

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.625/2018. (D.B.)

Madan Lahanu Khadse,
Aged about 53 years,
Occ-At present Nil,
R/o Plot No. 142, Kukde Layout,
Rameshwari Road, Nagpur.

Applicant.

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Tribal Development,
Mantralaya, Mumbai-400 032.
- 2) The Commissioner,
Tribal Development (M.S.),
Old Agra Road, Nashik.
- 3) The Additional Commissioner,
Tribal Development, Giripeth,
Nagpur.

Respondents

Shri S.P. Palshikar, the learned counsel for the applicant.
Shri A.M. Ghogre, the learned P.O. for the respondents.

Coram:-Shri Shree Bhagwan, Vice-Chairman
and
Shri A.D. Karanjkar, Member (J)

Judgment is reserved on 2nd July 2019.

Judgment is pronounced on 18th July 2019.

JUDGMENT**Per: Member (J)**

(Delivered on this 18th day of July 2019)

1. Heard Shri S.P. Palshikar, the Ld. counsel for the applicant and Shri A.M. Ghogre, the learned P.O. for the respondents. The applicant is challenging the order passed by the disciplinary authority dismissing the applicant from the service. The facts in brief are as under:-

2. The applicant was working as Head Master, Govt. Ashram School, Pandhurna, Tehsil Ashti, District Wardha. That on 18.8.2015 the applicant was out of headquarter for official work, the applicant came back to headquarter in the night of 18.8.2015.

3. It is case of the applicant that, Ku. Rani Zanak Parteki was student of the school. On 19.8.2015, the applicant learnt from Lady Superintendent Smt. Vaishali Dighore that there was quarrel between two girls Rani Parteki and Shilpa and the girls hurled vulgar words against each other and except this, no more information was given to the applicant. The applicant had directed the Lady Superintendent to collect the information as to why there was quarrel between two girls and whether there was truth in the allegations levelled by the girls. It is case of the applicant that till evening no

more information was given to him by the lady Superintendent, in the evening, he was compelled to leave headquarters, as his wife had serious heart problems, therefore, the applicant proceeded on leave from 20.8.2015 to 30.8.2015.

4. The applicant resumed duty on 1.9.2015 and learnt that father of Ku. Rani Parteki had lodged report in the police station and informed that his daughter Rani was sexually abused by one Raju Landge who was Chowkidar residing in the School premises. This matter was reported to the higher authorities and consequently the applicant was placed under suspension vide order dated 8.9.2015 and chargesheet dated 18.2.2016 was served on the applicant, on ground that the applicant was guilty of serious misconduct i.e. he did not take immediate action after knowledge of the incident and proceeded on leave and he permitted Raju Landage to reside in the school premises etc.. the applicant submitted reply to the charge sheet and denied the charges. The disciplinary authority appointed the inquiry officer and after completion of enquiry, report was submitted by the inquiry officer. The applicant submitted his detailed explanation to the report of Enquiry Officer and after considering the same he was dismissed by the competent authority from service.

5. The applicant thereafter preferred departmental appeal, the appellate authority dismissed the appeal and confirmed the order passed by the disciplinary authority.

6. The applicant is challenging the order of dismissal on the ground that there was no evidence before the Enquiry Officer for accepting that the Lady Superintendent had given information to the applicant that the girl student Ku. Rani Parteki was sexually abused by Watchman till evening of 19-8-2015. It is submitted that in the absence of reliable evidence, the Enquiry Officer mechanically arrived to the conclusion that the Lady Superintendent had given information to the applicant that Ku. Rani Parteki was sexually abused by Watchman, but the applicant did not take cognizance and he proceeded on leave. It is submitted that the Enquiry Officer did not consider the evidence that after receiving the information on 19-8-2015 in the morning, direction was given by the applicant to the Lady Superintendent to make detailed enquiry as to why there was quarrel between Rani Parteki and the another girl Shilpa and to submit report about the said incident. It is submitted that till the evening, no information was given by Lady Superintendent to the applicant and as the wife of the applicant had cardiac trouble, therefore, the applicant was forced to proceed on leave. It is submitted that this entire

evidence was not considered by the Enquiry Officer, therefore, due to non consideration of this evidence, findings recorded by the Enquiry Officer are vitiated.

