

(2015) 03 RAJ CK 0005
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6539/2012

Commissioner, Kendriya Vidyalaya Sangathan and Others	APPELLANT
Vs	
G.R. Sharma and Others	RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 03 RAJ CK 0005

Hon'ble Judges : Jaishree Thakur, J.; Govind Mathur, J.

Bench : Division Bench

Advocate : Avinash Acharya, for the Appellant; Manoj Bhandari, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. To question correctness of the judgment dated 18.3.2011 passed by Central Administrative Tribunal, Jodhpur Bench, Jodhpur in Original Application No. 246/2008, this petition for writ is preferred.
2. In brief, facts of the case are that the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Jaipur served a memorandum dated 17.12.2007 upon the petitioner as per provisions of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. As per the statement of articles of charge, the original applicant was found indulged in immoral behaviour with girl students of the Vidyalaya and that brought stigma to the institution and parents of the girl students. He also tarnished image of Kendriya Vidyalaya Sangathan and put the students and parents in a traumatic situation.
3. By another order dated 07.4.2008, the charge-sheet aforesaid was withdrawn due to administrative reasons. The Disciplinary Authority, however, under an order dated 19.11.2008 invoked authority under Article 81(B) of the Education Code of Kendriya Vidyalaya and called upon the original applicant to explain as to why he be not punished for exhibiting immoral behaviour towards girls students

of Class XI.

4. Pertinent to mention here that Article 81(B) of the Education Code provides for termination of service of an employee found guilty of immoral behaviour towards students. The provision aforesaid reads as under:--

"Where 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 Vidyalaya 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 three month's pay and allowances accordingly as the guilty employee is temporary or permanent in 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 embarrassment to 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.

Note : Wherever and as far as possible, a summary inquiry in the complaint of immoral behaviour by a teacher towards students of Kendriya Vidyalaya may be got investigate the Complaints Redressal Committee constituted in Regional Offices."

5. The respondent-original applicant, being aggrieved by the order dated 19.11.2008 preferred an Original Application before the Central Administrative Tribunal, Jodhpur Bench, Jodhpur, that came to be accepted by the judgment dated 18.3.2011 with following directions and orders:--

"(a) The impugned order dated 19.11.2008 (Annexure A/1) is hereby quashed and set aside as it is arbitrary, result of non application of mind and patent and latent illegality.

(b) We direct the authorities should issue charge-sheet against the present applicant as well as Shri P.K. Chandran, Principal and Shri V.K. Saxena, PGT (Physics), respectively, if action had already not been taken against them in respect to the incident covered by the preliminary enquiry report. The applicant shall cooperate with the enquiry in every way.

(c) The applicant shall be given an opportunity to cross examining the necessary persons who are witnesses and whose statements the authorities propose to rely upon.

(d) We also make it clear that the institutional integrity and the teachers' character must be above reproach, and while instituting and concluding the proceedings, these facts shall be ever in the mind of the authority.

(e) We note with concern, the Supreme Court judgments wherein the Hon''ble Supreme Court had distinguished the punishment proposed to be imposed on a clerk in an organization and a teacher in educational institution as they would naturally be in view of respect and trust which teachers hold in the society, there should be a difference in proportion of punishment if found necessary for a teacher or any similarly situate person.

(f) Till the enquiry is completed and the applicant is exonerated, he cannot come to same school on transfer also.

(g) The interim order issued in this case earlier on 03.12.2008 by this Tribunal will stand dispensed with."

6. In the instant petition for writ, while challenging the order aforesaid, the argument advanced by learned counsel for the petitioner is that the Kendriya Vidyalaya Sangathan under Article 81(B) of the Education Code empowers Commissioner of the Sangathan to decide misconduct pertaining to immoral sexual behaviour with the students by adopting summary procedure and by ignoring regular procedure of enquiry as given in the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and in the case in hand the Tribunal failed to appreciate guilt of the original applicant for moral turpitude involving sexual offence or exhibiting of immoral sexual behaviour towards a student and that warranted invoking of authority as per Article 81(B).

7. While meeting with the argument advanced, learned counsel for the respondent-original applicant submits that the Tribunal after examining entire record available arrived at the conclusion that the instant one is not a case fit to invoke the authority as per Article 81(B) of the Education Code. To substantiate the argument, he has placed reliance upon the findings given by the Preliminary Enquiry Officer.

8. Heard learned counsel. To examine merits of the arguments advanced, it shall be appropriate to notice that at the first instance the appellant choose to initiate regular disciplinary proceedings against the original applicant and before doing so, a preliminary enquiry was conducted. In this inquiry, the Enquiry Officer observed as under:--

"However, there is possibility of a conspiracy against the alleged Shri G.R. Sharma because of following reasons:--

(i) There is no signature of any student or teacher on the complaint given by students of Class XI to the Principal on dated 5/10/2007 through Shri V.K. Saxena, PGT (Physics) (as per statement of Principal)

(ii) The students have not given details of any particular incidence with date and time.

(iii)As per the statement of the alleged, about two months before a drink party was arranged in Computer Lab alongwith students of Class XII and matter was

reported to the Principal by Shri G.R. Sharma.

(iv) Incident of watching "Ashleel CD" by some students of Class XI namely Km. Manju, Km. Jyoti, Km. Harpreet was reported by Shri G.R. Sharma to the Principal, about which there had been discussion in PTA meeting of Class IX and XI in front of Col. Rangra, Chairman, VMC and the same has been confirmed by the Chairman, Col. Rangra personally to the members of the enquiry committee during his discussion. But nothing was reported/submitted to the inquiry committee in respect of action taken by the Principal against the Computer Instructor who was responsible for running of Ashleel CD in Computer Lab. When the matter came to the notice of the Inquiry Committee, Smt. Santosh Mirdha, Education Officer, instructed the Principal to remove Shri Kanta Ram Gaur, Computer Instructor on contract basis with immediate effect on 15/10/2007 (copy of the termination order enclosed).

