

THE SECRETARY, LUCY SEQUEIRA TRUST AND ANR.

v.

KAILASH RAMESH TANDEL AND ORS.

(Civil Appeal No. 3456 of 2019)

APRIL 08, 2019

[UDAY UMESH LALIT AND INDIRA BANERJEE, JJ.]

Service Law – Termination – Respondent No.1 appointed as Assistant Teacher in school run by the Appellant – Warning issued to respondent no.1 for his objectionable behavior with adolescent girl students in the school – Inquiry Committee constituted consisting of the Convenor, Nominee of the appellant, Nominee of respondent no.1 and a State Awardee Teacher– Respondent no.1 terminated from service – School Tribunal, Mumbai Region, Mumbai partly allowing the appeal filed by the respondent no.1, remitted the matter for fresh consideration and also directed reinstatement of respondent no.1, notionally for the purpose of conducting the inquiry – Challenged by the appellant – Dismissed – On appeal, held: Two FIRs were filed pursuant to reporting that respondent no.1 was guilty of objectionable behavior with adolescent girl students in the school – In both the FIRs the charge-sheets stand filed – Prima facie, the allegations made in the FIR were found sustainable in police investigation and respondent no.1 is presently accused of having committed said offences – Conclusion by the Convener in the report that the charges were sensitive and that the case called for strict action, was absolutely correct – Reports of the Nominee of respondent no.1 and the State Awardee Teacher not only show complete lack of sensitivity but they also unnecessarily got bogged down by question whether any action on their part would amount to contempt of court (pending criminal proceedings) or not – Departmental proceeding and proceedings in criminal court are completely different – Allegations made against respondent no.1 were of such level that an immediate action on the departmental front was required to be undertaken and such action by its very nature had to be completely independent – Whether any criminal trial was pending or not would not be having any bearing on the pending issue before the Inquiry Committee – Approach adopted

- A *by the Management was fair and transparent – Decision of the Tribunal and the High Court, set aside – Order of termination passed by the appellant, affirmed.*

Allowing the appeal, the Court

- B **HELD: 1.1** There were two FIRs filed pursuant to reporting that Respondent No.1 was guilty of objectionable behavior with adolescent girl students in the school. In both these FIRs the investigation was undertaken and charge-sheets stand filed. Thus, prima facie, the allegations made in the FIR were found sustainable in police investigation and Respondent No.1 is presently accused of having committed said offences. Pursuant to FIR bearing CR No.24 of 2014 Respondent No.1 was arrested and remained in custody for about seven days. During the present inquiry 12 witnesses were examined out of whom five witnesses were girls studying in the school. It was thus not just two girl students, pursuant to whose complaint the crime was registered against Respondent No.1, but there were other students as well. Some parents had also gone to the extent of levelling allegations against Respondent No.1. The conclusion by the Convener in the report that the charges were sensitive and that the case called for strict action, was absolutely correct. On the other hand, the reports of the Nominee of Respondent No.1 and the State Awardee Teacher not only show complete lack of sensitivity but they also got bogged down unnecessarily by a question whether any action on their part would amount to contempt of court or not. A departmental proceeding and proceedings in a criminal court are completely different. The purpose is different, the standard of proof is different and the approach is also different. The initiation of the process in a departmental proceeding, specially on charges as in the present matter can never be said to be amounting to contempt of court even if the criminal proceedings were pending. The allegations made against Respondent No.1 were of such level and dimension that an immediate action on the departmental front was required to be undertaken and such action by its very nature had to be completely independent. Whether any criminal trial was pending or not would
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not be having any bearing on the pending issue before the Inquiry Committee. The approach of the Nominee of Respondent No.1 and of the State Awardee Teacher was completely wrong and unsustainable. [Para 14][514-G-H; 515-A-F] A

1.2 The approach adopted by the Management was not only fair and transparent but was in keeping with what is expected of the Management where allegations of sexual harassment of adolescent girls are in issue. The Tribunal, as well as the High Court failed to appreciate the matter in correct perspective. They ought to have accepted the decision taken by the Management. The decision of the Tribunal, as well as the High Court set aside and the order of termination pursuant to resolution dated 26.09.2014 passed by the Appellant is affirmed. [Paras 16, 17][517-A-C] B C

Apparel Export Promotion Council v. A. K. Chopra (1999) 1 SCC 759 – relied on. D

State of Punjab and Ors. v. Dr. Harbhajan Singh Greasy (1996) 9 SCC 322 : [1996] 1 Suppl. SCR 288 – referred to.

Case Law Reference E

[1996] 1 Suppl. SCR 288 referred to Para 10

(1999) 1 SCC 759 relied on Para 15

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3456 of 2019 F

From the Judgment and Order dated 04.09.2017 of the High Court of Judicature at Bombay in W.P. (C) No. 4383 of 2017.

Suresh Kumar Panicker, G. Prakash, Jishnu M. L., Ms. Priyanka Prakash, Ms. Beena Prakash, Advs. for the Appellants. G

Shekhar Jagtap, M/s. J. Shekhar & Co., Advs. for the Respondents. H

A The Judgment of the Court was delivered by

UDAY UMESH LALIT, J.

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 04.09.2017 passed by the High Court of Judicature at Bombay in
B Writ Petition No.4383 of 2017.

3. Respondent No.1 was appointed as Assistant Teacher on 01.09.2004 in a school run by the Appellant. A warning was issued to him on 04.05.2009 for his objectionable behavior with adolescent girl students in said school. On 14.12.2012, mother of a teenaged student'
C made a complaint against Respondent No.1, pursuant to which a memo was issued to him on 24.01.2013. Another student* filed an FIR (C.R. No.67/13) dated 05.02.2013 against him alleging commission of offence punishable under Section 509 IPC. A letter was also received from the Police Station, Dindoshi, seeking response from the Head Master of the
D school regarding the incident mentioned in said FIR. The same student, thereafter, filed a written complaint on 11.02.2013 against him.

4. On 15.02.2013, the Appellant wrote to the Education Inspector about the FIR as aforesaid and sought permission to suspend Respondent No.1 and to conduct an enquiry in the matter. A letter was also issued to Respondent No.1 on 31.07.2013 that his confidential report was not good.
E On 16.01.2014 father of another adolescent girl* made a complaint to the Appellant about the behavior of Respondent No.1 and stated that his daughter was not ready to go to the school. A letter dated 20.01.2014 was, therefore, written by the Appellant to Respondent No.1 but he refused to acknowledge the letter. Said girl thereafter made a complaint
F to the police as a result of which FIR bearing C.R.No.25/2014 dated 21.01.2014 was lodged against Respondent No.1 under Section 354(a) of IPC read with Section 9(f), 10 and 11 of Protection of Children from Sexual Offences Act, 2012. Respondent No.1 was arrested in connection with this FIR on 21.01.2014 and remained in custody till 28.01.2014.

5. In the aforesaid circumstances, the school Committee of the
G Appellant being unhappy with the conduct of Respondent No.1 passed a Resolution on 31.01.2014 to take action against him. The Resolution was forwarded to the Education Inspector. The Appellant, thereafter, suspended Respondent No.1 vide order dated 04.03.2014, pending

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*Names of these students are withheld.

enquiry against him and addressed a letter to the Education Inspector on 05.03.2014 seeking approval of the suspension order. On 07.03.2014 statement of allegations in terms of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short 'the Rules'). After explanation was given by Respondent No.1, charge-sheet was issued to him on 07.04.2014. The charges framed against Respondent No.1 were as under:-

“1. It is charged against you that you have insulted the modesty of one of the girl students of our School by the name Ms. X*, who was then studying in 7th Standard, since August 2012. You are also charged that you have also mentally tortured her. And accordingly an FIR is lodged against you at Dindoshi Police Station by Ms. X* alleging an offence punishable U/Sec. 509 of IPC vide FIR bearing No.67 of 2013, dated 05.02.2013. Charge Sheet is also filed in this case. This is an act of serious misconduct and moral turpitude.

2. It is charged against you that on 08.01.2014 you have outraged the modesty of one of our girl student studying in 8th standard by the name Ms. Y* and have committed sexual assault and you have sexually harassed her. She has lodged an FIR at Dindoshi Police Station, bearing No.25 of 2014 dated 21.01.2014 against you alleging offences punishable U/sec. 354-A of IPC read with Sec. 9(f)10,11 of the Protection of Children from Sexual Offences Act, 2012. You were arrested by the Police on 21.01.2014 and you were in custody till 28.01.2014. These incidents brought shame to the school.

This also an act of serious misconduct and moral turpitude.”

6. On 21.04.2014 an Inquiry Committee was constituted consisting of the Convenor being Nominee of the Appellant, Nominee of Respondent No.1 and a State Awardee Teacher. The Inquiry Committee examined both the girls as well as other witnesses.

7. After conclusion of the inquiry, the Convenor submitted a Report on 20.09.2014 recommending that the service of Respondent No.1 be terminated. The Report of the Convenor shows that 12 witnesses were examined, out of which five witnesses were girls studying in the school. Various documents were also produced on record. The Convenor in her Report concluded:-

- A “Hence as stated earlier, we come to the conclusion that the charges as per the Charge-Sheet dated 07/04/2014 are proved against the Delinquent. The charges are so sensitive, as now-a-days these kinds of acts are reported in various media. The school is a temple of knowledge and the Girls students come to the school with great expectations. And if in the temple of knowledge, if such acts are allowed to take place, the image of temples of knowledge will be tarnished. The Girls students will get discouraged to come to school due to the fear and trauma. A teacher is a Guru and in a Gurukul, the sanctity of education ought to be maintained and respected. Hence, we have no hesitation to recommend to the Management to terminate the services of the Delinquent teacher. ...”
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8. Nominee of Respondent No.1 as well as the State Awardee Teacher, however refused to sign the Report prepared by the Convenor. There are observations in their reports that the guilt of the Respondent No.1 would be conclusively dealt with in the pending criminal proceedings. Nominee of Respondent No. 1 concluded:-
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- “6. As both cases of these charges or allegations are pending before the Hon’ble Borivali Court and Hon’ble Court of Sessions passing judgment about the same by the Inquiry Committee and Management till the disposal of these cases as per Rule 33(6) of the Rules, it would amount to contempt of the Hon’ble Court. Therefore the Inquiry Committee cannot give any reasoned decision.”
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9. The State Awardee Teacher in her separate Report concluded:-
- F “Since the matters with respect to both the charges are pending before the Borivali Court and Sessions Court, as per Rule 36(6) till the disposal of these cases, giving decision by the Inquiry committee will amount to Contempt of the Court.”

10. The matter was, then considered by the Appellant and by its Resolution dated 26.09.2014 the Appellant terminated the service of Respondent No.1. Thereafter, Appeal No.34 of 2014 under Section 9 of the Maharashtra Employees of Private Schools Act, 1977 (for short ‘the Act’) and Rules framed thereunder was filed by Respondent No.1 before the School Tribunal, Mumbai Region, Mumbai. The application for stay
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was rejected by the Tribunal on 15.12.2014. On 17.02.2017 the Tribunal partly allowed the Appeal and remitted the matter for fresh consideration. It was observed that the State Awardee Teacher and the Nominee of Respondent No.1 had not given any firm decision as they had proceeded on the basis that if any decision was given, it would amount to contempt of court, as criminal proceedings were pending against Respondent No.1 before the Metropolitan Magistrate's Court, Borivili and Sessions Court, Dindoshi. The Tribunal relied upon a decision of this Court in ***State of Punjab and Ors. vs. Dr. Harbhajan Singh Greasy***¹ to the effect that if an inquiry was found to be faulty, the matter be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and concluded as under:-

“27. In view of the above facts and circumstances in the light of ratio laid down by Hon'ble Supreme Court in the cited supra cases, I am of the opinion that the departmental enquiry is different than the criminal proceedings. In case of departmental enquiry the principle of preponderance of probability is applicable whereas in case of criminal trial the principle beyond reasonable doubt is applicable. Therefore, the State Awardee Member and the nominee of the appellant cannot keep their decision in abeyance till the outcome of criminal case as per the principles of enquiry. As per the provisions of Rules 1981 they have bounden duty and responsibility to give their firm and final decision and accordingly submit their report.

28. Considering the facts and circumstances of the case in hand and in the light of ratio laid down by Hon'ble Supreme Court in the cited supra case of Dr. Harbhajan Singh, it is proper to remit the enquiry proceedings of the case in hand for fresh enquiry from the stage of submission of joint and combined final report by all the members of the Inquiry Committee.”

The tribunal while remitting the matter as aforesaid, directed reinstatement of Respondent No.1, notionally for the purpose of conducting the inquiry.

11. The appellant, being aggrieved, challenged the decision of the Tribunal by filing Writ Petition No.4383 of 2017 in the High Court. The High Court by its judgment and order dated 04.09.2017 dismissed said

¹(1996) 9 SCC 322

A Writ Petition and upheld the order passed by the Tribunal. It held that the Tribunal was justified in remitting the matter as the nominee of Respondent No.1 and the State Awardee Teacher had not given any clear-cut opinions. The High Court also directed that the exercise of conducting the inquiry be undertaken as expeditiously as possible and preferably within three months.

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12. The appellant, being aggrieved, has challenged the view taken by the High Court and the Tribunal before this Court. While issuing notice on 03.11.2017 the operation of the impugned order was stayed. After exchange of pleadings, the matter was taken up for final disposal. The learned Counsel for the appellant submitted that as many as five girls had given statements before the Committee and two of them had gone to the extent of filing criminal proceedings against Respondent No. 1. The girls were in the age range of 13-14 years and the management had rightly taken the decision to terminate the service of Respondent No.1 and that it would be hazardous to have a teacher like him in the school. He further submitted that since approach of two out of three members of the Inquiry Committee was completely incorrect and they had not given any conclusive findings, the management was competent to take a decision in the matter, which was not only consistent with the findings of the Convenor but was otherwise supported by the facts on record and was arrived at in a transparent manner.

