

(1999) 09 AHC CK 0232

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 32424 of 1993

Suprabha V. Sahai (Dr.) (Mrs.)

APPELLANT

Vs

Secretary, University Grants Commission and Others

RESPONDENT

Date of Decision : 16-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 UPLBEC 556

Hon'ble Judges : D.S. Sinha, J; Bhagwan Din, J

Bench : Division Bench

Advocate : Satya Prakash Singh, for the Appellant; G.D. Srivastava and U.N. Sharma and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Bhagwan Din, J.—By means of this petition, the petitioner seeks for a writ in the nature of certiorari for quashing the order dated 26-6-93 passed by the Primary Body rejecting the appeal against disciplinary action and punishment awarded by the Governing Body and also the resolution of the Governing Body adopted in the meeting held on 27-5-91 and the order passed in the furtherance of the said resolution. The petitioner further seeks for a writ in the nature of mandamus commanding the respondents and directing them to award Readership from 1-8-89 and further direct them not to give effect to the order reducing the five stages in her salary.

2. The events and incident constituting factual matrix, necessary in true appreciation of the submissions of the parties Counsel in the case and for arriving at the correct decision, being set out are that the petitioner was appointed as a lecturer in D.E.I. Womens Training College, Agra. The Government of India, Ministry of Education and Culture (Department of Education), in exercise of powers conferred by Section 3 University Grants Commission Act, 1956 (3 of 1956), on the advice of the Commission declared Dayalbagh Educational Institute, Agra comprising of DEI Women's Training

College, DEIREI Degree College and D.E.I. Engineering College, Dayalbagh, Agra to be deemed to be a University for the purposes of the Act 3 of 1956. On such declaration the deemed University (to be called University hereinafter) framed its own Memorandum of Association and bye-laws governing appointment and service conditions of the employees, teachers, leave facilities, examination etc. Having regard to the notification and merger of DEI Women's Training College with the University, as provided in the Rule 44 of the Memorandum of Association, the petitioner was offered employment in the University on the terms and conditions of agreement entered into by her (Annexure-2 to the writ petition). She accepted the offer and agreed to work as Lecturer on those terms and conditions.

3. Every thing was quite and smooth till the first quarter of 1990. The trouble arose during the semester break from 8th March, 1990 to 15th March, 1990 when petitioner stated to have received a message on 11th March, 1990 from Nainital of sudden illness of her son. She left for Nainital on 12-3-1990. She could not return till 16th March, 1990 and the semester had begun on 16-3-90. Therefore, she sent a telegram on 16-3-90 to extend her leave for one month. The telegram was received in the office of Director on 17th March, 1990, who endorsed it to the Registrar to deal with. The Registrar received the same on 19-3-1990. The Dean faculty of Arts was, however, not aware of the said telegram. Therefore, he informed the Registrar by a letter dated 20-3-90 that Dr. (Smt.) Suprabha is on unauthorized leave from 16-3-90. The Registrar, on his part, by a letter dated 18th April, 1990 called upon the petitioner to explain why had she not informed the faculty of her absence and also left the station without prior permission in violation of the bye-law No. 9 (i)(d). He also asked her to submit her medical certificate within ten. days from the date of issue of the letter. Before the above letter was written and despatched, an application dated 10-4-90 together with a medical certificate for grant of medical leave w.e.f. 16-3-90 to 12-5-90 was received in the office of Director on 16th April, 1990, which was sent to the office of Registrar on 18th April, 1990. It appears that while sending the letter on 18th April, 1990, the Registrar ignored the application of the petitioner for medical leave and also the medical certificate attached therewith. However, in response to the notices the petitioner submitted her explanation dated 27-4-90 in the office of Registrar on 8th May, 1990 wherein it is stated by the petitioner that there was no necessity to obtain permission to leave station as she left Agra in mid semester break, even then she had handed over a letter to an acquaintance for giving the same in office of the college which could not be delivered by the said acquaintance.

4. The explanation given by the petitioner was not considered sufficient. Therefore, the matter of leaving the station without prior permission and the continuous absence from duties w.e.f. 16-3-90 to 12-5-90 was placed before the Director, who under bye-law No. 23(v)(h) directed the Registrar to serve a charge-sheet on the petitioner. The Registrar framed the following charges.

