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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9602 OF 2016

Mahatma Gandhi Vidyamandir & Anr.

...Petitioners

vs

Nishyant Tulsidas Tayade & Others

...Respondents

.....

Mr. Bhooshan Mandlik, i/b. Mr. S.S. Patwardhan, for the Petitioners.

Mr. R.C. Sadasivan, for Respondent No.1.

.....

CORAM : S.C. GUPTE, J.

DATED: JUNE 12, 2018

(JUDGEMENT) :

. Rule. Rule taken up for hearing forthwith with consent of Counsel.

2. This petition, filed by a college management, challenges an order passed by the University and College Tribunal in an appeal filed by the first respondent teacher impugning his termination by the management. By its impugned order, the Tribunal quashed and set aside the order of termination and directed reinstatement of the teacher without any back wages or other service benefits. The reinstatement was said to be for the purpose of holding of an enquiry as per procedure prescribed by law. The Respondent's entitlement to back wages and other service benefits was to be decided by the authorities depending on the result of the enquiry.

3. On 17 September 2013, the first Respondent was issued an appointment order in the post of Assistant Professor in the subject of Physics at the Petitioner's college. On 28 October 2013, the Respondent joined duty on probation for one year and was due for confirmation on 28 October 2014. Whilst on probation, on 16 October 2014, a show cause notice was issued to him concerning serious allegations of sexual harassment made against him by three girl students of the college named in the notice. The allegations were that on 7 October 2014, he had inappropriately touched, and misbehaved with, them and after the girl students protested his inappropriate behaviour, he had threatened to fail them in examination. The show cause notice referred to the police complaint lodged by one of the girl students in relation to the alleged inappropriate behaviour, in response to which an offence was registered against the Respondent and he was taken into custody, presented before the Magistrate and after remand to judicial custody, released on bail. The show cause notice also referred to the publicity generated by the incident in different newspapers circulating in the locality and the effect such publicity had on students, parents and employees of the college and the vitiation of the college atmosphere as a result. The notice also referred to his unauthorised absence ever since he was released on bail. The Respondent was, in the premises, called upon to show cause before 20 October 2014. Instead of submitting reply, the Respondent sought time. The Petitioner management, thereupon, terminated his services by a communication dated 22 October 2014. That order was challenged by the Petitioner in the appeal, in which the impugned order came to be passed.

4. The Tribunal appears to have quashed the order of termination principally on the ground that the termination, being stigmatic and by way of punishment, could not have been ordered without any enquiry. In the premises, the Tribunal found the order of termination to be illegal and in breach of principles of natural justice and accordingly, set aside the same and ordered reinstatement of the Respondent. Such reinstatement, however, was to be treated as reinstatement for the purposes of holding an enquiry. The Tribunal also ordered that the Respondent would not be entitled to back wages for the time being; his entitlement to back wages and other service benefits would depend on the result of the enquiry as per procedure prescribed.

5. The Petitioner management challenges the Tribunal's order principally on the ground that merely because no formal inquiry was conducted by the former, the order of termination could not be faulted. It is submitted that the Respondent was serving his probationary period, when the incidents narrated above happened. The management, in the premises, made discrete inquiries and thereafter deemed it fit not to continue the Respondent in the services of the college. The management disputes that the termination was by way of punishment.

6. Learned Counsel for the Respondent teacher, on the other hand, supports the impugned order on the ground that the Tribunal correctly applied the law. It is submitted that in case of a termination which is either stigmatic or by way of punishment, a departmental inquiry is a pre-condition and the impugned order of termination,

without such inquiry, was rightly quashed by the Tribunal.

7. Respondent No.1 was on probation, his services yet to be confirmed. His probationary period was to come to an end on 27 October 2014, by which time the management was bound to consider advisability of confirming him in service. Just a few days before that, the incidents narrated above are said to have occurred, as a result of which the management did not think it fit to continue him and terminated him accordingly. The question before the Court is this: Considering (i) the position in which he was employed, namely, as a teacher, (ii) the gravity of the conduct alleged against him, namely, of separate incidents of sexual harassment, reported by as many as three girl students, (iii) the aftermath of these incidents leading to a criminal complaint, arrest of the teacher, his remand to judicial custody and release on bail pending trial and (iv) the adverse publicity generated, as a consequence, leading to protests of students and parents, if the management thought it fit to terminate him around the end of his probationary period, should the action be reversed, just so that a formal inquiry may follow before any disciplinary action is ordered. It may be possible to view the termination itself as punitive and it is true that generally law would frown upon any punitive action sans inquiry affording an opportunity to defend to the delinquent and even in case of probationers, the Courts do insist upon such inquiry if the action is punitive or stigmatic. Yet, the question which arises for consideration in a case such as this is, whether these are inflexible rules, which have to be always followed in a formal sense or is there to be some discretionary element appropriate to special circumstances of any given case.

