

SUPREME COURT OF INDIA

Shri Anant R. Kulkarni

Vs

Y.P. Education Society

C.A.No.3935 of 2013

(Dr.B.S.Chauhan and Fakkir Mohamed Ibrahim Kalifulla JJ.)

26.04.2013

JUDGMENT

DR. B.S. CHAUHAN, J.

1. This appeal has been preferred against the impugned judgment and order dated 4.10.2011 of the High Court of Judicature of Bombay in Letters Patent Appeal No.171 of 2011 arising out of Writ Petition No. 1849 of 2003, by way of which the Division Bench of the High Court upheld the judgment of the learned Single Judge, as well as that of the School Tribunal (hereinafter referred to as the 'Tribunal'), quashing the enquiry against the appellant, while giving liberty to respondent Nos.1 and 2 to hold a fresh enquiry on the charges levelled against the appellant.

2. Facts and circumstances giving rise to this appeal are that:

A. The appellant was appointed as Assistant Teacher in the school run by the respondents on 7.6.1965, and was promoted as the Head Master of the said school on 21.6.1979.

B. A new Management Committee came into power in the year 2000, and began to raise allegations of misconduct against the appellant, as the appellant had certain apprehensions with respect to the eligibility of certain office bearers of the Management Committee.

C. The respondents-management issued show-cause notice dated 21.2.2001 to the appellant, under Rule 28 of the Maharashtra Employees of Private School Rules, 1981 (hereinafter referred to as the 'Rules 1981'), seeking an explanation as to why disciplinary proceedings should not be initiated against him, for his alleged misconduct. The appellant submitted his reply on 3.3.2001, and also challenged the eligibility of some of the elected members of the Management Committee.

D. The Management Committee, vide resolution dated 4.3.2001 took a decision to hold disciplinary proceedings against the appellant as per the provisions of Rule 36 of the Rules 1981, and in pursuance thereof, a chargesheet dated 17.5.2001 containing 12 charges of misconduct, was served upon the appellant. The appellant vide letter dated 1.7.2001, submitted his clarifications with respect to the said charges that had been levelled against him.

E. An Enquiry Committee consisting of two members instead of three, as per the Rules 1981, conducted the enquiry and submitted its enquiry report on 20.5.2002, making a recommendation that the appellant be dismissed from service. The said enquiry report was accepted by the Management Committee, and the services of the appellant were terminated vide order dated 24.5.2002 w.e.f. 31.5.2002.

F. Aggrieved, the appellant challenged the said termination order by filing Appeal No.65 of 2002, before the Tribunal. The respondents contested the appeal. However, upon reaching the age of superannuation, the appellant stood retired on 30.9.2002. G. The Tribunal vide judgment and order dated 19.10.2002 held, that none of the charges levelled against the appellant stood proved, and that the enquiry had not been conducted according to the Rules 1981. Thus, the termination order against the appellant was quashed.

H. Aggrieved, the respondents-management filed Writ Petition No.1849 of 2003 before the High Court, and the learned Single Judge decided the said writ petition vide judgment and order dated 20.4.2011, upholding the judgment of the Tribunal, and found the enquiry to be entirely defective and thus, illegal. I. The respondents-management filed Letters Patent Appeal No.171 of 2011, and the Division Bench too, upheld the judgment of the learned Single Judge, as well as that of the Tribunal, but simultaneously also

held, that the respondents were at liberty to proceed with the enquiry afresh, as regards the said charges.

Hence, this appeal.

3. Shri C.U. Singh, learned senior counsel appearing for the appellant, has submitted that the charges have been found to be vague, and that the enquiry was conducted in violation of the statutory Rules 1981, and further that none of the charges reflected embezzlement or mis-appropriation, and cast no doubt upon the integrity of the appellant whatsoever. As the appellant stood retired on 30.9.2002, the question of holding a fresh enquiry in 2011 could not arise. The court does not lack competence to decide the case on merits even if it comes to the conclusion that there has been violation of statutory rules, principles of natural justice or the order also stood vitiated on some other technical ground. There is no statutory rule permitting the Management Committee to hold an enquiry against a person who has retired a decade ago, particularly when the school is a government-aided school, and the appellant-employee receives pension from the State. Thus, the appeal deserves to be allowed.