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13. Learned counsel for Respondent No.1, on the other hand, submitted that the Committee comprised of three representatives and the State Awardee Teacher, a completely dispassionate and impartial observer had concluded that the inquiry must await the conclusion of proceedings in criminal cases. There was thus, no justification for the Management to issue an order of termination. In his submission, the Tribunal was justified in passing the directions in question.

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14. What emerges from the record is:
(a) There were two FIRs filed pursuant to reporting that Respondent No.1 was guilty of objectionable behavior with adolescent girl students in the school. In both these FIRs the investigation was undertaken and charge-sheets stand filed. Thus, prima facie, the allegations made in the FIR were found sustainable in police investigation and Respondent No.1 is presently accused of having committed said offences.

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(b) Pursuant to FIR bearing CR No.24 of 2014 Respondent No.1 was arrested and remained in custody for about seven days. A

(c) During the present inquiry 12 witnesses were examined out of whom five witnesses were girls studying in the school.

It was thus not just two girl students, pursuant to whose complaint the crime was registered against Respondent No.1, but there were other students as well. Some parents had also gone to the extent of levelling allegations against Respondent No.1. The conclusion by the Convener in the report that the charges were sensitive and that the case called for strict action, was absolutely correct. On the other hand, the reports of the Nominee of Respondent No.1 and the State Awardee Teacher not only show complete lack of sensitivity but they also got bogged down unnecessarily by a question whether any action on their part would amount to contempt of court or not. It is well settled that a departmental proceeding and proceedings in a criminal court are completely different. The purpose is different, the standard of proof is different and the approach is also different. The initiation of the process in a departmental proceeding, specially on charges with which we are concerned in the present matter can never be said to be amounting to contempt of court even if the criminal proceedings were pending. The allegations made against Respondent No.1 were of such level and dimension that an immediate action on the departmental front was required to be undertaken and such action by its very nature had to be completely independent. Whether any criminal trial was pending or not would not be having any bearing on the pending issue before the Inquiry Committee. We have, therefore, no hesitation in observing that the approach of the Nominee of Respondent No.1 and of the State Awardee Teacher was completely wrong and unsustainable. B C D E F

15. The approach to be adopted in matters where allegations of sexual harassment are made, is summed up in paragraph 28 of the decision of this Court in *Apparel Export Promotion Council v. A.K. Chopra*². Said paragraph is as under:-

“28. The observations made by the High Court to the effect that since the respondent did not “actually molest” Miss X but only “tried to molest” her and, therefore, his removal from service was not warranted, rebel against realism and lose their sanctity G

²(1999) 1 SCC 759

A and credibility. In the instant case, the behaviour of the respondent did not cease to be *outrageous* for want of an *actual assault* or *touch* by the superior officer. In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or the dictionary meaning of the expression “molestation”. They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaced and mercy has no relevance. The High Court overlooked the ground realities and ignored the fact that the conduct of the respondent against his junior female employee, Miss X, was wholly against moral sanctions, decency and was offensive to her modesty. Reduction of punishment in a case like this is bound to have a demoralising effect on the women employees and is a retrograde step. There was no justification for the High Court to interfere with the punishment imposed by the departmental authorities. The act of the respondent was unbecoming of good conduct and behaviour expected from a superior officer and undoubtedly amounted to sexual harassment of Miss X and the punishment imposed by the appellant was thus commensurate with the gravity of his objectionable behaviour and did not warrant any interference by the High Court in exercise of its power of judicial review.”

F 16. The facts also disclose that the Management had not taken any hasty action in initiating the proceedings against Respondent No.1. The Appellant had intimated the Department soon after the lodging of the first complaint by girl students with the police. The order of suspension and initiation of inquiry was preceded by a resolution passed by the School Committee of the Appellant. Appropriately constituted Inquiry Committee then went into the allegations where 12 persons including five girl students were examined as witnesses. If the Nominee of Respondent No.1 and the State Awardee Teacher had not given any final decision with clarity, since in their view it would have amounted to

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contempt of court, the Appellant was justified in relying upon the conclusions drawn by the Convener of the Inquiry Committee and then pass an order of termination. In our view, the approach adopted by the Management was not only fair and transparent but was in keeping with what is expected of the Management where allegations of sexual harassment of adolescent girls are in issue.

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17. The Tribunal, as well as the High Court failed to appreciate the matter in correct perspective. They ought to have accepted the decision taken by the Management. We, therefore, allow this appeal, set aside the decision of the Tribunal, as well as the High Court and affirm the order of termination pursuant to resolution dated 26.09.2014 passed by the Appellant. No costs.

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