5. Firstly; that the petitioner left the station for Nainital without prior permission of the leave sanctioning authority, and thereafter, remained on unauthorized absence from duty from 16-3-90 to 12-5-90 dislocating the departmental work as well as the education of the students attached to the department and thereby violated bye-law No. 9(i)(d) of Leave Rules and failed to maintain devotion to her duties by violating bye-law No. 23(iii)(a)(2) and 23 (iii)(c)(3)(4) which amounted to serious misconduct under bye-law No. 23 (iii)(i).

6. Secondly; that she had failed to file interim illness certificate for the purpose of her unauthorized leave from 16-3-90 within the prescribed period of her sickness as provided in bye-law No. (9)(i) (c) r/w bye-law No. 23 (iii)(c)(3)(4) pertaining to the conditions of service of the employees of the institution. It also tantamounted to serious misconduct of bye-law No. 23(iii)(i).

7. Thirdly; that she had failed to submit her sickness certificate for the said unauthorized absence from duty for a period of 32 days from 16-3-90 to 16-4-90, whereas, by her application dated 10-4-90 received in the office on 16-4-90 and another application dated Nil received on 15-5-90 she had requested for grant of leave on medical grounds for the period of 58 days from 16-3-90 to 12-5-90 prefixing semester break from 9-3-90 to 15-3-90 and suffixing 13-5-90. This action was in contravention of the bye-law No. 9(i)(c) r/w bye-law No. 23 (iii)(c)(3)(4) of condition of the service of the employees of the institution.

8. Fourthly; that she had failed to send the fitness certificate after having been cured of her illness from the same medical practitioner, who had earlier supported her sickness by issuing a sickness certificate dated 10-4-90, covering the period of her illness from 17-4-90 to 12-5-90 as would be clear from the fact that the sickness certificate dated 9-4-90 covered the period of her illness from 17-4-90 to 12-5-90, whereas, the fitness certificate dated 14-5-90 has been obtained from Sri Kamlesh Tandon at Agra. This action is in contravention of bye-law No. 9 (vi)(d) of Leave Rules of the Institution and thereby violated the bye-law No. 23 (iii) (c) (4), which tantamounted to serious misconduct under bye-law No. 23 (iii) (i).

9. The petitioner submitted her reply to the above charges. The Governing Body was not satisfied with the reply submitted by the petitioner, hence, by its resolution No. 14, dated 18-8-90 appointed Sri P.P. Mathur, the retired Addl. Sessions Judge, as Enquiry Officer to enquire into the charges levelled against her. The Enquiry Officer investigated the charges deeply and recorded the finding that the version of the delinquent as set out in the reply dated 27-4-90 that her programme of leaving for Nainital was sudden, 11th March, 1990 was Sunday and she could not give information to the University, but left a letter with an acquaintance to be sent to the College, the latter could not deliver the letter in the office, has no force. The Enquiry Officer did not accept the version of the petitioner that she had left a letter with Sri O.P. Jain to be delivered in the office for the reasons that she did not choose to come herself in the witness-box and

that she could not prove otherwise the fact that she had obtained prior permission to leave station and she did not care to inform the University. The Enquiry Officer has further found that she did not care to inform the University within a period of 10 days about her sickness and also that she failed to furnish the interim sickness certificate and remained absent for quite a long period of one month i.e. from 16-3-90 till 16-4-90. She is head of the single member department. The students were dependant entirely on her teaching. The department and her students must have been in dark as to what happened to her and what would be the future of the studies and the departmental work. The examinations were to be held shortly. Thus, the delinquent has violated the Rule 9 (i)(d) by leaving station without permission and failed to maintain devotion to duty by violating the bye-law No. 23 (iii) (i) (a) (2) r/w bye-law No. 23 (iii) (c) (3) & (4) amounting to serious misconduct under bye-law-No. 23(iii)(i); that she remained on unauthorised leave and thereby violated the bye-law No. 9(i)(c) read with bye-law No. 23 (iii) (c) (3) (4) amounting to serious misconduct.

10. As relates to the charge No. 3 the Enquiry Officer has held that, in the first sickness certificate, dated 9-4-90 issued by the physician at Nainital recommending leave from 17-4-90 to 12-5-90, there was a manifest error as relates to date 17-4-90, because the treatment of the petitioner had already commenced and the certificate was being issued on 9-4-90. The petitioner thereafter had submitted a correct medical certificate, wherein the date 17-4-90 has been corrected and written as 17-3-90. Since this certificate covers the whole period, it could not be said that because of the defective certificate her leave application is not properly supported, hence, no breach of bye-law mentioned in this article stands proved.

11. In relation to the charge No. 4, the Enquiry Officer has observed that the petitioner was required to submit a fitness certificate from the physician, who has given treatment to her. The petitioner had furnished a certificate from a physician practicing at Agra. When this fact was brought to the notice of the petitioner, she went to Nainital and obtained fitness certificate from the doctor who had given her treatment. Since irregularities occurred by furnishing a fitness certificate from a physician not being the doctor, who has treated her, has been cured by filing a fitness certificate of the Doctor, who had actually treated her, thereform this charge also is not proved and no contravention of bye-law mentioned in the charge is established,

12. The Enquiry Officer submitted his report to the Governing Body of the University. The Governing Body accepted the report, as such, and vide resolution No. 15, adopted in the meeting held on 13-4-91, resolved to impose a punishment of removal of the petitioner from service. The Governing Body also directed the issue of a show cause notice calling upon her to submit explanation within 15 days as to why the proposed punishment should not be awarded to her.

13. The petitioner submitted a detailed reply, covering the 21 pages, highlighting that in the present case the code of the conduct of the applicant forms the part

of contract. As per Rule 37(e) of the Memorandum of Association the dispute arising out of the contract should be referred to Tribunal. The proceedings before the Enquiry Officer are, therefore, void and arbitrary. No punishment could have been, therefore, awarded on the basis of the Enquiry Report. It is further stated in the reply that neither of the University Authorities ever complained that the applicant did not perform her duties with devotion. It is also stated in the reply that she did not remain on unauthorized leave. The Enquiry Officer did not consider the scheme of leave contemplated by bye-law No. 9 (i)(c). That certain documents were not supplied by the Registrar to the Enquiry Officer. In the reply the petitioner has highlighted some other facts and circumstances and contended that they have not been taken into consideration by the Enquiry Officer.

14. The. Governing Body considered the reply of the petitioner and by the impugned resolution No. 14, dated 27-5-91, observed that it will be wrong to equate a dispute arising under a contract to an enquiry against the alleged misconduct of a teacher under bye-law No. 23 of the Institute. The provisions of. Rule 37(e) and bye-law 23 are two separate independent provisions and operate separately in different spheres. The present matter is not a case of breach of contract of Agreement of Service but is in fact a case of enforcement of agreement of service which provides that bye-laws of the Institute will be applicable to the teacher, that the contention as relates to the enquiry being detrimental having regard to the Rule 44 of the Memorandum of the Association in entirely without any merit. No ground has been given by the teacher to support it. During the enquiry before the Enquiry Officer the petitioner was given ample opportunity and at any stage she has not raised any objection that she has been denied opportunity. She appeared before the Enquiry Officer without protest and has taken part in the enquiry. Now when the decision of the enquiry has gone against her she has started saying that enquiry was not legally correct. It is further observed by the Governing Body that as relates to the objection of the applicant that the Registrar did not supply certain documents to the Enquiry Officer resulting in the miscarriage of the justice, it is significant to mention that she did not point out those documents in her written statement nor she ever during the enquiry demanded the production of any document. The contention, therefore, is an afterthought and incorrect. The Governing Body has also discussed some of the facts and circumstances suggested by the petitioner that during her absence the substitute teachers taught the subject in the classes. Student, therefore, did not suffer, that in the past teachers have been granted leave on oral request for the period of their absence; and held that it should be noted that the misconduct of the teacher consisted in violation of leave Rules, her absence dislocated the work. How the Institute mitigated this dislocation whether by substituting some teachers or by some other way has no bearing on the misconduct of the teacher in creating such situation and that the Institute had taken lenient view in regard to the absence of the other teachers is not subject matter of the charge-sheet. The charges were confined to the matters to her unauthorized absence and punishment to be awarded. The Governing Body

found contentions of the petitioner without merit and rejected the reply. However, considering the long services of the petitioner it allowed one more opportunity and gave second thought on the quantum of punishment. Taking lenient view awarded punishment of reduction by five stages in the time scale of Rs. 2200-75-2800-100-4000 instead of punishment of removal from service. The Governing Body further held that her pay on the date of order i.e. 27-5-91 is Rs. 2400 she will now draw Rs. 2900 with corresponding changes in the allowances. She will draw next increment from that stage at the next due date of increment and so on subsequently. It was further resolved that period of her unauthorized absence from 16-3-90. to 12-5-90 i.e. 58 days be treated as extraordinary leave without pay.

15. Against this order of the Governing Body the petitioner preferred an appeal before the Primary Body through President, DEI Deemed University, Dayalbagh, Agra. The Primary Body in its meeting held on 3-5-93 vide resolution No. 5 considered the appeal filed by the petitioner against the disciplinary action taken by the Governing Body, and rejected the same in view of the provision of Rule 9(c) of Memorandum of Association, under which the Primary Body can review the act or the acts of the Governing Body only if they had violated the Memorandum, Rules and Bye-laws of the Institute, and that no case of violation of any of the provisions of the Memorandum of the Association or Bye-laws having been made out.

16. Aggrieved of the resolution No. 14 dated 27th May, 1991, passed by the Governing Body awarding the punishment as referred to above and subsequently rejection of the appeal by the Primary Body, the petitioner has filed this petition on the ground that even if the petitioner had opted to continue her services with the Institute being governed by the Memorandum of the Association and Bye-laws, the condition of her service with the institute should not be less advantageous or stringent as compared to those rules applicable to them immediately preceding the establishment of the institute. She should not be subjected to less advantageous and determinental conditions by the bye-laws of the institute, that neither the Enquiry Officer nor the Governing Body nor the Primary Body has applied its mind to the facts and circumstances, compelling her to leave the station suddenly and also the compelling circumstances of her absence from duties, that she had committed no misconduct in view of the provisions of bye-law Nos. 9 (i)(d) and 9 (i) (c), that the Enquiry Report and the orders passed by the Governing Body and the Primary Body are malafide and that she has been subjected to double jeopardy and lastly that punishment is severe and excessive and thereby she has been denied the opportunity of being promoted to the post of Readership.

17. The respondents controverted the claim vouched for in the petition, on the plea that the petitioner was offered to accept either the Memorandum of Association and Bye-laws of the deemed University or not accept it and be governed by the old Rules and Statutes of the Agra University. The petitioner

executed an agreement on 12-4-83 (contained in Annexure-2 to the petition) and opted to serve the deemed University and governed by the leave Rules, Provident Fund Rules and conditions of service, including code of conduct as may be prescribed by the institute from time to time. After execution of the said agreement the petitioner is not allowed to wriggle out of the same. It is further contended by the respondents in the counter-affidavit that the petitioner left Agra for Nainital on 12th March, 1990 without prior permission. She sent a vague telegram which speaks of extension of leave. When a leave had not been granted till that date and had not been applied for either, that the petitioner had also not intimated the respondents the cause of her absence. That after about a month on 10-4-90 she sent a letter together with a medical certificate without disclosing the emergent situation which compelled her to leave the station without permission and thereby violated the bye-law No. 9 (i) (d) and that the petitioner failed to submit within a period of ten days an interim sickness certificate specifying expected period required for treatment and thus, violated the bye-law No. 9 (i) (c) amounting to misconduct under bye-law Nos. 23 (iii) (c) (3) & (4). In the counter-affidavit it is also stated that the letter of Registrar dated 17-5-90 asking the petitioner to submit another fitness certificate from the doctor of Nainital is not malafide or biased. Under the Rules the petitioner was required to furnish the fitness certificate from the doctor who had actually given treatment to her. It is stated by the respondents in the counter-affidavit that the Governing Body turned down the explanation of the petitioner to the show-cause notice by a detailed order and has considered all the material evidence and the circumstances highlighted by her in the reply and the order dated 12-11-92 is an order relating to the replacement of the petitioner after reduction of five stages. The Primary Body is not required to make a detailed order while rejecting the appeal against the punishment awarded by the Governing Body. It is suffice for it to go through the order and the material documents on record.

18. The petitioner's Counsel Sri S.P. Singh in reference to the proviso appended to Rule 44 of the Memorandum of the Association urged that petitioner had opted to continue her services with the deemed University and agreed to be governed by the Memorandum of the Association. Bye-laws and regulation framed by the University from time to time but she ought to have not been subjected to detrimental situation as compared to bye-laws and the statute regulating her services prior to the notification of the deemed University :

The Rule 44 contemplates that:

"On the notification of the Institute as deemed to be a University--

(a) The existing members of teaching and non-teaching staff of the various University level units of the Institute, shall have the option to continue their service with the Institute on existing terms and conditions :

Provided always that terms of service of the existing staff shall not be altered to their detriment.

The terms of service are being laid down in Rules 37(a), (b) & (c).

(a) Every employee of the Institute including non-University educational institutions whether paid or honorary, other than the Director, shall be:--

(i) appointed under a written agreement of service, referred to hereinafter as "Contract". The condition of service shall be those embodied in the contract and every employee shall sign the contract, before he enters upon his duties. A copy of the contract shall be lodged with the Registrar of the Institute and a copy thereof, furnished to employee.

(ii) medically fit, as certified by the prescribed medical authority, but medical examination shall not be necessary for persons already in permanent employment of the Institute;

(iii) employed in the first instance of probation for one year which may be extended by a period not exceeding one year;

(iv) paid salary on such scales, as may be prescribed from time to time, by the Governing Body; and

(v) entitled to leave, salary allowances and provident fund benefits, as prescribed in the bye-laws.

(b) A person employed as permanent employee of the Institute, including non-University Educational Institutions shall retire from service at the age of 60.

(c) An employee of the Institute including non-University educational institutions may be dismissed and his services may be terminated on one or more of the following grounds--

(i) physical or mental unfitness,

(ii) conviction by a Court of law for an offence involving moral turpitude;

(iii) breach of any term of the contract;

(iv) misconduct;

(v) incompetence;

(vi) willful neglect of duty; and

(vii) abolition of the post:"

19. From the above provision, it is abundantly clear that the services of the employees of the deemed University are governed by the terms and the conditions embodied in the contract. The agreement contained in Annexure-2 to the writ petition executed by the petitioner contains a term that she has opted for the Leave Rules, Provident Fund Rules and Conditions of Service including code of conduct, as may be prescribed by the Institute from time to time. The Rules relating to the leave are contained in the bye-law No. 9 and the misconduct

is defined in bye-law Nos. 23 (iii)(a)(c)(3) & (4) which provides that no employee shall remain on unauthorized absence from duty and no employee shall resort to disobedience and indiscipline. Bye-law No. 23(iii)(i) provides that infringement of provision of paras (a) to (h) shall be regarded as misconduct.

20. The petitioner has, thus, not been subjected to detrimental service conditions as compared to the bye-laws of her employment prior to the notification of the deemed University. Her conduct has been dealt with under the Memorandum of the Association and bye-laws framed by the University. Hence the above submission of the learned Counsel for the petitioner has no substance.

21. Sri S.P. Singh, learned Counsel appearing for the petitioner further argued that the Governing Body while accepting the report of the Enquiry Officer and subsequently considering the reply to the show-cause notice has not applied its mind to the facts, circumstances and the material evidence, made available on the record, to prove that it was eminent for the petitioner to leave the station due to the sudden illness of her son at Nainital. Had the Governing Body given a judicious thought to the emergency which compelled the petitioner to leave the station and also duly acknowledged and given weight to the bye-law No. 9 (i) (d). It could not have not given undue emphasis to the prior permission of leave sanctioning authority before the petitioner left Agra for Nainital.

22. Sri G.D. Srivastava, learned Sr. Advocate in response urged that the petitioner was though not required to seek prior permission in the case she left the station due to sudden sickness of her son. Actually the son of the petitioner never fell ill. She has trotted the story of illness of her son with a view to make out a case of emergency.

23. To appreciate the submissions of the parties. Counsel, the perusal of bye-law No. 9 (i) (d) is expedient.

"No employee shall leave station, except in emergency, without obtaining prior permission for the leave sanctioning authority and without submitting outstation address so that communication may be established with the staff concerned if needed."

It would be clear from the above that it is obligatory for the teacher not to leave station without prior permission and without submitting the outstation address so that communication may be established, with him/her. The above requirement of the bye-law, however, has been relaxed in the case of emergency. It is asserted by the petitioner that she left Agra in mid-semester break on 12th March, 1990, on having an information that her son had suddenly fallen ill. A day before i.e. on 11th March, 1990 her husband met the Director of the Institution and informed that the petitioner is leaving station on 12th March, 1990, that she also handed over an envelop to neighbour to be delivered in the office. The envelop contained a letter informing about her movement. The petitioner has examined the Director and one Sri O.P. Jain to whom she had given the said envelop.

24. The Enquiry Officer took all the material facts and relevant documents into consideration and found that the petitioner failed to prove that she received and information of the sudden sickness of her son on 11th March, 1990, that she fell ill on 16th March, 1990 and remained under treatment of a doctor at Nainital is an after-thought and is not correct.

25. We perused the Enquiry Report and the material documents referred therein. The Enquiry Officer found that the petitioner has failed to prove that she had to leave the station in emergency. Therefore, she was not exempted from seeking prior permission before leaving station and thereby violated the provisions of bye-law No. 9 (i) (d). The petitioner has also not submitted the interim sickness certificate within the period often days as required by the bye-law No. 9(i)(c) and thus, committed misconduct as defined in bye-law Nos. 23 (iii)(c)(3) & (4). The finding recorded by the Enquiry Officer should not be equated with the findings of the Court of law made on the strict observance of the rules of the Evidence Act. The Enquiry Officer arrived at the conclusion that the charge of misconduct against the delinquent is proved. Though he failed to mention all the material evidence and documents in support of his finding, but Enquiry Report shall not stand vitiated on this count. The Hon'ble High Court, in the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, has held that:

"Strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities 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."

26. Despite that we proceed to examine in the instant case, if there is evidence on record to support the finding of the Enquiry Officer, Indisputably, the petitioner left Agra for Nainital in the Morning of 12th March, 1990 in the mid-semester break. In her letter dated 27-4-90 she has mentioned that she was not under obligation to obtain permission before she left for Nainital during the semester break. She has however disclosed that she had some urgent work, "therefore, she left Agra in the morning of 12th March, 1990. A day before i.e. 11th March, 1990 the Institution was closed, hence, she could not inform the authorities. However, she had given a letter to an acquaintance containing such information. It appears, he had not delivered that letter in the office. The petitioner has neither before the Enquiry Officer nor the Governing Body and even not before this Court could show the provision which provides relaxation to the provisions requiring the teacher to leave the station in the mid-semester break. She could not do so and even cannot, therefore, she has at the late stage, for the first time, disclosed in her written statement dated 28-6-90 that she had to leave Agra in emergency on receipt of message of the sudden sickness of her son. She has, however, mentioned in her letter dated 27-4-90 and thereafter in the written statement that she had handed over an envelop containing a letter to

the University informing about her going to Nainital in emergency. That very letter has not been produced before the Enquiry Officer. The Enquiry Officer, therefore, refused to accept the version of Sri O.P. Jain that the petitioner had given him any such letter. To our mind the said letter was not produced before the Enquiry Officer, because it was not mentioned therein that the petitioner left the station on account of the illness of her son. Thus, the finding of the Enquiry Officer that the plea of illness of the son is an after thought and is also not even proved by a reliable evidence is squarely based on the material on record.

27. As far relates to the charge that the petitioner has violated the bye-law No. 9 (i)(c) we have indicated above that the bye-law No. 9(i)(c) provides that in the case of casual leave and medical leave, if possible, a message should be sent on the day the leave is desired to be availed of and this should also be followed by a written application as soon as possible. However, it shall be obligatory for the employee desirous to avail of leave on medical ground to submit an interim sickness certificate specifying expected period required for his treatment in regard to his illness to the office of his attendance within ten days if he is out of station.

