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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision: 30.07.2024

1) CWP-17862-2019

DYAL SINGH COLLEGE TRUST SOCIETY (REGD.), KARNAL

...Petitioner(s)

Versus

EDUCATIONAL TRIBUNAL FOR EDUCATION INSTITUTIONS AT
KARNAL AND ANOTHER

...Respondent(s)

2) CWP-8775-2019

MUNISH SAINI

...Petitioner(s)

Versus

EDUCATION TRIBUNAL FOR EDUCATIONAL INSTITUTIONS AT
KARNAL AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Shvetanshu Goel, Advocate and Mr. Shrey Goel, Advocate
for the petitioner.
(in CWP-8775-2019)
for respondent No.2 (in CWP-17862-2019)

Mr. R. K. Malik, Senior Advocate with
Mr. Anshul Labana, Advocate, for the petitioner.
(in CWP-17862-2019)
for respondent No.2 (in CWP-8775-2019)

TRIBHUVAN DAHIYA, J. (Oral)

These petitions are being decided together as the same have been
filed against the impugned judgment dated 07.12.2018, Annexure P-4, passed
by the Educational Tribunal, Karnal, whereby holding the dismissal from
service to be bad in law, the employee was held entitled to damages
equivalent to two years' salary.



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2. For brevity, the facts are being taken from Civil Writ Petition No.17862 of 2019. The second respondent was initially appointed as teacher on temporary basis in the School being run by the petitioner Society/Management (hereinafter referred to as 'the Management') in 1992. His services were later regularised as Primary Teacher/PRT Mathematics in April, 1993, and was appointed/promoted as Trained Graduate Teacher/TGT Mathematics on 02.04.1999. On 06.02.2012, father of a lady colleague filed a complaint against him alleging misbehaviour with her daughter. A fact finding inquiry was conducted by the General Manager, who submitted his report on 08.02.2012. Thereafter, a charge sheet was served upon the second respondent vide memo dated 21.02.2012, Annexure P-1. The statement of Articles of Charge reads as under:

Misbehaviour with colleague

1. You have been misbehaving with Miss Arti Vohra, TGT (Science) since 1999.
2. You misbehaved with her on 02nd December, 2009 and shouted upon her in the staff room in the presence of Mrs. Alpana Chaudhari, TGT (Social Studies) and Mrs. Savita Gupta, TGT, Sanskrit (Retd.)
3. During Dec. 2011, Miss Arti Vohra was waiting outside the examination room for depositing her answer sheets along with other teachers. You came there and hit her with your elbow so as to deposit the answer sheets in your possession without waiting for your turn. Mrs. Sangeeta Singh, PRT, Dyal Singh Public School, Dyal Singh Colony was collecting the sheets.



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4. On 03.02.2012, around 04:30 p.m., your wife Mrs. Bhawna Saini alongwith an another lady reached Miss Arti Vohra's house and abused Arti Vohra. Soon after you also reached Ms. Arti Vohra's house and shouted upon her, abused her and used indecent language. You thus failed to maintain proper decorum expected from a TGT teacher.

2.1 After considering his reply, a four members' Committee was constituted to conduct regular inquiry, vide office order dated 07.03.2012. The Committee submitted its report, dated 28.05.2012, holding that all the charges against the second respondent stood proved. Thereupon, notice, dated 15.06.2012, was issued proposing the punishment of dismissal from service under Rule 27(ii)(c) of the Dyal Singh Public School Employees (Service, Recruitment, Conduct and Discipline), Rules, 2000 (hereinafter referred to as 'the Service Rules'). Considering his reply to the notice and after granting personal hearing, Chairman of the Managing Committee, vide order dated 16.01.2013, dismissed the second respondent from service.

2.2 The order of dismissal was challenged by him by filing an appeal before the Educational Tribunal. It was partly allowed vide impugned judgment dated 07.12.2018, holding the dismissal bad in law, and directing the Management to pay damages equivalent to two years' salary, instead of reinstatement. The Tribunal held that the alleged misconduct/misbehaviour of the second respondent was wrongly given the colour of sexual harassment, asking the Committee constituted in compliance of directions issued by the Supreme Court in *Vishaka and others v. State of Rajasthan and others*, 1997(6) SCC 241, to hold an inquiry. Although the charge sheet was served



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under the Service Rules, the inquiry was entrusted to the Committee constituted to look into sexual harassment allegations despite the fact that the alleged misconduct did not constitute sexual harassment. Secondly, the charge sheet upon the second respondent was served by the Chairman, whereas in terms of the Service Rules, General Manager was the appointing as well as disciplinary and punishing authority. Therefore, the Chairman was not competent to pass the impugned order. The findings of the Tribunal to this effect are as under:

