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

CWP-7882-2017

Reserved on : 23.01.2023

Pronounced on : 21.04.2023

Bindu Bhardwaj

..... Petitioner

versus

Thapar University and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. R.S. Bains, Sr. Advocate with
Mr. Amarjeet, Advocate
for the petitioner.

Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. Rajat Khanna, Advocate
Mr. Ashutosh, Advocate and
Ms. Snah Sahni, Advocate
for the respondents.

PANKAJ JAIN, J.

Petitioner who was working as Deputy Registrar with the respondent-University prays for issuance of a writ in the nature of certiorari for quashing chargesheet dated 23.07.2014 (Annexure P-17), show cause notice dated 20.02.2016 (Annexure P-26) and the order of dismissal dated 02.05.2016 and that dated 09.02.2017 (Annexure P-33) passed by the Appellate Authority.

2. Petitioner claims to have been appointed as Assistant Registrar (Finance) with the respondent-University from where she was further appointed/promoted as Deputy Registrar on 18.04.2013. As per the pleadings raised in the writ petition on receiving an anonymous complaint by e-mail dated 07.04.2014 regarding discrepancy in the central stores, a

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preliminary inquiry was conducted. The petitioner was served with chargesheet on 23.07.2014. On receiving the same, the petitioner requested for supply of documents relied upon in the chargesheet. The petitioner submitted her detailed reply on 12.08.2014. Dissatisfied with the reply submitted by the petitioner, inquiry was initiated wherein the petitioner was held guilty of all the charges levelled against her. The petitioner was served with show cause notice dated 20.02.2016 which further led to order of dismissal dated 02.05.2016 passed by respondent No.3. The petitioner preferred an appeal before the Board of Governance which stands rejected vide order dated 09.02.2017.

3. The gravamen of the charges levelled against the petitioner in the chargesheet dated 23.07.2014 is that the respondent being an educational institute is entitled to purchase computers for its inhouse user on concessional basis. The concession is in the tax chargeable on such machines. The tax gets exempted on the basis of DSIR certificates issued by the University based upon the statutory relaxation in the tax granted to the University by the Central and Excise Department, Government of India. The DSIR certificates issued by the University is qua each of the machine so received. It has been claimed in the chargesheet that there was big difference between the DSIRs issued by the University and the computers purchased. The DSIRs issued in excess by the University has allowed the supplier to misuse the exemption granted to the University vis-a-vis the computers not purchased by the University by selling the same out of University and pocketing the tax exemption.

4. Sr. counsel representing the petitioner has emphatically argued that the chargesheet served upon the petitioner itself was defective as no list

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of documents relied upon by the employer was supplied to the petitioner. There was no list of witnesses appended to the chargesheet and thus, the right of the petitioner to respond to the charges levelled against her was seriously crippled. He further submits that the complaint itself was malicious and the same has come on record that it was based upon an anonymous complaint made by one of the colleagues of the petitioner that too at the instance of Registrar. He further submits that after internal audit was modified and it was found that the DSIR certificates alleged to have been issued in excess were found from the files itself. The finding of the inquiry report being perverse cannot be sustained. He further submits that the impugned order passed against the petitioner and the order dismissing the appeal preferred by the petitioner are without application of mind and against the relevant rules. Lastly, counsel submits that the order of punishment passed against the petitioner cannot be sustained having been passed by the Director which is an authority subordinate to the appointing authority of the petitioner.

5. Per contra, Senior counsel representing the respondents submits that in the present case, the inquiry report has not been challenged by the petitioner and thus no plea can be raised w.r.t. findings recorded therein. It has been further asserted that as per the proposition of law, this Court while exercising writ jurisdiction cannot sit over as Court of Appeal over the findings recorded by the inquiry officer. The charges levelled against the petitioner not only stand proved on the basis of documentary evidence rather the guilt of the petitioner stands admitted by her in e-mail dated 19.04.2014 (Annexure P-12), where she admitted her responsibility being part of the store. He asserts that the petitioner cannot claim that list of

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witnesses was not appended to the chargesheet and thus she was prejudiced as no such plea was ever raised before the inquiry officer. With respect to the contention raised regarding termination order having been passed by an incompetent authority, it has been asserted that the appointment letter dated 04.12.2001 was issued to the petitioner by the Director. Copy thereof has been placed on record as Annexure R-2. The petitioner was appointed as Deputy Registrar with respondent-University on the basis of recommendation of the Selection Committee dated 30.03.2013 after having been approved by Chairman of Board of Governors and likewise the departmental action against the petitioner before passing of the impugned order dated 02.05.2016 was approved by the Chairman, Board of Governors on 28.04.2016 before it was issued on 02.05.2016 and was ratified by the Board of Governors in its meeting dated 24.06.2016. Further reliance has been placed upon Rule 5 read with Rule 29(v).

6. Counsel further submits that even on merits, it has been proved on confirmation from the courier agency that the material duly acknowledged by the University on the dispatch/delivery note, was delivered at an outside location in Patiala, which makes it clear that the consignments meant for the University were being received by stores and diverted to suppliers leading to misuse of DSIR certificates. Moreover, the petitioner in her defence produced 03 witnesses but opted not to examine herself. It has been thus claimed that the findings recorded by the inquiry officer are well founded on the basis of evidence on record. The standard of proof in the departmental proceedings is not beyond doubt as in the criminal trial. The guilt of the petitioner having come on record, the question as to whether the same was initiated on the basis of unanimous complaint or not

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is inconsequential.

7. I have heard counsel for the parties and have gone through the records of the case.

8. Trite it is that the Writ Court in the matters related to disciplinary proceedings cannot sit over the findings of the inquiry officer as a Court of Appeal. At the same time, as per settled law whenever an order of dismissal passed against the employee of State is challenged this Court is under obligation to consider whether the constitutional requirements of Article 311(2) have been satisfied or not. Constitutional Bench in the case of *State of Madhya Pradesh vs. Chintaman Sadashiva Waishampayan reported as AIR 1961 Supreme Court 1623* held as under:-

“When an order of dismissal passed against a public servant is challenged by him by a petition filed in the High Court under Article 226 it is for the High Court to consider whether the constitutional requirements of Articles 311(2) have been satisfied or not. In such a case it cannot be contended that the infirmities on which the public officer relies flow from the exercise of discretion vested in the enquiry officer. The enquiry officer may have acted bonafide but that does not mean that the discretionary orders passed by him are final and conclusive. Whenever it is urged before the High Court that as a result of such orders the public officer has been deprived of a reasonable opportunity it would be open to the High Court to examine the matter and decide whether the requirements of Articles 311(2) have been satisfied or not. In such matters it is difficult and inexpedient to lay down any general rules; whether or not the officer in question has had a reasonable opportunity must always depend on the facts in each case. The only general

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statement that can be safely made in this connection is that the departmental enquiries should observe rules of natural justice, and that if they are fairly and properly conducted the decisions reached by the enquiry officers on the merits are not open to be challenged on the ground that the procedure followed was not exactly in accordance with that which is observed in Courts of Law.

Stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. The right to cross-examine the witnesses who give evidence against him is a very valuable right and if it appear that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would mean that the enquiry had not been held in accordance with rules of natural justice.”

(emphasis supplied)

9. So far as the plea raised by counsel for the respondents that there is no challenge to the findings recorded by the inquiry officer is concerned, the same cannot be accepted in view of prayer clause in the writ petition which reads as under:-

“An appropriate writ, order or direction including a writ in the nature of Certiorari, seeking setting aside of chargesheet dated 23.07.2014 (P-17), Show Cause Notice 20.02.2016 (P-26), order of dismissal dated

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02.05.2016 (P-29) whereby the petitioner has been dismissed from the post of Deputy Registrar by the respondent University on the ground that the same has been passed in a completely arbitrary and illegal manner ignoring the fact that an employee cannot be punished by an authority which is lower in position/rank than the appointing authority meaning thereby the punishing authority. Le the respondent No. 3 has no authority/right to dismiss the petitioner who has been appointed by Board of Governors of the respondent university.”

It is thus apparent from perusal of the prayer clause in the writ petition that the whole proceedings right from the inception i.e. issuance of chargesheet dated 23.07.2014 are under challenge in the present writ petition.

10. The issues now before this Court are thus:-

- (i) Whether there is anything to show that the findings recorded by the inquiry officer are perverse;
- (ii) Whether there is any legal infirmity in the decision making process which leads to inference that there is violation of Article 311(2) warranting inference by this Court;
- (iii) Whether the punishment awarded to the petitioner can be said to be disproportionate;
- (iv) Whether the order passed by appellate authority is non-speaking?

11. It is trite law that findings not based upon evidence or based upon misreading of evidence are perverse and can be interfered. In the present case, it has come on record that the petitioner admits that she was answerable for the illegality committed in the store. It has also come on record that the consignments signed as received by the University were

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being delivered out of the University. Thus, this Court does not find that the petitioner has any case to submit that the findings recorded by the inquiry officer are perverse in any manner.

12. Coming on to the procedure followed the only argument raised by senior counsel representing the petitioner before this Court was that list of documents and witnesses were not supplied alongwith the chargesheet. However, he has not been able to show any representation/application moved by the petitioner before the inquiry officer or the disciplinary authority claiming that the said documents were not supplied to her and non-supply thereof is prejudicing her case. The petitioner by way of an e-mail sought an opportunity to inspect the record. Admittedly, vide order dated 13.07.2014, she was allowed to inspect the same on any working day from 30.07.2014 to 02.08.2014. Documents sought by the petitioner were handed over to her and qua that the inquiry officer recorded in the proceedings as under:-

“The charged officer also admitted that she has received all the documents and list of witnesses and no document is left and at the same time she moved an application for seeking existence of one Dr. Amit Kumar (Assistant Professor).”

There is no challenge in the writ petition to the same. Thus, the plea w.r.t. non-supply of documents alongwith chargesheet and/or list of witnesses sans merit and the same is rejected. Ratio of law laid down in the case of *‘Haryana Financial Corporation and another vs. Kailash Chandra Ahuja’* reported as (2008) 9 SCC 31 and *Civil Appeal No.1749 of 2019 titled as ‘R. Alexander vs. Registrar General High Court and another’*, decided on 19.02.2019 are of no help to the petitioner.

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13. Admittedly, the petitioner was supplied copy of inquiry report alongwith show cause notice dated 20.02.2016 prior to passing order of dismissal. In view of the above, this Court finds no infirmity with the procedure adopted by the respondents and thus the question framed herein above is answered accordingly.

14. Coming on to the another limb of argument raised by Mr. Bains w.r.t the order of dismissal being without jurisdiction, it will be apt to peruse the following regulations called as “Thapar University, Patiala, Staff Service Regulations-1986” governing the appointment of the petitioner and the authority vested in the Director:-

“xx xx

(ii) “Appointing Authority” means: the authority competent to make appointment to various categories of posts according to the Rules and Regulations.

Category A-2: All non-teaching posts having minimum salary equal to or more than the minimum salary for the post of Lecturer.

Discipline Penalty & Appeal

B-33.

(i.) Subject to the provisions in the Regulations, an employee of the University shall be liable to disciplinary action for acts of misconduct such as, negligence in the discharge of duty, in- subordination, any act prejudicial to the interest of the University or its property.

(ii.) The following penalties may for good and sufficient reasons, be imposed upon any employee of the University.

- a. Censure
- b. withholding of increments or promotion
- c. Recovery from pay of the whole or part of any pecuniary loss caused to the University by negligence or otherwise.
- d. Reduction to a lower service grade or post or to a lower stage in the same post.

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e. Removal from the service of the University which shall not be disqualification for employment under the University.

f. Dismissal from service which shall ordinarily be disqualification for future employment under the University.

(iii.) Except where otherwise laid down in these Regulations the authority competent Appoint shall be competent to impose any kind of punishment including removal from service on grounds of misconduct or gross inefficiency etc. In the event of any such order or punishment by the competent authority the employee concerned shall have the right of appeal to the Board whose decision shall be final.

(iv.) The grounds on which it is proposed to take action under Regulation 33 (ii), i.e. and it shall be reduced to the form of a definite charge or charges which shall be communicated in writing to the employee concerned and he shall be required within reasonable time to state in writing whether he admits the truth of all or any of the charges, what explanation or defense, if any, he has to offer and whether he desires to be heard in person. If he so desires or if the appointing authority so directs, an oral enquiry shall be held at which all evidence shall be heard as to such of the charges as are not admitted. The person charged shall be entitled to cross-examine the witnesses, to have such witnesses called as he wish provided that the officer conducting the enquiry may for reasons to be recorded in writing refuse to call any witness. The proceedings shall contain sufficient record of the evidence and statement of the findings and the grounds thereof.

(v.) When it is proposed to take action under Regulation 33.2.1, 2 & 3, no order shall be passed imposing a penalty on an employee unless he has been given an adequate opportunity of making any representation that he may desire to make, and such representation, has been taken into consideration.

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Provided that this condition shall not apply in a case where an order based on facts which has led to His conviction in a criminal court or an order has been passed superseding him for promotion to a higher post on account of the existence of unsatisfactory record.

Provided further that the requirements of this regulation may, for sufficient reasons to be recorded writing be waived where it is not practicable to observe them and where they can be waived without injustice to the employee concerned.

(vi.) After the enquiry against an employee has been completed and after the punishing authority has arrived at a provisional conclusion that the penalty proposed is dismissal, removal or reduction in the rank of an employee be supplied with a copy of the report of the enquiry authority and be called upon to show cause within reasonable time, not ordinarily exceeding one month why the particular penalty proposed be not imposed upon him. Any representation submitted by the accused in this respect shall be taken in to consideration before final orders are passed.

(vii.) In the case of an appeal against an order under this clause, the appellate authority shall consider:

- (a) Whether the facts on which the order was passed have been established;**
- (b) Whether the fact established afford sufficient ground for taking action;**
- (c) Whether the penalty is excessive, adequate or inadequate; and after due consideration shall pass such order as it thinks proper.”**

Authorities of the University

5. The following shall be the authorities of the University:-

- (i) President
- (ii) The Board of Governors;
- (iii) The Senate;
- (iv) The Planning and Monitoring Board;
- (v) The Finance Committee;
- (v) Staff Affairs Committee, and

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(vi) Such other authorities as may be declared by the Rules to be the authorities of the University.

Board of Governors

7. The Board of Governors shall be the principal executive body of the University and be responsible for the general superintendence, direction and control of the affairs of the University not otherwise provided in the Memorandum of Association, Rules and Regulations. Without prejudice to the provisions of the Memorandum of Association, Rules and Regulations, the Board shall also have the following powers:-

- (i) to manage, administer and review the affairs of the University and to conduct all administrative affairs of the University not otherwise provided for;
- (ii) to create, keep in abeyance, or abolish any post or cadres;
- (iii) to lay down qualifications and experience, fix emoluments; and to define duties and conditions of service of the staff of the University. Provided that no action shall be taken by the Board in respect of numbers and emoluments of the staff without consulting the Finance Committee. Provided further that no action shall be taken by Board in respect of qualifications and experience of academic staff without consulting the Senate;
- (iv) to appoint academic, administrative and technical staff as provided in the Rules and Regulations;
- (v) to regulate and enforce discipline amongst employees, and to impose penalty on the members of staff in accordance with the Rules and Regulations.
- (vi) to appoint the Auditors of the University;
- (vi) to consider and adopt the Annual Report, Annual Accounts, and to approve the Budget

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- Estimate and Development Plans of the University;
- (vii) to manage and regulate the finances, accounts, investments, property and all other administrative affairs of the University and for that purpose to delegate/appoint such committees/agencies as it may deem fit;
 - (ix) to invest any money belonging to the University including any unapplied income in such stocks, funds, shares or securities as it shall from time to time think fit in consultation with the Finance Committee;
 - (x) to borrow, with the approval of the President on the security of the property of the University, money for the purpose of the University;
 - (xi) to enter into arrangements with the Government, UGC, and other public and private organisations or individuals for securing and accepting endowments, grants-in-aid, donations or gifts to the University on mutually agreed terms and conditions, provided that the conditions of such grants-in-aid, donations or gifts, if any, shall not be in conflict with nature of objects of the University or with the provisions of the Rules;
 - (xii) to take over and acquire by purchase, gift or otherwise any movable or immovable properties, endowments or other funds together with any attendant obligations and engagement not inconsistent with the objects stated in the Memorandum of Association and the provisions of the Rules;
 - (xiii) to fix admission fees and other fees to be charged from the students and scholars;
 - (xiv) to demand and receive payment of fees and other charges;

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- (xv) to fix emoluments, travelling and other allowances for examiners, and moderators on the recommendations of the Senate and the Finance Committee;
- (xvi) to admit Corporate Members, and to fix initial contribution and annual subscription;
- (xvii) to provide buildings, premises, furniture, fixtures and apparatus and other means needed for carrying on the work of the University to enter into, vary, carryout and cancel contracts on behalf of the University;
- (xviii) to entertain, adjudicate upon and, if thought fit, to redress any grievances of the employees and students and scholars of the University who may for any reason feel aggrieved;
- (xx) to select a Common Seal for the University and provide for the custody and use of such seal;
- (xxi) to create Departments, Schools, Centres and such other units for instructions, training, research and extension;
- (xxii) to institute courses of study leading to a degree, diploma or a certificate recommendation of the Senate;
- (xxiii) to approve the procedure for admission of students and scholars to the University on recommendations of the Senate;
- (xxiv) to institute fellowships, scholarships, studentships, medals and prizes;
- (xxv) to review the decisions of the Senate;
- (xxvi) to delegate its powers to the Chairman, Director or others officers of the University;
- (xxvii) to appoint Committees for such purposes and with such powers as the Board may think fit;
- (xxviii) to lay down the procedures for prior consultation of the Senate on academic matters in so far as these are not inconsistent with the provisions of the Rules; and

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- (xxix) to exercise such other power and perform such other duties as may be conferred on it under the Rules, or as may be considered expedient for achieving the objects of the University.
- (xxx) to grant leave of absence to the Director or any other officer of the University and to make necessary arrangement for carrying on the functions of the officers proceeding on leave during their absence.
- (xxxi) to open account or accounts of the University with any one or more scheduled banks and to lay-down the procedure for operating the same.
- (xxxii) to draw and accept and make and endorse discount and negotiate Government of India's and other promissory notes, bills and exchange, cheques or other negotiable instruments.
- (xxxiii) to transfer or accept transfers of any moveable property on behalf of the University.
- (xxxiv) to advise the Holding Trustees (if any) on matters regarding acquisition, management and disposal of any immovable property on behalf of the University.
- (xxxv) to appoint in order to execute an instrument or transact any business of the University, any person as attorney of the University with such powers as it may deem fit.
- (xxxvi) to conduct examinations or tests for admission to the courses taught in the University, to conduct examinations for Degrees and diplomas and to declare the results of such examinations and tests and to confer, grant or award Degrees, Diplomas, Certificates and other academic titles and distinctions.
- (xxxvii) to recognize and maintain control and supervision on hostels owned and managed by other agencies for the students of the

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University and to rescind such recognition.

- (xxxviii) to execute in consultation with the Holding Trustees (if any) conveyance, transfer, Government Securities, re-conveyances, mortgages, leases, bonds, licenses and agreements in respect of property, moveable or immovable belonging to the University or to be acquired for the purposes of the University.
- (xxxix) in consultation with the Holding Trustees (if any) to raise and borrow money on bonds, mortgages, promissory notes or other obligations or securities founded or based of any of the properties and assets of the University or without any securities and upon such terms and conditions as it may think fit and to pay out of the funds of the University, all expenses, incidental to the raising of money and to repay and redeem any money borrowed.
- (xi) It shall also be responsible to maintain harmonious relations with Patiala Technical Educational Trust, "The holding & sponsoring Trust".
- (xii) To manage off-campus in the Country and off-shore campuses.

Power & Duties of the Director

- 29: (i) The Director shall be the Principal Academic and Executive officer of the University, and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of all the authorities of the University.**
- (ii) The Director, may, if he is of the opinion that immediate action is necessary on any matter, exercise any power conferred on the Board and shall report to the Board the action taken by him on such matter. Provided that if the Board

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is of the opinion that such action ought not have been taken it may refer the matter to the President whose decision thereon shall be final. Provided further that any person in the service of the University who is aggrieved by the action taken by the Director, shall have the right to appeal against such action to the Board within thirty days from the date on which such action is communicated to him and thereupon the Board may confirm, modify or reverse the action taken by the Director.

- (iii) The Director shall be entitled to be present at and to address, any meeting of any authority or akin body of committee of the University.
- (iv) It shall be the duty of the Director to see that the Memorandum of Association, the Rules and Regulations are duly observed and he shall have all the powers necessary to ensure such observance.
- (v) **The Director shall exercise general control over the affairs of the University and shall give effect to the decisions of the authorities of the University.**
- (vi) All powers relating to the proper maintenance and discipline in the University shall stand vested in the Director.
- (vii) The Director shall have the power to convene or cause to be convened meetings of Senate, the Planning and Monitoring Board Selection and other Committees of which he is the Chairman.
- (ix) Subject to the budget provisions made for the specific purpose, the Director shall have the power to incur expenditure in accordance with the procedure as may be laid down by the Board from time to time.
- (ix) The Director shall have the power to re-

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appropriate funds, write-off irrecoverable losses, waive recovery of over-payment within limits prescribed by, and in accordance with the procedure laid down by the Board.

- (x) The Director may at his discretion, constitute such committees as he may consider appropriate.
- (xi) The Director shall exercise such other powers and perform such other functions as may be prescribed by the Rules and Regulations.
- (xii) The Director shall exercise such other powers as may be delegated to him by the Board.
- (xiii) The Director shall have the power to redelegate some of his powers to any of the officers under his control with the approval of the Board.”

15. It has been claimed that the petitioner being A-2 category employee, her appointing authority is the Board. Thus, it is the Board only who ought to have initiated proceedings against the petitioner and imposed punishment on her. Since it is the Director who has initiated the proceedings against the petitioner and imposed punishment upon her, the same is bad in law.

16. Whereas Mr. Atma Ram submits that as per clause 29(v), the Director exercises general control over the affairs of the institute and gives effect to the decisions of the authorities of the institute. Thus, the appointment order as well as the departmental proceedings and the punishment order qua the petitioner, all were issued by Director to give effect to the decisions of the authorities of the institute and the same were approved by the Board. It has been asserted that even if argument raised qua appointing authority of the petitioner being Board is accepted for sake of arguments, it will be of no help to the petitioner as the punishment order

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of the petitioner was ratified by the Board. Reliance is being placed upon law laid down by the Apex Court in the case of *National Institute of Technology and another vs. Pannalal Choudhury and another reported as 2015(11) SCC 669* held as under:-

“xx xx xx

34. That apart, the issue in question could be examined from yet another angle by applying the law relating to "Ratification" which was not taken note of by the High Court.

35. The expression "Ratification" means "the making valid of an act already done". This principle is derived from the Latin maxim "ratihabitio mandato aequiparatur" meaning thereby "a subsequent ratification of an act is equivalent to a prior authority to perform such act." It is for this reason; the ratification assumes an invalid act, which is retrospectively validated.

36. The expression "ratification" was succinctly defined by the English Court in one old case, *Hartman Vs. Hornsby reported in 142 Mo 368 44 SW 242, 244* as under:

“ ‘Ratification’ is the approval by act, word, or conduct, of that which was attempted (of accomplishment), but which was improperly or unauthorisedly performed in the first instance.”

37. The law of ratification was applied by this Court in *Parmeshwari Prasad Gupta Vs. U.O.I (1973) 2 SCC 543*. In that case, the Chairman of the Board of Directors had terminated the services of the General Manager of a Company pursuant to a resolution taken by the Board at a meeting. It was not in dispute that the meeting had been improperly held and consequently the resolution passed in the said meeting terminating the

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services of General Manager was invalid. However, the Board of Directors then convened subsequent meeting and in this meeting affirmed the earlier resolution, which had been passed in improper meeting. On these facts, the Court held,

“Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance of the invalid resolution of the Board of Directors passed on 16-12-1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17-12-1953.”

38. This view was approved by this Court in ***High Court of Judicature for Rajasthan Vs. P.P. Singh & Anr. (2003) 4 SCC 239.***

39. The aforesaid principle of law of ratification was again applied by this Court in ***Maharashtra State Mining Corpn. Vs. Sunil (2006) 5 SCC 96.*** In this case, the respondent was an employee of the appellant Corporation. Consequent to a departmental enquiry, he was dismissed by the Managing Director of the

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appellant. The respondent then filed a writ petition before the High Court. During the pendency of the writ petition, the Board of Directors of the appellant Corporation passed a resolution ratifying the impugned action of the Managing Director and also empowering him to take decision in respect of the officers and staff in the grade of pay the maximum of which did not exceed Rs. 4700 p.m. Earlier, the Managing Director had powers only in respect of those posts where the maximum pay did not exceed Rs.1900 p.m. The respondent at the relevant time was drawing more than Rs.1800 p.m. Therefore, at the relevant time, the Managing Director was incompetent to dismiss the respondent. Accordingly, the High Court held the order of dismissal to be invalid. The High Court further held that the said defect could not be rectified subsequently by the resolution of the Board of Directors. The High Court set aside the dismissal order and granted consequential relief. The appellant then filed the appeal in this Court by special leave. Justice Ruma Pal, speaking for three- Judge Bench, while allowing the appeal and setting aside of the Court held as under :

“The High Court rightly held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act could not be subsequently “rectified” by ratification of the competent authority. Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim *ratihabitio mandato aequiparatur*, namely, “a subsequent ratification of an act is equivalent to a prior authority to perform such act.” Therefore, ratification assumes an invalid act which is retrospectively validated.”

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“In the present case, the Managing Director’s order dismissing the respondent from service was admittedly ratified by the Board of Directors unquestionably had the power to terminate the services of the respondent. Since the order of the Managing Director had been ratified by the Board of Directors such ratification related back to the date of the order and validated it.”

40. Applying the aforementioned law of ratification to the facts at hand, even if we assume for the sake of argument that the order of dismissal dated 16.08.1996 was passed by the Principal & Secretary who had neither any authority to pass such order under the Rules nor there was any authorization given by the BOG in his favour to pass such order yet in our considered view when the BOG in their meeting held on 22.08.1996 approved the previous actions of the Principal & Secretary in passing the respondent's dismissal order dated 16.08.1996, all the irregularities complained of by the respondent in the proceedings including the authority exercised by the Principal & Secretary to dismiss him stood ratified by the Competent Authority (Board of Governors) themselves with retrospective effect from 16.8.1996 thereby making an invalid act a lawful one in conformity with the procedure prescribed in Rules.

41. In such circumstances, the respondent's grievance that the dismissal order had not been passed by the competent authority, i.e., the BOG is no longer survived.”

(emphasis supplied)

17. In view of the above, in the considered opinion of this Court, once the fact of ratification of the decision by the Board in its meeting dated

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24.06.2016 has come on record, in the light of law laid down by Apex Court in the case of *National Institute of Technology (supra)*, the issue w.r.t. to dismissal order having not been passed by the competent authority does not survive. Thus, reliance placed by senior counsel for the petitioner on *Krishna Kumar vs. Divisional Assistant Electrical Engineer and others reported as (1979) 4 SCC 289* does not help the case of the petitioner as the issue of ratification was not involved in the said case.

18. Lastly, Mr. Bains points out that the order passed by the Appellate Authority is also cryptic. He has taken me to the order passed by Board of Governors placed on record as Annexure P-33, wherein the Board observed as under:-

“That the Board of Governors during its 122nd meeting held on 27.09.2016, discussed the appeal filed by Ms. Bindu Bhardwaj and agreed that there is no need for granting personal hearing to her. Further the board directed that a brief proposal based on appeal filed by Ms. Bindu Bhardwaj may be put up in the next meeting of the board as per the Rules and Regulations of the University.

That as directed by the Board of Governors, a note of the case was put up before the board during its 124 meeting held on 16.12.2016 for its due consideration and decision.

The Board of Governors considered the note provided by the Management regarding appeal filed by the Ms. Bindu Bhardwaj and was of the opinion that there is no merit in the appeal and accordingly rejected the same.

In view of the above the Board of Governors has found that there were sufficient grounds for taking action against Ms. Bindu Bhardwaj which has been

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established and hence the penalty of dismissal imposed by the Director, Thapar University. Patiala is adequate and therefore the same is upheld.”

19. Relevant regulation governing the powers of the Appellate Authority reads as under:-

“In the case of an appeal against an order under this clause, the appellate authority shall consider:

- (a) Whether the facts on which the order was passed have been established;
- (b) Whether the fact established afford sufficient ground for taking action;
- (c) Whether the penalty is excessive, adequate or inadequate; and after due consideration shall pass such order as it thinks proper.”

20. The order passed by the Appellate Authority when considered in the light of the aforesaid provision, this Court finds that the Appellate Authority having recorded its finding on all the three scores as provided under the regulation, the same cannot be interfered being a non-speaking order.

21. In view of the above, there is no reason to interfere in the present writ petition and the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

21.04.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes