

(2018) 01 P&H CK 0174
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3011 Of 2014

Rakesh Boora

APPELLANT

Vs

State Of Haryana

RESPONDENT

Date of Decision : 09-01-2018

Acts Referred:

Indian Penal Code, 1860 — Section 109, 120B, 294, 306, 509
Code Of Criminal Procedure, 1973 — Section 161, 319
Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2018) 2 SCT 39

Hon'ble Judges : Amol Rattan Singh, J

Bench : Single Bench

Advocate : R.K. Malik, Ramandeep Singh, R.K. Doon

Final Decision : Partly Allowed

Judgement

Amol Rattan Singh, J

1. By this petition, the petitioner, who is working as the Principal of the Government Senior Secondary School, Matlauda, seeks quashing of the order dated 10.02.2014, passed by the respondent herein, i.e. the Financial Commissioner and the Principal Secretary to the Government of Haryana, Department of School Education, retiring the petitioner compulsorily from service, holding him guilty of being insensitive to the complaints filed by a female Lecturer, alleging sexual harassment at the hands of another Lecturer.

The petitioner had been charged as follows:-

"That Shri Rakesh Boora has neither disposed of various complaints made by the Late Ms. Neelam, Lecturer in English, Govt. Senior Secondary School Tehsil Camp (Panipat) regarding sexual harassment nor brought the same to the notice of higher authorities. But instead, he has constituted a committee of five junior employee who have failed to conduct the enquiry. As a consequence of the same, said Late Ms. Neelam has committed suicide due to mental and social agony."

A regular inquiry having been held with a retired IAS officer appointed as an enquiry officer, the petitioner was found guilty of the first part of the charge, to the effect that he had ignored 13 complaints of sexual harassment caused to the late Lecturer, which she had made to the petitioner as the Principal of her school.

2. The second part of the charge, of not properly enquiring into the complaints, was held to be not proved by the enquiry officer.

Thus, in the impugned order of compulsory retirement, the punishing authority, i.e. the respondent herein, held that the first charge in any case had been proved, and aspersions were also cast on the petitioner in the manner in which the late Lecturer was transferred from the Government Model School, Panipat, simply at the level of the District Education Officer, without informing the Director, Secondary Education, which was also improper and in fact, as the head of the institution, it was required of the petitioner to recommend the transfer of the male Lecturer as well, in the interest of justice and fair play.

3. Yet further, in the impugned order, it has been stated that the petitioner in connivance with Rajinder, i.e. the Lecturer against whom the late Neelam Kumari had alleged sexual harassment, had taken up the matter with the Superintendent of Police, Panipat, to get a case registered against Neelam Kumari in fact, instead of first taking up the matter with his own superiors.

4. Though these are the essential facts, however, what has been stated in the writ petition is also being enumerated as given hereinafter.

The petitioner is stated to have joined the Education Department as a Lecturer in Mathematics on 23.10.1991 and continued till he was appointed as a Principal by way of direct recruitment, on 27.10.2004.

He is stated to have had an excellent service record throughout, with no adverse remarks ever conveyed to him from his ACRs.

He is also stated to have been awarded commendation certificates in sports and for good results in the school, also having been honoured by the District Administration for 'best performance', on Independence Day 2008.

5. As per the petition, the aforesaid Lecturer in English, Ms. Neelam Kumari, was posted at the Government Senior Secondary School, Tehsil Camp Panipat, during the tenure of the petitioner as the Principal of the school, with the lady being 'shifted' to the Government Model Sanskriti Senior Secondary School, Panipat, about one kilometer away from the school of the Principal, after which she died on 11.02.2009, with her father thereafter having filed a complaint.

The Director General, School Education, vide a letter dated 10. 03.2009, entrusted a preliminary enquiry to the Deputy Director (Examinations), Smt. Kanta Sharma, with the enquiry officer having given an opinion that the petitioner did not take any interest to solve the problems of the late Neelam Kumari by conducting any enquiry himself, and instead constituted a Committee

of five junior school teachers, to "solve the problem of sexual harassment."

