

(2016) 10 GUJ CK 0018

In the Gujarat High Court

Case No : Special Civil Application No. 8268 of 2011

Jyotiben D. Shah

APPELLANT

Vs

President M.E. Society

RESPONDENT

Date of Decision : 03-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227

Citation : (2017) 2 GLR 1528 : (2017) 1 GujLH 251

Hon'ble Judges : Smt. Abhilasha Kumari, J.

Bench : Single Bench

Advocate : Mr. Subramaniam Iyer, Advocate, for the Petitioner; Ms. Snusha Joshi, Assistant Government Pleader, for the Respondent Nos.3, 5; Mr. N.K. Majmudar and Mr. P.B. Khambholja, Advocates, for the Respondent Nos.1 - 2, 4

Final Decision : Partly Allowed

Judgement

Smt. Abhilasha Kumari, J. (C.A.V.) - By preferring this petition under Articles 226 and 227 of the Constitution of India, the petitioner has assailed the order dated 20.06.2008, passed by respondent No.2, Principal, M.E. Society Boys' High School, whereby the petitioner has been dismissed from service, as well as the judgment and order dated 29.04.2011, rendered by the Gujarat Secondary Education Tribunal, Ahmedabad [now "the Gujarat Educational Institutions Services Tribunal"] ("the Tribunal" for short), in Application No.104 of 2008, confirming the above order of dismissal. The petitioner has further prayed that she be reinstated in service with continuity of service and all consequential benefits.

2. Briefly stated, the facts of the case are to the effect that M.E. Boys' High School, run by respondent No.1, President of M.E. Society, is a registered grant-in-aid school receiving 100% grant from the State Government, towards salary and expenses. The school also receives maintenance grants as per Rules.

3. On 12.06.1981, the petitioner joined service as a Primary Teacher in the

Primary School run by respondent No.1. On 01.09.1989, the petitioner was appointed as a Secondary Teacher in the said school. The petitioner possesses the educational qualifications of B.A., C.P.Ed. and D.P.Ed. The petitioner was a permanent teacher of the said school and, as per her say, she has been discharging her duties satisfactorily and diligently without any grievance from the management. The petitioner had put in more than twenty-seven years of service in the respondent School.

4. On 21.07.2006, a show cause notice was issued to the petitioner, alleging that she had committed certain irregularities and asking her to explain why departmental proceedings should not be initiated against her. Four charges were levelled against the petitioner in the said show cause notice, which are as below:

(i) On 13.04.2006 the petitioner was given notice by the Principal to give lesson diary. Instead of giving reply to the Principal, the petitioner had addressed a letter to the President.

(ii) The petitioner was asked to prepare Annual Results of Standard VIIIIG, which she refused to do in presence of Supervisor, Shri A.I. Patel.

(iii) According to the instructions, in lesson diary, nothing should be written except lesson plan. Despite that the petitioner has written some note.

(iv) On 27.06.2006, the petitioner had addressed a letter to the District Education Officer directly levelling allegations against the Principal.

5. On the date of the issuance of the show cause notice, the petitioner was placed under suspension by a separate order dated 21.07.2006. On the same day, the petitioner addressed a letter to the District Education Officer, the third respondent herein, voicing her grievance against respondent No.2, the Principal of the school, inter alia, stating that she was scolded and threatened by the said Principal.

6. On 25.07.2006, the petitioner replied to the show cause notice, denying the allegations and rendering her explanation. The petitioner submitted that the allegations levelled against her were vague and general. Regarding the work of preparing the result-sheet assigned to her, the petitioner, inter alia stated that according to the Rules, the "Annual Kachchha Result" (rough result) was prepared and given to Shri A.I. Patel, the Supervisor. However, the Supervisor advised the petitioner that all students should be declared as having passed in the examination by giving grace marks. The petitioner had expressed her inability to declare all students as having passed. She had further declared that she was not the examiner in all the subjects of Standard VIIIIG but was the Class Teacher. That, different teachers had given different result-sheets and the duty of the petitioner was only to coordinate and prepare the final result. Some students had remained absent, which had been mentioned by the concerned examiner. Therefore, the petitioner expressed her inability to commit an illegality by preparing the result in the manner suggested by the Supervisor and declaring all

the students to have passed even though they had remained absent. The petitioner further explained that the rough result prepared by her on the 24th, 25th and 26th April, 2006, was taken away by the Supervisor and the petitioner was asked to leave the Library where she was preparing the result along with other staff members. The petitioner submitted that she had not refused to prepare the annual result but had worked for three days and prepared the same. She had refused to commit an illegal act and declined to oblige the Supervisor. Therefore, the allegation levelled against her was totally false. Regarding the allegation levelled against the Principal by the petitioner, by addressing a letter dated 27.06.2006 to the third respondent, she explained that she had sent an advance copy to the third respondent but had given two copies of the letter to the Principal, one for himself and the other to be forwarded to the third respondent. She further stated that the grievance voiced by her against the second respondent, to the third respondent, was true as the second respondent had used profane and derogatory language to her. The petitioner reiterated that she had not committed any misconduct and requested that the notice against her be withdrawn.

7. One Shri J.M. Shah was appointed as an Inquiry officer who subsequently resigned. Thereafter, Shri J.M. Gandhi was appointed as an Inquiry Officer who also resigned. Subsequently, one Shri A.A. Patel was appointed as Inquiry Officer, who commenced the inquiry with effect from 20.07.2007. After examining and cross-examining the witnesses and after the submission of written arguments by the petitioner, a second show cause notice dated 13.05.2008 was issued to her, to which she replied on 23.05.2008. Thereafter, respondent No.2 passed the impugned order dated 20.06.2008, dismissing the petitioner from service.

