

(2019) 01 DEL CK 0040

In the Delhi High Court

Case No : Civil Writ Petition No. 8030 Of 2012

Harcharan Singh

APPELLANT

Vs

Director Of Education And Ors

RESPONDENT

Date of Decision : 10-01-2019

Acts Referred:

Delhi Education Rules, 1973 — Rule 117, 118, 120, 123
Delhi School Education Act, 1973 — Section 8(3), 8(4), 11
Evidence Act, 1872 — Section 65B

Citation : (2019) 256 DLT 705 : (2019) 173 DRJ 249

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Virender Goswami, Soni Singh, Shamik Saha, Kanishk Rana, Rao Abdul Ahad Khan, K. P. Sundar Rao, Sanjeev Kumar Jha, Latika Choudhary

Final Decision : Allowed

Judgement

1. The petitioner vide the present petition seeks quashing of the impugned order dated 30.10.2012 of Delhi School Tribunal in Appeal No. 78/2012. Consequently, quashing the impugned order dated 20.10.2010 passed by the Disciplinary Committee.

2. The case of the petitioner is that he joined respondent School as Fee Clerk and thereafter promoted up to UDC and at the relevant time he was working as Head Clerk. On 9.10.2009 the School Authority informed the petitioner that they had received a complaint dated 5.10.2009 from one Vinay Kumar Yadav, another employee of respondent School that the petitioner had sent some SMS by computer through Vinay Kumar Yadav's mobile to Smt. Bimla Devi employee of respondent School. Accordingly, issued show cause notice to the petitioner on 9.10.2009. The petitioner replied on 9.10.2009 and denied the allegations. Thereafter, the respondent issued show cause notice and the same was replied by the petitioner vide his reply dated 11.10.2009. Vide order dated 14.01.2009 the respondent suspended the service of the petitioner and initiated disciplinary

proceedings. The petitioner being aggrieved, filed an appeal No. 65/2009 u/s 8(4) r/w Section 11 of Delhi School Education Act, 1973. Thereafter, the school authority issued another letter on 22.10.2009 and called the petitioner to appear in person before the Sexual Harassment Committee of the school. The petitioner replied to the letter dated 22.10.2009 and denied the allegations. The charge sheet in the form of Memorandum was issued to the petitioner on 13.01.2010 by the Disciplinary Committee of the respondent school. On 17.02.2010 the petitioner wrote a letter to Mr. Inder Singh, Member of Disciplinary Committee and Ex Chairman of Guru Nanak Public School mentioning the aforesaid facts and requested to provide the following documents:

- i) Copies of the printouts of SMS taken from the computer of Mrs. Harvinder Kaur.
- ii) Voice recorded statements of all persons involved.
- iii) Statement of telephone details of Mrs. Bimla's mobile phone where the SMS were received.
- iv) The hard Disc of Mrs. Harvinder Kaur's computer from where the SMS were sent was allegedly sealed.
- v) Details of Additional emoluments and benefits, if any, given to the witnesses till the period of 14.10.2009 and thereafter."

3. On 26.04.2010 the Chairman of the respondent School appointed Mr. M.P. Chowdhary as the Presenting Officer and Shri S.S. Sharma as the Inquiry Officer to proceed against the petitioner. Vide notice dated 27.04.2010 the respondent no.3 directed the petitioner to appear before him on 05.05.2010 at 2.30 pm. Accordingly, the petitioner appeared and requested that he be supplied with the relevant documents sought in letter dated 17.02.2010. However, vide order sheet no. 1 dated 05.5.2010, the Inquiry Officer furnished the details of the proceedings but did not pay any heed to the request of the petitioner for supply of the documents mentioned in the letter dated 17.02.2010. The Inquiry Officer again directed the petitioner to appear before him on 13.05.2010. On the said date, the petitioner again requested to supply the documents mentioned in the letter dated 17.02.2010 and thereafter reiterated the same by giving another letter on 13.05.2010 to the respondent no.3. Vide daily order sheet dated 13.05.2010, the Inquiry Officer directed the Presenting Officer to supply the documents as asked by the petitioner before the next date of hearing i.e. 18.05.2010. Out of all the documents as requested by the petitioner in letter dated 17.02.2010, only one i.e. the copy of the print outs of SMS were provided to the petitioner. Neither the voice recorded statement provided nor any attempt was made to seal the hard disc of Ms. Harvinder Kaur's computer which was the most important evidence in the present matter. The copies of SMS on the basis of which allegations were levelled against the petitioner, thus were provided for the first time during the proceedings on 18.05.2010. Vide letter dated 21.05.2010 the petitioner wrote a letter to the Inquiry Officer, by stating that none of the relevant documents were supplied and instead five pages of fabricated computer

print outs were given to him.

4. Learned counsel appearing on behalf of the petitioner submits that the whole case or allegations were made against the petitioner on the basis of allegations of sending vulgar SMS to the mobile of Bimla Kumari through the mobile of Vinay Kumar Yadav via internet and none of the aforementioned piece of evidence were sealed to preserve the evidentiary value of the same. Further, the petitioner repeatedly requested the Inquiry Officer to supply the documents, starting from letter dated 17.02.2010, so that the petitioner would be able to prepare his defence. But no response.

5. Learned counsel for the petitioner further submits that as per the report of Sexual Harassment Committee there was no finding against the petitioner as such, therefore the departmental proceedings initiated against the petitioner was mala fide, arbitrary and unreasonable. Vide letter dated 24.05.2010, the petitioner informed the Inquiry Officer that out of the five documents requested by him only two documents were supplied to him. Copies of print outs of SMS that were being supplied to him, there was no evidence to show that the same were procured from the hard disc of Harvinder Kaur's computer. Vide order dated 28.06.2010, the Inquiry Officer closed the inquiry. Vide letter dated 29.06.2010, the petitioner again requested the Inquiry Officer to let the petitioner lead the defence witness for a fair and impartial inquiry and to prove that the whole case is based on false and fabricated story, however, not allowed.

6. Counsel for the petitioner submits that throughout the inquiry proceedings the petitioner was pressurized and not given proper opportunity to lead the defence evidence. Being aggrieved, the petitioner filed an appeal before the Tribunal against the order dated 28.06.2010 and 3.7.2010 passed by the Inquiry Officer. The said appeal was disposed of vide order dated 27.07.2010 directing the Inquiry Officer to allow the petitioner to lead the defence evidence. Thereafter, the Inquiry Officer wrote a letter dated 30.07.2010 asking the petitioner to be present before him on 4.8.2010 but, on that day the Inquiry Officer suddenly informed the petitioner that he had already submitted the inquiry report on 20.07.2010.

7. Learned counsel further submits that despite the direction of the Tribunal and despite filing of the evidence by the petitioner, the Inquiry Officer wilfully, deliberately and intentionally disobeyed the order of the Tribunal and had manipulated the facts by stating that he had already submitted the inquiry report on 20.07.2010. The petitioner was never cross examined and the evidence by way of affidavit has gone un-rebutted. Even otherwise, non compliance of the order had caused great prejudice to the case of the petitioner and the Inquiry Officer had submitted an additional report dated 4.8.2010 which shows that the Inquiry Officer has ignored prosecution witnesses.

8. Thereafter, the petitioner filed a contempt application on 25.08.2010 before the Tribunal. The learned Tribunal granted stay with respect to any order in the

light of the report submitted by the Inquiry Officer.

9. Learned counsel submits that the Disciplinary Committee deliberately avoided service of notice of the contempt application and in an emergency meeting conducted just one day before the hearing of the matter i.e. 6.09.2010 passed order of dismissal of the petitioner, in complete disregard of the fact that the matter was pending before the Tribunal and there were specific orders of taking defence evidence on record. Thereafter, the petitioner vide order dated 20.09.2010 of the Tribunal was asked to present his witnesses on 23.9.2010. The petitioner replied on the same date and presented himself for the evidence and also submitted a letter signed by the teachers of respondent School who wanted to give evidence on behalf of the petitioner. The Inquiry Officer rejected the plea of the petitioner and did not allow anyone else other than the petitioner to lead evidence.

10. Counsel for the petitioner submits that the petitioner was asked to submit his brief within five days instead of 15 days as prescribed by the statute, which was submitted by the petitioner on 8.10.2010. However, the Disciplinary Committee passed the dismissal order dated 20.10.2010. Being aggrieved the petitioner filed appeal under Section 8(3) read with Section 11 of the Delhi School Education Act, 1973. Same was dismissed vide order dated 30.10.2012. Hence the present petition.

11. Counsel for the petitioner submits that during final arguments, the Tribunal took a view that opinion of Computer Expert would be required. Therefore, with the consent of counsel for the parties, Mr. Pawan Duggal, Advocate was appointed as Expert in the matter vide an order dated 7.2.2012 and who filed final report dated 7.3.2012, thereby categorically stated that evidence as produced by respondent nos.2 and 3 is not reliable as per Section 65B of Indian Evidence Act. The respondent nos.2 and 3 also filed cross objections to the said report dated 7.3.2012. Thereafter, on 22.05.2012 the matter was reserved for orders by the Tribunal and the order was pronounced on 30.10.2012 about 5 months thereafter.

