

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.02.2019

CORAM
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.31310 of 2014

R.G.Abirami Devi
13/35, Thirunagar
3rd Street, Villivakkam,
Chennai - 600 049.

... Petitioner

Vs.

- 1.The Chairman
Central Board of Secondary Education,
Shiksha Kendra, 2, Community Centre,
Preet Vihar, Delhi - 110 092.
- 2.The Chief General Manager,
State Bank of India, Local Head Office,
No.16, Circle top house Aparna Complex 7th Floor,
College Road, Greames Road,
Chennai - 600 006.
- 3.Disciplinary Committee (Appellate Authority),
SBIOA Educational Trust,
S.B.O.A School and Junior college,
No.18, School Road, Anna Nagar Western Extension,
Chennai - 600 101.
- 4.The Secretary and Correspondent and
Disciplinary Authority,
SBIOA Educational Trust,
S.B.O.A School and Junior college,
No.18, School Road, Anna Nagar Western Extension,
Chennai - 600 101.

... Respondents

(Cause title amended vide order dated 01.02.2019
made in WMP.No.3515/2019 in W.P.No.31310 of 2014)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in the order bearing no SBIOA/COR/51/2014 dated 10th April 2014 issued by respondent no.3 and quashing the same and consequently directing the respondent 4 to restore the petitioner position held in her service in the SBIOA School and Junior College before the date of suspension 13.03.2012, with eligibility to receive full

salary and all attendant benefits for the period of suspension and the subsequent period to the date of the order.

For Petitioner : Mrs.A.Abirami
Party - in - Person

For Respondents: Mr.Vijay Narayan, Senior Counsel
for Mr.C.Jagadish for R4

ORDER

The Petitioner has filed this Writ Petition seeking to quash the order passed by the 3rd respondent in its proceedings in SBIOA/COR/51/2014, Dated 10.04.2014 and for the consequential direction directing the 4th respondent to restore the petitioner's position held in SBIOA School and Junior College before the order of suspension dated 13.03.2012 with all monetary and attendant benefits for the period of suspension as well as for the subsequent period to the date of the order.

2.It is the case of the petitioner that the S.B.I.O.A. School was established in the year 1979 and registered under the Tamil Nadu Societies Registration Act, 1975. The trustees are under the governance of the Managing Committee of four members, who are the office-bearers of the S.B.I.O.A. Officers Association, Chennai Circle along with 12 other members. The school run by the above Trust called S.B.I.O.A. School is affiliated to the Central Board of Secondary Education.

3.The petitioner joined in that school in the year 2002. However, she was subjected to ill-treatment and denied due promotions by the Principal Mrs.Selvarani. Finally, the petitioner was placed under suspension with effect from 13.03.2012 and two charge memos dated 29.03.2012 and 05.06.2012 were issued against her and without even following the due process of law, she was dismissed from service by the 4th respondent by an order dated 15.02.2013. She challenged the same before the appellate authority by preferring an appeal dated 09.03.2013 addressed to the 1st and 3rd respondents as per Rule 49 of C.B.S.E. Affiliation byelaws. As there was no response for her appeal, she filed a Writ Petition before this Court in W.P. No.863 of 2014 for a Writ of Mandamus and in that Writ Petition, a direction was issued directing the 1st and 3rd respondents to constitute a committee and dispose of her appeal preferred against the penalty order dated 15.02.2014 passed by the disciplinary authority, who is 4th respondent.

4.The appeal preferred by her dated 09.03.2013 was also rejected by the illegally constituted Committee by its order dated 10.04.2014. Against those orders, the petitioner has preferred the present Writ Petition challenging both on the

ground of arbitrariness and failure to follow the due process of law before passing the major punishment of dismissal from service. She has alleged further that the management has chosen to dismiss her from service for the motivated reasons, viz., that one K.Vikesh had fallen down in the playground during the year 2007-2008 and sustained multiple fracture injuries. He was not be able to attend mathematical practical and his Mathematics teacher awarded him 20 marks for the practice. As a class teacher, she recorded those 20 marks in his mark sheet and submitted the same for the declaration of his result. However, he was detained in the class and not promoted and parents of Vikesh aggrieved by the attitude of the school approached this Court.

