
(2013) 02 DEL CK 0018

In the Delhi High Court

Case No : Writ Petition (C) No. 4483 of 1996

Ms. Usha Bhandari

APPELLANT

Vs

New Green Field School and Others

RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 6, 7

Citation : (2013) 02 DEL CK 0018

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Surat Singh with Mr. Biswarup Mukherjee, for the Appellant; Nitesh Kr. Singh, for Ms. Avnish Ahlawat, for R-3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition filed under Article 226 of the Constitution of India impugns the order of the Delhi School Tribunal dated 29.8.1996. By the order dated 29.8.1996, the Delhi School Tribunal upheld the order dated 21.10.1995 of the disciplinary authority imposing a major penalty of removal from service of the petitioner/teacher from the respondent No. 1/school. The disciplinary authority in its order dated 21.10.1995 accepted the findings of the enquiry officer dated 10.2.1995 by which the enquiry officer found all the seven charges as proved against the petitioner. The seven articles of charges against the petitioner read as under:-

Article I

That the said Smt. Usha Bhandari while functioning as assistant teacher (a) refused to sign the duty chart on 6.1.1993, (b) disobeyed the direction regarding class arrangement on 13.1.1993, (c) refused to receive the intimation on 19.1.1993 for not attending the assembly, (d) refused to explain the reasons as to why she managed to get the first bell rung five minutes before the schedule time on 5.2.1993, and (e) refused to acknowledge the direction regarding

arrangements on 14.7.1993 and 21.7.1993. Smt. Usha Bhandari thereby displayed disobedience and misconduct and lack of devotion to duty unbecoming for the teacher and indulged in gross indiscipline. She thus violated the provisions of Rule 123 of Delhi School Education Act and Rules, 1973 relating to code of conduct.

Article II

That Smt. Usha Bhandari misguided the parents of Deepa Bhatia student of V-D and took them to Uslain Convent School at L-271 DDA Kalkaji Flats and declared Deepa successful in that school and demanded and accepted an amount of Rs. 550/- and thus acted in a way prejudicial to the interests of the school of which she is an employee. She thus exhibited lack of integrity and acted in malafide manner and violated the provisions of Rule 123 of Delhi School Education Act & Rules, 1973 relating to code of conduct.

Article III

That Smt. Usha Bhandari has been running a school in the name of Uslain Convent School at the premises mentioned in Article II above without the permission and knowledge of the school authorities where she has been working. She has been giving the impression to the parents of students of said Uslain Convent School that that school is a branch of new Green Field School, Kalkaji, (Alaknanda). She thus used her personal influence for personal ends and displayed moral turpitude and thus violated Rule 123 of Delhi School Education Act & Rules, 1973 relating to code of conduct.

Article IV

That Smt. Usha Bhandari utilized the stationery of new Green Field School, Kalkaji, (Alaknanda) in the said Uslain Convent School without information, knowledge and permission of authorities or New Green Field School Kalkaji and thus acted in the interest detrimental to the interests of the school of which she is an employee. She thus displayed moral turpitude and acted in a manner unbecoming of an employee and exhibited lack of integrity and thus violated Rule 123 of Delhi School Education Act & Rules, 1973 relating to code of conduct.

Article V

That Smt. Usha Bhandari (a) refused to receive the Memo wherein she was asked to explain in the presence of other staff members on 27.7.1993 as to why she left the school early without permission on 22.7.1993 and 23.7.1993, (b) abused the Principal, Headmistress and other superiors on 28.7.1993 after noticing that there was a cross mark in the departure column on 27.7.1993 and (c) refused to note down the orders for taking class arrangement on 28.7.1993. Smt. Usha Bhandari thus displayed disobedience, misbehaved with superiors and indulged in gross indiscipline and thus violated the provisions of Rule 123 of Delhi School Education Act & Rules, 1973 relating to code of conduct.

Article VI

That on 28.7.1993 Smt. Usha Bhandari bluntly refused to receive the memorandum dated 27.7.1993 from the Manager of the New Green Field School, Kalkaji and misbehaved with the Manager in the presence of the Principal and the Headmistress. She thus displayed disobedience and exhibited indiscipline and acted in a manner unbecoming of an employee and thus violated Rule 123 of Delhi School Education Act & Rules, 1973 relating to code of conduct.

Article VII

That on 28.7.1993, Mrs. Usha Bhandari who was served with suspension order dated 28.7.1993 by the Manager refused to accept the said order in the presence of the Principal and the Headmistress and left the school at 12.30 P.M. by marking the time as 1.30 P.M. and abused Mr. Sareen, an employee of the school, who had taken the register to her for marking departure time. Smt. Usha Bhandari thus displayed disobedience and misconduct unbecoming of a teacher and indulged in gross indiscipline and thus violated Rule 123 of Delhi School Education Act & Rules, 1973.

2. A reading of the articles of charges shows that essentially the petitioner refused to perform extra duties of taking classes when she was asked to do so, left school early on two occasions, got the bell rung early by five minutes on one occasion and that too when the ringing of the bell was not in her purview of duties, misled parents of the students of the school to get admission in Uslain Convent School which was run benami by her in a flat belonging to her sister and finally by using the stationery of the school for the Uslain Convent school.

3. Before one proceeds to the facts and issues in the present case let us keep in mind what is the scope of a proceeding under Article 226 of the Constitution of India in a case like the present. This Court under Article 226 of the Constitution of India does not sit as an appellate Court to reappraise the findings of facts and conclusions as arrived at by the enquiry officer and the disciplinary authority. This Court can interfere with the findings and conclusions of the enquiry officer and the disciplinary authority only if the findings are perverse/arbitrary in violation of the Article 14 of the Constitution, or are violative of the law or the rules of the concerned organization and finally if the same are violative of the principles of natural justice. As the discussion hereafter will show, that, none of the aforesaid three factors are found to exist in the present case and therefore the writ petition must fail.

4. So far as the findings of the enquiry officer are concerned, the findings are detailed findings and conclusions which run into as many as 31 pages. I must put on record that the enquiry officer has done a very thorough job and has very systematically and analytically proceeded to examine each of the charges and has thereafter given his findings by reference to the evidence (both oral and documentary) which has been led in the case. With respect to each of the charges of the petitioner having not accepted extra duties or refusing to receive

the notice whereby she had denied to take up extra duties, are duly supported by the evidence of the witnesses in whose presence the events took place. These witnesses are either the administrative staff of the school or the teachers of the school or the principal of the school. The issue with regard to the petitioner not accepting the extra duties and refusing to acknowledge the directions of the principal are found by a notice of the same date and the records which are found in the school registers which show such facts as charged to be existing. The petitioner except routinely denying these charges has led no evidence to the contrary.

5. The most important aspect is that the petitioner in spite of having been given an opportunity to step into the witness box and explain her case, deliberately refused to step into the witness box and did not appear as a witness in the case. Surely, a person who does not have courage of conviction to depose in her own case, ought not to be believed by this Court and has thus rightly been disbelieved by the enquiry officer and the disciplinary authority.

6. So far as the aspect of the petitioner wrongly taking some students to the Uslain Convent School by representing that the said school is the branch of the respondent No. 1/school, the respondent No. 1/school before enquiry officer led the evidence of the parents of those students who deposed that it was the petitioner who took them to Uslain Convent School by representing as if the said school was a part of the respondent No. 1/school. Before the enquiry officer there is documentary evidence of the stationery of the respondent No. 1/school being utilized by the Uslain Convent School and there were also rubber stamps of the respondent No. 1/school with respect to admission of students in the Uslain Convent school. The petitioner herself admits that the school was being run in a flat which was owned by her sister. The petitioner herself filed the documents pertaining to admission of the students in Uslain Convent School. The respondent No. 1/school led the evidence of two parents. First was one Smt. Shakuntla Bhatia, mother of the student/Deepa Bhatia, and she showed and proved the acceptance by the petitioner of Rs. 550/- on behalf of the Uslain Convent School. The respondent No. 1/school also led the evidence of one Sh. Satinder Walia who deposed that his wife had worked in Uslain Convent School for 2-3 months who confirmed the contents of its complaint with respect to the petitioner utilizing the stationery which depicted the rubber stamp of the respondent No. 1/school for Uslain Convent School.