The complainant herself is stated not to have appeared before the Committee, with her father having appeared. He is stated, by the petitioner, to have said that an 'oral compromise' was entered into on 08.09.2008.

However, the father of Neelam Kumari denied any such compromise (before the enquiry officer conducting the preliminary enquiry). The preliminary enquiry report (a copy of which has been annexed as Annexure P-1 with the petition), further submits that the situation became serious with the passage of time and more complaints were made against Neelam Kumari by Rajinder, for using words pertaining to his caste, with students of Class XII also having made complainants against her behaviour, which were also made by other staff members.

As per the aforesaid enquiry officer, an enquiry of sexual harassment should actually have been entrusted to either the senior most lady officer of the district, or should have been conducted the Principal himself. However, that observation of the enquiry officer is not against the petitioner, but against the District Education Officer, Panipat, who appointed a male Block Education Officer to conduct the enquiry. (That was obviously in addition to the five member Committee that enquired into the issue at the instance of the petitioner).

6. The preliminary enquiry report further stated that as the complainant, Ms. Neelam Kumari, had died on 11.02.2009, without any "spot witness and cross questioning", it was impossible to establish whether she died due to the misbehaviour of the petitioner and the aforesaid Lecturer, Sh. Rajinder (or not).

It has further been observed in the report that, however, the sequence of events, and the complaints made against Neelam Kumari by the petitioner, the aforesaid Rajinder and other staff and students, as also her transfer in a very short span of time, without obtaining permission, indicated something suspicious.

Hence, the final opinion of the enquiry officer conducting the preliminary inquiry, was to the effect that the role of both the officials was suspicious and "not upto the mark".

7. The petitioner thereafter, is stated to have been issued a charge-sheet (with the charge as reproduced hereinabove made against him), to which he submitted his reply (a copy of which has been annexed as Annexure P-3 with the petition).

A perusal thereof shows that it is stated by him that during his tenure as a Principal, Neelam Kumari did not give any written or verbal complaint of sexual harassment to him, nor was she sexually harassed. In fact, Sh. Rajinder, Lecturer in Hindi, made a complaint to him on 02.09.2008 about Neelam Kumari, regarding her uncivilized behaviour.

As regards the constitution of a Committee of five junior employees, it was contended by the petitioner in his reply to the charge-sheet, that the said Committee was also to enquire into the complaint made by Rajinder, though the

petitioner himself had at the first instance tried to enquire into the matter himself. However, on seeing the seriousness of the matter and on suggestions of staff members, he constituted a Committee of five responsible teachers, so that the truth could be arrived at.

As per the petitioner, the senior most lady Lecturer (after Neelam and Kumari and Rajinder), was also a part of the Committee; but in the meanwhile, Neelam Kumari misbehaved with Rajinder again on 04.09.2008.

Thus, after seeing the abnormal behaviour of Neelam Kumari and again also upon suggestions of staff members, her father was called, and in the office of the petitioner a verbal compromise was reached between the two, which was confirmed later before the Committee.

The petitioners' contention thus was, that Neelam Kumari had in fact accepted her mistake and Rajinder had agreed to it.

Hence, as per the petitioner, the Committee constituted was not to enquire into any allegations of sexual exploitation of Neelam Kumari, but to enquire into the complaint made by Rajinder against Neelam Kumari, there in fact being no written or oral complaint by Neelam Kumari.

8. Further, as per the petitioners' reply to the charge sheet, on 18. 11.2008 again Neelam Kumari uttered vulgar and communal words to Rajinder, in respect of which again he is stated to have made a complaint.

Hence, on account of the aforesaid, as also seeing the fact that the students and staff members were also making complaints against her, the petitioner is stated to have made a written complaint against her abnormal behaviour on 19.01.2009, to the District Education Officer, Panipat.

