

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

+ **W.P.(C) No.2471/2005**

% **Date of Decision: 12.09.2011**

HP Sharma Petitioner

Through Nemo.

Versus

KVS & Anr. Respondents

Through Dr. Puran Chand Advocate for
Mr.S.Rajappa Advocate for the
Respondents.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner, has challenged the order dated 14th October, 2004 passed by the Central Administrative Tribunal, Principal Bench in O.A No.88/2004 titled as 'Sh. H.P. Sharma v. NVS and Anr.' dismissing the original application of the petitioner against the order of his dismissal from service, but giving him the liberty to submit a fresh unconditional

resignation with effect from the date of the order of termination i.e. 13th June 2003.

2. The brief facts to comprehend the disputes between the parties are that the petitioner had joined as Principal on deputation in the Navodaya Vidyalaya Samiti, the respondent institution, on 21st July, 1988 and he was subsequently absorbed as a permanent employee on 1st September, 1992. Thereafter, he was transferred from Rajgarh Navodaya School of Madhya Pradesh State to Jawahar Navodaya Vidyalaya, Niwarsi Distt. Kurushetra, Haryana on 30th April, 1993.

3. On 20th December, 1993, a notification was issued by the respondents by which the provisions of CCS (CC&A) Rules, 1965 as applicable to the employees of the respondent institution, relating to the procedure for imposing penalties, was amended to provide for special procedure in certain types of cases as enunciated in the Notification.

4. That on 28th January, 2003 the petitioner had received a complaint from a girl student namely Santosh (name changed) of Class X, against the Mathematics teacher, Sh. Rajesh Kumar, alleging molestation by the said teacher. Therefore, the petitioner had issued a direction to the Vice-Principal, Miss Anju Gupta, to conduct an inquiry in respect of the allegations made by the child. A copy of the complaint

dated 28th January, 2003 written in Hindi by the student was also forwarded. Consequently, the petitioner learnt that the concerned teacher, Mr. Rajesh Kumar, was transferred to Sikkim as 'Punishment Transfer'.

5. As per the petitioner, since he wasn't keeping good health, he proceeded to take leave w.e.f 3rd February, 2003 to 15th February, 2003 by submitting an application on 2nd February, 2003 to the Deputy Director. Allegedly, during the absence of the petitioner, certain evidence was procured against him and without testing the authenticity of the evidence, respondent No. 2 issued a suspension order against the petitioner on 4th February, 2003 wherein it was mentioned that "a disciplinary proceeding against Sh. HP Sharma (Petitioner), Principal, JNV-Kurukshetra (Haryana) is contemplated". The said order of suspension was received by the petitioner on 8th February, 2003.

6. On 2nd February, 2003 the petitioner had submitted his resignation from the post of Principal and the letter was addressed to the Deputy Director, Navodaya Vidyalaya Samiti, Regional Office Chandigarh.

7. Subsequently, the petitioner came to know that he was placed under suspension on the basis of a complaint alleged to be made by a

girl student imputing immoral sexual behavior against him on 22nd January, 2003. As per the petitioner, he wasn't even present on the said date from 3 PM to 9 PM. A summary inquiry into the incident was conducted on 11th March, 2003.

8. The girl student herself withdrew her complaint on 10th February, 2003, which was even supported by her father who allegedly claimed that the complaint was totally false and as a result of a conspiracy against the petitioner in a letter dated 4th February, 2003 written to the Deputy Director NVS, Chandigarh for the withdrawal of the complaint made by his daughter.

9. However, on inquiry it was held by the Assistant Director that the allegations against the petitioner stood proved and that the complainants had wished to withdraw their complaint due to the stigma attached to the allegations and not because the allegations were untrue.

10. That in the circumstances, the respondents by order dated 13th June, 2003 terminated the services of the petitioner. The order also stipulated that "it is felt that it is not expedient and practicable to hold regular inquiry under the provisions of the CCS(CC&A) Rules, 1965 in the matter on account of serious embarrassment it will cause to the concerned student and her guardians". The said punishment order was

said to be in exercise of the powers conferred under the provisions of the notification No. F 14-2/93-NVS(Vig.) dated 20th December, 2003.

11. Aggrieved by the order of termination, the petitioner approached the Appellate Authority on 26th June, 2003, however the appeal was also dismissed by order dated 22nd December, 2004. Meanwhile, an affidavit dated 22nd October, 2003 was submitted by the father of the complainant, Sh. Tejender Kaur, stating that the said complaint had been given under the pressure of notorious elements and was withdrawn thereafter.

12. Aggrieved by the above said orders the petitioner moved the Tribunal by filing an original application bearing O.A. No. 88/2004. However, the Tribunal also dismissed the original application of the petitioner by order dated 14th October, 2004. Thereafter, the petitioner filed a review application before the Tribunal on 1st January, 2004. The review application was also dismissed by the Tribunal by order dated 22nd December, 2004.

13. Before the Tribunal, the petitioner had contested the order of termination on the grounds that the appeal had been dismissed by the same authority who had passed the earlier order of termination; that the girl student as well as her father had already informed that they

had made the complaint in question, which is the sole basis for the penalty order, that the same had been written under pressure and on instigation of some notorious elements; and that the notification which permits summary termination of the service dispensing with the detailed inquiry dated 20th December, 1993 is ultra vires to the provisions of the Constitution.

14. Per contra the respondents, by a reply dated 2nd February, 2003, had contended that the petitioner had submitted his resignation from the post of Principal and the said letter was addressed to Deputy Director, Navodaya Vidyalaya Samiti, and thereafter, the petitioner had proceeded on leave. It was also contended that the act of procurement of letter from the girl student only confirmed the fact that the incident had taken place. It was also urged that the notification dated 20th December, 2003 is valid and inconsonance with the principles laid down in the Constitution.

15. After carefully taking into consideration the pleas and contentions raised by both the parties, the Tribunal dismissed the OA of the petitioner by order dated 14th October, 2004. The Tribunal rejected the contention of the petitioner that the authority who passed the order of punishment was the same as the authority who passed the order in appeal, as on perusing the said orders it held that while the penalty

order was passed by the Commissioner of Navodaya Vidyalaya Samiti, the appellate order had been passed by the Chairman of the respondent institution.

16. With regard to the contention that the very fact that the girl student and her father had given in writing as well as an affidavit that the said complaint was made under pressure and on the instigation of notorious elements, ought to be ground in itself to reject the said complaint and consequently the Appellate Authority should have set aside the penalty order, the Tribunal observed that in light of the facts and circumstances the said affidavits seem to be procured affidavits and that no reliance could be placed on the same. The reasoning of the Tribunal is as follows:

“10. On appraisal of the fact, we find that this clearly is an event/fact which should be ignored. Once the complaint was made by the girl student, the applicant resigned from the service. However, an inquiry was conducted. The applicant was placed under suspension when, in fact, he proceeded on leave. The very fact that he immediately resigned indicates volumes about the correctness of the allegations made by the girl student. After months of the same, the affidavit which is now being produced, must be taken to be a procured affidavit. At this stage, thus, the same deserves to be ignored.”

17. The Tribunal also carefully reviewed the notification dated 20th December, 1993. The Tribunal placed reliance on the judgments of Avinash Nagra v. Navodaya Vidyalaya Samiti & Ors. (1997) 2 SCC 534

and Director Navodaya Vidyalaya Samiti & Ors. v. Babban Prasad Yadav & Anr. 2002 (2) SCALE 400 wherein it was held that with a view to ensure the safety and security of the girl students and to protect their modesty and prevent any unnecessary exposure at an enquiry in relation to the conduct of a teacher resulting in sexual harassment, it would be advisable for the Director to take a decision based on fact-situation in order to determine whether a summary enquiry is necessary or if the services of the delinquent may be dispensed with by giving pay in lieu of notice. The Tribunal, therefore, held that there was no reason to infer that the said procedure prescribed in the notification dated 20th December, 1993 is ultra vires to the provisions of Article 311 of the Constitution.

18. The Tribunal, however, relying on Babban Prasad Yadav & Anr. (supra) wherein it was held that an opportunity should be given to the delinquent to tender unconditional resignation with effect from the date of the order of termination, directed the petitioner to submit an unconditional resignation from the date of the order of termination and disposed of the said original application.

19. It is against the above mentioned orders that the petitioner has sought to approach this Court under its writ jurisdiction. The petitioner in his petition has primarily reiterated the contentions made before the

Tribunal and in addition contended that the Tribunal greatly erred in placing reliance on the case of Babban Prasad Yadav as the facts of the case were clearly distinguishable from the present case since in that case very serious allegations were made against the delinquent and there was sufficient material to support the allegation and furthermore the delinquent was a probationer and therefore he could not have the protection of Article 311(2) of the Constitution of India.

20. During the pendency of the present petition it was contended on behalf of petitioner that he would be entitled for all the terminal benefits. The counsel for the respondents, however, on instructions, had stated that the respondents are not inclined to grant any terminal benefits to the petitioner and relied on 2004 (2) SCALE 15, Director, Navodaya Vidyalaya Samiti Ors. v. Babban Prasad Yadav & Anr. where it was held that the substitution of the letter of termination by the letter of resignation will not entitle the employee for any terminal benefits.

21. The writ petition was taken up for hearing on 5th September, 2011, however, no one had appeared on behalf of the petitioner. However, no adverse order was passed in the interest of justice and the matter was allowed to remain on board in the category of 'Regular Matters'. The matter was again taken up on 6th September, 2011 and again no one appeared on behalf of the petitioner. Again no adverse order was passed against the petitioner in the interest of justice.

22. Today again, no one is present on behalf of the petitioner. In the circumstances this court is left with no option but to dismiss the writ petition in default of appearance of the petitioner and his counsel. The writ petition is, therefore, dismissed in default. All the pending applications are also disposed of.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

SEPTEMBER 12, 2011.

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