

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

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Date of decision: 21st March, 2012

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LPA NO.909/2011

GURU HARKRISHAN PUBLIC SCHOOL

..... Appellant

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Jasmeet Singh, Adv.

Versus

S.K. SHUKLA

..... Respondent

Through: Mr. O.P. Saxena, Adv.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The appellant School impugns the judgment dated 05.10.2011 of the learned Single Judge in W.P.(C) No.3771/2001 preferred by the respondent, earlier employed as Trained Graduate Teacher (TGT) (Music) with the appellant School and whereby the learned Single Judge has converted the punishment, of removal from service meted out to the respondent to that of "severe" warning for dereliction of duty and directed reinstatement of the respondent with 25% of the back wages. Notice of this appeal was issued and implementation of the impugned judgment stayed. Litigation expenses were got paid to the respondent. The counsels have been heard.

2. The appellant claims to be an unaided minority School run by the Delhi Sikh Gurdwara Prabandhak Committee (DSGPC) and terms and conditions of service of whose employees are governed by the contract of

service. The respondent was employed with effect from 01.11.1994 and had also signed a Contract of Service. In January, 2000, the respondent and another lady teacher of the school were deputed to accompany some of the girl students of the appellant School participating in a National Group Folk Song Competition to Ahmedabad.

3. The respondent was on 21.01.2000, issued a Memorandum of, high order dereliction of duty which had resulted in an ugly incident during the return journey from Ahmedabad and which incident had put the appellant School to shame. It was stated that at the time of the incident, the respondent was in a state of intoxication with liquor and which was stated to be not only against the conduct rules but particularly so in the company of girl students and lady teacher.

4. The respondent in his reply dated 21.01.2000 to the said Memorandum, did not deny the incident. He, however stated that it was Mr. V.P. Singh and Mr. Ramesh Lohan of a government school in Delhi and who had accompanied students from their school, who had consumed alcohol and thereafter attempted to sexually harass the female students of the appellant School. He further stated that he was at that time unable to comprehend as to what had happened and had attempted to control the situation to avoid bringing disrepute to the appellant School. He denied having himself consumed alcohol and rather claimed to have handed over the miscreant Mr. V.P. Singh to the police at the Bandi Kuin Police Station, Rajasthan.

5. The explanation aforesaid of the respondent was not found tenable by the appellant School and he was vide another Memorandum dated 24.01.2000 accused of attempt to cover up; he was also told that he was duty bound to be on guard and to remain awake for the safety of the students and once again asked to divulge all the details. The respondent gave another reply dated 24.01.2000 denying his guilt.

6. The appellant School vide Memorandum dated 25.01.2000 suspended the respondent and also charged him with suppression of facts, having indulged in loose talks with the girl students, having been under the spell of alcohol and having failed to come out when the accused co-passenger was being taken out and having thus ignored the appeals for help from the girl students.

7. An Inquiry Committee was constituted and the report dated 01.05.2000 of the Inquiry Committee records that the respondent, the lady teacher, one Mrs. Kawaljit Kaur and all the students who participated in the tour had participated in the inquiry. Written statements given by all of them were considered. The Inquiry Committee took exception to the respondent asking the girl students to change their berth late at night and found that the respondent being the only male member accompanying the tour was entrusted with great responsibility towards the students and which he had not only neglected but also become a part of the miscreants. It was thus opined that the very presence of the respondent in the appellant School would be harmful to the girl students and the punishment of termination of his service was recommended.

8. The appellant School vide order dated 09.05.2000 terminated the services of the respondent, holding his continued presence in the appellant School to be harmful to the girl students of the appellant School.

9. It may be mentioned that though the lady teacher who had also accompanied the girl students was also found to have failed to discharge her duty honestly but was issued a warning and prohibited from accompanying any tour in future.

10. The learned Single Judge, as aforesaid converted the punishment from that of removal from service to that of a warning, finding that though the respondent was guilty of dereliction of duty in the matter of ensuring the safety of the students entrusted to his charge but further finding that, the charge of the respondent having become part of the miscreants and of his presence in the appellant School being dangerous to the girl students to have been not established and thus finding to that effect perverse. The learned Single Judge further held that the case of the respondent was not different from that of the lady teacher also accompanying the group and who had been let off with a warning. It was thus held that there was no occasion for meting out different punishment to the respondent.

11. The respondent has not impugned the finding of dereliction of duty confirmed by the learned Single Judge also. We are thus left with the charge of, the respondent having become part of the miscreants and of his continued presence in the appellant School being dangerous to the girl students, and are to find out whether the learned Single Judge was justified in interfering with

the findings of the Inquiry Committee and Disciplinary Authority of the appellant School on the said charge and in varying the punishment.

12. The senior counsel for the appellant School has argued that the learned Single Judge has, in holding the said charge to have been not established, relied on the record of the inquiry against the officials/teachers of the other school and which had no relevance. The learned Single Judge has in Para 10 of the judgment referred to the said inquiry and taken notice of the suspension order against the said persons having been revoked and their having been absolved of the charge and having been reinstated in service. It is argued that the inquiry conducted by the other school/Directorate of Education against its own employees ought to have had no bearing on the inquiry conducted by the appellant School. It is further argued that, while in the inquiry by the Directorate of Education, which was long after the incident, the girl students had not participated, in the inquiry against the respondent, which was immediately after the incident, the girl students had not only participated but also given their written statements which were considered by the Inquiry Committee. It is thus contended that the inferences drawn by the learned Single Judge and as noted in para 16 of the judgment, are on the basis of the other inquiry and the learned Single Judge erred in giving benefit thereof to the respondent.

13. We may notice that the learned Single Judge has set aside the finding of the respondent having become part of the miscreants on the basis of the report in the other inquiry aforesaid. Our attention is also invited to the

statements given by the girl students in the inquiry against the respondent, where they had complained that,

- a) “Sir” had told them dirty jokes which he ought not to have;
- b) that “Sir” was sleeping with his head “on the lap of our Madam and he has his thighs placed conveniently on Madam”;
- c) that “Sir” was least bothered or serious about their well being / security;
- d) that “Sir” and Madam on one of the outings sat together on My Fair Lady swing;
- e) that while the officials of the Directorate of Education were consuming alcohol, “Shukla Sir” also sipped alcohol from their cup;
- f) that even when the officials of Directorate of Education had sexually harassed them, “Sir” did not come to their rescue.

The senior counsel for the appellant also relied on ***Kendriya Vidyalaya Sangathan Vs. Gauri Shankar*** 146 (2008) DLT 364 (DB) laying down that the School Tribunal cannot sit in judgment over subjective satisfaction of the Disciplinary Authority based on cogent reasons and on material placed before it of immoral behaviour of the teacher towards the students and that once the conduct of the teacher is found to be not above par, the Tribunal acted in complete indifference and lack of sensitivity in setting aside the order of termination. It was further taken note of that it will be highly embarrassing for both students as well as guardians to participate in the inquiry. It was yet further held that if any leniency in such matters was

shown, it would encourage others to indulge in such misadventure and erode confidence of parents who send their young boys and girls to the School.

14. The counsel for the respondent has on the contrary has argued that the order of removal of the respondent from service was bad even on the ground of no proper inquiry having been conducted, no proper inquiry report having been given, the statements of the girl students having not been recorded in the presence of the respondent and the respondent having not been given opportunity to cross examine them and no statements of other passengers having been recorded.