(vi) Mr. G.R. Sharma was against the admission of Km. Manju, due to poor percentage of Kum. Manju who failed in II Unit also.

(vii) She was also scolded by Shri G.R. Sharma for mishandling microscope in Bio. Lab.

(viii) The matter of sexual harassment of Km. Arti by Shri G.R. Sharma was reported on closing of Hindi Week to the Principal by Shri Saxena and Arti herself, but neither this matter was reported nor action was taken by Principal.

(ix) As per statements of girl students, Shri G.R. Sharma is in has immoral behaviour with the girl students. But the matter came to the knowledge only after the exposure of drink party and CD episode by Shri G.R. Sharma.

CONCLUSION

1. The students have not given the details of any particular incidence with date and time.

2. However, the Committee is of the opinion that the general behavior of Shri G.R. Sharma, PGT (Bio.), KV Banar, Jodhpur in discharging his duties towards the children is doubtful.

3. Parawise comments of the Principal may be asked on the allegations leveled against Principal by Shri G.R. Sharma in his statement.

4. As per observation the inter rivalry exists between the Science PGT's due to one or the other reason as reflected in the statement of Shri V.K. Saxena, PGT (Phy) and Shri G.R. Sharma, PGT (Biology)."

9. It is also pertinent to notice that in a report of enquiry conducted on 17/18.1.2008 at Kendriya Vidyalaya, Banar, Jodhpur into the complaint made against the respondent-original applicant about his involvement in the misconduct involving moral turpitude following observations were made:--

"Committee view regarding the complaint

1. As per statements of the girl students, misconduct by Sh G R Sharma appears to have had taken place in the past. However, the matter seems to have been brought to the notice of the Principal only on inquiring by Sh V.K. Saxena about Sh G R Sharma from the girls students at his place of tuition, who narrated their past experience regarding moral turpitude by Sh G R Sharma, and then the matter was reported to the Principal by Sh V.K. Saxena. In turn the Principal called girls to his chamber and asked the girls to give their statements in writing. On the basis of statements of the girl students (specially Km. Manju and Km. Harpreet Kaur, Class XI) the act of moral misconduct by Shri G R Sharma seems to have taken place in the past (page 87 and 98).
2. The statement of other students regarding moral turpitude against Sh G R Sharma appears to be of hearsay nature.
3. On analyzing the statements of the students Sh G R Sharma and Sh V.K. Saxena there appears a tuition rivalry between Sh G R Sharma and Sh V.K. Saxena and the girl students may have become victim of the same.
4. As per statements of the Principal K.V. Banar, Sh G R Sharma frequently remained on leave without prior permission.
5. Principal neither informed the local management about the visit of two outsiders on 4th October, 2007 who threatened him about the man handling of the staff nor the matter was brought to the notice of Assistant Commissioner, KV (RO), Jaipur while reporting the issue.
6. Principal, KV, Banar, Jodhpur had received two complaints dated 5th October, 2007, one signed (made against Mr. K.R. Gaur, Computer Teacher) and another unsigned (made against Mr. G.R. Sharma, PGT (Bio) by the girl students of the same class. However, action was taken by the Principal on undersigned complaint and no action was taken on signed complaint.
7. Students were watching Ashleel Pictures (page 17) on Computer in Computer Lab. but no action was taken by the Principal against Computer Teacher Sh. K.R. Gaur.
8. As per the statement of students Shri V.K. Saxena also seems to have indulged in tuition (page 127, 128 statements of complainants).
9. Role of Mr. V.K. Saxena, PGT (Phy.) exposes his malafide intention against Sh G R Sharma."
10. As already stated Article 81(B) of the Education Code empowers the Commissioner on being satisfied after a summary enquiry, as he deems proper and practicable in the circumstances of the case, if any member of the Kendriya Vidyalaya is prima facie guilty of moral turpitude involving sexual offence or exhibiting of immoral sexual behaviour towards any student, he can terminate the services of that employee by giving him one month's notice or three month's pay and allowances. In such case, the procedure prescribed for holding

enquiry for imposing major penalty in accordance with Central Civil CCS (CCA) Rules, 1965 as applicable to the employees of Kendriya Vidyalaya Sangathan is not required to be adhered provided the Commissioner opines that regular enquiry shall not be appropriate on account of embarrassment to student or his guardians or such other practical difficulties.

11. A plain reading of Article 81(B) of the Education Code makes it clear that the Commissioner is required to arrive at a satisfaction that the holding of enquiry shall cause embarrassment to the student concerned or her parents.

12. In the case in hand from perusal of the report given by the Preliminary Enquiry Officer and by the Committee constituted by Kendriya Vidyalaya Sangathan, it is apparent that there was a possibility of involving the original applicant in the case because of certain extraneous consideration.

13. There was some rivalry between two groups and apprehension was there for making false accusation. No material is available on record to arrive at a definite conclusion to reach at a satisfaction needed to invoke Article 81(B) of the Education Code. Looking to this aspect, the learned Central Administrative Tribunal considered it appropriate to set aside the order passed by the Commissioner invoking authority under Article 81(B) of the Education Code.

14. Having considered all aspects of the matter in light of the discussion made above, we are in agreement with the findings arrived at by the Tribunal and, as such, no interference of this Court is called for while exercising authority under Article 226 of the Constitution of India. The writ petition is dismissed accordingly.