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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 255 OF 2006
AND
WRIT PETITION NO. 482 OF 2006

WRIT PETITION NO. 255 OF 2006

Shri S. R. Phal,
Retd. Reader,
Goa University,
Residing of Flat No.2,
above Dr. Thali's Hospital
Richie's Corner,
St. Cruz, Goa 403005.
Through :

1. Mrs. Vidya Shantaram Phal
Widow of (late) petitioner above,
Occupation House-wife,
Aged 64 years, Indian National,
Resident of Flat No.2,
Above Dr. Thali's Hospital,
Richie's Corner,
Santa Cruz, Goa 403 005
2. Shri Shireesh Shantaram Phal
son of (late) petitioner above,
Occupation service,
Aged 39 years, Indian National,
Resident of Row House D2,
Shah Harmony, Behind
Philomena Aptt. Moloca,
Merces, P.O. Santa Cruz, Goa.
3. Mrs. Archana Shireesh Phal,
Occupation service, House-wife,
Aged 35 years, Indian National,
Wife of Second Applicant above
Resident with husband
4. Mrs. Sangeeta Shahab Khan
Occupation service, House-wife,
Aged 43 years, married,

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Indian National,
Resident of Flat No.S4,
Block 56A, Kurtarkar Shrishti,
Shantinagar, Ponda Goa.

... Petitioners

V e r s u s

1. H.E. The Governor and Chancellor of
Goa University, Raj Bhavan,
Dona Paula, Goa 403 004

1A. Government of Goa,
through Chief Secretary,
Government of Goa
Secretariat, Alto Porvorim Goa.

2. Executive Council,
Goa University,
through the Vice Chancellor,
Taleigao Plateau,
Sub. P. O. Goa University,
Goa 403206
An University constituted under
Goa University Act, 1984.

3. Shri Ganadhish Vinayak Keni,
major, bachelor, Indian National,
presently Lower Division Clerk,
Goa University, Taleigao Plateau,
Sub. P.O. Goa University,
Goa 403 206.

(Through the Registrar Goa University). ... Respondents

Mr. D. B. Ambekar, Advocate for the petitioners.

Mr. M. Salkar, Government Advocate for respondent nos.1, 1A.

Mrs. A. Agni, Senior Advocate with Ms. K. Govenkar, Advocate for
respondent no.2.

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AND

WRIT PETITION NO. 482 OF 2006

Vinayak J. Kamat,
alias Suresh Kamat,
62 years old, residing at
F-4, Kamat Nagar,
Heliodoro Salgado Road,
Panaji Goa.

.... Petitioner

V e r s u s

1. Goa University,
through its Registrar,
Taleigao Plateau, Goa

2. The Governor & Chancellor of
Goa University, Raj Bhavan,
Dona Paula, Goa.

.... Respondents

Mr. M. S. Joshi, Advocate for the petitioner.

Mrs. A. Agni, Senior Advocate with Ms. K. Govenkar, Advocate for
the respondents.

Coram:- F. M. REIS &
K. L. WADANE, JJ

Judgment reserved on : 29.06.2015

Judgment pronounced on : 16.09.2015

J U D G M E N T (Per K. L. Wadane, J)

These Writ Petitions are filed by the petitioners namely
Mr. S. R. Phal and Mr. V. J. Kamat challenging the order dated
13.07.2005 passed by the Chancellor of Goa University by which

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50% of the pension of the petitioners is withheld.

2. The brief facts of the case may be stated as follows :

The petitioner in Writ Petition No. 255 of 2006 namely Mr. S. R. Phal was a Chairman of the Board of Examination at the relevant time (herein after referred to in short as Charged Officer "CO1" and the petitioner in Writ Petition No. 482 of 2006 namely Mr. V. J. Kamat was working as an Assistant Registrar and heading Section I of the Examination Division of Goa University (herein after referred to in short as Charged Officer "CO3". Another Officer Mr. U. S. Parab "CO2" has not challenged the order. Therefore, we are concerned only with the allegations made against the CO1 and CO3 by the disciplinary authority.

3. The case of the disciplinary authority, i.e. Executive Council of the University is that the three Charged Officers entered into conspiracy and in collusion with each other in order to abet, directly and indirectly and help Rajesh Desai in replacing the original answer books by new ones on which the signatures of the supervisors and the examiners had been forged and for that purpose the Charged Officers No. 1 and 3 along with Dr. Parab had made available the blank answer books and supplements to the said Rajesh Desai which were in their control. After the

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examination of M. A. Part I and II the papers were sent to internal and external examiners and after the corrected answer books were received in the Examination Division, the answer books of student namely Rajesh Desai had been fraudulently replaced by other answer books, written by the same student Rajesh in order to enable him to secure higher marks that is awarded to him by the examiners who had corrected the original answer books.

4. The employee of Goa University namely Mr. G. V. Keni, LDC detected the discrepancy between the marks awarded to Rajesh Desai in one of the three answer books and those entered in the respective marks list/marks sheet prepared by the examiner who had corrected it. Mr. Keni brought the discrepancy to the notice of his superior Mr. Golatkar, and thereafter, both of them on the initiative of Mr. Golatkar, put up the matter before CO3 Mr. Kamat who instead of taking action by altering his superiors, simply instructed them to enter in the register the marks shown in the marks lists.

5. On 27.07.1995 the inflated marks awarded in the answer books were entered by CO1 Mr. Phal in the marks lists and then on his instructions, in the results register, after the marks previously entered in it were erased, the register was signed by all

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three Charged Officers and in undue haste result was ordered to be declared.

6. On the next day, Mr. Alito Sequeira raised objections and stalled the announcement of the result.

7. CO3 and Dr. Parab had also failed in their duty to keep the assessed and blank answer books in safe custody to prevent from being misused or tampered with. Therefore, the departmental inquiry was initiated against all the Charged Officers and the Articles of charges were framed against CO1, CO3 are as follows :

Against CO1 Shri S. R. Phal

Article I

That you the said Shri Phal, while functioning in the above capacity during the period from 1.6.1995 to 27.7.95 entered into conspiracy with Dr. U. S. Parab, the then Controller of Examinations, Shri V. J. Kamat, the then Asstt. Registrar (Exams) I, officials of examination section, some unknown persons and the student Shri Rajesh P. Desai of M. A. (Sociology) Examinations of April, 1995 to give him (the student) undue advantage at the said examination

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by unfair means.

Article II

That you the said Phal individually and/or in collusion with the said officers of the University and other persons participated or aided and abetted directly or indirectly the said candidate Shri Rajesh P. Desai in substituting his (Rajesh) answer scripts of papers: SC-4, Philosophical science, SC-6, Social stratifications and SC-7, Systems and theory of kinship duly assessed by the examiners appointed by the University by fabricating false answer books with highly inflated marks shown to have been given by the Examiners and involved and participated directly or indirectly or aided or abetted said officers and persons in committing forgeries of the signatures of the respective invigilators and examiners in order to commit fraud and give undue advantage to the said student.

Article III

That you the said Shri Phal, during the above period individually and/or in connivance with said officers, persons and the student altered the marks given by the said examiners in the mark sheets of the said

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three papers in respect of the said student without proper verification in undue haste and/or without consulting Shri Alito Sequeira examiner of paper SC-6 who was otherwise available in the department to give undue benefit to the said students.

Article IV

That you the said Shri Phal in connivance with the above officers of the University and the students and in total breach of O.21.47(iii) and without calling for proper meeting of internal Examiners finalised in undue haste the results of M.A. Part I and II Sociology Examinations on 27.7.95 in which the said student was one of the candidates to give him undue advantage at the said examinations.

Article V

That you the said Phal, individually and/or with connivance with said officers and persons fraudulently allowed the entry of inflated marks already entered by you in the mark lists of the said three papers on 27.7.95, in the result registers of M. A. (Sociology) examinations and signed and said result registers and ordered to declare the results in undue haste despite the existence of serious

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discrepancies and suspicious circumstances to give benefit to the said student by unfair means.

