

Director, Navodaya Vidyalaya Samiti & Others

v.

Babban Prasad Yadav & Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE RUMA PAL HON'BLE MR. JUSTICE B.N. SRIKRISHNA

C. A. No. 4247 of 2003 | 02-05-2003

1. Leave granted.

2. Appellant 1 is an educational organisation and has been registered as a society under the Societies Registration Act. Respondent 1 (referred to hereafter as "the respondent") was employed as a teacher by the Society. On 8-2-2001 the services of the respondent were terminated. The order of termination records that the respondent was prima facie found guilty of moral turpitude because he had indulged in immoral conduct with one of the students of the school by writing undesirable letters/remarks to her. It is further recorded that the Director while issuing the order of termination, was satisfied that the procedure of holding a regular departmental enquiry under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was not expedient, as the same may cause serious embarrassment to the girl student and her parents. A full enquiry was therefore dispensed with. Finally, the order stated that the evidence on record established the respondent's guilt and that his continuation in a residential institution, like the appellant Society, would be prejudicial to the interest of the girl students and the institution itself. The respondent was given three months' pay and allowances in lieu of notice under the Rules in terms of Notification No. F. 14-2/93-VVS (Vig) dated 20-12-1993.

3. Aggrieved by the order of termination the respondent approached the Central Administrative Tribunal. The Tribunal dismissed the respondent's case. The High Court, however, reversed the decision of the Tribunal and set aside the order of termination on a writ application filed by the respondent. The High Court, however, gave an opportunity to the appellant Society to hold a regular enquiry into the charges levelled against the respondent.

4. Counsel appearing for the appellant has contended that the Rules relating to the dispensation of enquiry had been notified on 20-12-1993. These Rules specifically provided:

"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 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, the procedure prescribed for holding enquiry for imposing major penalty in accordance with the 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."

5. The appellant's argument is that the rule quoted above specifically entitled the Director, subject to the conditions being fulfilled under the rule, to dispense with the enquiry against an employee who is charged with offences of moral turpitude, including immoral behaviour. Learned counsel for the appellant has relied upon the decision of this Court in *Avinash Nagra v. Navodaya Vidyalaya Samiti*, 1997 (2) SCC 534 where this Court in a similar situation upheld the exercise of power by the Director in dispensing with a full scale enquiry. According to the appellant, a prima facie finding has been arrived at by the Director on the basis of an enquiry held by a Committee set up for the purpose. The Committee gave a report after affording an opportunity to the respondent and after considering his defence in the matter. It was only on the basis of the report that the Director arrived at the prima facie satisfaction as mandated by the rule in question. On the merits of the case, it is submitted that in view of the Committee's report, the Director's satisfaction that the respondent was prima facie guilty of immoral behaviour could not be said to be incorrect. The Committee had relied upon the letters proved to have been written by the respondent to the student which euphemistically speaking, were undesirable, having regard to the relationship of trust required to be maintained between a teacher and a student. The handwriting on the letters which had been disputed by the respondent, had been established to be his by an expert body which had given a report on the letters having compared them with admitted specimen handwritings of the respondent. It is also submitted that the High Court had erred in relying upon the principle enshrined in Art.311(2) of the Constitution not only because the provisions of that Article were not applicable to the respondent but also because there were specific rules governing the appellant institution which rules have been considered, construed and approved by this Court in the decision in the case of *Avinash Nagra*1.

6. Learned counsel appearing on behalf of the respondent states that the decision of the High Court should not be interfered with particularly since the High Court has not decided the issue on merits. It merely directed an enquiry to be held so that the respondent would be in a position to establish his defence. According to the respondent the entire case against him was cooked up by the Deputy Director on account of mala fides and that, therefore, a full scale enquiry was required to be held. It is contended that even during the enquiry against the respondent, the institution had entrusted the respondent with responsible jobs showing that the respondent was a man whose character was unblemished. It is submitted that the decision in *Avinash Nagra* case1 was distinguishable and should be limited to the facts of that case.

According to the learned counsel appearing on behalf of the respondent, the decision in Avinash Nagra case¹ was rendered in the background of the fact that the employee in question was a mere probationer.

7. 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 preconditions to the exercise of power under the said rule are fulfilled. These preconditions are: (i) 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.

8. In this case, all the preconditions have been fulfilled. An Enquiry Committee was duly constituted. It held an enquiry and came to the conclusion that the respondent 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 regular enquiry, reasons which have been upheld as being valid in the decision in Avinash Nagra¹ wherein this Court has held:

"With a view to ensure safety and security to the girl students, to protect their modesty and prevent their unnecessary exposure at an enquiry in relation to the conduct of a teacher resulting in sexual harassment of the girl student, etc. involving misconduct or moral turpitude, resolution prescribing special summary procedure was proposed and published by notification dated 23-12-1993, after due approval of the Executives of the respondent Samiti. The Minister of Human Resources and Development, Government of India is its Chairman.

XXXX XXXX XXXX

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 to Minister, Human Resources Department, Government of India in that behalf."

9. It is true that the Court in Avinash Nagra¹ has made the following observations:

"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."

However, the Court goes on to say:

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

(emphasis in original)

10. The last observation was not based on the fact that the employee in that case was a probationer at all. Indeed the embarrassment to the girl student would hardly be different merely because the alleged offender is a permanent employee. Besides, under Art.311(2) itself an enquiry may be dispensed with under certain circumstances. We have no doubt that those circumstances may include a situation as indicated in the rule of the institution as mentioned hereinbefore.

11. The High Court particularly erred in requiring that such a charge needed to be proved beyond all reasonable doubt. This is against the principles governing a departmental enquiry in general and the unchallenged rules of the appellant institution in particular. The reason sought to be given by the Director for dispensing with the enquiry has been held by the High Court to be "unconstitutional and not legal". This finding is also unacceptable since the Director has used the language of the rule. Furthermore, having regard to the approval of the rule in question in the decision of Avinash Nagra¹ it was not open to the High Court to have come to the conclusion that the reason given by the Director for dispensing with the enquiry was unconstitutional or illegal.

12. In the circumstances, we allow the appeal and set aside the order of the High Court. However, having regard to the submissions of the learned counsel appearing for the respondent, we grant the respondent an opportunity to tender his unconditional resignation to the institution with effect from the date of the order of termination. If such letter of resignation is given within a period of four weeks the appellant institution will accept it. After the acceptance of the resignation, the order of termination will be withdrawn by the appellant.

13. Place the matter in the list two weeks after the reopening for further directions.