

(2009) 07 DEL CK 0444

In the Delhi High Court

Case No : Writ Petition (C) No. 3902 of 2008

R.S. Misra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Education Act — Section 18(1)
Education Code — Article 81

Citation : (2009) 07 DEL CK 0444

Hon'ble Judges : Suresh Kait, J;A.K. Sikri, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, for the Appellant; S. Rajappa, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—The petitioner, being aggrieved by the order dated 24.07.2007 in OA No. 996/2006 and order dated 19.02.2008 in R.A. No. 208/2007 passed by the Central Administrative Tribunal, Principal Bench, New Delhi has filed the present writ petition.

2. The present case has a long history with rounds of litigations. The facts in brief are that the petitioner initially filed WP(C) No. 3354/89 against the respondent's action against him under Article 81(b) of the Education Code. Vide order dated 19.09.1994, this Court had directed the respondents to reinstate the petitioner with all consequential benefits. The aforesaid order was challenged in LPA. The same was disposed of vide order dated 04.07.2000 by holding that there was no infirmity in the findings as recorded by the learned Single Judge with regard to the interpretation of Article 81(b) of the Education Code of Kendriya Vidyalaya.

3. Though the petitioner still had a grievance against the respondents that inspite of specific directions of this Court, the respondents did not make the payment of all consequential benefits to the petitioner. The petitioner had filed

the contempt petition against the respondents, due to the said petition the respondent had made a part payment of the consequential benefits. The said contempt petition was disposed of by giving directions to the respondents to consider the balance consequential benefits and pass an order.

4. As per the contention of the petitioner, the respondents became prejudiced against the petitioner and he was issued a fresh memo dated 31.03.2003 under Article 81(B) of the Education Code as under:

Whereas a complaint dated 31.12.2001 was received from the "Secretary, Govt. of Manipur in the office of Kendriya Vidyalaya Sangathan, (Hqrs.) wherein it was alleged that Sh. R.S. Mishra, PGT (Chemistry), Kendriya Vidyalaya, No. 1, Imphal had indulged in acts of moral turpitude involving exhibition of immoral sexual behaviour towards girl students Class XI Arts (2000-01) Kendriya Vidyalaya, No. 1, Imphal.

Whereas after going through the said report I am of the considered opinion that the findings of the Inquiry Committee in its report are fully substantiated by material which has come on record, because of which it is necessary to proceed against Shri R.S. Mishra under Article 81(b) of the Education Code for Kendriya Vidyalayas. I am of the opinion that it is not expedient to hold a regular inquiry under the CCS (CCA) Rules, 1965 as it would cause serious embarrassment to the students and could also cause a trauma for them because of their tender age. Accordingly, holding of a regular inquiry for imposing penalty in accordance with CCS (CCA) Rules, 1965, as applicable to employees of KVS is dispensed with.

5. The respondents supplied the copy of the documents and filed the detailed reply to the same. On 05.11.2003 the respondents terminated the services of the petitioner, while the validity of the aforesaid show cause notice was under challenge in OA No. 2008/2003. Vide order dated 29.12.2003, the learned Tribunal stayed the termination and relieving order of the petitioner dated 05.11.2003 and 07.11.2003 respectively till the final adjudication of the aforesaid OA.

6. Vide order dated 16.08.2004 in WP(C) No. 3141/2004 of this Court directed to keep termination order in abeyance and the petitioner was considered deemed to be in service with payment of 50% of his salary during the period. The aforesaid decision of this Court was challenged by the respondents. The Apex Court dismissed the same against the respondents. Vide order dated 15.12.2005, the learned Tribunal disposed of the OA No. 2008/2003 with the direction to the respondents to consider the representation of the petitioner and also his forthcoming superannuation while passing an order a fresh under Article 81(b) of the Education Code of KVS. After due consideration the respondents again terminated the services of the petitioner on 20-24.01.2006. Being aggrieved by the aforesaid termination order the petitioner filed the appeal to the respondent No. 1. The same was considered and dismissed.

7. Being aggrieved by the termination order as well as the order passed by the

Appellate Authority the petitioner approached the learned Tribunal by filing the OA. The same was dismissed vide order dated 19.02.2008. Being aggrieved the petitioner has filed the present writ petition.

8. The main grounds amongst others are:

a) As per the provisions of Article 18 (1)(b) only the Commissioner is competent to take a decision regarding dispensation of regular enquiry as per Rule 14 of CCS (CCA) Rules, 1965.

b) The learned Tribunal has not considered the statements made by the complainant in favour of the petitioner.

c) The Tribunal has not considered the case of Sh. Ganga Dhar Ambadas Rao Ashture Co. Commissioner, Kendriya Vidyalaya Sangathan, decided on 06.02.2004 in OA No. 659/2002 by the Central Administrative Tribunal, Bombay Bench.

d) The learned CAT has also not considered the excellent track record of the petitioner and the result given by the petitioner.

e) There is no explanation for inordinate delay between complaint received by Principal on 08.02.2001, issue of memo by VEC, Chairman, Mr. Shambhu Singh on 11.03.2002, enquiry conducted on 06.04.2002 and charge sheet issued on 31.03.2003.

9. The Chairman K.V. Lamphelpat (Imphal) received a letter dated 29.01.2001 from Ms. Radharani Devi, Principal KV Lamphelpat (Imphal), which is as under:

Ref. No. F-RSM/2001-02

Date 29.10.01

To

The Chairman

Kendriya Vidyalaya,

Lamphelpat.

Sub. : Confidential Report

Sir,

I have the honour to submit herewith the confidential report in respect of R.S. Mishra (PGT), Chemistry that he is not interested in teaching and so many students complained against him his method of teaching and behaviour (photostate copy of compliant enclosed). His presence in the school may deteriorate and disturb the healthy atmosphere of this Vidyalaya.

It is, therefore, requested to your goodself taking necessary action at an early date to solve the problem so that the students should not suffer.

Yours faithfully,

Sd/-

(L. Radharani Devi)

Principal

Kendriya Vidyalaya:

Lamphelpat, Imphal

10. He further submitted that on 31.12.2001, Shambhu Singh, Secy. Govt. of Manipur Secretariat (North Block, Imphal) wrote DO letter to the Commissioner, KV Sanghathan, New Delhi as under:

Govt. of Manipur

Secretariat (North Block)

Imphal ? 795001 (INDIA)

TELE # 0385 223076 (O)

224717 (R)

FAX # 222629

Shambhu Singh, IAS

Secretary

Dear Shri Cairae,

Kindly find enclosed a letter from the Principal, Kendriya Vidyalaya, Lamphelpat, Imphal along with copies of complaints against Shri R.S. Mishra (PGT) regarding his behaviour unbecoming of a Government servant. I also would like to add here that I have made discreet enquiries and found that Shri Mishra has been misbehaving with the girl students in particular and making indecent remarks. He has also been blackmailing boy students by threatening them of not giving good marks in the practical examinations. He also visits their homes and curries favour from their parents offering similar inducements.

Needless to say, this has resulted in vitiating the atmosphere of the school and a situation has come when the students themselves may take the entire matter in their hands which would be a sad day for the School because then the teachers may find it extremely difficult to win back the confidence of the students and maintain discipline.

The situation requires urgent remedial measures. May I take the liberty of suggesting that pending enquiry Shri Mishra be attached to another School within the State where the School Management is in the hands of the Security Forces. An urgent action is solicited.

With warm regards and best wishes for the new year.

Yours sincerely,

Sd/-

(Shambhu Singh)

Shri H.M. Cairae, I.A.S.

Commissioner,

Kendriya Vidyalaya Sangathan,

New Delhi

11. We have perused the record. The Commissioner KVS, New Delhi after perusing the aforesaid letters and the complaint, decided to initiate action against the petitioner. Accordingly, the action was initiated only after the Commissioner's satisfaction on record and it is wrong to say that the Commissioner had not taken action, who is the only competent authority to take the decision to initiate u/s 18(1)(b) of the Education Code.

