

(2010) 05 PAT CK 0070

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14689 of 2009

The Commissioner, Kendriya Vidyalaya Sangathan and Others	APPELLANT
Vs	
Ajit Kumar and The Union of India (UOI)	RESPONDENT

Date of Decision : 14-05-2010

Acts Referred:

Citation : (2010) 05 PAT CK 0070

Final Decision : Allowed

Judgement

Sudhir Kumar Katriar, J.—The petitioners challenge the correctness of the order dated 9.7.2009 (Annexure-1), passed by the Central Administrative Tribunal, Patna Bench, in OA No. 389 of 2003 (Ajit Kumar v. Union:(sic) India and Ors.), whereby the order of termination of service of respondent No. 1 herein (the original applicant), by following the summary procedure, because it is reasonably not expedient and practicable to hold an enquiry, has been set aside. The authorities have taken the action in terms of Article 81(B), Chapter VIII, of the Education Code for Kendriya Vidyalaya (hereinafter referred to as "the Code"). We shall go by the description (sic) the parties occurring in the present proceeding.

2. A brief statement of facts essential for the disposal of the (sic) petition may be indicated. The Government of India has set up a net-work of schools, known as Kendriya Vidyalaya, throughout the country, inter alia, for the benefit of the government employees on transferable posts. Respondent No. 1 was appointed as a primary teacher in Kendriya Vidyalaya, Misa Cantonment, Nagaon, Assam, on 21.8.97. Boys as well as girls are admitted in this school to receive education. Seven male students one after the other complained against respondent No. 1 to the Principal of the school, of sexual harassment and exhibiting homosexual tendencies towards them. First such complaint was received in July 1999 The Principal of the school administered oral warning on respondent No. 1, notwithstanding which he did not improve, and was followed by more complaints against him in August 1999. Consequently the lady Principal of the school

constituted an Enquiry Committee of four members of the teaching faculty of the school including herself. The Committee conducted a preliminary enquiry, wherein the statements of the complainants as well as respondent No. 1 were recorded. The Committee submitted its report dated 5.8.1999 (Annexure -7). Services of respondent No. 1 were terminated in terms of Article 81(B) of the Code by following the summary procedure and in view of the position that it is not expedient to hold a detailed enquiry as it will cause serious embarrassment to the students. Respondent No. 1 submitted his memo of appeal on 27.4.2000 (Annexure-5). The appeal was dismissed by order dated 8.11.2002 (annexure-3), leading to the present OA No. 389 of 2003. which has been allowed by order dated 9.7.2009, the order of dismissal from service has been set aside with consequential reliefs. Hence this writ petition at the instance of the authorities.

3. While assailing the correctness of the order of the learned Tribunal, learned Counsel for the petitioners submits that Article 81(B) of the Code confers adequately canalized and guided powers on the authorities to dispense with the services of the employees. He next submits that, in view of the peculiar facts and circumstances of the present case, it was inexpedient and reasonably not practicable to hold a detailed enquiry. It could in the present case be done at a grave risk of the reputation of boys and girls, to their acute embarrassment and massive psychological impact. He relies on the following reported judgments:

- (i) Avinash Nagra Vs. Navodaya Vidyalaya Samiti and Others,
- (ii) (2004) 13 SCC 568 Director, Navodaya Vidyalaya Samiti v. Babban Prasad Yadav
- (iii) 2007(4) BBCJ 64 Suresh Chandra Misra v. Union of India and Ors.
- (iv) Air-India Corporation, Bombay Vs. V.A. Rebellow and Another,
- (v) Sita Ram Paswan Vs. State of Bihar and Others
- (vi) Unreported decision dated 15.2.2007, passed by a Division Bench of this Court in CWJC No. 11422 of 2005 Sunil Kumar Mishra v. Union of India and Ors.

4. Learned Counsel for respondent No. 1 has supported the order of the learned Tribunal. He submits that such a vast repository of power has to be exercised reasonably, with great circumspection, and sparingly. He submits that action of the authorities is in violation of Article 81(B) of the Code. The Committee has not recorded reasons/justification for the summary procedure, and the Chairman was never informed of the same. He lays particular emphasis on the note appended to Article 81(B). He relies on the judgment of the Supreme Court in the case of Tarsem Singh v. State of Punjab (2008) 2 SCC (L &S) 140. He next submits that the Courts have always carefully scrutinized the action of the authorities which deprives the employee of his basic source of livelihood. He lastly submits that the action of the authorities was actuated by Mala Fides, inasmuch as S N Goswami and C R Ligira, two teachers in the school and members of the Enquiry

Committee, had developed ill-will towards respondent No. 1, an aspect of the matter was duly considered by the learned Tribunal.

5. We have perused the materials on record and considered the submissions of learned Counsel for the parties. We are mindful of the position that the impugned action of the authorities has resulted in order of dismissal of respondent No. 1 from service. We have also no doubt that the Kendriya Vidyalaya is "State" within the meaning of Article 12 of the Constitution of India and is, therefore, subject to the rigors of the Constitution. Law is well settled that services of an employee with status can be dispensed with after following the detailed proceeding. However, service can be terminated in a summary manner, without following the detailed procedure, under certain circumstances. Article 311 of the Constitution of India is the guiding provision of law in this connection. The second proviso to Article 311 reads as follows:

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges:

Provided further that this clause shall not apply -

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry, or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in Clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

Clause (b) of the three exceptions is particularly relevant in the present context and should be our guide.

6. The conduct, behaviour, and the terms and conditions of service of the employees of Kendriya Vidyalays in India, are governed by the Code. Chapter VIII of the same is headed "DISCIPLINE". Article 81(B) of the same is relevant in the present context whereunder the impugned action has been taken, and is reproduced hereinbelow:

(B) Termination of services of an employee found guilty of immoral behaviour towards students:

Where 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 one month's or three month's pay and allowances accordingly 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 be 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 embarrassment to student or his guardians or such other practical difficulties. The Commissioner shall record in writing the reasons under which it is not reasonably practicable to hold such enquiry and he shall keep the Chairman of the Sangathan informed of the circumstances leading to such termination of services.

Note: Wherever and as far as possible, a summary inquiry in the complaint of immoral behaviour by a teacher towards the students of Kendriya Vidyalayas may be got investigated by the Complaints Redressal Committees constituted in the Regional Offices.

Though couched in a little different language, but the same is in substance akin to Clause (b) to the second proviso to Article 311 of the Constitution set out hereinabove. In other words, Article 81(B) of the Code permits termination of the service of an employee of Kendriya Vidyalaya for immoral behaviour towards students in a summary manner subject to the conditions prescribed therein. It lays down that the Commissioner should be satisfied after a summary inquiry about the immoral behaviour of the employee towards students that he is prima-facie guilty of immoral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student. The authorities have to give one month's notice or three months' pay and allowances in lieu thereof. The Commissioner must be of the opinion that it is not expedient to hold a regular enquiry which is likely to cause embarrassment to students or his guardians or such other practical difficulties to be recorded in writing. The summary enquiry has to be recorded by a Committee constituted in the Regional Office. It is thus evident that there is adequate provision in the Code to terminate the services of an employee for immoral behaviour towards students after dispensing with the detailed procedure. The question for consideration in the present case is whether or not, in the facts and circumstances of the present case, exercise of summary power is justified.

7. We would be well-advised to reproduce hereinbelow the entire text of the enquiry report:

ENQUIRY COMMITTEE REPORT ON THE COMPLAINTS AGAINST MR. AJIT KUMAR P.R.T. K.V. MISA CANTT.

Dated 5th August, 1999

On receipt of verbal complaints from a few parents and written statements from some students (attached herewith) of class VI against abuse of children by Mr. Ajit Kumar, PRT of this Vidyalaya, an enquiry committee was instituted consisting of the following members:

- 1) Mrs. M Baruah, Principal i/c
- 2) Mr. S. N Goswami, Sr. PRT
- 3) Mr. C.R. Ligara-do-
- 4) Mrs. P Banerjee, Music Teacher (Class Teacher VI)

The Committee in the Principal's office, called the students of class VI, who complained and received their statements both verbally and in writing. The major allegations against Mr. Ajit Kumar were as follows:

- i) That, Mr. Ajit Kumar slowly penetrated his hands into the pockets of the students and holds their secret part of the body tightly until they shout with pain.
- ii) That, Mr. Ajit Kumar asks the meaning of some Assamese words which are purely sex instigating in Assamese.
- iii) That, Ajit Kumar asks students who is the girl in their class.
- iv) That, Ajit Kumar says that by keeping hands in the main part of the students.
- v) That, he calls the students one by one and shows the above behaviour, sending the other students back to class. He also does such action outside the class room.

