

(2023) 07 DEL CK 0262

In the Delhi High Court

Case No : Letter Patent Appeal No. 94 Of 2021, Civil Miscellaneous Application
No. 8892 Of 2021

Prof. Ajay Tiwari

APPELLANT

Vs

University Of Delhi & Ors

RESPONDENT

Date of Decision : 26-07-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 148(5), 309, 311, 311(2)
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 3C, 14,
14(2)

Citation : (2023) 07 DEL CK 0262

Hon'ble Judges : Yashwant Varma, J; Dharmesh Sharma, J

Bench : Division Bench

Advocate : Manish K. Bishnoi, Beenashaw Soni, Mansi Jain, Tanya Agarwal

Final Decision : Disposed Of

Judgement

Dharmesh Sharma, J

1. This judgment shall decide an appeal preferred in terms of Clause 10 of Letters Patent, as applicable to the High Court of Delhi, preferred by the appellant assailing the impugned judgment/order dated 25 November 2019 passed in Writ Petition (C) No. 1288/2012, whereby the learned Single Judge was pleased to dismiss the Writ petition assailing the decision of the Executive Council [EC], University of Delhi/respondent No.1 vide Memorandum dated 8 July 2011 (Annexure P-1) imposing the punishment of compulsory retirement upon the appellant on the basis of a Sexual Harassment Complaint filed by respondent No.2, who is hereinafter referred by the pseudonym, namely Ms. "M" in order to protect her identity. Respondent No.3 is Professor Vibha Maurya, who was a member of the Sub-committee that inquired into the misconduct of the appellant, and her husband is respondent No.4, a fellow professor in the University of Delhi and respondent No.5 is one Anil Solanki.

FACTUAL BACKGROUND

2. Briefly stated, the appellant joined as a Professor in the Hindi Department, University of Delhi in the year 1981 and became a Professor for the Hindi Department in the Faculty of Arts, University of Delhi in the year 2004. A complaint was addressed by respondent No.2, Ms. "M" on 9 September 2008 (P-5) to the Vice-Chancellor [VC], who was pursuing M. Phil. in the Hindi Department, alleging sexual harassment meted out to her not only by the present appellant but also two other members of the faculty, namely Professor Ramesh Gautam and Professor Sudhish Pachauri. The complaint was initially referred to the University Units Complaints Committee [UUCC] as per Ordinance XV(D) of the Ordinance governing the University [Resolution No. 96 dated 03.09.2003]. The redressal mechanism consisted of a three-tier hierarchical structure viz., the "UUCC", followed by the Apex Complaints Committee [ACC] and finally the "EC". It appears that the complainant leveled certain allegations against the members of the "UUCC", and the "VC" marked the complaint to the "ACC", which convened, a Sexual Harassment Complaints Committee [SHCC], to inquire into the complaints. Thereafter, a Show Cause notice was issued to the appellant directing him to appear before the "SHCC" on 21 October 2008 which was responded to by the appellant vide communication dated 18 October 2008(P-3) requesting that a copy of the complaint preferred by Ms. "M" be provided to him; to which the "SHCC" responded vide communication dated 27 April 2008 (P-14) expressing its inability to provide a copy of the complaint to the appellant. In the meanwhile, the complainant Ms. "M" raised certain allegations against the members of the "SHCC" about misbehavior meted out to her, and hence, the "VC", transferred the complaint to the "ACC", which constituted a Sub-Committee and embarked upon an inquiry.

3. The appellant vide communication dated 4 March 2009 (P-6), reiterated his request to be supplied with copies of the complaint and other documents/material furnished by Ms."M". He further sought permission to lead oral and documentary evidence as also to allow him to cross examine Ms."M", inter alia not only challenging the procedure for inquiry adopted by the "ACC" but also contending that there were no "unwelcome" sexual advances. Moreover, the relationship between him and the complainant was "consensual" and rather that he has been a victim of a conspiracy hatched between respondents No. 2 to 5. The "ACC" did not accede to the request and vide communication dated 18 March 2009 (P-8), informed him of the charges framed against him, which were as under:

"You have sexually harassed Ms. "M and created an intimidating and hostile environment for her in the following ways: -

- a. You subjected her to unwelcome verbal conduct of a sexual nature on phone and in person on several occasion in the period March to September 2007,
- b. You subjected her to unwelcome sexual advance and physical conduct of a sexual nature on several occasions in the period March to September 2007.

c. You explicitly made submission to your demand for sexual favours a condition of decisions regarding her academic performance in the period March to September 2007."

4. Since this Court is not going into the merits of the allegations, it does not consider necessary to reproduce the defence taken by the appellant during the inquiry proceedings except to mention that the appellant alleged that everything between him and the complainant was consensual. Further, that there was never any "unwelcome" sexual advance by him and rather that the complainant had herself been making sexual overtures provoking him into indulging in indecent advances and thus it didn't lie in her mouth to lodge a complaint of being subjected to "sexual harassment" inter alia also acknowledging that due to the influence and provocation initiated by her, he indulged or participated in some indecent conversation and characterized some alleged occasions as regrettable moments of indiscretion. He also persistently canvassed that he was the victim of a criminal conspiracy hatched by respondents No.2 to 5. Suffice to state that the appellant responded vide letter dated 24 March 2009 (P-10) requesting to furnish him with all the documents and allow him to conduct cross-examination of the complainant. It is an admitted fact that the ACC finally furnished him with a copy of the complaint and also annexures in the nature of copies of some objectionable SMS's comprised in two pages allegedly sent by him to the complainant. Further, although the Sub-committee disallowed his plea for cross examination of the complainant on the ground that such course of action was not permitted by the Ordinance XV, it however allowed him to submit a list of questions with which he desired to cross examine the complainant, to which he objected, the same being no substitute to cross examination thus showing his discomfort to the summary proceedings being adopted by the ACC. Eventually, after conducting necessary inquiry, the Sub-Committee submitted a report dated 30 April 2009 to the "ACC" (R-1), and it would be expedient to reproduce the findings, in extenso as under:

"Thus, it is evident that there existed a close and intimate relationship of a sexual nature between the accused and the complainant. On the basis of the available records the SC cannot determine whether this relationship was, from the beginning, entirely consensual (as claimed by the accused) or non-consensual (as claimed by the complainant), but it believes that what is at stake here is not the issue of consent, but of power. The relationship between a teacher and a student is not one between equals, and involves the power dynamics of the hierarchical difference between the two. At every point in the relationship, it would be difficult for a student to refuse the advances of the teacher, as she may have apprehensions that the teachers can adversely affect her academic career if she resists/spurns the teacher's advances. In such a scenario, a teacher must always be mindful of the fact that even apparent 'consent' is not likely to be unmediated by this power; relationship, and submitted to because the affected individual believes that the request for sexual favours "is an implicit/explicit term or condition of teaching/guidance and

employment”.

In the present case, the accused has not produced any direct or indirect evidence to show that the complainant had taken the initiative to establish the relationship. Moreover, there is no evidence to show that the accused took steps to discourage or discontinue the relationship with Ms. “M” till August, 2007. He decided to distance himself only when he began to suspect that his telephonic conversations with Ms. “M” might be getting recorded.

Therefore, the complainant's contention that she was afraid of her result being adversely affected, if she did not oblige Prof. Tiwari cannot be dismissed as completely unfounded. A teacher does exercise control over evaluation of the performance of students in written examinations and interviews. This is an essential aspect of the power dynamics of teacher-taught relation. It is therefore, extremely important that a teacher maintains a friendly and dignified distance from the students. The responsibility for ensuring this lies much more with the teacher than the students, since a teacher by virtue of his position and age is expected to be more mature and responsible than a student. Even if Ms. “M” made attempts to befriend him, as alleged by Prof. Tiwari, he should have taken steps to ensure that the girl become discouraged. However, Prof. Tiwari not seem to have taken any such steps.

The SC is not convinced by Prof. Tiwari's assertion that he was simply a victim of the complainant's provocative overtures since it is not supported by available records. It is difficult to believe that a senior teacher like him would allow himself to be dragged into such a situation against his will. Prof. Tiwari has stated that the recordings of the telephonic conversations between him and the complainant will substantiate his contention. The complainant was asked about such recordings by the SC and was also requested in writing to submit the recordings of her conversations with the accused, if she had any. However, she denied that any such recordings existed."

{emphasis supplied on bold sentences}

5. The aforesaid findings were deliberated upon by the “ACC” and the report was forwarded to the “EC” not only to the effect that the allegations of sexual harassment against the petitioner have been proved but also making recommendations thereby proposing: (i) demotion of the appellant with deduction of salary, (ii) debarring him from holding any Administrative position for the remainder of the service; and (iii) debarring him from the membership of the Selection Committee in the University; and further (iv) debarring his appointment as a Research Supervisor in the Department of Hindi in the future. It is borne out from the record that the copy of the findings and recommendations of the “ACC” were furnished to the petitioner who submitted its response thereto on 20 May 2009 (P-16). The “EC” vide its Resolution dated 26 June 2009 (R-2) opined that the appellant had committed a serious act of misconduct, and accordingly, while placing the appellant under suspension,

issued a Show Cause Notice dated 29 June 2009 (R-3) to the appellant requiring him to show cause as to why his services not be disengaged/ terminated. The said show cause was assailed by the appellant by way of WP (C) No. 9933/2009 before this Court, which was disposed of vide order dated 9 July 2009, affording him the liberty to raise all contentions before the "EC". Accordingly, the appellant submitted reply dated 13 July 2009 (P-19), to the "ACC", which forwarded its report containing its comments and observations to the "EC" on 14 October 2009 (P-3).

6. At this juncture, there was a new twist in the tale as this Court came to deliver a decision in *Bidyug Chakarborty v. Delhi University* on 29 May 2009 (112) DRJ 391, that in short provided for the right to cross-examination of the complainant in sexual harassment matters. The appellant shot a representation dated 13 July 2009 (P-19) seeking enforcement of certain directions in his case too but then on such decision being challenged successfully, the Supreme Court of India in the case of *Delhi University v. Bidyug Chakarborty* 2009 VI AD (Delhi) 1, instead directed inter alia permitting the delinquent official to submit a questionnaire for the purposes of cross-examination of the complainant. Apparently, acting on the basis of aforesaid directions, the "ACC" at the instance of the Dean of Colleges vide communique dated 18 February, 2010 (P-21) called upon appellant to submit a questionnaire so as to seek responses of Ms. "M" and although the appellant followed suit thereby submitting a written questionnaire and exhorting the ACC to commence the inquiry proceedings de-novo, it appears Ms. "M" having submitted her brief response to the same, objected to the re-opening of the proceedings. On her failure to participate in the inquiry, the "ACC" vide letter dated 12 May 2010 (P-24) informed the appellant as under:

"In its meeting held on 3 May, 2010 the Inquiry Committee resolved that in view of (M"s) non-cooperation in the process of cross-examination, the proceedings were closed".

7. The said communique (P-25) was sent to the complainant Ms. "M" as well, who aggrieved thereof preferred W.P. (C) No. 8208/2010 during the hearing of which, the impugned memorandum dated 8 July 2011 (P-1) came to be issued thereby compulsorily retiring the appellant from the services of the University, and since the cause of action in said Writ Petition became infructuous, the same was accordingly disposed of vide order dated 5 July 2011.

8. The impugned memorandum (P-1) was passed in accordance with Clause 6 annexed to the Ordinance XI governing the University of Delhi, which reads as under:

"MEMORANDUM

WHEREAS Prof. Ajay Tiwari has been working as Professor in the Department of Hindi in the University of Delhi;

AND WHEREAS Ms. "M" is an M.Phil student in the Department of Hindi filed a

complaint dated 09.09.2008 for sexual harassment.

AND WHEREAS the Apex Complaints Committee against Sexual Harassment constituted under Ord. XV-D of the Ordinances of the University enquired into the matter and found Prof. Ajay Tiwari guilty of the charge of sexual harassment leveled against him in the complaint dated 09.09.2008 filed by Ms. Meenakshi;

AND WHEREAS the Apex Complaints Committee forwarded its findings along with its recommendations against Prof. Ajav Tiwari to the Vice-Chancellor University of Delhi on 05.05.2009;

AND WHEREAS a copy, of the findings and recommendations of the Apex Complaints Committee were supplied to Prof. Ajay Tiwari;

AND WHEREAS Prof. Ajay Tiwari has submitted his response on 20.05.2009;

AND WHEREAS the said report of the Apex Complaints Committee and the representation dated 20.5.2009 submitted by Prof. Ajay Tiwari were duly considered by the Executive Council of the University on 26.06.2009;

AND WHEREAS the Executive Council resolved vide Res. No. 97 dated 26.06.2009 that after taking into consideration the evidence on records, findings of the inquiry report, the representation against the findings, facts, circumstances placed before it has come to a conclusion that being a Professor of the University, this is a serious act of misconduct on the part of Prof. Ajay Tiwari and decided that Prof Ajay Tiwari be issued a show cause notice to explain why his services as Professor in the University be not disengaged for the act of misconduct. The Council further resolved that till the-time of final decision is taken in the matter, in pursuance of the above decision, Prof. Ajay Tiwari be placed under suspension forthwith.

AND WHEREAS vide Memorandum No SPA/R/2009/2888 dated 29.06.2009 Prof. Ajay Tiwari was placed under suspension and asked to show cause as to why his services as Professor in the University be not disengaged in terms of the Annexure to the Ordinance XI of the University. Prof. Ajay Tiwari has submitted his reply dated 13.07.2009 to the show cause notice.

AND WHEREAS the Apex Complaints Committee submitted its comments and observations on 14.10.2009 on the reply of Prof. Ajay Tiwari to the show cause memorandum for placing the matter before the Executive Council.

AND WHEREAS in the light of order dated 12.01.2010 of Hon'ble Supreme Court in the matter of University of Delhi v/s Prof. Bidyut Chakraborty [SLA (C) No. 23060/2009] the matter was referred to was forwarded to Apex Complaint Committee, so that accused be permitted to cross examine the complainant and witnesses through a written procedure, to submit statements of additional relevant witness, be given documents and relevant evidence not supplied thus far, without revealing the identity of the witnesses, and that a record of the proceedings of the proposed sittings of the sub- committee of the Apex

Committee be given to both sides.

AND WHEREAS the Apex Complaint Committee forwarded its report vide letter No. WSDC/2010/369 dated 31.08.2010.

AND WHEREAS the Executive Council vide Res. No. 137 dated 01.07.2011 considered the report dated 31.08.2010 of the Apex Complaints Committee against Sexual Harassment on the complaint of Ms. "M", against Prof Ajay Tiwari, Department of Hindi. The Executive Council accepted the findings of the report. The Executive Council resolved that Prof. Ajay Tiwari be compulsorily retired from the University service.

Now, therefore, Prof. Ajay Tiwari is hereby compulsorily retired from the University service as teacher of the University with effect from 01.07.2011, in terms of clause 6 of Annexure to the Ordinance XI of the University."

9. Aggrieved, the petitioner/appellant preferred the instant Writ Petition assailing the decision of the University to compulsorily retire him from the service, which ultimately came to be dismissed by the Learned Single Judge vide impugned judgment dated 25 November 2019.

