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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-6915-1999 (O&M)

Date of Decision: May 27, 2019

Ramesh K. Srivastava

... Petitioner

vs.

Guru Nanak Dev University, Amritsar and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Amit Jain, Advocate and
Mr. Arnav K. Sood, Advocate
for the petitioner.

Mr. Amrit Paul, Advocate
for the respondents.

ARUN MONGA, J

The petitioner having 27 years of unblemished service record, at the fag end of his career, was demoted from Professor to the post of Reader. Vide impugned punishment order dated 23.12.1998 (Annexure P/13), passed by the Registrar of the respondent-Guru Nanak Dev University, Amritsar, following punishments were awarded to the petitioner:-

1. demotion from the Post of Professor to the post of Reader;
 2. Making him a junior most Reader;
 3. reducing basic pay from Rs.6700/- to Rs.3700/- i.e. minimum of the scale of a Reader;
 4. reducing the status from being senior most in his department to being the junior most (resultantly, the petitioner was pushed back by 23 years i.e. 15 years of being Professor and 08 years of being Reader).
2. Few months after awarding of above punishment, the petitioner retired from his service. The punishment order was assailed by the petitioner

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under Section 33 (ii) of Guru Nanak Dev University, Calender, Volume-1 (1993) before the Appellate Authority but his appeal too was dismissed, vide impugned appellate order dated 26.04.1999 (Annexure P/14). Hence, the present writ petition questioning validity of orders dated 23.12.1998 (Annexure P/13) and 26.04.1999 (Annexure P/14) by the petitioner.

3. Punishment order was passed based on the indictment of the petitioner by the Inquiry Officer holding him guilty of charges of sexual harassment levelled by complainant who is referred hereinafter as Madam 'X' daughter of Mr. 'XF'. Being an old matter, even in the pleadings, necessary changes are directed to be carried out by the Registry where-ever the name of the victim appears in the pleadings, the same be changed to Madam 'X'.

4. Factual matrix and brief background of cantankerous antecedent litigation first. The petitioner states that he has an excellent academic and service record but, is being humiliated and victimized by persons with vested interest. In the year 1969-70, the petitioner was awarded with U.S. Government (Fulbright) Fellowship, for advanced study in American Literature in U.S.A. The petitioner successfully completed his graduate research fellowship and was awarded the degree of Ph.D. in year 1972 by University of Utah, Salt Lake City, U.S.A.

5. After coming back to India, he was appointed as Lecturer in English in Guru Nanak Dev University, Amritsar. During his academic career he also published 16 books. Apart from that he has a number of other publications to his credit. The petitioner was promoted as Reader in the year 1976. Thereafter, as a Professor, in the year 1984. In year 1984-85, he was also awarded Fulbright (Senior) Fellowship, U.S.A., for research on essayist, H.D.Thoreau.

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6. The petitioner was appointed as Head of the Department of English in July, 1988 and as Dean, Faculty of Language, with effect from 01.07.1990 to 30.06.1992. By virtue of his being Head of the Department and Dean of Faculty, the petitioner became the member of the selection committee for the appointment of Professors, Readers and Lecturers in the Department of English as well as in the faculty.

7. There was a move to amend the regulations regarding appointment of the Head from amongst the Professors and Readers both. If that rule had come into force, Dr. Harsharan Singh would have lost his chance forever for becoming Head. With a view to preempt the office of the Head, Department of English, Dr. Harsharan Singh hatched a conspiracy to procure the resignation of the petitioner with an intention to oust the petitioner from the University.

8. As part of plot, one Madam 'X', a Research Fellow in the Department of English, daughter of Mr. 'XF', the then Superintendent of Police, alongwith her father accompanied by 20-25 police personnel, armed and in uniforms, came to the residence of the petitioner on 17.10.1990. On gun-point, the petitioner was given following three options by her:

- a) to be ready to be killed;*
- b) to be forcibly taken away to an unknown place then and there;*
- c) to resign from the post of Professor of English immediately.*

The petitioner, under the circumstances, was forced to submit his resignation from the post of Professor in English. He was then taken to the office of the Vice Chancellor in a car where he was made to wait in the car and the persons, who had taken the petitioner there, submitted the resignation of the petitioner to the Vice Chancellor.

9. The petitioner later met the Vice Chancellor during the day and

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also on the next day and requested him not to accept his resignation. He later sent an express telegram withdrawing his resignation letter of 17.10.1990. However, it is alleged that before the receipt of his telegram the Vice Chancellor had already accepted his resignation. The names of the persons and the minute details connected with the aforesaid incident were detailed in the FIR lodged by the petitioner and also in the various representations made by him.

