

(2007) 12 OHC CK 0042

In the Orissa High Court

Commissioner, Kendriya Vidyalaya Sangathan and Another

APPELLANT

Vs

Biswanath Paul and Others

RESPONDENT

Date of Decision : 19-12-2007

Acts Referred:

Citation : (2008) 105 CLT 502 : (2008) 1 OLR 358

Hon'ble Judges : N. Prusty, J;I.M. Quddusi, J

Bench : Division Bench

Judgement

I.M. Quddusi, J.—This writ petition has been filed on behalf of the Kendriya Vidyalaya Sangathan through Joint Commissioner (Administration), 18 Industrial Area, Saheed Jet Singh Marg, New Delhi and Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Pragati Vihar, Mancheswar, Bhubaneswar in the District of Khurda against the judgment and order passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 176 of 2003 setting aside the impugned order dated 2/3.5.2002 as also the appellate order and directing reinstatement of the opposite party No. 1 in service with all consequential service benefits.

2. The brief facts of the case are that while the Opp. Party No. 1, Biswanath Paul was working as PGT (Maths), Kendriya Vidyalaya, Lakhapani in the State of Assam, he was served with a memo by the Principal informing him that a written complaint has been received by him from few girl students of Classes VII, VIII and IX and their parents for his misbehaviour with the girl students and he was called upon to submit a written reply on 28.2.2002 stating therein why disciplinary action shall not be initiated against him under Article 81(b) of the Code of Kendriya Vidyalaya (in short "K.V.") and also he was warned for exhibiting a doubtful character/guilty of immoral behaviour towards girl students while discharging the routine duties in the Vidyalaya. He denied the allegation by filing his reply on 28.2.2002 stating that such an allegation was wild and incorrect, as his own daughter was studying in Class VII and that during his 17 years of service he had been respected as a teacher of high moral character.

Nonetheless, the Principal conducted an ex parte enquiry setting up a Committee of three lady teachers one of the teachers was Mrs. Gunjan Kumar, a contractual teacher, who had earlier approached the Opp. Party No. 1 when he was officiating as Principal, for a job, but he had spurned the request for the reason that she did not possess the requisite qualification. The report of the Committee was signed by the two lady teacher members of the Committee, namely Smt. J.B. Gogoi and Smt. S.G. Sood who submitted their respective report separately stating that the girl students had deposed before them that the Opp. Party No. 1 was behaving with them as their father though at times he used to slap them at their back, but that was only to encourage them in the class. The report of the other member (Smt. Gunjan Kumar), though submitted, was later withdrawn and not made available for consideration. Smt. J.B. Gogoi in her report observed that she was surprised and shocked to hear such an allegation all on a sudden and that "if they (girl students) had any problem they should have reported to the Principal immediately". The other member Smt. Sood, had observed in her report that was not possible to do "anything immoral among 22 students inside the class room". The Principal ordered another enquiry on 28.2.2002 with three members of the teaching staff, the earlier one being dated 27.2.2002. Another Committee, called, Court of Enquiry was set up with one Maj. Rohatas Kumar, the husband of the contractual teacher (Smt. Gunjan Kumar) and two other teachers by the Chairman, Vidyalaya Managing Committee (in short "VMC"). The Opp. party No. 1 was forced to attend the Court of enquiry where his signature was forcibly obtained on some blank papers and no statement of any aggrieved girl student was recorded in presence of the Opp. Party No. 1. Thereafter another enquiry was conducted on 16th and 17th March, 2002 at the instance of the Assistant Commissioner, Regional Office, Silchar, by a Committee consisting of three members headed by the Education Officer and two other members. That enquiry was also conducted in the presence of Maj. Rohtas Kumar. On 17.3.2002 when the enquiry was in progress, some girl students and their parents had submitted representation to the Principal that they had no allegation to make against the Opp. Party No. 1 who was a Mathematics Teacher of merit and who dealt with the girl students as his own daughters. It was the grievance of the opp. party No. 1 that the Principal did not take these representations into account nor were those brought to the notice of the enquiry committee. The Opp. Party No. 1 was also not allowed to participate in the inquiry nor was he given an opportunity to go through the statements of the so-called victims who said to have levelled allegations against him. He, therefore, submitted that the local authorities had taken undue advantage of the procedure for holding summary enquiry and had foisted baseless charges against him and in the end had thrown him out of service. Without any show cause, he was transferred out of K.V., Lakhapani to K.V., Dhanbad on 17.4.2002. Soon thereafter on 2/3.5.2002, the order of termination was passed by the Commissioner, KVS, which was communicated to him by the Principal, Kendriya Vidyalaya, Old DVS Building, Dhanbad to him on 8.5.2002, Thereafter, the petitioner preferred an appeal against the order of termination before the appellate authority, but that authority without application

of mind dismissed the same.