8. Aggrieved by the aforesaid order, the petitioner approached the Tribunal by filing the above-mentioned application. The Tribunal dismissed the said application by the impugned order dated 29.04.2011, giving rise to the filing of the present petition.

9. Mr. Subramaniam Iyer, learned advocate for the petitioner, has submitted that in the guise of passing the order of suspension against the petitioner she has, in effect, been removed from service as she was not allowed to attend her duties thereafter. It is submitted that the school management has failed to show that the alleged actions of the petitioner fall under the definition of "misconduct" under any law, rule or regulation. If they do not fall under the definition of "misconduct", the petitioner cannot be charged with having committed misconduct.

10. It is submitted that none of the four allegations levelled against the petitioner constitute misconduct, much less serious misconduct. The petitioner has given convincing explanations rebutting the allegations, which have not been taken into consideration at all.

11. Insofar as the first and third charges are concerned, the petitioner has

submitted that when she went to the classroom in June 2006, after the reopening of the school, the class had not been constituted for want of students. She, therefore, wrote in the lesson diary that there was "no class". Merely noting this fact does not constitute misconduct. Insofar as the second charge is concerned, the petitioner has clearly stated that she was asked by the Supervisor to prepare the rough result in a manner that showed the absent students to have passed. The petitioner was not prepared to commit this illegality. Her refusal to prepare a wrong result, therefore, cannot be considered as misconduct. Regarding the fourth charge against the petitioner, that instead of replying to the notice dated 13.04.2006 issued by the Principal, she had sent a letter directly to the President, it is submitted that the petitioner has explained that she had sent two copies of the reply to the Principal as well. In any case, this cannot be considered as misconduct, much less of a serious nature.

12. Learned counsel for the petitioner further submits that insofar as the letter dated 27.06.2006, addressed directly to the third respondent levelling allegations against the second respondent is concerned, the petitioner complained to the third respondent as the second respondent had threatened her and used profane and derogatory language towards her. No misconduct, therefore, can be said to have been committed in this regard.

13. Adverting to the impugned order passed by the Tribunal, learned counsel for the petitioner has submitted that the Tribunal has accepted the version of the respondents but has failed to take into consideration the explanation advanced by the petitioner, only on the ground that it cannot enter into re-appreciation of evidence.

14. It is submitted that the petitioner has put in more than twenty-seven years of service under the same management, particularly, eighteen years of service in the secondary school. She was discharging her duties sincerely and satisfactorily and there was no complaint against her, as has also been noticed by the Tribunal in the impugned judgment.

15. It is submitted that no reasonable or prudent man would ever arrive at a conclusion that the allegations levelled against the petitioner constitute misconduct, or are so grave in nature that she deserves to be removed from service. The findings of the Inquiry Officer and the consequential order of dismissal are extremely harsh and the penalty imposed is disproportionate to the misconduct alleged to have been committed by the petitioner.

16. It is submitted that the Tribunal, which is the Appellate Authority in this case, has erred in narrowing its jurisdiction by stating that it cannot re-appreciate evidence and has, thus, not taken into consideration various pertinent aspects of the matter before it. It has failed to notice that the decision of the respondent management in removing the petitioner from service is unreasonable and perverse.

17. Learned counsel for the petitioner has contended that in its impugned order,

the Tribunal has itself stated that any punishment short of removal from service ought to have been imposed upon the petitioner. However, it has contradicted its own findings by stating that the punishment meted out to the petitioner is not disproportionate, as the charges against her have been proved. It is submitted that instead of giving a clear finding, the Tribunal has left the possibility of a compromise between the petitioner and the respondent school management open, thereby failing to exercise the jurisdiction vested in it, in a decisive and proper manner.

18. It is forcefully submitted on behalf of the petitioner that after having found that the penalty of dismissal from service was too harsh, the Tribunal ought to have substituted the penalty with an appropriate one. By not doing so and leaving it to the respondents, the Tribunal has committed a grave error. That, the impugned judgment of the Tribunal, therefore, deserves to be quashed and set aside.

19. It is argued that there are no allegations or misappropriation, moral turpitude or any other grave charge against the petitioner. The salary of the petitioner was the main source of income for her to maintain her family, as her husband is not earning sufficiently. The petitioner had even agreed to forfeit the back wages had she been reinstated in service with continuity and retiral benefits. The petitioner has not been dealt with fairly by the respondent school management and the Tribunal has not exercised the jurisdiction vested in it in a legal and proper manner. Rather, it has exercised the said jurisdiction with material irregularity. Hence, both the impugned orders deserve to be quashed and set aside.

20. It is emphatically submitted that the petitioner has been meted out too harsh a punishment, considering the nature of the allegations against her, therefore, she deserves to be reinstated in service with continuity and retiral benefits.

21. In support of his submission, learned counsel for the petitioner has placed reliance upon the following judgments:

(i) *Rasiklal Vaghajibhai Patel v. Ahmedabad Municipal Corporation and Another* - AIR 1985 SC 504

(ii) *Anil Gilurker v. Bilaspur Raipur Kshetriya Gramin Bank and Another* - (2011) 14 SCC 379

(iii) *G. Vallikumari v. Andhra Education Society and Others* - (2010) 2 SCC 497

(iv) *A.L. Kalra v. Project and Equipment Corporation of India Ltd.* (1984) 3 SCC 316

22. The petition has been strongly opposed by Mr. N.K. Majmudar, learned advocate for respondents Nos.1, 2 and 4. He has submitted that the Inquiry Officer has prepared a detailed Inquiry Report and found that all four charges levelled against the petitioner have been proved.

