

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Reserved

Original Application No.307 of 2011

Jabalpur, this Friday, the 18th day of May, 2018

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Subedar, S/o Shri Baburam Aged about 45 years
R/o Gram & Post Balarai,
Dist. Itawa (U.P.) PIN 206245

-Applicant

(By Advocate –**Shri Manoj Sharma**)

Versus

1. Kendriya Vidyalaya Sangathan,
18 Institutional Area, Shahid Jeet Singh Marg
New Delhi 110 602 Through its Commissioner

2. Commissioner, Kendriya Vidyalaya Sangathan
18 Institutional Area, Shahid Jeet Singh Marg,
New Delhi 110602 (Disciplinary Authority)

3. Vice Chairman, Kendriya Vidyalaya Sangathan
18 Institutional Area, Shahid Jeet Singh Marg,
New Delhi 110602 (Appellate Authority)

4. Asstt. Commissioner, Kendriya Vidyalaya Sangathan
Regional Office Bhopal, Opp. Maida Mill
Hoshangabad Road, Bhopal (M.P.) 462001

- Respondents

(By Advocate –**Shri S.S. Chouhan**)

(Date of reserving the order: 04.01.2018)

O R D E R

By Navin Tandon, AM:-

The applicant is aggrieved by order of termination of his services passed against him by invoking provisions of Article 81(B) of the Education Code of Kendriya Vidyalaya Sangathan

after a summary enquiry on the complaints made against him relating to immoral behaviour with girl students.

2. The brief admitted facts of the case are that the applicant was working as Post Graduate Teacher (Biology) in Kendriya Vidyalaya (for brevity 'KV') No.3 Gwalior. On 19.11.2009 complaints were lodged against him by girl students of KV No.3 Gwalior for his immoral behaviour towards the girl students alleging that (i) he physically touches the girl students and holds their hands; and (ii) he leans and stares at the girl students which makes them uncomfortable.

2.1 The Principal, KV No.3 Gwalior called for explanation from the applicant on the above allegations vide memorandum dated 20.11.2009. The applicant submitted his reply to the said memorandum stating that he never made physical contact with the students but touching by hand could be possible during the occasion of birthday or in the crowd. The Principal informed the matter to the Chairman, Vidyalaya Management Committee (for brevity 'VMC') vide letter dated 21.11.2009. The VMC constituted a preliminary enquiry committee vide order dated 21.11.2009. The committee conducted the enquiry on 23.11.2009 at KV No.3,

Gwalior and submitted its report to the Principal with the following findings:-

- “(i) Shri Subedar need to be counseled for this behaviour and warned against repetition of the same.*
- (ii) To avoid any future confrontation between Shri Subedar and the complainants, Shri Subedar should be posted out from the school at the earliest”*

2.2 Thereafter, the applicant was transferred to KV Narmada Nagar vide order dated 08.12.2009. A summary enquiry committee was constituted. The said committee conducted the summary enquiry on 10.12.2009 at KV No.3 Gwalior and submitted its report (Annexure A-7) to the Assistant Commissioner, KVS Bhopal with the following findings:-

“Based on the oral and written evidence adduced from the students, teachers, parents and the Principal KV No.3, Gwalior it is established that Shri Subedar, PGT(Bio) KV No.3, Gwalior is in the habit of touching the girls, staring and leaning at them which made them uncomfortable. Hence the Committee comes to the conclusion that Shri Subedar has indulged in unwelcome/ unwarranted physical contact with the girl students”.

2.3 The applicant was issued a show cause notice under Article 81(B) of the Education Code vide memorandum dated 04.06.2010 (Annexure A-8) along with supporting documents. In response to said show cause notice the applicant submitted his representation dated 18.06.2010 (Annexure A-9). The disciplinary authority after

considering his representation passed the order of termination of his services dated 28.07.2010 (Annexure A-1). The applicant preferred an appeal dated 26.08.2010 (Annexure A-3) against the said punishment, which was also rejected vide order dated 17.02.2011 (Annexure -A-2).

3. The applicant has prayed for the following reliefs in this Original Application:

“8.i) *Call for the entire material record pertaining to the instant controversy from the respondents for its kind perusal.*

8.ii) *Quash and set aside impugned orders dt.28.07.2010 (Ann-A/1) & order dt. 17.02.2011 (Ann.A/2) passed by respondent Nos. 2 & 3 respectively and reinstate the applicant with all consequential benefits along with pay, perks, status, etc;*

8.iii) *Grant any other relief/s, which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case to the applicant.*

8(iv) *Award the cost of the instant lis to applicant.”*

4. The applicant has contended that he is a father of five children hence applicant had given a specific plea that the allegations in question were baseless and the applicant was having no such intention as alleged against him, still the enquiry committee held him guilty.

4.1 The applicant in his appeal had stated that amongst 6 girl students, who made the complaints against him, 3 students were

not the students of Bio stream and these girl students were the students of mathematics stream. Applicant was PGT in Bio and was concerned with the students of Bio stream. Further, in preliminary enquiry the Principal of KV No.3 Mrs.Pallvi Sharma has specifically stated that prior to this incident no oral or written complaint had been received by her. Still while passing the impugned orders the appellate and disciplinary authorities have absolutely overlooked these aspects and have passed the harsh punishment against the applicant without investigating into the matter in detail.

4.2 The applicant avers that Hon'ble Supreme Court in the matters of **Vishaka Vs. State of Rajasthan**, (1997)6 SCC 241 has specifically formulated a committee to look into the allegations and as per the coram of committee, there has to be an independent member. However, as is clear from the constitution of the committee, the same is not in consonance with the directions of the Hon'ble Supreme Court, as no independent member was present in the committee and all the members of the committee relatable to KVS. Hence on this ground alone the Original Application deserves to be allowed.

4.3 In the preliminary enquiry conducted against the applicant the committee had only recommended for transfer of the applicant.

Thereafter another committee was constituted which had given serious findings against him. Hence, the present case clearly smacks malice in law as well as malice in facts.

4.4 Before imposing harsh punishment against the applicant no detailed enquiry was conducted under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and only a summary enquiry was conducted against him that too behind his back, without giving heed to the past services rendered by the applicant. Hence, on this ground also the impugned orders deserve to perish.

4.5 During the enquiry some girl students had given their written statements in favour of the applicant (Annexure RJ2). The respondent-authorities have failed to appreciate the statements of other girl students and school staff. None of the staff or colleague has stated against the applicant (Annexure RJ 1).

5. On the other hand the respondents have stated that after going through the case thoroughly in the light of the enquiry reports, statements and considering all the submissions of the applicant in his representation, the competent authority was satisfied that the applicant was guilty of moral turpitude as he was

found indulging in immoral behaviour towards girl students. It was also held by the competent authority that the conditions mentioned under Article 81(B) of the Education Code of KVS were satisfied.

5.1 The respondents have further stated that there were allegations of grave sexual misconduct against the applicant from a number of students. The Commissioner by a detailed order observed that it would not be expedient to hold a regular departmental enquiry. The applicant was provided the material relied against him. The applicant was given opportunity to submit his representation in support of his defence. By a reasoned and speaking order the penalty was imposed on the applicant. The applicant filed an appeal against the order of termination and by passing a reasoned and speaking order the appeal was rejected, after granting the applicant an opportunity of personal hearing. The proceeding against the applicant has been conducted strictly in accordance with the procedure prescribed by Article 81(B) of the Education Code, validity of which has been upheld by various courts. The instant Original Application is bereft of any merits and the same deserves to be dismissed.

5.2 Regarding the contention of the applicant in Para 5.3 and 5.4 of the Original Application, that as per the decision of the Hon'ble

Supreme Court in the matters of **Vishakha** (supra), there should have been an independent member in the committee, the respondents submit that the verdict laid down in the case of **Vishakha** (supra) and Article 81(B) of the Education Code of KVS are two entirely different subjects. While the former pertains to sexual harassment of working women at work place, the latter pertains to immoral behaviour towards students in the Kendriya Vidyalayas.

5.3. The respondents have placed reliance on the decisions of Hon'ble Supreme Court in the matters of (i) **Director, Navodaya Vidyalaya Samiti and others Vs. Shri Babban Prasad Yadav**, (2004) 13 SCC 568 and (ii) **Avinash Nagra Vs. Navodaya Vidyalaya Samiti**, (1997) 2 SCC 534 and also of Hon'ble Delhi High Court in the matters of **Kendriya Vidyalaya Sangathan Vs. Gauri Shankar**, W.P.(C) No.4400/2003 decided on 12.12.2007, in support of their submissions.

6. Heard the learned counsel of parties and carefully perused the pleadings of the respective parties and the documents annexed therewith. We have also perused the records of the proceedings of preliminary enquiry as well as of summary enquiry proceedings

regarding alleged misbehaviour of the applicant with girl students of Class XI and XII.

