

(2017) 04 MAD CK 0070
In the Madras High Court
Case No : 5252 of 2017

M.Stephen

APPELLANT

Vs

The Joint Director of School Education

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

Citation : (2017) 04 MAD CK 0070

Hon'ble Judges : S.S.Sundar

Bench : SINGLE BENCH

Advocate : S.S.Sundar

Judgement

1. This Writ Petition has been filed seeking issuance of a Writ of Mandamus directing the respondents to permit the petitioner to retire and to grant

retirement and other monetary benefits considering the charges against the petitioner as draped as no charges are issued and no order retaining in

the service are passed by considering the representation of the petitioner dated 09.08.2016.

2. The brief facts that are necessary for the disposal of the present case are as follows:

2.1.The petitioner was appointed as B.T. Assistant (Science) by the Teachers' Recruitment Board by order dated 27.09.2007. He was appointed

in the third respondent school by order dated 08.10.2007. However, the petitioner was placed under suspension by order dated 25.07.2014 by

the first respondent stating that he was suspended for misconduct and misbehaviour. The petitioner had attained the age of superannuation on

31.05.2016. When the petitioner also sent a representation to revoke the order of suspension and to permit the petitioner to retire, due to the

order of suspension the petitioner was not allowed to retire. It is also the case of the petitioner that no disciplinary proceedings can be initiated as

there was no order passed by the respondent retaining the petitioner in service beyond 31.05.2016. The petitioner was issued with a charge memo

on 22.09.2014. The following are the charges:

The first charge is that the petitioner came to the school on 04.11.2013 after consuming alcohol. The second charge is that the petitioner have

uttered unparliamentary words against the teacher R.Santhi and the students. The third charge is that due to the activities of the petitioner in

scolding the teacher and the students on 05.11.2013, the parents of the children gathered before the school demanding action against the

petitioner. The fourth charge is that on 11.03.2014 again the petitioner went to the school after consuming alcohol.

3. It was challenging the said charge memo dated 22.09.2014, the present Writ Petition has been filed with a consequential relief directing the

respondents to permit the petitioner to retire and to grant his retirement and other monetary benefits. Since the petitioner himself has admitted that

he was placed under suspension and the charge memo was issued long prior to the date of his retirement, the contention that no disciplinary

proceedings can go on after retirement, in the absence of any order not permitting the petitioner to retire, cannot be accepted.

4. Heard the learned Counsel for the petitioner and the learned Government Advocate appearing for the respondents.

5. Having regard to the facts it is evident that the disciplinary proceedings were pending and continuing after his retirement. As a matter of fact,

from the records it can be seen that the petitioner is not cooperating for completion of the disciplinary proceedings. This Court has already, after

referring to several binding precedents, dismissed a similar Writ Petition in the judgment dated 18.04.2017 in W.P.(MD)No.5250 of 2017. The

following precedents on this point are relevant and hence, examined:

9. In the case of State of Uttar Pradesh v. Shri Brahm Datt Sharma and another reported in AIR 1987 SC 943 it has been held as follows:

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.

10. In the case of *Union of India v. Kunisetty Satyanarayana* reported in AIR 2007 SC 906, the Hon'ble Supreme Court has held as follows:

13. 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 vs. Ramdesh Kumar Singh and others* JT 1995 (8) SC 331, *Special Director and another vs. Mohd. Ghulam*

Ghouse and another AIR 2004 SC 1467, *Ulagappa and others vs. Divisional Commissioner, Mysore and others* 2001(10) SCC 639, *State of U.P. vs. Brahm Datt Sharma and another* AIR 1987 SC 943 etc.

14. 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 chargesheet 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.

15. 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.

16.No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or showcause 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.

Therefore, only in exceptional cases where the charge memo is found to be wholly illegal or wholly without jurisdiction, this Court can entertain a

Writ Petition questioning the charge memo.

11.In the case of Ministry of Defence v. Prabhash Chandra Mirdha reported in (2012) 11 SCC 565 the Hon''ble Supreme Court expressed its

view in the manner extracted below:

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, AIR 1987 SC 943; Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Ors., (1996) 1 SCC 327;

Ulagappa & Ors. v. Div. Commr., Mysore & Ors., AIR 2000 SC 3603 (2); Special Director & Anr. v. Mohd. Ghulam Ghouse & Anr., AIR

2004 SC 1467; and Union of India & Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906).

11. In State of Orissa & Anr. v. Sangram Keshari Misra & Anr., (2010) 13 SCC 311, 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 & Ors. v. Upendra Singh, (1994) 3 SCC 357).

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.

12. In the case of LIC v. A. Masilamani reported in (2013) 6 SCC 530 the Hon'ble Supreme Court has held as follows:

18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review. In the event that, the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable, in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, have to be examined, taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration, all relevant facts and to balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated, only on the ground of delay in their conclusion.