12. Learned counsel submits that the learned Tribunal failed to appreciate the fact that the material witnesses were not examined by the Inquiry Officer. Earlier plea of the petitioner to lead the defence evidence was totally ignored and disallowed by the Inquiry Officer and only after the petitioner approached the Tribunal the defence evidence was allowed to be led. Since, the order was misinterpreted by the Inquiry Officer that the opportunity was given to lead evidence to the petitioner only, disallowed any other witnesses to be examined, in fact is against the principles of natural justice.

13. Thus, the learned Tribunal has erred in holding that the petitioner had not pointed out any occasion where the Inquiry Officer has failed to follow the principles of natural justice despite the fact that when the petitioner was not allowed to lead the defence evidence, he approached the Tribunal and only

thereafter, the petitioner was allowed to lead his evidence, however not permitted to lead the defence evidence in his favour.

14. Learned counsel for the petitioner submits that provisions of Rule 120 of Delhi Education Rules, 1973 are mandatory to be followed in allegations of stigmatic nature and where the grave punishment of removal from service is there. Disciplinary Authority has only reproduced the report of the Inquiry Officer without there being any finding given by it, is in violation of provisions of Rule 120 of the Delhi School Education Rules, 1973. Despite, learned Tribunal has held that the Disciplinary Authority considered the finding of the Inquiry Officer and gave its own finding, is contrary to records of the case.

15. It is further submitted that the act of sexual harassment is an act of allegation of serious misconduct by an employee in any organization. The said allegations were never proved by the prosecution against the petitioner and mere averment in that regard could not be held guilty to the petitioner. The Tribunal failed to appreciate that Smt. Bimla Devi did not file the complaint and not examined during entire investigation. Moreover, her friend, a fellow employee who was examined has denied the allegation of sexual harassment against the petitioner. In addition, Tribunal has ignored the report of expert. The prosecution was unable to demonstrate that password was known to the petitioner or that while accessing to "way2sms.com" the account was opened by Vinay Kumar Yadav earlier which somehow came to the knowledge of the petitioner. The learned Tribunal has purely gone on assumptions while considering the factor of misusing and sending the SMS through the site mentioned above.

16. It is further submitted that the Tribunal failed to appreciate that it was not the case of the prosecution that the mobile phone of Vinay Kumar Yadav, which was used in the entire episode, either shared the password with the petitioner or the petitioner generated a fresh password. It is in the evidence of Vinay Kumar Yadav that Bimla Devi had called him, while he was away from school, to find out why he was messaging the alleged messages. However, in the order, the Tribunal has misinterpreted entire evidence of Vinay Kumar Yadav and has recorded that it has come on record that Vinay Kumar Yadav at the relevant time was not present in the office and had left his mobile. Whereas, Vinay Kumar Yadav in his evidence specifically stated that the mobile was with him and he received a call from Bimla Devi that why he was sending messages to her. Thus, it is proved that the mobile phone which belongs to Vinay Kumar Yadav was with him only and without that phone the messages could not have been sent through computer. It is also not on record that computer was in power and possession of the petitioner or that the petitioner had control over the computer.

17. Learned counsel further submitted that Tribunal failed to appreciate that the show cause notice dated 9.10.2009 pertains to only one allegation "that petitioner has sent SMS to one Bimla Kumari by computer through Vinay Kumar mobile and why disciplinary action not be taken". But new charges were added and improved in memorandum dated 13.01.2010 which were never basis of

show cause notice dated 9.10.2009. Thus all inquiry proceedings are illegal and the order of removal from service also is illegal.

18. Counsel for the petitioner has pointed out that the Sexual Harassment Committee and the Disciplinary Committee had the same members which is against the principles of natural justice. Thus, whole proceedings and the orders are vitiated. To strengthen this issue, counsel for the petitioner has relied upon the case reported in 1986 SCR (3) 1048.

19. It is further argued that SMS which was received by Bimla Devi was through computer using a website "way2sms.com". To use the services of the site, online registration is mandatory and can be done on the following steps.

"First, the person has to fill in personal details including the mobile number that is displayed when the message is received by someone. Second, the website generates a code cum password that is sent to the mobile number mentioned at the time of registration. Third, at the time of login the code cum password so generated is required to be filled in, only then a person can enter the website and avail its services."