4. Per contra, Shri Braj Kishore Mishra, learned counsel appearing for the respondents, has submitted that a person cannot be allowed to go scot-free simply because he has retired. An enquiry can be conducted against him, and he can be punished by withholding either full or part of his pension. No fault can be found with the impugned judgment and thus, the appeal is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. The appeal raises the following substantial questions of law:-

(i) In case the punishment is set aside by the Court/Tribunal as the enquiry stood vitiated for technical reasons, whether the employer is entitled to hold the enquiry afresh from the point it stood vitiated;

(ii) Whether the enquiry can be quashed on the ground of delay;

(iii) Whether the enquiry can be permitted to be held on vague and unspecified charges; and

(iv) Under what circumstances enquiry can be conducted against the delinquent employee who has retired on reaching the age of superannuation.

In case the punishment is set aside:

7. It is a settled legal proposition that, once the Court set aside an order of punishment on the ground, that the enquiry was not properly conducted, the Court should not severely preclude the employer from holding the inquiry in accordance with law. It must remit the concerned case to the disciplinary authority, to conduct the enquiry from the point that it stood vitiated, and to conclude the same in accordance with law. However, resorting to such a course depends upon the gravity of delinquency involved. Thus, the court must examine the magnitude of misconduct alleged against the delinquent employee. It is in view of this, that courts/tribunals, are not competent to quash the charge-sheet and related disciplinary proceedings, before the same are concluded, on the aforementioned grounds. (Vide: *Managing Director, ECIL, Hyderabad etc.etc. v. B. Karunakar etc.etc.* AIR 1994 SC 1074; *Hiran Mayee Bhattacharyya v. Secretary, S.M. School for Girls & Ors.*, (2002) 10 SCC 293; *U.P. State Spinning C. Ltd. v. R.S. Pandey & Anr.*, (2005) 8 SCC 264; and *Union of India v. Y.S. Sandhu, Ex-Inspector* AIR 2009 SC 161).

Enquiry at belated stage:

8. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, must be carefully examined, taking into consideration the gravity/magnitude of charges involved therein. The Court has to consider the seriousness and magnitude of the charges and while doing so the Court must weigh all the facts, both for and against the delinquent officers and come to the conclusion, which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration, that the said proceedings are allowed to be terminated, only on the ground of a delay in

their conclusion. (Vide: State of U.P. v. Brahm Datt Sharma & Anr., AIR 1987 SC 943; State of Madhya Pradesh v. Bani Singh & Anr., AIR 1990 SC 1308; State of Punjab & Ors. v. Chaman Lal Goyal, (1995) 2 SCC 570; State of Andhra Pradesh v. N. Radhakishan, AIR 1998 SC 1833; M.V. Bijlani v. Union of India & Ors., AIR 2006 SC 3475; Union of India & Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906; The Secretary, Ministry of Defence & Ors. v. Prabash Chandra Mirdha, AIR 2012 SC 2250; and Chairman, LIC of India & Ors. v. A. Masilamani, JT (2012) 11 SC 533).

Enquiry – on vague charges :

9. In *Surath Chandra Chakravarty v. The State of West Bengal*, AIR 1971 SC 752 this Court held, that it is not permissible to hold an enquiry on vague charges, as the same do not give a clear picture to the delinquent to make out an effective defence as he will be unaware of the exact nature of the allegations against him, and what kind of defence he should put up for rebuttal thereof. The Court observed as under:–

“The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has to be stated. This rule embodies a principle which is one of the specific contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.” (Emphasis added)

10. Where the chargesheet is accompanied by the statement of facts and the allegations are not specific in the chargesheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a chargesheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the chargesheet, the enquiry stands vitiated, as having been conducted in violation of the principles of

natural justice. Evidence adduced should not be perfunctory, even if the delinquent does not take the defence of, or make a protest with against that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair-play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges.

(Vide: State of Andhra Pradesh & Ors. v. S. Sree Rama Rao, AIR 1963 SC 1723; Sawai Singh v. State of Rajasthan, AIR 1986 SC 995; U.P.S.R.T.C. & Ors. v. Ram Chandra Yadav, AIR 2000 SC 3596; Union of India & Ors. v. Gyan Chand Chattar, (2009) 12 SCC 78; and Anil Gilurker v. Bilaspur Raipur Kshetria Gramin Bank & Anr., (2011) 14 SCC 379).

11. The purpose of holding an enquiry against any person is not only with a view to establish the charges levelled against him or to impose a penalty, but is also conducted with the object of such an enquiry recording the truth of the matter, and in that sense, the outcome of an enquiry may either result in establishing or vindicating his stand, and hence result in his exoneration. Therefore, fair action on the part of the authority concerned is a paramount necessity.

