

(2017) 03 GAU CK 0043
In the Gauhati High Court
Case No : 1972 of 2014

Kendriya Vidyalaya Sangathan and Ors.

APPELLANT

Vs

Jerome Reman Kerketta

RESPONDENT

Date of Decision : 17-03-2017

Acts Referred:

Constitution of India, Article 311 -
Dismissal, removal or reduction in rank of persons employed in civil capacities under
the Union or a State

Citation : (2017) 03 GAU CK 0043

Hon'ble Judges : Ujjal Bhuyan

Bench : SINGLE BENCH

Advocate : R.S. Choudhury, M. Mahanta, D. Senapati, R. Jain

Judgement

1. This case was heard on 07.03.2017 and today is fixed for delivery of judgment. Accordingly, judgment is being dictated in the open Court.
2. We have heard Ms. R. S. Choudhury and Mr. M. Mahanta, learned counsel for the petitioners and Mr. D. Senapati and Ms. R. Jain, learned counsel for the respondent.
3. This petition has been filed by the Kendriya Vidyalaya Sangathan and its officers assailing the legality and validity of the order dated 01.01.2014 passed by the Central Administrative Tribunal, Guwahati Bench (CAT) in Original Application (OA)No.70/2012 allowing the application filed by the respondent by setting aside the order dated 02.08.2010 whereby the service of the respondent as Vice-Principal of Kendriya Vidyalaya No.1, Kunjaban, Agartala was terminated with immediate effect by exercising power under Article 81(B) of the Education Code of Kendriya Vidyalaya Sangathan. By the said order, CAT also set aside the order dated 29.04.2011 passed by the appellate authority upholding the order of termination and thereafter directed reinstatement of the respondent with back wages.

4. At the relevant point of time, respondent was serving as Vice-Principal of Kendriya Vidyalaya No.1, Kunjaban, Agartala (School). On 12.11.2009, Principal of the School wrote to the respondent stating that it had come to her notice that he had indulged in unusual behaviour with girl students of Class-VII D on 11.11.2009 in connection with which written complaint was received on 12.11.2009 regarding his immoral behaviour (using vulgar words in the Class, etc). Respondent was asked to explain within two days. It is seen that on the next day itself, i.e., on 13.11.2009, respondent wrote back to the Principal stating that he did not utter any vulgar words and requested the Principal that if anything had come to her notice, he should be informed so that he would be able to take corrective measures.

5. On 13.11.2009, Principal of the School informed the Assistant Commissioner of Kendriya Vidyalaya Sangathan, Silchar that as informed by the Class Teacher, respondent had indulged in unusual behaviour with the girl students of Class-VII D on 11.11.2009. Two teachers were directed to investigate the matter and they had submitted their report on 13.11.2009. Principal mentioned that respondent was spoiling the environment of the School and his presence was not suitable for the School.

6. On the basis of such letter, Assistant Commissioner wrote to the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi on 19.11.2009 stating that respondent was found to behave immorally in the class as per report of the Principal and his behaviour was unruly which was reported in the local newspaper. Suggestion was made that respondent be placed under suspension with immediate effect.

7. Principal in her letter dated 23.11.2009 addressed to the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Silchar submitted preliminary enquiry report. On 24.11.2009, Assistant Commissioner, Kendriya Vidyalaya Sangathan, Silchar passed an order to the effect that complaints were received from the students of Class-VII A and VII D against the respondent regarding his unruly behaviour and also regarding immoral sexual behaviour. Accordingly, a Committee of three Members was constituted to conduct a summary enquiry and thereafter to submit report.

8. The Committee conducted summary enquiry and submitted its report on 26.11.2009. The report comprised of eight findings. As per finding No.1, views of the staff members were partly against the respondent, partly in favour of the respondent and partly neutral. Hence, it was a mixed reaction. Second finding was that respondent was not sincere in his duties and imposed corporal punishment on the students besides using vulgar words. On the other hand, he behaved well with the staff and the Principal of the School. As per finding No.3, respondent used to beat the students and indulged in sexual harassment of girls. He never taught from books but discussed irrelevant things. Finding No.5 was that girl students of Classes VII, IX, XI and XII expressed before the lady members that respondent used to talk only about sex and used vulgar words in

the class; he tempted the girl students to visit his quarter and asked for their contact numbers. He was also addicted to tobacco and liquor and sometimes used to come to School drunk. He encouraged the students to have relationship and also had the habit of touching private parts of the girl students. As per finding No.6, respondent used abusive and vulgar language with the students and discussed irrelevant and provocative topics. Summing up their conclusion, the Committee in finding Nos.7 and 8 held that respondent was not serious in his duties; he did not teach the allotted periods regularly, used to beat up students and discussed undesirable topics/matters. Thus, the allegation against him stood proved.

9. Commissioner, Kendriya Vidyalaya Sangathan thereafter issued a memorandum dated 05.04.2010 deciding to proceed against the respondent under Article 81(B) of the Education Code of Kendriya Vidyalaya Sangathan (Education Code). Accordingly, respondent was asked to submit representation as to why his service should not be terminated under Article 81(B) of the Education Code. The said memorandum was accompanied by charges framed against the respondent, facts in support of the charges, statement(s) recorded in the summary enquiry and report of the summary enquiry.

10. In response, respondent submitted his written representation on 07.06.2010 denying the charges framed against him. He also stated that it was not a case to be brought within the ambit of Article 81(B).

11. Commissioner, Kendriya Vidyalaya Sangathan then passed the order dated 02.08.2010 under Article 81(B) of the Education Code of Kendriya Vidyalaya Sangathan and terminated the service of the respondent.

12. Respondent preferred an appeal before the appellate authority but by order dated 29.04.2011, the appellate authority upheld the order dated 02.08.2010 and dismissed the appeal.

13. Respondent thereafter moved the Central Administrative Tribunal, Guwahati Bench (CAT) by filing OA No.70/2012. CAT by order dated 01.01.2014, allowed the OA and set aside the termination order dated 02.08.2010 as well as the appellate order dated 29.04.2011 further directing reinstatement of the respondent with back-wages.

14. Hence, the present writ petition.

15. This Court by order dated 08.04.2014 had admitted the writ petition for hearing and had stayed the operation of the order dated 01.01.2014 passed by the CAT.

16. Ms. R.S. Choudhury, learned counsel for the petitioners in her spirited arguments, submitted that CAT had failed to consider the circumstances leading to invocation of Article 81(B) of the Education Code and therefore came to an erroneous conclusion by interfering with the order of termination as affirmed by the appellate authority. Conduct of the respondent was reprehensible to say the

least and holding of regular enquiry would have caused immense embarrassment to the young girl students and therefore it was a fit case to proceed under Article 81(B). Respondent was granted full opportunity to defend himself within the ambit of Article 81(B) and after considering the materials on record, termination order dated 02.08.2010 came to be passed which was affirmed by the appellate authority. In support of her submissions, Ms. Choudhury has relied upon the decision of the Supreme Court in *Union of India v. Tulsiram Patel*, AIR 1985 SC 1416 . She has further placed reliance on the decisions of the Supreme Court in *Avinash Nagra v. Navodaya Vidyalaya Samiti*, (1997) 2 SCC 534 and in the case of *Commissioner, Kendriya Vidyalaya Sangathan v. Ratin Pal*, decided on 16.08.2010. Ms. Choudhury has also produced the record of the case in original for perusal of the Court.

17. Per contra, Mr. Senapati, learned counsel for the respondent, vehemently argued that there were no materials on record to justify invocation of power under Article 81(B) of the Education Code ruling out holding of regular enquiry. The charges brought against the respondent were extremely serious and stigmatic and therefore holding of regular enquiry was essential. Decision not to hold regular enquiry is therefore arbitrary and unreasonable which caused serious prejudice to the respondent. In support of his contention, Mr. Senapati has placed reliance on a decision of the Delhi High Court in *R.S. Misra v. Union of India*, decided on 19.09.1994 and the decision of the Supreme Court in *Ved Mitter Gill v. Union Territory Administration, Chandigarh*, (2015) 8 SCC 86.

18. In the course of hearing, we found that the complaint of Shri Ashok Das, Class Teacher of Class VII D dated 12.11.2009, which was the foundation of the proceeding against the respondent, had not been brought on record.

19. Following a query by the Court, Mr. M. Mahanta, learned counsel for the petitioners, has placed before the Court a copy of the said complaint dated 12.11.2009 along with a filing memo which has been taken on record.

20. Submissions made by learned counsel for the parties have been considered. Also perused the materials on record.

21. At the outset, it would be apposite to refer to the provisions of Article 81(B) of the Education Code of Kendriya Vidyalaya Sangathan. This provision provides for termination of service of an employee found guilty of immoral behaviour towards students. The provision is extracted hereunder:- "81.(B)Termination of Services of an employee found guilty of immoral behaviour towards students: 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 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 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: Whenever and as far as possible, a summary inquiry in the complaint of immoral behaviour by a teacher towards the students of Kendriya Vidyalayas may be got investigated by the Complaints Redressal Committees constituted in the Regional Offices"

