

Central Administrative Tribunal Lucknow Bench Lucknow

O.A.230/2008

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This, the 24th day of August, 2009

Hon'ble Ms. Sadhna Srivastava, Member (Judicial)
Hon'ble Dr. A. K. Mishra, Member (Administrative)

Thakur Prasad Maurya (T.P. Maurya) aged about 57 years son of late Sri R.D. Maurya, resident of 115, Mangla Vihar-I, Kanpur.

Applicant

By Advocate: Sri R.B.S. Rathore

VERSUS

1. Union of India through its Secretary, Human Resource Development, Shastri Bhawan, New Delhi.
2. Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Sector J, Aliganj, Lucknow.
4. Principal, Kendriya Vidyalaya, Raksha Vihar (Shyam Nagar) Kanpur.
5. Sri G.S. Arya, presently posted as Principal, Kendriya Vidyalaya, Raksha Vihar (Shyam Nagar) Kanpur.

Respondents.

By Advocate : Sri Surendran P.

ORDER

By Hon'ble Ms. Sadhna Srivastava, Member (J)

The applicant employed as Trained Graduate Teacher (in short TGT) (Maths), in Kendriya Vidyalaya, Raksha Vihar, Kanpur, has been terminated from service under Article 81(b) of the Education Code of K.V.S..

2. Admittedly, no appeal has been filed against the order of termination. He has come for quashing of order dated 30.5.2008 contained in Annexure No.1, by which, his services were terminated on allegation of moral turpitude. Further, he claims to direct the respondents to reinstate him with all consequential benefits. As per the applicant, the respondents may be directed for conducting a regular enquiry against the applicant giving him reasonable opportunity to defend.

3. Before proceeding further, Article 81(b) of the Education Code (in short, the Code) of KVS may be reproduced which admittedly is applicable to the applicant:-

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

Where ever the Commissioner is satisfied after such a summary inquiry 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 services of the Sangathan. In such cases, procedure prescribed for holding inquiry 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 opinion that it is not expedient to hold regular inquiry 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 inquiry and he shall keep the Chairman of the Sangathan informed of the circumstances leading to such termination of services."

4. The undisputed facts are that on receipt of complaint made by one Ram Awadh Verma, father of Km. Sweety Verma, a student of Class IX of Kendriya Vidyalaya, Raksha Vihar, Kanpur ; addressed to Principal of the aforesaid Vidyalaya against the applicant, respondent No. 4 called for the explanation of the applicant. The applicant submitted his explanation on 7.8.2007 (Annexure A-5). He was put under suspension vide order dated 5.9.2007 under Rule 10 of CCS (CCA) Rules as the Departmental enquiry was under contemplation. Aggrieved by the aforesaid suspension order, he filed a review application which is still pending. A summary enquiry was also conducted by Committee which submitted its report on 29.8.2007. During the enquiry, the Members of the Committee had interacted with the victim as well as the other students and also recorded their statement. This Committee concluded that Sri T.P.Maurya is in the habit of misbehaving with the ladies. He uses double meaning language with ladies and girls and exploits the innocent girls. Further, the Committee found that Sri T.P. Maurya exhibits immoral sexual behavior. The report of the summary enquiry dated 29.8.2007 was forwarded by letter dated 24.9.2007 of Assistant Commissioner, Lucknow to the Commissioner, KVS, New Delhi. Thereafter, on 8/12.2.2008, an official memorandum was issued by Commissioner, KVS, calling upon the applicant to submit a representation/ show cause as to why his services should not be terminated under Article 81(b) of the Code, supplying him copies of the charges, facts in support of charges, statement recorded in the summary enquiry and the report of the summary enquiry. This