7. A reference to the detailed order of the enquiry officer shows that on behalf of the respondent No. 1/school evidence was led of as many as fifteen witnesses who were the teachers and employees of the school. No evidence has been led by the petitioner to show how so many employees would have any personal grudge or grievance against the petitioner. In fact, during the course of the hearing, I have put it to counsel for the petitioner whether any pleadings were made before the enquiry officer with respect to any assumed malice which the teachers and employees of the school, who had deposed in the enquiry

proceedings, had against the petitioner, but on behalf of the petitioner nothing was shown with respect to any such pleadings being made before the enquiry officer. Further, there is no reason why the parent of a student would in any manner have any grudge or malice against the petitioner as no conflict of interest is shown of the said parent, Smt. Shakuntla Bhatia, mother of Deepa Bhatia (student), with the petitioner. Similarly, no malice of any nature existed or could be proved against Sh. Satinder Walia who also deposed on the aspect of the petitioner using the stationery of the respondent No. 1/school for the Uslain Convent School.

8. A conspectus of the aforesaid facts shows the following:-

i) Each and every charge, may be the issue of ringing of a school bell 5 minutes earlier, are very grave charges and each of these charges were duly proved before the enquiry officer by means of depositions of witnesses and the school records.

ii) The petitioner led no documentary evidence except routinely denying the charges. Though the petitioner had claimed that she was not well to take extra classes, however, this noting was not given when memos were sent to her for taking of extra classes. Also, no medical record was thereafter filed with regard to her illness for refusing to take extra classes.

iii) The witnesses who have deposed before enquiry officer cannot in any manner be said to be motivated against the petitioner or can be said to have any malice against the petitioner, and nor has any malice or any grudge been proved on record by the petitioner against the said witnesses.

iv) The petitioner had no courage of conviction to step into the witness box and explain her case or stand the test of cross-examination, though she utilized the opportunity of cross-examining of the witnesses of the respondent No. 1/school.

9. A reading of the report of the enquiry officer shows from pages 1 to 8 thereof that on the basis of one medical certificate or the other, repeated adjournments were taken on dates fixed before the enquiry officer, and the enquiry officer in spite of objections of the respondent No. 1/school accommodated the petitioner and gave many adjournments.

10. In view of all the aforesaid facts, I am of the opinion that neither is there any illegality or perversity in the report of the enquiry officer and nor can the petitioner claim that the principles of natural justice were violated. So far as the aspect of violation of principles of natural justice are concerned, the present is not a case of the principles of natural justice being violated inasmuch as no hearing was given, and at best, there would only be a facet of principles of natural justice which allegedly may not have been followed, however, no prejudice is shown and therefore there cannot be any issue raised by the petitioner of violation of the principles of natural justice in view of judgment of Supreme Court in the case of State Bank of Patiala and others Vs. S.K. Sharma,

11. It is urged on behalf of the petitioner that order of the disciplinary authority is vitiated because of the principle that no one can be a judge in his own cause and once there was a likelihood of bias, actual bias need not be proved. This principle is sought to be brought into play by making allegations that the memorandums issued against the petitioner were signed by Smt. Ved Kumari who was the manager of the school and who also issued the seven articles of charges. It is argued that Smt. Ved Kumari who was the manager of the school gave evidence with respect to Articles 6 and 7 and appeared in the enquiry proceedings as witness No. 14 on behalf of the school. It is argued that since Smt. Ved Kumari was therefore personally interested in the enquiry proceedings, and this aspect goes to the root of the matter, the enquiry proceedings are vitiated because there was not only a reasonable likelihood of bias of Smt. Ved Kumari, but also Smt. Ved Kumari became a judge in her own cause because she was a member of the disciplinary committee. Reliance is placed in this regard upon two judgments of the Supreme Court in the cases of Arjun Chaubey Vs. Union of India (UOI) and Others, and Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, .

12. In the judgment of Arjun Chaubey (supra), the following paragraphs are relied upon:-

7. The order of dismissal dated June 15, 1982 which was issued by Respondent 3 recites that he was fully satisfied that it was not reasonably practicable to hold an inquiry into the appellant's conduct as provided by the Rules and that he had come to the conclusion that the appellant was not fit to be retained in service and had, therefore, to be dismissed. Evidently, Respondent 3 assessed the weight of his own accusations against the appellant and passed a judgment which is one of the easiest pass, namely that he himself was a truthful person and the appellant a liar. In doing this, Respondent 3 violated a fundamental principle of natural justice.