20. Learned counsel submits that on the site mobile number of Vinay Kumar Yadav was registered and the messages were sent to Bimla Devi's mobile number. It is unbelievable that site could be accessed without the specially generated password. Vinay Kumar Yadav in his evidence admittedly stated that his mobile was with him and was not in school when the alleged SMS was sent.

21. Ld. counsel further submitted that, Vinay Kumar Yadav filed complaint on 5.10.2009 at 10.00 a.m. Whereas, in his statement he stated that the call from Bimla Devi had come at about 12.30, that a message had come from his mobile number. He denied the same and told her that mobile was with him and he had gone out of school for some official work. Thus, it is clear that at the relevant time Vinay Kumar Yadav was not in school. Moreover, the learned Tribunal failed to appreciate that the complaint filed by Vinay Kumar Yadav was different from one mentioned in his statement. The time indicated in the said complaint is 10.00 a.m. On one hand, in the statement of Vinay Kumar Yadav he has mentioned that he was not present until 12.30 p.m. in the school and in the complaint, the time has been mentioned as 10.00 a.m. Moreover, learned Tribunal has failed to appreciate that Bimla Devi had filed two complaints, however, not mentioned the name of petitioner. But in show cause notice issued immediately by the school authorities the name of the petitioner is mentioned. The complaint filed by Vinay Kumar is dated 5.10.2009 and the show cause notice issued to the petitioner on 9.10.2009. The complaint filed by the Bimla Devi is dated 12.10.2009 i.e. after the show cause notice already been issued to the petitioner. But the learned Tribunal has ignored the fact that the complaints which were filed by Bimla Devi were dated 12.10.2009, mentioned the name of Harcharan Singh, petitioner herein, who allegedly messaged on the mobile of Bimla Devi. The above facts proved that it is well planned plot created against

the petitioner of school authorities in connivance with the officials/employees of the school. There is no evidence as to how name of the petitioner came to light. The Tribunal also failed to appreciate the material came in the depositions of Vinay Kumar Yadav (SW1) during cross examination (Q 9,10,11). He was unable to explain as to for what specific work he had been sent on 5.10.2009 to the Education Department. He was also unable to explain as to who had assigned him the duty on 5.10.2009 to visit the Education Department. Vinay Kumar Yadav in his statement stated that while leaving school premises he always used to inform the receptionist and on question being put as to who was the receptionist on 5.10.2009, the witness replied that he did not remember the name of the person. In the cross examination, Vinay Kumar Yadav stated that at about 9.45 a.m, he had gone out of the school to visit the Education officers Zone 15, Karampura and at about 12.30 noon he received call from Bimla Devi. At 1 O" clock, he returned back and gave a complaint.

22. It is submitted, this clearly shows that Vinay Kumar Yadav is only plotting with the Management of the School to falsely implicate the petitioner. From the testimony it is clear the he had good family relations with Bimla Devi and he used to drop her from school to bus stop and also visit the house of Bimla Devi. Therefore, it is clear that in pre-planned way, the Management along with Vinay Kumar and Bimla Devi somehow wanted to frame the petitioner.

23. Further submitted, the learned Tribunal failed to appreciate that Harvinder Kaur (SW-3) is also UDC and was not present on the day when the alleged incident occurred. In her examination in chief she has stated that Bimla Devi used to complaint regarding "Hatchalaki" which means "shararat" which brother does even to his sister. He used to touch the head of Bimla Devi with his hand as stated in a reply to question no.6. She admitted in cross examination that certain employees namely Prabhjeet Singh Sodhi, Harvinder Kaur, Gurjeert Kaur, Vinay Kumar Yadav all were given extra emoluments of Rs. 500/- per month on or after October, 2009. Thus all the witnesses became interested witnesses as the management had paid them extra emoluments for giving evidence against the petitioner. On being asked as to whether the witness noticed any activity sexual harassment to any lady in the school staff, the witness replied in the negative.

24. Ld. counsel submits, Bimla Devi was examined as SW-4, he alleged in her examination that complaint was filed on 5.10.2009, the day when the alleged SMS incident had occurred but there is no such complaint on record however, two complaints both dated 12.10.2009 are on record which the witnesses has explained that earlier a short complaint was filed regarding the alleged incident. Later on, at the instance of Principal and Chairman, detailed complaint was filed which in fact included the earlier complaint and making additions to allegations as regarding sexual harassment and molestation which clearly shows that the witness has been tutored to file a false complaint against the petitioner.