23. It is submitted that the contention of the petitioner that she has been removed by the order of suspension is not correct. The order suspending the petitioner is a separate order to the one by which her services have been dispensed with.

24. It is further submitted that respondent No.1 school is run, managed and administered by a minority Trust, therefore, the procedure under the Gujarat Secondary Education Act, 1972, is not applicable to the said school.

25. It is contended that the petitioner has been granted full opportunity of hearing. After the show cause notice was issued to her, she was granted an opportunity to furnish her reply. The Inquiry Officer has prepared his report after taking into consideration the written submissions advanced by the petitioner. The Inquiry Report contains detailed reasons. As the petitioner was granted a reasonable opportunity to defend herself, there are no flaws in the procedure of conducting the inquiry.

26. It is further submitted that the decision regarding the dismissal of the petitioner from service is based upon the findings of the Inquiry Officer. These findings have been upheld by the Tribunal. The scope of judicial review by this Court is very narrow and this Court would not go into appreciation of evidence. That, the findings of the Inquiry Officer, as confirmed by the Tribunal, may not be interfered with.

27. It is further submitted that after going through the entire material on record, the Tribunal has arrived at the conclusion that the punishment meted out to the petitioner is not disproportionate as the charges against her have been proved. These findings are findings of fact, arrived at by the Tribunal, which are not shocking or disproportionate so as to deserve interference.

28. On the basis of the above submissions, it is prayed that the petition be rejected.

29. In support of his submissions, learned counsel for the school management has placed reliance upon the following judgments :

(i) State of Uttar Pradesh and Another v. Man Mohan Nath Sinha and Another - (2009)8 SCC 310

(ii) Y.P. Sarabhai v. Union Bank of India and Another - (2006)5 SCC 377

(iii) State Bank of India and Others v. Ramesh Dinkar Punde - (2006) 7 SCC 212

(iv) State of U.P. and Ors. v. Nand Kishor Shukla and Others - AIR 1996 SC 1561

(v) Government of Andhra Pradesh v. B. Ashok Kumar - AIR 1997 SC 2447

(vi) Noharlal Verma v. District Cooperative Central Bank Limited, Jagdalpur - (2008) 14 SCC 445

(vii) Government of Andhra Pradesh and Others v. P. Chandra Mouli and Another

- (2009) 13 SCC 272

(viii) Praveen Bhatia v. Union of India and Others - (2009) 4 SCC 225

(ix) Waryam Singh and another v. Amarnath and another - AIR 1954 SC 215

(x) Shalini Shyam Shetty and Another v. Rajendra Shankar Patil - (2010) 8 SCC 329

30. Ms. Snusha Joshi, learned Assistant Government Pleader has submitted that the State is a formal party and as no order of the State Government has been challenged, the Court may pass an appropriate order.

31. In rejoinder, Mr. Subramaniam Iyer, learned advocate for the petitioner, has reiterated the submissions advanced by him earlier and has further submitted that, in accordance with the principles of law enunciated by the Supreme Court in G. Vallikumari v. Andhra Education Society and Others (supra), this Court ought to substitute the punishment in the event that the Court comes to the conclusion that the punishment imposed upon the petitioner is grossly disproportionate to the charges.

32. In the above background, this Court has heard learned counsel for the respective parties, perused the averments made in the petition, contents of the impugned order and other documents on record.

33. It may be noted at the outset that before the Tribunal, the petitioner had taken an objection that the respondent school is not a minority institution, therefore, it would be amenable to the provisions of the Gujarat Secondary Education Act, 1972, and the Rules framed thereunder. This averment has also been made in the petition. However, when the matter was argued before this Court, no such submission has been advanced by the learned counsel for the petitioner. This Court would, therefore, decide the petition on the basis of the submissions advanced on behalf of the respective parties, as recorded herein above.

34. The issue that primarily arise for consideration is whether the acts committed by the petitioner constitute misconduct of so grave and serious nature that it merits the penalty of dismissal from service?

35. What is further required to be seen is whether the Tribunal has dealt with the above issue in a legal and proper manner or has committed material irregularity while doing so.

36. Keeping these aspects in mind, the judgments relied upon by learned counsel for the respective parties may be noticed.

37. In Rasiklal Vaghajibhai Patel v. Ahmedabad Municipal Corporation and Another (supra), relied upon by learned counsel for the petitioner, the Supreme Court has held :

"4. The High Court while dismissing the petition held that even if the allegation of

misconduct does not constitute misconduct amongst those enumerated in the relevant service regulations yet the employer can attribute what would otherwise per se be a misconduct though not enumerated and punish him for the same. This proposition appears to us to be startling because even though either under the Certified Standing Orders or service regulations, it is necessary for the employer to prescribe what would be the misconduct so that the workman/employee knows the pitfall he should guard against. If after undergoing the elaborate exercise of enumerating misconduct, it is left to the unbridled discretion of the employer to dub any conduct as misconduct, the workman will be on tenterhooks and he will be punished by ex post facto determination by the employer. It is a well-settled canon of penal jurisprudence-removal or dismissal from service on account of the misconduct constitutes penalty in law-that the workmen sought to be charged for misconduct must have adequate advance notice of what section or what conduct would constitute misconduct...."

This judgment has been pressed into service in support of the submission that the alleged actions of the petitioner do not constitute misconduct under any law, rule or regulation, therefore, it was not open to the respondents to have terminated her services on the ground of misconduct.

38. In *Anil Gilurker v. Bilaspur Raipur Kshetriya Gramin Bank and Another* (supra), relied upon by learned counsel for the petitioner, the Supreme Court held that the inquiry must be conducted according to the principles of natural justice and the charges should be specific and definite, giving all the details which form the basis of the charges. It is further held that no inquiry can be sustained on vague charges.

