

Before Mahabir Singh Sindhu, J.

PARMINDER SINGH—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

CWP No.25484 of 2021

March 31, 2022

Constitution of India, 1950—Art.226—Punjab Civil Services (Punishment and Appeal) Rules, 1970—Rls.5(v) and 8—Petition challenging order of dismissal from service as Lecturer (English), District Institute of Education and Training—Allegations of sexual abuse by female students—Violation of principle of natural justice pleaded—Court to adopt practical approach, not get swayed by technicalities—To serve interest of justice—Petitioner not an ordinary employee, but a Teacher—Exploiting female students—Condemnable in “strongest words”—Petition under Article 226—Not an appeal—Regular departmental inquiry conducted by retired Judicial Officer—Full credence accorded by Court—No allegation of mala fide or ill-will against Director, SCERT or Protection Officer or Inquiry Officer—No reason to ignore fact finding reports of these independent authorities—“Insufficiency of evidence”—No ground to interfere with findings of authorities; rather mere preponderance of evidence shall serve desired purpose—Duly established that a Teacher sexually harassed female students—To protect dignity of innocent and helpless girls—Court duty-bound to show him the door instead of mercy—Petition dismissed.

Held that, although learned Senior Counsel pleaded violation of the principle of natural justice; but in view of the facts and circumstances of present case, this Court does not find any violation for interference with the impugned order. Law is well settled that in such like cases, instead of being swayed with the technicalities, the Courts should adopt practical approach to serve the interest of justice.

(Para 23)

In view of the above, an irresistible conclusion would be as under:-

1. Present writ petition under Article 226 of the Constitution is not an appeal; rather these are proceedings for judicial review of the

impugned dismissal order and therefore, the scope of interference against the factual foundation is well-defined.

2. It is noteworthy that in the present case, before passing the impugned dismissal order, a regular departmental inquiry was conducted by a retired judicial officer and as such this Court will accord full credence to the conclusion recorded in the inquiry report dated 28.01.2020; thereby proving the charge against petitioner.
3. Ms.Karuna Sachdeva, PW-7, gave a report to the District Education officer, Sri Muktsar Sahib that 2nd year students were frightened and feeling insecure;
4. Dr.(Smt.) Shivani Nagpal, Protection Officer, in her report dated 13.02.2018 came to the conclusion that petitioner used to do wrong things with the girl students and quoted two definite instances. At first instance, the girl came out by pushing the petitioner and at that time there was no lady teacher available in the DIET. During the 2nd instance, petitioner called the girl in the room for arranging the books and he tried to catch her from behind;
5. Director, SCERT, (PW-7) himself visited at DIET and submitted a detailed report after affording an opportunity of hearing to the petitioner and also recorded the statements of 11 Lecturers along with Ms. Karuna Sachdeva, PW4.
6. It is also worth mentioning that there is no allegation of malafide or ill-will against Director, SCERT, PW-7; or Protection Officer or even against the inquiry officer-Mr.B.C. Gupta, by the petitioner. Therefore, in such a serious matter, there is no reason to ignore the fact finding reports of these independent authorities;
7. Petitioner is not an ordinary employee; rather he was working as a teacher (Lecturer English); yet he tried to exploit the female students in the institution which, in the opinion of this Court, is condemnable in “strongest words”;
8. In view of the facts and circumstances of the present case, the view taken by the punishing authority was very much possible, therefore, this Court while exercising jurisdiction under Article 226 shall refrain from substituting the same merely on account of minor inconsistencies which are of insignificant nature.

9. To satisfy the conscience, this Court has also examined the matter at length; but keeping in view the sensitivity of the matter, does not find anything worth for interference with the impugned order.
10. Moreover, in such like cases, “insufficiency of evidence” is not a ground to interfere with the findings arrived at by the authorities; rather mere preponderance of evidence shall serve the desired purpose.
11. When it is duly established that a Teacher has sexually harassed female student(s), then in order to protect the dignity of innocent and helpless girl(s), this Court would be duty-bound to show him the door instead of mercy.

(Para 25)

Rajiv Atma Ram, Sr. Advocate assisted by
Arjun Pratap Atma Ram, Advocate,
for the petitioner.

Monica Chhibber Sharma, Sr. DAG Punjab.

MAHABIR SINGH SINDHU. J.

“One good schoolmaster is of more use than a hundred priests.”

Thomas Paine.

Present petition has been filed under Article 226 of the Constitution, *inter-alia*, for issuance of a writ in the nature of Certiorari to quash the impugned order dated 18.11.2021 whereby petitioner, [the then Lecturer (English), District Institute of Education & Training, (for short “DIET”) Barkandi, District Sri Muktsar Sahib], was dismissed from service.

(2) Controversy in brief:-

Initially, in the year 1996, petitioner was appointed as Punjabi Master with Department of Education, Punjab. In July, 2008, he was promoted as Lecturer (English). On 01.08.2008, petitioner was transferred to DIET, Barkandi. Thereafter, with effect from 14.11.2016, he was transferred to Government Girls Senior Secondary School, Sri Muktsar Sahib (GGSSS, Sri Muktsar Sahib). Thus, petitioner remained posted at DIET, Barkandi for a period of little over 08(eight) years.

2(i) On 15.02.2018, a news was published in ‘*The Tribune*’, which reads as under:-

“Sexual abuse: DIET students accuse Edu. Dept. of inaction.”

Say erring teachers not shifted despite indictment.

BALWANT GARG. TRIBUNE NEWS SERVICE.

FARIDKOT, February 14 — Several girl students of the District Institute of Education and Training (DIET), Muktsar and Faridkot, have accused the Education Department of failing to take action against teachers who allegedly exploited them sexually.

The students have now threatened to end their lives. An inquiry finding six male teachers of DIET, Muktsar, prima facie guilty of exploiting girl students and recommending their shifting, but the Department failed to act, rued the students.

Inderjit Singh, Director, State Council of Education Research and Training (SCERT), said he had got the additional charge of the SCERT just two days ago,, “I will check the status of complaints and the inquiry report”, he said.

In their compliant to the CM, Education Minister, SCERT Director, Faridkot Circle Education Officer (CEO) and Director General School Education (DGSE), these students alleged that the teachers were forcing them to submit to their promiscuous desires by threatening them with poor internal assessment and shortage of attendance.

We have already lodged several complaints, but there was no check on the behavior of the teachers despite an inquiry in the matter, they alleged.

The inquiry was conducted by the Principal of a Government School for Girls last month. In her findings, she had alleged that the second year girl students of DIET, Muktsar, were “highly terrorized”. Out of fear, they could not muster courage to name any teacher, revealed the inquiry report.

In another complaint, the girl students of DIET, Bathinda have alleged that two male teachers of DIET Faridkot had demanded favours from them for giving marks in practical

exams.”

