

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF NOVEMBER, 2025

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C M JOSHI

WRIT APPEAL NO. 248 OF 2025 (S-RES)

BETWEEN:

SIDDARTHA EDUCATION SOCIETY,
SIDDARTHA NAGARA POST OFFICE,
S.S.I.T CAMPUS, MARALUR,
TUMKUR-572 105,
REP. BY ITS ASSISTANT ADMINISTRATIVE OFFICER,
SRI. K.H. KHALANDAR PASHA.

...APPELLANT

(BY SRI. MURALIDHAR H.M, ADVOCATE)

AND:

1. DR. B.H. DEVARAJU,
S/O. LATE B. HANUMANTHA GOWDA,
AGED ABOUT 64 YEARS,
R/AT. "SWATHI NILAYA",
SRI. RANGA VIDYA MANDIRA ROAD,
BATAWADI, TUMAKURU-572 103.
2. THE STATE OF KARNATAKA,
DEPARTMENT OF HIGHER EDUCATION
(COLLEGIATE EDUCATION),
MULTISTOREYED BUILDING,
DR. B.R. AMBEDKAR VEEDHI,
BENGALURU-560 001,
REP. BY ITS PRINCIPAL SECRETARY.
3. THE COMMISSIONER FOR
COLLEGIATE EDUCATION,
2ND FLOOR, D.T.E BUILDING,
PALACE ROAD, BENGALURU-560 001.

...RESPONDENTS

(BY SRI. DR. B.H. DEVARAJU, R1- PARTY IN PERSON;
SRI. K.S. HARISH, G.A. FOR R-2 & 3)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO a) ALLOW THE APPEAL, ISSUE WRIT IN THE NATURE OF CERTIORARI, QUASHING THE ORDER DATED 19/12/2024 PASSED BY THE LEARNED SINGLE JUDGE IN WP NO.5076/2024 OR b) IN THE ALTERNATIVE PASS SUCH OTHER ORDERS.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 20.08.2025 AND COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, **C M JOSHI J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C M JOSHI

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE C M JOSHI)

1. Being aggrieved by the order dated 19.12.2024 [**impugned order**] passed by the learned Single Judge of this Court in Writ Petition No.5076/2024 (S-RES) whereby the order passed by the learned Principal District and Sessions Judge and the Education Appellate E.A.T., Tumkuru (hereinafter referred to as 'the E.A.T.' for short) in MA (EAT) No.3 of 2017 was confirmed, the appellant [writ petitioner] is before this Court in this appeal under Section 4 of the Karnataka High Court Act, 1961.

2. The appellant had filed the said writ petition seeking writ of certiorari to quash the order dated 30.09.2023 passed by learned Principal District and Sessions Judge, Tumkur in MA (EAT) No.3/2017.

THE FACTUAL BACKGROUND:

3. The appellant-Society [Siddhartha Education Society] is a Society engaged in imparting education at Tumkur and surrounding area. Respondent No.1 was working as Associate Professor in the Institute run by the appellant-Society at Tumkur. His post is admitted to salary grants by the State Government and his service conditions are governed by the Karnataka Educational Institutions (Collegiate Education) Rules, 2003 (for short 'Rules of 2003'). Respondent No.1 was appointed as a Lecturer by the appellant-Society on 31.08.1985 and over the years, respondent No.1 demonstrated significant professional growth and ultimately he was promoted as Associate Professor from 01.01.2006. The post of respondent No.1 was admitted to salary grants by the State Government and his service conditions were governed by the Rules of 2003.

4. In 2016, he was subjected to a disciplinary inquiry for the misconduct committed by him in discharge of his duties. He was

suspended by the appellant-Society on allegations of violating the terms of his service agreement and the prime reason for such suspension was that respondent No.1 was engaged as Chairman of MBA Department of Tumkur University during the period from 2006 to 2010. It was contended that respondent No.1 undertook the said role without the requisite permission from the competent authority of the appellant-Society. The respondent No.1 was subjected to a disciplinary inquiry for the misconduct and the Inquiry Officer found that the charges levelled against respondent No.1 were proved and as such, a second show-cause notice dated 30.12.2016 was issued. The respondent No.1 submitted a reply on 07.01.2017 and after considering said reply, an order of dismissal from service was passed on 07.11.2017 after approval was obtained from the competent authority of the Government. The respondent No.1 challenged the said order before the E.A.T. in MA(EAT) No.3/2017.

