

(2017) 02 DEL CK 0295

In the Delhi High Court

Case No : 8780 of 2008

**SHRI RAVINDER JAIN Vs MANAGING COMMITTEE RAMJAS SCHOOL
(SENIOR WING)?& ANR .**

Date of Decision : 13-02-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court

Citation : (2017) 02 DEL CK 0295

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : Rajiv Aggarwal, Randhir Jain, Dhananjay Jain, Satyakam

Judgement

1. By this writ petition under Article 226 and Article 227 of the Constitution of India, petitioner impugns the judgment of the Delhi School Tribunal (DST) dated 27.5.2008. The DST by the impugned judgment has dismissed the appeal filed by the petitioner against his termination order dated 10.7.1998 issued by the disciplinary authority of the respondent no.1/Managing Committee Ramjas School.

2. Two articles were published in two newspapers; one in Times of India on 4.9.1997 and another in Hindustan Times on 21.9.1997. These articles were with respect to misbehavior with girl students in the respondent no.1/school. Prior thereto the petitioner was called by the Principal of the respondent no.1/school on 13.8.1997 and a letter was issued to him on 14.8.1997 seeking clarifications. Petitioner was issued a specific letter on 14.8.1997 and which was replied by him on 16.8.1997. A charge sheet was then served upon the petitioner on 18.11.1997. Petitioner submitted his reply to the charge sheet on 28.11.1997. Earlier the disciplinary committee of the respondent no.1/school had decided on 4.11.1997 that disciplinary proceedings be initiated against the petitioner and whereupon the charge sheet was issued to him. Enquiry proceedings were conducted by one Sh. R.D. Sharma, Retired Deputy Registrar of this Court. In the enquiry proceedings, the respondent no.1/school examined five witnesses and

also proved documents. Five witnesses of the respondent no.1/school were examined-in-chief on 19.2.1998. On the request of the petitioner, cross-examination of these witnesses was deferred. Four of the witnesses were cross-examined by the petitioner on 2.3.1998 and one remaining witness was cross-examined by the petitioner on 11.3.1998. Petitioner did not lead any evidence in the enquiry proceedings. Enquiry officer thereafter submitted his report dated 14.4.1998 finding/holding the petitioner guilty. Meeting of the disciplinary committee thereafter was called on 23.4.1998 and the petitioner was issued a show cause notice attaching therewith the enquiry report and calling for his reply. Reply of the petitioner was received on 4.5.1998. The disciplinary authority thereafter passed the impugned order on 10.7.1998 terminating the services of the petitioner.

3. Before the DST, as also before this Court, on behalf of the petitioner, the following arguments were/have been urged:- (i) The enquiry against the petitioner was initiated without any specific written complaint and hence petitioner could not have been proceeded with against by the disciplinary authority. The complaints against the petitioner are stated to be dated 19.2.1998, 24.9.1997 whereas the memorandum issued to the petitioner is dated 14.8.1997 i.e much earlier.

(ii) Petitioner was not given opportunity to effectively employ a defence assistant because none of the employees of the respondent no.1/school wanted to represent the petitioner.

(iii) The respondent no.1/school violated the principles of natural justice because the witnesses as per the list submitted along with the memorandum of charges were not the witnesses who were examined, but other set of witnesses were examined, and thereby the entire disciplinary proceedings must fail on account of violation of principles of natural justice.

(iv) Petitioner was not supplied with the documents in the enquiry proceedings and thus once again principles of natural justice are violated.

(v) The charge sheet against the petitioner is pleaded to be completely vague because it is only stated that petitioner misbehaved, harassed or molested the girl students, and which charges are extremely vague, and therefore the petitioner accordingly could not have been found guilty.

(vi) Another argument urged on behalf of the petitioner is that the petitioner has been indicted in this case only by hear-say evidence, inasmuch as, none of the complainants were examined in the enquiry proceedings by the respondent no.1/school, and thus the Enquiry Report is illegal and bound to be set aside.

4. In my opinion, all the arguments urged on behalf of the petitioner are completely without merit. Most of these arguments have been dealt with effectively and exhaustively by the DST in its judgment. Since I cannot do better than the exhaustive discussion of the DST, I propose in most aspects to simply

reproduce the discussion, findings and conclusions of the DST, and which are adopted by this Court.

5. (i) The first aspect to be examined is as regards the argument of the petitioner that petitioner was not given sufficient opportunity to engage a defence assistant. This aspect has been held against the petitioner by the DST by observing that there is no law that a person must be represented by an Advocate or an Agent and rules of departmental enquiry can require the delinquent employee to be represented by an employee of the organization. This is so observed by the DST as under:- "5(j) The second contention of the Appellant that he was not allowed to have assistance of defence assistant to help him during the enquiry. Vide letter dated 6.12.1997 the Appellant was allowed to be represented by any other co-employee but no outsider was allowed. Contention of the Appellant is that his right of effective representation was taken away by not allowing him to be represented by a defence assistant of his own choice. On the other hand, the management had denied these allegations. The Hon"ble Supreme Court in the matter of "Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi" (1993) 2 SCC 115 held that "A delinquent must be given an opportunity of presenting his case in such way suitable to the character of the enquiry which would ensure a fair hearing resulting in fair dispensation of justice. But that does not extend to the right to be represented through counsel of agent. The right to be represented by a counsel or agent of one's own choice is not an absolute right and can be controlled, restricted or regulated by law, rules, regulations or Standing Orders.""

(ii) I completely agree with the findings and conclusions of the DST because petitioner had necessarily, as per the applicable rules, to choose a defence assistant who was an employee of the school, but that opportunity was not utilized by the petitioner. I may also note that this argument is in substance an argument of futility because it is found that petitioner in fact had cross-examined all the five witnesses who were examined by the respondent no.1/school. This argument of the petitioner is therefore rejected.

6. (i) Another argument urged on behalf of the petitioner is that petitioner was issued a notice dated 14.8.1997 but the written complaints in this case are later being dated 19.2.1998 and 24.9.1997, and therefore reply from the petitioner was called even before there were any written complaints. (ii) The argument of the petitioner appears to be attractive at the first blush, but the argument is hollow because the notice issued to the petitioner dated 14.8.1997 was only a preliminary notice much before the commencement of formal enquiry proceedings. Surely an organization can ask an employee to give his response if certain disturbing issues come to the notice of the Management of the school. There is no requirement in law that before issuing any letter to an employee asking explanation there must be a written complaint, more so in a sensitive case such as the present where there are allegations of misbehavior with and molestation of girl students.

7. So far as the charge-sheet against the petitioner is concerned, the same was issued much latter on 18.11.1997 and petitioner in fact responded to the same on 28.11.1997, and which dates are after the written complaint dated 24.9.1997. Also, guilt or otherwise is an aspect which is enquired into and decided in the disciplinary proceedings where the evidence is considered as per the requirement in a civil case of preponderance of probabilities, and which aspect has been considered, and a finding returned by the Enquiry Officer holding the petitioner guilty. Also, it is noted that whereas the respondent no.1/school led evidence in the form of depositions of witnesses and proved documents, petitioner led no evidence whatsoever. Petitioner thus did not have the courage of conviction to step into the witness box to depose in his favour, and therefore, such a delinquent employee cannot be believed or discharged from the findings against him in the Enquiry Report and the consequent order of the disciplinary authority. This argument of the petitioner is therefore rejected.

8. (i) Another argument urged on behalf of the petitioner was that the respondent no.1/school in the list of witnesses along with the Article of Charges gave names of some witnesses whereas other witnesses, whose names were not mentioned along with the Articles of Charges, were examined in the enquiry proceedings, and therefore, the enquiry proceedings are to be faulted with being against the principles of natural justice. (ii) This argument of the petitioner is again of no effect because there is no law that only those witnesses mentioned in the Annexure to the charge sheet must be examined and other witnesses cannot be examined. Also, the witnesses were examined-in-chief on one day i.e 19.2.1998 and thereafter matter was adjourned and the petitioner thereafter cross-examined the witnesses on two separate dates being 2.3.1998 and 11.3.1998. Therefore, this argument of the petitioner is misconceived and has been rightly dealt with and rejected by the DST in the following terms:-

