
(1993) 10 RAJ CK 0005

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 356 of 1991

Kendriya Vidyalaya Sangthan

APPELLANT

Vs

M.L. Mudgal

RESPONDENT

Date of Decision : 28-10-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 WLC 609 : (1993) WLN 445

Hon'ble Judges : K.C. Agarwal, C.J.;V.K. Singhal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.C. Agrawal, C.J.—This special appeal has been filed against the order of learned single Judge dated 23rd April, 1991, by which, the writ petition of the petitioner was allowed.

2. The submissions of the learned Counsel for the appellant are as under:

1. That present one is not a fit case for exercising discretion under Article 226 looking to the conduct of the petitioner and entertaining the writ petition and quashing the order of termination;

2. That the writ petition is not maintainable against Kendriya Vidyalaya Sangthan which is not a State;

3. That a proper opportunity was not given to the appellant-respondent by the learned single Judge inasmuch as the appellant entrusted the file to Shri V.S. Dave, Advocate who was subsequently alleviated as Hon "ble Judge of this Court and neither there was any information to the petitioner nor any proper authorisation to submit the reply and defined the case and

4. On merit it was submitted that the learned single Judge has erred in interpreting the provisions of Rule 81-b of the Kendriya Vidyalaya Sangthan rules.

3. The submission of Mr. Joshi on behalf of the petitioner-respondent is that the requirement of the provisions of Rule 81-B have not been complied with inasmuch as the summary enquiry was conducted by the Assistant Commissioner and not by the Commissioner and the petitioner was interrogated by the Commissioner. The Commissioner has not applied his mind and no notice was given by the Commissioner before dispensing with the enquiry contemplated under Rule 81-b and no enquiry was conducted and it was only an investigation.

4. The arguments of both the learned Counsel have been heard. The record of the appellant was also produced and it was pointed out that Mr. M.L. Mudgal (Primary Teacher) was a teacher in the Kendriya Vidyalaya Sangthan and was doing the tuition of Kusum Wadhwa (Class VIIIth C) at the rate of Rs. 50/-per month for maths and general science since July, 1981. It was reported by Mr. H.C. Wadhwa, father of Kusum Wadhwa that his daughter was sexually assaulted by Mr. Mudgal on 26th December, 1981. It was decided that the entire incident needs to be thoroughly enquired into. A report was also received from the Principal of the Kendriya Vidhyalaya Sangthan. The Assistant Commissioner Ahmedabad has also endorsed the views particularly of Mr. Mudgal's involvement in some incidence earlier and has general reputation in this regard A detailed report of enquiry was submitted. Kumari Kusum Wadhwa in her statement before the Enquiry Officer in presence of the accused, her father and principal stated that on 26.12.1981 Shri Mudgal closed his room and assaulted her and outraged her modesty and threatened her that dire consequences will be there if she tells the aforesaid incidence to anyone. The girl was not cross-examined and it was stated by Mr. Mudgul that he did not like to argue with his student. In the enquiry the petitioner was found prima facie guilty of moral turpitude outraging the modesty of a girl. During the course of preliminary enquiry the petitioner has accepted the charge, which statement subsequently he resiled.

5. Chapter-8 refers to discipline and Rule 80 has made the provisions of Central Civil Services (Classification, Control & Appeals Rules, 1965 as amended from time to time applicable to the members of the staff of Sangthah. Rule 81(A) refers to the procedure for termination of services under the terms of appointment of a temporary employee. Rule 81-b which is relevant for the purpose of the present dispute is as under:

81-b-Wherever 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 behavior towards any student, he can terminate the services of that employee by giving him one months or 3 month's pay and allowances according as the guilty employee Is temporary or permanent in the service of Sangthan. In such cases procedure prescribed for holding enquiry for imposing major penalty in accordance with CCS (C.C.A.) Rules, 1965 as applicable to the employees of the Kendriya Vidyalaya Sangathan, shall be dispensed with, provided that the it 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 reasonable practicable to hold such enquiry and he shall keep the Chairman of the Sangathan informed of the circumstances leading to such termination of services.

