

Neutral Citation No. - 2023:AHC:224849

RESERVED ON: 06.11.2023
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Court No. - 35

Case :- WRIT - A No. - 13696 of 2023

Petitioner :- Smt.Meena Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Nipun Singh

Counsel for Respondent :- C.S.C.,Ashutosh Mishra,Rahul Agarwal

Hon'ble Vikas Budhwar,J.

1. Heard Sri Nipun Singh, learned counsel for the writ petitioner, Sri P.K. Shahi, learned Addl. Chief Standing Counsel for Respondent no.1, Sri V.K. Singh, learned Senior Counsel assisted by Sri Ashutosh Mishra for Respondent Nos. 2 and 4 and Sri Rahul Agarwal for Respondent no.3.

2. Since affidavits have been exchanged between the parties and they do not propose to file any further affidavits, thus with the consent of the parties, the writ petition is being decided at the fresh stage.

3. The case of the writ petitioner as worded in the writ petition is that the second respondent, Gautam Budh University, Greater Noida, Gautam Budh Nagar is a University established under the provisions of Uttar Pradesh Gautam Budh University Act, 2002 (hereinafter referred to as the respondent-University), in exercise of the powers purported to be under Section 24 of the U.P. Act No.9 of 2002, the Gautam Budh University has enacted the statute by the name of Uttar Pradesh Gautam Budh University First Statute, 2007.

4. The respondent-University in order to fill up the post of Personal Secretary to the Vice-Chancellor conducted selections pursuant where to the writ petitioner claims to have been appointed as Personal Secretary to the Vice-Chancellor on contractual basis for a period of two years by virtue of the order dated 08.07.2010 in Pay-Band-2 of Rs.9300-34800 in the Grade Pay of Rs.4800 with starting basic salary of Rs.18150 plus allowances. It is also the case of the writ petitioner that as per the qualification and the experience so set out by the respondent-University pursuant to the meeting held on 27.04.2008 under the Chairmanship of Vice-Chancellor, the Academic Qualifications for the post of Personal Secretary to Vice-Chancellor was Graduation (desirable Post-Graduation

with two years relevant experience). The writ petitioner, post issuance of the appointment order dated 08.07.2010 was accorded joining. Thereafter his services were regularized on the post of Personal Secretary to the Vice Chancellor by order dated 13.04.2018.

5. The next post for which the writ petitioner claims to be entitled for promotion was the post of Staff Officer to the Vice-Chancellor.

6. As per the qualifications provided under the relevant Rules as set out in the meeting held on 27.04.2008 under the Chairmanship of the Vice-Chancellor, an applicant had to possess Graduation (Desirable Post-Graduation) with 8 years of working experience in Administrative/ Academic / Account of Government Department or University/ Educational/ Research Institute/ Society. Further according to the writ petitioner, as asserted in the paragraph-22 of the writ petition, there was a change in the academic qualification, as for the post of Staff Officer to the Vice-Chancellor (Group-A) Pay-Scale 15600-39100 G.P. 5400, the mode of recruitment was Direct Recruitment/ Deputation/ Promotion and the Promotional eligibility was Graduation with five years of continuous service in Gautam Budh University in G.P. 4800 and good work record. According to the writ petitioner, he had an unblemished service record and an impeachable reputation. As from the year 2010-2011 to 2012-13 and 2014-15 to 2016-17, he had been assessed as outstanding and the integrity was certified. However for the year 2013-14, the assessment was though certified as whereas for the year 2017-18, assessment was outstanding integrity was certified beyond doubt. It is further claimed that while the writ petitioner was working as the Staff Officer to the Vice-Chancellor of the respondent-University, he received a suspension order dated 18.08.2020, whereby he was placed under suspension on the basis of the complaint/ legal notice made / sent by one of the local advocates practicing in District Court, Greater Noida, Gautam Budh Nagar upon instructions of Vishnu Pratap Singh. It is also the allegation of the writ petitioner, that the said suspension order basis complaint was tailored by the Officiating Registrar, as he had exhibited a conduct which was not only indecent but an act of molestation and in furtherance of outraging the modesty of the writ petitioner. The writ petitioner claims to have preferred Writ Petition No. 17156 of 2020 challenging the suspension order dated 18.08.2020, which is pending, but no interim order has been passed. It is also the case of the writ petitioner that a first information report was lodged by the Officiating Registrar, Sri S.N. Tiwari, in personal capacity pursuant to the exercise undertaken under Section 156(3) of the CrPC being registered as Case Crime No.1066 of 2020 under Section 420, 467,

468, 471 IPC. The writ petitioner claims that he had filed a Criminal Misc. Writ Petition No.16275 of 2020, which was dismissed as not pressed, however, he was granted anticipatory bail in Anticipatory Bail Application (Under Section 438 of CrPC) No.4389 of 2021. In paragraph-40, it is further asserted that the matter was investigated by the Investigating Officer and a closure report has been submitted on 09.07.2021 in favour of the writ petitioner. Post-suspension of the writ petitioner, an enquiry committee was constituted by the Vice-Chancellor of the respondent-University by the order dated 21.08.2020 and charge sheet was served on writ petitioner on 27.10.2020, containing as many as four charges. According to the writ petitioner, the documents relied upon in order to prove the charges were not provided, however, the writ petitioner submitted his reply on 09.11.2020. Dr. Sumati Verma, who was appointed as an Enquiry Officer did not succumb to the pressure of the University Administration and she refused to continue with the enquiry, pursuant where to one Sri Ravi Kant Sinha was appointed as the Enquiry Officer. It is also the case of the writ petitioner that the Enquiry Officer did not conduct the enquiry and the suspension of the writ petitioner was being used as a tool to dislodge the writ petitioner from service. In the meantime Writ-A No. 7156 of 2020, which was filed questioning the suspension order dated 18.08.2020 came to be decided by this Court while passing the following order on 21.09.2022:-

“ 1. Heard Sri Nipun Singh learned counsel for the petitioner, Sri Rahul Agarwal learned counsel for the respondent University and the learned Standing Counsel for the State respondents.

2. Present writ petition has been filed against the suspension order dated 18.8.2020 issued by the Vice Chancellor of the respondent-University. Pleadings have been exchanged. Accordingly, the matter has been heard.

3. Learned counsel for the petitioner would submit, suspension order is occasioned by mala fides arising from the earlier complaint lodged by the petitioner against the then acting Registrar of the University, dated 06.8.2020 wherein she had made specific accusation against Sri Satish Narayan Tiwari, the then Deputy Registrar of the University containing allegations of sexual harassment. In any case, more than two years have passed since then. Though a charge sheet was issued and enquiry conducted into the allegations made against the petitioner, neither such enquiry report has been submitted to the disciplinary authority nor the said authority has issued any second show cause notice to the petitioner. Relying on a decision of the Supreme Court in Ajay Kumar Choudhary Vs. Union of India and another, AIR 2015 SC 2389 as also two decisions of the learned single Judge of this Court in Anshu Bharti Vs. State of U.P. And Others, 2009(1) AWC 691 and Chaman Singh Vs. State of U.P. And Others, Service Single No. 16606 of 2020, decided on 03.2.2021, it has

been submitted, no employer has right to keep an employee under suspension for an indefinite period of time. Two years is a very long period of time. The petitioner has always cooperated in the disciplinary proceedings. However, the same have been kept pending owing to the delay and default on the part of the University authorities. Therefore, the suspension deserves to be revoked, for that reason.

4. Third, it has been submitted, the complaint that had occasioned the suspension order issued against the petitioner was not supported by the person at whose behalf it was alleged to be made. Thus, reference has been made to the legal notice dated Nil issued by one Anil Kumar Agrawal, Advocate on behalf of Vishnu Pratap Singh and the affidavit of said Vishnu Pratap Singh denying having issued any instructions to Sri Amit Kumar Agrawal, Advocate.

5. Last, it has been submitted, there is no defect in the educational qualifications disclosed by the petitioner to the respondent-University while seeking appointment on the post of Personal Secretary to the Vice Chancellor or at the stage of promotion granted to her as Staff Officer to the Vice Chancellor. The entire enquiry report is stated to be a witch hunt to falsely implicate the petitioner occasioned by her complaint made against the then Deputy Registrar of the University.

6. On the other hand, learned counsel for the University would submit, as a fact it cannot be denied that the petitioner had lodged a complaint against the then Deputy Registrar of the University containing allegations of sexual harassment. Though, no action appears to have been taken, later services of the said Deputy Registrar Sri Satish Narayan Tiwari were terminated. Also, without denying the fact assertions made with respect to legal notice issued by Anil Kumar Agrawal, Advocate and the affidavit of Vishnu Pratap Singh, it has been submitted, in any case the University made independent fact finding preliminary enquiry and the relevant authority reached a prima facie conclusion with respect to wrong doing on the part of the petitioner in making her application for appointment on the post of Personal Secretary to the Vice Chancellor. Occasioned by that, a charge sheet was issued to the petitioner on 27.10.2020 containing four charges. Three charges pertained to academic qualifications disclosed by the petitioner being Ph.D. both at the stage of seeking appointment on the post of Personal Secretary to the Vice Chancellor and also at the stage of promotion granted to her. Third charge pertained to her wrongly approaching the media with respect to the actions being taken by the University in accordance with law. The fourth charge has not been shown to be proved.

7. As to the stage of proceedings, it has been submitted, the petitioner participated in the enquiry proceeding. Accordingly, the enquiry report was prepared on 04.6.2021. Thereafter the matter has remained pending. According to learned counsel for the University, proceedings have remained pending on account of certain difficulties that arose with the functioning of Board of Management of the University. While those

difficulties are not known to the Court, today he has assured that if permitted the University would conclude the proceedings within a period of one month subject to the petitioner cooperating in the same.

8. Having heard learned counsel for parties and having perused the record, inasmuch as the petitioner has not sought any relief with respect to her complaint dated 06.8.2020 made against the then Deputy Registrar Satish Narayan Tiwari, no observation is required to be made with respect to that.

9. As to the suspension order, it is true, two years have passed since it was issued on 18.8.2020. However, it is not possible to quash the same at this stage when enquiry proceedings are shown to have been undertaken within time inasmuch as the charge sheet was issued to the petitioner on 27.10.2020 i.e. within two months of the issuance of the suspension order. The decisions relied upon by the learned counsel for the petitioner do not offer any help in the facts of the present case. In those decisions there was much delay in issuance of the show cause notice. In Ajay Kumar Chaudhary (supra), the suspension order was effected on 15.9.2011. It was repeatedly extended without issuing any charge sheet. In those circumstances, the petitioner (in that case) approached the Tribunal that granted relief. In Anshu Bharti (supra), suspension order was passed on 03.11.2004. Charge sheet was issued after two and half years on 10.9.2007 which was replied to on 11.9.2007, still enquiry was not completed within the next year. Such are not the facts in the present case. Where, as, the charge sheet was issued within two months from the date of suspension order and the enquiry was conducted within eight months thereafter. In Chaman Singh (supra), the petitioner was placed under suspension on 01.8.2018 while charge sheet was issued almost one year later on 06.6.2019. Its reply was submitted on 16.8.2019. However, no enquiry took place thereafter. In the present facts, the enquiry was admittedly conducted and has also been concluded. The delay, if any is at later stage. Further, it cannot be ignored that years 2020 and 2021 had largely been consumed and adversely impacted by the circumstances arising from the spread of the pandemic COVID-19. Both, petitioner and the University authorities were under difficulties. Therefor, giving due margin to that circumstance, it cannot be inferred that there was any inordinate delay in concluding the enquiry proceedings on 04.6.2021 i.e. within eight months of the charge sheet being issued to the petitioner. To that extent, the University authorities may not be faulted on account of delay. However, it is not normal for the University authority to have kept pending the disciplinary proceedings sine 04.6.2021 till date without issuing any second show cause notice to the petitioner.

10. In view of the above, upon query made, learned counsel for the University has, on perusal of the enquiry report, made a clear statement that the petitioner has been found guilty of the first three charges pertaining to wrongful representation for the purpose of securing

employment and promotion on the post of Personal Secretary to the Vice Chancellor and Staff Officer to the Vice Chancellor of the University.

11. While those findings are not being endorsed and no comments are required to be made on the same as the petitioner has right to challenge the same upon being confronted, exercise of judicial discretion in such circumstance to set aside the suspension order is not available.

12. Accordingly, writ petition is disposed of with the following directions:

(i) The respondent University shall necessarily cause to be served on the petitioner a second show cause notice, if any, within a period of one week from today together with copy of the enquiry report and any other document as may be required in law.

(ii) Upon service of second show cause notice, if any, petitioner shall have two weeks' time to tender her reply thereto.

(iii) Subject to such reply being furnished, the disciplinary authority shall take a final decision in the matter and communicate the same to the petitioner within a further period of two weeks therefrom.

(iv) Thus, in all events, the disciplinary proceedings against the petitioner be concluded within six weeks from today.

(v) in the event of the petitioner complying with this order, if the University authority does not conclude the enquiry in terms of this order, the suspension order shall fall upon expiry of six weeks.”

7. The writ petitioner further claims that without complying with the directions contained in the order dated 21.09.2022 passed in Writ-A No.7156 of 2020, a second show-cause notice dated 27.09.2022 along with the enquiry report dated 04.06.2021 was issued to the writ petitioner. The writ petitioner tendered his reply on 10.10.2022. However, on 30.10.2022, the third respondent, Board of Management, Gautam Budh Nagar University, Greater Noida, Gautam Budh Nagar proceeded to pass an order removing the writ petitioner from service. Challenging the order dated 30.10.2022, the writ petitioner preferred Writ-A No.19902 of 2022, which came to be decided by this Court on 08.12.2022 while passing the following orders:-

“1. Heard Shri Nipun Singh, learned counsel for the petitioner; learned Standing Counsel and, Shri V.K. Singh, Senior Advocate, assisted by Shri Rahul Agarwal, learned counsel for the respondent University.

2. Challenge has been raised to the termination order dated 30.10.2022 passed by respondent no.3/Board of Management, Gautam Buddha University, Greater NOIDA, Gautam Budh Nagar.

3. Two submissions have been advanced by learned counsel for the petitioner. First, it has been submitted, the appointment of the petitioner having been made by the Vice Chancellor, the termination order could not

have been passed by Board of Management. Here, reliance has been placed on Clause 9 of the first statute of the University. Thus, further prejudice has been caused to the petitioner inasmuch as her right of appeal to the Board of Management has been taken up.

4. Second, it has been submitted, while the enquiry report is vitiated, the petitioner was prevented from establishing the illegalities and deficiencies in the enquiry, at the stage of submitting her reply to the second show cause notice dated 27.09.2022 inasmuch as only 15 page enquiry report was made available to the petitioner though the record of the enquiry proceedings containing statements of witnesses and other material, were never supplied. In that regard, heavy reliance was placed on the contents of the second show cause notice dated 27.09.2022.

5. On the other hand, learned senior counsel for the respondent University would contend, the Board of Management of the University was the appointing authority of the petitioner. As she was not an officer of the University under Section 8 of the Uttar Pradesh Gautam Buddha University Act 2002 (hereinafter referred to as the Act), referring to Clause 9 and 10 (2)(iii) of the first statutes of the University, it has been submitted, in her capacity as Staff Officer (S.O.) to the Vice Chancellor, the petitioner was never an officer of the University but only holder of a post that may have been created by the Board of Management. Therefore, the Board of Management was the disciplinary authority. It has rightly passed the impugned termination order.

6. As to the right of appeal, it has been submitted, Section 17(2)(a) of the Act, the Board of Governor may review the impugned order. Therefore, the petitioner has statutory remedy available to her.

7. On the issue of non-compliance of principles of natural justice, it has been vehemently contended, the entire material accompanying the enquiry report dated 04.06.2021 was supplied to the petitioner vide second show cause notice dated 27.09.2022. The petitioner has duly acknowledged the same in writing. In her reply submitted to the second show cause notice, the petitioner never raised such objection. Therefore, there is no merit in the same.

8. Having heard learned counsel for parties and having perused the record, insofar as the first objection has been raised by the learned counsel for the petitioner that the Board of Management was not the disciplinary authority of the petitioner and that her disciplinary authority was the Vice Chancellor, the same may not be accepted. Section 8 of the Act clearly provides following to be the officers of the University namely, the Chancellor; Vice Chancellor; Pro-Vice-Chancellor; the Deans of Faculties; the Registrar and, the Finance Officer. Other officers may also be appointed and be recognized as such if they are declared by the statutes to be the officers of the University.

9. Perusal of the first statute of the University does not bring out any provision where under the petitioner in discharge of duties on the post

designated 'Staff Officer to the Vice Chancellor' may claim declaration made that that post or the occupant of that post be an officer of the University. On the contrary, under clause 10(2)(iii), other posts including administrative, ministerial etc. may be created by the Board of Management of the University which itself is an authority under Section 16 of the Act.

10. Therefore, notwithstanding the issuance of appointment letter dated 08.07.2010 by the Registrar, that too on the post of 'Personal Secretary to Vice Chancellor', the petitioner may never claim to be an officer of the University.

11. In that view of the matter, there is no error in the inherent jurisdiction exercised by the Board of Management to act as disciplinary authority over the petitioner. The challenge to that extent must fail, for that reason.

12. As to the second aspect, perusal of the second show cause notice dated 27.9.2022 leaves much to doubt as to due compliance of the principles of natural justice. It is a sine qua non for the disciplinary proceedings against an employee that he may be served with the enquiry report and the accompanying material at the stage of second show cause notice. While the recital in the notice dated 27.9.2022 does refer to other material being annexured to the enquiry report supplied to the petitioner, yet in the description of the documents attached to the said notice, following reference has been made - 'The complete enquiry report in total - 15 pages'.

13. Then pursuant to the earlier order, the record of the proceedings had been produced by learned counsel for the University. At page 23 of that record, the endorsement made by the petitioner upon receipt of the second show cause notice has been recorded. It does not inspire confidence that the annexures to the enquiry report had been served on the petitioner.

14. Thus, sufficient and reasonable doubt exists as to full compliance of rules of natural justice. Unless the petitioner had been first confronted with the enquiry material in entirety, she may never have been able to submit a complete defence thereto.

15. In view of the above, the impugned order is set aside.

16. Learned counsel for the University may supply to the learned counsel for the petitioner the complete set of documents accompanying the enquiry report during the course of the day.

17. The matter is accordingly remitted to the Board of Management of the University. Being enabled, the petitioner may now submit a fresh reply to the second show cause notice dated 27.9.2022 within a period of three weeks from today. Thereupon, the Board of Management may communicate a short date for personal hearing that may be granted to the petitioner. The petitioner undertakes to appear on such date and cooperate in the proceedings. Accordingly, the Board of Management may pass a fresh order in accordance with law, as expeditiously as possible,

preferably within a period of two months from the date of compliance shown by the petitioner.

18. With the above directions, present petition stands disposed of."

8. Again on 02.03.2023, without recording any reason, the order removing the writ petitioner from service was maintained.

9. Challenging the order dated 02.03.2023 passed by the third respondent, Board of Management, Gautam Budh Nagar University, Greater Noida, Gautam Budh Nagar, the writ petitioner filed Writ-A No.6339 of 2023, Smt. Meena Singh Vs. State of U.P. in which on 18.04.2023, following orders were passed:-

"Supplementary affidavit filed today is taken on record.

Heard Sri Nipun Singh, learned counsel for the petitioner and Sri V.K. Singh, learned Senior Advocate assisted by Sri Rahul Agarwal, learned counsel for the University.

Petitioner before this Court is aggrieved by the order of termination dated 02.03.2023 passed by the competent authority for the reason that the reply submitted by him after the matter was remitted to the authority to decide afresh, has not been accorded any consideration whatsoever.

He submits that the order of termination would contain recital of chain of events right from receipt of the complaint and the ultimate termination but does not deal with his reply by the competent authority. He submits that once this Court has remitted the matter to be decided afresh after giving full opportunity of hearing to the petitioner, the authority competent in the matter ought to have give consideration to the reply submitted by the petitioner and hence he submits that the order is in the teeth of judgment of this Court and also de hors the procedure prescribed, inasmuch as, the reply/ stand/ defence taken by the petitioner having not been considered the order is liable to be held as non speaking.

Per contra it is argued by learned Senior Advocate that as per the first statute of the University, there is a provision for review against the order passed by the authorities of the University under Section 17(2)(a) of the Gautam Budh University Act.

However, on a pointed query made to the learned Senior Advocate as to in what manner the order can be said to have accorded due consideration to the reply submitted by the petitioner, learned Senior Advocate fairly concedes that given an opportunity the competent authority it would be passing order afresh.

In such circumstances, therefore, there is no question of relegating the petitioner to an alternative remedy of review. In the circumstances, the order dated 02.03.2023 is hereby quashed.

This time it is directed that the competent authority will not only hear the petitioner afresh but will also accord due consideration to the reply

submitted before the competent authority which the petitioner will be submitting within a period of two weeks from today. The authority will thus be passing order afresh in the light of the observations made above, as expeditiously as possible, preferably within a period of two months of production of certified copy of this order along with reply by the petitioner.

With the aforesaid observations and directions, this petition stands disposed of.”

10. The writ petitioner claims to have submitted a detailed representation along with supporting documents on 04.05.2023. On 12.06.2023, a communication is stated to have been issued by Registrar/ Secretary, Board of Management, requiring the writ petition to be present on 14.06.2023. The writ petitioner claims to have appeared before the Board of Management on 14.06.2023 and now on 27.06.2023, the order impugned has been passed by the Board of Management, Gautam Buddha University, Greater Noida, Gautam Budh Nagar, the third respondent, whereby the order removing the writ petitioner from service has been maintained.

11. Questioning the minutes dated 14.06.2023 and the order dated 27.06.2023 removing the writ petitioner from services by the Board of Management, Gautam Buddha University, Greater Noida, Gautam Budh Nagar, third respondent, the writ petitioner has filed the present writ petition.

12. This Court entertained the present writ petition on 15.09.2023, while passing the following orders:-

“Today when the matter has been taken up, a counter affidavit on behalf of the third respondent has been filed before the Court after serving a copy upon the learned counsel for the writ petitioner.

Sri Ashutosh Mishra (AOR A/A 0162/2016) has made a statement at bar that he appears for respondents No. 2 and 4 and he shall be filing his Vakalatnama as well as the counter affidavit shall be filed by Monday i.e. 18.09.2023 as it is under preparation.

Put up this case as fresh on 20.09.2023.

As a statement has been made by Sri Ashutosh Mishra that he has instructions and the counter affidavit is under preparation, thus, his name be also printed on behalf of the respondents when the case is next listed.”

13. A counter affidavit has been filed by the Respondents 2 and 4 sworn by the Senior Office Assistant in respondent-University dated 19.09.2023 followed by another counter affidavit filed by the third respondent, sworn by the Senior Office Assistant dated 11.09.2023. To

both the counter affidavits, rejoinder affidavits have been filed by the writ petitioner.

14. Sri Nipun Singh, learned counsel for the writ petitioner while assailing the minutes dated 14.06.2023, and the order dated 27.06.2023 removing the writ petitioner from service has contended that the orders impugned are in violation of the principles of natural justice, inasmuch as though the Enquiry Officer had recorded certain findings in favour of the writ petitioner while holding the charge nos. 1, 2 and 3 to be proved against the writ petitioner, but the disciplinary authority without issuing a disagreement note has itself disagreed with the findings of the Enquiry Officer, which was in favour of the writ petitioner though holding the charges to be proved.

15. Elaborating the said submission, it is submitted on behalf of the writ petitioner that once certain findings have been recorded in favour of the writ petitioner, though by holding the charges to be proved on the basis of other findings, but once the disciplinary authority disagrees with those findings, which were in favour of the writ petitioner, then in view of the law laid down by the Hon'ble Apex Court in the case of ***Punjab National Bank Vs. Kunj Bihari Mishra*, (1998) 7 SCC 84** and ***Yoginath D Bhagde Vs. State of Maharashtra* (1999) 3 SCC 739**, it was incumbent upon the disciplinary authority to have issued a disagreement note and put the delinquent to the notice to file its objection against the same. According to Sri Nipun Singh, learned counsel for the writ petitioner, the charge memorandum dated 27.10.2020 contained as many as four charges. The first being that while posted and functioning as Staff Officer to the Vice-Chancellor and getting promotion from time to time from 08.07.2010 till the suspension of the writ petitioner, i.e. 18.08.2020, the writ petitioner had committed acts and omissions by furnishing fake documents, declaring falsity about her educational qualification, submitting forged documents in order to get promotion and affixing false designation as a doctor as prefix before her name and title, which was found to be false, forged and fabricated. In ordinary course of periodic verification of the competent authority of the University, which led to and amounted to her integrity as doubtful and misleading the authorities by concealing the material facts and acting in violation of the Rules of the Universities Act. It is the submission of the learned counsel for the writ petitioner that the entire allegation hinges upon the fact that the writ petitioner while applying for the post of Personal Secretary to the Vice-Chancellor had submitted its Curriculum Vitae wherein showing that she was pursuing Ph.D. in Education from Veer Bahadur Purvanchal

University, Jaunpur and the same was made the basis of acquiring qualification commensurate to the requirement under Rules. It is also alleged that in the year 2011, the writ petitioner applied for the post of Assistant Professor (Education) in Humanitarian and Social Science, wherein she had claimed that she was possessing Ph.D. from C.C.S. University, Meerut in the year 2009. However, the same was found to be fake. According to Sri Nipun Singh, learned counsel for the writ petitioner, as per the Charge Memorandum, the Ph.D. degree which was found to be fake was also taken into consideration for the promotion of the writ petitioner from the post of Personal Secretary to the Vice-Chancellor to the Staff Officer to the Vice-Chancellor. Thus the said acts and omissions exhibited doubtful integrity, concealment of material facts, misleading the University Authorities in violation of the Rule 9 of the Universities Act. He submits that the Enquiry Officer in its Enquiry Report dated 04.06.2021 with respect to the Article no.1, doubtful integrity had though held it to be proved, but there was a finding in favour of the writ petitioner recorded by the Enquiry Officer that the writ petitioner while seeking appointment did not make any wrongful claims regarding the fact that she being qualified as a candidate in order to emphasize her candidature as competent enough for the post of Principal Secretary/ Executive Assistant of respondent-University. With respect to Charge No.2 & 3, which was with regard to concealment of material facts and misleading the University, the Enquiry Officer has also recorded finding in favour of the writ petitioner that it was very difficult to establish that the writ petitioner had made any false attempt to show herself as a Ph.D. holder which had a significant role in her promotion as Staff Officer to the Vice-Chancellor.

16. Though according to the writ petitioner, the said findings were in favour of the writ petitioner, however, a disciplinary authority in its order dated 27.06.2023 had disagreed with the finding of the Enquiry Officer and held the said charges to be proved without issuing any disagreement note.

17. Submission is that what would be the relevant is the fact that the said findings recorded by the Enquiry Officer goes to the root of the matter and it was incumbent upon the disciplinary authority to issue a disagreement note so as to give a fair chance to the writ petitioner to convince the disciplinary authority that in view of the said findings the writ petitioner was entitled to be reinstated in service. Thus, it is prayed that the order impugned in the said writ petition be set aside, the matter be remitted back to the disciplinary authority to issue a disagreement note to

the writ petitioner containing the points of disagreement to enable the writ petitioner to submit its reply/ objection to the same and after considering the version of the writ petitioner final orders be passed.

18. Countering the said submission, Sri V.K. Singh, learned Senior Counsel, assisted by Sri Ashutosh Mishra, who appears for Respondent Nos. 2 and 4 and Sri Rahul Agarwal, who appears for Respondent No.3 have submitted that the present writ petition at the behest of the writ petitioner is not maintainable in view of the provisions contained under Section 17(2) (a) of the Uttar Pradesh Gautam Budh University Act, 2002, as there already exists a provision empowering the Board of Governors to review its decisions if they are not in conformity with the provisions of the Act, Statutes or the Ordinances, as the case may be. They submit that once a statutory provision is already existing in the statute, then it would not be appropriate for the writ petitioner to directly come before this Court under writ jurisdiction, as whatever issues, the writ petitioner is raising, can be very well addressed by the said authority. According to Sri V.K. Singh, learned Senior Counsel, assisted by Sri Ashutosh Mishra, and Sri Rahul Agarwal, who appear for the Respondents, the present writ petition raises disputed question of facts, which at the very first instance, is to be addressed by the authority empowered under the Statute under Section 17(2) (a) of the Uttar Pradesh Gautam Budh University Act, 2002, thus this Court may direct the writ petitioner to approach the Board of Governors to take an appropriate decision. They seek to rely upon the decision in the case of *Whirlpool Corporation Vs. Registrar of Trademarks*, (1998) 8 SCC 1, so as to contend that though alternate remedy is not an absolute bar and it shall not apply in three contingencies; (a) where the writ petitioner seeks enforcement of any fundamental right; (b) where there is any violation of principles of natural justice; and (c) where the order of the writ proceedings are without jurisdiction or the vires of the Act is challenged. Submission is that none of the three exceptions are in favour of the writ petitioner. Thus in the wake of the existence of alternate efficacious remedy, the writ petitioner may avail the same. Learned counsels for the respondents also seeks to rely upon the judgment in the case of *U.P. State Spinning Company Limited Vs. R.S. Pandey and others*, (2005)8 SCC 264, so as to contend that the present writ petition is not maintainable in view of the existence of alternate remedy. Reliance has also been placed upon a judgment of *Union of India Vs. T.R. Verma*, AIR 1957 SC 882; *New Okhla Industrial Development Authority Vs. Kendriya Karmachari Sahkari Grih Nirman Samiti*, (2006) 9 SCC 54 and *Regional Manager Vs. Pawan Kumar Dubey*, (1976) 3 SCC 334 in order to buttress the said submission.

19. On merits, Sri V.K. Singh, learned Senior Counsel assisted by Sri Ashutosh Mishra, who appears for Respondents 2 to 4 has submitted that interpretation, which is sought to be suggested by the learned counsel for the writ petitioner that there has been violation of principles of natural justice is patently misconceived besides being out of context, particularly in view of the fact that the Enquiry Officer in its enquiry report dated 04.06.2021 had held all the three charges to be proved and the disciplinary authority has not taken any exception to the same, however it has agreed with the finding of the Enquiry Officer while holding the charges to be proved. He submits that the position might have been different in case, certain charges were not found to be proved by the Enquiry Officer, but the disciplinary authority without issuing any disagreement note found the charges to be proved. Since the said situation does not arise in the present case, thus recording a different finding by the disciplinary authority, vis-a-vis, the finding of the Enquiry Officer would not be of much relevance and material and it would not prejudice the case of the writ petitioner. He further submits that the charges leveled against the writ petitioner are grave and serious. He while inviting the attention of the Court towards the counter affidavit filed by the respondent nos. 2 to 4 at page-7 which happens to be the Resume/ Curriculum Vitae submitted for appointment on the post of P.S. to Vice-Chancellor where the writ petitioner has shown himself to have been pursuing Ph.D. Education from Veer Bahadur Singh Purvanchal University, Jaunpur. According to him, after taking permission from the University, while working as P.S. to Vice-Chancellor, the writ petitioner applied in the year 2011 for the post of Assistant Professor (Education), Humanities and Social Science while showing his academic qualification bases upon Ph.D. from C.C.S. University, Meerut in the year 2009. Once it is found that the said Ph.D. degree from CCS University, Meerut claimed to have been possessed by the writ petitioner in the year 2009 was a forged, then the question of loss of confidence comes into play, particularly when the writ petitioner is working in the office of the Vice-Chancellor in such a sensitive position. He submits that these facts are thoroughly undisputed, thus same disentitles equitable relief to the writ petitioner. He thus prays that the writ petition be dismissed.

20. In Rejoinder Affidavit, Sri Nipun Singh, learned counsel for the writ petitioner submits that the judgment so relied upon by the learned counsel for the respondents will not come to their rescue as the judgment in the case of Whirlpool Corporation (supra) is in favour of the writ petitioner, particularly when one of the exceptions being in violation of the principles of natural justice would make the present writ petition maintainable, when no exercise of issuing disagreement note by the

disciplinary authority was resorted to. He submits that once the Enquiry Officer recording a finding in favour of the writ petitioner with respect to Charge Nos. 1, 2 and 3 that the degree of Ph.D. of CCS University, Meerut was not used for attaining eligibility and it was not put to service by the writ petitioner, coupled with the fact that there was no requirement to obtain Ph.D. degree, then the said issues play a vital role and goes to the root of the matter and thus it was incumbent upon the disciplinary authority to have issued a disagreement note, which even otherwise was not done, which vitiated the entire proceedings.