14. Again there was no reference to sexual harassment. The imputation was that the appellant had failed to maintain cordial relations with his colleagues and that he has used abusive language and conducted himself in disrespectful manner. There was reference to Rule 25 (i) (ii) of the Rules 2000 and also clauses 13 (2) and 13 (4) of the agreement. Needless to say that if the authorities were of the opinion that conduct required an enquiry to find out if it had sexual undertone/orientation only then it could have referred the matter to a committee constituted in compliance with the guidelines issued in Vishakha's case (supra). In that eventuality, there would have been no need to serve a charge sheet under the rules of 2000. The fact remains that the charge sheet was served under rules of 2000 but, the inquiry was entrusted to a committee constituted under the guidelines issued in Vishakha's case (supra). This has caused prejudice to the appellant. When a committee which is required to look into the allegations on sexual harassment is asked to hold



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enquiry into the general misconduct/misbehaviour of an employee, it is obvious that the disciplinary authorities want the official to be nailed. No wonder that while referring to charge No.3, the committee in its report took the allegations as constituting sexual assault/sexual harassment! In this way, what could have been an act of misconduct/misbehaviour was given the colour of sexual harassment. The Chairman of the School Managing Committee while issuing show cause notice proposing punishment also treated the matter as if the complainant was a victim of sexual harassment. Perhaps, this is what prompted him to award the extreme penalty of dismissal from service.

15. In view of the discussion foregoing, the entire proceedings stand vitiated. This apart, the appointing authority of the plaintiff is the General Manager. As per the rules of 2000 he was to be the disciplinary and punishing authority. However, it is the Chairman of the School Managing Committee who served the charge sheet and constituted committee to hold enquiry. It is he, who passed the order of punishment. I find no substance in the explanation by the respondents that the General Manager is junior to the trustees and Chairman of the School Managing Committee, therefore there was no illegality if the Chairman of the School Managing Committee passed the order of dismissal. The law is settled that when rules lay down a procedure, it has to be followed to the hilt. The authorities cannot twist and tweak the procedure to their convenience. If the rules provide that a



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particular person will be the disciplinary and punishing authority, none else can assume that role even if he is senior in position to the one actually designated as a disciplinary/punishing authority. It is worth mention that as per Rule 29 of the rules of 2000, the authority next to the appointing authority is the appellate authority. If we were to assume that the Chairman of the School Managing Committee is senior to the General Manager, he should have been the appellate authority. Since he assumed the role of disciplinary/punishing authority, where could the appellant go for appeal?

16. All said and done, there is no escape from the conclusion that the respondent tore the fabric of procedural fairness into smithereens in a head long march to ensure that the appellant was administered the severest penalty. Therefore, the order of punishment cannot be sustained and is, hereby, set aside.

2.3 Following the law laid down and keeping in view the fact that the second respondent had sought damages as an alternative to reinstatement, the Tribunal held him entitled to damages equivalent to two years' salary, by holding as under:

17. Having held so, the next question is as to whether the reinstatement of the appellant can be ordered. The law is settled that a contract of personal service cannot ordinarily be specifically enforced except in three situations; firstly, under article 311 of the Constitution of India; secondly, under Industrial Law and; thirdly, where a statutory body has acted in breach of



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violation of the mandatory provisions of the statute. Learned counsel for the appellant would concede that his case is not covered by any of the exceptions. Therefore, reinstatement of the appellant is ruled out.

18. Since the appellant has sought damages as an alternative to reinstatement, let us whether he is so entitled and, if so, what should be the measure for determination. Learned counsel for the appellant would argue that once the order of dismissal has been held to be illegal, there is no option but to grant him damages equivalent to salary from the date of dismissal till date.

3. In this factual background, learned senior counsel for the petitioner/Management has contended that the impugned order is bad in law as a case of sexual harassment was clearly made out against the second respondent, since he allegedly made physical contact and advances, as the charge states, *“he allegedly hit the complainant’s daughter with his elbow, so as to deposit the answer sheets in his possession without waiting for his turn”*. This comes under the definition of sexual harassment as given in *Vishakha* case *ibid*. Secondly, he has contended that the Service Rules had been amended by the Management, vide Agenda Item No.7, in the meeting of Dyal Singh College Trust Society, Karnal, dated 21.03.2022, Annexure P-5. After the amendment, powers and functions of the Chairman were laid down, which included disciplinary powers as well. Clause (viii) thereof giving administrative powers to the Chairman prescribes:



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(viii) Disciplinary Powers: he shall exercise powers to take disciplinary action against staff as per Dyal Singh Public School employees Discipline Rules.

