

AIR FORCE BAL BHARTI SCHOOL V. DELHI SCHOOL
TRIBUNAL

COURT: High Court of Delhi

CITATION: LPA 48/2005

DECIDED ON: 16.01.2013

BENCH: Justice S. Ravindra Bhat, Justice Sudershan Kumar Misra

LAW APPLIED: [Delhi School Education Act, 1973](#)

INTRODUCTION

The criminal justice system adheres to the principle of proportional justice which requires that the quantum of punishment awarded shall be equal to the gravity of the crime committed. It represents a sense of retributive fairness. The notion behind it is that the offender shall receive punishment proportional to the severity of the crime committed and that he should not face sanctions for something that he has not done. The courts have time and again upheld the principle of proportional justice and have endorsed the granting of punishments equivalent to the offence. While we consider the rights of the victims to be of utmost importance, the rights of the offender cannot be sidelined and they should be considered equally. And imposing harsh sanctions on offenders would be a death knell to their rights as well as the justice machinery.

BACKGROUND

Facts of the Case

Since 1977, the respondent i.e. the teacher (hereinafter referred to as teacher) worked as a Post Graduate teacher in the Air Force Bal Bharti School wherein he taught engineering drawing. From 1979, he was assigned an additional duty of teaching SUPW (electronics) to students

belonging to the 10th Standard. The alleged incident happened on 5th May, 1987, when the Principal while he was on his inspection of the school, observed that the teacher was not discharging his duty of teaching, as the alleged classroom was locked. Thus, the Principal called the teacher and questioned him as to why he was not taking the class, thereby not adhering to his duties. Contrarily, the teacher claimed that he was present in the classroom. This aggravated the Principal and he alleged that the teacher was untruthful. The conversation further heated up as the Principal allegedly called the teacher ‘an idiot’, who also called the principal ‘an idiot’ in retaliation.

Disciplinary Proceedings by the Enquiring Authority

Subsequent to the incident, a show cause notice was issued to the teacher with regards to the alleged misconduct, following which an enquiry was initiated against the teacher in the form of a disciplinary proceeding. The enquiring authority after investigation of the matter framed seven charges against the teacher and held him considerably guilty in six of the charges. Considering the matter to be of a serious nature and involving a grave misconduct, actions were taken against the teacher and he was dismissed from employment.

Appeal before the ‘Delhi school education tribunal’

Resultantly, the teacher, aggrieved by the dismissal, filed an appeal before the Delhi School Education Tribunal (hereinafter referred to as Tribunal) under section 8 of the Delhi School Education Act. After considering the evidences from both the sides, the Tribunal allowed the appeal. The Tribunal held the teacher not guilty with regards to the 4th & 5th charges. Further, concerning the 6th and 7th charges, the Tribunal found little substance in the matter which wasn't rebukeable. Thus, considering the facts at hand and the circumstances, the Tribunal disagreed to the punishment of dismissal, holding the punishment to be harsh and disproportionate to the misconduct.

Appeal before Single Judge Of The High Court

The order of the Tribunal was appealed by the School before this High Court through writ proceedings under Article 226 of the Constitution. The Single judge of this Court, after analyzing the merits of the case, upheld the opinion of the Tribunal by holding that the penalty of dismissal was disproportionate. On the contrary, the Judge amended the direction of absolute payment of wages, and directed the school to pay only 50% of the outstanding wages. The

learned Judge pointed out to two aspects, the first being that only two out of the seven charges have been proved and none of those charges relate to any grave offence and thus the punishment of removal is manifestly disproportionate. The second is that the Court could resort to adopting a mutually suitable course to avoid further discontentment on the decision of the Court. The Court opined that this was an apt case for the Court to exercise its power of moulding an appropriate relief.

The Learned Judge analyzed the facts of the case and stated that the alleged incident occurred in 1987 while the teacher was removed from employment in 1989. During his suspension, he requested the School authorities to absolve him from the charges and permit him to leave the school and join any other organization for his livelihood. However, the school admittedly refused to permit him the same. The Court agreed to the opinion of the Tribunal that the case entails only a minor penalty. Also, we cannot ignore the fact that the school is a non-profit organization run by Air Force officers. Thus, it would be extremely difficult for the school to pay the outstanding salary of 15 years to the teacher. Considering all these circumstances, the learned Single Judge felt the need of modifying the orders pronounced by the Tribunal and the Disciplinary Authority. The judge opined that the order of dismissal was unsustainable and thus, stands annulled and the teacher shall be reinstated. Further, with regards to the payment of the arrears of salary, the Court directed the school to pay 50% of the outstanding salary in the interests of justice.

Appeal Before The Division Bench Of High Court

Subsequently, the school filed an appeal against the judgment dated 15.10.2004 of the Single Judge of this Court. The present matter is an appeal before a division bench of this High Court.

RULE APPLIED:

[Delhi School Education Act, 1973](#)

Section 8 —(1) The Administrator may make rules regulating the minimum qualifications for recruitment, and the conditions of service, of employees of recognised private schools: Provided that neither the salary nor the rights in respect of leave of absence, age of retirement and pension of an employee in the employment of an existing school at the commencement of

this Act shall be varied to the disadvantage of such employee: Provided further that every such employee shall be entitled to opt for terms and conditions of service as they were applicable to him immediately before the commencement of this Act.