The members of the Committee also enquired of the alleged physical punishment to students.

After the boys' departure, the members called Mr. Ajit Kumar and put before him the above mentioned allegations against him. Mr. Kumar accepted the allegations against him. Mr. Kumar accepted the allegations but made efforts to clarify by saying that

- i) He keeps hands in the pockets of the students to check and take out the stickers from the pockets/and letters to girls.
- ii) That his hand might go unconsciously and unintentionally to the secret part of the boys, for which he is regretted.
- iii) That he asks the students the meaning of Assamese words, mentioned above just to know. While the members asked him as to why he had asked the students instead of his colleague-teachers, he confessed his mistake.

In regard to the physical punishment to students, while the committee members enquired, he confessed his mistakes and assured the members of the Committee that he would not repeat the same in future.

Mr. Ajit Kumar was warned by the members and to note for future guidance. Mr. Kumar begged pardon and assured so.

Lastly, the Committee decided to forward the matter to the higher authority as a first occurrence with warning to accused.

-illegible -illegible -illegible -illegible (Mrs. M. Baruah) (S.N.Goswami) (C.R. Ligira) (Mrs. P. Banerjee)

I have come to know the allegations brought against me as detailed in this report. While I confess them, I assure that such unintentional and unconscious happenings will not be repeated by me in future. I regret for such occurrence and beg apology for above mentioned ill conducts."

Dated: 5.8.1999 (Ajit Kumar) PRT, K.V. Misa Cantt.

It is thus evident that the Committee had examined the complainants, who were boys ranging between the ages of 11 years to 14 years, and were students of Class v. to VIII, as well as respondent No. 1. We have not the slightest manner of doubt that respondent No. 1 was prima-facie guilty of immoral behaviour involving sexual offence and exhibition of immoral sexual behaviour towards students. We can quite visualize the traumatic experience which the action of respondent No. 1 must have caused to the young ones. A detailed enquiry would have brought out their names in the open, would have appeared in the judgments of courts which must have followed as has happened in the present case, bringing about personal stigma and utter harassment to them and their family members so long they were alive. Another very noticeable feature of the allegation prima-facie found to be correct was that respondent No. 1 had asked the students the names of "girls" in their class. A detailed enquiry had the ominous prospect of giving publicity to the names of girls. It is remarkably evident from the enquiry report that respondent No. 1 admitted the allegations and made a specious attempt to explain away the same. This has to be read in the back-ground of the warning administered to him in July 1999, notwithstanding which he did not improve leading to further complaints from the boys.

8. We are thus convinced that the learned disciplinary authority rightly took the decision to terminate the services of respondent No. 1 after following the summary procedure. We are equally convinced that they took the precaution in terms Article 81(B) to hold a preliminary enquiry and satisfied themselves prima-facie about the immoral behaviour of respondent No. 1. This was fully considered by the learned appellate authority and has been rightly upheld. We are more than convinced that the authorities took the only appropriate action available to them in law after taking due care to satisfy themselves about the culpability of respondent No. 1. Any action short of termination of service of respondent No. 1 would have been an act of abdication of essential duties and functions. We are mindful of the position that a school imparting education to young ones are innocent of the wily ways of the world. Therefore, the greatest care and

precaution has to be taken to protect them. It is for this reason, we say advisedly, that Article 81(B) has been incorporated in the Code which is exclusively meant to take care of the immoral behaviour of the employees towards students. The power has, therefore, to be exercised whenever occasion arises without any show of compassion or sympathy, lest children get on to the wrong side of life.

