
(2012) 03 GAU CK 0080

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4364 of 2008

Rabindra Nath Barman

APPELLANT

Vs

Gauhati High Court & Anr.

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Citation : (2012) 2 GLT 111

Hon'ble Judges : Amitava Roy, J and B.P.Katakey, J

Bench : Division Bench

Advocate : Advocates appeared for the Petitioner: Mr. P. K. Tiwari & Mr. L. Tenzin, Advocate appeared for the Respondents: Mr. S.S. Dey, Standing Counsel, Advocates appearing for Parties

Judgement

B.P. Katakey, J.—The petitioner, who is presently working as Deputy Registrar in the Principal Seat of this Court, by the present petition has challenged the order dated 18.12.2006 passed by Hon''ble the Chief Justice imposing punishment of reversion in Grade from Deputy Registrar to Assistant Registrar as the junior most in the said cadre and for treating his period of suspension as on duty with pay equivalent to the allowances already paid during that period.

2. The petitioner was initially appointed as Lower Division Clerk in Aizawl Bench of this Court on 01.09.1990 and thereafter, was promoted as Upper Division Clerk on 03.03.1992. He was appointed as Secretary to Hon''ble the Chief Justice on 16.12.1997. Vide order dated 18.07,2003 the petitioner was promoted to the post of Deputy Registrar with effect from 12.08.2002. While discharging his duties as Secretary to Hon''ble the Chief Justice in the Principal Seat at Guwahati the petitioner took admission into the 1st year and 2nd year LL.B. Course on 12.11.2001 and 11.11.2002, respectively, in Royal Academy of Law, Oinarn, DistrictBishnupur in the State of Manipur. The petitioner on 23.04.2003 filed an application before the Registrar General of this Court seeking permission to study the LL.B. Course for the session 200203 without hampering his normal official duties as Secretary to Hon''ble the Chief Justice contending that though pursuant

to the earlier permission granted by the Registry he took admission, he, however, could not prosecute the study due to some personal difficulties and complete the Course. The Registrar (Administration) on 02.06.03, on the basis of the said application, granted permission to prosecute the study in LL.B. Course without affecting the normal duties in any manner with further condition that the said permission may be withdrawn at any time in the interest of service, if so required. The petitioner after completion of the Course and obtaining the degree of Bachelor of Law from Manipur University in the year 2005 filed an application on 02.05.2005 before the Registrar General for recording the said qualification in his Service Book. The Registrar (Administration), thereafter, vide communication dated 01.10.2005 asked the petitioner to furnish a copy of the purported permission accorded to him to prosecute law studies as, according to the Registry, it was subsequently found that though in the application dated 23.04.2003 the petitioner mentioned about granting of the permission by the Registry to prosecute study, no such permission was available. By the said communication the petitioner was also asked to furnish information relating to the period during which he attended the college in Manipur; his total days of attendance, monthwise and yearwise and the leave, if any, availed by him during the period of his study in Manipur. The petitioner vide communications dated 05.10.2005 and 07.11.2005 replied to the aforesaid communication dated 01.10.2005. On 16.11.2005 he was placed under suspension in contemplation of drawal of the departmental proceeding.

3. The disciplinary authority upon consideration of the replies filed by the petitioner decided to hold a departmental proceeding against him and accordingly the Registrar General issued the show cause notice on 23.06.2006 under Rule. 23 of the Gauhati High Court Service (Appointment, Condition of Service and Conduct) Rules, 1967 (in short, "1967 Rules") read with Article 311 of the Constitution of India, asking the petitioner to show cause as to why any of the penalties laid down in Rule 22 of the said Rules should not be inflicted on him on the charges mentioned therein. The petitioner was also supplied with the statement of allegation and the list of witnesses and list of documents to be relied upon by the disciplinary authority in the said proceeding, alongwith the aforesaid charge memo dated 23.03.2006. The petitioner submitted his reply on 08.04.2006. Those charges, however, were amended, which was communicated by the Registrar General on 29.05.2006 to the petitioner, thereby leveling 5 (five) charges against him. The statement of allegation, additional list of witnesses and additional list of documents were also furnished to the petitioner alongwith the said amended charge memo. The petitioner, on 30.06.2006 in continuance of his earlier reply dated 08.04.2006, submitted the written statement of defence denying the charges levelled against him and requesting the disciplinary authority to drop the disciplinary proceeding initiated against him by revoking the order of suspension with all service benefits.

4. Being not satisfied with the reply to the charges levelled, the disciplinary authority decided to proceed with the enquiry by appointing the Enquiry Officer

to enquire into the charges levelled against the petitioner, who on completion of the enquiry submitted his report on 23.11.2006 holding that all the 5 (five) charges levelled against the petitioner are proved. The Registrar General on 29.11.06 furnished a copy of the enquiry report to the petitioner giving an opportunity to make representation against such finding and also to show cause under Rule 24 of the 1967 Rules as to why any of the penalties prescribed in Rule 22 of the said Rules should not be imposed on him. The petitioner on 02.12.2006 submitted his representation contending that the findings recorded by the Enquiry Officer in his report are not based on evidence and there are no materials to hold that the charges against him are proved. The petitioner, therefore, prayed for restatement in service by revoking the order of suspension with all consequential service benefits.

5. The Hon''ble Chief Justice, upon consideration of all the relevant materials, accepted the findings of the Enquiry Officer and imposed the penalty, as noticed above, vide order dated 18.12.2006. Consequential order was, thereafter/issued by the Registrar General on 17.01.2007 reverting the petitioner to the post of Assistant Registrar. The appeal to Hon''ble the Chief Justice filed by the petitioner on 13.03.2007 was rejected on 28.11.2007. The petitioner, however, during pendency of the writ petition subsequently promoted to the post of Deputy Registrar from the post of Assistant Registrar.

6. We have heard Mr. PK Tiwari, learned counsel for the petitioner and Mr. SS Dey, learned Standing Counsel, Gauhati High Court appearing for the respondents.

7. Mr. Tiwari, learned counsel for the petitioner referring to charge Nos. 1 and 2 levelled against the petitioner submits that though they relate to the allegation of taking admission in the 1st and 2nd year LL.B. Course without permission of the competent authority, it is evident from the records of the enquiry proceeding that on 06.01.1991, the Registry earlier .accorded permission to take admission in LL.B. Course during the year 1991 and the petitioner, for some reasons having failed to take admission and complete the Course, obtained verbal permission from the then Hon''ble Chief Justice in the/year 2001 and accordingly took admission into the 1st and 2nd year LL.B. Courses on 12.11.2001 and 11.11.2002, respectively. It has also been submitted that the petitioner referring to the earlier permission granted filed an application on 23042003 (Exhibit53) before the Registrar General to allow him to prosecute the LL.B. Course for the session 200203, which was granted on 02.06.2003 by the Registrar (Administrative), on approval of the then Hon''ble Chief Justice. It has also been submitted that the factum of the approval of the Hon''ble Chief Justice allowing the petitioner to prosecute the LL.B. Course is also evident from the evidence of Sri Mahesh Sarma (witness No.2) and Smti. C.S. Marak (witness No.7) examined by the disciplinary authority in the disciplinary proceeding conducted against him. The fact that the petitioner was earlier granted permission on 16072003 (Exhibit12) by the then Hon''ble Chief Justice has also

been supported by grant of earned leave from 21.07.2003 to 13.08.2003 by the then Hon''ble Chief Justice, so as to enable the petitioner to appear in the LL.B. examination.

8. The learned counsel submits that it appears from the records that the petitioner never kept either the Registry or the then Hon''ble Chief Justice in dark by taking admission and pursuing with the LL.B. Course under Manipur University. The conduct of the petitioner, according to the learned counsel, therefore, is bonafide and cannot in any stress of imagination be termed as malafide, so as to invite disciplinary action against him for taking admission and in pursuing the LL.B. Course. It has also been submitted that since neither the 1967 Rules nor any instruction issued by the authority requires obtaining prior written permission of the competent authority to take admission in any course of study, the allegation of taking admission without permission even if taken to be true, does not violate any Rules or instruction issued, so as to entail the disciplinary action against the petitioner.

9. Referring to the 1967 Rules, Mr. Tiwari submits that the disciplinary action against an employee/officer can be taken only in the event of commission of any misconduct as enumerated in Rules 42 to 61 of the 1967 Rules and since taking admission in any Course of study without permission does not constitute misconduct within the meaning of 1967 Rules, no disciplinary action can be taken against the petitioner on the basis of such allegation. The ex post facto approval of taking admission to LL.B. Course by granting permission by the Registrar (Administration) on 02.06.2003 as well as granting the leave to appear in the examination of 1 st year LL.B. Course by the then Hon''ble Chief Justice on 16.07.2003 has validated the initial conduct of the petitioner, even if, taking admission in any Course of study without permission amounts to misconduct, submits the learned counsel. The learned counsel further submits that the charge of not maintaining the devotion to duty and absolute integrity and acting in a manner unbecoming of a public servant and abuse or misuse of official power and position as levelled in the charge memo could not be proved by the disciplinary authority in the proceeding conducted against him, as, it is not the allegation that the petitioner did not maintain the absolute integrity and devotion to duty as Secretary to, the then Hon''ble Chief Justice, the post which he held at the relevant point of time, more so when the allegation of taking admission in LL.B. Course without permission does not relates to official work or the action or behaviour of the petitioner as Secretary to the then Hon''ble Chief Justice. Mr. Tiwari further submits that his action in taking admission in LL.B. Course, in view of the aforesaid submission, does not amount to any act unbecoming of a public servant or abuse or misuse of the official position amounting to misconduct, so as to take disciplinary action against the petitioner.

10. Referring to charge No.3 based on the allegation that the petitioner by submitting the application dated 23.04.2003 (Exhibit53) stating that he was earlier granted the permission to prosecute the study in LL.B. Course mislead the

authority in granting the permission vide order dated 02.06.2003 (Exhibit54) as no permission was granted earlier, it has been submitted by Mr. Tiwari that it is evident from the deposition of witness Nos.2, 3 and 7 that the permission dated 02.03.2003 was accorded on the approval of the then Hon"ble Chief Justice on the basis of the application filed by the petitioner, which was placed before him. It has been submitted that it is an undisputed fact that the petitioner was earlier granted permission in writing on 06.01.1991 to prosecute the study in LL.B. Course during the year 1991, which, however, he could not pursue due to certain personal difficulties and as such, there was no misleading statement at all in the application filed by him on 23.04.2003, so as to mislead the then Hon"ble Chief Justice or the Registry to pass the order granting approval on 02.06.2003. The learned counsel further submits that since it is evident from the depositions of the aforesaid witnesses that the application filed by the petitioner was placed before the then Hon"ble Chief Justice, on whose approval, the order dated 02.06.2003 was issued by the Registrar (Administration), the authority ought not to have brought the charge No.3 against the petitioner without verifying the fact from the then Hon"ble Chief Justice, which was not done despite the repeated request made by the petitioner. Mr. Tiwari further submits that the charge No.3 is also very vague as it has not disclose who was mislead by the petitioner by the aforesaid application dated 23.04.2003. The further submission is that the fact that the Hon"ble Chief Justice was not mislead by the statement made in application dated 23.04.2003 is also evident from the subsequent order of the then Hon"ble Chief Justice dated 16.07.2003 granting leave allowing the petitioner to appear in the 1 st year LL.B. examination. The said charge, according to the learned counsel, has been brought only to counter the defence of the petitioner of grant of ex post facto approval in relation to charge Nos.1 and 2.

11. It has also been submitted by Mr. Tiwari that the charge No.4 levelled against the petitioner on the basis of the allegation that he attended the classes on few days in the months of October tmd December, for the 1st year, 2nd year, and 3rd year LL.B. Course, in the years 2001,2002 and 2003, respectively, without obtaining permission from the competent authority to remain away from the headquarter also cannot be sustained, as the petitioner in the month of November, 2001 and 2002 took admission in the 1 st and 2nd year LL.B. Course in Royal Academy of Law, Oinam, which fact is also reflected in charge Nos. 1 and 2. The learned counsel, therefore, submits that the said charge has been framed against the petitioner without any application of mind by the competent authority, which, is therefore, liable to be quashed. The basis for holding by the Enquiry Officer that the said charge against the petitioner has been proved, i.e. the evidence of Sri Jogeswar Singh, the Principal of the said Law College and the relevant attendance register of the College, cannot be sustained, as the proper maintenance of such attendance register is doubtful because of the evident fact that though the petitioner took admission in the 1 st year LL.B. Course on 12.11.2001 and the 2nd year LL.B. Course on 11.11.2002, he was marked

present on various dates in the month of October, 2001 and 2002 in the 1st and 2nd year LL.B. Course, more so when the petitioner has taken the specific stand that he did not attend the classes on those dates. According to the learned counsel, the charge No.4 against the petitioner, therefore, cannot be sustained on the basis of such doubtful attendance register. Mr. Tiwari further submits that the said charge of attendance of classes on various dates in the months of October and December, 2001, 2002 and 2003 cannot also be sustained since there is no allegation against the petitioner that he did not attend the duty as Secretary to the Hon'ble Chief Justice in those days.

12. Referring to charge No.5 levelled against the petitioner, it has been submitted by Mr. Tiwari that the allegation of the petitioner being personally present in the office of the Principal of Royal Academy of Law, Oinam on 12.11.2002, 11.11.2002 and 19.09.2003 for submitting the applications for admission in the, 1 st, 2nd and 3rd year LL.B. Course, also could not be substantiated by the disciplinary authority so as to constitute the misconduct as alleged. Referring to the date, i.e. 12.11.2002, on which according to the disciplinary authority the petitioner was personally present in the college in Oinam, Manipur for taking admission in the 1 st year LL.B. Course, it has been submitted that the said allegation is contrary to the allegation in charge No.1 that he took admission on 12.11.2001, which reflects total non application of mind on the part of the Registrar General in levelling the charge against the petitioner. It has also been submitted that the evidence of Sri Jogeswar Sing, the Principal of the said College, on which much reliance has been placed by the Enquiry Officer in holding that the said charge against the petitioner has been proved, is not at all reliable, as this witness in relation to charge No .4 has deposed that the petitioner attended the classes in the month of October, 2001 in the 1 st year LL.B. Course when he did not even take admission. That apart, according to the learned counsel, the petitioner could prove by producing the relevant documents that he was proceeding to Patna for treatment with due permission from the competent authority on 12.11.2001 and came back after treatment only on 18.11.2001 and hence there is no question of the petitioner being personally present in Oinam in the State of Manipur on 12.11.2001, even if it is treated that there is mistake in typing the date as 12.11.2002 instead of 12.11.2001. The learned counsel further submits that the said charge cannot be proved against the petitioner only on the basis of the records of the College and the evidence of the then Principal of the College that the petitioner was personally present on those days in the College for admission, in view of the positive evidence before the Enquiry Officer that on those dates the petitioner was present in Guwahati discharging the duties as Secretary of the Hon'ble Chief Justice and when there is also no allegation against the petitioner that he was unauthorizedly absent from duty on those dates in Guwahati. The learned counsel, therefore, submits that the record of the College authority cannot be the sole basis for recording the finding that the charge against the petitioner has been proved so as to take disciplinary action against him.

13. Mr. Tiwari further submits that the act of taking admission in any Course of study without prior permission of the employer does not bear a forbidden quality or character so as to constitute the misconduct entailing disciplinary action against an employee. Such act of taking admission without permission, even if taken to be true, does not, therefore, constitute misconduct and hence the petitioner cannot be punished for commission of any misconduct on the basis of the allegations made against him. The learned counsel further submits that the then Hon''ble Chief Justice Mr. B.K. Roy in his order dated 26.09.2005 has also recorded that the petitioner pursued the LL.B. Course with due approval and sanction of the Hon''ble Chief Justice, which fact has also not been taken into consideration and in fact ignored by the Enquiry Officer as well as by the disciplinary authority while holding that the charges levelled against the petitioner are proved. The learned counsel submits that there was no proper appreciation of the evidences on record and the petitioner is held to be guilty against the charges levelled against him when there was no evidence at all to record the finding of guilt against him by the Enquiry Officer. Mr. Tiwari, therefore, submits that the disciplinary action taken against the petitioner needs to be interfered with and the petitioner be given all service benefits.

14. Mr. Tiwari in support of his contention has placed reliance on the decision of the Apex Court in Nand Kishore Prasad Vs. State of Bihar & Ors. reported in AIR 1978 SC 1277; in K.L. Tripathi Vs. State Bank of India & Ors. reported in AIR 1984 SC 273; in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd. reported in AIR 1984 SC 1361; in Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi & Ors. reported in (1991) 2 SCC 716; in Kuldeep Singh Vs. Commissioner of Police & Ors. reported in (1999) 2 SCC 10; in MM Malhotra Vs. Union of India & Ors. reported in (2005) 8 SCC 351; in Narinder Mohan Arya Vs. United India Insurance Company Limited & Ors. reported in (2006) 4 SCC 713 and in Moni Shankar Vs. Union of India & Anr. reported in (2008) 3 SCC 484.

15. Mr. Dey, learned standing counsel, Gauhati High Court, appearing for the respondents, supporting the disciplinary action taken against the petitioner and referring to the records produced, submits that it is evident from the materials made available before the Enquiry Officer in the disciplinary proceeding conducted against the petitioner that he took admission in the 1 st and 2nd year LL.B. Course on 12.11.11 and 11.11.02, respectively, which is much prior to the permission granted by the Registrar (Administration) on 02.06.2003, which permission was also obtained by the petitioner by making misleading statement in his application dated 23042003 intimating the Registrar General that he earlier obtained the permission to prosecute the LL.B. Course in Royal Academy of Law, Oinam in the State of Manipur. Mr. Dey submits that the service of the petitioner being whole time within the meaning of FR11 of Fundamental Rules and Subsidiary Rules of Government of Assam, which Rule is applicable to the employee/officers of the High Court in view of Rule 37 of the 1967 Rules providing that the Rules and orders applicable to the Government servant of

corresponding classes in the service of the State shall mutatis mutandis regulate the service of the employees/officers of the High Court, the petitioner is to maintain the devotion to duty with absolute integrity, which the petitioner has failed to do by taking admission without permission of the competent authority. The learned counsel submits that since the petitioner's service is whole time service, the permission to take admission and prosecute the study of LL.B. Course, which is also a full time Course, is necessary as the petitioner cannot attend the classes in the LL.B. Course at the same time in Oinam in the State of Manipur while attending his duties at Guwahati. Taking admission without the permission to prosecute the full time Course amounts to failure to maintain devotion to duty and absolute integrity and the said act on the part of the petitioner is unbecoming of a public servant, which also amounts to gross abuse or misuse of the official power as Secretary to the then Hon'ble Chief Justice, submits the learned counsel.

16. Mr. Dey further submits that the grant of subsequent permission by the Registrar (Administration) on 02.06.2003 to prosecute the study would not validate the misconduct committed by the petitioner in taking admission without permission of the competent authority, more so, when such permission was obtained by making misleading statement in his application seeking permission dated 24.03.2003 to the effect that he earlier obtained permission to take admission and prosecute the study in LL.B. Course. It has also been submitted that the petitioner being the Secretary to the Hon'ble Chief Justice has misused his official power and position by taking the earned leave to appear in the 1 st year LL.B. Course examination without informing that he took admission without any permission. It has also been submitted that grant of such leave to appear in the LL.B. examination would also not validate misconduct committed by him in obtaining the permission from the Registrar (Administration) on 02.06.2003 by making misleading statement in his application dated 23.04.2003.

17. Mr. Dey also submits that in the proceeding conducted against the petitioner allegation of attending the classes on different dates in the months of October and December, 2001, 2002 and 2003 has been conclusively proved by proving the attendance registers maintained by the College and also by the evidence of the Principal of the College, who was examined in the said proceeding. Mr. Dey submits that even if it is taken that as because the petitioner took admission in the 1st and 2nd year LL.B. Course in the months of November, 2001 and 2002, respectively, and as such he could not have attend the classes in the months of October, 2001 and 2002, the allegation that he attended the classes in the months of December, 2001 and 2002, apart from in the months of October and December, 2003 without obtaining permission from the competent authority to remain away from the headquarter, i.e. Guwahati, having conclusively proved, it cannot be said that there is no evidence to record the finding that the charge No.4 brought against him is proved. Mr. Dey also submits that even if the petitioner has not been charged for unauthorized absence from his duties as Secretary to the Hon'ble Chief Justice, there being proof that he on different

dates in the months of October and December in 2001, 2002 and 2003 attended the classes in Royal Academy of Law, Oinam in the State of Manipur, the factum of his absence from Guwahati is automatically proved, though the disciplinary authority has not brought any charges for his unauthorized absence from duty, which, according to the learned counsel, would not have any bearing on the charge proved against the petitioner.

18. Relating to the charge No.5 levelled against the petitioner, the learned counsel submits that the application filed by the petitioner for taking admission in the 1st, 2nd and 3rd year LL.B. Course on 12.11.01; 11.11.02 and 19.09.2003, respectively, were proved in the proceeding conducted against him, through the Principal of the college, wherefrom it appears that the petitioner was personally present on those dates in the said College, Oinam in the State of Manipur, without obtaining any permission to remain away from the headquarter at Guwahati. Such positive evidence relating to the petitioner's presence on those dates in Oinam in the State of Manipur could not be discredited by the petitioner during cross-examination of the Principal, whose evidence was recorded in the disciplinary proceeding conducted against the petitioner, submits the learned counsel. It is also submitted that the evidence of the Principal would not become untrustworthy only because the petitioner's attendance in the months of October, 2001 and 2002 was recorded in the attendance register, though he took admission in the months of November, 2001 and 2002 in 1st and 2nd year LL.B. Course, respectively. Since the petitioner's presence in Oinam in the State of Manipur on 12.11.2001; 11.11.2002 and 19.09.2003 is proved by documentary evidence, contents of which the petitioner could not discredit, the charge levelled against the petitioner, being charge No.5, is rightly held to be proved by the Enquiry Officer and consequently, the disciplinary authority has rightly inflicted the punishment on him, contends the learned counsel. The further contention is that the defence as set up by the petitioner that he in fact sent those applications through special messenger, however, could not be proved by him by examining the messenger through whom the application for admission were sent to the college authority. Mr. Dey further submits that the petitioner also could not prove that he proceeded to Patna on 12.11.2001 for treatment and, therefore, it is impossible to remain present in Oinam in the State of Manipur on 12.11.2001 for taking admission in the 1st year LL.B. Course.

19. The learned counsel referring to FR84, which is also made applicable to the employees/officers of the High Court by virtue of Rule 37 of 1967 Rules, further submits that couple with FR11, which provides that whole time of a Government servant is at the disposal of the Government, which pays him, the employees/officers of the High Court has to obtain prior permission and leave to take admission in any whole time Course like the LL.B. Course, otherwise the High Court would not be able to utilize the services of the employees/officers, if he is allowed to take admission and prosecute the study without permission. Such permission, according to the learned counsel, is necessary as the authority while granting permission would verify as to whether grant of permission would

affect discharge of his normal duty as employee/officer of the High Court. The learned counsel submits that the petitioner after taking admission prosecute the study and also received the benefit of the degree obtained, without obtaining prior permission.

20. The learned standing counsel further submits that the scope of interference with the disciplinary proceeding as well as the finding of the Enquiry Officer, in exercise of the power of judicial review, being limited, this Court may not interfere with the disciplinary proceeding initiated and the disciplinary action taken against the petitioner on the basis of the enquiry report submitted by the Enquiry Officer, based on cogent and reliable evidence adduced in the proceeding. It has been submitted that the writ proceeding being not an appeal over the findings recorded by the Enquiry Officer in his report, would, therefore, not sit on appeal and interfere with the findings recorded by the Enquiry Officer when there are evidences to support the charges levelled against the petitioner. It has, however, been submitted that the writ Court in exercise of the judicial review can naturally interfere with the findings, if there is no evidence at all to support such findings, which is not the case in hand. The learned standing counsel, therefore, submits that the writ petition filed by the petitioner deserves to be dismissed.

21. Mr. Tiwari, learned counsel for the petitioner, in reply to the submission made by the learned standing counsel, reiterating the submission made, which are noticed above, submits that it was within the knowledge of the then Hon'ble the Chief Justice about taking admission by the petitioner, which is evident from the leave sanctioned for appearing in the LL.B. examination. It has also been submitted that FRs 11 and 84 are of no assistance to the respondents as those provisions do not specifically stipulate taking prior permission for taking admission in any Course of study. Mr. Tiwari reiterates his submission that there is neither any Rule nor administrative instruction issued by the authority of the High Court imposing any bar in taking admission without permission of the competent authority and as such, no disciplinary action can be taken against the petitioner for taking admission and pursuing the LL.B. Course. Referring to the executive instruction issued by the Government of India, relating to the permission for joining education institution by the Government servant, it has been submitted that the authority should be liberal in granting permission for joining the educational institution and ordinarily there should not be any objection to pursuit of knowledge of the Government servant and as such, the petitioner should not be penalized for gathering knowledge by taking admission in law Course.

22. We have given our anxious consideration to the submissions made by the learned counsel for the parties and also perused the pleadings, apart from the materials available on records of the disciplinary proceeding produced by the learned standing counsel of the High Court.

23. By the amended charge sheet dated 29.05.2006 the charges of failure to

maintain devotion to duty, absolute integrity and conduct unbecoming of an officer of the High Court amounting to gross misconduct as well as gross abuse or misuse of official power and position were levelled against the petitioner, on the basis of the following allegations, in 5 (five) charges. For better appreciation, the allegations against each of the charges are quoted below:

"Charge No.1

That on 12.11.2001, while you were working in the Principal Seat of Gauhati High Court as Secretary to Hon"ble the Chief Justice, you got yourself admitted into 1 st year LL.B. Course in Royal Academy of Law, Oinam, DistrictBishnupur in the State of Manipur, without obtaining prior permission from the competent authority.

Charge No.2

That on 11.11.2002, while you were working in the Principal Seat of Gauhati High Court as Secretary to Hon"ble the Chief Justice, you got yourself admitted into 2nd year LL.B. Course in Royal Academy of Law, Oinam, DistrictBishnupur in the State of Manipur, without obtaining prior permission from the competent authority.

Charge No.3

That with dishonest intention to obtain post facto permission to regularize your act of getting admission in LL.B. Course, without prior permission of the authority, you submitted an application on 23.04.2003 before the Registry of Gauhati High Court at Guwahati, requesting the Registry to allow you to prosecute your study in law from the Session 20022003 by making misleading statement to the effect that earlier you were granted permission by the Registry for prosecution of study in LL.B. Course (three years) but that due to some personal difficulties you could not complete the Course and that you intend to complete the Course for which you have already got admitted, whereas no such permission, whatsoever, was ever granted to you by the Registry prior to the date of your said application dated 23.04.2003. In the said application, to mislead the authority, you did not mention the name of the Institution where, and the year in which, you had taken admission. In the said application you prayed for permission to prosecute study in law from the Session 20022003, whereas you were already a regular student of LL.B. Course in the Royal Academy of Law, Oinam in the State of Manipur from the Session 2001 2002.

Charge No.4

That while you were working in the Principal Seat of Gauhati High Court at Guwahati, as Secretary to Hon"ble the Chief Justice, you attended classes on 23 days and 05 days in the months of October 2001 and December 2001, respectively; for 1st year LL.B. Course; 22 days and 05 days in the months of October, 2002 and December 2002 respectively; for 2nd year LL.B. Course; 17 days and 03 days in the months of October 2003 and December, 2003,

respectively; for 3rd year LL.B. Course, in royal Academy of Law, Oinam, in the State of Manipur, without obtaining permission to remain away from your Headquarters, from the competent authority. Charge No.5

That while you were working in the Principal Seat of Gauhati High Court at Guwahati, as Secretary to Hon"ble the Chief Justice, you had personally attended the office of the Principal, Royal Academy of law, Oinam, in the State of Manipur on 12.11.2002, 11.11.2002 and 19.09.2003 for submitting Application for Admission Forms for getting admission in the 1st year, 2nd year and 3rd year of LL.B. Course, respectively, without obtaining permission to remain away from your Headquarters, from the competent authority."

24. The jurisdiction of the High Court under Article 226 of the Constitution of India is circumscribed by the limit of judicial review to correct the errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. The judicial review cannot be extended to the extent of adjudication of the case on merits as an appellate authority as the Court cannot act as an appellate authority on the finding recorded by the Enquiry Officer in the enquiry. The Court also cannot sit on appeal over the decision of the disciplinary authority. Being not the Court of appeal against the decision of the disciplinary authority, the Court also cannot, in exercise of its judicial review, reappraise the evidences adduced in a disciplinary proceeding and come to a finding different from one arrived at by the Enquiry Officer on the ground of possibility of having another view. If there are materials available on record by which a reasonable person can arrive at a decision that the charges levelled against a delinquent are proved, the Court would not interfere with the disciplinary action taken, unless of Course, the punishment awarded is shockingly disproportionate to the conscience of the Court. The Court, however, can interfere with the disciplinary action taken on the basis of the enquiry conducted against the delinquent, if there is no evidence at all to arrive at the finding that the charges levelled against him are proved. The standard of proof in a disciplinary proceeding unlike any criminal proceeding is not "beyond all reasonable doubt" but it is "preponderance of probabilities". Hence, if there are some materials on record to arrive at a conclusion that the delinquent has committed the misconduct the Court would not interfere with the finding recorded by the Enquiry Officer in the report.

25. The Apex Court in Maharashtra State Board of Secondary and Higher Secondary Education (supra) while reiterating the standard of proof required in a disciplinary proceeding, i.e. "preponderance of probabilities" and not the proof "beyond reasonable doubt", has opined that the standard of proof cannot be put in a straitjacket formula and no mathematical formula could be laid on degree of proof. The probative value could be gauged from the facts and circumstances in a given case. The Apex court has also reiterated the settled principle of law that the strict rules of Evidence Act and the standard of proof envisaged therein do not apply to departmental proceedings and it is open to the authority to receive

and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. The inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue and there can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact, which it is sought to establish. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made, the method of inference fails and what is left is mere speculation or conjecture and hence when an inference of proof that a fact in dispute has been held or established, there must be some material facts or circumstances on record from which such facts or inference could be drawn.

26. In *Moni Shankar (supra)*, the Apex Court has also opined that the Courts exercising the power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. It has also been held that inference must be based on evidence which met the requirements of legal principles and the Court is entitled to arrive at its own conclusion on the premise that the evidence adduced, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely preponderance of probability, and on such evidence, if the test of doctrine of proportionality has not been satisfied, the Court was within its domain to interfere. The doctrine of unreasonableness is, therefore, giving way to the doctrine of proportionality.

27. The Apex Court in *Nand Kishore Prasad (supra)* has opined that the disciplinary proceedings before a domestic tribunal are of a quasijudicial character and hence the minimum requirement of the rules of natural justice is to be followed. It has also been opined that the domestic tribunal should arrive at its conclusion on the basis of some evidence, i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. There is no dispute that the suspicion cannot be allowed to take the place of proof even in domestic inquiries. The disciplinary inquiry is also required to be conducted fairly without bias or predilection and in accordance with the relevant disciplinary rules and the Constitutional requirements. The same view has also been reiterated by the Apex Court in *Kuldeep Singh (supra)*, wherein it was held that the findings recorded in a disciplinary enquiry can be interfered with by the High Court in exercise of the jurisdiction under Article 226 of the Constitution, if such finding is perverse, i.e. if such findings are not supported by any evidence or not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence.

28. In *Narinder Mohan Arya (supra)*, the Apex Court while discussing the scope

of judicial review of the disciplinary action and interference with the finding recorded by the Enquiry Officer in the report has opined that when a delinquent employee questions the findings arrived at in the departmental proceeding, the Court should keep in mind that (1) the Enquiry Officer is not permitted to collect any material from outside sources during the conduct of the enquiry; (2) in a domestic enquiry fairness in the procedure is a part of the principles of natural justice; (3) exercise of discretionary power involves two elements (i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element; (4) it is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis; (5) the Enquiry Officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subjectmatter of the charges is wholly illegal and (6) suspicion or presumption cannot take the place of proof even in a domestic enquiry.

29. There is no dispute to the proposition of law that in a disciplinary proceeding, the delinquent must be afforded all reasonable opportunity of being heard, in compliance of the principles of natural justice, so that he can effectively defend himself in the proceeding, as held by the Apex Court in K.L. Tripathi (supra).

30. The disciplinary action against a delinquent officer can be taken by the disciplinary authority for any misconduct committed by him/her by conducting the disciplinary proceeding in accordance with the relevant Rules and also by observing the principles of natural justice. Misconduct has been defined in Black's Law Dictionary, Seventh Edition at Page 1013 thus:

A dereliction of duty; unlawful or improper behaviour.

Affirmative misconduct has been defined as:

(1) An affirmative act of misrepresentation or concealment of a material fact; intentional wrongful behavior. There must be an ongoing pattern of misrepresentation or false promises, as opposed to an isolated act of providing misinformation.

(2) With respect to a claim of estoppels against the federal government, a misrepresentation or concealment of a material fact by a government employee beyond a merely innocent or negligent misrepresentation.

Official misconduct has been defined as Apublic officer's corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance. Also termed misconduct in office; misbehavior in office; malconduct in office; misdemeanor in office; corruption in office; official corruption.

31. The term "misconduct", therefore, implies a wrongful intention, and not a mere error of judgment. The word "misconduct" has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute, which is being construed. Misconduct

literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand. Misconduct is a forbidden act; carelessness; a forbidden quality of an act, and is necessarily indefinite. Misconduct in office is unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected.

32. Thus the word "misconduct" though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. [State of Punjab Vs. Ram Singh ExConstable : (1992) 4 SCC 54].

33. The Apex Court in M.M. Malhotra (supra) has observed that the range of activities, which may amount to acts, which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. It has, therefore, been opined that though the word "misconduct" is not capable of precise definition but at the same time it must receives its connotation from the context that the delinquency in performance and its effect on the discipline and the nature of the duty. The Apex Court has further opined that the act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve. In A.L. Kalra (supra) the Apex Court has opined that failure to keep high standard of moral, ethical or decrous behaviour befitting of an officer by itself cannot constitute misconduct unless specific conduct falls in any of the enumerated misconduct.

34. PartV of 1967 Rules lays down how a High Court employee/officer is to conduct himself. Rule 41 provides the general conduct. It provides that every members of the High Court service shall at all times maintain absolute integrity and devotion to duty and no member of the High Court services shall act in a manner prejudicial to the discipline and good order in the Registry. Rule 37 of the 1967 Rules made applicable the Rules and Orders for the time being in force and applicable to the Government servant of corresponding classes in the service of the State, to the members of the High Court services, subject to the provisions of the 1967 Rules. FR11 of Fundamental Rules and Subsidiary Rules of Assam provides that the whole time of a Government servant is at the disposal of the

Government, which pays him. The members of the High Court services are in whole time service and they are required to maintain absolute integrity and devotion to duty. They cannot act in a manner prejudicial to the discipline and good order in the Registry. They are required to perform their duties with absolute integrity and with devotion and cannot take any other engagement, which interferes with the working hours of the High Court and in discharging his/her duties. Admission in any course of study, which requires attendance in classes interfering with the working hours of the High Court, therefore, naturally requires prior permission as it interferes with the normal work of the High Court, which would result in not devoting to duty, thereby constitute misconduct.

35. The contention of the learned counsel for the petitioner that for taking admission in the law Course, where regular attendance is necessary and the timing of the classes clashes with the working hours of the High Court, the permission is not necessary and the authority should be liberal in granting permission, therefore, cannot be accepted. The circular issued by the Government of India relating to the permission for joining the educational institution by the Government servant do not support such contention of the learned counsel for the petitioner, the said circular being relating to the permission for joining the education institution outside the normal working hours. No doubt ordinarily there can be no objection to pursue of knowledge by any member of the High Court services in their leisure hours but it must be subject to the condition that such pursuit in no way detract them from efficient discharge of duty, which necessitates taking permission before joining the educational institution or course of studies, as the joining of such institution or courses involves commitment about attendance at specific hours and absence from duties during the period of examinations as well as for attending the classes.

36. On the backdrop of what have been discussed above, we shall now proceed to deal with the charges levelled against the petitioner and the disciplinary action taken against him. As noticed above, the charge Nos. 1 and 2 levelled against the petitioner is based on the allegation of taking admission in the 1st and 2nd year LL.B. Course in Royal Academy of Law, Oinam in the State of Manipur without obtaining permission from the competent authority and the charge No.3 is based on the allegation that the petitioner by making a statement about earlier grant of permission by the Registry to prosecute the study in LL.B. Course, mislead the authority to grant permission on 02.06.2003, though no such earlier permission was granted to the petitioner to take admission. The charge Nos. 1,2 and 3 are interrelated. Charge No.3 in effect is countering the defence of ex post facto approval of taking admission in relation to charge Nos. 1 and 2. Proof of allegations in charge Nos. 1 and 2 are, therefore, depends on the proof of the allegation in charge No.3. 37. It is not in dispute that the petitioner took admission in the 1st and 2nd year LL.B. Course on 12.11.2000 and 11.11.2002, respectively, without obtaining prior permission, though required. The defence of the petitioner is that he took admission on the verbal permission of the then Hon'ble Chief Justice and the action on the part of the Registrar (Administration)

in granting the permission on 02.06.2003 amounts to granting ex post facto permission to prosecute the study in LL.B. Course. For better appreciation, the letter dated 23.04.2003 submitted by the petitioner seeking permission is reproduced below:

"Sir,

I have the honour to state that earlier I was granted permission by the Registry for prosecution of study in LL.B. Course (three years) but due to some personal difficulties I could not complete the course. Now I intend to complete the course and I have already got admitted. I, therefore, request your honour kindly to allow me to prosecute my LL.B. studies from the session 20022003 without hampering my normal official duties.

Yours faithfully

Sd/

R. Barman"

38. The further contention of the petitioner is that unless the 1967 Rules provides for or any administrative order is issued by the authority requiring prior permission to pursue any course of study, no disciplinary action can be taken against an employee/officer of the High Court for taking admission in any course of study without permission, also can not be accepted for the reason, as has been discussed above. When an employee/officer is required to discharge his duty with absolute integrity and devotion, he has to take prior permission from the competent authority to take admission in any course of study, which interferes with the working hours of the High Court. No specific Rules or administrative order is required to be issued by the authority for that purpose as it is the obligation on the part of the employee/officer to devote to his duties sincerely with utmost devotion and perform his duties during the working hours.

