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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.6132 of 2024 (O&M)
Date of decision: 18.03.2024

Sarabjit Singh and others
.....Petitioners
Versus
State of Punjab and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Dr. Rau P.S. Girwar, Advocate
for the petitioners.

Mr. Rajesh Sehgal, Addl. A.G., Punjab.

Ms. Mona Yadav, Advocate
for Mr. R.S. Kalra, Advocate for respondents No.3 and 4.

NAMIT KUMAR J. (Oral)

1. The petitioners have invoked the jurisdiction of this Court by filing the present petition under Article 226 of the Constitution of India, seeking a writ of certiorari for quashing the memorandum of charge-sheet, article of charges dated 30.01.2024 (Annexure P-1), which have been issued without issuing any show cause notice to the petitioners and without affording any opportunity of hearing.
2. Brief facts of the case, as have been pleaded in the petition, are that petitioner No.1, is working on the post of Manager Storage, petitioner No.2 is working as Inspector Grade 2, petitioner No.3 is working as Field Officer and petitioner No.4 is working as Inspector Grade 2 in Punjab State Civil Supplies Corporation Limited (hereinafter referred as 'PUNSUP') and for the procurement of Khariff Season

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2023-24, PUNGRAIN being the Nodal Agency had floated tender for the purchase of LDPE Black Polythene Tarpaulins to cover Paddy in various destination points at Milling Centres/Shellers. On 02.12.2023, respondent No.4 – General Manager (Storage) & (Commercial), Chandigarh, instructed petitioners No.1 and 2 to inspect M/s. Climax Synthetic and they immediately travelled to Vadodara to carry out the pending order work of respondent No.4. Thereafter, they regularly carried out the inspection and intimated the progress to respondent No.4 and they had even inspected M/s. Bagpoly International Private Limited. Then, a letter from the office of Director Food & Civil Supplies, Punjab was circulated to stop further action on inspection. Thereafter, the tender was allotted to M/s. Shivalik Agro Parwanoo, M/s. Climax Synthetic Pvt. Ltd Vadodara, M/s Bagpoly International Private Limited, Karnal and M/s. Bagpoly International, Karnal for PUNSUP. On 03-12-2023, the Tarpaulins allocation was conducted by respondent No.4 and the same was communicated to the petitioners, as the tenderers' supply order inspection was done on 02.12.2023 and it was required to be dispatched as per the terms and conditions of the tender. So, on 03.12.2023, the allocations were dropped on Whatsapp number of the petitioners through dealing clerk Vishwash Singh. The petitioners requested respondent No.4 to orally provide the order of inspection, however, respondent No.4 stated that the same would be available after the signature of respondent No.3, and stated that the same was still pending but due to urgency involved, the inspection work was carried out immediately otherwise Khariff season may be disturbed

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which was required to be maintained for proper upkeep and maintaining the Paddy stock in the milling and for this reason, respondent No.3, chargesheeted the petitioners. Hence, the present writ petition has been filed impugning the said charge-sheets issued to the petitioners.

3. Learned counsel for the petitioners submit that no show-cause notice has been issued to the petitioners and without affording any opportunity of hearing, the petitioners have been charge-sheeted by respondent No.3, which is against the principles of natural justice. He has placed reliance on the judgment of Madhya Pradesh High Court in ***“Nikhat Khan vs State of M.P. and others”***, 2020(3) M.P.L.J. 422.

4. Per contra, learned counsel for the respondents who have caused appearance on the strength of advance copy served upon them, have opposed the submissions made by learned counsel for the petitioners on the ground that the charge-sheet has rightly been served upon the petitioners and the petitioners have approached this Court at the very initial stage and without even responding to the charge-sheets.

5. I have heard learned counsel for the parties and perused the record.

6. A perusal of the charge-sheet dated 30.01.2024 (Annexure P-1 Colly.) would show that the same has been issued on account of the negligence committed by the petitioners while performing their duties. The allegations against the petitioners are as under:-

*“List of Allegation against Mr. Sarabjeet Singh,
Manager (Inspection Cell/Quality Control Cell), PUNSUP,
Head Office.*

I, Sonali Giri, Managing Director of Punjab State

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Civil Supplies Corporation Limited, Chandigarh, lodge the following allegations against Mr. Sarabjeet Singh, Manager (Inspection Cell/Quality Control Cell), PUNSUP, Head Office, under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules 1970:

- 1. The authorization for the inspection of tarpaulins purchased during the Kharif season 2023-24 was approved on December 5, 2023. And the related letter was issued on December 5, 2023. However, it was found upon inspection of the inspection-related records that the inspection had already commenced upon reaching the suppliers on December 4, 2023, revealing their inefficiency towards their duty.*
- 2. Additionally, during the Kharif season 2023-24, no verbal or written instructions were received by the competent authority to visit the relevant suppliers for inspecting the purchased tarpaulins.*
- 3. He is an officer who demonstrates negligence towards his duties, displays indiscipline, and engages in misconduct.*

Supported documents regarding evidence, witnesses, or records are attached regarding allegations mentioned above.