IMPUGNED JUDGMENT/ORDER

10. First things first, the definition of "sexual harassment" as contained in Clause-2 (viii) of the Ordinance XV(D) goes as under:-

"Sexual harassment includes any unwelcome sexually determined behaviour, whether directly or by implication and includes physical contact, and advances a demand or request for sexual favours, sexually coloured remarks, showing pornography or any other Unwelcome physical, verbal or non-verbal conduct of sexual nature.

Explanation: "Sexual harassment" shall include, but will not be confined to the following:

(a) When submission to unwelcome sexual advances, requests for sexual favours and verbal or physical conduct of a sexual nature are made, either implicitly or explicitly, a ground for any decision relating to employment, academic performance, extra-curricular activities; or entitlement to services of opportunities at the Delhi University.

(b) When unwelcome sexual advances, and verbal, non-verbal and/or physical conduct such as loaded comments, remarks or jokes, letters, phone calls or email, gestures, exhibition of pornography, lurid stares, physical contact, stalking, sounds or display of a directory in nature at the purpose and/or effect of interfering with the individual's performance or of creating an intimidating, hostile or oppressive environment.

(c) When a person uses, with a sexual purpose, the body or any part of it or any object as an extension of the body in relation to another person without the

latter's consent or against the persons will, such conduct will amount to sexual assault.

(d) When deprecatory comments, contact or any such behaviour is based on the gender identity/sexual orientation of the person and/or when the classroom or other public forum of the University is used to denigrate black discriminate against a person or create a hostile environment on the basis of a person's gender identity/sexual orientation."

11. Suffice to state, learned Single Judge held that the definition of "sexual harassment" was an inclusive one, thereby not only implying the conduct conforming to the circumstances outlined in the definition but also any other conduct as would be commonly understood to constitute "sexual harassment"; and, therefore, while repelling the plea of the appellant was held that it would be unjustifiable to restrain the scope of interpretation to the specific types of conduct referred therein. It was further held that an act is "welcomed" when there is an active element of conscious and willing acquiescence by the person to the doing to the act provided that such free consent or welcome conduct can constitute a defence, only if the act itself is not proscribed by law. It was held that the relationship between student and teacher is a most sacred one, therefore, no defence of complainant being a consenting party could be taken.

12. Further, the plea by the appellant as to the complainant with other respondents conceiving a grandiose scheme to blackmail him was shot down. No merit was found in the proceedings getting transferred from the "UUC" to the "ACC" holding that there was plenary power vested with the Vice-Chairmen vide Clause-4 of the Ordinance XV(D) to transfer the complaint to any of the Committees including the Apex Committee.

13. As regards the plea that the inquiry proceedings had been closed vide letter dated 12 May 2010 and inevitably there could be no question of penalizing the appellant, it was held that letter dated 12 May 2010 did not go to the extent of suggesting the closing of the disciplinary proceedings since the disciplinary proceedings once initiated, can only end with the punishment or with the exoneration of the charged official; and the letter dated 12 May 2010 merely signified closure of the inquiry proceedings in so far as it required the participation of the appellant, or for that matter the complainant, for which reference was invited to decision *Yoginath D. Bagde v. State of Maharashtra* (1999) 7 SCC 739.

14. It was finally concluded that since the appellant had admitted exchanging text messages and also indulging in telephonic conversations having sexual overtones with Ms. "M" albeit in what he termed as "moments" of indiscretion, there was no procedural infraction that resulted in any kind of prejudice to him, for which reference was invited to *State Bank of Patiala v. S.K. Sharma* AIR 1996 SC 1669; *P. D. Agrawal v. S.B.I* (2006) 8 SC 776 and; and *Haryana Financial Corporation v. Kailash Chandra Ahuja* (2008) 9 SCC 31. Ultimately, learned

Single Judge held that there were no grounds to suggest that the decision to compulsorily retire the petitioner from service could be said to be unjustified, or in any manner disproportionate to the "indiscretions" committed by him, thus the Writ Petition was dismissed without orders as to costs.

GROUND FOR CHALLENGE

15. The impugned judgment dated 25 November 2019 has been assailed in the present LPA inter alia on the grounds that the Learned Single Judge passed the impugned judgment dated 25 November 2019 after more than 13 months of reserving the judgment and thereby causing severe prejudice to the appellant. Relying on direction of the Apex Court in the case of Anil Rai v. State of Bihar (2001) 7 SSC 318; and that the learned Single Judge wrongly read down and interpreted the definition of "sexual harassment" by carving out a special category of teacher-student relationship despite the fact that the student in question was a mature girl pursuing a post graduation course; and that the appellant was neither given a Show Cause notice nor a hearing prior to the decision taken by the Executive Committee to compulsorily retire him from service so much so that he was not even provided a copy of the inquiry report dated 31 August 2010; and that the learned Single Judge failed to appreciate that the final report of the Apex Committee was vitiated due to participation of respondent No.3 Professor Vibha Arya; and that non-cooperation on the part of respondent No. 2 in her act of not appearing for cross examination, frustrated the defence raised by the appellant; and that merely because the appellant was in a relationship with complainant Ms."M" would not partake the character of making it a case of sexual harassment; and that the learned Single Judge did not even try to determine whether the power dynamic was misused by the appellant and on the contrary went on to assume that teacher - student could never get romantically involved.

SUBMISSIONS ADVANCED AT THE BAR

ON BEHALF OF THE APPELLANT

16. Mr. Manish K. Bishnoi, learned counsel for the appellant took this Court through the contents of the first inquiry report dated 30 April 2010 and pointed out that the inquiry proceedings against the other delinquent officials, namely Prof. Sudhish Pachauri and Prof. Ramesh Gautam were closed on the "ACC" finding no prima facie grounds to proceed against them and yet the Committee rendered a finding that the delinquent official/appellant by his verbal and physical conduct of an explicitly sexual nature, created a hostile environment for the complainant despite the fact that no evidence was found to support the allegations of Ms. "M"; that he victimized her or committed any act that would have had an adverse effect on her academic prospects; and rather the "ACC" in its report found substance in the defence of the appellant that he had been victimized by a former student of Hindi in University of Delhi, blackmailing him into securing a job for himself and some other favours recommending the

University to initiate inquiry into the said allegations and take appropriate action.

17. It was then vehemently urged by Shri Bishnoi that once inquiry proceedings had been closed vide communication dated 12 May 2010, there was no inquiry pending against him, which fact was endorsed by the then learned Standing counsel for the respondent-2/University of Delhi in W.P. (C) 8208/2010 and CM No.21142/21010 that was filed at the instance of Ms."M", wherein during the course of the hearing on 8 December 2010 it was recorded that proceedings had been closed on 12 May 2010 and it was further stated by their counsel that the question of the committee issuing any further report did not arise. It was pointed out that it was in the subsequent hearing in the aforesaid Writ Petition that on 5 July 2011 a bombshell was thrown regarding punishment already having been met out to the delinquent official/appellant by the disciplinary authority of the University; and it was only later that he was served with the impugned memorandum dated 4/8 July 2011 communicating a decision to compulsorily retire him from service based on the report of the "ACC" vide letter No. WSDC/2010/369 dated 31 August 2010. It was urged that when the representation of the complainant challenging imposition of lighter punishment upon the appellant was dismissed vide order dated 21 February 2012, the complainant/R-2 filed SLP No. 19060/2012 and only then the appellant was in receipt of the "ACC" report dated 31 August 2010 for the first time annexed with the copy of the SLP.