39. The petitioner in the written statement filed has also taken the plea that he was granted permission by the Registry vide order No.HC.V98/91/22, 44245/ESTT. dated 06.01.1991 allowing him to take admission in the LL.B. Course in the year 1991. The said fact is not in dispute. The aforesaid application dated 23.04.2003 (Exhibit53), reveals that the petitioner did not mention that he was granted permission to take admission and prosecute the study in LL.B. Course in 2001 or in 2002. What the petitioner has stated in the said application is that he was earlier granted permission but he could not complete the course and as such, intends to complete the same, in which he has taken admission. It is also evident from the deposition of witnesses and the materials available on record, more particularly the deposition of witness Nos.2,3 and 7, that the aforesaid application filed by the petitioner was placed before the then Hon'ble Chief Justice, who accorded the permission, which was communicated by the Registry on 02.06.2003 (Exhibit54). There is nothing on the record to suggest that the then Hon'ble Chief Justice was misled in according his approval to allow the

petitioner to prosecute the study in LL.B. Course. That apart, the then Hon''ble the Chief Justice also on 16.06.2003 (Exhibit12) granted earned leave to the petitioner with effect from 21.07.2003 to 13.08.2003 for appearing in the LL.B. examination under Manipur University. All these factors lead to the conclusion, by applying the principles of standard of proof, i.e. preponderance of probabilities, that it was within the knowledge of the then Hon''ble Chief Justice about the admission taken by the petitioner, who was the Secretary to the Hon''ble Chief Justice. Such admission was, therefore, taken with his tacit consent. In the note of the then Hon''ble Chief Justice (Justice B.K. Roy) dated 26.09.2005, which is available on record, also reflects the knowledge of the then Chief Justice, during whose tenure the petitioner took admission.

40. In view of the above, we are of the considered opinion that there is no material to hold that the charge No.3 levelled against the petitioner is established. The subsequent permission dated 02.06.2003 (Exhibit4) coupled with the earned leave granted by the then Hon''ble Chief Justice on 16.07.2003 to appear in the LL.B. examination amounts to grant of expostfacto permission to the petitioner and hence, no disciplinary action can be taken against him on the basis of the charge Nos.1 and 2.

41. Charge No.4 relates to attending the classes in Royal Academy of Law, Oinam in the State of Manipur in the months of October and December, 2001, 2002 and 2003 for 1st, 2nd and 3rd year LL.B. Courses. The Enquiry Officer found that the said charge is proved on the basis of the attendance register of the College and the deposition of the Principal of the said College. No credence can be given to the attendance register of the College, on the face of the allegation in charge No. 1 that the petitioner took admission in the 1st year LL.B. Course on 12.11.2001 without permission, wherein it has been reflected that the petitioner attended the 1st year LL.B. Course in the month of October, 2001, i.e. even before taking admission. Marking attendance of the petitioner in the register in the month of October, 2001, even before the petitioner took admission, makes the attendance register very doubtful. Much credence also cannot be given to the evidence of the Principal, who deposed on the basis of such attendance register. That apart, the petitioner at the relevant point of time was the Secretary of the then Hon''ble Chief Justice against whom no charge of unauthorizedly absence from his duty, on those dates when his presence was marked in the classes in the college in Manipur, was brought against him, which signify his presence in Guwahati and discharging his duties as Secretary to the then Hon''ble Chief Justice. That being the position, it cannot be said that there are evidences on record to substantiate the charge No.4.

42. This leads to the last charge being charge No.5, which is based on the allegation that the petitioner on 12.11.2002, 11.11.2002 and 19.09.2003 was personally present in the College while submitting the application form seeking admission in the 1st, 2nd and 3rd year LL.B. Course. The first part of the charge, i.e. the petitioner's presence on 12.11.2002 in the College, on the face of the

allegation in the first charge that the petitioner took admission on 12.11.2001, is not correct. The Enquiry Officer has recorded the finding that the charge No.5 is proved on the basis of the admission forms proved in the proceeding, which mention the dates when the petitioner was present in the college. The petitioner's defence, on the other hand, is that he sent those application forms through special messenger and never personally submitted those application forms. It is also the defence of the petitioner that on 12.11.2001 he proceeded to Patna for treatment after obtaining the leave and he was treated in Patna on 13.11.2001 and was out of station upto 18.11.2001. Further defence of the petitioner is that he was on duty in Guwahati as Secretary to the Hon'ble Chief Justice on 11.11.2002 and 19.09.2003 and there is no allegation that he was unauthorizedly absent from duty on those dates and as such, the contents of those admission forms cannot be taken in its face value for recording the finding that the charge No.5 against him has been established.

43. The petitioner could produce the prescription dated 13.11.2001 from a Doctor of Patna in the disciplinary proceeding. It is also proved that the petitioner proceeded to Patna for taking treatment on 12.11.2001 and was out of station upto 18.11.2001 and hence, it is not possible on his part to personally go to Manipur and submit the application forms on 12.11.2001. That apart, there is no allegation that the petitioner was unauthorizedly absent from duty either on 12.11.2001 or on 11.11.2002 or on 19.09.2003, on which dates it has been alleged that he was personally present in Oinam in the State of Manipur. In the absence of any allegation of unauthorized absence from duty from Guwahati as Secretary to the Hon'ble Chief Justice, it is highly improbable that the petitioner was personally present on 12.11.2001; 11.11.2002 and 19.09.2003 at the time of filing the admission forms seeking admission in the 1st, 2nd and 3rd year LL.B. Course in Oinam in the State of Manipur, which gives credence to petitioner's defence that those applications were sent by special messenger and he was not personally present in Oinam in the State of Manipur. The finding of the Enquiry Officer, therefore, in relation to charge No.5 also cannot be sustained.

44. In view of the aforesaid discussion, we are of the considered opinion that there is no material to record the finding that the charges levelled against the petitioner are proved, by applying the standard of proof, i.e. the preponderance of probabilities. The impugned order of the then Hon'ble Chief Justice dated 18.12.2006 as well as the order dated 17.01.2007 passed by the Registrar General, imposing the penalty, are, therefore, set aside.

45. The writ petition is accordingly allowed. No costs.