IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

JUSTICE SUJOY PAUL

ON THE 1st OF NOVEMBER, 2023

WRIT PETITION No. 27352 of 2023

BETWEEN :-

ASHISH MAHAJAN S/O SHRI S.R. MAHAJAN, AGED ABOUT 38 YEARS, OCCUPATION: ASSISTANT GRADE III (SUSPENDED) DIRECTORATE HEALTH SERVICES BHOPAL (MADHYA PRADESH)

…...PETITIONER

(*BY SHRI DEVENDRA KUMAR TRIPATHI – ADVOCATE*)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY HEALTH AND FAMILY WELFARE DEPARTMENT VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**

2. **DIRECTOR (ADMIN) DIRECTORATE HEALTH SERVICES SATPURA BHAWAN BHOPAL (MADHYA PRADESH)**

3. **SECRETARY CUM HEALTH COMMISSIONER BHOPAL MADHYA PRADESH BHOPAL (MADHYA PRADESH)**

4. AYUSHMAN BHARAT NIRAMAYAM MADHYA PRADESH JAI PRAKASH HOSPITAL IEC BUREAU IST FLOOR BHOPAL (MADHYA PRADESH)

…..RESPONDENTS

(***BY SHRI ANKIT AGRAWAL – GOVERNMENT ADVOCATE FOR THE STATE***)

This petition coming on for admission this day, ***JUSTICE SUJOY PAUL*** *passed the following :*

ORDER

Heard on admission.

2. This petition filed under Article 226 of the Constitution of India challenges the charge sheet dated 16.02.2023 (Annexure-P/1). Petitioner has already filed reply to the said charge sheet.

3. Criticising the charge sheet, learned counsel for the petitioner raised following submissions :-

(i) a preliminary/fact finding enquiry was conducted by the Department in which charges were not found proved against the petitioner, and therefore, issuance of charge sheet is bad in law in the light of judgment of Supreme Court in **Nand Kumar Verma v. State of Jharkhand, (2012) 3 SCC 580**.

(ii) Charges are vague and ambiguous.

(iii) the other persons also committed misconduct but petitioner alone is picked up and chosen for disciplinary action which is discriminatory in nature.

(iv) the documents listed alongwith the charge sheet are not supplied to the petitioner enabling the petitioner to file the effective reply.

4. Shri Ankit Agrawal, learned Government Advocate opposed the admission.

5. No other point is pressed by the learned counsel for the parties.

6. This is trite that scope of interference at the stage of issuance of charge sheet in exercise of power under Article 226 of the Constitution is limited. The charge sheet is not an order. If allegations mentioned in the charge sheet are admitted in totality and yet no misconduct is made out, interference can be made. Interference can also be made if it is issued by an incompetent authority, if it is highly belated and there exists no justifiable explanation of delay. In the case of **Union of India v. Kunisetty Satyanarayana, (2006) 12 SCC 28**, the Apex Court opined 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 [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467], Ulagappa v. Divisional Commr., Mysore [(2001) 10 SCC 639] , State of U.P. v. Brahm Datt Sharma

[(1987) 2 SCC 179 : (1987) 3 ATC 319 : 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 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.

17. Learned counsel for the respondent submitted that the charge against the respondent had already been enquired into earlier and he had been exonerated of the charge in an earlier proceeding. Hence, he contended that the impugned charge memo would amount to double jeopardy and was therefore illegal. He relied upon the decision of this

> Court in Lt. Governor, Delhi v. HC Narinder Singh [(2004) 13 SCC 342 : 2004 SCC (L&S) 876].
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> **18.** We agree with the learned counsel for the respondent that if the charge which has been levelled under the memo dated 23-12-2003 **had earlier been enquired into in a regular enquiry by a competent authority**, and if the respondent had been exonerated on that very charge, a second enquiry would not be maintainable. However, in the present case, we are of the opinion that the charges levelled against the respondent under the charge memo dated 23-12-2003, had not been enquired into by any authority and he had not been exonerated on those charges. Hence we are of the opinion that it is not a case of double jeopardy."
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> **(Emphasis supplied)**

7. Para-18 of this judgment of Supreme Court makes it clear that if earlier enquiry was a *regular enquiry* constituted by the competent authority and in that *regular enquiry*, an employee stood exonerated, a second enquiry would not be maintainable. This principle cannot be made applicable when previous enquiry was a *preliminary enquiry* and not a *regular enquiry*.

