

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

Judgment delivered on: May 28, 2015.

+ W.P. (C) 8440/2011 & C.M. APPL. No. 1370/2012

UDAI SINGH

..... Petitioner

Through: Ms. Jyoti Singh, Senior Advocate
with Mr. Sajjan Kumar Singh and
Ms. Tinu Bajwa, Advocate.

Versus

KENDRIYA VIDYALAYA SANGATHAN Respondent

Through: Mr. S. Rajappa, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S. MEHTA

JUDGMENT

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KAILASH GAMBHIR, J.

1. “Guru Govind Dou Khade, Kakke laagun paye..Balihari guru aapne, govind dio bataye.” This immensely popular & often quoted couplet by Poet-saint Kabir has a profound foothold. It says I face both God and my guru, who should I bow first? I first bow to my guru because he’s the one who showed me the path to God. The importance given to a teacher or a guru in our society thus needs no special mention. Since times immemorial, the relationship between teachers and students has been venerated. It is considered to be a pious bond which is further strengthened by the knots of trust, respect and utmost devotion. Teachers

play a pivotal role in shaping a child's life and to help decide the course which the child would eventually take in his life path. They are the torchbearers who lead from the front and mould a child like a potter moulds the clay to give it shape and being. Teachers have been known to influence their students by shaping their rational and moral values and hence, play an important role in moulding the society as a whole. But with the changing times, this pious and sacramental bond has also come under the scanner. Now-a-days even this revered relationship has become a victim of covetousness, lust and contemptible desires, because of which the students do not consider their teachers as their "gurus" in the true sense of the word. The teachers are also heard of exploiting students, going to the extent of sexually abusing them. This faith between them has been crushed with impunity with the protector turning into a beast. Similar are the facts of the case at hand wherein the fate of this girl was debauched at the hands of her teacher's unwanted desires who sexually harassed her on the pretext of tutoring. She was subjected to harassment at the hands of someone who instead should have been a concierge, a protector.

2. By way of the present Writ Petition, the petitioner seeks to

question the tenability of the order dated 05.05.2010 passed by the learned Central Administrative Tribunal (*hereinafter referred to as the learned tribunal*), Principal Bench, New Delhi thereby dismissing his application being O.A.No. 1907/2010 preferred by the petitioner. The petitioner has also assailed the order dated 26.07.2011 passed by the learned Tribunal in R.A. No.231/2011 whereby the Review Application preferred by the petitioner was also dismissed.

3. Before we deal with the various contentions raised by the parties, it would be pertinent to narrate the facts of the case. The petitioner herein was employed as a Post Graduate Teacher (PGT) with the respondent School. As per the petitioner he had a meritorious record as a teacher right from the date when he was selected for the post of TGT in the Kendriya Vidyalaya Sangathan (*hereinafter referred to as KVS*). As per the petitioner he was lauded not only by the Principal of the school where he was posted from time to time but also by the administrative officer of the KVS. In his twenty seven years of service with the KVS, on 22.01.2008 for the first time a complaint on 22.01.2004 was made against him, by a girl student of class XII, alleging sexual harassment. On the basis of the complaint, the petitioner was suspended on 06.06.2008. In

order to put forward his case and specially for seeking personal hearing, the petitioner made a detailed representation to the Assistant Commissioner of KVS (Delhi Region). An enquiry was initiated against the petitioner, without divulging the details of the complaint. When he was asked to join the enquiry, virtually all the witnesses had already been examined. Although, 140 students of class XII and altogether 80 teachers were available to bring correct facts before the enquiry committee, but none of those were examined as witnesses. On the basis of the report given by the enquiry committee, the service of the petitioner was terminated by the Commissioner, KVS, vide order dated 24.10.2008. Pursuant to such order, an appeal was preferred by the petitioner before the Vice-Chairmen (Appellate- Authority), KVS and the same was also dismissed vide order dated 4th February, 2009, whereby the termination order passed by the Commissioner, KVS was confirmed.

4. That being aggrieved by the order of termination passed by the Commissioner, KVS as well as of the Appellate Authority, the petitioner had preferred an OA being No. 1907 of 2010 before the Ld. Tribunal, Principal Bench, New- Delhi. The said OA of the petitioner was dismissed by the learned Tribunal vide order dt. 05.05.2010. That a

Review Application being RA NO. 231/2011 was also preferred by the petitioner, but the same was also dismissed vide order dated 26.07. 2011. Left with no option, the petitioner is now before this Court to assail the legality and correctness of both the said orders passed by the learned Tribunal in the Original Application as well as the Review Application. Hence, the Present Writ Petition.

