

(2001) 01 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No. 1745 of 1998

The Principal, B.M. Ruia Mahila Mahavidyalaya and Another	APPELLANT
Vs	
Mrs. Nini Gulla and Others	RESPONDENT

Date of Decision : 22-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 ALLMR 664 : (2001) 3 BomCR 140 : (2001) 2 BOMLR 774 : (2001) 88 FLR 1056 : (2001) 4 MhLj 379

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Mr. J.P. Cama, instructed by, Mr. N.M. Ganguli, for the Appellant; Mr. M.P. Vashi Advocate, for the Respondent

Judgement

R. J. Kochar, J.—Both the petitioners are aggrieved by the Judgment and order passed by the University and College Tribunal at Mumbai, (hereinafter referred to as the Tribunal). By the impugned judgment and order the Tribunal has partly allowed the appeal of the respondent herein. (For the sake of convenience, hereinafter the petitioners will be referred to as "the management" and the respondent No. 1 will be referred to as "the teacher").

2. The learned Tribunal has set aside the order of termination of service of the teacher passed by the management and reinstated her with 2/3rd back wages. The Tribunal further passed an order to substitute the order of termination by a minor penalty of reprimand, warning and censure.

3. The management has challenged the entire order of reinstatement with 2/3rd back wages while the teacher has challenged the same in another petition for having been denied the remaining 1/3rd back wages and imposition of minor punishment by the Tribunal.

4. I have heard both the learned Counsel at quite a length. Both the learned Counsel insisted to refer to even minor facts and also the evidence recorded by

the Enquiry Officer in the enquiry held by him at the instance of the management. Both the learned Counsel have also cited a number of decisions in support of their respective contentions. It is an admitted fact that the teacher was appointed in the year 1981 as a Lecturer and according to her, she was performing her duties quite satisfactorily, without any grievance, complaint or blemish in her service record. According to her, it was in the year 1993, when the earlier Principal of the college retired, she staked her claim to the post of the Principal as a senior most qualified and eligible candidate for the said post and from that point onwards she became eye-sore for the management as it wanted to appoint the present Principal as their own candidate. According to the teacher, she had opposed the said appointment and, therefore, she invited wrath of the management which finally resulted in issuance of a charge-sheet on 20th April, 1994, whereby several charges were levelled against her. She submitted her written explanation/reply to the charge-sheet, denying the charges as false, vindictive and mala fide and made with a view to victimise her. The management, not satisfied with the reply of the teacher, proceeded to hold an enquiry in the charges. The management appointed the respondent No. 5 as Enquiry Officer to hold enquiry in the charges levelled against the teacher. The respondent No. 5 is a practising Advocate of this Court and is also a member of the managing committee of the institution. I have mentioned this fact as it is one of the allegations of the teacher that the Enquiry Officer was a biased person being a part and parcel of the college management and therefore, he did not hold fair and proper enquiry. The enquiry was completed and the management on the basis of the report of the Enquiry Officer, dismissed the teacher from service by its order dated 21st February, 1995.

5. The teacher filed an appeal before the Tribunal challenging the order of dismissal and prayed for reinstatement with full back wages and continuity of service. After hearing the parties, the Tribunal allowed the appeal filed by the teacher and directed the management to reinstate the teacher in service with continuity of service and full back wages by its judgment and order dated 30th September, 1996. It appears that the main grievance of the teacher against the enquiry was that she was not allowed to cross-examine the witnesses, allegedly examined before the Enquiry Officer and, therefore, the enquiry suffered from serious violation of the principles of natural justice. It was also her case that though from record it appears that 21 witnesses had given their statements in the enquiry, in fact, such statements were never made before the Enquiry Officer in her presence and that, all such statements were recorded behind her back and signatures of the witnesses were obtained by the management. She has also alleged manipulation and fabrication of the record by the Enquiry Officer. The Tribunal had accepted the aforesaid contention of the teacher and had, therefore, set aside the order of dismissal. The judgment and order of the Tribunal was challenged by the management before this Court under Article 226 of the Constitution of India, wherein the order of the Tribunal was set aside and the matter was remanded back with a direction to give opportunity to the teacher to