9. The District Education Officer is stated to have then got an enquiry conducted by the Block Education Officer, and then shifted Neelam Kumari to the Government Model Sanskriti School on 23.01.2009, which was only one kilometer away from her home.

The transfer order was challenged by Neelam Kumari before the Civil Court, which as per the petitioners' reply to the show cause notice, was found to be a challenge without basis and in fact adverse comments were made on the mental state of the plaintiff, Neelam Kumari. [A copy of the order of the learned Additional Civil Judge (Senior Division), Panipat, dated 7. 02.2009, in the civil suit filed by Neelam Kumari, has been annexed as Annexure P-26 with the petition].

10. Yet further, it is contended in the reply of the petitioner to his charge-sheet, that thereafter Neelam Kumari died in her home on 11.02.2009, after which her parents executed an affidavit in order to receive her service benefits, with her death also stated to be natural, with her brother also stated to have made a statement to that effect on 13.02.2009.

Hence, it is contended that Neelam Kumari did not commit suicide, even as per her brothers' statement.

As per the petitioner a false FIR was thereafter registered against him and Rajinder, three months after the lady's death, which was also investigated into, with the petitioner found innocent in the investigation.

11. According to the petitioner, his wife also worked as a Math Mistress in the same school, but she too was got transferred allegedly on false complaints made, with other teachers also attempted to be got transferred by referring to Neelam Kumaris' death.

Finally, it has been stated in the reply to the charge-sheet, that the department was duly informed by the petitioner, who has never neglected his duty and in fact has been honoured for his dedication and integrity.

12. The competent authority not having found the aforesaid reply satisfactory, Sh. V.P. Batra IAS (Retired) was appointed as an enquiry officer, who submitted his report on 10.10.2011 (a copy of which has been annexed as Annexure P-4 with the writ petition), in which the final finding is as follows:-

"Part-I:- Sh. Rakesh Boora did not investigate at his level the sexual harassment complaints of late Kumari Neelam Lecturer English & instead of bringing to the notice of higher authorities constituted a committee of five employees of the school and got investigated and they failed to investigate.....(Not proved).

Part-2:- Sh. Rakesh Boora, neglected the sexual harassment complaints of Late Kumari Neelam included in the said 13 complaints succeeds.....

(Proved)"

13. The respondent herein (the Principal Secretary), having disagreed with the enquiry report, the petitioner was served a disagreement note dated 20.12.2011 (Annexure P-5), to which he again submitted a detailed reply, the stand taken in which he reiterated at the time of his personal hearing, by way of a representation, Annexure P-7.

14. Further in the petition, the petitioner has submitted that as a matter of fact, the complaints stated to have been filed by Neelam Kumari on 24. 05.2008, 12.05.2008, 23.07.2008, 13.01.2009, 29.08.2008, 15.11.2008, 12. 08.2008 and 31.07.2008, were never received in his office (as Principal), and that after the death of Neelam Kumari, in the criminal case registered under Sections 306, 294, 509, 109 and 120-B IPC, against Rajinder, the petitioners' name was also mentioned, but he having been found innocent, the case was eventually registered only against Rajinder.

It is further stated that the investigation conducted by the SHO of Police Station Panipat City, was after verification from the school regarding the complaints filed

by Neelam Kumari, with the said information also having passed scrutiny by the Inspector posted in the office of the Superintendent of Police, Panipat.

As per the petitioner, even his successor as the Principal of the school, had stated in the investigation that the said complaints were actually never received in the school, with copies of the letters from the Principal, addressed to the SHO, and the office of the Superintendent of Police, Panipat, having been annexed with the petition as Annexures P-11 to P-13 (though Annexure P-11 is seen to have been written by the petitioner himself).

Reference has also been made to the statements made by one Smt. Rajbir Kaur, Clerk in the office school, under Section 161 Cr.P.C. before the police, in which she too stated that no such complaints were presented by Neelam Kumari in the office of the Principal. (A copy of the statement of Rajbir Kaur has been annexed as Annexure P-14 with the petition).

