



CWP-7164-2015 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CWP-7164-2015 (O&M)
Date of Decision: 05.02.2025**

Chand Kishore**...Petitioner(s)**

Versus

State of Haryana and others**...Respondent(s)****CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present:- Mr. R.K. Malik, Senior Advocate, with
Mr. Ankur Sheoran, Advocate for the petitioner

Mr. Rohit Arya, Deputy Advocate General, Haryana

Mr. Balkar Singh, Advocate, for
Mr. Ramesh Malik, Advocate for respondent no.3

Mr. Roopak Bansal, Advocate for applicant in
CM-4266-CWP-2016

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed seeking a writ of *certiorari* quashing the memorandum dated 27.02.2015, Annexure P-20, whereby the government has expressed its opinion provisionally to impose the penalty of dismissal from service on the petitioner who has been given an opportunity to show cause against it.

2. Facts relevant to decide the matter are, the petitioner was appointed as JBT Teacher in the respondent Department on 12.03.1994. Later, he was appointed as Science Master by way of direct recruitment on 01.09.1997, and again as Head Master by direct recruitment on 01.02.2008.



While working as Head Master at Government High School, Beeswanmeel Rai, Sonipat, he was issued a chargesheet dated 11.11.2011, Annexure P-10, on the following three charges:

1. That while working as Science Master at GGHS, Sonapat, he has given excessive corporal punishment to Ms. Suman a girl student of class 10th. This act of Sh. Chand Kishore was totally against the cannons of Conduct Rules and has shown irresponsibility to perform his duty in a decent manner especially his act of attacking the private organs of the girl student of a tender age was totally against the moral decency.
2. That he has stopped the salary of Smt. Shakuntla Devi, former Head Teacher, Govt. Primary School, Biswanmoel, Sonapat from May, 2010 to July, 2010 without specific and definite reasons and consequently, officers of the Department had to face the National Commission for Schedule Caste, Govt. of India, New Delhi.
3. That inspite of his transfer from GHS Biswanmeel (Sonapat) to Govt. High School, Barotha (Sonapat) on administrative grounds vide order No. 5/24-2009 HRG-II (2) dated 24.3.2011 and further on being relieved on the afternoon of 28.3.2011, he has not joined at the new station till 6.4.2011.

2.1. The petitioner replied to the chargesheet and a regular disciplinary enquiry was initiated against him. The enquiry officer, vide his report dated 20.09.2013, absolved the petitioner of all the charges. The disciplinary authority, however, differed with the findings of enquiry officer regarding charge no.1, and recorded a note that it was incumbent upon him to look into the statement of the aggrieved student (third respondent herein) alleging excessive corporal punishment which was given during the preliminary enquiry conducted by the Managing Director, Cooperative Sugar Mills Limited, Sonipat, and also its report dated 12.11.2001; but the enquiry officer failed to



make any reference to the same. The dissenting note dated 31.10.2013, reads as under:

Regarding charge No.1, in the list of documents, enquiry report dated 12.11.2001 conducted by the then Managing Director, Cooperative Sugar Mills Ltd., Sonipat is a part, whereas no reference of the same has been made in the enquiry report submitted by the regular enquiry officer. Further, in the enquiry report dated 12.11.2001, it has been concluded on the basis of statement of Ms. Suman Bala - the aggrieved student that excessive corporal punishment has been inflicted upon her and has behaved with her in an indecent manner as alleged in the chargesheet. In such sensitive issues of moral indecency with a girl student by the charge-sheeted teacher, it was incumbent upon the enquiry officer to have looked into this aspect critically, which he has failed to do so. The statement of the said girl student at the relevant time in 2001 before a senior HCS officer posted as MD, Sugar Mills cannot absolve the incumbent of the charge and there is not a scintilla of doubt that that statement proves the charge to the extent enunciated above especially in view of the fact that the said girl student Ms. Suman Bala has not made any statement before the regular enquiry officer appointed in the disciplinary matter.

2.2. The petitioner replied to the dissenting notice vide letter dated 04.12.2013, Annexure P-15, mentioning that there was no basis to disagree with the findings recorded by the enquiry officer; the girl student/third respondent was not even cited as a witness against the petitioner during the enquiry and could not have been examined. The Department, however, proceeded with the matter and issued the impugned memorandum, dated 27.02.2015, proposing the penalty of dismissal from service against the petitioner.