21. Before delving into the legality and the tenability of the argument of the rival parties, it would be apposite to extract the relevant portions of the charge sheet, enquiry report and the ultimate punishment order dated 27.06.2023.

22. The relevant extracts of Charge Memorandum dated 27.10.2020 are quoted hereinunder:

“CHARGE MEMORANDUM DATED 27.10.2020

Annexure-I

STATEMENT OF THE ARTICLES OF CHARGE AGAINST MS. MEENA SINGH, STAFF OFFICER TO THE VICE CHANCELLOR (SUSPENDED, VIDE ORDER DATED 18.08.2020) PRESENTLY ATTACHED WITH THE LIBRARY.

While posted and functioning as Staff Officer to the Vice Chancellor and getting promotion time to time between 08.07.2010 till date of suspension i.e., 18.08.2020, Ms. Meena Singh, mentioned above, committed acts of omissions and commissions by furnishing fake documents, declaring falsely about her educational qualification, submitting forged documents, in order to get promotion and affixing false designation as a 'Doctor as prefix before her name & title. Such information provided by her was found to be false, forged & fabricated in ordinary course of periodic verification by the competent authority of university which leads & amounts to her integrity as doubtful & misleading the authority by concealing the material facts and acting in violation of Rule 9 of the University Act.

Article-I: Doubtful integrity

While submitting her resume in the year 2010, Ms. Meena Singh declared that she had been pursuing her Ph. D from Vir Bahadur Singh Purvanchal University (VBPU), Jaunpur, as part of her qualification details, along with other educational qualifications, in order to emphasise her candidature as competent enough for the post.. Subsequent details submitted by her in the year 2011, évidently reveal that she possess a

Ph.D degree in education from Chaudhary Charan Singh University, Meerut and got awarded the same in the year 2009. It is evident vide verification response letter dated 18.08.2020 that the said Ph.D degree submitted by Ms. Meena Singh is fake and has never been issued from Chaudhary Charan Singh University. The deliberate submission of forged/ fake documents by Ms. Meena Singh reflects her integrity, doubtful in most apparent manner.

Article - II: Concealment of material facts

While serving as Staff Officer to the Vice Chancellor, Ms. Meena Singh did not submit the documents/certificates pertaining to the requisite skills desired for the post of P.S. to the Vice Chancellor and subsequently presented the Ph.D. degree which had a significant role in her promotion as Staff Officer to the Vice Chancellor. This degree was reportedly (as evident from letter dated 18.08.2020) found to be fake by the issuing University, thus clearly indicating the deliberate concealment of material facts on part of Ms. Meena Singh.

Article-III:- Misleading the University Authorities

While serving as Staff Officer to the Vice Chancellor, Ms. Meena Singh tried to mislead the authorities by the usage of fake educational documents. She attended conferences and also submitted her candidature for Assistant Professor in the department of Education, in the year 2011 and tried to wrongly influence the University authorities by presenting herself as a Ph.D. degree holder for departmental promotion, which in later stage, was found fake.

Article-IV: Violation of Rule 9 of the University Ordinance

Ms. Meena Singh deliberately approached the media, as evident from the publication dated 21.08.2020 and tried to malign & impute the image of Gautam Buddha University and its reputation with all the ill-will and malice, which is the clear violation of Rule 9 of the University Ordinance.

The aforesaid acts, on part of Ms. Meena Singh are devoid of her duties and ethics towards her employment with the Gautam Buddha University and are contrary to the Rules, Ordinance & statute related to Gautam Buddha University (GBU)."

23. The relevant extracts of Enquiry Report dated 04.06.2021 are quoted hereinunder:

“ ...

CHARGE NO.I

7.17 Conclusion: *In view of the above, it is evident that CO submitted the fake Ph.D. degree and misled her employer through various acts to establish that she is a Ph.D. degree holder. Hence, her integrity is doubtful which is in violation of Sub Para 3(i) of Para 16 pertaining to Employees Conduct Rules of the Ordinances of GBU. However, it is clear*

from the evidence that she was indeed pursuing her Ph.D. as stated in the curriculum vitae she had submitted along with her application dated 07.07.2010 for the post of PS/Executive Assistant. At that time, she did not make any wrongful claims regarding she being a Ph.D. candidate in order to emphasise her candidature as competent enough for the post of PS/Executive Assistant of GBU.

Hence, the Charge of 'Doubtful integrity' is PROVED.

.....

CHARGE NO.II

8.4 Conclusion: *In view of the above, it is evident that CO sought to mislead her employer by various means to establish that she was a Ph.D. degree holder. Thus, concealment of the material fact that she used a fake Ph.D. degree while applying for the Assistant Professor post, is in violation of Sub Para 3(i) of Para 16 pertaining to Employees Conduct Rules of the Ordinances of GBU. However, it is very difficult to establish that her damnable attempt to show herself a Ph.D. degree holder had a significant role in her promotion as Staff Officer to the Vice Chancellor.*

Hence, the Charge of 'Concealment of material facts' is PROVED.

.....

CHARGE NO.III

9.2 Conclusion: *In view of the above, it is evident that CO sought to mislead her employer by various means including the usage of fake educational document while applying for the Assistant Professor post, to establish that she was a Ph.D. degree holder. Thus the action of the CO, is in violation of Sub Para 3(i) of Para 16 pertaining to Employees Conduct Rules of the Ordinances of GBU. However, it is very difficult to establish that her false attempt to show herself a Ph.D. holder had a significant role in her promotion as Staff Officer to the Vice Chancellor.*

Hence, the Charge of 'Misleading the University Authorities' is PROVED."

24. The relevant extract of order dated 27.06.2023 passed by the Board of Management, Gautam Budh Nagar is quoted hereinunder:

"Question No.1:-

Question No.1: *Whether the Charged Officer submitted her PhD degree to the University?*

The Charged Officer categorically denied the submission of the PhD degree to the University and has stated that it was the malice of the then Deputy Registrar Shri S.N. Tiwari that alleged self-attested degree became the part of the records of her personal file. It has been stated by the Charged Officer that at no occasion, she has submitted this degree to the University.

However, from the perusal of records, it is apparent, the Charged Officer has submitted the forged PhD degree along-with the application, duly filled in her own handwriting, for obtaining NoC. At the time of the grant of promotion from PS to SO the three member committee has taken into consideration this PhD degree. Even at the time of her regularisation, back-dated 6 years, due cognizance has been given to the PhD degree. It would be not out of place to mention that the Charged Officer on 08.07.2010 used to write her name as Smt. Meena Singh. however, after from 2011 onwards in all correspondence Smt. Meena Singh has shown herself to be PhD holder and prefixed "Dr" before her name.

While being posted as the PS to the Vice Chancellor, the Charged Officer applied for the position of the Assistant Professor in the Gautam Buddha University itself by declaring herself as "Dr. Meena Singh", whereby in her CV she has herself deposed that she has done PhD from CCS University, Meerut in 2009. For making the application to the post of Assistant Professor, the Charged Officer sought NoC and in the process, on 10.05.2011, the self-attested copy of the alleged PhD degree was submitted by the Charged Officer to the University.

From the perusal of the personal file and records specially Page No. 8 to 12, it is clear that Smt. Meena Singh has supplied to the University her hand written/filled form qua Advertisement No.3 of 2011 in which she has declared to have completed her PhD from CCS University, Meerut and was issued no objection dated 02.06.2011 from the then Registrar, GBU.

The Charged Officer utterly failed to provide any explanation in the Second Show Cause Notice as to under what circumstances the Charged Officer disclosed herself to be PhD holder and why she supplied the self-attested copy of the alleged PhD degree issued by the CCS University, Meerut.

This Board find no perversity in the finding of the Enquiry Officer that Smt. Meena Singh supplied the copy of her PhD degree to the University and further this Board does not find any merit in the defence raised by the Charged Officer that she started using "Dr." as a prefixed to her name because her parents used to address her as "Doctor". Even if the same is accepted, this Board does not find any explanation as to under what circumstance the Charged Officer supplied the copy of the forged PhD degree to the University.

Since the self-attested copy of the alleged PhD degree is a part of the personal file of the Charged Officer, which has been given by the Charged Officer to the University itself, therefore, under no circumstance it can be said that the Charged Officer did not submit her PhD degree to the University. The Charged Officer failed to convince this Board that the forged and fabricated degree was not presented by her and failed to carve out any plausible defence. Thus, the finding of the Enquiry Officer is accepted by this Board.

Question No.2:

Question No.2: Whether the Charged Officer was benefited from the degree of PhD despite the same being not an essential qualification for the appointment on the post of PS or Staff Officer?

The minimum qualification for the appointment of the post of PS to Vice Chancellor or the Staff Officer is graduation. It has been asserted by the Charged Officer that since the essential qualification for the appointment on the post of PS to VC or the Staff Officer to the Vice Chancellor is graduation, therefore, even if it is considered that she has submitted the alleged PhD degree, the same may not be taken into consideration.

Charged Officer was initially appointed on the post of PS to VC on 08.07.2010 and was promoted to the post of Staff Officer on 18.09.2018. At the time of initial appointment on the post of PS to VC, the Charged Officer disclosed that she was pursuing her PhD from Veer Bahadur Singh Poorvanchal University, Jaunpur, Uttar Pradesh.

when Charged Officer applied for the post of Assistant Professor in Department of Education and sought NoC from the University, the Charged Officer declared that she has completed her PhD from CCS University, Meerut. At this time, the Charged Officer was on contractual appointment, which was then extended on 15.06.2012 for another period of one year, which was further extended on 15.05.2013 and her contractual services were regularized on 17.04.2018 with effect from 08.07.2012. From the perusal of the personal file of the Charged Officer, in the table, it is apparent that cognizance has been taken of her PhD degree 2009, and therefore, it cannot be said that the highest educational qualification of the Charged Officer was not taken into account by the Competent Authority while regularizing her contractual services. The same goes when the Charged Officer was given promotion to the post of Staff Officer to the Vice Chancellor, where the chronology of the events are as under:

S. No.	Date	Event
1.	08.07.2010	<i>Appointment of the Charged Officer on Contractual Basis for a period of 2 Years</i>
2.	10.05.2011	<i>Submission of the Forged PhD degree to the University.</i>
3.	15.06.2012	<i>First Extension.</i>
4.	15.05.2013	<i>Second Extension Regularisation on the post of the PS to Vice Chancellor.</i>

5.	17.04.2018	<i>For regularisation from Contractual Services, cognizance of the PhD degree was taken.</i>
6.	18.09.2018	<i>Promotion of the Charged Officer on the Post of Staff Officer to the Vice Chancellor.</i>

Therefore the defence taken by the Charged Officer that she has not taken any benefit of the PhD degree is devoid of merit as at the time of her regularization on her initial appointment, her highest qualification, ie. the alleged PhD degree was very well taken into account. The same is the case with her promotion. At the time of regularising the Charged Officer with six years retrospective effect and at the time of her promotion from PS of VC to Staff Officer of VC, her PhD degree was given due cognizance.

Therefore, after thorough examination, this Board is of the view that the assertion and defence of the Charged Officer is negated and the question is answered in affirmative.

Question No.4

Question No.4: Whether the Enquiry Report is to be accepted or rejected in toto?

The Charged Officer in her reply to Second Show Cause Notice has given circular analogy that it was only because of her enmity with the erstwhile Deputy Registrar. Shri Satish Narayan Tiwari, she has been falsely implicated in the present matter.

The Charged Officer has supplied the information to the University on 10.05.2011 that she is a PhD holder whereas Shri Satish Narayan Tiwari joined the Gautam Buddha University in 2019. The Charged Officer was regularized on 17.04.2018 even when Shri Satish Narayan Tiwari did not join the Gautam Buddha University.

The Charged Officer failed to bring out any explanation or bias of Shri Satish Narayan Tiwari on record. Shri Satish Narayan Tiwari had no role with respect to the validity and submission of the forged PhD degree by the Charged Officer; because the CCS University itself this degree and this degree was submitted by the Charged Officer has denied from the issue much before the joining of Shri Satish Narayan Tiwari in the University.

If it is assumed that Smt. Meena Singh is not PhD holder from CCS University, Meerut, Smt. Meena Singh has not provided any explanation as to why she was treated as PhD holder at the time of

regularisation or promotion and that what happened to her PhD from Veer Bahadur Singh Poorvanchal University, Jaunpur, Uttar Pradesh.

Therefore, no appropriate or plausible defence has been drawn by the Charged Officer in the Second Show Cause Notice to vitiate or quash the Enquiry Report submitted by the Enquiry Officer. Therefore, the Enquiry Report is accepted by this Board.”

25. I have heard learned counsel for the parties and perused the records carefully.

26. The first and foremost question, which falls for consideration before this Court is as to whether the writ petition at the behest of the writ petitioner is maintainable in view of the existence of alternate efficacious remedy provided under the Statute under Section 17(2) (a) of the Uttar Pradesh Gautam Budh University Act, 2002. The said objection of the respondents has to be decided bearing in mind the facts of the case in the light of the judgment in the case of **Whirlpool Corporation** (*supra*). Facts of the case are not in dispute between the parties before this Court. A charge memorandum containing four articles of charges was served upon the writ petitioner dated 27.10.2020. The Enquiry Officer tendered its enquiry report dated 04.06.2021 though holding Charge Nos. 1, 2 and 3 to be proved against the writ petitioner. The disciplinary authority also held the Charge Nos. 1, 2 and 3 proved.

27. The bone of contention between the parties is whether any finding recorded by the Enquiry Officer in favour of a delinquent could be disagreed with by the disciplinary authority without serving a disagreement note or not, particularly, when all the three charges have been held to be proved both by the Enquiry Officer and the Disciplinary Authority. It is settled principle of law that whenever a Disciplinary Authority disagrees with the finding of the Enquiry Officer, then disagreement note is a condition precedent.

28. The Hon'ble Apex Court in the case of **Kunj Bihari Mishra** (*supra*) in paragraphs-18 and 19 has observed as under:-

“18. Under Regulation - 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an

opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case(supra).

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

29. The said judgement was followed in the case of **Yoginath D Bhagde (supra)**, wherein in paragraphs-28 and 29, it was observed as under: -

“28. In view of the provisions contained in the statutory Rule extracted above, it is open to the Disciplinary Authority either to agree with the findings recorded by the Inquiring Authority or disagree with those findings. If it does not agree with the findings of the Inquiring Authority, it may record its own findings. Where the Inquiring Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Inquiring Authority has held the charges proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Article 309 of the Constitution or the Disciplinary Authority may, of its

own, provide such an opportunity. Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, "an opportunity of hearing" may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be 'not guilty' by the Inquiring Authority, is found 'guilty' without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded.

29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which enables the Disciplinary Authority to disagree with the findings of the Inquiring Authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The Rule does not specifically provide that before recording its own findings, the Disciplinary Authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before Disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the Inquiring Authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with."

30. The principle charges against the writ petitioner are that the writ petitioner showed her eligibility for appointment as P.S. to Vice Chancellor based upon Ph.D. degree, which she obtained from CCS University Meerut. The said degree was found to be fake and the said degree also became the basis for appointment and promotion on the post of Staff Officer to the Vice-Chancellor. It is also alleged that the writ petitioner also staked her claim for applying for the post of Assistant Professor in Humanitarians and Social Science on the basis of forged degree. Thus, the writ petitioner exhibited a conduct for doubtful integrity, concealment of material fact, misleading the University Authorities. The Enquiry Officer in its enquiry report dated 04.06.2021 had recorded a finding that though the charge sheeted officer submitted fake degree and misleading her employer through various acts to establish that she is

Ph.D. holder and her integrity is doubtful in view of the sub-section 3(i) of Paragraph-16 of Employees Conduct Rules and it is clear from the evidence that she showed herself pursuing her Ph.D. as per her Curriculum Vitae submitted along with her application dated 07.07.2010 for the post of P.S. / Executive Assistant, but she did not make any wrongful claim regarding the fact that she being Ph.D. candidate in order to emphasize her candidature as competent enough for the post of P.S./ Executive Assistant of Gautam Budh University and it was also difficult to establish that her damnable attempt to show herself a Ph.D. degree holder had a significant role in her promotion as Staff Officer to Vice-Chancellor. The said findings, which were in favour of the writ petitioner have been disagreed by the disciplinary authority in its order dated 27.06.2023 holding that at the time of the grant of promotion to the writ petitioner from Personal Secretary to Staff Officer, the Three Member Committee had taken into consideration the Ph.D. degree and she had shown herself to be the Doctor being a Ph.D. degree holder before her name and post her eligibility on the basis of Ph.D. degree, which was found to be forged and her contractual appointment was extended and her services were regularized on the basis of the Ph.D. degree, which was found to be forged. The aforesaid findings recorded by the disciplinary authority, which was made the basis for removal of the services of the writ petitioner was without issuing a disagreement note dissenting with the finding of the Enquiry Officer, and it clinches the entire issue. Since the said exercise is in violation of principles of natural justice, coupled with the fact that it is against the well settled law as propounded by the Hon'ble Apex Court in the case of **Kunj Bihari Mishra** (*supra*) and **Yoginath D Bhagde** (*supra*) and thus the exception so carved out by the Hon'ble Apex Court in the case of **Whirlpool Corporation** (*supra*) would come to rescue of the writ petition.

31. Notably, had a disagreement note been issued to the writ petitioner disagreeing with the finding of the Enquiry Officer, the writ petitioner would have got an opportunity to convince the Disciplinary Authority that there happened to be a sound and valid case of the writ petitioner.

32. So far as the arguments raised by the learned counsel for the respondents that once the conclusion of the Enquiry Officer had been kept intact by the Disciplinary Authority and only there was a disagreement with respect to certain findings, then it would not create prejudice is preposterous, being out of context, particularly, when findings plays an important role and they are the links in coming to the conclusion.

33. Accordingly, this Court is of the firm view that there has been a substantial procedural lapse entailing to violation of principles of natural justice while not issuing the disagreement note while disagreeing with the finding of the Enquiry Officer. Since the case of the writ petitioner falls within the exception culled out in the case of *Whirlpool Corporation (supra)*, violation of principles of natural justice, thus objection of the respondents regarding dismissal of the writ petition on the ground of availability of alternative efficacious remedy is turned down.

34. Once this Court has come to the conclusion that there has been a procedural irregularity in conducting the disciplinary proceedings, then there are two options available before the Court; firstly to set aside the orders impugned and to accord reinstatement to the writ petitioner; and secondly, to direct the authorities to conduct the Disciplinary proceedings from the stage when the defect occurred. This Court while viewing the case from all points of angle is of the opinion that an opportunity be accorded to the Disciplinary Authority to conduct the disciplinary proceedings from the stage of issuance of disagreement note containing the points of disagreement of the disciplinary authority with the findings of the Enquiry Officer.

35. Accordingly the writ petition is decided in the following manner:-
(a) The order dated 27.06.2023 as well as the minutes of the Board of Management, Gautam Buddha University, Greater Noida, Gautam Budh Nagar dated 14.06.2023 are set aside; (b) The matter stands remitted back to the respondents to conduct the disciplinary proceedings against the petitioner from the stage of issuing Show Cause Notice/ Disagreement Note; (c) The proceedings shall be concluded within a period of three months from the date of production of certified copy of the order subject to cooperation of the writ petitioner, strictly in accordance with statutes and ordinances, as applicable after providing adequate opportunity to the writ petitioner; (d) The question of reinstatement and payment of consequential benefit shall be subject to final outcome of the disciplinary proceedings; (e) In case, the disciplinary authority proposes to suspend the writ petitioner, then the writ petitioner shall be admissible to subsistence allowance, arrears and current as and when same falls due subject to compliance of the Rules.

36. In view of aforesaid the writ petition is **partly allowed**.

Order Date :- 29.11.2023

N.S.Rathour