15. Hence, in the aforesaid background, the contention of the petitioner is that the charge-sheet issued to him is based on the assumption that Neelam Kumari had committed suicide due to "mental and social disturbance", but as a matter of fact, her parents had actually filed an affidavit before the school authorities at the time when they sought pensionary/service benefits, to the effect that their daughter had died on 11.02.2009 of natural causes. A copy of the affidavit dated 02.03.2009 has been annexed as Annexure P-25 with the petition, wherein the first paragraph thereof states to the aforesaid effect.

The petitioners' wife is also stated to have obtained information from the Register of Births & Deaths, Panipat, according to which the reason of the death of Neelam Kumari had been a heart attack, with a person named Ramesh Kumar having stated so at the time of registration of her death.

As per the petitioner, the aforesaid Ramesh Kumar is the brother of the late Neelam Kumari.

A copy of the said information received under the Right to Information Act, 2005, has also been annexed with the petition, and as per the petitioner, no post mortem examination was conducted upon her body.

16. Yet further, in the criminal proceedings an investigation report was also submitted by the Inspector of the Economic Crimes Branch in the office of the Superintendent of Police, Panipat, which was eventually put up to the Inspector General of Police, Rohtak Range, and even in an enquiry entrusted to the Deputy Superintendent of Police, Bahadurgarh, outside District Panipat, the petitioner was found to be innocent. Copies of all investigations reports have also been annexed with the petition.

17. An application filed under Section 319 of the Cr.P.C. by the father of Neelam Kumari is also shown to have been dismissed by the learned trial Court, vide its order dated 11.05.2010, against which order a criminal revision petition was filed in this Court, which is also shown to have been dismissed on 05.07.2011, and an

SLP filed thereafter also dismissed on 9. 09.2011. Copies of the aforesaid orders have also been annexed with the petition.

Eventually in the criminal case, even Rajinder is stated to have been acquitted, with a copy of the judgment of the learned Sessions Judge, Panipat, annexed as Annexure P-24 with the petition.

18. Thus, the contention of the petitioner in a nutshell is that he having been actually exonerated in all criminal investigations, with the factum of any complaints made by Neelam Kumari having been received in the office of the Principal, denied by all concerned, including the subsequent Principal as also the Clerk in the office of the Principal, and further, that the entrustment by him of an enquiry to subordinate staff being only in respect of complaints made by Rajinder, the conclusion reached by the respondent Financial Commissioner-cum-Principal Secretary, while imposing the punishment upon the petitioner, is without proper application of mind.

19. In the written statement filed on behalf of the respondent, by the Special Secretary to the Government of Haryana, Department of School Education, it is stated that a complaint dated 26.02.2009 was made by the father of Neelam Kumari, Sh. Daya Nand, against the petitioner, alleging therein sexual harassment of his daughter, which was received in the department, with Smt. Kanta Sharma appointed as an enquiry officer (as noticed hereinabove).

The factum of the preliminary enquiry conducted, the charge-sheet issued and regular enquiry having been conducted, the petitioner having been heard in person, are admitted in the reply.

20. As per the reply, the competent authority, after considering the entire case, including the complaints and record, as also judgments of the Supreme Court, found that the petitioner had not shown any interest in considering various complaints made by a female employee regarding sexual harassment caused to her, and that he never brought such a serious matter to the notice of the higher authorities in the hierarchy.

It is further stated that during the course of the enquiry, the petitioner in fact did not show any receipt register with regard to the complaint stated to have been made by Neelam Kumari against students as also against Rajinder, and therefore, it was rightly concluded that the role of the petitioner and Rajinder in respect of complaints made against Neelam Kumari by the students, was not above board, and that in fact some of the students had also denied the same during the course of the enquiry.

The preliminary submissions in the written statement, thereafter go on to justify the decision on the ground that the yardstick for acquitting a person in criminal proceedings is wholly different from that in disciplinary proceedings, and therefore, the petitioner cannot place any reliance on the acquittal of even Rajinder Kumar in those proceedings.

In the reply it has been reiterated (as has been stated in the impugned order), that it was the duty of the petitioner to have looked into the gravity and sensitivity of the matter personally, especially in view of allegations of character assassination by a female employee.

21. It further states that the 2nd part of the charge had been proved by the enquiry officer also, and that even from the report of the officer conducting the preliminary enquiry, it was clear that the petitioner as a Principal had acted in a biased manner, not having shown any receipt register about the complaints made by Neelam Kumari against the students and Rajinder.

It has next been reiterated that the petitioner should have brought to the notice of the higher authorities, the transfer of Neelam Kumari at the level of the District Education Officer on 24.01.2009.

22. On the aforesaid contentions, the impugned order has been defended on behalf of the respondent.

23. A short replication has been filed by the petitioner to the aforesaid written statement, reiterating therein that even as per the statement of Rajbir Kaur, Clerk in the Government Senior Secondary School, Tehsil Camp, Panipat, it was very clear that no complaints were received from Neelam Kumari, which have also been verified by the police authorities.

The following has also been reproduced in the replication, from the preliminary enquiry report submitted by Smt. Kanta Sharma, Deputy Director Exam. (Annexure P-1):-

"The Principal was shown all these letters as explained in point-5 but he did not acknowledge them and those were not found entered in the receipt register of the school".

24. It is thereafter reiterated that in view of the fact that no such complaints from Neelam Kumari were received, and the fact that the Committee of five junior employees constituted was only to enquire into the complaints by Rajinder against Neelam Kumari (with the copy of the order constituting the Committee being Annexure P-28 with the petition and the complaints made by Rajinder being Annexure P-27), and lastly, a presumption having been raised that Neelam Kumari had committed suicide, contrary to the statements of the parents and brother of Neelam Kumari, the impugned order deserves to be quashed.

It is further stated that even the complaint to the police with regard to the death of Neelam Kumari was made three months after her death by her father and in any case, there was no personal allegation against the petitioner with all such allegations being Rajinder, who has been not only acquitted by the Criminal Court but also exonerated in the disciplinary proceedings by the enquiry officer.

25. Thereafter, upon an application filed, which was allowed by this Court vide an order dated 09.11.2017 (by which order, the judgment in this case had been

reserved), the order passed by the Additional Chief Secretary to the Government of Haryana, Department of School Education, in the case of disciplinary proceedings against the aforesaid Rajinder, on charges of sexual harassment of the late Neelam Kumari, was taken on record as Annexure P- 43.

A perusal of that order shows that the same enquiry officer as had conducted an enquiry against the petitioner, had exonerated Rajinder of the charges of sexual harassment, saying that such charge had not been established.

That finding has been accepted by the punishing authority (successor officer to the person who passed the order impugned in the present petition, i.e. the now re-designated respondent), with the aforesaid Rajinder having been reinstated in service, with the period during which his services were suspended also treated to be duty period. The charge-sheet against him was therefore ordered to be filed away.

26. Mr. Malik, learned senior counsel appearing for the petitioner, first reiterated all the aforesaid facts as have already been noticed hereinabove, and submitted that in view of all these facts, especially as even no complaint of Neelam Kumari against Rajinder was found to be on record in the school in which the petitioner was the Principal, and further she not shown to have committed suicide even as per the statements of her parents and brother, and more especially so when the person against whom sexual harassment charges were levelled having been not only acquitted in the criminal proceedings but fully exonerated of the charges in the disciplinary proceedings also, the finding by the enquiry officer on one charge against the petitioner, and the impugned order passed by the respondent, are not sustainable in any manner.

27. Mr. Doon, learned Assistant Advocate General, Haryana, however, submitted that the petitioner actually having neglected his responsibility in going into the complaints made by Neelam Kumari and being partly responsible for her transfer from one school to the other, without taking approval of the higher authorities, the impugned order was correctly passed and requires no interference with by this Court.

28. Having considered the pleadings as also the arguments raised on both sides, what first needs to be noticed is that as regards the order Annexure P-43, passed in favour of the aforesaid Rajinder, against whom allegations of sexual harassment are stated to have been made by the late Neelam Kumari, the said order, as already noticed, is on the basis of the fact that the charges against Rajinder were not found to have been proved, by the same enquiry officer as had conducted the enquiry against the petitioner herein.

A perusal of that enquiry report, Annexure P-25, shows that as regards the first charge, to the effect that Rajinder had misbehaved with the late lady Lecturer and had used foul words, the finding of the enquiry officer is that "in the described circumstances", it is not possible to reach a definite conclusion as to whether the charge-sheeted employee was guilty of mis-behaviour or not, in

view of the fact that allegations and counter-allegations were made on both sides and as Neelam Kumari had died, it was not proper and fair to conclude that Rajinder was guilty.

As regards the second charge, of Rajinder having instigated students of Class XII, thereby spoiling the atmosphere of the school, again the enquiry officer found that it was not possible to reach a definite conclusion to hold the employee guilty, virtually for the same reason, that Neelam Kumari had died and therefore no cross-examination was possible (as that charge was also essentially on complaints stated to have been made by Neelam Kumari).

The 3rd charge against Rajinder Kumar was that it was his misbehaviour with the late lady that had caused her death on 11.02.2009 "due to mental disturbance".

As regards that charge, the enquiry officer concluded that the departmental evidence was not sufficient to corroborate that charge and in any case, that charge being related to charge 4, that Rajinder had been taken into judicial custody on account of an FIR having been registered against him, the matter was still sub-judice before the trial Court.

Thus there is no 'specific exoneration' on account of a finding that actually the allegations made by Neelam Kumari/her father were correct or incorrect, but on account of the fact that Neelam Kumari having died, she was not cross-examined and therefore, there was no corroboration of the allegations.

29. Coming to the argument of learned senior counsel that even the learned Additional Civil Judge, in the suit filed by Neelam Kumari against her transfer, had observed that she was mentally disturbed, a perusal of the said order, Annexure P-26 dated 07.02.2009, shows that the conclusion arrived at by the learned court (in an order passed on an application under Order 39 Rules 1 and 2 CPC), was to the effect that Neelam Kumari was found to be in a shattered state of mental health and was complaining against the male members of the school, making serious allegations of sexual harassment against them, and as regards the present petitioner (defendant no. 3 before the Civil Court), her complaint/allegation was that he was not showing any concern in her favour. The late plaintiff in that case (Neelam Kumari), was also found to have stated that she would like to resign or end her life, if things continued in the same manner.

Having stated as above, the learned Civil Judge came to the conclusion that it would be better for the working of the school that the plaintiff remained in a different school and therefore, she was not entitled to a stay on the transfer order.

Therefore, what has been recorded by the Civil Court is not a final finding in the suit that the late Neelam Kumari was making false allegations, but that in her shattered state of mental health, it may be better that she remain in a different school during the pendency of the suit.

30. Coming next to the findings against the present petitioner by the enquiry

officer, vide the enquiry report Annexure P-4, as already noticed, he had recorded a finding dividing the single charge into two parts, and as regards the finding of neglecting the sexual harassment complaint made by Neelam Kumari, that part of the charge was held to be proved, but the allegation that he did not investigate the sexual harassment complaints at his own level and further did not bring them to the notice of the higher authorities and instead constituted a committee of five members of the school to investigate into it, was held to be not proved.

31. It needs to be noticed here that in fact what the finding of the enquiry officer, on that part of the charge which he held to be not proved, was with regard to the constitution of the Committee of five employees instead of getting the harassment complaints investigated. That charge was held to be not proved because it was found in the enquiry, that even as per the order constituting the five member Committee, the committee was to look into the complaints made by Rajinder against Neelam Kumari, and not any complaints made by Neelam Kumari against Rajinder.

In fact, if looked at logically, the factum of not getting Neelam Kumaris' complaints/allegations enquired into or reporting them to the higher authorities, would actually be a part of the charge which was found to be proved, as it was held that the petitioner actually neglected the sexual harassment complaints made by Neelam Kumari.

Hence, the finding on the part of the charge not proved, is actually contradictory to the part held to be proved.

32. The argument of learned senior counsel appearing for the petitioner is that the Clerk in the school, i.e. Rajbir Kaur, also testified in the enquiry proceedings to the effect that none of the complaints presented by the father of Neelam Kumari was found to have been received, and therefore, with that testimony, as also the fact that even the succeeding Principal in the school had written to the police officers concerned in the criminal investigation that no such complaints were shown to have been received, proved that all the complaints were actually an afterthought by the father of the deceased lady.

In the opinion of this Court, that contention cannot be accepted because, firstly, the finding of the enquiry officer (in paragraph 17 of the report), is that in the cross-examination of Neelam Kumaris' father, the petitioner had suggested that the documents which were given to the 'preliminary enquiry officer' were forged but no documentary evidence pertaining to the said suggestion was produced, and in that situation, "it is felt that the late Neelam Kumari had written these complaints in her life time and therefore, cannot be called false and forged; and further as she had died the mode of sending the complaints could not be ascertained."

In fact, as per the enquiry officer, even the statement made by the petitioner, simply denying the receipt of complaints, could not be believed.

33. The conclusion of the respondent authority in the impugned order, that the non-production of the receipt register/the complaints made by Neelam Kumari against the students and Rajinder not being shown in the receipt register, showed the bias of the Principal (the petitioner herein), cannot be faulted in the opinion of this Court, because without a doubt Neelam Kumari had instituted a civil suit against her transfer, and in that civil suit itself, as is obvious from a perusal of the order of the learned Civil Judge, Annexure P-26, she had made allegations against Rajinder of sexual exploitation, with the allegations against the petitioner being that as the Principal, he always 'took Rajinders' side'.

Hence, seen also with the fact that letters were produced by Neelam Kumaris' father, which are stated to be copies of complaints made by her, it is not possible to believe that the petitioner was never approached by Neelam Kumari with allegations of sexual harassment at the hands of Rajinder.

Therefore, in the opinion of this Court too, the respondent authority correctly arrived at that conclusion, with even the enquiry officer having held (though not for sufficiently detailed reasons), that the petitioner was guilty in neglecting the sexual harassment complaints made by Neelam Kumari.

Whether or not such allegations of sexual harassment were correct or not, is not being commented upon, with there being no challenge to Rajinders' exoneration in the disciplinary proceedings, and his allegation being that he was in fact harassed by the lady Lecturer, by way of 'caste abuse' etc. No comment is to be made by this Court on that allegation either, but the contentions of both sides were necessary to be noticed in the context of the present petition.

34. Having said that, the question now is whether, in the background of the petitioners' service record and with no allegation of sexual harassment made against him specifically by Neelam Kumari, especially in view of the fact that the man against whom such an allegation was made, has been completely exonerated by the punishing authority, can the punishment of compulsorily retirement imposed on the petitioner be sustainable?

35. Though, in the opinion of this Court, in view of the charge that he ignored the sexual harassment complaints made by the lady who eventually died (though not proved to be a case of suicide), the punishment would otherwise be wholly justified, however, to repeat, since on the man against whom sexual harassment was alleged, no punishment has been imposed, such a harsh punishment on the petitioner would seem to be not sustainable.

