



2024:DHC:4848



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 30.04.2024

Judgment pronounced on: 01.07.2024

+ W.P.(C) 1094/2011 & CM APPL. 2329/2011, CM APPL. 36639/2021

NARESH KUMAR TREHAN

..... Petitioner

versus

UNIVERSITY OF DELHI AND ORS.

.... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. K.K. Rai, Senior Advocate with Mr. Piyush Sharma, Mr. Anuj Kumar Sharma, Mr. Anshul Rai, Ms. Sreshi Chatterjee, Ms. Medha Tandon and Mr. Shivam Dubey, Advocates

For the Respondents : Ms. Seema Dolo, Advocate for R-1/DU. Ms. Beenashaw N. Soni, Advocate with Ms. Mansi Jain and Ms. Ann Joseph, Advocates for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. This is a writ petition under Article 226 of the Constitution of India, 1950 seeking *inter alia* the following reliefs:-

“(i) to issue a writ or other writ, order or directions, quashing and setting aside the order of termination LBC/2225/10 dated 21.12.2010,

(ii) to issue a writ or other writ, order or directions, quashing and setting aside the Conditions/Decision Nos. 1, 2, 3, 4 and 8, contained

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in the impugned Memorandum No. LBC/389/2004, dated 30.6.04, issued to the petitioner, by Respondent No. 2 - College,

(iii) to issue a writ or other writ, order or directions, quashing and setting aside the MEMORANDUM No. LBC/470/10 dated 23.7.10 and MEMORANDUM No. LBC/1245/10 dated 1.9.2010, issued to the petitioner, by Respondent No. 2 - College,

(iv) consequently, to issue writs of mandamus, or other writ, order or directions in the nature of mandamus, directing Respondent No. 2 to promote the petitioner as Senior Assistant w.e.f. 4.8.04, and as S.O. Accounts w.e.f. 1.1.2008 with all consequential benefits both monitory or otherwise,

(v) direct the Respondents to release the petitioners Salary and arrears which has been illegally withheld by the Respondents for the period form June 2002 to 2004 which has not been disbursed to him till now even after several representations made to the Respondents and various other authorities.

(vi) To pass an order for the fixation of salary in the higher grade of 5000-150-8000 from the date of 4.08.04 and

(vii) to pass such order or orders as may be deemed fit and proper in the interests of justice.”

2. Facts of the case germane to the dispute and as culled out from the petition are as under:

(a) The petitioner was appointed as a Junior Assistant-cum-Typist in the respondent no.1/University w.e.f. 09.08.1988. He was subsequently promoted as an Assistant w.e.f. 01.07.1997 and as a Senior Assistant w.e.f. 31.08.2005, which post he continued to hold till the termination of his service on 21.12.2010.

(b) The petitioner was a heart patient and was also suffering from depression and applied for one month's Medical Leave w.e.f. 03.03.2002, which was granted.

(c) As the condition of the petitioner's health continued to remain poor, his wife sent a telegram dated 18.04.2002 to the Principal of the

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respondent no.2/College, requesting for extension of the leave granted to the petitioner.

(d) On 19/22.04.2002, a Memorandum was issued to the petitioner by the respondent no. 2/College to the effect that as the Medical Leave granted to him had expired on 03.04.2002 and nothing had been heard from him thereafter, his absence from duty was being viewed seriously and as unauthorized.

(e) As the petitioner was in no position to respond to the abovementioned Memo dated 19/22.04.2002, his wife replied thereto, *vide* her letter dated 30.04.2002, addressed to the Acting Principal of the respondent no. 2/College, intimating him that the petitioner was still not well and had been advised complete bed rest by the doctor. In the circumstances, extension of the Medical Leave till 31.05.2002 was requested.

(f) On 03.05.2002, Memo No. LBC/8532/02 was issued to the petitioner by the Acting Principal of the respondent no. 2/College directing him to explain within three days as to why disciplinary action be not taken against him for willful absence from duty without leave since 04.04.2002. The same was responded to by the petitioner's wife on 10.06.2002, requesting for grant of extension of Medical Leave.

(g) On the same day i.e. 10.06.2002, the respondent no.2/College addressed Letter No. LBC/153/02 to the petitioner intimating him that for want of accompanying Medical Certificates, the Medical Leave as requested *vide* letter dated 30.04.2002 could not be granted to him and therefore, he was being treated as absent from duty without permission.

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Further observing that the petitioner had not responded to the Memorandum dated 03.05.2002 addressed to him, he was alleged to be guilty of insubordination and disobedience and the matter was therefore being referred to the respondent no.3/Governing Body of the College for necessary disciplinary action.

(h) With effect from June 2002, the respondent no. 2/College stopped paying salary to the petitioner. In response to the said aforesaid conduct of respondent no. 2, wife of the petitioner wrote another letter on 08.07.2002 to respondent no. 2 along with the Medical Certificate issued by Dr. Susheel Garg who had attended the Petitioner and had advised rest till 03.09.2002.

(i) On 21.08.2002, Memorandum No. LBC-8606/02 was issued to the petitioner by the respondent no. 2/College, directing him to report to the Chief Medical Officer (hereinafter referred to as 'CMO') within 7 days and to carry with him all documents, prescriptions etc., relating to his illness.

(j) It is the case of the petitioner that he was not aware of any Memo dated 21.08.2002 as he had not received the same. It was only on 19.09.2002 that the petitioner became aware of the Memo dated 21.08.2002, when he had a telephonic conversation with the then Acting Principal of respondent no.2/College. The petitioner immediately went to the office of CMO for his check up as directed. The CMO issued a Certificate dated 30.09.2002 certifying that the petitioner was found fit to resume his duties from that date. The petitioner joined duty on the same day, i.e. 30.09.2002, and submitted his Joining Report along with the Medical Certificate dated 30.09.2002.

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(k) That the respondent no. 2 issued another letter dated 08.10.2002 to the petitioner opining that the Fitness Certificate dated 30.09.2002 submitted by him had no value without accompanying Medical Certificates and that the Medical Certificate produced by him for the period from 04.09.2002 to 18.09.2002 was not acceptable in view of the decision of the Governing Body. It was, therefore, stated in the said letter that the Joining Report dated 30.09.2002 of the petitioner was being treated as cancelled and his case was reported back to the Governing Body for its decision, and that the petitioner therefore would not be considered as on duty.