25. On the other hand, learned counsel for the respondent submitted that after internal verification, a show cause notice dated 9.10.2009 was issued to the

petitioner as to why disciplinary action should not be taken against him. The petitioner instead apologising towards his ill action, denied the entire scenario through his letter dated 9.10.2009. Having no other option and keeping in mind strict guide lines of the Apex Court in respect of sexual harassment at work place, a Sexual Harassment Committee comprising of 3 members was constituted to enquire the same. The petitioner was also called to attend the meeting. Finally, report was submitted by the Enquiry Officer and on the basis of which interim order of suspension dated 14.10.2009 was passed and the disciplinary proceedings were initiated after giving ample opportunity to the petitioner to defend. The reasoned order dated 20.10.2010 was passed as per procedural law, based on statements of witnesses, evidence on record and the precedents set by the Apex Court. Before the disciplinary proceedings against the petitioner under Rule 117, 118, 120, 123 of the Delhi School Education Act, sufficient opportunity was given and the order of removal from service was passed after taking into consideration the material on the record. Though the petitioner has been removed from the service, but no bar was put on the future employment.

26. It is further submitted that as per the statement of the victim the petitioner became furious and made all efforts to surrender the victim to his wishes. The victim in her statement stated that the petitioner's action "hathchalaki" was reported to Mrs. Harvinder Kaur. The petitioner was warned by Mrs. Harvinder Kaur, not to do the "hathchalaki" with the victim and the petitioner also assured her that he would not do this in future, as per her deposition. But, the petitioner did not mend his ways. Consequently, Disciplinary Committee was instituted in terms of Rule 118 of DSER 1973, to probe the charges of physical contemplation through SMS's by sending the filthy, nasty and unparliamentarily communication to the victim, by serving a show cause notice to the petitioner. The respondent school has given three promotions to the petitioner which clearly shows that the respondent management had no enmity with the petitioner and the action of the respondent was just and fair. Further, opportunity was given to the petitioner before suspension and during the departmental proceedings.

27. It is further argued that the Courts / Tribunals in its power of judicial review do not act an appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. It is well settled principle of law that judicial review is not against the decision, it is against the decision making process. The Courts / Tribunals can only interfere if rules of natural justice have not been followed. In the garb of seeking judicial review the petitioner cannot seek a roving enquiry in the inquiry process. Moreover, there is nothing on record to show that action of the respondents was attended by malafides. In additions, Mrs. Harvinder Kaur (SW-3) other lady working in the school and Umesh Prasad Yadav (Peon) (SW-5) too has testified that petitioner continued to molest the victim by touching her body.

28. Mr. Juginder Singh (LDC) and Mr. Harjit Singh (SW-2) stated that the

petitioner was sitting and operating the computer system belonging to Mrs. Harvinder Kaur who was on leave on 5.10.2009 at 9.30 am onwards. Mr. Vinay Kumar (SW-1) was out for school work at that point of time which was also admitted by the petitioner in his examination in chief. It has been clear from the depositions of the witnesses that the petitioner was abusing sexually by misusing the official position and correctly charged by the Enquiry Officer which resulted removal of services. However, the petitioner was not barred for taking any future employment which clearly shows at the face that the respondent school has not given any grave punishment to delinquent.

29. To strengthen his arguments, counsel for the respondent has relied upon the case law Vishakha & Ors. vs. State of Rajasthan & Ors. 1997 (3) Crimes 188 (SC) whereby the Hon"ble Supreme Court has held that the objectives of the Judiciary is to ensure that all persons are able to live securely under the Rule of Law and to promote, within the proper limits of the judicial function, the observance and the attaining of human rights, and to administer the law impartially among persons and between persons and the State.

30. Further relied on case of M.D.Azimur Rahman vs. The University of Jamia Millia and Ors. 2013 203 DLT 463 whereby this Court held that harassment of a lady by using a particular language or certain gestures or by setting a particular fact, without even specifically calling these actions as sexual harassment, yet the same can still be sexual harassment.

31. Learned counsel further submits that learned Tribunal had considered on the facts, evidences and the plea of the petitioner only thereafter the learned Tribunal has dismissed the appeal filed by the petitioner. Therefore, no interference of this Court is required and the petition may be dismissed.

