

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1194 OF 2002

ALLAHABAD, THIS THE 8th DAY OF October 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)
HON'BLE MR. S. C. CHAUBE, MEMBER(A)

DR. Indra Datta Pandey,
s/o Late Shri Awadh Bihari Pandey,
r/o 372, Harpur District-Ballia.

.....Applicant

(By Advocate : B.P. Singh)

V E R S U S

1. Union of India through the Secretary, Ministry of Human Resources Development, Department of Education, Govt. of India, New Delhi.
2. Vice-Chairperson, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi-110 016.
3. Commissioner Kendriya Vidyalaya Sangathan, No.18 Institutional Area Saheed Jeet Singh Marg, New Delhi.
4. Assistant Commissioner, Kendriya Vidyalaya Sangathan, (Lucknow Region), Lucknow,

....Respondents

(By Advocate : Shri N.P. Singh)

O R D E R

By Hon'ble Mr. S. C. Chaube, Member (A)

Through this application, the applicant has sought the following reliefs:-

A. to quash the order of termination dated 27.07.02 and the order dated 23.08.2002 vide Annexures (1) & (2) respectively with immediate effect.

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B. to declare Article 81(b) of the Education Code of Kendriya Vidyalaya Sangathan, New Delhi- as ultra vires being arbitrary, unreasonable and in violation of the principles of natural justice.

C. to issue an order or a direction to the respondents to grant all the post-retiring benefits deeming it to be continued in service till the end of ~~the~~ completion of his tenure on 31.07.2001.

2. Briefly, the facts, as per the applicant, are that he was appointed as a post graduate Teacher (Hindi) in Kendriya Vidyalaya on 24.06.1966 and promoted to the post of Principal in the year 1984. In the month of July 1989, the applicant was posted as Principal of Kendriya Vidyalaya Cooch Bihar (West Bengal) where he faced ~~the~~ great indiscipline amongst students of his Vidyalaya who used to consume liquor and indulged in drug abuses in the school hours. The applicant had to take stern action against such elements to maintain the discipline. Most of such indisciplined students, both amongst boys and girls belonged to rich and influential families. Some of the students were also caught red-handed in the red light area where they ~~were~~ visited. Due to stern steps taken by the applicant to enforce ~~the~~ order and discipline amongst teachers as well as students some of the undesirable elements hatched a conspiracy against the applicant to get rid of him. Accordingly, they decided to level ~~the~~ false and fabricated allegations against the applicant with a plan to defame and harass him. A number of students as well as their parents have already ~~been~~ given in writing that the students shall abide by rules and regulations of the Kendriya Vidyalaya and observe ^{and} disciplined/ orderly deportment (O.A./Annexure-4). Further the applicant has alleged that regional bias against the outsiders especially persons coming from North India was there. The applicant has alleged that on 07.11.1992 the alleged incident is only a product of concoction and fabrication under a well planned

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conspiracy. Even the Chairman of the Kendriya Vidyalaya Cooch Bihar was annoyed with the applicant as his son was denied admission for which he held the applicant responsible personally. The applicant has also alleged that Dr. P.C. Bhatt, who was the inquiry officer against the applicant was very friendly with the Chairman of the Kendriya Vidyalaya Cooch Bihar. During the course of the summary enquiry, the enquiry officer Dr. Bhatt had neither supplied a copy of the Telegram, nor even showed the telegram to the applicant. Enquiry Officer sought explanation from the applicant through letter dated 17.11.1992 and reply thereto submitted by the applicant on the same date (Annexure 5 & 6). As a matter of fact, annexure-6, which is a letter dated 17.11.1992 of the applicant addressed to the Education Officer, Kendriya Vidyalaya Sangathan ^{wa} Gohati Region, ^{wa} Gohati is the version of the applicant on the incident of 07.11.1992. Accordingly, he had denied the allegations levelled by the some parents of ^{School} Cooch Bihar/ that another girl of class IXth was molested by Principal Cooch Bihar in his chamber.

