



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 1st September, 2023**

+ **W.P.(C) 11609/2023**

MANISH KUMAR

..... Petitioner

Through: **Mr. Vivek Sharma, Advocate**
(Through VC)

versus

**OFFICE OF PRINCIPAL DISTRICT AND SESSIONS JUDGE,
HQS AND ANR.**

..... Respondents

Through: **Ms. Laavanya Kaushik, Mrs.
Taniya Ahlawat, Mr. Nitesh Kumar
Singh, Ms. Aliza Alam and Mr.
Mohnish Sehrawat, Advocates for
Mrs. Avnish Ahlawat, SC**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“(a) To pass an order thereby quashing the Show Cause Notice dated 01.08.2023 issued by the Office of the Respondent No. 02;

(b) To pass an order or direction to Respondents to transfer the petitioner to a lighter seat in any Branch at Karkardooma Courts to his mental/psychological condition;

(c) To pass any other Order or further orders this Hon'ble



Court deems fit on the basis of the above-mentioned facts and circumstances of the case.”

2. The factual matrix is recapitulated herein below:
- a) The petitioner was employed in the office of respondent no. 1 as a stenographer in the year of 2009. From June 2014 onwards, the petitioner has been suffering from psychological disorders such as insomnia, headache, depression, etc.
 - b) The petitioner *vide* letter dated 04th July 2023 sent an application along his medical records sent to respondent no.1, Principal Districts and Session Judge, HQs, Tis Hazari Court seeking transfer to a position with relatively lesser work load than the present post of the petitioner.
 - c) On 10th July 2023, the petitioner sent another letter to respondent no. 2, Principal Districts and Session Judge, HQs Karkardooma Courts intimating regarding his medical condition.
 - d) The petitioner vide an email dated 11th July 2023, informed the respondent no. 2 about his medical leave due to mental health issues.
 - e) The Administrator office of respondent no.2 replied to the letter dated 4th July 2023 on 13th July 2023 stating that petitioner's request was forwarded to the office of respondent no. 2,
 - f) The petitioner in continuation of letter dated 10th July 2023 made another request vide letter dated 24th July 2023 for granting relief regarding transfer to a position with relatively less work than the



present post of the petitioner.

- g) The respondent no. 2 issued a Show-Cause Notice dated 01st August 2023 to the petitioner for taking leave with no prior approval or intimation to the office.
- h) Aggrieved by the said show-cause notice, the petitioner has filed the instant petition.
3. Learned counsel appearing on behalf of the petitioner submitted that the mental condition of the petitioner deteriorated to an extent where his medications failed to prevent his seizures from occurring in varied patterns leading to extreme and sudden mood swings, and heightened delusions.
4. It is further submitted that despite the treatment received under the consultation of several qualified psychiatrists, the psychological condition of the petitioner continued to deteriorate and he was diagnosed with Bipolar Disorder, Anxiety Disorder, and Depression eventually leading to aggravated suicidal tendencies.
5. It is contended that it was only when the petitioner's mental health worsened, he intimated about his medical condition to respondent and requested for a transfer to a post which has relatively less work than the present post of the petitioner in the Karkardooma Courts.
6. It is further contended that the actions of the respondents taken against the petitioner is violative of the petitioner's right to life and livelihood under Article 21 of the Constitution of India by not considering his medical condition.



7. It is submitted that the Show Cause Notice issued by the respondent no. 2 is violative of Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995.

8. It is further contended that as per the said proviso, no establishment shall dispense with or reduce the rank of a person who acquired disability during his service. Therefore, the petitioner is entitled for transfer to a job with less intensive work due to his mental disability.

9. It is contended that the stressful working environment for the petitioner is resulting in further degradation of his psychological condition and posing a risk to his health and life.

10. In view of the foregoing submissions, the counsel for the petitioner prayed that the petition may be allowed, and the reliefs as claimed by the petitioner may be granted by this Court.

11. *Per Contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the present writ petition submitting to the effect that the impugned show cause notice dated 1st August, 2023 has been issued by the competent authority on and does not suffer from any illegality as the same has been issued in compliance with the statutory rules and principles of natural justice.

12. It is further submitted that the said show cause notice has been issued to the petitioner on the ground that the petitioner has not been attending the Court on regular basis w.e.f. 3rd July 2023, onwards and is on leave without any intimation or submitting leave application in that



regard.

13. It is contended that respondent have given an opportunity to the petitioner by way of issuing show-cause notice an opportunity to the petitioner to elucidate the reasons for not initiating disciplinary proceedings against him.

14. It is submitted that the petitioner may file his reply to the said show cause notice issued by respondent no. 2, which will be accordingly considered in adjudication of the issue at hand.

15. Hence, in view of the foregoing submissions, the respondent seeks that this Court may dismiss the writ petition thereby, upholding the impugned orders.

16. Heard learned counsels for the parties and perused the material on record including the pleadings, the various documents including the impugned show-cause notice and judicial precedents cited.

17. Keeping in view the arguments advanced by the parties, the following issue has been framed for adjudication by this Court:

‘Whether this Court may quash the impugned order dated 1st August 2023 passed by the office of respondent no. 2?’

18. To consider this issue, it is imperative to reiterate the impugned show-cause notice dated 1st August 2023 issued by respondent no. 2 as follows:

“Whereas, it has been reported by your Presiding Officer that you have not attended the court on regular basis w.e.f 03.07.2023 to till date and remains on leave without



intimation, as well as proceed to leave without furnishing any kind of leave application.

It has been further reported that you takes leave frequently citing health reason.

You are therefore, asked to show cause as to why disciplinary action be not initiated against you for your gross misconduct and absenting from duty without intimation.

You are further directed to submit your written explanation within three days on receipt of this notice.”

19. Before delving into merits, this Court will examine the principle governing quashing of show-cause notice under Article 226 of the Constitution of India.

20. A show-cause notice does not give rise to any cause of action since there is no such violation of the rights of the party unless the same has been issued by an authority/person who does not have the jurisdiction. There is a likelihood that after considering a reply to the show cause notice issued by a competent authority or holding an inquiry, the authority may hold that the charges are not proved against the party.

21. Under Article 226 of the Constitution of India, the Court can take any action against the authority when there is a violation of rights. In the case of a show-cause notice, there is no such infringement of the right of the party unless in circumstances where the grievance is caused to the party, such as a show-cause notice imposing any punishment on the party or adversely affecting a party.

22. Hence, Writ jurisdiction is a discretionary jurisdiction, and such discretion under Article 226 should not ordinarily be exercised by



quashing a show-cause notice. In some very rare and exceptional cases, the High Court can quash 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.

23. The Hon'ble Supreme Court in a catena of judgments has ruled that writ petitions are not entertainable against show-cause notices and only exceptionally the Courts intervene at the stage of show-cause notice. The Hon'ble Supreme Court in the judgment of **Divisional Forest Officer v. M. Ramalinga Reddy, (2007) 9 SCC 286** as follows:

“12. It is also not a case where an order has been passed without application of mind. It is also not a case where the appellant had made up its mind and the notice had been issued only by way of a formality. (See Siemens Ltd. v. State of Maharashtra [(2006) 12 SCC 33 : (2006) 13 Scale 297] .) The Tribunal, as noticed hereinbefore, directed the respondent to show his cause. Ordinarily, no writ petition would be maintainable at that stage.”

24. The principle governing show-cause notice was enunciated further by the Supreme Court in the judgment of **Ministry of Defence v. Prabhash Chandra Mirdha, (2012) 11 SCC 565** as follows:

“8. The law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in



initiation of disciplinary proceedings or delay in concluding the proceedings, the court/tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance. (Vide State of M.P. v. Bani Singh [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514] , State of Punjab v. Chaman Lal Goyal [(1995) 2 SCC 570 : 1995 SCC (L&S) 541 : (1995) 29 ATC 546] , Registrar, Coop. Societies v. Sachindra Nath Pandey [(1995) 3 SCC 134 : 1995 SCC (L&S) 648 : (1995) 29 ATC 538] , Union of India v. Ashok Kacker [1995 Supp (1) SCC 180 : 1995 SCC (L&S) 374 : (1995) 29 ATC 145] , Prohibition & Excise Deptt. v. L. Srinivasan [(1996) 3 SCC 157 : 1996 SCC (L&S) 686 : (1996) 33 ATC 745] , State of A.P. v. N. Radhakishan [(1998) 4 SCC 154 : 1998 SCC (L&S) 1044 : AIR 1998 SC 1833] , Food Corporation of India v. V.P. Bhatia [(1998) 9 SCC 131 : 1998 SCC (L&S) 466] , Supt. of Police v. T. Natarajan [1999 SCC (L&S) 646] , M.V. Bijlani v. Union of India [(2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006 SC 3475] , P.D. Agrawal v. SBI [(2006) 8 SCC 776 : (2007) 1 SCC (L&S) 43] and Govt. of A.P. v. V. Appala Swamy [(2007) 14 SCC 49 : (2009) 1 SCC (L&S) 440] .)