10. After securing the resignation of the petitioner, Madam 'X' was appointed as Lecturer, though on *ad hoc* basis, on 06.12.1990. The other post of Lecturer was also filled by appointing one Manbeer Singh Bhullar, who was a student of Dr. Harsharan Singh.

11. The petitioner was constrained to file Civil Writ Petition bearing No. 15813 of 1990 in this Court, challenging the action of the respondent University in not permitting him to withdraw the resignation dated 17.10.1990. The writ petition was allowed by this Court and the operative part of the judgment is as under:

“.. The upshot of the entire discussion is that this petition is allowed, the petitioner would be allowed to withdraw his resignation as prayed for by him vide Annexure P-3 and P-4. Order, Annexure P-6, accepting the resignation of petitioner by the Vice Chancellor with effect from 18.10.1990 and order, Annexure P-7, paragraph 82 of the minutes of the meeting of the Syndicate held on 23.10.1990 regarding waiving of the condition of three months notice after the withdrawal of the resignation are quashed. The petitioner consequently shall be deemed to be in service for all this while. It shall, however, be open to the Respondent authorities to proceed against the petitioner, if they may so choose with regard to the allegations that might be against the petitioner on account of his conversation with Madam

'X' in accordance with law. In the circumstances however, there shall be no order as to costs."

12. As a consequence of the aforesaid decision rendered by this Court, the petitioner was reinstated. He was to continue as Head of the Department of English till 12.06.1993.

13. At the relevant time when petitioner was reinstated, one post of Professor and Lecturer was to be filled, being Head of the Department, petitioner initiated process for the same. However, per allegation of the petitioner, with a view to snatch this opportunity from him, he was removed as Head of Department vide order dated 30.12.1992 (Annexure P/4). The petitioner was constrained to file another writ petition bearing CWP No. 59 of 1993 in this Court. This Court passed the following order dated 05.01.1993 (Annexure P5) :-

"On the oral prayer of the learned counsel for the petitioner, Shri G.S.Randhawa, Vice Chancellor, Guru Nanak Dev University, Amritsar, is added as party respondent in the writ petition. Notice of motion for 4th February 1993. The petitioner will continue on his duty as Head of English Department, till further orders. The University is directed to produce the records of the meeting dated 29.12.1992 and the earlier meeting also."

14. On 04.02.1993 this Court admitted the above writ petition and passed the following order:

"On the oral prayer of Mr. P.S.Patwalia, Advocate, Madam 'X' daughter of Mr. 'XF' is added as party-Respondent to the writ petition. After hearing the learned counsel for the parties, we find it a fit case for admission.

Admitted.

Ad-interim direction are made absolute"

Thus the petitioner continued to work as Head of Department

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under the directions of this Court.

15. The respondent University, after the petitioner had successfully completed his term as Head of Department, moved an application before this Court, seeking dismissal of above writ petition, as having been rendered infructuous. But, vide order dated 04.08.1993 (Annexure P/6), this Court declined to dismiss it as infructuous.

16. Having failed on all other fronts, respondent/Guru Nanak Dev University, Amritsar, then served a charge sheet dated 10.02.1994 (Annexure P/7) on the petitioner pursuant to a complaint of Anup Singh Minhas, father of Madam 'X', dated 28.12.1992 i.e. after more than two years. The petitioner, way prior thereto, had already complained to the Senior Superintendent of Police, Amritsar, vide Annexure P-1 dated 06.11.1990 with regard to the incident dated 17.10.1990, when Madam 'X' alongwith her father Mr. 'XF', Superintendent of Police, Railways, posted at Jalandhar, stormed into the residence of the petitioner with a bus-load of persons, mostly Police Constables and some faculty members, on the pretext of alleged misbehaviour and had threatened the petitioner.

17. The complaint of petitioner was later converted into FIR No. 563 dated 07.11.1990. The respondent authorities instead of taking any follow-up action against the faculty members and Madam 'X', proceeded to charge sheet the petitioner. The petitioner has, thus emphasized that pressure tactics were being employed against him to withdraw his FIR.

18. The petitioner has stated that in the inquiry to be proceeded qua charge-sheet issued to him, it was incumbent upon respondent-University to simultaneously proceed against the faculty members involved in the incident who had master-minded the whole affair. Both matters i.e. charge-sheet issued

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to him and his complaint were interconnected, the petitioner has so contended. The alleged misconduct, which was the subject matter of the charge sheet, could not be isolated from the complaint/representation sent by the petitioner and his family members.

19. The petitioner also assailed the charge-sheet in this Court vide CWP No. 2457 of 1994 which was disposed of on 27.07.1994 (Annexure P/8) in following terms:-

“After hearing the learned Counsel for the parties, this writ petition is disposed of with the observations that it will be open to the petitioner to raise all the points taken in the writ petition before the Inquiry Officer.”

20. Thereafter, reply of petitioner to the charge-sheet was placed before the Syndicate of the respondent-University. The Syndicate in its meeting dated 16.09.1994 (Annexure P9), vide Item No. 36, decided as under:-

“Resolved that the reply dated 09.03.94 of Professor R.K.Srivastava, English Department, relating to the charge sheet on the basis of allegations of Madam 'X' is not satisfactory. Therefore, as per University Rules, an inquiry be conducted against him. In this connection the Vice Chancellor is authorised to appoint an Inquiry Officer. The Inquiry Officer will conduct an inquiry on the representations of Professor Srivastava.”

21. The petitioner made repeated representations and requested to simultaneously proceed against the other faculty members to look into the incident complained of by the petitioner. But the respondents, states the petitioner, with a calculated move to victimize the petitioner segregated the subject matter of charge-sheet and did not get the inquiry conducted against the other faculty members, with regard to complaint/representation made by the petitioner.

22. The petitioner avers that inquiry report submitted by the Inquiry Officer, de-linked alleged delinquency of other faculty members from that of the petitioner and indicted the petitioner. The respondent authority acted on the report of the Inquiry Officer and issued notice to the petitioner, to show cause as to why he should not be removed from the service of the University.

23. The petitioner yet again filed CWP-5797-1997 in this Court to impugn the show cause notice, which after issuance of notice of motion, was disposed of, vide order dated 09.10.1997 (Annexure P/12), as below:-

“.. The grievance made by the petitioner in this writ petition is that the Inquiry Officer has not taken into consideration the points taken by him in the writ petition despite the observations of the Division Bench in this regard. In our view, it would not be proper for this Court to interfere at this stage. Petitioner, if so advised, may raise all the points taken in this writ petition, in the reply which he may file to the show cause notice. We are sure the disciplinary authority while deciding the case of the petitioner shall take into consideration the entire aspect of the matter, including the points taken by the petitioner herein....”

24. The petitioner submitted detailed reply to the show cause notice but respondent/University proceeded to award multiple punishments to the petitioner vide order dated 23.12.1998 (Annexure P/13), impugned herein. The Appellate Authority, vide order dated 26.04.1999 (Annexure P/14) proceeded to dismiss the appeal against the said order, by passing a non-speaking order.

25. In the written statement filed by the respondent-University, the stand taken is that since resignation of the petitioner had already been accepted by the Vice-Chancellor, permission to withdraw the same was not accorded by the University. The Syndicate endorsed the decision of the Vice-Chancellor

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accepting the resignation of the petitioner in its meeting held on 23.10.1990. In fact, right from the time when the petitioner had submitted his resignation, it was well known in the University that the petitioner had attempted to outrage the modesty of one Madam 'X', who was doing her Ph.D in English under the petitioner. Detailed reference of the allegations in this regard, proved by the two inquiry officers i.e. a Senior I.A.S. Officer and the other a learned retired Judge of this Court were also relied upon.

26. In any case, since the petitioner had submitted his resignation which was accepted by the University, the allegations though proved were permitted to rest at that stage. However, once the petitioner was reinstated in service as a consequence of the directions given by this Court, a formal complaint was lodged by Mr. 'XF', father of Madam 'X', on 28.12.1992, wherein, there were detailed allegations against the petitioner for attempting to outrage the modesty of his daughter, requesting the University to take action against the petitioner.

27. The abovesaid complaint was placed before the Syndicate in its meeting held on 29.12.1992 (Annexure P/4). It was decided to constitute a inquiry Committee to go into the allegations made in the complaint against the petitioner and further not to assign him any administrative responsibility till the final outcome of the inquiry.

28. Consequently, the petitioner's appointment as Head of the Department of English was cancelled. Vice Chancellor appointed Sh. Lal Singh Aujla, I.A.S.(Retired), to hold a fact finding inquiry vide letter dated 01.01.1993 and the Inquiry Officer submitted detailed report dated 20.03.1993 holding the allegations as, *prima facie*, correct.

29. In the meanwhile, aggrieved against the order dated 29.12.1992,

the petitioner approached this Court vide CWP No. 59 of 1993, whereby, *inter alia*, the petitioner was divested of the charge of the post of Head of Department. Pursuant to interim order passed by this Court, the petitioner was allowed to continue as Head of the Department of English during the pendency of the above writ petition.

30. Inquiry report dated 20.03.1993 was placed before the Syndicate in its meeting held on 24.12.1993 and on the basis of the same, the Syndicate decided to serve a charge sheet on the petitioner and pursuant to that decision, a charge sheet dated 10.02.1994 (Annexure P7) was served.

31. Reply to the charge sheet, filed by petitioner, was also placed before the Syndicate in its meeting held on 16.09.1994 and Syndicate resolved to appoint an Inquiry Officer to conduct a full fledged inquiry into the allegations against the petitioner. Accordingly, Justice K.P.S.Sandhu (Retired), was appointed as Inquiry Officer. Mr. 'XF', Madam 'X', Shri Maninder Singh Dhillon, Dr. John Elizer, Dr. Rajinder Singh Sandhu, Ms. Harleen Sandhu and Dr. S.K.Bhatia were examined as witnesses in the inquiry proceedings. Tape of recorded version between petitioner and Madam 'X' (daughter of the complainant) was also tendered into evidence. Full opportunity was given to the petitioner to rebut the charges levelled against him.

32. Inquiry Officer vide his report (Annexure R1/1) conclusively held that the allegations against the petitioner, that he tried to outrage the modesty of Ph.D. student under him, had been proved. The assertion of the petitioner in the writ petition that a scheme was hatched to oust him from the post of Head of the Department and Madam 'X' was given the lure of appointment as Lecturer was also looked into by the learned Inquiry Officer. Petitioner failed to put any suggestion to the witnesses to this effect and during cross-

examination, despite the fact, he was given opportunity to cross-examine. Punishment order was passed based on the indictment of the petitioner by the Inquiry Officer holding him guilty of charges of sexual harassment levelled by complainant leading to the filing of the instant writ petition.

33. I have heard learned counsels for the respective parties and gone through the record with their able assistance.

34. Broadly, four arguments have been raised by learned counsel for the petitioner viz. a) that the complaint of sexual harassment was filed against the petitioner *malafide*. b) it was after a lapse of four years of incident and; c) that too not by the victim but by her father and d) despite order dated 09.10.1997 (Annexure P/12) passed by this Court the contentions raised by petitioner were given a short shrift.

35. Learned counsel for the petitioner contended that reliance placed by the Inquiry Officer on the tape recording is completely based on conjectures and surmises, as is revealed from the bare perusal of the finding given by him. Even if it is assumed for the sake of arguments that the Inquiry Officer has rightly held the petitioner guilty, the punishing authority, while accepting the report, has given a grossly disproportionate punishment.

36. Per contra, learned counsel for the respondent(s) stated that proper procedure was followed in conducting the departmental proceedings and after the inquiry report and a show cause notice was issued. All the contentions raised by the petitioner, even if not dealt with by the Inquiry Officer, were looked into by the Punishing Authority while passing the impugned order, pursuant to the show cause notice. He further contends that the impugned order, passed by the Punishing Authority, was upheld by the Appellate Authority.

37. Having perused the appellate order, I am of the view that it clearly shows that not only the same is cryptic but as non-speaking as it can be. The only reason cited by the Appellate Authority, in upholding the Punishing Authority's order, is that 'after due consideration' the appeal has been rejected by the Chancellor. There is not even the slightest of whisper as to what material was considered by the Appellate Authority.

38. Reliance may be had on a judgment, titled as **Dr. P.K.Mittal vs. State of Punjab and others, 1982 (2) SLR 267**, rendered by this Court in CWP-1766 of 1974. The relevant whereof is extracted here-in-below:

37. *"The only contention raised by Mr. J. L. Gupta, learned counsel for the petitioner, in support of the petition is that order Annexure P-16 is not a speaking order and that no reasons have been assigned as to why the reply of the petitioner has been rejected. According to him, the order is cryptic and sketchy and could well have been passed without the application of any mind. Reliance has been placed by him on **Ram Dass Chaudhary v. State of Punjab and another, 1968 S. L. R. 792**, wherein P. C. Jain, J. in somewhat similar circumstances, relying on the decision of the Supreme Court in **Bhagat Raja v. Union of India and others, AIR 1967 Supreme Court 1606**, took the view that it was incumbent on a punishing authority to give reasons while arriving at a decision against a delinquent officer as the power of punishing was quasi judicial in nature. The case before P. C. Jain, J. arose from an appellate order of the Government, but here the impugned order is on the original side. In **State of Punjab v. Dr. R. K. Chopra, 1978(1) I. L. R. 1**, a Division Bench of this Court approved P. C. Jain, J's view in Ram Dass Chaudhary's case (supra) To my mind, the dictum of Bhagat Raja's case (supra) applies reinforcedly to an order passed by a punishing authority*

on the original side. It goes without saying that such an order may be subjected to appeal or revision or be tested in writ jurisdiction of this Court. Ex facie, something has to be available on the face of the order from which the Court of correction has to go by. In the instant case, as is plain, the order was that the reply of the petitioner had been considered by the Government and found to be unsatisfactory and, therefore, one increment was thereby stopped with cumulative effect. That per se, to my mind, does not reveal as to how the mind of the Government was applied towards arriving at such a conclusion. Such an order cannot be sustained merely because in the return filed by the Government, effort has been made to justify that it is a speaking order, and it indicates the reasons because of which action was being taken against the petitioner. That may be true, that it indicates the reasons because of which action was being taken against the petitioner. But it does not indicate the reasons for coming to the conclusion for punishing the petitioner. The arena for the respective two spheres is well marked. And though permitted to over-shadow 'to some extent, cannot have the effect of superimposition to wipe out the ultimate aspect altogether.'"

39. Learned counsel for the respondent(s) has argued that proper procedure was followed in the case. He placed reliance on a judgment, titled as **S.N.Mukherjee vs. Union of India, reported as 1990 (4) SCC, 594**, to submit that in view of the aforesaid judgment, the Appellate Authority is not bound to give any reason, in the event, the order under appeal is a speaking order and the same is being upheld, unless it is provided in the Punishment and Appeal Rules. In my opinion his reliance on the said judgment is misplaced. Relevant extract of the judgment, relied by him, is reproduced hereunder:

"For the reasons aforesaid it must be held that reasons are

not required to be recorded for an order passed by the confirming authority confirming the findings and sentence recorded by the court-martial as well as for the order passed by the Central Government dismissing the post-confirmation petition. Since we have arrived at the same conclusion as in Som Datt Datta case (supra) the submission of Shri Ganguli that the said decision needs reconsideration cannot be accepted and is, therefore, rejected.”

40. As is seen, the said case pertained to court martial proceedings and the above observations were made in an entirely different context, while examining the specific provisions of the Army Act, to the effect that confirmation of the findings and sentence of the court martial is necessary before the said finding or sentence becomes operative. Before the findings and sentence of a court martial are confirmed, the same are examined by the Deputy or Assistant Judge-Advocate General of the command. The same are not applicable to the wholly different situation in the present case.

41. He further relied on Section 42 of the Guru Nanak Dev University, Amritsar, Act, 1969, which is reproduced herein below:-

*“Save as may be otherwise provided in the Statutes, power of suspension and removal from office or any other kind of punishment of officers or 'Class' A/'B' and 'C' employees shall vest in the Syndicate/Vice Chancellor and the Registrar/Head of the Department to which they are attached subject to the control of the Syndicate, respectively. **An appeal against an order of suspension, removal or any other punishment passed by the Syndicate shall lie with the Chancellor and against such orders passed by the Vice-Chancellor shall lie with the Syndicate and against such order passed by the Registrar/Head of the Department shall lie with the Vice-Chancellor.**”*

42. Learned counsel for the respondent(s) contended that in the

present case, the Punishment and Appeal Rules do not envisage any requirement that the order should be speaking one. To my mind, the stand taken by the respondent(s) and the impugned orders do not stand judicial scrutiny.

43. The Syndicate in its meeting held on 16.09.94 passed the following resolution:-

“Item No. 36:-

Resolved that the reply dated 9.3.94 of Prof. R.K.Srivastava, English Department, relating to the charge sheet on the basis of the allegations of Madam 'X' is found unsatisfactory. Therefore as per University rules, an inquiry be conducted against him. In this connection the V.C. is authorised to appoint an Inquiry Officer. The Inquiry Officer will conduct an inquiry on the representation of Prof. Srivastava.”

44. This resolution, it would be seen, does not provide for nor authorizes the Vice Chancellor for the appointment of any Presenting Officer for the inquiry proceedings. In the absence of the necessary authority from the Syndicate, obviously, the Vice Chancellor could not have appointed any presenting Officer to conduct the inquiry. Written statement of the University also does not indicate if any Presenting Officer was appointed. There is nothing mentioned in the report of the inquiry officer if any Presenting officer had been appointed for the inquiry. It can be inferred, therefore, that no Presenting Officer had been appointed in the case and that the Inquiry officer took upon himself that role also. The appointment of a Presenting Officer was necessary to ensure that the Inquiry Officer could effectively, fully, independently and impartially perform his adjudicatory role for the conduct of inquiry.

45. In my opinion, the failure of the respondent to appoint a Presenting Officer and the assumption and performance of his role also by the Inquiry Officer himself, was unfair and against the rules of natural justice and the same vitiated the proceedings and report of the inquiry. For this view, I find support from the judgment of the Hon'ble Apex Court in **Kumaon Mandal Vikas Nagar Ltd. v. Girja Shankar Pant** reported as **2001 AIR (SC) 24**. The relevant whereof is reproduced herein below:-

“....The sixty-five page Report has been sent to the Managing Director of the Nigam against the petitioner recording therein that the charge against him stand proved - what is the basis ? Was the Inquiry Officer justified in coming to such a conclusion on the basis of the charge-sheet only ? The answer cannot possibly be in the affirmative. If the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next issue could be as regards the nature of the records - unfortunately there is not a whisper in the rather longish report in that regard. Where is the Presenting Officer ? Where is the notice fixing the date of hearing ? Where is the list of witnesses ? What has happened to the defence witnesses ? All these questions arise but unfortunately no answer is to be found in the rather longish Report. But if one does not have it - Can it be termed to be in consonance with the concept of justice or the same tantamount to a total miscarriage of justice. The High Court answers it as miscarriage of justice and we do lend our occurrence therewith....”

46. As per the charge-sheet dated 10.02.1994 (Annexure P/7), the specific charge against the petitioner was as under:

“Now as per orders of the Vice Chancellor in pursuance of the decision of the Syndicate referred to above, you are charge sheeted as under:

That on 16.10.90 when you were the Head of the Department of English, you called Madam 'X', who was then working as Research Scholar under you, in your office and committed grave misconduct by attempting to seduce her taking advantage of the position that Madam 'X' was a candidate for adhoc appointment as Lecturer in your Department, as complained by Mr. 'XF', father of Madam 'X' in his complaint dated 28.12.1992.”

47. As against this, the finding recorded by the Learned Inquiry Officer is that the petitioner misused his position and fiduciary relationship with Madam 'X' and made indecent advances and dirty suggestions to her so as to outrage her modesty.

48. Against the specific charge against the petitioner that on 16.10.90, he had called Madam 'X', in his office and attempted to seduce her, the Inquiry Officer recorded a general and non-specific finding i.e. “he misused his position and fiduciary relationship with Madam 'X' and made indecent advances and dirty suggestions to her so as to outrage her modesty”. From the report, it emerges that the learned Inquiry Officer, did not hold the petitioner guilty for the charge that he had called Madam 'X' on 16.10.1990 and attempted to seduce her on that day. The learned Inquiry Officer, without specifying any particular incident, held in general and non-specific manner that the petitioner had made indecent advances and dirty suggestions to Madam 'X' so as to outrage her modesty.

49. In the circumstances, this Court is of the opinion that the vague and general finding, in the way it has been recorded by the learned Inquiry Officer, falls short of holding the petitioner guilty of the specific charge that

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on a particular date (16.10.90), he had called Madam 'X', in his office and attempted to seduce her. Needless to add that the dictionary meaning and connotation of the word "seduce" and the term "outrage of modesty" are distinctly different. A finding recorded by the learned Inquiry Officer, beyond and different from the charge levelled against the petitioner, could not have been made the basis of penal action for such charge against the petitioner.

50. The definite stand of the respondent in the written statement is that the petitioner's reply to the show cause notice was placed before the Syndicate, who in the meeting held on 25.5.1998, resolved to obtain legal opinion on the question of punishment to be imposed on the petitioner. There is nothing further pleaded in the written statement. Respondent failed to show on record, whether the report of Inquiry Officer was ever accepted by the competent Authority i.e Syndicate. The reference in the Syndicate meeting is only for taking legal opinion. Syndicate did not record any decision for accepting the finding of the Inquiry Officer before resolving to take legal opinion on the quantum of punishment.

51. Show cause notice dated 31.03.1997 (Annexure P/11) was no doubt issued but nothing has been brought on record regarding Resolution of competent Authority for its issuance.

52. In my opinion, it was incumbent upon the respondent to show on record that the punishing authority had applied its mind to the report of and the finding recorded by the Inquiry Officer and taken/recorded any decision of its own to accept and act further upon that finding. As things are, the respondents have failed to discharge that onus. The ratio of the decision rendered in **Dr. P.K.Mittal'** case (*supra*), is relevant here that any order passed by Punishing Authority must be speaking.

53. Annexure P/11 A is the detailed reply submitted by the petitioner to the show cause notice dated 31.03.1997 (Annexure P-11). Relevant part of the minutes of the Syndicate's meeting dated 15.12.1998 Annexure R-1/3 is as under:

“After considering all the facts of the case, Syndicate agreed to the opinion given by Dr. (Justice) Sarojini Saxena and it was decided that as per University Calendar, 1993, Volume-I, Page 27 Statute 33 (c), the designation of Dr. R.K.Srivastava is reduced to Reader. He will be given initial pay in the grade of Reader and he will be placed junior to all the present readers.”

This resolution is wholly non-speaking. It is conspicuously silent about and does not even mention any of the numerous contentions raised by the petitioner in his reply to the show cause notice, let alone their consideration and passing of a reasoned order for rejection those contentions.

54. This, in my opinion, is fatal to the order/decision (Annexure R-1/3), taken by the Syndicate, for imposition of penalties on the petitioner. The said decision of the Syndicate was conveyed to the petitioner by the Registrar of the University vide Impugned order dated 23.12.1998 (Annexure P-13). This order too, like resolution (Annexure R-1/3) is wholly silent about and does not even mention any of the numerous contentions raised by the petitioner in his reply to the show cause notice, let alone their consideration and passing of a reasoned order for rejecting the same. The said penal decisions/orders, being totally non-speaking, it cannot be said that the same were taken/passed by the competent authority after due application of mind to the numerous contentions raised by the petitioner in his reply to the show cause notice and recording a reasoned finding for their rejection.

55. Annexure P/14 is the order dated 26.04.1999, whereby the appeal

of the petitioner against the imposition of penalty was rejected. The entire body text of this order is as under:

“I am directed to refer to your appeal dated 27th December, 1998 on the subject noted above, and to intimate that after due consideration your appeal has been rejected by the Hon’ble Chancellor of the Guru Nanak Dev University, Amritsar.”

56. It would be seen that this order too, like resolution Annexure R-1/3 and order Annexure P/14, is totally non-speaking. It does not even mention/refer to any of the contentions raised by the petitioner in his appeal, let alone their consideration and passing of a reasoned order for rejection of the contentions raised before the Appellate Authority. The said penal decision/order also being totally non-speaking, it cannot be said that the same was passed by the Appellate Authority after due application of mind to the numerous contentions raised by the petitioner in his appeal and recording a reasoned finding for their rejection. Owing to this, the same is also liable to be set aside.

57. A perusal of the impugned order dated 23.12.1998 (Annexure P-13) reflects that the same does not even refer to the inquiry report or the findings contained therein. On the other hand, it merely conveys to the petitioner that in view of the decision taken by the Syndicate in its Meeting dated 15.12.1998 vide para 86, after taking into account legal opinion obtained, petitioner is demoted from the rank of Professor to that of Reader. Neither the decision of the Syndicate nor the opinion which formed basis of Syndicate's decision were conveyed to the petitioner at the time of communicating the impugned order. The petitioner was thus, left completely in dark as to what transpired in the mind of the decision making authority

while awarding him punishment. Pleadings do not show if the Syndicate's decision and legal opinion were communicated to petitioner, though the same are referred in the said impugned order. Show cause notice dated 31.03.1997 Annexure P-11 issued to the petitioner was accompanied by the report Annexure R-1/1 of the Inquiry officer. The petitioner submitted his reply dated 24.12.1997 Annexure P-11/A thereto. It was thereafter that the legal opinion was taken about the quantum of punishment and later the Syndicate took the decision on penalty. In the nature of things, the said legal opinion and syndicate decision on quantum of punishment could not have been supplied to the petitioner with the earlier show cause notice dated 31.03.1997, accompanied by the report of the Inquiry officer.

58. The petitioner filed an appeal against the impugned order dated 23.12.1998 (Annexure P-13). The appellate order dated 26.04.1999 (Annexure P/14) was also passed in as cryptic manner as it can be, while rejecting the appeal on the specious plea that ***“after due consideration your appeal has been rejected by the Hon'ble Chancellor of the Guru Nanak Dev University”***. Nothing more was stated while dismissing the appeal of the petitioner. I have already reflected my mind on the non-speaking nature and crypticness of the appellate order in the preceding paragraphs.

59. A perusal of the Minutes of the Meeting of the Syndicate held on 15.12.1998 (wherein decision to award punishment to the petitioner was taken) reflects that there has been no independent application of mind on the part of Syndicate other than noticing that on the basis of inquiry report an opinion was solicited from Justice (Retired) Dr. Sarojani Saxena who discussed the various options of punishments and opined that penalty of censure was inadequate as also withholding of increment is inappropriate and disproportionate to the

charge proved against the petitioner. In her considered opinion, the petitioner deserved the punishment under Clause C of Statute 33 of Calendar 1993, Vol I, Page 27 i.e. reduction to a lower post. She further opined that removal from service/dismissal/compulsory retirement will be too harsh in the facts and circumstances of the case.

60. It is primarily the above opinion that weighed with the Syndicate as is borne out from Minutes *ibid* for imposing the specific penalties, even though, in passing reference, it has been stated in concluding para that after considering all the facts and circumstances of the case, Syndicate came to the opinion of awarding a punishment of reduction of rank.

61. Section /Statute 33 (i) of the Guru Nanak Dev University Calendar 1999, Volume I provides that the following penalties may, for good and sufficient reason, be imposed upon any employee of the University:

- (a) *Censure.*
- (b) *Withholding of increment or promotion.*
- (c) *Reduction to a lower post or to a lower stage in the same post*
- (d) *Recovery from pay of the whole or part of any pecuniary loss caused to the University by negligence or breach of orders.*
- (e) *Removal from the service of the University which does not disqualify from future employment.*
- (f) *Compulsory retirement.*

62. As is evident from the provision *ibid*, in appropriate cases, the penalty, either of reduction to a lower post or reduction to lower stage in the same post, can be imposed. The presence of proposition ‘or’ and the absence of word ‘and’ between the two options is significant. It shows that only one of these two penalties can be imposed for the same delinquency. Furthermore, “reduction to a lower stage” has been held to mean reduction to a stage immediately next below the existing stage of pay and not the lowest stage of pay in the relevant pay scale.

63. In present case, the punishing authority has imposed and the appellate authority has upheld simultaneous imposition of both the penalties-one for reduction from the higher post of Professor to the lower post of Reader and also the second penalty of reduction from higher stage to lower stage in the post of Reader by directing that the petitioner will be given initial pay in the grade of Reader and he will be placed Junior to all the present Readers. Needless to state that ordinarily, on reduction from the higher post of Professor to the lower post of Reader, the petitioner would have been entitled to pay protection and seniority as Reader, in accordance with the Rules. In my opinion, the simultaneous imposition of the penalties as done by the punishing authority and upheld by the appellate authority is not provided for nor permissible in/under the University calendar.

64. To sum up, I am of the considered opinion that:-

- (a) owing to non-appointment/absence of any presenting officer for inquiry and the consequent assumption and performance of role of the Presenting Officer by the Inquiry Officer himself was unfair and against the rules of natural justice and the same vitiated the proceedings and report of the inquiry rendered by the learned Inquiry officer;
- (b) the finding recorded by the learned Inquiry Officer was beyond and different from the charge ascribed to the petitioner and could not have been made the basis of penal action against the petitioner;
- (c) the respondent has failed to discharge the onus to show on record that before the order/decision Annexure R-1/3, passed/taken by the Syndicate and conveyed to the petitioner vide order dated 23.12.1998 Annexure P/13, the punishing authority had applied its mind to the report of and the finding recorded by the Inquiry Officer and taken/recorded any decision to accept and act further upon that finding and for issuance of the show cause notice;

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- (d) the respondent has also failed to show on record that any of the numerous contentions raised by the petitioner in his reply to the show cause notice were considered, let alone their proper consideration and passing of a reasoned order for rejecting those contentions and imposing the penalties on the petitioner and conveying of that decision of the Syndicate by the Registrar of the University, vide Impugned order dated 23.12.1998 (Annexure P/13).
- (e) Respondent has also failed to discharge the onus of showing on record that before passing the order dated 26.04.1999 (Annexure P/14), rejecting the appeal of the petitioner, the appellate authority had applied its mind to the contentions raised by the petitioner in his appeal and recorded a reasoned finding thereon.
- (f) the simultaneous imposition of the penalties as done by the punishing authority and upheld by the appellate authority is not provided for or permissible in/under the University calendar.

65. In view of my above discussion and the reasons assigned therein, the present petition is allowed. Impugned orders dated 23.12.1998 (Annexure P/13) and 26.04.1999 (Annexure P/14) are set aside. The respondents are directed to grant to the petitioner all consequential benefits pursuant to the same.

66. Let needful be done within a period of three months from the date of receipt of certified copy of this order.

May 27, 2019
smriti/vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No