

B.P. Sahu Vs State Of Chhattisgarh And Ors

Court: Chhattisgarh High Court

Date of Decision: Feb. 27, 2019

Acts Referred: Constitution Of India, 1950 " Article 226

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Mateen Siddique, Sunita Jain

Final Decision: Dismissed

Judgement

P. Sam Koshy, J

1. The challenge in this petition is to the charge sheet dated 18.03.2016 and subsequent dates of hearing provided by the department to the petitioner

vide Annexure P/2 dated 20.09.2018 and Annexure P/3 dated 04.12.2018.

2. The charges levelled against the petitioner is in respect of certain alleged irregularity committed during the course of selection to the post of

Training Officer conducted in the year, 2010.

3. According to the petitioner, the advertisement in respect of the said selection was published on 01.09.2010.

Subsequently, a corrigendum was

further issued on 25.09.2010 and thereafter certain relaxations were made by the higher authorities in the department so far as eligibility criteria is

concerned. The grievance of the petitioner now is that, the petitioner has been unnecessarily dragged in the disciplinary proceedings when the

petitioner as such has not committed any misconduct. Since the petitioner was one of the member of the selection committee and what he has done is

only as per the guidelines and relaxations made from time to time and as such, the act on the part of the petitioner cannot be brought within the

purview of misconduct.

4. Moreover, the counsel for the petitioner submits that similar charge sheet was issued to the beneficiaries from the said selection process against

whom a show cause notice at the first instance was issued which was challenged before this court in bunch of writ petitions leading of which being

WPS No.4805 of 2015 and which was allowed by this court on 09.10.2017. Subsequent to the allowing of the writ petitions, the respondents further

had issued another show cause notice which too has been taken cognizance by this court in another bunch of writ petitions, one such being WPS

No.8207 of 2018 in which also this court had granted some interim protection to the petitioners therein. Therefore, under the circumstances, the

respondents should not have further proceeded with the charge sheet which has been initiated against the petitioner and the same deserves to be

quashed.

5. It was further contended by the counsel for the petitioner that the petitioner as such has not committed any misconduct as is evident from the note

sheet issued by the higher authorities in the department relaxing the eligibility criteria. That, there also does not seem to have been any allegation of

malafide or favour shown by the petitioner to any of the beneficiaries who have been selected from the said selection process and thus, the entire

charge sheet deserves to be quashed.

6. The State counsel, on the contrary, opposing the petition submits that it is only a charge sheet has been issued to the petitioner and has been called

upon to submit his reply and in case if the petitioner is able to provide satisfactory explanation and reply and materials in support of his defence, the

department may not think of proceeding further with the charge sheet. That, if the petitioner is able to produce cogent evidence in respect of his

defence, the authorities may consider for dropping the proceedings against the petitioner and as such the petition at this juncture is premature and

deserves to be dismissed.

7. Having heard the contentions on either side and on perusal of records, some of the admitted facts as is evident is that, charge sheet in the instant

case has been issued on 18.03.2016 i.e. by now almost 3 years have passed from the date of issuance of charge sheet. The petitioner is also said to

have filed a detailed reply to the charge sheet and the present writ petition now is being filed as late as on 05.02.2019 challenging the charge sheet

which was issued 3 years back.

8. So far as issuance of charge sheet and the scope of interference of High Court is concerned, it is by now well settled proposition of law that the

High Court in exercise of its power under Article 226 of the Constitution of India would not, as a matter of routine, interfere with disciplinary

proceedings initiated by the State. The High Court would not substitute itself as another appellate body or an administrative wing of the department to

conduct a roving enquiry or threadbare scrutiny of the documents, allegations or another fact finding agency to decide the veracity of the charges

which have been levelled against the petitioner.

9. The Supreme Court in the case of State of Uttar Pradesh v. Brahm Datt Sharma & Anr. [1987 2 SCC 179] dealing with the scope of judicial

interference in disciplinary matters was of the opinion that, "the purpose of issuing show cause notice is to afford an 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, only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature

and the Hon'ble Supreme Court went on holding that, the High Court in our opinion ought not have interfere with the show cause notice.

10. Again, the Hon'ble Supreme Court in the case of Secretary, Ministry of Defence & Ors. v. Prabhash Chandra Mirdha [2012 11 SCC 565] in

paragraph 8, 10 & 12 has held as under:-

8. The law does not permit quashing of " charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the

charge-sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon.

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, 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.

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.

11. In the instant case, the contention of the petitioner is neither questioning the competency or the power of the authorities in issuing the same and the

petitioner has filed the petition assailing charge sheet more on the ground that the same does not fall within the ambit of misconduct and therefore it

should be quashed.

12. This aspect can also be looked into by the disciplinary authority on the petitioner submitting a detailed reply to the charge sheet. This Court

therefore is reluctant to entertain the petition at this juncture.

13. Given the entire facts and circumstances of the case, this petition stands rejected reserving the right of the petitioner to participate before the

disciplinary authority and prove his innocence. The department also is expected to take a prudent stand particularly in the light of the corrigendum

which have been issued vide note sheets of the higher authorities relaxing the eligibility conditions, and decision of this court in the bunch of writ

petitions leading being WPS No.4805 of 2015 and other analogous writ petitions decided on 09.10.2017.