32. I have heard Id. Counsel for the parties in length.

33. This Court does not dispute on the case law cited by the counsel for the respondents. However, it is also settled law that fair trial and natural justice is the legal and constitutional right of the charged officer. In the present case, the chargesheet was issued to the petitioner on 13.01.2010 by the Disciplinary Committee. On 17.02.2010, the petitioner wrote a letter to Mr.Inder Singh, Member of Disciplinary Committee and Ex Chairman of the respondent school whereby requested to provide the following documents:

- i) Copies of the printouts of SMS taken from the computer of Mrs. Harvinder Kaur.
- ii) Voice recorded statements of all persons involved.
- iii) Statement of telephone details fo Mrs.Bimla"s mobile phone where the SMS were received.
- iv) The hard Disc of Mrs. Harvinder Kaur"s computer from where the SMS were sent was allegedly sealed.
- v) Details of Additional emoluments and benefits, if any, given to the witnesses

till the period of 14,.10.2009 and thereafter."

34. On 26.04.2010, Mr.M.P. Chaudhary was appointed as Presenting Officer and Mr. S.S. Sharma as the Inquiry Officer to proceed against the petitioner. Vide notice dated 27.04.2010, the respondent no.3 directed the petitioner to appear before him on 05.05.2010 at 2.30 pm. Accordingly, the petitioner appeared and requested that he be supplied with the relevant documents sought in letter dated 17.02.2010. However, vide order sheet no. 1 dated 05.05.2010, the Inquiry Officer furnished the details of the proceedings but did not pay any heed to the request of the petitioner for supply of the documents mentioned in the letter dated 17.02.2010. The Inquiry Officer again directed the petitioner to appear before him on 13.05.2010. On the said date also, the petitioner requested to supply the documents mentioned in the letter dated 17.02.2010 and thereafter reiterated the same by giving another letter on 13.05.2010 to the respondent no.3. Vide daily order sheet dated 13.05.2010, the Inquiry Officer directed the Presenting Officer to supply the documents as sought by the petitioner before the next date of hearing i.e. 18.05.2010. Out of the documents as requested by the petitioner in letter dated 17.02.2010, only one i.e. the copy of the print outs of SMS were provided to the petitioner. Neither the voice recorded statement provided nor any attempt was made to seal the hard disc of Ms. Harvinder Kaur"s computer which was the most important evidence in the present case.

35. It is pertinent to mention here that the copies of SMS on the basis of which allegations were levelled against the petitioner, thus, were provided to the petitioner for the first time during the proceedings on 18.05.2010. Vide letter dated 21.05.2010 the petitioner wrote a letter to the Inquiry Officer by stating that none of the relevant documents were supplied and instead five pages of fabricated computer print outs were given to him.

36. The whole allegations against the petitioner were made on the basis of allegations of sending vulgar SMS to the mobile of Bimla Kumari through the mobile of Vinay Kumar Yadav via internet. But none of the aforementioned piece of evidence were sealed to preserve the evidentiary value of the same. Further, the petitioner repeatedly requested the Inquiry Officer to supply the documents, starting from letter dated 17.02.2010, so that the petitioner would be able to prepare his defence, but no response.

37. It is not in dispute that as per the report of Sexual Harassment Committee, there was no finding against the petitioner despite departmental proceedings were initiated against him.

38. It is pertinent to mention here that vide order dated 28.06.2010, the Inquiry Officer closed the inquiry and vide letter dated 29.06.2010, the petitioner requested the Inquiry Officer to let the petitioner lead the defence witness for a fair and impartial inquiry and to prove that the whole case is based on false and fabricated story. However, same was denied. Being aggrieved, the petitioner filed an appeal before the Tribunal against the orders dated 28.06.2010 and

03.07.2010 passed by the Inquiry Officer. The said appeal was disposed of vide order dated 27.07.2010 directing the Inquiry Officer to allow the petitioner to lead the defence evidence. Thereafter, the Inquiry Officer wrote a letter dated 30.07.2010 asking the petitioner to be present before him on 04.08.2010 and on that day, the Inquiry Officer was informed the petitioner that he had already submitted the inquiry report on 20.07.2010.

39. It is further pertinent to mention here that despite the direction of the Tribunal and despite filing of the evidence by the petitioner, the Inquiry Officer deliberately disobeyed the order of the Tribunal and manipulated the facts by stating that he had already submitted the inquiry report on 20.07.2010. Thus, the petitioner was never cross examined and the evidence by way of affidavit has gone un-rebutted. Even otherwise, non-compliance of the order had caused great prejudice to the case of the petitioner and the Inquiry Officer had submitted an additional report dated 04.08.2010 which shows that the Inquiry Officer has ignored prosecution witnesses.

40. Being aggrieved, the petitioner filed a contempt application on 25.08.2010 before the Tribunal. The learned Tribunal granted stay with respect to any order in the light of the report submitted by the Inquiry Officer.

