

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

219

CWP-14700-2018
Date of Decision: 21.02.2024

ASI Jagdish Lal and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. G.S. Bal, Senior Advocate with
Mr. Laxman Choudhary, Advocate for the petitioners
Mr. Pawan Kumar, Deputy Advocate General, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of charge sheet (Annexure P-5) whereby departmental enquiry has been initiated against them.

2. On 31.05.2018, the following order was passed:-

“It is inter alia contended by learned senior counsel for the petitioners that the petitioners are being proceeded against departmentally on account of the fact that they have filed a writ petition in this Court challenging the order of transfer. The same is patently illegal as right of redressal of grievance is a fundamental right and no body can be punished for approaching the Court for vindication of his/her rights.

Notice of motion for 29.10.2018.

Meanwhile, operation of charge-sheet (Anenxure P-5) shall remain stayed.”

3. On 13.07.2023, the matter came up for consideration before this Court and with the consent of both sides, the stay granted by the aforesaid order was vacated and the following order was passed:-

“The instant petition has been filed assailing ‘Statement of Allegations’ (Annexure P-5).

While in the petition, the said document is referred to as ‘charge-sheet’ but the stand of the State is that the said document is not a ‘charge-sheet’ and it is just a ‘Statement of Allegations’ in terms of Rule 16.24(i) of Punjab Police Rules and that the formal decision regarding framing of charge-sheet is yet to be taken after evidence is recorded in terms of Rule 16.24(iii). It has been submitted by the learned State counsel that the said decision could not be taken earlier on account of operation of stay against the impugned ‘Statement of Allegations’ (Annexure P-5). Learned State counsel has further submitted that in case such stay is vacated, the authorities concerned shall take the requisite decision in the shortest possible time.

Learned Senior counsel appearing on behalf of the petitioners submits that he has no objection in case the said stay is vacated solely for the purpose of enabling the authorities concerned to take a formal decision as to whether any charge-sheet is required to be served upon pursuant to the ‘Statement of Allegations’ (Annexure P-5).

In view of the aforesaid position, interim order dated 31.05.2018 vide which operation of the impugned ‘Statement of Allegations’ (Annexure P-5) had been stayed, is vacated. The authorities concerned shall take the requisite decision in the matter after recording evidence, if required, as to whether any charge-sheet is required to be served in the facts & circumstances, within a period of 3 months from today.

List again on 10.01.2024.”

4. The petitioners have placed on record charge sheet (Annexure P-6). In the charge sheet, the respondent has alleged that petitioners have violated Rule 14.49 of Punjab Police Rules, 1934 (for short '**1934 Rules**') and they have violated orders of senior officers.

5. Mr. G.S. Bal, Senior Advocate, submits that Rule 14.49 of 1934 Rules is not attracted in the facts and circumstances of the present case, nonetheless, the respondents have invoked the aforesaid Rule and intention of the respondents is to dismiss the petitioners from service or impose any other major punishment.

6. Mr. Pawan Kumar, Deputy Advocate General, Punjab submits that petitioners are pre-empting outcome of the aforesaid charge sheet. They have right to file reply and competent authority would decide charge sheet in accordance with law and without being influenced by the fact that petitioners have preferred the present writ petition before this Court.

7. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

8. The petitioners were initially assailing 'Statement of Allegations' and at present, grievance of the petitioners is that charge sheet is contrary to mandate of Rule 14.49 of 1934 Rules, thus, it should be quashed. Rule 14.49 of the 1934 Rules reads as:

"14.49. Joining associations. - Government is prepared to grant official recognition to associations representing distinct ranks of police officers, provided such association conform to conditions which have been laid down. Copies of the rules

embodying these conditions can be obtained by associations or proposed associations on application through the proper official channel. The formation of associations otherwise than in accordance with these rules, and the joining of any association or trade union other than a recognised police association by individual police officers, is absolutely prohibited.”

The petitioners are claiming that they have not formed an association, thus, rigor of aforesaid Rule cannot be invoked against them. The respondent in one or another way wants to implicate them. They have reasonable apprehension that respondent would dismiss them from service or impose any other major penalty.

9. The petitioners are posted with respondent as Assistant Sub-Inspector or Head Constable. They are governed by 1934 Rules which is a complete Code contemplating disciplinary action, remedy to file appeal as well as revision. The petitioners have further remedy to assail final order passed by authorities before this Court by way of writ petition.

10. The Apex Court in ***Secretary, Ministry of Defence and others v. Prabhash Chandra Mirdha, (2012) 11 SCC 565***, has held that ordinarily a writ petition 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. The relevant extracts of the aforesaid judgment read as:

“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.”

11. In the case in hand, the petitioners have been issued charge sheet and it is pending at the stage of adjudication. The petitioners have remedy to file reply and in case an adverse order is passed, they have remedy to file appeal followed by revision. The petitioners are not pleading that impugned charge sheet has been issued by an incompetent officer or it is beyond jurisdiction. In these facts and circumstances, this Court does not deem it appropriate to invoke its extra-ordinary writ jurisdiction under Article 226 of the Constitution of India.

12. In the wake of above discussion and findings, the present petition stands disposed of with liberty to the petitioners to file response to the aforesaid charge sheet. The Court is sanguine of the fact that competent authority would adjudicate the aforesaid charge sheet within four corners of mandate of Punjab Police Rules, 1934.

13. It is made clear that disposal of present petition shall not be construed as an expression of opinion of this Court on merits.

(JAGMOHAN BANSAL)
JUDGE

21.02.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No