

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

117

CWP-5597-2024

Date of decision : 11.03.2024

Kuldeep Singh

.....Petitioner

Versus

Punjab State Power Corporation Ltd. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Amritpal Singh Gill, Advocate for the petitioner.

Ms. Harpriya Khaneka, Advocate for the respondents.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India is for issuance of writ in the nature of certiorari for setting aside the charge-sheet dated 14.02.2023 (Annexure P-1) and inquiry report dated 29.11.2023 (Annexure P-2).

2. Brief facts, as have been pleaded in the present petition, are that the petitioner was working with the respondent-department on work charge daily wage since January, 1988 and later on in year 2002, he was promoted to the post of Assistant Lineman and worked as such till year 2017 and was further promoted to the post of Lineman. It has further been pleaded that due to a family dispute, his real brother made a complaint against him to the department stating therein that the petitioner has wrongly mentioned his date of birth as 13.09.1966 instead of 01.04.1958 by submitting the affidavit of his father. Accordingly, the date of birth was got verified by the department from the concerned

elementary school which disclosed that the date of birth of the petitioner was mentioned as 01.04.1958. It has further been submitted that his brother due to family dispute given a complaint against him after the death of his father, so that the contents of the affidavit could not be verified and testified as he is no more. Since the petitioner being illiterate person and having no proof of date of birth, therefore, his father had given affidavit. Thereafter, the department has issued charge-sheet against the petitioner for giving wrong date of birth and inquiry was initiated and held him guilty of charges. It has also been stated that the petitioner has earlier approached this Court by way of filing CWP No.24642 of 2023, challenging the order dated 06.02.2023, whereby he was suspended.

3. Learned counsel for the petitioner contends that the charge-sheet and inquiry report are liable to be set aside as the inquiry has not been held in a proper manner and the procedure thereof has been violated as established under the relevant rules. In support of his contention, learned counsel for the petitioner has placed reliance upon the judgment of Hon'ble Supreme Court passed in ***Deputy General Manager (Appellate Authority) and others Vs. Ajai Kumar Srivastava : 2021(2) SCC 612.***

4. Per contra, Ms. Harpriya Khaneka, Advocate appearing for the respondent, on the strength of advance notice of the petition, submits that the enquiry has been conducted after following the due procedure as established under the law. She further submits that the writ petition is not maintainable and therefore, liable to be dismissed.

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

6. It is a well settled proposition of law that the charge-sheet or the inquiry proceedings cannot be challenged unless there is some adverse order passed in pursuance to the said inquiry proceedings. The Hon'ble Supreme Court in ***The Special Director and another Vs. Mohd. Ghulam Ghouse and another : 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.”*

7. To the same effect is the judgment of the Hon'ble Supreme Court in ***Union of India and another Vs. 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 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.”

8. A Division Bench of this Court in ***Ved Pal Gupta Vs. 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 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 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.”*

9. The judgment **Ajai Kumar Srivastava (supra)** relied upon by learned counsel for the petitioner is not applicable to the facts of the present case as in that case after the inquiry proceedings were concluded, the employee was dismissed from service, hence the Court

had interfered in the matter. However, in the present case, the petitioner has approached this Court on conclusion of inquiry, whereby he has been held guilty of charges, whereas the final decision on the said inquiry proceedings is yet to be taken by the competent authority.

10. It is apt to mention here that the petitioner is under suspension vide order dated 06.02.2023 passed by the department and to challenge the same he has filed CWP No.24642 of 2023 which is pending for 24.04.2024 for the irregularity and negligence committed by him while performing his duties.

11. In view of the above, there is no merit in the present petition and the same is hereby dismissed, being premature.

12. Needless to mention here that petitioner would be at liberty to challenge the outcome of the enquiry proceedings, in accordance with law.

11.03.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No