Before G. S. Sandhawalia & Vikas Suri, JJ.

ANIL KUMAR—*Appellant*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

LPA No.719 of 2014

April 06, 2022

Constitution of India, 1950—Art.311(2)(b)—Indian Penal Code, 1860—Ss.451, 354 and 376B—Haryana Civil Services (Punishment and Appeal) Rules, 1987—Rls. 7.2 (b) and 3—Rape of two female students by teacher—Dismissal from service while dispensing with regular inquiry on ground that it would cause further mental agony to two minor girls and bring social stigma that they were minors—Thus, in view of Division Bench judgment of High Court in 2012 (2) SCT 85, dismissal not interfered with on ground that girl students should not be exposed to unnecessary vagaries of cross-examination in departmental inquiry which may result in embarrassment, humiliation and coercion— Hence, order of dismissal from service upheld.

Held that, the age of the girls and the classes in which they were studying has already been noticed and the fact remains that they were minors at that point of time and the elder girl was only in Class-X being around 17 years, as her date of birth is 11.09.1993, whereas the younger one was in Class-VIII. It has also been noticed by the learned Single Judge also that their father was a labourer. It is in such circumstances, it is apparent that the apprehension in the mind of the employer has come true to the extent that the appellant has managed to prevail upon the relevant witnesses to earn an acquittal on account of the fact that the witnesses were declared hostile.

(Para 12)

Further held that, is not disputed that even in the evidence which has come before the Trial Court that the girls at one point of time had gone missing and thereafter had returned as per the preliminary inquiry which has been relied upon dated 01.05.2010 (Annexure R-1). It had been recorded that they had gone to Delhi at the instance of the appellant himself, who had been threatening them at that point of time.

(Para 13)

Further held that, if the argument of counsel for the appellant is

now to be accepted, it would amount to the girls being put through another round of embarrassing questions, which would lead to further humiliation of an incident that had taken place a decade earlier. The scales of justice can never be so insensitive as not to allow the ugly scars of the unfortunate incident to ever heal.

(Para 14)

Further held that, it is also to be noticed that apparently on account of hue and cry, which had been raised at that point of time and which has also been noticed by the Trial Court that a decision was taken in the Panchayat that legal action be taken against the teacher, the FIR had been lodged. Thus, it is apparent that the situation in the area was on a boil on account of the misconduct of the appellant and on that account the Director School Education had exercised his extraordinary jurisdiction to dispense with the departmental inquiry under the provisions of the 1987 Rules read with Article 311 (2) (b) of the Constitution of India. The said decision cannot be faulted in any manner in the facts and circumstances of the present case and therefore, the order of the learned Single Judge cannot be faulted in any manner.

(Para 15)

Anurag Goyal, Advocate
for the appellant.

Hitesh Pandit, Addl. AG, Haryana.

G.S. SANDHAWALIA, J.(ORAL)

(1) Present letters patent appeal arises out of the order of the learned Single Judge dated 03.03.2014, whereby CWP No.8880 of 2011 filed by the appellant Anil Kumar was dismissed. The learned Single Judge as such upheld the order dated 03.05.2010 (Annexure P-2), which had been passed by the Director School Education while dispensing with the regular inquiry and following the procedure laid down under Rule 7.2 (b) & 3 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 (for short '1987 Rules') read with Article 311 (2) (b) of the Constitution of India.

(2) The reasoning as such which prevailed with the Director School Education to pass the said order was that FIR No.87 dated 24.04.2010 under Sections 451, 354, 376B IPC had been lodged at Police Station Sadar, Sirsa. A report had been received from the District Education Officer with the statements of the girls who were two sisters that the appellant Anil Kumar who was the Hindi Teacher

had raped the elder one on 16.02.2010 and 19.02.2010 and outraged the modesty of the younger girl. The girls were studying in Class-X and VIII and there were allegations that pornography movies were also shown on the television and mobile phone and the fact that he had remained on casual leave on 19.04.2010 and 20.04.2010 and left early in the morning on 22.04.2010. The date when the FIR was lodged and he thereafter willfully remained absent from the school without permission and was suspended on 24.04.2010. The news items had appeared in the Press about the heinous acts of moral turpitude apart from the report and keeping in view the fact that he was a teacherwho had committed such a heinous crime which not only tarnished the image of the school but had lowered the image of the State, the authority came to the conclusion that there was no option but to throw him out from service at once so that this should serve as an eye opener example. The reasoning as such given to dispense with the services of the appellant without conducting a regular inquiry was that it would further cause mental agony to the two minor girls and will bring them social stigma.

