

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Judgment Reserved On 09.11.2020	Judgment Pronounced On 22.12.2020
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Writ Appeal No.687 of 2019
and
C.M.P.Nos.5603 & 10176 of 2019

The Secretary and Correspondent and
Disciplinary Authority,
SBIOA Educational Trust,
S.B.O.A.School and Junior College,
18, School Road,
Anna Nagar Western Extension,
Chennai-600 001. .. Appellant/4th respondent

-vs-

1.R.G.Abirami Devi .. 1st Respondent/Writ Petitioner

2.The Chairman,
Central Board of Secondary Education,
Shiksha Kendra, 2, Community Centre,
Preet Vihar, Delhi-110 092.

3.The Chief General Manager,
State Bank of India, Local Head Office,
No.16, Circletop House, Aparna Complex,
7th Floor, College Road,
Greens Road, Chennai-600 008.

4.Disciplinary Committee (Appellate Authority),
SBIOA Educational Trust,
S.B.O.A. School and Junior College,
No.18, School Road,
Anna Nagar Western Extension,
Chennai-600 101. .. Respondents 2 to 4/ Respondents 1
to 3

Appeal under Clause 15 of the Letters Patent to set aside
the order dated 01.02.2019 made in W.P.No.31310 of 2014, which
was filed to issue a Writ of Certiorarified Mandamus, calling
for the records in the order bearing No.SBIOA/COR/51/2014

dated 10th April, 2014 issued by respondent no.3 and quashing the same and consequently directing the respondent 4 to restore the petitioner's position held in her service in the SBIOA School and Junior College before the date of suspension 13.03.2012, with eligibility to receive full salary and all attendant benefits for the period of suspension and the subsequent period to the date of the order.

For Appellant : Mr.Vijay Narayan, Senior Counsel
for Mr.C.Jagadish

For Respondents: R1 - Ms.R.G.Abirami Devi
(Party-in-Person)

: R2 - Mr.G.Nagarajan

: R3 - Mr.K.Chandrasekaran

: R4 - Disciplinary Committee

JUDGMENT

T.S.Sivagnanam, J.

This appeal, by the Secretary and Correspondent and Disciplinary Authority, SBIOA Educational Trust, is directed against the order dated 01.02.2019, passed in W.P.No.31310 of 2014 filed by the first respondent/writ petitioner for issuance of a Writ of Certiorarified Mandamus to quash the order dated 10.04.2014 passed by the Disciplinary Committee-fourth respondent herein dismissing the appeal filed by the first respondent/petitioner challenging the order of dismissal from service passed by the Disciplinary Authority dated 15.02.2013 and for a consequential direction to direct the appellant to restore the first respondent/petitioner in the position held by her while in service in the SBIOA School and Junior College before the date of her suspension dated 13.03.2012 and to receive full salary and all attendant benefits for the period of suspension and subsequent period to the said date.

2.By the impugned order dated 01.02.2019, the writ petition was allowed setting aside the order of dismissal passed by the appellant, as confirmed by the Disciplinary Committee, with a direction to reinstate the first respondent/petitioner within a time frame and settle all service benefits with 50% backwages and by treating the service of the first respondent/petitioner as continuous one for all purposes.

3.The first respondent/writ petitioner joined as a teaching Assistant in the SBIOA School and Junior College,

Anna Nagar Western Extension on 01.06.2002. The said School was established and is being administered by the SBIOA Education Trust set up by the State Bank of India Officers Association (Chennai Circle) and registered as a Society under the provisions of the Tamil Nadu Societies Registration Act, 1975. The said society has established and is administering other schools as well and in this appeal, we are concerned about the School and Junior College located at Anna Nagar Western Extension and in this judgment, the said School will be referred as the "Institution", in which, the first respondent/petitioner was appointed.

4.The first respondent/petitioner was promoted as a Trained Graduate Teacher (TGT) in the cadre of Secondary Grade Teacher during 2007. The order of dismissal passed against the first respondent/writ petitioner emanated from an incident, which occurred in the premises of the institution on 13.03.2012. The genesis for initiation of disciplinary proceedings against the first respondent/petitioner is due to the reason that the first respondent/petitioner had come to the indoor stadium in the Institution on 13.03.2012 at 08.45 am when there was a regular assembly, in which, 330 students participated, the purpose being to give tips and motivate the students, who are to take their Higher Secondary Examination (CBSE Board Examination). The first respondent/petitioner appears to have recited a prayer which, according to her, was a secular prayer and she wanted to motivate the students, so that they come out with flying colours more particularly because, she had taught the subject Chemistry to those students from Class VIII. This incident led to the suspension of the first respondent/writ petitioner on the very same date by order dated 13.03.2012, issued by the Secretary and Correspondent of the Institution. In the said order, it was mentioned that the first respondent/petitioner on 13.03.2012 at about 08.45 am failed to comply with the allotted duty, misbehaved and manhandled the Vice Principal in the presence of 330 XII Standard students, who were to take the Chemistry CBSE Board Examination, which amounted to gross misconduct. Pending investigation and enquiry, the first respondent/petitioner was placed under suspension with immediate effect (with effect from 13.03.2012).

5.The first respondent was served with a charge memo dated 29.03.2012 containing nine articles of charge. Charge No.1 alleged that the first respondent/petitioner disobeyed the instructions in not attending the evaluation duty in the Physics Laboratory-II and refusing to sign the circular; Charge No.2 alleged that the first respondent/petitioner had not shown due respect to the Principal by disobeying the Administrative Instructions to attend evaluation work held at Physics Laboratory-II at 08.45 am on 13.03.2012; Charge No.3 alleged that as per the circular instructions issued by the Principal, the first respondent/petitioner was required to be in the Physics Laboratory-II to attend the evaluation work,

but she was in the indoor auditorium at the said time without obtaining permission; Charge No.4 alleged that the first respondent/petitioner misled the Principal by saying that she had the permission of the Correspondent to be in the indoor auditorium; Charge No.5 alleged that the first respondent/petitioner, who was allotted the evaluation work in Physics Laboratory No.II, without seeking permission from any one of the superiors, barged on the dais, grabbed the mike (microphone) and started using it and when the Vice Principal tried to stop her, the first respondent/petitioner physically pushed her hands aside and continued to use the mike and such act was unbecoming of a teacher, who was supposed to be a role model of the students; Charge No.6 alleged that her action in the presence of 330 students, who were to take XII Standard CBSE Board Examination and in the presence of 15 teachers created shock for the students and caused mental turmoil and emotional disturbance and the first respondent/petitioner's act would tantamount to arrogant attitude and was detrimental to the interest and welfare of the students and the school; Charge No.7 alleged that from the newspaper report dated 22.03.2012, it was observed that the first respondent/petitioner engaged political persons to conduct Dharna in front of the school premises and displayed posters etc., on 21.03.2012 with an intention to defame the image of the school and bring disrepute; Charge No.8 alleged that the first respondent/petitioner sent frequent Short Message Service (SMS) and made frequent calls to the Correspondent of the School in his employee phone and from her mobile phone with an intention to disturb the Correspondent from his normal work and caused severe mental stress to him thereby, failed to show due respect to the superior; and Charge No.9 alleged that the first respondent/petitioner continuously disobeyed the instructions from the superiors viz., the Principal and the Vice Principal and due to her unruly behaviour, showing utter disregard to the instructions of the authorities and the Conduct Rule for the Employees of the School, the first respondent/petitioner acted in a way of unbecoming of a school teacher and her action was in gross violence of the instructions of the Educational Trust (Society) and she put the Trust's interest in jeopardy. The charge memo further stated that the first respondent/petitioner has failed to protect the interest of the Institution and had not attended her duties with care and commitment assigned by her superiors. It was further stated that on account of the aforementioned acts, the first respondent/petitioner violated the Conduct Rules for the Employees in Rule Nos.1.02, 1.03, 1.04, 1.05, 1.06, 1.12, 1.13, 1.14 and 1.21 of Section 111 of the SBIOA Educational Trust Rules and Regulations, 1990. The statement of imputations of misconduct was given as Annexure-II to the charge proceedings.

6.The first respondent/petitioner had submitted her explanation denying the charges, among other things, within a period of ten days from the date of receipt of the charge

memo. The Disciplinary Authority issued the second charge memo dated 05.06.2012 containing four articles of charge. Charge No.1 alleged that the first respondent/petitioner was instrumental in publishing an article in a Bi-monthly Tamil Magazine carrying false/misinformation tarnishing the image of the institution/Educational Trust; Charge No.2 alleged that the first respondent/petitioner instigated certain named persons to arrange for a public meeting and was instrumental in falsely accusing the Principal, Vice Principal and Management; Charge No.3 alleged that the first respondent/petitioner, engaged with communal activists, displayed huge posters on 24.04.2012 against the school Management falsely accusing the Principal and Vice Principal with an intention to create unrest and commotion in the minds of the public and Charge No.4 alleged that when sufficient opportunity had been given to the first respondent/petitioner to reply to the first charge memo dated 29.03.2012, she had approached a third party to represent her case, which, in the opinion of the Management, was bringing outside pressure to the School Management and divulging confidential matters relating to the school to an outsider which showed that she had not discharged her duties as a teacher with utmost integrity and honesty. The first respondent/petitioner had submitted her explanation within ten days from the date of receipt of the second charge memo. After about five months, the first respondent/petitioner received a communication from the Vice Principal (Academics) informing her that she had been entrusted with a duty of conducting departmental enquiry against the first respondent/petitioner by the order of the Disciplinary Authority dated 28.07.2012 in respect of both the charge memos simultaneously. The first respondent/petitioner was also informed that a preliminary enquiry would be conducted on 16.08.2012 and further enquiry would be conducted on ongoing basis, that the first respondent/petitioner would be given opportunity to cross examine the witnesses presented on behalf of the Institution that she would also be permitted to submit evidence and present witnesses to defend her case, that she should make her own arrangement for production of such witnesses during enquiry and that if the first respondent/petitioner desired to examine any of the employees of the school as witnesses on her behalf, she should inform their names. The first respondent/petitioner was warned that if she failed to attend the enquiry, the proceedings would be conducted ex-parte.

7.It appears that the first respondent/petitioner wanted the enquiry proceedings to be video graphed, for which, the Enquiry Officer, by letter 16.08.2012, informed the first respondent/petitioner that since in the domestic enquiry, daily order sheet would be maintained with signatures of all persons, who attended the enquiry, video graphing was not needed.

8.The first respondent/petitioner sent a representation to the Regional Officer, CBSE, Chennai on 03.09.2012, alleging bias and lack of transparency in the enquiry proceedings. She further alleged that the Enquiry Officer was refusing to accept the exhibits of the first respondent's/petitioner, not allowing her to contradict the evidence and exhibits produced by the Management, that she had spent nearly 15 to 20 minutes requesting to record her version that on 03.09.2012, the Enquiry Officer refused to give the photostat copy of the attendance register maintained for the enquiry purpose and that she was forcing her to sign the daily sheet, which was recorded in the absence of the first respondent/petitioner, which was against the principle of natural justice. According to her, the allegation in the order of suspension was incorrect, as the first respondent/petitioner attended the allotted duty of evaluation on 13.03.2012 as per Ex.P1 and the allegation that the first respondent/petitioner manhandled the Vice Principal was absolutely false and in this regard, she referred to an e-mail sent by a student, who was present in the regular assembly. Further, the first respondent/petitioner stated that during the enquiry proceedings, the Principal herself accepted that while the first respondent/petitioner was chanting slokas, the Vice Principal switched off the mike, which was a serious violation of secular principles embodied in The Constitution of India. Further, the first respondent/petitioner stated that reciting a secular prayer could never be a crime and requested appropriate action.

9.On 05.09.2012, the first respondent/petitioner submitted a representation to the Correspondent of the Educational Trust stating that there was no transparency in the enquiry and the Enquiry Officer was biased and that she met the Regional Officer of the CBSE and submitted a complaint letter against the conduct of the Enquiry Officer and requested the CBSE to intervene in the enquiry proceedings. The first respondent/petitioner undertook to attend the enquiry proceedings, if it was conducted in a fair and just manner. This was followed by another representation dated 04.10.2012 to the Management once again stating as to how the enquiry proceedings were totally biased, further stating that she had not been given an opportunity to cross examine the Management witnesses more particularly P.W.7, P.W.8 and P.W.12 and that without affording an opportunity to cross examine, the enquiry proceedings could not be concluded and if it was done so, it would be a clear abuse of the the power of the Management. The first respondent/petitioner requested that the enquiry proceedings might be conducted in the presence of the representative from the State Board or the Central Board Officials.

10.The CBSE, New Delhi by, communication dated 02.11.2012, addressed to the Manager of the Institution while enclosing the representation given by the first

respondent/petitioner dated 07.09.2012 and informed the Management that the School authority had to act in accordance with the provisions of the Service Rules adopted by the School, which should either on the line of the State Education Act or Service Rules stipulated in the Affiliation By-Laws of the Board. The Management was cautioned that all administrative action should be procedurally correct and there should not be revengeful action against any teacher or employee and the duties/responsibilities of teacher should be specifically assigned. The Management was further advised that the administrative orders should be very clear and there should not be any scope for dispute of it being in contradiction to the provisions of Service Rules.

11. On 22.11.2012, the Enquiry Officer submitted the enquiry report, which was forwarded by the Disciplinary Authority and Secretary and Correspondent of the institution of the first respondent/petitioner by a covering letter dated 22.11.2012. The first respondent/petitioner was given an opportunity to make her submission on the report within ten days, which would be considered appropriately while taking final decision in the matter. In the Enquiry Officer's report, it had been stated that the first respondent/petitioner had attended and participated in the enquiry proceedings on 16.08.2012, 17.08.2012, 21.08.2012 and 22.08.2012, that subsequently, she had not participated, despite notices being issued and she frequently walked out of the proceedings on 27.08.2012, 03.09.2012, 07.09.2012 and 12.09.2012, that therefore, the enquiry was conducted ex-parte on 07.09.2012 and 12.09.2012, and that the first respondent/petitioner had not produced any documentary or oral evidence in the enquiry proceedings to establish her innocence or to defend her from the charge, even though she was given sufficient opportunity to do so. The Enquiry Officer held that all the nine charges in the first charge memo dated 29.03.2012 were proved. In the second charge memo dated 05.06.2012, the Enquiry Officer held charges 1 to 3 as proved and charge No.4 as not proved.

12. On receipt of the Enquiry Officer's report, the first respondent/petitioner submitted representation dated 10.12.2012, which appears to be a very elaborate representation running to about 41 pages. This was followed by another representation, which was also dated 10.12.2012, but in a different format and the first respondent/petitioner had prepared a tabulated statement giving a gist of the charges alleged against her and her corresponding explanation. In the penultimate paragraph, the first respondent/petitioner stated that the defence statement was to have been submitted to the Enquiry Officer after closure of the Management's case as presented by the Presenting Officer and after taking up Defence Presentation, the Management's case was closed on 12.09.2012 and the Enquiry Officer, without giving opportunity to the first respondent/petitioner to present her defence,

arbitrarily closed the enquiry and forwarded the brief of the Presenting Officer to the first respondent/petitioner on 27.09.2012. The first respondent/petitioner stated that she had been condemned unheard. Therefore, the first respondent/petitioner requested the Disciplinary Committee to consider either to take note of the defence submission or to order fresh enquiry.

13.The third representation, which is also dated 10.12.2012, but in a slightly different format was sent by the first respondent/petitioner wherein, after setting out the various flaws committed in the enquiry proceedings, the first respondent/petitioner stated that the defence statement and brief were to be treated as part of the enquiry records and these were not allowed to be submitted during enquiry and substantial part of the enquiry was conducted ex-parte. Further, the first respondent/petitioner stated that any decision by the Disciplinary Authority, without looking into the defence of the first respondent/petitioner, would turn the proceedings one sided and the enquiry would be an empty rubber stamp formality and that the Enquiry Officer did not allow filing of defence exhibits. The first respondent/petitioner enclosed 15 defence exhibits in a tabulated form along with representation.

14.The Disciplinary Authority, who is the Secretary and Correspondent of the Institution, passed an order dated 15.02.2013 dismissing the first respondent/petitioner from service. The Disciplinary Authority accepted the findings of the Enquiry Officer, who held the charges to be proved except Charge No.4 of the second charge sheet and further held that the first respondent/petitioner was guilty of gross misconduct. He ordered that penalty of dismissal from service being passed against her. The first respondent/petitioner was informed that if she desired, she could make an appeal before the Appellate Authority within thirty days. The first respondent/petitioner preferred appeal dated 09.03.2013, which was to be decided by a Disciplinary Committee consisting of five persons, three of whom are from the Management of the Institution, one officer from the CBSE and one other Teacher, who was not connected with the Institution. The appeal petition appears to have not been taken up for disposal and therefore, the first respondent/petitioner filed W.P.No.863/2014 before this Court to direct the Institution to form the committee and dispose of the appeal. In the said Writ Petition, the first respondent/petitioner also stated that her original certificates and credentials were unauthorizedly withheld by the Management, though they were not entitled to retain the same after issuance of the order and in spite of she having been dismissed from service, the original certificates and credentials were not returned.

the said writ petition, the original certificates of the first respondent/petitioner were returned to her. It further appears that after the said writ petition was filed, the Management initiated action and formed the Disciplinary Committee consisting of three members of the Management, one officer of the CBSE and one Principal of another school. The first respondent/petitioner came to know that the Management representatives in the Disciplinary Committee were Mr.T.Senthilkumar, K.Bavanisankar. Mr.Valerie Devisser. Mr.D.T.Sudershan Rao, Regional Officer, CBSE and Mr.L.Neelakanta Pillai, Principal of another school were other two members.

16.The first respondent/petitioner on 06.03.2014 addressed to the CBSE with regard to the constitution of the Disciplinary Committee. It was stated that there has been correspondence between the Principal of the Institution, who was the main management witness in the domestic enquiry, who addressed the Assistant Secretary, Affiliation, CBSE, Delhi forwarding the names to be appointed to the Disciplinary Committee. Further, it was stated that the names of the four persons were selected jointly by the Principal and Secretary and Correspondent, who was the Disciplinary Authority and these were mechanically approved by the CBSE. Therefore, the first respondent stated that the constitution of the Disciplinary Committee was improper and that they would not act in an independent manner. It was further pointed out that Mr.T.Senthilkumar, who was a Managing Committee member of the Educational agency, was appointed as a member of the Disciplinary Committee in the place of the Secretary and Correspondent, who was the Disciplinary Authority. The first respondent/petitioner stated that the selection of Mr.T.Senthilkumar by the Secretary and Correspondent, who was the Disciplinary Authority was illegal, as it should have been done by the educational agency/trust and Mr.T.Senthilkumar would undoubtedly not act in an independent manner, he would be biased and his nomination to the Committee was challenged by the first respondent. Further, with regard to the Principal of another school, who also formed part of the Disciplinary Committee, the first respondent/petitioner questioned the nomination stating that the nomination was made on the suggestion of an interested person in the disciplinary proceedings, therefore, he would not be an independent member. Further, the selection was not in terms of By-law No.49 of the CBSE By-Laws and the same would also apply to the nomination of Mr.Valerie Devisser, Vice Principal to be a member of the Committee.

17.The Disciplinary Committee passed an order dismissing the appeal, which was communicated to the first respondent by letter dated 10.04.2014 signed by Mr.T.Senthilkumar describing himself and on behalf of Mr.D.Thomas Franco Rajendra Dev, Secretary and Correspondent in the Disciplinary Committee. Challenging the orders passed by the Disciplinary Authority

and the Disciplinary Committee, the present Writ Petition was filed. The Proceedings were challenged on the ground of illegality of the order of suspension, illegality of the prolonged suspension, defective charge proceedings, procedural irregularities in the domestic enquiry, lack of consideration of the defence exhibits and witnesses, failure to provide an opportunity to cross examine the Management witnesses, flaws in the findings of the enquiry authority, non-consideration of the further representations dated 10.12.2012 (three), defects in the order passed by the Disciplinary Authority, illegality in the constitution of the Disciplinary Committee and illegality in the order passed by the Disciplinary Authority, since it is a nullity and it is not the decision taken by the Management Committee as per the relevant Rules. The learned Single Bench by order dated 01.02.2019, allowed the present writ petition and issued consequential directions as mentioned above.

18.Mr.Vijay Narayan, learned Senior Counsel appearing for Mr.C.Jagadish, learned counsel for the appellant submitted that the order passed in the present writ petition is liable to be interfered with on several grounds, as the findings have been rendered without taking note of the relevant facts, which were available on record and not disputed by the first respondent/petitioner. Though it had been stated in the impugned order that the proceedings were against the principals of natural justice, such finding is to be considered as a vague finding, as there is no specific finding recorded as to which of the proceedings were against the principals of natural justice. It is further submitted that though there is an observation in the impugned order that there was lack of transparency, the first respondent/petitioner is not clear as to in which of the proceedings, there was lack of transparency. To substantiate that the procedure, as required to be followed in a domestic enquiry, has been scrupulously followed, the learned Senior Counsel elaborately referred to the charge proceedings, the finding of the Enquiry Officer, the order of the Disciplinary Authority and the order of the Disciplinary Committee.

19.To buttress his submission that the enquiry proceedings were conducted in a fair and transparent manner, that all issues were considered and that the Enquiry Officer held the charges to be proved except one (four), the report of the Enquiry Officer was referred to. Further, it was submitted that the Disciplinary Authority considered the representations of the first respondent and accepted the findings of the Enquiry Officer and considering the fact that the first respondent is a teacher in a very established and reputed Institution having thousands of students studying therein and the incident having caused mental and emotional disturbance to the students, who were about to sit for XII Standard Board Examination and the conduct of the first respondent in bringing external pressures, involving political

outfits to stage Dharna around the Institution and erecting banners and posters causing disrepute to the Institution, all factors were taken note of and an order of dismissal has been passed. This order was tested for its correctness by the Disciplinary Committee after affording an opportunity to the first respondent and the Disciplinary Committee approved the findings of the Disciplinary Authority. Therefore, it is submitted that there is no illegality in the order passed by the Disciplinary Authority or the Disciplinary Committee more particularly when the first respondent walked out from the enquiry proceedings and when she had not produced any exhibits and that the findings rendered in the impugned order are not sustainable. Further, it is submitted that there is no discussion or finding with regard to the Enquiry Officer's report, which is an elaborate report and several of the findings are factually incorrect. Though in the impugned order it has been stated that the Enquiry Officer recommended punishment and faulted the proceedings, it is seen from the records that the Enquiry Officer did not recommend the punishment, but only held the charges to be proved. Therefore, there is no illegality in the domestic enquiry proceedings for the Court to interfere. It is further submitted that in the disciplinary proceedings, what is required to be proved is preponderance of probability and not proof beyond reasonable doubt and this was done after meticulously following the procedure and there are several factual errors in the impugned order and consequently, the same would call for interference.

20. In response to the said submission, the first respondent, who appears in person, submitted that the relief granted in the present writ petition is proper and that there are several illegalities committed by the Management and the entire proceedings are thoroughly vitiated and she would be able to substantiate the same when her turn comes for arguments.

21. In the impugned order, there is a finding that the Enquiry Officer recommended the punishment. We have carefully gone through the Enquiry Officer's report and we find that there is no such recommendation or opinion rendered by the Enquiry Officer. On a reading of the order passed in the present writ petition, it appears that the said observation is an argument put forth on behalf of the first respondent.

22. Be that as it may, the Court suggested to the learned Senior Counsel for the appellant and the first respondent that the appellant might argue their case to sustain the order of dismissal passed by the Disciplinary Authority as confirmed by the Disciplinary Committee and that the first respondent might argue her case to convince this Court that the order of dismissal was erroneous on account of serious procedural illegalities, irregularities and without following the principles of natural justice etc. This suggestion was made

to the learned Senior Counsel for the appellant at the commencement of the hearing of the case and the learned Senior Counsel readily agreed for the same and the first respondent, having understood the suggestion, also agreed for the same and therefore, we proceeded to hear the learned Senior Counsel who argued to sustain the order of dismissal.

23. In support of his arguments, the learned Senior Counsel referred to the decision *State Bank of Patiala vs. S.K.Sharma* [(1996) 3 SCC 364], which explains the doctrine of test of prejudice and merely because it is stated that there is no notice, no opportunity, no hearing, it will not vitiate the proceedings and this very aspect has to be looked at from the point of view of the directory and mandatory provisions.

24. Reliance was placed by the learned Senior Counsel on the decision in *State Bank of India vs. Narendra Kumar Pandey* [(2013) 2 SCC 740] for the argument that the charge sheet need not contain the list of documents and witnesses. Reference was made to the decision of the Hon'ble Supreme Court in *M.H.Devendrappa vs. Karnataka State Small Industries Development Corporation* [(1998) 3 SCC 732] to justify the action of the Management in dismissing the appellant therein from service on account of the detriment caused by the first respondent therein as teacher in the institution and involved third parties etc., and making allegation against the institution would entail the Management to pass an order of dismissal. Reference was made to the decision in *Manager, Nirmala Senior Secondary School, Port Blair vs. N.I.Khan* [(2003) 12 SCC 84] to explain the role of a teacher.

25. It is further submitted by the learned Senior Counsel that indiscipline in an educational institution should not be tolerated and a teacher, whose conduct should be an example for the pupils, cannot be shown any leniency in cases of indiscipline. To support such argument, reliance was placed on *Hombe Gowda Educational Trust vs. State of Karnataka* [(2006) 1 SCC 430], *Vice-Chancellor, Guru Ghasidas University vs. Craig Macleod* [(2012) 11 SCC 275] and *Deputy Commissioner, Kendriya Vidyalaya Sangathan vs. J.Hussain* [(2013) 10 SCC 106].

26. With regard to the scope of judicial review, in such matters, reliance was placed on the decision of the Hon'ble Supreme Court in *State of U.P. vs. Raj Kishore Yadav* [(2006) 5 SCC 673]. It is further submitted by the learned Senior Counsel that in the impugned order, the decisions of the Hon'ble Supreme Court in *State of Bombay vs. Narul Latif Khan* [AIR 1966 SC 269], *Mathura Prasad vs. UoI* [(2007) 1 SCC 437], *M.V.Bijlani vs. UoI* [(2006) 5 SCC 88], *Roop Singh Negi vs. Punjab National Bank* [(2009) 2 SCC 570] and *Director (Marketing), Indian Oil Corpn. Ltd. vs. Santhosh Kumar* [(2006) 11 SCC 147] have been referred to, which were not relied on by the Management, nor by the first respondent. It is submitted that each of the decisions, which have been referred to in the

impugned order, is factually distinguishable and not applicable to the case on hand and that the Management had no opportunity to put forth their submission in respect of those decisions, which have been referred to in the impugned order.

27. Further, it is submitted by the learned Senior Counsel that there is no By-Law issued by the CBSE that an order of suspension cannot be passed beyond a period of six months and even as per the Service Rules of the Trust, there is no such restriction. Further, in By-Law No.47 of the CBSE By-Laws, which stipulates the procedure for majority penalty, no such time limit is fixed for concluding the disciplinary proceedings as alleged by the first respondent and there is also no such embargo with regard to the period of suspension under By-Law No.44. In any event, the ground with regard to the order of suspension will, in no manner, affect the final order. Further, it is submitted that all the facts have been admitted by the first respondent herself and there is nothing more required on the part of the Enquiry Officer to render a finding.

28. With regard to issues regarding the circular, grabbing of the mike etc., the learned Senior Counsel referred to various paragraphs in the affidavit filed by the first respondent in support of the present writ petition. Further, it is submitted that with regard to the quantum of penalty, the Court will not interfere, unless the penalty is shockingly disproportionate, which is not so in the case of the first respondent. Further, the degree of proof and the standards to be adopted are different for educational institutions unlike industries and factories. It is reiterated that the fact relating to the Institution which occurred on 13.03.2012 has been admitted by the first respondent/petitioner. The prayer song sung in the Institution is an English prayer and not a Christian prayer. The first respondent/petitioner had challenged the order of suspension by filing W.P.No.10675 of 2012, which was dismissed as withdrawn on 25.04.2012. The news reports published in the Deccan Chronicle dated 21.02.2012 quoted and referred to the submissions of the first respondent. With regard to the constitution of the Disciplinary Committee, since the Disciplinary Authority was the Manager/Secretary of the School, he had to recuse himself and the Principal of the School was the Management witness in the domestic enquiry and he also had to recuse himself and therefore, the School had written to the CBSE to form a new committee in terms of By-Law No.47 of the CBSE By-Laws and this was done and there is nothing illegal in the said proceedings. On the above grounds, the learned Senior Counsel prayed for sustaining the order of dismissal from service and allowing the appeal filed by the Management.