9. There is yet another aspect of the matter which has attracted our attention. We notice from the judgments cited before us that such cases of immoral behaviour of teachers towards students are coming up before Court regularly. The reported judgments cited before us are complete evidence of this aspect of the matter, and not in one case the Court has shown any leniency. We will have the occasion to deal with the judgments hereinbelow in detail. Out of the six judgments cited on behalf of the petitioners, four are with respect to students of such schools. Any lenient treatment with such wrong-doers would be unpardonable, would be hazardous to the young ones, and would amount to abdication of essential duties and functions.

10. We would first of all deal with the decision of the Supreme Court in *Avinash Nagra v. Navodaya Vidyalaya Samity* (supra). The appellant before the Supreme Court was a teacher in Navodaya Vidyalaya and was warned of the sexual advances towards the girl students, but did not correct himself. The preliminary enquiry had revealed that he went to the girls' hostel at 10 PM, and procured the girls presence by sending a false message to her and when she ran away he pursued her to her room and on intervention of her room-mates rebuked them and went away taking with him the torch from the room. He admitted that he had gone to the girls' hostel but attempted to give false explanation which was unacceptable to the learned enquiry officer. In that view of the matter, his services were terminated without following the detailed procedure and was upheld by the Supreme Court. The basic factual issue in both the cases is the same, namely, sexual advances towards the students. After all, in the present case, one of the allegations found prima-facie correct was that respondent No. 1 had been taking stock of beautiful girl students from the complainants. The Supreme Court had noticed a number of text books on students-teachers relationship and concluded that the Indian society has elevated teacher to the level of "Guru Brahma, Gurur Vishnu, Guru Devo Meheshwara". The decision of the Supreme Court is almost of identical nature, and applies to the facts and circumstances of the present case in all fours.

11. The judgment of the Supreme Court in *Director, Navodaya Vidyalaya Samity v. Babban Prasad Yadav* (supra), may also be noticed. He was a teacher in Navodaya Vidyalaya and was found indulging himself in immoral conduct with a girl student by writing undesirable letters/remarks to her. On the basis of an enquiry, the Director of the institution satisfied himself that it was not expedient to hold a detailed enquiry which would cause serious embarrassment to the girl and her parents leading to the teacher's dismissal from service. The Tribunal

repelled the challenge to the order of dismissal. The High Court reversed the decision of the Tribunal and set aside the order of dismissal from service. The High Court, however, gave an opportunity to the appellant Society to hold a regular enquiry into the charges levelled against the respondent. The Supreme Court relied on its decision in *Avinash Nagra* (supra), set aside the judgment of the High Court, and restored the order of dismissal.

12. A Division Bench of this Court had to consider a similar issue in the case of *Sunil Kumar Mishra* (supra). The writ petitioner was a trained graduate teacher in *Jawahar Navodaya Vidyalaya*. He was found guilty of moral turpitude involving sexual offence and exhibition of sexual immoral behaviour towards the students. His services were dispensed with after a summary inquiry. Relying on the judgment of the Supreme Court in *Avinash Nagra* (supra), dismissed the writ petition, and upheld the order of dismissal from service.

13. Another Division of this Court had the occasion to deal with an identical matter in the case of *Suresh Chandra Misra* (supra). The writ petitioner was the Principal of *Kendriya Vidyalaya* and was found guilty of moral turpitude involving sexual offence and exhibition of immoral behaviour towards a girl student. His services were dispensed with summarily. Relying on the judgment of the Supreme Court in the case of *Avinash Nagra*, as well as on the judgment in the case of *Sunil Kumar Mishra* (supra), a Division Bench of this Court dismissed the writ petition and upheld the order of dismissal from service.

14. We have thus seen the four decisions, two of which are of the Supreme Court and the other two of this Court, where Article 81(B) or provisions in *Pari Materia* were invoked to dispense with the services of the school teachers for immoral conduct and behaviour towards the students. Uniformly the orders of dismissal in all the four cases have been upheld. It must be emphasized that the High Court interfered in the matter and set aside the order of dismissal in *Director, Navodaya Vidyalaya Samity v. Babban Prasad Yadav* (supra), but the Supreme Court restored the order of dismissal from service. The conclusion which automatically emerges from a plain reading of the four judgments is that an act of misconduct or misbehaviour by a school teacher showing sexual behaviour towards students has to be taken with utmost seriousness and strictness, and the services of such an employee should be dispensed with by following the summary procedure showing no compassion or sympathy. Teachers are in a position of trust and confidence and they are in the best position to exploit the students. Students hold their teachers in very high esteem and, therefore, the teachers are pre-eminently in the position of exploiting the students. Therefore, utmost protection has to be extended to the students and deterrent punishment has to be inflicted on such wrong-doers. Thirdly, so many reported judgments speak of growing incidence of such sexual misbehaviour towards the young ones who are in no position to defend or protect themselves. Therefore, the law has to extend the requisite protection and come down heavily on such wrong-doers.

15. We must also notice the judgment of the Supreme Court in *Air-India*

Corporation, Bombay Vs. V.A. Rebellow and Another, That was a case where the employee had to deal with the Air Hostesses in performance of his duties and the authorities were not satisfied beyond suspicion about his "general conduct" and behaviour while dealing with the Air Hostesses. Consequently, the authorities felt lack of confidence in him, and dispensed with his services in a summary manner, namely, in terms of Article 48 of the Air India Regulations. It was obviously a case where respectability of lady employees was in question and, therefore, the Supreme Court came to the conclusion that dismissal from service on the ground of lack of confidence in a summary manner was fully justified. Paragraph 15 of the judgment is relevant and reproduced hereinbelow:

15. Regulation 48 which has been set out earlier as its plain language shows does not lay down or contemplate any defined essential pre-requisite for invoking its operation. Action under this Regulation can be validly taken by the employer at his sweet will without assigning any reason. He is not bound to disclose why he does not want to continue in service the employee concerned. It may be conceded that an employer must always have some reason for terminating the services of his employee. Such reasons apart from misconduct may, inter alia, be want of full satisfaction with his overall suitability in the job assigned to the employee concerned. The fact that the employer is not fully satisfied with the overall result of the performance of his duties by his employee does not necessarily imply misconduct on his part. The only thing that remains to be seen is if in this case the impugned order is mala fide. The record merely discloses that the appellant had suspicion about the complainant's suitability for the job in which he was employed and this led to loss of confidence in him with the result that his services were terminated under Regulation 48. In our view, loss of confidence in such circumstances cannot be considered to be mala fide. We are unable to conceive of any rational challenge to the bona fides of the employer in making the impugned order in the above background. The complainant, it may be remembered had to deal with Air-Hostesses in the performance of his duties and if the appellant was not fully satisfied beyond suspicion about his general conduct and behaviour while dealing with them it cannot be said that loss of confidence was not bona fide. Once bona fide loss of confidence is affirmed the impugned order must be considered to be immune from challenge. The opinion formed by the employer about the suitability of his employee for the job assigned to him even though erroneous, if bona fide, is in our opinion final and not subject to review by the industrial adjudication. Such opinion may legitimately induce the employer to terminate the employee's services; but such termination can on no rational grounds be considered to be for misconduct and must, therefore, be held to be permissible and immune from challenge.

(Emphasis added)

16. We must also notice the judgment of a Division Bench of this Court in Sitaram Paswan v. State of Bihar (supra), to which one of us (S.K. Katriar, J.) was a party. That was a case where the appellant was an Enforcement Sub-

Inspector in the Transport Department in the Government of Bihar. Under a general policy decision of the State Government, he was transferred to Patna, and he was keen to go back to his previous place of posting. A large number of goons led by a sitting MLA armed with sophisticated fire-arms stormed into the chamber of the Transport Commissioner, and forced the Transport Commissioner to put his signature on a transfer order with which they had come ready. The Transport Commissioner invoked Clause (b) of the second proviso of Article 311 of the Constitution of India, and dispensed with the services of the employee in a summary manner. The writ petition at the instance of the employee failed, leading to the appeal. The Division Bench examined the matter on facts and felt satisfied that it was reasonably not practicable to hold a detailed enquiry in the case. It may be mentioned that the MLA who had led the team of goons and stormed into the chamber of the Transport Commissioner, was the full brother of the then Chief Minister whose husband was the President of the then ruling party in the State of Bihar. He had been able to create a reign of terror, and forced the transport Commissioner to sign the transfer order by putting him under fear of being beaten up and threat of life. This Court felt satisfied that it was reasonably not practicable to hold an enquiry. Paragraph 22 of the judgment is reproduced hereinbelow:

