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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 17th July, 2023*+ **W.P.(C) 9481/2017****SHRI NARESH KUMAR GANDHI**Petitioner

Through: Mr. Sanjeev Ralli, Senior Advocate with Mr. Saumil Sharma, Mr. Ravi Kant Yadav and Ms. Divya Parashar, Advocates.

versus

**CAMBRIDGE FOUNDATION SCHOOL
AND ORS.**

....Respondents

Through: Mr. Pramod Gupta and Ms. Mahima Shekhawat, Advocates for R-1 and 2.

Ms. Latika Chaudhary, Advocate for R-3.

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. By this writ petition, Petitioner assails the impugned order dated 29.11.2016 passed by the learned Delhi School Tribunal (hereinafter referred to as 'DST') in Appeal No. 17/2011 as also to set aside the impugned orders dated 14.03.2011 and 18.03.2011 passed by Respondent No. 1/Cambridge Foundation School (hereinafter referred to as the 'School'). Writ of mandamus is sought directing the School to reinstate the Petitioner with all consequential service benefits. Respondent No. 3 is Director of Education (hereinafter referred to as the 'DoE').

2. Facts to the extent necessary and as captured in the writ petition are that Petitioner was appointed as Lab Assistant in the School in



1984 and subsequently as TGT (Science) in 1988. Since the date of his joining till December, 2009, there were no complaints against the Petitioner and the results of the students in classes taught by him were consistently good. Upon implementation of 6th CPC w.e.f. 01.01.2006, pay scales of the School employees including the Petitioner were revised but the School did not release arrears of salaries/emoluments, despite repeated demands. Several letters were written by the Petitioner in this regard but to no avail. This triggered the School making false allegations against the Petitioner in an endeavour to dispense with his services.

3. As per the case set up by the Petitioner, in the academic session 2009-2010, Petitioner was assigned four classes viz. VII-E, VIII-C, IX-B and IX-D for teaching Mathematics subject. The total strength of the School then was 1932 students with a ratio of 3:1 between boys and girls. Classes assigned to the Petitioner were on the first floor of the School building and were equipped with CCTV cameras with recording facility.

4. On 15.12.2009, Petitioner while taking a class test in Class VIII-C found one girl namely, XXX (name is being omitted to maintain confidentiality) copying from homework notes. On noting this, Petitioner stopped her and acting as a guide and mentor, advised her not to repeat the act of cheating, in the interest of her career. Petitioner also apprised the Principal of the incident on 18.12.2009. On 23.12.2009, Petitioner was called by the Principal in her office where the Chairperson, the Principal herself and Manager of the School Ms. Meena Malik were already present along with three other Teachers namely, Ms. Asha Sarin, Ms. Seema Kapoor and Ms. M.



against him by girl students of class VIII and father of one student XXX. Petitioner had no knowledge of the Preliminary Enquiry Committee ('PEC') being set up comprising of the said three teachers or of any complaints and on being shown the complaints, though not handed over, Petitioner categorically denied the allegations, being false. Preliminary inquiry ('PE') was conducted by the 3 teachers in the presence and dictates of the Chairperson, Principal and Manager and neither the girl students/alleged complainants nor the parent alleged to have made the complaint were present when the Petitioner was called.

5. On the next day i.e. 24.12.2009, a show cause notice was handed over to the Petitioner levelling false allegations of holding hands of girl students and molestation, misbehaviour etc. Petitioner requested the Chairperson on 29.12.2009 to supply the documents to enable him to respond to the show cause notice. However, instead of supplying the documents sought for, Petitioner was suspended vide order dated 02.01.2010, to which he filed a protest letter on 04.01.2010.

6. Charge Memorandum was issued to the Petitioner on 22.02.2010 alleging that Petitioner had indulged in inappropriate and immoral acts with girl students by holding their hands. Petitioner submitted his response to the charge-sheet on 06.03.2010, however, without considering the reply, the School appointed Sh. S.S. Sharma, a sitting member of the Managing Committee as an Inquiry Officer (hereinafter referred to as 'IO') to conduct the inquiry proceedings. During the inquiry, School examined four witnesses i.e. Ms. Meena Malik, Manager of the School, Ms. Neeru Sharma, Receptionist and



two Teachers namely, Ms. Daur and Ms. Sarin, both of whom were members of the PEC.

7. During the pendency of the inquiry proceedings, Petitioner preferred a Writ Petition being W.P. (C) 6219/2010, in which one of the issues raised was with respect to authenticity and genuineness of the CDs/DVDs relied upon by the School as an important piece of evidence and in which, according to the Petitioner, there were jumps/breaks when the same was played before the IO and appeared to be tampered/doctored. Writ petition was disposed of vide order dated 14.09.2010 recording the submission of the parties that they were agreeable to make the said grievance before the IO who would decide the same on merits, after verifying the CDs/DVDs.

8. IO made no efforts to verify the authenticity of the CDs/DVDs and accepted the version of the School that they were genuine and true copies of the original, relying upon a certificate given by M/s. Arihant Electrovision, the firm which had installed the Digital Video Recorder ('DVR') at the School premises *albeit* undated. According to the Petitioner, IO made no effort to even examine if the electronic evidence was adduced in compliance of the mandatory legal requirement prescribed under Section 65B of the Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act') and rendered the Inquiry Report on 01.02.2011, based primarily on the PE report and evidence of the School Witnesses testifying that PE was held and complainants had supported the complaints. Vide letter dated 07.02.2011, School conveyed to the Petitioner its proposal to impose penalty of removal from service. Representations dated 21.02.2011 and 27.02.2011 were made by the Petitioner against the findings of the



grievances raised in the representations, vide order dated 14.03.2011, the Disciplinary Authority ('DAC') imposed the major penalty of removal from service, which shall disqualify the Petitioner to serve in any Recognized Private Co-Ed/Girls School with immediate effect, which on a reconsideration was modified vide order dated 18.03.2011 to read '*Removal from Service, which shall not be a disqualification for future Employment in any other Private Recognized School*' as per provision of Rule 117(b)(iii) of Delhi School Education Rules, 1973 (hereinafter referred to as 'Rules, 1973'). Appeal filed by the Petitioner against the penalty of removal was dismissed by DST by the impugned order dated 29.11.2016, leading to filing of the present writ petition.

Contentions on behalf of the Petitioner:-

9. Bias of the IO vitiates the inquiry and the penalty of removal from service deserves to be quashed on this ground alone. IO was member of the Managing Committee of the School which in its meeting held on 02.01.2010 considered the matter relating to the alleged complaints by girl students against the Petitioner and decided to suspend the Petitioner and initiate disciplinary action. Show cause notice and reply of the Petitioner thereto were examined by the IO and he endorsed the strong opinion formed by the Committee against the Petitioner that he was guilty of a serious misconduct. This was enough to disentitle and disqualify Sh. Sharma from acting as an Inquiring Authority, who needless to state is required to conduct the inquiry impartially and free from bias. No doubt, Sh. Sharma had retired from the post of ADE (Exam), DoE when he was appointed as IO on 09.04.2010, however, he was not working for charity and must have been employed for remuneration. His loyalty towards the School



raises a question mark on his impartiality as an IO. Bias thus vitiates the inquiry and the findings and report of the IO, which formed the basis of the penalty imposed on the Petitioner. Reliance was placed on the judgment of the Supreme Court in *State of Uttaranchal and Others v. Kharak Singh, (2008) 8 SCC 236* and of this Court in *Taj Mahal Hotel v. Industrial Tribunal-I & Ors., 2010 SCC OnLine Del 1969*, to argue that bias pervades the entire inquiry.

10. Rule 118 of Rules, 1973 prescribes the constitution of the DAC and the School is under a mandate of law to constitute DAC as per the laid down constitution. Inclusion of Sh. Purang, allegedly as Manager of the School, as a part of the DAC is in violation of Rule 118. As per record of the School, Ms. Meena Malik was the Manager of the School at the relevant time and continued to be so even after issuance of the charge sheet, which is established from the statement of SW-1 and Form No. 16 dated 13.05.2010 signed by her in the capacity of a Manager. No document was placed by the School before the IO to demonstrate the appointment of Sh. Purang as a Manager and even otherwise there is no provision under the Delhi School Education Act, 1973 (hereinafter referred to as the '1973 Act') or Rules, 1973 which permits appointment of a Manager for the sole purpose of constituting DAC. Rule 59 (i) and (k) of Rules, 1973, which falls under Chapter V of the 1973 Act provides for Scheme of Management in relation to a recognized school and no Manager can be appointed without following the laid down procedure. School has illegally attempted to file a fabricated appointment letter of Sh. Purang along with the synopsis before this Court for the first time, to rectify a gross illegality in constitution of the DAC. Assuming for the sake of argument that



the inquiry, the School ought to have appointed Manager of any other School by applying the analogy of the provision in Rule 118(iv) of Rules, 1973 with respect to the Head of School. The stand of the School that Ms. Malik was the Director of the School is also false for two reasons i.e. there is no sanctioned post of a Director in the School and secondly, no appointment order to this effect was placed before the IO.

