

GAHC010054492021



Judgment reserved on : 30.01.2024.
Judgment delivered on : 07.03.2024.

In the Gauhati High Court

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

W.P.(C) NO. 2209 OF 2021

Mrs. Biyola Baruah,
Aged about 44 years
Wife of Mr. Maheswar Saikia,
Resident of village Udamari, P.O.- Balipara,
P.S.-Charlduar, Dist.-Sonitpur, Pin-784101, Assam.

.....Petitioner

-Versus-

1. The Union of India represented through the Secretary to the Government of India, Ministry of Health and family Welfare, New Delhi.
2. The Director, LGB Regional Institute of Mental Health, Tezpur, District- Sonitpur, Pin-784001.
3. The Chief Administrative Officer, LGB Regional Institute of Mental Health, Tezpur, Pin-784001.
4. The HOD, Department of Psychiatric Nursing, LGB Regional Institute of Mental Health, Tezpur, Pin-784001.

.....Respondents

– B E F O R E –

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitioner : Mr. A. C. Borbora, learned senior counsel assisted by Ms. N. Dey, learned counsel.

Advocate for the respondents : Mr. A. K. Dutta, learned standing counsel, LGBRIMH and Mr.K. Gogoi, learned CGC.

JUDGMENT AND ORDER

(Soumitra Saikia, J)

Heard Mr. A. C. Borbora, learned senior counsel assisted by Ms. N. Dey, learned counsel appearing for the petitioner. Also heard Mr. A. K. Dutta, learned standing counsel, LGBRIMH and Mr. K. Gogoi, learned CGC appears for the respondents.

2. This writ petition is filed by the writ petitioner praying for a writ of certiorari for setting aside and declaring the impugned Office Order dated 27.01.2021 bearing No. LGB/Estt./DISP/2047/20/342, whereby the respondent No.3 was appointed as Presenting Officer and further to call for the records including the Attendance Registers, Duty Roosters, in original and pending disposal of the Rule not to give effect to the office order dated 27.01.2021. The writ petition was subsequently amended with leave of the Court and besides the existing prayers, further prayer of interference with the impugned Memorandum dated 26.11.2020 bearing number LGB/Estt./PF/04/1510/4153 containing the Articles of charges, declaring it to be illegal and unconstitutional and also pass any other appropriate writ direction or order.

3. The writ petitioner is a Post Graduate in Psychiatric Nursing and was

initially appointed as a Staff Nurse at the LGB Regional Institution of Mental Health, Tezpur by order dated 18.10.2003 bearing No. LGB/Estt./INT/SN/01/249/3234 issued by the respondent No.2. Pursuant thereto her appointment was regularized in the said post by order dated 26.10.2005 bearing No. LGB/EST./1582/6840 issued by the respondent No.3. The petitioner is posted as Nursing Tutor in the Department of Psychiatric Nursing in the LGB Regional Institution of Mental Health, Tezpur with effect from 01.05.2011 to 07.08.2018. During her service as a Nursing Tutor, several batches of nurses graduated from the said Institute. However, petitioner was not permanently posted as Nursing Tutor and consequently, she has been rendering her services as a Staff Nurse in the LGB Regional Institution of Mental Health, Tezpur. During the Covid-19 pandemic situation, which culminated in a total lockdown of the entire nation with effect from 24th March, 2020, frontline workers in the Health Sector were issued instructions to take all steps necessary as directed for prevention and containing Covid-19 pandemic situation. At that relevant point in time, the petitioner was assigned her night duty which she completed with effect from 22nd March to 24th March, 2020. After completing her night shift/night duty, she was informed by the authorized Ward in-charge, to avail special leave or special off (SP/SO) from 26th March 2020 for a period of one week during the initial period of total lockdown. Petitioner was given to understand that it was a measure undertaken pursuant to office memorandum dated 19.03.2020 issued by the Ministry of Personal Public Grievance and Pensions Department, Government of India. As per the said office memorandum, Heads of departments were directed to ensure 50% of group B and C employees to attend office every day and the remaining 50% staffs were instructed to work from home. In terms of the said office memorandum, the Ward in-charge make

necessary alterations and re-allotted the duties to the petitioner and other Nurses. The petitioner and the other nurses were supposed to report for duty earlier as per the scheduled were directed to stay at home till 01.04.2020. These duties which were struck off is clearly evident in the duty allotment register maintained in the office. The petitioner, who does not reside within the campus, attends to her workplace from her residence, which is situated at some distance from the campus. However, because of the total lockdown in the COVID-19 pandemic situation, her movement from her residence to the campus was required to be undertaken by her personal vehicle and for which purpose necessary car passes were required. In spite of requests made by the petitioner for allotment of the car passes no steps were taken by the authorities and thereby putting the petitioner to extreme hardship. It is pleaded that the petitioner was undergoing several health issues and therefore, was not in a position to commute from her residence to the campus without a vehicle transport. For the said purposes, appropriate car passes were required to be issued by the hospital/Institute authorities, for which several requests were made by the petitioner. Finally, the petitioner was provided with the appropriate link in the Government of Assam portal for applying for e-passes and the husband of the petitioner could obtain an e-pass for plying their personal vehicle, enabling the petitioner to commute between her residence and the institute/ the hospital. She, therefore, resumed her duties from 06.04.2020. While the petitioner was rendering her services she was served with memorandum dated 22.04.2020 bearing number LGB/Estt/PF/04/1510/1360 issued by the Chief Administrative Officer of the Institution containing three (3) numbers of charges calling for explanation on the charges levelled against the petitioner.

4. In response to the said charges levelled, the petitioner filed her explanation dated 27.04.2020. Thereafter, the petitioner was served with another office memorandum bearing number LGB/Estt/PF/04/1510/4153 dated 26.11.2020 issued by the respondent No.2 containing six (6) Articles of charges as statement of imputation of misconduct or misbehaviour. In her defence the petitioner filed her written statement dated 04.12.2020 denying each and every Article of charges. According to the petitioner, the Articles of Charges against the petitioner alleged misconduct in subordination and violation of the provisions of Rule 3 (ii) and 3 (iii) of the CCS Conduct Rules, 1964. The said show-cause Notice enclosed the list of documents and the list of witnesses. It is the grievance of the petitioner that the custodian of the official records has been made the Presenting Officer by the authorities concerned by order dated 27th January 2021.

5. It is the pleaded case of the petitioner that the Administrative Officer is the custodian of all official records pertaining to the Duty Allotment, Attendance Registers, etc. as well as all correspondences made by and between the petitioner and the Institute. The petitioner therefore expresses her apprehension that because of personal bias and hostility towards the petitioner, the Presenting Officer appointed will not allow the enquiry to proceed in an impartial manner. That apart, it is pleaded that the Enquiry Officer, being the custodian of the records on the basis of which the enquiry will be conducted, will also be required to be presented as a witness and examined in the enquiry proceedings.

6. Under such circumstances, the appointment of the respondent number 3, Mr. P.K. Saikia, as the Presenting Officer was objected to by the petitioner with a request to alter and change the Presenting Officer and replace him with another

suitable person in order to permit enquiry without any bias. The respondents by communication dated 02.03.2021 altered the Enquiry Officer by replacing Professor Arunjyoti Baruah, HOD, Department of Psychiatric Nursing and replacing him with Dr. Subhashish Nath, Assistant Professor, Psychiatry as the Enquiry Officer. However, the change of the Presenting Officer was not agreed to by the concerned authorities. Under these circumstances, the petitioner has approached this court praying for appropriate writ direction or order.

7. While this writ petition was pending, the increments which had accrued to the petitioner and which are stated to be payable to the petitioner were not released by the respondent authorities on the ground that there is a departmental proceeding pending and the matter is subjudiced before the Court. Being aggrieved WP(C) No. 5622/2023 has been filed. Since both these writ petitions are filed by the same petitioner and are inter-connected, as agreed to by the learned counsels for the parties, both these writ petitions are taken up together for hearing and disposal.

8. Learned counsel for the petitioner strenuously argues that the departmental proceedings are for the purposes of making enquiry to arrive at a dispassionate finding as to the truth of the allegations levelled against the delinquent employee. Although the strict rules of procedure and evidence are not required to be followed by the disciplinary authority, nevertheless, it has to be an impartial enquiry to find out the veracity of the allegations made against the petitioner upon giving adequate opportunity of finding the truth into the allegations leveled against the delinquent employee. In the given facts and circumstances of the present case, learned senior counsel has vehemently urged that the entire proceeding levelled against the petitioner is an eye wash and the institute authorities are inimical to the petitioner for reasons best known to

them and are proceeding in a manner to arrive at a finding of guilt against the petitioner at all cost. Such attempt made by the institute authorities are violative of the constitutional safeguards guaranteed under Article 14, 16 and 19.(1)(g) and therefore the petitioner has approached this Court at the threshold praying for interference of the entire enquiry proceedings. It is submitted that a mere perusal of the Articles of charges will reveal that the charges are vague and the writ petitioner will not be in a position to render any effective defence in the absence of specific charges. It is further submitted that due to improper legal advice, the petitioner submitted her written statement of defense without the institute authorities permitting her to peruse or examine the documents on the basis of which these charges are levelled against the petitioner and the proceeding initiated.

9. Learned senior counsel submits that where the charges are vague and nonspecific, the delinquent officer will not be able to offer proper defense and the same amounts to a violation of the basic principles of natural justice.

10. Learned counsel for the petitioner has relied upon a judgment of a Co-Ordinate Bench of this Court rendered in *Mayur Dutta Vs The Food Corporation of India and Ors. in WP(C) 8305 of 2019* by judgment and order dated 19.12.2022 to substantiate his contentions that where the allegations are vague, it is not permissible to embark on an enquiry by the department. He further refers to and relies on the judgment of the Apex court rendered in *Anant R. Kulkarni Vs Y. P. Education Society & Ors*, reported in *2013 (6) SCC 515*. Learned senior counsel submits that the ratio laid down by the Apex Court, and which is followed by this Court, holds that where the charges are vague and it does not give a clear picture to the delinquent to make out an effective defense, then it is not permissible to hold an enquiry. He, therefore submits that the

enquiry proceedings initiated against the petitioner vide memo number LGB/Estt/PF/04/1510/4153 dated 26.11.2020 being based on absolutely vague charges, denying the petitioner adequate opportunity to render an effective defense is required to, be suitably interfered with, set aside and quashed.

11. Per contra, Mr. K. Gogoi, learned CGC refutes the contentions raised by the learned counsel for the petitioner. He submits that the matter is at the threshold and the petitioner has submitted her written statement of defense and no objection has been taken before the authority that the charges are vague and nonspecific and therefore, no effective defense could be put up by the authority. The learned counsel for the respondent further submits that the law on the issue of judicial review in respect of disciplinary proceedings is very clear. He submits that where the proceedings are initiated by the competent authority, following the basic principles of natural justice and all opportunity of defense as available under law has been offered to the delinquent officer and as such, no judicial review is called for at this stage on the allegations of charges being vague and non-specific. Referring to the judgments relied upon by the learned senior counsel for the writ petitioner it is submitted that these judgments are not applicable on the facts of the present proceedings. It is submitted that a perusal of the memo of charges reveals that there are 6 (six) clear charges against the petitioner, and the petitioner has in turn submitted a written statement of defense. The writ petition was originally premised with the simple prayer of seeking a direction to replace respondent No.3 as the Presenting Officer by any other suitable officer. Subsequently, upon leave being granted by this Court, the petition was amended and the disciplinary proceeding has now been assailed before this court.

12. Learned counsel for the respondent further submits that the respondent

No.3, namely, the Presenting Officer in the meantime, has also been replaced by an order dated 02.03.2021, whereby Dr. Subhashish Nath, Assistant Professor, Psychiatry has been now appointed as the Presenting Officer in place of the respondent no.3. Under such circumstances, the original prayer made by the petitioner having been granted and the petitioner having subjected herself to the disciplinary proceedings and the proceedings have been drawn up by the respondent authorities as per provision of law, at this stage, any interference by the Court under judicial review is not called for. If the petitioner is aggrieved by the ultimate findings, which may be arrived at by the Enquiry Officer, and/or the consequential orders as may be passed by the disciplinary authorities, there will be ample scope for the petitioner to ventilate her grievances before the appellate authority prescribed and/or to approach this Court at a later stage. Learned counsel for the respondent submits that since the very maintainability of the writ petition has been questioned, he submits that at this stage, no submissions in respect of the merits of the case need to be urged until the question of maintainability is decided. Learned counsel for the respondent, in support of his contentions relies upon the following judgments :-

i) State of U.P. Vs Shri.Brahm Datt Sharma and anr. reported in AIR 1987 SC 943.

