

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.434/1999

CORAM: Friday this, the 28th day of April, 2000
HONBLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI G.RAMAKRISHNAN, MEMBER(A)

K.Chandran,
MIG-19, Gandhi Nagar,
Kadavanthra Post,
Ernakulam -20. ... Applicant

(By Advocate Sri N.N.Sugunapalan)

vs.

1. The Principal,
Kendriya Vidyalaya,
Ernakulam,
Kochi, Kerala.
2. Smt. R.Padmaja,
Education Officer,
Kendriya Vidyalaya Sangathan,
Regional Office,
Chennai.
3. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
New Delhi-110016.
4. Kendriya Vidyalaya Sangathan,
represented by its Chairman,
Kendriya Vidyalaya,
New Delhi. .. Respondents

(By Advocate Mr. Thottathil B.Radhakrishnan)

This application having been heard on 18.4.2000, the
Tribunal on 28.4.2000 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN: This application is directed against the order dated 5.4.1999(Annexure A3) by which the third respondent the Commissioner, Kendriya Vidyalaya has terminated the applicant's services as Trained Graduate Teacher in Mathematics offering him pay and allowances admissible under Rules in lieu of notice exercising the powers under Article 81(b) of the Education Code for Kendriya Vidyalayas.

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2. The facts in a nut shell can be stated thus. The applicant who was appointed as TGT, Mathematics, Kendriya Vidyalaya in the year 1972 has been working in Kendriya Vidyalaya, Ernakulam since 1985. One Sri Thamban, father of Miss Surya Thamban aged 13 a student of Standard VIII B in the Kendriya Vidyalaya ,Ernakulam sent a letter to the Commissioner, Kendriya Vidyalaya, the third respondent stating that the applicant was in the habit of caressing the back, arm-pits and other parts of the body of girl students including his daughter, that the enquiry revealed that most of the girl students are being subjected to this by the applicant, that complaint made to the Principal and Secretary of the Parent Teachers Association did not yield any result though they also told him that they have heard similar complaints from others also and that to safe-guard the prestige of the institution as also the modesty of the girl students, it was necessary to hold a fact finding enquiry and to take action against the applicant. A copy of this letter (Annexure A1) was given to the applicant by the first respondent and he was asked to submit his explanation. The applicant submitted his explanation denying the allegations. On receipt of the explanation of the applicant after having a fact finding enquiry held by the second respondent, the third respondent decided to dispense with a regular enquiry and issued the impugned order terminating the services of the applicant. It is alleged in the application that the third respondent has usurped power not

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vested in him, that the order suffers from violation of natural justice as no enquiry giving the applicant reasonable opportunity was held before issuing the order, that there was no evidence to arrive at a *prima facie* finding that the applicant was guilty of moral turpitude or sexual offence or immoral sexual behaviour and that the order is in fact one made in colourable exercise of power. The applicant therefore prays that the impugned order may be set aside with a direction to the respondents to retain the applicant as TGT, Mathematics, Kendriya Vidyalaya, Ernakulam.

3. The respondents seek to justify the action on the ground that the Commissioner being satisfied that circumstances warranting the exercise of powers under Article 81(b) of the Education Code did exists decided to dispense with the enquiry and terminated the services of the applicant in terms of the said Article, in public interest and in the interest of the institution.

4. Sri Sugunapalan, the learned counsel of the applicant argued that the impugned order is unsustainable because the applicant has not even been served with a charge sheet nor has he been given any opportunity to challenge the veracity of the complaint against him. The lapse on the part of the respondents denying the applicant a reasonable opportunity of being heard and terminating his services amounts to deprival of right to life guaranteed by the

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Constitution, according to him. The learned counsel further argued that the Commissioner before deciding to dispense with the regular enquiry as warranted by the rules should have given an opportunity to the applicant to show-cause why the enquiry should not be dispensed with invoking the provisions of Article 81(b) of the Code. He also argued that without any material on record, the Commissioner has without application of mind come to the conclusion that the applicant was *prima facie* guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards girl students and it was not expedient and not reasonably practicable to hold an enquiry. This according to the learned counsel is opposed to the salutary principle of *audi alteram partem* and therefore the impugned order is liable to be struck down.

5. The pivotal question that arises for consideration in this case is whether in the circumstances of the case, the action of the Commissioner in dispensing with a regular enquiry and terminating the services of the applicant offering him pay and allowances in accordance with the rules, is sustainable ?. While considering the issue, the material aspects that are to be borne in mind are that the Kendriya Vidyalaya, Ernakulam, of which the applicant is a teacher is a co-educational institution, that the applicant is a person aged about 55 years, that the girl students including Surya Thamban studying in 8th standard are young

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adolescent girls at the threshold of womanhood, that the behaviour of the teachers of the school is likely to have considerable influence in the moulding of character of the young students and that the teachers are expected to be example to the students and should endeavour their best to bring them up as responsible and good citizens of the nation. It is in this backdrop that we have to consider whether the decision taken by the competent authority to dispense with the enquiry was in conformity with the rules and whether the action would amount negation of the principles of natural justice and therefore invalid.

6. Article 81(b) of the Education Code for Kendriya Vidyalaya under which the impugned order has been passed reads as follows:

"Wherever 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 behaviour towards any student, he can terminate the services of that employee by giving him one month's or 3 months pay and allowances according as the guilty employee is temporary or permanent in service of 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 a regular enquiry on account of serious embarrassment to the 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 shall keep the Chairman of the Sangathan informed of the circumstances leading to such termination of Services."

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It is evident on a perusal of the above quoted article that if the Commissioner after an enquiry as he deems proper and practicable is satisfied that any member of the Kendriya Vidyalaya is prima facie guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student, the services of that employee may be terminated by giving one or three months pay and allowances depending on whether the employee is temporary or permanent in service, dispensing with the enquiry for imposing major penalty in accordance with the CCS(CCA)Rules, provided that the Commissioner is of the opinion that it would not be expedient and reasonably practicable to hold a regular enquiry on account of serious embarrassment to the student or their guardians or such other practical difficulties, keeping the Chairman of the Sangathan informed of the circumstances. We have gone through the file which led to the issue of the impugned order which was produced for our perusal by the learned counsel of the respondents. It is revealed from the file that on receipt of Annexure A1 complaint, the Commissioner caused an enquiry to be held into the complaints through a responsible officer namely the second respondent who questioned Surya Thamban and other girl students, that the statement of the girl students revealed that the applicant used to caress their back, tickle them, reach their arm-pits and pinch them on various parts of the body and that the young girl students felt uncomfortable while they were subjected to such caressing by the applicant. On a consideration of the above report, the Commissioner on 31.3.1999 made the following order:-



" I have carefully gone through the report submitted by the Assistant Commissioner(Offg.), KVS, RO, Chennai regarding the conduct of Shri Chandran, TGT(Maths), Kendriya Vidyalaya, Ernakulam. It is evident from the report that Shri Chandran is prima facie guilty of moral turpitude involving exhibition of immoral sexual behaviour towards the girl students of the School. It is a fit case for taking stern action against Shri Chandran. However, it will not be expedient to hold a regular enquiry for imposing major penalty in accordance with the CCS(CCA) Rules 1965 as applicable to the employees of KVS because this will cause serious embarrassment to the girl students. Holding of such an enquiry is hence dispensed with. Taking recourse to Article 81(b) of the Education Code, the services of Shri Chandran, TGT(Maths), Kendriya Vidyalaya, Ernakulam be terminated with immediate effect. Shri Chandran would be paid pay and allowances for the required period as per rules."

7. It is also seen from the file that the Chairman of the KVS was informed of this and the impugned order terminating the services of the applicant invoking the provisions of Article 81(b) of the Education Code of KVS was issued. The argument of the learned counsel that there is no material on the basis of which the Commissioner could be satisfied that the applicant was prima facie guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student and that it was neither expedient nor reasonably practicable to hold a regular enquiry, is without merit. If caressing an adolescent girl aged about 13 on her back, tickling her, reaching her arm-pits and pinching her on various parts of the body by an adult male have been considered as a behaviour involving moral turpitude and sexual offence or exhibition of immoral sexual behaviour towards a girl, it cannot be held to be unreasonable. The enquiry revealed that the applicant

subjected girls including Surya Thamban to the above said overt acts. Adolescent girl being highly sensitive to contact by members of the opposite sex, such caressing and tickling may result in undesirable effect on their moral character. The boy students of the class may also be tempted seeing such things. The behaviour of the applicant as is stated in the statements of the girls, if true, cannot be considered to be in keeping with the moral standards expected of a teacher and prima facie it appears to be outrageous and an affront on the modesty of the girls. It cannot be said that there was no material for the Commissioner to come to a prima facie conclusion that the applicant was guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour to the students. The reason stated by the Commissioner for dispensing with the enquiry is that it would not be fair to the students as it would cause serious embarrassment to the girl students, their parents and would also vitiate the atmosphere of the school also, cannot be said to be unreasonable, unfair or without application of mind. Interpreting a rule similar to Article 81(b) of Code in Avinash Nagra vs. Navodaya Vidyalaya Samiti and others, (1997)2 SCC 534, the Hon'ble Supreme Court upheld the decision of the High Court refusing to interfere with the order of termination of service of a teacher without holding an enquiry. The circumstances are almost similar. Further as has been observed supra, the Commissioner has taken the decision to dispense with the enquiry after having an

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enquiry held by a responsible officer and applying his mind to the facts revealed and being satisfied that the applicant was *prima facie* guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards girl students, we do not find any reason to interfere with the decision taken by the Commissioner and the impugned order which was passed in public interest and in the interest of the students and the institution.

8. Sri Sugunapalan argued that before dispensing with the enquiry as required under the rules before imposing a major penalty the Commissioner should have given the applicant an opportunity to show-cause why such an enquiry should not be dispensed with and that the failure to do so amounts to negation of the principles of natural justice. A similar argument was addressed before the Hon'ble Supreme Court in Union of India and another vs. Tulsiram Patel, AIR 1985 SC 1416. The Court in paragraph 136 of the celebrated judgment observed as follows:-

"136. It was next submitted that though clause (b) of the second proviso excludes an inquiry into the charges made against a government servant, it does not exclude an inquiry preceding it, namely, an inquiry into whether the disciplinary inquiry should be dispensed with or not, and that in such a preliminary inquiry the government servant should be given an opportunity of a hearing by issuing to him a notice to show cause why the inquiry should not be dispensed with so as to enable him to satisfy the disciplinary authority that it would be reasonably practicable to hold the inquiry. This argument is illogical and is a contradiction in terms. If an inquiry into the charges against a government servant is not reasonably practicable, it stands to reason that an inquiry into the question whether the disciplinary inquiry should be dispensed with or not is equally not reasonably practicable."

The principle enunciated in the above ruling is squarely applicable to the facts of this case also. Sri Sugunapalan invited our attention to the ruling of the Apex Court in Jaswant Singh vs. State of Punjab and others, (1991)1 SCC 362 and Chief Security Officer and others vs. Singasan Rabi Das, (1991)1 SCC 729, wherein it was held that when there is total absence of sufficient material, the enquiry should not be dispensed with. The facts of the case under citation have no comparison to the facts of the case. In this case, the Commissioner has dispensed with the enquiry invoking the provisions of Article 81(b) of the Education Code after being satisfied from the report and the other materials placed before him that the applicant was *prima facie* guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards girl students and that the holding of a regular enquiry would cause serious embarrassment to the girl students and their guardians and also would vitiate the atmosphere of the school, we do not find any infirmity in the decision taken by the Commissioner to dispense with the enquiry and terminating the services of the applicant by the impugned order. Subjecting the girl students to cross-examination etc. would result in serious embarrassment to them and the conclusion of the Commissioner that, that would pollute and vitiate the atmosphere cannot be held perverse.

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9. In the light of what is stated above, we do not find any merit in this application and therefore, we dismiss the same leaving the parties to bear their own costs.



(G. RAMAKRISHNAN)
MEMBER(A)



(A.V. HARIDASAN)
VICE CHAIRMAN

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List of Annexures referred to in the Order:

1. Annexure A1	True copy of the registered letter dated 10.8.1998 sent to the 1st respondent.
2. Annexure A3	True copy of Order No.F.8-53/98 KVS(Vig) dated 5.4.1999 of the 3rd respondent.