15. The statements which we have referred to above, of the girl students and which are appended to the inquiry report have undoubtedly not been considered by the learned Single Judge who as aforesaid proceeded on the basis of report of the inquiry against the officials of the Directorate of Education/other school. The said statements undoubtedly mention only “Sir” and do not mention the respondent by name save at the place where he is stated to have consumed alcohol from the cup of the officials of the Directorate of Education. However what cannot be lost sight of is that the said inquiry was being held immediately after the return from the tour and was against the respondent and not against the officials of the Directorate of Education. We have thus no reason to suspect that the reference therein to “Sir” is to the respondent. What also cannot be lost sight of is that the girl students whose statements were being recorded were barely 14/15 years of age. We can well imagine the environment in which the inquiry was conducted. The Inquiry Officer cannot be expected to have been explicit

with such students whose statements were being recorded and who must have been already traumatized from the incident. As aforesaid, the incident of the officials of the Directorate of Education consuming alcohol on the train and of thereafter sexually harassing the girl students, is admitted by the respondent also.

16. What we find is that the respondent inspite of knowledge of the officials of Directorate of Education consuming alcohol on the train in the presence of girl students, did not take any action to stop them from doing so. The respondent had been entrusted with the safety of the girl students whom he was accompanying and as aforesaid the finding of dereliction of duty has not been interfered with by the learned Single Judge also. Not only so, the respondent even if had been unable to stop the said officials from consuming alcohol, was required to be more careful as to the safety of the girl students. On the contrary, he went to sleep and in his response to the memoranda stated that he could not comprehend as to what had happened. The respondent thus, if not an active, had certainly become a passive part of the miscreants. In our view the same was enough for the Disciplinary Authority of the appellant School to have reached a conclusion of the continued presence of the respondent in the appellant School being harmful to the girl students. No perversity can be found in such perception of the appellant School's Management entrusted with the safety and upbringing of the young ones. What is also clear is that the girl students whose statements were recorded by the Inquiry Committee, blamed the respondent and we may add, not wrongly. We have wondered as to what would have been the

reaction of the parents of the said girls and other students had the appellant School let off the respondent merely with a warning and welcomed him back to its gates, to continue to mingle with the girl students. The same undoubtedly would have sent a message of the appellant School being not a safe haven, at least for the girl students.

17. Insofar as the learned Single Judge has found disparity in the punishment meted out to the respondent and to the other lady teacher accompanying the group, the appellant School has given reasons therefor and which are also borne out from the statements of the girl students; they did state that she was helpful to them. No perversity can therefore be found in the decision of the appellant School to, while letting of the said lady teacher with a warning, removing the respondent from employment.

18. What has been held by a Coordinate Bench of this Court in ***Kendriya Vidyalaya Sangathan*** (supra) applies on all fours to the present case also and we are of the view that no case for interference with the punishment meted out to the respondent was made out.

19. The Supreme Court in ***Avinash Nagra v. Navodaya Vidyalaya Samiti*** (1997) 2 SCC 534 was also concerned with a case of termination of services of a teacher. It was held that right to education is a fundamental right; that the success of the educational process depends considerably on the teacher, for it is the teacher who has to implant aims and to build the character of the students and who is a primary functionary to transmit the intellectual and ethical value to the young; that a teacher cannot be without character - if he

lacks it, he will be like salt without its savour; children imbibe more from the teacher's own life than they do from books; if teachers impart all the knowledge in the world to their students but do not inculcate truth and purity amongst them, they will have betrayed them; that a teacher must be an example of Sadachar or good conduct; a teacher must be self-disciplined and dedicated with integrity; it is the duty of the teacher to take such care of the pupils as a careful parent would take of its children and the ordinary principle of vicarious liability would apply where negligence is that of a teacher. It was further emphasized that education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. It was further observed that it is only of late, some middle class people are sending the girl children to co-educational institutions under the care of proper management and to look after the welfare and safety of the girls and therefore, greater responsibility is thrust on the management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in disciplined and dedicated pursuit of excellence; the teacher who has been kept in charge, bears more added higher responsibility and should be more exemplary - his/her character and conduct should be more like Rishi and as loco parentis. The Supreme Court held that the conduct of the teacher has to be judged in the said light and if the conduct is of betraying the trust and forfeiting the faith, the teacher cannot even demand a full-fledged enquiry. It was further observed that inquiry is not a panacea but a nail in the coffin. Accordingly the rules providing special procedure for inquiry were upheld. The Supreme

Court held that it is very hazardous to expose the young girls to tardy process of cross- examination.

20. Similarly, in *M.S. Grewal v. Deep Chand Sood* (2001) 8 SCC 151 which though was a case of death by drowning in river during school picnic, the Supreme Court qua the role of the teacher defined negligence as a breach of duty or lack of proper care in doing something, want of attention and doing of something which a prudent and a reasonable man would not do. It was held that a teacher in a school is expected to show such care towards a child under his charge as would be exercised by a reasonably careful parent. It was further observed that duty of care varies from situation to situation and if the students are taken out to a play ground near a river for fun and a swim, the degree of care required stands at a much higher degree and no deviation therefrom can be had on any count whatsoever. If we apply the said principle to the facts of the present case, it will be seen that the respondent who was in charge of girl students owed a duty to stop the other officials from consuming alcohol. Though it is not the case of the respondent that he did anything in this regard but even if we were to hold that the other officials so continued consuming alcohol inspite of protest of the respondent, the respondent owed a higher degree of care at that point of time to ensure the safety of the girl students, in his charge. The Supreme Court in the said judgment laid down the test of ‘doing of all that was possible to be done in the matter’. The respondent herein does not satisfy the said test also as aforesaid.

21. We may also notice that Justice Sathasivam speaking for the Division Bench of the Madras High Court in ***C. Parthiban and Selvi D. Akila v. Dr. K. Meena*** (2007) 3 MLJ 492 in the absence of the rules prescribing any special procedure in this regard upheld the decision of the Vice-Chancellor to change the mode of inquiry in order to protect the modesty of girl students to prevent their unnecessary exposure at an enquiry. It was observed that it is very hazardous to expose the young girl to tardy process of cross examination.

22. Before parting with the matter, we may notice another preliminary objection taken by the appellant School in its counter affidavit to the writ petition. The appellant School at the very first instance, in its counter affidavit pleaded that the writ petition was not maintainable owing to the availability of the remedy of appeal to the Delhi School Tribunal under Section 8 of the Delhi School Education Act, 1973. The learned Single Judge has also accepted the availability of the said remedy but has observed that since the writ petition had remained pending for nearly ten years, the respondent could not be relegated to the remedy of appeal. We may only notice that it was not as if the said plea was being taken by the appellant for the first time during arguments. As aforesaid, it was taken immediately after the writ petition had been filed. The respondent however in spite of being so warned, continued to pursue the writ petition and had himself to blame therefor and could not derive any advantage of pursuing the wrong remedy for howsoever long. A Division Bench of this Court in ***Internsil P. Ltd. v. Union of India*** (2006) VIII AD (Delhi) 332 has in a similar situation held

that mere pendency for long (in that case also of ten years) is no ground to entertain the writ petition if alternative remedy is available.

23. We may also notice that it was the case of the respondent himself in the writ petition that the appellant School is run by the DGSPC. This Court in judgment dated 23.05.2011 in W.P.(C) No.369/2011 titled *Sh. Gurdeep Singh Vs. President, Delhi Sikh Gurudwara Management Committee* and in *Satpal Singh Vs. Delhi Sikh Gurudwara Management Committee* 181 (2011) DLT 455 (intra court appeal where against being LPA No.619/2011 was dismissed on 02.08.2011) held that since Section 32 of the Delhi Sikh Gurdwaras Act, 1971 provides for the jurisdiction of the District Judge for settlement of the disputes between any employee of the educational institution of DSGPC and DSGPC, the remedy under Article 226 is barred for this reason also.

24. We therefore set aside the judgment of the learned Single Judge and axiomatically dismiss the writ petition filed by the respondent.

No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 21, 2012

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