ii) Special Director and anr. Vs Mohd. Ghulam Ghouse and anr. reported in AIR 2004 SC 1467.

iii) Union of India and anr. Vs Kunisetty Satyanarayana reported in (2006) 12 SCC 28.

iv) Secretary, Ministry of Defence and Ors. Vs Prabhash Chandra Mirdha reported in (2012) 11 SCC 565.

v) State of Orissa and anr. Vs Sangram Keshari Misra and anr. reported in (2010) 13 SCC 311.

vi) Union of India and Ors. Vs Upendra Singh reported in (1994) 3 SCC 357.

13. Learned counsels for the parties have been heard. Pleadings on record have been carefully perused. Judgments cited at the bar are also carefully noted. It is seen that the prayer before the writ Court in W. P. (C)/ 2209/2021 was originally for a direction to replace the respondent number 3 as a Presenting Officer with a suitable person. Since an application was filed seeking amendment of writ petition and leave was granted on such an application by order dated 09.01.2024 passed in I.A.(Civil)/ No. 3279/2023 the writ petition was amended, incorporating a further prayer for interference with the OM dated 26.11.2020 issuing the show cause and further proceedings thereon.

14. WP(C) No. 5622/2023 is a sequel to the earlier writ petition and which has been filed assailing the communication dated 07.12.2022, whereby the petitioner's claim for release of incentives has been declined on the ground of the pendency of the departmental proceedings as well as the pendency of the present proceedings before this Court. This Court by order dated 21.09.2023 had granted interim protection to the petitioner in WP(C)/2209/2021 staying the further proceedings as at the relevant point in time the challenge made was for replacement of the respondent No.3 as the Presenting Officer. It is seen from the pleadings filed by the respondents that by communication dated 02.03.2021, the respondent No.3 has been replaced and a new Presenting Officer has been appointed. It is also seen that there is no specific challenge made in the writ petition that the rules of procedure have been violated while issuing the show-cause notice and/or that the competent authority bestowed

with the power to show cause to the petitioner has not issued the show cause notice. Although notices in the matter was issued on 26.03.2021 and the respondents are represented by the learned standing counsel and have also filed their counter affidavit, none represents the respondent 3 and 4.

15. The only grievance projected by the writ petitioner in W.P.(C)/ 2209/2021 is that the charges levelled against the petitioner by the charge memo dated 26.11.2020 are vague and nonspecific and consequently the petitioner, as a delinquent employee was not able to render effective defense and thereby, if the disciplinary proceedings are allowed to proceed, the petitioner will be seriously prejudiced and it will amount to miscarriage of justice. By memo number LGB/Estt./PF/04/1510/4153, the following charges were levelled against the petitioner.

“Statement of articles of charge framed against Mrs. Biyola Baruah, Staff Nurse

Article-I

That the said Mrs. Biyola Baruah while functioning as Staff Nurse was assigned emergency essential health care service as per duty roster prepared for nursing personnel during Noval Corona Virus (COVID-19). But she did not turn up for her assigned duties and remained absent willfully w.e.f. 26.03.2020 to 05.04.2020 citing unacceptable reasons time and again. By her irresponsible and motivated act, Mrs. Biyola Baruah could not maintain absolute devotion to duty and acted in a manner which is unbecoming of an Institute employee and thereby amounts to misconduct and violated the provision of Rule 3 (ii) and (iii) of the CCS (Conduct) Rules, 1964.

Article-II

That the said Mrs. Biyola Baruah while functioning as Staff Nurse

applied for grant of leave from 26.03.2020 to 05.04.2020 for escaping from assigned emergency essential health care services. The Chief Nursing Superintendent and Assistant Matron denied to grant/forward the aforementioned leave as asked for and requested her to perform the assigned duties in view of COVID-19 and bar that had been imposed by the Institute administration vide order dated 16/03/2020 on availing any kind of leave by any employee except on medical emergency.