39. Learned counsel for the petitioner has heavily relied upon the judgment of the Supreme Court in *G. Vallikumari v. Andhra Education Society and Others* (supra), in support of his submissions that the penalty imposed upon the petitioner is disproportionate to the alleged misconduct. It is urged that directions similar to the ones issued by the Supreme Court in the said judgment be issued by this Court. The relevant extract of the judgment is reproduced herein below :

"21. Since the order of punishment passed by the Chairman of the Managing Committee is vitiated due to violation of the statutory rules and the principles of natural justice, we may have remitted the matter to the Tribunal with a direction to consider whether or not the penalty of removal from service imposed upon the appellant was disproportionate to the misconduct found against her or the action taken by the management was wholly arbitrary or unjust but keeping in view the fact that the appellant was removed from service more than 13 years ago, we do not consider it proper to adopt that course.

22. In *Supdt. (Tech.I) Central Excise v. Pratap Rai*, 1978 (2) SCC 113, this Court held that if an order passed by the disciplinary authority is annulled on a technical ground, the concerned authority is free to pass fresh order but, at the

same time, the Court declined to give such liberty to the administration on the ground that a period of 15 years had elapsed since the framing of charge.

23. In Shri Bhagwan Lal Arya's case - (2004) 4 SCC 560, a somewhat similar approach was adopted by this Court by recording the following observations : (SCC p.566, para 14)

"14. Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the disciplinary authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the appellant to be reinstated in service subject to the condition that the period during which the appellant remained absent from duty and the period calculated up to the date on which the appellant reports back to duty pursuant to this judgment shall not be counted as a period spent on duty. The appellant shall not be entitled to any service benefits for this period. Looking at the nature of partial relief allowed hereby to the appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The appellant must report on duty within a period of six weeks from today to take benefit of this judgment."

(emphasis supplied)

24. In Dev Singh case - (2003) 8 SCC 9, the two Judge Bench held that punishment of dismissal on the ground of misplacement of file without any ulterior motive was too harsh and totally disproportionate to the misconduct alleged and the same would certainly shock the court's judicial conscience.

25. In view of the above noted judgments, we feel that ends of justice will be met by substituting the punishment of removal from service imposed on the appellant with the penalty of stoppage of three increments without cumulative effect and directing that she shall be paid only 20% of back wages during the intervening period.

26. In the result, the appeal is allowed. The impugned order of the High Court is set aside. The punishment of removal from service imposed on the appellant is substituted with the penalty of stoppage of three increments without cumulative effect. We also direct that instead of full back wages, the appellant shall be entitled to 20% of the salary and allowances for the period between the dates of removal from service and this order. Respondent Nos. 1 and 2 are directed to reinstate the appellant without delay. The parties are left to bear their own costs."

40. In A.L. Kalra v. Project and Equipment Corporation of India Ltd. (supra), also

relied upon by learned counsel for the petitioner, the Supreme Court has held thus :

"26. Now if what is alleged as misconduct does not constitute misconduct not by analysis or appraisal of evidence, but per se under 1975 Rules the respondent had neither the authority nor the jurisdiction nor the power to impose any penalty for the alleged misconduct. An administrative authority who purports to act by its regulation must be held bound by the regulation. "Even if these regulations have no force of law the employment under these corporations is public employment, and therefore an employee would get a status which would enable him to obtain a declaration for continuance in service, if he was dismissed or discharged contrary to the regulations." [Sukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi (1975) 1 SCC 421]

... ..

31. To sum up the order of removal passed by Disciplinary Authority is illegal and invalid for the reasons:(i) that the action is thoroughly arbitrary and is violative of Article 14, (ii) that the alleged misconduct does not constitute misconduct within the 1975 Rules; (iii) that the inquiry officer himself found that punishment was already imposed for the alleged misconduct by withholding the salary and the appellant could not be exposed to double jeopardy; and (iv) that the findings of the inquiry officer are unsupported by reasons and the order of the Disciplinary Authority as well as the Appellate Authority suffer from the same vice. Therefore, the order of removal from service as well as the appellate order are quashed and set aside.

32. The last question then is to what relief the appellant is entitled ? Once the order of removal from service is held to be illegal and invalid and the appellant being in public employment, the necessary declaration must follow that he continues to be in service uninterruptedly. This aspect does, not present any difficult and the declaration is hereby granted.

33. When removal from service is held to be illegal and invalid, the next question is whether: the victim of such action is entitled to back wages. Ordinarily, it is well-settled that if termination of service is held to be bad, no other punishment in the guise of denial of back wages can be imposed and therefore, it must as a necessary corollary follow that he will be entitled to all the back wages on the footing that he has continued to be in service uninterruptedly. But it was pointed out in this case that the appellant was employed as Factory Manager by M/s. KDR Woollen Mills, A90, Wazirpur Industrial Area, Delhi from where he resigned with effect from August 8, 1983. It was also submitted that he was drawing a salary of Rs. 2500 per month. Now if the appellant had procured an alternative employment, he would not be entitled to wages and salary from the respondent. But it is equally true that an employee depending on salary for his survival when he is exposed. to the vagaries of the court litigation cannot hold on to a slender distant hope of judicial process coming to his rescue and not try to survive by

accepting an alternative employment, a hope which may turn out to be a mirage. Therefore, the appellant was perfectly justified in procuring an alternative employment in order to keep his body and soul together as also to bear the expenses of litigation to vindicate his honour, integrity and character.

34. The submission of the respondent that the appellant had accepted employment with M/s. KDR Woollen Mills may be accepted in view of the evidence tendered in the case. Therefore, the appellant would not be entitled to salary for the period he was employed with M/s. KDR Woollen Mills.