2(ii) Taking cognizance of above News item, the Secretary, Department of Education, Government of Punjab (for short ‘the Secretary Education’) instructed the Director, State Council of Education Research & Training (for short ‘Director, SCERT’) to immediately inquire into the matter. In compliance thereof, Sh. Inderjit Singh, the then Director, SCERT visited DIET on 02.07.2018. He recorded the statements of staff members (teaching & non-teaching) and submitted his report dated 20.07.2018, thereby recommending disciplinary action against 04 Lecturers of DIET who remained posted during the session 2015-17 in the following Capacity:-

- (i) Ramesh Kumar Garg, Lecturer (Commerce)
- (ii) Lakhwant Singh, Lecturer (English)
- (iii) Parminder Singh (Petitioner), Lecturer (English)
- (iv) Ashok Kumar, Lecturer (Geography)

2(iii) All four were charge-sheeted under Rule 8 & Rule 5(v) to (ix) of The Punjab Civil Services (Punishment and Appeal) Rules, 1970, for short ‘Rules of 1970’. Lakhwant Singh, Parminder Singh (petitioner) & Ashok Kumar, were charge-sheeted on 06.10.2018; whereas charge-memo to Ramesh Kumar was issued on 08.04.2019. The relevant extract of charge-memo issued to present petitioner reads as under:-

“Charges

It is alleged against Shri Parminder Singh, Lecturer in English, District Institute of Education and Training, Barkandi, District Sri Mukatsar Sahib that under the cover of completing the lectures and allocating marks in the internal assessment of the students of D.El.Ed. Session 2015-17, has physically and mentally exploited them, due to which the students feel/perceive themselves as insecure. By doing so, you have made yourself liable for awarding punishment under Rule 8 and Rule 5(V to IX) of the Punjab Civil Service (Punishment and Appeal) Rules, 1970.

Details of Charges

The allegations against Shri Parminder Singh, Lecturer in English, District Institute of Education and Training, Barkandi, District Sri Mukatsar Sahib is that under the

cover of completing the lectures and allocating marks in the internal assessment of the students of D.El.Ed Session 2015-17, has physically and mentally exploited them, due to which the students feel/perceive themselves as insecure. By doing so, you have given the proof of irresponsibility and have violated the Rules/ Instructions and you have made yourself liable to be awarded punishment under Rule 8 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970”.

In response to Charge-sheets, all four, including present petitioner filed separate replies. The competent authority duly considered their response; but did not find any substance.

2(iv) In order to verify the truthfulness of charges against all of them, Sh. B.C.Gupta, Additional District & Sessions Judge (Retired), was appointed to conduct regular inquiry in the matter. The inquiry officer collected voluminous records (oral as well as documentary) and after consideration of the same, submitted his report dated 28.01.2020, thereby proving the charges against three of them; namely, Ramesh Kumar, Lakhwant Singh and Parminder Singh (petitioner). The 4th Lecturer, namely, Ashok Kumar was found innocent by the inquiry officer. All three delinquents were supplied the copies of inquiry report, separately and the competent authority after considering their response dismissed two of them from service, namely, Lakhwant Singh and Parminder Singh (petitioner).

(3) Hence, the present writ petition.

(4) During the course of hearing, Ld. State counsel, appraised the court that matter against Ramesh Kumar, (now posted as Principal, Government Senior Secondary School, Kaniawali, District Muktsar), is pending. However, upon instructions, she assured that final decision *qua* him shall be taken in due course, as per law.

(5) **CONTENTIONS:**

5(I) On behalf of the petitioner:

a. Learned Senior counsel while assailing inquiry proceedings, including the report dated 28.01.2020, submitted that process in present case was initiated on the basis of anonymous complaints; but in law, no cognizance could have been taken on pseudo communications. He

further submitted that in view of the specific government instructions, the proceedings ought to have been dropped at the threshold by the respondents without making any further reference of the same.

b. The inquiry officer, while submitting his report, relied upon various prosecution witnesses which were not mentioned in the list supplied to petitioner. That apart, the inquiry officer had taken into consideration documents which were not disclosed in the list while issuing charge memo to petitioner.

c. Again contended that the inquiry officer failed to consider testimonies of defense witnesses inasmuch as Ms. Ritika (DW-1) deposed that nobody harassed her and; or to her friend, namely, Ms. Sanchita (another girl student). Also contended that purported complaint at the instance of Ms. Sanchita is fabricated by Ms. Kiran Bhateja (PW-3) and moreover, it was not corroborated by Varinderjit Kaur (PW-5); but despite that these material facts were not properly taken into consideration by the inquiry officer.

d. Preliminary inquiry dated 20.07.2018 conducted by the Director, SCERT is perverse on account of the fact that no female student for the session 2015-17 was examined by him and as such the inquiry officer (Mr. B.C. Gupta) while submitting his report dated 28.01.2020 has wrongly relied upon the above said preliminary report.

e. The inquiry officer was pre-determined to draw an adverse inference in the matter as except Ms. Kiran Bhateja (PW-3), none of the prosecution witnesses deposed against petitioner.

f. Names of female students who made complaints during the sessions 2015-17 have not been disclosed in the charge-sheet; nor any material is on record to prove as to in which paper(s) petitioner awarded wrong marks to the students; thus the charge is not only vague; rather it has wrongly been proved against the petitioner.

g. The disciplinary authority was under obligation to pass a reasoned order; but the impugned dismissal order is absolutely non-speaking and cryptic; thus liable to be set aside.

h. The ex-parte preliminary inquiries dated 12.10.2016 & 13.02.2018 (R-1) conducted by Ms.Karuna Sachdeva (PW4) and Dr. Shivani Nagpal, District Child Protection Officer, for short ‘Protection Officer’, respectively, were wrongly relied upon by the punishing authority while passing the impugned order, despite the fact that these reports were neverproduced during inquiry proceedings.

i. The service conditions of petitioner are governed by the Punjab Educational Service (School and Inspection) Group ‘B’ Service Rules, 2018 (for short ‘the Service Rules’). As per rule 9, thereof, in the matters of discipline, punishment & appeal, the members of service shall be governed under the rules of 1970. Learned Senior counsel further contended that as per proviso to sub-rule 4, rule 9 of the rules of 1970, before imposing any punishment, the approval of Punjab Public Service Commission (for short ‘the Commission’) was necessary; but no such course has been followed by the disciplinary authority. Thus, the impugned action while dismissing the petitioner from service is vitiated in law. Reference in this regard was made to three judgments of this court viz. (i) **Dr.Vijay Khariwal Vs. State of Punjab and another-2013** (4) SCT 302; (ii) Union of India and another Vs. Maya Ram and others, 2016 (1) SCT 275; and (iii) CWP-21052-2017-G.S.Sidhu Vs. State of Punjab and others, decided on 21.09.2018.

j. The petitioner was afforded opportunity of personal hearing twice by OSD to Director General Secondary Education, (for short ‘DGSE’) as well as by Chairman, Sexual Harassment Committee on 03.02.2021; but the impugned dismissal order has been passed by another authority i.e. the Secretary Education, without affording any opportunity of personal hearing, thus, the same is in violation of the principles of natural justice.