11. Objection to the participation of Sh. Purang as member of DAC was taken by the Petitioner before the DST, but has been brushed aside without appreciating that an inquiry proceeding based on a charge sheet issued by DAC, whose constitution is illegal, cannot be sustained in law. [*Ref.: Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and Others, (1993) 4 SCC 10*]. In fact, correct constitution of DAC is so fundamental to a disciplinary proceeding that the charged officer need not even show any prejudice on this score and if he is able to show that DAC was not validly constituted in accordance with Rule 118 of Rules, 1973, the inquiry proceedings and resultant penalty cannot sustain. Decision of the DAC to issue charge sheet to the Petitioner is illegal on account of the Chairperson and Principal being its members. Both of them were not mere witnesses to the PE proceedings but had regulated and dictated the conduct of the proceedings by three teachers, who were subordinate to the Chairperson and Principal and thus ought to have recused themselves from being members of DAC, which took the decision to issue the charge sheet to the Petitioner. The decision of DAC is thus tainted due to the presence of Chairperson and Principal, who beyond a doubt were not impartial to the



Shukla v. S.N. Ingole and Others, 1982 SCC OnLine Bom 271; The Managing Committee Vidya Bhawan Mahavidyalaya (Secondary School) v. Directorate of Education and Ors., 2006 SCC OnLine Del 309 and Kalpana Mehdiratta v. Air Force Bal Bharati School and Others, 2019 SCC OnLine Del 11538, for the propositions that bias vitiates all proceedings and justice must not only be done but must also be seen to be done.

12. CCTV footage of PE proceedings dated 21.12.2009 and 23.12.2009 was adduced in evidence through the electronic mode, however, the CDs/DVDs when played before the IO were clearly doctored and tampered and displayed jumps/skips and importantly, the electronic evidence was not produced as per the procedure prescribed under Section 65B of the Evidence Act. Petitioner objected to the authenticity of the CDs/DVDs and requested for forensic examination but the IO on account of his bias against the Petitioner, did not get the CDs/DVDs examined. This was despite the fact that in the earlier round of litigation, parties had agreed to raise this issue before the IO, who was directed to verify the CDs/DVDs. As a cover up, the School obtained an undated certificate from M/s. Arihant Electrovision and without even taking the trouble to see that the certificate was compliant with Section 65B of the Evidence Act, IO accepted the CDs/DVDs to be genuine and relied upon them.

13. Show cause notice dated 24.12.2009 was issued to the Petitioner alleging that on 19.12.2009, Petitioner had in the presence of the Principal and Manager of the School admitted his mistake and felt sorry and requested to be pardoned for his misconduct. Despite repeated requests, CCTV footage of 19.12.2009 was never furnished



would have been exposed. Unavailability of the footage for 19.12.2009 was an unbelievable excuse as footage for 18th, 21st and 23rd December, 2009, was available and produced by the School.

14. DST failed to appreciate that there was no evidence against the Petitioner as neither the girl students who had allegedly complained nor any parent was examined during the inquiry. Even assuming that the girls could be exempted from giving evidence to save them from any harassment, at least the parent who was stated to have complained could have been produced as a witness. SW-1 was the Receptionist who only deposed of having received a phone call from the father of XXX. SW-2 and SW-3 testified with respect to the PE proceedings being members of the PEC and SW-4 deposed with respect to receiving the complaint from the father of XXX and the conduct of PE proceedings. There is no evidence in the inquiry to prove the allegations in the charge sheet. The PE proceedings could not be relied upon as the electronic evidence by which they were sought to be proved was inadmissible, in the absence of compliance with the procedure prescribed in Section 65B of the Evidence Act. The girl students never appeared in the presence of the Petitioner and were purportedly examined before the Petitioner was called by the PEC. No opportunity was given to the Petitioner even during the PE to question the girl students and despite his request even copies of the alleged complaints were not supplied.

15. Both the IO and DST ignored the fact that Petitioner had rendered unblemished service from 1984 and SW-1 and SW-4 had also testified to this effect. In a span of 26 years of service, Petitioner had the occasion to teach several girl students but no one had even



raised issues of non-payment of arrears of 6th CPC and had caught XXX cheating on 15.12.2009. All eight complaints are post 15.12.2009 and are verbatim copies of each other containing allegations that Petitioner held hands of girl students, scolded them and was a strict teacher. It is apparent that the complaints, most of which bear the date of 19.12.2009, were motivated.

Contentions on behalf of the School:-

16. Appointment of Sh. S.S. Sharma as IO is assailed by the Petitioner on the ground that he was member of the Managing Committee and participated in the deliberations leading to suspension of the Petitioner. The objection is completely misconceived and Petitioner has concealed the relevant fact that Sh. Sharma was member of the Managing Committee in his capacity as nominee of the Advisory Board being ADE (Exam), DoE. Post his retirement from the office of DoE, DAC in its meeting dated 09.04.2010 took a decision to appoint him as an IO. On objection to the appointment of the IO by the Petitioner, the matter was referred to DAC, which after due deliberation on the objection, found the same to be without substance and this was communicated to the Petitioner vide letter dated 01.05.2010. Petitioner had even earlier challenged the appointment of IO in W.P. (C) 6219/2010 but the challenge was given up during the course of arguments. Petitioner is conveniently raising issues and giving them up as per his choice and cannot be permitted to approbate and reprobate.

17. Merely being a spectator to PE proceedings, the Chairperson and Principal were not disqualified from discharging their responsibilities as members of DAC constituted under Rule 118. The



raised at the initial stage of inquiry proceedings. In *Government of Andhra Pradesh and Others v. V. Appala Swamy, (2007) 14 SCC 49*, it was held that technical objections must be taken at the start of the inquiry proceedings. Even otherwise, their participation is covered by the Doctrine of Necessity. [Ref. *Election Commission of India and Another v. Dr. Subramaniam Swamy and Another, (1996) 4 SCC 104*]. During the inquiry proceedings while cross-examining the School witnesses, Petitioner had specifically asked them on the role of the Chairperson and Principal in the PEC and it was testified by the witnesses that there was no interference from their end, in any manner, during the PE proceedings. In any case, this line of defence is not available to the Petitioner since this issue was raised by him in W.P. (C) 6219/2010 and was given up specifically, as recorded in the order dated 14.09.2010, disposing of the writ petition. In the earlier writ petition, stand of the Petitioner was that Chairperson, Principal and Manager were influencing the PE proceedings and were actively involved in falsely implicating the Petitioner. This stand was revised in the appeal before DST, where it was averred that all the three were participating in the PE proceedings and were personally interested and therefore any order passed on the basis of these proceedings was a nullity. A third stand is taken in the present petition that proceedings are vitiated on account of bias, merely on account of presence of Chairperson, Principal and Manager in the same room, where PE was conducted and were disqualified to be members of DAC. Inconsistent pleas at different stages only reflect the falsity of the stand of the Petitioner.

18. Petitioner is raising unnecessary objections on the authenticity



procedure prescribed under Section 65B of the Evidence Act. It is a settled law that departmental proceedings are not bound by strict rules of evidence. [*Ref. Bank of India and Another v. Degala Suryanarayana, (1999) 5 SCC 762; Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi and Others, (1991) 2 SCC 716 and State Bank of India and Others v. Narendra Kumar Pandey, (2013) 2 SCC 740*]. The standard of proof in departmental proceedings is preponderance of probabilities and not proof beyond reasonable doubt. In any case, finding of the IO is not solely based on the electronic evidence and there was corroborative evidence in the form of oral statements of SW-1 to SW-4, who were extensively cross-examined by the Petitioner. Furthermore, the Technical Specification Certificate of DVR issued by M/s. Arihant Electrovision itself clarified that “...the viewer may experience gaps when video is played back. This is a normal occurrence...” Even assuming that the Court is inclined to set aside the proceedings on this technical ground, liberty ought to be given to School to initiate proceedings from the stage from where the alleged infirmity has crept in but technicalities cannot lead to exoneration of the Petitioner. [*Ref. U.P. State Spinning Co. Ltd. v. R.S. Pandey and Another, (2005) 8 SCC 264*].

19. Petitioner is raising several grounds in this writ petition which were either not raised earlier or are inconsistent with the pleas taken before the DST. Inconsistencies in the pleas of the Petitioner are evident from the fact that initially the stand of the Petitioner with regard to recordings in the CDs/DVDs was that School should produce original hard drives from which recordings have been made



and when this was countered by the School, the stand has now shifted to non-compliance with Section 65B of the Evidence Act.

20. Rule 118 of the Rules, 1973, no doubt contemplates that the DAC shall comprise of the Manager of the School, however, in the present case the Manager, Ms. Meena Malik was to appear as a witness in the disciplinary proceedings and therefore the School appointed Sh.Y.P. Purang as a Manager to constitute the DAC. In his capacity as a Manager, Sh. Purang had signed the charge sheet dated 22.02.2010 and this fact was within the knowledge of the Petitioner at that stage. In another meeting of the DAC held on 09.04.2010, pertaining to appointment of the IO, Sh. Purang was present and participated in his capacity as a Manager and this fact was also in the knowledge of the Petitioner. In the very first proceeding on 19.04.2010, Petitioner submitted a protest letter dated 19.04.2010, objecting to the appointment of the IO and seeking certain documents but did not raise any objection, with respect to Sh. Y.P. Purang as member of DAC and this clearly reflects that the issue is being raised as an afterthought.

21. Substitution of Sh. Y.P. Purang as Manager in DAC in place of Ms. Meena Malik was to obviate any bias against the Petitioner as she was to appear as Management witness in the inquiry proceedings and had the inquiry proceeded with her as Manager, the composition would have been assailed by the Petitioner on the plea of violation of principles of natural justice. The analogy drawn by the Petitioner with regard to appointment of Principal of another school as member of the DAC in the event of the inquiry being against a Principal is completely misplaced and cannot apply for a Manager. Reliance



Kamla Prasad Shukla (supra), is misplaced as the Teacher in that school was charge sheeted for character assassination of the Principal of the School and in that context the Court held that the Principal being biased could not be a member of the inquiry committee.

22. The whole objective of the Petitioner in making allegations against the Chairperson, Principal and Manager is to somehow lead the Court to hold that constitution of DAC was vitiated under Rule 118 of Rules, 1973 and escape from the seriousness of the charges, which are unbecoming of a teacher. Division Bench of this Court in ***Managing Committee, Naval Public School v. Neera Chopra & Anr., 2013 SCC OnLine Del 1648*** has ruled as follows:-

“19. Though Section 8(4) of the Act requires the Managing Committee to make suspension only with the approval of DoE but the decision to suspend has to emanate from the Managing Committee. This Court in B.S. Verma v. Delhi Administration, 48 (1992) DLT 49 has held that the basic power to suspend is conferred on the Managing Committee. For taking such decision, the Managing Committee has necessarily to form an opinion as to the charge against the employee inasmuch as it is only for charges of certain kind that the power to suspend can be invoked and not for all kinds of charges. Similarly, the decision of the proposed penalty also has to be of the Managing Committee only i.e. whether to propose a minor or a major penalty for the misconduct of which the employee is accused. The Disciplinary Authority of a School does not appear to be a permanent or a standing body and is a body to be constituted each time when the School proposes to impose, a penalty. This is obvious from the fact that even though the Managing Committee under Rule 59 and which is a permanent or a standing body is to comprise of the nominees of the DoE also, Rule 118 separately provides for composition of Disciplinary Authority. One of us (Rajiv Sahai Endlaw, J.) in Mamta v. School Management of Jindal Public School, (2011) 5 ADD 630 and against which no appeal is found to have been preferred, has held that merely because a nominee of the DoE also exists on the Managing Committee cannot be read as making the Managing Committee the Disciplinary Authority also. The practice prevalent also has been of the School, as and when need arises, approaching the DoE for nomination on the Disciplinary Authority. The Disciplinary Authority is thus constituted after the Managing Committee of the School has formed an opinion of the charges against the employee against whom major



penalty proceedings are contemplated and whether or not to place him under suspension. The Scheme of the Rules thus permits the Managing Committee of the School to, before constitution of the Disciplinary Authority at least form an opinion of the nature of the charges against an employee guilty of misconduct. It thus cannot be said that the action of the Managing Committee of the School in framing the charges is ex facie illegal or contrary to the Rules.”

23. Members of the Managing Committee were the persons In-charge of the Administration and were well aware and conversant with the activities in the School and were most suited to decide whether charge-sheet was to be issued to the Petitioner or not as members of DAC. The objection even otherwise has no merit as even a different constitution of DAC would have made no difference to the final outcome of the inquiry in view of the evidence given by the School witnesses during the inquiry.

24. I have heard learned Senior Counsel for the Petitioner and learned counsel for the School and examined their rival contentions.

25. Among the myriad of contentions raised by the Petitioner assailing the inquiry proceedings and the consequential Inquiry Report and major penalty, in my considered view, the objection that first needs examination is with regard to appointment of Sh. S.S. Sharma as the IO since this objection goes to the root of the matter and in case Petitioner succeeds in establishing bias or likelihood of bias of the IO, the inquiry proceedings shall vitiate. Minutes of the Managing Committee meeting held on 02.01.2010 show that Sh. S.S. Sharma was a part of the Committee as nominee of the Advisory Board. Agenda ‘Item No. 2’ of the minutes was with regard to the contemplated disciplinary proceedings against the Petitioner under Rules 117, 118, 120 and 123 of Rules, 1973 as well as to place him under suspension. Show cause notice dated 24.12.2009 issued to the



Petitioner and his representation dated 29.12.2009 submitted in response thereto were placed before the Managing Committee for its consideration. Committee observed that: (a) Petitioner had committed a serious crime with girl students; (b) being parental guardian in the School Petitioner was required to behave like a father to the girl students; and (c) Petitioner had committed sexual harassment amounting to molestation causing discomfort and mental agony to the girl students. After coming to these conclusions, the Managing Committee unanimously resolved that Petitioner be placed under suspension with immediate effect and disciplinary proceedings be initiated against him. Relevant part of the minutes of the meeting is extracted hereunder:-

“ITEM NO:2. TO TAKE THE COGNIZANCE OF THE CONTEMPLATED DISCIPLINARY PROCEEDINGS AGAINST MR NARESH KUMAR GANDHI TGT(SCIENCE) UNDER PROVISION OF RULE 117, 118, 120, 123 OF DSEA&R-1973 AS WELL TO PLACE UNDER SUSPENSION.

2. A copy of the show cause notice dated 24-12-2009 issued to Mr Naresh Gandhi TGT (Science) and his representation dated 26-12-2009, which he had submitted in response to show cause notice was placed on record for favour of kind perusal and consideration of the members of the Managing Committee. After perusing the same, it was considered and resolved that :-

- (a) Mr Gandhi has committed a serious crime with the girl students.*
- (b) He being the parental guardian in the school, he was required to behave like a father to the girls.*
- (c) He has committed sexual harassment amounting to molestation which caused discomfort and mental agony to the girl students.*
- (d) By virtue of that he has acted contrary to the provision of conduct rule notified under rule 123 DSER&A-73, viz*
 - (i) He has shown misbehaviour/cruelty towards students (girls) of his class-breached sub clause (xviii) of clause (b) of sub rule (1) of Rule 123 of DSEA&R-1973.*
 - (ii) He is guilty of the mis-conduct which involves moral turpitude-*



Breached sub-clause (xvii) of clause (b) of sub rule (1) of Rule 123 of DSER&A-1973.

3. After deliberation of discussion it was unanimously resolved that:-

(a) It has been informed to the members of the Managing Committee that he has been trying to put all kinds of pressure through different sources, trying to extricate himself from the act, that he has committed, for which he has been issued Show Cause Notice.

(b) As far his representation is concerned, he has denied the allegations and at the same time, he has requested a copy of some documents & records to enable him to represent to the Show Cause Notice.

4. After due deliberation and discussion, it was unanimously resolved that:-

(a) Mr Naresh Kumar Gandhi, TGT (Science) be placed under suspension with immediate effect and order of suspension be signed by the Chairperson of the school.

(b) The disciplinary proceedings be initiated against him as per the guide lines laid down in the rules 117, 118, 120, 123 of DSER&A-1973.

(c) Since he has denied the charge(s) and at the same has requested for a copy of documents/records to enable him to submit his representations. During the course of disciplinary proceeding, he may demand a copy of any record for his defense.

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 Mrs Sheila Verma Chair Person	 Mrs Anita Puri Principal	 Mrs Moana Malik Manager
 Mr Y.P. Puri Member	 Mr R.K. Malik Member	 Mrs J Bhatnagar Member
 Mr S.S. Sharma Nominee of the Advisory Bd	 Mr Vinod Srivastava Member	 Dr (Miss) Shakti Kapoor Member
 Mr R.M. Sharma Member	 Mrs Preeti Chaudhary Member	 Mrs Kajoli Chakraborty Teacher Rep
 Mrs Seema Kapoor Teacher Rep	 Attestant	

Signature Not Verified

Digitally Signed
By: KAMAL KUMAR
Signing Date: 21.07.2023
20:13:05

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26. From the aforesaid minutes, it is palpably clear that Sh. Sharma was member of the Managing Committee *albeit* as nominee of the Advisory Board. Minutes reflect that the allegations against the Petitioner were examined by the Committee and it was unanimously resolved that Petitioner be suspended and disciplinary proceedings be initiated against him. Paragraph 2 contains the opinion formed by the members of the Committee before taking the decision. It can hardly be disputed that Sh. Sharma endorsed the opinion, as a part of the Committee, that Petitioner had committed a serious crime of sexual harassment, molestation and cruelty towards the girl students and was guilty of misconduct involving moral turpitude not befitting his role as a parental guardian in the School. This being the view of Sh. Sharma about the conduct and character of the Petitioner, the question that begs an answer is whether he was qualified to act as an IO, who is required to be a person free from any bias or pre-conceived notions against the charged officer. The answer to the question, in my view, can only be an emphatic 'No'.

27. In *A.K. Kraipak and Others v. Union of India and Others, (1969) 2 SCC 262*, the Supreme Court held that the aim of rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice. Concept of natural justice has undergone a great deal of change. Initially recognized as consisting of two principles, i.e., no one shall be a Judge in his own cause and no decision shall be given against a party without affording him a reasonable hearing, a third rule is now envisaged i.e. quasi-judicial inquiries must be held in good faith, without bias and not arbitrarily. In *State of Uttar Pradesh and Others. v. Saroj Kumar Sinha, (2010)*



inquiry is conducted, it cannot be treated as a casual exercise and cannot be conducted with a close mind. The IO has to be 'wholly unbiased' and rules of natural justice are to be observed to ensure not only that justice is done but is manifestly seen to be done. Object of rules of natural justice is to ensure that a Government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

28. In *Union of India, Through Its Secretary, Ministry of Railway and Others v. Naseem Siddiqui*, 2004 SCC OnLine MP 678, the Court held that one of the fundamental principles of natural justice is that no man shall be a Judge in his own cause and this principle in turn consists of seven well-recognized facets, one of them being '*the adjudicator shall be impartial and free from bias*' and '*if any one of these fundamental rules is breached, the inquiry will be vitiated*'. It was also held that a domestic inquiry must be held by an unbiased person so that he can be impartial and objective in deciding the subject matter of the inquiry and should have an open mind till the inquiry is completed. IO should neither act with bias nor give an impression of bias.