3. Being aggrieved, the opposite party No. 1 filed Original Application before the Central Administrative Tribunal, Cuttack Bench. Cuttack which was registered as O.A. No. 176 of 2003 against the order of termination of service passed under the Provision of Article 81(b) of the Education Code for Kendriya Vidyalayas which was communicated to him vide order dated 2/3.5.2002 for quashing the same as well as the appellate order dated 15.1.2003 and for a direction for his reinstatement of service with all consequential benefits. The Tribunal allowed the Original Application, set aside the impugned order with a direction to reinstate him in service from the date he was removed with all consequential benefits. However, liberty was granted to the petitioners to take such action as deemed necessary to correct the pattern of behaviour of the opposite party No. 1 in dealing with the students as a whole in the interest of harmonious student teacher relationship.

4. The Tribunal by allowing the Original Application of the opposite party No. 1 has held that not only inquiry was instituted against the opposite party in an arbitrary manner but it did not follow the procedure of inquiry as laid down in the K.V.S. Headquarters letter dated 24.1.2002. Neither the Principal nor the Regional Level Enquiry Committee were in possession of written complaint filed either by students or by any parents to initiate proceedings. The memo dated 27.2.2002 issued by the Principal to the opposite party No. 1 on receipt of telephonic instruction did not constitute a memo of charges as laid down for Vidyalaya Level Enquiry and a plain perusal of the memorandum reveals that the Principal before obtaining show cause reply from the opposite party No. 1 and before making any enquiry into the matter had come to the conclusion that the opposite party had exhibited a doubtful character/guilty of immoral behaviour towards girl students while discharging the routine duties in the Vidyalaya. The whole process started with the strong belief that the opposite party No. 1 was guilty of misbehaviour with the girl students and the inquiry was conducted to uphold that conclusion and, therefore, the proceedings were vitiated ab initio. Further the Principal instituted two enquiries in a span of two days, the first one consisting of three lady teachers, namely, Smt. J.B. Gogoi, Smt. S.G. Sood and Smt. Gunjan Kumar which enquired into the matter on 27.2.2002. The report of Smt. Gunjan Kumar was not available. However, Smt. Gogoi and Smt. Sood in their report had found the allegation not proved. The Committee had examined 15 students belonging to Classes VII, VIII and IX. This was followed by another Vidyalaya Level Enquiry conducted on 27.2.2002 and 2.3.2002. Simultaneously, on 28.2.2002 the Chairman, V.M.C. appointed a Court of enquiry consisting of Maj. Rohtas Kumar and two teachers of the Vidyalaya. After that the R.O. Level Enquiry was held. Nowhere explanation was available as to why the authorities had to convene two more enquiry committees over and above the prescribed Committee at Vidyalaya Level and R.O. Level and Army Level. It is not also clear as to why Army Officer was inducted to enquire into the disciplinary matter concerning Vidyalaya Teachers/officials, which was clearly without jurisdiction. It

is also not clarified why the report submitted by Smt. Gunjan Kumar was allowed to be withdrawn at the request of Maj. Rohatas Kumar. Some of the teachers have also gone on record to say how the army authorities had tried to put pressure on the teachers and other staff of the Vidyalaya with firm preconceived notion that some act of misbehaviour had taken place. No clear cut answer was available as to why Major Rohatas Kumar was so actively visible in the enquiries. Neither the Regional Level Enquiry Committee had clarified this point nor was this explained in the office file. The Tribunal further found that both the Vidyalaya Level Enquiry Committee and R.O. Level Enquiry Committee collected statements from the said girl students and two of the parents without reference to any allegation, There was also selectivity in calling the parents as witnesses. Only two parents/guardians were examined by the Vidyalaya Level Enquiry Committee. Those were the parents of the two of the girls out of 7 who in their statements had disclosed that opposite party No. 1 was in the habit of putting his hand on their back. This picking and choosing witness at will vitiates the proceedings. Further it was also noticed that when 15 students were examined on 27.2.2-002, all that came out during enquiry was that the opposite party No. 1 had either slapped or put his hand on their back although no motive was ascribed. Then during the course of enquiry some of them varied their statements further to the extent of saying that some times the opposite party's hand would touch their private parts from the side and this stand they maintained before the Regional Level Enquiry Committee. It is, however, admitted by the complaining girl students that they had not lodged any complaint even with their parents against the opposite party No. 1, and that such type of behaviour on his part was of recent origin. On the other hand, none of the boy students who were examined by the Regional Level Enquiry Committee had any complaint against the opposite party about his behaviour nor any one had noticed any immoral behaviour on the part of the opposite party No. 1 with their female classmates.

