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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-14816-2023

Date of Decision: 17.07.2023

Jaspreet Singh Arora

. . . . Petitioner

Vs.

Guru Angad Dev Veterinary and Animal Sciences University, Ludhiana and
another

. . . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present Mr. Sardavinder Goyal, Advocate
for the petitioner.

Mr. Vikas Arora, AAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The petitioner by way of present Writ Petition challenges the order dated 07.07.2023 (P-10) whereby a show cause notice has been issued to the petitioner against the proposed punishment of imposing a major penalty of removal from the University services.
2. Learned counsel for the petitioner submits that the show cause notice mentions about the decision taken by the Vice-Chancellor for the proposed punishment of removal, although the Vice-Chancellor is wholly incompetent to pass order of punishment.
3. Learned counsel further submits that he had earlier challenged the order of suspension passed by the Vice-Chancellor in a Writ Petition before this Court bearing No.CWP-25747-2022 and this Court passed an interim order. Mentioning the arguments raised, the Writ Petition is listed for 20.07.2023.

4. Learned counsel further submits that the copy of the enquiry report has not been made available to the petitioner.
5. This Court had after hearing the counsel for the petitioner wanted to place this Writ Petition along with CWP-25747-2022. However, the counsel for the petitioner insisted to hear him on his prayer for stay and on the question as raised by him.
6. A pointed query was raised to the petitioner about maintainability of the Writ Petition to which he has relied on a judgment passed by the Supreme Court in case of ***Union of India and another vs. Kunisetty Satyanarayana***, reported in ***2006(12) SCC 28***, wherein the Apex Court has observed as under:

*“12. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide ***Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Ghulam Ghouse and another AIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore and others 2001(10) SCC 639, State of U.P. vs. Brahm Datt Sharma and another AIR 1987 SC 943 etc.****

13. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

14. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

15. 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.”

7. He has also relied on the judgment of Supreme Court passed in ***Managing Director, ECIL, Hyderabad vs. B. Karunakar, reported in 1993(4) SCC 727***, and submits that it is necessary to supply copy of the enquiry report.
8. At this stage, it is not known as to whether the Vice-Chancellor has conveyed his own proposal for removal of petitioner or the matter is to be placed before the Board to take a final decision, and therefore the question of competency of the Vice-Chancellor cannot be gone into at this stage where a simple show cause notice has been given to the petitioner.
9. The petitioner cannot be allowed to pre-empt the concerned authorities to take a final decision with regard to an enquiry.
10. In view of above, it is premature to prefer a Writ Petition with regard to a show cause notice proposing a particular punishment. It is for the petitioner to file his reply and take all objections before the authority.
11. This Court will not pre-empt the competent authorities to take a final decision. A presumption can also not be drawn that the authorities will not act in according with their jurisdiction. The Writ Petition on that count is wholly misconceived.
12. Further, this Court observes that so far as copy of enquiry report is concerned, the law as laid down in ***Union of India and others vs. Mohd. Ramzan Khan, reported in 1991(1) SCC 588***, required that a copy of enquiry report be made available to the petitioner along with the punishment order.

13. The concept of issuing of show cause notice for punishment has been done away by the 42nd Amendment under Article 311(2) of the Constitution of India which reads as under:

“311 (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.”

14. In view thereof, giving a show cause notice to the petitioner is by way of an abundant caution, however no right is created in favour of the petitioner merely because a show cause notice has been served upon him.

15. In ***Managing Director, ECIL, Hyderabad*** (supra), the Constitution Bench has not only reiterated the law as laid down by the Apex Court in ***Union of India and others vs. Mohd. Ramzan Khan*** (supra), but has further also observed as under:

“(iii) Since it is the right of the employee to, have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the, report or not, the report has to be furnished to him.

(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in

the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice."

16. Question of causing prejudice will also have to be examined at this stage.

17. Accordingly, this Court finds that the petitioner has rushed to this Court without submitting his reply to the show cause notice and as held by the

Apex Court (supra), the Writ Petition would not be maintainable and is accordingly dismissed.

18. However, this shall not come in the way of the petitioner for raising all objections before the concerned authority.

(SANJEEV PRAKASH SHARMA)
JUDGE

July 17, 2023

Mohit goyal

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |