
(2016) 07 JH CK 0088
In the Jharkhand High Court
Case No : L.P.A. No. 417 of 2014

Birsa Agricultural University

APPELLANT

Vs

Dr. Anant Prasad Jaiswal

RESPONDENT

Date of Decision : 29-07-2016

Acts Referred:

Statute of Birsa Agricultural University — Clause 13.9

Citation : (2017) 1 AIRJharR 89 : (2016) 4 JBCJ 178 : (2016) 4 JLJR 409

Hon'ble Judges : Mr. Virender Singh, CJ. and Mr. Shree Chandrashekhar, J.

Bench : Division Bench

Advocate : Mr. Anil Kumar Sinha and Mr. A. Allam, Senior Advocates, for the Appellant; Mr. Anant Prasad Jaiswal, In person, for the Respondents

Final Decision : Allowed

Judgement

Shree Chandrashekhar, J.—Order passed in W.P.(S) No. 3897 of 2011, whereby penalty of removal from service inflicted upon respondent-writ petitioner was quashed with all consequential benefits, is under challenge in the present Letters Patent Appeal.

2. Briefly stated, the respondent-writ petitioner (hereinafter to be referred as respondent) was appointed as Junior Scientist-Assistant Professor, Soil (Agro Forestry) in the Birsa Agricultural University, Ranchi, on 05.11.1990. He was transferred, on 25.08.2003, to ZRS, Dumka and was relieved from his office on 26.08.2003. However, he did not join his new posting. Several reminders were issued to him and a notice was also published in the newspaper, requiring him to join at the new posting. On the allegations of misconduct, indiscipline, unauthorized absence from duty etc., a charge-memo was served upon him and he was put under suspension on 29.10.2003. The respondent denied the charges. The enquiry committee submitted a report on 17.03.2004 and a second show cause notice was issued to the respondent on 19.04.2004. The respondent submitted his reply, making allegation against one of the members of the enquiry committee. The Vice-Chancellor of the University imposed penalty of termination

from service vide order dated 26.06.2004, which was challenged by the respondent by filing an appeal before the Chancellor, who came to a conclusion that through the second show cause notice proper opportunity of hearing was not afforded to the respondent. Consequently, the order of dismissal from service was set aside vide order dated 10.06.2005, remitting the matter to the appointing authority to pass appropriate order after hearing the respondent. The reconstituted enquiry committee issued notice to the respondent who appeared on 10.08.2006 before the committee and again made accusations against one of the members of the committee. A report was submitted by the committee on 19.09.2006 and second show cause notice dated 06.12.2010 was issued to the respondent. The Vice-Chancellor again passed order of dismissal from service on 15.05.2008, which was challenged by the respondent before the Chancellor who dismissed his appeal on 05.07.2009. Application seeking review of the appellate order dated 05.07.2009 filed by the respondent was dismissed on 20.03.2010. The aforesaid orders were, thereafter, challenged by the respondent before this Court in W.P.(S) No.1558 of 2010. The writ petition was allowed vide order dated 04.11.2010, on the ground that in terms of sub-clause (3) and (4) to Clause 13.9 of the Statute of Birsa Agricultural University, the disciplinary authority is required to communicate to the delinquent the grounds on which he proposes to impose a major penalty. Thereafter, the second show cause dated 06.12.2010 was issued to the respondent, who responded through letter dated 21.12.2010 seeking clarification and supply of documents. The Vice-Chancellor, Birsa Agricultural University formed the opinion that the misconduct, indiscipline and wilful disobedience committed by the respondent warrants penalty of removal from service and he passed order dated 03.01.2011 in the aforesaid terms. This is the order impugned by the respondent before the Writ Court in the present proceeding. The appeal preferred by the respondent before the appellate authority failed on 23.02.2011 and the appellate order was also challenged by filing an interlocutory application in the writ petition. The learned Single Judge held that the enquiry committee did not afford proper opportunity to the writ petitioner to defend his case and penalty of removal from service was passed in breach of Clause 13.9 of the Statute of the University. The penalty order and the appellate order, both were quashed and the respondent was reinstated with all consequential benefits. The respondent was directed to join his transferred post at ZRS, Dumka. In the aforesaid background, the appellant-Birsa Agricultural University is before us in the instant Letters Patent Appeal filed under Clause 10 of the Letters Patent of Patna High Court, as adopted by the High Court of Jharkhand.

3. Heard.

4. Mr. Anil Kumar Sinha, the learned Senior Counsel for the appellant-Birsa Agricultural University, assailed the impugned order dated 16.09.2014, inter alia, on the following grounds:

(i) Legality of enquiry held against respondent and the enquiry report dated

19.09.2006 was not open to scrutiny by the Writ Court.

(ii) The Writ Court while interfering with the penalty order has exercised jurisdiction not vested in it, inasmuch as, there is no violation of the statutory provisions under the Statute nor the penalty order has been passed in breach of rules of natural justice.

(iii) Second show-cause notice dated 06.12.2010 complies the statutory provisions contained under sub-clause (3) and (4) to Clause 13.9 of the Statute.

(iv) Grant of consequential benefits including, salary for the period between 15.05.2008 till 01.01.2011, is erroneous and not justified.

(v) The conclusion in the impugned order that, no further action is warranted against the petitioner, is a serious error in law.

5. Per contra, respondent-in person, reiterating the stand taken before the Writ Court, contended that:

(i) After the order passed in W.P.(S) No. 1558 of 2010, a denovo enquiry should have been instituted, which was not done by the University.

(ii) The enquiry conducted against him was an ex-parte enquiry, inasmuch, no day-to-day proceeding was held by the Enquiry Committee, and it was a mere formality.

(iii) In the enquiry, neither any witness was examined nor any document was proved and, copies of the documents relied upon by the University were not furnished to him.

(iv) Penalty order dated 15.05.2008 was passed in breach of Clause 13.9(4) of the Statute and also in violation of the principles of natural justice.

(v) He was illegally prevented from discharging his duties and therefore, he is entitled for salary for the period between 15.05.2008 and 01.01.2011 and other consequential benefits.

6. The litigation which started after the respondent was transferred from Ranchi to Dumka, splits into two stages and for a better appreciation of the contentions raised on behalf of the parties, proceeding in both stages needs to be appreciated separately.

First Stage

7. The initial controversy revolves around transfer of the respondent from Ranchi to Dumka vide order dated 25.08.2003 and his unauthorized absence from duty. The respondent claimed that he submitted leave application on 09.08.2003 and sent applications dated 26.08.2003 and 08.09.2003 seeking further extension of leave and for that reason his absence from duty cannot be labeled unauthorized. The appellant-University pleaded that his leave application dated 09.08.2003 was declined by the Dean and consequently, further applications for extension of

leave sent by the respondent also stood rejected. The respondent has pleaded that he suddenly fell ill and left for his native place however, he has failed to produce any evidence of his treatment at his native place. The record does not reveal the nature of ailment suffered by the respondent. The respondent has not denied reminder notice issued to him and the notice issued in the newspaper, whereby he was directed to join his place of posting at ZRS, Dumka. The enquiry committee has held the charge of unauthorized absence established. Order dated 10.06.2005 passed by the Chancellor discloses that the respondent did not challenge the findings recorded in the enquiry report. Chancellor interfered with the order of dismissal from service dated 26.06.2004, on the ground that the respondent should have been afforded personal hearing before the final order of penalty was passed. The aforesaid facts are not in dispute.

Second Stage

8. In the second stage also, there is barely any controversy on facts and fate of the case hinges on interpretation of sub-clause (4) to Clause 13.9 of the Statute viz; whether sub-clause (4) mandates communication of proposed punishment through second show-cause notice.

9. After the decision in W.P.(S) No. 1558 of 2010, second show-cause notice dated 06.12.2010 was served upon the respondent, whereby 15 days' time was granted to him to avail right of hearing. The date fixed for personal hearing was 21.12.2010 at 11 a.m. Along with the second show-cause, a copy of the enquiry report and the charge-sheet were also enclosed. The respondent appeared before the Vice-Chancellor on 21.12.2010, a fact admitted by him in his letter seeking clarification and supply of documents. Through the said letter the respondent sought supply of charge-sheet, list of documents, list of witnesses and articles of charge besides, day to day proceedings of the enquiry. This is the stage, from where the respondent ignited a new controversy which was taken to the Writ Court.

10. Before the issues examined by the Writ Court are considered by us, it would be useful to advert to the contention on limited scope of enquiry in respect of the penalty order dated 03.01.2011 by the Writ Court.

Limited Remand :

11. The second order of dismissal from service vide order dated 15.05.2008 as well as the appellate and revisional orders were challenged in W.P.(S) No.1558 of 2010, on the sole ground that the disciplinary authority before imposing penalty of dismissal from service did not furnish any ground on which he has passed the order of dismissal from service. This challenge is based on alleged noncompliance of sub-clause (4) to Clause 13.9 of the Statute, which found favour with the Writ Court and the order of dismissal from service was quashed. Vide order dated 04.11.2010 passed in W.P.(S) No. 1558 of 2010, the matter was remitted to the appointing authority only on the question of penalty, which is made abundantly clear in the concluding paragraph of the said order. The writ petition was allowed

only on the ground of breach of rules of natural justice incorporated in sub-clause (4) to Clause 13.9, which requires communication of grounds on which any one of major punishments is proposed. The Writ Court has held, as under:

"Accordingly, the orders as contained in Annexures 4, 9 and 14 are hereby set aside. Hence, this writ application is allowed. However, the disciplinary authority will be at liberty to proceed with the matter relating to imposition of penalty in accordance with law."

12. May be, the respondent took various pleas in his memorandum of the said writ petition, at the time of argument only plea raised by him was non-supply of grounds on which the disciplinary authority proposed to pass order of termination. The sole point taken by the respondent in W.P.(S) No. 1558 of 2010 is recorded in order dated 04.11.2010, which reads as under:

"Dr. Anant Prasad Jaiswal appearing in person in order to assail the impugned orders took a sole point that the Vice Chancellor, the disciplinary authority before imposing penalty of termination did not furnish any ground on which he has passed order of termination, though, as per clause 13.9 of the Birsa Agricultural University Statutes, the ground on which the Vice Chancellor has passed the order of termination was required to be furnished to the delinquent so that delinquent may give effective reply in his show cause but the disciplinary authority without complying the said provision has passed the order and hence, not only the order passed by the disciplinary authority but also the orders passed by the learned Chancellor in an appeal and also in review application are fit to be set aside."

13. In view of the aforesaid order passed in W.P.(S) No. 1558 of 2010, it must be concluded that in the proceeding of W.P.(S) No. 3897 of 2011, it was not open to the Writ Court to examine the alleged illegality in enquiry committed prior to issuance of second show-cause notice dated 06.12.2010.

Sub-clause (4) To Clause 13.9 of Statute

14. The Writ Court has apparently gone wrong on the issue of communication of proposed punishment. There is no dispute that conduct, discipline and enquiry in respect of an employee of the University are governed under Clause 13.9 of the Statute. The respondent-in person reiterated his contention that the punishment order dated 03.01.2011 is vitiated on account of non-communication of the proposed punishment in the second show-cause notice. The learned Writ Court has also held that the punishment of removal from service cannot be sustained on this ground alone. The Writ Court has held, thus;

17. "Having heard both the parties and upon going through the record, I find that though pursuant to the order of this Court passed in W.P.(S) No. 1558 of 2010 as contained in Annexure 2 to the writ application, the petitioner was given a second show cause notice by the respondent University, but the proposed punishment was not mentioned in the second show cause notice, in spite of the

clarification of the law by this Court in the order dated 4.11.2010 passed in W.P. (S) No. 1558 of 2010 (Annexure 2). In my considered view, the final order dated 3.10.2011, imposing the punishment of removal from service upon the petitioner, contained in Annexure 6 to the writ application, cannot be sustained on this ground alone."

15. For examining this issue, an in-depth examination of the statutory scheme under Clause 13.9 of the Statute has now become necessary, relevant portion of which are extracted herein below :-

13.3 (1) The University may terminate the service of an employee in any of the undermentioned circumstances:

i) On ground of physical and/or mental unfitness for service, as certified by the Medical Board, in which case the employee may represent against the order if termination of his employment to an appellate authority whose decision on the basis of the recommendation of the medical board to which the employee's case shall have been referred, shall be final.

(ii) On ground of indiscipline, misconduct, moral turpitude or subversive activities on the part of the employees in which case proceedings as communicated in Statute 13.9 shall be held before orders of termination of service are issued.

13.9 (1) Any one or more of the penalties specified in Clause(2) given below may, for good and sufficient reasons, such as misconduct, moral turpitude, neglect of duty, violation of term or condition of service, inefficiency, indiscipline, criminal conviction, be imposed upon an employee.

Note: The "misconduct" for this purpose means:

(i) wilful disobedience or wilful omission or negligence in executive any lawful orders or instructions, or

(ii) wilful breach of trust and duty, or

(iii) demand, acceptance or receipt by the employee, in the discharge of his duties, by gift gratuity, reward or remuneration except in accordance with the University rules or orders, or express permission of the Vice Chancellor;

(iv) Indulging in unlawful activity or in political preaching among the students or employees of the University:

(v) doing anything which undermines or is likely to undermine the prestige of the University or is detrimental to its interests or disturbs or is likely to disturb the harmony and cohesion of the University's corporate life, or

(vi) Communicating any document or information, which has come into his possession in the course of discharge of his duties, without general or special permission of authorisation directly or indirectly, to any person who is not entitled to receive such information or document.

(2) The following are the minor and major penalties which may be imposed upon

a University employee:

(a) Minor Penalties

(i) Censure;

(ii) withholding of increments including stoppage of an efficiency bar;

(iii) Recovery from pay of the whole or part of any pecuniary loss caused to the University by negligence or breach of orders or any other act of commissions or omissions;

(b) Major penalties

(iv) Reduction to a lower post or to a lower stage in a timescale of pay;

(v) Removal from University service which does not ordinarily disability for any other employment in the University;

(vi) Compulsory retirement;

(vii) Dismissal from University service which ordinarily disqualifies for further employment in the University and involves ordinarily loss of all accrued financial benefits.

(3) The appointing authority shall be competent to impose any of the punishments mentioned in clause(2), and an authority, subordinate to the appointing authority, namely Deans, Directors and Principals can impose any minor punishment to Class III and Class IV employees mentioned in sub-clause(a) of Clause(2), and the punishment of censure in the case of the other staff posted under him if empowered to do so by the former.

Provided that no order shall be passed imposing any major penalty on a University employee unless he has been given an adequate opportunity of making any representation that he may desire to make and such a representation has been duly taken into consideration.

Explanation: The full procedure indicated in clause(4) below for a major punishment need not be followed in a case of minor punishment. It will be sufficient, if the officer concerned given an opportunity of explaining the charges against him and the explanation so submitted is taken into consideration before orders are passed.

(4) The grounds on which it is proposed to impose any major punishment shall be communicated in writing to the University servant concerned and he shall be required to state within a reasonable time:

(a) Whether he admits the truth of all or any of the charges;

(b) What explanation or defense if any he has to offer; and

(c) Whether he desires to be heard in person.

(5) If the appointing authority is satisfied that a prima facie case against the defaulting employee is established, an inquiry shall be instituted by appointing an Enquiry Officer or Committee.

.....

(8) After the enquiry against a person has been completed the appointing authority shall consider the report of the Enquiry Officer or Committee, along with the evidence adduced during the enquiry and be competent to pass final orders including the imposition or penalties specified in Clause(2).

16. Sub-clause (1) to Clause 13.9 provides that any one or more of the penalties specified may, for good and sufficient reasons, be imposed upon an employee. Good and sufficient reasons have been explained to mean, misconduct, moral turpitude, neglect of duty, violation of term and condition of service, inefficient, indiscipline and criminal conviction. Apparently, each one of the instances mentioned therein would constitute separate misconduct. Note appended to sub-clause (1) includes further instances of misbehavior which would also constitute misconduct. Sub-clause 2(a) to Clause 13.9 enumerates minor penalties and sub-clause 2(b) mentions major penalties, which in terms of Clause 13.9.3 the appointing authority may impose on the delinquent employee. Sub-clause (5) authorises the appointing authority to institute an enquiry, if it is satisfied that a prima facie case against the delinquent employee is established. On completion of the enquiry, after considering the enquiry report and other materials adduced during the enquiry the appointing authority may impose any one or more of the penalties specified in sub-clause (2). However, in cases where major penalty is proposed, proviso to sub-clause (3) to Clause 13.9 mandates that an adequate opportunity of representation must be given to the delinquent employee, before imposing any major penalty. Sub-clause (4) mandates communication of grounds on which any major punishment is proposed to be imposed. Thus, subject to the limitation that an adequate opportunity of representation should be given to the delinquent employee and he must be informed of the grounds on which it is proposed to impose any major punishment, the Statute does not put any fetters on the power of the appointing authority to impose any of the punishments mentioned in sub-clause (2). Respondent has filed a written note of argument and during the course of argument the respondent made submissions, full of rhetorics; voice of an innocent person cannot be silenced and where an honest person like him would go if not to the Court, however, on the issue of sub-clause (4) to Clause 13.9 he could not demonstrate that under sub-clause (4) the appointing authority is required to communicate the proposed penalty.

17. On the above issue, the finding recorded in paragraph no. 17 of the impugned judgment dated 16.09.2014 that in the previous writ proceeding it has been held that proposed penalty should be communicated to the delinquent, is not correct. W.P.(S) No. 1558 of 2010 was allowed for the reason that the second show-cause notice did not contain the grounds, on which any of the major penalties was proposed to be imposed upon the respondent. The Writ Court has

held as under:

"Simple reading of sub-clause (3) and (4) of Clause 13.9 do indicate that the disciplinary authority on receiving the enquiry report if proposes to impose major punishment then the ground on which he proposes to pass order of major punishment needs to be communicated to the delinquent so that the delinquent may make an effective representation and only then after taking into consideration the representation, the disciplinary authority is required to pass major punishment."

18. From the above observation in W.P.(S) No. 1558 of 2010, it is apparent that the Court has not held that the second show-cause notice should reflect the proposed punishment. It would be really a misinterpretation of the order passed in W.P.(S) No. 1558 of 2010 to assume that sub-clause (3) and (4) have been interpreted as if the second show cause notice must reflect the proposed punishment. No doubt, an enquiry must proceed in accordance with the statutory provisions and the delinquent must be afforded reasonable opportunity of hearing, that is, the departmental enquiry should be conducted in consonance to the rules of natural justice, however, sub-clause (4) to Clause 13.9 of the Statute does not mandate communication of the proposed penalty. It is sufficient compliance of the aforesaid statutory provision, if it is made known to the delinquent employee that a major penalty is proposed to be imposed upon him. On admitted facts, in our considered opinion requirements under sub-clause (3) and (4) are adequately satisfied, and the punishment order dated 03.01.2011 does not breach rules of natural justice.

19. It needs to be mentioned here, even in cases where the disciplinary authority/appointing authority is required to communicate the proposed punishment, the second show-cause notice must not indicate formation of a final opinion on the question of punishment rather, it should reflect only a tentative formation of opinion by the disciplinary authority. As rightly contended by Mr. A.K. Sinha, the learned counsel for the appellant-University, even if an opportunity is afforded to a delinquent employee to respond to the show-cause notice which communicates final punishment proposed to be imposed by the disciplinary authority, that would be an empty ceremony, and such a course has not been approved by the Supreme Court. Indeed, opportunity to respond to communication of the proposed final punishment would have been, as summarised by the Hon'ble Supreme Court in "Oryx Fisheries Private Limited v. Union of India and Others", reported in (2010) 13 SCC 427 "merely knocking his head against the impenetrable wall of prejudged opinion".

Enquiry And Enquiry Report

20. The sum and substance of the submissions of the respondent-in person, is that, after the first order of dismissal dated 26.06.2004 was quashed by the Chancellor, a denovo enquiry should have been started by serving a fresh charge-memo containing articles of charge, imputation, list of witnesses, list of

documents etc., or at least after order dated 04.11.2010 whereby the writ petition was allowed, the University should have followed the procedure for a denovo enquiry. This contention is liable to be rejected. Neither the Chancellor nor the Writ Court ordered for a denovo enquiry.

21. Legality of the enquiry and the enquiry report was never a subject-matter of challenge in earlier writ proceeding. As noticed herein above, in the present writ proceeding it was, in fact, not open to the Writ Court to examine the legality of enquiry, however, long history of litigation and findings recorded by the Writ Court have made it necessary for us to examine all the issues dealt with by the Writ Court.

22. The charge-memo dated 06.12.2003 contained as many as seven charges against the respondent. The enquiry report dated 19.09.2006 records presence of the respondent before the Enquiry Committee, and the respondent has also not denied this fact. The first charge relates to unfounded allegations made by the respondent against his colleague Dr. M.S. Yadav, Senior Scientist-cum-Associate Professor in his letter dated 22.01.2003, which was found derogatory. However, in absence of eye witness account the allegation levelled by the respondent could not be verified. The second charge is in respect of unauthorized absence from duty, which was found proved. The charge of influencing his transfer order; the respondent engaged in political pairvi and brought recommendation letter from Agriculture Minister for cancellation of his transfer, was denied by the respondent and the enquiry committee observed that nothing has been brought on record to show that the respondent sought political help from any MLA/Minister. The fourth charge was framed on the allegation that the respondent wanted to avoid the transfer order and that is why even after his application dated 08/09.08.2003 for leave was declined by the Dean of the University, he forwarded an application dated 26.08.2003 for extension of leave till 06.09.2003 and he again submitted another application on plain paper for further extension of leave till 30.09.2003. The explanation offered by the respondent has been found untrue by the Committee. The fifth charge has not been found proved, however, the Committee observed that the respondent remained absent wilfully to avoid transfer order. The charge no. 6 overlapped with the charge no. 2 which has been found proved. The last charge is, in fact, a consolidated charge of misconducts committed by the respondent. The Committee observed that the respondent did not obey University's orders.

23. The grievance in respect to non-supply of documents was raised by the respondent for the first time in the proceeding of W.P.(S) No. 3897 of 2011. The respondent-in person has supported the impugned order dated 16.09.2014, reiterating the plea taken before the Writ Court however, he has failed to indicate any communication seeking supply of documents on or before 10.08.2006. In fact, except pointing out that he raised objection to bona fide of one of the members of the Enquiry Committee, the respondent-in person failed to point out his specific challenge to the enquiry report dated 19.09.2006, prior to second

show-cause notice dated 21.12.2010. The charge against the respondent is of unauthorized absence, indiscipline, availing assistance of MLA/Minister etc. and the documents referred to in the enquiry report dated 19.09.2006 are either written by the respondent himself or produced by him. The respondent denied availing help of MLA/Minister and the Enquiry Committee has not found the said charge proved. In the memorandum of W.P.(S) No. 1558 of 2010, in paragraph no. 15, the respondent admitted that he appeared before the Enquiry Committee on 10.08.2006. He, however, did not raise a grievance for non-supply of documents to him rather, his grievance was in respect of non-supply of enquiry report, which has been found incorrect by the Writ Court.

24. The respondent, in fact, contended before the Writ Court that after decision in W.P.(S) No. 1558 of 2010, no enquiry was conducted and this plea has been accepted by the learned Writ Court, which recorded a finding in paragraph no. 19 of the impugned order dated 16.09.2014 that "there was no proceeding at all and even day-to-day enquiry proceeding was not available". This is another error committed by the Writ Court, which assumed as if a departmental proceeding must continue for several dates. Hearing in a departmental proceeding, as the one conducted to enquire into the charges framed against the respondent, which rests solely on documentary evidence may not continue beyond one single day, particularly when the documents were not denied by the delinquent. The veracity of the documents referred to in the enquiry report dated 19.09.2006 was never challenged by the respondent and therefore, even though, no witness was produced by the University, it would have no material bearing on the legality of the enquiry. Memorandum of W.P.(S) No. 1558 of 2010 does not disclose grievance in respect of demand of documents by the respondent and any subsequent demand by him cannot be taken note of, to conclude that non-supply of documents to the respondent vitiates the enquiry. Rules of evidence and procedure are not required to be followed in a departmental enquiry, mandatorily. To quote, the inimitable expression of Justice V.R. Krishna Iyer in "State of Haryana and Anr. v. Rattan Singh", reported in (1977) 2 SCC 491;

4. "?....There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides....."

25. The observation that there is no discussion in the enquiry report and the enquiry report is absolutely a nonspeaking report, clearly speaks of exercise of jurisdiction by the Writ Court, which was not legally vested in it. Moreover, the enquiry report is an elaborate one, which refers to the charges framed and plea taken by the respondent, thus, in our opinion, satisfies the requirements in law. "Whether enquiry report is cursory or elaborate would make no difference to

legality of the report, if the finding recorded by the enquiry committee is justified," per "Vijay Shankar Pandey v. Union of India and Another", (2014) 10 SCC 589.

26. Reliance placed by the learned Writ Court on decision in "State of U.P. and others v. Saroj Kumar Sinha", reported in (2010) 2 SCC 772 is clearly misplaced. In the said case some of the witnesses were cited in the charge-sheet however, they were not examined by the department in the departmental proceeding which was held ex parte. It was also found that documents were not supplied to the delinquent though, he had made specific request in this regard, during the enquiry. Whereas, in the instant case on or before 21.12.2010, when he appeared before the enquiry committee, the respondent did not raise a grievance on alleged non-supply of documents nor did he challenge the documents referred in the charge-memo dated 06.12.2003. The appellant-University has pleaded that the enquiry was conducted strictly in terms of Clause 13.9 of the Statute.

27. To conclude, the controversy, if any, in respect of conduct of departmental proceeding, must set at rest after decision in W.P.(S) No. 1558 of 2010. As rightly contended by Mr. A.K. Sinha, the learned Senior counsel for the appellant-University, in view of order dated 04.11.2010 passed in W.P.(S) No. 1558 of 2010 it was not open to the Writ Court to reopen the entire issue. Whether second show-cause notice dated 06.12.2010 complies with the statutory requirement under sub-clause (4) to Clause 13.9 of the Statute, that is, whether it contains the grounds on which one of the major penalties is proposed, or not, and may be the quantum of punishment are the issues which, in view of order dated 04.11.2010, could have been examined in the present writ proceeding. Order passed in W.P.(S) No. 1558 of 2010 effectively limits the scope of any further enquiry. The impugned order dated 16.09.2014 travels beyond the limits of enquiry limited by order passed in W.P.(S) No. 1558 of 2010, and for this reason alone findings recorded by the Writ Court in respect of legality of enquiry are liable to be set-aside.

Second Show-cause Notice

28. The observation of the Writ Court that the second show-cause notice dated 06.12.2010 reflects non-application of mind on the part of the appointing authority in as much as, the appointing authority has held that all the allegations against the respondent have been found proved, does not appear to be correct. The appointing authority has recorded, in the second show-cause notice dated 06.12.2010, as under ;

"I have again gone through the entire records, charge-sheet, enquiry report and the order of the Hon^{ble} High Court and I have come to a conclusion that on each and every points which you raised, you must be heard since the enquiry officers in its report has given its finding against you on 19.09.2006. So, agreeing with the findings of the enquiry officer and on the allegations of non joining by you at the transferred place and being absent for such a long time

without any authority, it has become necessary for the University to proceed in this matter after allowing you to avail right of hearing within a period of fifteen (15) days from the date of receipt of this show-cause."

29. A perusal of the aforesaid findings recorded by the appointing authority clearly discloses that he agreed with the findings of the enquiry committee in respect of allegations of unauthorized absence and non-joining at the new place of posting. The penalty order dated 03.01.2011 also takes note of respondent's misconduct on account of indiscipline, unauthorized absence and wilful disobedience of order of transfer. A copy of enquiry report has been served upon the respondent and, thus, it can be safely concluded that he knows the contents of the enquiry report. The enquiry report reflects that enquiry was conducted for imposing a major penalty. The second show-cause notice also reflects that it is proposed to impose a major penalty on the respondent. In the aforesaid background, it cannot be assumed that the respondent was misled, and, in fact, nor did the respondent raise a contention on this count. Obviously, the error crept in the second show-cause notice dated 06.12.2010, at best, is an error in construction of the sentence, and nothing more, and this cannot be a ground to find fault with the second show-cause notice dated 06.12.2010, to quash the penalty order dated 03.01.2011.

Unauthorized Absence

30. A mere application for grant of leave cannot be construed to be a proper intimation of absence. In any case, the application for leave does not render absence from duty, an authorised one. In the instant case, the application for leave dated 09.08.2003 was declined by the Dean, and the respondent remained absent from 10.08.2003 to 30.09.2003. He reported on 01.10.2003 and produced medical certificate of University's doctor, however, thereafter again absented himself from duty. He was suspended on 29.10.2003. Though, charge of unauthorized absence from duty is for the period between 09.08.2003 and 06.12.2003 when charge-memo was issued to the respondent, he remained absent from duty till punishment of dismissal from service was imposed upon him on 26.06.2004.

31. The plea raised by the respondent is that once he has been paid salary for the aforesaid period, he cannot be said to be unauthorisedly absent from duty. The contention of the respondent is liable to be rejected. Payment of salary to the respondent is not consequent upon order dated 10.06.2005 of the Chancellor, whereby punishment of dismissal from service dated 26.06.2004 was quashed. In fact, salary was paid to the respondent in response to a communication from Governor's Secretariate. Moreover, this issue was not raised before the Writ Court.

32. Even in cases where absence from duty has been treated as leave without pay, it cannot be assumed that the employer has condoned the misconduct. In such cases also, the unauthorized absence can be treated as misconduct. In the

instant case, neither the Writ Court nor the Chancellor has interfered with the finding of unauthorised absence recorded in the departmental proceeding. In "Tushar D. Bhatt v. State of Gujarat & Anr.", reported in (2009) 11 SCC 678, the appointee defied the transfer order and levelled allegations against his superiors. He remained absent from duty unauthorisedly for more than six months. The Hon"ble Supreme Court observed that, "in the interest of discipline of any institution or organisation such an approach and attitude of the employees cannot be countenanced". In "Mithlesh Singh, v. Union of India", reported in (2003) 3 SCC 309, the Hon"ble Supreme Court, in the context of Rule 147 (vi) of Railway Protection Force Rules, 1959, has observed that, "absence from duty without proper intimation is indicated to be a grave offence warranting removal from service".

Back Wages

33. The learned Senior counsel for the appellant-University contended that the order of reinstatement with all consequential benefits is patently erroneous. The respondent-in person however, supported the said direction of the Writ Court, submitting that he was wrongfully prevented from discharging his duty and therefore, he is entitled for full salary and other benefits of service.

34. Since the time concept of back wages evolved, it has remained fluid. In cases where it has been found that the workman was always ready to work, but he was kept away therefrom on account of invalid act of the employer; one being the landmark judgment of "M/s Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s. Hindustan Tin works Pvt. Ltd. And Others", (1979) 2 SCC 80, the Supreme Court has held that "in the very nature of things there cannot be a straitjacket formula for awarding relief of back wages". In the context of termination of service by way of punishment for misconduct in a departmental enquiry, if the Court interferes with punishment being of the view that it is excessive, resulting in the reinstatement of service, normally back wages is not a consequence of reinstatement in service. Another exception to grant of back wages as a matter of rule, is where the interference with the order of punishment is purely on technical grounds, for example, nonobservance of rules of natural justice. The plea taken by respondent that he was victimised by the University seems far from reality, when he fails to offer a plausible explanation for his absence from duty for more than one year. At every stage, the order of punishment awarded to the respondent has been quashed by the appellate authority or the Court on the ground of breach of rules of natural justice. In the present proceeding also, the Writ Court has held that the order of punishment dated 03.01.2011 has been passed in contravention of Clause 13.9 of the Statute and thus, in violation of the principles of natural justice and fair play. Apparently, reinstatement with all consequential benefits which would include salary and other emoluments to the respondent who remained out of service on account of order of dismissal/removal from service passed on the ground of proved charge of misconduct, is seriously flawed in law.

No Further Enquiry

35. Taking exception to the observation in the concluding paragraph of the impugned order dated 16.09.2014, the learned Senior counsel for the appellant-University contended that a mandatory injunction has been issued against the University not to take any further action against the respondent. It is submitted that respondent who has remained defiant all through and who gave his joining at ZRS, Dumka only after order passed by the Division Bench, may misuse the observation of the Writ Court besides, such observation not being in consonance with law. Percontra, the respondent-in person submitted that he has given his joining at Dumka but post of Assistant Professor-cum-Junior Scientist is not available at ZRS, Dumka, and in this manner the appellant-University is still harassing him by not offering a proper place of posting and full salary. The learned Writ Court has concluded in these words:

22. "Taking into consideration the allegations against the petitioner that he remained absent without leave and that he did not give his joining at his transferred place of posting, as also taking into consideration the fact that this is the third order of punishment, which has been quashed by this Court, I find that the petitioner has been sufficiently punished for his disobedience, if any, in challenging the three illegal dismissal/removal orders passed against him since the year 2004 itself, repeatedly. As such, no further action is warranted against the petitioner, in case there is no further disobedience by the petitioner in joining at ZRS Dumka, or at the fresh place of posting as the case may be.

36. Without looking into further controversies sought to be raised by the respondent, when the aforesaid observation of the Writ Court is read in the context of unauthorized absence and the respondent's refusal to give joining at his transferred place of posting, the finding that the respondent has been sufficiently punished for his disobedience and that no further action is warranted against him, turn out to be erroneous. The power of the disciplinary authority, to take or not to take action against an employee, is only fettered by the statutory provisions and the Writ Court cannot divest the appellant-University of its powers to take action against its employees.

Conclusion

37. In a nutshell, the impugned order dated 16.09.2014 suffers more than one fundamental flaw. The Writ Court committed serious errors in law in examining the legality of departmental proceeding and in the process it has exercised jurisdiction which is not legally vested in it. The second show-cause notice dated 06.12.2010 satisfies the statutory requirement under sub-clause (4) to Clause 13.9 of the Statute. There is no requirement under the Statute under which the appointing authority is under a duty to communicate the proposed penalty in the second show-cause notice. Oblivious of the fact that maintenance of discipline in the educational institutions is of utmost importance, finds echo in various judgments of the Supreme Court, and interference with the order of penalty

imposed in a departmental proceeding by the Writ Court is on settled principles in law, the Writ Court erroneously interfered with the penalty order dated 03.01.2011. In "State of Andhra Pradesh and others v. S. Sree Rama Rao", reported in AIR 1963 SC 1723, the law on the issue has been declared thus;

7. "..... But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

38. In view of the discussions herein above, it is held that penalty of removal from service on proved misconduct of unauthorized absence, indiscipline etc. did not warrant interference of the Writ Court, and grant of salary for the period between 15.05.2008 to 01.01.2011 is not sustainable in law. The impugned order dated 16.09.2014 passed in W.P.(S) No. 3897 of 2014 suffers from serious infirmity in law and accordingly, it is set-aside.

39. The instant Letters Patent Appeal stands allowed.