7. We find that complaints regarding alleged misbehaviour of the applicant were given by the girl students of Class XI and XII on 19.11.2009 and 20.11.2009 alleging that the applicant physically touches the girl students and holds their hands and that he leans and stares at the girl students which makes them uncomfortable. Accordingly, a memorandum was issued to him vide letter No.F.Conf/PF/09-10/726 dated 20.11.2009 asking him to submit his explanation. The applicant submitted his explanation on 20.11.2009 stating that he never makes physical contact with the students, but touching by hand could be possible during the occasion of birthday or in the crowd. The Chairman of the Vidyalaya Management Committee (for brevity 'VMC') was informed about the complaints vide letter dated 21.11.2009. A committee comprising of Nominee Chairman, two lady teachers and one male teacher was constituted to conduct preliminary enquiry. The preliminary enquiry was conducted on 23.11.2009 and submitted its report holding that the applicant has been indulging in abnormal behaviour with girl students of Class XI and XII and continued with it despite being objected to by the students. The committee opined that the applicant needs to be counseled for

his behaviour and warned against repetition of the same and further that to avoid any future confrontation, between the complainants and the applicant, the applicant should be posted out from the said school. The report of the said committee was forwarded to the Assistant Commissioner, KVS, Bhopal. Vide office order dated 07.12.2009 the Assistant Commissioner, KVS constituted a committee, as per instructions contained in KVS (HQrs) letter No.F.11-40/2001-KVS (Vig) dated 24.1.2002, to conduct a summary enquiry into the complaints made against the applicant, consisting of the following:-

1. Dr.S.N.Sharma, Education Officer, KVS RO Bhopal
2. Ms.Kiran Dhody, Principal, KV No.1 Gwalior
3. Smt.Sunita Singh, PGT (Hindi) KV No.3 Gwalior

7.1 Thereafter, vide order dated 08.12.2009 the applicant was transferred to KV Narmadanagar and was relieved from his duties on 12.12.2009.

7.2 The members of the summary enquiry committee inquired following individuals and the statements made by them were recorded on 10.12.2009:-

- (a) Affected students – six girl students of Class XII & Class XI
- (b) parents of the affected students
- (c) students of Class XI & XII
- (d) students of Class VIIC
- (e) lady teachers of KV 3 Gwalior

- (f) male teachers of KV 3, Gwalior
- (g) Shri Subedar PGT(Bio)- applicant

7.3 During the enquiry the applicant was given an opportunity to present his defence against the allegations made against him. He made a written statement that he has been in the service of the Sangathan since 1993 and has a clear record and that his neighbours, Principal, staff and students could be asked about his behaviour. He added that he is a quiet person and is innocent. He is a father of 5 children and treats all girls as his daughter and that his behaviour has been misunderstood by the girls. The committee perused the service record of the applicant and found that there was no previous record of misconduct. Based on the oral and written evidence adduced from the students, teachers, parents and principal of KV3, Gwalior the committee found that the applicant was in the habit of touching the girls, staring and leaning at them which made them uncomfortable. The committee came to the conclusion that the applicant had indulged in unwelcome/unwarranted physical contact with girl students.

7.4 The disciplinary authority after going through the records came to the final opinion that the applicant while functioning as PGT(Bio) at KV No.3 Gwalior was indulging himself in immoral behaviour towards girl students of KV No.3 Gwalior because of

which it was necessary to proceed against the applicant under Article 81(B) of the Education Code for KVs. The disciplinary authority also held that it was not expedient to hold a regular enquiry under the CCS(CCA) Rules, 1965 as it would cause serious embarrassment to the victim girl students and could also cause a trauma for them because of their tender age. Furthermore, the safety and security of the girl students have to be ensured by preventing their exposure to the tardy process of cross-examination in the regular enquiry in relation to the conduct of the applicant involving moral turpitude. Accordingly, holding of a regular enquiry for imposing major penalty in accordance with CCS(CCA) Rules, 1965 was dispensed with. After going through the case thoroughly in the light of the enquiry reports, statements and considering all the submissions of the applicant, the disciplinary authority found that the applicant was indulged in immoral behaviour towards girl students and the conditions mentioned under Article 81(B) of the Education Code for KVs were satisfied. By invoking the provisions of Article 81(B) (ibid) the disciplinary authority vide its order dated 28.07.2010 terminated the services of the applicant with immediate effect. The appeal submitted by the applicant against the order of termination was also rejected vide order dated 17.02.2011.

8. In the matters of **Gauri Shankar** (supra), Hon'ble Delhi High Court has held thus:

“(13). The guidelines prescribed under Rule 81(b) for dispensing with holding of a regular inquiry under the CCS(CCS) Rules, 1965, is that the Commissioner should be of the opinion that it is not expedient to hold a regular inquiry on account of the serious embarrassment that may be caused to the student or his guardians or such other practical difficulties. This decision/opinion has to be that of the Commissioner on whatever preliminary inquiry he might have got contacted and on the basis of the complaint/responses before him. In a case like the present, it can hardly be said that it would not have been highly embarrassing for both the students in question as well as their guardians to have faced an inquiry into the conduct of the respondent wherein he is stated to have physically abused the two students. The Commissioner, in his impugned order has recorded the reasons as to why it is not reasonably practicable to hold an inquiry in the present case. The Appellate order is even more clear which records detailed reasons of the Appellate Authority for rejecting the departmental appeal against the respondent.

(14). It was not for the Tribunal to have sat in judgment over the subjective satisfaction of the disciplinary authority and the appellate authority, which were based on cogent reasons and materials brought on record. Merely because the parents of the two students might have been aware of their relationship as noticed by the Tribunal (a fact, which is not borne out from the record), that by itself also was not enough to say that there was no question of any embarrassment to the students or their guardians in the holding of an inquiry. In our view, the present was a fit case where article 81 (b) of the Educational Code was rightly invoked by the Petitioner. This appears to us to be a case where the Respondent tried to exploit the vulnerable situation in which the two students found themselves. We are sorry to say that the Tribunal has acted with complete indifference and lack of sensitivity in making its aforesaid observations and we have no hesitation in setting aside the impugned order.

(15). In such like matters, the School administration is entitled to show zero tolerance. Parents send their children

to school on the trust and belief that their wards are safe from such exploitation at the hands of teachers and other staff of the school and that the school administration shall protect them against such exposure. If such conduct is tolerated or overlooked and treated with leniency, it would not only encourage others to indulge in similar misadventures, but also erode the confidence of the parents who send their young boys and girls to school".

8.1 A careful perusal of the above rulings we find that the Hon'ble High Court has specifically held that in such matters the School administration is entitled to show zero tolerance. Parents send their children to school on the trust and belief that their wards are safe from such exploitation at the hands of teachers and other staff of the school and that the school administration shall protect them against such exposure. If such conduct is tolerated or overlooked and treated with leniency, it would not only encourage others to indulge in similar misadventures, but also erode the confidence of the parents who send their young boys and girls to school.

8.2 Further in the matters of **Avinash Nagra** (supra) Hon'ble Supreme Court has held thus:

"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 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 the faith whether he would be entitled to the full-fledged enquiry 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. Enquiry 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 enquiry 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 enquiry 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 girls' 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 admitted his meeting with the girl but he had given a false explanation which was not found acceptable to the Enquiry Officer, namely, Asstt. Director. After conducting the enquiry, he submitted the report to the Director and the Director examined the report and found him not worthy 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 enquiry exposing the students and modesty of the girl and to terminate the services of the appellant 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 timings 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 statements 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 a loco parentis and, therefore, dispensing with regular enquiry under the rules and denial of cross-examination are legal and not vitiated by violation of the principles of natural justice".

8.3 We have also gone through the decision of the Hon'ble Supreme Court in the case of **Shri Babban Prasad Yadav (supra)**, wherein their lordships have held that all that is required for the court is to be satisfied that the preconditions to the exercise of

power under the rules are fulfilled. These preconditions 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.

9. In the instant case we find that all the preconditions to the exercise of power under the said rule laid down in the matters of **Shri Babban Prasad Yadav** (*supra*) were fulfilled, inasmuch as (i) a proper summary enquiry was held, (ii) finding in such summary enquiry that the applicant was guilty of moral turpitude was duly recorded; (iii) the disciplinary authority duly recorded its satisfaction on the basis of such summary enquiry that the applicant was *prima facie* guilty; (iv) the disciplinary authority also recorded its satisfaction that it was not expedient to hold an enquiry on account of serious embarrassment to be caused to the girl; and (v) sufficient reasons were also recorded by passing a detailed and speaking order in support of the aforesaid.

10. All the contentions raised by the applicant were duly considered by the disciplinary authority while passing the detailed order 28.07.2010 (Annexure A-1).

11. Since the conduct of the applicant was found to be unbecoming of a teacher, therefore, dispensing with regular enquiry under the rules and denial of cross-examination are legal and not vitiated by violation of the principles of natural justice, as has been held by the Hon'ble Supreme Court in the matters of **Avinash Nagra** (supra). Further, the Hon'ble Delhi High Court has specifically held that "*In such like matters, the School administration is entitled to show zero tolerance. Parents send their children to school on the trust and belief that their wards are safe from such exploitation at the hands of teachers and other staff of the school and that the school administration shall protect them against such exposure. If such conduct is tolerated or overlooked and treated with leniency, it would not only encourage others to indulge in similar misadventures, but also erode the confidence of the parents who send their young boys and girls to school*".

12. In the light of the above discussions and the verdicts of the Hon'ble Supreme Court and Hon'ble Delhi High Court in such

matters, as reproduced above, we find no reason to interfere in the disciplinary action taken by the KVS. Accordingly, the Original Application is dismissed, however, without any order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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