5(II) On behalf of respondents

Learned State counsel while opposing the pleas raised on behalf of petitioner submitted as under:-

i. Apart from various fact finding reports, a regular departmental inquiry has been conducted in the matter by a retired judicial officer; and the charge framed against the

petitioner stands duly proved;

- ii. Since there was sufficient material available on record to prove the charge, therefore, the inquiry officer rightly came to the conclusion against petitioner and the report has duly been accepted by the punishing authority resulting into passing of the impugned order. The inquiry officer is an independent person being a retired judicial officer, having sufficient experience to deal with legal matters and as such, it is not appropriate to attribute any *malice* against him.
- iii. The punishing authority after taking into consideration the entire facts and circumstances of the case as well as inquiry report dated 28.01.2020, passed the impugned dismissal order to give a clear message to the wrong doers in the entire Department; thus there is nothing wrong with the decision.
- iv. It is well settled that in such cases strict proof beyond reasonable doubt is not required like a criminal trial; rather mere preponderance of evidence would be sufficient to prove the charge against the delinquent.
- v. The jurisdiction under Article 226 of the Constitution is not like an appeal and as such the findings of facts recorded by the inquiry officer as well as disciplinary authority do not warrant any interference by this court through present judicial review.
- vi. The names and details of female students as well as their statements were not disclosed in view of the sensitivity of the issue involved and in case of disclosure, it would have caused a lot of embarrassment to the female students and their families.
- vii. As per service rules, the Secretary Education was the only competent authority for passing the dismissal order and as such the personal hearing, if at all, afforded to petitioner by OSD to the DGSE is inconsequential. Moreover, there was no obligation on the part of disciplinary authority to grant an opportunity of personal hearing to the petitioner before passing the impugned order.
- viii. Even if the OSD to DGSE afforded an opportunity of personal hearing to the petitioner; that is of no use as the dismissal order has been passed by the Secretary

Education on the basis of his independent opinion formed after considering the material on record.

(6) Heard learned counsel for the parties and perused the records.

(7) The sole point for consideration of this court would be:-

“As to whether, in view of the facts and circumstances of the present case, the impugned dismissal order is legally sustainable?”

(8) The students for the academic Sessions 2015-17, got enrolled at DIET, Barkandi for two year course i.e. Diploma in Elementary Education (D.El.Ed.) with an hope to join Primary School(s) in future and to teach small children of next generation. During this period, the allegations of sexual harassment of some female students by the teachers were brought to the notice of authorities and at least 04(four) different reports were submitted in this regard.

(9) All these reports have been made available on record; which, after going through by this court, are discussed as under:-

9 (i) 1ST REPORT dated 12.10.2016 by Ms. Karuna Sachdeva, Principal, Government Girls Senior Secondary, Malout (PW-4)

On the basis of a complaint received from some female students vide Dairy No.968 Dated 30.09.2016, an inquiry was entrusted to Ms.Karuna Sachdeva, (PW-4) by the District Education Officer, Sri Muktsar Sahib on 03.10.2016. In pursuance thereof, she along with other members of the team visited DIET on 12.10.2016and *inter-alia* observed:-

“The girls told in clear words that we are not safe from the gents Teachers. Due to fear of teachers, they refused to tell the name of any teacher. They told that we can’t name any one teacher, because they frequently threaten us to defame us and give lesser numbers in assessment. The girls told that the gents Teachers for one work or the other call us in isolation in the room, where we feel unsafe. The boys also told us that conduct of the gents Teachers with the girls is not good.

Conclusion: After the complete discussion, myself and my team has reached to the conclusion that students,

especially the second year students were very frightened and were feeling insecure. We felt that the entire staff of the Institute be changed. One regular female Principal and Senior Lecturers on regular basis be appointed. For the cleanliness of the Institute, some Class Four employee be appointed. As the Institute is situated at a desolated place, therefore, for the safety of students, if it is possible then a security guard be appointed. It is requested to the higher Officers that for running the Institute in a smooth/ efficient manner, the entire staff of the Institute including the Incharge/Manager be changed because many shortcomings have been seen in their management.”

9 (ii) 2ND REPORT dated 13.02.2018 by Dr. (Smt.) Shivani Nagpal, District Child Protection Officer, Sri Muktsar Sahib.

The Protection Officer submitted her report dated 13.02.2018, to the Deputy Commissioner, Sri Muktsar Sahib and which is recapitulated as under:-

“**Subject:** Enquiry report regarding application of girls of Diet Barkandi sent by you.

Regarding the above subject it is humbly brought to your notice that in the above enquiry the undersigned visited diet Barkandi on 24.11.2017 with Child Protection Officer, Smt. Anu Bala of my office and on 29.11.2017 with Madam Kanu Garg,

P.C.S. Asstt. Commissioner (S.O.). During enquiry there was atmosphere of fear among the students, they were assured not to fear from anything and disclose their problems openly. During enquiry all students submitted that their marks of assessment are to be given by the teachers and these teachers exploit the student for the sake of assessment marks. Students disclosed that due to non-availability of the regular principal in Diet, the teachers act according to their own sweet will. Students also disclosed that Sheela Madam asks students to buy suit, Milk, Saag, Jacket etc. for her with their money personal phone bills of teacher are paid by the students and they ask for these things of domestic uses from the students.

During enquiry most of the students were fresher taking into

consideration the seriousness of the matter when students of previous session were contacted then so many other illegitimate movements of Diet teachers came forward. Old students disclosed the torture done to them with the condition to not disclose their names.

1) Session 2015-2017's are students stated that 'Ramesh Sir tried to do something wrong with me. He called me alone and asked some simple question and all of a sudden tried for molestation. I saved my life and to secure my life. I told him that I will come tomorrow but once I came out and I never went there again'. (Student's statement as written by her).

2) One another girl student of session 2015-17 gave statement that Parminder Sir tried to do wrong with me, but I came out by pushing him. At that time there was no lady teacher in Diet so I could not tell this thing to anyone. I have told thing earlier also in inquiry. At that time he called me in the room asked to arrange the books. While I was arranging the books he tried to catch me from behind. (Student's statement as written by her).

Lady employee of Diet also disclosed (while not disclosing her name) that Parminder Sir and Ramesh Sir were used to lie down on the bed in the science lab. They also called girls in that room when they were alone. Sheela Madam of Diet arranges the girls. (As per statement of lady employee verbal). One lady teacher told that one

student disclosed to her that Lakhwant Singh pinched that student. Lady teachers of Diet have also confirmed about the molestation of the students. Statement of students recorded during the enquiry are annexed to you in secret manner and you are requested to take necessary action against these teachers so that in future molestation of the students can be prohibited in the Diet and good and safe atmosphere can be provided to the students for this study.

Report is submitted for next action.”

9 (iii) 3RD REPO RT Dated 20.07.2018 by Sh. Inderjit Singh, Director, SCERT (PW7).

Aftermath of news published in The Tribune on 15.02.2018, the Director, SCERT visited the institute on 02.07.2018 and after taking

into consideration the statements made by staff members (teaching & non teaching), including that of petitioner , *inter-alia* noticed:--

“After examining the aforesaid and record, the following facts came to light:-

1. This complaint has been submitted by the students of D.El.Ed. Session 2015-17 against the male Teachers working at that time at DIET, Barkandi, Sri Muktsar Sahib.
2. The students in their complaint have mentioned that the male Teachers working at DIET, under the cover of completing Lectures and Internal Assessment, are physically exploiting the female students.
3. Smt. Varinder Kaur, Lecturer in Chemistry, in her statement has submitted that she has seen the physical exploitation of the students on the basis of numbers of assessment.
4. As per the statements of Smt.Varinder Kaur and Smt.Kiran Bhateja: In the Cabin behind the Science Lab., in DIET, Barkandi, one bed has been kept, which has been used for taking rest by the male teachers of DIET.

As per the statements of Kiran Bhateja:-

On which Ramesh Kumar, Lecturer frequently take rest.

5. As per the statements of Smt.Varinder Kaur, Lecturerin Chemistry:

The students of Session 2015-17 have told her orally that some wrong act has been committed with them.

6. As per the statements of Smt.Varinder Kaur and Smt.Kiran Bhateja:

Mostly, the practice subjects of the students are with Male Staff and in the time table, the Practical subjects are with male staff and excess marks for the same are given.

7. As per statements of Smt.Kiran Bhateja, Math Lecturer:

One girl namely, Ritika, Session 2015-17 has told her that she was called over phone by Ramesh Kumar in his room and committed wrong act with her.

Likewise, Sanchita, student of Session 2015-17 told that Parminder Singh committed wrong act with her.

The complaint of Lakhwant Singh was also submitted to Smt. Baljeet Kaur that he talked regarding physical weakness with Komal, student of year 2016-18, also asked the Trainee of year 2014-16 that “Your hair are very romantic” (“Tere Wall bade Aashiqi Vale Han”). The conduct of Karamjit Singh with the female students was of strange nature.

For putting the numbers of Assessment, the female students are called in the room in isolation.

The conduct of Shri Navjeet Singh is also very strange, he is also casting aspersions regarding my character also.

The conduct of Ashok Kumar with the girls is becoming open hurriedly.

8. As per statements of Smt. Paramjeet Kaur, Sweeper:
In the Cabin made behind the Science Lab., one

Bed has been kept, on which Shri Ramesh Garg, Incharge Principal Officer is sitting frequently. Whosoever is having any work with him, he is called in the Cabin. An incident which took place on one day in her presence, one girl, who was having medium height, went to Ramesh Kumar in his Cabin. At that time, she was cleaning the utensils, then she heard loud cry of the girl and then she came out running from the Cabin and went from DIET to her house immediately.

9. In her statements, Smt. Karuna Sachdeva, Principal, G.G.S.S. School, Malout submitted that: The preliminary inquiry of this complaint was conducted by her. As per the statements of Karuna Sachdeva, the female students of Second year of the Session 2015-17 were very frightened and shrunk with fear and were felling themselves as unsafe. As per the statements of Smt. Karuna Sachdeva, the male teachers of DIET, Barkandi, were extending objectionable conduct to them.

As per the statements of Karuna Sachdeva, the female students told her that the male teachers on the pretext of checking the Assessment, were calling them one by one in

the room and after closing the door, they were committing obscene acts.

The female students also told her that the male teachers were also trying to give new Mobile Sims separately, so that they can talk with them over phone.

The said Trainees refused to name the said male Teachers, because they have threatened them to give less numbers of Assessment and also to defame them in the society.

In addition to the aforesaid Teachers/ employees who appearing in the enquiry, Dr.(Smt.) Shivani Nagpal, District Child Protection Officer, District: Sri Muktsar Sahib, who has conducted the inquiry of this case as per the orders of D.C., Sri Muktsar Sahib, was also joined this enquiry. She refused to give written statement, because she had already submitted her report to Hon'ble D.C., Sri Muktsar Sahib. She submitted that it will be premature to submit any statement by her regarding this case. During the conversation, she told that:-

She has been disclosed by the students that Sheela madam was demanding in addition to the money, suits, milk green leafy vegetables ('Saag'), Jacket, payment of bills of personal phones and other household articles also.

One student of Session 2015-17 has submitted the statement that Ramesh Garg Sir tried to commit some wrong act with her. He has called her in isolation and put some simple question that all of a sudden, he tried to commit the act forcibly. I saved my life and to save my life I told him that I will come tomorrow, but once I came out from there, I never went there again.

Another student of Session 2015-17 submitted the statement that Parminder Sir tried to commit wrong act with me, I pushed him and came out. At the relevant time, there was no female Teacher in DIET, hence, I did not disclose this incident to anyone. This fact was earlier also mentioned by me in the inquiry that at that time, he called me in the room and asked me to set the books and thereafter, during setting of books, he tried to catch hold of me from the backside.

By keeping her name as confidential, one lady employee of DIET told that Parminder Sir and Ramesh Sir were frequently lying on the bed kept in Science Lab. They were calling the girls in isolation in the said room. Sheela madam of DIET was arranging the meeting of girls.

One female Teacher told that one female student told the incident to the said female teacher that Lakhwant Singh pinched the said student. The female teacher of DIET have also confirmed regarding the exploitation of the students.

During the enquiry, this fact also came to light that the complaint was submitted by the female students of Session 2015-17, who were not present in the Institute due to completion of Session and their statements could not be obtained.”

At the end of this report, the Director while recommending the departmental action against all 04 (four) delinquent, categorically opined as under:-

“From the aforesaid statements, examination of record and on the basis of facts came to light, the undersigned has reached the conclusion that the following teachers have been found as main accused:-

1. Shri Ramesh Kumar Garg, Lecturer, who after his promotion as Principal, has gone to G.S.S.S., Kania Wali, Sri Muktsar Sahib.
2. Shri Parminder Singh, who after getting transferred has gone to G.G.S.S.S., Sri Muktsar Sahib.
3. Shri Lakhwant Singh, Lecturer in English, who is presently working at DIET, Barkandi (Sri Muktsar Sahib).
4. Shri Ashok Kumar, Lecturer, who is presently working at DIET Barkandi, Sri Muktsar Sahib.”

9 (iv) 4TH REPORT dated 28.01.2020 By Sh. B.C.Gupta AD&SJ(Retd.)

This report reveals that Ms.Kiran Bhateja, Lecturer, Math (PW3) fully supported the allegations against petitioner. For reference, para Nos.13 & 16 of the report relating to this witness are extracted as under:-

“13. As far as statement of Ms.Kiran Bhateja, PW-3 is concerned, she has categorically stated on oath before the undersigned that Mr.Ramesh Kumar, CO had kept a bed in the laboratory and usually he sits there and that the students usually visit him in that room. She further stated that one student Ms.Ritika came to her when Ms.Varinderjit Kaur another teacher was sitting with her and told her that Ramesh Kumar, CO called her by giving a ring on phone and then did something wrong and that Ms.Sanchita was also with her at that time. Parminder Singh teacher also took her in a room and did something wrong. She further stated that Lakhwant Singh, CO told her that her physique was weak.

16. As far as statement of Ms.Kiran Bhateja is concerned, she did support the case against the COs before the undersigned as well as before Inderjit Singh Director and she is very categorical that Ramesh Kumar CO used to call the girl students in the lab. where a bed had been kept and harass /misuse them. She has also proved the allegations against Parminder Singh and Lakhwant Singh. Inderjit Singh PW-7 is very responsible officer of the department and is presently enjoying the status of the head of department. He had absolutely no motive to make a false statement or to twist the facts of the case. A perusal of the file shows that one application was given by the girl students to Incharge of the DIET on 30.09.2016 and copy of the same is at page 57 to 59. It is true that t+his application is not signed by the students because they did not like to disclose their names otherwise the same could jeopardize their chances of settlement in life. A perusal of the file shows that complaints were made by Sanchita copy at page 86, Ms.Ritika copy at page 87, Ms.Pooja copy at page 160, Ms. Rajpal Kaur, Ms. Navpreet Kaur, Ms. Jyoti, Ms.Amanpreet Kaur, Ms. Ramandeep Kaur, Ms. Beant Kaur, Ms. Manpreet Kaur, Ms. Jyoti and many more students copies at pages 161 to 258 and 356 to 389. Most of these complaints are addressed to the Principal but there is nothing on the record to show as to whether these complaints were dealt with by the Incharge of the Institute, DEO or by the Directorate. Things are not as they appear to be. But for the report of Ms.Inderjit Singh, PW-7 no action would have

been taken against the Cos who seem to be enjoying the patronage of high ups.”

Ms. Karuna Sachdeva, (PW4) Principal, who had earlier submitted 1st report also supported the charges against petitioner during regular inquiry and reference in this regard can be made to the relevant part of report, which reads as under:-

“13.....Ms. Karun Sachdeva PW-4 stated that when she was working as Principal, Govt. Sr. Secondary School, Malout she was appointed as inquiry officer and she visited the institute and submitted the report Ex.PX. Ms. Varinderjit Kaur, Lecturer PW-5 expressed her ignorance regarding the allegations made by the students and Ms. Paramjit Kaur Sweeper also stated that all the teachers are very good. As far as Inderjit Singh, DPI (Elementary) PW-7 is concerned, he visited the school, conducted the enquiry and submitted report Ex.PA to the Education Secretary and categorically stated that according to him girl students of 2015-2017 batch of DIET Barkandi sexually abused the students on one pretext or the other as detailed by him in his report copy Ex.P-1.

14. First of all, I take up the version of Karuna Sachdeva PW-4, she did conduct an inquiry and submitted a report Ex.PX at page 60 dated 12.10.2016 in which she has categorically stated that when she visited the School on 12.10.2016, the atmosphere in the institution was not good. Because of the fear of the teachers the students refused to make complaint against the teachers but it was felt that there was something serious in the school. The students told Ms. Karuna Sachdeva that the girl students were not given proper treatment by the teachers and that the girl students were feeling insecure. It was recommended by her that all the male teachers be transferred from the school. Ms. Karuna Sachdeva is an independent and responsible officer of the Govt. and there is no reason to disbelieve her version on the basis of which some teachers were transferred. A complaint Ex.PY at page 62 was given by some student addressed to her but it was not signed for fear of the COs and other teachers. When Ms. Karuna Sachdeva was cross examined by the learned DA nothing has come on record which may show that she has twisted the facts of the case or has

given biased report.”

Sh.Inderjit Singh, Director, SCERT (PW7), who submitted 3rd report also supported the charge against petitioner and relevant part of the same in this regard is extracted as under:-

“8.....When this news appeared in the newspaper and the matter came to the notice of the learned Education Secretary he directed Shri Inderjit Singh, Director, State Council of Education Research and Training (SCERT) to immediately visit the institute, conduct an inquiry and submit a report. Shri Inderjit Singh PW-7 visited the Institute on 02.07.2018 and recorded the statements of teachers/ employees regarding the authenticity of the various allegations as mentioned in the newspaper dated 15.02.2018.”

In para 16 of the report, inquiry officer observed as under:-

“Inderjit Singh PW-7 is very responsible officer of the department and is presently enjoying the status of the head of department. He had absolutely no motive to make a false statement or to twist the facts of the case.”

At the same time, the inquiry officer also recorded a distressing note about patronage being enjoyed by the charged officials to the effect that “for the report of Ms.(sic Mr.) Inderjit Singh, PW-7, no action have been taken against the COs who seem to be enjoying the patronage of high-ups.”

Again in para 17, it is specifically observed that “Sh.Inderjit Singh had no motive to make false report”.

Still further, the inquiry officer in para 18 of the report, *inter-alia*, observed:-

“As far as statement of Ms.Karuna Sachdeva is concerned, I do not agree that she attached a benami complaint and that Karun Sachdeva is holding responsible position and conducted an inquiry as Principal. Kiran Bhateja, PW-3 has given consistent statement to the effect that COs harassed girl students and Mr.Ramesh used to take rest on the bed in the laboratory and call the students off and on and sometimes sexually harassed them. It may be that Kiran Bhateja was warned for not taking leave on 07.08.2015 and 10.08.2015 in advance but that has nothing to do with this case. The statement of Varinderjit Kaur PW-5 and Paramjit

Kaur PW-6 do not inspire credence because they seemed to have been won over by the COs and they gave twisted and false statement before the undersigned. The plea of Ramesh that his statement was not recorded by the IO is true. If Ramesh Kumar wanted to say something, he should have written to the Directorate or to D.E.O. to record his statement but he failed to do so. Some more arguments have been detailed by the COs in lengthy written defence versions but no CO came forward in the witness box to make a statement on oath and, therefore, the defence version of C.Os. Ramesh Kumar, Lakhwant Singh, Parminder Kaur (sic.Parminder Singh) does not inspire credence.”

Ultimately, the inquiry officer, in para 18 of the report dated 28.01.2020 while proving the charges against petitioner as well as two other delinquent, concluded:-

“As all the witnesses except two have supported the case of the department in toto against Ramesh Kumar, Lakhwant Singh and Parminder and, therefore, I hold that the department has succeeded to prove the allegations against RameshKumar, Lakhwant Singh and Parminder Singh.”

(10) The petitioner belongs to a noble profession i.e. teaching. Parents send their children to all the educational institutes for learning with an hope that they will become good citizens to serve the nation. These temples of learning are considered as second home for students. On the basis of this analogy, all over the world, teachers have been elevated to the status of *loco parentis* and this practice is being followed since good olden days. Occasionally, there are some aberrations in this noble profession which lead to invasion of dignity of female students by some *lusty brutes* under the camouflage of being teachers. It is quite sensible to assume that trauma of sexual harassment meted to a female student shall completely shatter her dream of becoming a good citizen as it might derail her entire life.

As discussed in the preceding paragraph, there is sufficient material on record to prove the allegation of sexual harassment against the petitioner. It duly established from records that during sessions 2015-17, the petitioner while working as Lecturer (English) at DIET, Barkandi, exploited female students physically as well as mentally on the pretext of completing their lectures and awarding marks for internal assessment.

It needs to be emphasized that regular inquiry in the present case has been conducted by a retired Judicial Officer; who, after going through extensive records found the charge against petitioner duly proved and there is no such compelling reason(s) for this Court to interfere with the conclusion drawn by the inquiry officer in such a sensitive matter.

(11) Although, learned Senior counsel raised a plea that testimony of Ms. Kiran Bhateja, PW-3 is not trustworthy in view of the fact that another lecturer Varinderjit Kaur, PW-5, did not support her version; therefore, the inquiry officer wrongly relied upon the same, but the contention is not acceptable. As already discussed under para 9 (iv), the inquiry officer gave full credence to the testimony of Ms. Kiran Bhateja, PW-3, and in para 14 of the report, he has discarded the credibility of Ms. Varinderjit Kaur-PW5, in the following manner:-

“14. As far as Varinderjit Kaur, Lecturer PW5 is concerned, though she gave a clean chit to the COs by making a statement that she has absolutely no knowledge about the atmosphere of the Institute but when she gave a statement before Shri Inderjit Singh, Director she fully supported the allegations against the COs and that a bed had been kept in the Laboratory in which Ramesh Kumar, CO used to take rest and call the students on the pretext of giving more marks in the Internal assessment and that the harassment caused by the COs was visible. It indicates that though Ms. Varinderjit Kaur gave correct version of the atmosphere in the school before Shri Inderjit Singh, yet when she appeared before the undersigned and made a statement as PW5 she resiled from the true facts of the case, maybe at the instance of COs. and, therefore, appropriate action should be initiated against her for helping the COs in the nefarious activities going on in the institute.”

