
Before M. M. Kumar & Rajesh Bindal, JJ.

PRITPAL SINGH,—*Petitioner*

versus

PUNJAB STATE ELECTRICITY BOARD AND
OTHERS,—*Respondents*

C.W.P. NO. 5899 OF 2004

28th May, 2007

Constitution of India, 1950—Art.226—Petitioner claiming to be an employee of Board—Labour Court holding petitioner entitled for reinstatement with continuity of service—Petitioner failing to produce any document to prove his appointment—Petitioner also failing to file additional affidavit before High Court—Inquiry against petitioner for presenting forged document—Board allowed to proceed further in accordance with law with full opportunity to petitioner to show his bona fide—Board held entitled to cost of Rs. 10,000.

Held, that the question of opining on the correctness of charge-sheet or its vagueness, cannot be gone into at the threshold because evidence may substantiate those charges. Ordinarily, no judicial review of charges is possible because it would involve deciding the case on merit, which is well nigh impossible because the Courts lack any mechanism which could be substituted for the departmental inquiry. Therefore, we express our inability to accept the prayer made by the petitioner for quashing the charge-sheet.

(Para 8)

Further held, that the petitioner will have full opportunity to prove that he is an employee of the Board and he did not play any fraud in that regard. He may produce his appointment letter and other documents showing his *bona fide*, which he has not been able to show before this Court. On account of failure of the petitioner to show his *bona fide* to this Court, we permit the Board to hold the inquiry and allow the Enquiry Officer or any functionary of the Board to proceed further in accordance with law as the inquiry might have been completed already.

(Para 9)

B. R. Mahajan, Advocate, *for the petitioner.*

M. S. Khaira, Senior Advocate, with Ms. Anjali Kukkar,
Advocate, for the respondents.

JUDGEMENT

M. M. KUMAR, J.

(1) The challenge in this petition filed under Article 226 of the Constitution is to the charge-sheet dated 8th April, 2003 (P-2) and order dated 10th July, 2003 (P-4),—*vide* which inquiry against the petitioner has been ordered to be held. According to the charge-sheet the petitioner presented forged document/letter No. 142, dated 15th February, 1991, purported to be issued by the Senior Executive Engineer, Rural Division, Kapurthala, whereby no objection had been expressed with regard to the transfer of the petitioner. On the basis of this forged document/letter the petitioner is alleged to have got issued order regarding his transfer from Rural Division, Kapurthala to Amar Kot from the Senior Executive Engineer, Bhikhiwind Division,—*vide* office order No. 245, dated 22nd February, 1991. As a matter of fact, the case of the respondent Punjab State Electricity Board (for brevity, 'the Board') is that the petitioner has never been an employee of the Board nor ever any appointment letter was issued to him by any competent authority of the Board.

(2) The petitioner has claimed that he is an employee of the Board and his services were terminated on 3rd January, 1992. He raised an industrial dispute and on a reference to the Labour Court, Amritsar, it was held that the termination of services of the petitioner was not justified and he was directed to be reinstated in service with all benefits,—*vide* award dated 4th October, 1999 (P-1). He was reinstated in service on 11th March, 2003. It is claimed that on the same charges a charge-sheet dated 8th April, 2003 (P-2) has now been issued and a fresh inquiry has been ordered,—*vide* order dated 10th July, 2003. The petitioner has sought quashing of the charge-sheet as well as the order of holding inquiry against him and respondent No. 3 having been appointed as Enquiry Officer. On 12th November, 2003, the Enquiry Officer issued a letter to the petitioner (P-7) asking him to produce documents like original appointment letter, an affidavit attested by Ist Class Magistrate in which it was required to be stated that if the petitioner had played any fraud then he would be responsible

for the same ; whether he wanted the inquiry to be got conducted from respondent No. 3-Enquiry Officer; language of the inquiry; and whether the petitioner was to conduct the inquiry himself or through a counsel. The petitioner in the reply filed on 14th November, 2003 stated that Enquiry Officer was not entitled to call for production of those documents and expressed no confidence in the Enquiry Officer.

(3) In reply to the notice to show-cause, the Board has taken the stand that the petitioner has never been appointed in the Board and there is no record in existence regarding his appointment as Assistant Lineman because there was no direct recruitment of Assistant Lineman at the relevant time. Moreover, the petitioner has not been able to produce any order of appointment either before the Board or before the Labour Court. A reference to some civil suit has also been made which was filed seeking reference of dispute to the Labour Court.

(4) When the matter had come up for motion hearing on 8th April, 2004, this Court had stayed passing of the final order. On 12th December, 2006, learned counsel for the Board took a categorical stand that the petitioner was never appointed by the Board. It would be appropriate to make a reference to the order dated 12th December, 2006, which read as under :—

“Mr. Khaira is emphatic that the petitioner was never appointed by the Punjab State Electricity Board at any place prior to his alleged appointment by transfer. He submits that the petitioner is at liberty to show to this Court any documentary evidence which would prove his appointment and posting on the post from which he had been allegedly transferred. Mr Mahajan seeks a short adjournment to place on record an additional affidavit together with any document that may be available.

