

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

WRIT PETITION (S/B) NO. 156 OF 2023

21ST JUNE, 2023

BETWEEN:

Chinmaya Education Society & another Petitioners.

And

Vice Chancellor Hemwati Nandan Bahuguna Central University
& others Respondents.

Counsel for the Petitioners : Mr. Arvind Vashisth, learned Senior Counsel assisted by Mr. Munish Bhardwaj and Mr. Annirudh Sharma, learned counsels.

Counsel for the Respondent Nos.1 & 2 : Dr. Kartikey Hari Gupta, learned counsel.

Counsel for the Respondent No.3 : Mr. Ajay Veer Pundir, learned counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

We have heard learned counsels and proceed to dispose of this writ petition.

2. The petitioners- Chinmaya Education Society and its Committee of Management have preferred the present writ petition to assail the order No. HNBGU/15/2023 dated 10.04.2023 issued by respondent no.2, i.e. the Registrar of the Hemwati Nandan Bahuguna Central University, Srinagar, Garhwal. The petitioners further seek a direction to uphold the penalty imposed by the Committee of Management and the petitioner-college upon respondent no.3.

3. The brief background facts are that the petitioner no.1- Society setup petitioner No.2- Chinmaya Degree College, Haridwar, in the year 1989. Earlier it was affiliated to Chaudhary Charan Singh University, Meerut. Consequent upon the formation of the State of Uttarakhand, the petitioner-College came to be affiliated to the Hemwati Nandan Bahuguna Garhwal University (*for short 'HNBGU'*), Srinagar, Uttarakhand. In the year 2009, when the Central Universities Act, 2009 was enacted, HNB Garhwal University was declared as a Central University, and is currently governed by the provisions of the Central Universities Act, 2009. Petitioner no.1- Chinmaya Education Society, which is a unit of a trust, is the sponsoring body of petitioner no.2- Chinmaya Degree College. Respondent no.1 is the Vice Chancellor of the HNBGU, which is the parent University of petitioner no.2. Respondent no.2, as aforesaid, is the Registrar of the said University, and respondent no.3 was serving as the Principal of petitioner no.2- College.

4. The case of the petitioners is that certain wrong doings of respondent no.3, while he was serving as the Principal of petitioner no.2-college came to light, in respect whereof, one charge-sheet was issued to him on 25.07.2020. Thereafter, certain information was gathered under the Right to Information Act, which brought to forth further acts of misconduct of respondent no.3, and consequently, the second

charge-sheet was issued to him on 14.08.2020. Thereafter, respondent no.3 was suspended from his position as the Principal of petitioner no.2- College on 12.09.2020, and after his suspension, further materials emerged from his office, which led to the issuance of third charge-sheet on 25.11.2020. The three charge-sheets issued to respondent no.3 were then sought to be inquired by an Inquiry Officer appointed by the Management.

5. Respondent no.3 raised an issue of bias against the Inquiry Officer, due to which, he resigned. Eventually, a retired Judge of the Delhi High Court, namely, Mr. Justice (Retd.) R.K. Gauba, was appointed as the Inquiry Officer, who proceeded to conduct *de novo* inquiry, as directed to him. Respondent no.3 again made allegations of bias against the Inquiry Officer. Those allegations were rejected. Respondent no.3 states that he raised his grievance, against the rejection of his allegation of bias, before the Vice Chancellor, namely, respondent no.1. However, that grievance remained pending. Thereafter, respondent no.3 chose not to participate in the inquiry proceedings, which proceeded *ex parte*. The Inquiry Officer recorded the evidence of the petitioner-Management in support of the charges levelled against respondent no.3, and he prepared a detailed inquiry report, finding respondent no.3 guilty of the charges levelled against him.

6. The petitioners then, in compliance of the First Statutes of the HNB Garhwal University, which were framed in the year 1978, sought the approval of the Vice Chancellor in terms of Statute 17.06 (3). We may reproduce Statute 17.06(3), insofar as it is relevant. The same reads as follows:-

"17.06 (1) No order dismissing, removing, or terminating the services of a teach on any ground mentioned in Clause (1) or Clause (2) of Statute 17.04 (except in the case of a conviction for an offence involving moral turpitude or of abolition of post) shall be passed unless a charge has been framed against the teacher and communicated to him with a statement of the grounds of which it is proposed to take action and he has been given adequate opportunity. [Section 49 (o)]:

*(3) of submitting a written statement of his defence;
(ii) of being heard in person, if he so desires, and
(iii) of calling and examining such witnesses in his defence as the may desire:*

Provided that the Management or the officer authorized by it to conduct the inquiry may, for sufficient reasons to be recorded in writing, refuse to call any witness.

(2) The Management may, at any time, ordinarily within two months from the date of the Inquiry Officer's report pass a resolution dismissing or removing the teacher concerned from service, or terminating his services mentioning the grounds of such dismissal, removal or termination.

(3) The resolution shall forthwith be communicated to the teacher concerned and also be reported to the Vice-Chancellor for approval and shall not be operative unless so approved by the Vice-Chancellor". (emphasis supplied)

7. By the impugned communication, the request for approval has been turned down by the Vice Chancellor- as

communicated by the Registrar of the University. The impugned order dated 10.04.2023 reads as follow:-

"To,

*The Chairman,
Chinmanya Degree College,
Haridwar, Uttarakhand.*

Dear Sir,

I have been directed by the Hon'ble Vice Chancellor to communicate the following:

Please refer to you Letter No.CES/0812/GS/XVIII whereby approval was sought for termination of the services of Dr. Alok Kumar from the post of Principal (hereinafter referred to as 'Principal'). Subsequently, a representation addressed to the Vice Chancellor of the HNB Garhwal University, Srinagar (Garhwal) was moved by the aforesaid Dr. Alok Kumar through e-mail dated 29.08.2022 challenging the decision of the Management Committee of the college.

Vide University letter No.HNBGU/Manyata/ 2022/1467 dated 25.11.2022, the management committee of the college was provided the copy of the representation moved by the Principal asking to submit point-wise reply.

The Management Committee of the College vide their letter No.CES/0812/GS/28 dated 28.12.2022 submitted their reply and the same was received in the university on 31.12.2022.

The matter has been thoroughly deliberated by the University and the following has been observed:

- a. That chargesheet(s) dated 25-07-2020, 14-8-2020 and that charge sheet dated 25.11.2020 was served upon the Principal and the Principal was placed under suspension by the Management Committee of the College on 12-9-2020.*
- b. That Mr. Rajesh Kumar, Advocate was appointed as the Enquiry Officer (E.O.) by the management committee of the college vide order dated 17-09-2020.*
- c. That the said E.O. resigned during the course of enquiry proceedings leaving the same inconclusive and eventually (Rtd.) Justice R.K. Gauba Former Judge High Court of Delhi was appointed as enquiry officer.*
- d. That Justice Gauba took over the charge as enquiry officer and directed that the enquiry shall be held the 'De-Novo' for all the three chargesheets. Mr. Anirudh Sharma was appointed as the new Presenting Officer for the enquiry proceedings.*

e. That on 09-11-2021 the Management Committee of college presented its witnesses. The witnesses were cross-examined by the Defense Assistant of the Principal.

f. Defense Assistant of the Principal raised objections imputing the procedure of recording the evidence and attributed bias on the enquiry officer, Justice R.K. Gauba.

g. That aggrieved by the process and the procedures followed by enquiry officer, the Principal filed a bias petition against enquiry officer alleging that the enquiry officer is prejudiced and has not been following the procedure to conduct the enquiry in a judicious manner. The said bias petition moved by the Principal was rejected by the management committee of the college. An appeal was before the Hon'ble Vice Chancellor imputing the enquiry officer.

h. That the Principal absented himself from the enquiry proceedings conducted against him and the matter proceeded 'ex-parte' against him. Consequently, the Principal failed to cross-examine the said witnesses.

The above observations have been analyzed and the following is concluded:-

a. Mr. Rajesh Kumar, Advocate was appointed the enquiry officer who recused himself during the course of enquiry and Justice (Rtd.) Gauba was appointed as enquiry officer. Justice (Rtd.) Gauba started the enquiry-'De-novo'. The proper course of action was that the enquiry as conducted by the previous enquiry officer should have been resumed from the point where the enquiry officer (Mr. Rajesh Kumar Advocate) had recused himself from the proceedings. There was no cogent reason to start the enquiry proceedings afresh. The management committee of the college has despite ample opportunities failed to clarify the need of starting the proceedings of enquiry- 'De-novo'.

b. The management committee of the college has also failed to make it clear as to what caused them to serve three chargesheets at different occasions. It was the duty of the management committee of the college- employer- to ensure that the teacher (Principal) facing enquiry should be communicated the charges properly. Furthermore, the management committee of the college should also not be allowed to 'fill-in' its gaps by issuing fresh chargesheets. Moreover, the manner in which the chargesheets have been issued are not in alignment with the laid down rules of

process and procedures. The rules of natural justice also are to be adhered to by the enquiry officer. Any order which is 'ex-parte' in nature does not meet the ends of justice.

Thus, the Hon'ble Vice Chancellor has directed me to communicate that the matter is remanded back to the management committee of the College with a direction that the same may be heard and decided, afresh, after issuing proper chargesheet(s) and recording of evidence. The parties to the enquiry proceedings should endeavor that rules of natural justice should be adhered to in true letter and spirit.

Registrar"

8. The aforesaid order would show that on 09.11.2021, the Management Committee of the College presented its witnesses, which were also cross-examined by the defence assistant of respondent no.3. However, respondent no.3 then accused the Inquiry Officer Justice (Retd.) R.K. Gauba of bias. That allegation was turned down. Respondent no.3, thereafter, voluntarily absented himself from the inquiry proceedings, and in those circumstances, he was proceeded *ex parte*.

9. The submission of Mr. Vashisth, learned Senior Counsel for the petitioners is that the Vice Chancellor has exceeded her jurisdiction and authority while passing the impugned order. He submits that the grounds on which the inquiry conducted by the Retired Judge of High Court of Delhi have been nullified; the matter remanded back to the Managing Committee of the College, i.e. the petitioner- with the direction that the same be heard and decided afresh after issuing proper charge-sheets and recording of evidence, are

that a *de novo* inquiry had been initiated upon appointment of Justice (Retd.) Gauba, whereas the earlier inquiry should have been continued; there was no explanation furnished by the petitioners, as to why three different charge-sheets were issued on different occasions, and; that the rules of natural justice had not been adhered to by the Inquiry Officer, inasmuch, as, an *ex parte* inquiry had been held against respondent no.3, Mr. Vashisth submits that the Vice Chancellor did not even grant an opportunity to the petitioners- Management, to answer any of the three grounds, on the basis of which, the inquiry conducted by Justice (Retd.) Gauba, has virtually been set-aside. He submits that the authority and jurisdiction vested in the Vice Chancellor under Statute 17.06 (3) is merely to vest an oversight in the Vice Chancellor, and he had no authority to meddle into the administrative functioning of the petitioner's institution, particularly, when it involved the issue of indiscipline, and serious misconduct, in relation to which a detailed inquiry had been held. The Statute did not vest him/her with the Appellate Authority. Only in cases of gross and patent violation of the principles of natural justice or manifestly arbitrary, malafide and whimsical action, the Vice Chancellor could intervene for such disclosed reasons, and not otherwise.

10. Mr. Vashisth submits that the reason for issuance of three charge-sheets dated 25.07.2020, 14.08.2020 and 25.11.2020, would have been apparent, if the said charge-sheets had been read by the Vice Chancellor. However, the impugned order does not disclose any application of mind to the said aspects by the Vice Chancellor. He further submits that the conduct of *de novo* inquiry by the Justice (Retd.) Gauba could not have been raised as a grievance by respondent no.3, for the reason that he himself alleged bias against the earlier appointed Inquiry Officers. Moreover, the inquiry had hardly proceeded before the earlier appointed Inquiry Officers. So far as the aspect of inquiry being proceeded *ex parte* by the Inquiry Officer against respondent no.3 is concerned, he submits that it was respondent no.3 who, at his own peril, stopped participating in the inquiry proceedings before Justice (Retd.) Gauba after evidence was led by the petitioner- Management, and after he had cross-examined the petitioner's witnesses on the first date. Merely because he had raised an issue of bias against the Inquiry Officer, which was turned down, gave him no justification to walk out of the inquiry proceedings. He submits that respondent no.3 could not be given the benefit of his own wrong. He submits that the inquiry report is well reasoned, and is founded upon evidence led before the Inquiry Officer, and there is no reason or justification for setting the same at

naught, and directing re-issuance of the charge-sheets, and holding of a fresh inquiry.

11. Dr. Gupta, who appears for respondent nos.1 and 2 submits that the Vice Chancellor had constituted a four Member Committee to look into the inquiry report, and it is on their advice that the Vice Chancellor directed issuance of the impugned order by the Registrar. He further submits that the Vice Chancellor was also guided by the judgment of the Supreme Court in ***Secretary, Managing Committee BMS (PG) College, Roorkee vs. Samrat Sharma & others, (2019) 16 SCC 56***. In the said case, in relation to the same University- though relating to a different affiliated college, the inquiry was found to be bad on the grounds of violation of procedure prescribed under the First Statutes.

12. Mr. Pundir, who appears for respondent no.3 has defended the impugned order. He submits that the Management, i.e. the petitioners, were acting *malafide* against respondent no.3 and had a bias. He further submits that respondent no.3 has raised the petitioner- College by giving his years of service, and just because the Management did not want him to continue as the Principal, the charge-sheets were issued. He further submits that the Inquiry Officer has held that the charges are proved. However, he has not quantified the amounts, in respect whereof, misappropriation and defalcation has been alleged. He further

submits that upon rejection of the objections of respondent no.3 with regard to the bias of the Inquiry Officer by the Managing Committee, respondent no.3 had represented to the Vice Chancellor, and that representation was not decided. This is offered as the justification for respondent no.3 not participating in the inquiry proceedings. Mr. Pundir further submits that the power vested in the Vice Chancellor under Statute 17.06 (3) in the nature of appellate power.

13. We have considered the aforesaid submissions of learned counsels.

14. The first ground cited by the Vice Chancellor for refusal to grant approval to the disciplinary action against respondent under Statute 17.06 (3) of the First Statutes in the impugned order, was that Justice (Retd.) R.K. Gauba had initiated the inquiry '*De-Novo*', and that the proper course that should have been adopted, was to resume the inquiry from the point it was left by the erstwhile Inquiry Officer Mr. Rajesh Kumar, Advocate.

15. We find this objection of the Vice Chancellor to be completely meritless. The allegation against the erstwhile Inquiry Officer Mr. Rakesh Kumar, Advocate made by respondent no.3, was that the said Advocate had acted as the counsel of the petitioners. That was cited as a ground for *bias*. The said ground, in our view, was a justified ground,

and it appears that Mr. Rajesh Kumar, Advocate answered the call of his conscience, and decided to recuse himself from the matter.

16. That being the position, the proceedings undertaken by Mr. Rajesh Kumar, Advocate- the erstwhile Inquiry Officer, could not have been looked into for any purpose, as they were tainted with possible *bias*. Merely because Mr. Rajesh Kumar, Advocate held some proceedings, most of which were procedural, and recorded certain statements, it did not follow that the proceedings conducted by him had to be continued from the stage where he recused. If there were any material brought forth during the course of inquiry conducted by Mr. Rajesh Kumar, Advocate, on which respondent no.3 desired to place reliance, he could have produced the same and relied upon the same even when the *de novo* inquiry was initiated, as held by Justice (Retd.) Gauba.

17. Pertinently, the Vice Chancellor does not state as to how respondent no.3 was prejudiced with the conduct of *de novo* inquiry by Justice (Retd.) Gauba.

18. The second ground for refusal to grant approval by the Vice Chancellor was that three charge-sheets dated 27.05.2020, 14.08.2020 and 25.11.2020 were served by the petitioners on respondent no.3 at different occasions, and

that there is no explanation for issuance of three different charge-sheets.

19. We find this reason given by the Vice Chancellor to be completely erroneous and ill-founded. The petitioners have placed on record the said three charge-sheets. The first charge-sheet was issued on 25.07.2020. It was proceeded by a show-cause notice dated 16.06.2020 given to respondent no.3, requiring him to respond to the said show-cause notice, which he did on 29.06.2020. The charge-sheet dated 25.07.2020, insofar as it is relevant, reads as follows:-

"Now, therefore, you are hereby charged with the commission and omission of the following:

- (i) Continuous mismanagement.*
- (ii) Embezzlement/ misappropriation of funds.*
- (iii) Activities evincing lack of integrity.*
- (iv) Willful neglect of duties.*
- (v) Scandalous conduct involving moral turpitude.*
- (vi) Disobedience of orders of Management.*
- (vii) Prejudicial activities against interest of the institution.*
- (viii) Indulging in activities unbecoming of a Principal.*

You are charged to have indulged in the following acts of misconduct:

- a. Diversion/ siphoning off of funds from Self Finance Scheme (SFS) to yourself and other staff under the guise of working for "Evening Classes" which do not exist at all. This is misappropriation.*
- b. Transgression of Financial Powers. Improper distribution of registration fee collected from the students for the academic year 2017-18 to the regular employees without concurrence of the Committee of Management.*

- c. Missing data in respect of security deposits to the tune of Rs.0.45 Lacs ($0.23 + 0.01 + 0.21 = 0.45$ Lacs) as revealed in the audit report. Collection of these security deposits without management approval is misfeasance with regard to Financial Powers of Principal.*
- d. Mismanagement of handling cash. Receiving money from failed and debarred students and permitting them to sit for classes in lieu of the money received, by printing Cash Receipt Books without concurrence of the Committee of Management and not maintaining a proper record of the receipt books.*
- e. Arbitrarily changing personnel nominated for conduct of the Judicial Services Civil Judge Exam UKPSC exam and releasing payments, which were not as per the approved process.*
- f. Ignoring and not replying to the letters issued by the Management seeking clarification from you regarding collection of cash and accounting of cash receipt books.*
- g. Negligence of duty on account of not pursuing proceedings against an ex-employee for recovery of stolen money. Also, more importantly, not instituting a proper procedure to prevent such lapses. Further, non-compliance and no response to orders issued vide CES letter No.3006/CES/A dated 04 Sep 2018 and of even No. dated 15 Oct 2018 and 29 Oct 2018 in this regard.*
- h. Misuse of SFS employee Lab Attendant for personal driver duties, SFS employee as cook at your personal residence, using temporary staff for menial household chores.*
- i. Misusing college funds for purchase of iPhone for personal use.*
- j. Claiming actual expenses for work travel and also at the same time claiming travel and telephone expense to the tune of Rs.20,000/- per month.*
- k. Non maintenance of records pertaining to security deposits received from students.*

- l. Delaying refunding of security deposits to the students.*
- m. Non-compliance with the prescribed rules and regulations in relation to Student Fund account/ public funds despite repeated reminders.*
- n. Setting up a fully furnished bedroom in the main college premises wherein majority of the students are girls.*
- o. Sending obscene whatsapp message and indecent messages to students amounting to sexual harassment.*
- p. Dereliction of duty and causing financial losses to the college, by misrepresenting facts before government authorities.*
- q. Deliberately mixing Grant in Aid account with SFS Account for obtaining wrongful monetary gain.*
- r. Failure to rectify/ complete fixed asset register in compliance of letter dated 31 October 2018 and pursuant to financial audit for the year 2017-18.*
- s. Chewing paan/ paan masala almost all the time, while on duty, and even spitting in the college premises, on several occasions.*
- t. Non-cooperation in the financial audits and refusal to sign audit related documents.*
- u. Non furnishing of details in relation to various bank accounts despite repeated reminders by the Management.*
- v. Non furnishing of details pertaining to pending legal proceedings/ litigation despite repeated reminders.*
- w. Nondisclosure of registration of FIR against you to the Management.*
- x. Non-compliance with and violating the orders of the Management regarding giving of long break to SFS Faculty.*
- y. Not furnishing details regarding conducting of BMLT course and pursuing MCI for approval despite repeated reminders.*

- z. Non-cooperation in SFS teaching faculty interviews and delaying the interview/ selection process which resulted in loss of 16 academic days.*
- aa. Destroying documents without following the prescribed procedures of the Destruction Board.*
- bb. Causing hurdles for distribution of salaries in COVID-19 pandemic.*
- cc. Failure to prepare and submit academic calendar despite repeated reminders.*
- dd. Declaring restricted holidays beyond the discretionary quota and refusal to obey Management's instructions in this regard.*
- ee. Unauthorizedly cancelling the interviews for selection of SFS faculty and preventing entry of staff at the college gate. Use of rude and insulting language with the teaching staff in collusion with regular class III & IV employees.*
- ff. Non maintenance and no renovation of basic amenities such as toilet and canteen despite various approvals.*
- gg. Issuing office order and directing staff not to hand over any documents to the Chairman without your permission.*
- hh. Non- implementation of the DAK management system whereby not all letters addressed to the Management are being handed over to the CES Secretariat rather are being illegally retained by you.*
- ii. Misleading and misguiding the Management with false and untrue facts regarding appointment of security agency.*
- jj. Non preparation of Standing Operating Procedures (SOPs) and College Manual and stonewalling initiatives if taken by the Management.*
- kk. Violation of Rules and Orders. Not complying with the extant rules and regulations with regard to earning Annual Confidential Reports (ACRs) for yourself and also not writing annual confidential reports of the*

college staff, thereby leaving no trail of satisfactory/unsatisfactory performance of the employees.

ll. Negligence in relation to question papers due to which over 20 students lost an academic year.

mm. Negligence in ensuring that students are taught in accordance with the updated correct and current syllabus of the subject.

nn. Dealing with black listed vendors.

oo. Instigating investigation against Chinmaya Education Society and the Chairman.

pp. Differential treatment with the temporary employees and being biased against them”.

20. The said charge-sheet was accompanied by the statement of articles of change, and the statement of imputation of misconduct for each charge.

21. The second charge-sheet was issued on 14.08.2020. This charge-sheet contains two charges. It states that the charge-sheet is being issued in accordance with the decision taken in the meeting of the Managing Committee of the Chinmaya Degree College, Haridwar on 13.08.2020, i.e. after the issuance of the first charge-sheet. The first charge begin with the words *"it has recently come to knowledge that there is a Society which is running under the name and title of "Chinmaya Advance Research Education" (CARE) and yourself Principal of Chinmaya Degree College, have been the co-founder of this society and chairman of the same for several years"*.

22. The aforesaid statement itself would show that the second charge-sheet was issued upon petitioners deriving recent knowledge that respondent no.3 had founded a Society under the name and title "*Chinmaya Advance Research Education*" (CARE) by using the name "*Chinmaya*".

23. Pertinently, the charges contained in the second charge-sheet are not a part of the first charge-sheet. Even if it is assumed, for the sake of argument, that the charges levelled in the second charge-sheet, or the third charge-sheet, could have been levelled in the first charge-sheet as well- on the assumption that the Management had knowledge of those charges when they issued the first charge-sheet, in our view, that does not preclude the Management from issuing the second or the third charge-sheets in relation to the charges which may not have been framed while issuing the first charge-sheet. There was no overlap. What is of relevance is, whether the charges levelled are true, or not. Not whether the charges are contained in one, or two or three charge-sheets. The issue is, what is the prejudice suffered by the delinquent, if multiple charge-sheets have been issued. Unless there is a statutory prohibition on issuance of multiple charge-sheets, we fail to appreciate how the issuance of multiple charge-sheets could have vitiated the inquiry in the circumstances of the case.

24. Moreover, the first and the second charge-sheets were issued in quick successions, i.e. on 27.05.2020 and 14.08.2020 when the inquiry had not been set into motion. The third charge-sheet was issued by the petitioners on 25.11.2020. The impugned order itself notes that after issuance of the second charge-sheet, respondent no.3 was suspended on 12.09.2020, and the alleged wrong doings emerged post the suspension of respondent no.3.

25. The charge-sheet notes that after the suspension of respondent no.3, the charge of the Principal was taken over on 18.0.2020 by a committee, and at that time, six rubber stamps were found in one of the drawers. It is also stated in the charge-sheet that *"that before this, the management was never aware of these stamps"*.

26. A perusal of the third charge-sheet dated 25.11.2020 shows that the charge therein is in relation to respondent no.3 being found in unauthorized and illegal possession of office rubber stamps of:

- "a. Registrar HNB Garhwal University Srinagar (Garhwal);*
- b. President Chinmaya Degree College BHEL Haridwar;*
- c. Secretary Chinmaya Degree College BHEL Haridwar (Hindi);*
- d. Delhi Chinmaya Sewa Trust, round stamp;*
- e. Delhi Chinmaya Sewa Trust, office stamp;*
- f. Chinmaya Education Society, office stamp".*

27. The aforesaid clearly shows that the petitioner's management was not aware of the aforesaid misconduct of respondent no.3, which came to light only after he was divested of the charge of Principal on 18.09.2020. Obviously, the charges contained in the third charge-sheet could not have been a part of either the first charge-sheet, or the second charge-sheet. If only the Vice Chancellor had taken the trouble of reading through the three charge-sheets, he would not have been left without an answer, as to why three, and not one, charge-sheets were issued to respondent no.3.

28. We, therefore, find the aforesaid reasoning, for refusal to grant approval by the Vice Chancellor, to be a result of complete non-application of mind by her.

29. The third ground cited by the Vice Chancellor for refusal to grant approval to the disciplinary proceedings conducted against respondent no.3, was that the inquiry had proceeded *ex parte*, and therefore, it did not meet the ends of justice.

30. Once again, we find the reasoning adopted by the Vice Chancellor to be completely erroneous. Merely because the proceedings proceeded *ex parte* after a certain stage, it does not follow that there was a breach of the principles of natural justice. The question of breach of principle of natural justice would arise, when the aggrieved person has not been

granted an opportunity to participate in the inquiry proceedings. The question of breach of the principles of natural justice cannot arise, where the person alleging such breach has, voluntarily, with open eyes, and at his own peril, decided to walk out of the proceedings, and not avail of the opportunity to participate in the proceedings. If the reason adopted by the Vice Chancellor were to be accepted, it would be very easy for any delinquent officer, against whom an inquiry is conducted, to walk out of such inquiry proceedings, and then to turn around and claim that there was breach of principles of natural justice. We, thus, find that there is absolutely no merit in any of the reasoning cited by the Vice Chancellor for refusal to grant approval in respect of the disciplinary proceedings held against respondent no.3.

31. The submission of Mr. Pundir that the Vice Chancellor exercises appellate jurisdiction under Statute 17.06 (3) of the First Statutes, is completely misplaced.

32. On a plain reading of the Statutes, it is clear to us that the only jurisdiction and power vested in her, is to consider the aspect of approval. While exercising his power and jurisdiction, the Vice Chancellor is, therefore, only required to have an oversight and to see that there is no gross illegality or injustice being committed by the Management of the College, and that it is not a case of victimization due to *malafides*. The Vice Chancellor would be

justified in not granting approval only in cases of patent arbitrariness or violation of the principles of natural justice, or patent illegality, which is writ large on the face of the proceedings.

