

IN THE HIGH COURT OF JUDICATURE AT BOMBAY AT GOA
PANAJI, GOA

APPELLATE SIDE

WRIT PETITION NO.602 OF 2011

Mr.Aureliano Fernandes,
S/o.Mr.Francisco Fernandes,
46 yrs of age,
Reader and Head of Department
of Political Science at Goa University,
(under Order of dismissal from service)
R/o. Of Rosary Apartment,
Building No.4, Flat No.F-2,
Miramar, Panaji, Goa 403 001

.. Petitioner

versus

- 1} State of Goa,
Through the Chief Secretary,
Alto Porvorim, Bardez, Goa.
- 2} Goa University,
Through its Registrar,
Taleigao Plateau.
- 3} Executive Council of the Goa
University,
Through its Chairman,
Taleigao Plateau, SPO,
Goa University, Goa 403 206

.. Respondents

Mr.Rohit Bras De Sa for the petitioner.
Mr.S.Mahambrey, Additional Government Advocate for respondent
No.1.

Mrs.A. Agni for respondent Nos.2 and 3.

CORAM : S.C.DHARMADHIKARI &
U.V.BAKRE, JJ.

RESERVED ON : 8th FEBRUARY 2012.

PRONOUNCED ON : 15th MARCH 2012

JUDGMENT: (PER S.C.DHARMADHIKARI, J):

. Rule. This writ petition under Article 226 of the Constitution of India is directed against the order dated 10th May 2010 of the Executive Council of the Goa University (Disciplinary Authority) imposing major penalty of dismissal from service under Rule 11(ix) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short the CCS (CCA) Rules).

2) The petitioner is also praying for quashing and setting aside the order passed by the Appellate Authorities dated 25th June 2011 and 19th April 2011.

3) The brief facts necessary to appreciate the challenge, may now be stated. The petitioner was appointed as a temporary lecturer in the Department of Political Science in the Goa

University. On 21st April 1998 the petitioner was appointed as a lecturer in the Department of Political Science in the senior scale. On 25th January 2000, the petitioner was appointed as a Reader in this department. The petitioner was then appointed as Head of Department of Political Science with effect from 25th June 2003. It is the case of the petitioner that he has served the Goa University for thirteen years since 1996 keeping in mind the code of professional ethics and inculcated in the students ideals of patriotism, democracy and secularism. He has endeavoured to promote hard work and academic excellence. The petitioner states that the Department of Political Science progressed under his leadership and received the highest funding from the University Grant Commission, New Delhi. It was singled out for praise by the National Assessment Accreditation Council, Bangalore Reaccreditation Team alongwith Department of Botany for doing good advocacy training and outreach work, besides teaching and research in 2008-2009. The petitioner has insisted on hard work and refused to compromise on academic standards. The petitioner was always available to help and assist the students. It is his case that he organised number of high quality local and national

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seminars and conferences, organised guest lectures of visiting national and foreign scholars to raise academic standards at Goa University. It is his case that he also represented the Goa University at several academic foras.

4} It is the case of the petitioner that on 15th April 2009, an order was made by the Registrar under which the petitioner was informed that he is directed by the Executive Council in its meeting held on 15th April 2009 to hand over the charge of the Department to Professor A.V.Afonso, Dean, Faculty of Social Sciences with effect from 16th April 2009 and proceed on leave till the inquiry into the allegations concerning grievance on internal assessment, complaints regarding ragging and reported sexual harassment is completed.

5} It is the case of the petitioner that prior to the chargesheet being served on him, an inquiry was held by the Committee for Prevention of Sexual Harassment of Women at Work Place headed by Dr.Edith Melo Furtado. According to the petitioner, it is the Executive Council of the Goa University that has to conduct an

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inquiry. However, in the present case, it abdicated its power and delegated its authority to the Chairperson of the Committee for Prevention of Sexual Harassment at Work Place. Accordingly, a notice was served by this Committee whereby the petitioner was informed that the said Committee has received a complaint of sexual harassment and that it had conducted a preliminary verification by recording the statement of the concerned students. He was forwarded copies of the complaint and statements made before the Committee and asked to reply to the charges. It is his case that this Committee assumed jurisdiction by a casual communication of the Registrar dated 8th April 2009 without decision from the Executive Council. Thus, the Registrar has made a reference to this Committee to hold an inquiry into three cases of sexual harassment. The Committee, therefore, served a letter on the petitioner on 17th April 2009 stating that a preliminary verification of the complaints was undertaken and he was required to reply/explain the charges latest by 21st April 2009. Further, he was informed that he would be required to attend the fact finding proceeding of the Committee, wherein a personal hearing would be given to him on 24th April 2009 at the Committee Room of Goa

University. The petitioner submits that fourteen statements/complaints were enclosed to this communication.

6} It is then the case of the petitioner that the first complaint dated 11th March 2009 pertains to physical harassment. That was from one Selifa Gracias, a student who left the Department of Political Science in October 2008. However, no sexual harassment was alleged in the complaint. The second complaint dated 17th March 2009 was relating purely to administrative and academic matters. That was by six M.A Part II students of the Department of Political Science, two of whom were given zero marks by the petitioner for verbatim copying/plagiarizing their home assignment in the paper taught by the petitioner in the first semester of academic year 2008-2009.

7} The third complaint dated 18th March 2009 was by one Agostinho Antao, resident of Guirdrolim, Goa and father of the student who was given zero marks for plagiarizing her home assignment. The petitioner replied to the aforestated letter of the Committee on 20th April 2009 and asked for extension of time for

replying and for his appearance before the Committee in view of election duty. He denied any harassment, including sexual, of any student. The petitioner also objected to the presence of a person administratively subordinate to him on this Committee stating that his animus against him was well known.

8) It is his complaint that ignoring this letter the petitioner was required to attend the fact finding proceedings on 27th April 2009 at 11.15 a.m. The petitioner was also told that cognizance of his complaint was taken and he was informed that he should state the name of the person who has animus against him. The letter claimed that Dr.Rahul Tripathi from Department of Political Science was excused from the deliberation of the Committee since a person who could be witness in the case, cannot be sitting on the Committee inquiring the matter.

9) The petitioner wrote a letter to the Registrar, Goa University dated 24th April 2009 asking him to remove Shaila D'Souza from this complaint Committee since she was administratively subordinate to the petitioner, when he was in-charge of Centre for

Women's Studies in 2003. The petitioner states that on 25th April 2009 he filed his detailed reply in the matter of alleged complaint of sexual harassment by the students of M.A, Department of Political Science and father of the student caught copying.

10} The petitioner also refuted all false allegations and charges while reiterating that Dr.Rahul Tripathi and Ms.Shaila D'Souza are prone to bias being his subordinates and that they be removed from the Committee.

11} The petitioner states that on 27th April 2009, he appeared before the Committee but was made to wait for one hour and forty minutes outside the Committee Room, while the Committee recorded deposition of Dr.Rahul Tripathi and Ms.Shilpa Narvekar behind his back. In fact, all depositions of all students, including witnesses named by the petitioner, were recorded behind his back. Thereafter, the petitioner was called in and the Chairperson informed him that they had not read the reply since it was thick and they did not have the time to read it and asked him if he had anything to say. The petitioner made statement before the

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Committee, proceedings of which were recorded.

12} After the petitioner made his statement, the hearing was concluded. Since the members had not read the statement, no copies were given to the petitioner.

13} The petitioner was served with another notice on 28th April 2009 asking him to remain present before the Committee for further deposition. Accordingly, he remained present but he was made to wait for one hour and thirty minutes outside the Committee Room while deposition of some other witnesses was recorded behind his back. The petitioner was called in and was cross examined by advocate Albertina Almeida and even the Chairperson asked him a few questions. The petitioner alleges that Shaila D'Souza passed chits and provoked and tutored the Chairperson to ask questions. All other Committee Members sat silently. After lunch, the hearing was terminated. Even copies of the statement/depositions of this hearing were not supplied.

14} The petitioner further states that he was served with

another letter dated 29th April 2009 wherein the Chairperson informed him that the date of her letter including fourteen statements should be read as 17th April 2009 and not 17th March 2009. On 30th April 2009, he received another notice from the Committee whereby additional complaints which had nothing to do with the original complaints were sought to be added and the petitioner was called upon to forward his reply. The petitioner states that he was required to remain present before the Committee on 6th May 2009, prior to which a copy of the complaint/deposition of Shilpa Shet Narvekar who was neither student nor employee of the University, was enclosed with a request to reply to the same by 4th May 2009. By his letter dated 2nd May 2009, the petitioner asked for more time to reply to the added communication enclosing the deposition of the said Shilpa Shet Narvekar. He also requested permission for engaging a legal counsel. The petitioner states that he filed his reply to the notice on 8th May 2009. The petitioner states that by his letter dated 5th May 2009, he objected to the presence of the Member advocate Albertina Almeida on the Committee since she was a lawyer and she was doing most of the questioning and he did not have a legal

counsel to assist him. He also objected to her presence on the ground that she was not a member of any registered NGO.

15} In the meanwhile, the petitioner was served with a letter dated 5th May 2009 wherein the date for filing his reply to the deposition of Shilpa Shet Narvekar was postponed to 12th June 2009. The petitioner was served with another letter on 6th May 2009 signed by one Rajal Shinkre as Officiating Chairperson informing him that advocate Albertina Almeida is a member of the Committee and that the petitioner's request for being represented by a lawyer was not acceded to. However, the petitioner alleges that the said advocate Albertina Almeida actively supported the complainants in deposing before the Committee.

16} The petitioner was also served with another letter informing him that there is some error in the dates and that he should reply to the allegations by 12th May 2009 and the date for further deposition should be read as 14th May 2009 instead of 12th June 2009. He was served with another letter on 7th May 2009.

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17} The petitioner objected to all this by sending a letter dated 8th May 2009 addressed to the Chairperson pointing out that a complaint of sexual harassment made by Shilpa Shet Narvekar is a statement made before the Committee and a copy of which was furnished, which has been treated as deposition. However, he demanded a copy of the complaint made by her and sending a copy of the deposition, according to him was not enough. He further raised an objection that Shilpa S. Narvekar is not connected with the inquiry and in fact when the petitioner was Ph.D guide of said Shilpa S. Narvekar, she had malafide intentions. That was because she was asked to discontinue her Ph.D by Goa University. She was unable to get a job on research project worth Rs.3.19 lakhs of the petitioner even by making false claims. Therefore, she has made false and baseless charges and there is a conspiracy and frame up.

18} The petitioner by letter dated 12th May 2009 submitted a letter to the Officiating Chairperson enclosing a copy of communication from Mr.Laxmikant Bhat, Caterer of the workshop on human rights. This communication was addressed to Vice Chancellor stating therein that no teacher had served tea in the

seminar hall by taking his tray. The petitioner also enclosed an affidavit sworn by Mr.Laxmikant Bhat before notary on 8th May 2010, in which it is stated that no lecturer, professor or member of the staff of Goa University was involved in serving tea and snacks.

19) The petitioner states that by letter dated 12th May 2009, the Officiating Chairperson of the Committee enclosed additional deposition made before the Committee and asked him to depose and reply to the charge on 14th May 2009. In covering letter there is a reference made that deposition of Dr.Rahul Tripathi is enclosed. Dr.Rahul Tripathi was a Member of the Committee who stepped down after the petitioner filed objection to his presence. Now he has become a witness on the charges leveled and had quid proquo with the Committee Members. The petitioner applied for postponement of the inquiry since he could not avail a legal counsel. He also pointed out that the Committee recorded the statement on 27th April 2009 but sent to the petitioner after fifteen days. The petitioner also brought it to the notice of the Committee by his letter dated 13th May 2009 that he was admitted to Goa Medical College Hospital since he was suffering from severe back

pain and enclosed proof thereof.

20} By letter dated 13th May 2009, the petitioner applied for voluntary retirement on health ground as he was suffering from severe tension, back pain and was diagnosed with kidney stone. His health was deteriorating on account of false allegations leveled against him. However, the petitioner kept on receiving letters to attend the inquiry and remain present on 19th May 2009 and in one such letter, he was also forwarded fresh deposition of Alito Sequeira. It was stated that no further time would be given since there are serious allegations. In the meanwhile, by letter dated 18th May 2009, the petitioner withdrew his application for voluntary retirement. The petitioner was informed by letter dated 20th May 2009 that he had failed to appear on 19th May 2009 and, therefore, a last opportunity was given to him for further deposition and cross examination of witnesses. The date was fixed on 23rd May 2009. Curiously, seven depositions, including those of six students of Don Bosco Higher Secondary School, Panaji and Shilpa Singh, M.A Part I students were recorded and forwarded.

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21} The petitioner sent a letter on 22nd May 2009 stating that it was not possible to reply to the enclosures in such a short time and that he would not be in a position to attend the inquiry on 23rd May 2009 as he was suffering from acute stress and reactive depression and not in proper frame of mind to arrange for cross examination or cross examine the deponent. He requested for postponement of three to four weeks. He enclosed certificate from three doctors and prescription of the medication the petitioner was taking. The petitioner was informed by letter dated 22nd May 2009 that the Committee was not satisfied with the enclosure submitted by the petitioner and asked him to remain present on 23rd May 2009, failing which they would proceed as per law. The petitioner again requested for postponement. The petitioner then sent a letter on 4th June 2009 informing the Chairperson that he was now in a position to depose before the Committee since he has partially recovered from his ailment. The petitioner sought new dates for deposition. He also vide letter dated 4th June 2009 addressed to the Registrar, Goa University, requested to provide access to his office in the Department of Political Science, Goa University to collect his personal belongings and documents and papers relating to the

case. The petitioner was informed by a letter dated 12th June 2009 that since the inquiry was in progress, it may take some time for administration to permit access to office of the Head of Department, Department of Political Science.

22} The petitioner was then served with an order of the Chairman, Executive Council of Goa University stating that the disciplinary proceedings (second inquiry) was contemplated for misconduct and the order of the Executive Council, having accepted the reports of the complaint Committee, places the petitioner under suspension with immediate effect. He was then served with order dated 18th June 2009 directing payment of subsistence allowance. The petitioner was directed to hand over charge to Dr.Rahul Tripathi though he had already handed over the same to Dean, Faculty of Social Sciences on 15th April 2009 and it was dean who was supposed to hand over charge to the said Dr.Rahul Tripathi.

23} After the first inquiry was conducted, the petitioner was served with the memorandum (chargesheet) dated 9th September

2009 stating that the Executive Council proposes to hold an inquiry and that the petitioner should submit his defence within ten days to the statement of imputations and misconduct in support of each article of charge. He was also asked to intimate whether he desires to be heard in person.

24} The petitioner sought time and again sent reminder since there was no response to his letter dated 10th September 2009. The petitioner went on sending the reminders and he was then informed that his request to supply additional documents and to engage a lawyer, was refused. The petitioner then forwarded his reply to memorandum of charges on 17th October 2009 reserving his right to file his full defence later.

25} The petitioner was then served with order dated 15th October 2009 of the Vice Chancellor informing that inquiry under the statute SSP-1 (XXVI) read with Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 was being held and Executive Council at its meeting decided to appoint Presenting Officer on behalf of the University. On the same date,

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he was served with another communication informing him that an Inquiry Authority has been appointed and now Justice Dr. Pratibha Upasani (Retired) was appointed to inquire into the charges framed against him. The petitioner sent a letter to the Chairman, Executive Council requesting that he should be permitted to engage a lawyer. The petitioner made this request once again but he was informed that the Inquiry Officer held preliminary hearing on 9th November 2009. The petitioner then engaged a lawyer and appeared for preliminary hearing. In the meanwhile, the documents were permitted to be inspected and the inquiry was postponed to 7th December 2009. The petitioner inspected the documents on 2nd December 2009. He also appeared before the Committee on 7th December 2009.

26} However, this inquiry was kept in abeyance by the Inquiry Officer and subsequently by order dated 15th December 2009, through the Registrar, the Goa University informed the petitioner that the disciplinary proceedings against the petitioner, by appointing Inquiry Officer, were terminated and that Disciplinary Authority shall decide further course of action. The petitioner was

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also informed that the earlier communication by the Registrar be ignored and a fresh communication on identical lines signed by the Vice Chancellor (without designation of Chairman of Executive Council) was issued.

27} The petitioner was then informed by a memorandum dated 17th February 2010 by the Vice Chancellor on behalf of Executive Council stating that the Executive Council at its meeting on 28th January 2010 has accepted the report of the Committee for Prevention of Sexual Harassment of Women at Work Place and had come to a conclusion that the petitioner was not fit person to be retained in service and the gravity of the charge is such that it warrants the imposition of major penalty and accordingly proposes to impose major penalty of dismissal from service, which would ordinarily be a disqualification for future employment under the Government as specified in Rule 11(IX) of CCS (CCA) Rules, 1965. The petitioner was asked to give representation against the proposed penalty.

28} The petitioner kept on receiving the letters stating that

some pages of the Committee Report, which were forwarded, were incorrect and all this according to him shows that the inquiry was biased, conducted in haste and persons who had no relevance to the case were examined as witnesses by the Committee. The petitioner was thus discredited.

29} The petitioner sought extension of time to reply to the notice of the Disciplinary Authority and that time was extended by ten days. Therefore, the petitioner replied to the memorandum dated 17th February 2010 vide his representation dated 13th March 2010 as to how inquiry was bad in law. If the first inquiry was a fact finding inquiry, then, how suddenly after terminating the second inquiry, the first inquiry was sought to be termed as inquiry under the CCS (CCA) Rules, has not been clarified at all. Thus, there is a gross illegality.

30} The petitioner was also served with a letter dated 24th March 2010 asking him to apply for appropriate leave with effect from 16th April 2009 to 13th June 2009 to regularise his absence, when infact the petitioner was directed to go on leave.

31} The petitioner then wrote a letter dated 28th April 2010 to the Vice Chancellor stating that the Times of India, Goa Edition, carried a report on 11th April 2010 on page 3 stating that the petitioner had been dismissed from service in a decision taken by the Executive Council of Goa University on 8th April 2010 and the news item also quoted the Registrar of Goa University stating that the petitioner was no longer in service. The petitioner sought to know from the Vice Chancellor whether the news was correct and how it was first given to the press without any official communication to the petitioner.

32} The petitioner was issued a letter by the Registrar, Goa University on 7th May 2010 stating that the Executive Council at its meeting held on 8th April 2010 had resolved to maintain the penalty of dismissal from service with immediate effect and that is how the petitioner was served an order dated 10th May 2010 signed by the Secretary on behalf of the Executive Council dismissing him from service.

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33} Against this order, the petitioner preferred an appeal on 25th June 2010 to the Executive Council. The appeal came to be dismissed on 19th April 2011. Thus, these orders which are termed as impugned orders, are challenged by the petitioner in this writ petition under Article 226 of the Constitution of India.

34} Mr.Rohit Bras De Sa, learned counsel appearing for the petitioner submitted that the inquiry is violative of the CCS (CCA) Rules, 1965. The petitioner was Head of Department in the Department of Political Science, Goa University. The Goa University statues SSB-1(xxvi) states that for disciplinary proceedings and departmental action, the teachers shall be governed by the provisions of the CCS (CCA) Rules, 1965, fundamental rules and supplementary rules. Therefore, the inquiry should have been in accordance with these rules. There is a violation of these rules inasmuch as the rules state that the Committee for redressal of complaints of sexual harassment should be headed by the Officer sufficiently higher than the delinquent Officer. In the instant case, the Chairperson and almost all members of the Committee were junior in rank to the petitioner.

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One member was working as a junior under the petitioner and the Members/Secretary had served under the petitioner when he was Head of Department in 2003-2004 and had been often pulled up for dereliction of duty.

35} It is then contented by the learned counsel for the petitioner that there is violation of Rule 14(2) inasmuch as the Executive Council of Goa University had not recorded grounds for inquiring into any imputations of misconduct or misbehaviour of the petitioner before the inquiry. He contends that there is violation of Rule 14(2) inasmuch as the inquiry was not conducted as provided for under the CCS (CCA) Rules.

36} Mr.Rohit Bras De Sa then submits that the Disciplinary Authority has not drawn up or caused to be drawn substance of the imputation of misconduct or misbehaviour in the distinct articles of charge before the preliminary inquiry, which is now termed as final inquiry. The Disciplinary Authority has not delivered or caused to be delivered to the petitioner copy of the articles of charges, statements of imputations of misconduct or misbehaviour

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and list of documents and witnesses before the preliminary inquiry.

37} The learned counsel appearing for the petitioner has throughout termed the inquiry held by the Complaints Committee as a preliminary inquiry and according to him the Committee may have termed it as a final inquiry, but it was not so on the own showing of the respondents.

38} The Disciplinary Authority did not require the petitioner to submit a written statement of his defence and did not ask him to state as to whether he desires to be heard in person or through Defence Assistant. There is violation of Rule 14(iv) and 14(vi) of the CCS (CCA) Rules, 1965 inasmuch as copies of the statement of witnesses, written statement and a copy of the order appointing the Presenting Officer were not forwarded. The petitioner was completely misled into believing that the inquiry was a preliminary hearing as stated by the Chairperson Dr.Edith Melo Furtardo in the letter dated 17th March 2009. He was not allowed to take the assistance of any other government servant/defence

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assistant to present his case. The application for engaging the lawyer was rejected by the Complaints Committee which has resulted in miscarriage of justice. He was not given any opportunity to seek and obtain the documents in possession of the Goa University and which were vital and required for his defence and this also violates sub-rule 3 of Rule 14 and Rule 14(2) of the CCS (CCA) Rules, 1965. An inquiry which is preliminary in nature by the own saying of the respondents, cannot be termed as a final inquiry and particularly when the respondents themselves appointed an Inquiring Authority and termed the earlier exercise as preliminary. It could not have been given a go-by mid way. It was not open for the Authority to fall back on the earlier inquiry which was termed as preliminary and at which the petitioner was denied fair opportunity to defend himself. Reliance placed on such an inquiry and its report has caused great prejudice to the petitioner.

39} The prejudice is writ large, even assuming that the inquiry held earlier can be said as final one. Even at that inquiry, the petitioner was forwarded by the Committee, fresh depositions from time to time and additional documents as well. This could not have

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been permitted by any stretch of imagination as the petitioner must know in advance the charges and imputations and the witnesses who are going to be examined to prove the same. The petitioner was not permitted to lead evidence nor was he given permission to engage any defence assistant and all the witnesses were examined behind his back. The petitioner was not allowed to examine his witnesses, cross examine and re-examine the complainants either by himself or through his defence assistant and make submissions as well.

40} Thus, this is a case of complete non compliance with the rules. The rules have been violated in letter and spirit. If the rules are violated and the inquiry has caused grave prejudice to the petitioner by casting a stigma on his character, then, the ultimate punishment given/awarded be set aside as it cannot be sustained in law.

41} Pointing out various rules and relying on them, it is contended by the learned counsel for the petitioner that a fair and just inquiry contemplates access to documents, taking copies

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thereof, preparing complete and proper defence and full opportunity being given to the delinquent to examine his witnesses so also depositions being recorded in his presence and allowing the delinquent to cross examine all the witnesses and thereafter make final submissions. Nothing of this kind was permitted and even oral or written arguments were not allowed to be placed on record. Thus, an ex-parte inquiry was held and such an inquiry violates the principles of natural justice and the service rules. Consequently, both the orders are unsustainable in law and must be set aside.

42} Lastly, the inquiry suffers from bias and serious prejudice against the petitioner. The bias was apparent not only in the composition and constitution of the Committee but also while denying fair opportunity by refusing adjournments, disbelieving medical certificate and version of the petitioner that he is ill and medically unfit. When all these violations were brought to the notice and when the judgment of the Supreme Court in the case of Vishakha vs. State of Rajasthan reported in AIR 1997 Supreme Court 3011 has been violated, then, this inquiry and the ultimate

conclusion cannot be sustained. The petitioner, therefore, prays that the same be set aside.

43} The learned counsel for the petitioner in support of his arguments that the inquiry was illegal and makes mockery of the principles of natural justice and the service rules, relies on the following decisions:

- (1) 1994 Supp (2) Supreme Court Cases 518 (Union of India & Ors vs. I.S. Singh);
- (2) Judgment of Hon'ble Supreme Court in W.P.(Cri.) No.173-177 of 1999 decided on 26th April 2004 in the case of Medha Kotwal Lele & Ors vs. Union of India & Ors;
- (3) Judgment of Delhi High Court in Writ Petition (Civil) No.7849 of 2006 in the case of Sandeep Khurana vs. Delhi Transco Ltd & Ors;

44} On the other hand, Mrs.Agni, learned counsel appearing on behalf of the respondent - Goa University submits that the Disciplinary Authority and the Committee has not committed any illegality much less in course of conducting the inquiry and awarding the punishment. She submits that what the petitioner is

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attempting is to find flaw in the inquiry on some technical ground and matters of procedure. She submits that the inquiry in the present case cannot be compared with other inquiries for imposing penalties on account of misconduct committed by delinquent officers, while in service. A complaint of sexual harassment at work place is by itself a serious offence and misconduct. Ordinarily, the victim does not come forward to depose about such harassment by her superior or senior in service. She cannot be expected to depose openly and state the details of harassment as that would cause not only embarrassment to her but to her family members. The victims of sexual harassment do not muster courage unless committee members assure them of confidentiality, protection and security. Bearing this important distinction in mind, the Inquiry Committee decided that the petitioner will be informed well in advance about the witnesses who are proposing to depose, when their deposition would be recorded and the petitioner was informed to remain present. The petitioner has himself chosen to not to remain present. This is not a case of the Inquiry Committee proceeding ex-parte on its own. The Committee was virtually forced to do so because repeatedly the petitioner was seeking adjournments. He

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sought adjournment on false medical grounds. The medical certificate forwarded by the petitioner bears no date. It is not an authentic one. No reliance could have been placed on such certificates which are undated and the genuineness and authenticity of which was not established. Even the ailment stated therein was not of such a nature as would prevent a person like the petitioner from attending the inquiry in the State of Goa.

45} Mrs.Agni submits that the Committee itself was duly constituted in terms of the statutes, the CCS (CCA) Rules, 1965 and the guidelines laid down in the case of Vishaka (supra) by the Supreme Court. None of the Committee Members were junior in rank as alleged. In fact, when the petitioner complained about presence of Dr.Rahul Tripathi on the Committee and finding that Dr.Rahul Tripathi may be a witness, promptly he was dropped from the Committee. The petitioner made false and baseless allegation that the Committee still has some junior officers on it. However, none of the Members were junior to the petitioner in service, but, they were of equal rank. Ultimately, this is not a case where the petitioner was completely caught by surprise by the

allegations of sexual harassment. He was well and truly informed about the charges and imputations and being aware of the same, it was expected of him to come forward and defend himself by demonstrating his courage and by the strength of his character. Instead, the petitioner chose to remain away from the inquiry. He has failed to establish any prejudice being caused. There is absolutely no bias. The Inquiry Committee had rightly proceeded as it was a Committee constituted to inquire into allegations of sexual harassment at work place. There was no flaw in its composition. When the inquiry was held by the said Committee and the Committee members may not be well acquainted with legal procedures and rules, yet, finding that their exercise was complete and proper, the inquiry by appointing Inquiry Officer/Authority, namely, Justice Pratibha Upasani (Retired), was rightly dropped. There was no need to do so because the inquiry by the Committee was in terms of the statute and rules and had no defect or infirmity. If the petitioner alleges that the principles of fairness and justice or principles of natural justice have been violated, it is for him to establish and prove the prejudice. Merely, raising technical aspects would not vitiate the inquiry and the

punishment.

46} Mrs. Agni was at pains to emphasise that the Court must see the allegations which are indeed very serious. According to her, this is a case of a teacher who is in superior position, exploiting his pupil and students. A teacher is looked upon as a guide, a friend and a philosopher. A student respects and has regard for the teacher on account of his/her character, learning and academic excellence. When person in such a position ill-treats and misbehaves with the students, then, it is not expected from the highest academic authority, namely, the Goa University to tolerate such activities at its campus. The complaints by girl student of sexual harassment at the campus have to be sternly and strictly dealt with or else the atmosphere will be polluted totally. For all these reasons, it is prayed by Mrs.Agni that this is not a fit case for interference in writ jurisdiction and the petition be dismissed.

47} Mrs.Agni, learned counsel appearing for the respondent has relied upon following decisions in support of her contentions:

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- (1) AIR 1997 Supreme Court 2654 (Pankajesh vs. Tulsi Gramin Bank & Anr);
- (2) (2008) 9 Supreme Court Cases 31 (Haryana Financial Corporation & Anr vs. Kailash Chandra Ahuja);
- (3) (2008) 11 Supreme Court Cases 85 (State of Punjab & Anr vs. Hari Singh);
- (4) 2010 (11) Supreme Court Cases 5000 (Dinesh Chandra Pandey vs. High Court of Madhya Pradesh & Anr)

48} For properly appreciating the rival contentions, a reference will have to be made to the rules, namely, the CCS (CCA) Rules. Apart from this, ultimately these rules set out the procedure for imposing the penalties.

49} Rule 14 sets out the procedure for imposing major penalties. After the judgment of the Supreme Court in the case of Vishaka (supra), every Ministry or Department in the Central Government, State Government and other establishments were obliged to constitute Complaints Committee. These Complaints Committee were to enquire into complaint of sexual harassment. These Complaints Committee were to comprise the members in terms of the guidelines laid down in the case of Vishaka (supra). Since a

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mechanism is devised to prevent exploitation of women at work place, it goes without saying that the Complaints Committee must comprise of women. Ultimately, it is the women who experience such harassment on account of their vulnerability and their weak position in comparison to men. The judicial notice of sexual bias in our society had been taken and that is why the Hon'ble Supreme Court stepped in. Finding that Government and governmental agencies were not sensitive enough to such complaints and serious cognisance of the complaints of sexual harassment at work place has not been taken, that the Supreme Court framed a scheme and laid down guidelines which were to bind everybody until the rules were amended or framed.

50} All that Rule 14(1)(2) and proviso thereto sets out is, that such Complaints Committee would be deemed to be a Committee set up and constituted under the service rules by which the employees are governed. The Supreme Court clarified this aspect in the subsequent order in the case of Medha Kotwal Lele and Ors Vs. Union of India and Ors reported in (2009) 16 Supreme Court Cases 624 and such a clarification had to be given to take care of

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technical objections that were being raised to the inquiries by such Committees by the employees who misbehaved with female employees at work place. Therefore, the Supreme Court clarified that the Complaints Committee as envisaged by it in its judgment in the case of Vishaka (supra) will be deemed to be an Inquiry Authority for the purposes of Central Civil Services (Conduct) Rules, 1964 and the report of this Committee shall be deemed to be an inquiry report under the CCS (CCA) Rules enabling the Disciplinary Authority to act on the same, in accordance with rules. It is primarily with this intent and to comply with the judgments of the Hon'ble Supreme Court, that vide notification dated 1st July 2004 published as GSR 225 in the Gazette of India dated 10th July 2004, a proviso below Rule 14(2) of the CCS (CCA) Rules, 1965, came to be inserted.

51} We read nothing more in the submission of Mr.Rohit Bras De Sa that the insertion of the proviso would mean that this Committee is obliged to conduct the inquiry and major penalties have to be imposed by the Disciplinary Authority only after it fully complies with the procedure laid down in Rule 14.

52} Assuming it to be so, we are in agreement with Mrs.Agni that the procedural provisions have to be adhered to and cannot be given a complete go-by, but a technical infraction or breach thereof should not be held as vitiating the entire inquiry and the punishment imposed in furtherance thereof, as that would defeat and frustrate the object of the guidelines laid down by the Supreme Court totally.

53} If female employees have to be made bold and courageous enough to come forward and lodge complaints of sexual harassment by and against their male counter parts, then, the procedure has to be some what flexible and allowing an element of confidentiality. This is a step towards empowering the women and making them aware of their rights. This is a case of the women being denied their basic human rights and merely because they are working with male employers or male co-employees or male superiors, does not mean that they have to play a secondary role and to surrender themselves. The whole process is to give strength to the weak and to our mind, to inculcate sensitivity in the strong.

If this purpose is to be achieved then, although, the Committee may not have strictly gone by the procedure laid down in Rule 14 in a given case, that by itself and without anything more should not vitiate the entire inquiry. Everything depends upon the facts and circumstances of each case. No general rule can be laid down and each and every inquiry cannot be set at naught or the findings thereof cannot be disturbed and interfered with for breach of technical matters or rules of procedure unless it is conclusively established and proved that there is grave and serious prejudice caused to the delinquent by such breach or infraction.

54} We are in agreement with Mrs. Agni that in this case the Complaints Committee proceeded under a genuine misconception for some time, that it is conducting a fact finding or some preliminary exercise. From the pleadings of the petitioner and particularly in this petition (see paras 13 onwards right up to para 15), that the complaint was to the Committee for prevention of sexual harassment of women at work place (Goa University) and that he had to appear before such Committee to answer the charge of sexual harassment made against him. The details of the charges

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and the persons to be examined were provided to the petitioner by various written communications from this Committee. It is not expected of such Committees and specially in the academic bodies and educational institutions that they stick to all the rules of procedure. They are not legally trained minds. Their communications may not be worded satisfactorily and happily but the fact remains that if the Committee was constituted to inquire into the charges of sexual harassment against the petitioner, then, there was clearly no need for a second inquiry. The Inquiry Committee headed by an non-academic person and particularly legal person (Retired Judge of this Court), may have been constituted, but a finding that once a Complaint Committee constituted in terms of the Statute and the Rules is duly authorised and empowered to proceed against the petitioner in law and it having initiated an inquiry, there was no need to bring in any other person as inquiring authority. The inquiry, therefore, was dropped. By initiating an inquiry through means of Complaints Committee duly constituted under the Rules for inquiring into charges of sexual harassment against the petitioner, there was no necessity of a second or parallel inquiry. It was, therefore, rightly

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dropped as the Disciplinary Authority was of the opinion that it could act on the report of the Complaints Committee. Therefore, it must be allowed to proceed and complete its assignment. By the exercise of merely appointing another Inquiry Authority, but later on dropping that course, no prejudice has been caused to the petitioner. By appointing or dropping such an inquiry altogether, no prejudice can be caused, as the petitioner had to answer the charge either before the Complaints Committee or before the Inquiry Authority to be appointed by the Vice Chancellor/Executive Council of the University. Either which way, the petitioner had to subject himself to an inquiry and he had no vested right in matters of procedure and particularly in the given facts and circumstances. As long as the Committee was constituted in terms of the guidelines of the Hon'ble Supreme Court in the case of Vishaka (supra) and comprising of the required number of members including the women members, the petitioner could have no cause to complain or make any grievance.

55} In our view, the petitioner is really blowing hot and cold because he also challenged the composition of the Complaints

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Committee. On account of his complaint, Dr. Rahul Tripathi stepped down as a member of the Committee. He then raised a complaint that one of the members Shila D'Souza was his subordinate and has a grouse against him because of the fact that she was reporting to him when he was serving the University. When that allegation was not found to be of no substance and it was ruled that any member junior to the rank of the petitioner was appointed on the Committee, that the Committee over ruled all objections and proceeded to hold the inquiry.

56} The inquiry was into the charges of sexual harassment and that was known to the petitioner. If the report of the Standing Committee for the Prevention of Sexual Harassment of Women at Work Place, Goa University is perused, it would be apparent that there were complaints made and the inquiry was made on account of the written complaints made by Selif Gracias dated 11th March 2009 to the Vice Chancellor, Goa University, and seven M.A Part II students of Political Science dated 17th March 2009 and the complaint of one Agostinho Antao dated 18th March 2009 addressed to Vice Chancellor, Goa University.

57} The report notes that when the initiation of the proceedings was informed to the petitioner, he raised preliminary objections of bias. The Committee, therefore, called upon him to name persons whom he accuses of bias so as to take cognizance of allegations. A reply was forwarded by the petitioner on 25th April 2009 which was not only raising these objections but dealing with the charges. The Committee has noted that the complaints were only against Dr.Rahul Tripathi and Mrs.Shaila D'Souza. Dr.Rahul Tripathi stepped down on his own and excused himself from the Committee as he was likely to depose before it as a witness as well. As far as Mrs.Shaila D'Souza is concerned, the Committee extensively dealt with the complaint and found that there were no such episodes or pleas as alleged by the petitioner against her and, therefore, there were no reasonable grounds to allege bias as far as she is concerned. The Committee also sought clarifications from the Goa State Commission for Women in a letter dated 30th April 2009 and it received a reply thereto on 5th May 2009. That Committee informed that none of the allegations made by the petitioner against Mrs.Shaila D'Souza of dereliction of duty had any basis.

58} It is stated that the Committee held eighteen meetings which were spread over from April 2009 to June 2009. All the persons who are signatories of the complaints forwarded to the University were first summoned. They all appeared on 16th April 2009 and deposed before the Committee and their complaints were verified. The deposition of the mother of the complainant No.1, who accompanied her, was also recorded. The Committee noted that there was prima facie case of sexual harassment made out against the petitioner by all the persons who deposed, except the father of complainant No.2. The petitioner was then forwarded the copies of the three complaints received by the Committee and all depositions of the complainants and witnesses. The Committee decided that if any witnesses were forthcoming, they would be asked to come before the Committee. The petitioner also appeared and deposed on the extended date viz., 26th April 2009 and submitted his 27 pages reply. His deposition was audio-visually recorded with his consent. He was asked to depose on the allegations against him as reflected in the complaint and depositions of the witnesses. It was thereafter for the petitioner to respond to the questions of the Committee in

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relation to the reply to the complaints and depositions. The deposition continued on 29th April 2009. Further deposition was deferred for want of time till 6th May 2009, from which date the petitioner-delinquent did not appear before the Committee again. The details in this behalf are set out in paras 2.3 of the Inquiry Report. In such circumstances, the Committee had no choice but to proceed with the inquiry by recording the statements of witnesses examined by the complainants and such other witnesses which the Committee itself thought fit to examine. The Inquiry Committee also had before it the further materials which came to be duly forwarded to the petitioner.

59) We have carefully examined the Inquiry Report although we are not expected to sit in judgment over the findings as an Appellate Authority. In judicial review, we can interfere with such findings provided they are perverse or based on no evidence. If the findings recorded are such as no reasonable person would arrive at in the given facts and circumstances, then, the writ Court is duty bound to interfere with the same. Equally, in judicial review if the decision making process is vitiated on account of discrimination,

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unfairness, unreasonableness, bias or the findings are wholly irrational, not based on any germane or relevant material or taking into account material which was not before the Authority, but the Authority obtained it behind the back of delinquent and utilised it to his detriment and prejudice, then, in all such cases, the decision making process is faulty and flawed and must be interfered with and set right. Ultimately, violation of the mandate of Article 14 of the Constitution of India and equally the mandate of Articles 16 and 309 and 311 which are applicable to persons holding public posts which are also guaranteed by the CCS (CCA) Rules, 1965 the statutes and Ordinance of Goa University, has serious consequences. Therefore, any infringement of the mandate of these Articles and which brings in inequality, discrimination, irrationality, unreasonableness and elements demonstrating lack of fairness, equity, justice and fair play would enable us to exercise our writ jurisdiction. This is to enable the holders of public offices to seek protection from a Court of Law by approaching it in cases of violation of the Rights of Civil and Public Servants. This is to safeguard and uphold the rights of public servants so that they discharge their duty to the public and fulfill the trust and faith

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reposed in them. They must be allowed to work independently and impartially. However, when their conduct is such that they are not fit to be retained in service, then, their service Rules must enact a procedure of their removal and dismissal. Proper adherence thereto is equally their right.

60} The petitioner's livelihood being at stake and equally his character, that we have perused the report and the complaints carefully. Additionally, we did so because the petitioner's counsel argued that the inquiry proceeded ex-parte to the serious detriment and prejudice of the petitioner. If guilty and corrupt have to be weeded out and the law contemplates balancing the right of persons like the petitioner in disciplinary matters with the need to maintain the sanctity and discipline in Educational Institutions, then, this precise test is applied by us in this case.

61} On careful perusal of the relevant material, we find no basis in the complaint in this grievance and argument.

62} The Committee has rightly held that the statement of

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Ms. Shilpa Seth Narvekar was treated as deposition in respect of series of complaints already before the Committee as it was a continuation of the sexual harassment and allegations against the petitioner. The petitioner was sent copies of various depositions for his replies but apart from reply to the depositions and complaints of Selifa Gracias, Chris Antao, Sophia Moraes, Hilda Costa, Bhakti Kandolkar, Fouzia Rizvi, Shilpa Shetgaonkar, Suvarna Gaonkar, Roopa Dessai, Ms Milagrina Gracias, Mr. Agostinho Antao and the deposition/ complaint of Ms. Shilpa Seth Narvekar, he gave no response to the remaining depositions which were forwarded to him. The petitioner was also provided an opportunity to cross-examine the witnesses including the complainant, who were summoned accordingly, but the petitioner did not appear. Considering the sensitivity involved, the Committee arranged for video conferencing of the cross examination.

63} We find there is a reasonable and satisfactory explanation for proceeding ex-parte because the allegations themselves so also the inquiry was a trauma for the complainants, witnesses and the near and dear ones of them. It was not easy for them to come and re-

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count the events with sufficient clarity and details. That such an inquiry need not be postponed without any sufficient cause being shown by the delinquent, is a reason which appeals to us. It is not as if the Committee made no attempt to secure the presence of the petitioner. It sent him various communications to which he replied as well, but he forwarded certain certificates stated to be given by medical practitioners, but the Committee noted that, the private medical practitioners whose certificates were forwarded, were not inspiring confidence. There was an undated certificate from one Dr. Abel Da Costa, J.M.J Hospital. Now, surely an undated certificate could not have been taken into consideration and was rightly discarded. The second document which was an enclosure to the petitioner's letter dated 22nd August 2009, was a prescription by the same doctor dated 15th May 2009. The third document was a case paper of Dr. Ajoy Estibeiro, Esperanca, Dr. Estibeiro Clinic dated 19th May 2009. The ailments disclosed were not such as would be sufficient to hold that the petitioner was unable to attend the inquiry. It is stated that the petitioner who was aged 43 years male showed symptom of acute stress. A recommendation was made that he should take rest and follow up regularly. However,

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this certificate was not dated by the doctor. What the psychiatrist certificate shows is that the petitioner has reactive depression and should rest at home. However, we do not find fault if the Committee thinks that the petitioner was fit to depose. Thereafter, we have seen what the case against him is. There are complaints of female students about the petitioner commenting on their dress and physical appearance and body, which left them with a feeling of humiliation. One female student stated that he was touching her hand, breast or attempting to do so by coming very close. He was staring at the girls wearing deep neckline dress, his acts and gestures made them uncomfortable. He was accused of forcing them to come in his car and subjecting them to indecent physical action which made them insecure. He even threatened them that their name would be spoiled. He enquired about their friendship with boys and asked them not to roam with boy friend and he was using vulgar language.

64} The allegation was that he abused/misused his position of power and authority. He instigated some M.A Part I students against other M.A Part I and II students to gain support for

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carrying on his acts. It became apparent to the students that if they make any complaint their careers would be ruined. Therefore, when they made these complaints to the highest academic authority, namely, Vice Chancellor, it was decided to constitute a Committee to enquire into them. Thereafter, the Committee called upon these students to come forward and depose. The complainants/students did depose and gave sufficient details, some of which are graphic and not capable of being reproduced in this judgment. The behaviour of the petitioner in the Department, at the seminar or workshop has been vulgar and indecent and that is how by referring to the details and finding that these were not mere versions of the students but they were supported by independent witnesses, that the Committee has believed them. The assessment of the evidence by the Committee in its report, a copy of which is enclosed to this petition, from page 127 to 154 leaves us in no manner of doubt that the petitioner has done little to help his case. As an academician, highly qualified and expert in the field as claimed by him, he was in a position of superiority. He was to guide the students in their career. Instead, from his conduct it appears that he exploited them. The narration by the students is such that

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we are shocked by their disclosure. If this is the atmosphere which was prevailing at the relevant time in the Department of Political Science, it is well and truly disturbing all right minded people. Educational institutions and University campuses are temples of learning where parents send their children and wards so that right values and morals are inculcated in them. That children in addition to following their parents and society, learn from their teachers, the way of life. They not only are expected to excel in studies and extra curricular activities but to shape their careers and their life as a whole with the assistance, guidance and help of the teachers. The conduct of the petitioner has completely belied this basic and fundamental expectation from a teacher and a guide. If the version of complainant No.9 is perused, it would demonstrate as to how the petitioner harassed her. The said complainant was known to him since 2003. The petitioner was her teacher, Ph.D guide, Head of Department and Project Director. He acknowledged her academic skill and ability and appointed her on his project. He assigned her the task of taking lectures and tutorials for M.A students. He also was her guide for Ph.D. Yet, the petitioner persuaded her. It is stated by her that she was followed by him.

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She was forced to leave her career pursuits half way and join a higher secondary school as a teacher. The petitioner followed her to that school and even took classes in that school so that he could meet her. The telephone conversations which have been noted including the SMS messages at page 137 of the paper book, would go to show that the petitioner has not denied any of the allegations. He does not deny that the number from which the calls were made does not belong to him or the handset bearing the said number was never in his possession. In such circumstances, when the Committee has analysed the evidence against the petitioner critically and evaluated it, we do not find it necessary to refer to each of the depositions and the answers or replies of the petitioner in further details. Even while assessing the statements and written submissions and the replies of the petitioner, in para 2.3 onwards, what the Committee has observed is that he had not made himself available for complete examination, on his denials of the charges of sexual harassment. All that he stated was that the alleged acts do not amount to sexual harassment. However, going by the concept of sexual harassment as enshrined in the Supreme Court decisions, we have no hesitation in rejecting his contention,

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which is rightly not pressed before us. Sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as: (a) physical conduct and advances; (b) a demand or request for sexual favours; (c) sexually coloured remarks; (d) showing pornography; (e) any other unwelcome physical, verbal or non verbal conduct of sexual nature. The Protection of Women Against the Sexual Harassment at Work Place Bill is aimed at prevention of sexual harassment of the women at work place. It provides a complete mechanism. We need not discuss this aspect in great details because when basic human rights guaranteeing and protecting dignity, self-respect of women are violated, the Courts should follow all such norms which are nationally and internationally laid down so that the status and reputation of the women in the society is protected and safe guarded.

65} The petitioner's version that he never served a tray at the Human Rights Seminar/Workshop stands refuted by the oral and documentary evidence. The petitioner went on to state that the door of the conference hall automatically closes due to automatic

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mechanism, but not only the complainants but also the witnesses showed that this was not the position, is clear from their statements and deposition.

66} The Committee has rightly termed the conduct of the petitioner during the course of the inquiry as indulging in technicalities and semantics.

67} Thus, the Committee is right that from very inception of the inquiry the petitioner was trying to avoid meeting the charges as serious as sexual harassment of students. He avoided the inquiry and once he was not ready to face it, the Committee was left with no alternative but to independently scrutinise the material. Part III of the report of the Committee containing the observations and findings has been carefully scrutinised by us and we are in agreement with the Committee that the material gathered and the evidence on record demonstrates that the petitioner is guilty of sexual harassment at work. His conduct and his behaviour have been termed rightly as grave misconduct.

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68} Finally, we agree with the Committee that some of the students/complainants may have overstated their case but their complaints cannot be discarded because they are based on actual events the occurrence of which have been corroborated even by others. If witnesses such as catering contractors also corroborated and supported the version, then, we do not see how the Committee has committed any gross irregularity or grave illegality in arriving at the finding of guilt of the petitioner.

69} We are of the view, therefore, that there is no merit in any of the contentions raised by Mr.Rohit Bras De Sa. His first contention that the Committee was not properly constituted and was biased, has no merit for the aforementioned reasons. Dr.Rahul Tripathi has stepped down and was not a member of the Committee, the moment his attention was invited to the objections and grievances of the petitioner as against him. Ms.Shila D'Souza was stated to be biased but there were no materials to conclude even reasonable apprehension of bias on her part. It was found that she has not directly been proceeded by the petitioner for dereliction of duty or any insubordination and there was no basis for the allegations in

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that behalf.

70} The second contention that the Committee consisted of subordinates is not well founded. The argument is that the Committee had people junior and subordinates of the petitioner. The petitioner held a certain rank. The Committee members with their names and designations have been noted by us. They were certainly not junior to the petitioner. They were of equal rank. If that is so, we do not find that the composition of the Committee was in any way such as would cause prejudice to the petitioner and particularly on the ground that he was tried by persons who were far junior to him in rank and status.

71} The third contention that the inquiry proceeded ex-parte and that has caused prejudice to the petitioner, is equally without merit. We have found from the material on record that the Committee proceeded ex-parte only after it arrived at a conclusion that it was not possible to delay the inquiry further considering the sensitive nature of the same. The petitioner went on seeking adjournments and on several occasions stopped attending. If he

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has stopped attending inquiry on his own and for no sufficient cause or reason, then, he has himself to blame. He requested to postpone his cross-examination. That he was medically unfit was also dealt with by the Committee and it found no basis in the complaint. The ailment disclosed and the nature of the treatment that he was taking showed that it was not such as would render him completely unfit to depose because the certificates in that behalf were not conclusive. In such circumstances, we find that there is no merit in the complaint that any prejudice is caused to the petitioner because the Committee proceeded ex-parte.

72} The complaint of the petitioner that he was not allowed to engage the services of lawyer is equally without substance. It is not the law that every inquiry against the delinquent must be held to be vitiated if the delinquent is not provided with the services of the lawyer. The delinquent must show that being pitted against legally trained minds and considering the complications and seriousness of the charge, so also being confronted with lawyers or legal experts, that he was handicapped, only then such complaints have to be looked into with some degree of seriousness and concern. The

reliance placed by Mrs.Agni on a judgment of the Hon'ble Supreme Court in the case of Dinesh Chandra Pandey vs. High Court of Madhya Pradesh and Anr., is apposite. In this decision reported in 2010 (11) Supreme Court Cases 500, the Hon'ble Mr. Justice Swantater Kumar speaking for the Bench has observed thus:

“23 The charge against the appellant was not of a very complicated nature, which a person having qualification and experience of the appellant would not be able to defend. In these circumstances, we are of the considered view that no prejudice whatsoever has been caused to the interest of the delinquent officer. These are the rules primarily of procedure, an element of prejudice would be one of the necessary features, before departmental proceedings can be held to be vitiated on that ground.”

73} The complaint then made that there is violation of rules of procedure as contained in Rule 14 has no basis. Firstly, these are rules of procedure and every infraction or breach of such rules cannot be said to be fatal unless real and serious prejudice is demonstrated as held by the Hon'ble Supreme Court in the case of Haryana Financial Corporation and Anr vs. Kailash Chandra

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Ahuja reported in 2008 (9) Supreme Court Cases 31 and 2008 (11) Supreme Court Cases 85 in the case of State of Punjab and Anr vs. Hari Singh.

74} We have perused the report of the Inquiry Committee and the communications from the petitioner and response thereto carefully and what we find is that the petitioner appeared and submitted to the jurisdiction of the Committee. He voluntarily attended the inquiry proceedings for some time but stopped attending them midway leaving no option to the Committee but to proceed in his absence. Therefore, this is not a case where any documents were not supplied or the complaints were not made available to him with the details. We agree with Mrs.Agni when she submits that the petitioner was well aware of the charge and the case he has to meet. It is not as if the petitioner was ever denying that he was a guide of Shilpa or that any of the students had not studied under him. He has never denied the charge of being present at the workshop and the presence of female students with whom he misbehaved thereat. It was not his case that he has never contacted the student concerned or not given them lift in his

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car or that he did not pass any remarks. If only the question was of contents of those remarks and if they were found to be sexual innuendos and demeaning and insulting, then, the petitioner cannot complain on account of procedural and technical breaches. In other words, we find that the Committee has proceeded by adhering to the rules substantially and conducted the inquiry in a fair and reasonable manner. It was also not unduly carried away or swayed by the nature of the inquiry or seriousness of the charge.

75} The other contentions of Mr.Rohit Bras De Sa did not, therefore, detain us inasmuch as the inquiry was not completed with any undue haste or without giving fair and reasonable opportunity to the petitioner as complained by him. The petitioner was given adequate opportunity to defend himself as is apparent from the record of the inquiry and the communications from the petitioner which have been duly replied with.

76} The reliance placed by Mr.Rohit Bras De Sa on the decision of the Hon'ble Supreme Court in the case of Union of India and Ors vs. I.S.Singh reported in 1994 Supp. (2) Supreme Court Cases 518

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is wholly misplaced. In that case what the Supreme Court found was notice of the second inquiry was not served on the respondent before it. On a later date the Respondent therein sent an application that he is suffering from unsoundness of mind and that the inquiry be postponed till he gains his mental health. He also sent medical certificate. The report of the Inquiry Officer showed that he did not pay any attention to his letters. It is in these circumstances that the Hon'ble Supreme Court holds that the proper course for the Inquiry Officer was to have called upon the respondent either to produce a medical certificate or to direct him to be examined by a medical officer specified by him. That is how the finding that the ex-parte inquiry violated the principles of natural justice was rendered. Thus, in the facts before the Supreme Court and when it was demonstrated that prejudice has been caused, that the Supreme Court struck down the inquiry and the punishment. This distinction has to be borne in mind and it is not that every inquiry which is held ex-parte or by ignoring medical certificates sent by delinquents can be set aside.

77} We have already dealt with the order of the judgment of the

Hon'ble Supreme Court in the case of Medha Kotwal Lele & Ors vs. Union of India & Ors in Writ Petition Criminal 173-177/1999 delivered on 23rd April 2004.

78} Finally, what remains is the reliance on a learned single Judge's judgment of the Delhi High Court in the case of Sandeep Khurana vs. Delhi Transco Ltd in Writ Petition (Civil) No.7849/2006 delivered on 17th November 2006. True it is that it was case of sexual harassment. Equally true it is that the same rules were held to be applicable to the delinquent in that case. True it is that the complaint of the delinquent was also identical. However, what distinguishes that case from the case before us and at hand is that the Complaints Committee did not give any chargesheet, memorandum and other articles like list of witnesses and documents relied upon. The facts noted by the learned single Judge are eloquent enough. The Committee gave notice to delinquent to appear before it in order to give his view point. It never stated that it was holding any inquiry. There was no memo of charges and there was no compliance with the rules at all. If there was no show cause notice, no chargesheet and no proper

inquiry, then, the punishment is bound to be vitiated. Such is not the case at hand and, therefore, the decisions of the Hon'ble Supreme Court which have been applied by the learned single Judge, although the view taken therein has been explained in later decisions, have been rightly followed and applied by the learned single Judge. The ratio of those decisions is applied in the facts of the case before the learned single Judge.

79} Having dealt with all the submissions of the petitioner and finding that both the orders, namely, of the Disciplinary Authority and that of the Appellate Authority cannot be termed as illegal, irrational, perverse nor can the conduct of the inquiry be held to be vitiated by breach of principles of natural justice and the service rules, we are of the opinion that there is no merit in this writ petition. It accordingly fails. Rule is discharged. No order as to costs.

(S.C.DHARMADHIKARI, J)

(U.V. BAKRE, J)