

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.332 OF 2023

WITH

WRIT PETITION NO.333 OF 2023

Mrs. BERTHA T.A. D'MELLO e DANIEL,
aged 49 years, residing at
H.No. 500/27/1, Lane 4,
Hillside Enclave, Philomena
Housing Society, Alto St. Cruz,
Tiswadi, Goa – 403 202.

... Petitioner.

Versus

1. GOA UNIVERSITY,
an Institution created under
the Goa Universities Act,
1984, represented by the
Registrar, Goa University,
Taleigao Plateau, Taleigao,
Goa – 403206.

2. VICE CHANCELLOR,
Goa University,
Taleigao Plateau, Taleigao,
Goa – 403206.

... Respondents.

**Mr Yogesh V. Nadkarni with Ms Simran Khadilkar, Advocates for
the Petitioner.**

**Ms A.A. Agni, Senior Advocate with Ms Jay Sawaikar, Advocate
for the Respondents.**

CORAM:

**M.S. SONAK, J &
BHARAT P. DESHPANDE, J.**

RESERVED ON:

17 July, 2023

PRONOUNCED ON:

27 July, 2023

JUDGMENT: (*Per Bharat P. Deshpande, J.*)

1. Rule. The Rule is made returnable forthwith. Further, with the consent of the learned Counsel for the respective parties, both the Petitions are disposed of by a common Judgment and Order.

2. The challenge in Writ Petition No. 332/2023 is to the Vice Chancellor's order dated 25/4/2023, suspending the Petitioner with immediate effect pending disciplinary proceedings. This order was made on the eve of the Petitioner's candidature being considered for direct recruitment and promotion to Deputy Registrar, Goa University, based primarily on stale charges, some of which do not constitute misconduct.

3. The challenge in Writ Petition No. 333/2023 is to the impugned charge memorandum dated 25/05/2023, *inter alia*, on the grounds of inordinate and unexplained delay, legal malafides, arbitrariness and vindictive approach by the Respondents. The Petitioner alleges violation of Article 14 of the Constitution of India and points out that the decision-making process was grossly unfair and arbitrary.

4. The Petitioner was appointed Assistant Registrar (Legal) in Goa University on 16/12/2005, effective from 26/11/2005. Upon completing the probation period, she was confirmed as an Assistant Registrar (Legal) effective 26/05/2008 vide order dated 29/07/2009.

5. Though the Petitioner was entitled to senior scale effective from 2013, the same was not granted to the Petitioner because she had yet to complete training programs for the officers. The Petitioner appealed to the Chancellor by pointing out that it was the responsibility of the University

to conduct or facilitate the training programs for officers, and the University, having failed to discharge this duty, could not deny the Petitioner senior scale effective from 2013. The Chancellor disposed of the Appeal on 21/07/2016 by recording the Registrar's assurance that appropriate training programs will be conducted. After the Petitioner completes the same, a senior scale will be granted to the Petitioner from 2013. The Petitioner expressed satisfaction with the assurance given and did not press for interest effective from 2013.

6. The Petitioner's next promotional avenue is to the post of Deputy Registrar. In terms of Statute SA10(4)(3) of the Goa University Rules, the post of Deputy Registrar is to be filled in by a roster. In all, there are three posts of Deputy Registrar. One such post fell vacant on 31/01/2023 due to the superannuation of the incumbent officer. This was to be filled in by direct recruitment. Another post fell vacant on 31/05/2023 and as per the roster, this was to be filled in by promotion.

7. There is no dispute that the Petitioner, the senior-most Assistant Registrar at Goa University, was perhaps the only candidate fulfilling the eligibility criteria for promotion to the post of Deputy Registrar. The Petitioner had completed over eight years of service as an Assistant Registrar (Legal). The final seniority list dated 23/11/2022 (Exhibit 'C' on page 118 of the paper book) also indicates the Petitioner's senior-most position in the feeder cadre.

8. On 21/02/2023, applications were invited online to fill up the post of Deputy Registrar by direct recruitment. The Petitioner applied and was

informed on 25/02/2023 that her registration was successful, meaning that her application was duly accepted for consideration as a direct recruit.

9. By Office Note dated 15/03/2023, the Registrar, Goa University informed the Petitioner that she should present herself before the High-Level Committee on 23/3/2023. The Office Note further stated that vide letter dated 11/11/2022, the Hon'ble Chancellor advised the Goa University to take such action as it deems fit on the vigilance report submitted by the Vigilance Officer on 30/11/2018. The note also states that the matter was placed before the Executive Council in its meeting held on 13/01/2023, and the Executive Council resolved to constitute a High-Level Committee to look into the issues concerning the functioning of the Petitioner.

10. The Petitioner presented herself before the High-Level Committee on 23/03/2023 and filed her representation/comments based upon the limited material made available to her.

11. On 25/04/2023, the Vice Chancellor immediately placed the Petitioner under suspension. The Petitioner challenged this suspension order dated 25/04/2023 by instituting Writ Petition No. 332/2023. The matter was taken up on 03/05/2023 for interim relief when Ms Agni, the learned Senior Advocate for the Goa University, stated that the Petitioner was already invited to attend the interview for the post of Deputy Registrar (direct recruitment) scheduled on 08/05/2023 and the Selection Committee would consider her candidature in accord with law. This statement was accepted, and the Selection Committee was directed to act accordingly.

12. The Petitioner did appear for the interview before the Selection Committee, but she has learnt that she was not selected for the post of Deputy Registrar. The Petitioner has applied for the documents concerning the selection process.

13. By Memorandum dated 25/05/2023, the Petitioner was served with a charge sheet as an inquiry was proposed to be held against her under Rule 14 of the CCS (CCA) Rules, 1965.

14. By instituting Writ Petition No. 333/2023, the Petitioner has challenged this charge memorandum, *inter alia*, on the grounds that some of the charges do not constitute misconduct and, in any case, there was an inordinate delay in issuing the charge sheet, thereby causing immense prejudice to the Petitioner.

15. The Registrar of Goa University has filed an affidavit denying all allegations in the Petitions. The affidavit states that the Petitioner was called for the interview to the post of Deputy Registrar (direct recruitment) even though she was placed under suspension and Office Memorandum dated 25/05/2023 did not oblige the Goa University to call such suspended employees for interviews. The affidavit points out that the Selection Committee duly considered the candidature of the Petitioner, but she was not found worthy of selection. The affidavit also points out that the candidature of the Petitioner was considered for promotion, and the result has been kept in a sealed cover. From this, it was suggested that the Petitioner had been treated fairly.

16. The affidavit states that there was strong *prima facie* material indicating that the Petitioner consistently failed to abide by the instructions given to her by superiors and defiant in discharging duties assigned to her. The affidavit also states that there is *prima facie* material about the Petitioner's argumentative attitude. For all these reasons, the affidavit submits that no case is made out by the Petitioner warranting interference with the charge memorandum or with the suspension order.

17. The affidavit also states that the Registrar made telephonic inquiries with the past Registrars because the Petitioner's ACRs were always good and very good. The affidavit states that the past Registrar telephonically informed the affiant that no adverse remarks were entered in the Petitioner's confidential rolls because the past Registrars felt that being a lady, she would improve her performance.

18. The affidavit also states that the suspension order was warranted because the Petitioner might attempt to influence the employees likely to depose against her.

19. Learned Counsel Mr Nadkarni vehemently submitted that the order of suspension and memorandum along with articles of charge, impugned in both these petitions were issued only to bypass the Petitioner from appearing for the post of Deputy Registrar (direct recruitment) and the post of Deputy Registrar (promotion). The entire approach of the Respondents shows their vindictive nature only to prevent the Petitioner from appearing for interviews. He submitted that the Petitioner is the only candidate having the eligibility and the experience to work as Deputy Registrar

(promotion) and since the Respondents were not inclined, the impugned orders were issued.

20. Mr Nadkarni would then submit that the action of the Respondents smacked mala fides as suspension order was issued on the eve of her appearance before the selection committee for the post of Assistant Registrar (direct recruitment). Similarly, the intention of the Respondents was clear *i.e.* not to allow Petitioner to appear for the interview. In this respect, he submitted that the reply filed by Respondents in Writ Petition No.332/2023 is clear.

21. Mr Nadkarni would then submit that the report of Vigilance Officer dated 19.07.2018 was kept in cold storage till the time the post of Deputy Registrar became vacant. Suddenly such report was made the basis of initiation of disciplinary proceedings in the year 2023 *i.e.* after a period of four and a half years. There is no explanation as to why on receipt of vigilance report dated 19.07.2018, action was not initiated.

22. Mr Nadkarni would then submit that vacancy for Deputy Registrar (direct recruitment) arose on 01.02.2023 and thereafter, when the Petitioner applied for such post through online method, immediately the office note surfaced on 15.03.2023 asking the University to take up necessary action on the recommendations of vigilance report dated 19.07.2018. The High-Level Committee was constituted to consider the vigilance report. Though the Petitioner appeared before the High-Level Committee and submitted her explanation/representation as well as recorded her statement, the fifth meeting conducted on 23.04.2023

accepted the draft report. The members of the said committee are Prof. N.S. Bhat, Prof. (Smt) Kiran J. Budkuley and Prof. Suhas Pednekar.

23. Mr Nadkarni then pointed out that the star witness was examined during the said proceedings before High-Level Inquiry Committee is Prof. Jayant S. Budkuley, the husband of one of the members, Prof. (Smt) Kiran J. Budkuley. He therefore submitted that the entire proceedings conducted before the High-Level Committee smacks of arbitrariness as well as a farce. The wife being the member of High-Level Committee wherein her husband deposed as a star witness for the University. He submitted that this amounted to the violation of the principles of natural justice.

24. Mr Nadkarni would then submit that most of charges found in the memorandum of charges are first of all of the year 2014-2017 and that most of the charges are stale, vague and some of the charges do not constitute misconduct at all.. The instances referred in the memorandum of articles of charges refers back to 13 years even though no adverse entries or remarks are found in the entire service record of the Petitioner.

25. Mr Nadkarni would then submit that the actions of the Respondents certainly prejudiced the Petitioner as first of all there is unexplained delay, which itself prejudice the career of the Petitioner. Secondly, the action of Respondents is clearly arbitrary, illegal and vindictive only with a view to prevent the Petitioner from appearing and getting promotion to the post of Deputy Registrar. He submitted that allegations made in the articles of charges are vague and in fact not supported by material documents/contemporaneous evidence. He invited our attention to report of the High-Level Committee along with minutes of the meetings,

statements and relevant documents, in order to point out that such proceedings were initiated after a period of five years without explaining the delay.

26. Mr Nadkarni would then submit that action on the part of Respondents is only to prevent the Petitioner from appearing for the interview for the post of Deputy Registrar (direct) since she was the only eligible and suitable candidate for the post of Deputy Registrar (promotion). Finally, he prayed that both the impugned orders be quashed and set aside.

27. Mr Nadkarni placed reliance on the following decisions:-

(1) Bhupendra Pal Singh vs Union of India and Ors.-2021 SCC OnLine Bom 6073;

(2) State of Madhya Pradesh vs Bani Singh and Anr; - 1990 (Supp) SCC 738;

(3) State of Punjab and Ors. vs. Chaman Lal Goyal; - (1995) 2 SCC 570;

(4) State of A.P. vs. N. Radhakishan; - (1998) 4 SCC 154;

(5) P.V. Mahadevan vs. MD, T.N. Housing Board; - (2005) 6 SCC 636'

(6) M.V. Bijlani vs Union of India and Ors.; - (2006) 5 SCC 88;

(7) Secretary, Ministry of Defence and Ors. vs. Prabhash Chandra Mirdha; - (2012) 11 SCC 565';

(8) UCO Bank and Ors. vs. Rajendra Shankar Shukla; - (2018) 14 SCC 92;

(9) Union of India and Anr. vs. Ashok Kumar Aggarwal; - (2013) 16 SCC 147;

(10) *A.K. Kraipak and Ors. vs. Union of India and Ors.*; - (1969) 2 SCC 262;

(11) *Regional Manager, UCO Bank and Anr. vs. Krishna Kumar Bhardwaj*; - (2022) 5 SCC 695; and

(12) *Delhi Transport Corporation vs. D.T.C. Mazdoor Congress and Ors.*; -1991 Supp (1) SCC 600.

28. Ms Agni, the learned Senior Advocate appearing for Goa University, countered Mr Nadkarni's submissions. She submitted that the Petitioner was in the habit of not following the instructions from her superiors. She submitted that this was a case of persistent disobedience of lawful instructions. Therefore, the period spread from 2014 to 2022 was included in the charge memorandum. She submits that there was no delay in issuing the charge memorandum because, the charge pertains to the Petitioner's course of conduct over 8 years.

29. Ms Agni submitted that the charges levelled against the Petitioner are serious. She submitted that some of the witnesses were the Petitioner's subordinates. If the suspension were lifted, in all probability, the Petitioner would influence such witnesses or be afraid to depose against the Petitioner. She, therefore, submitted that issuance of the suspension order was justified.

30. Ms. Agni strongly contended that the Petitioner is habitual in not following the instructions of her superiors, having behaviour which tends to argue with the superiors and preparing notes repeatedly/persistently for a long period, though such notes were rejected by the superiors. She invited our attention to the definition of word "habitual" and claimed that on perusal of the articles of charges along with the documents, would clearly suggest that the Petitioner is *prima facie* guilty of such misconduct and her

attitude is persistent by defying the order and instructions of superiors. She virtually took us through all the articles of charges, along with the statements and documents in order to convince that such charges are ranging from the year 2014 till 2022. Ms Agni's efforts were only to point out that there is no delay in issuing the suspension order or the memorandum of charges as some of the acts allegedly committed by the Petitioner are even in the year 2022. She then invited our attention to the minutes of the High-Level Committee, the report of the Vigilance Officer of the year 2018 and the statements of the earlier Registrars recorded before the High-Level Committee.

31. Ms Agni would then submit that all these charges levelled against the Petitioner are serious in nature and if proved, would clearly go to show that the Petitioner conducted herself as unbecoming of a Government servant. The Petitioner's approach in defying the superiors' orders and directions, time and again, is not good for the institution. She submitted that the scope of examination of the case of Petitioner by this Court is limited as it is not permissible to go into the charges levelled against the Petitioner to find out whether such charges are true or false. According to her, the only scope of this Court is to consider the decision-making process and not the final outcome. According to her, there is no flaw in the decision-making process; therefore, this Court should not interfere at this stage. She submitted that only the memorandum of charges are served upon the Petitioner, who will be getting full opportunity to defend herself. Replying on the argument about some of the charges not constituting any misconduct, Ms Agni, on instructions, submitted that charges II and VI would not be pressed and may be taken as withdrawn.

32. Ms Agni would then submit that this Court will have to consider relevant factors which are in favour of the Petitioner and which are against the Petitioner even if this Court comes to the conclusion that there is arbitrariness.

33. Ms Agni placed reliance on the following decisions:-

- (1) *Union of India and Ors. vs. B. Dev*; -(1998) 7 SCC 691;
- (2) *Secretary, Ministry of Defence and Ors. vs. Prabhash Chandra Mirdha*; - (2012) 11 SCC 565;
- (3) *Union of India and Ors. vs. Upendra Singh*; - (1994) 3 SCC 357;
- (4) *Anant R. Kulkarni vs. Y.P. Education Society and Ors.*; (2013) 6 SCC 515;
- (5) *Chairman, Life Insurance Corporation of India and Ors. vs. A. Masilamani*; - (2013) 6 SCC 530;
- (6) *State of Punjab and Ors. vs. Chaman Lal Goyal*; - (1995) 2 SCC 570;
- (7) *Andhra Scientific Co., Ltd. vs. A Seshagiri Rao and Anr.*; - AIR 1967 SC 408;
- (8) *Government of Andhra Pradesh and Ors. vs. V. Appala Swamy*; - (2007) 14 SCC 49;
- (9) *State of Madhya Pradesh and Anr. vs. Akhilesh Jha and Anr.*; - (2021) 12 SCC 460;
- (10) *State of Orissa and Anr. vs. Sangram Keshari Misra and Anr.*; - (2010) 13 SCC 311;
- (11) *State of Orissa through its Principal Secretary, Home Dept. vs. Bomal Kumar Mohanty*; - (1994) 4 SCC 126; and
- (12) *Union of India and Anr. vs. Ashok Kumar Aggarwal*; (2013) 16 SCC 147.

34. The rival contentions are determined as follows.

35. The Petitioner was appointed Assistant Registrar (Legal) effective 26/11/2005. From her appointment to date, no adverse remarks were ever communicated to the Petitioner. Instead, it is accepted that the Petitioner has been graded as “good” or “very good” by the various reporting and reviewing officers who had the opportunity to assess her performance.

36. The Petitioner completed her probationary period and was duly confirmed. The Petitioner should have been placed in the senior scale in 2013 in the regular course. However, for no fault on the Petitioner’s part, she was not placed in this scale because the University failed to conduct training programs which the officers had to undergo before they could be placed in senior scales. Therefore, in 2016, the Petitioner appealed to the Chancellor and her appeal was allowed by order dated 21/07/2016. The appeal was disposed of by recording the Registrar’s assurance that the training programs would be conducted within six months. Upon the Petitioner successfully completing the same, she would be placed in the senior scale effective from 2013. The Petitioner also agreed to forego interest effective from 2013.

37. After the Petitioner completed her training, the Petitioner was placed in the senior scale effective from 2013. Such placement is not automatic, and a committee has to consider relevant material concerning the officers functioning at the University. The fact that the Petitioner was placed in a senior scale shows that at least up to 2016-2017, there were no serious issues about the Petitioner’s functioning.

38. In 2018, one Pranay S. Salgaonkar complained to the Vice Chancellor reporting about several illegal activities in the Goa University.

Serious allegations were made against several officers, including allegations about misappropriation, fraudulent claims, etc. However, the only allegations made against the Petitioner in this 2018 complaint were as follows :

- (a) The officer is enjoying the leisure time; and
- (b) She is one of the least working official in the University.

39. Vigilance Officer Shri Vishnu S. Nadkarni (who is presently the Registrar of Goa University) held a confidential inquiry. Regards most serious complaints, nothing much was said in the inquiry report dated 19/7/2018. However, regards blissful vague allegations against the Petitioner, the Vigilance Officer, based on discussion with the then Registrars, agreed that the allegations made against her appeared to be “*prima facie correct based on the information provided by the office of the Registrar. However, this might require further detailed investigation and suitable decision may please be taken*”.

40. The relevant extract from the Vigilance Officer’s report dated 19/07/2018 is quoted below :

“Sr. No.7: Regarding activities of Ms. Bertha Daniel e D’Mello, Asistant Registrar-Legal.

Allegations made:

- a. The officer is enjoying the leisure time.*
- b. She is one of the least working officials in the University..*

Observations:

The matter was discussed with the Registrar who agreed that there is considerable substance in the matter. The u/s requested

him to provide details regarding his observation in the matter as the Registrar has overall control over the administrative officers of the level of Assistant Registrar or Joint Registrar. The observations made by the Registrar are very serious, self-explanatory and are attached as Annexure-IV to this report.

When the matter was discussed with the senior officers in the University Administration, they provided some critical information in the matter by way of the excerpts of the minutes of the meeting of Executive Council dated 20.05.2016. The said documents are attached as Annexure-V and are also self explanatory.

Based on the evidence provided, the administration is of the opinion that Ms. Bertha Daniel e D'Mello, AR-Legal is not making required justice to the position occupied by her and the higher officers of University are finding it very difficult to deal with her.

Conclusion: The allegations made by the complainant (Sr. No. 7 of letter dated 23/3/18) in case of Ms. Bertha Daniel e D'Mello, AR-Legal appear to be prima facie correct based on the information provided by the office of the Registrar. However, this might require further detailed investigation and suitable decision may please be taken."

41. For almost five years after the Vigilance Officer submitted the above report, neither was any decision taken to proceed further against the Petitioner nor was any action taken against the Petitioner. Even during this period, no adverse remarks were issued to the Petitioner. Instead, the remarks in her confidential rolls were consistently good or very good. The Petitioner has placed on record letters of appreciation and other such material concerning her functioning at Goa University.

42. On 18/03/2022, one Advocate, Simon Jose Ferrao, addressed a complaint to the Chancellor of the Goa University complaining about

various irregularities in which various Goa University officials were involved. Significantly, in this complaint, there were no allegations against the Petitioner. Still, the University received a query from the Chancellor's office as to what action had been taken on the Vigilance report dated 12/11/2018 referred to above. This query was considered by the Executive Council of the Goa University, which resolved to constitute a High-Level Committee to consider whether disciplinary proceedings should be initiated against the Petitioner.

43. The High-Level Committee proposed by the Executive Council comprised the following :

- | | | |
|--------------------------------------|---|-------------|
| (i) Prof. Suhas Pednekar | - | Chairperson |
| (ii) Prof. N.S. Bhat | - | Member |
| (iii) Prof. (Smt.) Kiran J. Budkuley | - | Member |

44. The Petitioner was directed to present herself before the High-Level Committee on 23/03/2013 based on the office note dated 15/03/2023. Along with the office note dated 15/03/2023, the Petitioner was only furnished a copy of the Vigilance Report dated 19/07/2018, the extract quoted above. The Petitioner was also furnished some documents she requested before appearing before the High-Level Committee.

45. The High-Level Committee held five meetings, including the last meeting which was held on 23/04/2023 from 10.00 a.m. to 9.30 p.m. This is relevant because the High-Level Committee made available its voluminous report to the Executive Council of the Goa University dated 24/04/2023 though the discussion on such report was already included in

the agenda of the Executive Council meeting circulated much earlier. Ms Agni explained that this report was expected on the date of the Executive Council meeting and, therefore, the agenda item was circulated in anticipation of the report being made available on the said date.

46. The Executing Council meeting minutes record that the High-Level Committee report, which is quite voluminous, was given to the few Executive Council members attending the meeting. After the members studied the voluminous report no sooner it was presented to them, they decided to initiate disciplinary proceedings based on the recommendations in the High-Level Committee report. In this Executive Council meeting, a decision was also taken to suspend the Petitioner pending the proposed inquiry.

47. Since the decision-making process is what is being examined, we must note that the High-Level Committee's voluminous report was presented to the members on the date of the Executive Council meeting and soon after the Members, who were present, decided to initiate an inquiry and place the Petitioner under suspension.

48. The Executive Council meeting minutes record that the decision to initiate an inquiry against the Petitioner and place the Petitioner under suspension was based upon the report of the High-Level Committee dated 23/04/2023. Now, if this voluminous report is perused, it is evident that this High-Level Committee first recorded the statement of Prof. Jayant S. Budkuley, retired Registrar of Goa University. In this statement, Prof. Jayant Budkuley admitted that he was the Registrar of the Goa University only upto 26/11/2005. The Petitioner was appointed Assistant Registrar (Legal)

effective from 26/11/2005, a Friday. From 28/11/2005, a new Registrar assumed the Office. Still, Prof. Jayant Budkuley, based on his interaction with the Petitioner as a Chairman of the Drafting and Vetting Committee for Ordinances and Statutes, stated that he did not get requisite suggestions or appropriate feedback from the Petitioner. He stated that the Petitioner avoided responsibility for her work and lacked leadership qualities. He stated that apart from scheduling meetings, the Petitioner did not contribute suitably to drafting the Ordinances and Statutes as expected of the person having a post-graduate degree in law.

49. During the period Prof. Jayant Budkuley was the Registrar of the University, or after he became Chairman of the Drafting Committee, no adverse remarks were recorded or communicated to the Petitioner. The statements about no cooperation or lacking leadership qualities, relate to extremely stale interactions, which Prof. Jayant Budkuley should have clarified. Mr Nadkarni also pointed out Prof. Y.V. Reddy's (Registrar at the relevant time) letter dated 2/2/2018 stating that on behalf of the Vice Chancellor, he specially thanked the Petitioner for being a member of the Drafting and Vetting Committee and Petitioner's contribution to the development of the University.

50. But, what is most disturbing is that Prof. Jayant Budkuley, who gave his statement against the Petitioner, was the husband of Prof. (Smt.) Kiran Budkuley, one of the Members of the High-Level Committee, which was constituted to decide whether there was any case for initiating disciplinary proceedings against the Petitioner. Since Prof. Jayant Budkuley was one of the star witnesses, Prof. (Smt.) Kiran Budkuley should have recused herself

and not participated in the inquiry. In such matters, the test is never about actual bias, but the test is of a reasonable likelihood of bias.

51. In *A.K. Kraipak and Ors.* (supra), the Hon'ble Supreme Court held that it is against all canons of justice to make a man judge in his own cause though such person did not participate in the deliberations of the committee when his name was considered. The fact that he was member of the selection board must have had its own impact on the decision of the selection board. He participated in the deliberations of the selection board when the claims of his rivals was considered. He was party to preparation of the selected list. At ever stage of his participation in the deliberations, there was a conflict between his interest and duty. Under those circumstances, it is difficult to believe that he could have been impartial. The Court held that real question is not whether he was biased but it is difficult to prove the state of mind of a person. Therefore, whether there is reasonable ground for believing that he was likely to have been biased is the question. A mere suspicion of bias is not sufficient. There must be reasonable likelihood of bias. While deciding question of bias, we have to take into consideration human probabilities and ordinary course of human conduct.

52. The Hon'ble Supreme Court further held that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land, but supplement it. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. The rules of natural justice are not embodied rules. What particular

rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose.

53. Applying the above principle, we agree with Mr Nadkarni that the recommendations of the High-Level Committee, which is the base for initiating the inquiry against the Petitioner, stand vitiated due to the participation of Prof. (Smt.) Kiran Budkuley, a constituent of the High-Level Committee, and her husband Prof. Jayant Budkuley was one of the witnesses, if not star witness, who deposed against the Petitioner. Instead of recusing herself, Prof. (Smt.) Kiran Budkuley participated in the inquiry and is a signatory to the voluminous report recommending disciplinary proceedings against the Petitioner. This is one of the instances based on which we can say that the Petitioner was not fairly treated and there was a deficiency in the decision making process.

54. The Petitioner was directed to appear before the High-Level Committee. The Petitioner did make a statement in her defense. The Petitioner did use some documents before this Committee in her defense. Most surprisingly, Articles II and VI of the Article of Charges allege that the Petitioner made allegations against the Authorities who had conducted her interviews for the post of Deputy Registrar in the year 2019. Article VI of the Charge Memorandum says that the documents produced by the Petitioner before the High-Level Committee, were not obtained by her under the Right to Information Act and producing such documents amounts to failure to maintain devotion to duty and amounts to an act

which is unbecoming of the Sectional Head like the Assistant Registrar (Legal).

55. Now, according to us, based upon the Petitioner's defense before the High-Level Committee, no such charges could have been framed. There are no allegations about the documents produced by the Petitioner being either fraudulent or manipulated. If the Petitioner feels that she was not fairly treated at the interview of 2019 and expresses such an opinion before the High-Level Committee, the same could not have been made subject matter of the impugned charge memorandum. All this suggests that fetters were imposed upon the Petitioner effectively defending herself. Her defense was itself made subject matter of the impugned charge memorandum vide Articles of Charge II and VI.

56. Fortunately, Ms Agni, learned Senior Advocate for the Goa University, on instructions, made a statement that Articles II and VI from the charge memorandum would not be pressed and may be taken as withdrawn. This statement is accepted and even appreciated. However, the fact that such charges were levelled points to the unfairness of the entire exercise, which is based upon stale allegations and vague charges.

57. The impugned charge memorandum contains nine charges, out of which charges under Articles II and VI now stand withdrawn/dropped. Charges under Articles II and VI purport to refer to the Petitioner's conduct between 2014 -2023. However, we are convinced that this is only a ruse to get over the issue of inordinate delay in initiating the disciplinary proceedings. Although Article I refers to the period 2014-2023, two specific instances referred to in the statement of imputation of misconduct are of

2017 and 2018. The 2017 instance only recites the Petitioner having pointed out that order dated 15/02/2017 served upon her did not provide duties for the post of AR(Legal) and consequently, the Petitioner expressed difficulties in complying with the said order. The second instance of 2018 refers to order dated 16/03/2018, containing instructions that the files dealing with the legal and related matters were placed under AR(Legal) with immediate effect. However, it is alleged vaguely that the Petitioner failed to adhere/obey the instructions contained in the said letter.

58. Now, even if the allegations in Article I are held as correct, we wonder whether that would amount to any misconduct or serious misconduct. Be that as it may, there is no explanation why some action was not taken against the Petitioner in 2017 and 2018 for *prima facie* trivial instances. Triviality is evident from the circumstance that none of the superior officers or the reporting officers even deemed it fit to enter any adverse remarks against the Petitioner for the years 2017-2018. Suddenly after 5 years, on the eve of recruitment/promotion to the post of Deputy Registrar these instances have been raked up and included in the impugned charge memorandum.

59. Similarly, Article III of the charge memorandum refers to only two instances of the year 2010 and 2018. The 2010 instance is that the Petitioner returned the work experience certificate issued to her by expressing that she was disappointed and disheartened with the certificate as the legal work handed by her independently was not acknowledge in the certificate. Now, such an act can hardly constitute a misconduct. In any case, such an act cannot be raked up after 13 long years and included in a

charge memorandum. The second instance is about her appointment as the Member Secretary of the Drafting and Vetting Committee vide order dated 12/03/2018. The allegation is that the Petitioner expressed her inability to carry out this working claiming that she has no secretarial practice. It is alleged that these instances amount to insubordination. Again, there is no explanation for the inordinate delay in initiating the disciplinary proceedings for this incident in 2023. The Chairperson of the Drafting and Vetting Committee was none other than Prof. Jayant Budkuley, the husband of one of the High-Level Committee members. In 2018, Prof. Jayant Budkuley did not deem this incident to be fit enough to write to the Petitioner's reporting officer, so that some entry could be made in the confidential rolls. After 5 long years, on the eve of the Petitioner being considered for appointment/promotion to the post of Deputy Registrar, this incident has been raked up, without any explanation for the inordinate delay.

60. Thus, it is incorrect to say that Articles I and III of the impugned charge memorandum relate to the incidents from 2014-2023. The only incident referred to in the two articles of charge relate to the years 2017, 2018, 2010 and 2018. Assuming such instances constitute misconduct, there is no explanation for the inordinate delay.

61. Article II of the impugned charge memorandum was fortunately dropped/withdrawn. Article IV refers to two instances. First relates to year 2012, when the Petitioner allegedly refused responsibility to become the Member Secretary of the Vigilance Committee by pointing out that she was already overburdened. The second refers to the instance dated 27/10/2021

when the Petitioner allegedly refused the responsibility of the Internal Committee to inquire into cases of sexual harassment at work. Apart from the fact that the material on record belies such charges, the inordinate delay involved is not explained. There are no corresponding entries in the confidential rolls. Instead, the confidential rolls reflect that the Petitioner was graded as good or very good. To rake up the alleged incident of 2012 in 2023 without any valid explanation for the delay clearly sounds in the arena of arbitrariness.

62. Article V of the charge memorandum refers to certain arguments in which the Petitioner was allegedly involved with the Superintendent in month of February 2011. Based upon this, in the year 2023, the charge memorandum recites that this shows the Petitioner's inability to manage the staff and amounts to acts "unbecoming of an officer". This charge refers to arguments between Ms Sandra Lobo, Head Clerk in the Petitioner's Department. For the period between March 2022 to December 2022, Ms Sandra Lobo is alleged to have written in her noting that the Petitioner harassed her. Based on this, the impugned charge memorandum recites that the Petitioner lacks "leadership qualities" and "interpersonal relationship".

63. The arguments referred to in Article V can hardly be styled as some misconduct or serious misconduct. The arguments were that the colleagues in the Petitioner's department, the Superintendent and the Head Clerk are required to function under the Petitioner, the Assistant Registrar (Legal). Thus, if the Petitioner calls upon the Superintendent or the Head Clerk to discharge the duties assigned to them, it is belatedly alleged that the Petitioner is involved in persistent and continuous arguments. If, the

Petitioner does not prevail upon her colleagues in the Department to do the assigned duties, then this conduct is styled as a lack of leadership qualities. In any case, there is no explanation why an incident of 2011 is raked up in 2023 without giving any reasons for the inordinate delay.

64. Incidentally, the Head Clerk, Ms Sandra Lobo deposed/stated the High-Level Committee as follows:

“Statement by Ms. Sandra Lobo

“ I, Ms. Sandra Lobo, presently working as the Head Clerk at Goa University. I have been requested to interact with the Members of the High Level Committee constituted via Order No. GU/R/EC-Ing/2023/68 dated 21/02/2023, on 14/03/2023 at 4.00 pm. On the basis of the questions asked by the Committee Members regarding Smt. Bertha T.A. D' Mello e Daniel, Assistant Registrar (Legal) about her overall performance, inter-personal relationships with the colleagues and authorities, I would like to state as under:

- I have 3 years professional interaction with Smt. Bertha in the Legal section.*
- On my transfer in the legal section as UDC, I requested her to instruct me about my workload to be handled in the legal section, she did not give much instructions and made very discouraging comments.*
- She had written that I am not maintaining my work diary for day-to-day sectional work. She wanted to me maintain work diary and I found it difficult to pen down when work was at its peak and in urgent need of completion.*

I do hereby declare that all the above information/ observations given by me are true to the best of my knowledge and belief.

Sd/-

(Ms. Sandra Lobo)

Place: Taleigao Plateau

Date: 14/03/2023

65. Now, based upon the above statement, there was no question of concluding that the Petitioner lacks leadership qualities or that she lacks any interpersonal relationships. Article V also refers to some instances of 2016. The Executive Council 2016 approved the recommendation of a Committee to appoint additional staff in the Legal Section. In the discussion, some members of the Executive Committee remarked about no need for additional staff in the Legal Section. Nevertheless, additional staff was sanctioned by the Executive Council based on the recommendations of the Committee. From this, some inference is drawn that the Petitioner, as the sectional head, kept requesting more than sufficient staff without assessing the quantum of work or utilizing the services of the section staff appropriately. The charge was that this reflects poor leadership qualities and “unbecoming of an officer”. Again, apart from the question whether this amounts to a misconduct, there is no explanation for the inordinate delay of about 7 years in raking up this charge.

66. Article VI of the charge, has already been withdrawn. Here, because of production of most authentic documents by the Petitioner, some doubt was raised about her integrity simply because authentic documents were not procured by the Petitioner under the RTI. The documents were with the Petitioner in her official capacity and the same were not produced before any stranger, but before the High-Level Committee, which had called upon the Petitioner to defend herself. Fortunately, this charge was withdrawn. However, very inclusion of such a charge, shows that the University is bent

upon finding out something or the other against the Petitioner at a stage when the Petitioner was due to be considered for recruitment/promotion to the post of Deputy Registrar.

67. Article VII refers to the violation of instructions dated 13/10/2021. However, if the charge is perused, the Petitioner suggested that she may not be appointed as the Nodal Officer for dealing with the Legislative questions. However, the charge memorandum itself states that the Petitioner suggested that Ms Sandra Lobo, Head Clerk be appointed as the Nodal Officer. From this, no insubordination or dereliction of duties can be inferred. These were the only suggestions made by the Petitioner. Mr Nadkarni pointed out that ultimately, the Petitioner was appointed as the Nodal Officer. The Petitioner discharged her duties as such.

68. Ms Agni referred to the communication dated 20/08/2021, addressed by the Addl. Director of Higher Education to the Officiating Registrar of the Goa University, in which the Addl. Director of Higher Education requested the Registrar to warn the officials in case of delay in submitting the replies to the Legislative Assembly questions or submission of replies by ignoring the prescribed format. Ms Agni suggested that this communication was on account of dereliction of duty by the Petitioner. However, Mr Nadkarni pointed out that the Petitioner was appointed as the Nodal Officer only on 13/10/2021. Therefore, the Additional Director of Higher Education's communication dated 20/08/2021 concerned the previous Nodal Officer, who may have delayed replying to the question or replied to the question by ignoring the prescribed format. Mr Nadkarni justifiably questioned why no action was taken against the previous Nodal

Officer despite the Addl. Director of High Education's communication. Therefore, it is apparent that there is no misconduct revealed on the part of the Petitioner qua Article of Charges No. VII.

69. Article VIII of the impugned charge memorandum again refers to instances of 2014 and 2016. The only allegation is that the Petitioner failed to provide guidance and leadership to her subordinate staff. There is a vague allegation about the Petitioner needing to be more confident of her legal opinions. From this it is alleged that there raises questions regarding her competency and ability to work as an officer. Again, there is no explanation for the inordinate delay between 2014 and 2023 or 2016 and 2023. Article IX also deals with the instance of the year 2012. Again, there is no explanation for the inordinate delay between 2012 and 2023.

70. Thus, from the analysis of the impugned charge memorandum, it is clear that most of the allegations are stale and relate to the years 2010 to 2018. There is a serious doubt whether most of the allegations would constitute any misconduct. In any case, the allegations in the impugned charge sheet hardly constitute any serious misconduct. However, Ms Agni relied on Anant R. Kulkarni (supra) on the gravity of charges. The Petitioner in the said case failed to submit dead stock verification report, cash books, ledgers, and caused loss of ₹ 48,851/- to the school. Other charges included failure to send appointment proposal of a co-employee to the Education Officer, as a result of which, the salary of this employee could not be paid. There was a charge of failure of forwarding Budget 2001-2002, without obtaining sanction of the school committee. The Petitioner in the said case even obstructed the working of the managing and the

school committee on the ground that he had challenged the election of the office bearers before the Joint Charity Commissioner even though there was no stay or injunction. There was also a charge of not attending 11 meetings in his capacity as a Headmaster. There was also charge about excessive telephone bills being submitted by the Petitioner. There was no delay in issuing the charge-sheet. Still, the Hon'ble Supreme Court held that there was no allegation of misappropriation, embezzlement, or any charge which may cast any doubt on the integrity of the Petitioner. In such a situation, the Hon'ble Supreme Court interfered with the High Court's conclusion permitting the Management to hold a fresh inquiry into the charges against the Petitioner. The Court also held that no charges were specific and precise. The Court observed that it is a settled legal proposition that a departmental enquiry can be quashed on the grounds of delay, provided the charges are not grave. This decision, therefore, does not assist the case of the University.

71. Ms Agni relied upon *Union of India vs. Upendra Singh* (supra) to submit that the charges against the present Petitioner were grave. In *Upendra Singh* (supra), the charge was that incriminating documents of the assessee showing unaccounted receipts of ₹1.56 crores and unaccounted income of ₹46.40 lakhs was unearthed, yet, Upendra Singh neither examined the incriminating documents nor the evidence collected during the survey, and failed to pass orders under Section 144-A by ignoring the evidence collected during the survey. The Court held that where the charge memorandum is questioned, the High Court cannot go into the truth or correctness of the charges because the judicial review is confined to the decision making process. The Hon'ble Supreme Court referred to *H.B.*

Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons – 1992 Supp (2) SCC 312, in which it was held that purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Again, this decision is hardly of any assistance to the University because in the present case, we are concerned with the precise issue relating to the decision making process and whether the Petitioner was given a fair treatment by the University by raking up vague and imprecise charges after 8 to 10 years on the eve of the Petitioner being considered for direct recruitment/promotion to the post of Deputy Registrar. Besides, the charges levelled against Upendra Singh were quite serious and the same cannot be compared with the vague, imprecise and stale charges levelled against the Petitioner in the present case.

72. Thus, it is apparent that most of the charges levelled against the Petitioner are trivial and may not even constitute misconduct. Since at this stage, it is not for us to go into the merits or demerits of the charges, we only note that most of the charges relate to the years 2010, 2011, 2012, 2014, 2016 and 2018. There are hardly any charges after this date. Yet, the impugned charge memorandum was issued only in 2023 on the eve of consideration of the Petitioner for the direct recruit/promotion to the post of Deputy Registrar. Based upon this charge memorandum, the Petitioner was also placed under suspension. The prejudice that has occasioned the Petitioner thereby is quite evident because such a suspension and charge sheet impacted her selection as a direct recruit Deputy Registrar. Besides, the DPC results have also been kept in a sealed cover.

73. The only explanation in the affidavit for the inordinate delay is the telephonic conversation between the present Registrar and the past Registrars. The Registrar has stated that the past Registrars telephonically informed him that no action was taken against the Petitioner nor were any adverse remarks made in her CRs because she was a lady and they expected her to improve. We do not approve of these types of explanations, which are excuses not in the best taste. If they indeed felt a problem with the Petitioner, the past Registrars should have been bold enough to take prompt action. However, after so many years it is not proper to give such reasons to help the University explain the inordinate delay.

74. Ms Agni relied upon CCS (CCA) Conduct Rules applicable to the Goa University employees. The following provisions were held to be applicable to the University employees. Rule/Schedule A-41 (5) deals with Code of Conduct for officers. It says that in addition to the provisions of CCS (Conduct Rules), 1964 and CCS (CCA) Rules, 1965, the following provisions shall also be applicable to the officers such as:-

“i. The officer shall perform his/her administrative duties and work as mentioned above in all sincerity and devotion to her/his profession.

ii. The officer shall enjoy the fundamental right of freedom of thought and expression,

iii. The officer shall be objective, impartial and fair in assessment of subordinate staff and shall not deliberate over-mark, under-mark or victimise her/his subordinate staff on any ground.

iv. The officer shall not discriminate against her/his subordinate staff on political grounds or for reasons of race,

religion, caste, language or gender or for any other reason of arbitrary or personal nature.

v. The officer shall strive to distinguish himself/herself by her/his constant progress in advancing of her/his knowledge of the administrative matters.

vi. The officer shall complete the administrative work assigned to her/him by this statute, the Registrar or Vice-Chancellor in a satisfactory manner within the prescribed time period.”

75. The above Code of Conduct of Officers mentioned in SA-41 (5) is very much relevant in this matter and applicable to even other staff of the University as far as assessing subordinate staff while giving the remarks on their confidential reports. This Code of Conduct is essential in the present matter as admittedly, all the ACRs of the Petitioner, right from the time of her appointment show no adverse remarks. All her superior officers either rated her good or very good while assessing her performance, which has been admitted in the affidavit in reply filed by the Respondents. However, a very strange explanation is found forthcoming for not giving adverse remarks to the Petitioner though allegedly she was not performing her duty and was found arrogant, argumentative and inefficient. At the end of para no. 16 of the reply affidavit filed by Respondents in Writ Petition No. 333/2023, following explanation is forthcoming:-

“The Registrars under which the petitioner worked, during the telephonic and personal discussions with them made it a point to mention that ‘good’ grade was given to her in the ACR by them though observations were made that there exists scope for further improvement and adverse remarks were not made as she was a lady officer and it was hoped that she would improve with a passage of time.”

76. Such explanation is first of all contrary to statute SA-41 (5) which deals with Code of Conduct of Officers and more specifically Clauses 3 and 4 as quoted above. Be that as it may, we are unable to accept such explanation found in para no. 17 of the reply as it is clearly an afterthought. Only because the Petitioner is a lady, there was no question of not giving adverse remarks in her ACRs. The duty of the higher officer is to assess subordinate staff with impartial and fair manner and by objectiveness and shall not deliberately, over-mark, under-mark or victimize such subordinate staff. The explanation given by the Respondents in para 17 of their reply would clearly go to show that the Petitioner was given favour by not giving adverse remarks being a lady. This otherwise shows that the annual confidential reports of the Petitioner did not contain any adverse remarks.

77. At this stage, we would like to refer to the procedure of writing of annual confidential reports and communication of adverse remarks to the subordinate officer. The Code of Conduct found in SA-41 (5) shows that the officer shall be objective, impartial and fair in assessment of the subordinate staff. If the officer comes to the conclusion that any staff subordinate to him is not performing his duty diligently or that he is guilty of insubordination, such officer is duty-bound to issue memorandum so as to give an opportunity to the subordinate staff to improve his conduct, efficiency and performance. In this case, Petitioner was never served with any adverse remarks by her higher authorities and therefore, her annual confidential reports have to be accepted as contemporaneous material to presume that her conduct in the office and specifically in the eyes of her superiors was good/very good during the said years.

78. Thus, the object of providing a detailed procedure regards CRs is to give the employee an opportunity to question the assessment, if perceived as wrong or to correct the faults pointed out and improve the working. If, for all these years there are no adverse remarks, suddenly the conduct of all these years cannot simply and most belatedly be styled as a misconduct. Given the charges, which relate almost entirely to the Petitioner's style of functioning mainly during 2014 to 2017, such an approach would violate principles of natural justice. The Petitioner was neither granted the opportunity to contest (because all CRs were good or very good) nor was she called upon to improve.

79. In this matter, admittedly, the charge-sheet has been recently issued and the disciplinary proceedings are yet to start. It is also clear from the record that the post of Deputy Registrar (direct recruit) fell vacant somewhere in January 2023 and the post of Deputy Registrar (promotion) became vacant in the month of May 2023. The Petitioner was found eligible for both these posts. More so she is the senior-most officer in the grade of Assistant Registrar (legal) to be considered for the post of Deputy Registrar (promotion). The Petitioner applied for the post of Deputy Registrar (direct recruit) by submitting her application online which was accepted by the department. Her application for the said post is dated 25.02.2023. However, the Petitioner was suddenly called to present herself before the High-Level Committee vide office note dated 15.03.2023. On perusal of this High-Level Committee report, it is clear that somewhere in March 2018, one Shri Pranay R. Salgaokar from Porvorim addressed a letter to the Governor of Goa dated 23.03.2018 alleging corruption issues pertaining to certain officers/staff of Goa University. In the said

complaint/letter dated 23.03.2018, there is reference to the name of the Petitioner claiming therein:- (A) The officer is enjoying leisure time, (B) She is one of the least working officers in the University.

80. In the case of *Bhupendra Pal Singh vs Union of India and Ors. and Vishnu Babu Mule vs Union of India and Anr.* (supra), a Division Bench of this Court comprising of Dipankar Datta, CJ (as His Lordship then was) and M.S. Karnik, J. after considering all the earlier decisions, culled out the principles in para 32 and summarised it as under:-

“32. The principles that can be culled out from the aforesaid decisions may be summarized as below:

a. It would always be desirable to initiate disciplinary proceedings immediately after the alleged misconduct is detected but if charge-sheet is issued after a considerable length of time has passed since such detection, it would be unfair to the charged officer to proceed against him on the basis of stale charges.

b. Disciplinary proceedings may not be interdicted at the stage of charge-sheet and should be allowed to proceed according to the relevant rules since a charge-sheet does not affect any legal right of the delinquent unless, of course, it suffers from an invalidity that strikes at the root of the proceedings.

c. If there is delay in initiation of disciplinary proceedings by drawing up charges against the delinquent and such proceedings are challenged, the disciplinary authority is under an obligation to explain the reasons for the delay; and, depending upon the worth of such reasons, the Court may proceed to decide one way or the other.

d. There cannot be any exact measurement of the length of delay by reference to years to fall into the category of ‘too

long a delay', and what would amount to the same has to be decided depending upon the facts of a given case.

e. Should the delay be found to be too long and unexplained, that would definitely have a bearing on the seriousness of the disciplinary authority to pursue the charges against the charged officer and the Court may, in a fit and proper case, quash the proceedings because prejudice to the officer in such case would be writ large on the face of it.

f. Even if, in a given case, the delay is satisfactorily explained, the charge-sheet could still be quashed if the charged officer proves to the satisfaction of the Court that he would be severely prejudiced if the proceedings were allowed to continue, a fortiori, lending credence to the claim of unfair treatment.

g. For the mistakes committed by the department in the procedure for initiating disciplinary proceedings, the charged officer should not be made to suffer.

h. Delay in initiation of disciplinary proceedings per se may not be a vitiating factor, if the charges are grave and in such case the gravity of the charges together with the factors, for and against the continuation of the proceedings, need to be balanced before arriving at a just conclusion.”

81. In *Bhupendra Pal Singh* (supra), the Division Bench held that the delay of each month or each year need not be explained. Whatever the length of delay, the explanation must be acceptable to the Court. The Court also held that a satisfactory explanation of the delay could sustain a delayed charge sheet containing stale charges and, therefore, it is necessary to understand what an 'explanation means.

82. The Division Bench observed that ‘explanation’ is designed to give someone all of the facts and lay out the cause for something. It helps to clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. For the purposes of the present case, it was necessary for the respondents to explain on what account the delay occurred. Briefly put, delay was caused because the draft charge-sheet went through several stages before taking a final shape, thereby consuming a lot of time. None appears to have taken responsibility. In such circumstances the question that obviously arises is, is the explanation for the delay really an explanation or is it an ‘excuse’? Although people tend to see ‘explanation’ and ‘excuse’ as the same thing, and struggle to find out the difference between the two, there is a distinction which, though fine, is real. An ‘excuse’ is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an ‘excuse’ would imply that the explanation proffered is believed not to be true.

83. Following the above observations, we are convinced that in this case, what the University has offered through its Registrar’s affidavit is not an explanation but only an excuse. This excuse is also not in good taste. This excuse belatedly procured from the Registrars who have already retired is not quite acceptable. When they had the opportunity to weigh the Petitioner’s conduct, the Registrar did not deem it appropriate to make any adverse entries in the Petitioner’s confidential rolls. After so many years, we fail to understand how these Registrar can inform the present Registrar about not initiating any action against the Petitioner because she was a lady and expected her to improve her performance.

84. The Division Bench has held that initiating an inquiry against the officials based on stale charges can, in a given case, violate Articles 14 and 16 of the Constitution because such initiation is arbitrary. The Division Bench held that in such a situation, no further prejudice must be pleaded or proved because violating a fundamental right is itself prejudice. However, deferring to the Hon'ble Supreme Court's decision in *Chaman Lal Goyal* (supra), the Division Bench applied the principles laid down therein and weighed the positive and negative factors before concluding that initiation of an inquiry, based upon stale charges after inordinate delay backed by no explanation, warrants quashing.

85. In the present case, we are satisfied that the Respondents' action *ex facie* arbitrary and violates Articles 14 and 16 of the Constitution of India. Still, in deference to the decision in *Chaman Lal Goyal* (supra), we proceed to consider the factors favouring the Petitioner so that the same could be weighed to determine whether a case is made out to quash the charge memorandum and the proposed inquiry proceedings at a belated stage.

86. The factors favouring the Petitioners are as follows :

(a) The charge memorandum is issued in 2023. However, the charges relate to some specific instances in 2010, 2011, 2012, 2014, 2016 and 2018. There is no explanation whatsoever for the inordinate delay; based on the same, the Petitioner was suspended at a crucial juncture of her career.

(b) The charge memorandum was issued with great haste soon after it was realised that the candidature of the Petitioner would have to be considered for direct recruitment and promotion to the post of Deputy Registrar. Thus,

the charge memorandum was issued on the eve of the Petitioner being considered for the post of Deputy Registrar;

(c) Most of the charges hardly constitute misconduct or, in any case, none of the charges are quite serious; the bogey of persistence or repeated acts of disobedience was slipped into the impugned chargesheet to get over the inordinate delay for which there was no explanation.

(d) Though the charges are alleged to have been spread over several years, all throughout the Petitioner has been graded as good or very good in her annual confidential reports. The purpose of grading in the confidential rolls is to grant an opportunity to the employee to challenge adverse entries on the ground that they are not justified or to improve performance. Considering the nature of charges levelled against the Petitioner, this exercise was a must;

(e) Because of the delayed issuance of the impugned charge memorandum, the Petitioner was suspended without any cogent reasons. While on suspension, the Petitioner, through the Court's orders, was interviewed for direct recruitment to the post of Deputy Registrar. However, predictably, the Petitioner was not selected. The factum of suspension, pending disciplinary proceedings, must have obviously impacted her selection to the post of Deputy Registrar despite her qualifications and long experience;

(f) The Petitioner's candidature was considered for promotion to the post of Deputy Registrar, but because of the impugned charge memorandum, results are kept in a sealed cover;

(g) The Petitioner was cleared for senior scale after almost three years delay. The Petitioner had to petition the Chancellor to get this relief. Still, the Petitioner had to forego interest on the delayed payments.

87. The above factors establish prejudice to the Petitioner because of the delayed issuance of the impugned charge memorandum on the eve of the Petitioner being considered for the post of Deputy Registrar by Goa University. The Petitioner was not treated fairly because the High-Level Committee constituted to recommend action against Petitioner, comprised of a member who was the wife of the University's star witness Prof. Jayant Budkuley. There was a clear violation of the principles of natural justice and fair play. There is no record that Goa University constituted any high-level committee or took any action on the serious complaints involving misappropriation, etc., against several officials of Goa University, as referred to in the vigilance report of 2018. Admittedly, there are no charges questioning the Petitioner's integrity either in the vigilance report 2018 or the impugned charge memorandum. A decision was taken to pursue the cases referred to in the vigilance report of 2018 based on a complaint of Advocate Simon Jose Ferrao to the Chancellor of Goa University. However, perusing the said complaint would indicate that this Advocate had levelled no charges against the Petitioner.

88. In *Bhupendra Pal Singh* (supra), the factors against the Petitioner before the Court were that technicalities should not be allowed to stand in the way of disciplinary proceedings; the Petitioner was promoted in 2002 even though his misconduct concerned the year 2000; the charges against the Petitioner were quite serious involving deliberate acts of negligence,

leading to loss of public revenue which had to be dealt with iron hands and finally, the Petitioner had approached the Tribunal and obtained stay on the disciplinary proceedings, as a result of which, the same were delayed. None of such factors even remotely apply to the present case. The Petitioner has come to the Court as soon as possible before the inquiry could commence. In *Chaman Lal Goyal* (supra), the inquiry was almost on the verge of completion; therefore, it was a fit not to quash the same even though some of the charges may have been stale.

89. Therefore, upon cumulative consideration of the positive and negative factors, or upon balancing the factors favouring the Petitioner and the factors that may not so much favour the Petitioner, we are convinced that a case is made out to quash the impugned charge memorandum. Incidentally, the only factor that could be held in the University's support is that the University did place the Petitioner in the senior scale in 2017 or thereabouts. But, again, the Petitioner was entitled to be placed in the senior scale in 2013 and had to petition the Chancellor to get this relief. Further, the Petitioner had also to forego interest for the delayed payment. In this case, the charges may not even constitute misconduct or, in any case, do not constitute serious misconduct. The Petitioner has approached the Court at the earliest instance. There are no allegations about her integrity or any financial loss to the University. Overall, the material on record shows that the University has mistreated the Petitioner. Even the decision-making process leading to initiation of the disciplinary proceedings is vitiated. There is a violation of natural justice and fair play.

90. In *Prabhash Chandra Mirdha* (supra), relied upon by Ms Agni, the Hon'ble Supreme Court holds that normally a charge-sheet is not quashed for the asking. In *Chairman, Life Insurance Corporation of India vs. A. Masilamani* (supra), the Hon'ble Supreme Court held that Courts do not inquire into the veracity of the charges at the preliminary stage and the charge memorandum can be quashed on the ground of inordinate delay, backed by no sufficient explanation. In *V. Appala Swamy* (supra), Hon'ble Supreme Court held that no hard and fast rule can be laid down where inquiries must be quashed on the ground of delay and each case must be determined on its own facts. *Akhilesh Jha* (supra) concerned delay in conclusion of the inquiry where prejudice had to be demonstrated and could not be a matter of mere surmise. In *Sangram Keshari Misra* (supra), again it was held that correctness or truth of the charge is within the domain of the disciplinary authority and not the Court.

91. Most of the above decisions were duly considered by the Division Bench in *Bhupendra Pal Singh* (supra). Reasoning and analysis in *Bhupendra Pal Singh* (supra) is, therefore, adopted by us and applied for determining whether the Petitioner has made out a case for quashing the impugned charge memorandum.

92. Upon cumulative consideration of the above circumstances and the law on the subject, we are satisfied that the Petitioner has made out a case for quashing the impugned charge memorandum. As noted earlier, the charge-sheet has been issued after an inordinate delay and there is no explanation for the delay. The charges are vague, and most do not even constitute any misconduct or serious misconduct. The instances of 2010,

2011, 2012 are included in the charge memorandum issued in the year 2023. A fault is sought to be found at the belated stage about normal procedure of maintaining files, obtaining opinions, drafts, suggestions, etc. Even if the Petitioner expresses her opinion or expresses that it would be assigned to some other person, that cannot be post facto styled as misconduct or insubordination. Each employee has his own way of expressing opinion. The question is not whether the style of expressing is good or could have been better or is bad. However, question is such belatedly initiating inquiry against the officer, particularly when there is no doubt about integrity of such officer. Inquiries cannot be initiated based upon vague charges like lack of leadership, or lack of interpersonal relationship in the department. On some occasions, we also thought that the Petitioner could have avoided putting up repetitive notes or notings and could have displayed greater grace in dealing with some of her superiors. But, this is far from saying that any case of insubordination was made out.

93. By expressing difficulties in discharging some duties by putting up notes cannot amount to refusal to discharge such responsibilities. Even, most of the charges bear out that works were ultimately discharged by the Petitioner whenever the same were assigned to her. Mr Nadkarni referred to some assessment reports, including the Vice Chancellor's reports stating that the Petitioner's performance was very good and she was fit for promotion.

94. Mr Nadkarni also pointed out to a communication dated 23/2/2009 by Dr. M. M. Sangodkar, then Registrar appreciating the Petitioner as one of the Convenors for the 21st Annual Convocation of the Goa University.

He also pointed out to a personal letter addressed by Dr. M.M. Sangodkar, Registrar on behalf of the Vice Chancellor and his own behalf conveying their sincere appreciation of the Petitioner for her dedicated efforts and valuable contribution to the various tasks and assignment during the visit of the XI Plan Committee. The letter states that the Vice Chancellor and the Registrar Dr Sangodkar recognized and sincerely appreciated the Petitioner's valuable contribution. There is another note of appreciation by Dr. Sangodkar regards efforts put in by the Petitioner to get the Goa University land demarcated and cases successfully resolved in favour of the Goa University inspite of several inherent complications in the case. Dr. Sangodkar writes that such sincere and hard efforts would go a long way in protecting University assets.

95. Mr Nadkarni also pointed out Prof. Y.V. Reddy's letter dated 2/2/2018 stating that on behalf of the Vice Chancellor, he specially thanked the Petitioner for being a member of the Drafting and Vetting Committee and Petitioner's contribution to the development of the University.

96. Incidentally, Prof. Jayant Budkuley who was also associated with the Drafting and Vetting Committee, gave statement before the High-Level Committee comprising his own wife that the Petitioner's cooperation and contribution to the Drafting and Vetting Committee was not upto the mark. Prof. Y.V. Reddy, Registrar, who also gave an adverse statement before the High-Level Committee, failed to produce his communication dated 2/2/2018 in which he had generously praised the Petitioner's contribution to the Drafting and Vetting Committee. Prof. Sangodkar also gave an adverse statement before the High-Level Committee forgetting all his letters

of appreciation to the Petitioner and her work. All these are instances which go to show that the Petitioner was not given a fair treatment by the High-Level Committee. Based on this report, a decision was taken to formally start disciplinary proceedings against the Petitioner and place her under suspension.

97. Ms Agni relied upon CCS (CCA) Conduct Rules applicable to the Goa University employees. The following provisions were held to be applicable to the University employees. Rule/Schedule A-41 (5) deals with Code of Conduct for officers. It says that in addition to the provisions of CCS (Conduct Rules), 1964 and CCS (CCA) Rules, 1965, the following provisions shall also be applicable to the officers such as:-

“i. The officer shall perform his/her administrative duties and work as mentioned above in all sincerity and devotion to her/his profession.

ii. The officer shall enjoy the fundamental right of freedom of thought and expression,

iii. The officer shall be objective, impartial and fair in assessment of subordinate staff and shall not deliberate over-mark, under-mark or victimise her/his subordinate staff on any ground.

iv. The officer shall not discriminate against her/his subordinate staff on political grounds or for reasons of race, religion, caste, language or gender or for any other reason of arbitrary or personal nature.

v. The officer shall strive to distinguish himself/herself by her/his constant progress in advancing of her/his knowledge of the administrative matters.

vi. The officer shall complete the administrative work assigned to her/him by this statute, the Registrar or Vice-Chancellor in a satisfactory manner within the prescribed time period.”

98. The above Code of Conduct of Officers mentioned in SA-41 (5) is very much relevant in this matter and applicable to even other staff of the University as far as assessing subordinate staff while giving the remarks on their confidential reports. This Code of Conduct is essential in the present matter as admittedly, all the ACRs of the Petitioner, right from the time of her appointment show no adverse remarks. All her superior officers either rated her good or very good while assessing her performance, which has been admitted in the affidavit in reply filed by the Respondents. However, a very strange explanation is found forthcoming for not giving adverse remarks to the Petitioner though allegedly she was not performing her duty and was found arrogant, argumentative and inefficient. At the end of para no. 16 of the reply affidavit filed by Respondents in Writ Petition No. 333/2023, following explanation is forthcoming:-

“The Registrars under which the petitioner worked, during the telephonic and personal discussions with them made it a point to mention that ‘good’ grade was given to her in the ACR by them though observations were made that there exists scope for further improvement and adverse remarks were not made as she was a lady officer and it was hoped that she would improve with a passage of time.”

99. Such an explanation contradicts statute SA-41 (5) which deals with Code of Conduct of Officers and more specifically Clauses 3 and 4 as quoted above. Be that as it may, we are unable to accept such explanation found in para no. 17 of the reply as it is clearly an afterthought. Only

because the Petitioner is a lady, there was no question of not giving adverse remarks in her ACRs. The higher officer has to assess subordinate staff impartially and fairly and by objectiveness and shall not deliberately, over-mark, under-mark or victimise such subordinate staff. The explanation given by the Respondents in para 17 of their reply would clearly show that the Petitioner was favoured by not giving adverse remarks being a lady. This otherwise shows that the annual confidential reports of the Petitioner did not contain any adverse remarks.

100. At this stage, we would like to refer to the procedure of writing of annual confidential reports and communication of adverse remarks to the subordinate officer. The Code of Conduct found in SA-41 (5) shows that the officer shall be objective, impartial and fair in assessment of the subordinate staff. If the officer comes to the conclusion that any staff subordinate to him is not performing his duty diligently or that he is guilty of insubordination, such officer is duty-bound to issue memorandum so as to give an opportunity to the subordinate staff to improve his conduct, efficiency and performance. In this case, Petitioner was never served with any adverse remarks by her higher authorities and therefore, her annual confidential reports have to be accepted as contemporaneous material to presume that her conduct in the office and specifically in the eyes of her superiors was good/very good during the said years.

101. Thus, the object of providing a detailed procedure regarding CRs is to allow the employee to question the assessment if perceived as wrong or to correct the faults pointed out and improve the working. If there are no adverse remarks for all these years, suddenly, the conduct of all these years

cannot simply and most belatedly be styled as misconduct. Given the charges, which relate almost entirely to the Petitioner's style of functioning mainly during 2014 to 2017, such an approach would violate principles of natural justice. The Petitioner was neither allowed to contest (because all CRs were good or very good) nor was she called upon to improve.

102. In this matter, admittedly, the charge-sheet has been recently issued and the disciplinary proceedings are yet to start. It is also clear from the record that the post of Deputy Registrar (direct recruit) fell vacant somewhere in January 2023 and the post of Deputy Registrar (promotion) became vacant in the month of May 2023. The Petitioner was found eligible for both these posts. More so she is the senior-most officer in the Assistant Registrar (legal) grade to be considered for the Deputy Registrar (promotion) post. The Petitioner applied for the Deputy Registrar (direct recruit) post by submitting her application online, which was accepted by the department. Her application for the said post is dated 25.02.2023. However, the Petitioner was suddenly called to present herself before the High-Level Committee vide office note dated 15.03.2023. On perusal of this High-Level Committee report, it is clear that somewhere in March 2018, one Shri Pranay R. Salgaokar from Porvorim addressed a letter to the Governor of Goa dated 23.03.2018 alleging corruption issues about certain officers/staff of Goa University. In the said complaint/letter dated 23.03.2018, there is reference to the name of the Petitioner claiming therein:- (A) The officer is enjoying leisure time, (B) She is one of the least working officers in the University.

103. For all the above reasons, we quash the impugned charge memorandum dated 25/05/2023 issued against the Petitioner. Accordingly, Writ Petition No.333/2023 is allowed.

104. The impugned suspension order was based upon the impugned charge memorandum. Since the same is quashed and set aside, even the impugned suspension order dated 25/04/2023 must fail and will have to be set aside.

105. However, independent of the quashing of the impugned charge memorandum dated 25/05/2023, we think that there was absolutely no justification to place the Petitioner under suspension. As noted earlier, the charge memorandum was issued in the year 2023, but most of the charges relate to the years 2010 to 2018. Ms Agni submitted that there were at least two employees Ms Sandra Lobo and Ms Sneha Talkar, who were in the Petitioner's department and that they might be influenced by the Petitioner. With respect, this statement cannot be accepted.

106. Ms Sandra Lobo is already transferred to some other department. Besides, Ms Sandra Lobo gave her statement before the High-Level Committee, which did not incriminate the Petitioner. As far as Ms Sneha Talkar is concerned, she also gave a statement before the High-Level Committee while in the Petitioner's department. Therefore, it is too much to say that the Petitioner should be suspended because she might be in a position to influence said Ms Sneha Talkar. Such a reason borders on perversity and cannot be accepted.

107. Stale and vague allegations against the Petitioner do not relate to integrity issues. Therefore, no case was made to place the Petitioner under suspension. From the material placed before us, we think that the suspension was to prejudice the Petitioner's consideration for the post of Deputy Registrar. For all these reasons, the impugned suspension order is also liable to be quashed and set aside.

108. Accordingly, the Rule is made absolute in both the Writ Petitions. The impugned charge memorandum dated 25/05/2023 and the impugned suspension order dated 25/04/2023 are quashed and set aside. The Petitioner shall be reinstated forthwith, with all consequential benefits. There shall be no order for costs.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.

JOSE
FRANCISCO
DSOUZA

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