

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

ORIGINAL APPLICATION No. 170/00490/2017

TODAY, THIS THE 28th DAY OF SEPTEMBER, 2018

**HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE SHRI DINESH SHARMA, ADMINISTRATIVE MEMBER**

Sri Om Prakash Sahu, 36 years,
S/o Late Sri Tilak Sahu,
Occn: TGT Hindi
(Under Suspension)
Jawahar Navodaya Vidyalaya District Karaikal,
Puducherry (U.T.)
Now attached at
JNV District Gulbarga – 2 (Kalaburagi-2) : 585 101
Karnataka

With present postal address as:
Care of Prabhu Singh Thakur,
Residential Area,
Kalgi: 585 312
Kalaburagi: District Applicant.
(By Advocate Shri P.A. Kulkarni)

Vs.

1. Union of India
To be represented by its Secretary,
Ministry of Human Resources Development
(Department of School Education and Literacy),
Government of India,
North Block, New Delhi: 110 001
2. The Commissioner
Navodaya Vidyalaya Samiti,
B 15, Institutional Area, Sector 62,
Noida: 201 307
District Gautam Budh Nagar (U.P.)
3. The Deputy Commissioner
Navodaya Vidyalaya Samiti,
Hyderabad Region,
N.L.I. Buildings, Nalagandla Road,
Post & Village: Gopanpally,
Rangareddy District,
Hyderabad: 500 107
Telangana State

4. The Principal,
 Jawahar Navodaya Vidyalaya District Karaikal,
 Pin Code: 609 602
 Puducherry (U.T.)

5. The Principal
 Jawahar Navodaya Vidyalaya
 Korwar Taluk,
 District Gulbarga-2 (Kalaburagi-2): 585 312
 Karnataka State

6. Smt. P. Helen Mary,
 Principal,
 Jawahar Navodaya Vidyalaya District Karaikal,
 Pin Code: 609 602
 Puducherry (U.T.) Respondents.

(By Advocate Shri V.N. Holla & Shri Raja Kumar for Respondents)

ORDER

Hon'ble Shri Dinesh Sharma, Administrative Member

The case of the applicant, in brief, is as follows :

2. The applicant, while working as Trained Graduate Teacher (Hindi) of Jawahar Navodaya Vidyalaya (JNV) Karaikal, Puducherry (U.T) was placed under suspension for allegedly unfounded case created against him by the Principal of the above School by obtaining false complaints from girls students of the School against him. After his suspension, the applicant was shifted to Kalaburagi and by an order dated 25.08.2017, his services were terminated by offering three months' pay and allowances in lieu of notice period. The applicant's grievance is against the summary enquiry and termination, on grounds that these orders are passed without following the principles of natural justice and without giving him any chance to defend his case.

3. The respondents have filed a detailed reply affidavit in which they have alleged that the applicant indulged in acts of moral turpitude e.g. inappropriate touching of girl students, beating them for no mistakes, using bad words and slapping them. The Principal of JNV Karaikal, Puducherry, had reported this matter and the Vidyalaya Level Committee, at the first instance,

enquired into the matter and *prima facie* found the allegations against the applicant true. When this matter was informed to the Regional Office, a preliminary investigation was conducted by the Assistant Commissioner, who submitted his report to the Deputy Commissioner. Following this, the Commissioner, Navodaya Vidyalaya Samiti (NVS, for short), after examining all the records found that it was not expedient to hold a regular enquiry as it would involve making the girl students to undergo the tardy process of cross examination etc. In exercise of power conferred on the Commissioner under the provisions of Notification dated 20.12.1993 of NVS, he dispensed with the enquiry and ordered a summary enquiry. A Committee was constituted with 3 members who after conducting a detailed investigation, held that Shri Om Prakash Sahu had inappropriately touched the girl students of the class-IX, causing them serious mental agony. Based on their report, in exercise of the powers conferred by NVS Notification No. 14-2/1993- NVS(Vig) dated 20.12.1993, the Commissioner terminated the services of Shri Om Prakash Sahu from the Vidyalaya. The respondents have also quoted in their counter affidavit the decisions of Hon'ble Supreme Court in the matter of *Avinash Nagara vs. NVS*, reported in JT 1996 (10) SC 461, and *Babban Prasad Yadav vs. NVS*, reported in 2004 (2) Scale 400. The respondents also allege that the applicant was given full opportunity to put up his defence while answering the questions during summary enquiry and that in his statement dated 22.07.2016, the applicant had himself admitted to touching the girl students and sought apology assuring that he will never repeat such behaviour in future. The respondents also allege that the applicant has not exhausted all his remedies and he has not made use of his right to appeal before the Appellate Authority, which is the Human Resources Minister (HRM), in this case.

4. The applicant, in his rejoinder, has denied the contents of the affidavit filed by the respondents. He said that he has not been informed about anything on the basis of which allegations have been levelled against him. He has not been given copy of any of the reports mentioned in the reply affidavit.

The applicant has quoted the judgment of Hon'ble High Court of Karnataka in W.P. No. 12682/2011 dated 28.11.2013 (*Union of India & Others vs. Sri S.B. Sankadavar*) which relied upon its earlier judgment in the case of *Government of India & Ors. Vs. Dhanu S. Rathod*, reported in ILR 2002 KAR 4911. The applicant has also alleged that the constitutional validity of the Rule 81(B) of Educational Code (which relates to Kendriya Vidyalaya Sangathan and is analogous to NVS notification dated 20.12.1993) has not been gone in depth vis-a-vis the constitutional guarantee under Article 311(ii) in any of the cases cited by the respondents in their favour. The applicant has again alleged that he has been victimized because of his complaint against the Principal for spreading Christian religious sentiments. The applicant has not mentioned anything about his not having availed of the right to appeal before HRM and has apparently foregone that right, by not doing so.

5. After going through the pleadings and hearing the arguments in this case, it is clear that the applicant has been terminated from service under the provisions of NVS Notification No. 14-2/1993- NVS(Vig) dated 20.12.1993 which empowers the Director (now the Commissioner), NVS, to order such termination after a summary enquiry. One of the judgments of the Apex Court, quoted in their favour by the respondents is the case of *Babban Prasad Yadav vs. NVS*, reported in 2004 (2) Scale 400. The most relevant part of this judgment is reproduced below :

“7.... All that is required for the Court is to be satisfied that the preconditions to the exercise of power under the said rule are fulfilled. These pre conditions are (1) holding of a summary enquiry; (2) a finding in such summary enquiry that the charged employee was guilty of moral turpitude; (3) the satisfaction of the Director on the basis of such summary enquiry that the charged officer was *prima facie* guilty; (4) the satisfaction of the Director that it was not expedient to hold an enquiry on account of serious embarrassment to be caused to the student or his guardians or such other practical difficulties and finally; (5) the recording of the reasons in writing in support of the aforesaid.”

We find that all these conditions mentioned in the judgment have been fulfilled in this case. An enquiry committee was constituted, which conducted

the enquiry and came to the conclusion that the applicant was guilty of the charge of misconduct. The Commissioner has recorded the reasons for dispensing with the regular enquiry. The Rules have given power to the Commissioner, who is the highest authority in the management of this Institution, to take this position and there is nothing on record to show that this decision has been taken on any extraneous considerations. It is also relevant to note here that the applicant did not specifically deny the respondents' averment in para 10 about his having accepted the guilt.

6. The applicant has quoted the decisions of Hon'ble Karnataka High Court in W.P. No. 12682/2011 dated 28.11.2013 - *Union of India & Others vs. Sri S.B. Sankadavar* (Annexure RJ-1) and in case of *The Government of India & Ors. Vs. Dhanu S. Rathod*, reported in ILR 2002 KAR 4911 (Annexure RJ-2). While the former judgment relies extensively on the latter (a judgement of 2002), there is no mention in this judgment (of 2013) of the Apex Court judgment of 2004 (Babban Prasad Yadav case) and thus, it is, *prima facie*, per incuriam.

7. The decision of the Karnataka High Court in Government of India and Others vs. Dhanu S. Rathod case does rely on Avinash Nagra's case (1997 (2) SCC 534). It is argued that following that decision it is necessary to provide an "opportunity as contemplated in Avinash Nagra.... that is issue a show cause notice.... and give an opportunity to the respondents to submit his explanation". It is a fact that this was done in Avinash Nagra case , but it is also a fact that in the later case of Babban Prasad Yadav, which went upto the Apex Court, the Apex Court did not mention anything about this and specifically restricted the requirements to what is already quoted in para 5 above.

8. In the light of the facts and the precedents discussed above, the O.A is disallowed. No orders as to costs.

(Dinesh Sharma)
Administrative Member

(Dr. K.B. Suresh)
Judicial Member

Cvr.

Annexures filed by the applicant in O.A :

- Annexure-A1: Copy of the suspension order dated 23.09.2016
- Annexure-A2: Copy of the office order dated 24.09.2016
- Annexure-A3: Copy of the order dated 26.04.2017 extension of suspension order
- Annexure-A4: Copy of the inquiry notice dated 06.01.2017
- Annexure-A5: Copy of the attendance certificate dated 13.01.2017
- Annexure-A6: Copy of the written submission dated 13.01.2017
- Annexure-A7: Copy of the termination order dated 25.08.2017
- Annexure-A8: Copy of the relieving order dated 07.09.2017

Annexures filed by the respondents along with reply:

Nil

Annexures filed by the applicant with rejoinder:

- Annexure-RJ1: Copy of the Hon'ble High Court judgment dated 28.11.2013 in Writ Petition No. 12682/2011
- Annexure-RJ2: Copy of the Hon'ble High Court judgment reported in ILR 2002 Karnataka 4911
- Annexure-RJ3: Copy of the English translation of Annexure-A6
- Annexure-RJ4: Copy of the NVS notification dated 20.12.1993
- Annexure-RJ5: Copy of the Hon'ble Apex Court ruling in Avinash Nagra's case reported in 1997 2 SCC 534
- Annexure-RJ6: Copy of the Hon'ble Apex Court ruling in Babban Prasad Yadav's case reported in 2004 13 SCC 568
- Annexure-RJ7: Copy of the extract of Rule 81 of Education Code of KVS