Still further, the inquiry officer has specifically noticed that Ms. Varinderjit Kaur while appearing before Director, SCERT, PW-7 at the time of conducting 3rd inquiry, categorically stated that “she was working as Lecturer in the Institute since 26.08.2016 and that the students were mentally and physically harassed on the pretext of giving better marks in the assessment and she was quite surprised to see it.” Thus, in the opinion of this Court, the above conclusion drawn by inquiry officer is well justified and does not deserve any second thought.

(12) The contention of learned Senior counsel that Ms.Ritika and Ms.Sanchita did not support the prosecution case, therefore, the charge cannot be said to be proved against the petitioner, is also not acceptable. Still further, the argument that defence version has not been considered by the inquiry officer is also insignificant due to the following reasons:-

a. The report submitted by Ms.Kiran Bhateja (PW-3) is not only fair; rather has given an independent opinion being the Principal of GSSS (Girls), Malout and she categorically raised red flag towards the delinquents, including petitioner.

b. The second report was submitted by the Director, SCERT (PW-7) after visiting at the spot. More importantly, the petitioner was duly associated during this inquiry as his statement was recorded by PW-7. Also noteworthy that report submitted by PW- 7 is duly shown in the list of document with charge- sheet. Also relevant that PW-7 while preparing his report recorded the statements of 11 (eleven) Lecturers and this document (3rd report) gives vivid details about sexual harassment being faced by female students at DIET, Barkandi. It be again noticed that PW-7 is a senior officer of the Department and he had no motive to falsely implicate the petitioner in such an episode which has completely damaged the reputation of the institute as well. Honestly speaking, the report of PW-7, which is a document duly proved on record, would be more than sufficient to prove the charge of sexual harassment in this case.

c. Still further, the Protection Officer who submitted the 2nd report on 13.02.2018 to the Deputy Commissioner, Sri Muktsar Sahib, specifically indicted the petitioner as well as other Lecturers; but unfortunately, it seems that no action was taken on the basis of said report by the concerned quarter at relevant time.

d. As already mentioned, regular inquiry has been conducted by a retired Judicial Officer after taking lot of pain as is clear from the lengthy records to prove the charges. The inquiry officer has even recommended necessary action against some erring officials who resiled from their earlier statement made before PW-7 and this Court fully appreciate the course adopted in such a way.

e. Para No.16 of the inquiry report dated 28.01.2020 clearly indicates that various complaints were made by female students of DIET, but most of them remained unattended by the authorities for the reasons best known to them and relevant part of the observations made in this regard are recapitulated as under:-

“A perusal of the file shows that one application was given by the girl students to Incharge of the DIET on 30.09.2016 and copy of the same is at page 57 to 59. It is true that this application is not signed by the students because they did not like to disclose their names otherwise the same could jeopardize their chances of settlement in life. A perusal of the file shows that complaints were made by Sanchita copy at page 86, Ms. Ritika copy at page 87, Ms. Pooja copy at page 160, Ms. Rajpal Kaur, Ms. Navpreet Kaur, Ms. Jyoti, Ms. Amanpreet Kaur, Ms. Ramandeep Kaur, Ms. Beant Kaur, Ms. Manpreet Kaur, Ms. Jyoti and many more students copies at pages 161 to 258 and 356 to 389. Most of these complaints are addressed to the Principal but there is nothing on the record to show as to whether these complaints were dealt with by the Incharge of the Institute, DEO or by the Directorate. Things are not as they appear to be.”

(13) The argument of learned Senior counsel with regard to vagueness of charge is also not acceptable for the reason that allegations against petitioner are not only clear, but categorical as well. There is specific charge framed and proved against the petitioner to the effect that he being Lecturer (English) for the session 2015-17 at DIET, Barkandi, under the garb of completing lectures and allocating marks in the internal assessment of D.El.Ed. students, had physically and mentally exploited them. The charge has already been extracted in para No.2 of the order and this Court does not find any ambiguity with the same.

(14) The argument that names of female students who made complaints were not disclosed in the charge-sheet; is also not helpful for the reason that disclosure of names of students in such a sensitive matter shall cause irreversible damage to the reputation of female students as well as their families.

(15) Learned Senior counsel also tried to raise a plea that w.e.f. 14.11.2016, petitioner was transferred from DIET, Barkandi to

Government Girls Senior Secondary School, Sri Muktsar Sahib (for short ‘GSSS, Sri Muktsar Sahib’), but that is also insignificant for the reasons that:—

- (i) Transfer was managed by petitioner at his own request;
- (ii) The allegations pertain to the period prior in time; and
- (iii) It cannot be ruled out that after receiving so many complaints from female students, just to save his skin, the petitioner got himself transferred from DIET, Barkandi to another place.

(16) The argument of learned Senior counsel that proceedings in this case were initiated on the basis of anonymous complaint will also pale into insignificance in view of the fact that allegations in the present case were based on verifiable facts and which have been duly proved while leading overwhelming evidence during regular inquiry.

(17) Learned Senior counsel vehemently argued that punishing authority failed to record reasons while passing the impugned order; but that will also not be helpful to the petitioner in view of the fact that this court has examined the matter at length and is fully satisfied that charge against petitioner stands duly proved.

Still further, perusal of the impugned order reveals that punishing authority after consideration of the matter consented with the inquiry report dated 28.01.2020 and specifically observed that “*allegations against the employee are of very serious nature and to cite example in such case*”, dismissed the petitioner from service.

At the same time, there is no quarrel that dismissal from service of a Government employee entails serious consequences and as such, it would have been more appropriate for the disciplinary authority if some better reasons had come forward so that it may save the valuable hours of this Court while considering the judicial review. It is well known that reasons serve the purpose of living link between an alleged misconduct vis-à-vis the punishment order based on the material collected during inquiry proceedings. Also not in doubt that due to insufficient reasoning, dismissal order can be set aside with further direction to pass fresh reasoned order at the end of disciplinary authority; but that is to be seen in the context of controversy involved. Certainly, adopting such a course in the present case would be adding more fuel to the agony of innocent female students and extending premium in favour of the sexual harassers. Thus, as a solace to the

sufferers and clear indication to the harassers, this court minutely examined the records to avoid the easy way of remand exercise. Consequently, in view of the gravity of matter, conclusion recorded by punishing authority is acceptable and does not warrant interference on this count also. However, for the future, punishing authority is advised to record proper reasons while taking into consideration the above observations.

At this stage it would be appropriate to make a reference of the recent judgment Hon'ble Supreme Court reported as ***Boloram Bordoloi*** versus ***Lakhimi Gaolia Bank & Ors***¹, and which *inter-alia* says:-

“It is well settled that if the disciplinary authority accepts the findings recorded by the Enquiry Officer and passes an order, no detailed reasons are required to be recorded in the order imposing punishment. The punishment is imposed based on the findings recorded in the enquiry report, as such, no further elaborate reasons are required to be given by the disciplinary authority.”

