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

+ **W.P.(C) 510/2014 & CM No. 1024/2014**

Date of Decision: 4th February, 2014

YOGENDRA NATH Petitioner

Through Mr. Prabodh Kumar, Adv.

versus

COMMISSIONER KENDRIYA VIDYALAYA SANGATHAN

..... Respondent

Through Mr. S. Rajappa, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J (Oral)

1. The petitioner before us assails the order dated 28.05.2013 passed in O.A. No. 4605/2011, passed by the Central Administrative Tribunal, Principal Bench, New Delhi whereby the order dated 07.01.2004 passed by the Commissioner, Kendriya Vidyalaya Sangathan under Article 81(b) of the Education Code, terminating the services of the petitioner and the order of the Appellate Authority dated 21.07.2010 were sustained.

2. The facts giving rise to the instant petition are in narrow compass. The petitioner was employed by the Kendriya Vidyalaya Sangathan (KVS) as a post graduate teacher (English) and at the relevant time, posted with the Kendriya Vidyalaya, Yol Cantonment.

3. Complaints were received from the students, lady teachers and parents in the office of the Assistant Commissioner, Kendriya Vidyalaya Sangathan Regional Office, Jammu alleging that the present petitioner had indulged in moral turpitude involving in immoral sexual behaviour towards the girl students

of Class-VIII-B, IX-B and XII-B.

4. A fact finding enquiry was consequently ordered into the matter.

5. The Inquiry Committee constituted by the Assistant Commissioner, Jammu vide order dated 31.07.2002, comprised of (i) Shri S.K. Verma, Education Officer, KVS Jammu (ii) Mrs. Manju Sehgal, Principal Kendriya Vidyalaya, Dharmshala (iii) Mr. Anurag Yadav, PGT (Bio), Kendriya Vidyalaya Yol Cantt., (iv) Ms. Vandana, PGT (History) Kendriya Vidyalaya, Yol Cantt.

6. This committee conducted its proceedings on the 17th and 18th August, 2002 wherein they interacted with 07 girl victims of class –VIII-B, IX-B and XII-B, one victim lady parent, two victim girl students of class XII-B, three other staff members and two other parents. Statements were recorded to unravel the truth. The petitioner participated in the summary enquiry and was provided with full opportunity to present his case. His statement was also recorded during the enquiry.

7. The Enquiry Committee submitted a report dated 18.08.2002 to the Commissioner, KVS prima facie finding the petitioner guilty of moral turpitude involving immoral sexual behaviour. The Assistant Commissioner submitted a report thereon to the Commissioner, KVS.

8. The Commissioner considered the entire matter including the enquiry report and formed an opinion that the findings of the enquiry committee were fully substantiated by material which had come on record during the enquiry. Therefore, exercising jurisdiction under Article 81(b) of the Education Code for Kendriya Vidyalaya Sangathan, the Commissioner was of the opinion that it was not expedient to hold a regular enquiry under the CCS (CCA) Rules 1965, as it would serious embarrassment to the students and would also cause a

trauma to them because of their tender ages. The Commissioner passed an order dated 7th January, 2004 consequently, holding an enquiry for imposing major penalty in accordance with CCS(CCA) Rules, 1965 was dispensed with.

9. Reliance was placed on the judgment of the Supreme Court dated 30-09-1996 in Civil Appeal No. 14525/1996, Avinash Nagra vs. Navodaya Vidyalaya Samiti & Ors.,[reported at (1997) 2 SCC 534], wherein the procedure required to be followed in such matters involving schools has been laid down. The Supreme Court has mandated that upon the Commissioner arriving at such a conclusion with regard to dispensation of the regular enquiry. The Supreme Court has mandated that a show cause notice containing the charge and the facts in support of the charge together with the statements recorded in the preliminary enquiry, along with a copy of the report of the preliminary inquiry is required to be given to the charged person. Such charged person would be given an opportunity to submit his explanation, without having the right to cross-examine the witnesses. The explanation tendered by the employee would be considered with all other records, before the final order under Article 81(b) of the Education Code was passed.

10. The High Court of Karnataka by judgement dated 01.07.2002 in W.P.(C) No. 23535 also approved the action of the employer who followed such procedure.

11. It appears that the Commission, KVS in compliance of the above procedure mandated by the Supreme Court. A Memorandum dated 8th April, 2003 setting out the following charges against the present petitioner was accordingly communicated to the petitioner. The Commissioner also communicated the following facts in support of the charges:

“That the said Shri Yogendra Nath while functioning as Post Graduate Teacher (English) in the Kendriya Vidyalaya, Yol Cantt.

during the period from 2002-2003, indulged in acts of moral turpitude involving exhibition of immoral sexual behaviour.

FACTS IN SUPPORT OF THE CHARGE

That the girls students viz. Surabhi Rana, IX-B, Sheetal Sharma, XII-A, Rashi Thapa, XII-B, Ashima Dogra, XII-B, Laxmi Thapa XII-B, Jyoti Katoch, IX-B and Priya VIII-B have complained that Sri Yogendra Nath, PGT (English), Kendriya Vidyalaya, Yol Cantt. during 2002-03 indulged in acts of moral turpitude involving exhibition of immoral sexual behaviour such as making vulgar statements/gestures like “Go drink water and make water”, asking Priya VIII-B “to open her top button since it was hot”. Commenting on the figure and body structure of Shital Sharma, XII-A, demonstrating how a mother feeds her child while teaching the lesson “Maternity” and immoral acts like entering girls/ladies toilets, following girls into their toilet, hiding inside girls toilet etc. and they have substantiated the same with their statements during the summary inquiry on 17/18-08-2002.”

12. The petitioner was called upon to show cause as to why his services be not terminated under Article 81(b) of the Education Code.

13. With the Memorandum dated 08.04.2003 issued to the petitioner, copies of preliminary inquiry as well as in the report of the preliminary inquiry were served upon the petitioner.

14. It is not disputed before us that the petitioner was given full opportunity to submit his representation to the show cause notice as to why his services should not be terminated under Article 81(b) of the Education Code of the Kendriya Vidyalaya.

Pursuant to such opportunity, the petitioner submitted a reply dated 15th May, 2003.

15. On a consideration of the entire record of the enquiry as well as the

statements and reply of the petitioner, the Commissioner in exercise of his jurisdiction conferred under Article 81(b) passed an order dated 07.01.2004, terminating the services of the petitioner with immediate effect.

16. Aggrieved thereby the petitioner preferred an appeal dated 15.02.2009 before the Additional Secretary, MHRD and Vice-Chairman, Kendriya Vidyalaya Sangathan as an Appellate Authority. His appeal was rejected by an order dated 30.06.2009 on the sole ground of it being barred by limitation.

17. The petitioner assailed the order of the Appellate Authority by way of O.A. No. 2783/2009 before the Central Administrative Tribunal, Principal Bench, New Delhi which application was disposed of vide order dated 09.12.2009, holding that the Appellate Authority ought to have recorded the reasons in support of the dismissal of the appeal. The matter was remanded to the Appellate Authority to reconsider the petitioner's appeal on merits and to pass a speaking and reasoned order.

18. It appears that the entire matter was considered afresh by the Appellate Authority which passed afresh order dated 21.07.2010, rejecting the appeal with detailed reasons. The contention of the petitioner that the impugned order was passed in violation of principle of natural justice and the petitioner had been denied fair opportunity to defend the charges against him, which were false was rejected.

19. The petitioner assailed the order dated 21.07.2010 before the Central Administrative Tribunal by way of O.A. No. 4605/11, which application has culminated in the order dated 28.05.2013 dismissing the petitioner's application.

20. The order dated 28.05.2013, as well as orders dated 07.01.2004 and 21.07.2010 of the respondents have been assailed before us on the ground that the complaint against the petitioner was false; that he has a blemishless record

of 9 years service with the Govt. of Himachal Pradesh and 25 years service with Kendriya Vidyalaya Sangathan and that he was entitled to an opportunity to cross-examine the witnesses.

21. Before dealing with the submissions of the petitioner, we may extract Article 81(b) of the Education Code of the Kendriya Vidyalaya Sangathan which reads as under:

“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 him one month's or 3 month's pay and allowances according 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 the 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 serious embarrassment to the 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 service.”

22. The construction of the above provisions of Article 81(b) of the Education Code have arisen for consideration in several cases. Our attention has been drawn to the judgment reported as **(1997) 2 SCC 534, Avinash Nagra Vs. Navodaya Vidyalaya Samiti & Ors.**, wherein a similar objection raised by the petitioner was rejected by the Supreme Court. It was held that the fair procedure to be adopted in such cases would be that a show cause notice containing the charge and the facts in support of the charge together with the statements recorded in the preliminary inquiry along with a copy of the report of

the preliminary inquiry would be given to the charged person and such charged person would be given an opportunity to submit his explanation, without having the right to cross-examine witnesses.

“12. It is axiomatic that percentage of education among girls, even after independence, is fathom deep due to indifference on the part of all in rural India except some educated people. 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. 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. 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 parent is and such is the duty, responsibility and charge expected of a teacher. The question arises: whether the conduct of the appellant is befitting with such higher responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to the full-fledged enquiry as demanded by him? The fallen standard of the appellant is an ice berg in the discipline of teaching, a noble and learned profession; it is for each teacher and collectively their body to stem the rot to sustain the faith of the society reposed in them. Enquiry is not a panacea but a nail on the coffin. It is self-inspection and correction that is supreme. It is seen that the rules wisely devised have given the power to the Director, a highest authority in the management of the institution to take decision, based on the fact situation, whether a summary enquiry was necessary or he can dispense with the services of the appellant by giving pay in lieu of notice. Two safeguards have been provided, namely, he should record reasons for his decision not to conduct an enquiry under the rules and also post with facts the information with Minister, Human Resources Department, Government of India in that behalf. It is seen from the record that the appellant was given a warning of his sexual advances towards a girl student but he did not correct himself and mend his conduct. He went to the girl hostel at 10 p.m. in the night and asked the Hostel helper,

Bharat Singh to misguide the girl by telling her that Bio-Chemistry Madam was calling her; believing the statement, she came out of the hostel. It is the admitted position that she was an active participant in cultural activities. Taking advantage thereof, he misused his position and adopted sexual advances towards her. When she ran away from his presence, he persued her to the room where she locked herself inside; he banged the door. When he was informed by her room mates that she was asleep, he rebuked them and took the torch from the room and went away. He admitted his going there and admitted his meeting with the girl but he had given a false explanation which was not found acceptable to an Inquiry Officer, namely. Asstt. Director. **After conducting the enquiry, he submitted the report to the Director and the Director examined the report and found him to be not worthy to be a teacher in the institution. Under those circumstances, the question arises: whether the girl and her room-mates should be exposed to the cross-examination and harassment and further publicity? In our considered view, the Director has correctly taken the decision not to conduct any enquiry exposing the students and modesty of the girl and to terminate the services of the appellant by giving one month's salary and allowances in lieu of notice as he is a temporary employee under probation. In the circumstances, it is very hazardous to expose the young girls for tortuous process of cross-examination. Their statements were supplied to the appellant and he was given an opportunity to controvert the correctness thereof....."**

23. This view of the Supreme Court finds reiterated in the judgment of *Director, Navodaya Vidyalaya Samiti & Ors., Vs. Babban Prasad Yadav & Anr., (2004) 13 SCC 568* wherein the court held as follows:-

“7. xxx The rule quoted earlier, explicitly deals with such a situation as obtains in the present case. The rule is not under challenge. All that is required for the court is to be satisfied that the preconditions to the exercise of power under the said rule are fulfilled. These preconditions are:

1. Holding of summary inquiry.
2. A finding in such summary inquiry that the charged employee was guilty of moral turpitude.

3. The satisfaction of the Commissioner on the basis of such summary inquiry that the charged officer was prime – facie guilty.
4. Satisfaction of the Commissioner that it was not expedient to hold an enquiry on account of serious embarrassment to be caused to the student or his guardians or such other practical difficulties and finally.
5. The recording of the reasons in writing in support of the aforesaid.”

24. The Court had noted the procedures which were required to be followed in cases involving the charges of immoral sexual behaviour against the employees.

25. A question identical to that principle arose before the Supreme Court in SLP (C) No. 4627/2008, Commissioner, K.V. Sangathan & Ors. Vs. Rathin Pal, which was decided by order dated 16.08.2010, holding as under:

“The High Court’s observation that appellant No. 1 had not recorded his satisfaction on the desirability of dispensing with the regular inquiry is clearly erroneous. A reading of the order extracted in the earlier part of his judgment shows that appellant No.2 had independently analyzed the statements of the girl students and their parents and came to the conclusion that it was not expedient to conduct regular inquiry because that would embarrass the girl students and their parents and would also vitiate atmosphere of the school. The reasons assigned by appellant No.1 cannot, by any stretch of imagination, be treated as extraneous or irrelevant to the exercise of power under Article 81(b) of the Education Code.”

26. The spirit, purpose and intent of incorporating Article 81(b) on the Education Code of the Kendriya Vidyalaya Sangathan is to prevent traumatising of the victims of such immoral sexual behaviour.

27. In the present case, as detailed above, a four member committee

consisting of a senior officer of the rank of Education Officer of Kendriya Vidyalaya Sangathan; one Principal of Kendriya Vidyalaya; and two PGT teachers were appointed as Members of the enquiry committee. The enquiry committee interacted with the complainants as well as the petitioners; recorded the statements of seven victims and other staff persons. The petitioner was given full opportunity to give explanation and his statement was also recorded. It is after consideration of the entire material, which was brought on record that the committee made its recommendations. These recommendations were placed before the Assistant Commissioner who forwarded them to the Commissioner.

28. So far as the opinion of the Commissioner is concerned, the same is found stated in the Memorandum dated 08.04.2003. The Commissioner noted that the opinion that the findings of the enquiry committee in its report stood substantiated by the material facts which had come on record because of which it was necessary to proceed against the petitioner under Article 81(b) of the Education Code and . So far as not holding the regular enquiry under the CCS(CCA) Rules 1965, is concerned, the Commissioner has specifically opined that it would cause serious embarrassment to the students and would also cause trauma to them because of their tender age.

29. Before us, there is no challenge to the opinion formed by the Commissioner dispensing with the regular enquiry. The petitioner has only made a grievance that he was deprived of the opportunity to cross-examine the persons examined by the inquiry committee.

30. So far as this issue is concerned, it was considered and rejected by the Supreme Court of India as noted above.

31. A reading of Article 81(b) of the Education Code also manifests the objective of the framers of the Code to the effect that it is the rights and sensibilities of the victims of the allegations which would guide the

Commissioner in arriving at its opinion for dispensing with the regular inquiry and also dictate the procedure which is required to be followed. There is a clear mandate of the Code as well as binding judicial precedents that a person against whom the charges are framed under Article 81 (b) of the Education Code would not be entitled to claim right to cross examine the victims in such proceedings.

32. The Tribunal has given detailed reasons in arriving at a conclusion that due process has been following in proceeding against the petitioner. The Tribunal has also rejected the grievance of the petitioner that the punishment of termination of his services is disproportionate to the charges. Nothing has been placed before us, which would enable us to take a different view. We therefore, find no merit in the present petition, hence the same is dismissed along with pending application.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

FEBRUARY 04, 2014
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