8. The main thrust of the charges against the appellant related to his conduct qua Respondent 3. Therefore, it was not open to the latter to sit in judgment over the explanation offered by the appellant and decide that the explanation was untrue. No person can be a judge in his own cause and no witness can certify that his own testimony is true. Any one who has a personal stake in an inquiry must keep himself aloof from the conduct of the inquiry.

9. The order of dismissal passed against the appellant stands vitiated for the simple reason that the issue as to who, between the appellant and Respondent 3, was speaking the truth was decided by Respondent 3 himself.

10. In The State of Uttar Pradesh Vs. Mohammad Nooh, observed, while speaking for the majority, that the roles of a judge and a witness cannot be played by one and the same person and that it is futile to expect, when those roles are combined, that the judge can hold the scales of justice even. We may borrow the language of Das, C.J., and record a finding on the facts of the case

before us that the illegality touching the proceedings which ended in the dismissal of the appellant is "so patent and loudly obtrusive that it leaves an indelible stamp of infirmity" on the decision of Respondent 3.

11. Mr. Mridul, appearing on behalf of the respondent, contended that though this may be the true legal position, the appellant does not deserve the assistance of the Court since, he was habitually guilty of acts subversive of discipline. This argument does not impress us.

12. In the first place, to hold the appellant guilty of habitual acts of indiscipline is to assume something which remains unproved. Secondly, the illegality from which the order of dismissal passed by Respondent 3 suffers is of a character so grave and fundamental that the alleged habitual misbehaviour on the part of the appellant cannot cure or condone it.

13. In the result, we allow the appeal and set aside the judgment of the High Court. The order dated June 15, 1982 whereby the appellant was dismissed from service is set aside. In order, however, to avoid needless complications in working out the mutual rights and obligations of the parties, we direct that the appellant, who is due to retire within about six months, shall be treated as having retired from service with effect from April 1, 1984. He shall be paid the arrears of his salary due until March 31, 1984, on the basis of the salary last drawn by him on June 15, 1982, without taking into account the increments which he might have earned subsequent to that date. The provident fund and gratuity shall also be paid to the appellant as calculated in accordance with the rules, as if no order of dismissal was passed against him. The appellant may not and shall not rejoin his duties. He will be treated as on leave between now and March 31, 1984.

13. In the judgment of Rattan Lal Sharma (supra), para 11 is relied upon which reads as under:-

11. In the instant case, Charge No. 12 states that a particular sum on account of amalgamated fund for the month of December was given to the appellant by Shri Maru Ram who was teacher in charge of the amalgamated fund. In the enquiry committee comprising of the three members, the said Shri Maru Ram was taken as one of the members and the himself deposed to establish the said Charge No. 12 and thereafter again joined the enquiry committee and submitted a report holding the appellant guilty of some of the charges including the said Charge No. 12. Shri Maru Ram was interested in establishing the said charge. From the charge itself, it is apparent that he had a pre-disposition to decide against the appellant. It is really unfortunate that although the appellant raised an objection before the enquiry committee by clearly indicating that the said Shri Maru Ram was inimical towards him and he should not be a member in the enquiry committee, such objection was reject on a very flimsy ground, namely, that since the said Shri Maru Ram was one of the members of the Managing Committee and was the representative of the teachers in the Managing Committee it was necessary to include him in the enquiry committee. It is quite apparent that the

enquiry committee could have been constituted with other members of the Managing Committee and the rules of the enquiry are not such that Shri Maru Ram being teacher's representative was required to be included in the said inquiry committee so that the doctrine of necessity may be attracted. If a person has a pecuniary interest, such interest, even if very small, disqualifies such person. For appreciating a case of personal bias or bias to the subject matter the test is whether there was a real likelihood of a bias even though such bias has not in fact taken place. De Smith in his Judicial Review of Administrative Action, (1980) at page has observed that a real likelihood of bias means at least substantial possibility of bias. In *R.V. Sunderland Justices*, (1901) 2 KB 357 (373) it has been held that the Court will have to judge the matter as reasonable man would judge of any matter in the conduct of his own business. In *R.V. Sussex Justices*, (1924) 1 KB 256 (259) it has been indicated that answer to the question whether there was a real likelihood of bias depends not upon what actually was done but upon what might appear to be done. In *Halsbury Laws of England* (4th Edn.) Vol. 2, para 551, it has been indicated that the test of bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias. The same principle has also been accepted by this Court in *Manak Lal Vs. Dr. Prem Chand*, This Court has laid down that the test is not whether in fact, a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehended that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

