

(2013) 09 DEL CK 0357

In the Delhi High Court

Case No : Writ Petition (C) No. 2067 of 2010 and CM 4133 of 2010

Madhu Bharti

APPELLANT

Vs

S.D. Hari Mandir Girls Sr. Sec. School and Others

RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Citation : (2013) 09 DEL CK 0357

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Anil Gera, for R-1 to 3, Ms. Purnima Maheshwari, Manoj Kumar for R-4 and Mr. S.C. Meena, DEO Zone-27, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—Petitioner who appears in person prays for adjournment as counsel is not available. The request is opposed. I do not think that this is a fit case for adjournment inasmuch as in the connected matter which has been disposed of by me, there was a stay operating against conduct of the departmental proceedings, and which departmental proceedings were going on since 2009 and the writ petition was only filed in the year 2010. I have therefore perused the records of the case. I may note that I have allowed the connected writ petition filed by the petitioner and in which petitioner has been allowed to engage a defence assistant. In this writ petition, petitioner prays for quashing of the chargesheet dated 27.4.2009.

2. The chargesheet issued in the present case shows that petitioner is alleged to be guilty of neglecting her duties being absent from school without taking leave, bringing to attempt political influence wrongly dealing with students, showing disrespect to the head of the school and so on. Petitioner is also stated to be guilty of using wrong language against other teachers in the school. I am not reproducing the Article of Charges because they contain detailed factual aspects.

3. It is settled law that this Court is not a fact finding body. It is in the enquiry

proceedings that issues of truth and falsity will have to be looked into. I have had an occasion to examine a similar aspect as regards to the entitlement of Courts to stay disciplinary proceedings during its continuance in the case of Dr. Muhammad Iqbal Vs. Union of India & Ors. in W.P.(C) No. 4222/2013 decided on 8.7.2013. The relevant paras of the said judgment are paras 3 to 5 and which read as under:-

3. The Supreme Court in the case of State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, has held the following in para 9 of its judgment:-

9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature. The High Court in our opinion ought not have interfered with the show cause notice.

(underlining added)

A reference to the aforesaid para shows that truth or falsity of the allegations cannot be determined by a Court before whom enquiry proceedings are challenged at the outset and an entitlement to challenge the enquiry proceedings arises only when there is found lack of jurisdiction.

4. The Supreme Court in its recent judgment in the case of The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha, has similarly so held by referring to various earlier judgments including the judgment in the case of Brahm Datt Sharma (supra). Paras 10 to 12 of the said judgment read as under:-

10. Ordinarily a writ application does not lie against a chargesheet 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, chargesheet 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 chargesheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide; State of U.P. v. Brahm Datt Sharma, Bihar State Housing Board v. Ramesh Kumar Singh, Ulagappa and Ors. v. Div. Commr., Mysore and Ors., Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr. and Union of India and Anr. v. Kunisetty Satyanarayana).

11. In *State of Orissa and Anr. v. Sangram Keshari Misra* (SCC pp. 315-16, para 10) this Court held that normally a chargesheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority. (See also *Union of India v. Upendra Singh*).

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

(underlining added)

5. It is therefore clear that a Court can only interfere with continuation of enquiry proceedings when there is complete lack of jurisdiction in holding of the enquiry proceedings by the authority which is holding the enquiry, or because the authority did not have the power to initiate the enquiry or the enquiry may be barred by principle of *res judicata* or double jeopardy or that on the face of the show cause notice even if facts are accepted as correct no charges are made out or there is no cause of action or no violation of any law or rules etc.

4. In view of the above, I do not find any merit in the writ petition, inasmuch as this petition has been filed not only after considerable delay when enquiry proceedings have substantially progressed and evidence is being led, but also because truth and falsity of the allegations will have to be decided in the enquiry proceedings and not before this Court. It is however, made clear that school, and its Disciplinary Committee and the Enquiry Officer will conduct the proceedings strictly in accordance with the provisions of the Delhi School Education Act and Rules, 1973 including Rules 118 to 120. The writ petition is dismissed with the aforesaid observations. Parties are left to bear their own costs.