

21

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.593 of 2011

Cuttack this the 16th day of March,, 2015

Bidhu Bhusan Dixit...Applicant


-VERSUS-

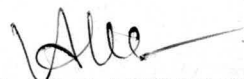
Kendriya Vidyalaya Sangathan...Respondents

FOR INSTRUCTIONS

1.Whether it be referred to reporters or not ? *yes*

2.Whether it be referred to CAT, PB, New Delhi for being referred to various Benches of the Tribunal or not ? *yes*


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

22

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.593 of 2011

Cuttack this the 16th day of March, 2015

CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Bidhu Bhusan Dixit
Aged about 56 years
S/o.late Chintamani Dixit
Ex-PRT, K.V.No.1
Kendriya Vidyalaya, Bhubaneswar
Presently residing At/PO-Salandi Colony
Bypass - Bhadrak
Dist-Bhadrak-756 100
Odisha

...Applicant

By the Advocate(s)-M/s.K.C.Kanungo
H.V.B.R.K.Dora

-VERSUS-

Kendriya Vidyalaya Sangathan represented through

1. Vice Chairman
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg
New delhi-110 001
2. Commissioner,
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg
New delhi-110 001
3. Principal
Kendriya Vidyalaya No.1
Unit-IX
Bhubaneswar
Dist-Khurda
Orissa

...Respondents

By the Advocate(s)-Mr.H.K.Tripathy



ORDER
R.C.MISRA, MEMBER(A):

Applicant has invoked the jurisdiction of this Tribunal in this Original Application seeking the following relief.

“...to admit the Original Application, call for the records of the disciplinary proceeding and be further pleased to quash the preliminary report at Annexure-A/4, the summary enquiry report at Annexure-A/5, the order of punishment at Annexure-A/8 and the order of the appellate authority at Annexure-A/13 for the ends of justice, to direct the respondents for reinstatement of the applicant in service, i.e., dated 23.08.2010 in the interest of justice and to allow any other relief to the applicant or pass any other orders/directions as deemed fit in the circumstances of the case”.

2. The entire gamut of the matter runs thus: Applicant was appointed as a Primary Teacher in the Kendriya Vidyalaya Sangathan(KVS) w.e.f. 17.09.1984 and had completed about 25 years of service. In course of his employment, he was transferred to Kendriya Vidyalaya (in short K.V.) No.1, Bhubaneswar, as Primary Teacher for 2nd shift of the School and joined as such with effect from 20.07.2006. While working as such, he was served with a Memorandum dated 08.12.2009 (A/2) by Respondent No.3 directing him to submit his explanation within 24 hours on his alleged sexual harassment to some girl students. In response to this, applicant submitted his explanation on 09.12.2009(A/3) denying the allegations. Thereafter, a Committee consisting of four members submitted



24

a preliminary enquiry report vide A/4 dated 17.12.2009, probing the allegations leveled against the applicant. On receipt of the preliminary enquiry report, vide Office Order dated 12.02.2010 a Committee ^{consisting of} ~~constituted~~ three Members at the Regional level conducted a summary enquiry at K.V. No.1, Bhubaneswar on 26th and 27th February , 2010 and submitted its report vide A/5 dated 15.03.2010 holding that the applicant was prima-facie guilty of moral turpitude involving sexual offence and exhibition of immoral sexual behavior towards the girls students of Class-V (Section-B) of K.V. No.1, Bhubaneswar. Based on this, applicant was issued with Memorandum dated 02.06.2010(A/6) to show cause as to why his services should not be terminated under Article 81(B) of the Education Code of Kendriya Vidyalaya. In response to this, applicant submitted his written representation dated 16.06.2010, praying therein not to proceed further and to exonerate him of the charges leveled against him. While the matter stood as such, the disciplinary authority (Res.no.2) vide order dated 18.08.2010 terminated the services of the applicant with immediate effect. Being aggrieved, applicant submitted an appeal dated 02.09.2010 (A/9) to the Vice Chairman, Kendriya Vidyalaya Sangathan(Res.1). While the appeal was under consideration, fathers/guardians of the five victim girl students submitted letters to the appellate authority (Res.No.1) and Res.No.2, disclaiming their allegations with a request to consider the case



25

of the applicant sympathetically and to retain him in service. On the request made, applicant was given a personal hearing and finally, the appellate authority vide order dated 06.05.2011(A/13) rejected the appeal. Hence, this Original Application.

3. Applicant has contended that the points urged in his written representation to the summary enquiry report as well as in the appeal have not been taken into consideration by the disciplinary authority as well as the appellate authority and therefore, the orders so passed are bereft of any reason. According to applicant, written complaint of Mrs. Anita Das, Vice Principal (K.V.No.1, 2nd Shift), Mr. K.N.Behera (Headmaster, K.V.No.1, 2nd Shift), Mrs. D. Mishra (K.V.No.1, Primary School Teacher, 2nd Shift) and Mrs.D. Mohanty (PRT, 1st Shift) which were part of the enquiry record were founded on hear-say evidences and would convey that the complaint against applicant was channelized on hear-say evidence. Mrs. D. Mohanty, PRT (1st Shift) being the first link point in the entire episode submitted her statement on 10.12.2009 and the subsequent teacher picked up the thread namely Mrs. Debasmita Mishra, PRT (2nd Shift) who submitted her report on 08.12.2009. It is the case of the applicant that the above act would show that the evidence led was improbable. On the same footing, Mr. Kedarnath Behera (Headmaster, 2nd Shift) and Mrs. Anita Das (Vice Principal, 2nd Shift) stood since their

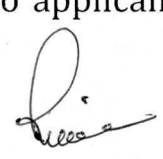


26

statements were dated 08.12.2009. These improbable and fragile evidences though were succinctly pleaded, the disciplinary authority just ignored them. The disciplinary authority having relied on selective evidences by excluding the huge defence evidences for disproving the allegations, the decision so taken by him is bad in law.

4. According to applicant whereas the Preliminary Enquiry Committee on its own volition had taken deposition from 42 available students of Class-V (Section-B & C), 7 School Teachers including Mr. Kedarnath Behera, Headmaster (2nd Shift), ~~but~~ the regional level enquiry Committee, for the reasons best known, did not take into consideration / assess the said deposition. In other words, it is the contention of the applicant that the disciplinary authority while considering the entire matter did not scrutinize the written statements of other students out of whom 22 have overwhelmingly spoken in favour of the applicant and the rest 20 had not stated a single word about the sexual harassment of the applicant but stated the strictness of the applicant towards the students.

5. The Summary Enquiry Committee ignored the evidences of 10 Teachers ^{and} including 1 UDC and the witness Kum. Abhilipsa Behera (Class-V-C) and the version of 42 other students of Class-V (Section-B & C) whereas the Committee believed in the statement of alleged 5 victims and 4 parents as gospel truth. Besides the above, according to applicant, the guardians of all



five victims girls contradicted the entire incident in their letter dated 16.12.2009 addressed to the Collector-cum-Chairman of K.V. No.1, Khurda, Bhubaneswar.

6. It is also the case of the applicant that the appellate authority confirmed the order of punishment in violation of the procedure laid down under Rule 27(2) of CCS(CCA) Rules 1965 in as much as he failed to take note that the findings of the disciplinary authority were not warranted by evidence on record. He also failed to appreciate that the penalty imposed is severe and disproportionate.

7. It has been urged by the applicant that major penalty proceeding was conducted under the provision of Article 81-B of Educational Code of KVS which is a summary proceedings, without following the law/ rules laid down under Rule 14 of CCS(CCA) Conduct Rules or any other Service Rules. The summary procedure has been adopted following decision of the Hon'ble Supreme Court. However, while dealing with the alleged misconduct, which may end with the termination of service, a well laid procedure was formulated keeping in view ~~the~~ ^{the} summary nature of proceeding and the threat of major punishment. But in the instant case, according to applicant, the authorities have erred in law ^{not} in adhering to the provisions of the said proceedings while imposing punishment of termination from service on the applicant.



8. Respondent-KVS have filed an exhaustive counter reply. In the counter reply, it has been submitted that Principal, K.V. No.1, Bhubaneswar received a written complaint dated 8.12.09 from (1) Mrs. Aneeta Dash, Vice-Principal, (2) Kedarnath Behera, HM & (3) Dabasmita Mishra, PRT of KV No.1, Bhubaneswar (2nd Shift)(R/1 series) regarding misbehavior of the applicant with the girl students of Class-V (Sec.B) of KV No.1, (2nd Shift), Bhubaneswar. On receipt of the complaint, immediately on the same day, Principal K.V. No.1, Bhubaneswar, called the girl students and asked about the incident in the presence of Mrs. Aneeta Dash, Vice-Principal, (2nd Shift), K.N. Behera, Headmaster, (2nd Shift) and Smt. Dabasmita Mishra, PRT (2nd Shift) who gave the first information to the Principal. The girl students replied that the applicant was misbehaving with them by touching their chest and pressing the breast and they also informed that their parents wanted to come and meet the Principal to lodge complaints. The Principal immediately informed this fact to the Chairman, Vidyalaya Management Committee (VMC) vide ^{his} its letter dated 8.12.09 and at the same time, issued a Memorandum dated 8.12.09 to the applicant giving a gist of the complaint lodged against him in accordance with KVS (HQ), New Delhi letter dated 24.01.2002 for conducting preliminary inquiry and instructed him to submit his explanation within 24 hours. Applicant submitted his reply on 9.12.09 denying the



29

allegations. Smt. D. Mohanty, PRT, KV.No.1, Bhubaneswar (1st Shift) informed the Principal, K.V. No.1, Bhubaneswar vide her application dated 10.12.09 that mother of Kumari Harshita Sahoo, Class-V(B) (2nd Shift) had intimated regarding indecent and immoral sexual behavior of the applicant towards her daughter. She also submitted that the mother of Kumari Harshita Sahoo explained that the applicant touched the chest of her daughter and she came to meet the Principal on 7.12.09 to make a complaint, when the (Principal) was out of station. After hearing the matter, she informed this fact to one of the lady teacher Mrs. Debasmita Mishra, PRT, K.V. No.1 (2nd Shift), Bhubaneswar. After receiving the written complaint on 9.12.2009 from the victim girls and from their parents, the Principal, constituted a Vidyalaya Level Committee vide order dated 10.12.09 in accordance with KVS (HQ) New Delhi letter dated 24.01.2002 for conducting preliminary inquiry by nominating (1) Sh. Nagendra Kumar, PGT (Bio), K.V. No.1 (2nd Shift), Bhubaneswar as Convenor (2) Sh. R.K. Sarangi, PGT, K.V. No.1 (2nd Shift) Bhubaneswar (3) Smt. Milli Mohanty member of VMC, K.V. No.1, Bhubaneswar & (4) Smt. Debajani Dash, TGT (Eng.), K.V. No.1 (2nd Shift), Bhubaneswar as members. The Vidyalaya level inquiry committee conducted the preliminary inquiry on 11th, 14th & 16th December, 2009. During the course of inquiry the Committee obtained the statements of four victim girls, viz., (1) Y. Kushmita, Class-V(B) (2) Harshita Sahoo, Class-



30

V(B) (3) Jasmita Jayashree, Class-V(B) & (4) Kajol, Class-V(B), and obtained the statements of other students and their parents. The Committee also had taken the statements of seven teachers (four lady teachers and three gents teachers), discussed the issue with the present applicant, enquired from other available students of Classes-V(B) & V(C) and obtained their statements, discussed with the Principal and obtained his views (opinion), whereafter, the Vidyalaya level Committee submitted the report holding that the Committee found prima-facie, Sh. B.B. Dixit, PRT, K.V. No.1, Bhubaneswar (2nd Shift) was touching the chest of some girl students inside the classroom during his English classes. In the above backdrop, in accordance KVS (HQ), New Delhi, Letter No.F.11-40/2001-KVS) (Vig.) dtd.24.01.02, Assistant Commissioner, Bhubaneswar Region constituted a Regional Level Committee on receipt of the preliminary inquiry report along with the complete records from the Principal, K.V. No.1, Bhubaneswar vide its letter dtd.12.01.10 for conducting summary inquiry on the complaint lodged against applicant. The summary inquiry was conducted constituting a committee by nominating :- (1) Sri. A.P. Pravakar Rao, Education Officer, KVS R.O., Bhubaneswar as converner (2) Smt. Bandana Mohanty, Pricipal, K.V. No.2, CRPF, Bhubaneswar & (3) Smt. S.L. Panda, TGT (Hindi), K.V. No.1, Bhubaneswar (2nd Shift), as members for conducting summary inquiry.



31

9. The Committee conducted the summary inquiry on 26th & 27th February, 2010 at K.V. No.1, Bhubaneswar, which interrogated the victim girl students, their parents and other staff members including the applicant and recorded their statements and submitted its report on 15.03.2010 with findings as under.

"Every Teacher of KVS should hold high morals, character, honesty and integrity. They should be the role model to the students of the Vidyalaya. But Shri B.B. Dixit, PRT (Under Suspension), K.V. No.1 (2nd Shift) Bhubaneswar instead of keeping good moral character towards students especially girl students of the Vidyalaya, he committed sexual offence and exhibited immoral sexual behavior towards the girl students of Class-V (Section-B) during the academic year 2009-10. Hence as per the Article-81(B), Sri B.B. Dixit PRT (under Suspension), K.V. No.1, Bhubaneswar is a Prima-facie guilty of moral turpitude involving sexual offence and exhibition of immoral sexual behavior towards the girl students of Class-V (Section-B) of K.V. No.1 (2nd Shift), Bhubaneswar during 2009-10 keeping his hand on the shoulder of the girl students, and,

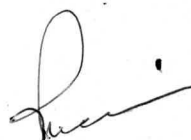
- (1) Touched the breasts of Kum.Y.Kusmita, Class-V(Section-B) and Kum.Kazol Mohanty, Class-V(Section-B)
- (2) Touched and pressed the breasts of Kum.Harshita Sahoo, Class-V (Section-B), Kum.Jaysmita Jayashree, Class-V(Section-B), Kum.Monalis Nayak, Class-V(Section-B)".

10. On the basis of preliminary and summary inquiry report, it was proposed and recommended for taking action under Article-81(B) of Education Code against the present applicant and ultimately, the Commissioner, KVS being the competent authority ^{ed} ~~opinioned~~ that it is not expedient to hold a regular



32

inquiry under the CCS (CCA) Rules, 1965 as it would cause serious embarrassment to the victim girl students and their parents and safety & security of the girl students have to be ensured by preventing their exposure to the tardy process of cross-examination because of their tender age. Accordingly, holding a regular inquiry for imposing major penalty in accordance with the CCS (CCA) Rules, 1965 as applicable to the employees of KVS was^d dispensed with. Therefore, the Commissioner, KVS issued a show cause notice vide Memorandum dated 02.06.2010 to the applicant under the provision of Article-81(B) of Education Code with the details of charges framed including the details in support of the charges giving an opportunity to submit his representation, supplying therewith the copies of statements recorded in the summary inquiry. Applicant submitted a representation dated 16.06.2010, enclosing a letter supposedly written by parents of some of the girls students, which says that allegations were not correct and requested to drop the charges. The competent authority after examining the preliminary inquiry report, summary inquiry report, deposition made by the victim girl students and the representation dated 16.06.2010 held the applicant guilty of the misconduct and in exercise of powers conferred upon him under Article-81(B) of Education Code imposed the penalty of termination of service with immediate effect vide order dated 18.08.10. Thereafter, applicant



preferred an appeal dated 2.9.10 followed by another appeal dated 6.10.10 along with two letters duly signed by the parents under Annexure-A/12 to the Vice-Chairman, who is the appellate authority against the order dated 18.08.10 passed by the Commissioner KVS. In consideration of appeal so preferred, the appellate authority gave an opportunity of personal hearing to the applicant and vide order dated 06.05.2011 rejected the appeal by holding that *"there is no need to interfere with the order of Commissioner, KVS as he has rightly concluded and given due weightage to the preliminary as well as summary inquiry which has been done as per law and found the applicant guilty of this serious misbehavior"*.

11. By stating the above in the counter-reply, the respondents have contended that the Commissioner, being the Competent Authority has in the present case strictly adhered to the requirements of Article-81(B) of the Education Code and followed the law laid down by the Hon'ble Apex Court in the case of Avinash Nagra vs. Navodaya Vidyalaya Samiti & Others (1997-vol-2-SCC-P-534).

As per the decision of the Hon'ble Apex Court in the case of Director, Navodaya Vidyalaya Samiti & Ors. vs. Babban Prasad Yadav (2004 Vol.13-SCC - P-568) the following preconditions were required to be satisfied before the services of the charged officer are terminated by the competent authority.



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 competent authority on the basis of such summary inquiry that the charged officer was prima-facie guilty.
4. Satisfaction of the competent 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.
5. The recording of the reasons in writing in support of the aforesaid.

It is the contention of the respondents that the competent authority has strictly adhered to the law as laid down by the Hon'ble Apex Court in the above mentioned case, before terminating the service of the applicant.

12. The respondents have cited some important decisions of the Hon'ble Apex Court on the same subject matter which are highly relevant.

In SLP (C) No.4627/2008 filed by Commissioner, KVS & Ors. vs.Rathin Pal decided on 16.8.2010, the Hon'ble Apex Court observed that the decision of the Commissioner to dispense with the regular inquiry was correct since in case of a regular inquiry minor girls who have not seen the complexities of life will be put into a hazardous situation. Dispensing with regular inquiry in such a situation did not violate the principles of natural justice. In the case of Avinash Nagra vs.Navodaya



Vidyalaya Samiti & Ors. (1997) Vol.2-SCC 534, similar view was taken by Hon'ble Apex Court which stated that "it is very hazardous to expose the young girls to tardy process of cross-examination when a teacher is disgraceful with a depraved character and viewed his girl students not in a similar manner as treating his own daughter". In the case of Director, Navodaya Vidyalaya Samiti & Ors. vs. Babban Prasad Yadav & Ors. (1004) Vol. 13 SCC 568 similar view was taken in a situation where a teacher wrote undesirable letters to one of his students.

13. It is also submitted by the respondents that in WP (C) No.221/2007 filed by KVS & Ors. vs. State of Jharkhand & Ors. decided on 1.12.2008, by the Hon'ble High Court of Jharkhand, the Court observed that "the Tribunal has not considered the gravity of the complaint made against the respondent, who is none else but a teacher of the school and the allegations against him is of moral turpitude. The Tribunal also failed to notice that not only the summary inquiry was conducted, but also the Commissioner and Vice Chairman being the appointing authority and the appellate authority have given opportunity to the respondent to submit his explanation/sow cause and also to participate in the proceedings. The Tribunal therefore, ought not to have interfered with the orders passed by the authorities of the school".



14. In addition to the decisions mentioned above, respondents in their counter affidavit have also cited various other judgments, e.g., R.S.Mishra vs. UOI decided by the Hon'ble Delhi High Court on 10.7.2009, K.V.S. & Ors. vs. Gouri Shankar decided by the Hon'ble High Court of delhi on 12.12.2009, JT 1997(7) SC - 384 - Visakha vs. State of Rajasthan decided by Hon'ble Apex Court and decision of the Principal Bench in O.A.No.374/06 filed by J.N.Jha vs KVS and Ors. The Respondents have submitted by citing these decisions and a few others which we do not consider it necessary to quote in great detail, that all procedures were duly followed in the summary inquiry, before passing the order of termination, and due opportunity was also afforded to the delinquent applicant.

15. It is further submitted that the victim girl students submitted the complaint in writing duly attested also by the mother, father, and teachers on 9.12.2009. They made specific mention of the heinous activity that the applicant indulged in which put the girls to shame. The verbal complaint of the victim girls was subsequently supported by their written complaints. In the preliminary inquiry and summary inquiry the statements of victim girls and also of other girls who witnessed these deplorable activities were recorded. There was, therefore, adequate evidence of the immoral behavior of the applicants^l towards the young girl students whose physical, mental, and moral welfare ^{was} ~~were~~ entrusted to the applicant, a trust which

there

37

was completely betrayed by the applicant in a most despicable manner. The Commissioner, KVS has not created any plot with foul and mala fide intention to frame allegation against the applicant. It is the applicant who has exhibited heinous conduct of moral turpitude against young girls, and the allegations in this regard have been established in the preliminary as well as summary inquiry. Clause 14 of Article 59 of Education Code for KVS requires a teacher to have an exemplary moral character. His dealing with the members of the opposite sex in the Vidyalaya or outside should not be such as would cause reflection on his character or bring discredit to the Vidyalaya. The respondents have submitted in the counter reply that the applicant has by his reprehensible conduct violated utterly the moral code of a teacher. Therefore, order of termination ^{which} was passed, after following due process is the appropriate punishment for the applicant.

16. The applicant has also filed a rejoinder. His main contention in the rejoinder is that the complaints of the victim girls and their parents were dated 9.12.2009; therefore, Respondent No.3's information dated 8.12.2009 to the Chairman, Managing Committee was without any basis of written complaint. His further allegation is that the victim girls made statements by being tortured and prompted. No students of other classes, the teaching and non-teaching staff of the school and the Principal had any complaint regarding the conduct of

the applicant. The appellate authority did not investigate into the fragile nature of the evidence against the applicant. He should have in fact order^{ed} another inquiry to test the veracity of the documents that were relied upon.

17. Having heard the learned counsels for both the sides, we have also perused the records. We have also gone through the written notes of argument filed by both the learned counsels.

18. This is not a case of disciplinary proceeding conducted in accordance with the CCS(CCA) Rules, 1965. The order of termination is passed as per the provision of Rule-81(B) of the Education Code for Kendriya Vidyalaya, which is quoted below.

81(B)- Termination of services of an employee found guilty of immoral behavior 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 the Kendriya Vidyalaya is prima facie guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behavior towards any student, he can terminate the services of that employee by giving him one month's or three 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 the 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 embarrassment to student or his guardians 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



39


shall keep the Chairman of the Sangathan informed of the circumstances leading to such termination of services”.

19. It has also come to our notice that vide letter dated 24.1.2002 the KVS has laid down the stpes that are to be taken while referring the cases for initiating action under provisions of Article 81(B) of Education Code. The following are the main provisions.


VIDYALAYA LEVEL

1. A written complaint may be obtained from the students/ parents.
2. Case may be brought to the notice of Chairman VMC.
3. A Memorandum may be issued to the teacher by giving the gist of the complaint and in no case copy of the complaint should be given to the teacher.
4. A committee may be constituted comprising of two or three gents/ lady teachers and executive committee members to conduct the preliminary inquiry.
5. The Committee may obtain the statement of the victim girl and her parents as well as the other students who witness the incident or to whom the victim girl narrated the incident and statement of the teachers should be obtained to whom the victim girl made the complaint initially.
6. The Committee may ask about the behavior of the accused teacher towards other girl students and other teachers and their statements may also be recorded.



- 40
7. Views of the Principal about the accused teacher may also be obtained.
 8. The Committee may discuss the issue with the accused teacher and his statement/ documents may be recorded.
 9. The Principal may forward the preliminary report with all original statements/ documents to the Assistant Commissioner of the concerned Regional Office. All these exercise at Vidyalaya level has to be complete within three days from the date of the receipt of the complaint. But the present case the Committee did not follow the principles / provisions at serial No.V, VI and VII and thereby the whole procedure and the findings are void and illegal. 

REGIONAL OFFICE LEVEL

10. According to the seriousness of the case and the situation prevails in the school due to the incident, Assistant Commissioner may decide whether the teacher is to be kept under suspension or not.
11. After receiving the Preliminary Inquiry Report from the school the Assistant Commissioner may send a team comprising of an Education Officer, A Lady Principal and a Senior Lady Teacher of the Vidyalaya to conduct Summary Inquiry.
12. The team may discuss the issue with the victim girl(s) their parent(s), other girl students, teachers, Principal and the accused separately and their statement may be recorded with their signature. 

41

13. The team may be asked to submit a comprehensive report clearly mentioning whether the charge is proved or not against the accused teacher.
14. The A.C. may examine the case and decide whether the action is to be taken under the provisions of Article 81(b) of Education Code for KVS or not.
15. If action has to be taken under the provision of Article 81(b) of Education Code for KVS, the A.C. may forward the Original Preliminary Inquiry Report and Summary Inquiry Report together with all the original documents to the KVS (Hqrs.) with specific comments/recommendations and bio date of the accused teacher.

20. It is the specific case of the applicant that as per Clause-I of KVS (HQ) letter No.F1-40-2001-KVS (Vig.) dated 24.01.2002 no written complaint had been obtained by the Principal either from the students or parents on 8.12.2009 when Memorandum was issued to him of his alleged misbehavior to girl students of Class-V and thereby calling upon him to submit his explanation within 24 hours of receiving the said memorandum. It is also the case of the applicant that whatever complaints were received by the Principal on 8.12.2009 were based on hearsay.

21. We have examined this point. Respondents in their counter have annexed the written complaints of the victims girl students and their fathers/guardians vide Annexure-R/6 series



42

dated 9.12.2009. Therefore, the action of the Principal in issuing the aforesaid Memorandum dated 8.12.2009 and calling upon him to submit his explanation on the alleged misbehavior to girls students stands corroborated. The facts being substantiated by receipt of written complaints from the victim girl students and their parents on 9.12.2009, the point raised by the applicant in this regard, in our considered view, do not hold much water.

22. Admittedly, there has been no procedural irregularity and/or violation of the principles of natural justice during the course of preliminary inquiry and the summary inquiry conducted by the regional level. However, it is the case of the applicant that the Summary Inquiry Committee did not take into consideration the evidence of other students of Class-V(B) where 52 students (34 boys + 18 girls) were there – rather it took the evidence of seven girls (5 victims girls + 2 witnesses). The Committee also did not take evidence from 42 students of V(C) except one Ku.Abhilipsa Behera who spoke high of the applicant. According to applicant, the Committee did not proceed to assess the evidence of other students of Class-V(C) since those were in favour of the applicant. The above being the materials on record in the Preliminary Inquiry Committee ought to have been taken into consideration by the Summary Inquiry Committee. This having not been done, mandatory requirement of Clause-6 of the guidelines has been violated.

23. In this connection, it is to be noted that in a disciplinary proceedings matter, the Tribunal cannot re-appreciate the evidence and come to a conclusion that had those statements of certain witnesses and/or evidence been taken into consideration, the conclusion would have been otherwise than what has been arrived at by the Inquiry Committee or the Disciplinary Authority. As regards the contention of the applicant that the Preliminary Inquiry Committee on its own volition having taken deposition from 42 available students of Class-V (Section-B & C), 7 School Teachers including Shri Kedarnath Behera, Headmaster (2nd shift), the same did not form part of the record before the Summary Inquiry Committee and for the reasons best known, the Summary Inquiry Committee did leave out of consideration those evidences, law is well settled that preliminary inquiry is conducted only for the purpose to hold an opinion whether there exists any prima facie evidence to proceed further against an official on the alleged misconduct or otherwise. Therefore, in the instant case the Disciplinary Authority having relied on the summary inquiry report has not violated any of the provisions of the Rules. In this connection the relevant rule as produced by the Respondents vide R/18 series reads as under.

(B) ***Termination of services of an employee found guilty of immoral behavior towards students:***



44

"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 the Kendriya Vidyalaya is prima facie guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behavior towards any students, he can terminate the services of that employee by giving him one month's or three month's pay and allowance accordingly as the guilty employee is temporary or permanent in the service of the Sangathan. ..."

24. Therefore, rightly the Commissioner of the Sangathan, being the disciplinary authority, has put emphasis on the summary inquiry report, in order to come to a conclusion regarding the guilt or otherwise of the applicant. Judged from this angle, by doing so the Disciplinary Authority has not acted beyond his powers and authority. The contention of the applicant that the Disciplinary Authority passed an unreasoned order is not borne out by the facts.

25. The learned counsel for the applicant has raised a point that the appellate authority has also not passed a reasoned order in this case. However, it appears from the order of appellate authority dated 6.5.2011 that all relevant issues and procedural requirements were discussed by the appellate authority before he passed the order confirming the orders of the disciplinary authority. We also find that under Rule-81(C) which provide for Appeal, it is laid down that the appellate



45
authority while disposing of the appeal shall consider the following aspects.

- (a) Whether the requirement laid down under Article-81(B) has been complied with and if not, whether such non-compliance has resulted in the violation of the provision of Article-81(B) or the failure of justice.
- (b) Whether the order of the Commissioner is warranted by the material on record.

We find that the appellate authority's order in the present case meets the requirements of Rule-81(C) as mentioned above.

26. The learned counsel for the applicant in his written notes of argument has cited the decision of the Hon'ble Apex Court in *Moni Shankar vs. UOI & another* (2008) 1 SCC(L&S) 819 and the case of *Narinder Mchan Arya vs. United India Insurance Co.Ltd.* (2006) 1 SCC (L&S) 840 in which it is laid down that Courts have the power to examine whether relevant evidence has been taken into consideration and irrelevant evidence excluded , while proving misconduct against an employee. However, we do not find any violation of the provisions of Rule 81(B) of the KVS Rules, nor do we find ay failure of the respondents in keeping with the principles of natural justice, while considering the evidence.

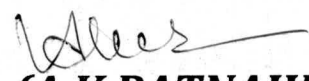


46

27. The learned counsel has also submitted that the written statements of the other students who had supported the applicant were not considered. The guardians of the victim girl students contradicted the incident in a letter dated 16.12.2009 to the Collector cum chairman of the KV No.1, Bhubaneswar and this letter was also not considered. This letter mentions that it appears that the allegations were not totally correct, and makes a plea to consider the case sympathetically on humanitarian grounds. The complaints made by the victim girl students are adequate basis for proceeding in the matter, and any certificate of good conduct by others is of no use when complaints about such heinous conduct were made by the victim girl students. We find these points raised by the learned counsel to be of no help to the applicant's case.

28. Having detected no infirmities in the process of inquiry, no violation of the statute or the principles of natural justice, we find no reason to interfere with the orders of the Disciplinary Authority and the Appellate Authority. Accordingly, the O.A. is dismissed, being devoid of merit, with no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

BKS