14. There is no quarrel to the principle of law that once there is a reasonable likelihood of bias, the order of the disciplinary authority can be vitiated depending on the facts of a particular case. It also cannot be disputed that no one can be a judge in his own cause. The issue however is that whether at all in the facts of this case it can be said that the order of the disciplinary authority must fail because Smt. Ved Kumari, the manager of the school was a judge in her own cause and there was implicit and reasonable likelihood of bias as she was member of the Disciplinary Committee.

15. The fact of the matter is that though Smt. Ved Kumari, the manager of the school was earlier a member of the disciplinary committee, and had issued the chargesheet containing the articles of charges, and had appeared as a witness in the case, however, when the order of the disciplinary authority was passed, she was removed from the disciplinary committee and the disciplinary committee did not comprise of Smt. Ved Kumari. This aspect is made clear by para 6 of the counter affidavit which is filed by the respondent No. 1/school, and the same reads as under:-

6. That on 5.2.95, the Management Committee of Respondent No. 1, reconstituted the disciplinary authority in the case of Petitioner as under:-

i.

Shri B.P. Sinha Chairman

ii.

Shri A. Biswas Director New Field School, Saket, New Delhi

iii.

Directorate of Education Nominee.

iv.

Mrs. Versha Verma Head Mistress New Green Field School, Saket, New Delhi

v.

Mrs. Manju Arora Teacher-Member

It is therefore clear that Smt. Ved Kumari therefore was not part of the disciplinary committee which passed the impugned order dated 21.10.1995 against the petitioner. Once Smt. Ved Kumari was not part of the disciplinary committee, then, there does not arise the question of applicability of the principle of no one being a judge in his own cause and of an issue of the likelihood of bias affecting the orders passed by the disciplinary authority. In both the cases which were relied upon on behalf of the petitioner the member(s) of the disciplinary authority who was/were to decide the case were judges in their own cause because that/those member(s) of the disciplinary authority had made charges against the charged official and which were enquired into and punishment imposed by the same authority which made the charges. In the case of Arjun Chaubey (*supra*), the respondent No. 3 in that case, had made various charges against the charged official and it was the respondent No. 3 which had passed the punishment order and therefore it was held that the order of the disciplinary authority was vitiated because the disciplinary authority was judge in his own cause. In the case of Rattan Lal Sharma (*supra*), similarly one Sh. Maru Ram against whom it was alleged that there was reasonable likelihood of bias because he was inimical towards the charged official, and, it was found as a matter of fact that it was Sh. Maru Ram who had charged the charged official of having been given monies by Maru Ram and which aspect was in question, and Sh. Maru Ram was part of the enquiry committee which went into the allegations against the charged official. Sh. Maru Ram was therefore found to have a pecuniary interest in the subject matter of the enquiry and therefore he was held to be disqualified to be a member of the enquiry committee. Accordingly, Supreme Court held that the enquiry was vitiated as there was a reasonable likelihood of bias against Sh. Maru Ram.

16. As already stated above, since Smt. Ved Kumari was not part of the disciplinary committee which finally passed the impugned order against the petitioner, the enquiry proceedings cannot be said to be vitiated either on account of the principle of a person being a judge in his own cause or on the issue of a reasonable likelihood of bias against a member of the disciplinary

authority.

17. For the sake of completion, I must note that though the petitioner had argued that the Delhi School Tribunal which passed the impugned order did not consider this aspect, however, in view of the aforesaid facts even assuming the Delhi School Tribunal did not consider this matter, the same will not make any difference inasmuch as the above stated facts show there is no question of the order of the disciplinary authority being violative of the principle that no one can be a judge in his own cause and that there existed a likelihood of bias of a member of the disciplinary authority. In view of the aforesaid, there is no reason why this Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. In fact, the report of the enquiry officer dated 10.2.1995 is a detailed report discussing all the depositions of the witnesses, the documents filed, analysis of the evidence as also the facts and thereafter ending with rationale conclusions given with respect to holding the petitioner guilty qua each article of charges. The writ petition is therefore dismissed leaving the parties to bear their own costs.