"5(b) The main contention of the Appellant is that at the time of issuing of charge-sheet Annexure IV was annexed to it showing the names of the five parents and six girl students. These witnesses were not examined before the Enquiry Officer and a fresh set of witnesses was introduced later on by the Respondent Management. As per the appellant, since the witnesses named in the charge-sheet were not examined and other witnesses were examined, hence evidence of the said witnesses cannot be read. The contention of the management is that names of the witnesses were mentioned in the first list submitted to the Enquiry Officer. The report of the enquiry officer states that the list of witnesses was filed on 19.2.1998 and witness were also examined on the same date. On the other hand, the Appellant did not file any list of witnesses nor did he call any witness on the day when the enquiry was concluded. Sufficient opportunity was granted to the Appellant to crossexamine the witnesses and these witnesses were cross-examined in detail by the Appellant on 2.3.98 and 11.3.98. Now the question arises as to whether the Management had a right to submit a fresh set of witnesses before the Enquiry Officer after the start of the enquiry or not. 5(c) Proceedings before the Enquiry Officer are quasi-judicial in

nature and rules of proceedings observed in the Civil Court cannot be strictly enforced in the enquiry proceedings. Enquiry Officer is at liberty to make his own rules within the parameter of giving fair opportunity to both the sides to produce the witnesses to prove their rival contentions. Mere submission of a second list of witnesses during the pendency of the enquiry proceedings cannot be itself be a reason to set aside enquiry proceedings. The list of witnesses was filed on 19.2.1998 and all the witnesses were produced on the said date and their examination-in-chief was recorded. On the request of the Appellant, amply time was granted to him to cross-examine these witnesses. Appellant cross-examined four witnesses on 2.3.1998 and the last witness was cross-examined on 11.3.98. It was specifically mentioned in the order-sheet dated 11.3.98 that no list of witnesses was filed by the appellant, although he was given time to file the same as far back as 22.12.1997."

9. (i) The related argument urged on behalf of the petitioner was that only hear-say evidence has been considered and none of the complainants or girl students were examined and hence the findings of the enquiry proceedings have to be set aside. (ii) I cannot agree with the argument urged on behalf of the petitioner inasmuch as Supreme Court has consistently observed in a catena of decisions that when the case is of sensitive nature i.e of misbehavior with and molestation of minor girl students, as in this case, the normal standards of the procedure of disciplinary proceedings need not be strictly followed and which is because of the aspect that the rules of natural justice cannot be put in a strait-jacket. Accordingly, once there was sufficient evidence in the form of deposition of teachers to whom the girl students had complained and other evidence in the form of written complaints to the teachers proved as Ex. A1 and A2, in my opinion, it cannot be held that enquiry proceedings/disciplinary proceedings are bound to fail inasmuch as disciplinary proceedings are not in the nature of criminal trial where onus of proof has to be discharged to the hilt. The DST has therefore rightly made the following pertinent observations in the impugned judgment, and which are accepted and adopted by this Court:-

"5(d) The charges framed in this case are sensitive in nature involving young girls who were alleged to have been molested by the Appellant during their annual medical examination. The list Annexure IV at SI. No.20 shows the names of some girl students as witnesses and another list shows the names of their parents. None of the students was examined before the enquiry officer. Now the question is whether young girls should have been examined in respect of charges framed against the Appellant or other witnesses produced by the respondent school were sufficient to bring home the charges against the appellant. Similar question had arisen in the matter of "Rajinder Jain Vs. Ramjas" (1973) 1 SCC 805 where it was observed and held as under:-

"i) The complaint made to the Principal related to an extremely serious matter as it involved not inertly internal discipline but the safety of the girls students living in the Hostel under the guardianship of the college authorities. These authorities

were in loco parentis to all the students-who were living in the Hostels and the responsibility towards the young girl students was greater. The authorities towards the young girl students was greater. The authorities could not possibly dismiss the matter as of small consequence because if they did, they would have encouraged the male student rowdies to increase their questionable activities which would not only have brought a bad name to the college but would have compelled the parents of the girl students to withdraw them from the Hostel and, perhaps, even stop their further education. The principal was, therefore, under an obligation to make a suitable enquiry and punish the miscreants.

ii) The police could not be called in because if an investigation was started the female students out of sheer fright and harm to their reputation would not have co-operated with the police. Nor was an enquiry, as before a regular tribunal, feasible because the girls would not have ventured to make their statements in the presence of the miscreants because if they did, they would have most certainly exposed themselves to retaliation and harassment thereafter. The very reasons for which the girls were not examined in the presence of the appellants, prevailed on the authorities not to give a copy of the report to them. It would have been unwise to do so.

iii) Therefore, the authorities had to devise a just and reasonable plan of enquiry which, on the one hand, would not expose the individual girls to harassment by the male students and, on the other, secure reasonable opportunity to the accused to state their case. The course followed by the Principal was a wise one.

iv) Under the circumstances of the case the requirements of natural justice were fulfilled, because principles of natural justice are not inflexible and may differ in different circumstances."

5 (e). It was held by the Hon"ble Supreme Court in the matter of "Hira Nath Mishra V/s Principal Rajindera Medical College" (1973) 1 SCC 805 that the girls would not have ventured to make their statements in the presence of miscreants because if they did, they would have most certainly exposed themselves to retaliation and harassment thereafter. In the said case, statements of the victim girls were not recorded in the presence of miscreants. The Hon"ble Supreme Court was of the view that principle of doctrine of natural justice could not be imprisoned within strait-jacket of a rigid formula and its application depends upon several factors. The requirement of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the Tribunal was acting and subject matter that was being dealt with.

5 (f). In the present case, the witnesses examined by the management are Mrs. Kiran Agarwal, a teacher of the school who deposed that one girl student "M" came in tears to her and had stated that the Appellant had misbehaved with her and she explained it with her gestures. The second witnessed was Mrs. Pratibha Nayar who was TGT English in the said school. She was also told by one girl "S" that she had gone for the examination to the medical room where the Appellant had drawn the curtains of the window and the door of the medical room. He was

touching her throat, her neck and moving his hands on her stomach and also on her chest. The third witness was Sh. S.P. Ahuja whose daughter Ms. "C" was studying in Class X B. Her daughter had told her mother that the person who had conducted medical check-up had misbehaved with her and Mrs. Ahuja told this fact to Mr. S.P. Ahuja. The next witness was Sh. D.P. Goyal, who had received number of telephonic calls from the parents and some parents also met him regarding the conduct of the Appellant during the medical check-up of the girl students. He had even talked to some of the girls students who confirmed the incident. Sh. Goyal took up the matter with the management and Chairman of the school. He also submitted the two complaints bearing the signatures of the concerned complainants. The last witness was Mrs. Anjana Motra who was TGT Maths and Incharge of Class X B. She was informed by Mrs. Pratibha Nayar about the incident with girl student "C" regarding other students. All these witnesses were cross-examined in detail but nothing material had come out in the cross-examination to demolish the case of the management.

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5 (h). As far as standard of proof required in a departmental enquiry is concerned, Hon"ble Supreme Court has held in the matter of "Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi" (1991) 2 SCC 716 that "Strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue."

(iii) Accordingly, it is held that there is no violation of principles of natural justice as is argued on behalf of the petitioner.

10. I may also at this stage reject the argument urged on behalf of the petitioner that the charges against the petitioner are vague inasmuch as when the issue is a sensitive issue of molestation of girl students, there is no requirement of explicit complaints and explicit depositions. The nature of the complaints and the nature of the depositions can well show, as it did in the present case as per para 5(f) of the impugned judgment of the DST, that serious charges against the petitioner stood proved. Also, it is again reiterated that whereas the respondent no.1/school led evidence being depositions of witnesses as also documentary evidence, the petitioner led no evidence whatsoever and in fact petitioner did not even step into the witness box because he had no courage of conviction for being cross examined. There is therefore no reason why it should not be held that the Enquiry Officer has rightly concluded against the petitioner with respect to the grave charges against the petitioner. This argument of the petitioner is also therefore rejected.

11. As regards the issue of vague charges, and the fact that petitioner should not

be held guilty, learned counsel for the petitioner argued that no FIR was lodged against the petitioner, and therefore, petitioner could not have been held guilty in the departmental proceedings. Nothing can be further from truth and substance because it is not the law that unless an FIR is lodged, departmental proceedings cannot be conducted against a delinquent employee, more so in a case involving the grave charges against the petitioner which were of sensitive nature. This argument urged on behalf of the petitioner is also rejected.

12. The argument that petitioner was not supplied with the documents is a false argument and was thus rightly rejected by the DST as per para 5(I) and which para reads as under:- "5 (I). Another grudge of the Appellant is that copies of the complaints were not supplied to him. The contention of the management in reply is that all the relevant record including complaint of student and parents of the students of the school were supplied to the Appellant employee. These complaints were also produced and proved before the Enquiry Officer. As per the Appellant, no written complaint from the students was made available during enquiry nor any complaint by parents were made available on the record of the Enquiry Officer. However the record of the enquiry as well as the Enquiry Report clearly shows that original complaints were filed before the Enquiry Officer and they were proved as Ex. A1 and A2 on 19.2.1998. Copy of the proceedings dated 19.2.1998 was handed over to the Appellant and he had also received copy of the statement through which these complaints were proved. So he cannot state that as per his knowledge no copies of the complaints were made available on the record file of the Enquiry Officer."

13. In view of the above, there is no merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs.