

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decided on: **February 8, 2011**

+ **WP (C) No. 791 of 2011**

Mrs. Lalita Singh Petitioner

Through: Mr.K. Venkatraman, Advocate

versus

Lt. Governor of Delhi and others Respondents

Through: Ms.Madhu Tewatia with
Ms.Sidhi Arora, Advs. Resp. 2 & 3

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

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| 1. | Whether reporters of the local papers be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

DIPAK MISRA, CJ

Before we advert to the nature of challenge of the order in question and the factual matrix, we have thought it seemly to dwell upon the signification of education and the role of a teacher and more so a teacher who is engaged to impart training to the mentally retarded school children, as the gravity of the role gets accentuated because of the delicate nature of duty.

2. It is worth nothing that education makes a man a complete human being in its conceptual essence and connotative continuum. In the days of yore, a realised poet Bhartruhari sang in the glory of 'Vidya' in the following terms:-

"VIDYA NAAM NARASYA ROOPAMADHIKAM
PRACHHANNA GUPTAM DHANAM
VIDYA BHOGAKARI YAASHAH SUKHAKARIYI
VIDYA GURUNAM GURUH
VIDYA BANDHUJANO VIDESHGAMANE
VIDYAPARAM DAIVATAM
VIDYA RAJASUPUJYATE NAHI DHANAM
VIDYA BIHINAH PASHUH."

A free translation of the aforesaid verse would mean that education is the most resplendent exposition of a man and in it inheres the concept of quintessential treasure. It is the bedrock of all happiness, fame and pleasure. Education is the preceptor of the teacher and acts as a dear friend in travel and is the supreme God, the creative intelligence. It is education but not money which is honoured and respected in the royal assembly. For these reasons, a man without education is equated with an animal.

3. It is education, the real hidden treasure in a man, which comes to his aid. Not for nothing it has been said that the process of evolution from ignorance to knowledge, from knowledge to wisdom and from wisdom to understanding of consciousness takes place through education which is regarded as a part of divine attainment. It is education which teaches purity of mind, righteousness of conduct and truthfulness of soul. If we allow ourselves to say so, education has the potentiality of metamorphosing eternal passion to everlasting sublimation and eternal pain to permanent peace.

4. In our Shastras and traditions, the teachers or the gurus have been put on a pedestal on the basis of the principle that they had been ascribed the role *AGYAN TIMIRANDHASYA GNYANANJAN SALAKYA* since ages.

It is the obligation of a teacher to nurture the mind of a student. The society expects and, rightly so, an impeccable conduct, sacred devotion to duty and unimpeachable behaviour from teacher.

5. With the aforesaid prefatory note, we would like to proceed to deal with the assail of the order impugned, factual score and the legal issues. The legal substantiability and acceptability of the order dated 29th November, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short 'the tribunal') in TA No. 1480/2009 is called in question by the petitioner in invocation of jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

6. The factual exposé, as unfurled, is that the petitioner joined one of the schools run by the NDMC for mentally retarded children, situate at Kautilya Marg, Chanakya Puri, New Delhi on 14th July, 1995 as Games-cum-Yoga teacher. As alleged, on 31st July, 2001, during the school hours, she called two mentally retarded students, in the sports room of the school and directed them to get involved in the sexual act. The concerned Principal of the school was apprised by the petitioner that she was making an effort to develop awareness of sex among the mentally retarded students. An investigation was carried out wherein the young girl reiterated the statement and eventually an inquiry under Rule 14 of the CCS (CCA) Rules, 1965 (for short 'the 1965 Rules') was initiated against the petitioner. In course of inquiry, some witnesses including the parents of the children were examined and ultimately the Inquiry Officer found the charges leveled against her proven. She visited with the penalty of

dismissal, which was challenged in appeal, but the same did not meet with success. After being unsuccessful in appeal, the petitioner had approached this Court in WP (C) No. 2689/2008, which was subsequently transferred to the tribunal and was numbered as TA No. 1480/2009.

7. Before the tribunal it was contended that the Principal of the school had always harboured a bias towards the petitioner and hence, she had been falsely implicated; that the statements of the mentally retarded children could not have been lent any credence as they do not have the mental faculty to articulate what had happened; that the statements of the witnesses were fabricated; and that the whole inquiry is fundamentally an apology of an inquiry with a pre-determined mind to impose major penalty.

8. The aforesaid contentions were resisted by the respondents contending, inter alia, that the statements of the children were recorded properly in presence of three witnesses including the Principal who were examined and cross-examined in course of enquiry and there is no reason to disbelieve them; that when an act of this nature takes place, the impression is imprinted in the minds of the young children and, therefore, their version cannot be thrown overboard on the ground that they could not have remembered the incident; that it was totally unbecomely on the part of a teacher to conduct in such a manner and, therefore, the punishment imposed was justified in the facts and circumstances of the case.

9. The tribunal by the order impugned has opined that most of the teachers including the principal as well as the parents had deposed that the entire incident as truthful and it is illogical and irrational that the entire school would be against the petitioner; that the incident was admitted by the petitioner before the Principal; that the truthfulness of the statements of the students could not be doubted on the ground that there is manipulation and fabrication; that the authenticity of the statements of the witnesses gains further acceptance, as they have remained unshaken throughout; and that the punishment that has been imposed is absolutely just and proper.

10. It is contended by learned counsel for the petitioner that the inquiry was not conducted in a proper manner and, in fact, it was a mockery of inquiry. It is urged by him that the mentally retarded students had no capacity to depose before the authorities and, therefore, the credibility of their statement could not have been given credence to. It is further urged that the manner in which the inquiry has been conducted is a travesty of justice inasmuch as the students never deposed before the inquiry officer and they were not cross examined by the petitioner. Learned counsel for the petitioner further submitted that there has been violation of principles of natural justice while holding inquiry and hence, the punishment imposed is totally vitiated in law.

11. Learned counsel appearing for respondents submitted that during inquiry, charges leveled against the petitioner were proved and regard being had to the delicate issue involved, appropriate and adequate opportunity of hearing was offered. Learned counsel has drawn our

attention to the statement of imputation of misconduct, the order passed by the disciplinary authority and that of the appellate authority. It is also her submission that the order passed by the tribunal is impeccable and the tribunal in exercise of power of judicial review could not have re-appreciated the evidence on record.

12. On a perusal of the material brought before us it is noticeable that a memorandum of charge sheet was served on the petitioner on 27.2.2002.

The imputation of misconduct reads as follows:

“On 31.07.2001 during school hours, while she was in dining hall where Master Sameer Chopra, a student of V.T.C. Mushroom, Aanchal, was present, she asked Master Chopra, to call Kumari Ruchika, also the student of V.T.C. Mushroom, Aanchal. Both Master Sameer and Kumari Ruchika came and then Smt. Lalita Singh took both the students in the sports room of the school. She then asked Sameer Chopra to bolt the room from inside. Thereafter she asked Master Sameer Chopra to open the jip of his pent and asked Kumari Ruchika to open her salwar and to do sexual act, as has been described in the statement dated 03.08.2001 of Kumari Ruchika and the statement of Sameer Chopra recorded in the presence of Smt. R. Chaterjee, the Principal, Ms. Sushila Tripathi and Ms.Chitra Gupta, Special Educator Aanchal. Thereafter she instructed both the students not to tell about the said incident to anybody.”

13. To prove the said charges, the documents and the list of witnesses were provided. Though the mentally retarded children were not produced before the inquiry officer, Mrs.Aruna Sharma, Mr.A.K. Pathak and Mr.Rajagopal were examined and cross-examined. It is worth noting that statements of the retarded children were recorded in the presence of Director (Welfare), confirmed by Mr.A.K. Pathak and Mr.Rajagopal of the Vigilance Department. What is urged is that the mentally retarded

children should have been made available for cross examination. At this juncture, we may note with profit that before the disciplinary authority it was contended that the acceptance of the findings of the I.O. before her submissions amounts to denial of reasonable opportunity to her; that the I.O. has introduced some documents which were never part of the inquiry and also failed to forward the written briefs of P.O. and C.O. to Disciplinary Authority; that the parents of both the students were called as witness whereas these two persons were not in the list of witnesses; that the findings recorded by the inquiry officer are baseless and bereft of any reasoning and, therefore, deemed to be quashed. The same has been appropriately dealt with by the disciplinary authority by holding thus:

“The Inquiry Officer has given her findings based on the evidence facts and documents placed before her both by Presenting Officer and by Smt.Lalita Singh, C.O., through her Defence Counsel during the course of inquiry proceedings. It has also been noticed that Smt.Lalita Singh, the C.O. in her submissions has not made any submission about the ugly incident took place and merits of the case but has tried to make objections on technical grounds.”

14. The appellate authority has appreciated the evidence on record and opined thus:

“.....In her deposition Smt. R. Chatterjee, PW-1 clearly stated that the appellant had narrated her that the latter wanted to assess the knowledge of these students regarding sexual matters. More so Km. Ruchika, the victim, also detailed the incident many a times without any discrepancy. All these led to the establishment of the charge against the appellant. It is also important to note that in such cases the level of proof required is much lower than that required in the criminal proceedings. Here we go by pre-ponderance of probabilities. Further, the grave misconduct committed by the appellant is shocking and most unbecoming of a teacher. This had brought bad name to the institution. As a

teacher the appellant was expected to ensure the welfare of the students. Instead she took advantage of the mental state of the students to achieve her malafide goal.”

15. The tribunal in paragraph 14 of the order has held thus:

“14. Regarding the statements made by the students, these statements have been recorded in presence of the teachers and Principal and other staff members of the school, who have deposed so much confidence as truthful version of exactly what happened with them has been stated by the mentally retarded students in innocence twice, which cannot be doubted, as even mentally retarded students have some IQ and such horrifying immoral act perpetuated by the applicant had left such an imprint over their minds that they had recovered from that and ultimately were able to reiterate while making the statements on second occasion. As the authenticity and credibility of these statements has been failed to be shaken by the applicant with a reasonable defence, the inquiry being conducted in accordance with law and the order passed after considering all the contentions raised cannot be found fault at law.

16. The core issue that emerges for consideration whether the mentally retarded children should have been cited as witnesses during the inquiry proceeding. As is evincible, they had stated before the Principal and the authorities who had affirmed their statements. The parents too have deposed before the inquiry officer and remained totally unshaken. It is to be borne in mind that the objective in a disciplinary proceeding is altogether distinct and different. It cannot be compared with criminal proceeding. The standard of proof, the mode of inquiry and the rules governing the inquiry are based on the principle of preponderance of probabilities. True it is, suspicion cannot take the position of proof but proving the charges in a disciplinary proceeding is totally different than

that in a criminal proceeding. The allegations are not to be proven to the hilt.

17. In *Lalit Popli v. Canara Bank and others*, (2003) 3 SCC 583, it has been held thus –

“It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (See *State of Rajasthan v. B.K Meena*). In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of “proof beyond doubt” has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.”

18. Tested on the anvil of said enunciation of law, it can safely be concluded that is not a case of no-evidence. The approach of the disciplinary authority, the appellate authority and that of the tribunal cannot be regarded as perverse. That apart, the case has its own special features. The petitioner was a sports teacher in a school for mentally retarded children. We cannot perceive any justifiable reason why the Principal, the administrative authorities, the teachers and the parents would form an unholy combination against the petitioner. The material brought on record speaks eloquently against the petitioner.

19. This Court cannot be oblivious of the fact that while exercising jurisdiction under Article 226 of the Constitution of India cannot act as an

appellate authority. Its jurisdiction is constricted by limits of judicial review. In this regard, we may refer with profit to the decision in ***R.S. Saini v. State of Punjab, (1999) 8 SCC 90*** wherein their lordships have stated thus –

“16. Before advertent to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

17. A narration of the charges and the reasons of the inquiring authority for accepting the charges, as seen from the records, shows that the inquiring authority has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion have been taken in a reasonable manner and objectively. The conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the inquiring authority. Likewise, the High Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard.”

20. Regard being had to the material brought on record, the findings recorded by the authorities and the scope of judicial review, we are of the considered opinion that the view expressed by the tribunal is unexceptionable and hence, there is no warrant for any interference.

21. Ex consequenti, the appeal stands dismissed without any order as to costs.

CHIEF JUSTICE

SANJIV KHANNA, J.

FEBRUARY 08, 2011
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