5.This Court passed an order directing the Regional Director of Central Board of Secondary Education to enquire into the matter and submit the report. For that, the Principal of S.B.I.O.A. School blamed the petitioner as the litigation had arisen because of her recording of marks in the mark sheet of the student Vikesh. However, the decision went in favour of Vikesh and in retaliation, the school management suspended the petitioner from service on 19.11.2018. This Court found that the suspension order was invalid and hence, set aside the same. The School Management went on appeal and the same was also dismissed by this Court.

6.Having failed in their attempts against the petitioner in the case of Vikesh, she was directed to take classes for 8th, 9th and 10th only on revocation of her suspension. The Principal further instructed all the other teachers to avoid any conversation with her. Thereafter, the Principal had chosen to issue two charge sheets dated 29.03.2012 and 05.06.2012 for major penalty. The first charge sheet contained 9 charges alleging that the petitioner had not attended the seminar organised by the management and without attending the same, she attended the parents open meet conducted on the same day. The second charge sheet contained 5 charges, particularly alleging that the petitioner scolded and abused the Headmaster while getting the charge sheet dated 05.06.2012. On those two charge sheets, enquiry was conducted without following any basic principles of natural justice and fair play.

7.Thereafter, on 13.03.2012, she was offering prayers to the 12th std. students at the indoor auditorium of the school before the commencement of the Chemistry examination scheduled to be held for them. She got permission from the Correspondent Mr.D.S.Risabhdas to conduct the prayer with morale instructions to encourage the students facing the above examinations. As it was done with the prior permission of the abovenamed Correspondent, the petitioner ought not to have been blamed for that. However, the Vice-Principal Mrs.Jayanthi Sundar, interfered in the midst of the prayer and plucked the mike from

the petitioner's hand.

8. When the Vice-Principal was attempting to get the mike from the petitioner, she resisted and did not allow her to get it from the petitioner. However, the Vice-Principal switched off the mike and in spite of that, the petitioner continued the prayer in her loud voice and completed the same. But, the Vice-Principal after switching off the mike commanded the English teacher Vinothini Prabakar to recite another prayer. Because of this incident, the students got very much disturbed and 330 students in the hall, aged about 17 to 18 years became upset. They were not able to digest the attitude of the petitioner.

9. Thereafter, the disciplinary action was initiated as above-mentioned incident happened on 13.03.2012. On the afternoon of 13.03.2012 she was served with an order of suspension suspending her from service alleging that she misbehaved with the Principal in the presence of 330 12th std. students. The Principal did not take part in any of the occurrences explained above and everything was done by the Vice-Principal.

10. The charge memorandum leveling 9 charges in Annexure-I of the charge memo is dated 29.03.2012 and those 9 charges are reproduced for the convenience of the parties :-

Charge No.1 :- Smt. R.Abirami has disobeyed the instructions to attend the evaluation work held at Physics lab II at 8.45 a.m. on 13.03.2012 conveyed through circular issued by the Principal and it is observed that she is in the habit of refusing to sign the circular or instructions sent by the superiors. Her above act tantamounts to willful negligence of duties (as detailed in the statement of imputations under Annexure II-Item No.1)

Charge No.2 :- Smt. R.Abirami has not shown due respect to the Principal by disobeying her Administrative Instructions to attend the Evaluation work held at Physics Lab II at 8.45 a.m. on 13.03.2012. She absented herself in attending the evaluation work in time without seeking permission from any one of the Superiors. The above act tantamount to defiance of superior's instructions and lawful orders (as detailed in the statement of imputations under Annexure II Item No.2)

Charge No.3 :- As per the circular instructions of the Principal of the school, Smt. R.Abirami has to report the Evaluation work at 8.45 a.m. on 13.03.2012. But, she was in the indoor auditorium at 8.45 a.m. neither getting the permission to attend the assembly held in the Indoor Auditorium nor to leave the Evaluation work. The above act tantamount to her disrespectful behavior and deliberate insubordination (as detailed in the statement of imputation under Annexure II Item No.3)

Charge No.4 :- When Smt. P.C.Selvarani, Principal of the school questioned her about her presence in the Indoor Auditorium, Smt. R.Abirami misled the Principal by stating that she had the permission of the Correspondent. Her above act reveals that she, as a teacher, has not discharged her duties with utmost honesty and sincerity. (as detailed in the statement of imputation under Annexure II Item No.4)

