
(2013) 08 DEL CK 0227

In the Delhi High Court

Case No : Writ Petition (C) No. 9042 of 2011

Sapna Jain

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 12-08-2013

Acts Referred:

Citation : (2013) 7 AD 718

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Amit Khemka, Advocate for respondent Nos. 1 to 4, for the Respondent

Final Decision : Disposed Off

Judgement

Valmiki J Mehta, J.

W.P. (C) 9042/2011 and C.M. Nos. 20343/2011 (stay) and 2735/2012 (interim directions)

1. There are two reliefs claimed in this writ petition. First is for quashing of the memorandum and communication of the respondent No. 1-University dated 14.10.2011 and 13.12.2011 whereby the petitioner has been asked to show cause as to why the departmental proceedings be not initiated against the petitioner. Second relief is for appointing of an investigating agency to look into the alleged tampering of the result of one student Mr. Pradeep Kumar in M. Phil course by the respondent No. 3. So far as challenge to the communications dated 14.10.2011 and 13.12.2011 is concerned, the writ petition is pre-mature because no chargesheet has been issued to the petitioner till date. These communications only show contemplation for issuing of chargesheet. Even if chargesheet is issued, Courts do not decide truth or falsity of the allegations, and which are decided by the Enquiry Officer. Chargesheet can only be quashed if there is lack of inherent jurisdiction in issuing of the same. I have had an occasion to consider this in the judgment in the case of Dr. Muhammad Iqbal Vs.

Union of India and Ors. in W.P. (C) No. 4222/2012 decided on 8.7.2013 wherein I have held 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 Another Vs. Sangram Keshari Misra and Another, 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.

2. Therefore, the writ petition so far as challenge to the communications dated 14.10.2011 and 13.12.2011 is concerned is dismissed as being pre-mature inasmuch as departmental proceedings have yet not been initiated against the petitioner and no Article of Charges are being issued.

3. So far as the issue of an enquiry to be conducted for looking into tampering of the result of a student is concerned, admittedly the said student Mr. Pradeep Kumar is not a party to the writ petition. On account of Mr. Pradeep Kumar not being a party to the writ petition, issues which are alleged against him, including of collusion and illegal action of the respondent No. 3 cannot be decided. Therefore, so far as this aspect is concerned, the writ petition is disposed of with liberty to the petitioner to file a detailed representation with respect to result of Mr. Pradeep Kumar to the respondent No. 1 and the respondent No. 1 will mark this representation to the appropriate authority for decision. The appropriate authority will hear the petitioner and thereafter decide the matter in accordance with the rules of the respondent No. 1. The entire exercise with respect to this matter be completed within a period of three months of receipt of the representation of the petitioner by the respondent No. 1-University. Writ petition is disposed of with the aforesaid observations.