

AVINASH NAGRA

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v.

NAVODAYA VIDYALAYA SAMITI ETC.

SEPTEMBER 30, 1996

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

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Service Law.

Central Civil Service (Classification, Control and Appeal) Rules, 1965.

Navodaya Vidyalaya—Notification dated December 23, 1993, Clause (b)—Dispensing with regular inquiry—Temporary teacher on probation—Moral turpitude—Exhibition of immoral sexual behaviour towards a girl student—Termination from service—Writ petition before High Court challenging the order, withdrawn—Second writ petition dismissed—This Court directing an inquiry into the allegations—Inquiry report submitted with the finding that the teacher was guilty of moral turpitude involving exhibition of immoral sexual behaviour towards the girl student—Teacher challenging the inquiry as violative of principle of natural justice inasmuch as he was not afforded an opportunity to cross-examine the girl student and her colleagues who gave their statements—Held the record shows that the conduct of the appellant is unbecoming of a teacher much less a 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—Rules have given the power of the Director to take decision based on the fact situation where a summary inquiry was necessary or he can dispense with the services of the delinquent by giving pay in lieu of notice.

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Constitution of India, 1950.

Article 51-A—Fundamental duties—Navodaya Vidyalaya—Teacher—Dismissed from service for exhibition of immoral sexual behaviour towards a girl student—Held, 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.

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Administrative Law—Natural Justice—Navodaya Vidyalaya—Teacher

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A —Dismissal from service for exhibition of immoral sexual behaviour towards a girl student—Held, dispensing with regular inquiry under the rules and denial of cross-examination is legal and not violative of the principles of natural justice.

B Constructive *res judicata*—Writ petition under Article 226 filed before the High Court withdrawn—Second writ petition dismissed—Held, the High Court was right in its view that the second writ petition was not maintainable in view of the principle of constructive *res judicata*.

C Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi and Ors., [1991] 2 SCC 716, referred to.

"Human Values and Education" edited by S.P. Ruhela; and "The Social and Political Thought" by Dr. S. Radhakrishnan", referred to.

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14525 of 1996.

From the Judgment and Order dated 9.1.96 of the Himachal Pradesh High Court in C.W.P.No. 56 of 1996.

E Arun K. Sinha for the Appellants.

Ms. Vijay Lakshmi Menon for the Respondents.

The following Order of the Court was delivered :

F Leave granted.

We have heard learned counsel on both sides.

This appeal by special leave arises from the order of the High Court of Himachal Pradesh made on January 9, 1996 in Writ Petition No. 56/96.

G The appellant was appointed as a post-graduate teacher on January 28, 1994. Initially he worked at Patiala but was transferred to Kinnaur. The Respondent-institution is a co-educational institution. The appellant's service was terminated in terms of his letter of appointment giving salary in lieu of notice on the ground of his improper conduct with a girl student.

H When he filed writ petition, the High Court, after consideration of the

record, dismissed the same. When the petition had come up for admission and the counsel insisted upon an enquiry to be conducted against the alleged misconduct, by Order dated March 13, 1996, we directed the management to issue show cause notice to the petitioner, conduct an enquiry and submit the report within a specified time which was subsequently extended. In furtherance thereof, show cause notice dated May 2, 1996, together with the statements of the girl, her room-mates and the attender, Bharat Singh, were supplied to the petitioner. After receipt of the explanation submitted by the appellant and consideration of the entire record, they have drawn up a report and submitted the same to this Court with the finding that the appellant is guilty of moral turpitude involving exhibition of immoral sexual behaviour towards a girl student in Jawahar Navodaya Vidyalaya, Kinnaur. On consideration of the report and the record we have heard the counsel on both sides.

It is contended for the appellant that the charges levelled against him impinge upon his character, conduct and career. Therefore, he should have been given an opportunity to cross-examine the girl student and her colleagues who have given their statements and to had himself examined. The procedure adopted, therefore, is in violation of the settled legal principles and principle of *audi alterem partem*. It is accordingly vitiated by manifest error of law warranting interference. Shri Arun Kumar Sinha, learned counsel for the appellant, contended that the matter requires remittance to the disciplinary authority for conducting *de novo* enquiry and give an opportunity to establish appellant's innocence. It is also contended that since the appellant had filed the writ petition initially which was dismissed as withdrawn, the second writ petition cannot be dismissed on the principle of constructive *res judicata*. The view of the High Court, therefore, was vitiated by serious errors of law. The learned counsel for the respondents resisted the contention.

The first question that arises for consideration is: whether the dismissal of the appellant in terms of his letter of appointment is vitiated by any error of law and whether he is entitled to a full-fledged enquiry and opportunity to cross-examine the girl students who gave the statements against the appellant? The second question is: whether the High Court was right in dismissing the writ petition under the impugned order dated January 9, 1996? Indisputably, the provisions of C.C.S (C.C.O) Rules, 1965

- A of the Government of India would be applicable to the employees of Navodaya Vidyalaya. The respondent is running nation-wide co-educational specialised and prestigious schools in which 1/3rd of the students are girls. With a view to ensure safety and security to the girl students, to protect their modesty and prevent their unnecessary exposure at an enquiry
- B 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 December 23, 1993, after due approval of the Executives of the respondent-Samiti. The Minister of Human Resources and Development, Government of India is its Chairman. The notification postulates to
- C dispense with regular enquiry under the Rules. In the case of a temporary employee whose integrity and conduct is doubtful but difficult to prove with sufficient documentary evidence to establish the charge and whose retention in service would be prejudicial to the interest of the institution or whose grave misconduct and the enquiry under the Rules would be likely
- D to result in embarrassment to the class of employees or is likely to endanger the reputation of the institution, the appointing authority, for the reasons to be recorded in the file, may terminate his services in terms of the letter of appointment. The order of termination need not contain any reasons but the appointing authority has to obtain prior approval of the Deputy Director. Similarly, when the Director is satisfied, after summary inquiry, that
- E there was a *prima facie* guilt of moral turpitude involving sexual harassment or exhibition of immoral behaviour towards any girl student, under clause (b) of the above notification, the Director "can terminate the services of that employee by giving him one month's or three months' pay and allowances in lieu thereof, depending upon whether the guilty employee is temporary or permanent in the services of the Samiti. In such cases, procedure prescribed for holding enquiry for imposing major penalty in accordance with the Rules as applicable to the employees of the Respondent, shall be dispensed with provided that the Director is of the opinion that it is not
- F 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. It would thus be seen that in a given situation, instead of adopting
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the regular procedure under the Rules to terminate the services of an employee, the notification prescribes the procedure to dispense with such enquiry, subject to the conditions mentioned above. The question is: whether the order terminating the services of the appellant in terms of his appointment letter is in violation of the Rules or the principles of natural justice? Before answering the question, it is necessary to consider the need for the education and the place of the teacher in that behalf. Article 45 of the Constitution enjoins the State to endeavour to provide free and compulsory education to all children, till they complete the age of 14 years. This Court has held that right to education is a Fundamental Right and the State is required to organise education through its agencies or private institutions in accordance with the law and the regulations or the scheme. As laid down by this Court, it is the duty of the State to provide compulsory primary education free; secondary education and the university education according to the appropriate statutes and the schemes. The Union of India had adopted the Navodaya Vidyalaya Scheme to impart discipline and higher learning upto the stage of secondary education. Article 51A in Chapter IVA of the Fundamental Duties envisages that it shall be the duty of every citizen of India to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem. The citizen should cherish and follow the noble ideals which inspired our national struggle for freedom; to uphold and protect the sovereignty, unity and integrity of India. The citizens should , as a duty, defend the country and render national service when called upon to do so; to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities. The citizen, as a duty, should renounce practices derogatory to the dignity of women; value and preserve the rich heritage of our composite culture; protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Every citizen should develop scientific temper, humanism and the spirit of inquiry and reform; safeguard public property and abjure violence; strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. These ideals should be nurtured and imbibed by imparting to the receptive minds of the children from their childhood. In *Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi and Ors.*, [1991]

