



GAHC010086242020



**IN THE GAUHATI HIGH COURT**  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

**WRIT PETITION (C) No. 2555/2020**

**Sri Suresh Das, aged 43 years,**  
Son of Jogeswar Das,  
Resident of Amar Path, Geetanagar,  
Bamunimaidan, P.S. Geetanagar, Guwahati,  
District-Kamrup(M), Assam-781021

**.....Petitioner**

**-Versus-**

**1. The State of Assam,**  
Represented by the Commissioner & Secretary to  
the Govt of Assam, Education (Higher) Department,  
Dispur, Guwahati- 6.

**2. The Director of Higher Education  
Department, Assam** Kahilipara, Guwahati-19.



**3. The Joint Director of Higher Education Department, Assam, Kahilipara, Guwahati-19.**

**4. The Deputy Director of Higher Education Department, Assam, Kahilipara, Guwahati-19.**

**5. The Principal, Lalit Chandra Bharali College, Maligaon, Guwahati-12, Assam.**

**6. The Governing Body, Lalit Chandra Bharali College, Maligaon, Guwahati-12, Assam.**

**.....Respondents**

**:: BEFORE::**

**HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

For the Petitioner : Mr. B.P. Borah, Advocate

For the Respondents : Mr. A.R. Tahbildar, SC,  
Higher Education for  
Respondents No. 1 to 4  
: Mr. S Muktar, Advocate for  
Respondents No. 5 & 6

Date of Hearing : **12.06.2023**

Date of Judgment : **19.10.2023**

**JUDGMENT & ORDER (CAV)**

This writ petition has been filed by the petitioner challenging the termination order dated 03.10.2017 as well as the resolution dated 23.02.2016 adopted by the Governing Body of Lalit Chandra Bharali College



whereby it was resolved to terminate the petitioner from service without affording any opportunity of hearing. The further prayer of the writ petitioner is for issuance of mandamus directing the authority to release the arrear salary of the petitioner with effect from 2011 till the date of his termination i.e. 03.10.2017.

**2.** The petitioner was appointed in the post of a bearer (Mali) in the Lalit Chandra Bharali College, Maligaon in the scale of pay of Rs 900/- to Rs. 1435/- by letter No. LCBC/NTS/24(C)223/94 dated 01.12.1994 issued by the Principal, Lalit Chandra Bharali College, Maligaon, Guwahati.

**3.** The appointment of the petitioner was provisionally approved by the Joint Director of Higher Education Department, Government of Assam. Thereafter, a special body of the Lalit Bharali College in its meeting held on 23.05.2000 resolved to confirm the services of the petitioner and to open a CPF account in the name of the petitioner. Since his date of appointment, the petitioner has put into his service to the satisfaction of all concerned without any blame or blemish.

**4.** The learned counsel for the petitioner submits that while he was serving in the capacity under the said college, he suffered from severe viral hepatitis since 02.09.2008 and was under treatment and care of a doctor who advised him rest for a period of three months. Although the petitioner



regained his physical stability and resumed his services in the college and he was working till December 2009. However in the month of January 2010, the health of the petitioner deteriorated due to several other deceases like hepatic dysfunction, Jaundice, pancreatitis, Rectal bleeding etc as a result of which he was undergoing treatment from 06.01.2010 to 13.04.2011. The learned counsel for the petitioner has referred to medical certificates enclosed to the writ petition in support of his contention.

**5.** Pursuant to his recovery, the petitioner made a representation before the Principal, Lalit Bharali College, Maligaon being respondent No. 5 herein on 18.04.2011 by enclosing medical certificate and submitted that because of the severe health problems he was absent from his duties and as he has recovered from his illness, he represented before the Principal to allow him to join in his regular service. However, the authorities of the college did not consider the prayer of the petitioner and did not permit him to join his normal duties. His salaries have been stopped by the college authorities with effect from January 2010. Inspite of several representations, the petitioner was not allowed to join in his regular post and the salary also was not released. Similar representation was also made before the Director of Higher Education Department, namely respondent No 2, requesting him to direct the College Authorities to permit him to rejoin his permanent post



in the College. The learned counsel for the petitioner submits that in response to the letter issued by the Deputy Director, Higher Education Department to the college authorities by communication dated 12.04.2017 issued by the college authorities and a copy of which was available to the petitioner, it is mentioned that no departmental proceeding was initiated against the petitioner nor any enquiry officer was appointed nor any such report is available.

**6.** Being thus situated, the petitioner was surprised to receive a show cause notice dated 06.06.2017 issued by the Director of Higher Education asking the petitioner to show cause as to why he had remained absent from normal duties from time to time w.e.f 01.10.2003 and that too without information and inspite of several notices sent by post and through local news papers, he was conspicuous by his absence. Although the college authorities on humanitarian grounds granted all possible leave to the petitioner inspite of that the petitioner remained absent without any authority and therefore he was charged with dereliction of duty and unauthorized absence. He was further asked to show cause that inspite of his absence he was given his full salary on humanitarian ground and the college authority after examining the pros and cons of the application refused to allow his prayer for rejoining in the college and subsequently by



resolution adopted on 23.02.2016, the Governing Body of the LCB College unanimously resolved to terminate the petitioner from his services due to extreme irregularities and insubordination to the authority. The show cause notice was accompanied by statement of allegation which contained the show cause notice served on him by post and by local news papers, report of the principle, Governing body resolution and hearing held on 29.08.2016.

**7.** The petitioner replied to the show cause notice giving his reasons for the absence and denied that the allegation of dereliction of duty and unauthorized absence was correct or based on correct facts. He further submitted that he did not receive any show cause notice issued by the Principal or the Governing Body prior to the resolution dated 23.02.2016. He further stated that the said resolution No. 13 dated 23.02.2016 of the Governing Body of LCB College removing him from service violated the provision of the Assam Services (Discipline and Appeal) Rules 1964 and the principle of natural Justice.

**8.** Thereafter, the Director of Higher Education vide impugned order dated 03.10.2017 passed the order of terminating the service of the petitioner. In the said order which was impugned in the present writ petition, it is mentioned that the petitioner did not submit any medical



report along with his show cause reply and therefore, the college authorities were justified in terminating the services of the petitioner as it cannot wait for an employee who was absent for 9 to 10 years. The charges of long absence have been held to be proved.

**9.** The respondent/College Authority contested the case by filing an affidavit denying the contentions raised by the petitioner. The affidavit contained the resolution which was adopted on 23.02.2016, show cause notice dated 06.06.2017, order dated 03.10.2017 and communication dated 23.11.2020, whereby the consolidated statement of records of unauthorized absence of leave of the petitioner has been reflected. No affidavit has been filed by the Department of Higher Education.

**10.** The petitioner also filed an affidavit in reply contesting the claims of the College Authorities.

**11.** The Director of Higher Education filed an affidavit also denying the claims of the petitioner. In the said affidavit, the department averred that hearing was initiated by the Director of Higher Education on 29.08.2016 which was initiated by the Enquiry Officer, who was the Inspector of College of this Directorate with the Principal of the concerned college namely LCB College, SA of the College, the petitioner and other non-teaching staff representatives and teaching staff representative of the



college. It is only upon such an enquiry being conducted that a show cause notice has been issued to the petitioner and to which the petitioner have submitted his reply but without enclosing the required evidences in support of his contentions made. Under such circumstances, the Department considered the entire matter and passed the order dated 03.10.2017 which is impugned in the present writ petition.

**12.** The learned counsel for the petitioner has strongly urged that the termination of the petitioner by the impugned order is violative of the principles of natural justice and opposed to the settled cannons of service jurisprudence. The learned counsel for the petitioner submits that there is no denial that the petitioner was suffering from severe health ailments and it was therefore necessary for him to undergo extensive medical care and hospitalization. The learned counsel for the petitioner submits that the petitioner had submitted his application for leave and upon improvement of his health, the petitioner even joined in his regular services. However, with effect from January 2011, the petitioner was undergoing severe health problems which required extensive medical care and treatment. He was under medical treatment w.e.f. 06.01.2010 to 13.04.2011. It is only after he recovered completely from all the ailments that he went to join the college authority. The learned counsel for the petitioner submits that no





show notice was served on him by the college authorities and the news paper publication, if any, who was not noticed by him. Consequently, the termination by the impugned order is bad in law and the same should therefore be interfered with, set aside and quashed. The learned counsel for the petitioner further submits that the petitioner was confirmed in his service in the post to which he was appointed. He was not temporary employee or employee on contractual basis. Under such circumstance, the petitioner could not have been terminated without following the prescribed procedure laid down by law which required a proper enquiry being conducted against the petitioner. The learned counsel for the petitioner in support of his contention relies upon the following Judgments :

1. *Rabindra Nath Kalita Vs. State of Assam and Ors*, reported in 2016 (2) GLT 955

2. *Ambika Patra Vs State of Assam*, reported in 2018(3) GLT 440.

3. *Gullapalli Nageswara Rao and Ors. Vs Andhra Pradesh State Road Transport Corporation and Anr.*, reported in AIR 1959 SC 308

**13.** The learned counsel relying upon the said judgments submits that the law laid down by this Court is that Rule 9 of Assam (Discipline and Appeal) Rules 1964 (hereinafter "the Rules of 1964") is mandatory in



nature and any punishment that is required to be inflicted on any person must be as per the procedure prescribed which is Rule 9 of the Assam (Disciplinary and Appeal) Rules 1964. Under such circumstances, where the Department of the college did not follow the prescribed procedure as laid down, the impugned order is bad in law and the same should therefore be set aside and quashed and the petitioner be directed to be reinstated and all his arrear pay benefits be directed to be granted.

**13.** Per contra , the learned counsel for the respondents submits that at the outset the writ petition is not maintainable inasmuch as there is a prescribed provision for filling an appeal under the Rules of 1964 and which having not been followed, the writ petition ought to be dismissed on the ground of alternative remedy.

**14.** The learned counsel for the Department submits that where the alternative remedy is prescribed ordinarily the writ Court will relegate the parties to approach the statutory authority prescribed and declined to entertain the writ petition. It is submitted that under the provisions of Assam (Discipline and Service) Rules 1964, the provisions of an appeal before the appellate authority is specifically provided for and in view of such a provision, the writ petition ought not to be entertained and the petitioner be directed to avail the alternative remedy as prescribed. The



learned counsel for the Department relies upon the Judgment of the Apex Court rendered in ***The State of Maharashtra and Ors Vs Greatship (India) Limited***, reported in ***2022 LiveLaw (SC) 784***.

**15.** Relying upon the said Judgment, the learned counsel for the department submits that the Apex Court has categorically laid down the law that where statutory remedies available, the petitioner ought to be relegated the statutory authority prescribed.

**16.** The learned counsel appearing for the college authorities submits that the college had been repeatedly issuing notices to the petitioner to resume his regular services. In spite of such notices being issued, the petitioner has remained absent from his regular services. The college authorities have been extending all help to the petitioner on humanitarian ground. Although the petitioner is not entitled to be granted the benefit as offered by the college authorities. Consequently, there is no infirmity with the procedure adopted by the college authority whereby they had resolved in their Special Body meeting for termination of the petitioner and a copy thereof the said resolution being forwarded to the Director of Higher Education, Govt of Assam.



**17.** The learned counsels for the parties have been heard. Pleadings on record have been carefully perused. The case laws which are cited also been carefully noted.