Resultantly, the contention raised on behalf of petitioner counsel is rejected.

(18) Lastly, learned Senior counsel tried to gain the sympathy of this Court while contending that petitioner is suffering from permanent disability as he had lost his right leg in an accident, but again not acceptable for the reason that there is no presumption in law that a person with such physical deformity shall not commit the alleged brutality. As a matter of fact, it is only the lascivious propensities of a man that shall tend to indulge in such activities and his physical deformity shall not wither the overpowering mood(s) of voluptuousness.

(19) Above all, the law is well settled that to prove a charge in disciplinary proceedings, there is no requirement of “proof beyond reasonable doubt” like a criminal trial; rather mere “preponderance of evidence” would be sufficient. It is also equally well settled that in domestic inquiry, even the hearsay evidence can also be taken into consideration; provided, it has reasonable nexus and worth of credibility. Reference in this regard can be made to the judgment of Hon'ble Supreme Court in ***State of Haryana and another*** versus

¹ (2021) 3 SCC 806

Rattan Singh² (03 Judges Bench), and para 4 thereof reads hereunder:-

“It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence- not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is

² (1977) 2 SCC 491

invalid on that ground.”

In view of above discussion, this court is of the opinion that there is sufficient material available on record to prove the charge against petitioner.

(20) This is an admitted position that during 01.08.2008 to 16.11.2016, the petitioner was working as Lecturer (English) at DIET, Barkandi. The rules 2(i)(d)& 9 of the Service Rules governing his service conditions read as under:-

“2. Definitions (i) In these rules, unless the context otherwise requires:-

(a) to (c).....

(d) ‘Government’ means the Government of the State of Punjab in the Department of School Education;”

“9: Discipline, punishment and appeal-

(1) In the matters of discipline, punishment and appeal, the members of the Service shall be governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1970, as amended from time to time.

(2) The authority empowered to impose penalties as specified in rule 5 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, in respect of the members of the Service, shall be the Government.”

Since rules 5(ix) & 9 of the rules of 1970 would also be relevant for adjudication of the matter, therefore, the same are extracted as under:-

“Rule 5. Penalties.

The following penalties may for good and sufficient reasons, and as hereinafter provided, be imposed on a Government employee, namely:-

Minor Penalties. (i) to (iv).....

Major Penalties.

(v) to (viii).....

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

Rule 9: Action on the inquiry report:

(1) The punishing authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 8 as far as may be.

(2) The punishing authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for each disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the punishing authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Clauses (i) to

(iv) of Rule 5 should be imposed on the Government employee, it shall, notwithstanding anything contained in Rule 10, make an order imposing such penalty;

Provided that in every case where it is necessary to consult the commission, the record of the inquiry shall be forwarded by the punishing authority to the commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government employee.

(4) If the punishing authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 5 should be imposed on the Government employee, it shall make an order imposing such penalty and it shall not be necessary to give the Government employee any opportunity of making representation on the penalty proposed to be imposed;

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the punishing authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the

Government employee.”

Perusal of Rule 2(d) of the Service Rules reveals that ‘Government’ means the Government of State of Punjab in the Department of School Education. There is no quarrel that the impugned order has been passed by the Secretary Education.

In view of the combined reading of rule 5(ix) of the rules of 1970 & the Rules of Business, 1992 (amended from time to time), it is safely discernable that the Secretary Education was very well competent to impose the punishment of dismissal from service against the petitioner.

(21) Learned Senior counsel vehemently contended that in view of the proviso to sub-rule 4, rule 9 of Rules of 1970, it was necessary for the disciplinary authority to take approval of the Commission before passing the impugned order. But this argument is not acceptable for the reason that proviso to sub-rule 4 says, “*where it is necessary to consult the Commission*”, the record of the inquiry shall be forwarded by the punishing authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government employee. In the present case, there is no material to substantiate that, “it was necessary” for the punishing authority to consult the Commission before passing the impugned dismissal order. Thus, in such a scenario the proviso to sub-rule 4 (ibid), does not obligate the punishing authority to seek any approval of the Commission before passing the impugned dismissal order.

21 (i) Still further, to support the above proposition, reference can also be made to the Article 320(3)(c) of the Constitution and which reads as under:-

“3 The Union Public Service Commission or the State Public Service Commission as the case may be shall be consulted—

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) on all disciplinary matters affecting a person serving under Government of India or Government of a State in a civil capacity, including memorials or petitions relating to such matters;”

21 (ii) The Hon’ble Supreme Court in case of *State of U.P. versus*

Manbodhan Lal Srivastava³ (**Constitution Bench**) while considering the ambit of Article 320(3)(c) held that it does not confer any rights on a public servant and that the absence of consultation or any irregularity in consultation shall not afford him a cause of action in a Court of law, or entitle him to relief under Article 226 of the Constitution. Reference in this regard can be made to paras 4, 12 & 13 of the above judgment and which are as under:-

“4. Hence, the main question in controversy in appeal No. 27 of 1955 is whether the High Court was right in taking the view that Art. 311 was subject to the provisions of Art. 320(3)(c) of the Constitution, which were mandatory, and, as such, non-compliance with those provisions in the instant case was fatal to the proceedings ending with the order passed by the Government on September 12, 1953.

12. We have already indicated that Article 320(3)(c) of the Constitution does not confer any rights on a public servant so that the absence of consultation or any irregularity in consultation, should not afford him a cause of action in a court of law, or entitle him to relief under the special powers of a High Court under Article 226 of the Constitution or of this Court under Article 32. It is not a right which could be recognized and enforced by a writ.

On the other hand, Article 311 of the Constitution has been construed as conferring a right on a civil servant of the Union or a State, which he can enforce in a court of law. Hence, if the provisions of Article 311, have been complied with in this case and it has not been contended at any stage that they had not been complied with, he has no remedy against any irregularity that the State Government may have committed.

Unless, it can be held, and we are not prepared to hold, that Article 320(3)(c) is in the nature of a rider or proviso to Article 311, it is not possible to construe Article 320(3)(c) in the sense of affording a cause of action to a public servant against whom some action has been taken by his employer.

13. In view of these considerations, it must be held that the

³ AIR 1957 SC 912

provisions of Article 320(3)(c) are not mandatory and that non-compliance with those provisions does not afford a cause of action to the respondent in a court of law. It is not for this Court further to consider what other remedy, if any, the respondent has. Appeal No. 27 is, therefore, allowed and appeal No. 28 dismissed. In view of the fact that the appellant did not strictly comply with the terms of Article 320(3)(c) of the Constitution, we direct that each party bear its own costs throughout.”

21 (iii) Again the Hon’ble Supreme Court in C.A. No.289 of 1958-*The State of Bombay* versus *D.A. Korgaonkar*, decided on 06.05.1960, (Constitution Bench) while following *Manbodhan Lal Srivastava’s* case (supra) held that provisions of Article 320 (3)(c) are not mandatory and relevant part of the same reads as under:-

“In this appeal by the State of Bombay the decision of the question whether the provisions about consultation with the Public Service Commission contained in Art.320 (3) (c) of the Constitution being directory or mandatory does not present any difficulty. It has been decided by this Court in *The State of Uttar Pradesh v. Manbodhan Lal Srivastava* that Art. 320 (3) (c) of the Constitution is not mandatory and it does not confer any right on a public servant so that absence of consultation or any irregularity in consultation does not afford to a public servant against whom disciplinary action is taken a cause of action in a court of law; and that Art. 311 of the Constitution is not controlled by Art.320.”