5. The E.A.T., framed issues, including the issue regarding fairness of the domestic inquiry as preliminary issue and by order dated 25.04.2019 the said issue was answered in the affirmative. The said order was not challenged and therefore, it became final. Thereafter, respondent No.1 did not adduce any

evidence on the proportionality of the penalty or victimisation and therefore, the E.A.T., proceeded to pass the final order on 30.09.2023 holding that the order of dismissal was illegal and it was set aside.

6. Against the order of the E.A.T., the appellant filed a writ petition in W.P.No.5076/2024 and after hearing both the parties, the learned Single Judge passed the impugned order dismissing the writ petition and confirming the order passed by the E.A.T. Being aggrieved by the same, the appellant-Society is before this Court.

7. The appellant-Society had framed six specific charges against respondent No.1 alleging misconduct. The charges were as below:

- a) The respondent No.1 while serving as associate professor under the appellant-society, simultaneously worked as chairman of the MBA Department at Tumkur University. During the said period, the respondent No.1 had received the salaries from both the institutions thereby engaging in dual employment in contravention of the Service Rules.
- b) The respondent No.1 was accused of drawing his full salary from the appellant-Society despite not rendering full time services as required under the Employment terms and the Rules of the UGC.

- c) The respondent failed in properly implementing Rashtriya Uchattara Sheekha Abhiyan (for short 'RUSA') scheme, a significant academic initiative aimed at enhancing the quality and accessibility of the higher education to the general public.
- d) The respondent submitted a report with a malafide intention concerning one Hanumantrayappa, which caused prejudice and undermined the institutional fairness resulting in expenses to the ex-chequer of the appellant-society.
- e) The respondent was accused of failing to maintain a work diary, which is a mandatory requirement under the institutional norms to document the daily activities and ensure accountability.
- f) Lastly, the respondent was alleged to have been unauthorizedly absent for one day during the year 1988.

8. The appellant-Society appointed an Inquiry Officer and initiated departmental proceedings against respondent No.1 and it culminated in the Inquiry Officer's report dated 28.12.2016. In the said report, the Inquiry Officer concluded that the charges 1 to 5 were substantiated based on the evidence and the 6th charge was dismissed as there were procedural delays in raising the allegation.

9. The appellant-Society issued a second show-cause notice to respondent No.1 and respondent No.1 submitted his

explanation to the second show-cause notice making out his defence. The reply to the second show-cause notice of the appellant delineated following aspects:

- a) The respondent No.1 had obtained the permission of the Administrative Officer of the appellant-Society i.e., Professor C.N. Narasimha Murthy on 07.08.2006 and had brought it to the notice of the Principal of the Institution and thereafter, he had worked as the Chairman of the MBA Department of Tumkur University.
- b) The respondent No.1 replied that he had not received any salary from the Tumkur University, but he had only received the honorarium. As per the testimony of the Finance Officer of the University, who was examined as a witness on behalf of respondent No.1, it was not a salary and therefore, it cannot be termed as dual employment. It was also stated that respondent No.1 worked in Tumkur University at the instance of the Vice-Chancellor of the University and the Administrator of the appellant- Society and such, his act was known to the Co-ordinator of the appellant-Society. Therefore, it was by consent of the appellant-Society that he had worked at Tumkur University.
- c) So far as second charge is concerned, respondent No.1 had worked 40 hours per week as per the Rules of the University Grants Commission at the

Institution of the appellant and it was only during the free time that he worked at the Tumkur University. Therefore, there is no such violation of any of the terms of the employment. Moreover, such working at Tumkur University was not for any trade or business.

- d) So far as not implementing the scheme of RUSA is concerned, he stated that the aided colleges, if they had obtained the recognition from the University Grants Commission, such colleges would not come under the RUSA as informed by the District Co-ordinator and therefore, the proposal to utilise the scheme was dropped. Therefore, there is no such misconduct committed by not submitting any plan under the RUSA scheme.
- e) So far as the wrong information submitted in respect of Shri Hanumantarayappa is concerned, it was stated that respondent No.1 was the in-charge Principal between 10.11.1995 to 19.11.1995 and the records in respect of such in-charge arrangement was available with the College. Therefore, when the regular Principal of the Institution was on leave, he was in-charge and there was an urgency to submit the information to the Department of Collegiate Education and Joint Director of Collegiate Education and as such, he

gave the necessary information to the Department of Collegiate Education.

- f) The respondent No.1 had submitted the work diary of the five years to the NAAC Committee and the Principal used to return the work diary after his endorsements and some of the diaries have been disposed of after the visit by the NAAC Committee. Therefore, there is no deficiency of the respondent No.1 in keeping the work diary. Apart from that, he had highlighted that some other Lecturers and Assistant Professors of the Institution had also worked in Tumkur University during the said time and the appellant-Society had targeted respondent No.1 alone, which is illegal and as such, the charges levelled against him be dropped.

10. Despite the said reply given by respondent No.1, the appellant-Society came to the conclusion that the charges have been proved and the explanations offered by respondent No.1 were not acceptable and therefore, it proceeded with the order of dismissal of the respondent No.1 from service.

PROCEEDINGS BEFORE E.A.T:

11. Respondent No.1 challenged the dismissal order before the E.A.T. After hearing the parties, E.A.T., by its order dated 21.01.2020 set aside the penalty of dismissal and directed the

appellant-society to reinstate the respondent by imposing a cost of ₹1,00,000/-. The said order of the E.A.T., was challenged before this Court in W.P.No.8094 of 2020 and after hearing, the matter was remanded to the E.A.T., for fresh adjudication and an additional issue was framed.

12. After remand the E.A.T., heard on following issues:

“ISSUES

1. Whether the appellant proves that, holding the enquiry under the provisions of K.C.S.R. and C.C.A., Rules, the of Government 1957 of Karnataka has vitiated the entire proceedings ?
2. Whether the respondents prove that the enquiry conducted against the appellant is fair and proper as well as in accordance with law?
3. Whether the order of dismissal vitiated due to non-approval by the Competent Authority under the Karnataka Education Act?
4. Whether the appellant further proves that non-payment of Subsistence Allowance during the enquiry is a serious infirmity attracting the very base of the enquiry was contended?
5. Whether the final order of the dismissal awarded is too harsh and disproportionate to the charges leveled against the appellant as contended?
6. Whether the respondent No.1 proves that the

appellant was working in dual employment as charged?

7. Whether the appellant is entitled for any of the relief sought for in the appeal?
8. What order or award?

ADDITIONAL ISSUE

1. Whether the appellant proves that there is inordinate delay in initiating departmental enquiry?"

13. After hearing, the E.A.T., found that the Commissioner of the Collegiate Education being the competent authority to grant the permission for dismissal, had not delegated the said power to the Joint Commissioner and the approval that was obtained from the Additional Director of Collegiate Education was bad and it did not satisfy the statutory requirement under the Rules and therefore, the order of dismissal is unsustainable.

14. Further, E.A.T., also held that the denial and non-payment of the subsistence allowance during the pendency of the Inquiry has vitiated the entire inquiry proceedings and it is a major procedural lapse. It was only after commencement of the inquiry with the appellant-Society, it paid the subsistence allowances and the respondent No.1 had conducted inquiry in

person. Therefore, by relying on the judgment of the Apex Court, it held that the inquiry is vitiated.

15. The E.A.T., also examined the substantive charges, particularly the charges (a) and (b) stated above, and it came to the conclusion that the testimony of the witnesses and the records showed that the respondent No.1 had fulfilled his teaching and administrative responsibilities at the appellant's society and thereafter, he had shouldered the responsibility at Tumkur University. It also observed that the receipt of sum of ₹4,82,000/- from Thumkur University is an honorarium but it cannot be termed as the salary on account of dual employment.

16. The E.A.T., also observed that the appellant-society was aware of the respondent's engagement with the Tumkur University, but it did not raise objection or issue any directions to the respondent No.1 to disengage himself from Tumkur University. Apart from that the respondent No.1 was also given timely promotions and therefore, the E.A.T., held that the appellant-Society was estopped from imposing any penalty.

17. The E.A.T., had considered the testimonies of the witnesses and observed that PW3 had participated in the events organized by Tumkur University where the respondent

and other Professors and Lecturers of the appellant-Society also involved in organizing the events. Therefore, it held that there was a tacit acceptance of the respondent No.1 working with Tumkur University as the said university was established recently and there was dearth for the qualified staff. In paragraph 49 to 55 of the judgment of the E.A.T., it appreciated and discussed the evidence in detail, particularly, the testimony of PW2, PW3, PW4 and DW2.