(l) In these circumstances, the petitioner addressed a Legal Notice dated 18.10.2002 to the Principal of the respondent no. 2/College, objecting to the College's letter dated 08.10.2002 and the non-payment of salary to the petitioner from June, 2002 onwards.

(m) The petitioner was forced to approach this Court by way of W.P.(C) No. 2499/2003 which was dismissed *vide* order dated 24.04.2003. Consequently, the petitioner visited the CMO, WUS Health Centre.

(n) On 09.05.2003, a Show Cause Notice No. LBC/133/03 was issued to the petitioner by the respondent no. 2/College communicating to him the serious view taken by the Governing Body regarding flouting of its decision because of the petitioner not reporting to the CMO, WUS Health Centre. It was further intimated that a serious decision has been taken for initiating disciplinary action against him. The petitioner filed his reply on 13.05.2003.

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(o) On 08.07.2003, the petitioner suffered a motor accident, as a result of which he sustained severe head injury and had to be admitted in the hospital. The said accident was intimated to the respondent no.2/College alongwith copies of FIR, hospital discharge slip, medical prescription, advice for rest and MRI Report of the petitioner.

(p) It is the case of the petitioner that the respondent no. 2 with *malafide* intention issued another Show Cause Notice No. LBC/610/03 dated 26/27.08.2003 to the petitioner. The same was duly replied by the petitioner on 29.08.2003.

(q) On 30.06.2004, a Memorandum No. LBC/389/04 was issued to the petitioner by respondent no. 2/College communicating to him the decision of the Committee as approved by the Governing Body, to impose minor penalties of Censure and debarment from promotion for 2 years as well as certain other conditions against the petitioner. He filed his response to the aforesaid Memo vide letter dated 07.07.2004. Subsequently, vide letter dated 15.07.2004, the petitioner accepted all the conditions as imposed by the impugned Memo dated 30.06.2004 and tendered his apology.

(r) Thereafter, the petitioner filed various representations to the respondent no.2/College seeking permission to join duty and for payment of his salary due from June, 2002 onwards. In the meanwhile, the petitioner was promoted as Senior Assistant w.e.f. 31.08.2005 on which date he joined duty on the said post.

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(s) Again, on 10.04.2006, Memorandum No. LBC/11/06 was issued to the petitioner alleging that he had defaulted in the leave work assigned to him earlier.

(t) After numerous representations to settle his issue, on 08.05.2009, the petitioner received a letter from the respondent no. 2 informing him about the decision of the Governing body to constitute a Committee to decide the issue of the petitioner as per the directions of this Court in the order dated 30.01.2009 passed in W.P.(C) 6730/2007 *vide* which the petition was dismissed as withdrawn with liberty to approach again if the grievance of the petitioner is not redressed.

(u) Again on 21/22.04.2010, a Memo was issued to the Petitioner to explain as to why he has not taken the work of Dealing Assistant as per the decision of the Governing Body dated 27.11.2009. Thereafter, a reminder dated 23.04.2010 was also issued. Petitioner replied to both the aforesaid Memos *vide* letter dated 27.04.2010.

(v) The respondent no. 2 issued the impugned Memo dated 23.07.2010 proposing to hold an inquiry against the petitioner and he was asked to file his written Statement of Defence and also to state whether he desired to be heard in person. The Petitioner submitted his reply within time on 06.08.2010 denying all the allegations, and also submitted an additional reply dated 19.08.2010 replying to all the Articles of Charge and claiming an opportunity of personal hearing.

(w) On 01.09.2010, another impugned Memo was issued against the petitioner. In these circumstances, the petitioner was not left with any other option but to file writ petition bearing W.P.(C) 6795/2010.

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Immediately thereafter, vide the letter dated 07.10.2010, it was informed to the petitioner that an Inquiry Officer (hereinafter referred to as “IO”) has been appointed.

(x) It is the case of the petitioner that he regularly and diligently appeared before the IO with his advocate and replied to each and every allegation with supporting documents. The IO gave his Report on 18.11.2010 alongwith a recommendation for dismissal of the petitioner from service.

(y) On the basis of the Inquiry Report, the Petitioner was issued a Show Cause Notice dated 25.11.2010. It is the case of the petitioner that being aware of the bias and prejudice against the Petitioner, he filed an application CM No. 21697/2011 in the W.P.(C) No. 6795/2010 with a prayer to restrain the Respondents from passing any orders till the pendency of the writ petition. However, *vide* order dated 20.12.2010, the said application was dismissed as withdrawn with liberty to file a reply to the Show Cause Notice.

(z) It is the case of the petitioner that the Petitioner immediately filed his Reply to the Show Cause Notice on 21.12.2010. However, the respondents without giving any consideration to the reply, passed the impugned order dated 21.12.2010 hurriedly and terminated the petitioner from service in the most illegal and *malafide* manner. Hence, the present writ petition was filed challenging the said termination and seeking other reliefs.

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CONTENTIONS OF THE PETITIONER

3. Mr. K.K. Rai, learned Senior Counsel appeared for the petitioner and addressed the following arguments.

4. The first attack of Mr. Rai, learned Senior Counsel is on the charges leveled against the petitioner, which according to him, were stale charges and in accordance with the Supreme Court judgments, such charges would not be maintainable. He submits that the charges pertain to the period commencing from the year 1994-1999 through till 2010. According to learned Senior Counsel, the clubbing of old and stale charges is impermissible and as such, the Articles of Charge as framed and the inquiry proceedings conducted by the respondents would be vitiated. Learned Senior Counsel relies upon the judgments of the Supreme Court in ***State of Madhya Pradesh vs. Bani Singh & Anr.***, reported in **1990 (Supp) SCC 738** and ***P.V. Mahadevan Vs. MD, T.N. Housing Board*** reported in **(2005) 6 SCC 636** for such proposition.

5. Learned Senior Counsel submits that the petitioner was issued two Charge Memorandums dated 23.07.2010 and 01.09.2010 whereby the stale charges were mixed and leveled against the petitioner. He, in fact, submits that those issues which were not part of the Charge Memos were also made part of the inquiry proceedings, particularly the statement of the witnesses examined on behalf of the respondent/College. He submits that it is a settled law that where the inquiry proceedings proceed on issues and aspects other than those on which the Articles of Charge and Statements of Imputation have been furnished to the Charged Officer, the inquiry proceedings itself are vitiated. Learned Senior Counsel took this Court through the Inquiry Report and read the same in detail to demonstrate as to how the Inquiry Officer has relied upon

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the extraneous issues and statements of the witnesses to record a finding of guilt against the petitioner.

6. In order to buttress the aforesaid argument, learned Senior Counsel read the statements of Mrs. Meenaxi Phukan, the former Principal as also of Dr. (Mrs.) Karuna Kaushik, the then Principal, to submit that the said statements referred to issues which are absolutely alien and extraneous to the Articles of Charge. He submits that in such a case, the Inquiry Report itself would become vitiated for the reason that the petitioner was never put to notice on such issues and had no reasonable or a fair opportunity to defend himself. In that short argument itself, learned Senior Counsel submits that the inquiry proceedings as also the impugned order of the Disciplinary Authority (hereinafter referred to as “DA”) is vitiated and ought to be quashed.

7. Learned Senior Counsel also vehemently attacks the inquiry proceedings on the ground that the same were violative of Rule 70 (23) of the University Non-Teaching Employees (Terms and Conditions of Service) Rules, 1971 (hereinafter referred to as the “Rules”). He submits that in violation of the sub-rule 23 of Rule 70, there is neither any finding recorded by the IO in respect of each Article of Charge, nor any reasons recorded therein for holding all the Articles of Charge as proved against the petitioner. He also submits that equally, there is no assessment of evidence as stipulated in the said Rules. Rather, he submits that there is no evidence against the petitioner. In such circumstances, the inquiry proceedings, according to learned Senior Counsel, are wholly unlawful, unconstitutional and ought to be quashed. Another infraction resulting in violation of principles of natural justice, according to learned Senior Counsel, was in respect of non-affording of an opportunity to the petitioner to cross examine the witnesses of the



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respondent/College. He submits that the witnesses, namely, the Former as also the then Principal who were examined by the IO were not permitted to be cross examined by the petitioner in order to disprove the allegations leveled against him and to simultaneously establish his innocence. More so, when the entire conclusion in the Inquiry Report is based upon sole consideration of these statements of the aforesaid two witnesses. According to learned Senior Counsel, this violation rendered the petitioner defenseless and as such, the said inquiry proceedings tantamount to sham proceedings and ought to be quashed. He also adds that even in the file pertaining to the inquiry proceedings, there is no statement of any of the witnesses, thus creating a doubt as to whether any witnesses were at all examined by the IO. More so, if they were, there is no reason as to why the petitioner would not be furnished with a copy of the statements of the witnesses, nor any reason as to why the petitioner would be deprived of cross examining the said witnesses. According to learned Senior Counsel, these are serious violations of principles of natural justice. Reliance is placed on judgements of the Supreme Court in *State of Mysore & Ors. Vs. Shivabasappa Shivappa Makapur* reported in AIR 1963 SC 375 and *State of Uttar Pradesh & Ors. vs. Saroj Kumar Sinha* reported in (2010) 2 SCC 772.

8. Learned Senior Counsel also submits that the IO is a fact finding authority and does not have any jurisdiction or authority to recommend a particular punishment against the Charged Officer. He submits that in the present case, violating the said norm, the IO had, in fact, recommended the penalty of dismissal of the petitioner from the services. By relying upon the judgement of the Supreme Court in *State of Uttaranchal & Ors. Vs. Kharak Singh* reported in (2008) 8 SCC 236, it is submitted that awarding of an

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appropriate punishment being the exclusive jurisdiction of the DA, the IO had exceeded his limit by recommending a penalty of dismissal from service against the petitioner.

9. That apart, learned Senior Counsel submits that consequent upon furnishing of the Inquiry Report, the respondent/College issued a Show Cause Notice dated 25/26.11.2010 directing the petitioner to furnish his explanation within ten days. He submits that the petitioner had approached this Court *vide* the CM APPL. 21697/2010 in the petition bearing W.P.(C) 2795/2010 captioned “*Naresh Kumar Trehan vs. University of Delhi & Ors.*”, which was disposed of on 20.12.2010 permitting the petitioner to withdraw the application with permission to pursue his remedy in accordance with law. He categorically points out that while this Court was dealing with the said application, the counsel for the University of Delhi was also present and as such, the same was in knowledge of the respondents. He submits that in accordance with such directions, the petitioner had furnished his Reply/Statement of Defense on 21.12.2010 to the Governing Body of the respondent no.2/College.

10. Learned Senior Counsel submits that despite having submitted his Reply/Representation/Statement of Defense on 21.12.2010, by way of the impugned order dated 21.12.2010, the respondent no.3/Governing Body i.e., the DA, had, without even considering his defence, terminated the services of the petitioner on the very same day.

11. Learned Senior Counsel referred to the impugned order of termination passed by the DA dated 21.12.2010 and submitted that the same has been passed without any reasons and as such, is a non-speaking order. He submits that the impugned order violates the settled law that any administrative order

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entailing drastic civil consequences upon an employee shall have to contain valid and cogent reasons for such decision. He submits that the impugned order is apparently bereft of any reasons, much less cogent ones. Reliance is placed on the judgement of the Supreme Court in ***Roop Singh Negi Vs. Punjab National Bank & Ors.*** reported in (2009) 2 SCC 570 and of this Court in ***Shri Jugal Kishore Sharma vs. Union of India & Ors.***, reported in 1981 SCC OnLine Del 72, to substantiate the aforesaid contentions.

12. Learned Senior Counsel draws attention to a relevant aspect which, according to him, is crucial. In that, the respondent/College in its counter affidavit had candidly admitted that the Governing Body did not consider the Reply/Statement of Defence of the petitioner since the same was belatedly submitted by the petitioner to it, i.e., on 21.12.2010. If that were so, learned Senior Counsel submits that there has been a blatant violation of principles of natural justice. Since the Reply/Statement of Defence was admittedly not considered, it is apparent that the DA has only gone by the Report of the IO, which is not only one-sided and biased but also based on absolutely no evidence. In such circumstances, according to him, the inquiry proceedings concluding with the impugned order dated 21.12.2010 passed by the DA terminating the petitioner from services is wholly unconstitutional, violative of the rights of the petitioner and of the principles of natural justice and ought to be quashed and set aside. In the aforesaid circumstances, learned Senior Counsel submits that the entire inquiry proceedings alongwith the impugned order dated 21.12.2010 passed by the DA ought to be quashed and set aside and the petitioner be reinstated with all consequential benefits.

