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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 8th October, 2018
Pronounced on: 25th October, 2018

+ W.P.(C) 8911/2011 & CM APPL. 20174/2011

SANGEETA THAPAR Petitioner
Through: Mr. Atul Bandhu, Adv.

versus

DIRECTOR EDUCATION AND ANR ... Respondents
Through: Ms. Aditi Gupta, Adv. for
Ms. Latika Chaudhary, Adv. for
R-1
Mr. P.D. Gupta, Sr. Adv. with
Mr. Abhishek Gupta, Adv. for
R-2

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T

1. Pursuant to the disciplinary proceedings conducted against her, the services of the petitioner, a teacher in the Respondent No. 2-School (hereinafter referred to as “the School”) were terminated, *vide* order dated 25th April, 2003, passed by the Principal of the School.

2. Her appeal, against the said order of termination, was also dismissed, by the Delhi School Tribunal (hereinafter referred to as “learned Tribunal”) *vide* order dated 15th July, 2011.

3. The petitioner has, therefore, approached this Court by means of the present writ petition, praying for issuance of writ of *certiorari*, quashing the proceedings against her in their entirety, commencing with the charge-sheet, dated 18th December, 2001 and proceeding, via inquiry report, dated 1st February, 2002, to the order, dated 25th April, 2003 of the Disciplinary Authority and order dated 15th July, 2011, of the Appellate Authority i.e. the learned Tribunal.

The Charge-Sheet

4. The charge-sheet, dated 18th December, 2001, issued to the petitioner, contained five Article of Charges. Article-I was found, by the Inquiry Officer (hereinafter referred to as “IO”) not to be proved, and, the said order having been accepted by the disciplinary authority, and the Appellate Authority, the said Article of Charge need not burden this judgment. The essence of the remaining four Articles of Charge may be extracted as under:

(i) Article-II alleged that the Petitioner had lodged a false complaint against the Principal of the School, with the Punjabi Bagh Police Station, in which she referred to a visit, to her house, by two teachers, who, allegedly, asked the petitioner to have herself transferred to the Pitampura School, or to face dire consequences. However, the Article of Charge alleged, inquiry and investigation, by the Police, revealed that the complaint of the petitioner was baseless. As such, it was alleged that “by lodging false complaint with the Police, Smt. Sangeeta Thapar

has been guilty of conduct involving moral turpitude and failed to show due respect to the constituted authority of the School in violation of Rule 123(1)(a)(xvii) and 123(1)(c)(ii) of the Delhi School Education Rules, 1973 (hereinafter referred to as “DSE Rules”)”.

(ii) Article-III of the Articles of Charge against the petitioner alleged that the petitioner had, as in-charge of School Bus No. 20, failed to board five students in the bus, leaving them playing on the school ground, on 21st February, 2000, though she marked these students as present in the Bus Register. As such, the petitioner was charged with having knowingly and willfully neglected an urgent and important duty connected with the safety of the School students, which was required to be accorded paramount importance, as per orders issued by the Supreme Court and directions of the Directorate of Education (hereinafter referred to as “DOE”). The said five students, it was alleged, had, later, to be sent home, from the school, by taxi, which the school had to arrange. This act of the petitioner, it was alleged, amounted to knowing and wilful neglect of duty, by her, in violation of Rule 123(1)(i) of the DSE Rules.

(iv) Article-IV alleged that the petitioner had, on 16th September, 1999, refused to take bus attendance and to sign her duty roster, as directed by the transport in-charge of the School. It was also alleged, in the said Article of Charge, that she misbehaved with another teacher of the School, namely

Yashoda Bisht, by using abusive language and derogatory remarks. This, it was alleged, amounted to violation, on the part of the petitioner, to carry out work connected with the duty assigned to her, as well as misbehavior towards another teacher of the School, thereby contravening Rules 123(1)(a)(xviii) and 123 (1)(c)(i) of the DSE Rules.

(iv) Article-V of the Articles of Charge alleged that the petitioner had used rude and indecorous language in the representations addressed by her to the Principal of the School/Manager. The Article of Charge may be reproduced, *in extenso*, thus:

“Smt. Sangeeta Thapar made representations to the Principal/Manager. Her representations were not for the redressal of any bonafide grievance and the language used in the representations was rude and indecorous. In her representation dated 23/2/2000 addressed to the Principal, she used the words “(1) I am a married lady and also in a grave danger of my self respect from you, Sh. M.D. Gupta”. “(2) You Sh. M.D. Gupta have earlier made an attempt to outrage my modesty and self respect”. “(3) I will take this issue of gender bias and harassment on the ground of my being a female to the Higher Education Authorities, Court of Law, National Commission for Women and also if needed to the Press.” “(4) I am very well able to understand the illegal designs in your mind.”

In her another representation dated 20/9/01 addressed to the Manager and copies to (I) Director Education (2) National Women Commission (N.C.W.) (3) Education Minister of Delhi she used the words “(1) However, your conduct reflects your intention to settle the scores with me connivance with the Principal”. “(2) I still maintain that I have been subjected to harassment on sexual ground by Mr. M.D.Gupta”. The above

mentioned words used by Smt. Sangeeta Thapar in her representations were found rude and indecorous. Thus she violated rule 123(2) (c). By this conduct she failed to show due respect to the constituted authority violating rule 123(1)(c)(ii) of the Rules.”

The petitioner’s response

5. *Vide* communication dated 15th January, 2002, the petitioner replied to the aforementioned charge-sheet dated 18th December, 2001.

6. The submissions of the petitioner, in response to the various Articles of Charge, contained in the charge-sheet, may be set out, in précis, thus :

(i) Regarding Article-I, the petitioner denied having filed any false complaint at Police Station, Punjabi Bagh. She maintained that the two teachers, i.e. Ms. Usha Sharma and Ms. Seema Sood, had come to her with a “peace proposal”, requesting her to accept a transfer to the Pitampura branch of the School, stating that, if she did not do so, the Principal would take action against her, in revenge. She asserted that it was in these circumstances that she approached the police, as her complaint, against the Principal M.D.Gupta, for sexual harassment, was already pending. She further submitted that it was her legal right to approach the police authorities, and that she could not be subjected to disciplinary proceedings on that count. She maintained, once again, that her complaint was true, and that she had not levelled any false allegations.

(ii) Regarding Article-III, the petitioner denied having willfully neglected her duties. She pointed out that the charge-sheet did not mention either the date when the incident took place, or the names of the children who, allegedly, had been left in the school. Inasmuch as there has been some debate, during arguments at the bar, as to whether the petitioner had, or had not, categorically denied the allegations against her client, her response, to Article-III of the Articles of Charge, as contained in her aforementioned reply, dated 15th January, 2002 merits reproduction, *in extenso*, thus :

“Allegations in Article III are incorrect and denied. It is denied that I willfully neglected the duty. The Authority has failed to mention incident, the date and the children who were left. The charge is defective, vague and non-specific hence *denied*. I shall reply to the charge only when it comes within the four corners of the rules. However it is submitted that school is running short of number of buses in proportion to the number of students. One day the bus which picks up the students in other round got inordinately delayed. As per the instructions the students cannot be asked to sit in the room and accordingly the students were brought to the ground. The number of students playing the ground was more than 50. I was on the family way. I took the attendance of the students and brought them to ground I was controlling 31 students. Suddenly two buses of different routes simultaneously arrived at the spot. There arose some confusion *but I boarded the students*. However next day I was informed about the case. Also I did not believe it but I tendered the explanation to it. Even today I do not understand that how and why the students *who were properly boarded on the bus*, got down and were found playing in the ground. I have been teaching in the school for the last more than a decade. The students have been missing their bus and they are being sent to the home by another

transport. I wish to emphasize that in discharging the duties assigned to me I have neither been negligent nor careless. Although *I refute that any such type of incident ever happened* but if it is so, this was not negligent act but a conspiracy. The allegation is “willfully neglecting the duties” which I deny as wrong and incorrect.”

(Emphasis supplied)

(iii) The petitioner similarly, denied Article-IV of the Articles of Charge against her, stating that she was unable to recollect any altercation with any teacher. She categorically denied having ever misbehaved with Ms. Yashoda Bisht. She maintained that she had never used any bad words or abusive language, or quarreled either with Ms. Yashoda Bisht or any of her other colleagues.

(iv) Article-IV of the Articles of Charge against her was also denied by the petitioner. She pointed out that no complaint had ever been made in this regard.

7. Consequent to the filing of her response dated 15th January, 2002, to the charge-sheet, enquiry proceedings commenced, against the petitioner, culminating in the submission, by the Inquiry Officer (hereinafter referred to as ‘IO’) of his inquiry report dated 1st February, 2002, in which he found Article-I, of the Articles of Charge against the petitioner, not to have been proved, and all other Articles of Charge to have been proved. The observations and findings of the IO, on each Article of Charge, may be summarised thus :

(i) Article-I of the Articles of Charge against the petitioner, as already observed hereinabove, was found, by the IO, not to have been proved.

(ii) On Article-II, the IO relied on the findings of the two teachers, who were alleged, by the petitioner, to have visited her premises, namely, Ms. Usha Sharma and Ms. Simmi Sood. The said teachers confirmed that, consequent to the complaint lodged by the petitioner, police personnel had come to the School and made enquiries from them. They categorically denied ever having visited the petitioner, or having asked her to get herself transferred to any other School. They, in fact, maintained that, on the said date, i.e. 2nd March, 2000, they were busy elsewhere, attending the Annual Day Cultural programme of the School. This assertion was maintained, by the said teachers, in their respective cross-examinations. Relying on the said statements, the IO held that the charge of having made false allegations against her own colleagues, and filing a false complaint in the police station, stood proved beyond doubt against the petitioner.

(iii) With regard to Article-III, the IO noted that the respondent had produced three witnesses, namely, Ms. S. Narang, Assistant Teacher, Mr. M.K.Pathak, Transport Incharge and Mrs. Ranjana Singh, Supervisor. It was noticed that Mr. Pathak confirmed, in his statement, on 22nd February, 2000, that five students, who were to travel by Bus No. 20, were left in the

school playground, and that, at that time, the petitioner was the Bus Incharge. As a result thereof, Mr. Pathak deposed that he had to arrange for a taxi to take the said children home. The fact of the petitioner's having left five students in the School, without boarding them on Bus Route No. 20, was also confirmed by the other two witnesses, namely, Ms. S. Narang and Ms. Sadhna. Observing that the petitioner had not furnished any explanation for the five students, who were in her charge, being left unboarded in the bus, the IO opined that Article-III of the Articles of Charge against the petitioner stood proved.

(iv) Regarding Article-IV, reliance had been placed, by the Management, on the statements of Ms. Kamlesh and Ms. Baby, who stated that they had approached the petitioner for obtaining her signature on the register for Bus No. 20 on 16th September, 1999, but that the petitioner refused to sign the register, stating that she would speak to Mr. Pathak in that regard. As regards the charge of using abusive language against Ms. Yashoda Bisht, the IO relied on letter dated 14th December, 1999, purportedly written by Ms. Bisht to the Principal, which was a listed document, in which Ms. Bisht had provided particulars of the misbehaviour and abusive language allegedly used by the petitioner against her on 9th December, 1999. At the same time, the IO acknowledged that Ms. Bisht could not be produced as a witness, as she had left the School and refused to attend the proceedings. In view thereof, the IO held Article-IV of the Articles of Charge against the Petitioner also to be proved.

(v) Regarding Article-V, the IO observed that the writing of the letters, addressed by the petitioner to the Principal and manager of the School, established that the petitioner was using rude and intemperate language, unbecoming of a teacher, and reflected lack of due respect to her superiors. The findings of the IO, on this Article of Charge, may be reproduced thus:

“As regards charge V, the management had mainly relied on the documents i.e. the letter written by Mrs. Sangeeta Thapar (C.O.) to the Principal and to the Manager of the school. Definitely the writing of these letters which were a part of the chargesheet clearly establish that the C.O. was using rude and language unbecoming as teacher and without due respect to the superiors. In her letters addressed to Manager of the school, C.O. has written “However your conduct reflects your contention to settle the score with me in connivance with the Principal.” In another letter dated 23-2-2000 addressed to the Principal, the C.O. has stated “I am a married lady and also in a grave danger of my self respect from you, Sh. M.D. Gupta.” At another point in this letter she had stated “You Sh. M.D. Gupta have earlier made an attempt to outrage my modesty and self respect”... I will take this issue of gender bias and harassment on the ground of my being a female to the Higher Education Authorities, Court of Law, National Commission for Women and also if needed to the Press”. The C.O. nowhere has denied writing this letter. In so far as using language which is unbecoming of a teacher definitely the documents establishing the guilt on her part. The charge is proved.”

8. In conclusion, the IO observed that the entire inquiry proceedings had taken 19 sittings, and that the witnesses cited by the petitioner, for her defence, had refused to appear in the inquiry proceedings. It was also observed that the petitioner, who wanted to

examine herself, refused to have her statement recorded on 16th October, 2002, and requested for an adjournment, which, in the opinion of the IO, was not justified.

9. In view of the above, the IO, as already noted hereinabove, held Articles II, III, IV and V of the Articles of Charge against the petitioner to have been proved, and Article-I not proved.

10. The aforementioned inquiry report, of the IO, was forwarded to the petitioner, who submitted her representation thereagainst. ‘

11. This culminated in an order, dated 25th April, 2003, passed by the Principal of the School, as the Disciplinary Authority, which read thus:

“The Disciplinary Authority was constituted in pursuance of rule 118 DSER 1973 to take cognizance of the charges against Mrs Sangeeta Thapar, Assistant Teacher (under suspension) S.D. Public School, East Punjabi Bagh, New Delhi. The Disciplinary Authority after having processed the proceedings in conformity with the lines of action laid out under Rule 120 DSER 1973 appointed the Inquiry Officer to enquire into the charge-sheet served upon Mrs. Sangeeta Thapar. Inquiry Report submitted by the Inquiry Officer was considered together with the representation from Mrs. Sangeeta Thapar, Asstt. Teacher (under suspension) by the Disciplinary Authority and resolved to confirm to impose major penalty i.e. Removal from Service which will not be a disqualification for future employment in a recognized private school.

The said decision of Disciplinary Authority also has the confirmation of the Managing Committee of the school. The matter was referred to the Department of Education for seeking approval of the Competent authority in accordance with subsection (2) of section 8 of DSEA-73. The Department of Education after having examined the case and communicated the approval of the Competent Authority vide

letter No 279 dated 24/4/2003 to impose major penalty i.e. Removal from service on Mrs. Sangeeta Thapar, Asstt. Teacher (under suspension).

In pursuance thereof Mrs. Sangeeta Thapar, Asst. Teacher (under suspension) is removed from service from 25/4/2003 (forenoon).”

12. The petitioner appealed, against the said order, dated 25th April, 2003, of the Disciplinary Authority, to the learned Tribunal.

13. *Vide* the impugned order dated 15th July, 2011, the learned Tribunal dismissed the appeal of the petitioner.

14. In doing so, the learned Tribunal returned the following findings:

(i) It was a settled principle, in law, that interference, with conclusions and findings arrived at pursuant to disciplinary proceedings conducted in accordance with the law, had to be restricted to the rarest cases. Once a domestic tribunal came to a particular conclusion, based on evidence, in normal circumstances, appellate tribunals and courts were not at liberty to substitute their substantive opinion in place of opinion arrived at by the domestic tribunal. Reliance was placed for this purpose, on the judgment *State of Haryana v. Rattan Singh, (1977) 2 SCC 491* and *Martin Burn Ltd v. R.N.Banerjee, 1958 SCR 514*.

(ii) The learned Tribunal observed that the findings of the Inquiry Officer were wholesome and not warranting of interference and that, on the basis thereof, the penalty of removal from service, as imposed on the petitioner, did not deserve interference.

15. It is against these findings, and this order, that the petitioner has moved this Court by means of the present proceedings.

16. Mr. Atul Bandhu, appearing for the petitioner, advances the following submissions in support of his client:

(i) Mr. Bandhu denies, first, the allegation that the petitioner was entrusted with bus duty on Bus Route No. 20 at all. He submits that the duty of the petitioner was on Bus Route No. 4. He draws attention to the fact that the Bus Register, though requisitioned by the petitioner, was not brought by the respondent, and submits that this was deliberate, as it would have indicated that the petitioner was never in-charge of Bus Route No. 20. He also invites my attention, in this regard, to the duty chart of the bus routes, which indicated that the name of the petitioner had been interpolated against Bus Route No. 20, by scoring out the name of another teacher, which was originally reflected against the said bus route.

(ii) Mr. Bandhu further submits that the evidence available was entirely insufficient to confirm an allegation that five children, who were supposed to be in the custody of the

petitioner, had been left in the School, without boarding them on Bus Route No. 20. In his submission, the depositions, to the said effect, by Mr. Pathak as well as Mr. Narang, were merely in the nature of hearsay. He draws my attention to the fact that Mr. Pathak was only reiterating what had been told to him by Ms. Narang and Ms. Narang, for her part, confessed that she did not even know the names of the students who had been left behind.

(iii) As regards Article-II of the Articles of Charge against the petitioner, Mr. Bandhu submits that the police report, on which reliance was placed, was only to the effect that no cognizable offence was reflected therein. In any event, he submits, the allegation against the petitioner, proceeding on the basis of the said facts, was of moral turpitude or violation of Rule 123(1)(a)(xvii) and (xviii) of the DSE Rules. He submits that none of these allegations could be leveled against the petitioner even if the facts stated in Article-II of the Articles of Charge against the petitioner were treated as correct.

(iv) As regards Article-IV, Mr. Bandhu submits that the allegations, in the said Article of Charge, to the effect that the petitioner had refused to sign the bus register, was also incorrect on facts. He seeks to point out that the evidence of the two teachers, who were cited as witnesses in this regard, was also only to the effect that the petitioner had stated that she would speak to Mr. Thapar before signing the register. As such, he submits that it could not be alleged that the petitioner had

refused, outright, to sign the attendance register. In any event, he submits that, even if the petitioner were to be presumed to have refused to sign the attendance register on one occasion, that could hardly constitute a basis to allege misconduct on her part.

(v) The allegation of the petitioner having used abusive language against Ms. Yashoda Bisht, Mr. Bandhu would submit, was not supported by any evidence whatsoever. Ms. Bisht, he points out, could not be brought into the witness box. Even the letter, of Ms. Bisht, on which reliance was placed by the IO, Mr. Bandhu submits, was not exhibited in the proceedings before the learned Tribunal.

(vi) As regards Article-V of the Articles of Charge against the petitioner, Mr. Bandhu submits that the language, used by the petitioner in her representations, as reproduced by the IO in his findings regarding the said Article of Charge, could hardly be regarded as intemperate or such as to allege commission of misconduct on the part of the petitioner.

(vii) Mr. Bandhu relies, to support his submission, that his client could not be held to have committed any misconduct, on the judgment of the Supreme Court in *U.O.I. v. J.Ahmed, (1979) 2 SCC 286* and *Ravi Yashwant Bhoir v. District Collector Raigad, (2012) 4 SCC 407*.

(viii) Mr. Bandhu submits, finally, that the inquiry, held against his client, was also vitiated by fatal procedural flaws, particularly in not allowing his client to lead her own evidence in her support. He draws my attention to the order sheet dated 14th September, 2002, in which the petitioner had been directed to send the list of witnesses and list of documents, which she wanted to produce in support of her case, on or before 30th September, 2002. The order further required the petitioner to appear on 16th October, 2002 at 02:30 p.m. along with her defence witnesses “for recording the statement of the defence witnesses”. Mr. Bandhu would submit, therefore, that the proceedings were fixed, on 16th October, 2002, only for recording the statement of the petitioner’s defence witnesses, and for her own examination. As such, even if the defence witnesses of the petitioner refused to turn up, Mr. Bandhu would submit that the IO was not justified in directing the petitioner to record her own statement on the said date and refusing her an adjournment for the said purpose. This, in Mr. Bandhu’s submission, constitutes a fatal infraction of the principles of natural justice.

17. Mr. P.D.Gupta, learned Senior counsel appearing for the School, submitted thus:

(i) Insofar as Article-II, of the Articles of Charge, against the petitioner, was concerned, Mr. Gupta submits that the alleged acts of the petitioner amounted to “misbehavior towards the

teacher” within the meaning of Rule 123(1)(a)(xvii) of the DSE Rules. As such, he submits that the said provisions had been rightly invoked, by the School, against the petitioner. He referred to the report of the Police, which confirmed that the matter was “external” and that the complaint against the Principal was found to be baseless. The report further noted that no cognizable offence had been made out and no action was called for in this regard. Accordingly, the complaint was filed. He also drew my attention to the letter of Ms. Usha Sharma, one of the teachers, who was alleged, by the petitioner, to have visited her residence, which referred to her astonishment, on finding the police visiting her residence and conveying, to her, the allegations of the petitioner. The letter also noted that, on 2nd March, 2000, the Principal had sent Ms. Usha Sharma with the team of the music faculty for recording of the Annual Day programme at Rajender Nagar. Mr. Gupta would submit that making of a false and baseless complaint against the Principal and teachers of the School was an act of gross indiscipline, and clearly amounted to “misbehavior”, giving the word its widest connotation. Such acts, he would submit, could not be condoned and deserved to be visited with the most extreme of penalties.

(ii) Referring, thereafter, to Article-III of the Articles of Charge against the petitioner, viz. of leaving five students in the School without boarding them on Bus No. 20, Mr. Gupta sought to submit that para III of the reply, of the petitioner, to the Articles of Charge against her, which already stands extracted hereinabove, amounted to an admission, by the petitioner, of the

allegation contained in the said Article of Charge. He also pointed out that the allegation was supported by the statements of Mr. M.K. Pathak, Transport In-charge and Ms. S. Narang. He pointed out that Mr. Pathak had confirmed that he was informed, by Ms. Narang and Ms. Sadhana, that the petitioner was assigned the duty of Bus Route No. 20 on 22nd February, 2000, and that she had left five students unboarded on the Bus, playing in the School. He also referred to the statement of Ms. Narang, who deposed, in her examination-in-chief before the IO, thus:

“... I was on rotational duty in the month of Feb 2000. Five students of bus no. 20 were found playing in the ground as their bus had already left.

The students belong to II and III classes. Parents of the students were contacted on telephone and they were not available, hence on the advice of the tpt I/c the students were sent by taxi. The teachers on rotational duty have to check whether all the students have left by bus and if any student is left out they were to be transported safely to their homes.

The students came to us and they said bus had already gone and enquired about the bus no and bus no was 20. We asked about the teacher I/C and they told us the teacher incharge was Mrs. Sangeeta Thapar.

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I joined the school in 13 Feb 1986. I teach social studies in Junior classes IV & V. I was on rotational duty and sitting on the reception. Mrs Sadhana Sachdev was with me. She was on rotational duty. The teachers on rotational duty see that if any discrepancy is there, try to manage it and inform the tpt i/c. Exact date I do not remember it was Feb 2000. We talk to the parents on the telephone but they were not available as they might have gone to pick up children at their various bus

stops. After departure of the bus after 2:00 p.m. I tried to contact the parents. All the students simultaneously spoke I did not speak to any particular student. I do not know the names of the students but they told us that their bus was Route no 20. Myself and co-teacher had telephonic talk to the parents of the students none were available. Now, I don't remember. At that time a co-teacher wrote an application to inform the authority about those students who were left. Now, I do not know how many of them were girls and how many were boys. When none was available on the telephone we talk to the tpt I/c Mr M.K. Pathak, then he managed to call a taxi and the students were sent in that taxi. We left the school after the taxi had gone. Taxi – it was a cab. The application was written by Mrs Sadhana Sachdeva on the reception. The tpt I/c told us to inform in writing. The application was handed to the tpt I/c.

None of the parents came to the school. The rotational duty starts around 1:45 p.m. and ends around 2:45 p.m. The taxi left at about 2:35 p.m. I do not know the trip but it was bus no. 20. It is true that I called up the parents of the children.”

He pointed out that Mr. Pathak had reiterated the allegation in his statement dated 7th September, 2002. Mr. Gupta also placed reliance, in this regard, on the communication at page 92 of the record of the Tribunal, which was signed by Ms. Narang and Ms. Sadhana and addressed to the Principal of the School, which named the five students who had been left in the School as they were playing in the ground. This letter, he pointed out, was exhibited by Ms. Narang before the learned Tribunal and was not denied by the petitioner. Mr. Gupta also relied on the statement of Ms. Ranjana Singh, given on 25th June, 2002, in which she, too, deposed that, on 21st February, 2000, five students had been left in the school, without boarding them on

Bus Route No. 20. She admitted not knowing the names of the students, and to not remembering the exact classes to which they belonged, though, she stated, they probably belonged to Classes II and III. She also referred to the reply, purportedly given by the petitioner, in this regard, treating it as a confession of guilt.

(iii) Proceeding, thereafter, to Article-IV of the Articles of Charge against the petitioner, Mr. Gupta merely relied on the findings of the IO, stating that they did not call for any interference.

(iv) On the petitioner's submission that there had been a violation of principles of natural justice, it was pointed out, by Mr. Gupta, that the proceedings had continued over 19 sittings, and that the witnesses whose evidence the petitioner chose to lead, in her evidence, were unwilling to join the proceedings. Insofar the petitioner was concerned, Mr. Gupta highlighted that, though she was asked to have her statement recorded on 16th October, 2002, she refused to do so. At the same time, he submitted, no infraction of principles of natural justice had occurred, as, despite the affidavit-in-evidence, of the petitioner, not having been subjected to cross-examination, the affidavit was accepted *in toto* and the contentions thereon discussed by the IO while assessing the evidence before him.

(v) In conclusion, Mr. Gupta submits that the views of the IO, Disciplinary Authority and the learned Tribunal, being both

possible and plausible, this Court ought not to interfere therewith. He also highlighted, while concluding his arguments, the fact that 16 years have passed since the termination of the petitioner from service, and that, in the interregnum, there has been complete loss of confidence between the petitioner and the School, so that it would not be in the interests of anyone to direct her reinstatement in service at this stage of time.

18. Analysis

18.1 Insofar as the impugned order of the DST is concerned, this Court is required to analyse the susceptibility, of the said order to judicial review upon two touchstones. Firstly, it has to be examined whether, in holding that the Charges II to V against the petitioner stood proved and that the authorities below had not erred in this regard, the learned Tribunal could be held to have arrived at a finding which would sustain in finding or in law. Secondly, this Court would be required to examine whether any case, for interference with the quantum of punishment, awarded to the petitioner, could be said to exist.

18.2 In doing so, this Court has to be mindful of the fact that the scope of judicial review, against findings returned consequent on disciplinary proceedings which are found to have been conducted and concluded in accordance with the principles of natural justice and fair play, is extremely limited. The court is proscribed from reanalyzing the evidence, or even from examining whether the evidence was

sufficient to sustain the findings arrived at. Classically expressed, the function of the court is only to ascertain that the procedure adopted, in arriving at such finding, is not vitiated for any reason, and that the findings are not such as would not commend themselves to any reasonable person, conversant with the facts and the law on the subject. If, of course, the findings are perverse, or even such as would normally not be arrived at, by a reasonably minded person, conversant with the facts, interference therewith, in judicial review, would not only be permissible but would be essential. Principally, it must be remembered that the writ court does not exercise appellate jurisdiction over the findings of the authorities below, if the findings are arrived at in a manner which is tolerable in law.

18.3 This aspect is underscored where the employee concerned is a teacher or a Principal in a school or institution, dealing with children of tender age. The court has to keep in mind the fact that young children cannot be left in the custody of teachers who are lackadaisical in their working, or do not maintain requisite standards of care or caution while dealing with them. Such children are not in a position to look after themselves, and the duty of a teacher is extremely onerous. Any let-up, in performance of such duty, is to be viewed seriously, inasmuch it is not that the teacher who is the main stakeholder in the entire transaction, but the students, with respect to whom the teacher is alleged not to have exercised the requisite degree of care and caution. Of course, this would be always subject to the allegations against the teacher being proved in a manner known to law, and by maintaining the requisite standard in that regard, which

are well understood and stand, one may say, fossilized, as it were, in our jurisprudence.

18.4 While, thus, reiterating the limitations on the scope of judicial review, with findings arrived at, consequent to disciplinary proceedings, or even with the punishment imposed on the basis thereof, especially where teachers and schools are concerned, it is also essential to bear, in mind, the harsh reality that termination, removal, or dismissal, from service, calls, even in itself, for an approach, from the court, which is *sui generis*. To be decapitated, from one's sole means of livelihood, is undoubtedly akin to a civil death, and the trauma resulting therefrom is personal, social and professional in equal measure. An administrative authority is, therefore, required, prior to taking a decision to terminate the vocational link between itself, and its employee, exercise the highest degree of caution and circumspection. It is only where continuation, with the services of the employee, is impossible, that such severance, of the link, may be effected. The magnitude of the offence committed by the employee, or of the misconduct proved against her, or him, has to be such that the employee can no longer be permitted to be part of the establishment which she, or he, has wronged. It would be an over-simplification to merely cite the "seriousness" of the misconduct, as the justification for termination of the service of the employee. The order passed by the authority, imposing the punishment of removal, dismissal or termination (the distinction between the three being merely one of form, rather than substance, practically viewed) has, therefore, to indicate that banishment, of the employee, from the environs of the

employer, and the employer's establishment is the only possible consequence, of the misconduct, as found to be proved. The test may well be described as one of "incorrigibility". Among the factors which may be of significance, while examining the "incorrigibility" of the employee concerned, would be the general demeanour and attitude of the employee towards his work – and, in the case of a teacher, towards her colleagues and students, the contributions of the employee to the institution, as weighed against the possible detriment, if any, to the institution, caused by her, or his, alleged misconduct, and whether the misconduct is habitual and a matter of general occurrence, so as to indicate the potentiality of the commission, thereof, on future occasions, by the employee concerned, or is an isolated instance. The interests of justice, which would require, necessarily, harmonizing the legitimate concerns of employee and employer, being satisfied by imposition of any lesser punishment, howsoever severe it might be, would necessarily render the decision to remove the employee from the services of the employer, arbitrary. This, too, therefore, is a factor to be borne in mind by the court, electing on whether to exercise, or not to exercise, judicial review, over the decision, of an administrative authority, to remove an employee from the services of the employer.

18.5 One other cardinal principle, which the court, exercising judicial review over the order of the Disciplinary Authority, is required to bear in mind, is that the authority is limited by the exact scope and ambit of the charges, as delineated in the charge-sheet issued to the employee concerned. In other words, howsoever abhorrent the conduct of the employee may seem, the authority is

required to examine whether misconduct, *within the scope of the charge-sheet, and the allegations contained and provisions invoked, therein*, can be said to be made out or not. This flows from the elementary *audi alteram partem* doctrine, entrenched in the principles of natural justice and fair play, and inextricably intertwined therewith. The officer having been put to show cause regarding a specific infraction, his contract has to be assessed, and his explanation appreciated, in the light of the said allegation, and not beyond the boundaries thereof.

18.6 Before, now, proceeding to examine the facts of the present case, in the light of the law, it would be appropriate to set out the various sub-clauses of Rule 123 of the DSE Rules, the infraction of which has been held to have been committed by the petitioner, thus:

“123. Code of Conduct for teachers –

(1) The Code of Conduct for the teachers of the recognised schools including unaided minority schools, shall be as follows:–

(a) No teacher shall:–

(i) knowingly or wilfully neglect his duties;

(xvii) be guilty of, or encourage, violence, or any conduct which involves moral turpitude;

(xviii) be guilty of misbehavior or cruelty towards any parent, guardian, student teacher or employee of the school;

(c) Every teacher shall:–

- (i) be punctual in attendance and in respect of his class-work and also for any other work connected with the duties assigned to him by the head of the school;
- (ii) abide by the rules and regulations of the school and also show due respect to the constituted authority.

(2) Nothing contained in sub-rule (1) shall be deemed to take away or abridge the right of a teacher,:-

- (c) to make any representation for the redressal of any bona fide grievance, subject to the condition that such representation is not made in any rude or indecorous language;"

18.7 I proceed, in the above backdrop, to examine, keeping in mind the parameters of judicial review in such cases, the sustainability, on facts and in law, of the impugned decisions, of the Disciplinary Authority and appellate authority.

18.8 I consider it appropriate, first, to examine the grievance, of Mr. Bandhu, ventilated on behalf of his client, to the effect that, by not acceding, on 16th October, 2002, to her request for an adjournment in order to examine herself, the IO infringed the principles of natural justice. On facts, the submission is correct. The Daily Order Sheet, dated 14th September, 2002, of the IO directs thus, with respect to the next date of hearing:

“In view of this the C.O. is directed to send the list of witnesses if any whom she wants to produce and a list of documents she wants to produce in support of her case within a fortnight i.e. on or before 30/9/2002. In case she fails to get the list of witnesses and ... It will be presumed that she has no defence witnesses to be examined and no documents to be

produced in her defence. She should appear on 16/10/2002 at 2:30 PM *along with her defence witnesses for recording the statement of defence witnesses.*”

(Emphasis supplied)

The Daily Order Sheet dated 16th October, 2002, as drawn up by the IO, read thus:

“The defence had given a list of witnesses they were sent letters for appearing on 16.10.02 to depose the enquiry. All of them except Mrs. Thapar (C.O.) have informed that they are not interested in appearing before the inquiry as a defence witnesses. Mrs Thapar who is a witness is present but defence do not want to record her statement today (16.10.02) as the witness is present not recording the statement is not in the interest of enquiry. Hence, the request of the defence to adjourn the enquiry to another date is not accepted. The defence is closed and inquiry is adjourned. The defence and P.O. are requested to send their brief to the Inquiry Officer within a fortnight i.e. on or before 1st Nov, 2002.”

18.9 To my mind, the approach of the IO, as reflected in the afore-extracted order dated 16th October, 2002, cannot sustain in law. The order-sheet dated 14th September, 2002, had required the petitioner to appear “*along with*” her defence witnesses. Plainly understood, the “defence witnesses” referred to, in the said direction, would be persons other than the petitioner herself, as, otherwise, the words “along with” would be rendered a malapropism. As such, the immediately succeeding direction, requiring the petitioner to “record the statements of the defence witnesses” on the next date of hearing, would also convey the impression that the statement is to be recorded, on the next date, would be of the defence witnesses *other than* the petitioner. These defence witnesses, undisputedly, refused to turn up in the enquiry proceedings. If in the circumstances, the petitioner

requested for one adjournment, in order to enable her to record her own statement, the decision of the IO, to refuse the said request was, in my view, exceedingly unreasonable. This is underscored by the fact that, in the very next sentence in the order dated 16th October, 2002, the IO records that the inquiry was adjourned. If, in any case, the inquiry was going to be adjourned, no prejudice would have resulted, had the petitioner been afforded the opportunity to lead her own evidence, on the next date. The observation, of the IO, that grant of such adjournment would not be “in the interest of inquiry” is, in my view, significant, in this regard. The IO does not hold that grant of the adjournment would not be in the interests of justice, but that it would not be in the *interests of the inquiry*. Such an observation is baffling and disquieting, in equal measure. The impression that is immediately conveyed, by the said observation of the IO, was that his interest was not in ensuring that the ends of justice were met, but that the ends of the inquiry were met. What the said ends (or “interest”, as the IO prefers to put it) of the inquiry would be, may, perhaps, best be consigned to the realm of conjecture.

18.10 Every endeavour, judicial, quasi-judicial or administrative, which aims at assessing the culpability of a citizen, in respect of an act of alleged deviancy, must aspire towards justice. The query of the adjudicator, at every stage, must be, “am I doing justice?” The slightest hesitation, in answering the said question, would vitiate the adjudicatory exercise in its totality.

18.11 Condemning a person, without grant of adequate opportunity, to the person, to defend herself, or himself, is unthinkable in law. That, however, appears to be what has happened in the present case. Having recorded the evidence of the witnesses deposing on behalf of the School, and having seen that none of the witnesses, whom the petitioner desired to summon in her defence, agreed to appear in the enquiry proceedings, the bare minimum, that was expected of the IO, was to allow the petitioner to present her own version of the proceedings, by examining herself. The refusal, on the part of the IO, to do so, completely vitiates the enquiry proceedings, and reflects malice, not only in fact but also in law. All that the petitioner had requested for, was one adjournment, to record her statement. To employ a cliché, the heavens would not have fallen, had the said request been acceded to. No reasonable justification, whatsoever, can be found to exist, in the decision of the IO, not to allow even this request of the petitioner. In fact, it may be reasonable to presume that, by doing so, the IO manifested an intention to hold against the petitioner, which, perhaps, he unconsciously exposed, by his usage of the words “in the interest of inquiry”. At the cost of repetition, it deserves to be emphasised that the aim, of every Inquiry Officer, entrusted with the solemn task of inquiring into charges of misconduct against an employee, has to be securing of the *interests of justice*, and never securing of the “*interests of the inquiry*”.

18.12 Mr. Gupta, faced with this uncomfortable situation, could only respond by saying that, ultimately, the interests of justice had been met, as the affidavit, tendered by the petitioner in her evidence, had

been considered, in detail, by the IO. The said submission, needless to say, merits rejection outright. The affidavit of the petitioner could be treated as her affidavit by way of evidence only when she was examined-in-chief and she limited her examination-in-chief to the contents of the affidavit. There was no embargo, in law, to the petitioner, when examined-in-chief, or when tendering her oral evidence before the IO, to advance submissions in addition of those contained in her affidavit. The fatal flaw, in the proceedings as conducted by the IO, in refusing, to the petitioner, an opportunity to examine herself, therefore, does not stand cured, to any extent by merely taking stock of her affidavit, and the averments contained therein.

18.13 In the above context, reference may usefully be made to the judgement of the Supreme Court in *State Bank of India v. Chandra Govindji*, (2000) 8 SCC 532, which holds that, when an adjournment is sought, the request has to be examined on the basis of the reasonability thereof, and on its own merits, and not on the basis of the number of adjournments already availed.

18.14 I am, therefore, in agreement with Mr. Bandhu's submission that the refusal, on the part of the IO, on 16th October, 2002, to allow the petitioner one adjournment to examine herself, vitiated the proceedings in their entirety.

18.15 One possible sequitur, of my above finding, would be to remand the matter wholesale, for consideration afresh, from the stage

at which request was made, by the petitioner, to lead her own evidence. It may be profitable, however, to examine the actual Articles of Charge, against the petitioner, to the extent they were found proved by the authorities below. While doing so, it would, needless to say, be appropriate to proceed Article of Charge-wise.

18.16 Article-I of the Articles of Charge, as already noted hereinabove, stands dropped; no further reference is, therefore, required to be made thereto.

18.17 Article-II, of the Articles of Charge, alleged that the petitioner had lodged a false complaint, with the Punjabi Bagh Police Station, against the Principal of the School, to the effect that two teachers, namely Usha Sharma and Simmi Sood had, on 2nd March, 2000, visited her and asked her to get herself transferred to the Pitampura branch of the School, or face dire consequences. The said complaint, as lodged by the petitioner, read thus:

“The Police Station,
Punjabi Bagh

Res/Sir,

Kindly treat to this letter to my earlier representation dated 10-2-98 regarding the sexual harassment by the Principal M.D. Gupta of S.D. Public School, Road No 10, East Punjabi Bagh, Delhi-26.

Sir I am advancing towards the advance stage of family way. Yesterday on 2-3-2000 around 10 a.m. two school teachers namely Usha Didi and Simi Sood, emissary of Mr. M.D. Gupta, the Principal of S.D. Public School, approached me and my husband at our residence. They had brought a

proposal of transfer of my transfer from the present school to another school at Pitampura.

On the other hand Mr. M.D. Gupta, the Principal himself threatened me to be verbally to expel me from the school. As I am under depression and not able to go to school nowadays. If I join the School the Principal Mr. M.D. Gupta tries to tease me by one or another way.

I am requesting you to kindly save me and my family from the harassment on the behalf of Sh. M.D. Gupta the Principal. I hope that you will take immediate action against the Principal.

Thanking you,

Yours sincerely

(Sangeeta Thapar)
Assistant Teacher,
S. D. Public School,
Road No 10,
Punjabi Bagh East,
New Delhi”

18.18 The Article of Charge alleges that, by the lodging of a false complaint with the Police authorities, the petitioner was “guilty of conduct involving moral turpitude, and failed to show due respect to the constituted authority in violation of Rules 123(1)(a)(xvii) and 123(1)(c)(ii) of the Rules. To a pointed query, as to how, even if the allegation would be treated as true, it could constitute “moral turpitude”, or “failure to show due respect to the constituted authority”, Mr. Gupta’s response was that, though, perhaps, neither of these particular clauses, or the aberrations contemplated thereby, was attracted, lodging of such a false complaint amounted, nevertheless, to “misbehaviour”, on the part of the petitioner, qua her colleagues and

the Principal which, too, was one of the “misconducts” contemplated by Rule 123(1)(a)(xvii) of the Rules.

18.19 I am unable to countenance such a submission, for more than one reason. Firstly, the specific charge, to which the petitioner was required to respond, was of “moral turpitude” and “failure to show due respect to the constituted authority”. Having thus particularised the allegation made against the petitioner, the School was required to sink, or swim, with the said allegation, as so particularised. The petitioner was never required to show cause as to why she be not found guilty of “misbehaviour”, against her colleagues or against anyone else. Obviously for this reason, the IO, too, did not return any finding, against the petitioner, of such “misbehaviour”. In fact, with due respect to Mr. Gupta and his submission, this Court does not find any reference, to “misbehaviour”, as an allegation against the petitioner, at any stage of the proceedings, or anywhere on the record. It is not open to this Court, therefore, in my view, to confirm Article-II of the Articles of Charge, against the petitioner, on the ground that she was guilty of “misbehaviour”.

18.20 Though Mr. Gupta was candid in admitting that it was not possible for him, readily, to support the allegation that, by lodging a false complaint with the Police, against the Principal, the petitioner had been guilty of “moral turpitude”, or of “lack of due respect to constituted authority”, it would be appropriate to examine the allegation on its own steam. “Moral turpitude” is not defined, anywhere in the DSE Rules; indeed, though it is an expression used in

several statutes, it finds definition in hardly any. Courts have, however, stepped in to supply this lacuna, and the expression “moral turpitude” has, over a period of time, come in for judicial examination and consideration on a variety of occasions. In ***Sushil Kumar Singhal v. Punjab National Bank, (2010) 8 SCC 573***, the Supreme Court defined “moral turpitude” thus:

“Moral turpitude means anything contrary to honesty, modesty or good morals. It means vileness and depravity. Conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked and base activities.”

The most comprehensive definition of “moral turpitude” is, perhaps, to be found in the following words, from the judgement of the High Court of Allahabad in ***Baleshwar Singh v. District Magistrate and Collector, AIR 1959 All 71***, which were approvingly quoted, by the Supreme Court, in ***Allahabad Bank v. Deepak Kumar Bhola, (1997) 4 SCC 1***:

“The expression ‘moral turpitude’ is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. *It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general.* If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. *It will be contrary to accepted customary rule and duty between man and man.*”

((Emphasis and underscoring supplied))

18.21 Thus viewed, it cannot, in my opinion, be said that, even if the facts alleged, in Article-II in the Articles of Charge against the petitioner, were to be taken as true, they would make out a case of “moral turpitude”, on the part of the petitioner. At the very worst, all that is alleged against the petitioner makes a case of having made a false complaint, against the Principal. As has been illuminatingly observed in the above extracted definition of “moral turpitude”, an act of falsehood does, *ipso facto*, not amount to “moral turpitude” and, inherent, in the very concept of moral turpitude, is depravity and immorality. Neither the allegation, as contained in the Article of Charge, nor the findings of the IO thereon, in my view, indicate “depravity”, in the act alleged to have been committed by the petitioner, i.e. of lodging a false complaint with the Police, as to elevate it to the status of “moral turpitude”.

18.22 Neither, in my view, can the findings of the IO, even if accepted on facts, make out a case of lack of “due respect for constituted authority”, on the part of the petitioner. The issue of showing respect to constituted authority, would arise where the “constituted authority” issued any particular instructions, directions, and the employee acts in defiance thereof. As understood in common parlance, or even in law, I cannot countenance the allegation that, by making a complaint, against the Principal, even if the complaint were presumed to be false, the petitioner showed “lack of respect for constituted authority”.

18.23 Significantly, the IO has not examined this aspect of the matter at all. On the basis of the report of the Police and the testimonies of Usha Sharma and Simmi Sood, he holds, in the Inquiry Report, that the petitioner “had made a false allegation against her own colleague” and that, consequently, “*the factum of the charges* has been proved beyond doubt”. The IO was, additionally, required, in law, to examine whether the particular misconduct, especially in the light of the clauses particularly cited and invoked in the charge-sheet, stood proved against the petitioner, or not. The IO has, unfortunately, not done so and, in my view, even if one were to accept the findings of fact recorded by the IO, they did not make out a case of commission, by the petitioner, of the misconduct alleged to have been committed, by, in the Articles of Charge.

18.24 It is, no doubt, true that this Court is not to sit in appeal over the decision of the Disciplinary Authority, or to re-appreciate the evidence which has once been appreciated by the IO and the Disciplinary Authority. It is for this reason that I have not ventured into the terrain of the acceptability, or otherwise, of the statements of Usha Sharma and Simmi Sood, or the Police Report, or examined what the said evidence, read as a whole, would indicate. Where, however, as in the present case, the facts, even if treated as true, do not make out the misconduct alleged to have been committed by the delinquent employee, the court is duty bound to interfere.

18.25 In my view, therefore, it cannot be said that Article-II, of the Articles of Charge, against the petitioner, stood proved.

18.26 Proceeding to Article-III, i.e. which dealt the charge of having left five students unboarded on Bus No. 20 on 22nd February, 2000, the IO has proceeded on the basis of the statements of S. Narang, Ranjana Singh and the bus in-charge M.K. Pathak. Without expressing any view on the said findings of the IO, as accepted by the Disciplinary Authority and the Appellate Authority, the fact remains that the IO has returned the said findings without, as already noted hereinabove, allowing the petitioner an opportunity of leading the evidence by way of her examination-in-chief, or by recording her statement in evidence. Such a procedure cannot be countenanced in law, especially as it is not a case in which the petitioner was given repeated opportunities to have her statement recorded, but chose to remain recalcitrant. Without, therefore, expressing any opinion on the various contentions advanced, before me, on this Article of Charge, I am of the view that the petitioner ought to be granted an opportunity to argue the said issue afresh, after her statement, by way of her examination-in-chief, is recorded. Needless to say, the School would be at liberty to cross-examine the petitioner, on her statement and the contents thereof.

18.27 Insofar as Articles-IV and V of the Articles of Charge, are concerned, however, I am in agreement with Mr. Bandhu that the findings of the IO, as accepted by the disciplinary and appellate authorities, cannot sustain on facts or in law. Insofar as the allegation of the petitioner having been refused to sign the attendance register of Bus No. 20 is concerned, the evidence of the two teachers,

Ms.Kamlesh and Ms. Baby, on which reliance was placed by the IO and the learned Tribunal, was only to the effect that she had refused to sign the register, when it was brought to her, stating that she would speak to Mr. Pathak. I am in agreement to the proposition that this cannot be regarded as a categorical refusal, on the part of the petitioner, to sign the register, or as an act of indiscipline or disobedience, especially as it was Mr. Pathak who had dispatched the said teachers to get the attendance register signed by the petitioner. The allegation of having misbehaved and use of abusive language with Ms. Bisht remained unsubstantiated, as it is supported only by a single letter written by Ms. Bisht, and by no other evidence. As Ms. Bisht could not be produced, by the School, to vouchsafe the said letter, or exhibit it in evidence, I agree with the learned counsel for the petitioner that the said letter, by itself, could not be treated as evidence to prove the allegation of the petitioner having misbehaved or used abusive language towards Ms. Bisht.

18.28 Similarly, Article-V, of the Articles of Charge against the petitioner, is totally misconceived. The said Article of Charge alleges infraction, by the petitioner, of Rule 123(1)(c)(ii) of the Rules. Rule 123(1)(c)(ii) is, essentially, a clause which saves the right of every teacher to make bona fide representations, for reasons of her, or his, grievance, and hedges such right with the condition that, in the representations, no “rude or indecorous” language would be used. The representations dated 23rd February, 2000 and 20th September, 2001, were representations voicing the petitioners perceived grievance that she had been subjected, by the Principal M.D.Gupta, to sexual

harassment. It could not, therefore, be expected that the petitioner would honey-coat the words used by her in the said representations. In a representation, addressed by the petitioner to the Manager of the School, with copies to the Director (Education), NCW and Education Minister, alleging sexual harassment on the part of the Principal of the School, the mention, by the petitioner, that she was being subjected to such harassment, or even the allegation that the Manager was in connivance with the Principal regarding the same, could hardly be regarded as use of “rude” or “indecorous” language. Were the said allegations found to be false, the Principal, and/or the Manager, may possibly have had other remedies against the petitioner, the invocation, against her, of Rule 123©(ii) was, nevertheless, per se unsustainable.

18.29 In this context, the reliance, by Mr. Bandhu, on the judgement of the Supreme Court in *Ravi Yashwant Bhoir* (*supra*), is well-placed. Dealing with the parameters of the concept of “misconduct”, as understood in service jurisprudence, the Supreme Court, in the said decision, ruled as under:

“11. “Misconduct” has been defined in Black's Law Dictionary, 6th Edn. as:

“A transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement offence, but not negligence or carelessness.”

“Misconduct in office” has been defined as:

“Any unlawful behavior by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act”

12. P. Ramanatha Aiyar's *Law Lexicon*, Reprint Edn. 1987 at p. 821 defines "misconduct" thus:

“The term 'misconduct' implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word 'misconduct' is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected.

Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, *the delinquency in its performance* and its effect on the discipline and the nature of the duty. It may involve moral turpitude, *it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct* but not mere error of judgment, carelessness or negligence in performance of the duty; *the act complained of bears forbidden quality or character*. Its ambit has to be construed with reference

to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve."

13. Mere error of judgment resulting in doing of negligent act does not amount to misconduct. However, in exceptional circumstances, not working diligently may be a misconduct. An action which is detrimental to the prestige of the institution may also amount to misconduct. Acting beyond authority may be a misconduct. When the office-bearer is expected to act with absolute integrity and honesty in handling the work, any misappropriation, even temporary, of the funds, etc. constitutes a serious misconduct, inviting severe punishment. (Vide *Disciplinary Authority-cum-Regl. Manager v. Nikunja Bihari Patnaik*, (1996) 9 SCC 69, *Govt. of T.N. v. K.N. Ramamurthy*, (1997) 7 SCC 101, *Inspector Prem Chand v. Govt. of NCT of Delhi*, (2007) 4 SCC 566 and *SBI v. S.N. Goyal*, (2008) 8 SCC 92.)

14. In *Govt. of A.P. v. P. Posetty*, (2000) 2 SCC 220, this Court held that since acting in derogation to the prestige of the institution/body and placing his present position in any kind of embarrassment may amount to misconduct, for the reason, that such conduct may ultimately lead that the delinquent had behaved in a manner which is unbecoming of an incumbent of the post.

15. In *M.M. Malhotra v. Union of India*, (2005) 8 SCC 351, this Court explained as under: (SCC p. 362, para 17)

"17.It has, therefore, to be noted that the word 'misconduct' is not capable of precise definition. But at the same time though incapable of precise definition, the word 'misconduct' on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of *must bear a forbidden quality or character* and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve."

A similar view has been reiterated in *Baldev Singh Gandhi v. State of Punjab*, (2002) 3 SCC 667.

16. Conclusions about the absence or lack of personal qualities in the incumbent do not amount to misconduct holding the person concerned liable for punishment. (See *Union of India v. J. Ahmed*, (1979) 2 SCC 286)

17. It is also a settled legal proposition that misconduct must necessarily be measured in terms of the nature of the misconduct and *the court must examine as to whether misconduct has been detrimental to the public interest*. (Vide *Bank of India v. Mohd. Nizamuddin*, (2006) 7 SCC 410)

18. The expression "misconduct" has to be understood as *a transgression of some established and definite rule of action, a forbidden act, unlawful behaviour, wilful in character*. It may be synonymous as misdemeanour in propriety and mismanagement. In a particular case, negligence or carelessness may also be a misconduct for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or loss to the institution but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary forces.

19. Further, the expression "misconduct" has to be construed and understood in reference to the subject-matter and context wherein the term occurs taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to the public interest."

(Emphasis Supplied)

18.30 In order for it to be saved from the vice of arbitrariness, the words "rude and indecorous", as used in Rule 123(1)(c)(ii) of the Rules has to be interpreted purposively and rationally, in the sense of "intemperate" or, to employ another cliché, "unparliamentary". Alleging commission of sexual harassment, by the Principal, in a

representation addressed to the DoE, or to the National Commission for Women cannot, in my view, constitute usage of “rude and indecorous” language. As already observed by me hereinabove, such allegations cannot be sugar-coated. In making the said allegations, therefore, it cannot be said that the petitioner used “rude” or “indecorous” language. If the allegations were found to be false, they may expose the petitioner to other action in law. The mere making of the allegations, however, cannot invite, on the petitioner, in my view, the wrath of Rule 123(1)(c)(ii).

18.31 Even as it is made in the charge-sheet, therefore, I am of the view that no “misconduct” can be said to be made out, in Article-V of the Articles of Charge. The words, to which the said Article of Charge takes exception, may not be pleasant or happy; that, however, is not because they are “rude” or “indecorous”, but because they complain of experiences which, if true, are not pleasant or happy in themselves. Acceptance of the usage of such expressions as misconduct would, effectively, amount to silencing the voice of victims who have been subjected to such experiences within the confines of the office space – which, needless to say, cannot, especially in the present age and time, be countenanced at all.

19. In the ultimate eventuate, therefore, I am of the view that

- (i) the IO has proceeded in violation of the principles of natural justice, by not allowing the petitioners request, made on 16th October, 2002, for one adjournment in order for her to record her statement, as her defence evidence,

- (ii) resultantly, the entire proceedings before the IO, commencing from that stage, i.e. from 16th October, 2002, culminating in the Inquiry Report, its acceptance by the Disciplinary Authority, and the dismissal of the appeal, preferred thereagainst, by the learned Tribunal, deserved to be set aside,
- (iii) for the reasons already adduced hereinabove, Articles II, IV and V, of the Articles of Charge against the petitioner, would be required to be dropped, and
- (iv) the recommendations, in the Inquiry Report, regarding Article-III, of the Articles of Charge, would require to be set aside for violation of the principles of natural justice, and the matter reconsidered.

20. In order, however, that the *de novo* proceedings are not unnecessarily delayed, I deem it appropriate to remand the matter, not to the IO, but to the Disciplinary Authority, which would have to grant the petitioner an opportunity to tender her evidence, by way of examination-in-chief subject, of course, to the right of the School to cross-examine her. The petitioner would, thereafter, be heard, on merits, by the Disciplinary Authority, with corresponding right of rebuttal to the School. This exercise would be limited to Article-III of the Articles of Charge against the petitioner.

Conclusion and directions

21. Resultantly, this writ petition is partly allowed, in the following terms:

(i) The impugned orders, dated 25th April, 2003, of the Disciplinary Authority, as well as 15th July, 2011, of the learned Tribunal, are quashed and set aside.

(ii) The proceedings initiated against the petitioner, consequent on issuance of the charge-sheet, dated 18th December, 2001, are remanded, to be reconsidered by the disciplinary authority *with reference to Article-III of the Articles of Charge alone*. The Disciplinary Authority may take into account the evidence obtained by the IO, but would not be influenced by any of the findings of the IO regarding the said Article of Charge. The petitioner would be given an opportunity, by the Disciplinary Authority, to lead her own evidence, by way of examination-in-chief, with corresponding right, of the School, to cross-examine her. For this purpose, the petitioner shall appear, in person, before the Disciplinary Authority, on 30th November, 2018.

(iii) During the pendency of the said proceedings, and till their culmination in the order of the Disciplinary Authority, the petitioner shall be treated as being under suspension, starting from the date of the impugned order of termination, i.e. 25th April, 2003, following the law laid down by the Supreme Court in *Managing Director, ECIL v. B. Karunakar, (1994) Supp (2) SCC 391*. She shall be entitled to subsistence allowance, in accordance with law and the applicable Rules, commencing from the said date. Arrears of subsistence allowance, till date,

shall be disbursed, to the petitioner, within a period of four weeks from the date of receipt, by the respondents, of a certified copy of this judgement. Thereafter, subsistence allowance, in accordance with the applicable Rules, shall be disbursed to the petitioner by the 10th of every month.

(iv) The Disciplinary Authority shall make every endeavour to conclude the proceedings, and pass its order, consequent thereupon, as expeditiously as possible. Such order would, at any rate, be required to be passed within a period of six months from the date of receipt of a certified copy of this judgement.

(v) While deciding the matter *de novo*, the Disciplinary Authority shall bear in mind the principles enunciated heretofore, in the body of this judgement, including those relating to quantum of punishment, if any, to be imposed.

(vi) In the event of the decision of the Disciplinary Authority being adverse to her, the right of the petitioner shall stand reserved, to challenge the same in accordance with law.

22. There shall be no order as to costs.

C. HARI SHANKAR, J

OCTOBER 25th, 2018

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