

**(2002) 05 AHC CK 0011**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 42300 of 1999

Anoop Kumar Pandey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision :** 16-05-2002

**Acts Referred:**

Constitution of India, 1950 — Article 12

**Citation :** (2003) 1 UPLBEC 186

**Hon'ble Judges :** Sunil Ambwani, J

**Bench :** Single Bench

**Advocate :** Akhileshwar Singh, for the Appellant; Subodh Kumar, Additional Standing Counsel, for the Respondent

**Final Decision :** Allowed

## Judgement

Sunil Ambwani, J.—Heard Shri Akhileshwar Singh, learned Counsel for the petitioner and Shri Subodh Kumar, Additional Standing Counsel for respondents.

2. Petitioner was appointed as Trained Graduate Teacher (T.G.T., S.U.P.W.) on 18.6.1998 in Air Force School, Bamrauli, Allahabad, managed by Indian Air Force Education and Cultural Society a non-profit making welfare institution registered under Societies Act, 1860. After completing probationary period of one year petitioner was confirmed in September, 1994. It is alleged by petitioner that by various Government Orders and policy laid down by Central Board of Secondary Education, the School fees of children of teaching staff was not to be charged. By letter dated 3.9.1997, respondents started realizing fee on which petitioner made protest vide representation dated 10.9.1997 and 6.11.1997, and requested for interview with SOA, CAS (Central Air Command). Respondents agreed for fee concession from April, 1998, but became prejudiced against the petitioner. Pay scale of School staff was revised with effect from 1.4.1998. It was found that it was not in accordance with the direction of Central Board of Secondary Education and thus, petitioner requested for clarification as to whether the revised pay scales were in accordance with U.P. Government or Government of India pattern.

According to petitioner, these queries were not taken into correct perspective, and a show cause notice dated 10.5.1999 was issued to him by Principal of the School for disobeying the orders for taking over duties as Stationary Incharge and for failing to accept revised pay scale and also for not keeping standards of S.U.P.W. (Office Room) as required. Petitioner submitted a reply on 26th June, 1999 denying the allegations. It was stated by him in his reply that he did not flatly refuse the duties of Stationary in charge and wanted to explain the over burden put upon him and his unavoidable family reasons. In respect of accepting revised pay scale, petitioner stated that after revision, the salaries decreased, and thus, petitioner wanted a clarification about the applicability of the pay scales before signing the forms for accepting them. It was denied by the petitioner that he has disobeyed the orders of the Vice Principal or that he has abused any of the superior authorities or quarreled with any of the colleagues. He reminded that he is a disciplined employee, as he has been in N.C.C. and Post Warden in Civil Defence and that is a qualified Teacher having seven years experience in K.V. Cantt, K.V. No. 3, IAFS Chakeri, Kanpur and six years experience in present School giving hundred per cent results.

3. Petitioner was issued a second show cause notice on 28th June, 1999 by Fit. Lt. S.K. Jaiswal, Principal, Air Force School, Bamrauli on 28th June, 1999 to show cause as to why his services may not be terminated on the ground that on 20th May, 1999 he violated code of conduct for Teachers in which he did not represent grievances through proper channel and wrote a letter directly to the SQA HQ, CAC and copy to C.B.S.C, Delhi, AOC-IN-C-HQ-CAC, D-Edn Air HQ and CBSC Regional Officer, Allahabad and further making allegations in the letter that a plot is being manipulated to terminate his services and further that reply to the show cause notice dated 10th May, 1999 was not received. Petitioner sent his reply on 20th June, 1999 and 3rd July, 1999 denying the allegations. A charge- sheet was issued to him on 13th July, 1999.

4. Petitioner submitted his reply to the charges on July 20, 1999, reiterating that he did not refuse to accept charge of stationery, and that he wanted to explain reasons of overloading his work and restriction of selling stationery through Schools by Government Orders. Regarding failure to accept pay scales, he submitted that he was not made aware of the pay scales, for which he made request for time. In respect of charges for violating code of conduct for sending copies of representation to higher authorities, petitioner referred to the Education Code, Chapter IV, Para 13 which provides that after fifteen days of making representation, the member of staff may file a representation directly to the higher authorities. He stated that his representations were pending since 24th April, 1999 and thus, after sending copies, he was compelled to move to the higher authorities.

