

(2011) 12 RAJ CK 0052

In the Rajasthan High Court

Case No : Civil Writ Petition No. 17259 of 2011 and Civil Miscellaneous Stay Application No. 15954 of 2011

Rajeev Kumar Paliwal

APPELLANT

Vs

Navodaya Vidyalaya Samiti and Others

RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 4 RLW 3183

Hon'ble Judges : Narendra Kumar Jain, J; Mahesh Bhagwati, J

Bench : Division Bench

Advocate : C.B. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Mahesh Bhagwati, J.—By way of the instant writ petition, the petitioner has beseeched to quash and set aside the order dated 13th July, 2011 (Annexure-5) whereby the Central Administrative Tribunal, Jaipur Bench, Jaipur dismissed the Original Application No. 179/2010 filed by the petitioner-applicant and further implored to grant the relief as prayed by him with all consequential benefits. Adumbrated in brief, the facts of the case are that the petitioner was appointed on the temporary post of Trained Graduate Teacher (T.G.T. Hindi) by Navodaya Vidhyalaya Samiti vide order dated 22nd June, 1995. Pursuant to this appointment order, he joined at Jawahar Navodaya Vidhyalaya, Bundi on 1st July, 1995. His services were made permanent vide order dated 17th June, 1998 and thereafter continuously worked with the respondent. The petitioner while posting at Jawahar Navodaya Vidhyalaya (J.N.V.) Sitapura, Bundi, was also assigned to work as Warden of boys Hostel in addition to his teaching work. It is alleged that the respondent No. 5-Principal-Jawahar Navodaya Vidhyalaya, Sitapura, Bundi lodged the FIR with Police Station, Taleda alleging that the petitioner made sexual advances towards Ms. Laxmi Saini a Class VII student. On the charge of sexual offence or exhibition of immoral sexual behaviour towards his student

Miss Laxmi Saini and on account of FIR having been lodged against him, he was placed under suspension and after the conclusion of the inquiry, his services were terminated with immediate effect.

2. The applicant-petitioner preferred a departmental appeal against the order of termination and the appellate Authority i.e. Commissioner also dismissed the appeal.

3. On the other side, the police commenced the investigation and having found the allegations to be false, after completion of investigation, gave Final Report in the case. The petitioner alleged that a false case was planted with malafides against him at the behest of Principal-Jawahar Navodaya Vidhyalaya, Sitapura, Bundi and the police found the report to be false and gave the Final Report, yet the disciplinary authority conducted the enquiry summarily and found him guilty and the competent authority terminated his services with one month's pay in lieu of notice.

4. Aggrieved with this order, the petitioner filed the Original Application No. 179/2010 before the Central Administrative Tribunal, Jaipur Bench, Jaipur and the Tribunal also, having found no merit therein, dismissed the same.

5. Heard the learned counsel for the petitioner and carefully perused the relevant material on record including the impugned order.

6. Learned counsel for the petitioner canvassed that the petitioner was nowhere entailed in any such incident and he was innocent.

7. The fact is that the news of exhibition of immoral sexual behaviour was published in the newspaper, hence, the management of institution conspired against him and the Principal of Jawahar Navodaya Vidyalaya with the aid of girl student, cooked up a false story and made him a scape-goat.

8. The petitioner endeavoured to bring home all these facts on record but the disciplinary authority in view of the notification dated 20th December, 1993 issued by Navodaya Vidyalaya Samiti, drew summary proceedings and sans conducting any proper enquiry, punished the petitioner and imposed the penalty of termination from service, which is disproportionate to the gravity of the charges levelled against him.

9. Learned counsel further canvassed that the petitioner was treated by the disciplinary authority as temporary employee and treating him as a temporary employee, his services were terminated with one month's notice pay, without conducting the proper enquiry. The Appellate Authority also did not consider his arguments raised in appeal and rejected the same against the provisions of Rule 27 of C.C.S. (C.C.A) Rules, 1965.

10. Learned counsel further canvassed that the enquiry was not conducted against the petitioner under CCS (CCA) Rules, 1965, hence, the appellate authority also could not decide under Rule 27 of the said Rules of 1965. The

appeal could only be decided under Rule 27, had the enquiry been conducted under CCS (CCA) Rules, 1965.

11. Learned counsel further contended that the C.A.T. also did not take into consideration all these aspects and arbitrarily dismissed his application in the light of the notification dated 20th December, 1993 sans assigning any cogent reason, hence, the impugned order rendered by the Central Administrative Tribunal, deserves to be set aside.

12. Having reflected over the submissions made by the learned counsel for the petitioner and carefully scanned the notification and other relevant documents, it is noticed that the Government of India issued the notification F. No. 14-2/93 NVS (Giv.) dated 20th December, 1993, which reads thus:

The Executive Committee of the Samiti at its meeting held on 12th January, 1992 had approved adoption of Central Govt. Rules and Regulations in the service matters of the employees of the Samiti mutatis mutandis till such time the Samiti framed its own rules and regulations. The above decision of the Executive Committee had been notified to all concerned vide No. F. 6-1/92-NVS (Admn.) dated 30th March, 1993.