29. Per contra, the first respondent appearing in person submitted that the prolonged order of suspension dated 13.03.2012 is vitiated as it is in violation of the relevant

By-law of the CBSE which prescribes six months time limit for completion of the disciplinary proceedings. The order of suspension dated 13.03.2012 uses the words 'misbehaved' and 'manhandled' which is absolutely untrue and this will be clear if charge No.5 of the charge proceedings is perused. Therefore, placing the first respondent under suspension on a false allegation is illegal. Further, the order of suspension stated that it was reported that the first respondent, on 13.03.2012 at about 08.45 am, failed to comply with the allotted duty and misbehaved and manhandled the Vice Principal in the presence of the students. But, it has not been stated as to who had reported the alleged incident. The copy of the alleged complaint was not given to the first respondent and there was no fact finding enquiry conducted before issuing the order of suspension which would go to show that the action of the Secretary and Correspondent to place the first respondent under suspension was vitiated on account of mala fide intention and biased attitude. The first respondent addressed to the CBSE and was able to secure the copy of the order dated 13.03.2012 sent by the Vice Principal of the Institution to the Principal reporting about the incident, which occurred on the said date at 08.50 am.

30. On the same date, the Academic Supervisor, Department of Chemistry had addressed to the Secretary and Correspondent of the Institution reporting about the incident. However, the said Academic Supervisor, Department of Chemistry, who was examined as P.W.4 in the domestic enquiry, during her cross examination to a specific question to her as to whether she reported the incident to the Principal or Correspondent or did she write any letter complaining about the incident to the Principal or Correspondent stated that the Principal was present at that time and therefore, she need not report because the Principal had seen it in person. For another question posed to P.W.4 as to whether she had written any complaint letter about the incident to the Principal or Correspondent, P.W.4 replied that she need not [write any complaint] because the Principal herself had watched the incident. Therefore, it is submitted that the alleged complaint letter dated 13.03.2012 said to have written by the Academic Supervisor, Department of Chemistry to the Secretary or Correspondent was a false document and concocted only for the purpose of charge sheeting the first respondent.

31. Further, it is submitted that the main allegation against the first respondent was that the first respondent did not attend the allotted duty. In this regard, the first respondent would refer to a communication sent by the CBSE, New Delhi, dated 02.11.2012 to the Manager of the Appellant Institution, wherein the Institution was cautioned that all administrative action should be procedurally correct and there should not be revengeful action against any teacher or employee; and the duties/responsibilities of a teacher should be specifically assigned. Referring to Ex.P1, Ex.P2 and Ex.P3, it is submitted that those documents would show that

the first respondent did not undertake any evaluation work on 07.03.2012 and 09.03.2012. However, the management did not take any action and there is no explanation from the Management as to why they did not take any action against the first respondent for not attending evaluation work on 07.03.2012 and 09.03.2012.

32. On the contrary they unreasonably took action stating that on 13.03.2012, the first respondent did not attend evaluation work which was allotted to her. Further, from Ex.P1, it is clear that there were several other teachers, who did not undertake evaluation work on various dates, but no action had been initiated against them. It is submitted that evaluation of answer papers is part of the duty of teachers and whenever they are free, they will undertake the evaluation work and for evaluation of the answer books of Classes VI, VII and VIII, there is no central evaluation and therefore, charge No.1 of the charge memo dated 29.03.2012 alleging that the first respondent was willfully negligent of her duties is wholly unsustainable.

33. The charge proceedings stated that the first respondent was in the habit of not receiving the circulars. This allegation, according to the first respondent, is wholly unsustainable. The first respondent would state that whenever a circular is issued, signature is not taken in the circular but in a separate plain paper and at times, the first respondent had stated that unless and until the signature is taken on the circular on the continuing sheet, she had an apprehension to sign on a plain paper, as there is every likelihood of the same being misused. Reverting to Ex.P2, which is a schedule for evaluation of Classes V to VIII, it is seen that the Headmaster has initialled the said schedule on 24.02.2012. The schedule contains signature of the Principal Smt.P.C.Selvarani, who had signed without putting any date. Further, the Principal has signed in the evaluation schedule that the said circular regarding evaluation was received on 24.02.2012. However, charge No.1 stated that the circular is dated 28.02.2012. This would clearly show that Ex.P2 was a forged and concocted document solely for the purpose of penalizing the first respondent. Further, the allegation in Charge No.5 was that only allotted teachers could attend assembly. However, during the enquiry proceedings, no document or letter was produced to show that teachers were specifically allotted to attend the regular assembly. In this regard, the first respondent referred to Teachers Guide [2009-2010] of the appellant Institution, wherein under the Chapter Assembly, it had been stated that all teachers should attend the morning assembly. In the teachers handbook, there was no restriction that only teachers, who had been allotted to attend assembly could join the assembly and others could not. Therefore, charge No.5 is without any basis.

letters dated 13.03.2012 sent by the Vice Principal to the Principal of the School and by the Academic Supervisor, Department of Chemistry to the Secretary and Correspondent of the Institution and argued that those letters were forged and concocted. Further, it is submitted that in those concocted letters, it had been stated that the first respondent had recited a prayer in front of the students. Though such was the allegation made conspicuously in charge No.5, there was absolutely no mention about the reciting of the prayer by the first respondent and this has been purposely omitted for certain vested reasons and this would go to show that the Institution is not a secular institution. Referring to the news report, which appeared in The Hindu dated 22.03.2012, there was a reference to the opinion expressed by the students, who were present in the assembly which would go to show that none of the students were disturbed on account of the first respondent reciting a secular prayer considering the welfare of the students. This aspect had been conveniently omitted by the Enquiry Officer to be taken note of. Further, it is an admitted fact that after the first respondent had recited the secular prayer, the English teacher, by name, Mrs.Vinodhini Prabhakar was permitted to offer prayer and this is clear from the alleged letter written by the Academic Supervisor, Department of Chemistry to the Secretary and Correspondent dated 13.03.2012. After the said English teacher was permitted to recite a prayer after the first respondent was prevented from doing so, no action could have been initiated against the first respondent and this would also show that the said teacher was accommodated because she belongs to a different religion and go to establish that the Management of the Institution is not secular. Furthermore, during the enquiry proceedings the Management did not produce any document to show that the said English teacher was allotted to attend assembly and offer a prayer. Furthermore, the first respondent would submit that the way, in which, the said English teacher recited the prayer would clearly show that it was not a secular prayer and in fact, the tone and tenor had an evangelical disposition. It is also submitted that the first respondent is not a member of any political outfit and the incident, in which, the activist of a particular outfit had been mentioned as part of the charge, took place much after 13.03.2012 and the same could not have been included in the charge memo as it had been held in several decisions that a charge memo is not a dust bin.

35.Further it is submitted by the first respondent/petitioner that a comparison of annexure 1 of the charge memo dated 29.03.2012, which is the statement of articles of charges with that of annexure 2 which is the statement of imputation [misconduct], would show that the statement of imputation is a replica of the statement of articles of charges. The statement of imputation does not give any details and therefore has to be held to be vague. Further, it is reiterated that the first respondent is not a

member of any political party or any other outfit and clubbing the actions initiated by those third parties in the charge proceedings is wholly illegal and unsustainable in law. It is submitted that these are all procedural and technical violation committed by the appellant Management commencing from the issuance of order of suspension till the issuance of charge memos. Further, it is submitted that the first charge memo is dated 29.03.2012 and within ten days, the first respondent had submitted her explanation. However, after more than 2½ months, the second charge memo was issued on 05.06.2012 and the first respondent had submitted her explanation within ten days. After an inordinate delay of 157 days, the enquiry commenced on 16.08.2012, which is vitiated as being contrary to the time limit prescribed in the CBSE By-laws. In addition, after the order of dismissal was passed the first respondent had preferred the appeal within the time prescribed. However, the appeal petition was not considered by the Disciplinary Committee, which compelled the first respondent to approach this Court by filing W.P.No.863 of 2014.

36. When the said writ petition was pending, the first respondent brought to the notice of this Court that her original certificates and credentials were unauthorizedly withheld by the appellant Management, which was contrary to Regulation No.43(4) of the CBSE Regulations, which states that the school authorities should not keep the original certificates with them and that they had to be returned to the employees after verification and Photostat copies have to be kept in the personal files of the employees. Thus, the appellant Management violated the regulations issued by the CBSE by retaining the certificates of the first respondent soon after the appointment and further not handing over the certificates in spite of dismissing the first respondent from service by order dated 15.02.2013 and only after an interim direction was issued in W.P.No.863 of 2014 on 24.03.2014, the certificates were returned to the first respondent. It is submitted by the first respondent/petitioner that this was with a view to harass and prevent her from utilizing her educational qualification for better purposes. Further, it is submitted that it is incorrect on the part of the appellant Management to argue that the order passed in the present writ petition is factually incorrect and that there are several discrepancies. It is submitted that the argument of the learned counsel by referring to paragraph 12 is not factually incorrect and the Court had culled out the illegalities, which were pointed out by the first respondent in her further representation after conclusion of the enquiry proceedings and copy of the findings being communicated to her. Therefore what has been recorded in the impugned order, more particularly, in paragraph 12 is factually correct. In this regard, the first respondent referred to her explanation dated 10.12.2012. Thus it is submitted that the entire action initiated by the appellant is one sided action and that the

first respondent was not heard in the matter.

37.The first respondent referred to her representation dated 10.12.2012 addressed to the Secretary and Correspondent, wherein it was pointed out that the first charge memo dated 29.03.2012 had been issued without any basic document, and that it was an incomplete document, as the list of witnesses and list of documents were not appended to the charge proceedings. Further it is submitted that the first respondent had specifically brought out in her representation as regards the attitude of the Presenting Officer as to how he was continuously fighting with the first respondent and had over reached his role as the Presenting Officer and that the Enquiry officer did nothing to control the proceedings which showed that the enquiry was thoroughly biased. It is submitted that assuming without admitting that the first respondent should not have recited the prayer in the assembly, it was a trivial incident, more particularly, when all the students, who sat for the 12th standard public examination, were the students of the first respondent in Classes VI to XI and there was nothing wrong in the first respondent desiring that her students should score well in the examination and merely because the first respondent had recited the secular prayer invoking the divine blessings of Almighty in all religions, it could not have been a reason for suspending the first respondent and initiating disciplinary proceedings. Further, the prolonged suspension is illegal and in spite of representations dated 03.09.2012, 05.09.2012 and 15.09.2012, the management did not revoke the order of suspension. Further, the first respondent referred to certain paragraphs of the representation dated 10.12.2012, wherein she has pointed out as to how the enquiry proceedings were thoroughly vitiated.

38.It is submitted by the first respondent that there had been a complete failure of the principles of natural justice, as there was total partiality and the first respondent, who was the affected individual was not given full and fair opportunity of being heard in the matter. Further, the first respondent had referred to Conduct Rule 1.13 stating that the teacher through teaching or otherwise should not propagate communal or sectarian outlook among his students and workers and should not incite them indulge in any communal activity. Further, it is submitted that there were several flaws in the domestic enquiry proceedings. The first respondent had requested the presence of Mr.D.S.Rishabadas - the Secretary and Correspondent in the enquiry proceedings and had given a letter to the said effect to the Enquiry Officer. However, the first respondent was informed that if she wanted the presence of the Secretary and Correspondent, she should make her own arrangements. The first respondent would submit that the procedure adopted by the Enquiry Officer was illegal as the first respondent could not arrange for the presence of the Secretary and Correspondent and it was the Enquiry Officer,

who should have sent notice to the Secretary for appearing in the domestic enquiry. Further the first respondent elaborately referred to all the three representations dated 10.12.2012, pointing out the various irregularities committed in the domestic enquiry. The first respondent referred to the cross examination of P.W.2, who was the attender. Elaborately referring to the cross examination, it was submitted that the allegation against the first respondent that she was in the habit of refusing to sign the circulars was proved to be false and this aspect of the matter was elaborately discussed by the first respondent in her further representation dated 10.12.2012. Further, from the evidence, it is clear that the file relating to the circulars was not produced before the Enquiry Officer and that there was nothing to show that the first respondent refused to sign the circulars.

39. The first respondent referred to the recording in the order sheet by the Enquiry Officer when P.W.1, the Academic Supervisor, by name, Mrs. Gracy Jeyakumar was examined wherein the first respondent had specifically brought to light that no action had been taken against other teachers, who had not undertaken evaluation work, as could be seen from Ex.P1. When the first respondent raised this issue, the Enquiry Officer stated that in respect of other teachers, they would take action. Further, by referring to her further representation dated 10.12.2012, it was submitted that the charge against the first respondent that she was not undertaking evaluation work was absolutely baseless and concocted. Further, there was also contradiction between the evidence of P.W.1 and P.W.3 and the first respondent was able to establish that the last date for evaluation was on 17.03.2012. However on 13.03.2012 itself, the first respondent was issued the order of suspension in spite of the fact that she had enough time for correction of the 8th standard answer papers and this aspect was not taken note of by the Enquiry Officer in spite of the first respondent/petitioner pointing out the same nor did the Disciplinary Authority take note of the same nor the Disciplinary Committee, which dealt with the first respondent's appeal.

40. Further it was pointed out that whenever the first respondent sought for cross examination of the Management witness, the same was flatly refused by the Enquiry Officer. In this regard, the first respondent pointed out as to how she was not permitted to cross examine P.W.5. Further, it was submitted that the teachers, who had deposed against the first respondent uttered absolute falsehood and that the entire proceedings were thoroughly vitiated, which would render the order of dismissal from service wholly illegal. Further, there were gross errors committed by the Disciplinary Authority which would vitiate the order of dismissal. The Disciplinary Authority recorded that he was in receipt of the defence brief and submissions dated 09.12.2012 and 10.12.2012 along with enclosures marked as defence exhibition. Having

accepted the receipt of the further representation given by the first respondent, there was absolutely no discussion in the findings of the Disciplinary Authority as to how the contentions placed by the first respondent were not correct or how they were not tenable. In fact, there was no discussion about the statement of witnesses and no discussion about the cross examination and the findings were absolutely vague, rather the findings recorded by the Disciplinary Authority were in the nature of advice given to the first respondent.

41.It was further submitted that, the Disciplinary Authority did not consider the vital aspect that the first respondent was prevented from marking her documents and except Ex.D9 no other exhibit had been referred to by the Disciplinary Authority. It was further submitted that though the Secretary and Correspondent Mr.D.S.Rishabadas was stated to have sent a complaint to the Inspector of Police, Tirumangalam Police Station on 16.03.2012, which was marked as Ex.P12/1, the complaint was not lodged by Mr.D.S.Rishabadas, but by Mr.John Anbalagan, who was examined as P.W.12. The request made by the first respondent for the presence of Mr.D.S.Rishabadas during the enquiry was flatly denied by the Enquiry Officer in a most illegal manner. Further, except for the witnesses P.W.1 to P.W.6, all other witnesses were not examined in the presence of the first respondent. Even Mr.John Anbalagan, who was examined as P.W.12, was examined in the absence of the first respondent and all those witnesses were examined on a single day, i.e., on 12.09.2012. All these would go to show that the order passed by the Disciplinary Authority is wholly unsustainable. Further it was submitted that the order of dismissal was signed and communicated to the first respondent/petitioner by the Secretary and Correspondent-Mr.D.S.Rishabadas.

42.According to the first respondent, the Secretary and Correspondent was not the competent authority to pass the order of dismissal, as it was the Managing Committee which was competent in terms of By-law No.22(v). It was reiterated that the order of suspension could not have been kept in force beyond the period of six months and in this regard, a reference was made to By-law No.44(2). Further, in terms of the CBSE By-laws in Appendix III, a contract of service should have been entered into, which was not done. Thus, it was submitted that the order of dismissal was rightly set aside by the learned Single Bench. It was further submitted that the appeal filed by the first respondent challenging the order of dismissal was not taken up for consideration by the Appellate Authority which was called as the Disciplinary Committee and only after the first respondent filed a writ petition before this Court, the Disciplinary Committee took up the matter. It was submitted that the composition of the Disciplinary Committee was illegal. The Principal of the Institution forwarded a letter to the Assistant Secretary, Affiliation, CBSE, New Delhi dated 14.11.2013, wherein the Principal had

requested the Competent Authority to induct Mr.L.Neelakanta Pillai, Principal of Kola Perumal Vaishnav Senior Secondary School as one of the members in the place of Principal Smt.P.C.Selvarani as she was one of the management witnesses in the enquiry. Further, the Correspondent being one of the members and he was the Disciplinary Authority, who passed the termination order, he might be replaced with Mr.Senthil Kumar, Member of the Managing Committee in the place of Mr.D.Thomas Franco Rajendra Dev, Secretary and Correspondent.

43.It was also submitted by the first respondent that based on the letter sent by the Principal dated 14.11.2013, the CBSE constituted the Disciplinary Committee vide a communication dated 21.01.2014. The Principal Smt.P.C.Selvarani being the complainant, main person for initialization of the disciplinary proceedings against the first respondent, could not have participated in any of the matters concerning the appeal filed by the first respondent, more particularly, she could not have had any role in the constitution of the Disciplinary Committee and no jurisdiction to address to the CBSE to constitute the Committee with the named persons. The petitioner, on 06.03.2014, addressed a detailed letter to the Assistant Secretary, Affiliation, CBSE, New Delhi, wherein the first respondent raised the issue as regards the illegality in the constitution of the Disciplinary Committee. Further, it was submitted that the first respondent/petitioner addressed to the Public Information Officer, District Registrar (Societies), Central Chennai on 22.11.2013 and sought for information under the Right to Information Act with regard to the issue as to whether the Trust/Association filed their Form-VII Declaration and whether they were accepted, etc. The Information Officer sent reply dated 17.12.2013, from which, it is seen that from 2004-05 onwards, Form-VII declarations had not been accepted. Therefore, the first respondent filed W.P.M.P.No.10760 of 2017 in the present writ petition for perjury and initiating the action against the appellant. However, the said miscellaneous petition was not disposed of though the main writ petition was allowed by the impugned order.

44.Further, the first respondent referred to email sent by a former student of the School, which would clearly support the case of the first respondent. Further, it was submitted that though the appellant would contend that it was the Committee, which passed the order and not the Secretary and Correspondent in his individual capacity, no record was produced to establish such a plea. It was also submitted that a bare reading of the order passed by the Appeal Committee showed that it was a non-speaking order without discussing any of the contentions advanced by the first respondent. It was further submitted that in the first charge memo dated 29.03.2012, the appellant referred to Rule 1.02(a) of Section 6 of SBIOA Educational Trust Rules and Regulations Act, 1990. Though the appellant enclosed the said Rules in the typed set

of papers, the said Rules were not available on the file of the Registrar of Societies. Therefore, it was submitted that the entire proceedings commencing from the order of suspension and culminating in the order of dismissal passed by Disciplinary Authority as confirmed by the Appellate Committee were wholly vitiated, illegal and unsustainable in law.

45. With regard to the decisions, which were relied on by the learned Senior Counsel for the appellant, it was submitted by the first respondent that the decision in the case of State Bank of Patiala would support the case of the first respondent and in this regard referred to paragraph 33 of the judgment, wherein it was held that where there is a provision expressly providing that after the evidence of the employer/government was over, the employee could be given an opportunity to lead defence in his evidence and in a given case, the Enquiry Officer did not give any opportunity inspite of the delinquent officer/employee asking for it and the prejudice was self-evident. With regard to the decision in the case of Narendra Kumar Pandey, it was submitted that the said decision could not be applied to the case on hand because the delinquent officer in the said case did not attend the domestic enquiry whereas the first respondent attended the enquiry and the last four days proceedings were recorded in her absence though the first respondent objected to the same. Therefore, the decision was factually distinguishable.

46. In so far as the decision in the case of M.H.Devendrappa, it was submitted by the first respondent that in the said case, the appellant made a public attack on the head of the Institution and addressed a letter to the Governor of the State, whereas the first respondent was not a member of any political party or any outfit and she was not involved in the Dharna and therefore, the decision could not be applied to the first respondent's case. The decision in the case of Nirmala Senior Secondary School, was distinguishable on facts because in the said case the teacher abused and assaulted a lady Principal and threatened to burn down the School. The decision in the case of Hombe Gowda Educational Trust was also factually distinguishable because in the said case the employee hit and injured his superior officer at work place whereas the first respondent was proceeded by the Management only due to the fact that she wanted her students to do well in their examination and only because she recited a secular prayer. In so far as the decision in the case of Vice Chancellor, Guru Ghasidas University, it was a case where the first respondent therein misbehaved with two Professors, beaten and threatened them. However, the first respondent was never involved in such activity nor there was any such allegation and the allegation of "misbehaving" and "manhandling" was absolutely false as mentioned in the order of suspension.

case of Kendriya Vidyalaya Sangathan was an extreme case where the first respondent/employee forcibly barged into the Principal room in an inebriated condition and therefore, the case could not be applied to the case on hand. The decision in the case of Raj Kishore Yadav was also distinguishable on facts because there the charges were proved and the Hon'ble Supreme Court reversed the order passed by the High Court because it found the judgment of the High Court to be perverse on the facts and circumstances, whereas in the case of the first respondent, the Court had considered the matter elaborately and granted relief to the first respondent and it was prayed that the order passed in the present writ petition may be sustained and the first respondent be reinstated in service with all benefits.

48. Heard Mr. Vijay Narayan, learned Senior Counsel for Mr. C. Jagadish, learned counsel for the appellant and Mrs. R. G. Abirami Devi, the first respondent appearing in person.

49. The first respondent had impugned the order of dismissal passed by the appellant Management dismissing her from the services of the Institution, in which, she had joined during 2002. The present writ petition was allowed by the learned Single Bench and consequential directions were issued to re-instate the first respondent with direction to settle all the service benefits along with 50% backwages.

50. The appellant Management, at the very outset, would contend that this Court should bear in mind that the action initiated by the Management was against a teacher for her behaviour, which was unbecoming of a teacher of a reputed Institution.

51. If this aspect is borne in mind, then the Court will be very slow in interfering with the disciplinary action initiated against an erring teaching faculty.

52. The next limb of the submission of the learned Senior Counsel for the appellant is that though the first respondent would state that the order of dismissal is vitiated on the ground of lack of opportunity to her and is in violation of principles of natural justice, such plea should be examined from the point of view of prejudice, namely, whether such alleged violation prejudiced the first respondent in defending herself properly and effectively and only if it is found that she was so prejudiced, appropriate orders have to be passed to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. When no prejudice is established to have resulted, no interference would be made to the disciplinary action initiated against the delinquent. It is the submission of the learned Senior Counsel that the first respondent though stated that there was no opportunity granted to her and that there was violation of principles of natural

justice, she had not pointed out as to how she was prejudiced, more particularly, when all the allegations, which were made against her in the charge proceedings, have been admitted by the first respondent in the affidavit filed in support of the present writ petition. It is further submitted that assuming the learned Writ Court had come to a conclusion that there had been a procedural violation committed by the Management in the disciplinary proceedings, then the Court should interfere to the extent warranted and not to set aside the entire disciplinary action initiated against the first respondent and order reinstatement of the first respondent.

53. The Hon'ble Supreme Court, in *Nirmala Senior Secondary School* held that educational institutions are temples of learning; the virtues of human intelligence are mastered and harmonised by education; where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is complete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshippers of learning, no discord or challenge will arise. It was further pointed out that an educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. Therefore, the appointment of teachers is an important part in educational institutions, their qualification and the character are really important. It has been further held that if the clay like mind of young children is shaped into beautiful moulds by a teacher; they shape the future of a children; to a great measure their behaviour, character, reputation leave imprints in the minds of the young children; if conduct, behaviour, character and reputation of a teacher are full of blemishes, the same would not be for the interest and in the welfare of the students.

54. In the case of *Ganga Retreat and Towers Limited & Anr. vs. State of Rajasthan & Ors.* [(2003) 12 SCC 91], the Hon'ble Supreme Court was dealing with the case of disciplinary action against a teacher who was found guilty of indulging in physical assault of the Principal and it was held that assaulting his superior at a work place amounts to an act of gross indiscipline. The first respondent therein was a teacher and even under grave provocation, a teacher is not expected to abuse the head of the Institution in filthy language and assault him with a chappal. Therefore, the punishment of dismissal from service was held to be not disproportionate so as to shock one's conscience. Further, it was pointed out that indiscipline in educational institutions should not be tolerated and no Management can ignore a serious lapse on the part of the teacher, whose conduct should be an example to the pupils.

55. The above referred decisions were relied on by the learned Senior Counsel for the appellant to emphasize the role

of a teacher and as to how a teacher has to be dealt with by the Management when there is a case of indiscipline.

56. There can be no other view as to the exalted position, in which, a teacher is placed. However, when disciplinary action is initiated against a teacher for alleged acts of indiscipline and they are challenged, Courts are enjoined with the duty to test as to whether the teacher has had a fair deal in the proceedings. In a disciplinary proceedings, proof beyond reasonable doubt is not required and preponderance of probabilities would be sufficient to uphold the charge framed. Yet, Courts have stepped in when there had been procedural flaws and had examined as to how those flaws and illegalities affected the proceedings initiated against the teacher and in many cases, relief has been either denied or granted evaluating the facts and circumstances of each case. No person can be condemned without being heard. When disciplinary proceedings are conducted, there should be strict adherence to the principles of natural justice and adequate opportunity is required to be given to the delinquent and the entire proceedings should be fair, reasonable and transparent. If the proceedings fail on any of these grounds, the Courts are entitled to interfere.

57. In the case of State Bank of Patiala, the Hon'ble Supreme Court has pointed out the difference between substantive provisions and procedural provisions. Substantive provision cannot be dispensed with and it has to be strictly adhered to. A procedural provision, if violated, then the Court will have to test whether on account of such violation, the delinquent was put to prejudice and if no prejudice is established, then no interference is called for. If prejudice is established, then the Court will interfere to the extent where there was procedural infirmity and quash the proceedings up to the said stage with direction to proceed afresh.

58. Bearing all the above guidelines and findings rendered by the Hon'ble Supreme Court, we shall now proceed to test the arguments which were placed before us.

59. The genesis of the entire issue is an incident, which occurred in the indoor auditorium of the appellant Institution on 13.03.2012 at about 08.45 a.m. There was regular assembly, in which, 330 students, who were to take 12th Standard CBSE examination in the subject Chemistry, were assembled. The Principal, Vice Principal and several teachers were present. It appears that in the appellant Institution, such regular assembly is convened to encourage the students to give them tips as to how they can answer the questions, etc. The first respondent, who had joined as a Teaching Assistant in the appellant Institution in 2002, was promoted as Secondary Grade Teacher in 2007 and has been working in the Institution over ten years. She has handled the said students, who were to take the Board examination when they were in Classes 6 to 11.

The first respondent had gone to the indoor auditorium, taken the mike and recited a prayer, which, according to the first respondent, was a secular prayer invoking the blessings of Almighty of all religions and wish to her students to come out with flying colours. While the first respondent was midway reciting the prayer, she was asked to stop and the mike was switched off. The first respondent did not stop, but continued to recite without the assistance of the mike. This incident led to her suspension on 13.03.2012 followed by two charge proceedings dated 29.03.2012 and 05.06.2012.

60. We have heard the learned Senior Counsel for the appellant as well as the first respondent appearing in person elaborately. One thing, which strikes our mind, is that a trivial incident seems to have been blown out of proportion. Certain facts and circumstances and other incidents, which took place much thereafter precipitated the matter even further. The first respondent was steadfast, she faced the disciplinary action and ultimately, she was issued an order of dismissal, which was confirmed by the Appellate Authority. She succeeded before the learned Single Bench. Had the people in helm of affairs acted with prudence, the entire episode would have been avoided. Nevertheless, we are not hear to render any advice to either side, but to test whether the order of dismissal is legal and valid or otherwise.

61. The order of suspension dated 13.03.2012 refers to a report said to have been received, but nothing is available on record as to who submitted the report. This was also not brought out during the domestic enquiry. Therefore, we can safely hold that the alleged report to the Secretary and Correspondent of the Institution is non-existent. The order of suspension does not refer to the incident, which was stated to have occurred in the indoor auditorium and which was the genesis of the entire issue but it alleges that the first respondent failed to comply with allotted duty that she misbehaved and that she manhandled the Vice Principal in the presence of the students, which amounted to gross misconduct.

62. There are three allegations made in the order of suspension, one is that the first respondent failed to comply with the allotted duty, the second allegation is misbehaving with the Vice Principal and the third is manhandling the Vice Principal.

63. The comparison of the allegation made in the order of suspension dated 13.03.2012 with that of charge No.5 in the first charge proceedings dated 29.03.2012 shows that no charge was framed against the first respondent alleging misbehaviour and manhandling. Therefore, the allegation in the order of suspension stating that the first respondent had misbehaved and manhandled the Vice Principal is false.

attending the allotted duty. However, the appellant, while issuing the first charge memo dated 29.03.2012 framed three charges, namely, charge Nos.1 to 3 on the same allegation of not attending the allotted duty. Probably, it is an ingenious way of clever drafting. Thus the substance of the charge Nos.1 to 3 in the first charge memo dated 29.03.2012 is with regard to the allegation of not attending the allotted duty. This is also contained in charge No.5. Charge No.4 is with regard to the presence of the first respondent in the indoor auditorium on the said date, which is stated to be unauthorized, as no permission was granted by the Correspondent and she misled the Principal and therefore, did not discharge her duties with honesty and sincerity. Charge No.5 also refers to the same incident stating that unauthorizedly, the first respondent came to the indoor auditorium, barged on the dais, rushed to the mike and when the Vice Principal requested her to get permission of the Principal to use the mike, she was stated to have grabbed the mike and started using the mike and when the Vice Principal tried to stop her, she pushed her hands aside and continued to use the mike.

65.What is relevant to note here is that there is no mention about the prayer recited by the first respondent. It is admitted in the counter affidavit filed in the present writ petition that the first respondent had recited a prayer. If such is the fact situation, we fail to understand as to why this fact was suppressed in the charge proceedings because without knowing the background facts, if one were to read charge No.5, one would get an impression that the first respondent barged into the dais for some other purpose.

66.We fail to understand the intention behind the appellant/Management suppressing this fact in the charge proceedings. Charge No.6 is also relatable to Charge No.5 stating that the children were shocked on account of the first respondent's behaviour. Charge No.7 pertains to a Dharna conducted by a political party and display of poster and the charge alleges that it was the first respondent, who arranged it. Admittedly, the Dharna and display of posters was much later than 13.03.2012, which was the date, on which, the alleged incident took place resulting in placing the first respondent under suspension. Therefore, technically, the allegation in charge No.7 could not have been included as part of the charge proceedings. Nevertheless, we will test as to whether there was tangible material to connect the first respondent with the conduct of Dharna and display of posters. Charge No.8 pertains to allegation that the first respondent had sent frequent SMS and made phone calls to the Correspondent in his mobile phone, which, according to the Management, amounted to threat meted out to the Correspondent by the first respondent. Charge No.9 appears to be the summation of all the charges and it is absolutely vague.

67.The first respondent submitted her explanation to the charge memo within ten days. The Management did not take any action for nearly three months and on 05.06.2012, the second charge memo was issued to the first respondent containing four charges. Charge Nos.1 to 3 pertain to certain articles, which were published in a bimonthly magazine, a public meeting which was conducted by certain political personalities and display of posters around the Institution. All these allegations are admittedly much after 13.03.2012. Charge No.4 alleges that the first respondent had brought outside pressure on the School Management by approaching a person, who normally files Public Interest Litigations. However, we need not go into charge No.4 because the Enquiry Officer held charge No.4 as not proved. The first respondent had submitted her explanation to the second charge memo dated 05.06.2012 within ten days and for nearly three months nothing had happened and on 06.08.2012, the first respondent received a communication from the Vice Principal (Academics), stating that she was appointed as the Enquiry Officer and she was to commence the enquiry on both the charge proceedings.

68.Thus, in terms of the communication sent by the Enquiry Officer dated 06.08.2012, the first respondent was assured that she would be given an opportunity to cross examine the witness presented by the Management that she would be permitted to submit her evidence and present her witnesses and that if she sought to examine any of the school employees as witnesses on her behalf, she should inform their names to the Enquiry Officer. However, the Enquiry Officer added a rider stating that the first respondent should make her own arrangements for production of such witnesses at the enquiry.

69.This rider appears to be not consistent with the established procedure to be followed while conducting a domestic enquiry or for that matter any enquiry. The Management and the charge sheeted employee are both required to submit the names of witnesses they proposed to examine during the enquiry and it is the duty of the Enquiry Officer to issue notices to such persons to be present on the date and time fixed for the enquiry. Therefore, to state that the first respondent had to make her own arrangements may not be justified since the first respondent has been granted opportunity to examine witnesses on her side, who are employees of the School. In such circumstances, the burden cannot be solely fastened on the first respondent to produce such witnesses. In the instant case, this issue assumes substantial importance because the first respondent wanted to examine the Correspondent of the School, the Principal of the School and the Vice Principal of the School and obviously, she cannot compel their attendance. Therefore, such embargo placed by the Enquiry Officer is not sustainable.

70.On the date fixed for the enquiry, i.e. 16.08.2012, the first respondent submitted a representation requesting

video graphing. This was declined by the Enquiry Officer by observing that a daily order sheet would be maintained, in which, signatures of all the Officers attending the enquiry would be obtained. The enquiry was conducted on 16.08.2012, 17.08.2012, 21.08.2012 and 22.08.2012. It is not in dispute that on all these four days, the first respondent attended the enquiry proceedings. In the latter part of this judgment, we shall mention as to the stand taken by the first respondent on these four days when the enquiry was conducted. The enquiry thereafter proceeded and it was conducted on 27.08.2012, 03.09.2012, 07.09.2012 and concluded on 12.09.2012. The first respondent specifically stated that she, as a committed teacher of the Institution, went to the School to attend enquiry proceedings, but she was made to sit and not allowed to participate. On 27.08.2012, 03.09.2012 and 07.09.2012, she was not furnished with the daily order sheet and she was not permitted to cross examine the witnesses presented by the Management. The enquiry was completed *exparte* on 12.09.2012 and it was stated that after a lapse of ten days, the daily order sheet was forwarded to the first respondent.

71. On 03.09.2012, the first respondent addressed to the Regional Officer, CBSE, Chennai requesting their intervention stating that the Enquiry Officer was thoroughly biased that she was refusing to record her version, when she went to attend the enquiry on 03.09.2012 and that the Enquiry Officer refused to furnish the photostat copy of the attendance register maintained for the purpose of the enquiry. She also stated that the Enquiry Officer was forcing her to sign the daily order sheet, which was recorded in the first respondent's absence. Further, the first respondent also mentioned as to how the order of suspension was illegal and how the allegations, which were made in the order of suspension, were factually incorrect. Further, the first respondent stated that in the enquiry proceedings, the Principal had accepted that the first respondent had recited Slokas and the Vice Principal had switched off the mike and this was a serious violation of the secular principles enshrined in The Constitution of India. Therefore the first respondent requested the intervention of the Regional Officer, CBSE to take action against the Management and also interfere with the order of suspension.

72. On 05.09.2012, the first respondent addressed to the Correspondent of the Educational Agency pointing out once again as to how the enquiry proceedings were not transparent and the fact that she met the Regional Officer, CBSE, Chennai on 03.09.2012 and submitted a representation requesting the intervention of the authority. The first respondent placed on record in the said representation that she was ready to attend the enquiry proceedings if it was conducted in a fair and just manner. It appears that no action was taken on those representation immediately and the first respondent was not

given any reply. By then on 12.09.2012, the enquiry was completed and the Enquiry Officer submitted her report to the Management. On 04.09.2012, the first respondent addressed a representation to the Correspondent as well as to the Enquiry Officer stating that she attended the enquiry on all the eight days i.e. 16.08.2012, 17.08.2012, 21.08.2012, 22.08.2012, 27.08.2012, 03.09.2012, 07.09.2012 and 12.09.2012 and cooperated with the enquiry to the best of her ability. However, by misusing the powers of the Management, with a view to protect the Principal and the Vice Principal, the Enquiry Officer proceeded to conduct the enquiry in an unjust and unfair manner, that the Enquiry Officer did not record the first respondent's statements and that the enquiry proceedings were vitiated on account of violation of the principles of natural justice.

73. It was further stated by the first respondent that for the first four days, with much difficulty, she cross examined the Management witnesses and proved the stand taken by her, more particularly, their non-secular attitude. Therefore, from 27.08.2012, the Enquiry Officer was rude towards the first respondent, did not allow her to cross examine the witnesses and threatened her to sign the daily order sheet, which was recorded in her absence. Therefore, the first respondent lodged a complaint at the CBSE on 03.09.2012 and 17.09.2012 and sent the same by registered post. She also lodged a complaint before the Hon'ble Chief Minister's Special Cell. Further, the first respondent stated that when the enquiry proceedings were pending, the School Management lodged a false complaint with the Police against the first respondent and that she was put to lot of harassment by the Correspondent, the Principal and the Vice Principal.

74. The first respondent also stated that in the year 2000, the Principal Tmt.P.C.Selvarani, forged the school records and submitted the same before this Court in a writ petition filed by a student and she reasonably suspected that the said Tmt.P.C.Selvarani might have misused her signature in the order sheet of the enquiry proceedings. Therefore, the first respondent pleaded that she needed a chance to cross examine the Management witnesses, more particularly, P.W.7, P.W.8, P.W.12 and without affording an opportunity to her to cross examine those witnesses and contradict the documents marked through them, the Enquiry Officer arbitrarily completed and closed the enquiry proceedings. Therefore the first respondent prayed that the enquiry proceedings might be conducted in the presence of the officials of the Board. It is, by communication dated 02.11.2012, the CBSE cautioned the Management that all administrative action should be procedurally correct and there should not be revengeful action against any teacher or employees. Further the duties/responsibilities of the teacher should be specifically assigned. Nothing appears to have transpired pursuant to the said letter sent by the CBSE to the Management. By then, the

Enquiry Officer submitted her enquiry report/findings on 22.11.2012.

75.A perusal of the enquiry report shows that the Enquiry Officer recorded that the Management produced 24 documents, which were marked as Ex.P1 to Ex.P24 and examined 12 witnesses as P.W.1 to P.W.12. So far as the defence exhibits are concerned, it is stated as 'NIL' and defence witnesses as 'NIL'. Further, the Enquiry Officer stated that the first respondent participated in the enquiry proceedings on 16.08.2012, 17.08.2012, 21.08.2012 and 22.08.2012, and that repeated opportunity was given to her to attend and participate in the enquiry proceedings by giving notices dated 23.08.2012, 30.08.2012, 05.09.2012 and 10.09.2012 that she did not avail the opportunity, nor participated in the proceedings held on 27.08.2012, 03.09.2012, 07.09.2012 and 12.09.2012 and that because of her frequent walkouts from the proceedings on 27.08.2012, 03.09.2012, 07.09.2012 and 12.09.2012, the enquiry was conducted ex-parte on 07.09.2012 and 12.09.2012. Further, the Enquiry Officer stated that she had not produced any documentary or oral evidence in the enquiry proceedings to establish her innocence or to defend her from the charges even though she was given sufficient opportunity. Further, the Enquiry Officer recorded that the Presenting Officer had submitted his brief, which was received by her on 27.09.2012 and the copy of the Presenting Officer's brief along with the daily order sheets of the enquiry proceedings with the dates, on which, she had not participated along with the Management exhibits were sent to the first respondent by letter dated 27.09.2012 to submit her defence brief, which was followed by another letter dated 11.10.2012.

76.The first respondent sent a reply referring to the Enquiry Officer's letter dated 11.10.2012, in which, she informed that her previous letter dated 04.10.2012 was a reply to the Enquiry Officer's letter dated 27.09.2012 and therefore, the Enquiry Officer had treated her letter dated 04.10.2012 as the defence brief of the first respondent and proceeded accordingly. From what has been recorded in the Enquiry Officer's report, it can be clearly deciphered that the first respondent had attended the enquiry for four days. It is also clear that the first respondent was present on the remaining four days when the enquiry was conducted because the Enquiry Officer states that she walked out of the proceedings. Therefore, it cannot be said by the Management that the first respondent did not respond to the notices issued by the Enquiry Officer and the stand taken by the first respondent that she, as a sincere teacher, attended all the enquiry proceedings is established.

77.If that is so, we need to examine as to the justification on the part of the first respondent in not participating in the enquiry for the last four days though she was present in the School on those dates. If the first

respondent recorded certain reasons as to why she was unable to participate, then we need to examine as to the justifiability of those reasons for her non-participation. This is required to be examined because the first respondent had been taking a consistent stand that the enquiry proceedings were unjust and unfair that there was a violation of the principles of natural justice, that the Presenting Officer was shouting and harassing the first respondent, and that the Enquiry Officer compelled the first respondent to sign the daily order sheet, which was recorded in the absence of the first respondent.

78.If, on examination of these facts, it is found that there was no adequate opportunity to the first respondent or if there was a violation of the principles of natural justice, this Court would have sufficient jurisdiction to term the enquiry proceedings as illegal. The Enquiry Officer's findings run to 28 pages and she followed a pattern where after extracting the charge, she mentioned in brief about the stand taken by the Presenting Officer, certain portions of the deposition of the Management witnesses and the stand taken by the first respondent. After mentioning the stand taken by the Management witnesses and Ex.P2, the Enquiry Officer referred to cross examination of P.W.1 as done by the first respondent, however, proceeded to hold that the stand of the first respondent was not acceptable and ultimately held that the first respondent had not brought out any credible documentary/oral submissions to establish her argument and even in the cross examination, she was not able to establish her stand. The details of the cross examination had been furnished to us, from which, we find that certain vital questions had been put by the first respondent to the Management witnesses, more particularly, P.W.1 and the answers have been elicited from the said witness. However, we find that there was no discussion done by the Enquiry Officer on those answers given by the Management witness during the cross examination.

79.When a witness is subjected to cross examination and certain information is elicited by the charge sheeted employee from the Management witness, the Enquiry Officer is bound to discuss as to how such an answer, given during the cross examination, is irrelevant and would not, in any manner, go to disprove the charge framed by the Management. Therefore, we find the reasoning to be absolutely bald. The same pattern had been referred to by the Enquiry Officer in respect of other charges as well. Though the Enquiry Officer states that the argument of the first respondent that Ex.P2 was a cooked up document, which stand she had taken based upon her defence as well as the answers elicited during the cross examination, in one line, the Enquiry Officer stated that the first respondent's argument was totally irrelevant and not acceptable.

respondent was that there was no circular stating that nominated teachers alone could attend the daily assembly. Though this was brought out during the enquiry proceedings, the Enquiry Officer held charge No.3 to be proved solely based upon the deposition of P.W.4. What was required to be established is that a teacher of the School was required to have a written permission to attend the regular assembly in the indoor auditorium on the said date. This has not been established as required to be done to establish the charge. With regard to Charge No.4, the Enquiry Officer rejected the case of the first respondent in a single line stating that there was no valid or acceptable argument of the first respondent in the enquiry proceedings or in the cross examination of P.W.5. Similarly, for charge No.5, the Enquiry Officer, after referring to the chief examination of the management witnesses, namely P.W.5, P.W.6, P.W.7, P.W.10 and P.W.11, stated that the first respondent had not brought out any credible information in her cross examination of the prosecution witnesses, that she was not able to bring out anything in her favour and that she had not entered any evidence, documentary or oral to disprove the charge.