It needs to be noticed here that a perusal of the enquiry reports Annexures P-4 and P-5, reveals that in fact Neelam Kumaris' father had even made allegations of sexual exploitation against the petitioner himself, however, neither was there any such charge against the petitioner, nor in fact even in the order passed in the civil suit (on an application for interim relief), has the learned Civil Judge recorded any averment of the plaintiff (complainant Neelam Kumari), that the petitioner had also sexually harassed her. The allegation of sexual harassment,

as recorded in the the aforesaid order, was only against Rajinder, Hindi Lecturer, with the allegation against the petitioner herein being that he did not take action against either Rajinder or the boys who were indulging in wrong activities at the instigation of Rajinder, and that he (the petitioner), always "took the side" of Rajinder.

36. The enquiry report of the enquiry officer, exonerating Rajinder on the ground that as Neelam Kumari had died, the allegations of sexual harassment could not be held to have been proved, was accepted by the punishing authority, who therefore may not have had any ground to impose a punishment on Rajinder.

However, that does not take away the fact that, even in the opinion of this Court, the factum of negligence on the part of the petitioner, in bringing the complaints of Neelam Kumari to the notice of the higher authorities, or to even have enquired into them, and in fact in not even making any entry with regard to her complaints in the register, is something unbecoming of a person holding the post of a Principal, i.e. administrative head of an educational Institution.

37. Very obviously of course the petitioner did bring to the notice of the District Education Officer that all was not well as regards Neelam Kumari, and therefore she was even transferred by the said officer to a different school, and the petitioner can take that plea of things being amiss having been brought to the notice of his immediate superior, by him. Yet, it does not exonerate him of the charge of not taking any heed of the complaints made by Neelam Kumari.

Whether upon any enquiry conducted by the petitioner himself, the allegations would have been proved or not against Rajinder, is another matter, which cannot be speculated upon after Neelam Kumaris' death. However, complete denial of any such complaints having been made by her, despite her even having instituted a civil suit against her transfer, making the same allegations, is something which this Court finds not possible to accept.

Had the said allegations not been made by the deceased Lecturer in the civil suit filed by her, the contention of the petitioner that no complaints of sexual harassment were made by her, may have been accepted. However, with the said allegations having been made in the civil suit filed by her on 27.01.2009, even if the complaints subsequently produced by her father are to be ignored as possibly being forged/fabricated as was contended, it is not possible to believe that she would not have made the complaint to the Principal himself, before making them in the civil suit. Very obviously, her complaint and the counter complaints filed by the male Lecturer against her, led to her transfer to a different school in the same vicinity. Hence, in my opinion, it is not possible to accept the petitioners' contention that she never made any such complaint to him.

Without making any comment of the truth or otherwise of the allegations made by the late Neelam Kumari, even if it is (for the sake of argument), to be presumed that there was not much truth in the complaint made by her, the petitioner as the head of the institution, was duty bound to have acted upon such

complaints by either enquiring into the matter himself, or instituting an enquiry thereon, or bringing it to the notice of higher authorities. His complete denial, however, of even having received the complaints, in the aforesaid circumstances is not believable.

38 Consequently, while upholding the finding of the enquiry officer and the punishing authority as regards the guilt of the petitioner on the charge of neglecting the complaints of Neelam Kumari, but because the man against whom the allegations of sexual harassment were made has been eventually not imposed any punishment by the competent authority in view of the inconclusive findings against him, this petition is partly allowed to the extent that the impugned order of punishment of compulsory retirement of the petitioner is quashed, with the matter remitted to the respondent herein, to take a fresh decision on the quantum of punishment to be awarded to the petitioner, also taking into account his previous record in service.

It may be stated here that this Court would normally not interfere with the quantum of punishment awarded, but in the circumstance of the person with the main allegation against him having been exonerated, the punishment of compulsory retirement imposed upon the petitioner for neglecting the complaint of the late Neelam Kumari, is seen to be too harsh.

In the circumstances, there can be no order as to costs.