

CASE NO.:
Appeal (civil) 5337-5339 of 1999
Writ Petition (civil) 189 of 1999

PETITIONER:
Manager, Nirmala Senior, Secondary School, Port Blair

RESPONDENT:
N.I. Khan & Ors.

DATE OF JUDGMENT: 21/11/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT.

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J

A teacher affects the eternity. He can never tell where his influence stops; said Henry Adam. Any educational institution for its growth and acceptability to a large measure depends upon the quality of teachers.

Educational institutions are temples of learning. The virtues of human intelligence are mastered and harmonised by education. Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is complete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshipers of learning, no discord or challenge will arise. An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important.

The case at hand has some unfortunate shades as it involves alleged misconduct of a teacher and the purported desire of the management of an educational institution to keep him out of the institution to maintain the purity in educational sphere and serene atmosphere of the institution. The whole unsavoury episode started on 21.12.1995 when respondent-N.I. Khan allegedly abused and attempted to assault a lady Principal of the appellant's educational institution in front of the school. That led to lodging of a First Information Report. Khan was placed under suspension on the same day. Subsistence allowance was sanctioned on 29.12.1995. A few days thereafter in a second incident, Khan allegedly picked up quarrel again and threatened to burn the school down. Again complaint was lodged at the Police Station. Thereafter began a legal battle involving not only the factual controversies, but also assertion of rights guaranteed and protected under Article 30(1) of the Constitution of India, 1950 (for short the 'Constitution') and the legal battle has continued unabated and reached this Court in these appeals.

To continue the factual narration, on 9.2.1996 Director of Education (in short the 'Director') revoked the suspension order and indicated that a separate enquiry will be conducted by the Directorate. In response thereto, started the controversies regarding applicability of Article 30(1) of the Constitution to the Institution. On 12.2.1996 the school wrote to the Director stating that he should not come to the

picture as Article 30(1) of the Constitution authorized the Institution to adopt its own procedure. Few days thereafter, the Institution again wrote to the Director. Charges were issued. But on 6.3.1996 respondent-Khan claimed that he was governed by the Delhi Education Code, 1965 (in short the 'Code') which was made applicable to the Andaman and Nicobar Islands with effect from 25.10.1968. On 24.6.1996, the Assistant Secretary of Education called the school authorities to attend a meeting where the school requested that suspension may be sanctioned by the Director. Permission to sanction suspension was sought for by the Institution on 2.7.1996. For about three months the Director did not respond, but threatened punitive action if the school did not settle issues positively. This was again the turning point of the controversy, because the school felt that the governmental authorities were trying to scuttle its efforts to enforce discipline and an undisciplined teacher who was undesirable in the Institution had been imposed on it.

On 29.10.1996, a fresh letter of suspension was issued on the ground that suspension was approved. Copy of the charges was served on respondent-Khan on 29.10.1996. He denied the charges on 8.11.1996. On 25.11.1996 one Shri Ram Lal was appointed as the Inquiry Officer but he declined to conduct the inquiry. On 26.12.1996 the Director issued instructions to the Institution to permit Khan to report on duty and reversed the school's order of suspension as according to him the prior approval had not been obtained to take action in the matter. On 22.1.1997 the School again referred to Article 30(1) of the Constitution and requested the Director to re-consider the matter. On 27.2.1997 one M. Alphonse was appointed as the Inquiry Officer. The date of inquiry was fixed on 15.4.1997 but respondent-Khan did not attend. On 25.5.1997 according to the Institution, the Director approved payment of subsistence allowance and, therefore, approved suspension. This stand was however, being disputed by respondent-Khan and we shall deal with this aspect later. On 13.6.1997, the School wrote to respondent-Khan that subsistence allowance will be paid for the period from December 1995 to 31st May, 1997 as per Director's order and he should not delay the inquiry. On 13.6.1997 Khan objected to the appointment of Shri Alphonse as Inquiry Officer. On 9.7.1997 the School rejected Khan's objections about the appointment and sent to Khan the details of disciplinary inquiry invoking Article 30(1) of the Constitution. On 19.9.1997 Khan was intimated that several opportunities had been granted to him but he did not appear and was therefore guilty of the charges. On the punishment aspect, intimation was given to respondent-Khan on 6.10.1997 and he was granted opportunity. Though Khan did not respond on the issue of punishment his stand was that all the charges were to be dropped. On 25.11.1997 the School requested the Director to nominate his representative for the disciplinary proceedings. The request was re-iterated on 12.12.1997. The Director on 15.12.1997 wrote back stating that since the suspension was without prior permission, necessarily no one would be sent for the disciplinary proceedings. On 22.1.1998, the School again requested the Director to send someone for the disciplinary proceedings which was scheduled to be taken out on 2nd February 1998. As no one appeared from the Director's office, by majority, it was decided that dismissal was a proper course to be adopted and order of dismissal was communicated to Khan on 20.2.1998. A writ application was filed by respondent-Khan on 25.2.1998 before the Calcutta High Court. The Director's stand was that since an order of termination was passed without prior approval same was not legal. The school explained its purported stand that prior approval was not required. By judgment dated 5.6.1998 learned Single Judge quashed its order of dismissal. An appeal was filed before a Division Bench, initially it granted stay on the direction for payment of back wages. On 13.7.1998, Khan reported for duty. The Division Bench by judgment dated 19.8.1998 dismissed the appeal and the review filed by the Institution met a similar fate of dismissal by judgment dated 11.11.1998.

These appeals have been filed by the management questioning

legality of the judgments passed by the High Court.