7. The second ground of attack is that there was evidence before the inquiry officer that the said Watchman was employed by Contractor who was constructing the building and the Watchman was not in control of the applicant and the applicant had never permitted him to stay in the premises. It is submitted that no one had brought this fact to the notice of the applicant that the Watchman was staying in the school premises, had anyone brought this fact to the notice of the applicant, then the applicant certainly would have taken steps to remove the Watchman. It is submitted that in the enquiry, there was evidence that the Watchman was engaged in the service by the Contractor and he was never permitted by the applicant to stay in the premises, but the Enquiry Officer and the appellate authority did not consider this evidence which suggesting innocence of the applicant, therefore, the findings recorded by the inquiry officer and confirmed by the appellate authority are illegal. It is submitted that due to non consideration of this evidence, conclusions drawn by the Enquiry Officer are vitiated.

8. It is submission of the applicant that on 19.8.2015, no positive statement was made by the lady Superintendent or male Superintendent to the effect that Ku. Rani Parteki was sexually abused by the Watchman. As there was no firm information, therefore, the applicant was unable to take any decision in order to report the matter to the police or the higher authorities. It is submitted that the lady Superintendent was interested in her own defence, therefore she misled the inquiry officer. It is submitted that this vital aspect was disregarded by the Enquiry Officer.

9. It is contention of the applicant that the findings recorded by the Enquiry Officer are not based on evidence and story narrated by the witnesses was entirely their hearsay knowledge, therefore, conclusion of Enquiry Officer is apparently incorrect.

10. It is submitted that the Enquiry Officer and the Appellant Authority did not consider this material aspect and relied upon the facts stated by the witnesses in enquiry which was totally hearsay information and, therefore, findings recorded that the applicant was guilty of misconduct, that the applicant committed default in not reporting the matter to the police or to the higher authority and permitted the said watchman to reside in the school

premises, therefore, this was dereliction in duty, cannot be sustained. It is submitted that the punishment of dismissal from service awarded to the applicant is shockingly disproportionate, therefore, the O.A. be allowed, punishment awarded be quashed and the applicant be reinstated in service with full back wages.

11. The respondents have submitted their reply at page No.256 and have justified the conclusions drawn by the Enquiry Officer and also punishment awarded by the disciplinary authority. It is submitted on behalf of the respondents that even after knowledge that Ku. Rani Parteki was sexually abused, the applicant hurriedly left the school without taking any decision to report the matter to the police or higher authority. It is submitted that being the Head Master of the school and guardian of girls who were taking education in the Govt. Ashram School, the applicant was duty bound to take immediate action in the matter, but it was not done. It is submitted that there was no substance in the contention of the applicant that there was no reliable evidence in support of the findings recorded by the Enquiry Officer. It is contention of the respondents that the school building was completed and after completion of the school building, Raju Landge (i.e. the accused) had no reason to reside in the premises the applicant was aware about this, but did not ask the

watchman not to reside in the school premises. It is submitted that the Enquiry Officer has rightly considered this evidence and rightly held that it was the duty of the applicant to evict Raju Landge from the premises.

12. It is contention of the respondents that being Head Master and after knowledge of the incident, it was his personal duty to make enquiry as to what had happened. It is submitted that the applicant, instead of discharging his own duty with responsibility, informed the lady Superintendent and male Superintendent to make detailed enquiry and submit the report. It is submitted that as the applicant got knowledge about the incident on 19.8.2015, he should have immediately taken proper steps for reporting the matter to the police and the higher authority, but the applicant remained silent. It is submitted that there was evidence that the applicant asked the lady Superintendent not to give publicity to the matter and keep mum. On the basis of this evidence, it is contended that the Enquiry Officer rightly held that the applicant was insensitive while discharging his official duty and, therefore, he has rightly held the applicant guilty of misconduct. It is submitted that considering the nature of misconduct and the incident which occurred, punishment of dismissal is proper. It

cannot be said that it is shockingly disproportionate. On the basis of this, it is contended that no interference is required in this matter.