29. In *Rattan Lal Sharma (supra)*, the Supreme Court held that no one can be a Judge in his own cause, which is a common law principle derived from the Latin maxim '*nemo debet esse judex in propria causa*'. In *A. U. Kureshi v. High Court of Gujarat and Another*, (2009) 11 SCC 84, the Supreme Court referring to the said principle held that failure to adhere to this principle creates an apprehension of bias on the part of the Judge and referred to the observations of Justice P.N. Bhagwati in *Ashok Kumar Yadav and Others v. State of*

Signature Not Verified **Haryana and Others, (1985) 4 SCC 417**, as follows:-



“ ...

One of the fundamental principles of our jurisprudence is that no man can be a judge in his own cause. The question is not whether the judge is actually biased or has in fact decided partially but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. If there is a reasonable likelihood of bias ‘it is in accordance with natural justice and common sense that the judge likely to be so biased should be incapacitated from sitting’. The basic principle underlying this rule is that justice must not only be done but must also appear to be done.”

30. It was further held that failure to observe the principle that no person should adjudicate a dispute which he/she has dealt with in any capacity, creates an apprehension of bias on the part of the said person. Therefore, law requires that a person should not decide a case in which he is interested and the question is not whether the person is actually biased but whether the circumstances are such as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision. In ***Mohd. Yunus Khan v. State of Uttar Pradesh and Others, (2010) 10 SCC 539***, the Supreme Court observed that existence of an element of bias renders the entire disciplinary proceedings void and reiterated that apprehension of bias operates as a disqualification for a person to act as an adjudicator. Anyone who has personal interest in the disciplinary proceedings must keep himself away from such proceedings else the entire proceeding will be rendered null and void. I may quote an observation of the Supreme Court, as follows:-

“Principles of natural justice are to some minds burdensome but this price – a small price indeed – has to be paid if we desire a society governed by the rule of law”.

31. In this context, it would be relevant to refer to a few passages from the judgment of the Supreme Court in ***Rattan Lal Sharma***

(supra), as follows:-



“9. In Administrative Law, rules of natural justice are foundational and fundamental concepts and law is now well settled that the principles of natural justice are part of the legal and judicial procedures. On the question whether the principles of natural justice are also applicable to the administrative bodies, formerly, the law courts in England and India had taken a different view. It was held in *Franklin v. Minister of Town and Country Planning* [(1947) 2 All ER 289 (HL)] that the duty imposed on the minister was merely administrative and not being judicial or quasi-judicial, the principle of natural justice as applicable to the judicial or quasi-judicial authorities was not applicable and the only question which was required to be considered was whether the Minister had complied with the direction or not. Such view was also taken by the Indian courts and reference may be made to the decision of this Court in *Kishan Chand Arora v. Commissioner of Police, Calcutta* [(1961) 3 SCR 135 : AIR 1961 SC 705]. It was held that the compulsion of hearing before passing the order implied in the maxim ‘audi alteram partem’ applied only to judicial or quasi-judicial proceedings. Later on, the law courts in England and also in India including this Court have specifically held that the principle of natural justice is applicable also in administrative proceedings. In *Breen v. Amalgamated Engineering Union* [(1971) 1 All ER 1148 (CA)] Lord Denning emphasised that statutory body is required to act fairly in functions whether administrative or judicial or quasi-judicial. Lord Morris observed (as noted by this Court in *Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248, 285 : (1978) 2 SCR 621, 675]* decision) that:

“We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying these principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed.”

In *State of Orissa v. Binapani Dei* [(1967) 2 SCR 625 : AIR 1967 SC 1269 : (1967) 2 LLJ 266] this Court also accepted the application of the principle of natural justice in the order which is administrative in character. It was observed by Shah, J.:

“It is true that the order is administrative in character, but even an administrative order which involves civil consequences ... must be made consistently with the rules of natural justice.”

Similar view was also taken in *A.K. Kraipak v. Union of India* [(1969) 2 SCC 262 : (1970) 1 SCR 457] and the observation of Justice Hegde may be referred to: (SCC p. 272, para 20)

“... Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it



functioned to act judicially, there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries.”

There are number of decisions where application of principle of natural justice in the decision-making process of the administrative body having civil consequence has been upheld by this Court but it is not necessary to refer to all such decisions. Prof Wade in his Administrative Law (1988) at page 503, has very aptly observed that the principles of natural justice are applicable to almost the whole range of administrative powers.

10. Since the rules of natural justice were not embodied rules it is not possible and practicable to precisely define the parameters of natural justice. In Russell v. Duke of Norfolk [(1949) 1 All ER 109 (CA)] Tucker, L.J. observed:

“... There are, in my view, no words which are of universal application to every kind of inquiry and the every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth.”

It has been observed by this Court in Union of India v. P.K. Roy [(1968) 2 SCR 186 : AIR 1968 SC 850 : (1970) 1 LLJ 633] :

“The extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case.”

Similar view was also expressed in A.K. Kraipak case [(1969) 2 SCC 262 : (1970) 1 SCR 457] . This Court observed: (SCC pp. 272-73, para 20)

“... 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. Whenever a complaint is made before a court that some principle of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.”



Prof. Wade in his Administrative Law has succinctly summarised the principle of natural justice to the following effect:

“It is not possible to lay down rigid rules as to when the principles of natural justice are to apply: not as to their scope and extent. Everything depends on the subject-matter, the application for principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice depend on the facts and the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.”

One of the cardinal principles of natural justice is nemo debet esse judex in propria causa (no man shall be a judge in his own cause). The deciding authority must be impartial and without bias. It has been held by this Court in Secretary to Government, Transport Department v. Munuswamy Mudaliar [1988 Supp SCC 651] that a predisposition to decide for or against one party without proper regard to the true merits of the dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias. A classic case of personal bias was revealed in the decision of this Court in State of U.P. v. Mohd. Nooh [1958 SCR 595 : AIR 1958 SC 86] . In the said case, a departmental inquiry was held against an employee. One of the witnesses against the employee turned hostile. The officer holding the inquiry then left the inquiry, gave evidence against the employee and thereafter resumed to complete the inquiry and passed the order of dismissal. This Court quashed the order of dismissal by holding inter alia that the rules of natural justice were grievously violated.

11. In the instant case, charge No. 12 states that a particular sum on account of amalgamated fund for the month of December was given to the appellant by Shri Maru Ram who was teacher in charge of the amalgamated fund. In the inquiry committee comprising three members, the said Shri Maru Ram was taken as one of the members and he himself deposed to establish the said charge No. 12 and thereafter again joined the inquiry committee and submitted a report holding the appellant guilty of some of the charges including the said charge No. 12. Shri Maru Ram was interested in establishing the said charge. From the charge itself, it is apparent that he had a predisposition to decide against the appellant. It is really unfortunate that although the appellant raised an objection before the inquiry committee by clearly indicating that the said Shri Maru Ram was inimical towards him and he should not be a member in the inquiry committee, such objection was rejected on a very flimsy ground,



namely, that since the said Shri Maru Ram was one of the members of the Managing Committee and was the representative of the teachers in the Managing Committee it was necessary to include him in the inquiry committee. It is quite apparent that the inquiry committee could have been constituted with other members of the Managing Committee and the rules of the inquiry are not such that Shri Maru Ram being teachers' representative was required to be included in the said inquiry committee so that the doctrine of necessity may be attracted. If a person has a pecuniary interest, such interest, even if very small, disqualifies such person. For appreciating a case of personal bias or bias to the subject-matter the test is whether there was a real likelihood of a bias even though such bias has not in fact taken place. De Smith in his Judicial Review of Administrative Action, (1980) at page 262 has observed that a real likelihood of bias means at least substantial possibility of bias. In R. v. Sunderland Justices [(1901) 2 KB 357, 373] it has been held that the court will have to judge the matter as a reasonable man would judge of any matter in the conduct of his own business. In R. v. Sussex Justices [(1924) 1 KB 256, 259 : 1923 All ER Rep 233] it has been indicated that answer to the question whether there was a real likelihood of bias depends not upon what actually was done but upon what might appear to be done. In Halsbury's Laws of England, 4th Edn., Vol. 2, para 551, it has been indicated that the test of bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias. The same principle has also been accepted by this Court in Manak Lal v. Dr Prem Chand [1957 SCR 575 : AIR 1957 SC 425] . This Court has laid down that the test is not whether in fact, a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done."

32. Tested on the anvil of the aforesaid judgments, there is merit in the stand of the Petitioner that appointment of Sh. S.S. Sharma as an IO was wholly in violation of principles of natural justice. The undisputed fact that he had taken a decision as member of the Managing Committee to suspend the Petitioner and initiate an inquiry against him, is sufficient to create a suspicion in the mind of any reasonable person that there was a real likelihood of bias or at least a substantial possibility of bias. The strong language used in the



minutes, as referred above, leaves no room for doubt that as an IO he was not acting impartially or that the inquiry was conducted in an unbiased and fair manner. The opinion of Sh. Sharma that Petitioner was guilty of moral turpitude shows that there was a pre-disposition to give a finding against the Petitioner and surely the biasness of the mind would have overshadowed the true merits of the case. For appreciating a case of bias, the test is not always the actual bias but the test is a real likelihood of bias which can be inferred from totality of the circumstances. In my opinion, the apprehension of the Petitioner that the IO was not unbiased at the very start of the inquiry was correct and not unfounded. It is trite that bias vitiates the entire inquiry proceedings and this illegality cannot be cured even if the defence of an employer is that the employee is guilty of a serious or grave misconduct.