5. By letter dated 5th August, 1999, the Principal of the School communicated an additional charge to the petitioner for instigating other staff to accept revised pay scales and not to sign salary register and, thus, violating the code of conduct in

Education Code, Chapter 6, Paragraph 3(iv) which requires Teachers to abide by rules and regulations of School and to show due respect to the constituted authority and to diligently carry-out instructions issued by the Superior Authorities. By letter dated 24th August, 1999, petitioner requested for a proforma of revised pay scale, a copy of wage as on 1.4.1999 and the statements of Shri J.P. Snavastava and Mrs. Swetha Mishra, P.G.T. (Maths). Petitioner was given a reply by Shri S.K. Jaiswal, Senior Education Officer or Officer-in-Charge, Air Force School, Bamrauli, providing details of revised scale of P.G.T. Teacher from 1.4.1999 in the pay scale of Rs. 3200/- to 5600/- photocopy of wage register was denied on the ground that it was a confidential document and stating that on 23rd August, 1999, Enquiry Officer allowed inspection of both statements, to the petitioner, and gave him opportunity to appear before the Enquiry Officer again on 30th August, 1999. The Enquiry Officer submitted his report, in which he found petitioner guilty of only charge Nos. 2 and 6, namely, the charges for failing to take-over dues of stationary incharge and the charge for violating code of conduct, in making representations directly to higher authorities without going through proper channel. The Principal/Squadron Leader Shri S.K. Jaiswal gave a second show cause notice to the petitioner on 1st September; 1999 under Chapter 4(7) (d) (ii) Education Code finding him guilty of the aforesaid two charges, as well as additional charge of instigating other staff not to accept revised pay scale. These charges narrated in second show cause notice dated 1st September, 1999 are quoted as below :

"(a) Refuse to take over the duties of stationery in-charge on 20th April, 1999.

(b) Violating the code of conduct by not representing the case through proper channel.

(c) Instigating other staff not to accept the revised pay scale and not to sign the salary register."

By the impugned order dated 9th September, 1999, S. K. Leader S.K. Jaiswal, Principal of the School imposed major penalty of dismissal of service on the petitioner.

6. By order passed on 1.10.99, this Court stayed the dismissal order and allowed petitioner to continue in service and to pay him his salary stay application was thereafter rejected on 3.7.2001. Special Appeal No. 813 of 2001 against order dated 3.7.2001 was dismissed on 18.7.2001 with observation that the matter be listed on 30.7.2001 before appropriate Bench for hearing.

7. Counsel for the petitioner submits that the entire action was taken on account of mala fides. Respondents were prejudiced for having questioned their authorities in implementation of revised pay scales. The procedure with regard to imposing major penalties were not followed inasmuch as petitioner was not allowed copies, or inspection of complaints on the basis of which the charge of instigating other staff for refusing to accept revised pay scale was found established, and lastly, he submits that charges were not serious enough to

impose major penalty. According to Counsel for the petitioner, the penalty is wholly disproportionate to the charges levelled against petitioner as a Senior Teacher of the School. In reply, Counsel for the respondent submits that the petitioner failed to carry-out orders and breached discipline inasmuch as he refused to accept the charge of stationery, refused to accept revised pay scales and instigate other Teachers to refuse revised pay scales. According to him, petitioner was a Teacher in Air Force School and was bound to follow the orders of the superiors. The procedure as provided in Regulations 6 of Chapter 4 Education Board was strictly followed, and charges were found established before his services were dismissed.

