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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.88/2004

New Delhi, this the 14th day of October, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

H.P.Sharma
J-83, Vikas Puri
New Delhi.
Former Principal
Jawahar Navodaya Vidyalaya
Kurukshetra (Haryana). ... Applicant

(By Advocate: Sh. P.V.Dinesh)

Versus

1. The Chairman
Navodaya Vidyalaya Samiti
Ministry of H.R.D., Govt. of India
Shastri Bhavan
New Delhi.
2. The Commissioner
Navodaya Vidyalaya Samiti
Indira Gandhi Stadium
I.P.Estate, New Delhi – 02. .. Respondents

(By Advocate: Sh. S.Rajjappa)

O R D E R

By Mr. Justice V.S. Aggarwal:

By virtue of the present application, applicant (H.P.Sharma), former Principal of Jawahar Navodaya Vidyalaya, seeks quashing of the Notification of Navodaya Vidyalaya Samiti of 20.12.2003 to be ultra vires to the provisions of the Constitution and violative of Article 311 of the Constitution. He further seeks a direction to set aside the impugned order of 13.6.2003 and the appellate order passed thereafter dismissing the appeal. Needless to state that vide the impugned order, the services of the applicant had been terminated with immediate effect.

2. Some of the relevant facts are that the applicant joined Navodaya Vidyalaya Samiti on 21.7.1988 and was absorbed permanently on 1.9.1992. On 28.1.2003, he received a complaint from a girl student of Class-X alleging

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molestation against the Mathematics Teacher Shri Rajesh Kumar. The applicant had marked the matter to Vice Principal, Ms. Anju Gupta to conduct an inquiry. The applicant submitted an application to the Deputy Director for Earned Leave from 3.2.2003 to 15.2.2003 on the ground of illness. However, he was suspended on 4.2.2003 mentioning that the disciplinary proceedings against him is contemplated. It is alleged that a complaint was filed by a girl student of Class-X of immoral sexual behaviour by him towards her. The applicant's plea is that the complaint was on the basis of a conspiracy and external influence and his services have been terminated by the impugned order and his appeal even has been dismissed.

3. The applicant contends that (a) the appeal has been dismissed by the same authority who passed the earlier order; (b) the girl student and her father have already informed that they have written the same under the pressure and instigation of some notorious elements; and (c) the Notification which permits summary of termination of the services dispensing with the detailed inquiry dated 20.12.1993 is ultra vires to the provisions of the Constitution.

4. In the reply filed, it is asserted that on 2.2.2003, the applicant had submitted his resignation from the post of Principal and this letter was addressed to Deputy Director, Navodaya Vidyalaya Samiti, and thereafter, the applicant had proceeded on leave. It is stated that the act of procurement of letter from the girl student only confirms that incident took place. It is reiterated that the impugned Notification is valid.

5. We have heard the parties' counsel and have seen the relevant record.

6. So far as the first contention of the applicant to which we have referred to above is concerned, perusal of the impugned order dated 13.6.2003 clearly indicates that the order of terminating the services of the applicant was passed holding:



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"Whereas a complaint of moral turpitude involving exhibition of immoral sexual behaviour towards a girl student was received against Shri H.P.Sharma, Principal while he was posted at JNV Kurukshetra (Haryana).

And whereas an inquiry conducted regarding these charges has established that the said Shri H.P.Sharma is *prima facie* guilty of moral turpitude involving exhibition of immoral sexual behaviour towards a girl student of Class X of JNV, Kurukshetra.

And whereas it is felt that it is not expedient and practicable to hold a regular inquiry under the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 in the matter on account of serious embarrassment it will cause to the concerned student and her guardians.

Now, therefore, the undersigned in the capacity of Director (now Commissioner), Navodaya Vidyalaya Samiti in exercise of the powers conferred under the provisions of the notification no.F.14-2/93-NVS(Vig.) dated 20.12.1993 of Navodaya Vidyalaya Samiti, hereby terminates the services of the said Shri H.P.Sharma, Principal with immediate effect. Shri H.P.Sharma will be paid pay and allowances for three months as admissible under the rules in lieu of the notice period."

7. The order had been passed by the Commissioner of Navodaya Vidyalaya Samiti. The applicant preferred an appeal. Perusal of the order clearly indicates that in fact, it was an order passed by the Chairman, Navodaya Vidyalaya Samiti being the appellate authority. This is clear from the following lines in the said order:

"And whereas an appeal dated 26.06.2003 has been submitted by the said Shri H.P.Sharma against the orders dated 13.06.2003 terminating his services in the Samiti.

Now it is informed that the said appeal submitted by Shri H.P.Sharma has been duly considered by the Chairman, Navodaya Vidyalaya Samiti as appellate authority.

8. This clearly shows and it clearly indicates that he is only communicating the order that had been passed by the Chairman. Resultantly, the contention that the order passed in appeal is not valid, which had been passed by the disciplinary authority, must be rejected.



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9. It was the second submission which was seriously pressed. Strong reliance was placed on the fact that the girl student and her father have now given in writing that they have written the same under pressure and instigation of some notorious elements. In this regard, reliance was being placed on the affidavit that has been so filed.

10. On appraisal of the fact, we find that this clearly is an event/fact which should be ignored. Once the complaint was made by the girl student, the applicant resigned from the service. However, an inquiry was conducted. The applicant was placed under suspension when, in fact, he proceeded on leave. The very fact that he immediately resigned indicates volumes about the correctness of the allegations made by the girl student. After months of the same, the affidavit which is now being produced, must be taken to be a procured affidavit. At this stage, thus, the same deserves to be ignored.

11. In that event, it was urged by the learned counsel for the applicant that the Notification dated 20.12.1993 which permits termination of the services who is found *prima facie* guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student, was violative of Article 311 of the Constitution.

12. Part-B of the said Notification, which is being impugned, reads:

"Whenever the Director is satisfied, after such summary enquiry as he deems proper and practicable in the circumstances of the case, that any member of the Navodaya Vidyalaya is *prima facie* guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student, he can terminate the services of that employee by giving him one month's or three months' pay and allowances depending upon whether the guilty employee is temporary or permanent in the services of the Samiti. In such cases, procedure prescribed for holding enquiry for imposing major penalty in accordance with CCS (CCA) Rules, 1965, as applicable to the employees of Navodaya Vidyalaya Samiti, shall be dispensed with, provided, that the Director is of the opinion that it is not expedient to hold regular enquiry on account of serious embarrassment to the student or his guardians or such other practical difficulties. The Director shall record in writing the reasons under which it is not reasonably practicable to hold such enquiry

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and he shall keep the Chairman of the Samiti informed of the circumstances leading to such termination of services."

13. In the case of AVINASH NAGRA v. NAVODAYA VIDYALAYA SAMITI AND OTHERS, (1997) 2 SCC 534, though the facts were little different, the Supreme Court held:

"In our considered view, the Director has correctly taken the decision not to conduct any enquiry exposing the students and modesty of the girl and to terminate the services of the appellant by giving one month's salary and allowances in lieu of notice as he is a temporary employee under probation".

However, the Court goes on to say:

"In the circumstances, it is very hazardous to expose the young girls to tardy process of cross-examination."

14. This again came up for consideration before the Supreme Court in the case of DIRECTOR, NAVODAYA VIDYALAYA SAMITI & ORS. v. BABBAN PRASAD YADAV AND ANR., 2004(2) SCALE 400. In that case, a termination order was passed. The applicant had challenged the same. The regular departmental inquiry was not held to be expedient. The Tribunal had dismissed the application but the High Court had set aside that order. However, the Supreme Court held:

"5. All that is required for the Court is to be satisfied that the pre-conditions to the exercise of power under the said rule are fulfilled. These preconditions are (1) holding of summary inquiry; (2) a finding in such summary inquiry that the charged employee was guilty of moral turpitude; (3) the satisfaction of the Director on the basis of such summary inquiry that the charged officer was *prima facie* guilty; (4) the satisfaction of the Director that it was not expedient to hold an inquiry on account of serious embarrassment to be caused to the students or his guardians or such other practical difficulties; and finally (5) the recording of reasons in writing in support of the aforesaid.