cross-examine the witnesses before the Tribunal. By consent of the parties, the Tribunal was directed to decide the whole appeal afresh after recording evidence before the Tribunal. On remand, the Tribunal has decided the appeal afresh after recording oral evidence of the witnesses examined by the management before the Tribunal. It appears from the record that though 21 witnesses were said to have been examined in the enquiry, before the Tribunal only 11 witnesses were examined and the other 10 witnesses were not examined before the Tribunal. The teacher has no grievances on the point of opportunity of cross-examining the 11 witnesses examined before the Tribunal.

6. Shri Vashi the learned Counsel for the teacher has grievance against the order of Tribunal as far as denial of 1/3rd back wages is concerned for the reason that the teacher had some additional income of her own from other sources (business). Shri Vashi has submitted that even when she was in service, the aforesaid business continued and that cannot be a ground to deny part of the back wages. He has also pointed out that the teacher was not gainfully employed anywhere as a teacher and therefore, grant of only 2/3rd back wages is improper and unjust. He has also stressed that the Tribunal has placed reliance on the evidence of the witnesses who were not examined before the Tribunal. He has also challenged the order of minor punishment passed by the Tribunal. According to him, the Tribunal ought to have retained its earlier judgment and order dated 30th September, 1996 awarding full back wages with reinstatement and continuity of services as there was no change in the circumstances, even after the remand and that nothing new, fresh or additional material was brought on record by the management to vary the earlier order. Shri Vashi has also supported the order passed by the Tribunal granting reinstatement with only 2/3rd back wages to the teacher. It was his case that the Tribunal was fully justified to pass such an order on the basis of the material on record. He has laid a great stress on the fact that the teacher was being victimised on account of the animosity created by the management and the present principal against her. Shri Vashi has vehemently submitted that it was a clear cut case of mala fide and ulterior motives underlying the order of dismissal of the teacher. Shri Vashi has also submitted that the charges were totally vague and no charge could be said to have been proved either before the Enquiry Officer or even before the Tribunal. According to him, the witnesses were brought up witnesses examined by the management and the Principal against the teacher. According to Shri Vashi all other allegations made against the teacher do not constitute an act of misconduct to penalise the teacher. He has also pointed out that even before the Enquiry Officer, the witnesses have not set out a clear case against the teacher and all the witnesses have given very vague evidence, which could not be acted upon to impose an extreme punishment on the teacher. Shri Vashi has pointed out the conduct of the management and the Enquiry Officer to prove his point of mala fides beneath the order of dismissal of his client. He has drawn my attention to several minor points such as presence of President and Secretary of the Institution at the time of enquiry. I may mention here that both were present

once and when their presence was objected to, they did not remain present thereafter. He has also pointed out that evidence of 18 witnesses was recorded on one and the same day and a request for adjournment of the enquiry made by the teacher was turned down by the Enquiry Officer. He also pointed out that no statements of allegations were furnished. I may mention here that this submission is not correct, as the teacher was furnished with the charge-sheet along with "Articles of Allegations", wherein charges were tried to be detailed out. Shri Vashi has also tried to make a point that the charges were totally vague and no particulars were given to the teacher. According to him, no list of witnesses was given to the teacher. It was also pointed out that the statements of the 18 witnesses were not recorded in her presence but their signatures were obtained on prepared statements and at no point of time subsequently, they were offered for cross-examination. Shri Vashi has also complained that the copies of the documents and statements were not furnished to the teacher and the Enquiry Officer was totally biased and partial person being the Vice - President of the Institution. Shri Vashi has tried to put together all the aforesaid points to buttress his submissions of mala fides of the management in dismissing his client who, according to him, was absolutely innocent and that she was being victimised at the instance of the present incumbent Principal, who was favoured by the management. Shri Vashi, the learned Counsel, for the teacher tried to bring in communal aspect by attacking the management on the caste basis. According to him, the present Principal belongs to the same caste of the "management people" and therefore, the teacher was being harassed and hounded by the management and the Principal after 1993. I did not approve this line of argument of the learned Counsel to communalise the case and therefore, he did not carry such submissions any further to support his ground of mala fides. I may mention at this stage itself that resort to such submissions is to cling to a straw as if there are no other good grounds to support the case of the teacher. One cannot forget that the very same management of the same caste and community had appointed her as a teacher in the year 1981 and had continued her in good books till 1993 and had also appreciated her service without any bias of caste or communalism. Merely because her claim to the post of Principal was not accepted for whatever reasons, the teacher cannot turn about to make wild allegations based on caste discrimination. She ought not to have forgotten that it was the very same management that had continued her for such a long time and it does not He in the mouth of the teacher to condemn the said management because it belonged to a particular caste or community. The learned Counsel ought not to have begun with such submissions to increase bitterness in the relationship which otherwise was cordial till 1993. It is possible that the management might have acted in a particular manner considering its own interest, rightly or wrongly. Such acts of the management cannot be given caste colour merely because the other side does not like such decisions. It is the case of the teacher herself that the management had allowed her to represent College in the University from 1981 to 1992; she was appointed as Head of Economics of Board of Studies in 1986: she was elected in 1989 in the Board of

Studies and she was also elected as Chairman in the year 1990 and was ex-officio member of Board of Studies. She was recommended in the year 1992 to become the member of Board of Studies. It is her own case that this very management had placed full confidence in her till June, 1992. It is unfortunate that merely because she was not given the post of the Principal, the learned Counsel has tried to give caste colour to the decision of the management.

7. Shri Vashi has also urged that this Court exercising its extra ordinary jurisdiction under Article 226 of the Constitution should not interfere with the Judgment and order of the Tribunal awarding reinstatement with 2/3rd back wages as there is no error of law committed by the Tribunal. Though, however, he wants interference to the extent of awarding his client full back wages instead of 2/3rd granted by the Tribunal. According to him, the Tribunal has committed an error of law in denying the teacher 1/3rd back wages and imposing a minor punishment of warning, reprimand, censure etc. Shri Vashi has, therefore, prayed for dismissal of the petition filed by the management and grant of prayer of the teacher for full wages by quashing of the minor punishment. It was also pointed out by Shri Vashi that the management should not be heard as it is under contempt and that the contempt petition filed by the teacher against the management should be heard and that the management personnel should be sent to Jail by holding that they were under contempt for non-complying with the order passed by this Court at the interim stage. It is the case of Shri Vashi that the management has not made payment to his client as per the interim order passed by this Court at the time of admission. It was pointed out by him that the management had paid salary not on the basis of 5th pay commission which was made applicable to the teachers from 1.1.1996. I have heard the contempt petition separately. Shri Vashi in support of his arguments relied upon the following Judgments :-

(i) Surath Chandra Chakravarty v. The State of West Bengal.

(ii) An Advocate Vs. Bar Council of India and Another,

(iii) Divisional Controller. M.S.R.T.C. Bhandara v. Gulab Tanbaji Bhandarker,

According to Mr. Vashi, the allegations levelled against his client are not of serious nature and therefore, they do not amount to misconduct. He sought support from the judgment of the Supreme Court in the case of In Re: Advocate (supra). In the case under reference the Supreme Court was dealing with the conduct of the Advocates. There is no quarrel with the law laid down by the Supreme Court in the facts and circumstances of the case and the special law applicable to the Advocates. In our case, the charges levelled against the teacher are serious enough for the management to terminate her services and also to lose confidence in her. As far as the judgment in S. C. Chakravarty (supra) is concerned, there is again absolutely no quarrel with the ratio laid down by the said judgment. A vague and indefinite charge and failure to supply statement of allegation would definitely render removal of the government servant void and in-

operative as held by the Supreme Court. In our case, there is hardly any vagueness or indefiniteness in the charges levelled against the teacher. The management has given reasonably good particulars which the teacher has understood and has submitted her reply and also participated in the enquiry and has also cross-examined the witnesses before the Tribunal. This judgment, therefore, is also not applicable in the present case. The third judgment of the learned Single Judge of this Court is relied upon by the learned counsel on the point of past record being considered before imposing punishment. There is absolutely no quarrel with the ratio laid down by the learned Judge in the case under the M.R.T.U. & P.U.L.P. Act, 1971. In our case, though there is nothing against the teacher upto 1993, the allegations or charges levelled against her have been sufficiently proved deserving her termination from service. Besides, even good past record does not give licence to an employee to go scot-free even when a serious misconduct is proved against him. This judgment is also of no help to Shri Vashi as from the following discussion it would be clear that the serious acts of misconducts have been proved against the teacher.

8. Shri Cama, the learned Counsel for the management, has in equal vehemence submitted that the Tribunal's order is illegal, improper and unjustified. According to him, there was sufficient material before the Enquiry Officer on the basis of which he had recorded findings of guilt against the teacher and further that the only grievance of the teacher against the enquiry was that she was not allowed to cross-examine the witnesses, did not survive as before the Tribunal after remand she was allowed to cross-examine the witnesses and there is no dispute about this point. Shri Cama also gave stress on the point that the Tribunal has held positively in favour of the management that two charges were proved before the Tribunal and that would be sufficient to justify the order of punishment passed by the management and the Tribunal ought not to have interfered with the order of punishment as there was sufficient material to base such an order of punishment. Shri Cama also pointed out that the other charges which are held not proved by the Tribunal have actually been proved before the Tribunal but its finding is erroneous and perverse. It was the case of the management that the charges levelled against the teacher were not vague as reasonable particulars and details were given to the teacher who had in fact understood the charges and had submitted her explanation and had participated in the enquiry and that no prejudice of any nature was shown to have been caused to her. Shri Cama has also pointed out that the management was fully justified in passing an order of punishment if the management had some evidence on record and some material before it to come to a conclusion that the service of the teacher should not be continued any further. According to him, the management has acted on the basis of the preponderance of the evidence and material on record and this fact would show that they have not acted mala fide. The learned Counsel further pointed out that it was not open to the Tribunal and it is also not open for this Court to interfere with the order of punishment passed by the management, if it has followed a fair and proper enquiry and if it is based

on some evidence and material. Shri Cama pointed out that the Tribunal should not have re-appreciated the evidence and come to a different conclusion. According to him, it was not the case of absence of material and that it was a case of sufficient material before the management to dismiss the teacher for the acts of misconduct committed by her. As far as the charge of victimisation is concerned, he has pointed out that the management has acted on the basis of proved misconduct which is anti thesis of victimisation. Shri Cama has pointed out that the charge of violation of principles of natural justice does not survive and need not be dealt with as after the remand the said grievance of the teacher did not survive at all. After the remand, the Tribunal has come to a definite and positive conclusion that two charges have been proved and according to Shri Cama, these charges were sufficient to uphold the decision of the management to dismiss the teacher. The learned Counsel pointed out that those charges by themselves are quite serious and such a teacher cannot be foisted upon the management by the Tribunal. He has also pointed out that before the Tribunal after the management's evidence the teacher did not step in the witness box to rebut the evidence led by the management. Shri Cama has, therefore, submitted that the impugned judgment and order of the Tribunal should be quashed and set aside in entirety and that the petition filed by the teacher should be dismissed,

9. As far as the charge of vagueness of the charge-sheet is concerned. I am not very much satisfied that the charges can be said to be vague, though, some more particulars could have been given. Along with the" charge-sheet the articles of charge giving sufficient details and particulars to enable the teacher to have understood and met with the charges with quite certainty were given. The charge-sheet should contain all the material particulars with time and place details. The charge-sheet need not give and refer to the evidence at all. The articles of charge contained as many as nine charges and according to me they are not vague to the extent of not understanding the allegations. Out of nine charges, the Enquiry Officer has held all of them to have been proved. Before the Tribunal, the management had given up charge Nos. 5, 6 and 9. It is also significant to note that at the bottom of the articles of charge the management has given list of documents relied upon by it. These documents appear to be several memos issued by the management to the teacher and other correspondence and letters and complaints received from students, their parents etc. Out of the remaining charges the Tribunal has held the charge No. 1 (in part) and charge No. 2 to be established, while it has been held that charge Nos. 3, 4, 7 and 8 were not proved. Since the charges 5, 6 and 9 have been given up by the management itself, I need not deal with them. As far as the charges 1 and 2 are concerned they are relevant and material and therefore, are reproduced below. I have split the charge No. 1 as per the findings of the Tribunal as follows :-

(1)(a) It has been observed that your behaviour with the students is very rude. It has also been observed that you use abusive language and you humiliate them in front of the whole class-room.

(1)(b) It has also been observed that some students who have not been able to attend your lectures on account of their participation in certain college programmes are deliberately given less marks or are failed by you.

To be precise the Tribunal has held the charge (1)(a) proved and charge (1)(b) not proved.

Charge No. 2 : It has been observed that you are in the habit of reporting late for work. You have been issued Memos in this behalf. You have also entered wrong time in the Muster Roll. This affects the working and discipline of the college. You were issued the following memos in this behalf, (list of memos). These memos were replied to by your letters dated 4.12.93; 30.11.93; 23.1.94; 28.2.94 respectively, The explanation given by you therein has not been found satisfactory. This conduct amounts to indiscipline and also amounts to misconduct. You are therefore being charged under statute 43.2(c) and 43.3(1) and 43.3(2).

The Tribunal has referred to and discussed the evidence led before the Tribunal by the management in respect of the said charge. The management has examined students and members of teaching staff in support of the said charge. All of them have sworn about the rule and arrogant behaviour of the teacher in the class-room and about her language being abusive. One of the witness has also said that the teacher had passed a mark against a girl student which would amount to casting aspersion on her character. The students have sworn on oath that the teacher was using abusive language and was insulting and humiliating them in classroom. The witnesses before the Tribunal were students, class representatives, teachers and even office-bearers of the teachers' association. It cannot be said that such a large section of students and the staff had any reason to give false evidence against the present teacher. Except calling names to these witnesses, Shri Vashi could not substantiate why the evidence of such a large section of the college should not be accepted. The Tribunal had observed even the demeanour of the witnesses. It has assessed the whole evidence and has significantly observed as under :-

"Therefore, the evidence of that witness also goes to show that the applicant's approach to her students was far from satisfactory and about it several students had grievances."

One of the witnesses is a Treasurer of the SNDT Teachers' Union who has sworn on oath that he had received many complaints from the students about the behaviour of the teacher. It is true that such complaints were not in writing and nor had he written to the Principal about those complaints, but it is important to note that this witness being the office-bearer of the teachers union has recorded the fact that there were several complaints from several students against the teacher. What is more significant is the fact the teacher did not examine herself to deny the allegations on oath. Nor did she examine witness in her favour.