33. It is a cardinal principle of law that no one shall be a Judge in his own case (*nemo debet esse judex in propria causa*) and justice must not only be done but must be seen to be done. I would at this stage usefully refer to a decision of this Court in ***Taj Mahal Hotel (supra)***, relevant passages of which are as follows:-

*“16. I am even otherwise unable to accept the contention of the petitioner that bias is required to be established as a fact. It is almost impossible to so establish bias. It is sufficient if there is a real likelihood of bias or bona fide suspicion of bias or substantial possibility of bias. The likelihood of bias is to be looked into in the mind of the party and not in the mind of the inquiry officer. Even if the inquiry officer is impartial but if a right minded person would think, in the circumstances of the case, there was real likelihood of bias on his part, then the inquiry officer could not function as such and if he functions and renders the decision, that decision gets invalidated on the ground of bias. The Court will not inquire whether the inquiry officer, in fact, favoured one side unfairly. Suffice if a reasonable person would think that he did. The Supreme Court in *Indrani Bai v. Union of India*, 1994 Supp (2) SCC 256 has held that when a representation against the impartiality of the*



inquiry officer is made at the earliest requesting a change in the inquiry officer, the authority should have acceded to the request and appointed an inquiry officer other than the one whose objectivity is doubted. That having not been done, the Supreme Court held the inquiry to be vitiated, reiterating that justice should not only be done but also be seen to be done.

17. The established facts in the present case are that the lawyers firm, of which the inquiry officer forms a member of the 'core-team' (as described in the website of the law firm) is the Legal Advisor of the petitioner. The authorization in the industrial dispute wherefrom the present petition has arisen, was filed on behalf of the petitioner on a standard form bearing the name of the inquiry officer as well as Mr. S.K. Bhasin, Advocate who conducted the cross-examination and urged arguments before the Industrial Tribunal. The present writ petition on behalf of the petitioner is filed by the same firm of advocates, the printed Vakalatnama in whose favour also bears the name of the inquiry officer. In the normal course of business, the petitioner which is a large professionally managed company would not have taken the decision of suspending the respondent workmen and charge sheeting them without consulting their Legal Advisors and of whom the inquiry officer formed a part. It can thus safely be assumed that the inquiry officer was first a part of the decision making process which resulted in the respondent workmen being suspended and charge sheeted and after giving the report in favour of the petitioner and against the respondent workmen has been supporting his report, first before the Industrial Tribunal and thereafter before this Court. From the said admitted facts, a case of bias is made out.

18. The Supreme Court in State of Uttaranchal v. Kharak Singh, (2008) 8 SCC 236 has held that domestic inquiries must be conducted bona fide and care must be taken to see that the inquiries do not become empty formalities. It was held that if an officer is a witness to any of the incidents or if the inquiry was initiated on a report of an officer, then in all fairness he should not be the inquiry officer and the task of holding an inquiry should be assigned to some other. Recently, in Biecco Lawrie Ltd. v. State of West Bengal, AIR 2010 SC 142 the said question was again up for consideration. The inquiry officer in this case also was the company lawyer. The Supreme Court Laid down the test of nemo judex in re sua (a man may not be a judge in his own cause) and though upholding the inquiry by the company lawyer, the Supreme Court held that bias arises when the functions of a judge and the prosecutor are combined and it was further held that departmental fraternity and loyalty militates against the concept of fair hearing; conversely where the function of initiation of Inquiry and decision of the Inquiry were discharged by two separate persons, even though affiliated, it was held that no bias is made out.



19. Applying the said test and in view of the admitted facts, I find that the inquiry officer as part of the team initiating the disciplinary proceedings against the respondent workmen had disqualified himself from being the judge (inquiry officer). The inquiry officer in discharge of his duties as a Legal Advisor having advised the successful dismissal of the respondent workmen from service, cannot be seen as impartial in the inquiry proceedings. In the ordinary course of the human behaviour, an Advocate/legal advisor would not allow the legal advice rendered by him to be proved wrong and which would have been the case had the charge not been established against the respondent workmen. Thus not only is the inquiry officer found interested in establishing the charge against the respondent workmen but has thereafter also been found to be consistently supporting the same.

20. Any discussion on “bias” would be incomplete without reference to *Ranjit Thakur v. UOI*, (1987) 4 SCC 611 : AIR 1987 SC 2386. The test of likelihood of bias was held to be the reasonableness of the apprehension in that regard in the mind of the party. The Supreme Court quoted with approval, a passage from the judgment of the Queen's Bench to the effect that the question is not, whether in fact he was or was not biased. The court cannot inquire into that; public policy requires that in order that there should be no doubt about the purity of administration, any person who is to take part in it should not be in such a position that he might be suspected of being biased.

21. Applying the said ratio, a lawyer advising the employer on ways, means and procedure for terminating the services of an employee has to make a choice. Either he can remain such advisor and assist the client in successfully dismissing/punishing the employee or he has to let that function be performed by another and in which case he is entitled to act as an inquiry officer. He cannot be both. Unfortunately in the present case the lawyer/legal advisor of the petitioner has chosen to be both. The objection of the respondent/workmen of bias taken at the very first instance, was thus justified. However, the lawyer acting as the inquiry officer even then persisted with the inquiry. This Court now has no option but to declare the same a nullity or coram non iudice.”

34. The discussion on this aspect will be incomplete without reference to a judgment of this Court in *Managing Committee of the Pinnacle School v. Directorate of Education and Another*, 2022 SCC OnLine Del 2117, where one of the issues *inter alia* raised by the charged officer was that the Principal and the Manager of the School



as well as the Presenting Officer before the IO were part of the DAC which discussed the charges and authorized the Chairman of the Managing Committee to issue the charge sheet. Even in these circumstances, the Court held as under:-

“27. It appears that Mr. K.K. Batra, Manager of the School and Mrs. Gail Demonte, Principal of the School, who were witnesses in the inquiry, and Mrs. Rita Sinha, Teacher Representative who was the Presenting Officer before the Inquiry Officer, were part of the DAC, which discussed the charges, and authorised the Chairman of the Managing Committee to issue the charge sheet. This is as good as approving the charges framed against respondent No. 2. It follows, the very witnesses and the Presenting Officer, who approved the charges against the respondent No. 2 had deposed and conducted the enquiry for the Management in the proceedings, which is clearly untenable in law and contrary to the basic principles of natural justice. No doubt, a new DAC was constituted as shown in paragraph 8 above, replacing the three members, but by that time, the Inquiry Officer had already submitted his report. The new DAC has ratified the appointment of the Inquiry Officer and proceeded to act on the inquiry report as submitted by the Inquiry Officer. The objection of the respondent No. 2 is that after the constitution of the new DAC, it is the new DAC which should have decided the aspect of issuance of charge sheet without acting on the inquiry report already submitted. This submission of respondent No. 2 is appealing as I find that the Inquiry Officer has held the charges 1, 2, 3, 4, 5 and 7 to be proved on the basis of the deposition of the said two witnesses in the inquiry proceedings. That apart, I find that the fact that Mrs. Rita Sinha, Teacher Representative had presented the case of the Management before the Inquiry Officer after being part of the very DAC that issued/framed the charges against the respondent No. 2 is tantamount to her acting as judge and prosecutor at the same time, which is clearly impermissible in law. In this regard, I may refer to the judgment of the Gauhati High Court in Shanta Dutta v. The Silchar Collegiate School, W.P. (C) 2478/2014, wherein it was held as under:—

“Suffice it to say that the respondent authorities by including the presenting officer as one of the members of the disciplinary committee for proceeding against the petitioner has acted contrary to the principles of natural justice thereby causing prejudice to the petitioner.

xxxx xxxx xxxx

Since the presenting officer appointed by the disciplinary authority has been made one of the members of the disciplinary



committee, he has virtually become both the prosecutor and the judge. No man can be a judge in his own cause. There is thus likelihood of bias or a real danger of bias by including the presenting officer as one of the members of the disciplinary committee. Since, the defect in the inquiry held against the petitioner strikes at the root of the matter, a reasonable man can, on the admitted facts of this case, claim that there is real likelihood of bias. To this extent, the disciplinary proceeding against the petitioner in the impugned order emanating therefrom are vitiated. This calls for the interference of this Court.”

28. That apart, the High Court of Kerala in the case of *Sommy Kunjappan v. CBSE, W.P(C) 10054/2015* decided on March 21, 2016 set aside the order of dismissal of the petitioner therein, holding as under:

“4. Only considering the fact that the appellate authority is not properly constituted for reason only of the Presenting Officer, being a member of the disciplinary committee, this Court would set aside Ext.P19 order, leaving open the question of maintainability and also all contention of either parties.”