6. It has been submitted that in accordance with the provisions of Rule 81-b there must be satisfaction of the Commissioner and such satisfaction should be after a summary enquiry as he deems proper and practicable in the facts and circumstances of the case and if that member of the Kendriya Vidyalaya prima facie is found guilty of the moral turpitude involving sexual offence or exhibition of an immoral sexual behaviour towards any student his services can be terminated by giving him three months notice if he is in permanent service of the Sangathan and. one month's notice if the employee is temporary. The requirement for following the procedure prescribed for holding enquiry for imposing major penalty in accordance with Central Civil Services (Classification, Control and Appeal Rules, 1965 have been dispensed with. The three conditions which has been given for such dispensation is that the Commissioner who form an 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. Beside forming the opinion the Commissioner shall record in writing the reasons under which it is not reasonable practicable to hold such enquiry and he shall keep the Chairman of the Sangathan informed of the circumstances leading to such termination of services. The three conditions which are required to be fulfilled namely; (1) forming of opinion by the Commissioner; (2) recording of reasons and (3) information to the Chairman for termination of services.

7. In the present case from the record produced the Commissioner has formed an opinion to dispense with the enquiry by observing as under:

I also feel that it will not be expedient to hold a regular enquiry In accordance with the CCS (C.C.A.) Rule, 1965 without causing serious embarrassment to the students or his guardians and which might affect the future life of the young and unmarried girl.

8. So the first requirement of form of opinion by the Commissioner is fully satisfied. The reasons have been recorded which is evident from the file produced before us. In Union of India and others Vs. E.G. Nambudiri, it has been observed by the Apex Court that no order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons. If the reasons are contained in the file which enables the competent authority to formulate its opinion, the said reasons can be looked by the Court, if the matter is challenged.

9. On the perusal of the provisions of Rule 81-b and the decision of the Apex Court we are of the opinion that it is not necessary that the reasons should be

recorded in the order to be communicated to the delinquent officer. If the reasons have been recorded in the file it is sufficient compliance of the provisions of rules. Regarding the order of termination of service to be communicated to the Chairman of the Sangathan we find that the same were duly communicated and the information so communicated is also signed by the Chairman on the file produced before us. Not only this the petitioner has preferred an appeal to the Chairman against the order of termination.

10. The learned single Judge has observed in his order that the principles of natural justice requires that before the services are terminated he should be served with the charge-sheet and the query should be made in such a manner so that delinquent officer could get the opportunity for his defence. It was observed that the reasons should be recorded in the order for termination which should be communicated to the Chairman of the Sangathan. So far as the observations with regard to communication of the order of termination to the Chairman which is one of the requirement under rule-81-b we find that it has been duly complied with. The said provision does not contemplate that the reasons should be recorded in the order of termination itself. The application of principles of natural justice could be curtailed by the statute or the rule in the given circumstances. If such circumstance exists then it cannot be said that still the compliance of the principles of natural justice have to be followed.

11. The submission of the learned Counsel for the delinquent officer that after formation of the belief/opinion by the Commissioner and before recording the reasons the principles of natural justice require that the said officer should have been given an opportunity so that his defence could have been submitted and he could prove his innocence. We are of the considered opinion that in the matter of educational institution the character of a teacher has a great importance who builds the character of the students who are the future of the country. If the character of a teacher is even doubtful it cannot be expected from him that he would create a society of good character. It is in these circumstances, that Rule 81-b has come into force. The Commissioner who is the Executive head of the Sangathan has been entrusted with the responsibility with a proper safeguard of formation of opinion for dispensing with he enquiry and recording the reasons thereof. Recording of reasons is another safeguard so that the power may not be abused by the Commissioner and over and above the requirement to inform the Chairman of the Sangathan regarding termination of service is another safeguard by the rules. The enquiry which is contemplated under Rule 81-b is the summary enquiry. Rule 81-b contemplate that where the Commissioner satisfies after such summary enquiry as he deems proper and practicable in the circumstances of the case contemplates only a summary enquiry in such manner as he thinks proper and practicable. The information which has been received through the Assistant Commissioner and the Principal of the Kendriya Vidyalaya, Jaipur is the summary enquiry conducted by the Commissioner and it cannot be said that it was only an investigation made by the Assistant Commissioner. The mode for the summary enquiry is left to the discretion of the Commissioner. The discretion is to be

exercised judicially and reasonably and in the present case on the basis of the record produced before us we are satisfied that the summary enquiry which was conducted by the Commissioner fulfills the requirement of Rule 81-b.