13. In the case of State of Orissa v. Sangram Keshari Misra reported in (2010) 13 SCC 311 the Hon'ble Supreme Court has observed as follows:

10. Though there appears to be some merit in the said contentions of the first respondent, it is unnecessary to examine the correctness of these contentions as 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. It is well settled that the correctness or truth of the charge is the function of the disciplinary authority. (vide Union of India vs. Upendra Singh - 1994(3) SCC page 357). Therefore we reject the contention that the

charge to have been quashed without reserving to the State to proceed in accordance with law.

14. In the case of *Union of India v. Upendra Singh* reported in (1994) 3 SCC 357 the Hon'ble Supreme Court has held as follows:

6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or

particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary

to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the

functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after

the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges

or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the

court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision

in *H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons*⁵. The Bench comprising M.N.

Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the

examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual

receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to

decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which

the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but

also on the correctness of the decision itself.

15. In the case of *Executive Engineer, B.S.H.B. v. Ramesh Kumar Singh* reported in (1996) 1 SCC 327 the Hon'ble Supreme Court has held as

follows:-

10. We are concerned in this case, with the entertainment of the Writ Petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is not attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is ex facie a "nullity or totally "without jurisdiction" in the traditional sense of that expression -- that is to say even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a Writ Petition under Article 226 of the Constitution of India against a show-cause notice, at power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and taken up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him, to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India.

16. In the case of Secretary, Ministry of Defence v. Prabhash Chandra Mirdha reported in AIR 2012 12 SC 2250, the Hon"ble Supreme Court after referring to several judgments of the Hon"ble Supreme Court earlier summarised the position as follows:

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

17. In the case of Special Director v. Mohd. Ghulam Ghouse reported in AIR 2004

SC 1467 the Hon''ble Supreme Court has expressed serious concern for entertaining a Writ Petition against show cause notice and granting interim order. The relevant portion of the judgment reads as follows:

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

cause 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.

From the above judgment, the principles that were reiterated by Hon''ble Supreme Court can be summarised as follows:

a) A 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 or

infringe the rights of any party.

b) Ordinarily a Writ Petition should not be entertained against a mere show cause notice or charge sheet as interference at that stage would be

premature.

c) However, in some very rare and exceptional cases, the High Court can quash a charge sheet if it is found to be wholly without jurisdiction or on

the ground of unreasonably long unexplained delay causing great prejudice to the delinquent or for some strong reason if the charge memo is

wholly illegal. Even in such cases the gravity of alleged misconduct is a relevant factor that should be taken into consideration before quashing the charge memo.

(d) Charge sheet cannot be quashed on the ground that the facts stated in the charges are erroneous since it is the function of the disciplinary

authority to find the correctness or truth of the charges. Court or Tribunal has no jurisdiction to go into the correctness or truth of the charges as

there is no infringement of any fundamental right guaranteed by the Constitution.

(e) The question whether the show cause notice was founded on any legal premises is a jurisdictional issue which can also be decided by the

authority issuing the charge memo or show cause notice before the aggrieved approach the Court.

(f) In a Writ Petition challenging charge memo, issue is not whether the charge memo can ultimately be sustained.

18. Going by the principles enunciated by the Hon'ble Supreme Court in the judgments above referred to, the position is settled that in a Writ

Petition challenging charge memo issue is not whether the charge can ultimately be sustained. When there is prima facie material to maintain the

charge and the charge is attracted upon reading the allegations made in the statement of imputations there is no scope for entertaining the Writ

Petition.

19. The petitioner has not alleged any mala fide against any officer and none has been impleaded as respondent. It would be premature for this

Court to express any view on the materials on the basis of which the charge sheet has been issued.

20. As it has been reiterated by the Hon'ble Supreme Court in several binding precedents, charge memo cannot generally be a subject matter of

challenge in a Writ Petition as it does not adversely affect the right of delinquent. The present case does not fall within the exceptions carved out in

any of the judgments for maintaining the writ petition challenging the charge memo. It is not the case of the petitioner that the charge memo has

been issued by an authority not competent to initiate disciplinary proceedings. It is also not the case here that the charge memo has been issued

after a long unexplained delay creating prejudice to the petitioner. It cannot be said that the statement of allegation does not constitute the charge.

Charges framed are not demonstrated to be wholly illegal. Taking into consideration the nature of charge and other circumstances, this Court is not convinced that this Writ Petition is maintainable. Hence, this Writ Petition is dismissed. However, there is no orders as to costs. Consequently, the connected W.M.P.(MD)Nos.4206 and 4207 of 2017 closed.

6. In view of the position of law expressed above by this Court earlier in the judgment, the Writ Petition cannot be entertained and hence, this Writ Petition is dismissed. No costs. Consequently, the connected W.M.P. (MD)Nos.4212 and 4213 of 2017 are closed.