In support of the appeals Dr. Rajeev Dhavan, learned senior counsel submitted that the approach of the Government has been clearly erroneous. The Director proceeded on the basis as if the Code applied to the Institution, unmindful of the constitutional protection afforded by Article 30(1) of the Constitution. The procedure adopted by the Institution was fair, transparent and adequate opportunity was granted to respondent-Khan to have his say in the matter. The allegations were of a very serious nature, unbecoming of a teacher. The good name of the Institution had suffered because of the obnoxious conduct of the respondent and the gravity of the allegations can be seen from the fact that he had threatened to burn the institution itself. Nothing can be more shameful or objectionable for a teacher. Even if the approval for sanction is conceded for the sake of arguments, that has no relevance for the proceedings which were initiated for awarding punishment. Same stood on a different footing. Even Clause 242 prescribes constitution of punishing authority, where nominee of the Director is required to be a member. Notwithstanding the stand relating to Article 30(1) of the Constitution, the Institution requested the Director to send his nominee which was not responded. Ultimately, the Director rendered the provision odious by not sending the nominee and thereby frustrating the very purpose of constituting the punishing authority. The continuance of respondent-Khan in the Institution was undesirable and was having adverse affects. Therefore, the procedure was adopted by the Institution which was fair, transparent and in letters and spirit in line with the desirability of providing fair opportunity and thereafter taking a decision in the matter. Residually, it was submitted that when teacher has lost confidence of the Institution by his conduct, it would be unfair, unreasonable and inequitable to force his continuance in the institution. It would be detrimental to the interest of the Institution and the management.

In response, learned counsel for the respondent-Khan and the State submitted that Article 30(1) has no application to the facts of the case, more particularly, when the Institution is an aided one. On trumped up allegations, proceedings were initiated, and bias of the management is apparent from the actions taken. The Code is clearly applicable and there is no scope for taking a departure from the prescribed procedures. Judgments of the High Court do not suffer from any infirmity to warrant interference.

Learned counsel for the parties referred to several decisions of this Court, more particularly, Eleven-Judge Bench decision in T.M.A. Pai Foundation and Ors. v. State of Karnataka and ors. (2002 (8) SCC 481), The Ahmedabad St. Xaviers College Society and Anr. etc. v. State of Gujarat and Anr. (1975 (1) SCR 173) and Islamic Academy of Education and Anr. v. State of Karnataka and Ors. (2003 (6) SCC 697). Though complex issues of law relating to ever baffling question centering round Article 30(1) of the Constitution has been pressed into service by learned counsel for the appellant, and non-applicability thereof emphasized by learned counsel for the respondents, we do not propose to go into that question. It is relevant to note that at some stages during hearing on earlier occasions, it was suggested that to give a decent burial to the controversies involving a teacher and the management and a reasonable settlement should be arrived at. Prima facie, learned counsel for the State and the appellant agreed that some amount as may be fixed may be paid in full and final settlement of the claims of the respondent-Khan and his continuance in his establishment would be put to an end. Though, there appeared to be no controversy on the amount to be paid to respondent-Khan, he insisted that the State Government should consider him for appointment in some other institution. This was not found acceptable by learned counsel for the State as according to him it is for the Institution to select the candidate and send the name for approval by the Government. Therefore, no final say could be given to

the proposal.

The allegations made against respondent-Khan are no doubt of a very serious nature and certainly if proved do not befit a teacher. The clay like mind of young children are shaped into beautiful moulds by teachers. They shape the future course of the students. To a great measure their behaviour, character, reputation leave imprints in the minds of the young children. If their conduct, behaviour and reputation is full of blemish that would not be for the interest and in the welfare of the students. Respondent-Khan has denied the allegations and has alleged bias. But we do not think it necessary to opine one way or the other. Whatever be the truth, the undisputed fact is that the litigation has continued unabated for long years. It would be neither in the interest of respondent-Khan nor the Institution if respondent-Khan is continued in the Institution. By making this observation, it is not to be construed as if we have found the allegations to be true. On the contrary, the welfare of the Institution, the reputation of respondent-Khan has been considered by us in the proper perspective. If an act or omission of an employee reflects upon his character, reputation, integrity or devotion to duty or is an unbecoming act, certainly the employer can take action against him. In this context, reference may be made to the following observations of Lopes C.J. in *Pearce v. Foster*, (1866 (17) QBD 536, p.542):

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

This view was re-iterated by a three-Judge Bench of this Court in *Union of India and Ors. v. K.K. Dhawan* (AIR 1993 SC 1478) and *Indian Railway Construction Co. Ltd. v. Ajay Kumar* (2003 (4) SCC 579).

Without therefore deciding the contentious pleas raised by learned counsel for the parties, we direct as follows:

(1). A sum of Rs.4,50,000/- shall be paid within four months from today to respondent-Khan out of which Rs.4,00,000/- shall be paid by the State Government directly to respondent-Khan and the balance amount shall be paid by the Institution to respondent-Khan within the indicated time.

(2). The interim order passed by this Court shall continue till payment is made. The respondent-Khan would not be entitled to any other sum in respect of his service with the Institution. On payment being made, the order of termination of his service shall become operative not on the ground indicated therein, but because of the present order.

(3) This order shall not stand on the way of the respondent-Khan seeking employment elsewhere.

The appeals are disposed of accordingly, without any order as to costs.

WRIT PETITION (C) NO. 189/1999

In view of the order passed in Civil Appeal Nos.5337-5339/1999, no further order is necessary to be passed in the writ petition.

JUDIS