Charge No.5 :- As there was a regular assembly of giving tips and motivating children going to write the 12th std. Board Examination in the Indoor Auditorium at 8.45 a.m. the teachers, as per the allotment made, attended the assembly. Whereas Smt. R.Abirami, who has been allotted with evaluation work in Physics Lab II, without seeking permission from any one of the superiors, barged on the dais. Immediately, after Smt. Priyadarshini, Academic Supervisor of Chemistry, finished her tips and instructions to the students, Smt. R.Abirami rushed to the mike. Smt. Jayanthi Sundar, Vice-Principal requested her to get the permission from the Principal to use the mike, but Smt.R.Abirami ignored her request, forced herself and grabbed the mike and started using it. When Smt.Jayanthi Sundar tried to stop her, Smt. R.Abirami physically pushed her hands aside and continued to use it. Her above act is unbecoming of a teacher who is supposed to be a role model for children. (as detailed in the statement of imputation under Annexure II Item No.5)

Charge No.6 :- Her above actions in the presence of 330 children of our school going to the 12th Board Examination and nearly 15 teachers presence, shocked the children and caused mental turmoil and emotional disturbances. Her above act tantamount to arrogant attitude and detrimental to the interest and welfare of the students and the school (as detailed in the statement of imputation under Annexure II Item No.6)

Charge No.7 :- It is observed from the news papers report dated 22.03.2012 that Smt. R.Abirami has engaged some political parties to conduct Dharna in front of the school premises on 21.03.2012 arranged to display wall posters around the school premises and distributed pamphlets to the public against the school to create an unrest and public commotion, which is prejudicial to the interest of the school with an intention to defame the image of the school and to bring disrepute to the school (as detailed in the statement of imputation under Annexure II Item No.7)

Charge No.8 :- Smt. R.Abirami has sent frequent SMS and made frequent calls to the School Correspondent's Mobile through her domestic mobile bearing No.9445951863. The

frequent calls and threatening messages sent to him by Smt. R. Abirami shows her intention to disturb the School Correspondent from his normal work and to cause severe mental stress to him. She fails to show due respect to the superior (as detailed in the statement of imputation under Annexure II Item No.8)

Charge No.9 :- Smt. R.Abirami by continuously disobeying the instructions from the Superiors viz., the Principal & Vice-Principal and her above mentioned unruly behavior, have shown utter disregard to the Authority's instructions and conduct rules for the employees of the school and thereby Smt. R.Abirami acted in a way of unbecoming of a school teacher. Her act is a gross violation of Trust's instructions and she has put the trust's interest in jeopardy (as detailed in the statement of imputation under Annexure II Item No.9)

Most of the above quoted charges centre around the incident taken place on 13.03.2012 and they are not supported by the statement of allegations. Like that, the said charge memo does not contain the list of documents and witnesses also. The charge memo is very vague and it contains simple 9 charges and all the 9 charges are related to the incident said to have taken place on 13.03.2012 after nearly three months. Thereafter, another charge memo dated 05.06.2012 was issued against the petitioner leveling four charges as mentioned below :-

Charge No.1 :- It is reported that Smt. R.Abirami was instrumental in publishing an article carrying false/misinformation tarnishing the image of the school/Educational trust and accusing falsely the School Principal, Vice-Principal, in page No. 18 to 21 of Bi-monthly Tamil magazine "Sudesi" Vol-2, Issue-12. Her above act is prejudicial to the interest of the school with an intention to defame the image of the school. (as detailed in the statement of imputation under Annexure II Item No.1)

Charge No.2 :- Smt. R.Abirami has instigated the persons viz., Chennai Siva, Dunlop Kumar and Elangovan to arrange for a public meeting at Nehru Nagar, Chennai and instrumental in falsely accusing the School Principal, Vice-Principal and the Management in the meeting by spreading lies in the public against the school. Her above act tantamount to her disrespectful behaviour, character assassination and deliberate violation of the prescribed conduct rules for the employees of the school. (as detailed in the statement of imputation under Annexure II Item No.2)

Charge No.3 :- It is reported that Smt. R.Abirami engaged with the communal activists and once again displayed/pasted huge posters on 24.04.2012 in and around Anna Nagar, Chennai against the School Management falsely accusing the

Principal and Vice-Principal with an intention to create an unrest and commotion in the minds of the public. Thus, she has acted in a way of unbecoming of a teacher. (as detailed in the statement of imputation under Annexure II Item No.3)

Charge No.4 :- When sufficient opportunities have been given to Smt. Abirami to reply to the charge sheet dated 29.03.2012 to defend her case, she approached one Mr. Traffic Ramasamy to represent her case. Her above act of bringing outside pressure to the school management and divulging confidential matters relating to the school to an outsider shows that she has not discharging her duties as a teacher with utmost integrity and honesty. Thus, she has violated the conduct rules prescribed for an employee of the school. (as detailed in the statement of imputation under Annexure II Item No.4)

One of the above quoted charges i.e. Charge No.4 would clearly reveal the vindictive attitude of the Management and the charge is that she approached Mr. Traffic Ramasamy to represent the case against the charge sheet dated 29.03.2012. The management called this as an outside pressure and criticized that she has violated the conduct rules prescribed for an employee of the school. It is repeatedly held by the Hon'ble Apex Court that any order or circular threatening anyone for approaching an advocate or judicial forum is nothing but unconstitutional.

11. Charge No.1 is that she was claimed to be instrumental in publishing an article tarnishing the image of the school/educational trust in the bi-monthly Tamil magazine "Sudesi" volume-II, issue-12. She is said to have acted prejudicial to the interest of the school with an intention to defame the school. The second charge is that she had instigated the persons to arrange for a public meeting at Nehru Nagar, Chennai to accuse the School Principal, Vice-Principal and the Management for their enforcement of religious belief against the will and wish of the students. In the third charge, the petitioner was blamed to have engaged herself with the communal activities and displayed huge posters in and around Anna Nagar, Chennai accusing the school management, Principal and Vice-Principal.

12. As usual, this charge memo is also not supported by the statement of allegations and the list of witnesses and documents. Without supplying the same, a memo was served on her by a memo dated 13.07.2012 calling upon her for enquiry. The enquiry was also conducted without supplying any materials to the petitioner and the enquiry officer had submitted a report against the petitioner. The report of the enquiry officer was forwarded to her by a memo dated 22.11.2012 calling for her explanation. In reply to that, she had submitted a detailed explanation dated 10.12.2012 pointing out all the procedural infirmities and patent illegalities committed by the management

in issuing the charge sheet against her. It is alleged by her in her explanation that the enquiry proceedings on 27.08.2012, 03.09.2012, 07.09.2012 and 12.09.2012 were recorded in her absence and the absence of her signature in those proceedings itself would prove the said fact, particularly, she had pointed out the following patent illegalities :-

1. That the rules of natural justice are not followed in the enquiry.
2. That no transparency in the enquiry proceedings.
3. That the management refused to accept her defence exhibits.
4. That the management did not make any arrangement to enquire any witnesses from the school.
5. That the Management conducted the enquiry in the absence of the petitioner.
6. The petitioner was not allowed to cross-examine the witness.
7. The enquiry officer forced her to sign the daily order sheet of proceedings, which was recorded in her absence.
8. The petitioner faced lot of difficulties to record the statements made by her and to get the photocopies of the documents.
9. The enquiry officer did not allow her to contradict the prosecution exhibits.
10. The same enquiry authority had conducted her earlier enquiry also. No order had been passed for that enquiry.
11. The enquiry officer had not followed the rules and regulations of enquiry proceedings.

In fact, the Principal appointed a junior faculty member as an enquiry officer and she was not allowed to participate in the enquiry proceedings. The exhibits marked by the management 11 to 24 are the police complaints and the particulars of messages and phone calls alleged to have been made by the petitioner. The petitioner in fact requested for defence statement and that was also refused. Further, when she attempted to mark the following documents, viz.,

1. Email letter of student Vidyalakshmi, who witnessed the incident
2. Email letter of old student Deepika Shanmugam
3. Email letter of a doctor
4. Memorandum copy of Mrs.Eugie Shanthi

5. Hindu newspaper comments
6. School pupils leader Sheik Fiaz interview to the local Darshana television
7. Indian express newspaper
8. Hindu newspaper
9. Nakkeeran magazine
10. Kumudam reporter
11. Annanagar daily
12. Pioneer today
13. Statesman
14. Tarunbarat
15. Copy of complaint to CBSE board dated 15.09.2012,

she was not permitted to mark those documents. The Management failed to summon the defence witnesses inspite of the request made by her. The witnesses produced by the management are nothing to do with the incident or occurrence leading to the charge sheet against her. Out of 12 witnesses, 8 witnesses are in the supervisory grade and only four are teachers. The persons, who are directly related to the charges were not at all cited as witnesses and the petitioner also was not permitted to produce her witnesses as already indicated above. She has submitted a short reply to each and every charge in her detailed explanation to the findings of the enquiry officer by narrating all the information above mentioned.

13.The Management had filed a detailed counter affidavit denying each and every allegation made by the petitioner against the enquiry proceedings conducted against her. It is pleaded by the 4th respondent that the enquiry was conducted properly and there is no deviation or violation in the enquiry proceedings and hence, the writ petitions challenging the dismissal order and the consequential order of appellate authority are liable to be dismissed.

14.This court heard Mrs.Abirami, party-in-person and Mr.T.V.Ramanujan, learned Senior Counsel appearing for the fourth respondent and also carefully perused all the voluminous records produced before this Court.

15.A mere perusal of the two charge memos would clearly reveal that they are all vague and not supported by statement of allegations. Further, they had not even mentioned the list of witnesses and documents. Hence definitely, it is not possible for anyone to come out with the full-fledged explanation in the absence of the same. The sum and substance of the contentions of the Writ Petitioner is that the enquiry was not conducted fairly and the enquiry officer had not recorded what she said and the

witnesses deposed and he had behaved in an arbitrary and impartial manner. Her other serious allegation is that she was not permitted to produce her witnesses and marked the documents.

16. In the counter affidavit filed on behalf of the 4th respondent, the manner of enquiry conducted against the petitioner is explained at para 9 at page 8, which itself is sufficient to take a decision in respect of the serious allegation thrown against each other in respect of the manner of enquiry and the consequential punishment awarded against the petitioner and hence, they are reproduced below :-

"The Writ Petitioner once again engaged with communal activists displayed and placed and pasted huge posters on 24.04.2012 in and around Anna Nagar, Chennai accusing the school management, the Principal and Vice Principal creating unrest and commotion in the minds of the public and demanding condemning the order of suspension of the writ petitioner in support of the writ petitioner. The writ petitioner was served with two charge sheets dated 29.03.2012 and 05.06.2012. The Writ Petitioner was given sufficient opportunities to reply to the charge sheet dated 29.03.2012 but she approached Mr. Traffic Ramasamy to represent her case to bring about pressure on the school management and dwelling confidential matters relating to the school to an outsider violating the conduct rules prescribed. Thus, the writ petitioner has been acting detrimental to the interest of the students as well as the school. I humbly submit that the charge sheet dated 29.03.2012 and the charge sheet dated 05.06.2012 may kindly be read as part hereof. There was an enquiry and the writ petitioner participated in the enquiry on all the eight days. On 03.09.2012, the writ petitioner took part in the enquiry, but refused to sign the proceedings. On 07.09.2012, the writ petitioner appeared before the inquiry officer but refused to participate in the enquiry proceedings and left the hall abruptly without assigning any reason. Then the enquiry on 07.09.2012 was proceeded ex parte in his absence. Thereafter, the next date of enquiry was fixed on 12.09.2012 and the same was communicated to the writ petitioner. On 12.09.2012 the writ petitioner came to attend the proceedings but refused to sign the attendance register and abruptly left the enquiry proceedings. The enquiry proceeded ex parte and the enquiry was over on 12.09.2012. During the course of enquiry, the writ petitioner has cross-examined PW1 to PW6. The writ petitioner was given sufficient opportunity but the writ petitioner on 07.09.2012 and 12.09.2012 abruptly left the enquiry proceedings for reasons best known to her. I humbly submit that the writ petitioner submitted her

