

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21-11-2019
CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.20508 of 2010

- 1.The Registrar,
National Institute of Fashion Technology,
N.I.F.T. Campus,
Rajiv Gandhi Salai,
Old Mahabalipuram Road,
Taramani,
Chennai-600 113.
- 2.The Deputy Director General,
National Institute of Fashion Technology,
Hauz Khas, Head Office,
New Delhi. .. Petitioners

-vs-

- 1.Mr.Sam D.Raja Prabhu
- 2.Presiding Officer,
The Central Government Industrial Tribunal-
cum-Labour Court,
Ministry of Labour and Employment,
Office of the Deputy Chief Labour,
Commissioner (Central),
No.26, Haddows Road,
Sastri Bhavan,
Chennai-600 006. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records pertaining to the Award dated 22.07.2010 made in I.D.No.58 of 2007 on the file of the second respondent and quash the same.

For Petitioners : Mr.Balan Haridas
For Respondent-1 : Mr.V.G.Suresh Kumar
For Respondent-2 : Tribunal.

ORDER

The Award dated 22.07.2010 passed by the second respondent-Tribunal in I.D.No.58 of 2007, is under challenge in the present writ petition.

2. The writ petitioners are the Management of National Institute of Fashion Technology.

3. The learned counsel appearing on behalf of the writ petitioners made a submission that the first respondent joined with the writ petitioner-Institution as a Machine Mechanic on 09.04.1996. Subsequently, the first respondent-employee was appointed as Machine Lab Assistant. The writ petitioner-Management had received several complaints against the first respondent-employee. The complaints were very serious in nature, amounting to grave misconduct. Thus, charges were framed against the first respondent-employee and an enquiry was conducted.

4. The charges framed against the first respondent-employee on 25.05.2001, are extracted as under:-

"(1) that Mr.Sam D.Raja Prabhu has indulged in cheating the students in general and GMT (1999-2001 batch) in particular for pecuniary gains. When the GMT 1999-2001 batch was studying in I Semester, Mr.Sam D.Raja Prabhu forced them to buy Garment Construction materials from him for which he charged more than double the actual price.

(2) that Mr.Sam D.Raja Prabhu kept tampering with the Sewing Machines with an intention to get importance from the students of GMT 1999-2001 batch.

(3) that Mr.Sam D.Raja Prabhu has indulged in instigating students with the regional feelings (North-South feeling) with a mala fide intention of creating rift among the students.

(4) that Mr.Sam D.Raja Prabhu has intimidated the GMT 1999-2001 batch students by telling that he would create serious problems during their internship and also reduce their marks thereby created fear and spoilt the confidence of the students.

(5) that Mr.Sam D.Raja Prabhu has threatened the GMT 1999-2001 batch students that he would arrange gangs from outside and beat up those who do not listen to him.

(6) that Mr.Sam D.Raja Prabhu has extremely misbehaved with girl students of GMT 1999-2001 batch such as passing obscene remarks etc., while talking to them.

(7) that Mr.Sam D.Raja Prabhu has misused NIFT's property like Internet, Air-Conditioners, Computer Lab etc., during night time when was drunk."

5. The first respondent-employee submitted his explanation on 07.06.2001. An Enquiry Officer was appointed on 18.06.2001. During the course of enquiry, MW-1 to MW-10 (students) were examined on behalf of the writ petitioner-Management and on behalf of the first respondent-employee, four witnesses were examined as DW-1 to DW-4. The writ petitioner-Management produced six documents, which were marked as Exs.M-1 to M-6.

6. On 18.07.2001, the Enquiry Officer submitted his report holding that the charge Nos.1,4,5,6 and 7 were proved. The charge Nos.2 and 3 were held to be not proved. With reference to the findings of the Enquiry officer, further explanations were sought for from the first respondent-employee on 01.10.2001 and the second show cause notice was issued on 16.11.2001.

7. The first respondent-employee submitted his explanation on 21.11.2001 and thereafter, the first respondent-employee was removed from service by an order dated 10.07.2002. The first respondent-employee filed an appeal before the Appellate Authority on 16.08.2003 and the Appellate Authority rejected the appeal on 20.04.2007. Thereafter, an industrial dispute was raised before the Central Government Industrial Tribunal-cum-Labour Court in I.D.No.58 of 2007. The first respondent-employee examined himself as WW-1 and the writ

petitioner-Management examined as MW-1, Mr.S.Gopalakrishnan, Librarian.

8. The learned counsel for the writ petitioner-Management reiterated that before the Central Government Industrial Tribunal-cum-Labour Court, WW-1 the first respondent-employee (WW-1) had admitted the following facts:-

"I know the allegations levelled against me which I have denied. I know that enquiry was held in a just and proper manner. An assistant was provided for the enquiry who was also a NIFT staff. Whatever the Assistant was telling, it was never properly recorded. I could not object the same during that time before the Enquiry Officer. Suspension Order was served on 14.08.2000 which I accept. I do not know whether any of the Superiors ever warned me before the issuance of Suspension Order. With the permission of particular faculty I am entitled to use the Computers, Internet. I have also signed in the enquiry proceedings. I do not know the administrative powers of Directors and Registrars and my Superiors. I know who was the Enquiry Officer and I have signed before the Enquiry Officer. I have received the copies of the complaints made by the students but I do not know through which mode I have received." (Page No.86 of the typed set)"

9. The writ petitioner-Management marked the entire documents pertaining to the enquiry before the Industrial Tribunal on behalf of the workman were marked. On behalf of the first respondent-employee, Exs.W-1 to W-12 were marked and on behalf of the writ petitioner-Management Exs.M-1 to M-13 were marked. The Industrial Tribunal erroneously arrived a conclusion that in the counter-statement no charges are extracted and therefore, it cannot decide the issue.

10. The learned counsel for the writ petitioner-Management contended that the Industrial Tribunal committed the jurisdictional error in not looking into the exhibits filed before it in terms of Section 11-A of the Industrial Disputes Act, 1947. The Industrial Tribunal failed to look into Ex.M-6, the enquiry report, by which the Enquiry Officer has cogently held the charges 1,4,5,6 and 7 were proved. Under these circumstances, the Industrial Tribunal ought to have confirmed

the said findings of the Enquiry Officer and upheld the order of removal, as the charges proved are very serious in nature.

11. It is contended that the first respondent-employee himself admitted before the Industrial Tribunal that the enquiry was held in a fair and proper manner. The deposition made by WW-1 before the Industrial Tribunal is extracted and the Industrial Tribunal erred in holding that the enquiry was not held in a fair manner.

12. The learned counsel for the first respondent-employee disputed the contentions by stating that the charges are vague and no reason has been furnished in the order of termination. There was an enormous delay in framing of the charges itself, more specifically, about two years and further delay was caused by keeping the appeal filed by the first respondent-employee. In other words, the appeal also was decided belatedly.

13. The learned counsel for the first respondent reiterated that the allegations regarding the sexual harassment of girl students were not established. Undoubtedly, the students have given certain depositions before the Enquiry Officer. However, those depositions are insufficient to arrive a conclusion that the first respondent-employee had committed grave misconduct of causing sexual harassment to the girl students of the writ petitioner-Institution.

14. The learned counsel for the first respondent-employee is of an opinion that the Labour Court has not committed any error in appreciating the evidences and arriving a conclusion. In this regard, the learned counsel for the first respondent-employee cited a judgment of the Hon'ble Supreme Court of India in the case of State of Andhra Pradesh vs. N. Radhakishan [(1998) 4 SCC 154], wherein in paragraph-19, it has been held as under:-

"19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest

administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations."

15. In the case of S.Santhakumar vs. Managing Director, TASMAL [2017 SCC OnLine Mad 1849], wherein this Court observed in paragraphs-4 and 11 as under:-

"4. Proceeding further, the learned Senior counsel has taken this Court to the final order of termination issued by the Disciplinary Authority, whereby, an enquiry conducted and the final report on the domestic enquiry, was submitted on 28.12.2011. Learned Senior counsel contended that the said final report of the Enquiry Officer had not been communicated to the writ

petitioner, thereby, deprived of submitting his further explanation on the enquiry report. It is the valuable opportunity for the delinquents to offer their further explanation on the enquiry report. Denial of opportunity will cause prejudice to the delinquents. In certain cases, non-production cannot cause any prejudice. In such cases, the non-serving of the enquiry report may be dispensed with. Such a situation has not arisen on the facts and circumstances of the case, in view of the fact that at the first instance itself, the discrepancy arose and therefore, non-furnishing of the enquiry report will also have certain implication, since the writ petitioner was denied of the opportunity even to explain this discrepancy, if any available in the enquiry report. In support of this ground, the judgment of the Constitutional Bench of the Hon'ble Supreme Court of India in (Managing Director, ECIL v. B. Karunakar) reported in (1993) 4 SCC 727 was cited. The relevant portion of the judgment reads thus:

27. It will thus be seen that where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself

and to prove his innocence in the disciplinary proceedings.

11. In the case of Roop Singh Negi. v. Punjab National Bank reported in (2009) 2 SCC 570 wherein, the Apex Court held as follows:

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

16. Relying on the judgment, cited supra, the learned counsel for the first respondent-employee contended that the materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act

may not be applicable in a departmental proceeding but the principles of natural justice are.

17. The Kerala High Court in the case of Manager Prajyoti Niketan College, Pudukkad and two others vs. Dr.Sr.Ancy S.H., Principal (Under Dismissal), Prajyoti Niketan College, Pudukkad and another [2014 SCC OnLine Ker 4080], observed in paragraphs-7, 8 and 10 as under:-

"7. Having held so, we proceed to examine whether the decision of the Tribunal warrants interference in this revision under sub-section 9 of Section 60 of the Calicut University Act which provides that any person who objects to an order passed by the Tribunal may prefer a petition to the High Court on the ground that the Appellate Tribunal has either decided erroneously or failed to decide any question of law. This is in pari materia with the provisions in Section 103 of the Kerala Land Reforms Act, 1963 which provides for a revision to the High Court on the ground that the Appellate Authority or the Land Board, or the Taluk Land Board, as the case may be, has either decided erroneously, or failed to decide, any question of law. We make this comparative evaluation of the statutory provisions in two pieces of legislations of the same legislature to make immediate reference to the decision of the Hon'ble Supreme Court of India in Mammu v. Hari Mohan [(2000) 2 SCC 32] rendered in re questions relating to revisional jurisdiction of the High Court under the KLR Act. The questions that arose in that case were two. Firstly, it dealt with the issue as to whether a revision under Section 103 of that Act would lie against an order of remand made by the Appellate Authority to the Land Tribunal. The earlier views of the High Court of Kerala were overruled on that point, and it was held that an order of remand can be subjected to a revision under Section 103. The second question that arose for decision was as to the correctness of the revisional order of the High Court on the merits of the case. The High Court had discussed in detail, the facts and circumstances emerging on record and had

come to the finding on the question as to whether the person who claimed the benefit of the KLR Act is a kudikidappukaran or not, with respect to the structure that was in dispute in that case. Dilating on the scope of the revisional jurisdiction under Section 103 of that Act, Their Lordships held as follows:

"From the afore-noted statutory provisions, it is manifest that the power of revision vested in the High Court is wide and it is not limited only to the question of law or jurisdiction. It hardly needs to be emphasised that the revisional power to disturb findings of fact or law recorded by the Land Tribunal or the Land Board or the Taluk Land Board as the case may be, (sic) only in appropriate cases in which the Court is satisfied that such interference is necessary in the interest of justice and for proper adjudication of the dispute raised by the parties."

Appreciating the facts and examining the findings of the High Court, the Apex Court held that the order of the High Court showed that it had taken note of the relevant facts and, it was on the basis of such facts and circumstances appearing from the evidence on record, that the High Court had come to the findings rendered by it. The facts and circumstances noted by the High Court were held as relevant and germane for determining the question which was in dispute between the parties, that is to say, as to whether the person claiming to be a kudikidappukaran was one so with respect to the structure in question and as such, entitled to purchase the property. This precedent gives ample guidance to the exercise of revisional jurisdiction under Section 63(6) of the Mahatma Gandhi University Act which we, by the reasoning process made above, have adopted as a reasonable regulation of the jurisdiction of the Appellate Tribunal under the Calicut University Act and thereby, bringing it in conformity with the protection available to institutions of religious or linguistic minorities in terms of Article 30

(1) of the Constitution as enunciated in the abovenoted precedents in the litigation relating to Lilly Kurian (supra). In fact, the Land Tribunal and the Appellate Authority under the KLR Act are treated as quasi-judicial Tribunals and the Appellate Authority under the University Act is a Tribunal which is fundamentally a statutory body, though manned by a judicial officer. This is how the University Tribunals have been viewed by the precedents noted above. Under such circumstances, we can never ignore the eligibility of a teacher to redressal before an authority constituted for such purpose, having regard to the fact that the decision of that authority would be final.

8. While it is true that the Tribunal held that it has comprehensive powers as a court of first appeal and therefore, could visit the decision of the disciplinary authority by sitting in appeal and re-appreciating the entire materials and the records that it had before it, in the ultimate analysis, what emerges from the order of the Tribunal is that the initiation of the disciplinary proceedings against the Teacher was not in good faith and there is violation of the principle of natural justice in the disciplinary proceedings, including the enquiry and also that the order issued by the disciplinary authority and the initiation of the proceedings were to victimise the appellant before it. The quality of findings rendered by the Tribunal is essentially to the effect that the order impugned before it is not passed on any reliable material in the assessment of that judicial authority.

10. Evaluating the materials and the findings of the Enquiry Officer as regards Charge No. I, the Tribunal held that the specific case of the Teacher, in defence, was that there was a practice in the institution of giving advance to its staff on appropriate terms and that precedent was followed while Sr. Christella released amounts to Johnson Joseph, the Peon. DW1 had deposed before the Enquiry Officer that during his tenure as Principal, there was practice of advancing

loan to the staff of the College on certain conditions. The Tribunal found that the management had no case that the delinquent teacher, while functioning as the Principal of the College, had misappropriated any amount from the College fund. In fact, the management did not have a case to that effect. However, the Enquiry Officer held that the loan was advanced by Sr. Christella without the knowledge of the Manager and the delinquent teacher has committed misappropriation of funds belonging to the management. This was not even the case of the management, as rightly noted by the Tribunal. The Tribunal also noted that from Ext.X7, it is clear that the management had initially decided to initiate action against Sr. Christella. That decision was taken in the Governing Body meeting held on 8.7.2003 and no action was then proposed against the delinquent teacher. It was in the Governing Body meeting held on 21.8.2003 that decision was taken to proceed against the delinquent on Charge No. II. The Tribunal noted that Charge No. I regarding the release of funds by Sr. Christella and the alleged permission of the delinquent teacher in that regard were included as Charge No. I later with a view to strengthening the disciplinary proceedings against the delinquent teacher. The Tribunal noted that in Ext.D11 letter dated 25.3.2003 issued by the Manager to Sr. Christella, the delinquent Principal is mentioned as a new hand in the post of Principal. The Tribunal noticed the fact that the alleged transaction of advancing loan to Johnson Joseph was on 15.11.2002 when the delinquent was functioning as acting Principal only from 1.11.2002. The alleged incident took place within 15 days of her provisional appointment as Principal. These facts and circumstances were wholly ignored by the Enquiry Officer. This, according to the Tribunal, was unsustainable. The Tribunal also examined the materials and had concluded that advances were given even to employees before they could be paid salary on the basis of the agreement between the Government under direct

payment system. The testimony of DW2 was noted by the Tribunal to the effect that some irregularities were there in the College from the tenure of first Principal onwards, however that, no steps were taken to ascertain the funds of the College on various accounts till Ext.M2 dated 7.4.2003. No recovery was effected from the Peon, namely, Johnson Joseph, to whom the amount of Rs. 6,000/- was allegedly advanced. The Tribunal noted that no loss has been caused to the establishment on account of any act attributed to the delinquent teacher and the Enquiry officer had failed to consider the relevant aspects, including the fact that the delinquent was a fresh hand as a Principal and had been following the precedents carried on in the institution. The Tribunal concluded that the proceedings clearly show that the management was acting with a closed mind even at the time of issuing charge sheet, with a view to victimise the delinquent."

18. The learned counsel for the first respondent-employee relied on the judgment of the Hon'ble Supreme Court of India in the case of Anil Kumar vs. Presiding Officer [(1985) 3 SCC 378], held that the reasoned report of the enquiry is essential. The Enquiry Officer cannot merely record his ipse dixit that the charges were proved without assigning any reason. It is contended that the Enquiry Officer must record the reason for arriving such a conclusion for the purpose of holding the charges levelled against the delinquent are proved or not. Thus the reasons for arriving a conclusion is of paramount importance. Citing this judgment, the learned counsel for the first respondent contended that there is no reason for holding that the charges levelled against the first respondent are proved before the Enquiry Officer. Under these circumstances, the report of the Enquiry Officer itself is not in consonance with the principles laid down by the Hon'ble Apex Court of India.

19. The learned counsel appearing on behalf of the writ petitioner-Management, while opposing the contentions of the first respondent-employee, made a submission that those principles are undoubtedly to be followed and it is followed in the present case. To substantiate his contention, the learned counsel for the writ petitioner-Management solicited the attention of this Court with reference to the findings of the

Enquiry Officer.

20. With reference to Issue No.1, the Enquiry Officer has given a finding that the charges are held proved. To arrive such a conclusion, that the statement of the Presenting Officer has corroborated with the statement of the Management-witnesses. Thus, the contention of the delinquent employee in respect of this charge, cannot be taken into account and accordingly concluded that the charge No.1 is held proved.

21. Perusal of findings reveal that the reasons are recorded, the documents are relied upon and the statements are also considered by the Enquiry Officer. Therefore, the contention of the first respondent-employee that the Enquiry Officer arrived a conclusion without assigning any reason is incorrect. The Enquiry Officer arrived a conclusion by relying on the documents as well as the statements and the materials available on record.

22. Perusal of all other issues also reveal that the Enquiry Officer has not taken a blanket decision. With reference to each and every charge, the Enquiry Officer given a separate findings and it is relevant to extract charge No.6, which is grave in nature. The allegation in charge No.6 was that the first respondent-employee has extremely misbehaved with the girl students of GMT 1999-2001 batch such as passing obscene remarks etc., while moving with them. In support of the contention of the Management, five witnesses have been produced. The manner in which the Enquiry Officer dealt with those witnesses as well as the documents are extracted hereunder:-

"Shri Sushi Bhusan Rath, MW-1, has deposed that once Mr.Sam D.Raja Prabhu told him about one of his classmate Miss Veenakumari that she is flying very high, tell to behave her properly unless it might be in trouble and may not be easy to pass. Another witness Miss Shoba Murthy, MW-2, has deposed that they often go for outstation tours like Factory visit. In which they found him having the liquor in the bus offering it to students. During the cross-examination by the delinquent employee for a specific question that the Faculty had also travelled in the same bus why cannot she made complaint at that time. For which she replied that the Girls who have been offered did not want to make a issue of it at that time. Miss Asmita Roy who was examined as

MW-4 had deposed that Shri Sam D.Raja Prabhu told her that once he was taking one girl in his bike to some place and on the way she was scared to go with him. He said that at that time he told her what will happen if she travels behind him at the most her boobs will touch his back when he presses the brake. This comes directly from his mouth. He also told her that if he wanted at that time he could have done anything to her. But he had told that he was not like that. During the cross-examination, he had not asked anything about the incident. Another witness Shri A.Bharathidasan who was examined as MW-5 had deposed that he came to know through his classmate Miss Smita Prasad that Mr.Sam D.Raja Prabhu forced her to take liquor when he was taken it during the class Trip to Pondicherry which made her to feel very bad and discomfort of the whole class. Miss Smita Prasad who was examined as MW-8 had deposed that the main problem she concerned was they went for Pondicherry Trip. While coming back it was 20.11.1999 he offered her liquor. She said no to him for three and four times. But he did not stop. But she did not consumed. Her classmates stopped him. That is all happened to her. During the cross-examination by the delinquent employee that "was there any Senior person (Staff/Faculty) in the bus while you were travelling". For which she replied that either Mr.Kumerasan or Mr.Abdul Salam. I don't remember it.

The contention of the Management as well as the witnesses adduced in respect of this charge is repudiated by the delinquent employee. In his statement he had mentioned that most of cases reported by the student varied over a period of two years during which time the faculty was neither informed nor aware. The entire episode has been done with malafide intention. His witness DW-1 has mentioned that all the girl students are aware that they have to report any misbehaviour immediately to her. But this incident was reported after two years. This is cooked up while cross-examination by the

presenting officer for a specific query that have you handled the students of GMT III for which the DW-1 replied that she had not handled the GMT III batch. DW-2 deposed that the allegation made by the students are totally false with malafide intention. He never misbehaved with the Girls. They can not allow to take liquor in the bus during trip. During the cross-examination by the presenting officer that were you available in the bus when they undertook a trip to Pondicherry. For which the witness replied that yes he was available. It was during the Trip to Chengalpattu to one Company called Bharat Tex. The DW-3 had mentioned that as regards misbehaviour with girl students this is only a misunderstanding. During the last five years never had an occasion to see him with the influence of intoxication. He had also mentioned that he had no personal knowledge about the misbehaviour and intoxication.

The statement of witness of the Delinquent employee cannot be taken into account as they have no personal knowledge on the misbehaviour of the delinquent employee that had anything happened as alleged by the students they would have informed to the Faculty. It was not so. The statement of witness of MW-8 cannot be brushed aside as she was personally affected by the behaviour of the delinquent employee when a Industrial Trip was undertaken. The veracity of the statement of MW-8, Miss Smita is not doubtful. In fact her statement has given credence to the allegation of the Management. It is very clear from the statement of MW-4 and MW-8 that the delinquent employee had used obscene remarks against the Girl students and misbehaved with them. In the above circumstances, I conclude that the charge levelled against the delinquent employee that he has extremely misbehaved with the Girl students in proved beyond all reasonable doubt and that I found him guilty of the charges."

23. Reading of the entire findings would reveal that

the facts and circumstances as well as the documents were considered by the Enquiry Officer. Thus, this Court is unable to come to a conclusion that the Enquiry Officer arrived a finding without providing any reason for his conclusion. Such an argument is incorrect and therefore, deserves no consideration.

24. The learned counsel for the writ petitioner-Management cited the judgment of this Court in the case of S.Rajesh vs. Secretary, Tamil Nadu Public Service Commission and another [decided on 30.08.2018 in WP No.1341 of 2017], wherein this Court, in paragraphs-10 and 11, observed as under:-

"10. It is submitted that the Teacher profession is a noble profession which shapes the young generations to become good citizens of the Country. The petitioner has proved himself unworthy to hold the post of teacher which is explicit from the charges faced by him. In such circumstances the Commission which is bestowed with the duty of satisfying itself with the character and antecedent of the candidates by virtue of Rule 12(b) of Tamil Nadu State and Subordinate Service Rules, now Section 20(4) (i) of Act 14 of 2016 deemed it unnecessary to wait to see whether the candidate is coming up for selection and then decide his eligibility with reference to his character and antecedents, rather felt it would be correct to deny him admission to the next stage after certificate verification which is the interview stage and hence rejected his candidature for further selection process and considered another candidate as a substitute in the place of the Writ petitioner. However, it is submitted that, in obedience to the interim order of this Hon'ble Court dated 18.01.2017 the Commission has admitted the petitioner provisionally to the oral test on 19.01.2017 AN and the result of his oral test has been kept with held.

11. However, it is submitted that since recruitment to the Post of District Educational Officer has to be finalized based on rank, Rule of Reservation and the subject eligibility of the candidates and with reference to the vacancies available and thus, the selection is of a peculiar nature

unless and until the validity of the rejection of his candidature in view of his unbecoming character and antecedents is decided by this Hon'ble Court, the further selection process cannot be proceeded. In other words, the selection or non-selection of one candidate decides the selection or non-selection of other candidates based on marks/rank, rule of reservation, subject vacancies and communal rotation. As such without finalizing the Writ Petition of the petitioner, no selection for this long pending recruitment could be finalized. At this juncture, it is submitted that this Hon'ble Court must be pleased to appreciate that the decision of the Commission to deny him admission to further selection process when it came to know of his character and antecedents is reasonable and valid more so when the post to which the Writ petitioner seeks to be considered as a candidate can by virtue of the powers attached to the post be capable of being mis-used by a person like the Writ Petitioner."

25. The Hon'ble Division Bench of this Court in the case of Establishment Committee of the Board of Governors, National Institute of Fashion Technology and Another vs. A.S.Kumaresh [decided on 28.07.2016 in WP No.12967 of 2011], in paragraphs 10 and 11, observed as under:-

"10. The learned counsel appearing for the writ petitioners has contended that after coming to a conclusion that the charges framed against the respondent/applicant are proved, considering the gravity of charges, the Central Administrative Tribunal has committed an error in setting aside the punishment.

11. It has already been pointed out that the respondent/applicant has misbehaved with a student and she has given categorical evidence to that effect during domestic enquiry. Considering the gravity of charges framed against the respondent/applicant and also considering that all charges are touching the moral turpitude, this Court is of the considered view that the punishment imposed by the disciplinary authority is

perfectly correct and the same does not require any interference."

26. This Court in the case of Management of FORD INDIA PRIVATE LTD vs. Assistant Commissioner of Labour (Conciliation) 1 and Another [decided on 03.10.2019 in WP No.2683 of 2015], laid down certain principles, in paragraphs-18 to 21, which all are relevant to be considered in the present case, are extracted hereunder:-

"18. It is relevant to remind the fundamental duties of a citizen enunciated under Article 51-A of the Constitution of India. Sub Clause (i) to Article 51-A enumerates that "to safeguard public property and to abjure violence". Sub Clause (j) stipulates that "to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement".

19. Emphasizing the fundamental duties of the citizen under Article 51-A of the Constitution of India, this Court is of the strong opinion that rights and duties are inseparable concepts and the person, who is claiming right, must keep in mind that he has got corresponding duties towards the fellow citizen and to our great Nation at large. Rights and duties are the relative terms and therefore, in the current day situation, while dealing with the rights of the individuals, his duties are also to be considered by the Constitutional Courts in order to adopt a pragmatic and balancing approach. It is not as if while upholding a rights of a citizen, Court can neglect his duties. Only if a citizen respects his duties as law requires, then alone he can claim his right under the law and it is not as if he can violate his duties and responsibilities and claim rights in isolation. Such a concept, if at all in the mind of a person, the same can never be encouraged by the Constitutional Courts.

20. Keeping this view, this Court is of an opinion that certain allegations, manhandling or physically attacking or assaulting the co-employees or the higher

officials can never be tolerated and such offences are already classified as punishable offence under the Indian Penal Code. This apart, respecting the fellow citizen or colleagues in the work place is of paramount importance. Only through maintaining the discipline and decorum, the industrial activities can be developed, so also, the developmental activities across the country can be taken forward. Thus, discipline and decorum in industrial places are of paramount importance. It is an organizational discipline, which would make the industry to grow further and to develop the prospectus of our great Nation as well as the people at large. Thus, compromising the discipline will lead to destruction within the industry / public institutions. Any indisciplined industry or organization can never see the light of growth. Most of the industries / public institutions had collapsed on account of indiscipline, mal administration or corruption. Thus, discipline, decorum, honesty and integrity are the vital characters to be maintained in the industry / public institutions, factories and trade activities, so as to take our Nation forward on par with the global standards. Our great Nation is a fast growing Country in the world. Under these circumstances, Courts are also duty bound to ensure that such discipline, decorum, honesty and integrity are being maintained at all institutional levels and all such institutional respects are also protected.

21. This being the concept to be borne in mind, this Court is of an opinion that any indiscipline, if noticed and disciplinary actions are initiated against the employees, Courts must be keen in analyzing the factors and arrive a conclusion that such indiscipline activities are brought down and dealt in accordance with law without showing any leniency or misplaced sympathy. Thus in disciplinary matters, misplaced sympathy by the Courts also would lead to destruction of industries / public institutions. The personal likes

and dislikes of certain elements or character should not have any impact in deciding such cases of disciplinary proceedings. It is not as if we are compromising the principles, we are compromising the National developments and therefore, there cannot be any such misplaced sympathy in the matter of discipline and decorum in industries and in public institutions."

27. Relying on the judgment of this Court, cited supra, the learned counsel for the writ petitioner-Management reiterated that there cannot be any compromise in respect of maintenance of discipline in the writ petitioner-Institution, wherein the girl students are studying large in number and from various States across the country. The maintenance of discipline in the writ petitioner-Institution is of paramount importance and therefore, the conduct of the first respondent-employee against the girl students, which were proved before the Enquiry Officer was lightly taken by the Industrial Tribunal and by exercising the discretionary power, a leniency was shown for grant of relief, which is certainly unwarranted.

28. Perusal of the findings of the Enquiry Officer reveal that all the materials as well as the documents produced were considered to arrive a conclusion.

29. The learned counsel for the first respondent-employee raised a ground that the charges were vague and incapable ;of being defended by the first respondent-employee. In this regard, it is relevant to consider the deposition made by the first respondent himself (WW-1) on 10.08.2009 and the said deposition of the first respondent-employee is extracted hereunder:-

"I know the allegations levelled against me which I have denied. I know that enquiry was held in a just and proper manner. An assistant was provided for the enquiry who was also a NIFT staff. Whatever the Assistant was telling, it was never properly recorded. I could not object the same during that time before the Enquiry Officer. Suspension Order was served on 14.08.2000 which I accept. I do not know whether any of the superiors ever warned me before the issuance of

Suspension Order. With the permission of particular faculty I am entitled to use the Computers, Internet. I have also signed in the enquiry proceedings. I do not know the administrative powers of Directors and Registrars and my Superiors. I know who was the Enquiry Officer and I have signed before the Enquiry Officer. I have received the copies of the complaints made by the students but I do not know through which mode I have received."

30. Therefore, the first respondent-employee himself admitted that he knew the allegations levelled against him and he denied the allegations and participated in the enquiry proceedings by availing the opportunities provided. Thus, the contention of the learned counsel for the first respondent-employee that the charges are vague is incorrect and after availing the opportunities and defended the case with all particulars, documents and evidences, the said contentions deserve no merit consideration.

31. The Labour Court in its finding has stated that the elementary principle for an adjudication that the material allegations have to be specifically recited in the pleadings and based on the pleadings only evidence has to be let in and without any specific allegations in the pleadings, some materials are projected against the workman by way of some written documents or proceedings ought to have had indulged in various misconducts. Accordingly, the Labour Court proceeded by stating that the charges were vague and the Enquiry Officer has not furnished any reason for arriving such a conclusion and thus, set aside the order of removal and directed for reinstatement with continuity of service with 25% back wages.

32. This Court is of the considered opinion that the charges against the first respondent are grave in nature. The students of the writ petitioner-Institution were examined and the documents were filed. The Enquiry Officer considered all those documents in his findings as well as the depositions of the girl students and arrived a conclusion that the charges are proved, except charge Nos.2 and 3. When such findings of the Enquiry Officer is very clear and the entire reading of the enquiry report reveals that the documents and the evidences were considered and the reasons are furnished for the findings. Thus, the findings are very much in consonance with the materials relied upon, and there is no reason whatsoever for the Industrial Tribunal to arrive a conclusion that the findings of the Enquiry Officer is unreasoned. Such a finding, in the

opinion of this Court, is incorrect and not in consonance with the facts and circumstances, evidences and the documents produced before the Enquiry Officer. The Labour Court exercised its discretionary powers for the purpose of granting the relief. Such an exercise, cannot be done in respect of such serious misconducts wherein the allegations against the first respondent are regarding harassment of girl students in the writ petitioner-Institution.

33. Apart from this, the other allegations are also there. The delay in instituting disciplinary proceedings by the writ petitioner-Institution, cannot be a ground to hold that the delinquent-employee is to be exonerated, as the delay cannot be construed as enormous. Such administrative delay are to be condoned in view of the fact that the allegations against the first respondent-employee are grave in nature and regarding the indiscipline in an institution, where the girl students are studying. Therefore, this Court is of the considered opinion that the exercise of discretionary powers by the Industrial Tribunal in this case is unwarranted and such an exercise will result in a wrong precedent.

34. When the fairness of the enquiry was not disputed by the delinquent employee and the Enquiry Officer's findings are categorical in nature and the reasons recorded by the Enquiry Officer for arriving such a conclusion, then there is no reason to show any leniency or misplaced sympathy in respect of the quantum of punishment. The Labour Court, while interfering with the quantum of punishment imposed, shall ensure that reasons are recorded and such reasons must be candid and convincing. Mere exercise of discretionary powers on the basis of leniency or misplaced sympathy is unknown to law. Such exercise of discretionary powers, cannot be approved and to be construed as an erroneous approach.

35. This being the facts and circumstances, this Court has no hesitation in coming to the conclusion that the Award of the Tribunal is perverse and not in consonance with the proved charges, which all are grave in nature and the legal principles. Consequently, the Award dated 22.07.2010 passed by the second respondent-Tribunal in I.D.No.58 of 2007 is quashed and the writ petition stands allowed. However, there shall be no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

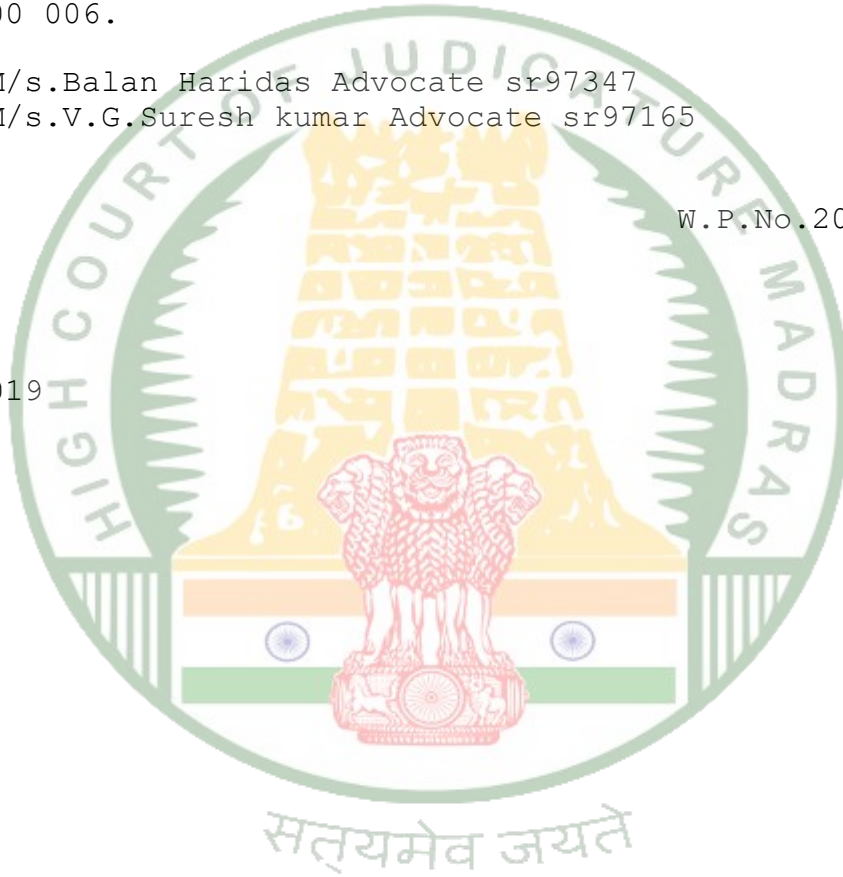
To

Presiding Officer,
The Central Government Industrial Tribunal-
cum-Labour Court,
Ministry of Labour and Employment,
Office of the Deputy Chief Labour,
Commissioner (Central),
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W.P.No.20508 of 2010

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