Adjourned to 19th February, 2007.”

(5) It is also a matter of record that despite the time taken by the learned counsel for the petitioner to place on record an additional affidavit with any document to prove his appointment and transfer, nothing has been brought on record before us.

(6) We have heard learned counsel for the parties. The facts of this case unfold an unfortunate situation which does not present

an easy solution. On the one hand there is an award of the Labour Court, dated 4th March, 1999 (P-1) which shows that the petitioner was held entitled for reinstatement with continuity of service with all benefits and on the other hand the claim of the Board is that he was never appointed as Assistant Lineman. It was keeping in view the aforementioned contrast factual position that this Court had granted the petitioner further time to produce any document to prove his appointment and posting on the post from which he had been allegedly transferred. The petitioner has not been able to produce any document or file any additional affidavit. We do not wish to dilate upon the conduct of the petitioner on his failure to produce appointment letter or affidavit before us. We would, however, allow the Board to proceed with the inquiry as we are not inclined to quash either the charge-sheet or the order directing holding of regular departmental inquiry against the petitioner. Exercising the power of judicial review by examining the correctness of charges at the threshold of issuing the charge-sheet has not been encouraged by the judicial precedents. It is not possible for the courts to substitute the whole mechanism of framing of charge-sheet, adducing evidence, submission of report by the enquiry officer and subsequent proceedings leading to passing of order by the punishing authority and then by the appellate authority. Even in cases where the charge-sheet is totally vague or did not disclose any misconduct, Hon'ble the Supreme Court has disapproved quashing of the charge-sheet. In this regard reliance may be placed on the judgement of Hon'ble the Supreme Court in the case of **Deputy Inspector General of Police versus K. Swaminathan**, (1). It would be apposite to read para 4 of the judgment, which is as under :—

- “4. It is settled law by a catena of decisions of this Court that if the charge memo is totally vague and does not disclose any misconduct for which the charges have been framed, the tribunal or the court would not be justified at the stage to go into whether the charges are true and could be gone into, for it would be a matter on production of the evidence for consideration at the enquiry by the enquiry officer. At the stage of framing of the charge, the statement of facts

and the charge-sheet supplied are required to be looked into by the court or the tribunal as to the nature of the charges, i.e., whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct. The Tribunal, therefore, was totally unjustified in going into the charges at that stage. It is not the case that the charge memo and the statement of facts do not disclose any misconduct alleged against the delinquent officer. Therefore, the Tribunal was totally wrong in quashing the charge memo. In similar circumstances, in respect of other persons involved in the same transactions, this Court in appeals arising out of SLPs (C) Nos. 19453—63 of 1995 had on 9th February, 1996 allowed the appeals, set aside the order passed by the Tribunal and remitted the matter holding that :”

“This is not the stage at which the truth or otherwise of the charges ought to be looked into. This is the uniform view taken by this Court in such matters.”

(7) Similar view was taken in the case of **State of H.P. versus B. C. Thakur** (2). In para 3 of the judgment, their Lordships’ disapproved the action of the Administrative Tribunal in quashing charge-sheet by observing as under :—

“3. Having heard learned counsel for the parties, we are satisfied that in the facts and circumstances of the case, the impugned order of the Tribunal quashing the order of respondent’s suspension does not call for any interference, even though the other part of the Tribunal’s order quashing the charge-sheet issued to the respondent cannot be sustained. The quashing of the charge-sheet by the Tribunal is not on the ground of want of authority to issue the charge-sheet or any other inherent defect therein. This being so, the question of going into the merits of the charges, which are yet to be investigated in the departmental proceedings, did not arise for consideration

or adjudication by the Tribunal at this stage. This being so, the Tribunal's order quashing the charge-sheet as well, on reaching the conclusion that the suspension order had to be set aside, is unwarranted,,,,,,,"

(8) When the facts of the present case are examined in the light of the principles laid down by Hon'ble the Supreme Court in the aforementioned judgments it becomes evident that the question of opining on the correctness of chargesheet or its vagueness, cannot be gone into at the threshold because evidence may substantiate those charges. Ordinarily, no judicial review of charges is possible because it would involve deciding the case on merit which is well nigh impossible because the courts lack any mechanism which could be substituted for the departmental inquiry. Therefore, we express our inability to accept the prayer made by the petitioner for quashing the chargesheet.

(9) Moreover, it has to be held that the petitioner will have full opportunity to prove that he is an employee of the Board and he did not play any fraud in that regard. He may produce his appointment letter and other documents showing his *bona fide*, which he has not been able to show before this Court. On account of failure of the petitioner to show his *bona fide* to this Court, we permit the Board to hold the inquiry and allow the Enquiry Officer or any functionary of the Board to proceed further in accordance with law as the inquiry might have been completed already. The writ petition is disposed of in the above terms. The Board shall be entitled to costs, which we quantify at Rs. 10,000. The costs shall be paid to the respondent Board within a period of one month from the date of receipt of certified copy of the order. In the event of non-payment of costs within the stipulated period, the Board shall be at liberty to move appropriate application and the case may be listed again before this Court.

R.N.R