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CONTENTIONS OF THE RESPONDENTS

13. *Per Contra*, Ms. Beenashaw N. Soni, learned counsel for the respondent no.2 and 3/College vehemently opposed the submissions made by the petitioner. According to Ms. Soni, the present writ petition is not even maintainable in its present form. She submits that admittedly, the petitioner is not a Teacher and is a Non-Teaching Staff of the respondent/College. She submits that in that view of the matter, the grievances of the petitioner, if any, are circumscribed under the Industrial Disputes Act, 1947. According to Ms. Soni, the petitioner being a Non-Teaching Staff would fall within the definition of “*workman*” as per the provisions of Section 2(s) of the Industrial Disputes Act, 1947. As such, the present writ petition ought to be dismissed on this ground alone.

14. Learned counsel also vehemently submits that apart from the aforesaid objection, another relevant ground for dismissal of the writ petition would be that there are multiple layers of disputed questions of facts arising in the present writ petition, which according to her, is a settled law, that the same cannot be considered by a Writ Court. She submits that the Industrial Disputes Act, 1947 would cover all the grievances raised by the petitioner and on the ground of disputed questions of fact too, this writ petition is not maintainable before this Court.

15. In order to buttress her arguments on the aforesaid objections, she refers to various paragraphs of counter affidavit filed by the respondent college to submit that the respondents have sufficiently questioned and objected to the maintainability of the petition, both on the ground of alternate and efficacious remedy being available under the Industrial Disputes Act, 1947 as also on the grounds of disputed questions of facts. To substantiate, she relies upon the



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judgment of ***PTI Employees Union vs. Press Trust of India Ltd.***, reported in **2020 SCC OnLine Del 1216**.

16. Ms. Soni next argues that the petitioner was issued a Charge Memo dated 30.06.2004 in respect of misconduct, in response to which the petitioner had, by way of his handwritten letter dated 15.07.2004, tendered an unconditional apology and accepted all the 13 conditions specified in the impugned Memo dated 30.06.2004, upon which the respondent/College had permitted him to continue in service. Despite such actions taken by the respondent/College, the petitioner continued with his misbehaviour and misconduct all through till the impugned Charge Memos were issued to him in the year 2010.

17. On the question of whether the DA i.e., the Governing Body did or did not consider the Reply/Statement of Defense submitted by the petitioner and as permitted by this Court *vide* order dated 20.12.2010 is concerned, Ms. Soni brought to the Court the original Inquiry Records maintained by the respondent/College. Ms. Soni furnished to the Court the copy of the Minutes of the Meeting of the Governing Body held on 21.12.2010 at 3.00 p.m. whereby the petitioner's case was considered as Item 2. By referring to such Minutes, she submits that though the petitioner was given ten days' time to file his reply to the Show Cause Notice dated 25/26.11.2010, the petitioner only furnished his Reply on 21.12.2010. Even then, the Governing Body did consider the Reply so filed, and found it to be unconvincing and it was observed that keeping in view his attitude of willful disobedience and non-performance at desk, the petitioner was found guilty of acts of gross misconduct unbecoming of an employee in terms of Rule 49(1)(c) and 2(v) of

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the University Non-Teaching Employees (Terms & Conditions of Services) Rules, 1971 and as such, the petitioner was terminated.

18. According to Ms. Soni, the Reply filed by the petitioner to the Show Cause Notice was taken note of, considered and once having found unconvincing, an informed decision was taken by the respondent/College. As such, according to her, there has been no violation of principles of natural justice, and the petitioner was afforded full authority and autonomy to appear before the Inquiry Officer, place his defence and thereafter, his representation was considered by the Governing Body which disagreed with his defence and passed the impugned order dated 21.12.2010 terminating the petitioner from service. She submits that there has been no violation of statutory rules, procedure or even the principles of natural justice.

19. Ms. Soni refers to the impugned Charge Memo dated 30.06.2004 whereby 13 conditions were imposed upon the petitioner, to which he had categorically admitted *vide* his apology letter dated 15.07.2004. She submits that one of such conditions was debarment of the petitioner from any promotion for the next two years. She submits that despite the petitioner's written acknowledgment and agreement on record, the petitioner, by way of prayer (iv) of the present writ petition is seeking the same promotion as Senior Assistant *w.e.f.* 04.08.2004 and as S.O. Accounts *w.e.f.* 01.01.2008. This, according to her, is impermissible. It is further submitted that even prayer (v) for release of salary and arrears for the period from 2002 to 2004 cannot be permitted to be raised by the petitioner, as one of the conditions in the Memo dated 30.06.2004, which was accepted by the petitioner, was with regard to treating the period from 2002 to 2004 as Leave without pay and increments.

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Thus, Ms. Soni submits that these prayers cannot be maintained before this Court.

20. Ms. Soni submits that the petitioner had filed 2 other writ petitions in the past with the similar, rather identical prayers as asked for in the present petition which would be barred by the principles of *res judicata*. Learned counsel passed over the bench a comparative chart of the prayers in the said writ petitions, which is reproduced hereunder:

W.P.(C) 6730/2007	W.P.(C) 6795/2010	W.P.(C) 1094/2011
Prayer (i) “to issue a writ or other writ, order or directions, quashing and setting aside the Conditions/Decision Nos.1, 2, 3, 4 and 8, contained in the impugned Memorandum No. LBC 389/2004 dated 30.06.04, issued to the petitioner, by Respondent No.2 – College”	Prayer (i) “to issue a writ or other writ, order or directions, quashing and setting aside the Conditions/Decision Nos.1, 2, 3, 4 and 8, contained in the impugned Memorandum No. LBC 389/2004 dated 30.06.04, issued to the petitioner, by Respondent No.2 – College”	Prayer (i) “to issue a writ or other writ, order or directions, quashing and setting aside the Conditions/Decision Nos.1, 2, 3, 4 and 8, contained in the impugned Memorandum No. LBC 389/2004 dated 30.06.04, issued to the petitioner, by Respondent No.2 – College”
Prayer (ii) “consequently, to issue writs of mandamus, or other writ, order of directions in the nature of mandamus directing Respondent No.2 to promote the petitioner as Senior Assistant w.e.f. 04.08.04 and as S.O. Accounts w.e.f. 1.1.2008 with all consequential benefits both monitory or	Prayer (ii) “to issue a writ or other writ, order or directions, quashing and setting aside the MEMORANDUM No.LBC/470/J dated 23.07.10 and MEMORANDUM No.LBC/1245/10 dated 1.9.2010, issued to the petitioner, by Respondent No.2 – College”	Prayer (ii) “to issue a writ or other writ, order or directions, quashing and setting aside the MEMORANDUM No.LBC/470/J dated 23.07.10 and MEMORANDUM No.LBC/1245/10 dated 1.9.2010, issued to the petitioner, by Respondent No.2 – College”

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<i>otherwise.”</i>		
Prayer (iii) <i>“direct the Respondents to release the petitioners Salary withheld by the Respondents for the period from June, 2002 to 2004 which has not been disbursed to him till now even after several representations made to the Respondents and various other authorities.”</i>	Prayer (iii) <i>“consequently, to issue writs of mandamus, or other writ, order or directions in the nature of mandamus, directing Respondent No.2 to promote the petitioner as Senior Assistant w.e.f. 4.8.04 and as S.O. Accounts w.e.f. 1.1.2008 with all consequential benefits both monitory or otherwise.”</i>	Prayer (iv) <i>“consequently, to issue writs of mandamus, or other writ, order or directions in the nature of mandamus, directing Respondent No.2 to promote the petitioner as Senior Assistant w.e.f. 4.8.04 and as S.O. Accounts w.e.f. 1.1.2008 with all consequential benefits both monitory or otherwise.”</i>
Prayer (iv) <i>“To pass an order for the fixation of salary in the higher grade of 5000-150-8000 from the date of 4.08.04”</i>	Prayer (iv) <i>“direct the Respondents to release the petitioners Salary withheld by the Respondents for the period from June, 2002 to 2004 which has not been disbursed to him till now even after several representations made to the Respondents and various other authorities.”</i>	Prayer (v) <i>“direct the Respondents to release the petitioners Salary withheld by the Respondents for the period from June, 2002 to 2004 which has not been disbursed to him till now even after several representations made to the Respondents and various other authorities.”</i>
	Prayer (v) <i>“To pass an order for the fixation of salary in the higher grade of 5000-150-8000 from the date of 4.08.04”</i>	Prayer (vi) <i>“To pass an order for the fixation of salary in the higher grade of 5000-150-8000 from the date of 4.08.04”</i>

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21. To the argument of the petitioner that the IO cannot recommend a penalty to be imposed on a Charged Officer is concerned, she submits that the same does not vitiate the inquiry proceedings nor does it vitiate the Inquiry Report. For such proposition, she relies upon the following judgments:

- (a) *Sreenivasayya vs. State of Mysore*, reported in 1964 SCC OnLine Kar 182;
- (b) *A.N.D. Silva vs. Union of India*, reported in 1961 SCC OnLine SC 81;
- (c) *Union of India vs. H.C. Goel*, reported in 1963 SCC OnLine SC 16; and
- (d) *High Court of Judicature at Bombay vs. Shashikant S. Patil*, reported in (2000) 1 SCC 416.

22. On the basis of the above, learned counsel for the respondent/College submits that the present petition be dismissed with costs in favour of the respondent.

REJOINDER OF THE PETITIONER

23. Mr. Rai, learned Senior Counsel in rejoinder firstly opposed the objections of the respondent raised on the ground of maintainability in respect of the efficacious and alternate remedy being available under the Industrial Disputes Act, 1947. He submits that apart from a bald averment that the petition is not maintainable under the Industrial Disputes Act, 1947, there is no averment in respect of as to whether the petitioner was a 'workman'. Learned Senior Counsel submits that unless it is clearly averred and established that an employee is a 'workman' under Section 2(s) of the ID Act, 1947, a mere allegation would not non-suit the petitioner from maintaining the

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present writ petition. He submits that mere references here and there in the counter affidavit will not seriously prejudice the case of the petitioner on the issue of maintainability.

24. He also submits that whether the petitioner was performing a role of a workman or a supervisory officer etc. have not been made good in the counter affidavit. That apart, he submits that the actions undertaken by the respondent/College are not under any of the provisions of the Industrial Disputes Act, 1947 and as such, the present writ petition is maintainable before this Court. He relies upon the following judgements:

(a) ***Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Limited & Anr.*** reported in (2021) 10 SCC 401;

(b) ***Jindal Realty limited vs. National faceless Assessment Centre, Delhi***, in W.P. (C) 6304/2022 decided on 20.04.2022;

(c) ***Chhotey Lal Vs. General Manager & Ors.*** reported in 2001 (1) LLN 752;

(d) ***Mahant Dooj Dass (Dead) Through LRs Vs. Udasin Panchayati Bara Akhara & Anr.*** reported in (2008) 12 SCC 181.

25. So far as the submission that the petitioner had filed previous writ petitions and the disposal of those petitions would render the prayers in the present writ petition as not maintainable is concerned, the learned Senior Counsel submits that those writ petitions were simply dismissed as withdrawn and were not decided on merits to tantamount to *res judicata* or constructive *res judicata* and thus, would not preclude the petitioner from seeking the present prayers.

26. Learned Senior Counsel also invites attention to what he terms as apparent contradictions, by referring to para (lxix) of the counter affidavit and

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para (vi) of the Reply to Grounds in the counter affidavit whereby the respondent had admitted that the DA did not consider the Reply of the petitioner before passing the impugned termination order dated 21.12.2010. Comparing the same to the Minutes of the Meeting of the Governing Body alleged to have been held on 21.12.2020, whereby it is noted that the Governing Body had in fact considered the Reply of the petitioner. He submits that these two contradictory statements itself establish that the Governing Body, while donning the role of DA, did not consider the Reply/Statement of Defense of the petitioner and as such, grossly violated the rules, regulations as also the principles of natural justice. On this point too, learned Senior Counsel submits that the impugned order dated 21.12.2010 alongwith the Inquiry Report ought to be quashed and set aside.

ANALYSIS AND CONCLUSION

27. This Court has heard the arguments of Mr. Rai, learned Senior Counsel for the petitioner as also Ms. Soni, learned counsel for the respondent/College, perused the entire records including the original file pertaining to the inquiry proceedings and have also considered the judgments relied upon by the parties.

28. The scope, authority and jurisdiction of a High Court under Article 226 of the Constitution of India, 1950 has been settled by the Supreme Court in a catena of judgments. The celebrated judgements in ***B.C. Chaturvedi vs. Union of India & Ors.***, reported in (1995) 6 SCC 749 and ***Union of India & Ors. vs. P. Gunasekaran***, reported in (2015) 2 SCC 610 have long settled the guiding factors which have now been reiterated by the Supreme Court in ***Union of India & Ors. vs. Subrata Nath*** reported in 2022 SCC OnLine SC 1617.

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29. These principles of law have been clearly laid down and followed by the Supreme Court and various High Courts in India for the last many decades and still hold the field. The examination under the powers of judicial review in such matters is very narrow and limited. In that, only consideration open for judicial review is to examine and satisfy itself that the procedure has been duly followed in accordance with the statutory rules and to consider whether there appears any violation of principles of natural justice. Every infraction does not call for interference unless it violates the above principles.

30. However, the Supreme Court in a line of judgments commencing from the Constitutional Bench judgment in *Managing Director, ECIL, Hyderabad and Ors. vs. B. Karunakar and Ors.*, reported in (1993) 4 SCC 727, and three learned Judges Bench judgement in *Punjab National Bank vs. Kunj Behari Mishra* reported in (1998) 7 SCC 84, and *Yoginath D. Bagde vs. State of Maharashtra & Anr.*, reported in (1999) 7 SCC 739 has held that the right of hearing should be afforded to the Charged Officer not only during the inquiry proceedings conducted by the Inquiry Officer into the charges leveled against him but also at the stage at which those findings are considered by the Disciplinary Authority and beyond. In fact, the Supreme Court in *Yoginath D. Bagde (supra)* has held that the opportunity of hearing to a Charged Officer would be in consonance with the requirement of Article 311 (2) of the Constitution of India and cannot be deprived to such employee. The Supreme Court had held, after considering the earlier judgments of *B. Karunakar (supra)* as also *Kunj Behari Mishra (supra)*, that the “*right to be heard*” would be available to the delinquent upto the final stage. It was categorically held that this right being a constitutional right of an employee cannot be taken



away by any legislative enactment or the Service Rules including the Rules made under Article 309 of the Constitution of India, 1950.

31. Having considered the aforesaid dicta of the Supreme Court, this Court would now proceed to consider the facts in the present case. However, before advertng to the facts, it would be relevant to examine the impact of Article 311 (2) of the Constitution of India. It would, thus, be appropriate to extract the same hereunder:

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

*[(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges****

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the



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decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]”

Clause (2) of Article 311 of the Constitution of India, 1950 specifically provides that an employee shall not be dismissed or removed or reduced in rank without any inquiry into the charges against him and without offering him an opportunity of showing cause against the action proposed to be taken in regard to him. It is apparent that the said clause takes within its ambit not only a written representation but also an opportunity of personal hearing. It is not far to see as to why such opportunities have been constitutionally afforded and zealously protected in respect of an employee against whom any disciplinary proceedings are sought to be initiated. In cases where the Charged Officer is sought to be dismissed from service, it is obvious that the same entails drastic civil action, acting to the absolute detriment of the employee. In such a situation, can it be said that a Constitutional Court would countenance a situation where a Charged Officer is dismissed or terminated from services without even affording an opportunity of not only a written Statement of Defence but also an opportunity of meaningful personal hearing? The answer to the above is obviously in the negative. Not only does Clause (2) of the Article 311 of the Constitution of India, 1950 encompass protection to the extent of submission of a written Statement of Defence but also indelibly protect the right of the Charged Officer to a meaningful personal hearing.

32. The aforesaid judgments of the Supreme Court were rendered in cases where the IO had exonerated the Charged Officer and the DA had issued a disagreement note and in those circumstances, the Supreme Court had held that personal hearing ought to be afforded to the Charged Officer. Though in the present case, there is no such disagreement note, yet on the touchstone of

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what has been held in the preceding paragraphs, this Court is of the firm and considered opinion that a meaningful and personal hearing ought to be afforded to a Charged Officer where the DA proposes to impose major penalties in the nature of dismissal/termination or drastic reduction in rank. Accordingly, such Charged Officer who is faced with the imposition of major penalty of dismissal or termination from services would have an indelible and a constitutional right to be afforded a meaningful opportunity of personal hearing. This proposition has been succinctly laid down in the celebrated Constitutional Bench judgment of the Supreme Court in ***Parshottam Lal Dhingra vs. Union of India***, reported in **AIR 1958 SC 36** and continues to hold the field till today.

33. That having been said, this Court would now proceed to examine the implication of the aforesaid observations in the context of the facts obtaining in the present case.

34. At the outset, it is relevant to note that the Show Cause Notice dated 25/26.11.2010 issued by the DA after the receipt of the Inquiry Report, though permitted the petitioner to file his written Statement of Defence within 10 days of the receipt of the said notice, however, was conspicuous by the absence of reference to any personal hearing at all. That apart, it is also on record that the petitioner had, by way of an application bearing CM APPL. 21697/2010 in W.P.(C) No.6795/2010, challenged the said Show Cause Notice. From the records, it appears that *vide* the order dated 20.12.2010, this Court did not interfere with the same, however, granted the petitioner an opportunity to avail of his remedy in that respect, in accordance with law. Following the said order, the petitioner had submitted his Reply/Statement of Defence on 21.12.2010. Though the said written Statement of Defence was filed beyond

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the 10 days' time stipulated in the Show Cause Notice dated 25/26.11.2010, yet the permission so granted by this Court *vide* order dated 20.12.2010 was admittedly in the knowledge of the respondents. It is intriguing to note that in the order dated 21.12.2010 passed by the DA which is the Governing Body of respondent/College, there is no reference to either the written Statement of Defence or any oral arguments rendered on behalf of the petitioner. It is equally bereft of any reasons whatsoever as to why the DA agreed with the findings of the IO and equally silent on the grounds of defence submitted by the petitioner.

35. It is only during the hearing before this Court that Ms. Soni, learned counsel for respondent/College had brought to the Court, the original file pertaining to the Inquiry Proceedings. Ms. Soni had not only drawn attention to the Minutes of the Meeting of the Governing Body held on 21.12.2010, but also had furnished a copy of the same over the bench. Ms. Soni had sought to impress upon this Court that contrary to what the petitioner submitted on non-consideration of his written Statement of Defence dated 21.12.2010, the Governing Body had, in fact, not only referred to said Reply/Statement of Defence but also after considering the same, observed that the said defence was unconvincing. On that basis, Ms. Soni had vehemently argued that in no case did the respondent/College violate either the Rules or Regulations or the Principles of Natural Justice.

36. This Court has closely scrutinized the records as also the record of the Inquiry proceedings. There is no doubt that the respondent/College had taken a diametrically opposite and contradictory stands in the counter affidavit, in comparison to the Minutes of the Meeting dated 21.12.2010. In that, in the counter affidavit, the respondent had stated that the petitioner had not filed his

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written Statement of Defence within the stipulated time and therefore, the DA was constrained to pass its order in the absence thereof. It was also contended that the petitioner filed his written Statement of Defence only after the DA passed its impugned order. Whereas, in the Minutes of the Meeting of the Governing Body dated 21.12.2010, there is a mere reference to the Reply of the petitioner dated 21.12.2010. Things would be more clear if the said Minutes of the Meeting dated 21.12.2010 are considered in its correct perspective, which are as under:-

“MINUTES of the Governing Body Meeting held on 21st December, 2010 at 3.00 p.m. in the College premises.

xxx

xxx

xxx

Item 2: The reply submitted by Mr. Naresh Kumar Trehan, Assistant, Lakshmibai College dated 21st December, 2010 was placed before the members of the Governing Body. According " the decision of the last Governing Body Meeting held on 18th November, 2010, Mr. Naresh Kumar Trehan was issued a show cause notice dated 26th November, 2010 with ten days time to submit his reply but he failed to submit any reply within this time period and asked for fifteen days time vide his letter dated 5th December, 2010. He was given ten days time which expired on 18 December, 2010 but he submitted his reply on 21st December, 2010. The reply submitted by him was found to be unconvincing. The members after detailed discussion observed that the charges leveled against Mr. Trehan related to misconduct, poor performance at desk and flouting of orders issued to him from time to time. Keeping in view his attitude of willful disobedience and non-performance at desk which is detrimental to the institution and also demoralizes other members of the non-teaching staff who are continuously striving to rise by performing well over the years, the members unanimously observed that Mr. Naresh Kumar Trehan is guilty of acts of gross misconduct on his part which tantamount to unbecoming of an employee of the college in terms of Rule 49 (1)(c) and 2(v) of the University Non-Teaching Employee (Terms and Conditions of Service) Rules, 1971, as applicable to the employees of Delhi University and its affiliated colleges. Hence, the members decided to terminate the services of Mr. Naresh Kumar Trehan, Assistant, Lakshmibai College w.e.f. December 22, 2010. However, the members decided that he may be paid three months salary instead of issuing him three months notice. It was also decided that he may be paid salary for the period he met with an accident and had produced the certificate from Government Hospital.”

(emphasis supplied)

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Equally, the relevant paragraphs of the counter affidavit are reproduced as under:-

“(lxvi)...If the Petitioner chose not to submit his reply to Show Cause within the time allowed and if the competent authorities take a final decision in the matter on the basis of the finding by the enquiry committee and available materials, the same cannot be construed to be a result of bias or prejudice as sought to be made out in the para under reply or otherwise.

xxx

xxx

xxx

REPLY TO GROUNDS

xxx

xxx

xxx

(vi) That it is not out of place to mention herein that the College Governing Body considered the enquiry report (Annexure P-91) in its meeting held on 18.11.2010 and decided to call upon the Petitioner to show cause against the recommendations in the said enquiry report and, accordingly, the Petitioner was called upon by the answering Respondents vide their letter dated 25.11.2010 (Annexure P-92) to show cause within ten days of receipt thereof against the said recommendation and forwarded to him there with a copy of the said enquiry report. Instead of and apparently with a view to avoid submitting his reply to the said Show Cause, the Petitioner filed an application, bearing C.M. No. 21697 of 2010 in his then pending WP (C) No. 6795 of 2010, which application, it transpires, came to be dismissed vide order dated 20.12.2010 and the answering Respondents had no knowledge either of the filing of the said application or of the said order of dismissal of the same. Therefore, when the Petitioner did not file any reply even after the lapse of a considerable period of time, the Governing Body of the College decided/resolved in its meeting held on 21.12.2010 to terminate his services as communicated to him vide letter dated 21.12.2010 (Annexure P-1) of the answering Respondents. It is only thereafter that the Petitioner belatedly submitted his reply (Annexure P-95) to the said show cause. Under the circumstances, the Petitioner cannot be permitted to make a grievance that the impugned order of termination of his services was passed by the answering Respondents without considering his said reply as sought to be made out in the ground under reply.”

(emphasis supplied)



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It is apparent from the above that the stand taken by the respondent/college in the counter affidavit on one hand and that noted in the Governing Body's Minutes of the Meeting dated 21.12.2010 on the other, are at absolute divergence and are contradictory.

37. Whether this Court takes into account the contentions in the counter affidavit or the observations in the Governing Body's Meeting dated 21.12.2010, either way, it is apparent that there has been a blatant violation of not only the principles of natural justice but also the ratio laid down by the Supreme Court which now forms *stare decisis*.

38. Since the opportunity of meaningful personal hearing is an indelible part of the inquiry proceedings right up till the appellate or the revisional stage, as the case may be, the non-adherence to such principle would be an apparent violation of the principles of natural justice.

39. This Court has also perused the Rules pertaining to the procedure for imposing penalties as per the University Rules, 1971, particularly Rule 70 which is in respect of imposition of major penalties. Rule 71 deals with the action to be undertaken by the DA upon submission of the Inquiry Report by the IO. In this regard, sub-Clauses (a) and (b) of Clause (i) and Clause (ii) of sub-Rule 4 of Rule 71 of the Rules would be relevant. The same are extracted hereunder:-

"71. Action on the inquiry report

xxx

xxx

xxx

4. (i) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (iv) to (vi) of rule 67 should be imposed on the employee it shall:

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(a) *Furnish to the employee a copy of the report of the inquiry held by it and its findings on each article of charge, or where the inquiry has been held by an inquiring authority appointed by it, a copy of the report of such authority and a statement of its findings on each article of charge together with brief reasons for disagreement, if any, with the findings of the inquiring authority.*

(b) *Give the employee a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representations as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under rule 70.*

(ii) *The disciplinary authority shall consider the representations if any, made by the employee in pursuance of the notice given to him under clause (1) and determine what penalty, if any, should be imposed on him and make such order as it may deem fit."*

Though it is apparent that no opportunity of personal hearing is stipulated in the aforesaid Rules, however, having regard to the judgments of the Supreme Court in **B. Karunakar** (*supra*), **Kunj Behari Mishra** (*supra*) and **Yoginath D. Bagde** (*supra*), this Court would read into the said Rules an opportunity of meaningful personal hearing. This is for the reason that such meaningful personal hearing has been held to be a constitutional right protected under Article 311 (2) of the Constitution of India, 1950. Having not been afforded an opportunity whatsoever by the DA, this Court is of the considered opinion that the impugned order dated 21.12.2010 of the DA is unsustainable and ought to be set aside on this ground alone.

40. The impugned order dated 21.12.2010 also suffers from the vice of being absolutely non-speaking and non-reasoned, leaving the petitioner with no reasons as to on what ground the impugned order of DA ought to be



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challenged. For clarity, the impugned order dated 21.12.2010 is extracted hereunder:



Office : 27308598
Principal : 27304076
Telefax : 27304076
LAKSHMIBAI COLLEGE
(University of Delhi)
ASHOK VIHAR - III
DELHI - 110052

Annex P-1

51

LAC/2225/10

21st December, 2010

Mr. Nareesh Kumar Trehan
Assistant
Lakshmibai College
77C/4, Circular Road
Mukesh Nagar, Shahdara
Delhi - 110 032

The Governing Body in its meeting held on 21st December, 2010 resolved to terminate your services w.e.f. 22nd December, 2010. It was also decided that you will be paid three month's salary instead of issuing three months notice and you may also be paid salary for the period you met with an accident and had produced the certificate from Government Hospital. You are required to handover the keys in your charge to Mr. Radhey Shyam, Assistant immediately in the presence of Section Officer (Admn.).

Karuna Kaushik
Dr. (Mrs.) Karuna Kaushik
Principal

Copy to:

1. S.O. (Admn.)
2. S.O. (Accounts)
3. Sr. P.A. to Principal
4. Librarian
5. Mr. Radhey Shyam, Assistant

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The aforesaid order of the DA imposing a major penalty of dismissal from service without discussing or recording any findings on the charges so levelled against the petitioner and being absolutely non-speaking and unreasoned also violates the principles of natural justice. This Court draws support from the judgement of the Supreme Court in **Roop Singh Negi** (*supra*). The relevant paragraphs of the aforementioned judgement are as under:-

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“...23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

24. For the aforementioned reasons, the judgment of the High Court is set aside. The appeal is allowed with costs and the appellant is directed to be reinstated with full back wages. Counsel's fee assessed at Rs 25,000.”

(emphasis supplied)

It is evident that the impugned order falls short of the mandate of the Supreme Court in the aforesaid judgement.

41. Even if this Court were to take, though does not seem to be plausible in the facts of the case, that the Governing Body had indeed considered the Reply/Statement of Defence of the petitioner, even then, except to reject the same on the ground of being “unconvincing”, there is not even a single line in the Minutes of the Meeting of the Governing Body dated 21.12.2010 to show as to what was the defence raised by the petitioner and as to what was found to be unconvincing in the grounds taken by the petitioner, In that view of the matter, both, the Minutes of the Meeting of the Governing Body dated 21.12.2010 to the extent of issue covered as Item-2 alone, as also the impugned Termination Order dated 21.12.2010 passed by the DA are found violative of the Rules, Regulations and also of the Principles of Natural



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Justice, apart from violating the mandate of the Supreme Court in the aforesaid judgments and consequently, are quashed and set aside.

42. As an upshot of the aforesaid analysis, observations and findings, the impugned termination order of the DA dated 21.12.2010 is set aside and the matter is remitted back to the DA for fresh consideration of the Reply/Statement of Defence of the petitioner with a direction to provide an opportunity of meaningful personal hearing to the petitioner before the final orders are passed by the DA. The said exercise shall be completed within a period of 12 weeks from the date of receipt of this order. Needless to state that the order shall be speaking and reasoned. Copy of the same shall be furnished to the petitioner within one week of such decision. The petitioner shall be at liberty to challenge the same, should the need so arise, in accordance with law.

43. Since this Court has neither traversed nor dealt with the arguments on the facts of both the parties, including the contentions of the petitioner regarding stale charges, nor has this Court rendered any observation on the issue of maintainability raised by the respondent, the same are kept open and reserved for the parties to raise the same at the appropriate stage. For the same reason, the judgments relied upon by the parties are not being dealt with and the ratio laid therein are kept reserved for the parties to take up at the appropriate stage.

44. It is also made clear that the prayers (iv), (v) and (vi) in respect of the issues covered under the Memo dated 30.06.2004 cannot be resurrected by the petitioner by way of these proceedings, particularly when the petitioner himself by his own handwritten letter dated 15.07.2004 had not only admitted but also agreed to all the conditions imposed upon him. The same being an issue of fact, would be hit by the doctrine of *estoppel*. As such, the petitioner

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cannot reagitate such issues and is precluded from raising the same in the present writ petition.

45. Before concluding, this Court deems it appropriate to address another argument of Ms Soni which is in respect of the prayers in the present writ being barred by *res judicata*/constructive *res judicata*, having been already sought in the earlier writ petitions. On a perusal of the records of this petition, it is clear that *vide* the order dated 30.01.2009 in W.P.(C) No. 6730/2007, this Court had dismissed the said petition as withdrawn with liberty to approach again if the grievance of the petitioner does not get redressed. So far as W.P. (C) No. 6795/2010 is concerned, *vide* the order dated 04.03.2011, this Court had dismissed the same as infructuous on the statement of the petitioner. It is apparent from the above orders that neither this Court had dealt with the merits of the case nor were any findings or observations rendered thereon, for the doctrine of *res judicata*/constructive *res judicata* to be applicable. Thus, the petitioner, except for seeking the reliefs in prayer clauses (iv), (v) and (vi), cannot be said to be barred from seeking other reliefs.

46. The petitioner, barring the aforesaid observations in para 44, shall be entitled to all financial benefits accruing to him in consequence of the quashing of the impugned order dated 21.12.2010 of the DA, treating the petitioner as on suspension, however, only to the extent of 50%. The same shall be calculated and released by the respondents within 12 weeks from the date of receipt of this judgment.

47. The petition, alongwith pending applications, if any, is disposed of with above terms with no order as to costs.

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48. Let the original records of the disciplinary proceedings *qua* the petitioner, furnished by Ms. Soni, learned counsel for the respondent be returned back against a valid acknowledgement.

TUSHAR RAO GEDELA, J.

JULY 01, 2024

kct/aj

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