(2) Subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director.

(3) Any employee of a recognised private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted under section 11.

(4) Where the managing committee of a recognised private school intends to suspend any of its employees, such intention shall be communicated to the Director and no such suspension shall be made except with the prior approval of the Director: Provided that the managing committee may suspend an employee with immediate effect and without the prior approval of the Director if it is satisfied that such immediate suspension is necessary by reason of the gross misconduct, within the meaning of the Code of Conduct prescribed under section 9, of the employee: Provided further that no such immediate suspension shall remain in force for more than a period of fifteen days from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of the said period.

(5) Where the intention to suspend, or the immediate suspension of, an employee is communicated to the Director, he may, if he is satisfied that there are adequate and reasonable grounds for such suspension, accord his approval to such suspension.

CONTENTIONS BY THE PARTIES

The High Court considered and analyzed the submissions of both the parties. The appellants contended that the behavior of the respondent was undeserving and unworthy as a teacher and that the theory of proportionality cannot be invoked in the present case. The counsel repeatedly stressed upon the fact that the respondent leveled false allegations on the Principal and the

remarks about the Principal's character were absolutely false and unsubstantiated by any material evidence. The respondent asserted that the Principal joined the school with a murky past, however he could not produce any evidence to substantiate his claims. Thus, the appellants firmly contended that the penalty of dismissal should be upheld and the doctrine of proportionality wouldn't serve justice to the matter and would merely disrupt the disciplinary order.

OBSERVATIONS OF THE COURT

The division bench articulated that primarily, the Tribunal exercised a substantive review of the decision by the disciplinary committee, after taking into account the facts and circumstances of the case, as the teacher had appealed to the decision of the Disciplinary Committee of the school. Aggrieved by the decision of the Tribunal, the school authorities proceeded under Article 226 of the Constitution by applying for a judicial review against the order of the Tribunal before the Single Judge of the High Court. The impugned order of the single judge was appealed before this division bench of the Court.

The judge pointed out that the Court was called upon to analyze and comment on the judiciousness and discretion exercised by the Single Judge owing to the undisputed powers granted to him under Article 226. The Division Bench is authorized to set aside or differ from the order of the previous judge in the interests of justice. However, after considering the totality of the circumstances in the present case, the bench barely found any reason to overrule the order of the Single judge. The Bench on reading the impugned judgment, especially paragraphs 25-27, observed that the learned judge has carefully undertaken an in-depth analysis of the facts and circumstances before pronouncing the judgment. He has also prudently examined the position of law. Thus, the analysis by the judge did not necessitate any intervention by the Bench.

The counsel's contention that the court ought not to exercise its powers for altering the penalty without finding it 'shockingly disproportionate', failed to persuade the Court. The Bench asserted that "It is the disproportionality of the punishment, by whatever name called, i.e., "shocking", "serious" or "gross" having regard to the totality of the proven facts, which is to be seen in every case. A case might reveal facts where the penalty is shockingly disproportionate, and the Court may substitute it without saying that the penalty is shockingly disproportionate. Conversely, in another instance, the penalty might not be disproportionate at all, despite which

the Court might say it is. Ultimately, it is a matter of substance, and not semantic form, that the Court has to look into.”

Thus, the Bench pronounced that the Court finds it appropriate to uphold the order of the Tribunal and the learned Single Judge. Taking into account the facts of the case and the ruling of the Court, the appeal was declared unmerited and was dismissed by the Bench without any order as to any costs.

ANALYSIS

The decisions by the appellate authorities advocated justice, by overruling the arbitrary decision of the Enquiring Authority. The orders by the appellate authorities are indeed applaudable as they sustain the rule of law. Nevertheless, a major drawback comes by the fact that the teacher remained unemployed for nearly 15 years, while the matter was decided and even after the decision of the Court, he would be entitled to only 50% of the salary he would have otherwise received in the course of his employment. Thus, even though justice is done to the matter, justice is not completely done to the teacher. While directing the school authorities to pay 50% of the arrears, the Court should have also calculated the amount of fine payable by the offenders in such cases. Further, excluding the fine amount, the school should be directed to pay the dues by way of an increment in his salary to compensate the teacher for the damage caused to him in these years, thus, ensuring complete justice to the matter.

CONCLUSION

This case is a landmark judgment and indeed a unique one. The orders by all the three authorities highlight the essence of the ‘principle of proportional justice’. The decision of the Disciplinary Committee of dismissing the teacher from employment was refuted by all the appellate authorities. The Courts held that the misconduct not being of a serious nature, it does not entail such a punishment as the penalty is highly disproportionate to the offence committed. Similarly, the Apex Court in Gopal Singh v. State Of Uttarakhand¹, held that “Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The

¹ Gopal Singh v. State Of Uttarakhand, JT 2013 (3) SC 444.



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CASE ANALYSIS

concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles.”



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