28. The petitioner did not send the interim sickness certificate within the stipulated period of ten days. She fell ill on or before 16th March, 1990 and submitted interim sickness certificate with a letter dated 10-4-90. Admittedly, she did not submit the interim sickness certificate within the stipulated period of ten days. Thus, it cannot be said that the finding recorded by the Enquiry Officer on this count is not based on the material on the record.

29. It may be noted that the findings recorded by the Enquiry Officer are the findings of the facts based on the evidence adduced in support thereof. We are aware of the legal proposition that the High Court, in exercise of jurisdiction conferred under Article 226 of the Constitution of India, is not empowered to reappreciate the facts and the evidence adduced to prove the same as Appellate Court/Authority and record a finding different from the findings recorded by the Enquiry Officer in the domestic enquiry, to arrive on distinct conclusion. The Hon'ble Supreme Court in the case of Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, observed that:

"High Court in the cases of departmental enquiries and the findings recorded therein does not exercise the powers of Appellate Court/Authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence and or the punishment is totally disproportionate to the proved misconduct of an employee."

30. In the instant case, the petitioner has not raised plea of denial of opportunity and miscarriage of justice in the course of enquiry and subsequent thereafter in awarding the punishment. The petitioner has also not questioned the Enquiry

Report before this Court on the ground that the principles of natural justice have not been observed and reasonable opportunity has not been allowed to her during the enquiry on the charges. The learned Counsel for the petitioner, however, picked up argument that the punishment awarded to the petitioner is disproportionate to the proved misconduct. It is urged that for a simple fault to leave station without permission and for an unintended, inadvertent failure to submit interim sickness certificate, the petitioner should have not been punished with reduction of 5 stages in her pay scale, and thereby reverting to the junior most position, which has ultimately killed her chances of being considered for promotion on the post of "Reader".

31. The argument though may be powerful to beck on our attention but cannot be sustained in view of the settled position of law in this regard. Hon"ble Supreme Court in the case of State of U.P. and others Vs. Nand Kishore Shukla and another, , has held that:

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

32. Every punishment simple or severe has its impact which may be termed as consequential punishment. If it does not cast stigma the Court should not interfere. In this case punishment awarded as such does not cast stigma on the petitioner. She is very much in the employment of the University, and discharging the duties which she had been discharging prior to the order of punishment. Therefore, we are not inclined to go into the question of punishment whether it is disproportionate to the misconduct stated to have been committed by the petitioner or not.

33. So far as relates to the contention of the learned Counsel appearing for the petitioner that the Governing Body confirmed the finding recorded by the Enquiry Officer without applying its mind to the facts and circumstances in which she was compelled to rush to Nainital without obtaining permission to leave station and also the circumstances narrated in the explanation to show-cause notice that how could she not submit the interim sickness certificate within the given time, we have discussed the observation of the Governing Body made in its order dated 27-5-90. Even if it is found that the Governing Body has not made the order touching on all pleas taken by the petitioner in her written statement and

the explanation to show cause the order of punishment cannot be quashed because Hon"ble Supreme Court in S.N. Mukherjee Vs. Union of India, has held that:

"The reasons are also not required to be recorded for an order passed by the confirming authority confirming the findings. The confirmation of the findings recorded by the Enquiry Officer is an integral part of the proceedings, and the reasons should be as elaborated as in the decision of the Court of law. The extent and nature of the reasons would depend on particular facts and circumstances."

34. In the case in hand the Governing Body has confirmed the findings recorded by the Enquiry Officer and the order of the Governing Body is an integral part of the proceedings, therefore, elaborate decision by the Governing Body is not a pre-requisite condition in confirming the findings of the Enquiry Officer.

35. It may also be mentioned that the Primary Body is an appellate authority. The Hon"ble Supreme Court in the case of S.N. Mukherjee v. Union of India (supra), in the last part of the para 36 has held that need for recording reasons in a case where the order is passed at the original stage the appellate authority or original authority, if it affirms such an order need not give separate reasons, if the appellate or original authority agrees with the reasons contained in the order under challenge.

36. In view of the reasons mentioned above and also having regard to the observations of Hon"ble Supreme Court on various points, we are of the view that the petition is without merit.

37. It is, accordingly, dismissed.

38. In the circumstances of the case, there shall be no order as to costs.