

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14111-2019 (O&M)

Decided on 13.07.2023

Principal DAV Public School, Assandh & Ors.

... Petitioners

VS.

District Judge exercising the powers
of Educational Tribunal for
Educational Institutions at Karnal & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Rajiv Kataria, Advocate and
Mr. Aman Joon, Advocate for the petitioner

Mr. Kannan Malik, Advocate for respondent No.2

Mr. BK Kaushik – respondent No.3 (in person)

Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing the order dated 06.03.2019 (Annexure P14) passed by Educational Tribunal, Karnal – respondent No.1 vide which the punishment orders dated 31.07.2014 and 21.11.2014 have been set aside with liberty to the petitioner-School to proceed with the matter from the stage it was to supply copy of the enquiry report to the respondent No.3.

(2). Respondent No.3, who was posted as Lecturer Physics in DAV Public School, Assandh, District Karnal, was placed under suspension by the Principal of the petitioner-DAV Public School, Assandh on 27.04.2013. He was served with a charge-sheet dated 02.09.2013 by the Chairman of the Local Managing Committee of the petitioner-School, under Rule 47 of the CBSE Byelaws, *inter alia*, on the ground that the respondent No.3 did not allow five students in the class because they could not get 33% marks in theory paper as

well as practical examination, as required under Rule 40(1)(vi) and 40(2) of the CBSE Byelaws. On the basis of the report of the Enquiry Officer dated 31.5.2014, the Chairman, School Managing Committee vide order dated 31.7.2014 (Annexure P8) imposed the penalty of removal from service upon respondent No.3 followed by another detailed order dated 21.11.2014 passed on the representation of respondent No.3 made post removal order. The respondent No.3 filed appeal which has been partly allowed by the Educational Tribunal vide order dated 06.03.2019 prompting the petitioner-School to approach this Court.

(3). Mr. Rajiv Kataria, Advocate for the petitioner-School contended that copies of all the documents relied by the school were duly supplied to the respondent No.3 in addition to which the documents as ordered by the Inquiry Officer were also supplied. It was asserted that when an employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. But to direct reinstatement of the employee with back-wages, in all cases, is to reduce the rules of justice to a mechanical ritual. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. In this regard, reliance has been placed on **Managing Director ECIL Versus B. Karunakar, 1993(4) SCC 727.**

(4). It is asserted that the Tribunal erred in concluding that inquiry report was not furnished to the respondent No.3 before the disciplinary authority applies its mind to the findings of the Inquiry Officer. The

Disciplinary authority only tentatively accepted the findings of the Inquiry Officer and proposed to impose penalty of removal from service. It has been averred that petitioner-School is following the CBSE Affiliation Byelaws and has no power or authority to change the same.

(5). Learned counsel averred that under *proviso* to Article 311(2), it is not necessary to give delinquent opportunity of representing against penalty proposed and that the Court must satisfy itself first that the alleged breach really caused prejudice to the delinquent and only then to remit the case relating the parties to the stage the alleged breach took place. Reliance has been placed on this Court's judgment rendered in **Jagdish Chander vs. UHBVNL & Ors. 2008(1) SCT 748**; as well as of the Supreme Court in **UP State Spinning Co.Ltd. vs. RS Pandey & Anr. 2005(4) SCT 430**.

(6). Notice of motion was issued on 24.05.2019 and the operation of the impugned judgment dated 06.03.2019 was ordered to remain stayed.

(7). Written statement dated 20.09.2019 has been filed by the respondent No.3, wherein it has been averred that the petitioner-School had framed Service Rules but still he was purposely charge-sheeted under CBSE Bye-laws without assigning any reason as to why the School Rules were not being invoked. It is submitted that the respondent No.3 was placed under suspension by the Principal whereas the competent authority was the Manager of the school on behalf of the Managing Committee under Bye-law 22(v) of the CBSE Bye-laws and also, the suspension was not approved by the committee before the expiry of 15 days as per the requirement of Bye-laws 44 of CBSE bye-laws.

(8). Learned counsel for respondent No.3 further averred that without withdrawing the first charge sheet, he was issued second charge sheet on 2.9.2013 on the same set of allegations. Neither his request for inspection of record was accepted affecting his defence nor was given personal hearing. It is vehemently urged that list of documents which were relevant and duly accepted by the inquiry officer was not supplied. He further submitted that the disciplinary authority was required to furnish a copy of the enquiry report before concurring with the findings recorded by the Enquiry Officer, to respondent No.3. Instead the report was forwarded to him while proposing the penalty of dismissal. Even the prior approval of the Managing Committee was not obtained, thereby violating Bye-laws 47 (1) (d) (iv) and 47 (2).

(9). Heard learned counsel for the parties and gone through the record.

(10). Before proceeding on merits, it is worthwhile to note that while concurring with the findings recorded by the Enquiry Officer, the disciplinary authority furnished to the respondent No.3, a copy of the enquiry report, **at the stage of proposing punishment**, allegedly, in line with the scheme laid down in CBSE Bye-laws.