35. Even for the rest of the period, the conduct of the appellant cannot be said to be entirely in consonance with corporate culture. As a highly placed officer he was bound to strengthen the corporate culture and he should have acted within the spirit of the regulations both for house building advance and conveyance advance, which are devised to help the employees. There has been lapse in totally complying with these regulations by the appellant though it neither constitutes misconduct to attract a penalty nor substantially good enough for initiation of disciplinary inquiry. Accordingly, having regard to all the aspects of the case, the appellant should be paid 50 per cent of the back wages for the period since his removal from service upto his reinstatement excluding the period for which he had procured an alternative employment. The respondent shall also pay the costs of the appellant quantified at Rs. 3000."

41. On the other hand, Mr. N.K. Majmudar, learned counsel for the school management has relied upon the following judgments.

42. In *State of Uttar Pradesh and Another v. Man Mohan Nath Sinha and Another* (supra), wherein the Supreme Court has delineated the ambit and scope of judicial review of the High Court while dealing with the case of departmental proceedings. This is what the Supreme Court has held :

"15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to re appreciate and reappraise the evidence led before the Inquiry Officer and examine the findings recorded by the Inquiry Officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court."

43. In *Y.P. Sarabhai v. Union Bank of India and Another* (supra), the Apex Court has held as below :

"9. This Court has repeatedly held that the factual finding of the Disciplinary Authority after holding a detailed enquiry and after going through elaborate

evidence are not assailable in the courts unless the breach of principles of natural justice or the violation of any rules or any material irregularity on the face of record is alleged and shown. However, in this case the High Court in the jurisdiction under Article 226 of the Constitution of India has again gone into all aspects of the enquiry in detail and has come to the same factual finding as the Disciplinary Authority and the Appellate Authority. Such concurrent findings by three different Authorities including the High Court should not be disturbed by this Court under Article 136 of the Constitution of India. We, therefore, have no other option except to dismiss this appeal. Accordingly, the appeal stands dismissed."

44. Further, in *State Bank of India and Others v. Ramesh Dinkar Punde (supra)*, the Supreme Court has further elaborated upon the scope of judicial review of departmental proceedings by the High Court under its writ jurisdiction. After noticing several judgments of the Supreme Court, it is held that:

"9. It is impermissible for the High Court to re appreciate the evidence which had been considered by the inquiry officer, a disciplinary authority and the Appellate Authority. The finding of the High Court, on facts, runs to the teeth of the evidence on record."

45. In *State of U.P. and Ors. v. Nand Kishor Shukla and Others (supra)*, the Supreme Court has held as under :

"7. It is settled law that the court is not a court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a Government servant based upon the proved misconduct against the Government servant. Its proportionality also cannot be gone into by the Court. The only question is : whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the Court would be loath to interfere with that part of the order. The order of removal does not cast stigma on the respondent to disable him to seek any appointment elsewhere. Under these circumstances, we think that the High Court was wholly wrong in setting aside the order."

46. Reliance has also been placed in the case of *Government of Andhra Pradesh v. B. Ashok Kumar (supra)*, wherein it is held as below :

"3. In view of the finding given by the Tribunal, that imposition of the penalty of dismissal from service shook the conscience of the Tribunal, it does not warrant interference. We find no force in the contention. It is now legal settled position that imposition of the penalty is the right of the disciplinary authority consistent with the magnitude and the misconduct imputed and the evidence in support thereof. The Tribunal in disciplinary proceedings found as a fact that the respondent demanded and accepted illegal gratification of Rs. 3,000/- for not prosecuting the offender. Since the respondent is an Inspector of Police, a higher

ranking officer, if he demands and accepts illegal gratification and restrains himself from initiating prosecution against the offender, it would have an effect on the maintenance of law and order in the society. Therefore, the finding of the Tribunal that it shook its conscience is unsustainable. We have seen that the Tribunal has no power to direct the appellant to reconsider the matter. This court in *B.C. Chaturvedi v. Union of India* [(1995) 6 SCC 749] has held that the Tribunal has the power to direct the punishment, imposed by the disciplinary authority."

47. In *Noharlal Verma v. District Cooperative Central Bank Limited, Jagdalpur* (supra), the Supreme Court has held as below on the scope of judicial review:

"36. So far as the prayer by the appellant that he has sufficiently suffered and should be reinstated in service without back wages also cannot be accepted. The appellant was holding position of trust and was Manager of a Bank. The charges levelled against him were serious in nature concerning misappropriation of money. It is true that the amount was not big and it was also repaid and the Bank has not suffered. But even then the Manager of a cooperative Bank was involved in financial irregularities. The Bank was satisfied that he should not be retained in service and passed an order of removal.

37. In our opinion, by no stretch of imagination, it can be said that such punishment is grossly disproportionate or excessively high. Normally in exercise of power of "judicial review", a writ court will not substitute its own judgment or decision for the judgment or decision of a disciplinary authority unless it comes to the conclusion that it has shocked the conscience of the Court or the punishment is such that no "reasonable man" would impose such punishment or in the words of Lord Scarman in *Nottinghamshire County Council v. Secretary of State*, 1986 AC 240 : (1986) 1 All ER 199 that the decision is so absurd that one is satisfied that the decision maker at the time of making decision "must have taken leave of his senses".

48. In *Government of Andhra Pradesh and Others v. P. Chandra Mouli and Another* (supra), the Supreme Court has held :

"14. It is trite that the power of punishment to an employee is within the discretion of the employer and ordinarily the courts do not interfere, unless it is found that either the enquiry, proceedings or punishment is vitiated because of nonobservance of the relevant rules and regulations or principles of natural justice or denial of reasonable opportunity to defend, etc. or that the punishment is totally disproportionate to the proved misconduct of an employee. All these principles have been highlighted in *Indian Oil Corpn. Ltd. v. Ashok Kumar Arora* (1997 (3) SCC 72). and *Lalit Popli v. Canara Bank* (2003 (3) SCC 583)."

49. The same principle has been laid down by the Supreme Court in *Praveen Bhatia v. Union of India and Others* (supra), in the following terms :

"13. The power of the court to interfere with the quantum of punishment is

extremely restricted and only when the relevant factors have not been considered the court can direct reconsideration or in an appropriate case to certain litigation, indicate the punishment to be awarded; and that can only be in very rare cases."

50. In *Waryam Singh and another v. Amarnath and another* (supra), the power of Superintendence under Article 227 of the Constitution of India arose for discussion. It was held as below :

"14. This power of superintendence conferred by article 227 is, as pointed out by Harries C.J., in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee*, AIR 1951 Cal 193 (EB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors. As rightly pointed out by the Judicial Commissioner in the case before us the lower courts in refusing to make an order for ejectment acted arbitrarily. The lower courts realised the legal position but in effect declined to do what was by section 13(2)(i) incumbent on them to do and thereby refused to exercise jurisdiction vested in them by law. It. was, therefore, a case which called for an interference by the court of the Judicial Commissioner and it acted quite properly in doing so."

51. In *Shalini Shyam Shetty and Another v. Rajendra Shankar Patil* (supra), the Supreme Court has held as below :

A proceeding under Article 226 is not the appropriate forum for adjudication of property disputes or disputes relating to title or disputes between landlord and tenant. A regular suit is the appropriate remedy for deciding property disputes between private persons. Jurisdiction under Article 226 is extraordinary in nature and is not meant for such issues unless there is violation of some statutory duty on the part of some statutory authority or any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority. (Paras 59 to 63 and 65)

In that case, the dispute before the Supreme Court was that between the landlord and tenant. The landlord, a private individual, being the only respondent, it was held that a writ against him was not maintainable. The Apex Court has further elaborated upon the scope of interference by the High Court under Articles 226 and 12 of the Constitution of India in civil matters and private dispute. In the view of this Court, this judgment is not at all relevant to the issue in hand, therefore, it does not require consideration.

52. In the backdrop of the above legal and factual submissions, it would be necessary to elaborate upon the principles regarding the scope of judicial review of disciplinary proceedings by the High Court in exercise of its writ jurisdiction and interference with the quantum of punishment.

53. In *B.C. Chaturvedi v. Union of India and Others* - (1995) 6 SCC 749, while elaborating on the concept of judicial review, the Supreme Court held as below :

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

(emphasis supplied)

In the concurrent judgment by His Lordship Justice Hansaria (as His Lordship then was), supplementing the conclusion arrived at by the other two honourable judges, it was held that :

"25. No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of High Court's view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law makers do desire application of judicial mind to the question of even proportionality of punishment/penalty. I have said so because the Industrial Disputes Act, 1947 was amended to insert Section 11A in it to confer this power even on a labour Court/industrial tribunal. It may be that this power was conferred on these adjudicating authorities because of the prevalence of unfair labour practise or victimisation by the management. Even so, the power under Section 11A is available to be exercised, even if there be no victimisation or taking recourse to unfair labour practise. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to Government employees or employees of the public corporations. I have said

so because if need for maintenance of office discipline be the reason of our adopting a strict attitude qua the public servants, discipline has to be maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference, as the appellate/revisional authority is known to have taken a different view on the question of sentence only rarely. I would, therefore, think that but for the self-imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionately of punishment/penalty. But then, while seized with this question as a writ court interference is permissible only when the punishment/penalty is shockingly disproportionate."

(emphasis supplied)

54. Following the principles of law enunciated by the Supreme Court in *B.C. Chaturvedi v. Union of India and Others* (supra), the Supreme Court, in *Shri Bhagwan Lal Arya v. Commissioner of Police, Delhi and Others* - (2004) 4 SCC 560, held as below :

"14. Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the disciplinary authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the appellant to be reinstated in service subject to the condition that the period during which the appellant remained absent from duty and the period calculated upto the date on which the appellant reports back to duty pursuant to this judgment shall not be counted as a period spend on duty. The appellant shall not be entitled to any service benefits for this period. Looking at the nature of partial relief allowed hereby to the appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The appellant must report on duty within a period of six weeks from today to take benefit of this judgment."

(emphasis supplied)

55. The law has been settled in a number of judgments of the Supreme Court that the High Court, in exercise of power under Articles 226 and 227 of the Constitution of India, cannot venture into a reappraisal of evidence or interfere with the conclusions in inquiry proceedings, if the same have been conducted in accordance with law, or go into the reliability or adequacy of evidence. The High Court would also not go into the proportionality of the punishment unless it shocks the conscience of the Court. This position has been stated in *State of Meghalaya and Others v. Mecken Singh N. Marak* - (2008) 7

SCC 580, in the following terms :

"14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice."

(emphasis supplied)

56. The same principle has been reiterated in *Union of India and Others v. P. Gunasekaran* - (2015) 2 SCC 610, as below :

"20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 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. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."

57. The above judgments, therefore, clearly lay down the principle of law that insofar as the quantum of punishment is concerned, the High Court ought not to interfere with the same in exercise of its powers of judicial review, unless it is found that the punishment is such that shocks the conscience of the Court.

58. As held by the Supreme Court in *Chairman-cum-Managing Director, Coal India Limited and Another v. Mukul Kumar Choudhuri and Others* - (2009) 15 SCC 620, if the punishment imposed upon an employee is found to be grossly excessive and unduly harsh in the context of the allegations against him, such punishment is liable to be interfered with under the limited scope of judicial review. The relevant extract of the judgment is reproduced herein below :

"19. The doctrine of proportionality is, thus, well recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

21. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's rules and regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations.

22. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months."

(emphasis supplied)

59. In *Jagdish Singh v. Punjab Engineering College and Others* - (2009) 7 SCC 301, the Supreme Court took into consideration the principles of law enunciated in its earlier judgments in the cases of *V. Ramana v. A.P.S.R.T.C. and Ors.* - (2005) 7 SCC 338 and *Kerala Solvent Extractions Ltd. v. A. Unnikrishnan* - (2006) 13 SCC 619 and, applying the same to the facts of the case before it, observed that the said case was not one of habitual absenteeism. The absence of the delinquent for fifteen days was to sort out the problem of his daughter with her in-laws. The Supreme Court found that the misconduct alleged, though would amount to a violation of discipline, did not fit into the category of gross violation of discipline. In the above background, the Supreme Court held as below :

"10. Taking the totality of the facts and circumstances of the case and having

due regard to unblemished record of the appellant, and the reasons for which he remained absent without obtaining permission, the ends of justice would be met, if punishment imposed by the disciplinary authority is modified to that of stoppage of two increments with cumulative effect and further declare that he would not be entitled for any monetary benefits during the period he was out of service and that period would be counted only for the purpose of his service benefits. We direct the disciplinary authority to issue appropriate orders in this regard within one month from the date of production of certified copy of this Court's order by either of the parties."

60. In light of the above principles of law, it remains to be determined whether in the case in hand, the punishment of removal from service is grossly excessive and harsh and far in excess of the alleged misconduct and, further, whether the Tribunal has dealt with the matter in proper exercise of its jurisdiction ?

61. The alleged misconduct committed by the petitioner, insofar as the first charge is concerned, is that instead of giving a reply to the Principal regarding the notice to give the lesson diary, she addressed a letter directly to the President. By no stretch of imagination can this charge be considered to be a serious one. At the most, it can be considered as an irregularity in the normally accepted procedure. That it amounts to misconduct, is a seriously debatable question.

62. Insofar as the second charge is concerned, the allegation is that the petitioner refused to prepare the annual result, as directed by the Supervisor. The explanation rendered by the petitioner was that the Supervisor had asked her to mark those students as having passed, who had not even remained present in the examination, which she refused to do. This explanation, however, has not been accepted by the Inquiry Officer. It emerges from the record that the petitioner had later prepared the annual result. This alleged misconduct is not so gross as to invite the ultimate penalty of dismissal.

63. The third charge against the petitioner is that according to instructions, nothing is supposed to be written in the lesson diary; however, the petitioner had written a note. The explanation of the petitioner is that the class had not been assembled, as admissions were still going on and she had written a note regarding this fact in the lesson diary. At the most the act of writing a note can be termed as a breach of instructions and procedure but whether it can be considered as grave misconduct is, again, a question to be considered.

64. Insofar as the fourth charge is concerned, the Inquiry Officer, as well as the Tribunal, have considered it to be very serious. According to the petitioner she was threatened by the Principal and derogatory language was used by him against her. The petitioner, therefore, complained against him by addressing a letter to the District Education Officer, directly. The petitioner has stated that though she did address a letter to the District Education Officer, she had also sent two copies of the said letter to the Principal, out of which one was to be

forwarded to the District Education Officer. This charge, at the most, can be considered as insubordination to a certain extent but whether it would amount to misconduct of the nature inviting the penalty of removal is once again highly debatable.

65. The question that emerges is whether the punishment of removal from service is commensurate with the alleged misconduct or grossly disproportionate to the charges levelled and found to be proved against the petitioner?

66. In *Chairman-cum-Managing Director, Coal India Limited and Another v. Mukul Kumar Choudhuri and Others* (supra), the Supreme Court has stated that one of the tests to be applied while dealing with the issue of quantum of punishment would be, whether any reasonable employer would have imposed such a punishment in like circumstances. A reasonable employer is stated to be one who is expected to take into consideration the measure, magnitude and degree of misconduct, together with all other relevant considerations and exclude irrelevant matters before imposing punishment. If evaluated in the light of the principles of law reiterated by the Supreme Court in *Chairman-cum-Managing Director, Coal India Limited and Another v. Mukul Kumar Choudhuri and Others* (supra), and seen from the eyes of a reasonable man, the nature of the charges levelled against the petitioner is not so serious so as to justify the extreme penalty of removal from service.

67. Taking into consideration the unblemished past service of twenty-seven years rendered by the petitioner as well as the nature of the alleged misconduct and other circumstances, such as the explanations rendered by the petitioner which were not considered or discussed either by the Inquiry Officer or the Tribunal, it indisputably appears to this Court, that no reasonable employer would inflict such a harsh and excessive punishment such as removal under the circumstances. The punishment of removal of service is hardly commensurate with the nature of the charges proved against the petitioner. It is unduly harsh and disproportionate to the alleged misconduct. In other words, the Court has no hesitation in holding that the punishment shocks the conscience of the Court.

68. The Court is unable to agree with the conclusions arrived at by the Tribunal in this regard. The Tribunal has rendered rather confused and contrary findings in the impugned judgment which aspect is illustrated by the following extracts of its judgment :

"11. The applicant was, therefore, served with a notice to submit the explanation. Instead of submitting the explanation of the H.M. the applicant has directly addressed the explanation to the management. This act of the applicant was considered as an act of violating the instructions of the principal amounting to the act of insubordination. The argument against this charge is that it does not constitute any misconduct as the applicant has subsequently taken out the xerox copy of the lesson-diary and submitted the same. It is apparent from the record that the charge is proved with the help of evidence because the applicant did not

submit the lesson-diary of the H.M. Immediately. It is also proved that instead of submitting the reply to the H.M. the applicant has submitted the reply to the president of the Trust which also appears to be inappropriate. The charge, however, does not appear to be very serious but then I am not persuaded to accept the argument that it was not a misconduct or it is not proved."

(emphasis supplied)

69. The Tribunal has itself stated that the charge does not appear to be very serious but then, at the same time, it finds that it cannot be persuaded to accept the argument that it was not a proved misconduct. The Tribunal has upheld the findings of the Inquiry Officer that all the charges against the petitioner are proved. It has considered the fourth charge, regarding the complaint by the petitioner to the District Education Officer, to be of a serious nature. Considering the manner in which the Tribunal has arrived at its findings, this Court is constrained to observe that while the Tribunal has consciously restricted itself from discussing the defence of the petitioner, on the ground that it cannot re-appreciate evidence, it has not followed the same principle insofar as the case of the prosecution/employer is concerned. It may not be lost sight of that the Tribunal, in the present case, is factually the Appellate Forum. An Appellate Forum has much wider powers and can go into findings of fact and evidence. This principle of law has been enunciated by the Supreme Court in *B.C. Chaturvedi v. Union of India and Others* (supra) in the following terms :

"13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment....."

In this view of the matter, the Tribunal has unnecessarily curtailed its jurisdiction by not considering the nature of the charges in the context of the penalty imposed upon the petitioner.

70. Regarding the quantum of punishment, the Tribunal has observed as under:

"17. A submission is made on the quantum stating that considering the long length of services of the delinquent-employee and the good antecedents, the punishment of dismissal is too harsh and deserves to be reduced. From the discussion made herein above, it is quite clear that all the charges have been proved with the help of legal evidence and the law on the point of quantum as laid down by the Hon"ble Supreme Court and noticed above, does not permit me to accept this submission. Though I find the punishment to be on the higher side, (for the reasons to be recorded hereinafter), the punishment cannot be considered as shockingly disproportionate."

(emphasis supplied)

71. As seen from the above extract, though the Tribunal has recorded that it finds the punishment of removal from service to be on the higher side, at the same time, it has stated that the said punishment cannot be considered as

shockingly disproportionate. This is a highly contradictory finding, the basis of which appears to be the finding of the Inquiry Officer that the charges against the petitioner are proved. By its vacillating stand, the Tribunal has approbated and reprobated in the same breath, which is impermissible in law.

72. The doubt lingering in the mind of the Tribunal regarding the proportionality of the punishment further emerges in a later part of the judgment, as below:

"18. The delinquent-employee has been in the employment of the respdt. school for a period of over 27 yrs. (including her service in the primary section of the same management) there is no reference to any antecedents. Out of 4 charges no doubt charge no.4 is very serious but considering the fact that all these things have happened within 2 months and there being no previous bad record, initially this forum felt to bring about a compromise between the parties....."

(emphasis supplied)

73. The efforts of the Tribunal to bring about a compromise between the parties was not successful. Therefore, it held that:

"18. Considering the totality of the facts, though it is not possible for me to accept the proposition that the punishment imposed is shockingly disproportionate, I do feel that any other penalty allowing the applicant to continue in service would be just and proper. I, therefore, while disallowing this application, recommend to the management to explore the possibility of modifying the penal order made by them in the light of these observations, of course, if and when such an application is made by the applicant."

74. On one hand, the Tribunal holds that the punishment imposed upon the petitioner is on the higher side and other the other, it states that it is not possible for it to accept that the punishment is shockingly disproportionate. In the same breath, the Tribunal goes on to say that any other penalty allowing the applicant to continue in service would be just and proper. This is nothing short of blowing hot and cold at the same time. The Tribunal has "recommended" to the school management to explore the possibility of modifying the penal order, but having stated so, it has not issued any decisive directions in this regard, which it ought to have done.

75. From the above, it is clear that the Tribunal has not exercised the jurisdiction vested in it in a befittingly legal and proper manner and there is material irregularity in the manner in which jurisdiction has been exercised by it. No clear or cogent finding emerges from the impugned order of the Tribunal, which appears to be indecisive, till the end.

76. Taking into consideration the above discussion and the principles of law enunciated by the Supreme Court in the abovequoted judgments and for reasons stated herein above, this Court considers it just and proper to pass the following order:

(i) The impugned judgment and order dated 29.04.2011, rendered by the Tribunal in Application No.104 of 2008, confirming the order of dismissal of the petitioner from service, dated 20.06.2008, passed by respondent No.2, is quashed and set aside.

(ii) The matter is remitted to the Gujarat Educational Institutions Services Tribunal to reconsider the quantum of punishment imposed upon the petitioner. The Tribunal shall go into the aspect of the proportionality of the punishment and take a decision on this aspect in accordance with law, taking into consideration the unblemished service record of the petitioner, the nature of the charges alleged against her and all other relevant factors. The Tribunal shall also consider the matter from the point of view of a reasonable employer, and decide the nature of the punishment, if any, commensurate with the alleged misconduct of the petitioner.

(iii) The entire exercise shall be completed within a period of three months from the date of the receipt of a copy of this judgment, taking into consideration the amount of time that has elapsed in the interregnum.

(iv) Needless to state that the Tribunal shall hear the parties before passing an order, in accordance with law.

77. The petition is partly allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no orders as to costs.