5. Mr. Sajjan Kumar Singh, Advocate representing the petitioner vehemently contended that the petitioner was not given any opportunity to put forth his defence as the Enquiry proceedings directed against him by the respondent were conducted in his absence without even affording any opportunity to cross-examine the witnesses examined by the enquiry committee. The learned counsel for the petitioner further submitted that the petitioner was informed by the Principal of the school at about 4 p.m. that against him an Enquiry Committee has been constituted but no prior information was given to him and when the petitioner had reached the school, by that time, the enquiry proceedings were over with examination of the witnesses. The learned counsel for the petitioner further submitted that the petitioner was asked by the enquiry committee to give his written statement without even supplying him with the copy of the complaint or

the statements made by the witnesses and not even the names of the witnesses examined by the committee were disclosed to him. In the absence of this basic material, the petitioner was made to submit his reply, totally unaware of the contents of allegations levelled against him by the complainant. Counsel also submitted that the records of the enquiry proceedings itself would reveal that the petitioner was not present in the enquiry proceedings and the record also shows that no such notice was sent to the petitioner through which he could be informed to attend the enquiry proceedings. Counsel thus submitted that there is a blatant violation of the principles of natural justice on the part of the respondent in not giving any opportunity to the petitioner to explain his case before the members of the enquiry committee and therefore, any findings recorded by the enquiry committee against the petitioner are illegal and against the basic principles of conducting any kind of enquiry which may be summary in nature. Counsel also submitted that the Tribunal has not appreciated the fact that the complainant continued to take extra classes from the petitioner alongwith other students after lodging the complaint of sexual harassment against him and had such a complaint on the part of the complainant been correct then neither the complainant would have

attended the extra class nor would her family members have permitted her to visit the residence of the petitioner for the said extra classes. Counsel also submitted that the learned Tribunal also failed to appreciate that the petitioner had a clean track record of dedicated service as a teacher with the respondent and never before any such complaint by any student either girl or boy was lodged against him. Counsel further submitted that the learned Tribunal also failed to appreciate that the witnesses examined in the summary enquiry were inimical to him as the petitioner had made certain complaints against them due to which they had instigated the complainant to rope in the petitioner to face such a humiliating charge of immoral behaviour. Counsel also argued that the learned Tribunal has not appreciated the legal principles laid down by the Hon'ble Supreme Court in its various decisions in the right perspective as none of the decisions of the Hon'ble Supreme Court approved any kind of summary enquiry without the participation and grant of reasonable opportunity to the delinquent. Based on these submissions the learned counsel for the petitioner strongly urged that the order passed by the learned Tribunal is irrational, perverse and illegal on the very face of it and the same may be set aside.

6. Repudiating the aforesaid submissions made by the petitioner, Mr. Rajappa, the learned counsel for the respondent vehemently defended the reasoning given by the learned Tribunal in both the orders. Mr. Rajappa submitted that it is a clear case of immoral conduct of the petitioner, by sexually harassing a girl student and the same was fully established by the enquiry committee set up against him. Counsel also submitted that the petitioner had duly participated in the enquiry proceedings and the records of the enquiry proceedings clearly show the presence of the petitioner during the enquiry proceedings.

7. Counsel for the respondent also submitted that at every stage, the petitioner was given ample opportunity to present his defence as not only was he allowed to participate in the enquiry proceeding but also before taking a decision to terminate his services, detailed show cause notice was served upon him to which he had submitted his reply. Counsel also submitted that at no stage the petitioner had made a request to cross examine the witnesses as were examined by the enquiry committee. Counsel also submitted that the petitioner in fact had admitted his guilt and this was duly established when in his letter dated 22.01.2008, he himself stated that he shall not behave in such a manner with the