Her act can thus be construed as misconduct for insubordination, unbecoming of an Institute employee and therefore violated the provision of Rules 3 of CCS (Conduct) Rules, 1964 and other Gol's instructions thereunder.

Article-III

That the said Smti Biyola Baruah while functioning as Staff Nurse has tainted the image of the Institute by writing letter directly to the Hon'ble Union Minister of Health to influence and bear upon the Director or any other Institute Authority of LGBRIMH for regularization of her willful absence during lockdown period. Her act was thus subversive of discipline which amounts to misconduct and thereby violated the provisions of Rule 3(iii) and Rule 20 of the CCS (Conduct) Rules, 1964 and other Gol's decision thereunder.

Article-IV

That the said Mrs. Biyola Baruah while functioning as Staff Nurse had demanded that the Institution should provide her conveyance or issue pass to her husband along with her vehicle to attend duty during lockdown period which is absurd and cannot be acceded to. Thus Mrs. Biyola Baruah has acted in an unbecoming manner, lack of devotion to duty which can be construed as misconduct and thereby violated the provision of Rule 3(ii) and (iii) of CCS (Conduct) Rules, 1964 as well as

violated other NDMA guidelines.

Article-V :

That the said Mrs. Biyola Baruah while functioning as Staff Nurse had bypassed her Immediate supervisory authorities and tried to extort undue benefit of availing leave by articulating improper image of Nursing Supervisors. The act of Mrs. Biyola Baruah was clear insubordination and so violated all provision of the rule 3 of the CCS (Conduct) Rules, 1964.

Article-VI

That the said Mrs. Biyola Baruah while functioning as Staff Nurse has been in habit of availing frequent leave. She is a,so in habit of availing leave before granting the same by the Leave Sanctioning Authority. Therefore, Mrs. Biyola Baruah could not maintain absolute devotion to duty and thereby violated the provision of Rule 3(ii) of the CCS (Conduct) Rules, 1964, and other standing instructions of the Institute administration.”.

16. The said memo is accompanied by statement of imputation of misconduct or misbehavior in support of the Articles of charge framed. The charge memo also included the list of documents by which the Articles of charge framed are proposed to be sustained as well as the list of witnesses. The petitioner responded to the said Articles of charge by filing the written statement of defence.

17. Before embarking on scrutiny of the charges viz-a-viz the reply submitted, it will be apposite to refer to the law relied upon by the counsel each in support of their contentions.

18. In *Anant R. Kulkarni Vs Y. P. Education Society & Ors*, the Apex Court was examining the findings arrived at by the Tribunal as well as by the High Court

where the Tribunal and the Single Bench of the High Court arrived at a conclusion that the charges were vague and not specific and declined to permit the authorities concerned to proceed for *de novo* enquiry in order to save the employee from harassment and humiliation. The said Judgment was also upheld by the Division Bench of the High Court and however permitted the authorities to proceed with the enquiry afresh as regards to the said charges. The employee being aggrieved has preferred the appeal before the Apex Court. One of the questions before the Apex Court was enquiry-on vague charges.

19. The Apex Court examined the charges framed in detail and arrived at a conclusion that none of the charges are specific and precise. It was held that the charges have not been accompanied by any statement of allegations or any details thereof and it was therefore not permissible for the respondents, namely, (the authority concerned) to hold an enquiry on such charges. And on these findings, the Apex Court altered the order of the Division Bench of the High Court to the extent and interfered with the findings of the Division Bench to conduct or hold a fresh enquiry on these charges against the employee.

20. The Apex Court upon consideration of the facts and circumstances of the case and referring to earlier decisions of the Apex Court held as under:-

“Enquiry — on vague charges

15. *In Surath Chandra Chakrabarty v. State of W.B. [(1970) 3 SCC 548 : AIR 1971 SC 752] this Court held, that it is not permissible to hold an enquiry on vague charges, as the same do not give a clear picture to the delinquent to make out an effective defence as he will be unaware of the exact nature of the allegations against him, and what kind of defence he should put up for rebuttal thereof. The Court observed as under : (SCC p. 553, para 5)*

“5. ... The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule

embodies a principle which is one of the specific contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him."

(emphasis supplied)

16. *Where the charge-sheet is accompanied by the statement of facts and the allegations are not specific in the charge-sheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a charge-sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge-sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. The evidence adduced should not be perfunctory; even if the delinquent does not take the defence of, or make a protest that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges.*

17. *The purpose of holding an enquiry against any person is not only with a view to establish the charges levelled against him or to impose a penalty, but is also conducted with the object of such an enquiry recording the truth of the matter, and in that sense, the outcome of an enquiry may either result in establishing or vindicating his stand, and hence result in his exoneration. Therefore, fair action on the part of the authority concerned is a paramount necessity".*

21. In *Mayur Dutta Vs The Food Corporation of India and Ors.*, a Co-Ordinate Bench of this Court was seized of an order, whereby the writ petitioner/employee was imposed a major penalty and the petitioner was imposed the major penalty of dismissal from service in a disciplinary proceedings initiated against the petitioner. Being aggrieved by these findings of the authority concerned, the petitioner therein approached this Court

challenging the disciplinary proceedings. The Co-Ordinate Bench placing reliance on *Sawai Singh -Vs- State of Rajasthan* reported in 1986 (3) SCC 454 as well as *Anant R. Kulkarni* and upon examination of the charges levelled against the petitioner therein came to a finding that the charges were vague and therefore, allowed the writ petition interfering with the enquiry report by setting aside the disciplinary proceedings as well as the order of punishment. Liberty was granted to the respondent department to proceed against the petitioner, but strictly as per law.

22. In the judgments which are referred to by the learned counsel for the petitioner, it is seen that the Apex Court as well as this Court, while rendering a judgment, was seized of the matter, which had come before the Court pursuant to conclusion of disciplinary proceedings resulting in imposition of penalty and/or rejection of the order in appeal. In the cases referred by the learned counsel for the petitioner, there was a major penalty imposed removing the petitioner from service. Such imposition of major penalty will have serious consequences on the rights of the employee. It gives rise to a cause of action enabling an employee to approach the Constitutional Court of law, for urging appropriate relief before this Court. However, in the case at hand before this Court the petitioner had initially approached this Court by filing the writ petition being WP(C) No.2209/2021 seeking a direction from the Court to change or alter the Presenting Officer on the ground that the then Presenting Officer, who was appointed was an interested party as he was the custodian of the records which are being relied upon by the department to press the charges against the petitioner. And consequently, there was every likelihood of the Presenting Officer being put up as a witness or called before the Enquiry Officer as a witness and examined. Under such circumstances, the petitioner was before this Court

seeking a direction to the respondent to replace the Presenting Officer, namely, private respondent No.3. During the pendency of the writ petition, the respondents had passed the order dated 3rd March, 2021, whereby the Enquiry Officer, who was earlier appointed, namely, Dr. Arunjyoti Baruah, Professor in HoD, Department of Psychiatric Nursing, was relieved of and in his place, Dr. Subhashish Nath, Assistant Professor, Psychiatric was appointed as the enquiring authority. Similarly, by communication dated 8th September, 2023, the petitioner was informed by the respondent/ institute that pursuant to the superannuation of the private respondent number 3, who was appointed as a Presenting Officer, Mr. Mrinal Kumar Sharma, Assistant Public Relation Officer, has been nominated to execute the role of Presenting Officer in his place. As such as on date, both the Enquiry Officer and the presenting officer earlier appointed has been replaced and pursuant to these communications, no grievance has been raised by the writ petitioner either before the authorities or before this Court in the present proceedings. By order dated 21.09.2023 passed in WP(C)/2209/2021 the departmental proceedings were stayed on the submissions made by the counsel for the petitioner that the Presenting Officer being an interested party and a probable witness, in the present proceedings, enquiry proceedings may not be proceeded until there is a change in the Presenting Officer. Under such circumstances, the proceedings were stayed by this Court and the said order is still subsisting.

23. As such as on date the departmental proceedings have not commenced pursuant to the orders of this Court. There is no finding arrived at by the authority concerned to impose any penalty or pass any adverse order against the petitioner giving rise to any course of action enabling the writ petitioner to approach this Court for due redressal of her grievances.

24. In *Jasbhai Motibhai Desai Vs Roshan Kumar, Haji Bashir Ahmed and Others* reported in (1976) 1 SCC 671, the Apex Court has very succinctly laid down as to when a writ court may exercise its extraordinary jurisdiction for issuance of a writ of certiorari and/or a writ of mandamus. The existence of a right is the basic foundation for any litigant to approach the Court seeking redressal of their grievances by a writ court in exercise of its powers under Article 226 of the Constitution of India.

25. This view of the Court finds support in the judgment of the Apex court rendered in *Secretary, Ministry of Defence and Others Vs Prabhash Chandra Mirdha* reported in (2012) 11 SCC 565, where the Apex Court has clearly held that at the stage of commencement of any disciplinary proceedings, where no adverse order or any order imposing any penalty on delinquent employee is passed, there can be no cause of action permitting such a delinquent employee to approach this Court for redressal under the discretionary powers of a constitutional court under Article 226 of the Constitutional India.

26. The arguments made by the learned counsel that the charges in the charge sheet are vague and non-specific and thereby the petitioner cannot be expected to put up a clear defense cannot be adjudicated at this stage of the proceedings in the absence of any final order passed in the disciplinary proceedings as on date, due to operation of the interim order passed by this Court suspending the further proceedings. No such order in the course of the disciplinary proceedings till it was suspended by the orders of this Court, vide order dated 21.09.2023, has also been brought to the notice of the Court which, in the opinion of the Court can give rise to a cause of action enabling the writ petitioner to avail remedies under Article 226 of the Constitution of India. At this stage, it cannot be said with absolute certainty that the respondent authorities

will impose penalty - major or minor, on the petitioner. It is quite possible that the disciplinary authority, upon consideration of necessary evidences, may proceed to drop the charges against the petitioner. It is equally possible for the disciplinary authority not to accept the findings of the enquiry report, even though the enquiry report may consider the charges to be proved. In view of such probabilities which may result in any decision only pursuant to completion of the entire disciplinary proceedings, at this stage, it cannot be arrived at any definitive finding that the authorities have commenced the disciplinary proceeding with a vindictive attitude to prove the charges alleged against the writ petitioner. The basic apprehension of bias, which was brought out against the Presenting Officer is no longer there in view of the superannuation of the said Officer and appointment of a new Presenting Officer. No allegations or apprehensions are made against the Presenting Officer or the Enquiry Officer subsequently appointed by the respondents replacing the respondent no.3 and the respondent no.4 respectively.

27. Under such circumstances, this Court cannot find force in the submissions made by the learned counsel for the petitioner to invoke writ jurisdiction for interference of the proceedings at this stage. Such view of the Court, however, should not be understood to have overlooked the apprehension expressed by the petitioner that the charges are non-specific and does not provide an opportunity of specific defense required to be put up by the petitioner. As it has been held that the disciplinary proceedings have not yet culminated into any finding either by the Enquiry Officer or by the disciplinary authority, this court refrains from returning any finding at this stage as to whether the charges levelled against the petitioner are definite and specific and not vague in nature, and whether the charges in the present form deprives the petitioner of putting

up specific defense. This Court is of the considered view that ends of justice will be met if the petitioner is given liberty to raise this issue before the Enquiry Officer and/or the disciplinary authority during the course of the proceedings. There is also another submission which has to be taken note of by the Court at this stage. Learned senior counsel appearing for the petitioner submits that no opportunity of perusal of the documents stated to be relied upon by the enquiry Officer for the purposes of the disciplinary proceedings was afforded to the petitioner to peruse the same and take notes if required. If that be the case, then the petitioner will also be given an opportunity, within 10 (ten) days from the date of this order to examine and take notes of the documents stated to be relied upon for the purposes of the enquiry by issuing a proper notice on the petitioner. If such a notice is issued to the petitioner, the petitioner will thereafter, within 3 (three) working days, examine those documents and take notes thereof.

28. In view of all of the above, this writ petition is disposed of in terms of the above. The Interim order dated 21.09.2023 passed in WP(C)/2209/2021 stands vacated. The respondent authorities are permitted to proceed with the enquiry proceedings subject to the directions in the paragraphs herein above. The petitioner will be granted every opportunity to participate in the disciplinary proceedings and to lead evidences in support of her defense, including examination of witnesses put up by the employer institute.

29. In terms of the above writ petition stands disposed of. No order as to cost.

JUDGE

Comparing Assistant