2.3. Another important fact needs mention here that the third respondent, the alleged victim of harassment at the hands of the petitioner, has



filed written statement to the effect that he had never misbehaved with her at any stage. The complaint against the petitioner was managed by the then School Principal who nursed a grudge against the former and wanted to settle personal scores. The third respondent was misguided and enticed by the Principal to file the complaint through her father. The stand taken by her in the written statement is as follows:

The actual facts are that when the answering respondent was a student of 10th class in the year 2000-2001 she was only asked by the petitioner to do the homework properly since she was a relatively weak in studies. The petitioner had not even touched the answering respondent much less to speak of touching her inappropriately. However the then Principal of the School Smt. Lajwanti, who was having her own grudge against the petitioner and wanted to settle score with him, tried to misuse the childhood brain of the answering respondent. She in collusion with some other private persons had already engineered some complaint, allegedly in the name of the father of the answering respondent against the petitioner through some official of the vigilance department. Although that complaint was never shown to the answering respondent, however, on the writing of the vigilance official a fact-finding enquiry was held in the matter by the then Managing Director of the Cooperative Sugar Mills Sonipat in the year 2001. At the time of enquiry the then principal of the school Smt. Lajwanti had pressurized, misguided and enticed the answering respondent to make a statement against the petitioner in lieu of promising her to help her in passing the matriculation. Due to misguidance and the immature nature at that time; the answering respondent fell prey to the design of the then Principal and had made a statement against the petitioner at the time of enquiry. However in the year 2001 itself when the petitioner made to sit together some elderly and respectable persons then the answering respondent had realized her mistake and therefore it was clarified



that the petitioner was not at fault and that everything had been created against him due to misunderstanding and on misguidance. Therefore this matter was laid to rest in the year 2001 itself and a written understanding to this effect was recorded in the presence of elderly and respectable persons. That written understanding is already attached by the petitioner with the writ petition as Annexure P-6. Hence so far as the answering respondent is concerned absolutely no matter was left against the petitioner after 2001. And even before that the allegation was fabricated against the petitioner by vested interests and the answering respondent could be misused by them because of immature nature at that point of time. All subsequent complaints against the petitioner using the name of the answering respondent or her father are totally false and fabricated. The answering respondent has no connection or concern with those complaints on the basis of which the enquiry against the petitioner has been conducted and is being continued.

3. In this background, learned senior counsel contends that the petitioner has been harassed and humiliated by issuing the chargesheet and the impugned memorandum, though there is no material on record against him and stands exonerated in the disciplinary enquiry as well. The dissenting note has been recorded on unfounded and baseless grounds, by relying upon a statement of the third respondent who was not a witness before the enquiry officer. Besides, she herself has filed a written statement before this Court alleging false implication of the petitioner for ulterior motives. He has been denied promotions on account of the impugned memorandum, though his juniors already stand promoted.

4. *Per contra*, learned State counsel has made a reference to the written statement and contended that the impugned memorandum has been rightly issued. He, however, could not dispute that the third respondent was not



5. Learned counsel for the third respondent, however, contends that it's a clear case of false implication of the petitioner. The complaint against him was made by the third respondent only on account of having been misguided by the then Principal.

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

7. The petitioner was charge-sheeted for three charges, reproduced hereinbefore, and none of those could be proved against him as per findings recorded by the enquiry officer in his report, dated 20.09.2013. The disciplinary authority, however, differed with the findings on charge no.1, that too on account of non-examination of the concerned girl student/third respondent who had given a statement during the preliminary/fact finding enquiry. The dissenting note states, *'statement of the said girl student at the relevant time in 2001 before a senior HCS officer posted as MD, Sugar Mills ... proves the charge to the extent enunciated above especially in view of the fact that the said girl student Ms. S has not made any statement before the regular enquiry officer'*. It remains a conceded position on record that the third respondent was not cited as a witness during the disciplinary proceedings. Consequently, her non-examination cannot be a ground to differ with the findings recorded by the enquiry officer on the basis of material placed before him and the witnesses examined. Also, a statement recorded during fact-finding enquiry cannot have a bearing on the regular disciplinary enquiry conducted to enquire into the charges levelled. Still further, the said witness/ third respondent has not only denied the allegations against the petitioner but has also affirmed his false implication. The allegations were a result of her having been misguided in an



Principal through her father to settle personal scores. Such a complaint made by a minor, who denies the same on gaining majority and explains it as a case of false implication for *mala fide* reasons, cannot be a basis to initiate action or conclude anything against a delinquent. Accordingly, the dissenting note has no legal basis to stand upon, as also the impugned memorandum which has been issued solely on that basis.

8. Consequently, the writ petition is allowed, the impugned memorandum, dated 27.02.2015, is set aside. The respondents are directed to proceed with the matter and take a final decision in the disciplinary proceedings against the petitioner on the basis of enquiry report, dated 20.09.2013, without taking into account the dissenting note, dated 31.10.2013, which is illegal. The entire exercise shall be concluded by the first respondent/Financial Commissioner and Principal Secretary to Govt. of Haryana, Department of School Education, within a period of three months of receiving a certified copy of the order.

9. Pending application(s), if any, also stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

05.02.2025
Payal

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No