

(2013) 08 MAD CK 0136

In the Madras High Court

Case No : Writ Petition No. 17642 of 2013 and M.P. No. 1 of 2013

S. Viswanathan

APPELLANT

Vs

The General Manager (NW -2) (appointing authority), State Bank of India, The Deputy General Manager (B and O) Disciplinary authority Disciplinary Proceedings Cell, The Deputy General Manager (B and O), Zone 1 Disciplinary Authority Disciplinary Proceedings Cell and The Enquiry Officer SMGS-IV Chief Manager RCPC

RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Citation : (2013) 08 MAD CK 0136

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : S. Raja Ravivarma, for the Appellant; P.D. Audikesavalu, for the Respondent

Final Decision : Dismissed

Judgement

D. Hariparanthaman, J.—The petitioner is an officer in the respondent Bank. He was placed under suspension by an order dated

22.3.2012. Thereafter, he was issued with a charge memo dated 14.8.2012. He gave explanation dated 24.11.2012 to the charges. An enquiry

was conducted. The petitioner sent a letter dated 8.1.2013 requesting the respondent to give one month time to engage defence representative.

Thereafter, he filed a Writ Petition No. 972 of 2013 before this Court, questioning the charge memo dated 14.8.2012 and the enquiry officer gave

his report dated 17.4.2013. Further, the appointing authority issued a memo dated 20.4.2013 enclosing a copy of the report of the enquiry officer

and requesting the petitioner to make his comments on the findings thereon. He

did not choose to give any comments on the report of the enquiry officer.

2. In the circumstances, the appointing authority issued a notice dated 7.6.2013, proposing to dismiss the petitioner from service and he was given an opportunity of personal hearing on 29.6.2013. It is at that stage, the petitioner has filed this Writ Petition to quash the show cause notice dated 7.6.2013.

3. Heard the learned counsel for the petitioner.

4. The learned counsel for the petitioner has made his submissions on facts and on various material documents placed before him in the enquiry.

5. On the other hand, the learned counsel for the respondent Bank has submitted that the Writ Petition is pre-mature and the petitioner could make all his submissions before the appointing authority. If the appointing authority imposes any punishment, even thereafter the petitioner can prefer an appeal against the punishment order. In the circumstances, the Writ Petition has to be dismissed.

6. I have considered the submissions made by the learned counsel on either side.

7. By the impugned show cause notice dated 7.6.2013, the respondent Bank is proposing to dismiss the petitioner from service based on the service Regulations. He was directed to appear for the personal hearing on 29.6.2013. He was also directed to make his submissions if he was not willing to appear for personal hearing.

8. As rightly contended by the learned counsel for the Bank, instead of availing opportunity as given in the show cause notice, the petitioner has chosen to question the same. The submissions which are made before this Court and the averments made in the affidavit could be very well made before the appointing authority and the petitioner can seek them to revise the proposed punishment altogether or to drop the proposal or to reduce the same to a minor punishment. Instead, the petitioner has chosen to file this Writ Petition to quash the show cause notice and consequently reinstate him in service with attended benefits. In my view, the Writ Petition cannot be entertained.

9. At this juncture, it is relevant to refer to the judgment of the Supreme Court in Union of India (UOI) and Another Vs. Kunisetty Satyanarayana,

. In paragraphs, 13 to 16, the Supreme Court 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 v. Ramesh Kumar Singh, Special Director v. Mohd. Ghulam Ghouse, Ulagappa v. Divisional Commr.,

Mysore, State of U.P. v. Brahm Datt Sharma 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 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 Petition lies when some right of any party is infringed. A

mere show cause notice or charge sheet does not infringe the right of anyone. 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 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.

In view of the principle laid down in the aforesaid judgment, the Writ Petition deserves to be dismissed. Accordingly, the Writ Petition stands

dismissed. No costs. The connected Miscellaneous Petition is closed.