81. More importantly, the Enquiry Officer failed to take note that during the chief examination, the Management witnesses accepted the fact that the first respondent had recited a sloka and the first respondent had specifically stated that in the charge proceedings, this fact had been conspicuously missing and she alleged that this was on account of the non-secular attitude of the people, who were manning the Institution. This aspect has not at all been touched upon by the Enquiry Officer and on a reading of the Enquiry Officer's report, one will definitely form an opinion that there can be no illegality in a teacher functioning in the same School, who had handled the students in the lower classes to come over to wish and congratulate her students, so that they score well in the Board examination. A person of reasonable prudence with a stable mind would definitely wonder as to whether at all such can be the reason for initiating a disciplinary action against a teacher of the Institution after placing her under suspension. The same position continues in respect of charge No.6 as well.

82. With regard to Charge No.7, once again the Enquiry Officer extracted the stand taken by the Presenting Officer in his brief by referring to Ex.P3, an article, which appeared in the Deccan Chronicle, the chief examination of P.W.9, P.W.10 and P.W.12, the Management exhibits Exs.P3, P11, P13, P14 and P16 and concluded that the first respondent had engaged outside organization to conduct Darna in front of the School on 21.03.2012 and that the first respondent had not brought any oral or documentary evidence or any credible information in her cross examination to disprove the charge. As observed earlier, the same was the tenor and finding of the Enquiry

Officer in respect of Charge Nos.8, 9 and additional charge Nos.1 to 3 and the only reprieve, which the first respondent got, is in respect of additional charge No.4, which was held to be not proved.

83.As mentioned earlier, the Enquiry Officer had taken the letter dated 04.10.2012 as the defence brief of the first respondent. If that is so, then the first respondent should have been permitted to lead evidence on her side. Thus, the Enquiry Officer committed a fundamental error, in the manner, in which, a domestic enquiry should be conducted. There are two ways of looking at such proceedings. Firstly, the first respondent did participate in the enquiry proceedings and there is material to show that she was present on all eight days of the enquiry. This is as per the finding of the Enquiry Officer. But it was alleged that the first respondent walked out of the proceedings. If that is so, the first option available to the Enquiry Officer is to close the defence side by setting the first respondent exparte with due intimation, proceed with the enquiry, examine the management witnesses, close the proceedings, drop the findings and thereafter, forward the same to the Disciplinary Authority. However, in the instant case, probably the Enquiry Officer was not fully convinced as to the procedure adopted by her, which prompted her to give one more opportunity to the first respondent by addressing a letter dated 11.10.2012. Pursuant to that, the Enquiry Officer thought fit to take on record the letter given by the first respondent dated 04.10.2012 as the defence brief of the first respondent.

84.In the preceding paragraph, we have referred to the letter dated 04.10.2012 which had been addressed not only to the Enquiry Officer, but also to the Correspondent of the Institution. The first respondent specifically stated that she cooperated with the enquiry to the best of her ability, but using the power of the management to protect the Principal and the Vice Principal, the Enquiry Officer was acting in an unjust and unfair manner. There is a specific allegation that the Enquiry Officer had not recorded the first respondent's statements and that she experienced great difficulty in the first four days to cross examine the prosecution witness. She would state that she had brought out the religious atrocities done by the Principal and the Vice Principal during her cross examination, which prompted the Enquiry Officer to be very rude to her from 27.08.2012 onwards. The first respondent also states that the Enquiry Officer threatened her to sign the daily order sheet, which was recorded in her absence. She mentioned about the complaint given to CBSE on 03.09.2012 and 17.09.2012. She mentions about the fact that the Principal accepted in the enquiry proceedings that the first respondent invoked the blessings of all Gods, namely, Hindu, Muslim and Christian and she also accepted the fact that the Vice Principal, namely, Smt.Jeyanthi Sundar switched off the mike when the first respondent was reciting sloka. Further, she

mentioned that when the enquiry proceedings were pending, a false police complaint was lodged against her and the first respondent was harassed. She also made a specific statement with regard to a past incident, which occurred in 2008 where the Principal-Smt.P.C.Selvarani had forged the school records. While concluding, the first respondent specifically stated that she required an opportunity to cross examine the prosecution witnesses, more particularly, P.W.7 to P.W.9 and contradict the documents produced by the Management and that without giving such an opportunity, the Enquiry Officer could not close the proceedings and if it was done, it was a clear abuse of power by the Management. Therefore, the first respondent requested that the enquiry proceedings might be conducted in the presence of an official of the Board.

85.Going by the contents and tenor of the letter dated 04.10.2012, it can never be accepted as a defence brief. If the Enquiry Officer has taken on record the letter dated 04.10.2012, there were two options available to her, firstly, to recuse herself from the enquiry proceedings and request the Management to nominate somebody else. In fact, this would have been a fair approach because, on an earlier occasion also, the same Enquiry Officer was nominated to enquire into an allegation against the first respondent, she was stated to have produced witnesses and ably defended her stand and ultimately, the Disciplinary Authority/Management did not pass any orders and rather abandoned the proceedings. The second option available to the Enquiry Officer was to reject the allegations made by the first respondent, take a stand that the enquiry proceedings were just and fair and there was no violation of the principles of natural justice. If the Enquiry Officer takes such a stand, she should record as to how she had proceeded in a fair and just manner. Therefore, the enquiry proceedings were completely flawed. The Enquiry Officer appears to have been oblivious of the manner, in which, a domestic enquiry to be conducted and minimum knowledge of service jurisprudence. The above is sufficient to scrap the report of the Enquiry Officer terming it to be wholly unsustainable and against law.

86.The findings of the Enquiry Officer's report is communicated to the first respondent obviously for the purpose of submitting a further representation. The first respondent submitted three representations, all dated 10.12.2012. Though the contents of all the three representations are by and large, the same, the format adopted by the first respondent is slightly different. To be admitted that all the three representations are very elaborate. The sum and substance of the stand taken by the first respondent in those representations is culled out as hereunder:-

87.In the representation dated 10.12.2012, the first respondent pointed out that there are several violations committed in the proceedings and that she was not afforded

reasonable opportunity. She requested for dropping the entire matter and further requested that a fresh enquiry might be ordered. Simultaneously, the first respondent would state that her defence statement and defence brief may be taken into consideration. The first respondent faulted the charge memo to be defective, vindictive and malicious.

88. Referring to the vigilance manual of the Central Vigilance Commission, the first respondent would submit that the very framing of the charge memo itself was illegal and capricious. She reiterated that the Presenting Officer was continuously fighting with her and the Enquiry Officer did nothing to prevent him from doing so. The delay of 157 days, after the first respondent was placed under suspension, was also pointed out as an injustice meted out to her and the prolonged suspension was arbitrary and illegal.

89. Further, by referring to the CBSE guidelines, it was submitted that disciplinary proceedings should not ordinarily exceed six months and in exceptional cases, where it was not possible to adhere to the time limit, the Disciplinary Authority should report to the next higher authority explaining the reasons for the delay in writing and the higher authority should examine the same and issue appropriate directions to the Disciplinary Authority. It was pointed out that the first respondent had addressed to the Regional Officer, CBSE about the unreasonable delay in the enquiry proceedings and about the prolonged suspension. The first respondent also pointed out as to how the illegality was perpetuated by issuing the second charge memo and as to how the enquiry was commenced after two months of the issuance of the second charge memo and the joint enquiry was conducted for both the charge memos. The first respondent stated that the Correspondent was requested to be present for the enquiry, for which, the Enquiry Officer stated that it was the first respondent, who had to make arrangements and the first respondent could make arrangements for the Correspondent and Principal to be present for the enquiry and she was virtually helpless. Further, the first respondent had no role in the protests, which were done by outsiders and putting up of posters etc., and it was not known as to how erroneously the Enquiry Officer had rendered a finding as if the first respondent was instrumental in arranging all those events.

90. Thus, it was submitted that there had been a complete failure of adhering to the principles of natural justice that there was no transparency in the enquiry proceedings and that the Enquiry Officer refused to accept the first respondent's defence exhibits, did not make any arrangements to make available the employees of the School for being examined in the enquiry, proceeded to conduct the enquiry in the absence of the first respondent, failed to provide opportunity to cross examine the Management witnesses, forced the first respondent to sign the daily order sheet, which was recorded

in the absence of the first respondent, not allowed to contradict the exhibits produced by the Presenting Officer. Rather, the Enquiry Officer was not acquainted with the relevant rules and regulations with regard to the domestic enquiry and it was the very same Enquiry Officer, who had conducted an earlier enquiry against the first respondent. However, the first respondent ably defended herself and ultimately, the Management dropped the entire proceedings.

91. With regard to the enquiry stated to have been conducted on 16.08.2012, 17.08.2012, 21.08.2012 and 22.08.2012, the first respondent would state that though she went to the School, she was not allowed to participate in the proceedings that the Enquiry Officer was in a hurry to finish the proceedings and that the first respondent was forced to sit like a statue. Further, the first respondent specifically stated that the Enquiry Officer informed her that she could talk/speak only after the Presenting Officer finished his entire proceedings and in the evening, she would be given copies. Since the recording done was not a true reflection of what had transpired, the first respondent refused to sign the daily order sheet and also submitted a complaint to the Regional Officer of the CBSE. Further, it was submitted that Management Exhibits P11 to P23 were police complaints, a copy of the cell details of the Correspondent alleging threatening calls, messages, etc., which came to the knowledge of the first respondent when she received the daily order sheet sent by post. Therefore, the first respondent could not record her objection to those documents.

92. Further, with regard to the Management Exhibits P5 to P8, it was submitted that those are all complaint letters sent by the Principal to the Police authorities alleging that the first respondent was instrumental in conducting dharna and the first respondent was denied opportunity to impeach the veracity of those complaints. Further, the first respondent reiterated that the Enquiry Officer specifically stated that she could submit her exhibits only after the Presenting Officer finished his side, for which, the first respondent had pleaded before the Enquiry Officer that she had to cross examine the Management witnesses based on defence exhibits and therefore, her exhibits had to be allowed to be filed then and there, which was refused to be accepted by the Enquiry Officer. Therefore, it was submitted that 15 documents, which were available with the first respondent, could not be placed by her in the enquiry proceedings.

93. Further, the first respondent wanted to examine 10 witnesses on her side viz., (i) Mrs. Kavitha, (ii) Mrs. Saraswathi, (iii) Mr. Vetrivel, (iv) Mr. Senthil Kumar, (v) Mrs. Christy, (vi) Mrs. Pamela, (vii) Mrs. Eugene Shanthi, (viii) Mr. Elangovan, (ix) Mr. Siva and (x) Mr. Dunlop Kumar. However, the first respondent was prevented from doing so. Further, it was submitted that the Presenting Officer had produced 12

witnesses, whose names were not mentioned in the charge sheet or in the annexure. It was also submitted that out of the 12 witnesses produced by the Management, 8 witnesses are supervisor grade and only 4 witnesses were teachers. The credibility and veracity of the 12 witnesses were totally wanting and they were proxy witnesses chosen based on their dependability to toe the Management. Further, the first respondent would state that the witnesses were coached and tutored to speak as advised by the Presenting Officer and that she had brought out as to how the School authorities misused the signature of teachers and the Management witness P.W.2 made a false statement that the first respondent never signed the circular whereas, the first respondent was able to show that she had signed other circulars and therefore, the statement of P.W.2 was false.

94. With regard to the circular for evaluation work, it was stated that the signature of the Head Master showed that the circular was received on 24.02.2012 and she was able to place material to show that Ex.P2 was a false and created document. Further, it was stated that the evaluation of answer papers was a routine and recurring job, which was attended in the normal course and since the exams were over, it was the duty of the teachers to make correction of the concerned bundle. Further, the first respondent pointed out that she was able to establish that several teachers had not attended the evaluation work and when this issue came up, the Enquiry Officer brushed aside the first respondent's objection stating that in respect of other teachers, they would take action or enquire about their action.

95. Further, it was submitted that from the deposition of P.W.1 itself, it was clear that there was no strict adherence to the reporting time at 08.45 am, as some teachers used to come well before the time and some a little later also and after referring to the other loopholes in the statement of the Management witnesses, it was submitted that the last date for correction was 17.03.2012, however, the first respondent was placed under suspension on 13.03.2012. Thus, it was submitted that in respect of Charge No.1, there was no record placed to show that the 1st respondent was allotted particular duty as directed to be done by the CBSE. Ex.P2 was a concocted document as was established by the first respondent during the enquiry, with regard to the date, on which, the Principal received the said document. The evidence of P.W.1 was false. From Ex.P1, it was established that the first respondent signed the allotment register for VIII Standard evaluation on 13.03.2012 while taking and returning the bundle, which had not been denied by the Management. The Management witness P.W.3 accepted the mistake and therefore, her evidence could not have been looked into. The evidence of P.W.2 was false and had to be out rightly rejected, as the last date for correction was 17.03.2012, which fact the Enquiry Officer failed to take note of.

96.With regard to Charge No.2, it was submitted that there was no specific administrative instruction to attend evaluation work to be held at the Physics Laboratory at 08.45 am on 13.03.2012.

97.With regard to Charge No.3, it was submitted that from the statements as recorded by the Enquiry Officer, it was clear that the first respondent was not allowed to cross examine P.W.4 and in that, she was not allowed to produce any of her documents.

98.Further, with regard to Charge No.4, it was submitted that the Enquiry Officer failed to summon the witnesses especially the Correspondent and the Principal, whom she wanted to examine in the enquiry, which put the first respondent to great prejudice. Further, the first respondent elaborately stated with regard to the Management witnesses, who were examined in support of Charge No.4 and she specifically stated that she had been requesting the Correspondent for permission to sing a prayer song for XII Standard students, however, the Management did not respond and on the said occasion, the first respondent would state that again, she requested the Correspondent for permission and he had said yes, but with one condition that it must be a secular prayer. But, the first respondent was denied reasonable opportunity to establish the same during the enquiry proceedings, as she was shut out of the proceedings. Further, the first respondent would state that on an earlier occasion, a memo was issued to a teacher on 23.03.2012 for using abusive language against the Principal, however, no action was taken against the said teacher, which, the first respondent would state, was on account of the fact that both the Principal and the said teacher belong to the same religion whereas, the first respondent, belonging to a different religion, had been victimised.

99.With regard to Charge No.6, the first respondent would state that the Vice Principal-Tmt.Jayanthi Sunder forced two students to write a letter about the incident by supporting the institution and this conversation, which was stated to have been posted through FaceBook, had been downloaded by the first respondent and one student had annexed in his FaceBook page stating that the Vice Principal edited most of the details from his letter and asked him to write only things, which were favouring the School and favouring the Principal. Another student wrote that he wanted to leave, but the Vice Principal and the Principal were dragging them that he does not care as to which religious prayer they were going to sing in the School and that he wanted to leave the dirty place and he was waiting for his conduct certificate. Further, another student's post in the FaceBook was by stating that the School was facing trouble and they wanted to save their face that they are lying like anything and whipping out false charges on

the teacher and that they were guarding the gates so that she (the first respondent) did not enter the School by chance. Another student gave a reply by stating that the first respondent would not have courage to face the other teachers, for which, another student replied that he was wrong and the first respondent has unbelievably enormous amount of courage. The first respondent attached a copy of the post in the FaceBook along with her representation.

100.With regard to Charge No.7, the first respondent specifically stated that she was not a member of RSS, that she was not answerable to the activities of RSS, that press had interviewed students and that they had also approached the first respondent, that RSS volunteers also inquired with the first respondent and that she had only narrated what had happened on the said date. Therefore, it was submitted that any wrong reporting done in a newspaper could not have been a reason to state that the first respondent was responsible for all those activities.

101.With regard to Charge No.8, the first respondent would state that she had only made representations to the Correspondent stating that she was facing grave harassment and there was no threatening letter sent by her, nor any evidence produced by the Management during the enquiry. In fact, the Correspondent during the staff meeting used to say that any staff member could meet him at any time and talk freely about their grievance, as everybody belonged to the same family. Therefore, it was submitted that it was essential for the first respondent to examine the Correspondent so that she would be able to establish that she, at no point of time, made any threatening calls to the Principal.

102.With regard to Charge No.9, the first respondent would state that it was not a charge by itself, but a summation of the other charges.

103.With regard to additional Charge No.1, the first respondent would state that it might be true that an article appeared in a bi-monthly journal, but the Management did not probe in an objective manner as to who was responsible for such publication and assuming that it was the first respondent, who was responsible, was wholly unsustainable and P.W.5 was not competent to speak about it, as she had not probed as to what was the reason behind the publication and therefore, it was submitted that additional Charge No.1 was based on assumptions, presumption and surmises. It was further submitted by the first respondent that after the article was published in the bi-monthly journal, the first respondent called the office of the journal and conveyed her disapproval and objections to the content, which was published and she also addressed a letter to the editor of the journal and the journal had published the first respondent's objection

later in the next issue and therefore, the first respondent requested to verify from the editor of the journal, which was not done and therefore, additional Charge No.1 was baseless.

104.With regard to additional Charge No.2, the first respondent would state that it was utterly perverse and based on assumptions and as the first respondent was not a member or sympathizer of any political organisation, she had no personal acquaintance with any one of the three persons, whose names were mentioned in the charge. Further, it was submitted that the public reaction was not on account of suspension of the first respondent, but it was against the School administration, the Principal and the Vice Principal for hurting the religious sentiment of one section of people and ultimately, the first respondent became the victim. The first respondent also stated as to how Mr.John Anbalagan, Headmaster of SBIOA School conspired to fabricate false charges against the first respondent.

105.With regard to additional Charge No.3, the first respondent submitted that she had not displayed any posters against the school and there was no evidence placed to connect the first respondent with those posters. Thus, the first respondent stated that the entire imputation in the charge was concocted and to victimise the first respondent and prayed for dropping the charges framed against her and payment of full salary for the period of suspension.

106.The submission made by the first respondent in the above referred to representation had been reiterated in another representation which was also dated 10.12.2012. In this representation, in paragraph 13, the first respondent had prepared a tabular format giving the charge number, the gist of the charge and the explanation of the first respondent and finally stated that the defence statement was to have been submitted to the Enquiry Officer by the first respondent after closure of the Management's case as presented by the Presenting Officer and that the Management's case was closed on 12.09.2012, but the Enquiry Officer without giving opportunity to the first respondent to present her defence, arbitrarily closed the enquiry and forwarded the brief submitted by the Presenting Officer to the first respondent on 27.09.2012 and the first respondent had been condemned unheard. Therefore, the defence submissions might be taken on record, to order for fresh enquiry. The second representation was followed by third representation, which was also dated 10.12.2012, which was in a slightly different format and the highlight of this representation was the discussion about the exhibits, which were filed by the Management as contained in paragraph 23 of the representation. Once again, the first respondent had prepared a tabular format with two columns, one mentioning about the Management exhibits and the other column as to how it was irrelevant. In conclusion, while praying for dropping the charge proceedings, revoking the suspension and

paying full salary, the first respondent requested that the defence statement and the brief be treated as part of the enquiry records, as they were not allowed to be submitted by the first respondent during the enquiry and any decision by the Disciplinary Authority without looking into the defence of the first respondent would turn the enquiry one sided and an empty-rubber stamp formality more particularly, because the Enquiry Officer did not allow the first respondent to file defence exhibits, which were 15 in number, nor allowed to produce her witnesses.

107.The purpose of providing an opportunity to the delinquent to submit further representation on the findings of the Enquiry Officer is not an empty formality. This opportunity is very vital because it is only when the copy of the findings of the Enquiry Officer is furnished to the delinquent, he will be in a position to know as to the opinion rendered by the Enquiry Officer upon conclusion of the oral enquiry. Therefore, before the Disciplinary Authority takes a decision on the findings rendered by the Enquiry Officer, the delinquent is entitled to put forth his submissions to point out any procedural errors or factual errors or any legal infirmity. Therefore, the duty cast upon the Disciplinary Authority is to consider the entire enquiry proceedings commencing from the statement of witnesses, the deposition elicited during cross examination the documents which were marked on either side, the findings of the Enquiry Officer, the representation submitted by the delinquent and thereafter, a decision has to be taken.

108.To say the least, the Disciplinary Authority has totally abdicated the responsibility cast upon him while dismissing the first respondent from service by order dated 15.02.2013. We support such conclusion with the following reasons:-

109.Firstly, the Disciplinary Authority failed to note the letter written by the first respondent to the Enquiry Officer dated 04.10.2012, which could not have been reckoned as a further representation. In the preceding paragraphs, we have stated as to what are the contents of the letter. In the penultimate paragraph of the said letter, the first respondent prayed for scrapping the enquiry stating that the Enquiry Officer was lacking basic knowledge about the fundamental principles of a domestic enquiry and that she was biased. The Presenting Officer had a better say in the enquiry proceedings and he was harassing the first respondent. Without noting this basic objection given by the first respondent, the Disciplinary Authority mechanically followed the observations of the Enquiry Officer stating that the letter dated 04.10.2012 sent by the first respondent was her defence statement. Thus, we can safely hold that there was total non-application of mind by the Disciplinary Authority. The order of dismissal though runs to 15 pages, on a careful perusal of

the same, it is evidently clear that it is absolutely devoid of reason and that it has not considered any of the objections raised by the first respondent in the further representations dated 10.12.2012, which were three (3) in number. A formality has been adopted by the Disciplinary Authority so to say that he extracted the charge, the findings of the Enquiry Officer, slightly re-worded the opinion of the Enquiry Officer, stated that he concurred with the findings of the Enquiry Officer and held the charges proved. None of the points, which was raised by the first respondent in the further representations dated 10.12.2012 have been considered or not even adverted to. We had extensively referred to the substantial portion of the objections raised by the first respondent in her representations dated 10.12.2012 to know the objections raised by the first respondent. The objections were factual, procedural and legal issues. Unfortunately, the Disciplinary Authority, who appears to have no knowledge of how to conduct the disciplinary proceedings, sent the order, which requires to be out rightly scrapped.

110.It was argued by the learned Senior Counsel for the appellant that the Disciplinary Authority afforded an opportunity to the first respondent to appear in person and make her submission, however she declined to avail the opportunity. From the manner, in which, the enquiry proceedings had been conducted, the first respondent appears to have lost what a little confidence she had in the Management and she was well justified in not accepting the offer made by the Disciplinary Authority, as, in her opinion, it is an empty formality.

111.To be noted, the Disciplinary Authority is none other than the Secretary and Correspondent of the institution. In fact, the first respondent wanted to examine him in the domestic enquiry, which request was turned down by the Enquiry Officer stating that the first respondent should make her own arrangement. The stand taken by the Enquiry Officer is perverse. A teacher of an institution, who wanted to examine a witness more particularly, when one of the charges was related to him, viz., the then Secretary and Correspondent, the first respondent was asked to make her own arrangement to bring him for the enquiry. The impugned order has been passed by his successor, who failed to take note of any of the objections raised by the first respondent, which, in our considered view, were valid, germane and legally sustainable objections. Failure to provide opportunity to cross examine the Management witnesses is fatal to the enquiry proceedings. Allowing the Presenting Officer to take charge of the enquiry proceedings is abdication of the duties cast upon the Enquiry Officer. Informing the first respondent that she will have her turn to produce her document only after the Presenting Officer completes his proceedings, is procedurally incorrect. Assuming that the procedure was right, the Enquiry Officer ought to have afforded opportunity to the first respondent to

submit her defence and her documents and produce her witnesses after 12.09.2012. However, the enquiry proceedings were abruptly closed. Therefore, the order of dismissal is flawed on all grounds.

112.What had happened thereafter, it can be perceived that the first respondent still had faith in the appellant/Management, in which, she had been serving. Therefore, she filed an appeal, which is to be considered by an Appellate Authority, which is called as the Disciplinary Committee. The constitution of the Committee is in terms of the CBSE guidelines and there are three Management representatives, one officer of the CBSE and one Head Master from other school. The Secretary and Correspondent of the School is also a member of the Disciplinary Committee. However, since the Secretary and Correspondent, Mr.D.Thomas Franco Rajendra Dev, was the Disciplinary Authority, who passed the order of dismissal, obviously he could not have been a part of the Disciplinary Committee and if permitted, he would be a judge of his own cause. Though an appeal petition was filed, the Disciplinary Committee was not formed. This has prompted the first respondent to come to this Court and file the earlier writ petition. While the earlier writ petition was pending, the first respondent stated that her original certificates and credentials were unauthorizably retained. After interim directions were issued, the certificates and credentials were returned to the first respondent. Ultimately, after directions were issued in the earlier writ petition, the Disciplinary Committee was formed. The first respondent needed to first ascertain as to whether the composition of the Disciplinary Committee was just and proper and in accordance with the relevant rules, as the first respondent had raised a very serious objection to the constitution of the Committee/members at the very inception. The fact that one of the Committee members Mr.T.Senthilkumar described himself as representative of Mr.D.Thomas Franco Rajendra Dev, Secretary and Correspondent in the Disciplinary Committee is a clear indicator that he had stepped into the shoes and taken up to the role, which, otherwise Mr.D.Thomas Franco Rajendra Dev would have done.

113.The undisputed fact is that it is the Disciplinary Authority (Secretary and Correspondent), who addressed to the CBSE suggesting names. The names suggested were accepted and a Disciplinary Committee was constituted. While issuing the order dated 10.04.2014 rejecting the appeal petition, Mr.T.Senthilkumar described himself as a representative of Mr.D.Thomas Franco Rajendra Dev. This will clearly show that he had no independent say in the matter and he has been virtually planted in the Disciplinary Committee by Mr.D.Thomas Franco Rajendra Dev, so that it is ensured that the order of dismissal, which we have held to be unsustainable, is, some how, sustained. With regard to the other two nominees and members of the Management noting as to how the first

respondent's case was handled by the Management, we have no doubt in our mind that the two other members of the Management Committee, who were part of the Disciplinary Committee, had no say in the matter and they were only name lenders.

114.The argument of the Management is that the Principal of another School, who is an accredited teacher, a President Medal winner, would reflect the independence of the Disciplinary Committee as well as the presence of a Senior Officer of the CBSE.

115.We have nothing to say on the credentials of the Principal of another School and assuming that he had an independent thought, yet his opinion was of little avail, as the majority constituted three members of the Management committee, all of whom have been suggested and nominated by the Disciplinary Authority himself. With regard to the Senior Officer of the CBSE, the opinion expressed by the Officer could also be brushed aside by the three other members nominated by the Secretary and Correspondent.

116.That apart, when the CBSE addressed to the Management by letter dated 02.11.2012, they made it clear that the CBSE was not in a position to address day to day problems of the School and advised the management to solve the issue accordingly. Therefore, the presence of the officer of the CBSE had absolutely no significance or relevance to the decision which would be taken by the Committee because the affiliated branch of the CBSE, New Delhi had made it clear that teacher-Management issues were the problems which were to be sorted out by the Schools themselves. Therefore, it is evidently clear that the Disciplinary Authority, who was the Secretary and Correspondent of the School, passed the order of dismissal. Since he was also a part of the Disciplinary Committee (Appeal Committee), he addressed to the CBSE for nominating three persons, who were members of the Managing Committee, one of whom was to represent him in the Appeal Committee. This proposal was accepted by the CBSE without any demur not noting that even much earlier, the first respondent had written a complaint to the CBSE that she has been victimised and for which complaint, the CBSE also sternly advised the management by letter dated 02.11.2012 and without application of mind, verbatim accepted the proposal of the Secretary and Correspondent proposing names to the Disciplinary Committee.

117.Thus, the constitution of the Disciplinary Committee is flawed and if one pierces the veil, it is evidently clear that the Disciplinary Authority had control of the entire proceedings and he had passed the order of dismissal and ensured that the appeal filed against it should also be dismissed. This would be sufficient to scrap the order passed

by the Appeal Committee. While examining the correctness or otherwise of the order passed by the Disciplinary Committee, on perusal of the same, it shows that first few pages of the order were devoted to the charge proceedings and a brief note on the domestic enquiry and the Committee stated that it went through the daily order sheet and the Enquiry Officer's report along with the defence statement and would state that sufficient opportunity had been granted to her and she had been given equitable opportunity to cross examine the Management witnesses and present her defence evidence to prove her innocence, that the principles of natural justice had been adhered to and that there was no reason to interfere with the order of dismissal.

118.To say the least, the order passed by the Disciplinary Committee is a non-speaking order and an outcome of total non-application of mind. The Disciplinary Committee, being the First Appellate Authority, is entitled to re-appreciate the evidence, which was available before the Enquiry Officer, the stand taken by the delinquent on the findings of the Enquiry Officer, the correctness or otherwise of the conclusion of the Disciplinary Authority qua the points raised in the further representation given by the delinquent on receipt of the Enquiry Officer's report. The Disciplinary Committee has totally brushed aside the points raised by the first respondent in the appeal petition. A copy of the appeal petition was filed by the Management before this Court, in the typed set of papers, from which, we are able to see the grounds raised by the first respondent in the appeal petition. Therefore, we have no hesitation to hold that the order passed by the Disciplinary Committee is liable to be set aside.

119.We find from the material papers filed in this appeal that the Appellate Authority though was impleaded as the third respondent in the present writ petition, they had not filed any counter affidavit and it is only the Secretary and Correspondent, Mr.D.Thomas Franco Rajendra Dev, who filed a counter affidavit. As mentioned by the first respondent, right from the inception of the disciplinary proceedings, the Management accepted that the first respondent had recited a prayer at stage. If such is the admitted factual position, it is not clear as to why the Management should withhold such information while issuing the charge proceedings. The questions are (i) was there any other hidden agenda for the Management behind non-mentioning about the recitation of the prayer by the first respondent and (ii) was the management in doubt that had they mentioned about the recitation of the prayer in the charge proceedings, there may be chances that an allegation will crop up that they are not secular. Therefore, at the very commencement of this judgment, we had expressed that the incident, as could be seen from the charge proceedings, is a very trivial incident and that any prudent man with common sense will have no hesitation to say that such an incident could not have been a cause for initiation of

disciplinary proceedings, that too, against a teacher, who has been with the appellant-Institution from 2002. Therefore, there are certain suspicious circumstances as to why the Management had to withhold as to what the first respondent had done on the ill-fated day, viz., 13.03.2012.

120. Assuming that the Management had mentioned about the same in the charge proceedings more particularly, in Charge No.5 of the first charge proceedings dated 29.03.2012, probably, the first respondent would have rightly mentioned that she was prevented from reciting a prayer, which had not been admitted by the Management in the counter affidavit to be a sloka and this may have had other ramifications especially when the incident escalated to a different level wherein, certain political outfits also took over. Therefore, on a reading of Charge No.5, it is not desirable as to what is the illegality committed by the first respondent in coming to the stage. Therefore, the intention behind issuing the charge is not because the first respondent came to the auditorium and not because the first respondent got on the dais, not because the first respondent took over the mike, but because of what she had recited using the mike, which led to the Vice Principal switching off the mike. That apart, it has not been established that a duty roster is being prepared by the Management and specific duties are allotted to teachers.

121. From the evidence, which were available before the Enquiry Officer, it is evidently clear that there is no water type procedure in this regard. The first respondent was able to establish in the domestic enquiry that the evaluation was part of the duty of a teacher and whenever they have time, they will undertake the same. Furthermore, the first respondent was able to establish that several teachers did not undertake the work, yet no action was taken against them. That apart, the last date for valuing VIII Standard papers was 17.03.2012, however, on 13.03.2012 itself, the first respondent was placed under suspension. For the involvement of certain political outfits, third parties were sought to be linked with the first respondent, for which, purpose the Management relied upon newspaper reports. If such is the case, there are other damaging reports given by the students of the Institution in their FaceBook status. Thus, a charge proceedings could not have been framed solely based upon newspaper reports. Further, the first respondent wanted to examine 12 witnesses on her side, two of whom were the persons said to have arranged for dharna. This opportunity was denied to her. Therefore, he plea that the first respondent was involved and instrumental in inciting the political outfits and the protest against the institution was not established during the enquiry proceedings.

122. Though it may be stated that the Court may not be entitled to go into the thicket of evidence, which was

available, yet on an examination at the supervisory level, once the first respondent is denied to produce her witnesses to substantiate her defence and is also denied opportunity to cross examine, it has to be held that the entire proceedings are vitiated, as these deficiencies and errors go to the root of the matter. The Management failed to take a proactive step at the very first instance, that is, after the first respondent received the communication from the Enquiry Officer dated 06.08.2012 stating that she had been nominated as Enquiry Officer and she would proceed further. The first respondent questioned the appointment of the Enquiry Officer. Apart from other things, she stated that she was the very same person who conducted the earlier proceedings, in which, the first respondent was able to bring in evidence to demolish the allegation against her and quietly the Management did not pass any orders thereby the entire proceedings were dropped. If, according to the Management, this objection was not tenable, then they should have rejected the objection as not tenable and then permitted the Enquiry Officer to go ahead. However, both the Management and the Enquiry Officer were unreasonable.

123. With regard to the threat meted out to the then Secretary and Correspondent, though it was formulated as a charge, when the first respondent requested that the said Secretary had to be requested to appear for the enquiry, her request was abruptly turned down by the Enquiry Officer stating that she had to make her own arrangement. It defines the logic as to how a teacher, who is serving in an institution for all these years, would have the wherewithal to bring the former Secretary and Correspondent to attend a domestic enquiry and all that she can do as a delinquent teacher is to put forth her plea before the Enquiry Officer, who was required to issue summons to the witness calling upon him to appear for the domestic enquiry regardless the fact whether he chooses to appear or not. Had such an approach been adopted by the Enquiry Officer, he could have been termed as an impartial Enquiry Officer. However, impartiality is writ large on the face of the record. Further, Charge No.6 alleged that the students were shocked because of the incident. This has not been established by the Management. In fact, the FaceBook post by the students, who were part of the assembly, shows otherwise that they have faulted the Management and in fact, one student fastened an encomium on the first respondent stating that she had unbelievably enormous amount of courage.

124. As observed earlier, Charge No.9 is not a charge by itself, but it is a summation of other charges. That apart, Charge Nos.1 to 6 relate to the same incident and we have mentioned that it has been split up into six charges by clever drafting. Furthermore, we have noted that though in the order of suspension, it was alleged that the first respondent misbehaved and manhandled the Vice Principal, there was no such allegation in the charge proceedings. Therefore, we hold

that using the words "misbehaved" and "manhandled" in the order of suspension dated 13.03.2012 by the then Secretary and Correspondent Mr.D.S.Rishabdas is uncalled for and it is a false allegation. Therefore, the first respondent is well justified in requesting the Enquiry Officer for the presence of Mr.Rishabdas, as she wanted to examine him.

125.The imputation in Charge No.1 is that the first respondent would refuse to sign the circulars. The first respondent has been able to bring out during the enquiry proceedings that it is not the habit of the first respondent in refusing to sign the circulars, however, the first respondent would cite two reasons. First is, her signature was misused and this came to light when a student approached this Court and filed a writ petition and the student had filed an affidavit setting out the correct facts which put the Management in trouble. Therefore, the first respondent stated that she was not willing to sign any blank paper and had the names of the teachers were appended to the circular, she would have signed. This appears to be reasonable. That apart, if the first respondent had been in the habit of refusing to sign any of the circulars, the Management could have initiated disciplinary action against her.

126.With regard to additional Charge No.1, imputing that the first respondent was responsible for the publication in the bi-monthly Tamil Magazine, which was stated to have been written adverse to the appellant-Management, the first respondent had stated that she had no connection with the said Magazine and that she had objected over phone about the article, which was published and addressed a letter to the editor and her objection had been published by the same Magazine in the next edition. Neither the Enquiry Officer, nor the Disciplinary Authority, nor the Disciplinary Committee has taken note of this aspect.

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127.Additional Charge No.2 proceeds on the basis that three named persons had arranged a public meeting and the first respondent was responsible. If that is so, those three persons could have been cited as Management witnesses or there should have been some evidence to show that it was the first respondent, who incited those three persons. Therefore, additional Charge No.2 has to necessarily fail. This is also the case in respect of additional Charge No.3. There are other issues, which have been raised by the first respondent with regard to the validity of the By-laws of the Management Society that Form-VII declarations have not been accepted for several years that the society is a non-existent entity and that the authorities have no jurisdiction, are all issues which are beyond the lis involved in this appeal. Therefore, we refrain from expressing anything on those issues and we leave it open to the first respondent to take up those issues

before the competent forum, if she deems appropriate.

128. Thus, in the light of the above conclusion, we hold that the decision in the case of State Bank of Patiala would come to the aid and assistance of the first respondent rather than the appellant-Management. If the first respondent was informed that she could open her defence after the conclusion of the submissions of the Presenting Officer, then opportunity should have been granted to the first respondent after 12.09.2012 and the enquiry proceedings should not have been closed. This defect is not condonable. The first respondent has also faulted the Management for keeping her under prolonged suspension. Undoubtedly, there was no review of the order of suspension, though the first respondent had made more than one representation to revoke the order of suspension.

129. The rules governing the proceedings stipulate an outer time limit of six months. It is argued by the first respondent that this time period is sacrosanct and cannot be breached. However, the guidelines issued are to the effect that an endeavour should be made to conclude the proceedings within a period of six months. However, if it is not concluded within the said time, orders have to be obtained from the superior authority, who should consider all relevant factors and issue direction. This has not been done by the appellant-Management and they retained the appellant under suspension from 13.03.2012 till she was served with an order of dismissal on 15.02.2013. The suspension is obviously prolonged and nothing is available on record to show that the Competent Authority reviewed the order of suspension and has recorded reasons that the first respondent should be continued under suspension till the conclusion of the domestic enquiry.

130. It is not clear as to the amount of subsistence allowance, which was given to the first respondent during the period of suspension. But considering the facts and circumstances of the case, we are of the view that beyond a period of six months from 13.03.2012, the first respondent is entitled to full salary.

131. The learned Senior Counsel for the appellant referred to the decisions of the Hon'ble Supreme Court in the cases of Nirmala Senior Secondary School, Hombe Gowda Educational Trust, Vice Chancellor, Guru Ghasidas University and Kendriya Vidyalaya Sangathan to impress upon the Court to explain the role of a teacher and that the Court is slow in interfering with the punishment imposed by the Management unless it shocks the conscience of the Court.

132. All the actions, which led to the disciplinary action against the teacher in all the aforementioned decisions, were extreme cases where the teacher physically abused the Principal, attacked the Principal in a drunken state, etc.,

and no such allegation is made against the first respondent in the instant case, and that too, a teacher who has been in the very same institution ever since 2002. Thus, if we consider the totality of the facts and circumstances as pointed out more than once earlier, a trivial incident has been grown out of the incident. We do not want to examine as to why it had been done so, as we are called upon to decide as to the legality and validity of the disciplinary action initiated against the first respondent. Nevertheless, without going into the proportionality of penalty, which has been imposed, the Court is entitled to examine the facts and circumstances of the case. The records placed by the Management show that the first respondent has not come to adverse notice earlier. In fact, proceedings were initiated against the first respondent in 2008, in which, the very same Enquiry Officer was appointed and after the enquiry was over, the Management did not pass any orders. Therefore, whatever allegation, which was made in 2008, would automatically stand effaced/abated. If that is so, we can safely observe that the first respondent has had an unblemished career as a teacher of the appellant-Management, who initially joined as a Teaching Assistant on 01.06.2002 and promoted as a Trained Graduate Teacher in 2007. Therefore, the punishment of dismissal from service is grossly disproportionate and it shocks the conscience of the Court and more particularly, the manner, in which, the disciplinary proceedings had been conducted and the technical and procedural faults, which have been brought out in the preceding paragraphs.

133. It was argued by the learned Senior Counsel for the appellant that in the event, the learned Single Bench was of the view that there was some infirmity in the proceedings, that could have been a reason to set aside the proceedings up to the said stage and it would not be a reason to quash the enquiry proceedings.

134. We have no hesitation in accepting the said submission as a legal principle, as there are catena of decisions of the Hon'ble Supreme Court. Nevertheless, the facts and circumstances of each case have to be gone into and it is not a universal application that whenever there is irregularity or illegality in a disciplinary proceeding, the Court, while interfering with the penalty, would remand the matter to the Management to redo the exercise. Facts have to be taken note of while deciding as to what relief the litigant is entitled to and this discretion vests with the Court, which shall be exercised considering the totality of the circumstances of the case on hand. If this test is applied, while holding that the entire disciplinary proceedings are thoroughly vitiated on account of several procedural and legal flaws, we are not convinced to remand the matter to the appellant for starting a fresh innings once over again. The incident, which occurred on 13.03.2012 is yet to attain finality and we hope and wish that this judgment puts an end

to the entire issue.

135. Though much has been said about the people, who manned the institution and the very strong allegation is that there were not secular, we do not wish to comment upon it, as we are yet to believe that the institution having been established by an association consisting of officers and employees of a nationalized bank, it is deemed that they are secular and they shall be secular. The purpose of establishing institutions is to giveback something to the society and State Bank of India, being one of the premier bank in the country, not only as an institution, they should set an example for others to emulate the officers and staff functioning in such a premier institution, who also live up to the standards for people to emulate. The association, which has established this institution could be a body of officers and employees of State Bank of India. If they were in the worker category, they would have been a trade union. However, if this association decides to establish an educational institution, it is their bounden duty to reach out of and ensure that none is left behind. An educational institution is a place of learning not to be converted into a den of litigation.

136. In the result, this writ appeal fails and is dismissed and the order and direction issued by the learned Single Bench is slightly modified in the following terms:-

(i) The order of dismissal dated 15.02.2013 passed by the Disciplinary Authority and the order of Disciplinary Committee dated 10.04.2014 are quashed;

(ii) The appellant is directed to reinstate the first respondent within ten days from the date of receipt of a copy of this judgment;

(iii) The first respondent shall be paid 50% of the salary as subsistence allowance from 13.03.2012 for a period of six months from the said date and on the expiry of the period of six months from the date of suspension till the date of her dismissal by order dated 15.02.2013, the first respondent shall be paid 75% of the salary as subsistence allowance. The payments shall be made within two weeks from the date of reinstatement after deducting any amounts already paid to the first respondent;

(iv) During the period when the first respondent was out of employment, she is entitled to 50% back wages. The back wages shall be computed based on the salary structure prevalent at the relevant time, that is, reckoning the revision of salary and other emoluments and paid to the first respondent within four weeks from the date, on which, the first respondent is reinstated;

(v) The period, during which, the first respondent was out of employment, shall be reckoned for all other purposes for computing her length of

service, seniority, sanction of increment, etc. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Abr

TO

- 1.The Chairman,
Central Board of Secondary Education,
Shiksha Kendra, 2, Community Centre,
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+1cc to Mr.C.Jagadish, Advocate, S.R.No. 42947
+2cc to Mr.R.G.Abirami Devi, Advocate, S.R.No. 42860

SR II(CO)
GN(21/01/2021)

W.A.No.687 of 2019

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