
(2005) 05 DEL CK 0166
In the Delhi High Court
Case No : WP (C) 6529 of 2005

Jwala Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-05-2005

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 19

Citation : (2005) 120 DLT 382 : (2005) 106 FLR 399

Hon'ble Judges : Rekha Sharma, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Jagdev Singh, for the Appellant; Rajan Sabharwal, for R-1 and H.J. Jayaraman, for the Respondent

Final Decision : Dismissed

Judgement

Rekha Sharma, J.—Kabir, the Indian sage, has put a teacher on a pedestal higher than the Creator for it is through the teacher that one reaches Him. Sadly, however, here is a sordid tale of a school teacher who outraged the modesty of his own student.

2. The petitioner Shri Jwala Singh was posted as a teacher at Jawahar Navodaya Vidyalaya (JNV), District, Rajouri, J and K. On November 6, 2000, he escorted 13 students , i.e. 10 boys and three girls to Bringkhera School in District Muktsar, Punjab. One of the girls was Kumari Rabina Kausur, a student of 9th class.

3. It was reported by the Deputy Director Education, Regional office Chandigarh, that a complaint had been received under the signatures of one Mohd. Bashir, father of said Rabina Kausur, to the effect, that the petitioner had caught hold of the hands of Rabina Kausur and had outraged her modesty while escorting the students from JNV Rajouri to JNV Muktsar, Punjab. On this complaint, a preliminary inquiry was got conducted from Assistant Director Shri P.K. Waghmare and then from another Assistant Director Ms. Kaneez Fatima. Thereafter, a committee consisting of three officers was constituted to carry out

further investigations.

The petitioner was given opportunity to present his defense before the committee.

4. It appears that during the inquiry both the Assistant Directors and the committee found certain contradictions as to the manner, place and the date in which the incident took place and for that reason they did not find the petitioner guilty. What however is of significance is that neither the two Assistant Directors nor the committee disputed that the petitioner made sexual advances towards Rabina Kausur. They seemed to have gone into the knitty gritty of the statements made before them and on that basis they probably let the petitioner off the hook. When the reports of the two Assistant Directors as well as of the committee were placed before the Commissioner of Navodaya Vidhyalaya Samiti, he did not agree with their finding. He observed that it was not really relevant on which date the complaint was written and by whom it was written. He further observed that what was important was whether the incident had actually taken place and if it had, it was a serious matter. It was felt by him that keeping in view the fact that the petitioner was given the opportunity of hearing and also keeping in view the totality of the facts and circumstances of the case, it would not be desirable to hold a regular inquiry. Accordingly, in exercise of his powers conferred upon him under Rule 19 (ii) of the Central Civil Services (Classification Control and Appeal) Rules, 1965 and in terms of the Navodaya Vidhyalaya Samiti's Notification NO. F14-2{93-NVS (Vig.)} dated 20th December, 1993 he dispensed with the holding of a regular inquiry and consequently, terminated the services of the petitioner with effect from 18th June, 2003.

5. Feeling aggrieved, the petitioner preferred an appeal to the Minister for Human Resources and Development which was turned down. Consequent thereto, he approached the Central Administrative Tribunal, but without success. That is why he has come before us.

6. It was argued by the learned counsel for the petitioner that the order of termination was bad as the complaint made against him was belated, unsubstantiated, motivated and contradictory. It was further contended that the basic principles of natural justice were violated inasmuch as no regular inquiry as envisaged by the rules was held thereby rendering the order of termination violative of the Constitution of India. Lastly, it was contended that as punishment has to be proportionate to the misconduct and that this was not a misconduct serious enough to invite the punishment of dismissal from service.

7. Our attention was drawn to some of the good character certificates for the year 2002 issued by some of the former colleagues of the petitioner and some by his former students. There is one letter purported to be from the father of Kumari Rabina Kausur wherein he denied having made any complaint. This letter too seems to have been written in or after September, 2002. It appears to us that after his grave act of misconduct, the petitioner went on a spree to collect

these testimonials. We refuse to take them of any consequence. We are also not persuaded by the letter purported to be of the complainant. It too does not wash away what was sullied much earlier. We feel all these letters have been stage-managed in a desperate attempt to cover up what had already come to the fore. We further feel that contradictions like, - was Kumari Rabina Kausur molested at the stair case or in the room or on which date the complaint was written or by whom, are insignificant and they cannot absolve the petitioner of the charge. What is of consequence is the allegation, the allegation which involved him of outraging the modesty of a female, who was none other but his own student and whose Ward he was at the relevant time. The two preliminary inquiries and the Committee, as has been noticed above, never returned a finding that the incident did not take place. They went on contradictions which, we feel, keeping in view the gravity of the allegations, should have been ignored which was subsequently done by the Commissioner.

8. It is true that no regular inquiry was held, but it does not mean that the petitioner was not heard. He was given ample opportunity to present his defense. He was heard. What needs to be remembered and kept in view is that here was a matter which involved the honour, self-respect and dignity of a young school girl. Her modesty had already been outraged. It must have been a traumatic experience. A regular inquiry would have further shattered her. We all know that in such cases, a victim is purposely, deliberately with design insinuated, insulted and humiliated. That is why, in matters like this, a regular inquiry is best avoided. The Supreme Court, with respect, rightly held in *Avinash Nagra Vs. Navodaya Vidyalaya Samiti and Others*, that :-

"Education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. Only of late, some middle-class people are sending the girl children to co-educational institutions under the care of proper management and to look after the welfare and safety of the girls. Therefore, greater responsibility is thus on the management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in disciplined and dedicated pursuit of excellence.

....After conducting the enquiry, he submitted the report to the Director and the Director examined the report and found him not worthy to be a teacher in the institution. Under these circumstances, the Director has correctly taken the decision not to conduct any enquiry exposing the students and modesty of the girl and to terminate the services of the appellant by giving one month's salary and allowances in lieu of notice as he was temporary employee under probation. In the circumstances, it is very hazardous to expose the young girls to the tardy process of cross-examination. Their statements were supplied to the appellant and he was given an opportunity to controvert the correctness thereof. Under those circumstances, the conduct of the appellant is unbecoming of a teacher much less a loco parentis and, Therefore, dispensing with regular enquiry under

the rules and denial of cross-examination are legal and not vitiated by violation of the principles of natural justice."

9. The finding of the Supreme Court in *Director, NVS and Ors. v. Babban Prasad Yadav and Anr.* reported in 2004 (2) Scale 400, are equally relevant in the context of the present case. The relevant portion of the same is as under :

"All that is required for the Court is to be satisfied that the pre- conditions before exercise of power under the said rule are fulfilled .These preconditions are (1) holding of summary inquiry; (2) a finding in such summary inquiry that the charged employee was guilty of moral turpitude; (3) the satisfaction of the Director on the basis of such summary inquiry that the charged officer was prima facie guilty; (4) the satisfaction of the Director that it was not expedient to hold an inquiry on account of serious embarrassment to be caused to the students or his guardians or such other practical difficulties" and finally (5) the recording of reasons in writing in support of the aforesaid."

10. We cannot resist commending the Commissioner of Navodaya Vidyalaya Samiti for the view taken by him. He looked into the matter in the right perspective and refused to get carried away by what, for instance, had been stated by Assistant Director, Shri Waghmare and Ms. Kaneez Fatima. They had dismissed the complaint on the basis, for example, of contradictions about the place and date of the incident. The Commissioner was right in observing that the question which needed to be gone into was whether the incident did take place or not and since the inquiry officers did not say that the incident had not taken place, the Commissioner rightly dispensed with the holding of regular inquiry and passing the order, terminating the services of the petitioner.

11. On going through the records, we are also satisfied that all the preconditions for exercising the extra-ordinary power of dispensing with the holding of a regular inquiry are satisfied in the present case. Therefore, the aforesaid decisions of the Supreme Court are applicable to the facts of this case on all fours.

12. Is the punishment not proportionate to the misconduct ?

13. A school is not merely bricks and mortar. It is the nursery of idealism and character. The teacher is the person who nurtures the nursery and it is under him that it grows. He affects eternity. What if a teacher falls from the standard expected of him ? In such a case, surgical treatment may be called for and the present is one such case.

14. For what has been discussed by us, we find no ground to differ from the view taken by the Central Administrative Tribunal. Affirming the same we dismiss the petition.