(11). In **Managing Director ECIL Versus B. Karunakar, 1993(4) SCC 727**, the question whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it, came up for consideration before the Supreme Court. It was held that since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and,

therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject. It further held that in cases where enquiry officer and disciplinary authority are two different entities, the disciplinary authority has to furnish copy of enquiry report to the delinquent before it arrives at its conclusion with regard to the guilt or innocence of the employee in the context of charges levelled against him. The said view was reiterated by the Supreme Court in *Jitender Singh Versus State of Haryana*, 2006(3) RSJ 669 wherein the Supreme Court held that the law laid down in **B. Karunakar's** case (supra) has to be followed even if the rules are silent or do not expressly provide for furnishing of the copy of the report at such stage.

(12). In **Union of India vs. Mohd. Ramzan Khan, (1991) 1 SCC 588**, while considering the supply/non supply of copy of enquiry report to the delinquent and also observing that 42nd Amendment bringing out changes in sub-Article (2) of Article 311 of the Constitution of India, has nothing to do with the supply of copy, the Supreme Court held as under:-

“For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 42nd Amendment. Supply of a copy of the inquiry report along with recommendations, if any, in the matter of

proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position.

Where the disciplinary authority is the Inquiry Officer there is no report. He becomes the first assessing authority to consider the evidence directly for finding out whether the delinquent is guilty and liable to be punished. Even otherwise, the inquiries which are directly handled by the disciplinary authority and those which are allowed to be handled by the Inquiry Officer can easily be classified into two separate groups one, where there is no inquiry report on account of the fact that the disciplinary authority is the Inquiry Officer and inquiries where there is a report on account of the fact that an officer other than the disciplinary authority has been constituted as the Inquiry Officer.

Wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.”

[emphasis supplied]

(13). In this case as well, the enquiry officer and the disciplinary authority are two different entities. Since the enquiry report was not furnished to the respondent No.3 before the disciplinary authority applied its mind to the findings recorded by the enquiry officer, the order of punishment and the subsequent proceedings stands vitiated.

(14). The findings or recommended punishment by the enquiry officer are likely to affect the mind of the disciplinary authority in his concluding the guilt or penalty to be imposed. The delinquent is, therefore, entitled to meet the reasoning, controvert the conclusions reached by the enquiry officer or is entitled to explain the effect of the evidence recorded. Unless the copy of the report is supplied to him, he would be in dark to know the findings, the reasons in support thereof or nature of the recommendation on penalty. He would point out all the factual or legal errors committed by the enquiry officer. He may also persuade the disciplinary authority that the finding is based on no evidence or the relevant material evidence was not considered or overlooked by the enquiry officer in coming to the conclusions, with a view to persuade the disciplinary authority to disagree with the enquiry officer and to consider his innocence of the charge, or even that the guilt as to the misconduct has not been established on the evidence on records or disabuse the initial impression formed in the minds of the disciplinary authority on consideration of the enquiry report. Even if the disciplinary authority comes to the conclusion that charge or charges is/are proved, the case may not warrant imposition of any, penalty. He may plead mitigating or extenuating circumstances to impose no punishment or a lesser punishment. For this purpose the delinquent needs reasonable opportunity or fair play in action.

(15). The supply of the copy of the report is neither an empty formality, nor a ritual, but aims to digress the direction of the disciplinary authority from his derivative conclusions from the report to the palliative path of fair consideration. The denial of the supply of the copy, therefore, causes to the delinquent a grave prejudice and avoidable injustice which cannot be cured or

mitigated in appeal or at a challenge under Article 226 of the Constitution or other relevant provisions. *Ex post facto* opportunity does not efface the past impression formed by the disciplinary authority against the delinquent, however, professedly to be fair to the delinquent. The lurking suspicion always lingers in the mind of the delinquent that the disciplinary authority was not objective and he was treated unfairly. To alleviate such an impression and to prevent injustice or miscarriage of justice at the threshold, the disciplinary authority should supply the copy of the report, consider objectively the records, the evidence, the report and the explanation offered by the delinquent and make up his mind on proof of the charge or the nature of the penalty. The supply of the copy of the report is thus, a sine qua non for a valid, fair, just and proper procedure to defend the delinquent himself effectively and efficaciously. The denial thereof is offending not only Article 311(2) but also violates Arts. 14 and 21 of the Constitution. The Court must act and appear to act without partiality and without prejudice or as it is often expressed, "justice should not only be done but should manifestly and undoubtedly seem to be done".

(16). In so far as the contention of the petitioner that CBSE Byelaws does not provide for any power or authority to the School to supply copy of the report, the said contention is liable to be negated as the natural justice is implied by the Courts when the parent statute under which an action is being taken by the Administration is silent as to its application. Omission to mention the right of hearing in the statutory provision does not *ipso facto* exclude a hearing to the affected person. Reference can be made to **Karnataka Public Service Commission vs. B.M. Vijay Shankar, 1992 SCC (2) 206.**

- (17). Even otherwise, no prejudice has been caused to the petitioner-School *inasmuch* as the Tribunal has rightly straightened the technical and procedural defects by giving liberty to the petitioner-School to proceed with the matter from the stage it was to supply copy of the enquiry report to the respondent No.3 and thereafter, the disciplinary authority may pass fresh orders.
- (18). This Court is of the considered view that there is no legal, factual or procedural infirmity or illegality in the impugned order passed by the Educational Tribunal and as such, no interference is called by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India.
- (19). Accordingly, this writ petition is dismissed.

13.07.2023
V.Vishal

(Sandeep Moudgil)
Judge

- 1. *Whether speaking/reasoned?*
- 2. *Whether reportable?*

Yes/No
Yes/No