3. The applicant has further asserted that during his entire service period from 1966 onwards, no complaint has ever been made against him for his work and conduct except during short duration of his posting at Cooch Bihar. After preliminary enquiry, the services of the applicant were terminated vide order dated 17.02.1993 dispensing ^{with} the regular enquiry under section 81(b) Education Code of K.V. Sangathan, which reads as under:-

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"81(b): Termination of services of an employee found guilty of behaviour towards students"

Where the Commissioner is satisfied after such a summary enquiry as he deems proper and practicable in the circumstances of the case that any member of Kendriya Vidyalaya is prima-facie guilty of moral turpitude involving sexual offence or exhibition of

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immoral sexual behaviour towards any student, he can't terminate the services of that employee by giving him one month's or 3 month's pay and allowances accordingly as the guilty employee is temporary or permanent in the service of the Sangathan. 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 Kendriya Vidyalaya Sangathan, shall be dispensed with provided that, the Commissioner is of the opinion that it is not expedient to hold regular enquiry on account of serious embrassment to the student or his guardian or such other practical difficulties. The Commissioner shall record in writing the reasons under which it is not reasonably practicable to hold such enquiry and he shall keep the Chairman of the Sangathan informed of the circumstances leading to such termination of services."

4. According to the applicant Section 81(b) of Education Code of Kendriya Vidyalaya Sangathan is analogous to Article 311(3) of the Constitution of India.

5. According to the applicant, he filed Civil Rule No. 496/93 (Writ Petition) in which the Hon'ble High Court while upholding the ^{the} virus of Article 81(b), have decided that the respondents ~~petitioners~~ ^{for} did not give opportunity for pre-decisional hearing to the petitioner and therefore, the same procedure violates the principles of natural justice. Accordingly, the respondents' authority was directed by the Hon'ble High Court to issue notice to the applicant and give him an opportunity to represent his case on the materials only available with the respondent authority and the authority concerned shall pass a speaking order after hearing him. Later on, the applicant was transferred to Kendriya Vidyalaya Sangathan Mau, where he joined on 10.12.1996. The work and

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and conduct of the petitioner has been fully satisfactory.

6. According to the applicant, his date of birth was 12.07.1941, as such, he was due for retirement on 12.07.2001 on completion of age of 60 years. As per current practice the applicant continued to work up to 31.07.2001. Vide letter dated 18.07.2001, the applicant was asked to appear before the Commissioner of Kendriya Vidyalaya New Delhi for personal hearing on 24.07.2001 at 10.00am. Further the memorandum letter was enclosed to the summary inquiry report dated 07.11.1992 only in alleged compliance of the order of Hon'ble High Court of ^{W.C.} Gohati after 5 years and after retirement of the applicant. The applicant has further asserted that summary inquiry report dated 19.11.1992 was served on the applicant for the first time on 24.07.2001 along with memo letter dated 18.07.2001 without annexing any documents, statements and complaints etc., relied upon by the inquiry officer.

7. Contrary to the directions of Hon'ble High Court of Gohati, the applicant was not given any opportunity to submit his defence, or to produce any documents or evidence in support of the version. The applicant vide his reply dated 25.07.2001 submitted his defence version in the office of Commissioner on 26.07.2001 without having/sent any materials used against him on record. Thus, he was denied opportunity to peruse materials, complaint, statements or any other materials used against the applicant. His defence was therefore, highly handicapped. Further, according to the applicant, the order of termination was passed on 27.07.2001 after attaining the age of retirement by the applicant without holding any regular enquiry under Article 81(b) of the Education Code of Kendriya Vidyalaya Sangathan, without

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recording any reasons or disclosing any material for granting exemption from enquiry. The applicant was also not permitted to cross-examine prosecution witnesses who allegedly deposed against him during summary enquiry. Further, no personal hearing was provided to the applicant as asserted by him. The inquiry officer passed order on 27.07.2001 endorsing the earlier order dated 17.02.1993 without giving any further opportunity to the applicant as directed by Hon'ble High Court. The order dated 27.07.2001 was challenged by the applicant before this Tribunal through O.A. No. 1286/01. While disposing off the O.A. the Hon'ble Tribunal directed the applicant to file an appeal against the order dated 27.07.2001 and the appellate authority was directed to consider and decide the same in accordance with law within 3 months. According to the applicant, the appeal was filed by him, but the appellate authority had not considered the grounds raised by the applicant and also not given reasons justifying the action under Article 81(b) of Education Code of Kendriya Vidyalaya Sangathan exempting the regular inquiry. Further the applicant was given no opportunity of being heard in conformity with the principles of natural justice. The applicant has also levelled allegations of bias against the appellate authority (4-xxiii, 4-xxiv and 4-xxv). The applicant has further alleged that the appellate authority dismissed his appeal on 23.08.2002 without recording any reasons, which is bad in law.