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- A 2 SCC 716, this Court, while holding that right to education is a fundamental right, had held the native endowments of men are by no means equal. Education means a process which provides for intellectual, moral and physical development of a child for good character formation; mobility to social status; an opportunity to scale equality and a powerful instrument to bring about social change including necessary awakening among the people. Education promotes intellectual, moral and social democracy. Education lays foundation of good citizenship and is a principal instrument to awaken the child to intellectual and cultural pursuits and values in preparing the child for later professional training and helps him to adjust to the new environment. Education, therefore, should be co-related to the social, political or economic needs of our developing nation fostering secular values, breaking the barriers of casteism, linguism, religious bigotry and should act as an instrument of social change. Education kindles its flames for pursuit of excellence, enables and enobles the young mind to sharpen his or her intellect more with reasoning than blind faith to reach intellectual heights and inculcate in him or her to strive for social equality and dignity of person.

- In "*Human Values and Education*" edited by S.P. Ruhela under the article on "*The Problem Values*" by P.N. Mathur, it is stated that the spiritual values taught in education, act as the guiding stars providing motive force behind his thought, emotion and action; the value should be moral and spiritual in socio-cultural and spiritual life of man has to be such as brings peace, progress and welfare of both, the individual and the society. The talk of scientific temper, egalitarianism, freedom, social justice and secularism will be fruitless unless these constitutional values are imbued with spiritual and moral values. The need for religious, moral and spiritual education, as a part of educational curriculum, being taught in Sathya Sai Educational Institutions and its utility to the social regeneration of falling standard of moral and social conduct, was re-emphasised in those articles published in book form on the 60th Birthday of Shri Sathya Sai Baba. In the foreword to the said book, Shri Justice V. Bala Krishna Eradi, a former Judge of this Court, has emphasised that the rich cultural and spiritual heritages we have been endowed with, is being neglected after independence, denying to the youth of this country the opportunity to imbibe moral, cultural and spiritual values that form part of our heritage. He emphasised that in value oriented education, ethical values help in

character building and develop discipline in students: cultural values enable the students to transcend the bounds of narrow sectarianism and develop equal respect for all faiths. Similarly spiritual values open the vision of a student to 'one spirit' dwelling in all and unite him with the whole mankind as one family. He, therefore, emphasised that it is the duty of every citizen interested in the future of the country and in the preservation of our great cultural heritage, to extend cooperation for successful implementation of the programme of value-oriented education being imparted by Shri Sathya Sai Educational Institutions.

In "the Social and Political Thought of Dr. S. Radhakrishnan" by Clarissa Rodrigues, at page 120, it has been stated that education helps to improve the social order. An educated man has an open mind, a broad outlook, is willing to reconsider issues and make his own decisions. He is liberated from *tutelage* to outmoded notions, to oppressive institutions and is always willing to learn from others and change whenever it is necessary. On the necessity of education, it is stated that the view of Dr. Radhakrishnan was that the education is meant to enable individuals to tackle the myriad problems of society (such as ignorance, disease, poverty and so on) and to cope with the accelerated pace of change in several spheres (such as agriculture, industry, medicine, transport, communication) which is a characteristic feature of society today. According to Dr. Radhakrishnan, education from the individual point of view will be incomplete, if it does not initiate the child to the supreme values of love, truth, goodness and beauty and fill him with a sense of purpose or else he suffers from greed, pusillanimity, anxiety and defeatism. Education, therefore, should not only train the intellect, promote technical skill but also develop a person's aesthetic abilities and especially moral and spiritual values. This is in accordance with the Upanishadic view that we should aim at the play of life (*pranaraman*), the satisfaction of mind (*manarandam*) and the fullness of tranquillity (*santisamdharm*). On social aims of education, according to Dr. Radhakrishnan, man must also realise that in a society where there is social injustice, gross inequality and lack of fraternity, individual liberty cannot be preserved. It must also be borne in mind that individual freedom entails social responsibility. Education, therefore, transforms the social order by promoting a healthy nationalism and the spirit of internationalism.

A On the functions of a teacher, at page 133, according to Dr. Radhakrishnan, the success of the educational process depends considerably on the teacher, for it is the teacher who has to implant aims, and to build the character of the students. According to Laski, at bottom of the education, the quality of a university is always in direct proportion to the quality of its teacher. A good teacher is one who knows his subject, is enthusiastic about it and one who never ceases to learn. Communication with the students and sense of commitment to his work are necessary. A good teacher; therefore, according to Dr. Radhakrishnan, is one who is objective, just, humble and is open to correction. According to Whitehead the teacher must be a self-confident learned man. The teacher, therefore, is

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C primary functionary to transmit the intellectual and ethical value to the young. He should encourage the attitude to free enquiry and rational reflections. The teacher should try to remove the leaden weights of pride and prejudice, passion and desire which are likely to cloud a student's vision. The devoted teacher is not only concerned with the child's intellectual

D development but also has the obligation to attend to his moral, emotional and social growth as well.

E Mahatma Gandhiji, the Father of the Nation has stated that "a teacher cannot be without character. If he lacks it, he will like salt without its savour. A teacher must touch the hearts of his students. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the world to their students but do not inculcate truth and purity amongst them, they will have betrayed them." Shri Aurobindo has stated that "it is the teacher's province to hold aloft the torch, to insist at all times and at all places that this nation of ours was

F founded on idealism and that whatever may be the prevailing tendencies of the times, our children shall learn to live among the sun-lit peaks." Dr. S. Radhakrishnan has stated that "we in our country look upon teacher as gurus or, as acharyas. An Acharya is one whose achar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must

G inspire the pupils who are entrusted to his care with love of virtue and goodness. The ideal of a true teacher is *andhakaraniridhata gurur itya bhidhiyate*. Andhakar is not merely intellectual ignorance, but is also spiritual blindness. He who is able to remove that kind of spiritual blindness is called a guru. Are we deserving the noble appellation of an acharya

H or a guru?" Swami Vivekananda had stated that "the student should live

from his very boyhood with one whose character is a blazing fire and should have before him a living example of the highest teaching. In our country, the imparting of knowledge has always been through men of renunciation. The charge of imparting knowledge should again fall upon the shoulder of Tyagis."

It is in this backdrop, therefore, that the Indian society has elevated the teacher as 'Guru Brahma, Gurur 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 Maheswara, he destroys 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 learner of knowledge, intelligently to articulate and communicate and imbibe in his students, as social 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 Constitution ideals enshrined in Article 51A so as to make the students responsible citizens of the country. Thus the teacher either individually or collectively as a community of teachers, 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 calibre, 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

A 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 take 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.

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 a tip of the ice berg in the discipline of teaching, a noble and learned profession; it is for each teacher and collectively their body to stem the root to sustain the faith of the society reposed in them. Enquiry is not a *panacea* but a nail on 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, a 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 of his sexual advances towards a girl student but he A
 did not correct himself and mend his conduct. He went to the girl 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; B
 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 persued her to the
 room where she locked herself inside; he banged the door. When he was
 informed by her room mates 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 C
 which was not found acceptable to an Inquiry Officer, namely, Asstt.
 Director. After conducting the enquiry, he submitted the report to the
 Director and the Director examined the report and found him to be not
 worthy to be a teacher in the institution. Under those circumstances, the
 question arises: whether the girl and her room-mates should be exposed to D
 the cross-examination and harassment and further publicity? In our con-
 sidered 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 E
 circumstances, it is very hazardous to expose the young girls for 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 that timings from 10 p.m. to 8 p.m. which was found not
 acceptable to the respondents and that he took the torch from the room, F
 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 *loco parentis* and, G
 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.

The High Court also was right in its conclusion that the second writ
 petition is not maintainable as the principle of constructive *res judicata* H

- A would apply. He filed the writ petition in first instance but withdrew the same without permission of the Court with liberty to file the second writ petition which was dismissed. Therefore, the second writ petition is not maintainable as held by the High Court is applying the correct principle of law. Thus considered we find no merit in the appeal for interference.
- B The appeal is accordingly dismissed. No costs.

R.P.

Appeal dismissed.