22. A careful analysis of the aforesaid provision would go to show that Commissioner must be satisfied after holding a summary enquiry that if 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, then he can terminate the service of such member by giving one month's notice or three month's pay and allowances. In such a case, procedure prescribed for holding enquiry for imposing major penalty as per the provisions contained in the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which are otherwise applicable to employees of Kendriya Vidyalaya Sangathan shall be dispensed with provided the Commissioner is of the opinion that it is not expedient to hold regular enquiry on account of embarrassment to the student or guardians or such other practical difficulties. The Commissioner shall record in writing the reasons for which it is not reasonably practicable to hold such enquiry and he shall keep the Chairman informed of the circumstances leading to such termination of service. As per note below the said provision, ordinarily a complaint of immoral behaviour by a teacher towards the student may be got investigated by way of a summary enquiry through the Complaints Redressal Committee constituted in the Regional Offices. Thus, the following pre-conditions must be fulfilled by the Commissioner before taking recourse to the provisions of Article 81(B):- Firstly, a summary enquiry must be conducted on the charges or allegations brought against a member of Kendriya Vidyalaya;

Secondly, following such summary enquiry, Commissioner must arrive at a satisfaction that such member is prima facie guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student;

Thirdly, Commissioner must also form an opinion that it is not expedient to hold regular enquiry on account of embarrassment to students or guardians or such other practical difficulties;

Fourthly, Commissioner shall record, in writing, the reasons for which it is not reasonably practicable to hold such enquiry;

Fifthly, Commissioner shall keep the Chairman informed of the circumstances;

and

Sixthly, the summary enquiry contemplated in this provision is ordinarily to be carried out by the Complaints Redressal Committee constituted in the Regional Offices.

23. From the above, what transpires is that Article 81(B) is an exception to the general rule of holding regular enquiry under the Central Civil Services (Classification, Control and Appeal) Rules, 1965. In other words, ordinarily in case of any misconduct by an employee of Kendriya Vidyalaya Sangathan, he would be subjected to a disciplinary proceeding conducted under the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 but in case the conditions precedent mentioned in Article 81(B) are present, the regular disciplinary proceeding as contemplated above may be discarded and instead provisions of Article 81(B) may be invoked. Being an exception to the general rule, the provisions contained in Article 81(B) would have to be construed strictly. Therefore, the conditions precedent or sine qua non for application of Article 81(B) would call for strict scrutiny and unless the pre-conditions are satisfied, recourse to Article 81(B) would not be justified.

24. Delhi High Court in R.S. Misra (supra) had observed that mere parrot-like repetitions of the words extracted from Article 81(B) would not be enough. There is no room for assumption in such a situation and there cannot be any mechanical exercise of power or exercise of discretion according to whims or caprice. The discretion must be exercised keeping in mind the true purport of the provision and in a bona fide manner. The decision to dispense with the departmental enquiry cannot be rested solely on the ipse dixit of the Commissioner nor is a disciplinary authority expected to dispense with disciplinary enquiry lightly.

25. In Ved Mitter Gill (supra), Supreme Court was considering clause (b) of the second proviso to Article 311(2) of the Constitution, which empowers the concerned authority to impose the penalty of dismissal or removal from service or reduction in rank on a person employed in civil capacity under the Union or State without holding an enquiry, if that authority is satisfied that for some reason to be recorded in writing, it is not reasonably practicable to hold such inquiry. While it may not be necessary to go into the details of the judgment, it would be useful to record the views of the Supreme Court. Referring to the decision in Tulsiram Patel (supra), it was held that a disciplinary authority is not expected to dispense with a disciplinary enquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid holding of an enquiry or because the department's case against the employee is weak and must fail. Whether it is practicable to hold enquiry or not must be judged in the context of whether it was reasonably practicable to do so. The opinion must be that of a reasonable man taking a reasonable view of the prevailing situation. The reasons for dispensing with the enquiry must be in writing and must precede the order imposing the penalty. Though detailed particulars need not be mentioned, yet the

reason must not be vague or just a repetition of the language used in the provision. In *Tarsem Singh v. State of Punjab*, (2006) 13 SCC 581, which was also referred to in *Ved Mitter Gill* (supra), it was observed that if a preliminary enquiry could be conducted, why a formal departmental enquiry could not have been initiated.

26. In this case, we are not considering the guilt or otherwise of the respondent. We are only considering as to whether having regard to the charge brought against the respondent dispensing of regular enquiry against the respondent was justified? As a natural corollary to the above, the question also arises as to whether invocation of Article 81(B) in the facts and circumstances of the case was justified?

27. We have already discussed the broad parameters of Article 81(B) in the foregoing paragraphs.

28. The complaint of the Class Teacher Ashok Das dated 12.11.2009 is the foundation for initiating proceeding against the respondent. In his complaint, the Class Teacher stated that according to his students, i.e., students of Class-VII D, the Vice-Principal, i.e., the respondent, who at that point of time was teaching Geography, was asking unnecessary questions outside the syllabus. If the students could not satisfy him, he used to use very slang words and also resorted to beating the students. Such type of behaviour was also noticeable even outside the class-room when the respondent used to go for a round. It was specifically mentioned that on 11.11.2009, when he (complainant) had entered his class, i.e., Class VII D, all the students had asked him to solve their problems, otherwise they would bring their parents and lodge complaint against the Vice-Principal. The Class Teacher told them not to do such thing and therefore he lodged the complaint to the Principal.

29. This is the basic document or foundation on which the proceeding against the respondent was initiated. From this complaint, what is noticeable is that while teaching Geography, respondent used to ask unnecessary questions to the students outside the syllabus. If the students could not answer the questions, he used very slang words and also resorted to beating them. This is, in sum and substance, the basic allegation against the respondent.

30. Reverting to the show-cause notice dated 05.04.2010, we notice that none of the conditions precedent which are required to be fulfilled for invoking Article 81(B) as alluded to herein above were fulfilled. Merely by repeating the language of Article 81(B), the Commissioner had dispensed with the need for holding regular enquiry. Relevant portion of the memorandum dated 05.04.2010 is extracted hereunder:- "Whereas after going through the said report along with the statements recorded, I am of the considered opinion that Shri J.R. Kerketta had been indulging in immoral behaviour towards girl students and prima facie a case of moral turpitude has been found against him, because of which it is necessary to proceed against Shri J.R. Kerketta under Article 81(B) of the

Education Code for Kendriya Vidyalayas. I am of the opinion that it is not expedient to hold a regular enquiry under the CCS (CCA) Rules, 1965 as it would cause serious embarrassment to the girl students and could also cause trauma for them because of their tender age. Accordingly, holding of a regular inquiry for imposing major penalty in accordance with the CCS (CCA) Rules, 1965 as applicable to employees of KVS is dispensed with."

31. Likewise in the order of penalty dated 02.08.2010, the Commissioner held as under: "Since it was a case of immoral behaviour of a teacher towards the girl students and it was not expedient to hold a regular enquiry as per the CCS (CC&A) Rules, 1965 as it would cause serious embarrassment to the girl students and their guardians/parents. Being girl students of tender age, their safety and security had to be protected by preventing their exposure to the tardy process of cross-examination etc during the inquiry. As such, holding of a regular enquiry is dispensed with. Hence, the submission of the applicant in the matter of issue of notices as in the case of a regular enquiry is not warranted."

32. From the above, it is quite evident that the conditions precedent for invoking Article 81(B) dispensing with the holding of regular enquiry under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 were not complied with. Thus, dispensing with regular enquiry by applying Article 81(B) was not justified. This has vitiated the order of penalty dated 02.08.2010 which was overlooked by the appellate authority.

33. The decisions relied upon by Ms. Choudhury, learned counsel for the petitioners, are quite distinguishable on facts. In Avinash Nagra (supra), the allegation against the appellant was that despite previous warning for his sexual advances towards a girl student, he did not mend his conduct. He went to the girls hostel at 10 pm in the night and asked the hostel helper to misguide the girl student by telling her that Bio-Chemistry Madam was calling her; believing that, the girl student came out. When he made sexual advances towards her, she ran away and locked herself inside a room only to be followed by him who banged the door. Like-wise, in Ratin Pal (supra), the victim girls vividly described the manner in which the respondent had sexually assaulted them which were corroborated by their parents. In those cases, dispensing with holding of regular enquiry by invoking Article 81(B) were held to be justified. But, as noticed above, facts of the present case are clearly distinguishable, particularly having regard to the complaint of the Class Teacher. Therefore, those decisions would be of no help to the petitioners.

34. In such circumstances, we concur with the decision of the CAT in so far setting aside of the termination order dated 02.08.2010 and the appellate order dated 29.04.2011 are concerned but for the reasons mentioned herein above. At the same time, we may hasten to add that we have not expressed any opinion on merit. Therefore, we would like to observe that notwithstanding quashing of the aforesaid orders, it would be open to the petitioners to hold regular enquiry against the respondent as per provisions contained in the Central Civil Services

(Classification, Control and Appeal) Rules, 1965, if deemed necessary. In such an eventuality, views expressed by CAT on the merit of the charge would be of no consequence. Further, the order of the CAT to the extent of reinstatement of the respondent would also stand modified to the extent that it would not be in the interest of anyone to reinstate the respondent in the same School, i.e., Kendriya Vidyalaya No.1, Kunjaban Agartala. Therefore, it would also be open to the petitioners to post the respondent in any other School but while so doing, it should be ensured that such posting do not take a punitive colour.

35. Subject to the modification as above, writ petition is dismissed. Stay order stands vacated. No costs.

36. Record produced by Ms. Choudhury is returned back.