Against CO3 Shri Kamat

Article I

That you the said Shri Kamat, while functioning as Asstt. Registrar (Exams) I during the period from 1.6.95 to 27.7.95 entered into conspiracy with Dr. U. S. Parab, the then Controller of Examinations, Shri S. R. Phal, Reader and Chairman of Board of Examiners, officials of examinations section, some unknown persons and the student Shri Rajesh P. Desai of M. A. (Sociology) Examination of April, 1995 to give him (the student) undue advantage of the said examinations.

Article II

That you the said Shri Kamat during the above period individually and/or in collusion with above said persons participated in the act of making available blank answer books and supplements which were in your control, to the said student Shri Rajesh P. Desai. Further, you aided or abetted directly, or indirectly by various acts of omission and commission in

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substitution of three answer books concerning papers SC-4, Philosophical science, SC-6, Social stratifications and SC-7 System and theory of kinship (M. A. Sociology), Examinations of April, 1995 which were duly assessed by the examiners appointed by the University pertaining to the said student Shri Rajesh P. Desai. They were substituted by fabricated and forged answer papers having highly inflated marks shown to have been given by the examiners appointed by the University forging signatures of the invigilators and examiners and circumstances indicate your involvement directly, or indirectly in the forgeries and fabrication of false answer book. Further, to camouflage your involvement in the affairs you applied for earned leave for 20 days w.e.f. 3.7.95 to 22.07.95 though actually you filed application on 10.7.95.

Article III

That you the said Shri Kamat individually and/or with connivance with said officers and persons fraudulently allowed the entry of inflated marks already entered by Shri Phal in the marklist in respect of said three papers in the result registers of said

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examinations against name of the said student Shri Rajesh P. Desai after rubbing out/erasing the earlier marks entered by Shri G. V. Keni and checked by Shri S. K. Golatkar, despite having knowledge of major discrepancies in the mark lists and answer papers of the said papers. These fraudulent acts were done, or permitted to be done, or got done at your instance and presence to give undue advantage to the said student in the examination by unfairmeans.

Article IV

That you the said Shri Kamat during the above period in breach of Ordinance 21.47(iii) and in connivance with the said officers and persons finalised in undue haste without even putting proper noting in the file, said results of M.A. Part I and II examination with the intention that the inflated marks are not noticed by Shri Alito Sequeira, Examiner of paper SC-6 in order to give undue benefit to the said student in the said examination by unfairmeans.

Article V

That you the said Shri Kamat, during the above period, failed to prevent, detect and take timely action in the matter of tampering with the mark-

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sheets by Shri Phal, answer papers by the student Shri Rajesh P. Desai and others. Despite knowledge of major discrepancies in the marks of as many as three papers in respect of the same student from Shri Golatkar and Shri Keni, you failed to take effective steps in the matter. You also failed or neglected to keep the vital material concerning examinations like assessed and blank answer books in safe custody thereby facilitating the commission of fraud and fabrication of false answer books, that despite the discrepancies being brought to your notice and existence of suspicious circumstances you failed or neglected to report the matter to the higher authorities of the University. By your conduct you attempted to downplay the seriousness of the issue and your act of signing, without raising any objections the relevant pages of the result registers imply that you were party to the commission of said fraud and forgeries. All these acts you committed directly or indirectly to give fraudulently undue benefit to the said student at the examination.

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8. Pursuant to the notices, all the Charged Officers were appeared and submitted their respective written statements and they have denied all the charges particularly the Charged Officer no.3 Mr. Kamat took the defence that during the relevant period he was not at Goa but he was at Belgaum for the purpose of medical treatment of his son. The Charged Officer No.1 Mr. Phal had taken defence that the marks were erased and rewritten by Mr. Keni.

9. Considering the rival contentions of both the sides and the defence taken by the Charged Officers, the undisputed facts are as follows :

Mr. Phal, CO1 was appointed as a Chairman of the Board of Examination in respect of the final examination held in April, 1995 in the subjects of SC4 of M.A. Part I and SC6 and SC7 of M.A. Part II. By letter dated 26.07.1995, CO3 requested him to convene the meeting of the Board in the office of Controller of Examination as laid down in Ordinance 21.47 to enable them to declare the results.

CO3 was working as an Assistant Registrar and was heading Section I of the said Examination Division.

One Mr. S. K. Golatkar was Superintendent working under CO3 and Mr. G. V. Keni was LDC working under Mr. Golatkar.

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10. The work of processing the papers relating to the examinations held by the University was distributed amongst several LDC's and UDC's who were working under the guidance of their superiors who were Mr. Golatkar, CO2 and CO3. Mr. Keni was dealing hand of suit papers of SC6 (Social Stratifications), SC7 (System and Theory of Kinship), and SC4 (Philosophical Science) of M. A. Part II, the first two papers and Part I of the paper SC4. It is further undisputed fact that the answer books of SC7 and SC4 were corrected by the external examiners Dr. (Mrs) Kamala Ganesh and Dr. (Mrs) Nasreen Fazelbhoy respectively. While, the paper SC6 was corrected by the internal examiner Mr. Alito Sequeira who at the relevant time was a Lecturer in the Sociology Department.

11. The student Mr. Rajesh Desai was one of the students appearing for the said three papers. In respect of paper SC6 and SC7 the said Rajesh was allotted the seat No.222 and in respect of paper SC4 he was allotted the seat No.123.

12. We have heard the arguments of Mr. D. Ambekar, learned counsel appearing for the petitioners in Writ Petition No. 255 of 2006, Mr. M. S. Joshi, learned counsel appearing for the petitioner in Writ Petition No. 482 of 2006, Mr. M. Salkar, learned Government Advocate appearing for respondent nos. 1, 1A, and

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Mrs. A. Agni, learned Senior Counsel appearing for respondent no.2 in Writ Petition No. 255 of 2006 and respondent nos. 1 and 2 in Writ Petition No. 482 of 2006. We have also gone through the bulky records and written submissions filed by both the parties.

13. Considering the facts and circumstances of the case and material on record, the following points arise for our determination in the above petitions :

| | <u>POINTS FOR DETERMINATION</u> | <u>FINDINGS</u> |
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| 1 | Whether the disciplinary authority of Goa University proves the Articles of charges levelled against SO1 and SO3 ? | Yes |
| 2 | Whether the punishment awarded by the Chancellor of Goa University disproportionate to the misconduct ? | No |
| 3 | Whether the petitioners are entitled to a relief claimed by them ? | No |
| 4 | What Order ? | Both the Writ Petitions are dismissed with no order as to costs |

14. On scrutiny of records, it reveals that all the Charged Officers were holding high position in Goa University at the relevant time and were concerned with the Examination Department of Post Graduate Degree. During the disciplinary inquiry, the statement of various witnesses were recorded. On scrutiny of evidence of all the

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witnesses, we find that the evidence of Mr. Keni, Mr. Golatkar and Mr. Sequeira is most important for the purpose of determination of misconduct. During the course of arguments, it was tried to be suggested that CO1 had no role to play in the alleged replacement of the answer books and erasion of the marks and filling it in the results register. According to CO1, Mr. Keni was a instrumental in doing so and to save his skin the false charges were levelled against CO1 and CO3. Therefore, we have to scrutinize the evidence of Mr. Keni.

15. Before going to scrutinize the evidence of Mr. Keni, it is material to mention here that there is evidence of the handwriting expert PW15 Mr. Goyal. From the evidence of the expert, it reveals that the disputed answer books and specimen hand writing signatures of the examiners and supervisors were sent to him. On examination of such material, Mr. Goyal reaches to the conclusion that the signatures of the supervisors and examiners on the concerned three papers do not tally with the standard signatures of the same supervisors and examiners. PW15 Mr. Goyal further states that the three answer books had been written by the same person whose specimen handwriting had been sent to him by the University and this person is the student Mr. Rajesh Desai.

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16. Looking to the evidence of this witness, it is crystal clear that earlier three answer books and supplements were substituted by another answer books and supplements which were written by the student Mr. Rajesh Desai. It is pertinent to note that all these three answer books are relating to one student. Therefore, there is material to show that these answer books were replaced by Mr. Rajesh Desai by taking disadvantage of the lapses on the part of CO1 and CO3 and negligence on their part to keep the unused answer books in a safe custody.

17. Now turning to the evidence of Mr. Keni, it appears that he is the person who brought the discrepancy to the notice of CO1 and CO3. But for the reasons best known to them they have not taken any action in the matter. Initially, he has deposed about the procedure to be followed while checking the answer books specially about the distribution of the answer books, sending it to the internal and external examiners and procedure to be followed after the answer books reached to the University after its corrections/examination.

18. Further from the evidence, it is seen that in respect of the M.A. Papers, the last batch of papers SC7 was received by Mr. Keni on 03.07.1995 from the external examiner Dr. Kamala and

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while checking, he found that Dr. Fazalbhoy while totalling the marks entered by her in the marks list (paper SC4) made a mistake in relation to the students 125 and 127 showing their total as 32 and 13 marks instead of 33 and 14 respectively. Then he wrote in the previous column of the same marks list the correct total of 33 and 14 and informed to the Superintendent Mr. Golatkar that he has found those two mistakes. Thereafter, Mr. Golatkar instructed him to check the other answer books as previously there was an incident of unfair-means in Sociology Department in respect of two girls were reported. Then he went to the envelopes containing the answer books and removed the first answer book that came to his hand, he saw that on the margin of the answer book, the marks awarded were totalling 42 while in the respective marks sheet the same total was shown as 24 only. Immediately, he showed the answer book and marks list to Mr. Golatkar and Mr. Golatkar told him that they should go to CO3 Mr. Kamat and accordingly, both of them went to the chamber of Mr. Kamat CO3 with the answer book and marks list. On reading them, Mr. Kamat CO3 ordered him to bring all the papers to him. Then Mr. Keni went to his table and brought the envelopes with the remaining answer books and marks sheets and thereafter they all three went on checking the answer books and marks sheets and found that besides the papers referred to there were two more papers with

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similar discrepancies in respect of the marks. In both the cases, the marks awarded in the answer books were much higher than the marks entered in the respective marks sheet. At this stage, it is very material to note that moment when Mr. Keni and Mr. Golatkar came to know about the discrepancies in the marks in the answer books and marks sheet, immediately, they went to their superiors and disclosed the discrepancies appearing in the answer books and marks sheet. This natural conduct of these two witnesses to inform about the misdeeds itself goes to suggest that both of them have not involved in erasing the marks and replacing the answer books. If at all both of them were involved in such activity, there was no reason for them to disclose these things to their superiors. If at all they were involved in doing such things they must have kept mum. So from the natural conduct of these witnesses, it appears that both these witnesses are innocent and there is no possibility that Mr. Keni has done this exercise. Therefore, the defence of CO1 that Mr. Keni was instrumental in doing so appears to be false.

19. Looking to the further evidence, it appears that all the answer books were of the same student Mr. Rajesh Desai. Mr. Keni deposed that Mr. Kamat CO3 told him to enter in the register the marks mentioned in the marks sheet and that discrepancy should be shown to the Chairman of the Board of the Examination whose

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decision should be carried out by them.

20. Mr. Keni, further states that on 27.07.1995 at about 15.00 or 15.30 hours, CO1 came alone to the Examination Division and sat at the table of Mr. Golatkar who was not present. Mr. Keni, brought the papers to the table and showed to CO1 the discrepancies referred to above. At that time, CO3 was standing at the side of the table. Mr. Phal told them that they should enter in the register the marks awarded in the answer books since they were higher.

21. It is material to note at that time Mr. Keni suggested that Mr. Alito Sequeira, one of the examiners should be heard as the other two were from Bombay. CO1 agreed and CO3 Mr. Kamat sent a Peon to call Mr. Sequeira. After some time, Mr. Manjit Singh, another lecturer in the Sociology Department came there and informed that Mr. Sequeira was unable to come. He talked for a while with Mr. Phal CO1 and Mr. Phal told Mr. Keni that they should enter in the register the marks awarded in the answer books and at the same time, Mr. Phal went on writing on the marks sheets, above the marks previously awarded by the examiners to Mr. Rajesh Desai.

22. He further deposed that the marks awarded in the corresponding answer books, he wrote these marks with pencil but soon after CO1 overwrote on the same figures with red pen and signed at the end. We have scrutinized the relevant marks sheets at Exhibits 56,57 and 58 in which there are initials of Mr. Phal.

23. Mr. Keni further deposed that Mr. Phal instructed him to rub the figures of the original marks that he had already written in the register and in the same spaces to write the marks written by Mr. Phal in the marks lists. These instructions were given in the presence of Mr. Mangit Singh and Mr. Kamat. Then, Mr. Keni complied with the order and after rubbing the original marks, wrote in the register the figures written by Mr. Phal in the marks lists. Thereafter, Mr. Phal wrote on the noting previously prepared by him that the results may be declared.

24. From the evidence of Mr. Keni, it is very much clear about the role played by Mr. Phal while altering the figures of the marks in the marks sheets for which there is no explanation coming forth from the side of CO1. In our opinion, this is very important piece of evidence coming from the mouth of a person directly concerned with the homework to be done before the results are declared. We do not find any reason to disbelieve the version of Mr.

Keni which directly throw a light on the act of a particular Charged Officer with their respective conduct and the act. It is further material to note that Mr. Alito Sequeira is one of the examiners who examined/corrected one of the disputed answer books was available but CO1 and/or CO3 have not verified from Mr. Alito as to the discrepancy appearing in the marks given in the marks sheet and the answer books.

25. On this background, it is material to refer the evidence of Mr. Alito Sequeira who deposed that on 28.07.1995 before 10.00 a.m., he met Mr. Keni in the canteen of the University and Mr. Keni told him that he had made a major mistake while transferring the marks awarded in the answer books to the marks lists. Then he went to the examination section along with Mr. Keni and Mr. Keni showed him the marks list and the answer book. On examining the answer book of the student no.222 he saw that it was fraudulent. Therefore, he told Mr. Keni that he wanted to meet the Controller i.e. CO3 Mr. Parab and Mr. Keni told him that the higher ups had condoned the error committed by him and the student was shown as passed. Even then Mr. Sequeira insisted and went to the chamber of Dr. Parab and Mr. Sequeira showed to Dr. Parab the answer book of student no.222 telling him that it was a fraudulent paper. Then CO2 Dr. Parab told him that he should examine

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carefully the answer books adding that he might have made a mistake while correcting the paper. Then Mr. Sequeira told Dr. Parab that he was confident about his averments and thereafter he requested Dr. Parab to call Mr. Keni to bring all the papers and verified and found that the discrepancies existing in relation to three papers corrected by three different examiners and all three papers belonging to the same candidate. They noticed that all the variations were in the same direction.

26. Looking to the evidence of Mr. Golatkar, it is consistent with the evidence of Mr. Keni and Mr. Alito. Taking into consideration overall effect of the entire evidence of the above three witnesses, it is crystal clear that CO1 was instrumental in changing the figures of the marks in the marks sheet. He has directed Mr. Keni to write the marks in the result register and hurriedly a note put up as to the declaration of the results was signed by CO1. This clearly indicates that the Charged Officer Nos.1 and 3 were directly and indirectly responsible for aiding the student Mr. Rajesh Dessai for the replacement of the answer books and for the alteration of the figures of the marks in the marks sheet and CO1 was responsible for hurriedly making arrangement of the declaration of the results.

27. This Court is aware that the standard of proof in the

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departmental inquiry is as per the preponderance of probability. The evidence of the disciplinary committee in the departmental inquiry has to be tested on preponderance of probability and no strict proof is required as has been required in the criminal trial. In these circumstances, this Court is of the opinion that the evidence adduced by the disciplinary authority is sufficient to prove the charges levelled against the Charged Officers.

28. Mr. Ambekar, learned counsel appearing for the petitioners has argued that after the departmental inquiry was over, the disciplinary authority has directly recommended to the Governor of Goa for action in the matter and consequently, the Governor of Goa has imposed penalty withholding the pensions of the petitioners to the extent of 50%. So according to Mr. Ambekar, the petitioners have lost one remedy of appeal. However, from the order of the Governor of Goa itself it is very much clear that the disciplinary authority initially referred the matter to the State Government and then to the Governor of Goa in terms of Rule 9 of the Pension Rules. Therefore, we do not find any illegality in the impugned order.

29. The next contention of Mr. Ambekar, is that during the period of suspension, CO1 was asked to do the work of supervisor.

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Therefore, CO1 is entitled to get full pay even during the period of suspension. We do not agree with the submission of Mr. Ambekar because during the period of suspension, the delinquent is only entitled to have subsistence allowances. Therefore, CO1 is not entitled to get full pay as claimed by CO1.

30. Mr. Ambekar, learned counsel has relied upon the observations in the case of **Surjit Ghosh v/s Chairman & Managing Director, United Commercial Bank and others**, reported in **1995 SCC (L&S) 529**. These observations of the above authority are in applicable to the facts of the present case because the disciplinary authority as per the provisions of law i.e. in terms of Rule 9 of the Pension Rules has referred the matter to the Governor of Goa. Mr. Ambekar, further relied upon the observations in the case of **Kuldip Singh v/s State of Punjab and others**, reported in **1997 SCC (L&S) 346**. We have gone through the facts and observations of the above cited authorities. The facts altogether are different from the facts of the present case. Therefore, the observations made therein are not applicable to the facts of the present case.

31. By leading defence evidence the attempt was made by CO3 to show that at the relevant time he was on leave during the

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period from 03.07.1995 to 22.07.1995 but it is brought on record that CO3 has given an application of such Earned Leave only on 10.07.1995. The defence taken by CO3 regarding his alibi appears to be improper in the light of the direct evidence adduced by way of examining Mr. Keni, Mr. Golatkar and Mr. Sequeira. Looking to the overall effect and facts and circumstances of the case, we are of the opinion that there is sufficient evidence against all the Charged Officers to prove their serious misconduct inspite of the fact that they were holding very high position in the University i.e. Educational Institution. Looking to the respective posts of the Charged Officers and their misconduct in reference to the alteration of the marks and record relating to three answer books of the same student, we are of the opinion that the punishment awarded to both the Charged Officers withholding 50% of the pension appears to be proportionate. Therefore, it is not necessary to disturb the findings recorded by the Disciplinary Authority.

32. This Court while disposing of Writ Petition No. 523 of 2004 filed by Dr. Ulhas S. Parab, who was also charged being a Chairman of the Board Examination in respect of the final examination held in April, 1995 has observed at para 28 thus :

“**28.** A reference can be made to a judgment of the Supreme Court in the matter of Union of India Vs. P.

Gunasekaran, reported in (2015) 2 SCC 610. In paragraph 12 of the judgment, it is observed by the Supreme Court, that the High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappraisal of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

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(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

In paragraph no.13 of the judgment, the Supreme Court has directed that under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based;

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its

conscience.

In paragraph 20 of the judgment, it is observed by the Supreme Court that, it is not open to the High Court, in exercise of its jurisdiction under Articles 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the Court.”

Taking note of the observations in the said judgment cited supra, we are of the considered opinion that the punishment imposed by the disciplinary authority against the petitioners does not call for any interference by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India. Therefore, CO1 and CO3 are not entitled for any relief sought in the present petitions. Hence, the points are answered accordingly.

33. As such, the Writ Petitions are dismissed with no order as to costs. However, it is made clear that the CO1 and CO3 are entitled for 50% pension from the respective dates of their superannuation. Rule stands disposed of accordingly.

K. L. WADANE, J

F. M. REIS, J

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