

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: **THE HON'BLE JUSTICE SUVRA GHOSH**
AND
THE HON'BLE JUSTICE SUBHENDU SAMANTA

WP.CT/50/2023

Anil Kumar Mridha ... PETITIONER

Vs.

THE UNION OF INDIA AND OTHERS ... RESPONDENTS

For the petitioner : Mrs. Anjili Nag

For the respondents : Mr. Shatadru Chakraborty
Mr. Dibesh Dwivedi

Heard on : 11.10.2023 & 12.10.2023

Judgment on : 16.10.2023

SUVRA GHOSH, J.

1. The present writ petition is directed against an order passed by the Central Administrative Tribunal in OA No. 351/1539/2021 on 8th August, 2018.

2. The fact of the case is enumerated hereunder:-

3. A departmental proceeding was initiated against the petitioner who was a primary school teacher at Government Middle School,

Krishna Nagar, Havelock, on an allegation made by a girl student of class VIII of the school to the effect that the petitioner outraged her modesty on 21st November, 2009. Charged framed against the petitioner was proved to the extent that he had physically touched the student (hereinafter referred to as the victim) on her back which caused unrest among the students for which the school did not function normally on 23rd November, 2009. The Disciplinary Authority, by an order passed on 28th February, 2012, held the petitioner guilty of the allegation and imposed major penalty of dismissal from service upon him. The order was carried in appeal by the petitioner and by an order passed on 5th July, 2013, the Appellate Authority affirmed the order of the Disciplinary Authority including the penalty imposed upon the petitioner. A review application was taken out by the petitioner in this regard which was also rejected by an order dated 8th August, 2018. The matter was carried to the Central Administrative Tribunal by the petitioner which, by the order impugned, turned down the prayer of the petitioner and dismissed the application filed by him.

4. It is submitted on behalf of the petitioner that criminal case instituted against the petitioner under Section 354 of the Indian Penal Code ended in acquittal of the petitioner on the anvil of a compromise petition filed by the victim and the petitioner jointly before the Trial Court and the petitioner was found not guilty of the offence in view of the compromise and acquitted of the charge. Charge was framed against the petitioner in the departmental proceeding to the effect that

the petitioner committed gross misconduct unbecoming of a Government servant in as much as he molested one girl student of class VIII inside the class room during school hours for outraging her modesty on 21st November, 2009. Several witnesses were examined by the authority including teachers and students of the school but none of the witnesses has implicated the petitioner. The victim herself also adduced evidence in the disciplinary proceedings and stated in her examination-in-chief that the petitioner put his hand on her back and pulled the straps of her under garment. She further stated that she submitted before the court that she was not interested in contesting the case further and the case may be dropped/dismissed. In her cross-examination, she admitted that she was copying during the science test held on the date of incident and she had given false statement before the police on self defense as she was shocked, nervous and aggrieved as well as angry due to the act of the petitioner who had actually touched her shoulder from behind. The victim said that besides this fact, the remaining part of the statement recorded by the police was falsely stated by her. Statement of the victim recorded on 9th March, 2010 also demonstrates that she made a false allegation against the petitioner and insulted him since the petitioner put his hand on her back only to refrain her from copying in the examination. Learned counsel further submits that the unrest caused due to the alleged act of the petitioner has not been proved. Since the victim has changed her stance from time to time, her statement that the petitioner touched her shoulders

from the back can also not be safely relied upon. Even if it is held that the petitioner touched the shoulders of the victim from the back, it was only for the purpose of restraining her from copying in the examination and there was no sexual/criminal intent on the part of the petitioner in doing so.

5. Learned advocate has placed reliance on the authorities in **M.V.Bijlani vs. Union of India and others** reported in **(2006) 5 SCC 88**, **Nirmal J. Jhala vs. State of Gujarat and another** reported in **(2013) 4 SCC 301** and a judgment of the Hon'ble Division Bench of the Delhi High Court in **Apparel Export Promotion Council vs. A.K. Chopra** in **LPA NO.27 and C.M.No.297 of 1997** in support of her contention.

6. In supporting the order impugned as well as orders passed by the Disciplinary Authority and the Appellate Authority, learned counsel for the respondents submits that the decision taken by the authorities are well considered decisions and the writ court, in exercising jurisdiction under Article 226 of the Constitution of India, cannot interdict the findings of fact finding authorities. Placing reliance on the authority in **B.C.Chaturvedi vs Union of India and others** reported in **(1995) 6 Supreme Court Cases 749**, learned counsel has submitted that the court, in a judicial review, may interfere only when the authority has conducted the proceeding in a manner inconsistent with the rule of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the

Disciplinary Authority is based on no evidence. Reappreciation of evidence and nature of punishment is best left to the Appellate Authority and only when the conclusion, upon consideration of the evidence reached by the Disciplinary Authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

7. We have considered the rival contention of the parties, material on record and law on the point.

8. Charge was framed against the petitioner and major penalty of dismissal from service imposed upon him on the basis of complaint of the victim, a student of class VIII, to the effect that he had touched the victim on her shoulders. The Disciplinary Authority took note of the fact that in the criminal case filed against the petitioner under Section 354 of the Code, the petitioner was acquitted on the basis of a compromise petition jointly filed by victim and the petitioner. The Disciplinary Authority held that since a minor is not competent to enter into a contract, the compromise petition filed by the minor victim and the petitioner jointly cannot be of any aid to the petitioner.

9. It appears that the petitioner was acquitted from the criminal case on the anvil of a joint compromise petition filed by the victim and the petitioner. The compromise petition filed by them cannot be termed as a contract. The compromise petition clearly demonstrates that the petitioner is innocent and the complaint was falsely lodged against him by the victim. Since the victim/complainant was not inclined to proceed

with the case any further and sought discharge of the petitioner therefrom, there was no legal impediment in her filing the compromise petition jointly with the petitioner before the learned Trial Court. The Trial Court decided not to deal with the merits of the case since the complainant herself submitted that she had lodged a false complaint and the petitioner was innocent.

10. Several witnesses were examined by the Disciplinary Authority. The witnesses have neither corroborated the allegations made against the petitioner, nor the unrest/ agitation by the students following the alleged incident. Over and above all, though the victim herself has initially stated in her evidence that she was molested by the petitioner she has subsequently retracted from her earlier evidence and stated that petitioner had only touched her shoulder from the back while she was copying in the examination.

11. The Disciplinary Authority has thrust an allegation of sexual harassment upon the petitioner and has made a detailed observation with regard to the heinous misconduct of the petitioner upon referring to judgements dealing with molestation and sexual harassment. The Appellate Authority has also recorded that the case pertains to molestation of a girl student of class VIII inside the class room during school hours. The Appellate Authority has placed reliance on the authority in **Vishaka and others vs. State of Rajasthan and others** wherein the Hon'ble Supreme Court has defined sexual harassment as any unwelcome sexually determined behavior whether directly or by

inclination as to include physical contact and advances and any other unwelcoming physical, verbal or nonverbal contact of sexual nature.

12. In the case in hand, the act of touching the shoulders of the victim by the petitioner from behind for the sole purpose of restraining her from copying in the examination cannot be said to have any sexual flavour. So also is the version of the victim herself who has in no uncertain terms stated that the petitioner held her by her shoulders when she was copying in the examination. The victim has not for once indicated that the said touch was with sexual intent or inappropriate.

13. In the order passed on 22nd August, 2023, the Tribunal has reiterated the observation made by the Disciplinary Authority as well as the Appellate Authority. No independent consideration was made by the Tribunal in adjudicating the legality and correctness of the orders. There is no quarrel with the authorities referred to by the Tribunal in the order impugned. This Court is not unmindful of the fact that the standard of proof required in a departmental proceedings is based on preponderance of probability and is not escalated to proof beyond reasonable doubt as required in a criminal trial. However, since the disciplinary proceedings is quasi criminal in nature, preponderance of probability should be based on some evidence/material on record. The observation of the Hon'ble Supreme Court with regard to standard of proof in a departmental inquiry as recorded in the authorities in **Nirmal J Jhala (supra) and M.V.Bijlani (supra)** is required to be set out:

“... Disciplinary proceedings, however, being quasi criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures.”

In reiterating the said principle, the authority in **Apparel Export Promotion Council (supra)** also records the observation of the Hon’ble Supreme Court in 1995 (6) SCC 749 that there has to be some evidence before the inquiry officer for it to come to the conclusion that the allegations made are true.

14. In the present case, the Disciplinary Authority has awarded penalty upon the petitioner though there was no evidence at all against him. Though the respondents have tried to impress upon the court that the petitioner has been penalized for misconduct and not molestation, the article of charge framed against the petitioner speaks otherwise. It says that the petitioner committed gross misconduct unbecoming of a Government servant inasmuch as he molested one girl student. In other words, the allegation of misconduct is solely on the anvil of the alleged act of molestation. Even in the order imposing major penalty of dismissal from service upon the petitioner which was concurred by the Appellate Authority and the Tribunal, it has been held that the charge against the petitioner has been proved, the charge being misconduct for

molesting the victim. Therefore, it is ultimately the alleged molestation which has been termed as misconduct on the part of the petitioner.

15. There is not an iota of evidence on record that suggests misconduct on the part of the petitioner. The statement of the victim is exonerative in nature and gives a clean chit to the petitioner. The decision of the authorities is based on no evidence at all and no misconduct resulting in violation of the service rules has been substantiated against the petitioner.

16. It is trite law that a judicial review is not an appeal and in exercising extra ordinary jurisdiction under Article 226 of Constitution of India, this Court is not empowered to sit in appeal against the orders impugned and can only review the decision making process. The Hon'ble Supreme Court, in the authority in **B.C.Chaturvedi vs Union of India and others** reported in **(1995) 6 SCC 749** has held that the court may interfere when the conclusion or finding reached by the Disciplinary Authority is based on no evidence. The ratio of the judgement is applicable in the present case where the authorities have drawn an inference against the petitioner based on no evidence at all. Restraining the victim from copying in the examination by touching her shoulders from behind can under no stretch of imagination be termed as misconduct, moreso, since the victim herself has not termed such action to be inappropriate or malicious. For the said reason the penalty imposed upon the petitioner is also utterly disproportionate and has no legal sanction.

17. In the said backdrop, we are inclined to hold that the decision taken by the Disciplinary Authority and the subsequent decisions of the Appellate Authority as well as the Tribunal and also the inquiry report on the basis of which the orders were passed suffer from the aforementioned laches and therefore, cannot be sustained.

18. Accordingly the writ petition being WP.CT/50/2023 is allowed.

19. Inquiry report as well as the orders passed by the Disciplinary Authority, the Appellate Authority and the Tribunal are set aside/quashed.

20. The respondent authorities are directed to reinstate the petitioner in service with full back wages as well as other consequential benefits to which the petitioner is entitled.

21. The petitioner is also entitled to cost of Rs. 10,000/- to be paid by the respondent authorities.

22. Urgent photostat certified copy of this order, if applied for, may be supplied to the parties upon compliance of usual formalities.

(Suvra Ghosh, J.)

I agree.

(Subhendu Samanta, J.)