It has further been decided with the approval of the Executive Committee that the relevant provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as amended from time to time, which are applicable to all members of the staff of the Samiti, mutatis mutandis shall suitably amended to provide for special procedure in certain types of cases. Accordingly, the provisions of Central Civil Services (Classification, Control and appeal) Rules, 1965 as applicable to the employees of the Samiti, relating to procedure for imposing penalties will stand amended to provide for special procedure in certain types of cases as enunciated below:-

A(i) In cases of purely temporary employee who is known to be doubtful integrity or conduct but where it is difficult to bring forth sufficient documentary or other evidence to establish the charges, and whose retention in the Vidyalaya etc. will be prejudicial to the interest of the Institution; and

(ii) in the case of a temporary employee suspected of grave misconduct, where the initiation of regular proceedings against him in accordance with the provisions of CCS (CCA) Rules, 1965 is likely to result in embarrassment to a class of employee and/or is likely to endanger the reputation of the Institution.

The appointing authority may record the reasons for termination of the services of the employee in its own record and thereafter terminate the services of the employee under the terms of appointment without assigning any reason, where the appointing authority is the Principal, action to terminate the services of an employee under the terms of appointment, shall be taken only after obtaining prior approval of the Deputy Director.

8. Whenever the Director is satisfied, after such summary enquiry as he deems

proper and practicable in the circumstances of the case, that any member of the Navodaya Vidyalaya is prima facie guilty of moral turpitude involving sexual offence or exhibition or 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 depending upon whether the guilty employee was temporary or permanent in the service of the Samiti. In cases, procedure prescribed for holding enquiry for imposing major penalty in accordance with CCS (CCA) Rules, 1965 as applicable to the employees of Navodaya Vidyalaya Samiti, shall be dispensed with, provided, that the Director 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 Director 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 Samiti informed of the circumstances leading to such termination of services.

The above provisions will take effect from the date of issue of the notification.

13. The crucial question springing up for consideration in the instant case is that as to whether a summary enquiry was permissible in the case of the petitioner by the disciplinary authority, A bare perusal of Clause B of the above notification envisages that whenever the Director (now called as Commissioner) was satisfied, after such summary enquiry as he deems proper and practicable in the circumstances of the case, that any member of the Navodaya Vidyalaya was prima facie guilty of moral turpitude involving sexual offence or exhibition or immoral sexual behaviour towards any student, he could terminate the services of that employee by giving him one month's or three months pay and allowances depending upon whether the guilty employee was temporary or permanent in the service of the Samiti.

14. It is also laid down in the notification that 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 Navodaya Vidyalaya Samiti, could be dispensed with, provided, that the Director was of the opinion that it was not expedient to hold regular enquiry on account of serious embarrassment to the student or his guardians or such other practical difficulties.

15. This notification tangibly reflects that the enquiry in a manner conducted against the petitioner can be conducted, if the Director is satisfied that the regular enquiry shall cause a serious embarrassment to the student or her guardians then the regular enquiry as contemplated by the CCS (CCA) Rules, 1965 can be dispensed with and on the basis of summary enquiry the major penalty can be imposed upon the delinquent employee. Thus, it is inferred that in view of the notification, if the summary enquiry can be conducted against the permanent employee if the Director (now called as Commissioner) is satisfied or he deems proper that the employee was prima facie guilty of moral turpitude on the basis of the summary enquiry and the major penalty could be imposed.

16. The second thrust of the argument put-forth by the learned counsel for the petitioner is that the appeal of the petitioner could not be decided by the appellate authority under Rule 27 of the CCS (CCA) Rules, 1965, as the enquiry against the petitioner was not conducted under the provisions of said Rules of 1965. Since the enquiry was conducted in view of the notification, the appeal could not be adjudicated under the Rules of 1965. The argument of the learned counsel does not carry any force for the simple reason that the notification is also found to have been issued by the Government of India and in exceptional cases wherein the incident of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student, the Director, if satisfied, after summary enquiry, and deemed proper and practicable, could terminate the services of that employee by giving him one month's or three months pay and allowances depending upon whether the guilty employee was temporary or permanent in the service of the Samiti.

17. The sort of enquiry as has been conducted in the case on hand can be initiated only in the exceptional circumstances, as mentioned above. Otherwise, in routine, the enquiry was to be conducted against the temporary employee in accordance with the Rules embodied in CCS (CCA) Rules, 1965. Viewed from this angle, the disciplinary authority is found to have committed no illegality in holding the petitioner to be guilty for exhibiting of immoral sexual behaviour towards a girl student. The appellate authority is also found to have rightly exercised its jurisdiction as contemplated by Rule 27 of the Rules, 1965,

18. The third ground formulated by the petitioner in the writ petition is that the matter was not referred to the Chairman of NVS nor was he informed about the circumstances leading to such termination of his services as envisaged under Rules of 1965. So far as the office order dated 12th February, 2010 is concerned, it is found to be issued by Joint Commissioner (Pers.) who is not the Chairman of the NVS, hence, the procedure laid down in the notification is also found not to have been followed by the disciplinary authority. The Central Administrative Tribunal also did not appreciate this argument put-forth by the learned counsel for the petitioner, hence, the whole enquiry conducted by the NVS's, competent authority, vitiates and the same deserves to be dismissed.

19. This argument of the learned counsel for the petitioner is also found to be devoid of any substance. A bare perusal of office order dated 12th February, 2010 reveals that the matter was submitted to the Hon'ble HRM/Chairman, NVS who after carefully examining the case files dealing with the termination of the petitioner Rajiv Kumar Paliwal, EX-TGT (Hindi), JNV, Bundi (Raj.), passed an order, the relevant portion of which reads as under:

On careful consideration of the records, I find none of the grounds raised by Sh. Paliwal stand and are borne by facts. The decision to hold a summary trial was taken since Sh. Rajiv Kumar Paliwal was found prima-facie guilty of immoral sexual behaviour towards a girl student of the Vidyalaya. As such the case was covered under the Samiti's notification No. 14-2/93-NVS (Vig.) dated

20.12.1993. Under these provisions, the procedure prescribed for holding inquiry for imposing major penalty in accordance with CCS (CCA) Rules, 1965 shall be dispensed with in case Commissioner is of the opinion that it is not expedient to hold regular inquiry into the case. On perusal of the records I find that the Commissioner has applied his mind while forming the opinion that it is neither expedient nor desirable to hold regular inquiry into the case. The file also reveals that Sh. Paliwal did appear before the Committee, he was shown copies of the complaint given by the girl student at the time of the summary inquiry, his signatures have been obtained on the complaint and he was given an opportunity to submit a written statement of defense. The Committee deliberated upon the reliability of the complaint and assessed the evidence in full. The Commissioner, NVS has applied his mind on the inquiry report before awarding the punishment of termination.

Considering the fact and circumstances given above, I find no reason to intervene in the matter and modify the orders of the Commissioner, NVS. There is no merit in the contentions raised in the appeal of Sh. Paliwal. Sh. Paliwal has committed very serious misconduct by misbehaving with a girl student. The gravity of the offence is magnified when one considers the fact that Sh. Paliwal was a teacher and the victim was his student. It will be against the interest of justice to make light of this charge and allow him to escape with minor penalties. I, therefore, uphold the termination of Sh. Rajiv Kumar Paliwal, which had been ordered by the Commissioner, NVS vide his order dated 19th February, 2007.

20. This order is bearing the signature of M.S. Khanna, Joint Commissioner (Pers.) which suggests that the office order was issued by the Joint Commissioner but this office order was carrying the actual order passed by the Chairman of NVS, which is Annexure-A/1.

21. The Central Administrative Tribunal relying upon the judgments of the Hon'ble Apex Court rendered in the case of Avinash Nagra Vs. Navodaya Vidyalaya Samiti and Others, and also the judgment in the case of Commissioner K.V. Sangathan and Ors vs. Ratin Pal decided on August 18, 2010 in SLP (Civil) No. 4627/2008 as well as the judgment in the case of Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, , observed that since the serious allegations of moral turpitude involving exhibition of immoral sexual behaviour had been levelled against the petitioner who happened to be the teacher of girl student and as held by the Supreme Court, under these circumstances, the conduct of the petitioner was unfitting coming of a teacher much less a loco parentis, dispensing with regular enquiry under the rules and denial of cross-examination were legal and not vitiated by violation of the principles of natural justice. The Tribunal also held that the competent authority had rightly terminated the services of the petitioner and the appellate authority also had rightly upheld the punishment imposed by the competent authority.

22. In view of above, the impugned order rendered by the Central Administrative Tribunal Jaipur Bench, Jaipur is found to be just and proper in the facts and

circumstances of the case and suffers from no infirmity.

23. It has made the order for valid and cogent reasons and there is no warrant for any interference by this Court in exercise of its writ jurisdiction and thus, the writ petition being devoid of any force deserves to be dismissed at the threshold.

24. The Hon''ble Supreme Court in *Surya Dev Rai Vs. Ram Chander Rai and Others*, held as under:

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

25. The Hon''ble Supreme Court in AIR 1975 1297 (SC) , held the High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts. The High Court cannot, while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate court or tribunal. It's function is limited to seeing that the subordinate court or tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and re-appreciating it.

26. The Hon''ble Supreme Court in *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, , held that in exercising the supervisory power under Article 227, the High Court does not act as an appellate court or Tribunal.

27. The instant writ petition has been filed under Article 227 of the Constitution of India. Hon''ble Apex Court in the case of *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, , held that the power under Article 227 of the Constitution of India is a reserved and exceptional power for judicial intervention to be exercised not merely for the grant of relief in any even of the case, but only to be directed for the promotion of public confidence in the administration of justice. It has been held that the power is unfettered, but subject to high degree of judicial discipline and interference is to be kept at the minimum.

28. For the reasons stated above, the writ petition fails and the same being bereft of any merit stands dismissed in limine. Consequent upon the dismissal of the writ petition, the stay application does not survive, and same also stands dismissed.