18. The E.A.T., also noticed that the appellant-Society had treated respondent No.1 with discrimination and while appreciating the testimony of PW3, it notices that no action was initiated against the other six officials, who were engaged with Tumkur University during the same time and PW3 had stated that the appellant-society will take necessary action against them also. Ultimately, the E.A.T., came to the conclusion that the approval for imposing the penalty of dismissal of the respondent No.1 was flawed as it was approved by the Additional Director of the Department of Collegiate Education. But in fact, it should have been done by the Commissioner of the Collegiate Education. Thus, it allowed the appeal filed by the respondent No.1 and set aside the order of dismissal and

directed that all the backwages, continuity of service and other consequential benefits be given to the respondent No.1.

19. Being aggrieved by the said judgment, the appellant herein approached this Court in W.P.No.5076/2024. The learned Single Judge dismissed the writ petition affirming the judgment of the E.A.T. It is the said order of the learned Single Judge, which is impugned in the present appeal.

SUBMISSIONS:

20. The learned Senior Counsel appearing for the appellant-Society, Sri. Sreeranga, submitted that the impugned order passed by the learned Single Judge is unjust and illegal. He anchored the appeal on four grounds:

- i) Firstly, he submitted that the order of dismissal was procedurally sound because it was passed after obtaining prior approval of the Commissioner of the Collegiate Education.
- ii) Secondly, he submitted that, once the inquiry was held as fair and proper, the E.A.T., could not have revisited the issue of the payment of subsistence allowances and record a finding that it has vitiated the enquiry and

therefore, the learned Single Judge could not have affirmed the said finding of the E.A.T.

iii) Thirdly, he submitted that once the inquiry is held fair and proper, the E.A.T., cannot interfere with the decision taken in imposing the punishment by entering into merits of the case and evidence. It could only consider the decision making process post to the finding in the inquiry. Therefore, the impugned order is erroneous.

iv) Fourthly, the Apex Court has repeatedly held that when the Inquiry is held to be fair and proper, the courts/tribunals cannot interfere with the penalty order unless it is shocking and disproportionate to the gravity of the misconduct proved.

21. He further submitted that the charge of dual employment has been admitted by respondent No.1 and the defence was that it was within the knowledge of the management. When it is an admitted fact that respondent No.1 was engaged by the Tumkur University, and such conduct being contrary to the Rules governing service conditions, no fault could have been found in imposing the punishment. It is contended that, by the impugned order, the employee who has committed a grave

misconduct has been let off, which amounts to pay the premium to an errant employee. It is contended that it was not open to consider the plea of discrimination. The employees, who were working in Tumkur University, have admitted the guilt and therefore, there was no necessity for the management to hold the Inquiry against them and as such they were imposed with a penalty of withholding one increment. His contention was that even if the penalty is found to be harsh, the Courts have to direct the Management to reconsider the decision and therefore, the impugned order is unsustainable. It is submitted that if the order of penalty is interdicted for the reason of disproportionality of penalty and the respondent No.1 is reinstated, he could not have been made entitled for either the back wages and continuity of service or any such consequential benefits. Therefore, it is submitted that the impugned judgment deserves to be set-aside

22. He further submitted that respondent No.1 had disputed the charge and contested the charges and as such, the plea of discrimination could not have been entertained by the learned Single Judge. It is contended that this aspect of the matter was not appreciated by the E.A.T., as well as the learned Single Judge.

23. *Per contra*, respondent No.1, who appeared as party- in-person, has filed his statement of objections in this writ appeal and reiterated his contentions that he had taken up before the E.A.T. He rebutted the appellant's contention on every ground.

- i) Firstly, he contended that under Rule 32 of the Rules of 2003, every order of the private management regarding the suspension, dismissal or removal from the service shall be issued only after prior approval by the competent authority and respondent No.1 being an employee of the aided Institution is governed by the said Rules. The Competent Authority to approve the penalty to be imposed is none else than the Commissioner for Collegiate Education under Rule 3(1) of the Rules of 2003. Therefore, an approval by the Additional Director is *non-est* in the eye of law.
- ii) Secondly, he stated that the question of payment of the subsistence allowance before the Inquiry commenced was not the subject matter of the disciplinary enquiry and therefore, the said question definitely comes within the purview of the consideration by the E.A.T.