also mentions that a fact finding enquiry was ordered in the matter and the Enquiry Committee had submitted its report, wherein the Committee had held the applicant, *prima facie*, guilty of moral turpitude involving sexual behaviour with girl student Km. Sweety. The Commissioner, thereafter, recorded that having gone through the records, he was of the considered opinion that the findings of the Committee were fully substantiated by material on record because of which it was necessary to proceed against the applicant under Article 81(b) of the Code as it was not expedient to hold a regular enquiry under CCS (CCA) Rules, 1965 as it would cause serious embarrassment to the student (Girl) and could also cause a trauma to them because of their tender age. So, opining, the Commissioner, dispensed with necessity of a regular enquiry for imposing a major penalty as in accordance with CCS (CCA) Rules, 1965. The applicant submitted his explanation to the Principal, KVS, relating to the aforesaid Official Memorandum received by him. In his representation, the applicant has denied the allegations alleged against him.

5. After considering the representation filed by the applicant, the respondent No. 4 passed an order dated 30.5.2008, which is impugned order.

6. The moot question that was argued before us was whether under Article 81(b) of the Code, the matter could have been disposed of after a summary enquiry by a Committee instead of conducting a regular enquiry.

7. In the case of *Avinash Nagra Vs. Navodaya Vidyalaya Samiti and others (1997) 2 Supreme Court Cases 534*, their Lordships had upheld the action of the administration in terminating the services after a preliminary enquiry. In that case also, the moot question involved was indecent behaviour with girl students and sexual harassment meted out to them.

In the case of Avinash Nagra, their Lordships had made following observations:-

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



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

8. The relevant decision have been fully discussed in an order of the Principal bench of the Central Administrative Tribunal, by a Division bench in T.A. No. 5 of 2003, by order dated 3.10.2003 which has been relied upon the respondents. A copy of that order is at Annexure R/1 to the written statement. That also relates to the sexual harassment of a girl student at the hands of the applicant relating to exhibition of immoral behaviour towards her. Since that is a well discussed order, we would hereinafter quote certain portions of that order:-

"6. On the other hand, respondents' counsel Shri Rajappa denied the contentions and vehemently opposed the T.A. According to him as per the decision of the Apex Court in Avinash Nagra Vs. Navodaya Vidyalaya Samiti and others (1997) 2 SCC (L&S) 565 where a similar provision exists for dispensing with the enquiry, it has been held in a case of moral turpitude when embarrassment is to be caused to a girl student, dispensing with the inquiry does not suffer from any legal infirmity. On the same analogy referring to Article 81 (b) of Education Code of KVS , it is contended that as per the decision in Babban Prasad Yadav's (Supra) five conditions are to be satisfied which includes holding of summary inquiry, finding against the charged official of being guilty of moral turpitude, satisfaction of the Director on the basis of such inquiry that the charged officer was prima facie guilty, satisfaction of the Director that it is not expedient to hold an inquiry on account of the serious embarrassment to be caused to the student and recording of reasons in writing in support of the aforesaid."

9. The Principal bench in that case quoted extensively from the judgment of the Apex Court in the case of Avinash Nagra (Supra) in para 16. The quoted portion , in order to understand the implication of such charges and a preliminary inquiry needs to be reproduced:-

"11. It is in this backdrop, therefore, that the Indian Society has elevated the teacher as 'Guru Brahma, Guru Vishnu, Guru Devo Maheshwaraha.' As Brahma, the teacher creates knowledge, learning wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of learning. As Maheshwaraha, he destroy ignorance. Obviously, therefore, the teacher was placed on the pedestal below the parents. The State has taken care

of service conditions of the teacher and he owes dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India, he should always be willing, self disciplined, dedicated with integrity to remain ever a learned of knowledge, intelligently to articulate and communicate and imbibe in his students, as society duty, to impart education, to bring them up with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing constitutional ideals enshrined to Article 51-A so as to make the students responsible citizen of the country. Thus, the teacher either individually or collectively as a community of teacher, should regenerate this dedication with a bent of spiritualism in broader perspective of the constitutionalism with secular ideologies enshrined in the Constitution as an arm of the State to establish egalitarian social order under the rule of law. Therefore, when the society has given such a pedestal, the conduct, character, ability and disposition of a teacher should be to transform the student into a disciplined citizen, inquisitive to learn, intellectual to pursue in any walk of life with dedication, discipline and devotion with an inquiring mind but not with blind customary beliefs. The education that is imparted by the teacher determines the level of the student for the development, prosperity and welfare of the society. The quality, competence and character of the teacher are, therefore, most significant to mould the caliber, character and capacity of the students for successful working of democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities. Without a dedicated and disciplined teacher, even the best education system is bound to fail. It is, therefore, the duty of the teacher to such care of the pupils as a careful parent would take of its children and the ordinary principle of vicarious liability would apply where negligence is that of a teacher. The age of the pupil and the nature of the activity in which he takes part are material factors determining the degree and supervision demanded by a teacher.

12. It is axiomatic that percentage of education among girls, even after independence, is fathom deep due to indifference on the part of all in rural India except some educated people. Education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. Only of late, some middle class people are sending the girl children to co-educational

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institutions under the care of proper management and to look after the welfare and safety of the girls. Therefore, greater responsibility is thrust on the management of the schools and colleges to protect the young children, in particular the growing up girls, to bring them up in disciplined and dedicated pursuit of excellence. The teacher who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/ her character and conduct should be more like Rishi and as loco parentis and such is the duty, responsibility and charge expected of a teacher. The question arises whether the conduct of the appellant is befitting with such higher responsibilities and as he by his conduct betrayed the trust and forfeited and faith whether he would be entitled to the full-fledged inquiry as demanded by him? The fallen standard of the appellant is the tip of the iceberg in the discipline of teaching, a noble and learned profession; it is for each teacher and collectively their body to stem the rot to sustain the faith of the society reposed in them. Inquiry is not a panacea but a nail in the coffin. It is self-inspection and correction that is supreme. It is seen that the rules wisely devised have given the power to the Director, the highest authority in the management of the institution to take decision, based on the fact situation, whether a summary inquiry was necessary or he can dispense with the services of the appellant by giving pay in lieu of notice. Two safeguards have been provided, namely, he should record reasons for his decision not to conduct an inquiry under the rules and also post with facts the information with Minister, Human Resources Department, Government of India in that behalf. It is seen from the record that the appellant was given a warning for his sexual advances towards a girl student but he did not correct himself and mend his conduct. He went to the girl's hostel at 10 P.M. in the night and asked the hostel helper, Bharat Singh to misguide the girl by telling her that Bio-Chemistry Madam was calling her; believing the statement, she came out of the hostel. It is the admitted position that she was an active participant in cultural activities. Taking advantage thereof, he misused his position and made sexual advances towards her. When she ran away from his presence, he pursued her to the room where she locked herself inside; he banged the door. When he was informed by her roommates that she was asleep, he rebuked them and took the torch from the room and went away. He admitted his going there and his meeting with the girl but he had given a false explanation which was not found acceptable to the Enquiry officer, namely Assistant Director. After conducting the enquiry, he submitted the report to the Director and the Director examined the



report and found him not worth to be a teacher in the institution. Under those circumstances, the question arises whether the girl and her roommates should be exposed to the cross-examination and harassment and further publicity? In our considered view, the Director has correctly taken the decision not to conduct any inquiry exposing the students and modesty of the girl and to terminate the services of the applicant by giving one month's salary and allowances in lieu of notice as he is a temporary employee under probation. In the circumstances, 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 thereof. In view of his admission that he went to the room in the night, though he shifted the timing from 10 p.m. to 8 p.m., which was not found acceptable to the respondents and that he took the torch from the room, do indicate that he went to the room. The misguiding statement sent through Bharat Singh, the hostel peon, was corroborated by the statement of the students; but for the misstatement, obviously the girl would not have gone out from the room. Under those circumstances, the conduct of the appellant is unbecoming of a teacher much less to loco parentis and, therefore, dispensing with regular inquiry under the rules and denial of cross-examination are legal and not vitiated by violation of the principles of natural justice."

10. In that order certain portions of the order of the Apex Court in the case of Navodaya Vidyalaya Samiti and Ors. Vs. Babban Prasad Yadav and Anr; decided on 2.5.2003 in SLP No. 9802 of 2002 were also quoted. Those quoted portion as coming in the order of the Apex Court are reproduced below:-

"We are of the view that the High Court erred in reversing the decision of the Tribunal. The rule quoted earlier, explicitly deals with such a situation as obtains in the present case. The rule is not under challenge. All that is required for the court is to be satisfied that the pre-condition to the exercise of power under the said rule are fulfilled. These pre-conditions are:- (1) holding of summary inquiry; (2) a finding in such summary inquiry that the charged employee was guilty of moral turpitude; (3) the satisfaction of the Director on the basis of such summary inquiry that the charged officer was *prima facie* guilty; (4) the satisfaction of the Director that it was not expedient to hold an inquiry on account of serious embarrassment to be caused to the students or his guardians or such other practical difficulties; and finally (5) the recording of reasons in writing in support of the aforesaid.



in this case, all the pre-conditions have been fulfilled. An inquiry Committee was duly constituted. It held an inquiry and come to the conclusion that the respondents was guilty of the offence with which he was charged, namely, writing love letters to the student in question. The Director has recorded the reasons for dispensing with a regular inquiry, reasons which have been upheld as being valid in the decision in Avinash Nagra (Supra)....."

11. In the case in hand, as will appear from the Enquiry Report attached to Annexure No.8, an Inquiry Committee was constituted of three senior officers, including Education Officer, Kendriya Vidyalaya Sangathan (R.O.), Lucknow, Vice -Principal, K.V. ,OEF, Kanpur and a leady teacher , namely Smt. Suman Shukla, PGT (Eng.) K.V. , OEF, Kanpur . They have in their report considered the charges and evidence of Sweety Verma and their parents. As per their report, the complaint of Sri Ram Awadh Verma and the statement of Km. Sweety revealed that the applicant was *prima facie* guilty of moral turpitude with victim girl Km. Sweety.

12. The bare perusal of summary enquiry report shows that the applicant participated in the summary enquiry and he was afforded opportunity to present his case. The Inquiry Committee after giving him opportunity of hearing had also recorded his statement on 21.8.2007.

13. As in Annexure A-1, also the reasons has been given for awarding punishment, dispensing with a regular enquiry, under Article 81(b) of the Code. The Commissioner recording this order has mentioned that he was of the view that it was not expedient to hold a regular inquiry under the CCS (CCA) Rules, 1965, as it would cause serious embarrassment to the girl students or their guardians, as also because of the tender age of the girl students as their safety and security had to be protected by preventing their exposure to the tardy process of cross-examination in the inquiry in relation to conduct of a teacher resulting in sexual harassment of the girl students thereby involving moral turpitude.

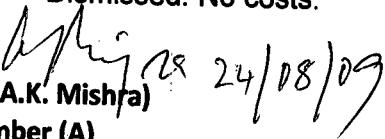
14. In view of the circumstances of the case and in view of the decision discussed above coming from the Apex Court, we find that all the ingredients have been fulfilled in the case for awarding a major penalty by taking recourse to Article 81(b) of the Code, i.e. a summary inquiry was held in which the applicant was found guilty by a Committee of three responsible officers, and that the disciplinary authority had given grounds for his satisfaction that the charged officer was *prima facie* guilty and also had stated reasons as to why it was

not expedient to hold a regular inquiry. The Commissioner who has recorded the order at Annexure A-1 has given reasons in writing for the aforesaid decision.

15. in the facts and circumstances of the case, already discussed the impugned order is unassailable.

16. Therefore, in view of such circumstances, we do not find that this application can be allowed.

17. Dismissed. No costs.


(Dr. A.K. Mishra) 24/08/09
Member (A)


(Sadhna Srivastava)
Member (J)

HLS/-