41. From the facts of the case, it is established that Disciplinary Committee deliberately avoided service of notice of the contempt application and in an emergency meeting conducted just one day before the hearing of the matter i.e. 06.09.2010 passed order of dismissal of the petitioner, in complete disregard of the fact that the matter was pending before the Tribunal and there were specific orders of taking defence evidence on record. Thereafter pursuant to order dated 20.09.2010 of the Tribunal, the petitioner was asked to present his witnesses on 23.09.2010.

The petitioner replied on the same date and represented himself for the evidence and also submitted a letter signed by the teachers of respondent School who wanted to give evidence on behalf of the petitioner. But the Inquiry Officer rejected the plea of the petitioner and did not allow anyone else other than the petitioner to lead evidence.

42. It is also relevant to mention here that the petitioner was asked to submit his brief within five days instead of 15 days as prescribed by the statute. The Disciplinary Authority passed the dismissal order dated 20.10.2010. Being aggrieved, the petitioner filed appeal under Section 8(3) read with Section 11 of the Delhi School Education Act, 1973. Same was dismissed vide impugned order dated 30.10.2012.

43. It is not in dispute that during the arguments before the Tribunal, the learned Tribunal was of a view that opinion of Computer Expert is required. Therefore, with the consent of the parties, Mr. Pawan Duggal, Advocate was appointed as Expert in the matter vide an order dated 07.02.2012 who filed final report dated 07.03.2012, thereby categorically stated that the evidence as produced by

respondent nos.2 and 3 is not reliable as per Section 65B of the Indian Evidence Act. The respondent nos.2 and 3 filed cross objections to the said report dated 07.03.2012. Thereafter, on 22.05.2012 the matter was reserved for orders by the Tribunal and the same was pronounced on 30.10.2012 after about 5 months.

44. After hearing learned counsel for the parties, it is established that material witnesses were not examined by the Inquiry Officer. Earlier plea of the petitioner to examine the material witnesses was totally ignored and disallowed by the Inquiry Officer and only after the petitioner approached the Tribunal the defence evidence was allowed to be led. However, the learned Tribunal failed to appreciate that opportunity to lead defence evidence was given only after the directions issued. Moreover, the order of the Tribunal was misinterpreted by the Inquiry Officer and allowed petitioner to lead evidence but disallowed any other defence witnesses, which is in fact, in my considered view, is against the principles of natural justice.

45. In addition, the learned Tribunal has erred in holding that the petitioner had not pointed out any occasion where the Inquiry Officer has failed to follow the principles of natural justice despite the fact that when the petitioner was not allowed to lead the evidence, he approached the Tribunal.

46. In case of S.P.Narang vs. University of Delhi decided on 31.07.2017 in W.P. (C) 3705/2002 this Court has held that in the cases of sexual harassment, while conducting enquiry, no strait jacket formula has to be applied and what has to be kept in mind is that the enquiry is conducted in good faith after giving opportunity to both the sides.

47. In case of M.V.Bijlani v. Union of India & Ors.: AIR 2006 SC 3475, it is held that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e. beyond all reasonable doubts, but we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been preponderance of probability to prove the charges on the basis of materials on record.

48. The similar issue came in case of the Secretary and Curator, Victoria Memorial hall v. Howrah Ganatantrik Nagrik Samity and Ors.: AIR 2010 SC 1285 wherein the Hon"ble Supreme Court has held that while ignoring the expert opinion, reasons to be recorded. Whereas in the present case the Tribunal failed to record the reason by brushing aside the expert report.

49. It is not in dispute that provisions of Rule 120 of Delhi Education Rules, 1973 are mandatorily to be followed in allegations of stigmatic nature and where the grave punishment of removal from service is there. The Disciplinary Authority had only reproduced the report of the Inquiry Officer without there being any finding given by it is violation of provisions of Rule 120 of the Delhi School

Education Rules, 1973. Despite, the learned Tribunal has held that the Disciplinary Authority considered the finding of the Inquiry Officer and gave its own finding, is contrary to the record of the case.

50. The sexual harassment is an act of allegation of serious misconduct by an employee in any organization. The learned Tribunal failed to appreciate Smt. Bimla Devi did not file the complaint on the date of incident nor was examined during entire investigation. Moreover, her friend, a fellow employee who was examined has denied the allegation of sexual harassment against the petitioner. In addition, the learned Tribunal has ignored the report of expert. Moreover, the prosecution was unable to demonstrate that password was known to the petitioner or that while access to "way2sms.com" the account was opened by Vinay Kumar Yadav earlier which somehow came to the knowledge of the petitioner. In my considered view, the learned Tribunal has purely gone on assumptions while considering the factor of misusing and sending the SMS through the site mentioned above.

