therefore there was no occasion on the part of the respondents for initiating any disciplinary action or for that matter issuance of the charge-sheet at that point of time.

12. For the aforesaid reasons, the objection raised by the petitioner of the charge-sheet deserving quashment on the ground of delay is not sustainable and the said grounds stands negated. The Hon'ble Supreme Court time and again has held that charge-sheet initiated by the Disciplinary Authority are not to be interfered by the High Courts as a matter of routine in exercise of its power of judicial review under Article 226 of the Constitution of India. The scope of interference upon the High Court is only to the extent of testing the jurisdiction and competence of the authority who has issued. Testing the charge-sheet on the touchstone of malafides, testing the charge-sheet which on the plain reading of the charges itself does not make out a misconduct under the Service Rules governing the field etc. It is settled position of law that judicial review cannot extend to the examination of the correctness or reasonableness of the charges. Judicial review is not an appellate power neither is to be considered in the form of an appeal.
13. Some of the recent decisions rendered by the Hon'ble Supreme Court in this regard is **2010 (13) SCC 311** in the case of “**State of Orissa & Another v. Sangram Keshari Misra**”. Similar view was also laid down by the Hon'ble Supreme Court in **2006 (12) SCC 28** in the case of “**Union of India & Anr. v. Kunisetty Satyanarayana**”.
14. Issuance of a charge-sheet by itself would not amount to an adverse action against the delinquent. It is always expected that the charge-sheet is issued calling upon the delinquent to give a proper

explanation to the allegations made and the Disciplinary Authority on due scrutiny of the same has to take a decision whether to proceed further with the disciplinary proceedings or to close the matter based on the reply that the delinquent has submitted.

15. For the aforesaid reasons, this Court does not find any strong case made out by the petitioner in the instant case calling for an interference to the charge-sheet and the writ petition therefore deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved