
(2007) 04 AHC CK 0220
In the Allahabad High Court

Satish Chandra Yadav

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2008) 5 AWC 4965

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Anjani Kumar and Sudhir Agarwal, JJ.—The writ petition arises out of order dated 5th January 2007 passed by Central Administrative Tribunal, Allahabad dismissing Original Application No. 905 of 1999 preferred by the petitioner against order of his dismissal.

2. The petitioner was appointed as Post Graduate Teacher (Biology) in Kendriya Vidyalaya, I.T.I. Naini, Allahabad. A girl student. Km. Akansha Gupta through her father, made a complaint against the petitioner that he attempted to outrage modesty of his daughter whereupon the Principal of the School and Education Officer, Kendriya Vidyalaya Sangathan (Regional Office), Lucknow jointly made summary enquiry giving opportunity to the petitioner also and found the said complaint true. Exercising power under Para 81 (b) of Education Code of Kendriya Vidyalaya, the Commissioner Kendriya Vidyalaya Sangathan, New Delhi terminated services of the petitioner vide order dated 24th December 1998 and his appeal has been rejected by the Chairman, Kendriya Vidyalaya Sangathan vide order dated 7.5.1999. The petitioner preferred an Original Application No. 905 of 1999 which has been dismissed by the Tribunal vide judgment impugned in this writ petition.

3. Learned Counsel for the petitioner vehemently contended that Para 81 (b) of Chapter VIII of Education Code of Kendriya Vidyalaya is pari materia with proviso

to Article 311(2) of the Constitution of India and without holding any regular enquiry, termination of petitioner is patently illegal, since it is on an allegation constituting serious misconduct, therefore, the termination amounts to punishment.

4. In our view (ho submission is thoroughly misconceived inasmuch as admittedly neither Kendriya Vidyalaya Sangathan or Kendriya Vidyalaya is a department of the Government of India nor the petitioner is holder of a civil post and, therefore, Article 311 as such is not applicable in the case. Considering the nature of institution and its different requirements, a provision has been made under the Education Code containing conditions of service of the teachers of Kendriya Vidyalaya Sangathan i.e. Para 81(b) of Chapter VIII which reads as under:

81(b). Termination of services of an Employee Found Guilty of Immoral Behaviour towards students.

Wherever the Commissioner is satisfied after such a summary enquiry as he deems proper and practicable in the circumstances of the case that any member of the Kendriya Vidyalaya is prima facie guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student, he can terminate the services of that employee by giving him one month's or 3 months' pay and allowances according as the guilty employee is temporary or permanent in the service of the Sangathan. 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 the Kendriya Vidyalaya Sangathan shall be dispensed with, provided that the Commissioner 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 commissioner shall record in writing the reasons under which it is not reasonable practicable to hold such enquiry and he shall keep the chairman of the Sangathan informed of the circumstances leading to such termination of service.

5. It provides for termination of service of an employee found guilty of immoral behaviour towards students in order to maintain purity of educational institution and to create an atmosphere of confidence amongst students and parents regarding their safety of their wards. The power of termination has been conferred upon a high authority, namely, Commissioner, Kendriya Vidyalaya Sangathan and where he is satisfied that any member of the Kendriya Vidyalaya is prima facie guilty of moral turpitude or involved in sexual offence or exhibition of immoral sexual behaviour he can terminate such employee by giving one month's notice or three months' pay and allowances if the employee is temporary or permanent as the case may be and procedure of enquiry shall stand dispensed with in such a case if the Commissioner is of the opinion that holding of enquiry of such case would cause serious embarrassment to the students or their guardians or there are some other practical difficulties. We cannot be oblivious of the fact that status of a teacher in Indian society is different. Here he has been

elevated as God, namely, "GURUR BRAHMA GURUR VISHNU GURUR DEVO MAHESVARAH:". A teacher creates knowledge, learning, wisdom and equip the students, girls or the boys with ability, knowledge, discipline and intellect to enable them to face challenges of their life. He is preserver of learning and destroys ignorance. Therefore as a member of noble teaching profession he should be a role model and either individually or collectively as a community of teachers should regenerate dedication with the bend of spiritualism in broader perspective to establish quality, competence, character and capacity of the students for successful working of democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities. Without a dedicated and disciplined teacher even the best education system is bound to fail. Therefore, it is the duty of teacher to take care of pupils as a careful parent would take of its children. In Indian society education amongst girls even after independence is wanton due to various factors including rural, culture and other factors. Education to the girls children is national asset and foundation of fertile human resources and disciplined family management apart from their equal participation in socioeconomic and political democracy. Of late people have realized and started sending their girl children to co-educational institutions under the care of proper management to look after the welfare and safety of the girls. Therefore, greater responsibility is thrust on the management of the school and college to protect young children, in particular, the chastity of girls, bring them up in discipline and dedicated pursuit of excellence and to protect them from all kinds of evils in the institution as well as outside. The teachers who are kept in-charge bear higher responsibilities and should be more careful. His character and conduct should be like Rishi and as loco parentis. It goes thus without saying where a teacher fails to maintain such high standard is not befitted to his status."

6. The Apex Court also considered the delicacy involved in such matters in Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, and it was observed that where there are allegations of misbehaviour with girl students it is a delicate matter. The police could not be called in because if an investigation is started, the female students out of sheer fright and harm to their reputation will not co-operate with the police nor an enquiry before a regular tribunal will be feasible since the girl students would not have venture to make then-statements in the presence of miscreants for various reasons including fear of retaliation and harassment and also loss of reputation amongst fellow students and Ors. Authorities, therefore, in their wisdom, have devised a principle which is a reasonable principle in the form of Para 81(b) and this is a condition of service which has been accepted by the petitioner while entering the service. It is not disputed that before passing the order of termination a summary enquiry was conducted by the Education Officer and the Principal of the School jointly wherein the version of the petitioner was also recorded and thereafter he was found prima facie guilty of moral turpitude including immoral sexual behaviour. The charge is very serious, that too against a person who is

supposed to maintain an exemplary character, a role model for his pupils. Thus, in our view such a person cannot be allowed to continue as a teacher of the institution.

7. We, therefore, do not find any error in the order of the Tribunal in rejecting petitioner's application. Even otherwise it is not a fit case where this Court, in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, would like to interfere.

8. In the result the writ petition fails and is dismissed.