13. The learned counsel for the applicant has placed reliance on the judgment in case of (i) **Allahabad Bank and others V/s Krishna Narayan Tewari reported in (2017) 2 SCC 308**, (ii) **Nand Kishore Prasad V/s State of Bihar and others reported in (1978) 3 SCC-366**, (iii) **Kailash Nath Gupta V/s Inquiry Officer (R.K. Rai), Allahabad Bank and others, reported in (2003) 9 SCC-480** and (iv) **State Bank of Bikaner and Jaipur V/s Nemi Chand Nalwaya reported in case of (2011) 4 SCC-584**.

14. The sum and substance of the law laid down by the Hon'ble Apex Court in all above judgments is that, the Court has very limited power to interfere in domestic enquiries. If findings of Enquiry Officer are based on evidence, then interference is not permissible. It is also laid down that only when findings are unsupported by the evidence or the nature of evidence is such, as no reasonable person would arrive at the conclusion drawn by the Enquiry Officer, only in such circumstances, the Court or Tribunal can interfere. The duty of the Court or Tribunal is to see whether the principles of natural justice

are followed, opportunity of hearing is given to the delinquent and whether the findings are based on evidence.

15. So far as punishment part is concerned, it is always open to the Court or Tribunal to examine whether the punishment awarded is in proportion to the nature of misconduct. If the punishment awarded is shockingly disproportionate, then definitely the Court or Tribunal may interfere.

16. In view of above law, we would like to examine the evidence collected in the enquiry to see whether the findings recorded by the inquiry officer are based on reliable evidence.

17. Apart from the evidence of other witnesses, we have straightway perused the evidence of Smt. Vaishali Dighore who was lady Superintendent. It has come in her evidence that on 18.8.2015, Ku. Rani Parteki had gone out of school without seeking permission of Smt. Vaishali Dighore. On that day, Ku. Rani Parteki was present at the time of meal, for some time, Ku. Rani Parteki had watched television at the house of Smt. Vaishali Dighore, thereafter she left. On 18.8.2015, in the evening after the meal, Smt. Vaishali Dighore and other girls were talking, it was just before the evening roll call. At that time, Smt. Vaishali Dighore learnt that there was quarrel

between Shilpa and Ku. Rani Parteki. It was in relation to the money and during the quarrel, Shilpa and Ku. Rani Parteki were abusing each other in vulgar language. Smt. Vaishali Dighore deposed that she settled that quarrel between Shilpa and Ku. Rani Parteki. At that time, Shilpa had informed Smt. Vaishali Dighore that Raju Landge had removed the clothes of Ku. Rani Parteki and had intercourse with her. It was also informed that Raju Landge used to give biscuits and chocolates to Ku. Rani Parteki. When enquiry was made by Smt. Vaishali Dighore with Ku. Rani Parteki, she replied the questions as "yes or no". It has also come in her evidence that thereafter Smt. Vaishali Dighore and female attendant took Ku. Rani Parteki in the bathroom and examined her private part of the body and Smt. Vaishali Dighore noticed that there was swelling on the private part of Ku. Rani Parteki.

18. It has further come in the evidence of Smt. Vaishali Dighore that on 19.8.2015 at 8.00 a.m., she called brother of Ku. Rani Parteki and she gave him information which was received by her in the yesterday night. Thereafter on 19.8.2015 at about 9.30 a.m., Smt. Vaishali Dighore narrated this fact to male Superintendent Shri Rangari. Shri Rangari told that they would report this matter to the applicant. It was specifically deposed by Smt. Vaishali Dighore that

she had specifically informed the applicant that Ku. Rani Parteki was sexually abused by Raju Landge and she had received this information from Shilpa. Smt. Vaishali Dighore also asked the applicant to inform this fact to all the staff members. At that time, she was informed by the applicant that this information should not be spread. In the night, Smt. Vaishali Dighore made enquiry with 20 to 25 girls. At that time, complaints were received that Raju Landge used to talk with the girls in vulgar language, he used to touch their clothes. Therefore, on 21.8.2015, Smt. Vaishali Dighore telephoned the applicant and narrated the information collected by her and asked the applicant whether she should carry Ku. Rani Parteki to the hospital for medical examination. The applicant informed Smt. Vaishali Dighore not to carry Ku. Rani Parteki to the hospital.

19. We have gone through the cross-examination of Smt. Vaishali Dighore. In cross-examination of Smt. Vaishali Dighore, material facts deposed by her in examination-in-chief were not challenged or disputed. Version of Smt. Vaishali Dighore that she had informed the applicant that Raju Landge had raped Ku. Rani Parteki was not disputed in her cross-examination. Similarly, facts stated by Smt. Vaishali Dighore that the applicant asked her not to spread the news, was also not disputed. Similarly, version of Smt.

Vaishali Dighore that she had telephoned the applicant on 21.8.2015 and gave all details about the incident to the applicant and also asked the applicant whether she should carry Ku. Rani Parteki to the hospital and the applicant had told her not to take Ku. Rani Parteki to the hospital was not challenged. The evidence of male Superintendent Mr. Rangari which was same, was also not challenged.

20. It appears from this evidence that on 19.8.2015 after the prayer in the morning, the applicant had received information that Ku. Rani Parteki was sexually abused by Raju Landge and inspite of this fact, the applicant remained silent throughout the day. As a matter of fact, as the information was serious and relating to the safety of the girls student, being Head Master of the Govt. Ashram School, in which girls were inmates, it was the duty of the applicant to make enquiry personally. The applicant did not make any enquiry throughout the day, though the incident was very serious. On the contrary, the applicant attempted to discharge his burden and he asked the lady Superintendent to conduct enquiry and in the evening, he left the school on the ground that his wife was ill.

21. It seems from the facts that one minor girl who was studying in the Ashram School was sexually abused by the Watchman who was illegally staying in the premises and inspite of receiving this information, the applicant remained silent. It is also very surprising that when detailed information was given to the applicant by Smt. Vaishali Dighore on telephone on 21.8.2015, he did not pay any heed to give intimation about serious incident to the police or to the higher authorities. On the contrary, after knowing this fact that such a serious incident occurred in the school in his control, he should have rushed back to the headquarter and have reported the matter to the police and higher authorities. It is pertinent to note that in this case, action was initiated only when the police came in picture. It appears from the evidence that the information was given by Ku. Rani Parteki to her parents, consequently, her father came to the school, thereafter, he lodged report in the police station and then machinery was moved. As the evidence of Smt. Vaishali Dighore was not disputed by the applicant, the Enquiry Officer has rightly placed reliance on this witness. Legal position is settled that the facts deposed by witness in chief examination if not disputed in cross examination can not be objected at later stage of the trial or inquiry and evidence of such facts can be relied upon to draw the

conclusions. It seems that the undisputed evidence of Smt. Vaishali Dighore was relied upon by the Enquiry Officer, as nothing was brought in her cross-examination to disbelieve her. In view of this evidence of Smt. Vaishali Dighore, the Enquiry Officer recored conclusion that the applicant was aware that Ku. Rani Parteki was sexually abused and this information was received by the applicant on 19.8.2015 in the morning. The applicant was present in the school throughout the day. The applicant did not take any initiative to make any personal enquiry by calling the girls who used to be in company of Ku. Rani Parteki or Shilpa. As a matter of fact, it was the duty of the applicant to call the common friends of Shilpa and Ku. Rani Parteki and the girls who were present when quarrel took place between Shilpa and Ku. Rani Parteki, for making inquiry. Being a responsible officer, it was expected from the applicant to have taken prompt initiative to know the truth when he had received information that Ku. Rani Parteki was raped by Raju Landge.

22. We have perused Annexure A-9, P.68 dated 13.2.2017. It is a reply given by the applicant in response to the notice after Enquiry Officer's report. On page No.2, it is mentioned by the applicant that on 19.8.2015, the male Superintendent Mr. Rangari informed the applicant after the prayer at 11.00 a.m. that on

18.8.2015, there was a quarrel between Shilpa and Ku. Rani Parteki and during that quarrel, the words were used that “Raju Landge had intercourse with Ku. Rani Parteki”. This fact stated by the applicant in fact supports the inference that the applicant got knowledge about the fact, therefore, the applicant to directed the lady Superintendent to make detailed enquiry.

23. After reading this reply of the applicant, it appears that this statement of the applicant corroborates the version of Mr. Rangari, male Superintendent and Smt. Dighore, lady Superintendent. This stand of the applicant is sufficient to infer that the applicant had knowledge that there was a serious quarrel between Ku. Rani Parteki and Ku. Shilpa and during that quarrel, the words were used that, “Raju Landge has sexual intercourse with Ku. Rani Parteki”. As a matter of fact, it was the duty of the applicant to call the concerned girl students and the lady Superintendent for the purposes of enquiry or the applicant should have directed the lady Superintendent to make the enquiry immediately. It seems that the applicant did not conduct any enquiry, similarly, the lady Superintendent did not conduct any enquiry till the evening and no steps were taken by the male Superintendent Rangari. It seems from

these fact that all responsible officers acted in careless manner, consequently they were held guilty of serious misconduct.

24. After considering the evidence of Smt. Dighore, it is not possible to draw inference that there was no evidence at all in the enquiry for holding that the applicant was insensitive and avoided to perform his duty, though serious incident occurred with the girls who were residing in his control. Secondly, it seems that though the construction of building was over, the applicant did not raise any objection and ask Raju Landge, under which capacity he was staying in the premises. On the contrary, the applicant should have been more cautious, as one male Watchman was residing in the premises even after completion of building. It seems that the Enquiry Officer examined the entire evidence and rightly drawn conclusions. Under these circumstances, it is not possible for us to accept the submission of the applicant that findings recorded by the Enquiry Officer are not based on evidence or no reasonable person would draw such inferences on the basis of the evidence which was before the inquiry officer.

25. After perusing the enquiry papers, we are unable to accept that there is violation of principles of natural justice. It appears

that the chargesheet and concerned papers were received by the applicant, he was given an opportunity to submit reply to the chargesheet, he was permitted to participate in the enquiry. The applicant was permitted to cross-examine the witnesses and he was also permitted to lead evidence. Under these circumstances, it is not possible to accept that there was violation of principles of natural justice. Once it is accepted that there was no violation of principles of natural justice and findings recorded by the Enquiry Officer are based on reasonable evidence, then, it is not possible to interfere in this matter.

26. So far as punishment part is concerned, we would like to point out that in this case, Watchman who was illegally staying in the premises of the Govt. Ashram School, sexually abused the minor girl and due to this act of wrong doer, minor girl was victim of serious crime and in tender age, she had to face agonies, defamation in the society and stigma. That being Head Master of the Ashram school, the applicant should have been vigilant, it was his duty to seek information about the visitors to the school and the reason for the visit. It seems that due to lack of supervision of the applicant, the criminal like Raju Landge could stay in the premises of the school, he was wandering in school premises and he took advantage of his

presence and committed rape on minor girl. Had the applicant taken care at proper time, then such incident would have been avoided. In this case, even after getting information, conduct of the applicant was reckless, he did not personally make any enquiry. On the contrary, in the evening, he left the school and proceeded on long leave. Even when Mrs. Dighore asked him whether she should carry the girl for medical examination, the applicant informed her not to take the girl for medical examination and earlier also the applicant had asked Mrs. Dighore not to give publicity to the incident. This conduct of the applicant was highly reckless and unfortunate. Being the responsible officer, he should have taken all care to bring the culprit before law. On the basis of this conduct of the applicant one may draw inference that it was desire of the applicant to suppress the incident to save the reputation of the school, therefore, the punishment of dismissal is justified. We, therefore, do not see any merit in this O.A. In the result, following order:-

ORDER

- (i) The O.A. stands dismissed
- (ii) No order as to costs.

(A.D. Karanjkar)
Member (J)

(Shree Bhagwan)
Vice-Chairman

Dt. 18th July 2019
Pdg

I affirm that the contents of the PDF file Order are word to word same as per original judgment.

Name of Steno : P.D. Girhale.

Court Name : Court of Hon'ble VC and Member (J)

Judgment signed and pronounced on : 18th July 2019.

Uploaded on date : 18th July 2019