51. The Tribunal has also ignored the fact that it was not the case of the prosecution that the mobile phone of Vinay Kumar Yadav, which was used in the entire episode, he either shared the password with the petitioner or the petitioner generated a fresh password. It is in the evidence of Vinay Kumar Yadav that Bimla Devi had called him while he was away from school to find out that why he was messaging the alleged messages. However, in the order, the Tribunal has misinterpreted entire evidence of Vinay Kumar Yadav and has mentioned that it has come on record that Vinay Kumar Yadav at the relevant time was not present in the office and had left his mobile. Whereas, Vinay Kumar Yadav in his evidence specifically stated that the mobile was with him and he received a call from Bimla Devi that why he was sending messages to her. Thus, it is established from the evidence that the mobile phone which belongs to Vinay Kumar Yadav was with him only and without that phone the messages would not have been sent through computer. In addition to above, it is not on record that computer was in power and possession of the petitioner or that the petitioner had control over the computer. The learned Tribunal has over sighted that show cause notice dated 09.10.2009 pertains to only one allegation "that petitioner has sent SMS to one Bimla Kumari by computer through Vinay Kumar mobile and why disciplinary action not be taken". But new charges were added and improved memorandum dated 13.01.2010 which were never basis of show cause notice dated 09.10.2009. The aforementioned Vinay Kumar Yadav admitted in his evidence that his mobile was with him and he was not in school when the alleged SMS was sent. It is important to note that Vinay Kumar Yadav filed a complaint on 05.10.2009 at 10:00 a.m. Whereas in his statement, he has stated that the call from Bimla Devi had come at about 12.30 P.M.

52. Thus, it is established that Vinay Kumar Yadav was not in school on the date of incident and his mobile phone was with him. But the learned Tribunal has recorded that Vinay Kumar Yadav was not in school and left his phone in the

school. In addition to above, complaint filed by Vinay Kumar dated 05.10.2009 and the show cause notice issued with the petitioner on 09.10.2009. The complaint filed by the Bimla Devi is dated 12.10.2009 i.e. after the show cause notice issued to the petitioner. Two complaints filed by Bimla Devi were dated 12.10.2009, wherein mentioned the name of the petitioner herein who allegedly messaged on the mobile of Bimla Devi. Thus it seems, it is well planned plot created against the petitioner by the school authorities in connivance with its employees. Vinay Kumar Yadav, during the cross examination was unable to explain as to for what specific work he had gone on 05.10.2009 to the Education Department. He was also unable to explain as to who had assigned him the duty on 05.10.2009 to visit the Education Department. He admitted that while leaving school premises, he always used to inform the receptionist but on question being put as to who was the receptionist on 05.10.2009, he replied that he did not remember. In the cross examination, Vinay Kumar Yadav stated that at about 9.45 a.m, he had gone out of the school to visit the Education officers Zone 15, Karampura and at about 12.30 noon he received call on his mobile number 9810524596. At 1 O" clock, he returned back and gave a complaint.

53. In the instant case Mr. Pawan Kumar Duggal, Advocate was appointed as an expert and whose report has been brushed aside without any reason whereas in the said report he stated that the petitioner was no where linked to the messages sent to Bimla Devi.

54. It is pertinent to mention here that certain employees namely Prabhjeet Singh Sodhi, Harvinder Kaur, Gurjeert Kaur, Vinay Kumar Yadav all were given extra emoluments of Rs. 500/- per month on or after October, 2009. Thus all the witnesses became interested witnesses as the management had paid them extra emoluments for giving evidence against the petitioner. The fact of giving extra emoluments of Rs. 500 is not denied by the respondents.

55. In view of the facts discussed above, I am of the considered opinion that the respondents school was somehow against the petitioner. Therefore to remove him from the service, disciplinary proceedings were initiated against him.

56. As discussed above, even documents in the disciplinary inquiry were not furnished and the petitioner was not allowed to examine defence witnesses. Thus, the department proceedings against the petitioner is vitiated, malafide, arbitrary and against the principles of natural justice. Consequently, I hereby set aside the order dated 30.10.2012 of Delhi School Tribunal passed in Appeal No.78/2012 and order dated 20.10.2010 passed by the disciplinary committee.

57. The respondents are directed to reinstate the petitioner in the school with all his consequential benefits. Since he has not worked after the impugned order dated 20.10.2010, he shall be entitled for 50% of the wages.

The petition is, accordingly, allowed with no order as to costs.