8. With this question in focus, let us first go over the admitted circumstances of our case. Of these circumstances, the first and, if I may so put it, the foremost, is that the Respondent was working as a teacher in an educational institute attended by teenage girls amongst others. Teachers have a very special place in any society, but particularly so in ours, where we place them on the same pedestal as gods themselves, likening the school or college to a temple. The second circumstance is the involvement of young impressionable students, who are hardly or just about adults; we are immediately concerned here with girl students of first year science. The third important circumstance is that the college, where the incidents are said to have occurred, is in a small village (Nampur in Taluka Baglan of District Nashik); the community in such places is apt to be a close-knit community where people are expected to know each other personally. The fourth circumstance is the FIR registered against the Respondent by one of the three girls and the former's arrest, remand and subsequent release on bail. The fifth is the wide publicity generated in respect of the incidents in local press and the insistence of parents and students on swift action. Now, under these circumstances, would it be reasonable for the management to conduct a formal departmental inquiry and continue the Respondent in probationary service by extending the same beyond the original tenure of one year (the year being about to end over a fortnight or so after the incidents) just so that the inquiry could be completed. The inquiry would have necessarily involved young girl students of the college to come forward and depose to the incidents of sexual harassment against their own teacher and that in an extremely vitiated atmosphere in the

village. Or would it be better part of discretion to act on discrete inquiries and swiftly and not confirm or continue the Respondent in service. The answer, to my mind, to the latter question must be in the affirmative.

9. Let us now consider some other circumstances, which, though are matters of dispute, can be conveniently taken as established having regard to the material on record. The chief amongst these is the Respondent's explanation of the incidents alleged against him. His case is that he was victimized by making false and pre-meditated accusations of sexual harassment. He claims that the management of the college had demanded Rs.3 lakhs in cash from him and since they came to know that he would not be paying this amount, he was victimized. First of all, besides his bare word, and that too merely in his pleadings, there is nothing to support his case of illegal demand of cash from him or conspiracy against him on account of his refusal to cough up the amount. Secondly, it is impossible to believe, particularly in the absence of any material to support such case, that three girl students would be party to any such scheme or rope in their teacher in false criminal accusations. It cannot be lost sight of that one of them in fact proceeded to file an F.I.R. and arraign him in criminal prosecution. The Tribunal has also not believed the Respondent's story in this behalf. It has ruled in favour of the Respondent only as a matter of law, relying on the principle that in a punitive or stigmatic termination, a departmental inquiry with opportunity to the delinquent employee to show cause was a must.

10. As for the punitive or stigmatic nature of the action, the

Petitioner management submits that its action is simply on the footing that it had lost confidence in the Respondent; the action was a discharge simplicitor which was neither punitive nor stigmatic. The management has no objection to this position being clarified by this Court.

11. Let us now consider whether the order of termination of the Respondent is either in violation of applicable rules or principles of natural justice. The action is under Statute 417 of Savitribai Phule Pune University by which the Respondent's case is governed, which provides for assessment of the probationary teacher's suitability and termination after probation without assigning any reason. Nothing is pointed out to the Court as to how the action is in breach of the Statute. As for natural justice, it is important to remember that compliance with principles of natural justice, as held by the Supreme Court in **Avinash Nagra's** case referred to below, does not require holding of a full-fledged regular inquiry in all situations and circumstances. The nature of inquiry that may suffice in any given case depends on the facts and circumstances of that particular case. In a given situation, it may well be reasonably impracticable to hold a regular inquiry. The law permits dispensing with an inquiry in such case. The next question is whether the ground for dispensing with a regular inquiry in the present case spells out such reasonable impracticability of holding of a regular inquiry. There are judicial precedents to decide this question, which may now be noticed.

12. In **Avinash Nagra vs. Navodaya Vidyalaya Samiti**¹, the Supreme Court was concerned with a similar question. A temporary

¹ (1997) 2 Supreme Court Cases 534

teacher on probation was charged with sexual harassment of a girl student in that case. He was terminated without any departmental inquiry. His case before the Court, as in the case of the Respondent here, was that the charges levied against him impinge upon his character, conduct and career; and accordingly, the procedure adopted was in violation of settled legal principles including the principle of *audi alteram partem*. He should have been given an opportunity to cross-examine the girl student and her colleagues who had given their statements and to have himself examined. The matter, submitted his Counsel, required remittance to the disciplinary authority for conducting a *de novo* inquiry and he ought to be given an opportunity to establish his innocence. The case of the management, on the other hand, was that in the case of a temporary employee whose integrity and conduct were doubtful but difficult to prove with sufficient evidence and yet whose retention in service would be prejudicial to the interest of the institution or endanger its reputation, the services could be terminated in terms of the letter of appointment and no departmental inquiry was necessary. Before answering the question, the Supreme Court considered the need for education and the place of a teacher in that behalf. Education is a process, noted the Court, which provides for intellectual, moral and physical development of a child for good character formation, mobility in social status, and opportunity to scale equality and a powerful instrument to bring about social change including necessary awakening among people. On the functions of the teacher in this process, the Court quoted the words of Dr. Radhakrishnan, an acknowledged authority on Indian culture and education, according to whom success of the whole educational process depends considerably on the teacher, for it is the

teacher who has to implant aims, and build characters of his students. It is in this backdrop, noted the Court, that the Indian society has famously described the teacher as “*Guru Brahma, Gurur Vishnu, Guru Devo Maheshwara*”. The Court also considered how education to girl children, which was still a matter of indifference in this Country, was the nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. The Court observed that greater responsibility was, thus, thrust upon managements of schools and colleges to protect young children, and in particular, growing up girls, to bring them up in disciplined and dedicated pursuit of excellence. This called for, as noted by the Court, character and conduct of the teacher more like a *rishi* or as *loco parentis*. The Court was of the view that the conduct attributed to the teacher in the case before it was not befitting such higher responsibilities, rather it betrayed trust and forfeited faith. The Court considered the necessity of an inquiry in the light of these considerations and found the power given to the Director, the highest authority in the management of the institution, “to take decision, based on the fact-situation, whether a summary inquiry was necessary or he can dispense with the services of the appellant by giving pay in lieu of notice” as wisely devised. Reflecting thereafter on the facts of the case before it, the Court held as follows :

“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 to tardy process of cross-examination.”

13. Relying on this case, the High Court of Karnataka in **Government of India vs. Dhanu S. Rathod**², per R.V. Raveendran and Manjula Chellur, JJ (as the Hon'ble Judges then were), held that the principles of natural justice do not require holding of a full-fledged regular inquiry in all situations and circumstances. In an extra-ordinary situation where it is reasonably impracticable to hold a regular inquiry, a summary inquiry would be adequate compliance of principles of natural justice.

14. As for the approach of Courts in matters of sexual harassment at a work place, it has been outlined by the Supreme Court in **Apparel Exports Promotion Council vs. A.K. Chopra**³ in the following words: (Para 28):

“In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or the dictionary meaning of the expression “molestation”. They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaced and mercy has no relevance.”

15. Viewed in the light of these principles, the management's act in not continuing the Respondent teacher after his probation or terminating him cannot be termed as illegal merely on the ground that

² ILR 2002 Karnataka 4911

³ (1999) 1 Supreme Court Cases 759

there was no formal inquiry conducted into the misconduct alleged. The reasons for not conducting such inquiry, as submitted by the management, were as follows:

(i) In the face of widespread publicity of the police complaint and tense situation prevailing in the village in which the college was situate, conducting of an inquiry was strife with unpleasant consequences and likelihood of breach of peace;

(ii) There were direct acquisitions of the girl students concerning involvement of the Respondent, who was their teacher as perpetrator of the alleged offence of sexual harassment;

(iii) The Respondent failed to show any particular reason, including enmity or otherwise, why the girls should have implicated him in a grievous matter such as this;

(iv) Gathering of evidence in a matter like this, which would be essentially 'word against word', where the girl students would be exposed to cross-examination, harassment and further publicity, was difficult; and,

(v) The Petitioner had failed to file any reply to the show cause notice within the stipulated period.

These reasons, viewed in the backdrop of the various circumstances, which are noted above, are good enough to make out

reasonable impracticality of holding a regular inquiry.

16. Accordingly, the impugned order of the Tribunal suffers from mis-application of law and has resulted into miscarriage of justice. The impugned order, accordingly, merits interference in the writ jurisdiction of this Court.

17. Rule is, in the premises, made absolute by quashing and setting aside the impugned order and dismissing the Petitioner's appeal before the College Tribunal. It is, however, clarified that the impugned order of termination shall be treated as a simple order of discharge on account of loss of confidence in the Respondent teacher on the part of the management and not a punitive or stigmatic action based on any proven sexual misconduct.

(S.C. GUPTE, J.)

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