18. At this juncture, it should be indicated that during the course of hearing arguments before this Court, it was clarified that the decision by the "EC" to compulsorily retire the appellant was in fact taken vide Resolution dated 1 July 2011 and that the prescribed procedure was followed and this Court was rightly informed in W.P. No. 8208/2010 on 5 July 2011 that a decision had been taken although order was passed on 4 July 2011 and communicated to the appellant on 8 July 2011. At the cost of repetition, it was vehemently urged by the learned counsel for the appellant that inquiry proceedings were vitiated as he was not allowed to orally cross-examine the complainant Ms."M" in terms of relevant procedure prescribed under the Ordinance XV, which caused grave prejudice to him.

19. Mr. Bishnoi in his submissions relied on decisions *Aureliano Fernandes v. State of Goa & Ors.* (2023) SCC Online SC 624; *Vishaka and Ors v. State of Rajasthan & Ors.* (1997) 6 SC 241; *Medha Kotwal Lele & Ors v. Union of India & Ors.* (2013) 1 SC 297; *Bidyug Chakraborty (Prof.) v. Delhi University & Ors.* 2009 VI AD (Delhi) 1; *Union of India & Anr. v. S.K. Das* 2016 SC OnLine Del. 5578; *Prof. S.P. Narang v. University of Delhi* 2017 SCC OnLine Delhi 9458; *Avinash Nagra v. Navodaya Vidyalaya Samiti & Ors.* (1997) 2 SCC 534; *Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School & Ors.* (1993) 4 SCC 10; and *Hira Nath Mishra & Ors. The Principal, Rajendra Medical College, Ranchi & Anr.* (1973) 1 SCC 805.

LEGAL SUBMISSIONS ON BEHALF OF THE UNIVERSITY

20. Per contra, Ms. Beenashaw Soni, learned counsel for the respondent No.1/ Delhi University in her brief submissions urged that inquiry proceedings were initiated by the "ACC" culminating into first inquiry report dated 30 April 2009 as per procedure prescribed by the law, as was applicable during the relevant time; and in order to demonstrate that the principles of natural justice were duly complied with, the learned counsel for respondent No. 1/ University of Delhi took this Court through the inquiry proceedings conducted by the Sub Committee wherein detailed questions were put to the appellant seeking his response to the allegations leveled against him by Ms. "M". It was emphasized that the delinquent official/appellant during the course of inquiry conceded in so many words that he had sent the impugned SMS to the complainant Ms."M" except that he took defence that he had been entrapped by her and he conceding in so many words that there were acts of indiscretion on his part. Learned counsel for the respondent No.1 urged that "ACC" in its first report dated 30 April 2009 gave a reasoned finding that the core issue was of the power wielded by the delinquent official over his student, which was wrong by all moral and ethical standards that per se being a case of "gross misconduct" amounted to acts unbecoming of a public servant. It was urged that the copy of the inquiry report dated 30 April 2009 was supplied to the appellant against which he filed a reply dated 20 May 2009, which was indeed considered by the "EC" and ultimately resulted in the Show Cause Notice dated 29 June 2009. It was vehemently urged that the appellant has not been prejudiced in any manner and there was substantial compliance with principles of natural justice and the defence of the appellant that he was a victim of conspiracy at the hands of respondent No.1/complainant Ms. "M" was concocted and as he did nothing to take action despite a finding in his favour by the "ACC".

LEGAL SUBMISSIONS ON BEHALF OF Ms. "M"

21. Ms. Tanya Agarwal, learned counsel for the respondent No.2/complainant, taking us through the contents of the inquiry proceedings pointed out the call records and the details of the SMSs, brought the record during the course of inquiry would demonstrate that from the period May, 2007 till about August, 2007 the appellant had been repeatedly calling her and/or sending SMS seeking sexual favours. It was further submitted that in response to 69 questionnaires that were submitted by the appellant, the Sub Committee framed four broad certain questions and the same were sent to her, which were responded to in detail by her and it was not a case where no cross-examination was done but then as per procedure prescribed vide Ordinance XV, the substance of the questions in the cross-examination were put to her, to which she had replied and it was pointed out it was not a case where she did not cooperate with the Sub Committee except that she only objected to appearance before the single member of the Sub-Committee who was sitting with the Deputy Registrar, which Sub-Committee was otherwise a five member body. It was urged that delinquent official may choose to raise multiple questions but then it was the prerogative of the Sub-Committee to decipher what questions were relevant to the matters-in-

issue. It was pointed out that Sub-Committee in its report also found that her assertions that she was afraid of her result being effected, if she did not oblige Professor Tiwari, cannot be dismissed as "completely unfounded". It was further urged that no direct or indirect evidence was shown by the appellant to show that she had taken the initiative to establish the relationship and it was a case where the delinquent official tendered a doctored recording between him and another student, who very conveniently supported his version that he was looking disturbed on meeting the respondent No.5 Mr. Anil Solanki and respondent No.2 Ms. "M" and it was urged that the conspiracy theory stands demolished by the recordings between the delinquent official and Mr. Anil Solanki purportedly recorded on 15 September 2007, wherein rather respondent No.5 Mr. Anil Solanki offered his services to help the ailing mother of the appellant and it was urged that it is inconceivable that a person who is alleged to be blackmailing would go all out to help the victim. It was thus urged that there was substantial compliance of principles of natural justice. Reliance has been placed on the decision of the Allahabad High Court in *Manu Singh v. Uma Dutt Pandey* (1980) ILR 12 ALL. 523.

22. It was urged that the defence of the appellant that the complainant was instrumental in initiating contact/relationship was not substantiated from the material/evidence on the record and in any case where contact itself was proscribed, there was no justification for the appellant to indulge in sexually explicit behavior, who should have stood on high moral grounds. It was urged that there is not an iota of evidence that the complainant was engaged in any kind of conspiracy with respondent No.5, Anil Solanki. Taking this court through the contents of the first inquiry report dated 30 April 2009, it was pointed out that the appellant sought to introduce several witnesses during the inquiry, who wanted to depose in his favour that would demonstrate the influence wielded by him and the conspiracy theory falls flat on its face as no evidence has been led that the respondent Nos. 3 and 4 entertained any bias against the appellant and rather the first inquiry report dated 30 April 2009 recorded a finding that Prof. Abhay Maurya, respondent No.4 had endorsed the defence of the appellant that he was being pressurized by some outsider to secure him a job in the Delhi University. In her submissions learned counsel invited reference to decisions in *Sangram Singh v. Election Tribunal, Kota* AIR 1955 SC 425; *Jankinath Sarangi v. State of Orissa* (1969) 3 SCC 392; *ECIL v. B. Karunakar* (1993) 4 SCC 727; *Union of India v. P. Gunasekaran* (2015) 2 SCC 610; and *Union of India v. Mudrika Singh Crl. Appeal-6859/2021* decided on 03.12.2021.

ANALYSIS AND DECISION

23. We have given our anxious considerations to the submission advanced by the learned Counsels for the rival parties at the Bar. We have meticulously scanned through the entire record of the case including the documents and the case law cited at the Bar.

24. In order to decide the present Letters Patent Appeal, we propose to pose for

ourselves the following questions that arise in the matter:

- (i) Whether there was any substantial non-compliance with the principles of natural justice and/or any statutory parameters while holding the disciplinary inquiry against the appellant, and if so, what effect?
- (ii) Whether the impugned Memorandum dated 4/8 July 2011 passed without affording any hearing to the appellant has caused any prejudice to the appellant?

OBSERVANCE TO THE PRINCIPLES OF NATURAL JUSTICE

25. Before embarking on an evaluation of the facts and circumstances established on the record, it would be apposite to point out that while exercising powers of judicial review, this court is not sitting as an appellate court over the factual findings arrived at in the disciplinary proceedings, and the same cannot be interfered with so long as the findings are reasonably substantiated by evidence that cannot be faulted on account of procedural illegalities or irregularities vitiating the whole purpose of decision arrived at. It is also well ordained in "service jurisprudence" that judicial review of a decision by the disciplinary authority is only to ensure that individual concerned has received not only fair treatment but also to ensure that the authority after recording fair treatment has reached a conclusion, which is fair and legally tenable in the eyes of law. Hence, this Court is under duty to satisfy itself that inquiry into the allegations of sexual harassment by the Sub-Committee was conducted in terms of the service rules and that the appellant got reasonable opportunity to vindicate his position and establish his innocence.

26. Having said that, it is also well established in legal jurisprudence that "the rules of natural justice do not supplant but supplement the statutory rules and regulations. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice wherever or whenever substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment...". They are now considered so fundamental as to be "implicit in the concept of ordered liberty" and, therefore, implicit in every decision-making function, be it judicial, quasi-judicial or administrative. Avoiding a long academic discourse, we can conveniently refer to the decision in the *causa celebre* titled *A.K. Kraipak v. Union of India* (1969) 2 SCC 262 wherein it was observed that:

"If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative inquiry may have more far reaching effect than a decision in a quasi-judicial

inquiry.....”

- [Emphasis supplied]

27. Reference can also be invited to decisions in the case of *D.K. Yadav v. J.M.A. Industries Ltd.* 1993 SCR (3) 930; *Liberty Oil Mills v. U.O.I.* 1984 AIR 1271; *U.O.I v. Tulsiram Patel* (1985) 3 SCC 398; *State of Orissa v. Bina Pani Dei* AIR 1967 1269; *Mohinder Singh Gill v. Election Commissioner of India* (1978) 1 SCC 405; *Maneka Gandhi v. Union of India* (1978) 1 SCC 248; and *Mangilal v. State of M.P etc.* 1994 SCC (4) 564. Again, shorn off long academic discussion, it would also be pertinent to refer to a recent decision of the Hon'ble Supreme Court in the case of *Madhyamam Broadcasting Limited v. Union of India & Others* (2023) SCC OnLine 366, wherein issues arose in the context of decision by the government leading to denial of security clearance to a media house without any hearing, it has been held as under:

“53. The judgment of this Court in *Maneka Gandhi* (supra) spearheaded two doctrinal shifts on procedural fairness because of the constitutionalising of natural justice. Firstly, procedural fairness was no longer viewed merely as a means to secure a just outcome but a requirement that hold an inherent value in itself. In view of this shift, the Courts are now precluded from solely assessing procedural infringements based on whether the procedure would have prejudiced the outcome of the case. Instead, the courts would have to decide if the procedure that was followed infringed upon the right to a fair and reasonable procedure, independent of the outcome. In compliance with this line of thought, the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds. Secondly, natural justice principles breathe reasonableness into the procedure. Responding to the argument that the principles of natural justice are not static but are capable of being moulded to the circumstances, it was held that the core of natural justice guarantees a reasonable procedure which is a constitutional requirement entrenched in Articles 14, 19 and 21. The facet of *audi alterum partem* encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness. The burden is on the applicant to prove that the procedure that was followed (or not followed) by the adjudicating authority, in effect, infringes upon the core of the right to a fair and reasonable hearing.”

[emphasis supplied]

ARTICLE 311 OF THE CONSTITUTION

28. In same vein, there is no gainsaying that the case law is replete with proposition of law that the mandate of Article 311 of the Constitution enshrines the principles of natural justice in matters of dismissal, removal or reduction in

rank of public servant, which reads as under:-

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or hold a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an Inquiry In which he has been informed of the charges against him and given a reasonable opportunity of being heard In respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such Inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final"

29. A bare perusal of sub-Article (2) to Article 311 would show that no public servant can be dismissed, removed or reduced in rank except after an inquiry in which one has been informed of the charges against him and also after giving him a reasonable opportunity of being heard in respect of those charges. It further provides that if any penalty is proposed after such inquiry based on evidence adduced during such inquiry, it is not necessary to give such person any opportunity of making representation on the penalty proposed.

CCS (CCA) RULES

30. In the light of the aforesaid proposition of law, let us now examine CCS(CCA) Rules enacted by the President of India in exercise of the powers conferred by proviso to Article 309 and Clause 5 of Article 148 of the Constitution. Part VI of the CCS(CCA) Rules lays down the procedures for imposing penalties and Rule 3(C) prohibits a government servant from indulging in any act of sexual

harassment of any woman at work place and the expression "sexual harassment" has been defined by the explanation clause to mean "any one or more of the acts or behavior (whether directly or by implication)," viz. physical contact and advances; or a demand or request for sexual favours or making sexually coloured remarks or showing pornography; or any other unwelcome physical, verbal or non verbal conduct of a sexual nature. Rule 14 of the CCS(CCA) then stipulates procedure for imposing major penalty which inter alia provides that Complaints Committee constituted by the disciplinary authority to examine the allegations contained in complaint of sexual harassment is deemed to be an inquiring authority appointed by the disciplinary authority and it is enjoined upon the Complaints Committee to adopt a fair procedure that is feasible and elastic for conducting an inquiry in a sensitive matter like sexual harassment at work place without compromising on the principles of natural justice.

14. Procedure for imposing major penalties

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules."

ORDINANCE XV(D)

31. In the light of the aforementioned edifice in service jurisprudence, before we delve into factual matrix of the matter, we have to take a look at Ordinance XV(D) applicable to the University of Delhi, which is based on the policy against sexual harassment adopted by the Delhi University, which seeks to maintain and create an academic and work environment free of sexual harassment for students, academicians as also non-teaching staff of Delhi University.

Clause 2 is the definition clause that defines the meaning of students which

include regular students as well as current students of the Delhi University and teaching staff including any person on the staff of the Delhi University or any college and institution affiliated to it, who is appointed to a teaching and/or research post, whether full time, temporary, adhoc, part time, visiting, honorary or on a special duty or deputation. Clause 2 (viii) that defines the expression "sexual harassment" has already been referred to at page 11 of this Judgment; and it is relevant to point out that Clause 4 of the ordinance creates a hierarchy of the complaints committee for achieving the policy against sexual harassment through College Complaints Committee(CCC), University Units Complaint Committee(UUCC), Central Pools Complaints Committee(CPCC) and then the Apex Complaints Committee(ACC) and the last of such committee is provided to be an Apex Regulatory and Appellate Body of the University of Delhi for redressal and resolution of complaints. The composition of committees, mode of election/nomination, powers, duties and procedure to be followed are outlined in the Appendix to the Ordinance and Clause 5(a) provides that disciplinary action may be taken in the form of warning, written apology, bond of good behavior, adverse remarks in the confidential report, debarring from supervisory duties, denial of membership of statutory bodies, denial of re-employment, stopping of increments/promotions, reverting, demotion, suspension, dismissal and any other relevant mechanism in case of a University/College employee also providing for disciplinary action separately vide Clause B wherever students are involved(which is omitted as not relevant). Appendix to the ordinance XV(D) then recites the parameters about the constitution of the CCC, UUCC, CPCC and APC.

32. As regards powers and duties of ACC/UUCC/CPCC/CCC, such committees are empowered to take "preventive" as well as "remedial" actions, and case of the latter i.e., the Committees are inter alia empowered to take cognizance of complaints about sexual harassment, conduct enquiries, provide assistance and redressal to the victims, recommend penalties and take action against the harasser, if necessary. Vide clause 4 under heading "Procedure to be followed", the VC is empowered to refer any complaints about sexual harassment to any of the committees including the Apex Committee. The Appendix then provides the procedure for enquires, which read as under:

- "1. All complaints made to any committee member must be received and recorded by the member, who shall then inform the Chairperson about the complaint, who in turn shall call a meeting of the committee.
2. All meetings of the committee will be called by the Member Secretary in consultation with the Chairperson and a notice of at least 3 to 5 working days must be given.
3. The committee is bound to maintain confidentiality during the time of the inquiry (in order not to prejudice the proceedings).
4. After the report has been finalised, confidentiality should be maintained, if the

complainant so desires, by withholding the complainant's name and other particulars that would identify her. (Revealing the identity either in exceptional cases such as stalking may put the complainant at greater risk or as a result of social prejudices the complainant may face additional adverse effects as a result of public circulation of the finished report.)

5. During an inquiry the quorum for all committee meetings will be one-third of the total membership, and must include at least one member from the complainant's category as well as, one of the two members co-opted from outside.

6. The UUCC/CCC/CPCC/ACC will, within ten days of the receipt of a complaint, establish a prima facie case of sexual harassment on the basis of both the definition of sexual harassment as given in this policy, and the jurisdiction of this policy. Reasons for not pursuing a complaint must be recorded in the minutes and made available to the complainant in writing.

7. In case of a complaint filed by another person on behalf of the complainant (where the complainant is in confinement) the complaint will be investigated in order to explore whether a prima facie case of sexual harassment exists and whether intervention or some other assistance is required.

8. In case a prima facie case is established the UCC/CCC/CPCC/ ACC shall set up an inquiry committee of 3-5 members, with at least one member of the complainant's category, as well as a member from outside the University.

9. The sub-committee must inform the accused in writing about the charges made against him/her and she should be given a period of five days from the date of receipt of the notification to respond to the charges.

10. During the inquiry procedure, the complainant and the accused will be called separately so as to ensure freedom of expression and an atmosphere free of intimidation. The complainant will be allowed to be accompanied by one representative during the inquiry.

11. The sub-committee must submit its report to the larger committee not later than 15 working days. The larger committee will discuss the report and make recommendations for punitive action if required.

12. The entire process of inquiry should be completed within one month.

13. The complainant or the accused may appeal to the Apex Committee if they are dissatisfied with the decision of the CCU/UUCC/CPCC."{emphasis supplied on clause (10)}

EVALUATION AND REASONS FOR DECISION

33. Reverting to the instant appeal, it is borne out from the record that the appellant/delinquent official was supplied with the copy of the complaint lodged by Ms. "M" vide covering letter of the Sub-Committee dated 24 February 2009

(P-5), to which a detailed reply dated 4 March 2009 (P-6) was submitted by the appellant/delinquent official, a bare perusal of which would show that although he made a grouse that the alleged prints of the SMS sent by him to the complainant Ms. "M" had not been supplied to him, he was well aware of not only the nature but also the substance of allegations levelled against him so much so that in his reply he on his own acknowledged that he had sent the so called objectionable messages to the complainant Ms. "M" inter alia conceding romantic messages sent on 16 May 2007 when he had gone to Patna, Bihar to attend a programme organized by Doordarshan, though at the same time claiming that the relationship between him and the complainant Ms."M" was consensual and rather she had been acting in a calculated manner so as to entrap him into a relationship in order to later on blackmail him and force him to provide a job to respondent No.5, Sh. Anil Solanki.

34. The record also bears testimony to the effect that statement of the appellant/delinquent official (Annexure-"E") (P-7) was recorded before the Sub-Committee on 4 March 2009, during which he testified as under:

"As a part of the conspiracy, the complainant used to call me frequently on my telephone and her conversation would invariably drift towards romantic talks. On 16.5.2007 I had gone to Patna (Bihar) to attend a programme organised by Doordarshan. I was in a party with friends when the complainant called me at about 11.00 -11.30 p.m. she spoke to me in a completely provocative tone so as to induce or entice me into a sexually tinged conversation I also participated in the conversation despite the influence of ambience and provocation thrown by her at me.... In those moments of indiscretion, I also called her back and we held conversation in which he incited me to talk about sex related matters. Thereafter she used to call me frequently and used to challenge me to indulge into sexually explicit talks and also used to ask me to send her SMS....In those moments of indiscretion, I did not since the underlying design and conspiracy to trap me and therefore I used to receive calls and also sent a few SMS which I deeply regret now." (Emphasis supplied)

35. In essence, he acknowledged that he had indulged in vulgar (sex related reciprocal conversation). The record also bears testimony to the effect that charge-sheet was served upon the appellant/delinquent official on 18 March 2009, to which a detailed reply was filed on 24 February 2009 (P-9), prior to which he had been supplied with the copy of the pages containing text of the objectionable SMS by the Sub-Committee³⁹. There is another reply on the record by the appellant dated 8 April 2009 (P-11) in which he made an elaborate account of his own versions of making calls and sending SMS and showing that there were several calls and SMS that were sent by the complainant which material evidence had been concealed/suppressed by the complainant. It is pertinent to mention here that after the report dated 30 April 2009 was submitted by the Sub-Committee, a copy of which was supplied to the appellant, detailed objections were filed by him on 1 May 2009 and again on 4 May 2009

challenging the findings recorded against him by the Sub-Committee, and incidentally it was first occasion that an allegation of bias was brought forth against Professor Ms. Vibha Chaturvedi/Maurya. The appellant preferred W.P (C) 9933/2009, which was disposed off vide order dated 9 July 2009 by this Court and then again he preferred representation dated 13 July 2009 against the Show Cause Notice issued by the "EC" based on the recommendations of the "ACC" dated 30 April 2009.

39 10th June, 2007 (at 9.47 p.m.)

"Shikwa Karu Kyo? Gila bhi Kam Kyo? Tumse mile to lagaye gale se Aaj rat tum bahut yaad aa rahi ho, Fone bhi nahi uthati ho. Chalo sms se hi baat karo."

Translation:

"Why should I complain? Why should I get upset? If we met, I could embrace you. Tonight, I am continuously remembering you. You are not even answering your phone. Let's converse via SMS. "

17th July 2007 at 9.49 p.m)

"Khubsurati aur aqlamandi ka ek jagah milna mushqil hota hai! Lekin tumne is kahawat ko galat sabit kar diya hai. Bas thoda gussa kar do. Kabhi-kabhi samajdari bhi aachi lagi hai."

Translation:

"It is rare to find beauty, and brains at one place! But you have disproved this adage, . Just be angry for a while. At times, it is good to be understanding. "

19th July, 2007 (at 3.40 p.m.)

"Kahan Khoi hui ho Shakuntala? Kya Soch rahi ho? Dekho tumhara Dushyant Kahin bhatak raha hai"

Translation:

"Where are you lost, Shakuntala? What are you thinking of? See, your Dushyant is wandering somewhere. "

36. In the said factual and circumstantial scenario, we have given our considerable thoughts to the vehement objections taken by the learned counsel for the appellant that although on de novo initiation of the inquiry, he was allowed to submit questionnaires with which the complainant Ms. "M" was sought to be prodded about, such measure afforded to him was no compliance with the principles of natural justice. We have no hesitation in holding that in view of the directions passed by the Supreme Court of India in the case of Delhi University v. Bidyug Chakarborty (supra), there was substantial compliance with the principles of natural justice, particularly when the Ordinance XV (D) did not provide for a face to face cross-examination vide Clause (10) in the Appendix. It is pertinent to mention that although 119 questions were submitted by the appellant on 26

March 2009, the Sub-Committee had grilled the complainant on 30 March 2009 on such questionnaire albeit in an abridged version, presumably since some of the questions were repetitive and some irrelevant. There is no gainsaying that the Sub-Committee in its wisdom and very rightly so culled out questions relevant to the inquiry from the questionnaire and prodded the complainant with the same before submitting its report dated 30 April 2009.

37. It is further borne out from the record that subsequent to the reopening of the inquiry, same set of questionnaires was provided by the appellant, and thus the complainant Ms. "M" objected to the said line of cross-examination again in her representation dated 1 April 2010 but at the same time she did reply to the questions put by the Sub-Committee vide reply/representation dated 26 April 2010. It is also significant to note that there is merit in the submissions made by the learned counsel for the complainant Ms. "M" that it is not a case where the complainant was unwilling to participate in the inquiry after it was initiated de novo except that she objected to the presence of Deputy Registrar with one member of the Sub-Committee since it consisted of five members when she appeared before it on 29 April 2010.

38. Thus, we have no hesitation in holding that there was no serious violation of principles of natural justice so as to prejudice the appellant during the course of the inquiry subsequent to the imposition of charges and ultimately leading to the initial report dated 30 April 2009, and that answers the first question posed hereinabove. All said and done, indeed the only blemish that occurred was that in the hearing conducted on 8 February 2010 in W.P.(C) No. 8208/2010, a wrong statement was made by the counsel for the University - "that since the committee had not been able to make any progress and had closed its proceedings on 12.05.2010, there was no question of committee issuing any further report"; and yet the impugned Memorandum dated 8 July 2011 was passed based on report dated 31 August 2010. Presumably, such blemish occurred on account of some mis-communication or inadvertent oversight on the part of the concerned officials in the University. All said and done, it is also borne from the record that a request was made to the "ACC" vide note-sheet dated 14 June 2010 to give its final report and the Sub-Committee met on 4 August 2010 and it went into the entire sequence of events including the inquiry already conducted and culminating into the report dated 30 April 2009 and inter alia it observed that such findings relied on the admissions by Prof. Tiwari of inappropriate conduct vis-a-vis a student, and its recommendations were based on a sober view of the misdemeanour that Prof. Tiwari had himself accepted. The Sub-Committee also deliberated upon additional representations (six in numbers) submitted by Prof. Tiwari and found that the representations did not reflect any eye witness account or first persons' statement or the instance of harassment mentioned by the complainant, and it ultimately recommended as under:-

"The Sub-committee noted that the procedure of cross examination could not be completed because of the complainant's non-cooperation. However, in view of

the analysis given above and the fact that no additional evidence has come to light the committee is of the view that its original findings and original recommendations do not need to be amended in any fashion.

39. Undoubtedly, the recommendations by the "ACC" vide report dated 31 August 2010 reiterated its earlier finding dated 30 April 2009 providing for milder punishment and there was departure since the impugned Memorandum dated 8 July 2011 thereby compulsorily retiring the appellant from services was punitive in nature. Much mileage was sought to be drawn by learned counsel for the appellant that no hearing was afforded by the disciplinary authority to the appellant before taking such course of action. In our considered opinion, we are not impressed by such plea. In a case titled *K.L. Tripathi v. State Bank of India* (1984) 1 SCC 43 the infraction of the natural justice complained of was that the delinquent official was not given an opportunity to rebut the materials gathered in his absence. It was held that:

"When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement."

40. Likewise, in *Managing Director, ECIL v. B. Karnakumar* (1993) 4 SCC 727, a bench comprising of Five Hon^{ble} Judges of the Supreme Court, discussed the constitutional requirement of a report being furnished under Article 311(2), and it was held as under:

"The next question to be answered is what is the effect on the order of punishment when the report of the inquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the

concept of justice to illogical and exasperating limits. It amounts to an “unnatural expansion of natural justice” which in itself is antithetical to justice.”

{emphasis supplied}

41. In another case *State Bank of Patiala v. S.K. Sharma* (1996) 3 SCC 364, the Supreme Court while distinguishing between “adequate opportunity” and “no opportunity at all”, summarised the principles emerging from discussion on a plethora of case law, and it was provided as under:

“(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental inquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the inquiry held or order passed.

Except cases falling under — “no notice”, “no opportunity” and “no hearing” categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the inquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the inquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar [(1993) 4 SCC 727]. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the inquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between “no opportunity” and no adequate opportunity, i.e., between “no notice”/“no hearing” and “no fair hearing”. (a) In the case of former, the order passed would undoubtedly be invalid (one may call it “void” or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.” {emphasis supplied}

42. In the case of Apparel Export Promotion Council v. A.K. Chopra (1999) 1 SCC 759 the disciplinary authority accepted the report of the “EC” and removed him from service on the ground that he had attempted to molest a lady employee. On challenge, the High Court set aside the order, which order was again assailed before the Hon'ble Supreme Court and their Lordships found that High Court had narrowly interpreted the expression “sexual harassment”, holding that the “disciplinary authority is the sole judge of facts and once findings of fact, based on appreciation of evidence are recorded, the High Court in its writ jurisdiction should not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The Court is under a duty to satisfy itself that an inquiry into the allegations of sexual harassment by a Committee is conducted in terms of the service rules and that the concerned employee gets a reasonable opportunity to vindicate his position and establish his innocence”.

43. Similar view was expressed in the case of Viveka Nand Sethi v. Chairman, J&K Bank Ltd. (2005) 5 SCC 337, wherein a summary inquiry was conducted against the delinquent workman for long absence from duties, which fact was admitted by the workman and rejecting the plea that a full-fledged inquiry should have been conducted, it was held “that the principle of natural justice, it is trite, is no unruly horse.

When facts are admitted, an inquiry would be an empty formality. Even the principle of estoppel will apply”. The aforesaid dictum of law was reiterated in the case of State of UP v. Sudhir Kumar Singh (2020) SCC Online SC 847, wherein it was observed that “in some of the early judgments of this Court, the non-observance of natural justice was said to be prejudice in itself to the person affected, and proof of prejudice, independent of proof of denial of natural justice, was held to be unnecessary. The only exception to this rule is where, on “admitted or indisputable” facts only one conclusion is possible, and under the law only one penalty is permissible. In such cases, a Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice, but because Courts do not issue writs which are “futile.”

44. Thus, there is perceptible departure in service law doing away with its earlier concept that even a small violation shall result in the order being rendered a nullity. In the realm of application of the principle/doctrine of audi alteram partem, a perceptible distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The ultimate test is always the same viz., the test of prejudice or the test of fair hearing. Needless to state the Court applies the principles of natural justice having regard to the fact situation established in each

case and at the cost of repetition, it is not applied in a vacuum without reference to the relevant facts and circumstances of the case. This Court cannot mechanically set aside the order of punishment on the ground that the report dated 31 August 2010 was not furnished, and/or on the ground that he was not heard prior to passing of the impugned order dated 4/8 July 2001. It would bear repetition, that in the instant matter, there was never a dispute as to the broad facts, or the weight to be attached on disputed facts but only an explanation of the acts i.e., the relationship between the parties, and thus absence of opportunity to the appellant to cross-examine the complainant face to face did not create any prejudice in such cases. To our mind, the delinquent employee has miserably failed to prove that the impugned memorandum dated 4/8 July 2011 prejudiced and resulted in miscarriage of justice. We answer the issue no. 2 posed hereinbefore accordingly.