6. In this case, all the pre-conditions have been fulfilled. An enquiry Committee was duly constituted. It held an enquiry and came to the conclusion that the respondent was guilty of the offence with which he was charged, namely, writing love letters to the student in question. The Director has recorded the reasons for

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dispensing with a regular enquiry, reasons which have been upheld as being valid in the decision in *Avinash Nagar* (supra), wherein this Court has held:

“With a view to ensure safety and security to the girl students, to protect their modesty and prevent their unnecessary exposure at an enquiry in relation to the conduct of a teacher resulting in sexual harassment of the girl student etc. involving misconduct or moral turpitude, resolution prescribing special summary procedure was proposed and published by notification dated 23.12.1993, after due approval of the Executives of the respondent Samiti. The Minister of Human Resources and Development, Government of India in its Chairman. It is seen that the rules wisely devised have given the power to the Director, the highest authority in the management of the institution to take decision, based on the fact-situation, whether a summary enquiry was necessary or he can dispense with the services of the appellant by giving pay in lieu of noice. Two safeguards have been provided namely, he should record reasons for his decision not to conduct an enquiry under the rules and also post with facts the information with Minister Human Resources department Government of India in that behalf.”

Thereafter, the Supreme Court further went on to hold:

“9. The last observation was not based on the fact that the employee in that case was a probationer at all. Indeed the embarrassment to the girl student would hardly be different merely because the alleged offender is a permanent employee. Besides under Article 311 (2) itself an enquiry may be dispensed with under certain circumstances. We have no doubt that those circumstances may include a situation as indicated in the rule of the institution as mentioned herein before.”

15. When the matter is examined on the touch stone of the aforesaid, we have least hesitation in concluding that the procedure cannot be taken to be arbitrary or ultra vires to the provisions of Article 311. This has been so enacted to ensure that young girl student or any such similar student is not asked to stand as witness in which cross-examination would be effected. They would be subjected to personal questions at their young age which should be avoided. The

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direction must formulate an opinion that it is not expedient to hold the regular inquiry. If such is the situation that it is not expedient to hold such an inquiry, particularly in the case of a girl student, dispensing with the same cannot be taken to be arbitrary. Even in Article 311 (2)(b) of the Constitution, if the concerned authority feels that it is not reasonably practicable to hold the inquiry, it can be dispensed with. Therefore, we find no reason to hold that the said procedure must be held to be ultra vires of the provisions of the Article 311 of the Constitution.

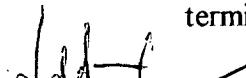
16. However, the Supreme Court in the case of *Babban Prasad Yadav and Anr.* (supra) had further directed that an opportunity should be given to tender unconditional resignation with effect from the date of the order of termination. The findings of the Supreme Court are:

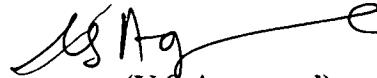
"11. In the circumstances, we allow the writ petition and set aside the order of the High Court. However, having regard to the submissions of the learned counsel appearing for the respondent, we grant the respondent an opportunity to tender his unconditional resignation from the institution with effect from the date of the order of termination. If such letter of resignation is given within a period of four weeks the appellant-institution will accept it. After the acceptance of the resignation the order of termination will be withdrawn by the appellant."

17. When such is the principle that was enunciated therein, we, in the facts of the present case, also find no hesitation in passing the similar order:

(a) We find no reason to interfere in the impugned order.

(b) The applicant may submit a fresh unconditional resignation with effect from the date of the order of termination. If such letter is given, within four weeks, the respondents should accept the same in terms of Supreme Court Judgment and after acceptance, the order of termination will be withdrawn by the respondents.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman