

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 6189 OF 2019
(Arising out of SLP (Civil) No.32520 of 2017)**

**Secretary Managing Committee BSMPG
College Roorkee** **Appellant (s)**
Versus

Dr. Samrat Sharma & Others **Respondent (s)**

J U D G M E N T

L. NAGESWARA RAO, J.

Leave granted.

1. The judgment of the High Court of Uttarakhand allowing the Writ Petition filed by Respondent No.1- Dr. Samrat Sharma and setting aside the order of termination of the services of Respondent No.1 is in challenge in this Appeal. The High Court directed the reinstatement of Respondent No.1 with all consequential benefits.

2. The Appellant is a private aided college, affiliated to Hemwati Nandan Bahuguna Garhwal Central University, Srinagar, Pauri Garhwal (for short "the HNBG University"). Respondent No.1 was an Assistant Professor (Hindi) in the Department of Hindi in the said College. Respondent No.5- Dr. (Smt.) Kamlesh Sharma made a complaint to the

Principal of the College on 04.09.2012 alleging misbehavior by Respondent No.1 on 01.09.2012 during the meeting of the teaching staff of the College. An explanation was sought from Respondent No.1 which was submitted on 12.10.2012. Not being satisfied with the explanation given by Respondent No.1, the Managing Committee of the College decided to constitute a committee to enquire into the charges levelled by Respondent No.5 in her letter dated 04.09.2012. Dr. I.D. Kansal and Mr. K.S. Sharma, Members of the Managing Committee were requested to conduct an enquiry. The statement of Respondent No.5- and other witnesses were recorded by the Enquiry Committee. In spite of the opportunity given to Respondent No.1 to defend himself, he did not appear before the Enquiry Committee. The Enquiry Committee came to a conclusion that Respondent No.1 used indecent language and behaved in an aggressive manner in the staff meeting on 01.09.2012. As Respondent No.1 was found guilty of the charges levelled against him, the Enquiry Committee recommended initiation of action against Respondent No.1. The Enquiry Committee also recommended criminal prosecution to be launched against Respondent No.1.

3. On the basis of the recommendations of the Enquiry Committee, three charges were framed against Respondent No.1 which are as follows:

“CHARGE NO.01- PARA 04 OF COMPLAINT LETTER DATED 04.09.2012:-

On 01.09.2012 at 10.00 O'clock in the morning, the Principal had called a meeting of his entire teaching staff in the Principal room. At the very same, in your presence, Dr. Samrat Sharma, Assistant Professor, Hindi Department has leveled allegations against me with regard to the time table and he has used very filthy words to me in a very aggressive manner and thus he has behaved me like that without any reason. The said time table had been prepared according to his consent.

CHARGE NO.02- PARA 06 OF COMPLAINT LETTER DATED 04.09.2012:-

“Apart in your room, he has conducted same indecent behavior in the Staff room also. He has developed such a habit to behave like this with the female teachers. Such act is generally done by a person who has lost his mental balance. There is a clear example that his wife Smt. Jayanti Adjariya alongwith his son has left his house and

for which cases are going on between them in the Courts at Roorkee, Jhansi, Nainital and Allahabad.

Charge No.03- Para No.7 of Complaint Letter Dated 04.09.2012:-

Due to this continuous insult and mental harassment, I, who is a senior most teacher who has 38 years of teaching experience, and who has been looking after/ performing the administrative duties and responsibilities of a Vice President while you go on leave, request you to kindly protect my dignity and seniority."

4. Respondent No.1 was informed that he should submit his written statement by 14.02.2014. Respondent No.1 was also given an opportunity to produce witnesses in his defense. He was also informed that he can cross-examine the witnesses during the fact-finding enquiry by a committee consisting of Dr. Dushyant Kumar, Vice President of the Managing Committee and Mr. Vikash Sharma, Advocate. The Fact Finding Committee submitted its report on 14.02.2014 holding Respondent No.1 guilty of all the three charges. The Committee recommended the termination of the services of Respondent No.1 as he was found guilty of Sub-Section 17.04 of Section 49(j) of the

First Statute of the University of Hemwati Nandan Bahuguna, Garhwal, 1978 (for short “the First Statutes”).

5. Thereafter, a supplementary charge sheet was issued on 02.07.2014. The following charges were framed and communicated to Respondent No.1:

“CHARGE NO.1:-

You are posted in this Non-Governmental College on the post of Associate Professor and this College is affiliated to the H.N.B. Garhwal University, Srinagar. You have acted insubordinately and made false complaints against the Chairman/ Secretary of the Managing Committee and also against the Principal, have written following letters directly to the Director, Higher Education, Uttarakhand, Haldwani:-

- 1) First Letter dated 04.01.2014*
- 2) Second Letter dated 31.01.2014*
- 3) Third Letter dated 06.02.2014*
- 4) Fourth Letter dated 28.02.2014*
- 5) Fifth Letter dated 01.03.2014*
- 6) Sixth Letter dated 12.04.2014*

The aforesaid letters having been sent by you directly without any proper channel and the same is in clear violation of the Point No.05 of the Agreement having been given in Appendix “Gha” of the Garhwal University Srinagar Regulation. You

have written letter to the Director of Education, Higher Education, Haldwani intentionally, in clear disobedience and in violation of the Degree Arth/8(21)/1671/2011-12 dated 05.05.2011 (which contained your signature also) and of which there are adequate proof against you. The Inquiry Committee, after perusing the entire correspondences, has found you guilty for sending letters directly and without any proper channel to the Director, Higher Education, Uttarakhand.

CHARGE NO.02:-

You after hearing of the Appeal bearing No.A(HR.)/12074 119(3)/2013 filed before the Hon'ble Information Commission, Uttarakhand, Dehradun, the Hon'ble Commissioner of the Information Commission Shri Vinod Nautiyal in his disposal order dated 16.09.2013 has found you to be guilty for forging in the bills towards the educational equipments having been purchased from the grant amount received from the U.G.C. and has directed the Public Information Officer/ Principal to register a First Information Report against you in the nearest Police Station. The Public Information Officer/ Principal in compliance of the directions of the Hon'ble Information Commissioner, has got registered a First Information Report against you with the Kotwali P.S. Gangnagar Roorkee on 12.10.2013 for the offence under Sections 467, 468, 469 and 471 of the Indian Penal Code. On 12.10.2013, the P.S. Kotwali

Gangnagar, Roorkee has registered a case against you bearing Crime Case No.269/ 13 at Serial No.276/13 under the aforesaid Sections. The Investigation Officer in the aforesaid criminal case, after recording the statements of the Principal Dr. Vipin Pratap Gautam, Member of the Purchasing Committee Dr. Surjeet Singh, Dr. Vijay Kumar, Shri Vijendra Singh, Shri Sandeep Poswal, Shri Amit Sharma, (Assistant Accountant) and after recording your statements also and obtaining signatures of all, has filed charge sheet in the Court on 31.10.2013 which is pending consideration before the said Hon'ble Court. You in order to save from the charges leveled against you with regard to forgery after having conspired, the details of the letters which you have written against the Principal, Chairman Managing Committee and the Secretary of the Managing Committee and against me directly to the Police Administration as also to the Government of Uttarakhand, is given below:-

Charge No.3:- As per directions of the Hon'ble Commissioner of Information Shri Vinod Nautiyal, after getting registered an FIR against you before the P.S. Kotwali Gangnagar Roorkee dated 12.10.2013 against you and on the basis of the said FIR, the police registered a Crime Case No.296/13 and after conducting investigation in respect of the

said case, charge sheet has been filed before Court on 31.10.2013.

The case in which you are an accused, against the same sections and with regard to the same charges, you have been given an application on 13.5.2014 before the Court of Additional Civil Judge/ S.D./J.M. Roorkee for filing a false case against Shri Manohar Lal Sharma, Chairman, Managing Committee, Dr. Vipin Pratap Gautam, Principal. The Members of the Purchasing Committee namely Dr. Surjeet Singh, Dr. Vijay Kumar, Shri Vijendra Singh, Shri Sandeep Poswal, Shri Amit Sharma (Assistant Accountant) for making them an accused for the purpose of registering an FIR under section 156(3) of the Cr.P.C. with P.S. Kotwali Gangnagar, Roorkee. After receiving the report of the Investigating Officer of the P.S. Gangnagar Kotwali, Roorkee, the learned Judge i.e. Additional Civil Judge/ S.D.J.M. Roorkee finding the allegations as leveled by you in your application filed before the learned judge, Additional Civil Judge/ S.D./J.H.M. Roorkee, has rejected your application vide order dated 26.05.2014. The Hon'ble Judge has clearly mentioned/ written in its judgment and order dated 26.05.2014 that the report is received from the concerned Police Station. According to the report received from the concerned Police Station, in respect of the aforesaid case, Crime Case No.296/2013 under Sections 467/468/469/471 of the Indian Penal Code has been registered in

respect of the aforesaid case in which the applicant Samrat Sharma is an accused and the respondents in the aforesaid case are the complainant of the case, in which Charge Sheet No.180/2013 dated 31.10.2013 has been sent.”

6. Respondent No.1 was directed to appear before the Enquiry Committee, failing which an *ex parte* decision will be taken against him. Responding to the supplementary charge sheet dated 02.07.2014, Respondent No.1 submitted his explanation on 04.07.2014. Respondent No.1 did not appear before the Enquiry Committee on 12.07.2014. The Enquiry Committee found that the charges levelled against Respondent No.1 were proved. The Enquiry Committee recommended stern action against Respondent No.1 for indulging in the acts of insubordination, indiscipline and violation of the First Statutes and the provisions of the U.P. State Universities Act, 1973 (for short “Universities Act”). The services of Respondent No.1 were terminated by an order dated 13.07.2014. The approval of the Vice Chancellor, HNBGC University, Srinagar was sought by the BSM (PG) College, Roorkee (Haridwar)- Appellant herein, which was granted on 16.09.2014.

7. Respondent No.1 filed a Writ Petition in the High Court of Uttarakhand challenging the order of termination of his services dated 13.07.2014 and the approval granted by the Vice Chancellor on 16.09.2014. During the pendency of the departmental enquiry, Respondent No.1 was placed under suspension on 31.01.2014. The order of suspension was also assailed by Respondent No.1 in the Writ Petition. The High Court allowed the Writ Petition and set aside the order of termination and directed reinstatement of Respondent No.1 and the Management of the College was directed to pay the salary for the period during which he was placed under suspension. The High Court was convinced that Respondent No.1 did not get sufficient opportunity to defend himself in the departmental enquiry. Commenting on the merits of the allegations against Respondent No.1, the High Court was of the opinion that sufficient evidence was not available to hold Respondent No.1 guilty of the charges. In any event, the High Court held that the imposition of penalty of termination of service was not commensurate with the allegations made against Respondent No.1.

8. Mr. Ajay Veer Pundir, learned counsel appearing for the Appellant- College submitted that the procedure prescribed under the Universities Act and the First Statutes made thereunder were scrupulously followed by the Management in conducting the enquiry against Respondent No.1. He argued that the High Court ought not to have interfered with the order of termination of services of Respondent No.1 by re-appreciating the evidence which was subject matter of the departmental enquiry. He submitted that serious allegations of harassment were made by Respondent No.5 against Respondent No.1 which amounted to misconduct under the First Statutes and no lenience can be shown to Respondent No.1. Mr. V.K. Shukla, learned Senior Counsel appearing for Respondent No.1 argued that the enquiry that was conducted against Respondent No.1 was in contravention of the First Statutes that were framed under the Universities Act. According to him, no opportunity was given to Respondent No.1 to defend himself in the enquiry, especially regarding the supplementary charges. He submitted that within ten days of making supplementary charges against Respondent No.1, the order of termination of his services was passed. He

further submitted that the decision of the Management is vitiated by bias as Respondent No.5 and the Principal of the Management Committee have conspired to get rid of Respondent No.1 from the College.

9. The First Statutes were framed in exercise of the powers conferred by sub-section (1) of Section 50 of the Uttar Pradesh State Universities Act, 1973. Chapter XVII Part I of the First Statutes deals with the Conditions of Services of Teachers of Affiliated Colleges. Clause 17.04 of the First Statutes is as follows :

“17.04. (1) A teacher of an affiliated college (other than a Principal) may be dismissed or removed or his services terminated on one or more of the following grounds:

(a) wilful neglect of duty;

(b) misconduct, including disobedience to the orders of the Principal;

(c) breach of any of the terms of contract of service;

(d) dishonesty connected with the University or college examinations;

(e) scandalous conduct or conviction for an offence involving moral turpitude;

(f) physical or mental unfitness;

(g) incompetence;

(h) abolition of the post with the prior approval of the Vice-Chancellor.

(2) A Principal of an affiliated college may be dismissed or removed or his services terminated on grounds mentioned in Clause (1) or on the ground of continued mismanagement of the college.

(3) Except as provided by Clause (4), not less than three months notice or where notice is given after the month of October, then three months notice or notice ending with the close of the session (whichever is longer) shall be given on either side terminating the contract of service or in lieu of such notice, salary for three months (or longer period as aforesaid) shall be paid or refunded, as the case may be:

Provided that where the Management dismisses or removes or terminates the services of a teacher, under Clause (1) or Clause (2) or when the teacher terminates the contract for breach of any of its terms by the Management, no such notice shall be necessary:

Provided further that the parties will be free to waive the condition of notice, in whole or, in part by mutual agreement.

(4) In the case of any other teacher appointed in a temporary or officiating capacity his service shall be terminable, by one month's notice or on payment of salary in lieu thereof, on either side."

10. Clause 17.06 of the First Statutes provides for the procedure to be followed before a member of teaching staff of an affiliated College is either dismissed, removed or terminated from service. After a charge has been framed and communicated to the teacher and action is proposed to be taken against him, the teacher is entitled for an adequate opportunity of submitting a written statement of his defense, of being heard in-person if he so desires and of calling and examining such witnesses in his defense as he may desire.

11. The only point that arises for our consideration is whether the enquiry that was conducted against Respondent No.1 was in conformity with the First Statutes mentioned above. A careful examination of the material on record would disclose that Respondent No.1 was not given sufficient opportunity to defend himself. The enquiry was conducted in three stages. Initially, a committee was constituted to conduct a preliminary enquiry into three charges. On the basis of the report of the said committee, a fact-finding enquiry was held regarding the said three charges. Later, a supplementary charge sheet was issued in which fresh charges were communicated to Respondent No.1 on 02.07.2014. Within

ten days thereafter, a final report was submitted regarding the supplementary charges and an order was passed terminating the services of Respondent No.1 on 13.04.2014. Though, Respondent No.1 was also guilty in not utilizing the opportunity that was given to him, the manner in which the enquiry was conducted by the Management is in clear violation of the procedure prescribed under the First Statutes.

12. We are in agreement with the contentions made by Mr. Pundir that the High Court committed an error in re-appreciating evidence in coming to the conclusion that the charges against Respondent No.1 were not established. It is well settled law that it is the decision making process and not the decision itself which can be the subject matter of judicial review. Interference by the courts can only be in cases where there is no evidence. Sufficiency of evidence for proof of the charges against delinquent officers is completely within the domain of the administrative authority. Courts cannot re-appreciate the evidence to come to a different conclusion. We are afraid that the High Court has transgressed the permissible limits of judicial review in holding that the evidence on record did not warrant an order of termination.

Interference with the penalty imposed on delinquent officers is permissible only when it shocks the conscience of the court. We are not dealing with any of the submissions made on behalf of the parties relating to the truth or otherwise of the allegations made against Respondent No.1 as we have held that the procedure prescribed under the First Statutes was violated while conducting the departmental enquiry against Respondent No.1. Accordingly, we affirm the judgment of the High Court by which the order of termination of the services of Respondent No.1 was set aside. We also uphold the direction relating to the entitlement of Respondent No.1 to claim salary for the period of his suspension. However, we are of the opinion that the Appellant- College should be permitted to conduct a fresh enquiry into the charges that have been communicated to Respondent No.1, if they so wish.

13. The Appeal is disposed of accordingly.

.....J.
[L. NAGESWARA RAO]

.....J.
[HEMANT GUPTA]

**New Delhi,
August 08, 2019.**