5. Sri Ashok Mohanty, learned Senior Advocate has submitted that Article 81(b) of the Education Code of Kendriya Vidyalaya provides "Wherever the Commissioner is satisfied after such a summary enquiry as he deems proper and practicable in the circumstances of the case that any member of the Kendriya Vidyalayas is prima facie guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student, he can terminate the services of that employee by giving him one month's or 3 month's pay and allowances according as the guilty employee is temporary or permanent in the service of the Sangathan. In such cases procedure prescribed for holding enquiry for imposing major penalty in accordance with CCS (CCA) Rules, 1965 as applicable to the employees of the Kendriya Vidyalaya Sangathan, shall be dispensed with, provided that the Commissioner is of the opinion that it is not expedient to hold regular enquiry on account of serious embarrassment to the student or his guardians or such other practical difficulties. The Commissioner shall record in writing the reasons under which it is not reasonably practicable to

hold such enquiry and he shall keep the Chairman of the Sangathan informed of the circumstances leading to such termination of services."

6. We could not understand as to why a number of Enquiry Committees were constituted and why an Army Officer conducted the enquiry. The Commissioner while passing impugned order of termination has held that employees of the Vidyalaya including the opposite party were given opportunity to be heard in person and their statements recorded by the Committee, but he opined that conducting regular enquiry and Departmental Proceeding under CCS (CCA) Rules, 1965 was neither feasible nor desirable in this case since it will cause immense, embarrassment and trauma towards the girl students who have already been traumatized by narrating their experiences to the members of the said committees and invoking the provision of Article 81(b) of the Education Code for Kendriya Vidyalaya terminated the services of the opposite party. However, in the appeal, the aspect of constitution of three committees which conducted the enquiry definitely was not considered.

7. In the case of Avinash Nagra Vs. Navodaya Vidyalaya Samiti and Others, , in similar circumstances Hon"ble Apex Court held that the girl students should not be exposed to the cross-examination and harassment and further publicity and correct decision was taken by the Director not to conduct any enquiry exposing the students and modesty of the girls and, therefore, dispensing with regular enquiry under the rules and denial of cross-examination were legal and not vitiated by violation of the principles of natural justice. However, in that case the statements were supplied to the delinquent and he was given opportunity to controvert the correctness thereof and a preliminary enquiry was also conducted by the Assistant Director who submitted his report. Similar view was also taken by the Hon"ble Apex Court in Director, Navodaya Vidyalaya Samiti and Ors. v. Babban Prasad Yadav and Anr. SLP (C) No. 9808 of 2002. In that case it was held that the pre-conditions under the rules (a) holding of a summary enquiry, (2) a finding in such summary enquiry that the charged employee was guilty of moral turpitude, (3) the satisfaction of the Director on the basis of such summary enquiry that the charged officer was prima facie guilty, (4) the satisfaction of the Director that it was not expedient to hold an enquiry on account of serious embarrassment to be caused to the student or his guardians or such other practical difficulties and (5) the recording of the reasons in writing in support of the aforesaid. All these do not take away the right of the delinquent to submit an explanation/representation after perusing the preliminary enquiry report holding him guilty of moral turpitude. Therefore, for this purpose, in our view, it was necessary to supply to O.P. 1 copy of the preliminary enquiry report along with the statements recorded/evidence collected during the enquiry.

8. In the instant case as the Tribunal has held that preliminary enquiry report was not supplied to the opp. party and the appeal was preferred without affording opportunity to peruse the preliminary enquiry report by the opposite party, we are of the opinion that the Tribunal should have quashed the impugned

order of termination and should have remitted the matter to the appellate authority with a direction to the instant petitioners to provide the copy of the preliminary enquiry report with liberty to file supplementary grounds on appeal before the appellate authority with a direction to the appellate authority to decide the appeal afresh.

9. In view of the above mentioned facts and circumstances, the writ petition is allowed in part. The impugned order passed by the Tribunal dated 29.4.2005 is quashed

10. However, we quash the order passed by the appellate authority rejecting the appeal and direct that the opp. party No. 1 shall be provided copy of the preliminary enquiry report, and it will be open for him to file a supplementary grounds in the appeal before the appellate authority within a period of one month from the date when the certified copy of this order becomes ready for delivery, if applied for by him within a period of one week from today, and the appellate authority shall decide the appeal afresh by a reasoned order taking into consideration the contentions and supplementary contentions raised by the opp. party No. 1 of the instant writ petition. No order as to cost.

N. Prusty, J.

11. I agree.