12. The counsel for the respondents have refuted the contentions of the petitioner that the Tribunal had not considered the statements made by the complainants in favour of the petitioner. The counsel for the respondents has relied upon the Division Bench judgment of this Court in WP(C) No. 6529/2005, wherein the Division Bench of this Court has held as under:

7. Our attention was drawn to some of the good character certificates for the year 2002 issued by some of the former colleagues of the petitioner and some by his former students. There is one letter purported to be from the father of Kumari Rabina Kausur wherein he denied having made any complaint. This letter too seems to have been written in or after September, 2002. It appears to us that after his grave act of misconduct, the petitioner went on a spree to collect these testimonials. We refuse to take them of any consequence. We are also not persuaded by the letter purported to be of the complainant. It too does not wash away what was sullied much earlier. We feel all these letters have been stage-managed in a desperate attempt to cover up what had already come to the fore. We further feel that contradictions like, - was Kumari Rabina Kausur molested at the stair case or in the room or on which date the complaint was written or by whom, are insignificant and they cannot absolve the petitioner of the charge.

10. We cannot resist commending the Commissioner of Navodaya Vidyalaya Samiti for the view taken by him. He looked into the matter in the right perspective and refused to get carried away by what, for instance, had been stated by Assistant Director, Shri Vaghmare and Ms. Kaneez Fatima. They had dismissed the complaint on the basis, for example, of contradictions about the place and date of the incident. The Commissioner was right in observing that the question which needed to be gone into was whether the incident did take place

or not and since the inquiry officers did not say that the incident had not taken place, the Commissioner rightly dispensed with the holding of regular inquiry and passing the order, terminating the services of the petitioner.

11. On going through the records, we are also satisfied that all the preconditions for exercising the extra-ordinary power of dispensing with the holding of a regular inquiry are satisfied in the present case. Therefore, the aforesaid decisions of the Supreme Court are applicable to the facts of this case on all fours."

13. The counsel for the respondents further relied upon the judgment of the Division Bench of this Court passed in WP(C) No. 17458/2008 in the case of J.P. Yadav v. UOI and Ors., relevant portion of which is as under:

8. The competent authority, i.e., the Commissioner Kendriya Vidyalaya Sangathan considered the entire record and on perusal of the same he was satisfied that indepth summary enquiry had been conducted carefully and that in the said enquiry it was established that the petitioner was guilty of moral turpitude. He was also satisfied on examination of the records that no further enquiry is desirable to avoid serious embarrassment to the girl. After recording the aforesaid reasons he proceeded to exercise his powers as vested under Article 81(b) of the Education Code for Kendriya Vidyalaya. Therefore, we are of the considered opinion that proper reasons and satisfaction of the Commissioner appear on record as required to be so recorded in terms of the provisions of Article 81(b) of the Education Code of Kendriya Vidyalaya. No concrete material is also placed on record to prove a case of mala fide. The allegation is totally unsubstantiated and devoid of any proof.

14. He has further relied upon the Division Bench Judgment of this Court in WP(C) No. 4400/2003 titled Kendriya Vidyalaya Sangathan and Ors. v. Gauri Shankar decided on 12.12.2007, relevant portion is reproduced as under:

13. The guidelines prescribed under Rule 81(b) for dispensing with holding of a regular inquiry under the CCS (CCS) Rules, 1965, is that the Commissioner should be of the opinion that it is not expedient to hold a regular inquiry on account of the serious embarrassment that may be caused to the student or his guardians or such other practical difficulties. This decision/opinion has to be that of the Commissioner on whatever preliminary inquiry he might have got contacted and on the basis of the compliant/responses before him. In a case like the present, it can hardly be said that it would not have been highly embarrassing for both the students in question as well as their guardians to have faced an inquiry into the conduct of the respondent wherein he is stated to have physically abused the two students. The Commissioner, in his impugned order has recorded the reasons as to why it is not reasonably practicable to hold an inquiry in the present case. The Appellate order is even more clear which records detailed reasons of the Appellate Authority for rejecting the departmental appeal against the respondent.

15. Besides, both the counsel argued before us, the learned Counsel for the petitioner contended before the Tribunal that under the provisions of Article 81(b) of the Education Code, the satisfaction of the commissioner has to be arrived at as to impracticability of the enquiry on the basis of the summary enquiry, which is to be ordered by the Commissioner itself.

16. We have perused the Memo dated 31.03.2003, issued by Commissioner himself, wherein it is recorded as under:

it is necessary to proceed against Shri R.S. Mishra under Article 81(b) of the Education Code for Kendriya Vidyalayas. I am of the opinion that it is not expedient to hold a regular inquiry under the CCS (CCA) Rules, 1965 as it would cause serious embarrassment to the students and could also cause a trauma for them because of their tender age.

17. We have gone through the judgment passed by the Tribunal, wherein the learned Tribunal has considered all the aspects submitted by both the parties and came to the conclusion as under:

28. Having regard to the above, when two girl students of higher classes have complained against applicant directly and through parents as to utterance of indecent words and behaviour which is sexually infested towards girl students with consistent views expressed by the students in their statements as to staring by applicant of girl students and his attempt to come in physical contact on one pretext or the other certainly leaves no doubt in our mind as to depraved character of applicant and his indulgence in sexual behaviour towards the girl students. We do not find any enmity or any ulterior motives of the girl students against applicant as they were not from his discipline (Science stream) and he was not in any manner to affect their career or status. Moreover, the independent act of the girl students has been legally corroborated by other circumstances. The defence raised by applicant of malafide has not been established to its hilt by laying a foundation.

29. As we are satisfied that all the ingredients of Article 81(B) of the Education Act have been satisfied by the competent authority and the reasons are apt in law as to dispensation of enquiry, we in a judicial review, would not assume the role of an appellate authority to step into the shoe of the DA. The summary enquiry has been held in accordance with Rules. As applicant has already been afforded a reasonable opportunity to defend, he has not been prejudiced in any manner by the act of the respondents. Once he has been afforded an opportunity to inspect the documents, having failed to do so, it is a situation where despite accord of reasonable opportunity, applicant having failed to avail it, would not be heard of complaining of violation of principles of natural justice, as Ruled by the Apex Court in Indira Bhanu Gaur v. Committee Management, Degree College 2004 (1) SLJ 3 SC. The punishment imposed upon applicant is certainly commensurate with his misconduct and despite the fact that he has completed 36 years of service and was to retire after seven days from infliction of penalty,

yet the same is not a mitigating factor, as applicant by his depravity and sexual conduct by his words and deeds has not only brought bad name to class of Teachers but also has demeaned the reputation of KVS and the fact that in North-East when insurgency is on rise and the atmosphere is volatile this act of applicant if had been picked up by those unscrupulous elements would lead to a catastrophic situation.

30. Insofar as previous termination and its being declared illegal by the High Court in LPA-116/1994 (supra) is concerned, we are of the considered view that earlier on a technical view of the matter the order was quashed with liberty to respondents to resume the proceedings but taking a holistic and compassionate view of the matter applicant was reinstated, his continued resort to sexual harassment of girl students shows his trait, the previous conduct also substantiated and justifies the orders assailed herein.

31. Resultantly, for the foregoing reasons, we find the OA as bereft of merit, which is accordingly dismissed. No costs.

18. We have also gone through the judgments relied upon by the petitioner mainly the case of Ganga Dhar (supra), wherein the Bombay Bench came to the conclusion as under:

10. In our view here is a case in which evidence of the complainant must be recorded at the most in camera, and the applicant should have been granted an opportunity to cross examine the witnesses. Applicant has to be given full opportunity before issuing order of Termination following the principles of natural justice. The charges against applicant must be proved in a regular inquiry.

19. The Division Benches of this Court has already given the judgment on this issue, therefore, keeping those judgments of the Division Benches into consideration as discussed hereinabove, the present case decided by the Bombay Bench has no relevance.

20. After going through the judgment passed by the CAT and the submissions of both the counsel before us, we are of the considered view that the provisions adopted by the Commissioner u/s 81(b) of the Education Code was absolutely right and it is on record that the Commissioner was himself satisfied with the complaints and the letter received by him from the Principal as well as Secretary, Chief Secretariat of Imphal. We find no error or discrepancy in the order passed in OA as well as in the review application. In the aforesaid circumstances, we hereby dismiss the writ petition.

No order as to costs.