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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 707 of 2021

Sanjay Singh S/o Late Shivpal Singh Aged About 60 Years Working As General Manager, Chhattisgarh Tourism Board, Udyog Bhavan, Telibandha, Raipur, District- Raipur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Tourism Mahanadi Bhawan, Naya Raipur, District- Raipur, Chhattisgarh.
2. Chhattisgarh Tourism Board Through Its Managing Director, 2nd Floor, Udyog Bhavan, Ring Road No. 1, Telibandha, Raipur, Chhattisgarh.
3. Managing Director Chhattisgarh Tourism Board, 2nd Floor, Udyog Bhawan, Ring Road No. 1, Telibandha, Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Manish Nigam, Advocate
For State	:	Mr. Rahul Jha, Govt. Advocate
For Respondents No.2 & 3	:	Mr. Ashish Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

16/02/2021

1. The present writ petition has been filed assailing the orders Annexure P/1 & P/2. Vide order dated 18.04.2020 and 11.11.2020, the State Government had at the first instance ordered for conducting of a departmental enquiry against the alleged financial irregularities committed by the petitioner and vide order dated 11.11.2020 the services of the petitioner has been placed under suspension contemplating departmental enquiry. Likewise, the challenge also is to order Annexure P/3 which is a charge-sheet that has been issued on 23.12.2020.

2. The brief facts of the case is that the petitioner presently is working on the post of General Manager under the respondent No.3. The

petitioner earlier during the period 2007-08 was working on the post of Senior Tourism Officer-cum-Deputy General Manager under the respondent No.3. It is alleged that the petitioner during the said period has committed certain financial irregularities and procedural lapses in the course of discharging his duties. Subsequently, an internal Committee was constituted by the State Authorities and thereafter a charge-sheet has now been issued vide Annexure P/3. Before issuance of the charge-sheet, the petitioner has been placed under suspension vide Annexure P/2 dated 11.11.2020. It is this order of suspension which has been passed and also the issuance of the charge-sheet, which is substantively under challenge in the present writ petition.

3. The main crux of arguments on behalf of the petitioner is that the charge-sheet otherwise is not sustainable on the ground of the delay. According to the petitioner, the alleged misconduct or irregularities committed by the petitioner was for the period between 2007-08 and the charge-sheet now issued was on 23.12 2020 which is after a period of more than 12-13 years and therefore the charge-sheet deserves to be quashed only on the ground of delay.

4. Though, the petitioner has also challenged the order of the State Government dated 18.04.2020 whereby they have also passed an order to conduct a departmental enquiry against the petitioner. In support of his contention, the counsel for the petitioner relied upon the judgments of the Hon'ble Supreme Court rendered in the case of **“P.V. Mahadevan v. MD, T.N. Housing Board” (2005) 6 SCC 636, “M.V. Bijlani v. Union of India & others” (2006) 5 SCC 88 and**

"Anant R. Kulkarni v. Y.P. Education Society & others" (2013) 6 SCC 515.

5. Referring to the aforesaid judgments, the counsel for the petitioner highlighted the aspect that once when for a considerable period of time the employer-respondents have not initiated any disciplinary proceedings against the petitioner or the delinquent employee, the same cannot be initiated after an inordinately belated stage as that would adversely affect the right to defense of the petitioner and also would prejudice the interest of the petitioner.

6. The counsel appearing for the respondents on the other hand opposing the petition submits that it is only a charge-sheet that has been issued whatever the contention of the petitioner are can still be raised in the reply to the charge-sheet that has to be given, which the Disciplinary Authority would be bound to consider.

7. It has also been contended by the learned counsel for the respondents that the question of delay in the instant case does not arise for the reason that the matter is not which has suddenly cropped up, but from the pleadings to the writ petition itself it clearly reflected that the proceedings have been going on for many years now and thereafter now the charge-sheet has been issued. Learned counsel for the respondents refers to the complaint and the subsequent inquiry which was conducted by the office of the Lok Ayog, State of Chhattisgarh and also an inquiry/preliminary enquiry conducted by an independent Committee constituted by the respondents in respect of the allegations. The findings of both of

which reflected there to have been gross illegalities and financial irregularities.

8. Having heard the contentions put forth on either side and on perusal of record, some of the admitted factual positions as it stands from the pleadings of the writ petition is that the petitioner undisputedly was working as a Deputy General Manager/Senior Tourism Officer during the period 2007-08. In the year 2007-08 itself there was an audit objection in respect of certain financial irregularities in respect of various purchases that were made in the Department. It also reflected that during the said period of time, the petitioner was Incharge of the purchases to be made by the Department.

9. Further, from the pleadings it also reflects that the matter in respect of the financial irregularities was also complained to the office of the Lok Ayog, State of Chhattisgarh. Who again in the year 2015 had ordered for an inquiry and a report was also submitted to the State Government clearly giving a finding that there appears to have been financial irregularities committed in the process of the purchases made by the Department and the Lok Ayog has given specific findings against the petitioner of being involved in the financial irregularities. Similarly, the respondents had also constituted a Committee to look into the aforesaid complaint and the Committee also as early as in the year 2018 given an inquiry report, wherein again it has been found that the allegations and the charges leveled were found to be true.

10. Based upon all this subsequent developments, the respondent-State at the first instance vide order dated 18.04.2020 (Annexure P/1)

decided to hold a departmental enquiry against the petitioner. Subsequently, the petitioner was placed under suspension on 11.11.2020 and thereafter a charge-sheet has been also issued on 23.12.2020 by the respondents No.2 & 3.

11. Thus, from the admitted factual position as it reflects in the preceding paragraphs, what would be clear from the pleadings is that it is not a case where suddenly the petitioner has been issued with a charge-sheet after a period of 12-13 years. Pleadings would show that in fact there was an audit objection made at the first instance in the year 2007-08 itself, followed by certain complaints which were lodged before the office of the Lok Ayog, which too was inquired into by the office of the Lok Ayog and thereafter another Committee was constituted by the Department, which too has inquired into the transaction for the period 2007-08 and both these forums have given a clear finding of there being gross financial irregularity in the Department.

12. Given the aforesaid facts, if the respondent authorities now thereafter have take a decision to initiate disciplinary proceedings against the petitioner, this Court is of the firm view that the aspect of delay laches in initiating the disciplinary proceedings would not come in the way of the authorities concerned.

13. As regards the judgments cited by the counsel for the petitioner, if we look into the facts of those case, it would clearly reflect that those were not cases where there was an inquiry already held in between, but were matter where there were a charge-sheet itself

14. issued at a belated stage out of the blue for the first time.

15. In the instant case, the pleadings in the writ petition itself would show that the matter was subjected to inquiry or was in the process of being inquired upon at various level at different point of time and finally now the Department has taken a decision to firstly place the petitioner under suspension and secondly to initiate disciplinary proceedings against the petitioner by formally issuing a charge-sheet in respect of those financial irregularities committed during the period 2007-08. Thus, those judgments cited by the petitioner would be distinguishable on its facts.

16. For the aforesaid reasons, the objection raised by the petitioner for 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 by 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.

17. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that no strong case for interference with the

impugned order of suspension or for that matter interference to the charge-sheet is made out. The writ petition thus being devoid of merits deserves to be and is accordingly rejected.

18. However, it is made clear that in the event if the petitioner submits a reply to the charge-sheet to the authorities concerned, it is always expected that the respondent authorities shall take into consideration the explanation that the petitioner shall be submit to the charge-sheet and only thereafter proceed in accordance with the Rules governing the field.

Sd/-
(P. Sam Koshy)
Judge

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