

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1372 of 2023

1. The Commissioner, Navodaya Vidyalaya Samiti, head Office-B-15, Institutional Area, Sector-62, NOIDA (UP)-201309.
2. The Deputy Commissioner (Pers.), Navodaya Vidyalaya Samiti, head Office-B-15, Institutional Area, Sector-62, NOIDA (UP)-201309.
3. The Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Karpuri Thakur Sadan, 5th Floor, Ashiyana-Digha Road, Patna-800025.
4. The Principal, Jawahar Navodaya Vidyalaya Samiti, Banka, Bihar-813103.
5. The Principal, Jawahar Navodaya Vidyalaya Samiti, Bastar (CG) Chattishgarh, Pin-494001.
6. The Deputy Commissioner, NVS Regional Officer, Bhopal, A-125, Alkapuri, Gate No.2, (MP) 462011.

... .. Petitioner/s

Versus

1. Shri Niranjana Pati S/o Late Kalandi Pati, At- Manibandha, PS- Badamba, District-Cuttack, State-Odisha, Pin Code-754035 and Served as T.G.T, (Odia) Jawahar Navodaya Vidyalaya, Banka, Pin-813102 (Bihar).
2. The Union of India through the Secretary, Ministry of H.R.D. (Department of School Education and Literacy), Govt. of India, New Delhi- 110001

... .. Respondent/s

Appearance :

For the Petitioner/s : Dr. K.N. Singh, ASG, Sr. Advocate assisted by
Mr. Siddhartha Prasad, Advocate
Mr. Kaustubh, Advocate

For the Respondent/s : Mr. M.P. Dixit, Advocate
Mr. S.K. Dixit, Advocate
Mr. S.K. Choubey, Advocate
Mrs. Swastika, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 25-09-2023



The present writ petition is filed by the Commissioner, *Navodaya Vidyalaya Samiti and others*. Respondent - *Niranjan Pati* was working as a Trained Graduate Teacher with the *Navodaya Vidyalaya Samiti*. He was alleged to have involved in sexual harassment to a girl student. Taking note of the complaint, disciplinary authority proceeded to initiate summary proceedings and terminate the services of the respondent on 15.04.2018. Feeling aggrieved and dissatisfied with the order of termination, respondent preferred appeal before the appellate authority in which also he has suffered an order on 09.10.2018. Thus, the respondent has invoked the remedy of filing Original Application before the Central Administrative Tribunal, Patna Bench, Patna (for short 'CAT') under Section 19 of the Central Administrative Tribunal's Act in questioning the validity of termination order dated 15.04.2018 as well as the appellate authority's order dated 09.10.2018.

2. On 12.07.2022, there was a difference of opinion between the member Judicial and member Administrative resulted in referring the matter to the third member (Judicial) in Original Application No. 971 of 2018. Third member proceeded to decide the issue on 14.11.2022 while agreeing with the Judicial member's decision dated 12.07.2022 and proceeded to set aside the order of



termination and appellate authority's order and further directed to conduct inquiry afresh from the stage of summary trial after giving proper and due opportunity to the respondent strictly as per law, rules and instructions. The aforesaid exercise was to be completed within a period of four weeks from the date of receipt of copy of the order. Feeling aggrieved by the order dated 14.11.2022, the present writ petition is presented by the petitioners – the Commissioner, *Navodaya Vidyalaya Samiti and others*.

3. On 13.04.2023, following order was passed:

“The instant writ petition is by the Union of India-Navodaya Vidyalaya Samiti. Respondent was subjected to some inquiry on the allegations that he was alleged to have been involved in sexual harassment to a girl student which resulted in termination of service and it was subject matter of litigation before Central Administrative Tribunal, Patna Bench, Patna.

2. Learned counsel for the petitioner is hereby directed to apprise this Court as to is there any compliance to proviso to Rule 14(2) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 or not?

3. Further, in the light of Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 and Rules, 2013 have been adopted by the Central Government or petitioner - Navodaya Vidyalaya Samiti or not? In order to examine whether the



petitioner's have followed the relevant Act and Rules or not?

4. Relist this matter on 27.04.2023.”

4. Petitioners have fairly admitted that staff of the *Navodaya Vidyalaya Samiti* have adopted the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short ‘Rules 1965’). It is submitted that Judicial member in its order dated 14.11.2022 has committed error in setting aside the order of termination as well as the appellate authority’s order and directing the concerned authority to conduct inquiry afresh from the stage of summary trial. It is also submitted that they have followed the notification dated 20.12.1993 (Annexure - 15 to the Original Application). Notification stipulates constitution of committee and proceed to hold a summary inquiry. Having regard to the alleged allegation levelled against the respondent summary inquiry was concluded and respondent was punished. Therefore, the CAT has committed error in not appreciating the procedure followed by the petitioner – disciplinary authority. Hence, the impugned order of the CAT dated 14.11.2022 is liable to be set aside. Writ petition is to be allowed.

5. *Per contra*, learned counsel for the respondent – *Niranjan Pati* resisted the aforementioned contentions and submitted that it is undisputed that petitioners have adopted the



Rules, 1965 for its employees read with Central Civil Services (Conduct) Rules (for short 'Rules, 1964'). The petitioners have not followed the relevant provisions of law while holding the summary proceedings and its conclusion read with imposition of penalty of termination and its affirmation by the appellate authority. In support of the aforementioned contentions, he is relying on the Apex Court decision in the case of *Aureliano Fernandes vs. State of Goa* reported in **2023 (3) PLJR SC 129**, paragraph Nos. 68 and 69. In the result, the present writ petition is liable to be dismissed.

6. Heard learned counsels for the respective parties.

7. Undisputed facts are that the respondent – *Niranjan Pati* was a Trained Graduate Teacher with the *Navodaya Vidyalaya Samiti*. Allegation is that he was involved in sexual harassment of a girl student. Based on a complaint, petitioner – disciplinary authority proceeded to initiate summary proceedings and concluded it in imposition of penalty of termination and its affirmation by the appellate authority. The disciplinary authority had resorted to summary proceedings having regard to the nature of allegation/complaint which cannot be adjudicated in a regular departmental inquiry to which there is provision for holding summary inquiry in the light of Apex Court decision read with



Navodaya Vidyalaya Samiti notification dated 20.12.1993. The petitioners have followed the procedure laid down in the notification dated 20.12.1993 and taking note of the Apex Court decisions in the case of *Avinash Nagra vs. Navodaya Vidyalaya Samiti* reported in 1997 (2) SCC 534, *Director Navodaya Vidyalaya Samiti vs. Babban Prasad Yadav* reported in 2004 (13) SCC 568.

8. The aforementioned position of law is prior to incorporation of Rule 14 (2) of Rules, 1965 read with Rule 3C of Rules, 1964. These two provisions have been incorporated in the relevant Rules in the year 2014 whereas the alleged incident is of the year 2016. Therefore, the petitioner – disciplinary authority should have resorted to invoke the provisions of Rule 14 (2) of Rules, 1965 read with Rule 3C of Rules, 1964. These two provisions have not been apprised by the CAT while remanding the matter to the disciplinary authority to proceed with defective stage and complete the inquiry.

9. It is to be noted that from the initial stage itself there is an error committed by the petitioners in not taking note of relevant amendment to the Rules, 1965 read with Rules, 1964. From Apex Court decision in the case of *Aureliano Fernandes* cited *supra*, it is crystal clear that sub Rule 2 of Rule 14 of Rules,



1965 is required to be taken note of where there is impracticability of holding inquiry against the government employee. In the present case of employee of *Navodaya Vidyalaya Samiti*, it is necessary to quote paragraph Nos. 68 and 69 of the decision in the case of *Aureliano Fernandes* cited *supra* which reads as under:

“68. The intent and purpose of the proviso inserted in Rule 14(2) of CCS (CCA) Rules and Rule 3C of CCS (Conduct) Rules is that the procedure required to be adopted for conducting an inquiry into the complaint of sexual harassment that can lead to imposition of a major penalty under the Rules, must be fair, impartial and in line with the Rules. Pertinently, the emphasis on adhering to the principles of natural justice during an inquiry conducted by a Complaints Committee finds specific mention in Rule 7(4) of the subsequently enacted Rules of 2013. But the spirit behind the due process could never be suppressed or ignored even in the absence of the Statute or the Rules inasmuch as the principles of natural justice is the very essence of the decision-making process and must be read into every judicial or even a quasi-judicial proceeding.

69. This is not to say that the Committee even if described as an Inquiring authority, by virtue of the ruling in *Medha Kotwal's* case (*supra*) and required to follow the procedure prescribed under Rule 14, was expected to conduct the inquiry as if it was a full-fledged trial. The expression used in the proviso to Rule 14(2), ‘as far as practicable’ has to be read and understood in a pragmatic manner. In any such proceedings initiated by the Disciplinary Authority, a



calibrated balance would have to be struck between the rights of a victim of sexual harassment and those of the delinquent employee. At the same time, fairness in the procedure would have to be necessarily adopted in the interest of both sides. After all, what is sauce for the goose, is sauce for the gander.”

10. In the light of these facts and circumstances, the impugned order of the CAT dated 14.11.2022 stands set aside. The matter is remitted back to the disciplinary authority to proceed afresh after taking note of sub Rule 2 of Rule 14 of Rules, 1965 read with Rule 3C of Rules, 1964 and proceed to hold afresh inquiry and complete the same within a period of six months from the date of receipt of copy of this order.

11. Respondent – *Niranjan Pati* is hereby directed to co-operate in the inquiry. The intervening period from the date of termination till date the concerned authority is required to take a decision as to whether respondent is to be reinstated or he should be placed under suspension shall be decided within three months from today, in the light of principles laid down in the Apex Court decisions in the case of *Managing Director, ECIL vs. B. Karunakar* reported in (1993) 4 SCC 727 read with *Chairman-cum-Managing Director, Coal India Limited and Ors. vs.*



Ananta Saha and Ors. reported in **(2011) 5 SCC 142** paragraph

Nos. 46 to 50 reads as under:

“46. In the last, the delinquent has submitted that this Court must issue directions for his reinstatement and payment of arrears of salary till date. Shri Bandopadhyay, learned Senior Counsel appearing for the appellants, has vehemently opposed the relief sought by the delinquent contending that the delinquent has to be deprived of the back wages on the principle of “no work —no pay”. The delinquent had been practising privately i.e. has been gainfully employed, thus, not entitled for back wages. Even if this Court comes to the conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be reinstated and put under suspension and would be entitled to subsistence allowance as per the service rules applicable in his case. The question of back wages shall be determined by the disciplinary authority in accordance with law only on the conclusion of the fresh enquiry.

47. It is a settled legal proposition that the result of the fresh enquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the enquiry in such a fact situation relates back to the date of imposition of punishment, earlier stands fortified by a large number of judgments of this Court and particularly in *R. Thiruvirkolam v. Presiding Officer* [(1997) 1 SCC 9 : 1997 SCC (L&S) 65 : AIR 1997 SC 633] , *Punjab Dairy Development Corpn. Ltd. v. Kala Singh* [(1997) 6 SCC 159 : 1997 SCC (L&S) 1434 : AIR 1997 SC 2661]



and Graphite India Ltd. v. Durgapur Projects Ltd. [(1999) 7 SCC 645].

48. In ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126 : AIR 2009 SC 161] , this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or



mechanical but flexible and realistic. (Vide U.P. SRTC v. Mitthu Singh [(2006) 7 SCC 180 : 2006 SCC (L&S) 1590 : AIR 2006 SC 3018] , Akola Taluka Education Society v. Shivaji [(2007) 9 SCC 564 : (2007) 2 SCC (L&S) 679] and Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale [(2009) 2 SCC 288 : (2009) 1 SCC (L&S) 372].

50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh enquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.

Principles laid down in the aforementioned decisions of the Apex Court have been reiterated in the later decision of the Apex Court in the case of ***State of Uttar Pradesh vs. Prabhat Kumar*** reported in **2022 LiveLaw (SC) 736**.

12. The intervening period and further decision to be taken by the disciplinary authority pursuant to our remand order are required to be decided by the disciplinary authority while passing fresh order. Such fresh order of regulating intervening



period from the date of termination till fresh order shall be passed within a period of three months from the date of passing final order in inquiry matter.

13. With the above observation, present writ petition stands allowed in part.

14. We are setting aside the CAT order only in respect of remand. In other words, setting aside of the order of disciplinary authority and appellate authority's order dated 15.04.2018 and 09.10.2018 respectively is affirmed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.10.2023
Transmission Date	NA

