

(2015) 11 DEL CK 0117

In the Delhi High Court

Case No : W.P. (C) 7003/2015 and CM No. 12836/2015

Ryan International School and Others

APPELLANT

Vs

Hemlata and Others

RESPONDENT

Date of Decision : 03-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 323-A
Criminal Procedure Code, 1973 (CrPC) — Section 125, 313
Penal Code, 1860 (IPC) — Section 304

Citation : (2015) 11 DEL CK 0117

Hon'ble Judges : V. Kameswar Rao, J.

Bench : Single Bench

Advocate : Romy Chacko and Abhishek Singh, Advocates, for the Appellant; Anil K. Batra and Prins Kumar, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the order of the Delhi School Tribunal dated May 22, 2015 in Appeal No. 08/2013, which was filed by the respondent No. 1 against the inquiry report dated September 29, 2012 and the dismissal order dated December 7, 2012.

2. It is the submission of Mr. Romy Chacko, learned counsel appearing for the petitioners that a show-cause notice dated May 8, 2012 was issued to the respondent No. 1 on the basis of a complaint of Mr. Deepak Bhatt, father of one of the student namely Abhishek, that on May 7, 2012, the respondent No. 1 had slapped his son Master Abhishek on his cheek due to which he got scared of coming to school. The show cause notice also gives reference to one Mr. Puran Singh inquiring from the student in the presence of the class teacher Mrs. Anshu Kukreja, when the student admitted that the respondent No. 1 had slapped him. Reference was given to the various complaints made in the past, when the respondent No. 1 was warned. The said show-cause notice was replied by the respondent No. 1 by stating that the student Abhishek Bhatt was doing mischief

by jumping from the table. As he did not stop doing so, she brought him down from the table and gave a pat on his back and told him not to do. Be that as it may, a charge sheet dated May 29, 2012 was issued to the respondent No. 1 wherein reference was given to a written complaint made by Mr. Deepak Bhatt and also the past complaints made against her of misbehaving/beating/slapping the students. The respondent No. 1 replied to the charge sheet vide her letter dated June 11, 2012. Suffice to state, the Inquiry Officer found the charges against the respondent No. 1 as proved and pursuant thereto, the penalty of dismissal was imposed on the respondent No. 1 vide letter dated December 7, 2012. He would submit, that it was this order, which was challenged before the Tribunal. The Tribunal while allowing the Appeal, has misdirected itself in holding that it can re-appreciate the evidence. According to him, the scope of judicial review is very limited. The Disciplinary Authority being, the person competent to proceed against an employee for misconduct, the ultimate conclusion arrived at by the Disciplinary Authority on the basis of the record could not have been interfered with.

3. He would also state, de-hors the fact that Mr. Deepak Bhatt, father of the student Abhishek has withdrawn the complaint on June 6, 2012, still there was sufficient evidence in terms of the deposition of the witnesses MW-2 Sh. Puran Singh Bisht and MW-3 Mrs. Anshu Kukreja who, in their deposition, have said that the student Abhishek, on inquiries did confirm that the respondent No. 1 had slapped him to prove the charges against respondent No. 1. According to him, the MW-2 had also deposed that he had confronted the respondent No. 1 of her having slapped the student, which the respondent No. 1 admitted. According to Mr. Chacko, even MW-3 has deposed on those lines. He state, there was no cross examination by the respondent of the two witnesses MW-2 and MW-3 and the evidence being un rebutted, would be sufficient to hold the charges against the respondent No. 1 as proved. According to him, the charges against the respondent No. 1 are of very serious nature. They relate to misbehaviour with a young child, who is studying in the school, and cannot be taken lightly. He states, that this Court had commented strongly against corporal punishment to the students. It is also his submission, that on the date when the charge sheet was issued to the respondent No. 1, the complaint was not withdrawn by Mr. Deepak Bhatt. It appears that the respondent No. 1 has won over Mr. Deepak Bhatt, father of the student to withdraw the complaint and accordingly he did so. Merely, because the father has withdrawn the complaint on being won over, would not preclude the Disciplinary Authority to take the complaint to its logical conclusion when the interest of the children is involved. According to him, the past conduct of the respondent No. 1 has been such that the school authorities could not have been mute spectators as the prestige and discipline of the school is involved and the interference with the inquiry report and penalty order by the Tribunal overlooking the settled principle of law, that the only requirement for proving the charges in departmental proceeding is preponderance of probability, unlike a criminal case where the offence has to be proved beyond reasonable

doubt. He would rely upon the following judgments in this regard:-

- (i) Union of India (UOI) and Others Vs. Upendra Singh, ;
- (ii) State of Mysore Vs. S.S. Makapur, ;
- (iii) K.L. Shinde Vs. State of Mysore, ;
- (iv) Parents Forum for Meaningful Education and Another Vs. Union of India and Another, ;
- (v) Anjanappa Vs. State of Karnataka, ;
- (vi) Kishor Guleria v. The Director of Education and ors, W.P.(C) No. 5765/2011 decided on July 3, 2012.
- (vii) Badshah Vs. Sou. Urmila Badshah Godse and Another, .

4. On the other hand, learned counsel for the respondent No. 1 would justify the order of the Tribunal. According to him, the Tribunal has rightly quashed the inquiry report and the order of the dismissal in the absence of any evidence being on record to prove the charges against the respondent No. 1. He states, the complaint, which was the basis for initiating departmental proceeding, cease to exist on the withdrawal of the complaint by Mr. Deepak Bhatt wherein Mr. Bhatt has clearly stated that he has talked to his son Abhishek, who had stated that respondent No. 1 had neither slapped nor scolded him. According to the learned counsel, Mr. Bhatt had regretted of having filed a complaint in the matter. That apart, he would state, the Tribunal was right in its conclusion of perversity as there was no evidence against the respondent No. 1. That apart, failure to produce Mr. Deepak Bhatt, the charges could not have been proved. He would contest the depositions of MW-2 and MW-3 as being false and unsustainable keeping in view the letter dated June 6, 2012 of Mr. Deepak Bhatt withdrawing the complaint. According to him, even the past complaints resulted in warnings, could not have been the subject-matter of the charge sheet dated May 29, 2012 as that would amount to double jeopardy. On the submission of Mr. Chacko that the respondent No. 1 may have won over Mr. Deepak Bhatt to withdraw the complaint against her is concerned, he would state that is an impossibility, figment of imagination of the petitioner school and as an afterthought inasmuch as Mr. Deepak Bhatt who was an employee of the school was removed from the services on the complaint made by the respondent No. 1 and Mr. Deepak Bhatt having animosity against the respondent No. 1, could not have acted in the interest/benefit of the respondent No. 1. He states, Mr. Deepak Bhatt on realizing his mistake that the complaint was false must have withdrawn the complaint dated May 8, 2012.

5. Having heard the learned counsel for the parties, before I deal with the submission of learned counsel for the parties, first a word about the finding of the Inquiry Officer on charge of slapping/scolding the student Abhishek. It is noted, the Inquiry Officer has held that on May 07, 2012 the respondent No. 1

was involved in some incident with the student, but on the aspect whether the respondent No. 1 has slapped the student Abhishek or not, the Inquiry Officer rejected the stand of the respondent No. 1 that she gave a pat on the back of the student, by noting that as the respondent No. 1 has changed her stand; she had deposed falsely and trying to conceal the truth. The IO also disbelieved the letter of Mr. Deepak Bhatt dated June 06, 2012 by holding, the writing in the letters dated July 29, 2012 and June 06, 2012 are different. He has also stated that the workman did not cross examine MW2 and MW3. He ultimately relied on the testimony of these witnesses by holding that the respondent No1 had admitted her mistake and gave in writing that she slapped the child in terms of Exh.M4. In Exh.-M4 (English Translation), the respondent No. 1 has stated as under:-

"That in reply to your show-cause notice dated 08.05.2012, I want to say that the child Abhishek Bhatt was jumping upon some tables. I tried to convince him but did not mend his way then I took hold him and brought on the floor and put a very light part on his back and told him not to repeat it again, I request you that I was not angry towards the child. Even then I apologized for my mistake and I swear not to do the same in future."

6. Nowhere in Exh.-M4, the respondent No. 1 has stated, she slapped the student Abhishek. Surely a pat on the back is different from a slap on the cheek. The rejection of the letter dated June 06, 2012 of Mr. Deepak Bhatt by the IO without ascertaining from the school/management of having received such a letter, is untenable. Even in these proceedings it is not the case of the petitioners, that a letter dated June 06, 2012 was not received by them. Not only that, even the contents thereof have not been disputed by the petitioners. If that be so, IO should have proceeded on the premise, that such a letter dated June 06, 2012 has been written by Mr. Deepak Bhatt.

7. That apart, the charge sheet was issued on the basis of the complaint made by Mr. Deepak Bhatt on May 8, 2012. No doubt, when the charge sheet was issued, the complaint was subsisting. The respondent No. 1 had filed a reply highlighting the fact that the complaint filed by Mr. Deepak Bhatt was a false one. Infact she, in her reply, stated that Mr. Deepak Bhatt used to work as a Peon in the school and had been terminated for stealing the school items on a complaint made by the respondent No. 1. It appears, there is some background to the complaint made by Mr. Deepak Bhatt. Be that as it may, insofar as the submission of Mr. Chacko that the MW-2 and MW-3 having deposed that the student had told them that the respondent No. 1 had slapped him is concerned, suffice to state, the said deposition would not hold good in view of the specific letter of withdrawal of the complaint by Mr. Deepak Bhatt on June 6, 2012. The English translation of the same reads as under:-

"To,

Dated: 06.06.2012

The Principal, Ryan International School, Sector-C, Pocket-8, Vasant Kunj, New

Delhi-70.

Sub: Withdrawal of Complaint

Madam,

I beg to say that my son Abhishek is studying in Class-1A in your school. I have filed a written complaint in respect of the incident dated 07.05.2012 in your school. But, when I talk to my son Abhishek he told me that my child was neither slapped nor scolded and I regret upon my mistake and I might not have filed a complaint in this way in this regard. I want to withdraw written complaint filed by me against Hemlata.

Therefore, I request you to withdraw written complaint filed by me.

Thanking you

Yours faithfully,

(Deepak Bhatt) 06/06/2012"

8. The withdrawal removes the very substratum for issuing the charge sheet. A reading of the same would reveal that the student had confirmed to his father that no such incident had taken place. Mr. Chacko would have been right in his submission, had Mr. Deepak Bhatt simply withdrew the complaint. Presumption could be drawn, the same was for protecting the respondent No. 1. That is not the case here. Mr. Bhatt had stated, his son has told him that respondent No. 1 had neither slapped nor scolded him. He qualifies the said statement expressing his regret for filing a complaint against the respondent No. 1. No doubt, the scope of judicial review is very limited to find out whether there is any evidence or not. If there is slightest evidence, the Tribunal could not have interfered with the same. It is not such a case here. It is a case of perversity, where there is no evidence on record. It cannot be held that the respondent No. 1 had slapped the student. I note, the Tribunal in the impugned order, has highlighted the discrepancy in the evidence of MW-2 and MW-3 in para 31 of the impugned judgment, which I reproduce as under:-

"31. The fact and circumstances of this case are peculiar as discussed above because the complainant not merely withdrew his complaint but denied the occurrence of very incident. He has not been examined before the Inquiry Officer. Ld. Inquiry Officer concluded that his signatures and handwriting and as on the complaint do not tally with the letter dated 06.06.2012 and 29.07.2012. I have also seen all these three documents. In this regard, I do not agree with the findings of the Ld. Inquiry Officer. Signatures and handwriting of all these three documents appear to be of one and same person. MW-3 deposed that Sh. Puran Singh came to her class on 07.05.2012, while MW-2 Sh. Puran Singh deposed that he had received the complaint on 08.05.2012 and after receiving the complaint he had gone to the class. Therefore, according to him, he had gone to the class on 08.05.2012 and not on 07.05.2012. MW-2 has specifically deposed

that he made inquiries from the Appellant after coming out of the class while mW-3 deposed that inquiries were made by Sh. Puran Singh in the class. In these peculiar facts and circumstances of this case this Tribunal is of the opinion that being the first appellate authority against the inquiry proceedings it can look into inquiry proceedings and can reappreciate the evidence".

9. Insofar as the submission of Mr. Chacko that the earlier complaints/incidents, which were subject-matter of the charge sheet have also been proved is concerned, suffice to state, it is a matter of record that against those complaints, the respondent No. 1 was warned on each occasion and this aspect has been noted by the learned Tribunal in para 32, which I reproduce as under:-

"32. It is also argued by the Id. Counsel for R1 and R2 that prior to this incident many complaints were received against the Appellant with regard to the corporal punishments. He had also referred the name of three students in this regard as mentioned in paragraph 4 of the charge sheet. It is also the case of R1 and R2 that qua these incident show cause notices were issued to the Appellant and afterward she was served with the warning letters qua this incident. It is well settled principle of law that one cannot be punished twice on the same cause of action. From the stand of R1 and R2, it is clear that warnings were given to the Appellant qua those three incident thus the Appellant cannot be punished again qua those incident in the present inquiry".

