

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 37 of 2020**

*{Arising out of order dated 24.07.2019 passed by the learned Single Judge in Writ
Petition (S) No. 5417 of 2019}*

- Nohar Singh Thakur, S/o Late Shri Gautam Singh Thakur, aged about 40 years, R/o Shri Ram Plot No. 70, Zone 1, Street-1, Borsi Road New Adarsh Nagar, Durg, District Durg (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, through Secretary Department of Commercial Tax (Excise) Mahanadi Bhavan, Atal Nagar, Raipur (C.G.)
2. Chhattisgarh State Marketing Corporation Limited, Raipur Chhattisgarh, Through its General Manager, Abkaari Bhavan, Labhandi, Raipur (C.G.)
3. Animesh Netam, Assistant Commissioner (Excise), Chhattisgarh State Marketing, Corporation, Raipur.

---- Respondents

For Appellant	:	Shri Ishan Verma, Advocate.
For Respondent/State	:	Shri Siddharth Dubey, Deputy Government Advocate.
For Respondent No. 2	:	Shri Rajeev Shrivastava, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, Judge****29.01.2020**

1. Heard on I.A. No. 1 of 2020, which is an application for condonation of delay of 11 days in filing with writ appeal. For the reasons stated in the application, it is allowed and the delay in filing of appeal is condoned.
2. Declining interference with the show cause notice by learned Single Judge in writ petition is subject matter of challenge in this appeal.

3. The fact of the case in the nutshell are that the Appellant is working as Deputy General Manager in Respondent No.2/Corporation at Raigarh. Respondent No. 1 issued a show cause notice on 01.06.2019, whereby reply has been sought from by the Appellant levelling several allegations against him therein. This show cause notice was challenged by the Appellant in Writ Petition No. 5417 of 2019 and the learned Single Judge after hearing both the sides had dismissed the writ petition by holding that the High Court under Article 226 of Constitution of India ordinarily would not exercise its jurisdiction to decide the veracity of show cause notice.
4. The learned counsel for the Appellant submits that the show cause notice is definite in nature and it appears that they are predetermined to initiate the proceedings against the Appellant, he submits that no purpose will be served in filing reply to the show cause notice.
5. Per contra, learned counsel for the State submits that from the face of the notice dated 01.06.2019 itself is the show cause notice and the concluding paragraph clearly show that reply has been sought from the Appellant as to why action be not taken against him. He submits that the objection, if any, can be raised by the Appellant before the competent authority and it will be decided in accordance with law.
6. We have heard the learned counsel for the respective parties.
7. Perusal of contents of the Annexure P/1 clearly reveals that several allegations has been levelled against the Appellant and reply is sought by the Appellant why not the proceeding should be initiated against him. It is settled law that the show cause notice is to provide opportunity to the employee to reply the allegations levelled against him and it cannot be treated as the finality of the opinion of the employer on the allegations mentioned in the show cause notice.

The Appellant can take whatever plea or objection, if any, in respect of the notice before the authority. Issuance of show cause notice is administrative action seeking explanation of an employee and not any order affecting his rights.

8. The learned Single Judge has taken note of judgments passed by the Apex Court in ***State of Uttar Pradesh vs. Brahm Datt Sharma & Another*** reported in **(1987) 2 SCC 179**, ***Union of India vs. Kunisetty Satyanarayana*** reported in **(2006) 12 SCC 28**, ***Secretary, Ministry of Defence & Others vs. Prabhash Chandra Mirdha*** reported in **(2012) 11 SCC 565** in the matter while dismissing the writ petition.
9. We are in agreement with the reasons assigned by the learned Single Judge while dismissing the writ petition. We do not find any infirmity in the impugned order passed by the learned Single Judge. The appeal is devoid of any merit which is liable to be and is hereby dismissed.
10. However, the Appellant will be at liberty to submit the reply/objection to the show cause notice and if any reply/objection is filed by the Appellant before the competent authority, then the competent authority will be obliged to decide the objections raised, if any, by the Appellant within the period of two weeks from the date of submission of objection to the show cause notice dated 01.06.2019.
11. If the Appellant is not satisfied by the order passed by the competent authority on the objection so raised by him, the Appellant will be at liberty to file appropriate proceedings before appropriate forum available to him under law.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge