

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 491 of 2012

FRIDAY, this the 3rd day of July, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mr. R. Ramanujam, Administrative Member

Tomy P. Joseph, Son of P.T. Joseph,
 Ex Post Graduate Teacher (English),
 Jawahar Navodaya Vidyalaya,
 Chitradurga (Karnataka),
 Residing at Bethel Cheeramvelil,
 Behind S.B. High School,
 Changanacherry, Kottayam – 686 101. **Applicant**

(By Advocate : Mr. M.P. Varkey)

V e r s u s

1. Union of India, represented by the Chairman,
 Navodaya Vidyalaya Samiti, A-28, Kailash Colony,
 New Delhi – 110 048.
2. The Commissioner,
 Navodaya Vidyalaya Samiti,
 A-28, Kailash Colony, New Delhi – 110 048.
3. The Deputy Commissioner,
 Navodaya Vidyalaya Samiti,
 Hyderabad Region, 1-1-10/3,
 S.P. Road, Secunderabad,
 Andhra Pradesh – 500 003. **Respondents**

[By Advocate : Mr. P. Parameswaran Nair (R2&3)]

This application having been heard on 24.06.2015, the Tribunal on
03.07.2015 delivered the following:

O R D E R

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member -

This Original Application has been filed challenging the orders by

which the services of the applicant as Post Graduate Teacher (English) under Navodaya Vidyalaya Samiti, New Delhi was terminated. The applicant was appointed as Post Graduate Teacher in English in 1992 under the Navodaya Vidyalaya Samiti, New Delhi. At the relevant time, in 2002 he was PGT (English) at Jawahar Navodaya Vidyalaya, Chitradurga in Karnataka.

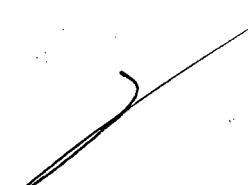
2. The applicant contends as follows:

2.1. When he was on leave at his native place in June, 2002 he was placed under suspension with effect from 19.4.2002. Subsequently, he received the charge memo (Annexure A1) dated 17.6.2002 issued by the 3rd respondent alleging that the applicant kissed a girl student on 21.2.2002. He submitted his statement of defence Annexure A2 denying the allegations contained in Annexure A1. A five member committee was constituted to hold an inquiry against the applicant. Thereafter, Annexure A3 order was issued. The applicant was asked to give his statement on the allegation at Annexure A1. He did so denying them and explaining the facts. The committee thereafter forwarded the inquiry report to which the applicant offered his comments but the 3rd respondent appointed Shri Hanumantha Reddy, Principal, Jawahar Navodaya Vidyalaya as Inquiry Officer to hold an inquiry against the applicant and also appointed Shir R. Srinivasan, Principal, Jawahar Navodaya Vidyalaya as the Presenting Officer in the proposed inquiry [Annexure A5(a) and A5(b)]. A representation was made by the applicant to the 3rd respondent (Annexure A6). Thereafter an order (Annexure A7) was

passed removing the applicant from service with immediate effect. Challenging the same Annexure A8 appeal was filed. The applicant thereafter filed OA No. 322 of 2005 before this Tribunal wherein direction was given to the appellate authority to dispose of the appeal within three months. Annexure A9 is that order passed by this Tribunal. Pursuant thereto the appellate authority heard the matter and set aside Annexure A5 order vide Annexure A10. The applicant again made a representation dated 2.2.2006 vide Annexure A12. The applicant was once again removed from service as per Annexure A13 order dated 2.3.2006. That was challenged in appeal. Since there was no action in the appeal, the applicant again filed OA No. 373 of 2007. Certain documents were produced along with the OA. By that time Annexure A14 order was passed by the appellate authority and hence, the OA was dismissed as per Annexure A15. While so the applicant was informed that summary trial under the Samiti's notification F.No. 14-2/93-NVS (Vig), dated 20.12.1993 would be held against the applicant at 11 AM on 12.3.2008. The applicant was directed to report for the same vide Annexure A16 to which the applicant made a representation that he was unable to attend the summary trial. The applicant was again asked to attend the summary trial on 19.6.2008. He appeared before Smt. Kiran Chandra on 19.6.2008 and submitted a representation explaining the reasons for not participating in the summary trial vide Annexure A17. A copy of the NVS notification referred to above was given to the applicant vide Annexure A18. Ignoring the representation, Annexure A17 orders were issued from the office of the 2nd respondent asking the applicant to attend the summary trial on different dates. The last one being on 1.6.2009. Summary trial

contemplated under Annexure A18 notification cannot be made applicable to the case of the applicant, as regular inquiry was held twice in the matter. The applicant was not prepared to attend any such summary trial vide Annexure A19. Thereafter, by Annexure A20 dated 4.10.2010 the service of the applicant was terminated by the 2nd respondent with immediate effect. In lieu of the notice period of three months the Principal, Navodaya Vidyalaya Samiti was directed to release three months pay to the applicant as per Annexure A21. The applicant filed appeal against Annexure A20 order as evidenced by Annexure A22 which was dismissed by the appellate authority as per Annexure A13.

3. Paragraph (b) of Annexure A18 provides for dispensing with a regular inquiry against a member of Navodaya Vidyalaya Samiti who is prima facie found guilty of sexual offence or immoral sexual behaviour towards a student, provided the Director is of the opinion that it is not expedient to hold a regular inquiry on account of serious embarrassment to the student or his parents or such other practical difficulties. The said provision was not invoked earlier in the case of the applicant but they followed inquiry under Rule 14 and hence the summary trial purportedly held ex parte against the applicant is illegal and without jurisdiction. Since the special procedure mentioned in Annexure A18 was not resorted to at the relevant time the respondents cannot choose to hold yet another inquiry after 'Rule 14 inquiry' was conducted in the matter. There was denial of reasonable opportunity to the applicant to defend himself and there was violation of principle of natural justice. Hence, the applicant contends that Annexure



A20 order is liable to be quashed and he also requests for reinstatement in service.

4. The respondents filed reply statement refuting the contentions raised by the applicant. The applicant was removed from service under Rule 15(4) and Rule 11 VIII of CCS (CCA) Rules, 1965 as per Annexure A7 stating as under:

"On account of charges of immoral behaviour with a girl student of Class X, Shri Tomy P Joseph, PGT (English), JNV, Chitradurga, Karnataka was awarded the major penalty of removal from services of the Samiti with immediate effect".

4.1. The appellate authority set aside the order of punishment passed against the applicant on account of procedural lapses of not providing a copy of the report of the inquiry officer to the charged officer (applicant) for his representation before passing the orders. Hence, the applicant was placed on deemed suspension. Subsequently, the procedure of providing a copy of the inquiry report to the charged officer for his comments was adhered to and thereafter a major penalty of removal from service was once again passed as per Annexure A13 order. Again in the appeal by the applicant, the appellate authority as per Annexure A14 set aside the order imposing penalty on the ground that the inquiry committee, which held the charge to be *prima facie* established, was headed by an Assistant Commissioner in the Regional Office, Hyderabad who was subsequently posted at RO, Hyderabad as Deputy Commissioner and has again issued orders imposing penalty of removal from service, in his capacity as disciplinary authority. Again the charged officer (applicant) was placed

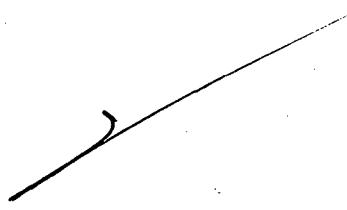
under deemed suspension until further orders with suspension headquarters at NVS, RO, Hyderabad. However, the applicant did not report at Regional Office. It was thereafter that a committee was constituted at Navodaya Vidyalaya Samiti Headquarters, New Delhi to conduct summary trial against the applicant as per the provisions contained in Annexure A18 notification. On receipt of the final notice for summary trial the applicant reported on 12.3.2008 but he did not submit any document to defend his side but only acknowledged orders of summary trial. He was provided a second opportunity on 28.3.2008 but he failed to report. However, the applicant was provided with a third opportunity on 19.6.2008 and he was also informed that if he failed to present himself before the Committee to defend his case, the committee will take appropriate decision ex parte and he only will be held responsible for any further consequence. The committee met on 19.6.2008 and submitted its report [Annexure R1(d)]. The applicant did not participate in the inquiry on the ground that he has challenged the summary trial proceedings before this Tribunal in OA No. 373 of 2007. Again the applicant was given opportunity to satisfy the requirement of principles of natural justice. The matter was again referred to the committee to conduct a summary trial as per provisions of Annexure A18 notification. In response to the notice dated 13.5.2009 the applicant submitted his representation dated 29.5.2009 challenging the provisions of the notification dated 20.12.1993 and he stated that he is not prepared to attend any such inquiry. As the applicant failed to appear before the committee despite several summons issued, with a view to ensure delivery of the summons to the applicant, NVS, RO, Hyderabad ~~vide~~ letter dated 3.2.2010

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directed the Principal, JNV, Kottayam to personally deliver the summons at the residential address of the applicant and to obtain acknowledgment vide Annexure R1(g). Accordingly, the Principal, JNV, Kottayam vide letter dated 16.2.2010 informed that Shri Iqbal O.M. Store Keeper was deputed to handover the said notice/summon to the applicant and that he was not residing at the address to which the Samiti's letter was addressed and further the applicant's father in law informed that the applicant was already in receipt of the said notice by post, vide Annexure R1(h). Since it was felt that it is not expedient and practicable to hold a regular inquiry under the provisions of CS (CCA) Rules, 1965 on account of serious embarrassment which would cause to the concerned student and her guardians, the Navodaya Vidyalaya Samiti constituted a committee to conduct a summary trial against the applicant. The procedure was dully followed and Annexure A20 order was passed accordingly. There is no illegality in the order impugned by the applicant and thus the respondents prayed for dismissal of the OA.

5. Heard the learned counsel for the applicant and the respondents. We have also gone through the pleadings and annexures produced by the parties.

6. The point for consideration is whether Annexure A20 order passed pursuant to the summary trial conducted in the matter is liable to be quashed ?



7. There can be no doubt and also as can be seen from the records that the committee of three officers was constituted to conduct a summary trial against the applicant as per Annexure A18 notification of Navodaya Vidyalaya Samiti dated 20.12.1993. The vires, legality or constitutionality of the notification has not been challenged by the applicant. The gravamen of the contention raised by the applicant is that since the respondents have chosen to proceed with the inquiry against the applicant resorting to Rules 14 & 15 they cannot thereafter resort to the summary trial directed under Annexure A18. Clause (B) of Annexure A18 reads thus:-

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

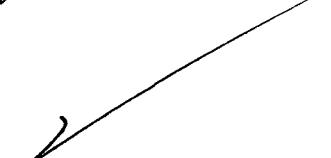
8. It is vehemently argued by the learned counsel for the applicant that unless the inquiry in CCS (CCA) Rules, 1965 is dispensed with the inquiry/summary trial directed under Annexure A18 cannot be resorted to. It is pointed out by the learned counsel for the respondents that in the inquiry under Rule 14 conducted in this case it was specifically found that the charge levelled against the applicant that he kissed a girl student stood proved. The learned counsel has also referred to the complaint given by the

girl student and also by other girl students and other materials based on which the inquiry report was prepared. It is not a case where the charge levelled against the applicant was not proved. The 1st order passed against the applicant was liable to be set aside by the appellate authority solely on a technical ground that the copy of the inquiry report was not furnished to the applicant. It is further pointed out by the learned counsel for the respondents that the applicant had at every stage filed petitions after petitions only to dodge the proceedings for years together. The annexures and the reports available on the records are tell-tale circumstances to hold that the Director, Navodaya Vidyalaya Samiti thought it fit and expedient to proceed with the summary trial in the light of Annexure A18, it is further argued.

9. Learned counsel for the applicant has very much relied upon the decision of the Hon'ble Supreme Court in *K.R. Deb v. The Collector of Central Excise, Shillong* - AIR 1971 SC 1447. In paragraph 13 it was held by the Hon'ble Supreme Court as under:-

"It seems to us that rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reasons, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9."

The aforesaid decision has no application to the facts of this case since the Hon'ble Supreme Court was only dealing with Rule 15 and not the summary trial procedure governed by Annexure A18 notification. The procedure



prescribed for summary trial in Annexure A18 may be to some extent similar to the special procedure prescribed under Rule 19 of CCS (CCA) Rules. The main object of Annexure A18 notification is to provide for summary inquiry in respect of a case where the delinquent employee was *prima facie* guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student. The very object is to terminate such delinquent employee from service after resorting to summary trial. The other object behind for resorting to summary trial is that regular inquiry would cause serious embarrassment to the student or her parents/guardians and to obviate other practical difficulties. So far as the case on hand is concerned it is quite evident that the charge levelled against the applicant is that he had kissed a girl student. The learned counsel or the respondents would submit that the respondents found that the applicant is *prima facie* guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards a student and as such the Director was well within his jurisdiction to order summary trial considering the special and peculiar nature of the case. The Hon'ble Supreme Court was not dealing with a case under Rule 19 of CCS (CCA) Rules or the special procedure governed by Annexure A18 notification mentioned herein.

10. The decision of the Kerala High Court in *Kesavan Namboodiri v. State of Kerala* – 1982 KLT 512 also has no application. There Rule 15 of the Civil Service (Classification, Control & Appeal) Rules, 1965 (Kerala) was the subject matter for consideration and so it was held that there is no provision in the rules to order a *de novo* inquiry after wiping out the inquiry

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already conducted. As stated earlier it is not a case where inquiry committee did not find material to support the allegations against the applicant but there was evidence in abundance to hold the applicant guilty of the very serious charge levelled against the applicant. It was only on technical ground that the copy of the report was not furnished, the 1st order had to be set aside in appeal, the learned counsel for the respondents submits.

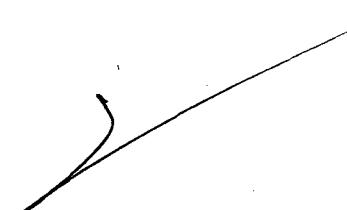
11. The decision in *Kunhiraman v. Registrar of Co-operative Societies* – 1995 (1) KLT 736 also has no application to this case. That was not an inquiry conducted under CCS (CCA) Rules, 1965 or CS (CCA) Rules, 1965 (Kerala).

12. The other point that survives for consideration is whether the respondents should have resorted to the special procedure (summary trial) provided under Annexure A18 at the earliest point of time or whether it can be dispensed with after inquiry under Rule 14/15 of the CCS (CCA) Rules was resorted to.

13. It is pointed out by the learned counsel for the respondents and is borne out from the records that after the summary trial was proposed, notices were issued to the applicant to appear on various dates. It is noted that he did not appear on 12.3.2008, 20.3.2008, 1.6.2009, 2.7.2009, 17.9.2009 and 15.2.2010. He failed to appear before the committee constituted for that purpose on all those hearing dates and so there was no other way but to conduct the inquiry ex parte. The averments made by the applicant in this OA itself would show that he had clearly stated to the

committee that he will not attend the proposed inquiry as according to him it was against the rules. Therefore, he cannot now turn around and contend that there is denial of opportunity and violation of principles of natural justice. The records would show that the committee showed sufficient and more indulgence to the applicant under the belief that he would participate in the inquiry but he never turned up or co-operated with the inquiry. After entering a finding the applicant was again given a notice for personal hearing. He did not appear for hearing but he sent his statement reiterating his earlier contentions.

14. It is seen from the records that notices repeatedly sent to the applicant were ignored with impunity. It is contended by the respondents that there are sufficient materials to hold that the applicant is guilty of the charges levelled against him. A definite finding was entered to the effect that the applicant had called the victim girl to his house in isolation and kissed on her cheeks and lips. There was also a finding that the applicant and victim girl had exchanged letters and continued the correspondence which are objectionable in the relationship of teacher and student. Further it was found that the applicant continued to keep in touch with the girl in telephone even after suspension and tried to emotionally blackmail her. Any way those are not matters relevant here and are not essential for the disposal of this case now. However, learned counsel for the respondents submitted that much damage was caused by the applicant to the image and reputation of the educational institution by his immoral and objectionable conduct towards his student. The applicant who was to act as loco parentis took undue



advantage of the liberty and freedom within a residential set up and exhibited immoral behaviour which is unbecoming of a teacher. It was also pointed out that besides the statement of the victim girl and of other students, the finding was supported by the letter sent by the applicant and also his confession statement, etc. As said earlier, these are also not matters, germane for consideration in this application. In the appeal the appellate authority observed as hereunder:-

"I have perused the record of the matter, I am constrained to observe that the disciplinary process has been frustrated by taking shelter behind technicalities as well as the obvious delay on the part of the NVS in completing the process of Inquiry. Sh. Tomy P. Joseph's plea that the procedure adopted for terminating his service is faulty is not borne out by record as due opportunity was given to him by the Inquiry Committee to present his case which he failed to do. The cause of justice cannot be frustrated by resorting to technicalities especially in a matter that is as serious as the immoral behavior of a teacher towards the student. Teachers are expected to uphold the highest standards of integrity and be a model for the young minds placed in their charge. Immoral acts by teachers can neither be tolerated nor go unpunished. I, therefore, find no merit in the appeal dated 8.11.2010 and dismiss the same."

15. Evidently, because of incontrovertible evidence and circumstances and the further fact that the applicant did not co-operate with the inquiry though notices were sent to him several times, the applicant has not now ventured to attack the order on any of those grounds but has confined the argument to the only point that after resorting to the inquiry under Rule 14 the authority cannot thereafter dispense with and proceed to have 'summary trial'. It is pertinent to note that the very object behind in the issuance of Annexure A18 is to see that an offender who is *prima facie* guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student should not go unpunished. Annexure A18-summary trial is intended only in respect of such cases and not for any other case. That itself would show that the paramount object was to ensure that such elements

should be eliminated from the educational institutions lest it should malign the institution or the social fabric or societal order. If as stated in Annexure A14 order passed by the appellate authority an inquiry under Rule 14 is to be conducted again, the victim girl, her father and other witnesses may have to be summoned again, for otherwise again that would be taken up as a ground to state that there was denial of opportunity to further cross-examine those witnesses. It is to avoid serious embarrassment to the victim girl, her father and other witnesses and also to obviate other practical difficulties the procedure under Annexure A18 was resorted to. Since Annexure A18 circular/order pertaining to summary procedure is not questioned, the plea raised by the applicant that the said procedure of summary trial should not have been resorted to, after the finding in the earlier inquiry under Rule 14 was set aside, is denuded of any merit. We could find no legal impediment in the respondent resorting to summary trial. It is a case where on earlier two occasions the findings and punishment imposed happened to be set aside only on technical grounds; at the first instance for non-supply of the inquiry report to the applicant and on the second occasion for not listing the inquiry report in the state documents and on the ground that the inquiry committee was headed by an Assistant Commissioner in the Regional Office who was later posted at Regional Office as Deputy Commissioner and order of penalty was finally passed by that Deputy Commissioner. But however, in the appeal order (Annexure A14) itself it was directed that departmental proceedings can be instituted against the applicant strictly in accordance with the rules and keeping in view the seriousness of charges against him. It was in that context the summary trial was resorted to. We find no legal

embargo touching the jurisdiction of the authority concerned to proceed with the summary trial as contemplated under Annexure A18. We have no hesitation to hold that this application is devoid of any merit.

16. In the result this Original Application is dismissed. No order as to costs.



**(R. RAMANUJAM)
ADMINISTRATIVE MEMBER**



**(N.K. BALAKRISHNAN)
JUDICIAL MEMBER**

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