29. Mr. Khanna has justified the position, by invoking the doctrine of necessity and by referring to Rule 118 of the DSEAR to state the presence of the above three members in the DAC was a necessity. But such a submission is belied by the fact that a new DAC without the three members was in fact constituted, which finally imposed the penalty. It means the new DAC which was constituted after the Inquiry Officer had submitted his report could have been constituted without the three members, at the initial stage itself. Mr. Khanna has relied upon the judgment of Division Bench of this Court Parimal Kumar Dutta (*supra*) in support of his submission. In the said judgment the Division Bench of this Court has upheld the action of the school wherein the Principal concerned, though the member of DAC, had adduced evidence in disciplinary proceedings wherein the Court has justified her presence on the ground of necessity inasmuch as it was the case of the school that the charged employee has confessed before the Principal about the misconduct which was the subject matter of the charge against her.”

35. Therefore, it is as clear as day that Courts have laid great emphasis on abiding by the principles of natural justice of which bias is an essential element and it is equally settled that bias vitiates the entire departmental inquiry. In *Managing Committee of the Pinnacle*

Signature Not Verified *School (supra)*, where the Principal or Manager and the Presenting



Officer were members of the DAC, the Court held that they were disqualified to even act as witnesses, having been party to the discussion and deliberation at the time of framing the charges. The threshold of violation of principles of natural justice in the present case is far higher where the person who is part of the Managing Committee and discusses and deliberates on the show cause notice, the allegations therein and after forming an opinion against the Petitioner that the charges are serious and he is guilty of misconduct, acts as an Inquiry Officer to conduct inquiry into those very allegations. In the considered opinion of this Court, there can hardly be a greater violation of principles of natural justice and the ethos of a fair and transparent inquiry and as rightly argued by learned Senior Counsel for the Petitioner, not only is this a case of likelihood of bias but actual bias. The disqualification of the IO to inquire into the charge sheet issued against the Petitioner goes to the root of the matter and since bias pervades the entire proceedings, the inquiry cannot be sustained in law and this is a ground sufficient to quash the inquiry proceedings and the resultant Inquiry Report and consequential penalty proceedings.

36. School has defended the action on the ground that Sh. S.S. Sharma participated as nominee of Advisory Board and had no personal interest. He retired from the post of ADE (Exam) from DoE and only after his retirement, he was appointed as an IO on 09.04.2010. To my mind, this fact makes no dent in the Petitioner's case, who rightly urges that role of an IO cannot be played by someone who has dawned the hat of taking a decision to suspend the employee and initiate inquiry against him. Clearly by his participation



disqualification and disability to act as an IO. Petitioner is also right in his submission that the School would not have employed him without any financial remuneration and that by itself created a fiduciary relationship between the School and the IO and he was naturally and obviously duty bound and morally obliged to follow the dictates of the School and the inquiry conducted was thus not free from bias.

37. It also needs a mention that immediately on receipt of the letter of appointment of Sh. Sharma as the IO, Petitioner had vide letter dated 19.04.2010 at the very outset represented to the DAC against his appointment on ground of likelihood of bias, pointing out that Sh. Sharma was one of the members of the Managing Committee of the School and was thus not an independent and impartial person to be an IO. Petitioner had expressed his apprehension that there will be no hope of justice if he was to conduct the inquiry. Despite the serious objection taken to the jurisdiction and entitlement of the IO to conduct the inquiry, DAC rejected the request for change of IO on the ground that there was no substantial reasoning available with the Petitioner to seek change of the IO, who was an honest person with integrity to deal with the matter and even if he was a member of the Managing Committee he was a free and independent person and there was no cause to replace him. As held by the Supreme Court and noted above, even a likelihood of bias is enough to vitiate the inquiry proceedings as justice must not only be done but also seen to be done and there can be no two opinions that DAC ought to have changed the IO at that very stage.

38. Objection to the appointment of the IO was also raised by the Petitioner before the DST, but did not find favour with the Tribunal.



Advisory Board of DoE and being member of the Managing Committee in his official capacity, he had no personal interest in the matter. Additionally, DST has referred to the number of hearings before the IO, the large number of questions put by the Petitioner in cross-examination to the Management's witnesses and the volume of the report running into 49 pages. Swayed by the length of hearing and the volume of pages of the report, DST has come to a conclusion that no bias could be imputed to the IO. This Court cannot agree with the view taken by the DST on this aspect. DST has completely overlooked the objection of the Petitioner wherein he pointed out that the IO was a party to a unanimous resolution wherein the allegations against him in the show-cause notice and his response thereto were examined and the Managing Committee of which the IO was a member, had come to a conclusion *albeit prima facie* that he was guilty of the serious misconduct alleged and needed to be suspended and subjected to disciplinary proceedings. As rightly contended by the Petitioner, any person who is party to such a decision cannot have an unbiased mind or expected to do justice, functioning as a judge of his own cause. Seen in this context, the factors heavily relied upon by the DST i.e. volume of the inquiry report, number of hearings, lengthy cross-examination by the Petitioner, etc. are of no consequence and are wholly extraneous factors.

39. Reliance by the DST on the decision of the DAC on this aspect and holding the same to be correct is also misconceived. DST ought to have examined the order of the DAC since Petitioner had objected to the impartiality of the IO at the very start of the inquiry proceedings.

The observation of the DAC that Sh. Sharma was an honest officer with great integrity can hardly be a ground to lend solace to a charged



officer whose conduct is going to be inquired into by a person who is a party to a decision to suspend him and initiate proceedings against him. As held by the Supreme Court, a reasonable permutation of the Latin maxim '*nemo debet esse judex in propria causa*' is that no judge should adjudicate a dispute which he or she has dealt with in any capacity and failure to adhere to this principle creates an apprehension of bias. Existence of an element of bias renders the entire disciplinary proceedings void and the defect cannot be cured at any later stage. The cardinal principle is that the deciding authority must be impartial and unbiased and the test is not whether the bias has affected the proceedings but the test is and must be whether the charged officer reasonably apprehended bias on the part of the IO. In this context, I may refer to the observations of the Bombay High Court in ***Kamla Prasad Shukla (supra)*** that the objective of fair and impartial inquiry must always be protected so that ends of justice are duly sub-served. In cases where a strong likelihood of bias emerges from the facts of the case, it is the statutory obligation of the DAC to substitute, wherever required, the composition of the Inquiry Committee. This Court in ***Sharda Devi Sanskrit Vidyapeeth v. Ganesh Ram Bhatt & Anr., in LPA 388/2019 decided on 14.10.2022***, was dealing with an objection raised against a Manager of the School from being a part of Disciplinary Committee on the ground that he nurtured a bias against the Charged Officer, having issued show-cause notices to him in the past and having filed a criminal complaint against the Charged Officer. The Court held that keeping the principles of natural justice in mind as well as to sub-serve the object of a fair inquiry, especially in the context of apprehension expressed by the Charged Officer and the



Manager himself, it would be in fairness of things that the Manager was replaced. In fact, the Court also directed the Management to ensure that the Disciplinary Committee did not constitute of another person who was a listed witness, to ensure fairness of the disciplinary proceedings. In the wake of these settled principles, the finding of the DST upholding the appointment of Sh. Sharma as the IO, cannot be sustained in law.

40. Since the inquiry proceedings stand vitiated on ground of bias of the IO, this Court need not really delve into the other issues strenuously contested between the parties. However, I may deal with the issue of production of electronic evidence of the PE report, which *albeit* is a procedural one but also touches upon the aspect of bias in conducting the inquiry proceedings and lends support to the case of the Petitioner with respect to bias of the IO.

41. The Charge Memorandum against the Petitioner is predicated on the alleged complaints by eight girl students of Class VIII. In the Imputation of Charges in Annexure-II of the Charge Memorandum, it is recorded that based on the complaints, Petitioner was summoned by the Chairperson of the School on 19.12.2009 in the presence of the Principal and the Manager of the School and when confronted with the serious complaints, Petitioner admitted his mistakes and tendered apology requesting for pardon. It is further stated that a PEC was constituted vide order dated 21.12.2009, which in its report dated 23.12.2009 found the allegations in the complaints to be substantially true. From Annexure-IV to the Charge Memorandum i.e. the list of relied upon Documents, it is evident that the listed documents enumerated CDs/DVDs to prove the 23.12.2009 PE proceedings.



genuineness of the copies of the CDs/DVDs on the ground that there were jumps/skips in timings, lack of clarity in sound, etc. in the recordings, as evident from the order sheets dated 31.08.2010 and 07.09.2010. Petitioner had also approached this Court during the pendency of the inquiry proceedings challenging the same on various grounds including the grievances pertaining to the authenticity of the CDs/DVDs and both parties agreed to raise this issue before the IO, for his verification. The allegation of tampering with the CDs/DVDs was taken up by the IO on 05.10.2010 and the order sheet reflects that the Presenting Officer submitted a certificate issued by M/s Arihant Electrovision, a firm which had installed the DVR at the School. The certificate is to the following effect:

“1. We have installed the Digital Video recorder (DVR) at Cambridge School which records video at motion sensor basis in hard disk. It record multiple video channels at the same time. As a result, the viewer may experience gaps when video is played back. This is a normal occurrence.

2. Audio disturbances may also occur due to external interferences.”

42. Admittedly, the certificate is undated and IO has recorded the submission of the Presenting Officer that the certificate was obtained after the order of this Court on 14.09.2010 though it does not bear any date incidentally. Taking the certificate on record, the IO accepted the secondary electronic evidence as it is without any deliberation on whether it was compliant with the provision of Section 65B of the Evidence Act. Relevant part of the order sheet dated 05.10.2010 is as under:-

“1. a) Just in the beginning of the hearing the C.O. submitted a representation No: NG/2010/146 dated 04-10-2010, addressed to Inquiry Officer, along with the copy of the order of Hon'ble High Court dated 14.09.2010. The copy of this representation was handed over to the Presenting Officer also. Through this representation the



matter of jumps and skipping, present in the CD /DVD, supplied to the C.O. has been raised by the C.O. The Hon'ble High Court has ordered in the last para of the order, as follows:-

"However, both the parties are agreeable to make the said grievance before the Inquiry Officer who shall decide the same on merit after verifying the CDs."

b) The CDs / DVDs (three in Number) containing the proceedings dated 21-12-2009, 23-12-2009 and 18-12-2009 have already been supplied to the C.O., duly authenticated by the Principal of the school, by putting her signatures on the CDs/DVDs with the help of a permanent marker.

c) The original copies of the recording containing the proceedings of preliminary Inquiry Committee dated 21-12-2009 and 23-12-2009 were displayed in the presence of C.O., D.A., P.O. and I.O. on 12.07.2010, and the same were recorded in the Daily Order Sheet No.10 (dated 12.07.2010) in para No. 11. The C.O. checked the jumps present in the DVDs from his record, having on a paper with him. He (C.O.) was satisfied with the contents of the DVDs provided to him are the same.

d) The original copy of the recording containing the proceedings of 18-12-2009 was displayed on 07-09-2010 in the present of CO., D.A., P.O. and I.O. After perusal / screening of the CD/DVD the C.O. submitted his observations regarding the jumps present in the original copy of the recording as well as in the copy supplied to the C.O. (Daily Order Sheet No.16 dated 07.09.2010, para No.2)

e) From the above stated facts, it is evident that the copies of the proceedings supplied to the C.O. are the true copy of the original recordings made available by the school. Regarding the jumps, present in the original recording as well as in the CD/DVD, supplied to the C.O. is concerned, it is a matter of record. When the jumps are present in the original recording nothing can be done.

f) The P.O. is directed to submit the technical reason, due to which, these jumps are present in the original recording.

g) In this regard the P.O. submitted a certificate issued by M/s.ARIHANT ELECTROVISION, C-3/129, Sector - 11, Rohini, Delhi – 110 085, who has installed the Digital Vedio Recorder (DVR) at Cambridge School, which describes regarding the gaps in the recording and audio disturbances. According to this agency this type of disturbances are a normal occurrence. The P.O. brought out that this certificate was obtained from M/s.ARIHANT ELECTROVISION after the verdict of the Hon'ble Court dated 14.09.2010, though this certificate does not bear any date incidentally. The certified copies of this certificate are being provided to I.O. and C.O.



h) Thus the Inquiry Officer took the decision, to accept the recording, as it is."

43. In the final Inquiry Report dated 01.02.2011, the IO evaluated the evidence in the form of CDs/DVDs. In paragraph 18 of the report, IO has taken note of three different CDs/DVDs containing three incidents/events dated 18.12.2009, 21.12.2009 and 23.12.2009. Insofar as the CD/DVD pertaining to the proceedings of PEC conducted on 23.12.2009 is concerned, the IO notes that two prosecution witnesses, who were members of PEC have verified/ testified during the evidence that there was no difference in the actual proceedings and those recorded in the CDs/DVDs. Petitioner raised the objection of the CDs/DVDs being doctored and tampered before the DST also and while dealing with the said argument, as the impugned order reflects, the DST merely extracted the order sheet dated 05.10.2010 and came to a conclusion that the decision of the IO with regard to the genuineness of the CDs/DVDs is correct. The order to this extent reads:

"24. In these circumstances, this Tribunal is of the opinion that decision of the I.O. with regard to the genuineness of the CDs is correct."

44. In the entire order, there is no other consideration or discussion on this aspect, save and except, the extract of the order sheet No. 20 dated 05.10.2010. Before this Court, the School has defended this objection raised by the Petitioner on two-fold grounds: (a) strict rules of the Evidence Act do not apply to departmental inquiries and; (b) standard of proof in departmental inquiries is preponderance of probabilities and not proof beyond reasonable doubt and it was enough that the PEC members deposed on the authenticity of the CDs/DVDs by stating that there was no difference in the actual



proceedings and those displayed by the CDs/DVDs. While there can be no dispute on the proposition that the standard of proof in departmental inquiries is preponderance of probabilities unlike a criminal trial, where the requirement is to prove the charge beyond a reasonable doubt, however, this is not an abstract doctrine and has to be viewed and seen in the context of the facts and circumstances of each case. Preponderance of probability does not connote or mean that the Charged Officer can be held guilty of the charges levelled on the basis of an inquiry where there is no evidence or the evidence adduced is inadmissible in law. Presenting officer is required to adduce some evidence to enable the IO to come to a finding that the charge is proved and the evidence so produced can only be in accordance with law.

45. To escape from the rigours of showing that the CDs/DVDs were proved in accordance with the mandate of Section 65B of the Evidence Act, School has argued for the first time before this Court that strict rules of evidence do not apply to departmental proceedings. I may pen down that the Court is intrigued with this defence raised by the School in the present case. Historically seen, the issue of unauthenticated and doctored copies of the CDs/DVDs produced during the inquiry was highlighted by the Petitioner at the inception of the inquiry proceedings. Petitioner had also filed a writ petition wherein he had *inter alia* raised this issue and it is a matter of record that while disposing of the writ petition on 14.09.2010, the Court had recorded as follows:-

“..... Learned counsel for the respondent no.2 is agreeable with the suggestion given by the petitioner.

(c) The last grievance of the petitioner is that the CDs supplied by the respondent are not complete as they are skipped and jumped.



Learned counsel for the respondent disputes the same. However, both the parties are agreeable to make the said grievance before the Enquiry Officer who shall decide the same on merit after verifying the CDs. In view of the above, the writ petition is disposed of.

....”

46. No objection was raised by the School before the Court that provision of Section 65B of the Evidence Act will be inapplicable and the CDs/DVDs can be relied upon overruling the objection to their authenticity. On the contrary, School had consented that the IO would verify the CDs. The matter thereafter proceeded before the IO and a certificate was produced by the School from M/s Arihant Electrovision, the agency which had installed the DVR at the School premises. The IO passed an order on 05.10.2010 accepting the CDs/DVDs as they were. In the final report rendered by the IO on 01.02.2011 also, he analysed and evaluated the evidence adduced through CDs/DVDs and in the appeal before the DST also, the same argument was raised by the Petitioner *albeit* the same was rejected against him. In none of these proceedings, significantly the School ever raised a contention that strict rules of evidence will be inapplicable and therefore it was unnecessary to go into the procedure required to be followed for adducing electronic evidence. In these circumstances, it is not open for the School to even raise this objection before this Court.

47. Even otherwise, examining this contention on merit, *albeit* there cannot be any quarrel with the broad proposition that strict rules of evidence do not apply to departmental proceedings and the standard of proof is preponderance of probability. However, this cannot be interpreted by the School to mean that the IO can rely on doctored



crucial evidence and has led to a major penalty. Principles of natural justice, which are deeply entrenched and embedded in service jurisprudence, especially in matters of inquiries cannot be sacrificed and it was the bounden duty of the IO to ensure that the School established that the CDs/DVDs were not tampered.

48. Examining this aspect, the Supreme Court in ***Moni Shankar v. Union of India and Another, (2008) 3 SCC 484***, held that departmental proceeding is a quasi-judicial proceeding and although provisions of the Evidence Act are not applicable, principles of natural justice are required to be complied with. The Courts exercising power of judicial review are entitled to consider as to whether relevant piece of evidence has been taken into consideration and irrelevant facts excluded therefrom. Inference on facts must be based on evidence which “*meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability.*”

49. Recognition of the principle that if the evidence against a delinquent employee is based on electronic evidence, the burden of proof lies on the employer is also found in the judgment of the Madras High Court in ***The Registrar, University of Madras v. H. Aminur Rahman*** in ***W.A. No. 2784/2012 decided on 23.11.2017***, where the Court held that a staff cannot be thrown out of the institution solely based upon the CD which is admittedly and indisputably edited and dubbed or otherwise based on the edited electronic evidence. It was observed that the disciplinary proceedings initiated based on



of the disciplinary proceedings. To the same effect is the judgment of the Patna High Court in ***Bharat Prasad Yadav v. State of Bihar and Ors.*** in ***Civil Writ Jurisdiction Case No. 18331/2019 decided on 12.07.2021***, where the Court held that the departmental proceedings will be governed by the principles laid down by the Supreme Court in ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors.***, (2020) 7 SCC 1, where the Supreme Court highlighted that a certificate required under Section 65B(4) of the Evidence Act is a condition precedent to the admissibility of evidence by way of electronic record. The Supreme Court in ***Arjun Panditrao Khotkar (supra)***, in turn, placed reliance on the judgment of the Supreme Court in ***Anvar P.V. v. P.K. Basheer & Others***, (2014) 10 SCC 473 and further held that oral evidence in place of such certificate cannot possibly suffice as Section 65B(4) of the Evidence Act is a mandatory requirement of law.

50. In ***Anvar P.V. (supra)***, the Supreme Court held that proof of electronic record is governed by the procedure prescribed under Section 65B of the Evidence Act, which is a complete code in itself and being a special law, the general law under Sections 63 and 65 thereof has to yield. An electronic record by way of secondary evidence shall not be admitted unless requirements of Section 65B are satisfied and therefore in case of CD/VCD/chip, etc. the same shall be accompanied by certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record is inadmissible. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof



electronic record is duly produced in terms of Section 65B, would the question arise of its genuineness and in that situation, resort can be had to an expert opinion. It was also observed that Evidence Act does not contemplate or permit the proof of electronic record by oral evidence if requirements of Section 65B are not complied with, as the law now stands in India.

51. This Court is conscious of the observations of the Supreme Court that strict rules of evidence will not apply to departmental proceedings, however, as noted above, where the evidence sought to be pitched against the Charged Officer is electronic evidence and is alleged to be doctored, tampered or unauthenticated, principles of natural justice require that the same must be supported by a certificate tendered in accordance with the principles of Section 65B. Any other conclusion, in my view, would lead to a finding of guilt and a penalty against the Charged Officer predicated on an electronic evidence, which in a given case, could be edited or tampered with to suit the employer and the genuine device may contain evidence pointing to the innocence of the charged employee. Conscious of this position of law, the School had taken the trouble of producing the certificate in support of the CDs/DVDs, after giving consent before this Court in the earlier round of litigation. In this backdrop, it was essential for the Inquiry Officer to have insisted on a certificate being tendered in accordance with Section 65B of the Evidence Act or at least a certificate which would have identified the electronic record, the manner in which it was produced, etc. following the underlying principles of Section 65B(2) and (4) of the Evidence Act.

52. Perusal of the certificate placed before the IO shows that the same is undated and makes no reference to the copies of the



CDs/DVDs produced as secondary evidence and only refers generally to the DVR installed by the agency in the School and contains an even more generalised and vague statement that the viewer may experience gaps when video is played back. This certainly casts a shadow of doubt on the authenticity of the CDs/DVDs which were admittedly copies and did show jumps/skips when they were played during the proceedings. Even applying the principle of preponderance of probability, it cannot be said that the threshold was met by production of secondary evidence without any authentication. List of Relied upon Documents in Annexure-IV with the charge sheet shows that the PEC Report was produced in the form of electronic evidence only.

53. The matter can be seen from another angle also. As a matter of fact, none of the girl students/complainants appeared in the departmental inquiry and nor was the parent of the girl who initially complained, made a witness. Reliance is therefore entirely on the statements of the girl students during the PE, which were given in the absence of the Petitioner, who, even if the PEC Report was to be believed, was called after the girl students had left. Therefore, insofar as the Petitioner is concerned, he was totally unaware of what the girl students had actually stated and the best piece of evidence, one way or the other, were the CDs/DVDs, which cannot be relied upon being inadmissible in evidence. This assumes relevance in view of the consistent stand of the Petitioner that he was falsely implicated for raising his voice against non-payment of arrears of salaries under the 6th CPC recommendations and the motivation of the girl student to level false allegations since she was caught cheating in the maths test by the Petitioner. In this backdrop, the truth and veracity of the



be established through the CDs and the burden to prove their authenticity was heavy on the School, which it has failed to discharge.

54. Insofar as the DST is concerned, on the question of evidence, it has relied on a judgment of the Supreme Court in *Avinash Nagra v. Navodaya Vidyalaya Samiti and Others*, (1997) 2 SCC 534 and of this Court in *Guru Harkrishan Public School v. S.K. Shukla*, 2012 SCC OnLine Del 1719, but did not examine the issue of lack of evidence at all. The judgment in *Avinash Nagra (supra)* is wholly inapplicable to the present case. In the said case, the Appellant was working on temporary basis and was terminated in terms of his letter of appointment giving salary in lieu of notice on the ground of improper conduct. One of the questions before the Supreme Court was whether the Appellant was entitled to a full-fledged inquiry and opportunity to cross-examine the girl students who had given statements against him. The Respondent in the said case was governed by the CCS (CCA) Rules, 1965 but in order to protect the modesty of the girls and prevent their exposure at inquiries in relation to conduct of a teacher resulting in sexual harassment of the girl students, a Notification was issued dispensing with regular inquiry in case of temporary employees whose integrity and conduct was doubtful but it was difficult to prove the same with sufficient documentary evidence. The Notification also postulated that where the Director is of the opinion that it is not expedient to hold regular inquiry on account of serious embarrassment to the student, the regular inquiry could be dispensed with by the Competent Authority. It is in this backdrop that the Supreme Court emphasizing on the need to protect a girl child concluded and held that there was no illegality in terminating the



he was only a temporary employee. It also needs a mention that in the said case, copies of the complaints were provided to the Appellant and he was given an opportunity to explain his conduct. In the present case, Petitioner was a permanent employee with 26 years of service and was entitled to a fair and impartial inquiry, once the School took a conscious decision to hold one.

55. The judgment of this Court in *Guru Harkrishan Public School (supra)* was also wrongly relied upon by the DST. In the said case, the Division Bench found from the evidence on record that inspite of having knowledge that officials of the DoE were consuming alcohol on the train in the presence of girl students and had made sexual advances while on way to an excursion, no action was taken by the Charged Officer. In this backdrop, the Court held that the Respondent, entrusted with the safety of the girl students, was guilty of dereliction of duty and there was no infirmity with the view of the Disciplinary Authority that it was harmful for the girl students to continue him in service.

56. Petitioner canvassed that the constitution of the DAC was illegal in view of the appointment of Sh. Purang, who was not the Manager of the School. This argument, in my view, cannot be accepted. Even if it is assumed that Ms. Malik was the Manager of the School, in view of the admitted fact that she was a witness for the Management, she could not be a part of the DAC as this would have been a direct violation of the principles of natural justice as held by this Court in *Managing Committee of the Pinnacle School (supra)*. Petitioner calls upon this Court to hold that in the absence of Ms. Malik, the School should have appointed a Manager of another School



of Rules, 1973 pertaining to Head of the School. This analogy cannot be imported as there is no such mandate in the Rule and had the Legislature intended that a similar position be taken for a Manager, Rule 118 would have so read. No doubt, it may have been an ideal position to have appointed a Manager of another School to constitute the DAC, but the failure to do so, in the absence of a mandate of law, cannot lead to a conclusion that the DAC was illegally constituted. The School has rightly relied on the doctrine of necessity in this context as Ms. Malik was a witness in the inquiry and doctrine of necessity is a well-known and recognized principle enunciated by the Supreme Court in *Election Commission of India (supra)* and *J. Mohapatra & Co. and Another v. State of Orissa and Another, (1984) 4 SCC 103*.

57. Learned counsel for the School has also contended that even assuming that there are technical infirmities in the inquiry, School be permitted to hold the inquiry again from the stage the infirmity has crept in. This Court is conscious that ordinarily, where departmental inquiries are set aside on grounds of procedural lapses or technicalities, employer is permitted to hold a *de novo* inquiry or continue the same from the stage the irregularity has set in. However, to my mind, this principle cannot *ipso facto* apply to the present case for manifold reasons. Firstly, bias of an IO is not a matter of mere technicality but is a serious issue which has vitiated the present inquiry. Secondly, it is not a case where the issue of bias was raised by the Petitioner for the first time before the DST or this Court as an afterthought. From the very inception of the inquiry, Petitioner had written to Disciplinary Authority that the IO appointed to conduct the



impartial inquiry. Competent Authority was clearly conscious of the fact that the IO appointed was party to the decision leading to the suspension of the Petitioner and it should have ensured that the IO was replaced. While this was not done by its own initiative, the Disciplinary Authority did not take a corrective action even when this issue was raised by the Petitioner. The result of this casual approach is that Petitioner has suffered an inquiry conducted by a biased Inquiry Officer and at this stage to put the clock back by 14 years and subject the Petitioner to further harassment and turmoil is neither fair nor justified and would amount to giving a premium to the illegal acts of the School. Petitioner has reached the age of superannuation in the year 2020 and, save and except, the alleged incident, which also has not been established by any cogent evidence, he had 26 long years of unblemished service in the School. Even otherwise, reopening the chapter at this stage would be a futile exercise for the reason that even in the earlier inquiry neither the girl students nor their parents were witnesses and the electronic evidence of the PE proceedings was also tampered and doctored. After 14 years today it is anybody's guess if any further evidence would come and it would be travesty of justice to subject the Petitioner to a fresh inquiry in the facts and circumstances of this case.

58. For all the aforesaid reasons, the impugned order dated 29.11.2016 passed by the learned DST in Appeal No.17/2011 cannot be sustained and is accordingly quashed and set aside. Further, the penalty orders dated 14.03.2011 and 18.03.2011 are also quashed and set aside being wholly illegal. Petitioner is stated to have attained the age of superannuation on 29.08.2020 and therefore, no order can be



quashing the orders imposing the penalty of “removal from service”, Petitioner is entitled to notional reinstatement from 14.03.2011 till the age of superannuation with continuity of service and other consequential benefits. Insofar as the back wages and other allowances for the period between the penalty and superannuation are concerned, decision shall be taken by the Managing Committee of the School under Rule 121 of the Rules 1973 within 12 weeks from today. Needless to state, a reasoned and speaking order shall be passed, which shall be communicated to the Petitioner, who will be at liberty to take recourse to legal remedies in case of any surviving grievances.

JYOTI SINGH, J

JULY 17, 2023
Shivam/kks