33. Mere allegation of *bias* against the management is neither here, nor there, for the reason that the stand of the Management is obviously adverse towards the delinquent officer, when a disciplinary proceeding is undertaken. What is relevant and important is that the Inquiry Officer should be unbiased and fair in his dealing, so that the delinquent is given sufficient and fair opportunity to meet the case of the management, and to present his own defence. Respondent no.3 did not prove the ground of alleged *bias* against the Inquiry Officer Justice (Retd.) Gauba. Merely because the proceedings were conducted by her in a manner that was not to the liking of respondent no.3, is no reason to allege *bias*. Justice Gauba is an experienced and reputed retired Judge of High Court of Delhi, well-versed in judicial process, and has the temper of an experienced Judge. Merely because respondent no.3 made an allegation of *bias*, which was turned down, it did not give him the right to walk out of the inquiry proceedings.

34. The submission of Mr. Pundir that because respondent no.3 had preferred a representation before the Vice Chancellor against the rejection of his objection of *bias*

against the Inquiry Officer, he was entitled not to participate in the inquiry proceedings, has only to be noticed, to be rejected.

35. The Statutes does not contemplate that one or the other party may approach the Vice Chancellor by resort to Statute 17.06(3) during the pendency of the proceedings at an interlocutory stage. Such an interpretation would completely defeat the object of concluding the disciplinary proceedings without any delay. Conclusion of disciplinary proceedings expeditiously is in the interest of not only the Institution, but also the delinquent officer, who is interested in clearing his name of the charges levelled against him.

36. We are also not impressed by the justification offered by Dr. Gupta for the refusal of approval by the Vice Chancellor, by placing reliance on the judgment of the Supreme Court in ***Samrat Sharma*** (supra).

37. A perusal of the said judgment shows that, that was a clear case of breach of principles of natural justice. In that case, the Supreme Court found that respondent no.1 was not given sufficient opportunity to defend himself. The inquiry was conducted in three stages. Initially, a Committee was constituted to conduct a preliminary inquiry into three charges. On the basis of the report of the said Committee, a fact finding inquiry was held against the said charges. Later, a

supplementary charge-sheet was issued, in which, fresh charges were communicated to respondent no.1 on 02.07.2014. Within ten days, thereafter, a final report was submitted regarding the supplementary charges, and an order was passed terminating the services of respondent no.1. It was in this background that the Supreme Court concluded the manner in which the inquiry was conducted by the Management, was in clear violation of the procedure prescribed under the First Statutes. The same cannot be said of the case in hand.

38. In the present case, respondent no.3 has not alleged that he was not given adequate opportunity of submitting his written statement of defence; of being heard in person, and; of calling and examining such witnesses in his defence, as he may desire.

39. A college, which is affiliated to a University as the autonomy to function on its own in the matter of its administration, and in the matter of enforcing discipline. That autonomy of the affiliated institution cannot be taken away by the Vice Chancellor by taking sides one way, or another. In the present case, it appears to us that the Vice Chancellor has clearly transgressed her authority by dwelling into the issuing, which, firstly, did not arise, and secondly, she had no justification to dwell into. Even otherwise, as we have

discussed in detail above, even on merits, the Vice Chancellor has grossly erred.

40. We, accordingly, set-aside the impugned order dated 10.04.2023, issued by the Registrar of the respondent-University. Since we have already dealt with all the grounds taken by the Vice Chancellor for refusal to grant approval to the petitioners in respect of the disciplinary action taken against respondent no.3, we hold that the said approval could not have been denied to the petitioners. The petitioners are, therefore, at liberty to proceed further in accordance with law.

41. The writ petition allowed in the aforesaid terms.

42. Pending application, if any, also stands disposed of.

43. The parties are left to bear their respective costs.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 21st June, 2023

NISHANT