9. In Forest Deptt. v. Abdur Rasul Chowdhury [(2009) 7 SCC 305 : (2009) 2 SCC (L&S) 327] (SCC p. 310, para 16) this Court dealt with the issue and observed that delay in concluding the domestic enquiry is not always fatal. It depends upon the facts and circumstances of each case. The unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with



the disciplinary proceedings. At the same time, if the delay is explained satisfactorily then the proceedings should not (sic) be permitted to continue.

10. Ordinarily a writ application does not lie against a charge-sheet 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 [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327] , Ulagappa v. Commr. [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] .)

11. In State of Orissa v. Sangram Keshari Misra [(2010) 13 SCC 311 : (2011) 1 SCC (L&S) 380] (SCC pp. 315-16, para 10) this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority. (See also Union of India v. Upendra



Singh [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200] .)

12. Thus, the law on the issue can be summarised to the effect that the 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.”

25. Recently, the Hon’ble Supreme Court reiterated the said principle in the judgment of ***CCE v. Krishna Wax (P) Ltd., (2020) 12 SCC 572*** and held as follows:

14. It has been laid down by this Court that the excise law is a complete code in itself and it would normally not be appropriate for a writ court to entertain a petition under Article 226 of the Constitution and that the person concerned must first raise all the objections before the authority who had issued a show-cause notice and the redressal in terms of the existing provisions of the law could be taken resort to if an adverse order was passed against such person. For example in Union of India v. Guwahati Carbon Ltd. [Union of India v. Guwahati Carbon Ltd., (2012) 11 SCC 651] , it was concluded; “The Excise Law is a complete code in order to seek redress in excise matters and hence may not be appropriate for the writ court to



entertain a petition under Article 226 of the Constitution”, while in Malladi Drugs & Pharma Ltd. v. Union of India [Malladi Drugs & Pharma Ltd. v. Union of India, (2020) 12 SCC 808] , it was observed:

“... The High Court, has, by the impugned judgment held that the appellant should first raise all the objections before the Authority who have issued the show-cause notice and in case any adverse order is passed against the appellant, then liberty has been granted to approach the High Court ...

... in our view, the High Court was absolutely right in dismissing the writ petition against a mere show-cause notice.”

15. It is thus well settled that writ petition should normally not be entertained against mere issuance of show-cause notice. In the present case no show-cause notice was even issued when the High Court had initially entertained the petition and directed the Department to prima facie consider whether there was material to proceed with the matter.”

26. It is the case of the petitioner that respondent No.2, Principal Districts and Session Judge, HQs Karkardooma Courts issued a show cause notice to explain the reasons why the petitioner has not been attending the Court on regular basis w.e.f. 03rd July 2023 onwards and is on leave without any intimation or submitting leave application in that regard and why the respondent no. 2 shall not initiate disciplinary proceedings on the said grounds.

27. The petitioner has by filing the present petition has tried to put the



cart before the horse i.e., the present petition has been filed at a premature stage. This Court observes that the present petition is based on the presupposition that respondent no. 2 will take an adverse action against the petitioner.

28. This Court is of the view that there is no such illegality in the impugned show cause notice which warrants interference of this Court. The show-cause notice is issued by the competent authority on the valid ground that the petitioner has not been attending Court regularly and has been taking frequent leaves.

29. In view of the discussion in the foregoing paragraphs, I do not find any merit in the instant petition and therefore, the instant petition is liable to be dismissed.

30. Accordingly, the instant petition stands dismissed.

31. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 1, 2023

gs/db/av

Click here to check corrigendum, if any