Sd/-

Managing Director”

7. The writ petition does not lie against a charge-sheet or show-cause notice as it does not give any cause of action. Unless some adverse order is passed in pursuance to the said charge-sheet, employee has no right to invoke the jurisdiction of the High Court or the Civil Court to impugn the charge-sheet. The Hon'ble Supreme Court in ***The Special Director and another v. Mohd. Ghulam Ghouse and another,***

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2004(1) S.C.T. 671 has held that ordinarily no writ lies against the show-cause notice and the writ petition cannot be entertained as a matter of routine. The relevant portion from the said judgment is as under: -

*“5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show causes notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. **Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine,** and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is accorded to the writ petitioner even at the threshold by the interim protection, granted.”*

8. To the same effect is the judgment of the Hon’ble Supreme

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Court in *Union of India and another v. Kunisetty Satyanarayana, 2007(1) S.C.T. 452*, wherein the Hon'ble Supreme Court has held 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 v. Ramdesh Kumar Singh and others, JT 1995(8) SC 331, Special Director and another v. Mohd. Ghulam Ghouse and another, 2004(1) SCT 671 (SC) : AIR 2004 Supreme Court 1467, Ulagappa and others v. Divisional Commissioner, Mysore and others, 2001(10) SCC 639, State of U.P. v. Brahm Datt Sharma and another, AIR 1987 Supreme Court 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

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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.”

9. A Division Bench of this Court in ***Ved Pal Gupta v. Punjab and Haryana High Court, Chandigarh, 2014(2) S.C.T. 793*** has held as under: -

“15. In Secretary, Ministry of Defence and others v. Prabhash Chandra Mirdha, 2012 (4) RSJ 484, it has been laid down by the Supreme Court that 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. It was further held that normally a charge sheet is not quashed prior to the conclusion of the inquiry on the ground that the facts stated in the charge sheet are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority. It was also held that neither the disciplinary proceedings nor the charge sheet should be quashed at an initial stage as it

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would be a premature stage to deal with the issues. The position prevailing at present in the department inquiry is that a sitting Judge of the High Court on the Administrative side is seized of the inquiry and proceedings are going on. Evidence is being recorded. The petitioner would have every right to submit his point of view in accordance with law before the inquiry officer. Therefore, at this stage, it would be wholly inappropriate to interfere in the inquiry that is going on at an intermediary stage and nullifying or in any case keep in abeyance the proceedings that are going on. At this stage it would in fact even be inappropriate to comment one way or the other on the charges that have been levelled and the reply that has been filed by the petitioner to the same. This is solely domain of the Inquiry Officer who is seized of the matter.

*16. The learned Senior counsel for the petitioner has, however, referred to the case **State of Punjab v. V. K. Khanna, 2001(1) S.C.T. 933 : AIR 2001 Supreme Court 343**. In the said case the learned Senior counsel has laid emphasis on the aspect wherein it has been held that while it is true that justifiability of charges at the stage of initiating a disciplinary proceedings cannot possibly be delved into by any Court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide motive involved in the matter of issue of a charge sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious, it is the due process of*

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*law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion. There is no dispute to said proposition, however, the same would more appropriately apply in case there is a charge of mala fide. In the present case though it has been alleged that the issuance of charge sheet and subsequent proceedings arising therefrom are completely mala fide, baseless and against the record, however, the allegations of mala fide have been made in a vague manner. In **State of Punjab v. Chamal Lal Goyal, 1995(2) S.C.T. 343 : JT 1995 (2) SC 18** with respect to the charge of mala fide, it was observed that the said charge was made in a vague manner. It was not specified which officer was ill-disposed towards the respondent (delinquent official in the said case) and in what manner did he manage to see that the charges are served upon him when his case was to come up for consideration for promotion. It was held that in the absence of any clear allegation against any particular official and in the absence of impleading such person eo nomine so as to enable him to answer the charge against him, the charge of mala fide cannot be sustained. The ratio of the said judgment applies in the present case and in the absence of specific allegations of mala fide, the averment is unfounded and would not warrant any consideration.”*

10. The judgment cited by the learned counsel for the petitioners in the case of Nikhat Khan’s case (supra) is not applicable to the facts of the present case as no final decision upon the charge-sheets issued to them has been taken by the respondents so far in the present case whereas in the above cited judgment, the petitioners therein have already been terminated without giving any opportunity of hearing.

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11. Further, no rule or instructions have been brought to the notice of this Court, which mandates the issuance of any show cause notice before issuing the charge-sheet.
12. For the foregoing reasons, no case to quash the charge-sheet dated 30.01.2024 (Annexure P-1) is made out and the present petition is accordingly, dismissed.

(NAMIT KUMAR)
JUDGE

18.03.2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No