8. A preliminary objection was raised by the learned Counsel for the respondents that the Air Force School, which is governed by the bye-laws of the society registered under the Societies Registration Act, is not amenable to writ jurisdiction. In *Smt. Rajni Sharma v. Union of India and Ors.* (1995) 3 UPLBEC 1664 this Court had occasion to consider whether the Society and the Schools are "State within the meaning of terms under Article 12 of the Constitution of India. It was held that the Army School run by Army Welfare Education Society is being run with an object to run the Schools for providing education facilities at Military stations to meet the needs of the children of the army personnel. The over all control of the Society and the School run by it vests in the Board of Governors and the Executive Committee, consisting of army officials. The School Managing Committee also consists of army officials. Thus, the administrative control of the Schools vests in the Governmental Authorities. The Society and its Schools are financed by Welfare funds and the Management of the School is also entitled to collect the fee and the donations, but this does not change the character of the Society or the School run by it. Relying upon *Ajai Hasia v. Khalik Mujib Sehravardi* AIR 1981 SC 497 ; *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *All India Sainik Schools Employees' Association v. Defence Minister-cum-Chairman*, AIR 1989 SC 88 it was held that the Society and the Schools run by it are "State" within the meaning of Article 12 of the Constitution, and thus amenable to writ jurisdiction of this Court. Similar view was taken in respect of Air Force School, Bamrauli, Allahabad. The School in question in the present case in Civil Misc. Writ Petition No. 16509 of 2001, *Niraj Kumar Tripathi v. School Management Committee*, decided on 18.5.2001. The preliminary objection is as such overruled.

9. Three charges were found to be established against petitioner. The first charge relates to refusing to take-over duties of Stationery In-charge on 20 April, 1999. In the counter-affidavit of Squadron Leader S.K. Jaiswal/Senior Education Officer, Air Force School, Bamrauli, Allahabad, it is stated in Paragraph-1 that petitioner refused to take-over charge of stationer}" as his secondary duty. On 20th April, 1999 and on 6th May, 1999, he refused to take-over and that a written reply was handed-over by him on 6th May, 1999. In reply to this charge, petitioner submitted on 26th June, 1999 that he did not flatly refuse duties of stationery in-charge. He had been given extra duties which he has duly performed and that in

fact he wanted to explain his over burden of duties and unavoidable family reasons. He, therefore, had some justification to refuse extra duties. The primary duty of a Teacher is to teach students. Secondary duties may be given to a Teacher for proper functioning and management of institution, but these by itself cannot become a ground to take disciplinary action resulting into major penalty against petitioner. There is nothing on record to show that respondents considered reasons offered by petitioner to take-over extra duties as stationery in-charge. In Paragraph 14 of the counter-affidavit, it has been admitted that petitioner was assigned two secondary duties, namely, public address system and cleanliness around his class room and corridors. His class room was near the common bathroom used by the School children. Petitioner was provided help of sweepers in maintaining cleanliness of the bathroom and corridors, his duty was to supervise such cleaning. In the circumstances, this charge, even if proved against the petitioner did not merit and extreme or harsh penalty.

10. The second charge relates to violating the code of conduct by not representing his case through proper channel. In this regard, I find that show cause notice dated 10th May, 1999, did not enumerate his charge amongst seven paragraphs in the notice. It was imputed as an additional charge in show cause notice dated 28th June, 1999 and was made part of charge-sheet against petitioner as charge No. 6 in the charges against him vide letter dated 13th July, 1999. In reply, petitioner referred to Education Code Chapter IV, Paragraph 3 of the representation where after fifteen days a member of staff may make representation to the higher authorities. The petitioner submitted that his case was pending before the Principal since 24th April, 1999, and that as he did not get reply he sent copies to higher authorities about a month later. It was within the knowledge of the Principal and that the petitioner had made representations and that no action was taken upon it. In the counter-affidavit of Squadron leader S.K. Jaiswal, it has been stated in Paragraph-18 is that according to Education Code in sending his application directly to Senior Officer-in-Charge Administration (SOA) headquarters, Central Air Command against the issue of show cause notice to the petitioner for termination of his services on the stated grounds of misconduct, copies of which were directly sent by the petitioner to Director Education, Air Headquarters, New Delhi, Air Officer Commanding-in-Chief HQ, CAC. Deputy Secretary, C.B.S.C, New Delhi and Joint Secretary, C.B.S.C, Allahabad. The remarks of the Principal, Air Force School was endorsed in his application which was further sent to S.M.C. The Chairman after due consideration of the application submitted the application, forwarded it to the SOA alongwith his comments. The SOA after judicious application of his mind on all the issues raised by the petitioner and the remarks of the interviewing authorities rejected the application of the petitioner and subsequently, charges were made-out against the petitioner for violating the channels of correspondence which was included in the Board of Inquiry held against him. Respondents have relied upon Chapter 6 of the Education Code providing for code of conduct for Teachers which provides in Clause-III (2) that a Teacher shall