22. For the facts stated in the impugned order and discussed in the judgment of Brother Rai, J. with which I full agree, proviso (b) to Article 311(2) of the Constitution is manifestly available to the disciplinary authority. I am convinced that the disciplinary authority is fully justified in reaching the conclusion that it is not reasonably practicable to hold an enquiry. A person of the rank of Secretary-cum-Commissioner has been terrorized into subservience, and was forced to sign the transfer order by putting him under fear of being beaten up and that of life in his office chamber in the Secretariat by threatening to use sophisticated weapons. The State Government at all levels upto the Chief Secretary has remained absolutely unmoved obviously because of fear of being beaten up and that of their lives. Full sister of the MLA who lead the team of goons is the Chief Minister of the State, and her husband is the President of the ruling party in power. The employee joined the new place of posting without being relieved at the place of previous posting, and no objection is raised at either of the two places. A person of the rank of Enforcement Sub-Inspector has been able to organize such a massive show of terrorism of extra-ordinary dimensions in the main Secretariat without a word of protest. Who will risk his life or would like to be beaten up for conducting the enquiry or coming as a witness. I am reminded of the observations of the Supreme Court in the case of Rudal Sah v. State of Bihar AIR 1983 SC 1986, though made in a slightly different context, that "there is darkness all around in the present administration of the State of Bihar". If there has to be one case, it is the present case which would be covered by proviso (b) to Article 311(2) of the Constitution.

The Supreme Court dismissed In Limine the SLP preferred by the appellant.

17. We wish to compare the facts and circumstances of the four judgments dealt with hereinabove with respect to school students on the one hand, and those of Sitaram Paswan (*supra*), on the other. In the latter judgment, there was no allegation of immoral behaviour with respect to sexual exploitation of students, notwithstanding which this Court upheld the summary order of dismissal from service. The test is whether or not it is expedient or it is reasonably practicable to hold such an enquiry.

18. Now we must notice the judgment of the Supreme Court relied on by respondent No. 1 in *Tarsem Singh v. State of Punjab* (*supra*). The appellant before the Supreme Court was a Constable in the Punjab Police and was charge-sheeted for commission of the following misconduct:

(i) On 11.10.1997 at about 10 pm he along with his abovesaid accomplices entered the house of one Dara Singh s/o Madan Singh, resident of Mohalla Ram Bagh, City, Barnala and outraged the modesty of his wife by inflicting pinches on her body. They forcefully extracted rupees one hundred from Dara Singh. They threatened him of dire consequences if he made any complaint against them or deposed against them or helped in any criminal or departmental proceedings against them.

(ii) Constable Tarsem Singh No. 4C/371 on 11.10.1997 in between about 10/11 pm along with his other two colleagues caught hold of one Ravinder Kumar s/o Kamaleshwary Yadav r/o Bharai, District Purnia, Bihar, a migrant labourer, stuffed cloth in his mough and had carnal intercourse with him against the law of nature. FIR No. 228 dated 13.10.1997 under Sections 377 and 34 IPC in PS Kotwali Barnala has been registered against him. This incident took place at grain market, Barnala.

(iii) He along with his other two accomplices further caused threats of dire consequences to anyone deposing against him in an enquiry/investigation which has further caused a scare amongst colleagues and citizens. That in the public and administrative interest the retention of the abovesaid Constable Tarsem Singh No. 4C/371 is considered wholly undesirable.

Detailed enquiry was dispensed with, and his services were terminated on the basis of a preliminary enquiry, on the ground that the appellant could win over the aggrieved persons as well as witnesses from giving evidence by threatening or other means. The Supreme Court on facts did not feel convinced that it was really covered by Clause (b) to the second proviso of Article 311 of the Constitution. That case stood on its own facts, and the Supreme Court did not feel convinced as to the applicability of Clause (b) to the second proviso of Article 311. The present case deals with an extremely vulnerable and innocent section of tender age of our society who are unable to protect themselves. That case stood on its fact and is inapplicable to the present case.

19. Learned Counsel for respondent No. 1 has also submitted that it is incumbent on the Commissioner to record his opinion that it is not expedient to hold a

regular enquiry on account of practicable reasons. The order of dismissal from service has been passed by the Commissioner which records the reasons in justification of the summary procedure and, therefore, this condition is fully satisfied. He had recorded reasons in support of the order of dismissal from service which has to be read with the enquiry report. Learned Counsel for respondent No. 1 has laid particular emphasis on the Note to Article 81(B) of the Code which provides that the summary enquiry may be conducted by a Complaint Redressal Committee. As noticed hereinabove, a Committee of four persons was constituted to conduct the preliminary enquiry who submitted their report dated 5.8.99, leading to the impugned action. The condition is fully satisfied. The contentions are rejected.

20. We must also deal with the allegation of mala fides levelled by respondent No. 1. It is contended that respondent No. 1 is a resident of Bihar, and was appointed and posted in Assam. S N Goswami and C R Ligira, his fellow colleagues, are permanent residents of Assam who used to tease him of occupying a post in the State of Assam to the deprivation of its permanent residents, which had developed into a fairly serious matter who had therefore implicated respondent No. 1. The contention is stated only to be rejected. This contention was not raised before the enquiry committee, nor is stated in the grounds of appeal. It was for the first time orally submitted during the course of personal hearing before the learned appellate authority and was rejected. The learned Tribunal entertained the plea and has attached some importance, which we feel wrongly. The aforesaid two persons were members of the enquiry committee, have in the enquiry report pardoned respondent No. 1, and recommended a compassionate approach. The same is apparent from the end portion of the enquiry report reproduced hereinabove. If the two colleagues were so unfavourably disposed towards him, they would not have recommended such lenient action. Law is well settled that if an order is valid or lawful on merits, then mala fide loses all force. Proved misconduct is the antithesis of victimization. If the offence is established, no question of bad faith, malafides, victimization, or ill-will arises. Reference may be made to the following reported judgments:

- i) Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others,
- ii) Burn and Co. v. Their Workmen 1959 (I) LLJ 450
- iii) Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate,
- iv) Hotel Mayur (P) Ltd. Vs. State of Bihar and Others,
- v) Ram Ashray Prasad Sinha Vs. Union of India and Others,
- vi) Ram Dhani Singh Vs. The State of Bihar and Others

We must sound the requisite note of caution that the reported judgments in Hotel Mayur, Ramashray Prasad Sinha, and Ram Dhani Singh, were rendered by one of us (S.K. Katriar, J.), sitting singly. We have hereinabove held that the

authorities have very rightly resorted to the summary procedure in terminating the services of respondent No. 1. The order is perfect and valid on merits.

21. Before we part with the records, we must express our strong feeling of unhappiness with the manner in which the Tribunal dealt with the matter. The Tribunal completely failed to appreciate the scope, ambit, and sweep of Article 81(B) of the Code which is akin to Clause (b) to the second proviso to Article 311 of the Constitution. The Tribunal should have informed itself of the decisions of the Supreme Court and the High Courts on this point before allowing the original application. Secondly, instead of relying on the authoritative pronouncements of the Supreme Court and the High Courts, the Tribunal relied on orders of Benches of the Tribunal which should be avoided. Has the Tribunal to be reminded that the judgments of the Supreme Court are binding precedents in terms of Article 141 of the Constitution of India. We notice from our experience that the Tribunal has developed a very unhappy tendency of relying on the various orders of Benches of the Central Administrative Tribunal, in case which are covered by the authoritative pronouncements of the Supreme Court, failing which the High Court.

22. In the result, we allow this writ petition, set aside the order of the Tribunal, and restore the order of dismissal of respondent No. 1 from service. Let copies of this order be forwarded to the Central Administrative Tribunal, Patna Bench, to be forwarded to the Members who were parties to the impugned judgment for their future guidance. There shall be no order as to costs.