Accordingly, the Tribunal was wrong in holding that Chairman was not the competent authority to dismiss the second respondent from service. *Thirdly*, it has been contended that even if it is assumed that due procedure was not followed in taking action against the second respondent, the appropriate course for the Tribunal was to remand the matter for fresh inquiry, instead of awarding him damages. *Lastly*, it has been contended that the impugned award has been accepted by the second respondent as the Management has paid two years' salary in the form of damages which were accepted by him without protest on 05.03.2019. The connected petition, Civil Writ Petition No.8775 of 2019, filed by him to challenge the judgment of the Tribunal is, therefore, not maintainable.

4. Learned counsel for the second respondent, on the contrary, contends that the petitioner is aggrieved against the Tribunal's finding only to the extent he has been awarded damages instead of reinstatement. And by filing the connected petition he has only sought modification of the impugned judgment to the extent he should be held entitled to reinstatement instead. In the alternative, it is contended that the amount of damages awarded by the Tribunal is on a lower side. Keeping in view the fact that the second respondent remained in service for over twenty years with unblemished record, and would have retired in 2027, the amount of damages needs to be enhanced.



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5. Submissions made by learned counsel for the parties have been considered.

6. Charges against the second respondent pertain to misbehaviour with a female colleague. The definition of sexual harassment as per guidelines issued in *Vishakha* case (*supra*), is as under:

Sexual Harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- a) physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually-coloured remarks;
- d) showing pornography;
- e) any other unwelcome physical verbal or non-verbal

conduct of sexual nature.

A perusal of the definition shows, sexual harassment has been defined to include any unwelcome sexually determined behaviour, like physical contact and advances, request for sexual favours, sexually coloured remarks, showing pornography, etc. There are no allegations of unwelcome sexually determined behaviour or physical contact for sexual favours against the second respondent. Mere physical contact in the form of 'hitting a female colleague with elbow so as to deposit the answer sheets without waiting for his turn', does not even *prima facie* amount to sexual harassment or unwelcome behaviour having sexually undertone. A physical contact in itself would not constitute sexual harassment, unless it has an undesirable sexual implication. In the instant case, even an allegation of such nature has not been levelled.

Therefore, the charges against the second respondent were meant to be



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enquired into as those of alleged misconduct under the Service Rules. Referring the inquiry to the Committee constituted to look into sexual harassment of employees in terms of the guidelines of *Vishakha* case (*supra*), was a clear violation of the prescribed procedure. Therefore, no exception to be taken to the Tribunal's findings to that extent.

7. It remains undisputed that in the meeting of Dyal Singh College Trust on 21.03.2002, the Chairman has been conferred powers to take disciplinary action against staff/employees of the School under the Service Rules. The said amendment was not brought to the notice of the Tribunal, resultantly it was held in the impugned judgment that the General Manager was the competent authority to take disciplinary action against the second respondent, instead of the Chairman. The finding being contrary to the Service Rules is not sustainable, and is hereby set aside.

8. Since the prescribed procedure to hold inquiry into the charges against the second respondent in terms of the Service Rules was not followed, as discussed hereinabove, the proper course for the Tribunal was to remand the matter to the Management to hold the inquiry afresh in accordance with law before taking any disciplinary action against him. This is because, once the procedure required to be followed to take action gets vitiated, its outcome, that is, the decision taken on that basis, cannot be termed legal. Due procedure is an indispensable feature of the fundamental principle of *audi alteram partem*; failure to comply with the same itself renders the decision illegal and contrary to the procedure established by law. Accordingly, the order of dismissal, dated 16.01.2013, having been passed without following due procedure is illegal and *non-est* in the eyes of law.



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9. Accordingly, the impugned judgment of the Tribunal dated 07.12.2018 as well as the order of dismissal dated 16.01.2013, passed against the second respondent are hereby set aside, directing the Management to conduct fresh enquiry against the second respondent in accordance with the Service Rules, and take appropriate action, as may be required, on that basis.
10. The amount of damages paid to the second respondent in terms of the impugned judgment, dated 07.12.2018, shall be subject to final outcome of the disciplinary proceedings against him.
11. The petitions stand disposed of accordingly.
12. A photocopy of this order be placed on the connected file.

(TRIBHUVAN DAHIYA)
JUDGE

30.07.2024
Ad

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>