10. The charge No. 2 which the Tribunal has held to be proved is about her habit

of reporting late for work and entering wrong time in the muster, which affects the working and discipline of the college. She was served with several memos in that respect. Only this charge, the management has led evidence of some witnesses. I do not find any thing wrong in the findings of the Tribunal in holding that this charge was sufficiently proved. It is also significant to note that she was served with several memos in the past and it is not that this charge was being levelled against her for the first time to victimise her. She has received those memos and had also replied to them. She has to thank the management for not taking any action at that time itself. It is not possible to accept the contention of Shri Vashi that the Tribunal had committed any error in holding the aforesaid two charges as proved. The Tribunal has discussed the evidence and has come to a definite conclusion that these two charges were proved. These findings are based on evidence and material, which according to me, is quite sufficient to hold that the findings were not perverse and according to me, it is not the case of lack of or absence of any material before the Tribunal. Though Shri Vashi has tried to run down the witnesses by calling them names (management chamchas), it is not possible for me to accept any such contention that all of them had ganged up against the teacher without any rhyme or reason. Shri Vashi has further tried to bring down the seriousness of the charges by saying that even the witnesses had not given particulars such as dates and timings on which the teacher was late and therefore, the evidence of the witnesses suffered from the vice of lack of precision. I can only say this much that every man/woman lives by his or her reputation created by his or her regular conduct or behaviour. It is the general impression which gets accumulated and forms as a result of several such occasions or instances. If the students have suffered for the late coming of the teacher in classroom more than once and very often and they have recorded the same in the evidence, in that case, it cannot be said that unless and until the students have recorded the dates and timings the charges of late coming cannot be said to be proved. On the basis of the evidence it does appear that the teacher had a bad reputation of reporting late in the class-room and if a teacher is very often late the students suffer and the discipline also gets a serious set back. If late coming of the teachers is allowed and is condoned, it would be very difficult for the management to maintain strict time schedule and finally it would be extremely difficult for the management to see that the whole syllabus is completed within the prescribed period. No late coming can be tolerated and late coming upsets the whole schedule of everything in the life. This is a question of habitual late coming and not once or twice in a while. According to me, both these charges are serious and there has been preponderance of evidence to come to a conclusion that the charges have been rightly accepted by the management. If a teacher uses abusive language in the class-room to say the least, such a teacher is unfit to be a teacher or a "Guru" in the traditional sense. A teacher cannot be expected to insult the students, humiliate them and abuse them. A teacher has to use his or her language very guardedly and he has to be kind and soft to the students and he may rebuke them at the appropriate time or occasion but not in an abusive language. Harsh language or abusive language

does not create any good impact and does not give desired results. On the contrary, it is likely to create adverse effect and violative reaction in the tender mind of the students. The Tribunal has rightly observed that the approach of the teacher towards her students was far from satisfactory. On both these counts I hold that the management was justified in removing the teacher from service. Such a behaviour of any teacher would create agitational atmosphere in the college. I agree with the submissions of Shri Cama that there was preponderance of evidence and material before the Enquiry Officer and before the Tribunal to come to the right conclusion that two charges were proved and that the management was fully justified in getting rid of such a teacher. I do not find any fault with the findings of the Tribunal that these two charges were proved. I, however, do not agree with the Tribunal that such a teacher should be reinstated with full or even 2/3rd back wages or any part of back wages for that matter. I am, therefore, inclined to quash and set aside the order of the Tribunal granting reinstatement with 2/3rd back wages to the teacher. I need not cite any authorities or judgments on this point that out of several charges levelled against a delinquent workman/ employee/servant if even one charge is proved it is enough to sustain the order of punishment.

11. Shri Cama has made a serious grievance that as far as other charges are concerned, the Tribunal was wrong in holding that the charge No. 3 was not proved. According to him, there was sufficient material on record including memos served on the teacher that she leaves the class-room from the lectures for long intervals and on occasions she was found in the office indulging in long conversation or having long conversations over telephone during the lime she was required or expected to hold lectures. In support of this charge I find that there is even sufficient material though it may not be precise, which could be called as legal evidence in the strict sense. I, however, cannot forget that the criminal trial is different from a domestic enquiry. According to me, there is some material in support of this charge to hold her guilty. It is significant to note that even the Tribunal has not held that the charge was not proved.

The Tribunal has found it difficult to hold and has not held that the charge was not proved at all. There has been some material in support of this charge and therefore, it can be held that the charge is proved. Besides, this proved charge is equally serious. A teacher cannot leave the classroom to receive a telephone and interrupt the lecture or teaching. To say the least, it is an extreme act of indiscipline on the part of a teacher to leave the class room in the midst of the lecture and indulge into a long conversation over the telephone or with the other staff. Same is the case with the charge No. 4 which the Tribunal has held not proved. This charge is that the teacher was not following time-table in the college and that she was holding lectures as per her own convenience and that she was not found in the lecture-room allotted to her as per the said time-table. She was given two memos in that respect. Apart from the oral evidence we cannot lose sight of the two memos which were given to the teacher. By communication dated 12th April, 1994, the Principal had cautioned the teacher in

this respect. The Tribunal has held this charge not proved for want of further better details. The Tribunal has held other charges not proved following the same logic. It is not necessary for me to deal with reasonings recorded by the Tribunal to say that they are not proved. According to me, charge Nos. 3 and 4 have also been sufficiently proved. In such charges no arithmetical accuracy can be insisted upon. There has been some material before the management against the teacher and the Enquiry Officer has accepted the same. The Tribunal ought to have been very careful in upsetting the findings of the Enquiry Officer in respect of these two charges. Shri Cama has further urged that the teacher was terminated from service also for loss of confidence. According to him, the charges which were levelled against her and the material which was in possession of the management on the basis of which those charges were levelled, was enough to lose confidence in the teacher. He has relied upon a judgment of Division Bench of this Court in the case of *Srinarayan Mevalal Gupta v. Padamjee Pulp and Paper Mills Ltd. & Ors.* In that case the petitioner employee was terminated from service because of his activities causing considerable disaffection amongst the workers of the Company leading to tensions. The Company had led evidence and placed material before the Labour Court and it was held by the Labour Court that the Company was justified in losing confidence in the workman. It was held that there was sufficient material on the basis of which the company had lost confidence in the workman.

The learned Counsel has relied upon another judgment of the Division Bench in the case of *Siddhanath Krishnaji Kadam v. Dadajee Bhackjee and Co. Put. Ltd.*," wherein the discharge order for loss of confidence was passed by the employer. The Division Bench has observed as under :- (Head note).

"The loss of confidence plea can be confined not only to the employees holding confidential posts, but also to others. Every contract of employment implies trust and confidence as its indispensable ingredients. Well founded suspicion against the employees holding posts of highly confidential nature maybe considered enough for loss of confidence. In other instances, the proof of his having worked privately after having the office on false pretext should be held enough for the employer's loss of confidence in him."

Shri Cama further placed reliance on a judgment of the Supreme Court in the case of *Air India Corporation Bombay v. V.A. Rebellow and Anr.*, The Supreme Court has observed as under :- (Head note)

"It appears that the appellant had lost confidence in the complainant and this loss of confidence was due to a grave suspicion regarding the complainant's private conduct and behaviour with air hostesses employed by the appellant.

Once bona fide loss of confidence is affirmed the impugned order must be considered to be immune from challenge. The opinion formed by the employer about the suitability of his employee for the job assigned to him even though erroneous if bona fide is in our view final and not subject to review by the

industrial adjudication."

Shri Cama has further relied upon following authorities in support of his contention that neither the Tribunal nor the High Court is entitled to interfere with the punishment or substitute its own conclusion on penalty and impose some other penalty unless the punishment imposed by the disciplinary authorities shocks the conscience of the High Court/ Tribunal.

(i) B.C. Chaturvedi v. Union of India & Ors.,.

(ii) U.P, State Road Transport Corpn. v. Subhash Chandra Sharma and Ors.,.

(iii) Shriji Vidyalaya and Anr. v. Patel Anil Kumar Lallubhai and Anr.,.

As far as punishment is concerned the trend of the Supreme Court in various judgments is not to allow interference in the punishment imposed by the employer unless it is shockingly disproportionate. In the case of U.P. State Road Transport Corporation v. Mohanlal Gupta, the Supreme Court has in para 8 observed as under :-

"On the wake of the situation as above, we are of opinion that the question of award of any minor punishment in the facts of the matter under consideration does not and cannot arise and neither the Labour Court could alter the punishment of termination of service having regard to its assessment offsets and the contentions as regards the validity of the inquiry proceedings. The employees has been found to be guilty of misappropriation and in such an event if the appellant-Corporation loses its confidence vis-a-vis the employee, it will be neither proper nor fair on the part of the Court to substitute the finding and confidence of the employer with that of its own in allowing reinstatement. The misconduct stands proved and in such a situation, by reason of the gravity of the offence, the Labour Court cannot exercise its discretion and alter the punishment."

The aforesaid case was once again considered by the Supreme Court in the case of Janatha Bazar (South Kanara Central Co-operative Wholesale Stores Ltd..) etc. v. Secretary, Sahakari Nourara Sangh, etc., Along with the said judgment the Supreme Court has also considered other judgments. It has in para 6 observed as under in

". . . . Once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstalling the employees in service."

Again in para 8 in respect of the past record of the employee, the Supreme Court has observed as under :-

"... In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases."

In the case of U.P. State Road Transport Corporation v. A. K. Parul, the Supreme Court has reiterated the law in para 3 as under: -

"Aggrieved by that, this appeal is filed by the appellant. This Court consistently has taken the view that while exercising judicial review the Court shall not normally interfere with the punishment imposed by the authorities and this will be more so when the Court finds the charges were proved. The interference with the punishment on the facts of this case cannot be " sustained. In State Bank of India v. Samarendra Kishore Endow. this Court held that imposition of proper punishment is within the discretion and judgment of the Disciplinary Authority. It may be open to the Appellate Authority to interfere with it, but not to the High Court or to the Administrative Tribunal for the reasons that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. As noticed earlier, the High Court, having found the charges proved, is not justified in interfering with the punishment imposed by the Disciplinary Authority, particularly when In this case, the respondent was once removed from service on the charge of corruption and again reinstated. On the facts, the interference by the High Court was not at all justified. Accordingly, the appeal is allowed, the order of the High Court is set aside and the writ petition filed by the respondent in the High Court stands dismissed. No order as to costs."

12. In view of the law laid down by the Supreme Court both in respect of interference with the punishment imposed by the management on the basis of proved misconduct and upheld by the Tribunal, it is not possible for me to hold that the punishment deserves to be interfered as has been done by the College Tribunal. The College Tribunal has held two charges proved. On considering the entire case once again, I have also found that other charges have been proved by the management before the Enquiry Officer as well as before the Tribunal. I am also satisfied, considering the totality of the circumstances, that it would not be just and proper for me to direct reinstatement of the teacher, as has been done by the Tribunal. The Supreme Court is further very clear that when the misconduct is proved, there is no question of considering the past record. On both these counts, it is not possible for me to accept the contentions of Shri Vashi.

13. In the aforesaid circumstances. I am satisfied that the management has proved at least four charges against the teacher. According to me. these charges are serious as far as the teaching profession is concerned. The management was fully justified in terminating the service of the teacher on the basis of the aforesaid charges. Even assuming that the Tribunal was right in discarding the entire material in support of charge Nos. 3 and 4, in my opinion, the management is fully justified in terminating the services of the teacher on the basis of the charges which have been held by the Tribunal to have been proved. The Judgment and order of the Tribunal, therefore, deserves to be quashed and set aside. The same is, therefore, quashed and set aside. The rule is made absolute in terms of prayer clauses (a) and (b). The writ petition is disposed of in

the aforesaid terms. No orders as to costs. C.C. expedited.