

(2015) 07 KAR CK 0366

In the Karnataka High Court

Case No : Writ Petition No. 85353/2013 (S-CAT)

D.J. Rathod

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2016) 1 AKR 150 : (2016) LabIC 687

Hon'ble Judges : Ravi V. Malimath, J;P.S. Dinesh Kumar, J

Bench : Division Bench

Advocate : H.M. Dharigond, for the Appellant

Final Decision : Dismissed

Judgement

P.S. Dinesh Kumar, J—The petitioner, in this writ petition has challenged order dated 5.3.2013 passed by the Central Administrative Tribunal, Bengaluru Bench, Bengaluru ["Tribunal" for short] dismissing O.A. No. 266/2011.

2. Brief facts of the case are, petitioner was working as Teacher [TGT (Bio)] in Kendriya Vidyalaya, Belgaum Cantt. Parents of Kumari. Devi Kulkarni, a student of Class VIII "C" of Kendriya Vidyalaya (School), No. 2, Belgaum Cantt., where the petitioner was working as a teacher lodged a complaint on 15.3.2010 contending inter alia that the petitioner had sexually harassed their daughter. Based on this complaint, the Principal of the School reported the matter to the Chairman of Vidyalaya. The matter investigated through a Preliminary Inquiry Committee ["PIC" for short] at the Vidyalaya level and its report was submitted to KVS Regional Office, Bengaluru. In preliminary report, the petitioner was found prima - facie guilty of moral turpitude involving to sexual harassment towards Kumari Devi Kulkarni. On receipt of PIC, the Assistant Commissioner, KVS Bengaluru placed the petitioner under suspension w.e.f. 1.4.2010 and constituted a Summary Inquiry Committee ["SIC" for short], which conducted an inquiry on 19.4.2010 & 20.4.2010 and submitted its report, wherein, the petitioner was held guilty of moral turpitude. The Commissioner after examining

the case came to the conclusion that it was not expedient to hold a regular inquiry as it would cause embarrassment to the victim girl and her parents and accordingly decided to initiate action in terms of Article 81(B) of the Education Code for Kendriya Vidyalayas. Accordingly, a show cause notice dated 9.8.2010 was issued in compliance with the procedure laid down by the Hon"ble Supreme Court in C.A. No. 14525 of 1996 (Avinash Nagra v. Navodaya Vidyalaya Samiti & Ors) and the same was replied by the petitioner on 3.9.2010. On consideration of the material on record, the Commissioner came to the conclusion that the petitioner was guilty of the charge and dispensing with a regular inquiry passed an order dated 22.12.2010 terminating the services of the petitioner in terms of Article 81(B) of the Education Code. The petitioner unsuccessfully challenged the order of termination in an appeal before the Vice Chairman, KVS (Appellate Authority). Thereafter, the petitioner filed an Original Application before the Tribunal contending inter alia that he found Kumari. Devi Kulkarni copying in the examination and though he warned her not to copy, she continued the malpractice and he snatched the answer paper from her and reported the matter to the Teacher-in-charge of the examination. After the examination, the victim girl had whispered to the petitioner that she would take revenge against him. Subsequent thereto, the Principal issued a Memorandum dated 18.3.2010 advertng to the complaint and called upon him to submit his reply by 19.3.2010. The Principal had informed the petitioner vide office order dated 19.3.2010 that an inquiry would be conducted on 20.3.2010 and the petitioner was directed to be present in the said inquiry. Though the petitioner attended the inquiry, his statement was not recorded. The Assistant Commissioner by order dated 30.3.2010 constituted an SIC consisting of (1) Shri E.T. Arasu, Education Officer, KVS RO, Bangalore, (2) Smt. Anu Thomas, Principal, KV, IISC, Bangalore and (3) Smt. Gayathri Devi, Vice Principal, KV No. 2, Belgaum, Cantt, to hold an inquiry as per Article 81(B) of the Education Code. The said Committee instead of inquiring into the charge of sexual harassment to Kumari. Devi Kulkarni, referred about 50 allegations made by about 130 students and thereby went beyond the charge against the petitioner. The Committee also recorded depositions of students studying in various classes. After the inquiry, the petitioner was called upon to explain as to why he should not be terminated from service and he submitted his explanation on 28.8.2010. The Commissioner relying on the findings of the inquiry, terminated the services of the petitioner vide order dated 22.12.2010. His appeal against the order of termination also resulted in dismissal vide order dated 2.5.2011. With the above averments, the petitioner contended before the Tribunal that the procedure adopted by the Committee holding SIC was contrary to law as the committee expanded its scope by recording statements of the other students and no opportunity was given to the petitioner to cross - examine the witnesses. Therefore, the entire inquiry was vitiated and accordingly, the penalty imposed in terms of such vitiated inquiry was liable to be set aside.

3. The respondent resisted the application contending inter alia that it was not

expedient in the facts and circumstances of the case to order an inquiry into CCS (CCA) Rule, 1965 ["Rules" for short] as it would not only cause embarrassment and humiliation to the victim but would cause a stigma on the character and image of the girl child besides causing trauma during examination and cross - examination to the minor girl child. In such circumstances, the petitioner was dealt with provisions contained in Article 81(B) of the KVS Education Code. The respondents also sought to sustain their contentions by placing reliance on the Judgment of the Hon"ble Supreme Court in C.A. No. 14525 of 1996 (Avinash Nagra v. Navodaya Vidyalaya Samiti & Ors) and a Judgment of this Court in W.P. No. 3535/2002. According to the respondents, the copying episode was a figment of imagination of the petitioner. In the Summary Inquiry, the petitioner replied in a very evasive manner when he asked to explain as to why he did not report the matter to the Principal and sought 5 days" time to appoint a Defence Counsel. In sum and substance, the respondents" case before the Tribunal was that the inquiry was conducted in accordance with law in a transparent manner. Insofar as permitting other students to give vent to their allegations against the petitioner, the respondents have contended before the Tribunal that in order to get an impartial idea of the general conduct of the petitioner, a cross section of students of Kendriya Vidyalaya were involved in the inquiry. According to the respondents, the petitioner was a habitual offender and therefore, the order of termination was just and proper.

4. The Tribunal after considering the material on record and advertent to various judicial pronouncements came to the conclusion that the respondent - authority had acted not merely on the solitary complaint but taken into account several acts of misconduct on the part of the petitioner relating to sexual harassment to number of girl pupils as was brought out in the report of the three members SIC. The Tribunal held that it was too much to accept the contention of the petitioner that all of them would have been tutored or all the students may have ganged up against the petitioner to implicate him in a false case. The Tribunal has recorded a finding with regard to petitioner"s misdeeds, which reads as follows:-

"The applicant was found to be in the habit of (a) touching the students on their back, back side, hands, wrist and shoulders, of sexual nature, (b) indulged in giving corporal punishment to children which ranged from beating, hitting, slapping on the face, back, hands and head, and asking them to stand on one leg outside the class room, and (c) exhibited a strange behavior of asking the students to recite "Om Rathodaya Namaha". The large number of complaints have been tabulated on pages 21-24 of the Report of the SIC."

On consideration of material on record, the Tribunal rejected the application. Hence, this writ petition.

5. We have heard Sri H.M. Dharigond, learned Counsel for the petitioner and Sri Ravi Hegde, learned Counsel for respondent No. 5 and perused the material papers appended to the writ petition.

6. This is a petition filed invoking extra-ordinary jurisdiction of Article 226 and the supervisory jurisdiction of Article 227 of the Constitution of India. Adverting to the grounds, it is urged on behalf of the petitioner that the dispensing with the inquiry under Rules and holding an SIC is bad in law. Learned Counsel for the petitioner strongly contends that the said Committee has referred to various allegations against the petitioner and given a finding on extraneous material which are not subject matter of inquiry. Therefore, the inquiry is vitiated. Consequently, the penalty imposed upon the petitioner is unsustainable.

7. It is further contended by the learned Counsel for petitioner that the Summery Inquiry Committee did not have any authority to examine the previous conduct of the petitioner to record depositions of students studying in various classes. According to the learned Counsel, the recording of evidence of various students and accepting their complaints was beyond the scope of inquiry and the committee exceeded in its power. Learned Counsel submits that the respondent-authorities erred in resorting to exercising provision of Article 81(B) of the KVS Education Code by dispensing with a proper inquiry under Rules on the ground that the victim girl may face embarrassment. Therefore he submits that the order of penalty so also the order passed by the tribunal are unsustainable in law and prays for allowing this petition.

Per contra, learned counsel for respondent supports the impugned order and prays for dismissal for petition.

8. The case on hand involves a complaint of sexual harassment by the parents of a minor girl, aged about 13 - 14 years and whereas the petitioner was aged about 49 years at the material point of time. Considering the sensitive nature of the case, the school authorities have resorted to SIC instead of holding an inquiry under CCA Rules. The said Committee consisted of Principal, Vice Principal and Education officer of Kendriya Vidyalaya. Thus, the Committee was consisting of senior and responsible officers of Kendriya Vidyalaya. Exposing a child of such tender age to a full-fledged inquiry under Rules would have most certainly caused immense trauma to the child during examination and cross - examination. Therefore, the decision of the respondents - School to resort to SIC by the three members Committee was just and appropriate in the facts of the case.

9. Insofar as the ground that the evidence of other students studying in various classes was recorded and that the same is beyond the scope of the inquiry, we are of the view that having regard to the nature of allegations against the petitioner, no error is committed in collecting evidence in a fair and transparent manner. The allegation against the petitioner was a serious one which would traumatize any girl child studying in the Schools and endanger tranquility in the School. Sexual harassment to the girls of tender age may lead to disastrous consequences and will have a toll of the Society. In the circumstances, we hold that permitting other girls studying in various classes to depose would not adversely affect the petitioner in any manner and on the other hand aid the

employer in taking an appropriate decision while passing the penalty order.

10. Insofar as the quantum of punishment is concerned, the management has taken action in accordance with Article 81(B) of the Education Code, which reads as follows:-

81(B) - Termination of Services of an employee found guilty of immoral behavior towards students

Whenever 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 of exhibition of immoral sexual behavior towards any student, he can terminate the services of that employee by giving him one month's notice or 3 months pay and allowances accordingly 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."

In terms of the above provision, if a member of Kendriya Vidyalaya is "prima - facie found guilty of moral turpitude", his services can be terminated. In the instant case, the Committee had the benefit of deposition of various students studying in various classes in addition to the complaint by parents of Kumari Devi. The findings recorded in the inquiry report of the three member Committee is abhorring. The Committee has taken pains in classifying various allegations against the petitioner and different kinds of harassment suffered by the students. The details of harassment include beating, slapping, beats on the backside and telling the girl child that he beats her with love, beating on the head and cheek, taking photographs of the girls in the mobile phones, blackmailing, pushing, pulling the hairs, tickling or misbehaving, putting hand on the back, calling names and asking the children to recite "Om Rathodaya Namaha". Depositions of 17 girls of Class VII "C"; 20 girls of Class VIIIB; 16 girls of Class VIII D and 16 girls of VIIIE were recorded by the committee. In all, 69 girls have deposed before the SIC.

11. The brief background of the case recorded in the report reads as follows:-

(iv) During the course of invigilation, Mr. D.J. Rathod "misbehaved" with Kum. Devi Kulkarni. She detailed the "misbehaviour" as (a) putting his hand on her shoulder and forcing it in to touching and crushing her breasts and (b) rubbing his private part on her hand/shoulder. Ku. Devi Kulkani "confided" the

"misbehaviour" of Mr. D.J. Rathod to two of her friends, namely, Ku. Priyanka and Ku. Sonia of her class, and as per their "advice", informed it to Mr. Prakash Patil, TGT (S.St.) her Class teacher. Kum. Devi Kulkarni told "everything excepting Mr. Rathod rubbing his private part on her, which she told only to her mother. Mr. Prakash Patil, in turn told all of what she said to Mr. Memon, TGT (Maths). Mr. Memon advised the girl to forget all as an accident. The girl said it was difficult to forget and Mr. Prakash Patil advised her to tell what happened to her to the Principal."

12. The gist of reply of petitioner is recorded as under:-

"In his reply to the memo, addressed to the Principal, Mr. D.J. Rathod alleged that on 15.3.2010, during his invigilation, one girl repeatedly involved in malpractice and hence took back the paper from her for some time. He further alleged that the girl told him that if the paper was not given back to her, she would complain against him. Mr. D.J. Rathod did not report the matter in writing either to the Exam Department or to the Principal."

13. In the backdrop of findings recorded by the SIC and deposition of large number of girl pupils aged between 13 - 14 years studying in VII & VIII classes, in our considered view, there is no error in the penalty order passed against the petitioner. A teacher in our country is placed at a very high pedestal from time immemorial. His order of precedence in the hierarchy of "most revered" is at Sl. No. 3 after mother and father. Every parent nurtures a wish to see their child to blossom as a bright student and grow as a good citizen of the country. The incident of the like nature would ruin the career of a child and particularly a girl child. Parents reposing utmost confidence leaves the child in the hands of the teachers in School for the major part of the day. Teachers are expected to maintain high degree of rectitude. The material on record discloses that the petitioner's conduct is unbecoming of a teacher. The petition is devoid of merits and stands dismissed.

14. In the facts and circumstances of the case and keeping in mind the nature of the offences committed, we were inclined to direct the jurisdictional police to initiate proceedings under the Indian Penal Code for the aforesaid acts. However, the authorities in the present case, were of the view that it would not be in the interest of the victim in exposing her to the public glare by various proceedings. To punish the accused on the one hand and to protect the interest of the victim on the other were two contingencies before us for consideration. Therefore, keeping in mind the view of the authorities, we opt the latter, we refrain from directing the jurisdictional police to initiate action in the larger interest of the victim in order to ensure that she is not harassed in any manner.