(3) Counsel for the appellant has vehemently submitted that the underlying principle is that some reason has to be recorded bythe authority to dispense with the services of the appellant, as per the abovesaid provisions and in the absence of same, the order is not justified. It is, accordingly, submitted that the learned Single Judge erred in upholding the said order while placing reliance upon the judgment passed in ***Talwinder Singh*** versus ***State of Punjab and others***[1]**,** authored by one of us i.e. G.S. Sandhawalia, J. and the judgment of the Apex Court passed in ***Jaswant Singh*** versus ***State of Punjab and others***[2]**,** to argue that the impugned order and the judgment of the learned Single Judge is not justifiable and opportunity should have been given as such to the appellant to prove his innocence in the departmental proceedings.

(4) Counsel for the State on the other hand has submitted that the orders of the authority below and of the learned Single Judge are justified in the facts and circumstances and it is not a fit case for interference. He has placed reliance upon the Division Bench judgment of the Bombay High Court passed in ***Udaynath Tirkey*** versus ***The Director General, Central Industrial Security Force, CISF***

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[1] 2016 (2) SCT 551

[2] (1991) 1 SCC 362

Headquarters and others[3] to submit that it was also a case where a minor had been raped as such. Thedismissal order was passed as it was not reasonably practicable to hold a disciplinary inquiry and producing the victim as a prosecutor witness in disciplinary proceedings was not feasible as it would result in further trauma of cross-examination. Therefore, he has supported the reasoning as such to submit that there is no merit in the appeal. Reliance is also placed upon the judgment passed by the Division Bench of this Court in ***'Balbir Singh*** versus ***Central Administrative Tribunal, Chandigarh Bench, Chandigarh***[4]**,** wherein also in a similar situation, a girl student was involved and the order of the Tribunal upholding the dismissal was not interfered with on the ground that girl students should not be exposed to unnecessary vagaries of cross-examination in the departmental inquiry which may result in embarrassment, humiliation and coercion, wherein reliance had also been placed upon the judgment passed in ***'Director, Navodaya Vidyalaya Samiti*** versus ***Babban Prasad Yadav***[5]. The same reads as under:-

> "4. The Tribunal rejected the argument that the procedure of holding regular departmental inquiry under Rule 14 of the CCS Rules should have been followed and, therefore, the course adopted by the respondents in passing the order of termination is vitiated. The basis for rejection of the argument is judgment of Hon'ble the Supreme Court rendered in the case of Director, NavodayaVidyalaya Samiti v. Babban Prasad Yadav, Yadav, 2004 (2) SCALE 400. The Tribunal has held that dispensing with inquiry under Article 81(B) of the Education Codefor KVS would not be unwarranted as it meets various requirements laid down by their Lordships' of Hon'ble the Supreme Court. The Tribunal after analysing various factors reached the conclusion that all the five conditions laid down in Babban Prasad Yadav's case (supra) have been fully satisfied in the present case.
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> 2. We have heard learned counsel for the applicant-petitioner at some length and are of the view that the instant petition is devoid of merit and does not merit admission. It could not be disputed that in the present case there are

[3] 2022 (1) SCT 459
[4] 2012 (2) SCT 85
[5] (2004) 13 SCC 568

allegations of immoral conduct on account of certain activities of the applicant- petitioner towards girl students of the school. The sensitivity of the matter required that such girl students were not exposed to unnecessary vagaries of cross-examination in the departmental inquiry which may result in embarrassment, humiliation and coercion. It also could not be disputed that a preliminary inquiry has been held in the matter followed by a summary inquiry and the authorities have recorded their satisfaction that the charged officer was prima facie guilty. The aforesaid reasons are required to be fulfilled in order to successfully dispensing with holding of regular inquiry in accordance with Rule 14 of the CCS Rules. In para 5 of the judgment in Babban Prasad Yadav's case (supra), (supra) Hon'ble the Supreme Court has laid down the following five conditions as a prelude to the exercise of power of dispensing with the inquiry:

"5 All that is required for the Court is to be satisfied that the pre-conditions to the exercise of power under the said rule are fulfilled. These preconditions are (1) holding of summary inquiry; 92) a finding in such summary inquiry that the charged employee was guilty of moral turpitude; (3) the satisfaction of the Director onthe basis of such summary inquiry that the charged officer was prima facie guilty; (4) the satisfaction of the Director that it was not expedient to hold an inquiry on account of serious embarrassment to be caused to the students or his guardians or such other practical difficulties; and finally (5) the recording of reasons in writing in support of the aforesaid."

3. When the above conditions are applied to the facts of the present case, we find that there is no legal infirmity in the view taken by the Tribunal in upholding the order of termination of the applicant-petitioner. Accordingly, the instant petition fails being devoid of merit. Dismissed."