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8- The respondents, on the other hand, have submitted that the applicant had indulged in the act of exhibition of immoral sexual behaviour towards Km. Swagata Chatterjee, the then student of Class IX of Kendriya Vidyalaya, Cooch Bihar on 7.11.1992.

9. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Guwahati got the summary inquiry conducted by deputing Dr. P.C. Bhatt, the then Education Officer, Regional Office, Guwahati. As per the enquiry report submitted by him, the written statement of ^{the} girl student and her parents and the witnesses, the allegations against the applicant were established, Based on the report, evidence on record, the then Commissioner, Kendriya Vidyalaya Sangathan, terminated the services of the applicant vide order dated 17.11.1993 under the provisions of Article 81(b) of Education Code for Kendriya Vidyalayas by dispensing with the prescribed procedure for holding regular enquiry in accordance with CCS(CCA) Rules, 1965 as the same would cause serious embarrassment to the girl students and ~~their~~ parents.

10. On a petition filed by the applicant before the Hon'ble High Court at Guwahati, the Hon'ble High Court in its order dated 13.8.1996 set-aside the order of termination and directed the respondents to give him an opportunity to present his case on the materials available only with the respondents authority and the authority concerned shall pass a speaking order after hearing the applicant.

11. The respondents have further asserted that the material available with the respondents was provided to the applicant, who came for personal hearing to the office of Commissioner, Kendriya Vidyalaya Sangathan on 26.7.2001 and submitted a representation against the enquiry report.

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The Commissioner after going through all the relevant documents as well as the representation given by the applicant and his assertion during the personal hearing, came to the conclusion that the applicant was *prima facie* guilty of an offence involving moral turpitude. Hence, the services of the applicant were terminated invoking the provisions of Article 81 (b) of Education Code for Kendriya Vidyalayas by his order dated 27.7.2001.

12. The respondents have also asserted that the applicant had filed O.A. no. 1286 of 2001 before Guwahati Bench of the Tribunal, which was disposed of on 27.7.2001 and directed the applicant to file an appeal against the order of termination before the appellate authority. The appeal, as submitted by the applicant, was considered by the then Vice-Chairperson, Kendriya Vidyalaya and ^{after} giving personal hearing to the applicant on 31.7.2002 and 1.8.2002 and taking into account the oral submissions, written oral statement and material on record, passed a reasoned and speaking order dated 23.8.2002, rejecting the appeal of the applicant and confirming the order dated 27.7.2001 of Commissioner, Kendriya Vidyalaya Sangathan. The respondents have next submitted that persistent complaints were received against the principal of similar nature involving moral turpitude. It is also submitted that such facts came to light during the summary enquiry conducted by the Assistant Commissioner, Regional Office, Guwahati on the telegraphic complaint received against him. He had also indulged in misconduct of irregular appointment, for which he was served with a chargesheet vide memo dated 8.5.2001. Further, the order of termination of the applicant has not been stayed by the Hon'ble High Court, according to the respondents, on merits of the case. They have also justified that the provisions of Article 81 (b) of Education Code for Kendriya

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Vidyalaya Sangathan by stating that preliminary enquiry was undertaken because a girl student of Class IX could not bring a false charge against the principal of such a nature, which she knew ^{would} bring a lot of embarrassment to her and her family. Further, during the personal hearing the Commissioner, Kendriya Vidyalaya Sangathan had asked him whether he wishes to see any documents other than what had stated, to which he replied that he ^{not} would/wish to see any more documents, but only craves for mercy. The appeal filed by the applicant was duly considered by the Vice Chairperson, Kendriya Vidyalaya Sangathan, who had given personal hearing to the applicant on 31.7.2002 and 1.8.2002 and after taking into account the oral submission, written & oral statement and material on record, passed a speaking and reasoned order. Thus, according to the respondents, the applicant was given ample opportunity to present his case. More-over, he was personally heard by the Disciplinary and appellate authorities on 26.7.2001 and 31.7.2002. *Dr/M*

13. According to the respondents, the applicant is not entitled for pension and retirement benefits as he was terminated from the services of the Kendriya Vidyalaya Sangathan under the Article 81 (b) of the Education Code of Kendriya Vidyalaya Sangathan.

