

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4354 of 2021**

1. Kum. Garima Shrivatri D/o Shri Hemant Kumar Shrivatri Aged About 31 Years Working As Stenographer, Chhattisgarh Police Housing Corporation, R/o C/o Amrik Singh Chabda House Poorv Parshad Gali, Gurunanak Nagar, Shyam Nagar, Raipur , District Raipur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Additional Chief Secretary, Department Of Home (Police), Government Of Chhattisgarh Mahanadi Bhawan, Mantralaya , Capital Complex, Atal Nagar , Nava Raipur , District Raipur Chhattisgarh
2. Director General Of Police Cum Chairman Chhattisgarh Police Housing Corporation Sib Building Old Police Headquarters, Civil Lines , Raipur , District Raipur Chhattisgarh
3. Chhattisgarh Police Housing Corporation, Raipur Through Its Managing Director, SIB Building, Old Police Headquarters, Civil Lines, Raipur , District Raipur Chhattisgarh.

----Respondents

For Petitioner	:	Shri Dhiraj Kumar Wankhede, Advocate.
For State/Res. No. 1	:	Shri Amrito Das, Addl. A.G.
For Respondent No. 3	:	Shri Pranjal Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****27.08.2021**

1. Aggrieved by the issuance of a charge-sheet on 18.02.2021, the present writ petition has been filed.
2. According to the Counsel for the petitioner, the said charge-sheet dated 18.02.2021 was subsequently served upon the petitioner only by an Email on 31.05.2021. Counsel for the petitioner submits that the petitioner is being subjected to unnecessary harassment as this is the

third charge-sheet which has been issued to the petitioner on lame and baseless grounds in a short span of less than two years.

3. According to the counsel for the petitioner, the first charge-sheet and the second charge-sheet dated 13.03.2020 and 07.11.2020 were both subjected to challenge before this High Court vide WP(S) No. 4467 of 2020 and WP(S) No. 2245 of 2021. Both the said charge-sheet have since been stayed by the interim protection granted by this Court vide the two orders dated 17.11.2020 and 06.04.2021. Now the respondent No. 3 has again implicated the petitioner in yet another disciplinary proceeding by issuing impugned charge-sheet again on baseless allegations.
4. Counsel for the petitioner referring to the documents enclosed along with the writ petition tried to submit that the documents along with the writ petition itself would show that the allegations as such are not made out and that there is no misconduct as such, to have been committed by the petitioner and therefore the charge-sheet at this juncture should be stayed restraining the respondents from unnecessarily prosecuting the petitioner.
5. Counsel for the petitioner further has questioned the charge-sheet on the competency of the authority who has passed the same. According to the Counsel for the petitioner, the charge-sheet has been signed by an Authority claiming himself to be a Chairman-cum-Managing Director whereas in-terms of the recent notification that has been issued by the State Government, the Chairman of the respondent No. 3- institution would be the Director General of Police of the State. Therefore the

charge-sheet having been signed in the capacity of Chairman-cum-Managing Director is not proper, and also not by the Competent Authority.

6. Counsel appearing for the respondents opposing the petition submits that the present is a writ petition which is filed at a premature stage in as much as, it is only a charge-sheet which has been issued to the petitioner and that the petitioner would be entitled to submit her reply to the charge-sheet and only incase, if the reply is not found to be satisfactory, would there be a necessity for the Disciplinary Authority to proceed further. Therefore, the scope of judicial interference at this stage being too minimal, the writ petition should be disposed of at this stage.
7. Counsel for the respondent No. 3 also tried to submit that though the charge-sheet was issued on 18.02.2021, all efforts were being made for the service of the charge-sheet to the petitioner but the petitioner has been somehow avoiding receiving of the same. It is only thereafter that the charge-sheet had to be sent to the petitioner by Email. The Counsel for the respondent No. 3 referring to their reply and the documents enclosed with their reply submitted that there were certain complaints received against the petitioner and also certain misconducts detected, which has led to the issuance of the charge-sheet, which of-course would be proceeded only after due consideration of the reply that the petitioner would be submitting.
8. Having heard the contention put forth on either side and on perusal of records, it would be relevant at this juncture to take note of the legal

position as it stands so far as interference by this Court exercising the power of judicial review under Article 226 of the constitution of India. The Hon'ble Supreme Court as early as in the case of Union of India and Anr. vs. Kunisetty Satyanarayana reported in (2006) 12 SCC 28 in paragraph 15 & 16, has held as under:-

“15 Writ jurisdiction is discretionary jurisdiction and hence such a 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 and 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.

9. Likewise again, in the case of Secretary Ministry of Defence and Ors. vs. Prabhash Chandra Mirdha reported in (2012)11 SCC 565 in paragraph 10 & 12, the Hon'ble Supreme Court has held as under:-

“10. Ordinarily a writ application does not lie against a chargesheet 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. (Vide State of U.P. v. Brahm Datt Sharma AIR 1987 SC 943, Bihar State Housing Board v. Ramesh Kumar Singh 1996 1 SCC 327, Ulagappa v. Commr. AIR 2000 SC 3603 (2), Special Director v. Mohd. Ghulam Ghouse AIR 2004 SC 1467 and Union of India v. Kunisetty Satyanarayana 2006 12 SCC 28.

12. Thus, the law on the issue can be summarized to the effect that charge-sheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.”

10. From the aforesaid legal position, it stands settled that the Court while exercising the writ jurisdiction would not as a matter of course or as a

routine entertain a petition, at the stage of issuance of a show-cause notice or at the stage of issuance of a charge-sheet. Moreover, the judicial pronouncement also specifically make it clear that mere issuance of a show-cause notice or a charge-sheet cannot by itself be presumed that the action is predetermined or punitive. Much would depend upon the reply and submission that the delinquent would be submitting to the charge-sheet. It goes without saying that in the event if the delinquent is able to submit proper justification and explanation to the allegations made in the charge-sheet supported with all cogent documents in support of his contentions, the Disciplinary Authority is expected to duly consider the same and only after due consideration of the reply and the explanation should an appropriate decision as regards the next course of action be taken.

11. Learned counsel for the petitioner submits that since it is only recently that the petitioner has received the charge-sheet by mail, she has not been able to submit reply and given her a limited period of time, the petitioner shall be making a detailed reply to the entire charge-sheet which the authorities may be directed to consider without being in any manner prejudiced.

12. The facts and circumstances of the case, this Court is of the opinion that let the petitioner as of now submit a detailed reply to the charge-sheet within a period of 10 days from the date of receipt of copy of this order. The respondent No. 3 in-turn shall consider the reply and only after due consideration of the contents of the reply, should take an appropriate decision on the disciplinary proceedings or on the next

course of action in-respect-of the charge-sheet under challenge in the present writ petition.

13. The contention of the petitioner is that she does not have access to the records pertaining to the allegations made in the charge-sheet, which would be relevant for her defense for the purpose of proper reply. The petitioner would be at liberty to approach the respondent No. 3 by moving an appropriate application for the same which on being made, the authorities would consider on its own merits. The petitioner, however meanwhile can file reply based upon whatever materials that he has as on date and which he has relied upon in the present writ petition.

14. With the above observation and direction, the writ petition is finally disposed of.

**Sd/-
P. Sam Koshy
Judge**

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