defence statement and submission dated 09.12.2012 and 10.12.2012 with enclosures. No exhibits were produced by her during the enquiry proceedings. Based on the proceedings, it was found that the writ petitioner was guilty of misconduct and the charges were proved. After the enquiry proceedings were over, I submitted my tentative decision to impose the penalty of dismissal from service as contemplated under Bye law number 47(2) to the members of the school management committee on 14.02.2012 for approval and the same was approved by the school management committee on 14.02.2013. The proposal to dismiss the petitioner from service was also sent to the writ petitioner on 11.02.2013 by speed post on 11.02.2013 calling upon the writ petitioner to appear before the Disciplinary Authority for personal hearing and offer explanations if any. The writ petitioner sent her reply dated 12.02.2013. The letter dated 12.02.2013 has been considered as reply to the letter dated 11.02.2013 since the writ petitioner was not willing to appear in person and final orders were pronounced on 15.02.2013 and the same was communicated to the writ petitioner on 15.02.2013. Thereafter, the writ petitioner preferred an appeal on 09.03.2013. The disciplinary committee was constituted as per by law number 49 of the Affiliation Bye-laws of Central Board of Secondary Education and the Disciplinary Committee passed the impugned order dated 10.04.2014 confirming the order of the disciplinary authority dated 15.02.2013 dismissing the writ petitioner from service."

It is clear from the above quoted lengthy passage :-

- (1) That the petitioner attempted to engage Traffic Ramasamy to help her in the enquiry proceedings, which is called detrimental to the school and the students.
- (2) That on 03.09.2012 the petitioner took part in the enquiry, but refused to sign the proceedings.
- (3) That on 07.09.2012, she appeared for enquiry, but refused to participate in the enquiry and left the hall.
- (4) That on 12.09.2012, also she attended the enquiry, but left the hall.
- (5) That P.W.1 to P.W.6 were cross-examined by the petitioner
- (6) That on 09.12.2012 and on 10.12.2012 the petitioner submitted her defence statements with enclosures.
- (7) That the statements were not considered on the ground that the enquiry was over.
- (8) That the enquiry officer submitted the tentative

decision to dismiss her from service to the School Management Committee on 14.02.2013.

- (9) That before forwarding the said report to the Management Committee, the enquiry officer had sent the same to the petitioner only for her explanation on 11.02.2017 by speed post.
- (10) That the petitioner had sent reply dated 12.02.2013 refusing to appear for personal hearing in person.
- (11) That the Management Committee passed orders dismissing the petitioner from service on 15.02.2013 and communicated the same to the petitioner.
- (12) That the Writ Petitioner preferred an appeal on 09.03.2013 and the same was dismissed by the Disciplinary Committee on 10.04.2014.

17. What is shocking to the conscience of this court from the above admitted fact is that inspite of the objections raised by the petitioner in respect of the manner of enquiry proceedings, they were conducted forcibly with a view to complete the same at the earliest either by hook or crook and get rid of the petitioner.

18. Secondly, the petitioner submitted her defence statement with enclosures on 09.12.2012 and 10.12.2012, though as per the version of the 4th respondent, after the conclusion of the enquiry, but it was very well before the drawal of his tentative decision sent to the petitioner on 11.02.2013. The Enquiry officer should have dealt with the matter impartially with open mind and had he dealt with the petitioner's case like that, then he would have definitely considered the defence statement and marked the enclosures sent by her along with the defence statement by reopening the enquiry or as they are. But, he failed to do so even though he had kept quiet for 63 days from 10.12.2012 to 11.02.2013 for the drawal of his tentative conclusion against the petitioner.

19. Thirdly, as an enquiry officer, it is not known as to how he could have recommended for the proposed punishment as the decision on the punishment has to be taken by the Management Committee only, even though their own byelaws or rules permit him to do so. It is the fundamental principle of law that any bye-law or rule should satisfy the constitutional mandate under Articles 14, 16, 21 and 311 and the law laid down by the Hon'ble Apex Court.

20. The law laid down in E.C.I.L. Vs. B.Karunahar reported in JT 1993 (6) SC p1 is that the enquiry report should be furnished to the delinquent by the enquiry officer without expressing any opinion on the findings available in the enquiry report and then the Disciplinary Authority should weigh both the enquiry report and the explanation before imposing the punishment. However, in

this case, not only the enquiry officer himself came out with the proposal for major punishment, but also acted as the Disciplinary Authority.

21.Fourthly, the petitioner was said to have been given an opportunity by the 4th respondent enquiry officer himself to appear before him and explain and she refused to appear, but sent her objections. When a person is called to explain, he or she should be called upon to explain on the findings, but on the proposed penalty. In this case, what the 4th respondent done was that he called the petitioner to speak on the punishment and not on the subject and that is why the petitioner did not appear.

22.Fifthly, the petitioner sought the help of a public interest litigation oriented citizen Traffic Ramasmy to give a legal aid to her and the same was alleged to be detrimental to the school and the students in the school of the fourth respondent. Her request could have been rejected on the simple ground that the rule does not provide for the request of the Defence Assistant or on some other ground. But, the allegation that her attempt to engage Traffic Ramasmy is detrimental to the school and the students would clearly indicate the pre-concluded prediscisive mind of the Management towards the petitioner.

23.In this connection, the following judgments of the Hon'ble Apex Court are referred for the proposition mentioned in respect of each decision :

(i).In Bombay State -vs- Nurul Kha, reported in (1966) SC 269 it has been held as follows:-

"It is true that the oral enquiry which the enquiry officer is bound to hold can well be regulated by him in his discretion. If the charge sheeted officer starts cross-examining the departmental witnesses in a irrelevant manner, such cross-examination can be checked and controlled. If the officer desires to examine witnesses whose evidence may appear to the enquiry officer to be thoroughly irrelevant, the enquiry officer may refuse to examine such witnesses, but in doing so, he will have to record his special and sufficient reasons. In other words, the right given to the charge sheeted officer to cross-examine the departmental witnesses or examine his own witnesses can be legitimately examined and controlled by the enquiry officer, he would be justified in conducting the enquiry in such a way that its proceedings are not allowed to be unduly or deliberately prolonged. But, in our opinion, it would be impossible to accept the argument that if the charge sheeted officer wants to lead oral evidence, the enquiry officer can say that having regard to the charges framed against the officer, he would not hold any oral enquiry. In the present case, the witnesses whom the respondent wanted to examine would undoubtedly have given relevant evidence. If the doctors who

treated the respondent had come and told the enquiry officer that the condition of the respondent was so bad that he could not resume work, then undoubtedly would have been a relevant and material fact to consider in deciding whether the charges framed against the respondent were proved. Even if we disapprove of the attitude adopted by the respondent in the course of this enquiry and condemn him for using extravagant words and making unreasonable contentions in his communication to the enquiry officer, the fact still remains that he wanted to examine his doctors, and though he intimated to Mr.Mehta that he desired to examine his doctors, Mr.Mehta failed to give him an opportunity to do so. That, in our opinion, introduces a fatal infirmity in the whole enquiry which means that the respondent has not been given a reasonable opportunity to defend himself within the meaning of Article 311 (2). On that view of the matter, it is unnecessary to consider whether the High Court was right in its other conclusions that the second notice served by the appellant on the respondent was defective in as much as it did not appear that the appellant had taken into account the representation made by the respondent."

Therefore, the Enquiry Officer should have permitted the petitioner to produce her own witnesses and evidences though according to him, they are irrelevant as those evidences have to be dealt with only after exhibition of the same before him on merits.

(ii).In Mathura Prasad -vs- Union of India, reported in (2007) 1 SCC 437, at Para 19 of the above judgment, it is observed as follows :-

"19.When an employee, by reason of an alleged act of misconduct is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. A judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes any order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review."

In view of the above law laid down by the Hon'ble Apex Court this Court holds that the Enquiry Officer in this case had not considered the defence statement with enclosures, though forwarded to him on 09-12-2012 and 10-12-2012, 63 days before his conclusion on 11-02-2013 and he himself had suggested the punishment, which is against the basic principle, on which the law laid down in E.C.I.L. -vs- B. Karunakar, reported in JT (1993) 6 SC pl.

(iii).In M.V. Bijlani - vs- Union of India & ors., reported in (2006) 5 SCC 88 at paras 25 and 26, the Hon'ble Apex Court has made the following observations :-

"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial (i.e.), beyond all reasonable doubt, we cannot lose sight on the fact that the Enquiry Officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take in to consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses on the basis of surmises and conjectures. He cannot enquire in to the allegations with which the delinquent officer had not been charged with.

26. The report of the Enquiry Officer suffers from the aforementioned vices. The orders of the disciplinary authority as also the Appellate Authority which are based on the said enquiry report, thus, cannot be sustained. We have also noticed the way in which the Tribunal has dealt with the matter. Upon its findings, the High Court also commented that it had not delved deep in to the contentions raised by the appellant. The Tribunal also, thus failed to discharge its functions properly."

(iv).In Roop Singh Negi -vs- Punjab National Bank, reported in (2009) 2 SCC 570 at Para 23, the Hon'ble Apex Court has made the following observations :-

"23. Furthermore, the order of the disciplinary authority is also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the Enquiry Officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken in to consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceedings, but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer

apparently were not supported by any evidence. Suspicion, as is well known, however, high may be, can under non circumstances be held to be a substitute for legal proof."

In view of all the admitted facts narrated above, this Court holds that there was no fair enquiry against the petitioner.

24. This Court is inclined to hold that the punishment order and the consequential order of the appellate authority cannot be allowed to stand to the scrutiny of law by following the basic principles governing disciplinary proceedings laid down by the Hon'ble Apex Court in the following two important cases viz., *Bijilani Vs. Union of India* reported in 2006 (5) SCC 88 and *Roop Singh Negi Vs. Punjab National Bank and others* reported in 2009 (2) SCC 570. The Hon'ble Apex Court even as early as in 1970 has held that the charges should be very specific and it should be supported by the statement of allegations and list of witnesses and documents. The failure to do so by the management vitiates the entire disciplinary proceedings and on that ground itself, the charge memos are liable to be quashed.

25. Further, this Court considered each and every charges leveled against the petitioner in both the charge memos. As already held, all the charges are related to solitary conduct of reciting a prayer song to 330 students facing the Chemistry examination of the school.

26. As already observed by this Court, the charges are not supported by the statement of allegations, list of witnesses and the documents and the enquiry was not conducted fairly. Hence, the punishment order is liable to be set aside by taking note of the principles laid down by the Hon'ble Apex Court reported in 2006 (5) SCC 88 [*Bijilani Vs. Union of India*] and 2009 (2) SCC 570 [*Roop Singh Negi Vs. Punjab National Bank and others*].

27. As the punishment order is based on the unsustainable charge memos, it cannot be allowed to stand to the scrutiny of law. The major punishment of dismissal is the consequence of vague charges and there is neither any discussion nor any findings on the evidences adduced before the enquiry officer. As laid down by the Hon'ble Apex Court in *Roop Singh's* case, (supra) any punishment order without any discussion and finding is liable to be set aside and hence, this Court is inclined to set aside the punishment order.

28. The appellate authority also simply confirmed the order passed by the disciplinary authority without even any discussion and finding and hence, the said order is also not sustainable in view of the principles laid down by the Apex Court reported in 2006 (11) SCC 147 and 2008 (3) SCC P.69.

29. It is to be strictly remembered by the Government, Management as well as all the staff of the school that the School is meant only for teaching good values and education to

the students, who are the future architects of the National and not for any other extraneous reasons.

30. In view of all the aforestated facts and reasons, this Court holds that,

(i). The order of dismissal passed by the 4th respondent confirmed by the 3rd respondent are liable to be set aside and accordingly, they are set aside.

(ii). The petitioner shall be reinstated within two weeks from the date of receipt of a copy of this order.

(iii). There shall be a direction to settle all the service benefits to the petitioner within eight weeks from the date of receipt of a copy of the order.

(iv). As the petitioner is out of employment and has not worked, this Court awards 50% of the backwages to her with other monetary and service benefits. Further, the services of the petitioner is to be treated as continuous one for all other purposes and the period out of employment is to be treated as duty period.

In fine, the Writ Petition stands allowed in the above terms and there is no order as to costs.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

pgp

To

1. The Chairman
Central Board of Secondary Education,
Shiksha Kendra, 2, Community Centre,
Preet Vihar, Delhi - 110 092.
2. The Chief General Manager,
State Bank of India, Local Head Office,
No.16, Circle top house Aparna Complex 7th Floor,
College Road, Greames Road,
Chennai - 600 006.
3. Disciplinary Committee (Appellate Authority),
SBIOA Educational Trust,
S.B.O.A School and Junior college,
No.18, School Road, Anna Nagar Western Extension,
Chennai - 600 101.

4.The Secretary and Correspondent and
Disciplinary Authority,
SBIOA Educational Trust,
S.B.O.A School and Junior college,
No.18, School Road, Anna Nagar Western Extension,
Chennai - 600 101.

+3ccs to Mr.R.G.Abirami Devi, Petitioner-in- Person, S.R.No.9090
+1cc to Mr.C.Jagadish, Advocate, S.R.No.9063

W.P.No.31310 of 2014

SR(CO)

rrs 18/02/2019



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