21 (iv) The law laid down by Hon’ble Supreme Court in *Manbodhan Lal Srivastava’s* case (supra) has consistently been followed and further reference can be made to the judgment of Hon’ble Supreme Court in *Union of India* versus *T.V. Patel*⁴ and relevant part of the same extracted as under:-

“**25.** In view of the law settled by the Constitution Bench of this Court in *Srivastava* [AIR 1957 SC 912 : 1958 SCR 533] we hold that the provisions of Article 320(3)(c) of the Constitution of India are not mandatory and they do not confer any rights on the public servant so that the absence of

⁴ (2007) 4 SCC 785

consultation or any irregularity in consultation process or furnishing a copy of the advice tendered by UPSC, if any, does not afford the delinquent government servant a cause of action in a court of law.”

(22) The argument raised by learned Senior counsel that opportunity of personal hearing was granted to petitioner by the OSD to DGSE; whereas, the impugned order has been passed by the Secretary Education, is also of no help for the following reasons—

(i) As already concluded in para no.20 of this order that Secretary Education was the only competent authority to pass the impugned dismissal order and the OSD had no role to play.

(ii) It was not obligatory for the punishing authority to give any opportunity of personal hearing to the petitioner before passing the impugned order;

(iii) Neither under Service Rules; nor as per the Rules of 1970, the OSD to DGSE was having any authority to grant the opportunity of personnel hearing to the petitioner, thus the same would be beyond his authority.

(23) Although learned Senior counsel pleaded violation of the principle of natural justice; but in view of the facts and circumstances of present case, this Court does not find any violation for interference with the impugned order. Law is well settled that in such like cases, instead of being swayed with the technicalities, the Courts should adopt practical approach to serve the interest of justice. Reference in this regard can be made to judgment of Supreme Court in *State Bank of Patiala and others* versus *S.K. Sharma*⁵ wherein this Court categorically held---

“Now, coming back to the illustration given by us in the preceding paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the

⁵ (1996) 3 SCC 364

ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise.”

In view of the above, it cannot be accepted that while passing the impugned order, the punishing authority has violated the principle of natural justice.

(24) The judgments relied upon by learned senior counsel viz. *Dr. Vijay Khariwal's case (supra)* and *Maya Ram's case (supra)* and **CWP-21052-2017-G.S.Sidhu versus State of Punjab**, decided on 21.09.2018, are not helpful for the following reasons:-

“A. MAYA RAM'S case (supra)

I. In this case, the advise tendered by UPSC was taken into consideration by the competent authority while imposing the punishment, but the copy of the same was not supplied to the petitioner. On the other hand, in the present case, no such advise was tendered by the PPSC at any point of time.

II. It seems that the Constitution Bench judgments in *Manbodhan Lal Srivastava as well as D.A. Korgaonkar (cases) (supra)*, were not brought to the notice of the Division Bench by either of the parties;

B. Dr. Vijay Khariwal's case (supra)

Similarly in this case also, the proposal to dismiss the petitioner was forwarded to PPSC. After receiving concurrence, the punishment was imposed by the competent authority; but approval of PPSC was not supplied to the petitioner. In the present case, no such proposal was sent to the PPSC. Again the Division Bench was kept incognizant about both the above Constitution Bench judgments.

C. CWP No.21052 of 2017

Again this order is also based upon the reasoning given in *Maya Ram's & Vijay Khariwal's cases (supra)*. In this case also, the order of dismissal was passed on 22.04.2016; whereas the approval of PPSC was obtained on 24.08.2016.

(25) In view of the above, an irresistible conclusion would be as under:-

1. Present writ petition under Article 226 of the Constitution is not an appeal; rather these are proceedings for judicial review of the impugned dismissal order and therefore, the scope of interference against the factual foundation is well-defined.
2. It is noteworthy that in the present case, before passing the impugned dismissal order, a regular departmental inquiry was conducted by a retired judicial officer and as such this Court will accord full credence to the conclusion recorded in the inquiry report dated 28.01.2020; thereby proving the charge against petitioner.
3. Ms.Karuna Sachdeva, PW-7, gave a report to the District Education Officer, Sri Muktsar Sahib that 2nd year students were frightened and feeling insecure;
4. Dr.(Smt.) Shivani Nagpal, Protection Officer, in her report dated 13.02.2018 came to the conclusion that petitioner used to do wrong things with the girl students and quoted two definite instances. At first instance, the girl cameout by pushing the petitioner and at that time there was no lady teacher available in the DIET. During the 2nd instance, petitioner called the girl in the room for arranging the books and he tried to catch her from behind;
5. Director, SCERT, (PW-7) himself visited at DIET and submitted a detailed report after affording an opportunity of hearing to the petitioner and also recorded the statements of 11 Lecturers along with Ms.Karuna Sachdeva, PW4.
6. It is also worth mentioning that there is no allegation of *malafide* or ill-will against Director, SCERT, PW-7; or Protection Officer or even against the inquiry officer-Mr.B.C. Gupta, by the petitioner. Therefore, in such a serious matter, there is no reason to ignore the fact finding reports of these independent authorities;
7. Petitioner is not an ordinary employee; rather he was working as a teacher (Lecturer English); yet he tried to exploit the female students in the institution which, in the opinion of this Court, is condemnable in “**strongest words**”;
8. In view of the facts and circumstances of the present case, the view taken by the punishing authority was very

much possible, therefore, this Court while exercising jurisdiction under Article 226 shall refrain from substituting the same merely on account of minor inconsistencies which are of insignificant nature.

9. To satisfy the conscience, this Court has also examined the matter at length; but keeping in view the sensitivity of the matter, does not find anything worth for interference with the impugned order.

10. Moreover, in such like cases, “insufficiency of evidence” is not a ground to interfere with the findings arrived at by the authorities; rather mere preponderance of evidence shall serve the desired purpose.

11. When it is duly established that a Teacher has sexually harassed female student(s), then in order to protect the dignity of innocent and helpless girl(s), this Court would be duty-bound to show him the door instead of mercy.

(26) In view of the above, the order impugned is perfectly legal and justify, thus does not warrant any interference by this Court. As a result thereof, there is no option, except to dismiss the present petition.

(27) Ordered accordingly.

(28) Before parting with the order, this Court deems it appropriate to make the following observations to safeguard the interest of female students:-

a. Respondent no.1 shall ensure that a regular Principal is posted at DIET, Barkandi.

b. In all the DIETs of Punjab, a 24x7 Toll Free Number be made available at the earliest. The number should be displayed at conspicuous place(s) of every Institute and grievance(s), if any, be redressed by some Designated Officer promptly.

c. Quarterly report(s) (after every three months) be prepared, so that the recurrence of such incident(s) be prevented, controlled and monitored to provide safe environment for study of female students.

Compliance report be sent to the Registry of this Court within 04 (four) months after the receipt of certified copy of this order.

Shubreet Kaur