14. We have perused the pleadings and heard both the counsel for the parties.

15. The main submission advanced by the applicant is that the summary enquiry report dated 19.11.1992 was served on the applicant for the first time on 24.7.2001 without annexing any document, statement, complaint etc. relied- upon by the Enquiry Officer. Thus, he was denied opportunity to peruse the materials likely to be used against him and as such his defence was highly handicapped. Secondly, the applicant was not permitted to cross examine the prosecution witness who allegedly deposed against him during the summary

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enquiry and also no personal hearing was provided to the applicant as contended by him. Similarly, the appellate authority has not considered the grounds raised by the applicant and also not given the reasons justifying the action under Article 81(b) of Education Code of K.V.S. exempting the regular enquiry. On the other hand, the respondents have asserted that the materials available with the respondents was provided to the applicant when he came for personal hearing to the office of Commissioner, K.V.S. on 26.7.2001. Thus, the respondents have followed the directions of the Hon'ble Higher Court, Guwahati on the petition filed by the applicant. The disciplinary authority after going through all the relevant documents as well as the representation given by the applicant and his assertion during the personal hearing concluded that the applicant was prima-facie guilty of an offence involving moral turpitude. The disciplinary authority was satisfied from the summary enquiry conducted that the applicant was guilty of morally turpitude involving sexual offence and exhibition of immoral sexual behaviour towards the girl student of ^{the then} class IX. It also concluded that the holding regular enquiry in such a situation was not expedient in this case as the same may cause serious embarrassment to the victim and her relations. Accordingly, his services were terminated under Article 81(b) of Education Code of KVS.

16. In this connection, we are inclined to recall the judgment of the Hon'ble Supreme Court in the case of Director Navodaya Vidyalaya Samiti & ors. Vs. Babban prasad Yadav & passed
Another/ in Special Leave Petition No. (c) No. 9808 of 2002 decided on 2.5.2003. The Hon'ble Supreme Court has laid down the law that the Court should satisfy itself, about the pre-condition of not holding regular enquiry, if a summary enquiry has been held; a finding in such summary enquiry that the charged employee was guilty of moral turpitude; the satisfaction of the disciplinary authority on the basis of such summary

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enquiry that the charged officer was *prima facie* guilty; and finally the satisfaction of the disciplinary authority that it was not expedient to hold an enquiry on account of serious embarrassment to be caused to the student or her guardians or such other practical difficulties and the recording of the reasons in writing in support of the decision for not holding regular enquiry. We are further inclined to recall to the judgment of Hon'ble Supreme Court in *Avinash Nagra vs. N.V.S.* reported in 1997 (2) SCC 534, where the Hon'ble Supreme Court upheld the exercise of power of the disciplinary authority in dispensing with full scale enquiry. The apex court has further observed that it is very hazardous to expose the young girls to tardy process of cross examination. Their statements were supplied to the appellant and he was given an opportunity to controvert the correctness thereto. Under those circumstances, the conduct of the appellant is un-becoming of a teacher and, therefore, dispensing with regular enquiry under rules and denial of cross-examination are legal and not vitiated by the provisions of principles of natural justice.

17. It is amply clear that the appellate authority in his order dated 23.8.2002 has passed speaking and detailed order giving out the grounds on which the appeal of the applicant has been rejected.

18. We have also perused the contents of the original file NO. 8-66/92-KVS (Vig.) of Kendriya Vidyalaya Sangathan alongwith all original documents containing the order dated 27.7.2001 passed by the Commissioner, KVS on the representation dated 25.7.2001 submitted by the applicant during personal hearing on 26.7.2001. After going through the relevant records, we are of the view that the charges against the applicant are borne-out by the ~~prosecution~~ evidence on record and the decision taken by the disciplinary authority to dispense with the regular enquiry under Rule 81(b) of

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Education Code of KVS is justified.

19. For the aforesaid reasons and the case law cited above, the O.A. is dismissed with no order as to costs.


MEMBER (A)


MEMBER (J)

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