complainant. Counsel also submitted that even in the letter dated 22.01.2008, sent by the complainant to the Principal, she had reiterated her confirmation about the immoral behaviour of the petitioner as earlier informed by her in her complaint. Counsel also supported the decision taken by the Commissioner of the respondent whereby he dispensed with holding a regular enquiry in accordance with the CCS (CCA) Rules, 1965, looking into the tender age of the girl student who had filed the complaint and also to save her from any kind of embarrassment or humiliation. Counsel thus justified the decision of the respondent in conducting summary enquiry against the petitioner for his immoral behaviour in terms of Article 81(d) of Education Code for Kendriya Vidyalaya Sangathan. Counsel also submitted that there was no violation of principles of natural justice as have been complained by the petitioner as he had duly participated during the course of enquiry proceedings and before passing an order of termination, show cause notice was served upon him. Based on these submissions, the learned counsel for the respondent pleaded for upholding the orders passed by learned Tribunal.

8. We have heard the submissions made by the learned counsel for the parties and also gone through the material on record and the

judgments cited by them.

9. Mahatma Gandhi, the Father of the Nation has stated that "a teacher cannot be without character." If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students. These lines undoubtedly explain to us the importance of a teacher and a guru and how in our society we as humans rely on their conduct and character but to our utter surprise and shock, this very foundation is trembling in its roots. It is quite alarming to read about cases where for mere lust and pleasure, a teacher, a guru, whom we call a protector, has fallen below the standards expected of him.

10. In this case, the petitioner being a physics TGT teacher at Kendriya Vidyalaya School was giving extra classes to some of the students and one amongst them was the girl student of 12th standard. This student lodged a complaint dated 4.2.2008 with the Principal of the School raising a grievance against the immoral conduct of the petitioner. The extract of the statement as lodged by the complainant vide her complaint dated 22.01.2008 and 04.02.2008 is reproduced as under:-

"I am a student of Class XII-C of Kendriya Vidyalaya, this to any one lest he would cut her marks. When Gurgaon. I used to go to Shri U.S. Yadav asked me to have sexual relation, also told me that I would not confide I refused him, he detailed three boys to pressurize me to complete his camel need. Whenever I

go for checking my note book, he used to say to me that when I would do so. He also told me that he had already got operation and nothing would happen to her. He would disclose the question papers of Board Exam. He also harass my father asking him over phone to withdraw complaint. He boasted himself that he is head of CBSE and he could reduce the marks. I am embarrassed due his behaviour, and action be taken against him.”

11. A separate complaint was also lodged by one Mr. M.K. Malik, social activist concerning the immoral behaviour of the petitioner with the girl student and also regarding the mismanagement of the respondents' school. Acting on such a complaint, the Commissioner of the respondent school gave a direction to the Assistant Commissioner to enquire into the matter and submit his report.

12. The matter was accordingly referred to the complaint registering committee for investigation and vide order dated 06.02.2008, as per the respondent, the petitioner was placed under suspension. The enquiry committee comprised of four members viz. Smt. Neelam Katara, Education Officer, KVS (DR), Sh. Dhir Singh, Principal KV No.2, Delhi Cantt., Smt. Alka Zadoo, Principal KV, NTPC, Badarpur and Dr. A. Padmavati (NGO). The enquiry committee had interaction with the concerned teachers and staff members including the complainant and her father and this list also included the name of the petitioner.

13. On perusal of the original record produced before the Court, we find that the petitioner was one of the members with whom the enquiry committee had interacted. The enquiry committee based on the statement of the complainant girl, her father and other members of the staff and after conducting due enquiry came to the conclusion that the petitioner had misused his position as a teacher. The findings and conclusion of the enquiry committee are found to be recorded in the original records, the same is reproduced as under:-

“The findings and conclusion of the Inquiry committee.

1. *After hearing various versions of concerned teachers and staff, the Committee unanimously came to the conclusion that Mr. U.S. Yadav, PGT (Phy) sexually harassed Km. Rekha during the academic term in Kendriya Vidyalaya AFORESAID, Gurgaon continuously. Keeping in view the above behaviour of Shri U.S. Yadav, PGT (Phy), and the conduct was found entirely unbecoming of a teacher who has been entrusted with the task of molding young psyche.*
2. *When Km.Rekha’s predicament had come to the notice of the Principal, Vidyalaya level enquiry have been conducted verbally and KVS, R.O. Delhi have been apprised of the matter for further action.*
3. *It has been notice that the student Km. Rekha continued to remain scared and in mental trauma which resulted in deterioration of her academic performance which is visible in her pre-board exam due to unholy/unbecoming conduct of U.S. Yadav.”*