- iii) Thirdly, he stated that the contention of the dual employment was not at all the part of the charge and there is no such clause in the Rules of 2003, which would prohibit dual employment. It is contended that respondent No.1 alone is targeted while the other Teachers, who worked in Tumkur University, were not subjected to any disciplinary inquiry though they had received the honorarium.
- iv) Fourthly, he submits that once the inquiry conducted by the Disciplinary Authority is set aside by the statutory E.A.T., the resultant effect would be reinstatement of the respondent with all consequential benefits. In this regard, he relies on the judgment of the Apex Court in the case of **Anantdeep Singh v. The High Court of Punjab and Haryana**¹. He also pointed out that there is an inordinate delay in initiating the departmental enquiry and absolutely no reasons are forthcoming for such inordinate delay in issuing the charge sheet or the suspension order. The learned Single Judge has

¹ 2024 SCC OnLine SC 2449

considered all these aspects and therefore, the respondent No.1 has sought for dismissing the appeal.

CONCLUSION AND ANALYSIS:

24. The first contention raised by the learned counsel appearing for the appellant-Society is that the dismissal order was passed after obtaining the approval of the competent authority. Despite such approval being there, the E.A.T., as well as the learned Single Judge have held that there was no such approval. Before we delve upon this issue, the provisions of Rules of 2003, particularly, Rule No.3(1),(2) and (3) are to be examined, which read as below:

“3. The powers and functions of the officers of the Department shall be as follows:-

(1) **Commissioner-** the Commissioner shall have overall responsibility for the efficient and smooth functioning of the department. He shall review the functioning of the department keeping in view the administrative problems and introduce scientific measures for improving administration in the department. He shall exercise such powers as are necessary to implement the policies and programmes of the Government. He shall issue such general or special directions from time to time to the officers in charge of administration to attend the matters relating to their sections in accordance with the administrative

orders. The Commissioner may call any papers/file relating to any section and pass such orders, as he deems fit. The Commissioner may delegate such administrative powers to such officers as he considers necessary.

(2) **Director-** the Director shall have such powers and shall perform such functions as entrusted by the Commissioner for efficient and smooth functioning of the department. He shall assist the Commissioner in all administrative and academic matters.

(3) **Additional Director-** Additional Director shall have such powers and shall perform such functions as entrusted by the Commissioner. He will assist the Commissioner/Director in administrative and academic matters.”

25. It is not in dispute that the appellant-society was under grant-in-aid of the Department of the Collegiate Education. It is also not in dispute that respondent No.1 was admitted to the grant-in-aid since the date of his appointment. The Rule 24 of Rules of 2003, defines who are the 'Head of the Department'. It is worth to note that the Commissioner for Collegiate Education is having overall control. It is only if the Commissioner entrusts any powers, the Director or the Additional Director will have the powers.

26. Clause (B) of Rule 24 of the Rules of 2003, defines 'Controlling Authority' and such 'Controlling Authority' may be the Commissioner for Collegiate Education and the Director of Collegiate Education in case of Colleges, including Evening Colleges and Law Colleges. Therefore, it is the Commissioner for Collegiate Education, who is the Head of the Department. The powers of the Additional Director, as may be found from Sub-Rule 3 above, would receive power from the Commissioner. Unless there is an express delegation of the power, the Additional Director cannot act on his own. Therefore, the powers of the Additional Director necessarily flow from an express order that may be passed by the Commissioner. In the instant case, there is no material on record to indicate that such power had been delegated to the Additional Director.

27. The learned Single Judge has noticed in paragraph 26 of the impugned order that there was no such express delegation of the powers to the Additional Director and under Rule 32 of Rules of 2003, it is the Head of the Department, who is none other than the Commissioner for Collegiate Education, who can act under Rule 32 of Rules of 2003. Rule 32 reads as below:

“32. Nature of penalties:- One or more of the following penalties for good and efficient reasons and

as hereinafter provided may be imposed on the employees, namely.

- i. fine, in the case of peons and attenders only;
- ii. censure;
- iii. withholding of increments;
- iv. withholding of promotions;
- v. xxxx
- vi. xxxx
- vii. xxxx
- viii. compulsory retirement;
- ix. removal from service which shall not be disqualification for future employment;
- x. dismissal from service which shall ordinarily be a disqualification for future employment:

Provided that in the absence of special and adequate reasons to the contrary to the mentioned in the order of the disciplinary authority, no penalty other than those specified in clauses (vi) to (x) shall be imposed for an established charge of corruption:

Provided further that every order of private management regarding suspension, dismissal or removal from service, etc., shall be issued after prior approval by the Competent Authority which approved the appointment."

(emphasis supplied)

28. Further, Rule 33 of Rules of 2003 states that the Board of Management may impose any penalties specified under Rule 32 on any of the employees, which reads as below:

“33. Disciplinary Authorities: (1) The Board of Management may impose any of the penalties specified under Rule 32 on any employee.

(2) Without prejudice to the provision of sub-rule (1) but subject to the provisions of sub-rule (3)—

(a) the head of the institution may impose any of the penalties specified in clauses (i) and (ii) of Rule 32;

(b) the Board of Management may impose any of penalties specified in clauses (iii) to (v) of Rule 32.

(3) The Board of management shall be competent to impose penalties (i) to (x).

(4) Notwithstanding anything contained in these rules, **no penalty specified in clauses (vi) to (x) of Rule 32 shall be imposed by any authority lower than Appointing Authority.”**

(emphasis supplied)

29. Thus, it is evident that it was only the Commissioner who could have given approval for dismissal of respondent No.1. The records in the present case reveal that the ‘draft’ of the letter intimating such approval for dismissal was approved by

the Commissioner. It is not the final order which was approved, but it was only the draft. After the draft is approved, it was for the Commissioner to issue such approval. In the case on hand, the final approval was given by the Additional Director.

30. The judgment of this Court in ***B. K. Gopalakrishna v. The Managing Committee Bharatiya Samskriti Vidyapeetha and others***² by relying upon the judgment of the Madras High Court in the case of ***Ramasamy Naidu Vidyalayam/The Education Agency Vs. Rembert S. Packiam & Others***³ lays down that imposing penalty without the approval of the competent authority is not sustainable in law. We find that the learned Single Judge has rightly relied on the above judgment, and has affirmed the finding of the E.A.T., while discussing Issue No. 3. We concur with the said finding.

31. The second ground that was urged before us is that, when the enquiry was held fair and proper, the delay in payment of subsistence allowance cannot be a ground to prejudice the defence of the domestic inquiry.

² ILR 2009 KAR 3409

³ 2004 (5) SLR 311

32. It is pertinent to note that when the disciplinary enquiry was instituted, the question as to whether subsistence allowance was paid to the delinquent employee or not was not the subject matter of the inquiry. The inquiry was conducted in respect of the charges levelled against respondent No.1. The payment of the subsistence allowance to respondent No.1 was outside the scope and ambit of the disciplinary inquiry.

33. What was considered by the E.A.T., in its first order, which held the inquiry to be fair and proper, was only in respect of the procedure followed by the Enquiry Authority. It is pertinent to note that the E.A.T., need not have gone into the question *whether the disciplinary proceeding is vitiated for non-payment of the subsistence allowance?* What was considered by the E.A.T., which attained finality, was the manner in which the enquiry was conducted.

34. The learned Single Judge, while dealing with the point No.2 (paragraph 36), has considered this aspect in detail. It is pertinent to note that the subsistence allowance was not at all paid to respondent No.1 even though the enquiry had commenced. Respondent No.1 had to knock the doors of this Court in W.P.No.59888/2016 and then only the appellant-

Society paid the subsistence allowance to respondent No.1. This aspect has been discussed by the E.A.T., at length and by relying on the judgment in the case of **UCO Bank & Others v. Rajendra Shankar Shukla**⁴, it came to the conclusion that the enquiry was vitiated. In the above judgment of **UCO Bank** (supra), it was held as below:

“14. We were also little taken aback to learn from the learned counsel for Shukla that after his superannuation on 31-1-1999 Shukla was paid nothing during the pendency of the disciplinary inquiry. He was not paid his salary because he had superannuated. For some reason he was not paid his pension, perhaps because a departmental inquiry was pending against him. He was also not paid any subsistence allowance during the period that the disciplinary inquiry was pending and even thereafter till 30-6-1999. In other words, Shukla was made to face a financial crunch and presumably, he did not have a fair opportunity of defending himself.

15. An employee is entitled to subsistence allowance during an inquiry pending against him or her but if that employee is starved of finances by zero payment, it would be unreasonable to expect the employee to meaningfully participate in a departmental inquiry. Access to justice is a valuable right available to every person, even to a criminal, and indeed free legal representation is provided even to a criminal. In the case of a departmental inquiry, the delinquent is at best guilty of a misconduct but that is no ground to deny access to pension (wherever applicable) or subsistence

⁴ (2018) 14 SCC 92

allowance (wherever applicable). As far as Shukla is concerned he was denied his pension as well as subsistence allowance which prevented him from effectively participating in the disciplinary inquiry. On this ground as well, the proceedings against Shukla are vitiated.”

35. The E.A.T., also notices that respondent No.1 did not engage a counsel for himself and he had himself conducted the case as may be seen from the records of the inquiry proceedings. Therefore, in view of the authoritative decision by the Apex Court, the contention that the non-payment of the subsistence allowance cannot vitiate the enquiry proceedings cannot be sustained. The learned Single Judge has dealt this aspect and observed that failure to provide timely subsistence allowance amounts to a serious lapse on the part of the management and the disciplinary authority. It is apposite to note that the E.A.T., had framed a specific issue in issue No.3 and as such, it dealt with it separately from issue No.1 and 2. Thus, we do not find any substance in the contention of the learned counsel for the appellant that the E.A.T., could not have gone into the said question once it has held that the inquiry is fair and proper and had attained finality.

36. The third ground that is urged before us by the learned Senior Counsel appearing for the appellant is that once the enquiry is held fair and proper, the E.A.T., should not interfere with the decision taken but it can only look into the decision making process. It is pertinent to note that the disciplinary inquiry conducted by the appellant against the respondent No.1 ended in finding guilt of respondent No.1. Such finding and the punishment imposed was questioned before the E.A.T., and the E.A.T., went into the same and framed the issues to be considered. It found that the procedure followed for the disciplinary inquiry is proper and correct, but the finding of the Enquiry Officer was interdicted by it. The non-payment of the subsistence allowance during the enquiry has also vitiated the enquiry. The final order of the dismissal was found to be too harsh and disproportionate to the charges levelled. It was not proved by the appellant-society that respondent No.1 was working in dual employment.

37. It is worth to note that the learned Senior counsel appearing for the appellant-society has vehemently argued that respondent No.1 was in dual employment. This aspect has been considered by the E.A.T., as well as the learned Single Judge at length.

38. In this regard we note that :

- i. Firstly, the witnesses who appeared before the Inquiry officer had deposed that it is not a salary which was paid to the respondent No.1 but it was an honorarium. Evidently, the E.A.T., has noticed that such honorarium paid to the respondent No.1 was a subject matter of writ petition in which the respondent No.1 had sought for provisional payment of the pension subject to the outcome of the disciplinary inquiry. This court in W.P.No.8094/2020 had directed the respondent No.1 to deposit the honorarium received and later, the Division Bench had set aside the order of the learned Single Judge in W.A.No.64/2021. The amount was ordered to be refunded.
- ii. Secondly, the E.A.T., also comes to the conclusion that it cannot be said to be a dual employment. The charges framed against respondent No.1 would reveal that there was no such charge of dual employment framed against him. The question was whether he had received salaries from both the institutions. Evidently, it was not a salary but it was an honorarium for an additional work done by

him without hindrance to his work at the appellant-society. The witnesses examined on behalf of the management had deposed that there was no hindrance to the work at the appellant-society. They had stated that they have never issued any memo for not performing his duty at the appellant-society and they had not noticed any such deficiency. The honorarium received from Tumkur University for the additional work done by him could not be treated as a salary.

- iii. Thirdly, it is pertinent to note that the respondent No.1 had informed the Administrator of the appellant-society about the request made by the Vice-Chancellor of Tumkur University. It is evident that the Vice-Chancellor of the Tumkur University had made a request to the Administrator of the appellant-society and the Administrator had referred the matter to 'SGL in commerce' on 09.08.2006. It is not known what happened to such endorsement dated 09.08.2006 by the Administrator of the appellant-society. The decision taken was not communicated to the respondent No.1. Thus, it is evident that the appellant-society was well within the knowledge that the respondent No.1 had sought

permission to look after the MBA Department of the Tumkur University after about 2.00 p.m., and completion of the work at the appellant-society. It is unfortunate that when the university had sought the assistance of an employee of the appellant-society, the appellant-society instead of feeling proud to send its employee to assist the university, has initiated the disciplinary proceedings against him. This act smells of victimization and discrimination.

39. In view of the categorical finding by the E.A.T., as well as the learned Single Judge that the honorarium cannot be equated as a salary, the argument of the learned counsel for the appellant-society cannot be accepted. We find no infirmity in the judgment of the E.A.T., and the order passed by the learned Single Judge. We cannot accept the contention of the learned Senior counsel appearing for the appellant-society that once the E.A.T., holds that the enquiry as fair and proper, the merits of finding by the Enquiry Officer can be gone into.

40. The peculiar circumstances which are highlighted by the learned Single Judge as well as the E.A.T., show that it was a fit case where the merits of the case has to be considered. In

normal circumstances, the Courts would not go into the merits of the case if the enquiry is found to be fair and proper. But in the case on hand, the material that was produced before the Enquiry Officer showed that the conclusions of the Enquiry Officer were perverse and unsustainable. That apart it demonstrated discrimination and victimization. Under these circumstances, we are unable to accept the contention of the learned Senior counsel appearing for the appellant-society that the employee who committed grave misconduct of dual employment has been let off with premium and the plea of discrimination was unwarranted. This is a clear case where the appellant-society has victimized respondent No. 1 and without any justification, he has been dismissed from service.

41. The last point that is urged by learned Senior Counsel appearing for the appellant-Society is that even if the Court feels that the penalty order is harsh, the Court shall direct the Management to reconsider the decision. He argues that the E.A.T., shall not interfere with the penalty order unless it is shockingly disproportionate to the gravity of the misconduct proved.

42. We are unable to accept this argument of the learned Senior Counsel for the appellant. It is pertinent to note that in an earlier order dated 25.04.2019 concerning Issue No.1 and 2, the E.A.T., had held that the Enquiry is fair and proper. It had not gone into the merits of the case. It was considering only the Issue Nos.1 and 2. It may be noted that the Issue Nos.3 to 7 were not considered by it. Even if we hold that the Issue Nos.1 and 2 had attained finality, the Issue No.3 concerning the dismissal being vitiated by non-approval by the Competent Authority would hold good. Therefore, notwithstanding the Issue Nos.1 and 2 being held in favour of the appellant herein, the finding on Issue No.3 would not come to the aid of appellant.

43. Moreover, when Issue No.4 was there, the E.A.T., in its order dated 25.04.2019 could not have decided that aspect. Non payment of the subsistence allowance was not the focal point of the discussion of the E.A.T., while dealing with issue Nos.1 and 2. There were specific issues and therefore, it cannot be held that those issues were covered by the finding on Issue Nos.1 and 2 by the E.A.T. The appellant-society has not raised that aspect before the E.A.T, that along with Issue Nos. 1 and 2, Issue No. 4 also to be considered. In that view of the matter,

we are unable to accept this argument of the learned counsel for the appellant-society.

44. Another aspect urged by the learned Senior counsel for the appellant-society is about the benefits that would accrue on account of reinstatement. This is a peculiar case wherein the respondent No.1 was targeted and discriminated against the other employees, who had worked at Tumkur University. Simply because the other employees have admitted their guilt, the appellant-society has imposed a minor penalty of withholding increment for one year. The gravity of the misconduct by the respondent No.1 was not sufficient enough to impose a penalty of dismissal from service. It is evident that when the respondent No.1 sought permission from the appellant-society to shoulder his responsibility at the MBA Department of Tumkur University, the appellant-society had kept mum. It had not responded to the letter given by the respondent No.1, wherein he had referred to a communication by the Vice-Chancellor of the University. It appears that there was a communication from the Vice-Chancellor of the University to the appellant-society. Since this aspect is not denied anywhere, the appellant-society has not disclosed as to what happened to the endorsement by the Administrator. It was necessary on the part of the appellant-

society to disclose about the communication made by the respondent No.1 and what action had been taken on it from 2006. For about 10 years, the appellant-society had not made any utterance about the respondent No.1 working in the Tumkur University. It is for this reason, we concur with the learned EAT, and the learned Single Judge that the respondent No.1 was singled out and he was victimized.

45. Therefore, this is a fit case where respondent No.1 is entitled for the back wages and all such other benefits that would accrue on account of his reinstatement. We do not consider that respondent No.1 shouldering the responsibility at Tumkur University on honorary bases is a misconduct, which warranted dismissal from service. Obviously, the charges were raised after a decade and the Inquiry Officer has rejected one of the charges, which was alleged to have been committed in the year 1988. Thus, the conduct of the appellant-Society would indicate vindictiveness. Hence, we do not find any merit in the contention of the appellant-society so far as it relates to the back wages and other benefits are concerned. Thus, the appeal is devoid of any merits and as such, it is ***dismissed***.

46. We refrain from imposing any costs on the appellant-society since it is rendering service in imparting the education.

47. In view of disposal of the appeal, pending interlocutory applications, if any, are disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C M JOSHI)
JUDGE**

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