(5) In our opinion the order as such which had been passed by the authority is justified in the facts and circumstances of the case and no case is made out for interference, though counsel for the appellant has argued that he was also acquitted of the charge on 09.10.2010 (Annexure P-3). The factual aspect has already been noticed by the learned Single Judge of the abuse as such of the appellant, who was

incharge of the girls and was the Hindi Teacherin the school. The fact remains that unfortunately he was released on bail by the trial Court on 21.09.2010, after his arrest on 26.04.2010. Apparently he took advantage of the said fact and has prevailed upon not only the girl children, but also their parents, who did not even support the case of the prosecution. Unfortunately, the trial Court did not bother to call for the records of medical examinationof the girls.

(6) A perusal of the earlier orders passed in the present case would go on to show that on 11.03.2015, the following order was passed:-

> "During the course of hearing of the appeal, the record of Criminal case bearing FIR No.87 dated 24.04.2010 under Sections 451, 354 and 376 IPC, registered at Police Station Sadar Sirsa, decided on 09.10.2010 by Additional Sessions Judge, Sirsa was summoned.
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> We have perused the said record. By the said judgment, the accused (appellant) has been acquitted. Without commenting any things on acquittal, we direct the Registrar (Vigilance) to look into the matter and submit a report on Administrative Side.
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> Learned Additional Advocate General, Haryana states that though the Director Prosecution has given an opinion not to file the appeal against the said acquittal, yet the State Government will reconsider the matter with regard to filing the appeal against the said acquittal and inthis regard he will submit a report on the next date of hearing.
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> Adjourned to March 30, 2015."

(7) Against the said order, the appellant had preferred SLP No.8973 of 2015, wherein an interim order was passed on25.03.2015, whereby there was a stay in the present appeal, which was continued on 30.09.2016. Thereafter, the matter was adjourned to await further orders by this Court and eventually, adjourned sine die on 10.05.2016. The appeal was only listed after the said Civil Appeal No.10075 of 2016 was dismissed as withdrawn on 25.11.2019 (Annexure A-6) and, thus, resultantly has come up for hearing.

(8) In pursuance of the said order, a preliminary inquiry has been conducted against the said officer and now the matter is pending before the Vigilance and Disciplinary Committee of this Court. We

need not to say anything more on the said issue, since the officer concerned would be prejudiced if any comments as such are made regarding the said manner in which the trial was abruptly put to an end.

(9) The relevant Rule 7.2 (b) of the 1987 Rules as relied upon by the counsel for the appellant and Article 311 (2) (b) of the Constitution of India, read as under:-

> "7. Inquiry before imposition of certain penalties.
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> a. Without prejudice to the provision of the Public Servants (Inquiries) Act, 1850, no order of imposing a major penalty shall be passed against a person to whom these rules are applicable unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.
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> b. The grounds on which it is to proposed to take such action shall be reduced to the form of definite charge or charges which shall be communicated in writing to the person together with a statement of allegations on which each charge is based and of any other circumstances whichit is proposed to take up into consideration in passingorders on the case and he shall be required within a reasonable time to state in writing whether he admits the truth of all or any, of the charges, what explanation for defence, if any, he has to offer and whether he desires to be heard in person. If the punishing authority is not satisfied with the explanation given by the person charged or there are other reasons to do so shall direct that an enquiry shall be held at which all evidence shall be heard as to such of the charges as are not admitted. The person charged shall subject to the conditions described in sub- rule (3), be entitled to the cross examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish, providing that the Officer conducting the enquiry may for reasons to be recorded in writing, refuse to call any witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof provided that-
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> i. it shall not be necessary to frame any additionalcharge when it proposed to take action in respect of any statement of allegation made by the person charged in the course of his

defence;

ii. the provisions of the foregoing sub-rule shall not apply where any major penalty is proposed to be imposed upon a person on the ground of conduct which had led to his conviction on a criminal charge or where an authority empowered to dismiss or remove him, or reduce him in rank is satisfied that, for some reasons to be recorded by him in writing, it is not reasonably practicable to give him an opportunity of showing cause against the action proposed to be taken against him, or where in the interest of security of the State it is considered not expedient to give to that person such an opportunity; "

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"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply:-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

> (c) where the President or the Governor, as the case may be, is satisfied that in the interest of thesecurity of the State it is not expedient to hold such inquiry.
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> (3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final".

(10) We have also examined the record of the trial Court. A perusal of the list of the witnesses would go on to show that there was medical evidence available in the shape of Dr. Archana Aggarwal and Dr. Sunil Kumar, who were arrayed as witnesses for the prosecution. It is to be noticed the charge was framed on 03.09.2010 and the evidence of all the four witnesses was recorded on 09.10.2010 and unfortunately immediately thereafter, on the same date he was acquitted. It is apparent that the reasons as such which were given in the order of the dismissal at that point of time was that the girls would be put to further trauma. The Trial Court also failed to refer to the Medico Legal Report of the elder girl which would go on to show that the elder girl who had been raped had a old healed tear present in the hymen and the Vagina admitted two fingers.