10. Insofar as the judgments relied upon by the learned counsel for the petitioners are concerned, no doubt, the Tribunal could not have examined the correctness of the charges but surely, can look into the evidence to come to a conclusion of perversity. In the present case, even though the Tribunal has held that it can re-appreciate the evidence, such a conclusion may not be correct but still the Tribunal can look into the same for the purpose of perversity. This position of law has been reiterated by the Supreme Court in the case reported as State of Tamil Nadu and another Vs. S. Subramaniam, The relevant portion is reproduced below:-

"The Tribunal is not a court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested in the Tribunal by the Administrative Tribunals Act, 1985. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application to the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the

conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, the Tribunal is devoid of power to reappreciate the evidence and come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence."

11. Insofar as the judgment of the Supreme Court in the case of State of Mysore and others, v. Shivabasappa Shivappa Makapur (supra) is concerned, Mr. Chacko has relied upon the said judgment only to contend, quasi-judicial authority is not bound by the strict rules of evidence as long as it gives a fair opportunity to the other party to explain the position. There is no dispute on the proposition. Surely, for a quasi-judicial authority to prove the charges, there should be some evidence on record. In the absence of any evidence, the charges could not be said to have been proved. The reliance placed by Mr. Chacko on the judgments of this Court in Parents Forum for Meaningful Education and Another Vs. Union of India and Another (supra) and Kishor Guleria v. The Director of Education and Ors. (supra), suffice to state, the interest of the children is pre-dominant and this Court is conscious of the same, but a charged employee cannot be condemned without any evidence being there of having committed a particular misconduct.

12. Insofar as the judgment of the Supreme Court in the case of Badshah v. Sou. Urmila Badshah Godse and another (supra) is concerned that a purposive interpretation must be given when the Courts are dealing with women, children or parents under Section 125 Cr.PC, such a submission could have been accepted by this Court had there been some evidence, which would prove that the respondent No. 1 had slapped the student Abhishek.

13. Insofar as the case of K.L. Shinde Vs. State of Mysore (supra) is concerned, learned counsel for the petitioner had relied upon the same to contend that sufficiency of evidence cannot be gone into by the Superior Courts. There is no dispute, on such a proposition. The said proposition would hold good if there is some evidence on record to prove the charge against the respondent No. 1 herein. As the Tribunal has rejected the deposition of MW2 and MW3, so also this Court, there is no shade of evidence to conclude that the charge against the respondent No. 1 has been proved. The judgment is not applicable to the facts.

In the case of Upendra Singh (supra), the Supreme Court was primarily concerned with the examining of the correctness of the charges, at the stage of framing of charges. The Supreme Court held that it is beyond the jurisdiction of the Central Administrative Tribunal. There is no dispute on such a proposition as the Courts and the Tribunals would not interfere with the correctness of the charges at the preliminary stage and would allow the Enquiry Officer to conduct the proceeding and to come to a conclusion, on the charges. The said judgment is not applicable in the facts of this case as it is not the case of the petitioners that the respondent No. 1 has challenged the charges framed against her in the

charge sheet at the preliminary stage. Rather, the Enquiry Officer has held, the disciplinary proceeding which culminated in the order of dismissal of the respondent No. 1, which was set aside by the Tribunal. Insofar as the judgment of the Supreme Court in Anjanappa (supra) is concerned, in the said case, the Supreme Court was concerned with the facts where one deceased Gowramma was married to the appellant on April 17, 1987. It was the prosecution case that at the time of marriage, the appellant demanded dowry and he received Rs. 5000, a motorbike, one gold chain and clothes from Hanumantharayappa, the father of Gowramma. After marriage the appellant was harassing the deceased for bringing more dowry from her parents. The appellant had caused burn injuries on the thighs of Gowramma to compel her to bring more dowry. On October 17, 1991, there was a quarrel between the appellant and Gowramma on the question of transferring Gowramma's property in the appellant's name. At about 6.00 p.m., the appellant poured kerosene on her and set her on fire. Gowramma was taken to Victoria Hospital. At about 7.00 p.m. PW-4, Dr. Parthasarathy admitted her for treatment of burn injuries. When PW4 Dr. Parthasarathy asked her about the burn injuries, she told him that on the same day at about 6.30 p.m., the appellant had poured kerosene on her and set her on fire. He recorded the said occurrence in the Accident Register. Gowramma's statement recorded by him is at Ext. P-16(b). He reported the matter to the police. The prosecution examined eight witnesses including the mother and father of Gowramma. The Trial Court acquitted the appellant. The Trial Court, inter alia, held that dying declaration could not be relied upon because Dr. Parthasarathy has not made any endorsement as to whether the deceased was in a fit condition to make a statement. The Trial Court held that the deceased was given sedatives, therefore, in all probability, she was not in a fit condition to make a dying declaration. In the opinion of the Trial Court, it was doubtful, whether the doctor was present when the dying declaration was being recorded. The fact that the parents of the deceased did not support the prosecution case weighed with the Trial Court. The State of Karnataka carried the appeal to the High Court. The High Court set aside the order of the acquittal, convicted the appellant under Section 304 Part II IPC and sentenced him to undergo RI for six years and to pay fine of Rs. 1000, in default, to undergo further sentence of three months. The Supreme Court, in the appeal filed by the appellant, has held that, there is no doubt that the parents of the deceased were either won over by the appellant or pressurized into supporting the appellant. The Supreme Court held, their evidence was a tissue of lies. In any case, even if it is obliterated and kept out of consideration, there is sufficient evidence on record to establish the appellant's guilt. The Supreme Court, noting the evidence of PW4 Dr. Parthasarathy, which according to the Supreme Court inspired confidence, held that, there is no reason why he should make up the story. The Supreme Court also held, there is nothing on record to show that he harboured any grudge against the appellant. He is an independent witness who has given his evidence in a forthright manner to hint that Gowramma was in a fit mental condition to make a statement and she implicated her husband. The Supreme Court held, he

made an endorsement on the Gowramma's statement recorded by PW5 HC Ramachari and thereupon, went on to hold as under:

"25. In any case, the trial court should have seen through the insincerity and dishonesty of PW2 Chikkaeemma and PW3 Hanumantharayappa and having regard to the independent evidence of PW4 Dr. Parthasarathy, which is corroborated by the evidence of PW5 HC Ramachari the trial court should have held that the deceased was in a fit mental condition to make a dying declaration and, therefore, her dying declaration can be relied upon".

The Supreme Court in paragraph 29 and 30 also held as under:

"29. There is also no substance in the submission that there is no motive. The appellant wanted the property standing in the name of the deceased to be transferred to his name, which the deceased was not prepared to do. There is no reason to disbelieve PW5 HC Ramachari on this aspect.

30. Besides, the conduct of the appellant speaks volumes. He was absconding and could be arrested only on 19.02.1992. Moreover, in his statement, recorded under Section 313 of the Code, he has not explained how the deceased received burn injuries. He did not set up the defence of alibi. It was obligatory on him to explain how the deceased received burn injuries in his house. His silence on this aspect gives rise to an adverse inference against him. It forms a link in the chain of circumstances which point to his guilt".

Having noted the facts and the conclusion arrived at by the Supreme Court in Anjanappa's case (supra), suffice to state, the same is not applicable to the facts of this case. In the said case, it is the testimony of the parents, was disbelieved as being hostile. The Supreme Court had noted and approved the testimony of PW4 Dr. Parthasarathy and upheld the conviction on that basis. That apart, the Supreme Court had noted certain other evidence which went against the appellant in the said case and on that basis, has upheld the conviction of the appellant. In the case in hand, there is no dispute that Mr. Deepak Bhatt, who has given initial complaint on May 8, 2012 has also withdrawn the same vide letter dated June 6, 2012, stating, on enquiry from his son, who has stated that the respondent No. 1 has neither slapped nor scolded. The charge sheet having been issued based on the complaint dated May 8, 2012, having been withdrawn by the very complainant, the testimony of MW2 and MW3 being at variance with the withdrawal letter, could not have been relied upon by the Enquiry Officer to prove the charges against the respondent No. 1. It is not a case, where the testimony of some other witness(es) can be accepted, as was done in the case before the Supreme Court. The said judgment would not be applicable to the present case.

14. In view of the above discussion, I do not see any reason to interfere with the order of the Tribunal. The petition is dismissed.