12. The decision of Full Bench of Allahabad High Court in Maksudan Pathak v. The Security officer 1981(2) SLR 451 was relied by the learned Counsel for the respondent wherein it was held that the disciplinary authority has to record its reasons in writing as to why it is not reasonably practicable to follow the procedure for holding an enquiry. The fact that the authority is required to record the reasons in writing itself in fact is that the reasons have to be recorded by the authority in order that the delinquent officer can challenge the said reasons before the Appellate authority. Not only the reasons have to be recorded in writing but the authority has to be further satisfied that it is not reasonably practicable to hold the enquiry. Since limitations have been prescribed for exercising of discretion by the authority the discretion has to be exercised on facts on record.

13. In the present case the rule has contemplated dispensing of the enquiry on account of serious embarrassment of the students or their guardian or such other practicable difficulties. The Commissioner had come to the conclusion of embarrassment to the students as well as their guardians and has taken into consideration the future life of the young unmarried girl. The authority relied has to be interpreted on the basis of each case and on account of specific requirement of the rules for dispensing the departmental enquiry and the factors which are to be taken into consideration having made explicit in the provision of rule itself which have duly been complied with by the appellant it has to be held that the discretion which was exercised in the present case was on objective facts on record.

14. A decision of this Court in the case of Hanuman Singh v. State of Rajasthan in S.B. Civil Writ Petition No. 1205/79 decided on 10.9.1990 was also relied by the delinquent officer. In this case it was observed that on the perusal of the provisions of Rule 16(6) of the C.C.A. Rules the evidence has to be followed. The petitioner was avoiding the enquiry and in spite of service of notice he has not attended the disciplinary proceedings. The Enquiry Officer sent the file to the Collector for further action and the subsequent conduct of the petitioner to bring the political pressure was also taken into consideration. The Collector dispense with the enquiry on the ground that the petitioner was avoiding the expeditious disposal of the disciplinary proceedings. The ground that despite service of notice the petitioner did not attend the disciplinary proceedings were held not sufficient reason to take action under Rule 19(ii) of C.C.A. Rules. A perusal of this judgment would show that it has no relevancy to the present case" where the dispensing of the enquiry was based for the reasons mentioned under Rule 81-b itself and circumstances were existing and it cannot be said that the formation of the belief or the reasons which have been recorded are irrelevant or could lead to the conclusion that the dispensation of enquiry was not justified in the facts and

circumstances of the case.

15. A decision of the Delhi High Court in the case of Jagpal Singh v. Commissioner dated 11.1-1.1991 has also been submitted wherein on the allegation against the petitioner who was a post graduate teacher in the Kendriya Vidyalaya had taken a girl student of 12th class to store-room of Chemistry Lab and repeatedly kissed her and the Principal of the Institution conducted a summary enquiry and after being convinced that the allegation being true against the petitioner, the Commissioner terminated his services under Rule 81-b of the Education Code for Kendriya Vidyalayas which empowered the Commissioner to terminate the services of a person like the petitioner if found guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any girl student by giving him three months" notice or one months" pay and allowance. The writ petition filed against the order of termination was dismissed as the Court declined to interfere in the extraordinary writ jurisdiction. No allegation of malafide against the Principal or the Commissioner was raised. In the present case also we found that no allegation of any malafide against the Principal, Assistant Commissioner or Commissioner have been alleged or proved and in such a matter the extraordinary writ jurisdiction should not be invoked even if the matter is sought to be challenged on legal points. It is true that discretion to invoke the extraordinary writ jurisdiction is discretionary but the discretion has to be exercised so as to built the character of the nation rather than encourage any person to take shelter of the Court and encourage committing of misconducts on the basis of technical pleas availably.

16. The learned Counsel for the delinquent officer has drawn attention towards the various exhibits by which he wanted to allege that either copies of the documents desired by him were not given to him or that a misconduct has not been committed by him or that he is innocent. Since we are of the considered opinion that the present is not a case fit for invoking extraordinary jurisdiction and the order passed by the learned single Judge was not in accordance with law we are not required to go to the facts of the case. It has been found that the procedure as contemplated by Rule 81 has been followed and there is no irregularity which has been committed. Regarding the point that the appellant is not a State the same issue is not considered in this case since even on merit we find that the appeal is liable to be allowed.

17. Accordingly, the order of the learned single Judge on 23.4.1991 is set aside. The appeal is allowed and the writ petition is dismissed with cost of Rs. 2,000/- (Rs. two thousand).