8. A Division Bench of this Court in **Jagdish Baheti vs. High Court of M.P., 2015 (2) MPHT 382** followed the *ratio decidendi* of aforesaid Supreme Court judgment. Accordingly, it is to be seen whether there exits any such ingredient on which interference can be made.

9. This is trite that preliminary inquiry is not a mandatory requirement before holding a regular departmental enquiry. It is the prerogative of disciplinary authority to conduct a preliminary enquiry or not. Outcome of preliminary enquiry does not bind the disciplinary

authority for the purpose of initiating regular departmental enquiry. So far, judgment of **Nand Kumar Verma (supra)** is concerned, it is clear that in that case the factual backdrop was different. A Judicial Officer was put to notice by the order of the High Court on judicial site and thereafter, for the same allegation, a departmental enquiry was directed to be conducted. In the above peculiar backdrop, the Apex Court made certain observations which cannot be stretched in a case of this nature.

10. So far argument that charge sheet is vague/ambiguous is concerned, on a specific query from the Bench. Shri D.K. Tripathi, learned counsel for the petitioner could not point out a single averment from his reply which shows that the petitioner raised any such objection before the disciplinary authority regarding ambiguity of the charges. This Court is not sitting as an appellate Court to examine these aspects. Had it been a case of vagueness of charge, the minimum expectation from the delinquent employees was that he will raise such ground in his reply. In absence thereof, no interference on this aspect is warranted.

11. The petitioner also raised ground of discrimination. On this aspect also, despite repeated query, learned counsel for the petitioner was unable to show any averment from his reply where he had raised the point of discrimination. Even otherwise, the aspect of discrimination is an aspect relating to a fact which needs to be established by leading evidence in the departmental enquiry and at this stage no interference can be made on this ground.

12. Lastly, learned counsel for the petitioner submitted that the relevant documents have not been given to him and therefore he could not file effective reply. This argument of petitioner runs contrary to the record. The relevant portion of his reply reads as under :-

> ''कृपया महोदयजी से विनम्र निवेदन कर लेख है कि आवेदक को उपरोक्त संदर्भित ज्ञाप दिनांक 16.02.2023 के माध्यम से जारी आरोप पत्र का प्रतिवाद उत्तर प्रस्तुत करने हेतु **आवेदक द्वारा अभिलेखों की सूची चाही गई जो कार्यालय स्थापना शाखा से आवेदक को ज्ञाप क्रमांक 854/दिनांक 25.04.2023 द्वारा प्राप्त होने पर आवेदक के विरूद्ध अधिरोपित आरोप का प्रतिवाद उत्तर, उपरोक्तानुसार प्रस्तुत कर अनुरोध है** कि म.प्र. शासन सामान्य प्रशासन विभाग के परिपत्र क्र. एफ 11–14/2014/एक/9 दिनांक 20.11.2014 एवं परिपत्र क्र. एफ–11/14/2007/एक/9 दिनांक 25.04.2007 के बिन्दु क्र. 06 अनुसार फर्जी नाम/पते से प्राप्त शिकायत को नस्तीबद्ध किया जाएगा'' के अनुसार उक्त आरोप क्र. 01 में उल्लेखित फर्जी नाम/पते से प्राप्त शिकायत को नस्तीबद्ध करने का कष्ट करें (परिशिष्ट–06)। आवेदक द्वारा प्रस्तुत प्रतिवाद उत्तर पर कृपया सहानुभूतिपूर्वक विचार कर आवेदक के विरूद्ध जारी आरोप पत्र सादर अनुरोध सहित निरस्त करने का कष्ट करें। स्वयं आवेदक एवं आवेदक का परिवार सदैव आपका आभारी रहेगा।''

(Emphasis supplied)

13. Thus, this argument runs contrary to record. In addition, subject matter of reply also shows that after receiving the documents, reply has been filed. I deprecate this practice of stating incorrect facts during arguments before the Court.

14. In view of foregoing discussion, no case is made out for admission. The petition is bereft of merits and is hereby **dismissed**.

(SUJOY PAUL)
JUDGE

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