From the foregoing discussion given from inquiry record and from the findings, it is evident that Shri U.S. Yadav has demonstrated immoral behaviour of sexual nature toward Km. Rekha to the extent he had demanded sexual favour from Km. Rekha of Class XII C. Such behaviour shown by Shri Yadav is abominable act in the educational institution that too in co-

education system where it is expected from a teacher to be role model and responsible for moulding the personality of children. In view of this, it is a fit case where Commissioner would like to invoke article 81(b) of the Education Code for awarding deterrent punishment. As per provision, before termination of his service, it is necessary to issue show cause notice.”

14. Perusal of the aforesaid original record clearly belies the stand taken by the petitioner that he was not present at the time of the enquiry proceedings or that he was not exactly aware of the nature of the complaint lodged against him by the complainant. The enquiry committee in fact had dealt with the representation dated 25.02.2008 submitted by the petitioner against the order of suspension and in fact the enquiry committee had also gone through the personal file of the petitioner before taking a final view on the said immoral conduct of the petitioner. We do not find from this record that any request was made by the petitioner that he was not told about the nature of allegations levelled by the complainant against him nor do we find any request made by the petitioner to cross examine the witnesses examined by the enquiry committee.

15. The learned Tribunal after taking note of the contents of petitioner's representation dated 25.02.2008 and 02.06.2008 correctly held that on perusal of the contents of these representation, it is quite

clear that the petitioner was fully aware of the allegations made against him by the complainant and therefore, raising a plea of violation of principles of natural justice has no bearing. The learned Tribunal also referred to the letter of apology dated 22.1.2008 written by the petitioner wherein he had promised not to misbehave with any student in future indicates that he indirectly admitted the incident, otherwise he would not have given such an assurance. The learned Tribunal also referred to the letter dated 22.01.2008 written by the complainant wherein she referred to the apology tendered by the petitioner and for the complainant to not to precipitate the matter further but at the same time she had reiterated that her complaint against the petitioner was absolutely correct. It is not in dispute that based on the findings of the enquiry committee a detailed show cause notice was served upon the petitioner to which he had filed his reply dated 18.08.2008 and it is after taking into consideration the stand taken by the petitioner in his reply, that the order dated 24.10.2008 was passed by the Competent Authority to terminate the services of the petitioner. Contents of the show cause notice and the termination order are not required to be repeated as the same have already been reproduced in the impugned orders.

16. The learned Tribunal after placing reliance on some of the authoritative pronouncements of the Hon'ble Supreme Court holding the field i.e. in the case of ***State Bank of Patiala & Ors. Vs. S.K. Sharma, 1996 (3) SCC 364; E.P. Royappa vs. State of Tamil Nadu, AIR 1974 SC 555; Avinash Nagra vs. Navodaya Vidyalaya Samiti and Others, 1997 (2) SCC 534; Director, Navodaya Vidyalaya Samiti and others vs. Babban Prasad Yadav, 2002 (13) SCC 568; and Jwala Singh vs. Union of India & ors, 120(2005) DLT 382***, reached to a conclusion that the respondent shall duly comply with all the preconditions as were laid down by the Hon'ble Supreme Court in ***Babban Prasad Yadav case(supra)***. Regular enquiry in this case was not held under CCS (CCA) Rules and rightly so, as in the complaint concerning immoral and unreasonable behaviour of the petitioner causing sexual harassment to the student of his class, in such like cases under Article 81(b) of Education Code of Kendriya Vidyalaya Sangathan, there is a provision for holding summary enquiry. As also holding a regular enquiry can be font of serious embarrassment and harassment to the complainant.

17. For better appreciation, Article 81(b) of the Education Code of Kendriya Vidyalaya Sangathan is reproduced as under:-

“81(b) Termination of Services of an employee found guilty

of immoral behaviour towards Students

Where the Commissioner if 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 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 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 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 the summary inquiry against the complaint of immoral behaviour by a teacher towards the student of Kendriya Vidyalaya may be got investigated by the Complaints Redressal Committee constituted in the regional offices."

18. The complainant was a girl student of 12th class and in her complaint, she had levelled allegation of immoral behaviour on the part of the petitioner who being in a dominating position was trying to pressurise the complainant to have sexual relationship with him and therefore, in our view, the present case was a fit case where Article 81(b) of the Education Code of Kendriya Vidyalaya Sangathan was invoked by the Commissioner of the respondent as in a case of this nature holding of regular enquiry under CCS (CCA) Rules 1965 can result in causing

serious embarrassment to the complainant and her family members.

19. It is the responsibility and duty of the management of the school and colleges to protect young children, in particular the female child. Even the enquiry conducted in such like matters should always keep in mind the honour, self respect and dignity of the female child and how harrowing the experience could have been for her. Dealing with the issue of “outraging the modesty” of a girl student, the Division bench of this court in the case of **Jwala Singh V. UOI and Ors. (supra)** placing reliance on the judgment of the Hon’ble Supreme Court in the case of **Avinash Nagra (supra)** reiterated as under:

“8. It is true that no regular inquiry was held, but it does not mean that the petitioner was not heard. He was given ample opportunity to present his defense. He was heard. What needs to be remembered and kept in view is that here was a matter which involved the honour, self-respect and dignity of a young school girl. Her modesty had already been outraged. It must have been a traumatic experience. A regular inquiry would have further shattered her. We all know that in such cases, a victim is purposely, deliberately with design insinuated, insulted and humiliated. That is why, in matters like this, a regular inquiry is best avoided. The Supreme Court, with respect, rightly held in Avinash Nagra V. NVS reported in (1997)IILLJ640SC 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. 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 thus 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.

....After conducting the enquiry, he submitted the report to the Director and the Director examined the report and found him not worthy to be a teacher in the institution. Under these circumstances, 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 was temporary employee under probation. In the circumstances, it is very hazardous to expose the young girls to the tardy process of cross- examination. Their statements were supplied to the appellant and he was given an opportunity to controvert the correctness thereof. Under those circumstances, the conduct of the appellant is unbecoming of a teacher must less a loco parentis and, Therefore, dispensing with regular enquiry under the rules and denial of cross-examination are legal and not vitiated by violation of the principles of natural justice."

9. The finding of the Supreme Court in Director, NVS and Ors V. Babban Prasad Yadav and Anr. reported in 2004 (2) Scale 400, are equally relevant in the context of the present case. The relevant portion of the same is as under :

"All that is required for the Court is to be satisfied that the pre-conditions before 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 Director on the basis of such summary inquiry that the charged officer was prima facie guilty; (4) the satisfaction of the Director that it was not expedient to hold an inquiry on account of serious embarrassment to be caused to the students or his guardians or such other practical difficulties' and finally (5) the recording of reasons in writing in support of the aforesaid."

In the end, It was very rightly observed in the aforesaid judgment that:

"13. A school is not merely bricks and mortar. It is the

nursery of idealism and character. The teacher is the person who nurtures the nursery and it is under him that he grows. He effects eternity. What if a teacher falls from the standard expected of him? In such a case surgical treatment may be called for and the present is one such case."

20. One cannot lose sight of the fact that the petitioner was a teacher in a co-ed school and such dissipated conduct of a teacher would grub the entire atmosphere of the school setting a bad precedent for the students itself, specifically boys. This girl in an adolescent age was made to face such cantankerous situation, therefore, to not to believe that she was made to face such disgrace and ignominy in the entire set of circumstances would be inhuman. We fail to imbibe that the allegations were made with some personal objective or under the influence of other teachers and students; rather it is quite visible that it was the teacher who targeted Kumari Rekha for his own gratification on the pretext of making her secure good marks. On the contrary, we feel that such students who muster the courage to bring such terrible people out in the open should be lauded. The girl even told about the incident to her family and her father came forward to support her, all these facts do not seem to be concocted or constructed against the petitioner with any malicious purpose.

21. In the light of the aforesaid discussion, we find no reasons to disagree with the well reasoned order passed by the learned Tribunal

thereby dismissing the Original Application and the Review Application preferred by the petitioner. Accordingly the impugned orders dated 05.05.2010 & 26.07.2011 passed in O.A.No. 1907/2010 and R.A. No.231/2011 respectively are upheld and the present petition and the pending applications filed by the petitioner are dismissed there being no merit.

22. It is ordered accordingly.

(KAILASH GAMBHIR)
JUDGE

(I.S.MEHTA)
JUDGE

May 28, 2015
Pkb/v