not represent his/her grievances, if any, except through proper channel, nor will he/she canvass any non-official or outside news in respect of any matter pertaining to his or her service code. It is to be noticed that the petitioner did not straight away sent representations to higher authorities. He first addressed his grievances to the Principal of the School and have failed to receive proper response, he made representation with regard to his grievances to the higher authorities as aforesaid, petitioner's right to represent against his grievances to higher authorities cannot be curtailed by any rules or so-called code of conduct. India is a free country in which every employee has a right to place his grievances, before any higher authority which may have the powers to redress them. These rules are colonial vestiges. We are no longer in British Rule, where a native could not have raised his voice upto the rulers. The Principal and Management of Air Force Schools should not be hyper sensitive to the grievances of the Teachers to be conveyed to the higher authorities. A time has come when a right to represent has to be recognized by law as inherent right in every citizen, in whatever capacity he may be to the authorities who have the powers to redress them. In the present case, there is no allegation that petitioners grievances were not related to his service conditions or that he used a language which may amounts to disrespect to Senior Officers or that he made uncalled for complaint against the management. The petitioner raised legitimate grievances to the higher authorities and that such a charge unless it was coupled with any malice or use of intemperate language in the representation cannot be said to be a misconduct, to be the basis of disciplinary action against the petitioner.

11. The third charge, which was alleged to be the most serious one by the Counsel for the respondent relates to instigating other staff not to accept the revised pay scale and to sign salary register. On the communication of this additional charge by letter dated 5th August, 1999, petitioner requested for the details of the revised pay scales, applicable from 1st April, 1999 with regard to all employees and copies of the written statement of Shri J.P. Srivastava, Accountant, Smt. Sheweta Mishra, PGT Mathematics. By his letter dated 25th August, 1999, the Principal communicated to him the pay scale, but did not provide either a copy or allowed inspection of wage register on the ground that it was confidential document. With regard to the statements, it was stated in reply that Enquiry Officer had allowed petitioner to inspect these documents.

12. Before the Court considers these submissions, it is necessary to look into the background. Pay scales of Teachers and staff of Air Force School were revised with effect from 1.4.12999 the Teachers and staff were required to give written undertaking on a printed proforma. The petitioner was apprehensive that the revised pay scales are not in accordance with U.P. Government, Government of India pattern and that the gross salary was being reduced. In these circumstances, the petitioner required that he may be informed with the pay scales applicable before he was required to accept the charges. Hew was accused of other Teachers not to accept revised pay scales and not to sign salary register. A salary register of a school could not be treated to be a confidential document.

The reason for not allowing inspection appears to be obvious. In the counter-affidavit of Squadron Leader S.K. Jaiswal, he has stated in Paragraph 2 as follows :

"2. School Managing Committee ( SMC) had revised the pay scales of Staff w.e.f, 1st April, 1999. Interim relief of 10% was provided to all staff w.e.f. 1st November, 1998. All staff members had accepted the revised pay scale except Mr. A.K. Pandey, He refused to give undertaking for not accepting pay and did not sign the salary register for the month of April, 1999. On 26th April, 1999, he discussed with the Chairman, S.M.C. regarding revised pay scales and new Contributory Provident Fund (CPF) Scheme. He was apprised that there has been 15% to 20% increase in overall pay. With regard to CPF, he was informed that contribution towards CPF has also been increased to 12% of Basic pay from the earlier existing 8.23% of Basic pay. The new Scheme is effective from December, 1998 with Commissioner, Provident Fund, Varanasi."

13. The aforesaid statement in Paragraph 2 of the counter-affidavit categorically states that all staff members had accepted revised pay scales except petitioner. It is also admitted that whereas there was some increase in over all pay, the compulsory deduction of C.P.F. was increased from 8.33% to 12% and the new Scheme of Provident Fund was effective from December, 1998. It is thus apparent that at time of introduction of revised pay scales, some clarification was required to be given to the Teachers and staff. All the staff members had accepted revised pay scales except petitioner. The written statements of complainants Shri J.P. Srivastava and Shweta Mishra, PGT Mathematics Teacher have been annexed to the counter-affidavit. The allegations in these statement is as follows :

"It is intimated that the last week of April, when the new revised pay scale was implemented w.e.f. 1st April, 1999, it was seen that Mr. A.K. Pandey TGT (SUPW) was insisting other staff not to sign the salary register and not to accept revised pay scale. Due to this 50% of staff did not sign. On 1st May, 1999, C.A.G.M.O. addressed to all the staff on revised pay scale. Then everybody signed except Mr. A.K. Pandey.

This is for your information please.

Sd/- J.P. Srivastava."

"I, Shweta Mishra, hereby state that I have been appointed as PGT (Mathematics) in the Air Force School, Bamrauli, w.e.f, 8th January, 1977.

In the month of April, I had witnessed that Mr. A.K. Pandey was instigating other Teachers on the issue of revised pay scale, as the result, many Teachers did not put their signature on the payroll of April month."

Sd/- "Shweta Mishra".

14. The aforesaid two statements show that the signatories of these statements

were not instigated by the petitioner and that the names of the other Teachers or members of staff who were alleged to have been instigated has not been given. The statements are merely hearsay and could not have been taken as the material against petitioner to conclude that he was instigating other Teachers not to sign the pay register whereas according to the statement of the Principal all other Teachers had accepted the revised pay scales.

15. From the aforesaid facts I find that whereas the first charge was not sufficient to have initiated disciplinary proceedings, second charge was wholly arbitrary and devoid of any substance, and that the third and last charge was not substantiated at all. It appears that the School is being run under strict discipline in which Teachers were also given over dose of discipline, taking away the legitimate rights of the employees to even raise their grievances. The Court finds that these actions by School Management towards its own staff were arbitrary and unreasonable.

16. In *Managing Director, ECU v. B. Karunakar* (1993) 4 SCC 776 Supreme Court has held that whereas the statute or statutory rules have graded power and authority to the Disciplinary Authority to impose either of the penalties enumerated; the facts, circumstances, the nature of imputation the gravity of misconduct, the indelible effect or impact on the discipline or morale of the employees the previous record or conduct of the delinquent and the severity to which the delinquent will be subjected to may, be some of the factors to be considered. They cannot be eulogized but could be visualised. Each case must be considered in the light of its own scenario. Therefore, a duty and responsibility has been cast on the disciplinary authority to weigh the pros and construction, consider the case and impose appropriate punishment. In a given case, if the penalty was proved to be disproportionate or there is no case even to find the charges proved or the charges are based on no evidence, that would be for the Court/the Tribunal to consider on merits, not as Court of appeal, but within its parameters of supervisory jurisdiction and to give appropriate relief.

17. In *B.C. Chaturvedi Vs. Union of India and others*, Supreme Court held that if punishment imposed by the Disciplinary Authority/Appellate Authority, except where it shocks the judicial conscience, in which case it can mould the relief either by directing the authority to reconsider the punishment penalty, imposed or in exceptional cases by itself imposing an appropriate punishment recording cogent reasons in support thereof

18. In the present case, I find that out of the three charges, the first and second did not mean even initiation of disciplinary proceedings and the third charge was not established at all. Although it has been stated that petitioner was given warnings, there was nothing to show that the petitioner's standard of teaching was not up to the mark, or the petitioner was subjected to any disciplinary proceedings in the past.

19. In the facts and circumstances of the case, without going into the allegations

of malafide, I find that the charges were not established against the petitioner. There was no allegation which could entail even a minor punishment against the petitioner. The writ petition is, accordingly, allowed. The impugned order dated 9.9.1999 (Annexure-24) to the writ petition passed by Principal/Sr. Education Officer, Air Force School, Bamrauli, Allahabad, dismissing the petitioner from service is set aside. A writ of mandamus is issued to the respondents to reinstate petitioner, with continuity in service and to pay him his entire arrears of salary and other consequential benefits.

20. In the facts and circumstances of the case, there shall be no order as to costs.