(11) In ***Babban Prasad Yadav*** **(supra),** the Apex Court had reversed the findings of the High Court wherein the services of the teachers of the Society had been terminated without holding a departmental inquiry which was also on the same grounds that it would cause serious embarrassment to the girl and her parents. The Tribunal had dismissed the employees case, whereas the High Court gave an opportunity to hold regular inquiry on the charges levelled against the employees. The Apex Court, accordingly, held that it was for the Court to be satisfied that all the preconditions to exercise the power under the said Rules were fulfilled for the purposes of summary inquiry. The satisfaction on the basis of such summary inquiry that the charged officer was *prima facie* guilty and it was not expedient to hold an inquiry on account of serious embarrassment to be caused to the girls and their guardian in recording the reasons in writing in support, would fulfill all the preconditions. Relevant portion of the said judgment reads as under:

> "7. We are of the view that the High Court erred inreversing the decision of the Tribunal. The rule quoted earlier, explicitly deals with such a situation as obtains in the

present case. The rule is not under challenge. All that is required for the court is to be satisfied that the preconditions to the exercise of power under the said rule are fulfilled. These preconditions are: (1) holding of a summary enquiry, (2) a finding in such summary enquiry that the charged employee was guilty of moral turpitude;

(3) the satisfaction of the Director on the basis of such summary enquiry that the charged officer was prima facie guilty;

(4) the satisfaction of the Director that it was not expedient to hold an enquiry on account of serious embarrassment to be caused to the student or his guardians or such other practical difficulties and finally; (5) the recording of the reasons in writing in support of the aforesaid."

(12) In the present case, as noticed above, the Director while passing the order of dismissal has come to a similar conclusion thatit would cause embarrassment to the girl students. The age of the girls and the classes in which they were studying has already been noticed and the fact remains that they were minors at that point of time and the elder girl was only in Class-X being around 17 years, as her date of birth is 11.09.1993, whereas the younger one was in Class-VIII. It has also been noticed by the learned Single Judge also that their father was a labourer. It is in such circumstances, it is apparent that the apprehension in the mind of the employer has come true to the extent that the appellant has managed to prevail upon the relevant witnesses to earn an acquittal on account of the fact that the witnesses were declared hostile.

(13) It is not disputed that even in the evidence which has come before the Trial Court that the girls at one point of time had gone missing and thereafter had returned as per the preliminary inquiry which has been relied upon dated 01.05.2010 (Annexure R-1). It had been recorded that they had gone to Delhi at the instance of the appellant himself, who had been threatening them at that point of time. On account of the fact when they reached there, they could not meet him and thereafter, they had come back by taking help of others and at that point of time they had been recovered.

(14) If the argument of counsel for the appellant is now to be accepted, it would amount to the girls being put through another round of embarrassing questions, which would lead to further humiliation of

an incident that had taken place a decade earlier. The scales of justice can never be so insensitive as not to allow the ugly scars of the unfortunate incident to ever heal. In such circumstances, this Court is of the considered opinion that the view taken by the Coordinate Bench in ***Balbir Singh's case*** **(supra)** would also be fully applicable to the facts and circumstances of the present case.

(15) The judgment passed in ***Talwinder Singh's case*** **(supra)** would not help counsel for the appellant in any manner as it was a case wherein the dismissal of a probationer was on the basis of an FIR lodged under Sections 376 & 506 IPC and it was not wherean order was passed under Article 311 (2) (b) of the Constitution of India, whereby the departmental inquiry had been dispensed with. It was in such circumstances, the order was set aside with liberty to hold a departmental inquiry, as it would amount to an punitive order. The Apex Court in ***Jaswant Singh's case*** **(supra)** has also held that the reasons must be recorded in writing in support of the satisfaction and the question of practicability to hold departmental inquiry and other surrounding circumstances that is to say that the question of reasonable practicability at the time of passing of the order, would exist. The practicability has thus rightly been judged by the Director School Education. It is also to be noticed that apparently on account of hue and cry, which had been raised at that point of time and which has also been noticed by the Trial Court that a decision was taken in the Panchayat that legal action be taken against the teacher, the FIR had been lodged. Thus, it is apparent that the situation in the area was on a boil on account of the misconduct of the appellant and on that account the Director School Education had exercised his extraordinary jurisdiction to dispense with the departmental inquiry under the provisions of the 1987 Rules read with Article 311 (2) (b) of the Constitution of India. The said decision cannot be faulted in any manner in the facts and circumstances of the present case and therefore, the order of the learned Single Judge cannot be faulted in any manner.

(16) Resultantly, we are of the opinion that there is no merit in the present appeal and the same is dismissed. All pending civil miscellaneous applications also stand disposed off.

Shubreet Kaur