Enquiry against a retired employee:

12. This Court in NOIDA Entrepreneurs Association v. NOIDA & Ors., AIR 2011 SC 2112, examined the issue, and held that the competence of an authority to hold an enquiry against an employee who has retired, depends upon the statutory rules which govern the terms and conditions of his service, and while deciding the said case, reliance was placed on various earlier judgments of this Court including B.J. Shelat v. State of Gujarat & Ors., AIR 1978 SC 1109; Ramesh Chandra Sharma v. Punjab National Bank & Anr., (2007) 9 SCC 15; and UCO Bank & Anr. v. Rajinder Lal Capoor, AIR 2008 SC 1831.

13. In State of Assam & Ors. v. Padma Ram Borah, AIR 1965 SC 473, a Constitution Bench of this Court held that it is not possible for the employer to continue with the enquiry after the delinquent employee stands retired. The Court observed:- “According to the earlier order of the State Government itself, the service of the respondent had come to an end on March 31, 1961. The State Government could not by unilateral action create a fresh contract of service to take

effect from April 1, 1961. If the State Government wished to continue the service of the respondent for a further period, the State Government should have issued a notification before March 31, 1961.”

(Emphasis added)

While deciding the said issue, the Court placed reliance on the judgment in *R.T. Rangachari v. Secretary of State*, AIR 1937 PC 27.

14. In *State of Punjab v. Khemi Ram*, AIR 1970 SC 214, this court observed:

“There can be no doubt that if disciplinary action is sought to be taken against a government servant it must be done before he retires as provided by the said rule. If a disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the Government is to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such enquiry is completed and a final order is passed therein.”

15. In *Kirti Bhusan Singh v. State of Bihar & Ors.*, AIR 1986 SC 2116, this Court held as under:

“.... We are of the view that in the absence of such a provision which entitled the State Government to revoke an order of retirement..... which had become effective and final, the order passed by the State Government revoking the order of retirement should be held as having been passed without the authority of law and is liable to be set aside. It, therefore, follows that the order of dismissal passed thereafter was also a nullity.”

16. In *Bhagirathi Jena v. Board of Directors, O.S.F.C. & Ors.*, AIR 1999 SC 1841, this Court observed:

“... There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held

that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.”

17. In U.P. State Sugar Corporation Ltd. & Ors. v. Kamal Swaroop Tondon, (2008) 2 SCC 41, this Court dealt with a case wherein statutory corporation had initiated proceedings for recovery of the financial loss from an employee after his retirement from service. This Court approved such a course observing that in the case of retirement, master and servant relationship continue for grant of retiral benefits. The proceedings for recovery of financial loss from an employee is permissible even after his retirement and the same can also be recovered from the retiral benefits of the said employee.

18. Thus, it is evident from the above, that the relevant rules governing the service conditions of an employee are the determining factors as to whether and in what manner the domestic enquiry can be held against an employee who stood retired after reaching the age of superannuation. Generally, if the enquiry has been initiated while the delinquent employee was in service, it would continue even after his retirement, but nature of punishment would change. The punishment of dismissal/removal from service would not be imposed.

19. The case requires to be examined in the light of the aforesaid legal propositions.

The following charges were framed against the appellant:

(a) Charge No.1:-The first respondent did not submit dead stock verification report in spite of several letters.

(b) Charge No.2:-The first respondent did not submit the documents such as cash books, ledgers and voucher files in spite of demands made by the management.

(c) Charge No.3:- relates to not calling School Committee meeting and causing loss of Rs.48851/- as no timely approval was obtained for that expenditure from the school committee.

(d) Charge No.4:- The first respondent did not send appointment proposal dated 4.9.2000 of Mr. Ghadge for approval to the Education Officer (Secondary) Z.P. Solapur and salary of the said teacher could not be paid .

(e) Charge No.5:- The Respondent prepared budget 2001-2002 and forwarded to the management directly without obtaining sanction of the School Committee.

(f) Charge No.6:- The first respondent obstructed working of the management and the School Committee on the ground that he had challenged the election of the office bearers before the Joint Charity Commissioner, Latur even though there was no stay/injunction.

(g) Charge No.7:- The first respondent did not attend any of the 11 meetings of the Managing Committee in the capacity as a Head Master.

(h) Charge No.8:- The first respondent did not submit explanation regarding his teaching workload though asked for by the management as per letter No. S/167 dated 11.12.2000.

(i) Charge No.9:- The first respondent did not give his explanation about donation of Rs.4900/- given by the Lioness Club of Barsi demanded by the management as per letter No. S/174 dated 27.12.2000.

(j) Charge No.10:- The respondent did not reply letter no. S/131 dated 10.10.2000 in respect of Internet connection.

(k) Charge No.11:- The first respondent did not explain excessive telephone bills as stated by him in his letter no.L/83 dated 26.10.2000.

(l) Charge No.12:- The first respondent did not submit report as to his activities during two days on duty leave in the office of Education Officer (Secondary) Solapur and the Deputy Director of Education, Pune Region, Pune.

The charges were found proved and punishment was imposed.

20. The Tribunal examined all the issues involved, and recorded its specific findings as under:

“The charge No.11 is in respect of excessive telephone bills. The telephone bill for the academic year 1999-2000 is Rs.3931/-. According to

Management this is excessive bill. The charge is vague. The explanation given by appellant that specifically no call was made for private purpose. The objection regarding call at Chennai is properly explained that this call was made to the Institute of Brilliant Tutorials as it was required for the students of Xth standard for guiding them for career for Engineering. The Institute by names Brilliant Tutorials is famous well known academy and some phone calls made to it are well within the powers of Head Master. The total bill of Rs.3931/- for a High School during a year cannot be said to be excessive particularly when many of the calls are made to Pune and Thane. These calls have properly been explained that Writ petition was filed against the school and these calls were made to the Advocate concerned in connection with the Writ Petition. Calling such an explanation on every call by the Management to the Head Master is nothing but over victimizing or interference of Management in day-to-day business of the school.

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There is no evidence brought before the Inquiry Committee to hold guilty for these charges. But the members seem to have anxious to hold the guilty of the charges to the appellant. They have based their conclusion on some thread of evidence ignoring all other circumstances and evidence in favour of appellant”

The Tribunal further stated as under:

(i) Charge No.1, is in respect of not submitting the documents papers asked by the Management particularly pertaining to dead stock.

(ii) Charge No.2 is regarding the Registers and journals regarding school fees, voucher files etc. The accounts of school are audited by the authorized auditor. Under these circumstances, calling these record seems to be only for finding loop holes. This is a sort of interference of the Management in day-to-day work of the school, which is unwarranted. In spite of this, the explanation shows that there is sufficient compliance of direction and there is no insubordination.

(iii) Charge No.3, is not calling meetings of school committee as per code....and the explanation submitted by appellant not calling the meetings is acceptable.

(iv) Charge No.4, is in respect of not forwarding proposal of Shikshan Sevek to the Education Officer. The reasons explained by the appellant are acceptable.

(v) Charge No.5, is in respect of submitting the budget for the year 2001-2002 to the Management without approval of school committee. When the Management has accepted this budget this charge does not survive. As such when the Management has directly accepted the budget and budget proposals, this charge ought not to have been framed at all.

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(vii) Charge No.7, is in respect of not attending the Management council meeting. This charge is also purely technical. The explanation of the appellant is that intimation of meeting was given by the Management at the 11th hour before few hours of the meeting without providing agenda of the meeting.... The explanation needs sympathetic consideration and the allegations if at all considered, cannot be a ground for termination of appellant's service.

(viii) Charge No.8, is in respect of workload of about six hours in a week to be discharged by the Head Master....Explanation given by the appellant is that the hard subjects of science and mathematics were given to new comers as appellant was to retire in near future. He wanted that new man should be well prepared before appellant leaves the school. This explanation is reasonable and acceptable.

In the conclusion, I hold that the evidence on record is not sufficient to hold the appellant guilty of the charges. The net result of the scrutiny of the proceedings is that the inquiry seems to have been initiated on very technical flaws which lead to only conclusion that it was pre-determined and prejudicial inquiry. As explained above, there is no sufficient proof on record to hold that the charges are proved.”

21. The Tribunal, as well as the learned Single Judge of the High Court have recorded a categorical finding of fact to the effect that initiation of departmental enquiry against the appellant had been done with malafide intention to harass him. The charges were not specific and precise; infact, they were vague and unspecific.

Furthermore, the Management committee had failed to observe the procedure prescribed in Rules 36 & 37 of Rules, 1981. The said Rules 36 & 37, prescribe a complete procedure for the purpose of holding an inquiry, wherein it is clearly stated that an inquiry committee should have minimum three members, one representative from the Management committee, one to be nominated by the employees from amongst themselves, and one to be chosen by the Chief Executive Officer, from amongst a panel of teachers who have been awarded National/State awards. In the instant case, there was only a two member committee. The procedure prescribed under the Rules is based on the Principles of Natural Justice and fair play, to ensure that an employee of a private school, may not be condemned unheard. It is pertinent to note that the Management committee failed to prove even a single charge against the appellant.

22. Therefore the Tribunal, as well as the learned Single Judge have both made it clear that the inquiry had not been conducted in accordance with the provisions of Rules 36 and 37 of the Rules 1981. However, they themselves have dealt with each and every charge, and have recorded their findings on merit. The present case is certainly not one where a punishment has been set aside only on a technical ground, that the inquiry stood vitiated for want of a particular requirement. Thus, in light of such a fact situation, the Division Bench has committed an error by giving liberty to the respondents to hold a fresh enquiry.

23. The Division Bench after examining the case, held as under:

(i) If there was defect found in the manner in which the departmental enquiry was held, liberty should have been given to the management to hold a fresh enquiry if so advised, and if the appellant was found guilty thereafter, punishment could have been imposed on him as permissible under law.

(ii) Once the Tribunal and the learned Single judge have found that there was infact, a defect in the manner in which the enquiry was held, there was no question of them recording findings on merit to the effect that the charges were not proved against the appellant.

(iii) However, before taking any steps towards holding an enquiry, the management would have to make payment of the full salary owed to the appellant, for the period between the date of termination of the appellant from service, till the date of his retirement.

24. The conclusion reached by the Division Bench that the Tribunal and the learned Single Judge had found that there was a defect in the manner in which the enquiry was held, and therefore there was no question of it recording a finding on merit to the effect that charges levelled against the appellant were not proved, is also not sustainable in law. It is always open for the Court in such a case, to examine the case on merits as well, and in case the Court comes to the conclusion that there was infact, no substance in the allegations, it may not permit the employer to hold a fresh enquiry. Such a course may be necessary to save the employee from harassment and humiliation.

25. In the instant case, there is no allegation of misappropriation/embezzlement or any charge which may cast a doubt upon the integrity of the appellant, or further, anything which may indicate even the slightest moral turpitude on the part of the appellant. The charges relate to accounts and to the discharge of his functions as the Headmaster of the school. The appellant has provided satisfactory explanation for each of the allegations levelled against him. Moreover, he has retired in the year 2002. The question of holding any fresh enquiry on such vague charges is therefore, unwarranted and uncalled for.

26. The Education Officer (Secondary), Zilla Parishad, Solapur, had filed an affidavit before the High Court, wherein it was stated that a dispute had arisen between the trustees, and in view thereof, an enquiry was initiated against the appellant. The respondents terminated the services of the appellant and many other employees, as a large number of cases had been filed against the Management Committee without impleading the State of Maharashtra, though the same was a necessary party, as the school was a government-aided school. Rules 36 and 37 of the Rules 1981, which prescribe the procedure of holding an enquiry have been violated. The charges levelled against the appellant were entirely vague, irrelevant and unspecific. As per statutory rules, the appellant was not allowed to be represented by another employee. Thus, the procedure prescribed under Rule 57(1) of the Rules 1981 stood violated. No chargesheet containing the statement of allegations was ever served. A summary of the proceedings, alongwith the statements of witnesses, as is required under Rule 37(4) of the Rules 1981, was never forwarded to the appellant. He was not given an opportunity to explain himself, and no charge was proved with the aid of any documentary evidence. There existed no charge against the appellant regarding his integrity, embezzlement or mis-appropriation. Therefore, the question of mis-appropriation of Rs.4,900/- in respect of a telephone bill remained entirely irrelevant. Furthermore, the same was not a charge of mis-appropriation. The learned Single

Judge has also agreed with the same. The Division Bench though also in agreement, has given liberty to the respondents to hold a fresh enquiry.

27. We may add that the court has not been apprised of any rule that may confer any statutory power on the management to hold a fresh enquiry after the retirement of an employee. In the absence of any such authority, the Division Bench has erred in creating a post-retirement forum that may not be permissible under law.

28. In light of the facts and circumstances of the case, none of the charges are specific and precise. The charges have not been accompanied by any statement of allegations, or any details thereof. It is not therefore permissible, for the respondents to hold an enquiry on such charges. Moreover, it is a settled legal proposition that a departmental enquiry can be quashed on the ground of delay provided the charges are not very grave.

29. In the facts and circumstances of the case, as the Tribunal as well as the learned Single Judge have examined all the charges on merit and also found that the enquiry has not been conducted as per the Rules 1981, it was not the cause of the Management Committee which had been prejudiced, rather it had been the other way around. In such a fact-situation, it was not necessary for the Division Bench to permit the respondents to hold a fresh enquiry on the said charges and that too, after more than a decade of the retirement of the appellant.

30. In view of the above, appeal succeeds and is allowed. The impugned judgment and order of the High Court is modified to the extent referred to hereinabove. The appellant shall be entitled to recover all his salary and retirement dues, if not paid already. No costs.