DISCUSSION ON CASE LAW CITED AT THE BAR

45. Before parting with this appeal, we need to reflect upon the case law relied by the learned counsel for appellant which do not help in any manner. No reliance can be placed on the decision in Bidyug Chakraborty (Prof.) v. Delhi University & Ors. (supra) since the observations recorded in the cited case that "mere permission to give written questions to committee for cross-examination of complainant does not fulfill legal requirement of giving opportunity to the delinquent for cross-examination of the complainant" was not approved on the SLP being preferred by the complainant-Delhi University in the case of Delhi University v. Bidyug Chakraborty (supra). Likewise, this Court in Prof. S.P. Narang v. University of Delhi (supra) relied on the decision of the High Court of Delhi in Bidyug Chakraborty (supra), which ratio stood implied overruled by the Supreme Court [Delhi University v. Bidyug Chakraborty]. The cited case of Avinash Nagra v. Navodaya Vidyalaya Samiti & Ors. (supra) is clearly distinguishable on facts wherein the preliminary inquiry found that the delinquent official/ Teacher pursued a girl student into the girls hostel at about 10.00 p.m. in the night, rebuked and created a ruckus when her roommates intervened apart from giving an absolutely a false statement, and in such circumstances during the inquiry the disciplinary authority took a decision to dispense with a regular inquiry so as to not infringe upon the modesty of the girls students as well as witnesses. It was held that "conduct of the appellant was unbecoming of a teacher much less a loco parentis, and therefore, dispensing with regular inquiry under the Rules including denial of cross-examination were legally permissible actions that did not vitiate principles of natural justice. The case of Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School & Ors.(supra) was a case where complaints were lodged by girl students about a nude march of male students of the college in their hostel and although the Supreme Court found no flaw in the recording of statement of complainant girls in the absence of the delinquent official, the proceedings were held to be vitiated in law since disciplinary proceedings were initiated against the Principal of a College and it was found that one of the members of the inquiry committee

had also deposed as a witness in support of one of the charges against the appellant.

46. In so far as the recent decision in the case of Aureliano Fernandes (*supra*) is concerned, it is again distinguishable on facts. It was a case where the appellant was the Head of the Department of Political Science in Goa University against whom initially as many as nine complaints were lodged by girl students alleging sexual harassment at his hands, upon which he was issued a Show Cause Notice to appear before the Committee and supplied with depositions (recorded in his absence of about 14 students), to which he filed a detailed reply refuting the contents of the deposition as also challenging the constitution of the Committee and requested for removal of two members of the Committee on the ground of bias being his subordinates. Despite requests by the delinquent that he was unwell and may be given some time to appear before the Committee, he was proceeded *ex parte* and the Committee submitted its report on 5 June 2009, which was accepted by the "EC" in its meeting dated 13 June 2009 and the Chairman of the "EC" informed the delinquent that it was proposed to conduct an inquiry against him under Rule 14 of the CCS (CCA) Rules and enclosed with the memorandum was the statement of article of charge, statement of imputation of the misconduct in support each article of charge and list of documents as well as list of witnesses and he was given ten days time to file reply. The "VC" then appointed a former Judge of the High Court to conduct an inquiry on 15 October 2009, who took over the inquiry and the appellant appeared before it on its first sitting on 9 November 2009 but then in the meanwhile the Supreme Court in the case of *Medha Kotwal Lele v. Union of India* (*supra*) held that in view of the amendment to the proviso to Rule-14(2) of the CCS (CCA) Rules, in case of the complaint of sexual harassment within the meaning of Rule 3C of the CCS(CCA) Rules, the complaints committee shall be deemed to be the inquiring authority for the purposes of imposing major penalties. Consequently, learned Presiding Officer kept the inquiry in abeyance and later the Registrar on 15 December 2009 informed the appellant that disciplinary proceedings initiated against him on the recommendations of the "EC" dated 12 December 2009 stood terminated and the order appointing the officer had been withdrawn in the light of decision passed by the Hon'ble Supreme Court in the aforesaid case. This was followed by a memorandum dated 17 February 2010 by the "VC" on behalf of the "EC" informing the appellant that in its meeting conducted on 28 January 2010, the "EC" had accepted the report of the Committee i.e. 5 June 2009 and he decided that he was unfit to be retained in service in view of the gravity of charges levelled against him and he proposed to impose major penalty of dismissal giving him two weeks time to submit representation. Although, representation was made by the appellant on 13 March 2010, the appellant was dismissed from service vide order dated 10 May 2010 and the appeal preferred by the appellant against the dismissal order was also rejected by the appellate authority vide order dated 19 April 2010. Aggrieved, the appellant preferred a Writ Petition before the High Court, Judicature at Bombay Bench, Goa, which dismissed the

Writ Petition vide order dated 10 May 2010. On challenge to the Hon'ble Supreme Court, the impugned dismissal orders were set aside holding that 12 hearings were conducted back to back by the Committee at lightening speed despite the fact that the appellant had shown that he was unwell and in the interregnum he was given only seven days time to come prepared for cross-examination of the complainants in about a week, which in total numbered around "17" depositions. The Supreme Court found that the "EC" also faltered when it remained under the impression that the first committee to which the complaints were forwarded, was only a fact finding committee and that a full fledged inquiry was still required to be conducted subsequently as per procedure prescribed under Rule 14 of the CCS (CCA) Rules, and as result it wrongly embarked on the inquiry by issuing memorandum dealing with article of charges and imputation of charges by appointing a former Judge of the High Court as inquiry officer but after the decision in the case of Medha Kotwal Lele (supra), there was a turn around and the ex parte report of the first committee was then taken out of the blue and the decision was taken based upon findings recorded therein probably in its anxiety of being fair to the victims of sexual harassment but ending up causing them greater harm.

47. Reverting to the instant matter, at the cost of repetition, the appellant was well aware of the allegations against him, and he was timely supplied with the copies of the complaint and copy of the objectionable messages. It is brought out that the inquiry was conducted by the Sub-Committee as per the procedure prescribed under ordinary XV(D) which questioned the complainant as also the appellant. The Rules providing for examination of the varying parties by the Sub-Committee did not envisage face to face examination and certainly not face to face cross-examination. The questionnaire submitted by the appellant was considered by the Committee, and the complainant was prodded with some of the relevant question before framing the charges. What ultimately turned decisive was voluntary acknowledgement by the appellant of his acts of indiscretion in getting attracted by the charms of a young female student. We could not agree more with the observations by learned Single Judge that the relationship between a teacher and student is a "sacred one" and the appellant should have stood on high moral grounds despite any alleged indecent overtures by the complainant. The acts complained of were not legally permissible in the first instance, and existence or otherwise, of consent, on the part of the "other party" paled into insignificance.

48. In the end, we find ourselves in agreement with the decision of the learned Single Judge that there was no question of closure of the inquiry proceedings vide letter dated 12 May 2010 which, in effect only signified that neither the appellant nor complainant was required for any further questioning. The inquiry was not closed by the disciplinary authority. The report dated 30 April, 2009 was never set at naught based on which the "ACC" framed charge against the appellant, and post charge, the appellant submitted his questionnaire for cross-examination and reply from the complainant was sought but then proceedings

had to be closed for the non-cooperation of the complainant. We find no illegality in the decision by the disciplinary authority seeking a final report from the "ACC". No hearing was envisaged by the Ordinance XV(D) and the "ACC" did not commit any illegality in appreciation of all the material on the record including admission by the appellant of his misdemeanors resulting in report dated 31 August 2010. We have no hesitation in holding that the disciplinary authority took a just and fair decision to compulsorily retire the appellant from the service in the interest of the institution and the impugned decision dated 1 July 2010 cannot be said to be perverse, harsh or unconscionable in any manner.

49. In view of the aforesaid discussion, we find no illegality, perversity or incorrect approach committed by the learned single judge in passing the impugned judgment, and thus, there is no merit in the present appeal. The same is dismissed. The parties are left to bear their own costs.

50. The appeal along with pending application is disposed of accordingly.