

HIGH COURT OF JUDICATURE MADHYA PRADESH,
JABALPUR

SINGLE BENCH: HON'BLE SHRI SUBODH ABHYANKAR, J

WRIT PETITION NO.4599 OF 2017

Ganesh Prasad Garg

Vs.

General Manager, South East Coal Limited & others

Present:

For petitioner : Shri Vinod Kumar Napit, Advocate.

For respondents: Smt Indira Nair, learned Senior Advocate with
Shri Abhinav Kherdikar, Advocate.

Whether Approved for Reporting : Yes

Law Laid Down : Maintainability of the writ petition against the issuance of the charge sheet in a departmental enquiry.

Significant Paragraph Nos.4, 5 & 6.

ORDER

(Passed on this the 1st day of August, 2017)

The present petition has been filed by the petitioner against the framing of charges dated 7.2.2017 and 12.2.2017 Annexures P/5 and P/7 respectively wherein the charges have been framed against the petitioner in departmental enquiry with respect to his misconduct owing to misbehaviour and indiscipline. The petitioner's contention is that the same has been issued with mala fide intention to harass the petitioner because the petitioner has filed a reference case before the Presiding Officer, Labour Court, Jabalpur for regularization of his services.

2. The petitioner has further submitted that the charges

have been framed against the petitioner by an incompetent authority as respondent No.2/Colliery Manager has no authority to issue charge sheet against the petitioner.

3. On the other hand, learned senior counsel for the respondents has submitted that the Colliery Managers have already been given the authority to issue charge sheet in respect of delinquent employees vide office order dated 31.3.2008 which has also been placed on record by the respondents. It is further contended that the petition is not maintainable as the alternative efficacious remedy is available to the petitioner to ventilate his grievances.

4. Learned senior counsel has also relied upon a decision of the Apex Court in the case of **Secretary, Ministry of Defence and others vs Prabhash Chandra Mirdha (2012) 11 SCC 565** wherein the Apex Court has held that a charge sheet normally is not liable to be quashed as it does not adversely affect the right of a delinquent employee and does not give rise to any cause of action. The Hon'ble Apex Court in the case of **Prabhash Chandra Mirdha (supra)** in para 12 has held as under :

“12. 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 charge-sheet 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.”

(emphasis supplied)

The Hon'ble Apex Court in the case of **Union of India and another vs Kunisetty Satyanarayana (2006) 12 SCC 28** in para 13 and 14 has held as under :

“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 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.”

(emphasis supplied)

5. Thus, the aforesaid decisions give an insight regarding maintainability of writ petition against filing of the charge sheet against a delinquent employee. In the present case, as already discussed by this Court that the authority which has issued the charge sheet has already been vested with the power to issue the charge sheet, nothing survives for this Court on the question of framing of charges as it is for the competent authority only to decide the case on merits in accordance with law.

6. In the circumstances, in the considered opinion of this Court the petition being devoid of any merit is liable to be and is hereby dismissed for having no substance. However, the petitioner is at liberty to contest the matter before the disciplinary authority in accordance with law.

7. Accordingly, the writ petition is dismissed.

(Subodh Abhyankar)

Judge

01/08/2017