**18.** The petitioner after his initial appointment was regularized in the LCB College. As a regular employee of the college, the petitioner is entitled to his rights and privileges guaranteed under the relevant laws. The impugned order of termination which is assailed in the present writ petition, was admittedly issued by the Director of Higher Education pursuant to the show cause notice issued. The show-cause notice was issued under Rule 9 of the Rules of 1964. What is noticed is that in the show-cause notice issued by the department, the petitioner was asked to show cause as to why any of the penalties prescribe under Clause I to III under Rule 7 of the aforesaid Rules of 1964 should not be inflicted on the petitioner. The Show-cause notice issued to the petitioner is extracted below:

*"GOVERNMENT OF ASSAM  
OFFICE OF THE DIRECTOR OF HIGHER EDUCATION, ASSAM  
KAHILIPARA, GUWAHATI-19*

\*\*\*\*\*

*No. G(B) Misc/126/2015/134*

*Dated, Kahilipara, the 06.06.2017*

*Subject: Show Cause Notice*

*In exercise of the powers conferred by Government Notification No.ABP.58/62/228, dated 5<sup>TH</sup> December 1967, the undersigned hereby ask you to show cause under Rule, 9 of the Assam Services (Discipline and Appeal) Rules, 1964, why any of the penalties prescribed in clauses (i) to (iii) of Rule 7 of the aforesaid Rules should not be inflicted on you on the following charges based on the statement of allegations attached herewith-*

*\*(1) While you were holding the post of Library Bearer of L.C.B. College you have remained absent in your normal duties from time to time with effect from 01-10-2003 and that too, without any Information. In spite of several show cause notices (by post and through local news papers) you have conspicuous by absence. The college authority on humanitarian ground granted all possible leave to you. In spite of that you become intolerably irregular in discharging your duties and since 28-08-2008 you have been absent from your duty. Therefore, your absence in the college is unauthorized. You are charged with dereliction of duty and unauthorized absence.*

*\*(2) That, as per office records of Principal, L.C.B. College you have unauthorized absence with effect from 28-08-2008 till date but you have given full salary on humanitarian ground granting all possible leave to you up to November, 2009. In spite of that you become intolerably irregular in discharging your duties and since 28-08-2008 you have remained absent from your duty. You have subsequently on 25-02-2015 and 09-07-2015 submitted two different applications to the college authority seeking permission to join in your post. The college authority after examining the pros and cons of the application refused your prayer of joining.*

*The Governing Body of L.C.B. College has adopted resolution vide No.13, dated 23-02-2016 unanimously resolved to terminate you from service for your extreme irregularities and insubordination to authority.*



*You should submit your written statement in defence within 10(ten) days from the date of issue of this communication provided you do not Intend to Inspect the documents which have relevance with the issues under enquiry. In case you intend to inspect those documents you should write to the undersigned for the same within 7(seven) days from the date of receipt of this communication and submit your explanation thereafter within 10(ten) days from the date of completion of the inspection.*

*Enclosures:*

*1) Statement of allegation.*

*(Signature of the Disciplinary Authority)  
Director of Higher Education, Assam,  
Kahilipara, Guwahati-19"*

**18.1.** The said show-cause notice was also contained the statement of allegations as well as the list of documents. The list of documents included the Governing Body's resolution also.

**19.** It is clear for a perusal of the show-cause notice that the College Authorities issued the show cause under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 as to why any of the penalties in Clauses (i) to (iii) of Rule 7 of the said Rule should not be inflicted on the charges so mentioned in the show-cause notice. What is also noticed from the show cause dated 06.06.2017 is that the Governing Body of the LCB College have already adopted a resolution vide Resolution No. 13 dated 23.02.2016 and had unanimously resolved to terminate the petitioner from the services for extreme irregularity and insubordination to the authority.

The petitioner was asked to submit his written statements of defence within ten (10) days from the date of issue of this communication and in the event he seeks to inspect the documents, he should write to the authorities within seven (7) days from the date of the receipt of the show cause notice and thereafter submit his written explanation within ten (10) days from the date completion of the inspection.

The petitioner submitted his show cause denying the allegations stating that he was absent from duties from time to time because of his ill-health for illness.

**20.** The Assam (Discipline and Appeal) Rules are rules framed by the Governor of Assam on the proviso to Article 309 of the Constitution of Assam which lays down detailed procedure in respect of Disciplinary Proceedings required to be drawn against Government Servants, the punishments prescribe as well as the statutory remedy available. Rule 7 of the said Rules is extracted below:

***"7. Nature of penalties-*** *The following penalties may for good and sufficient reasons and as hereinafter provided, be imposed, on a Government servant, namely:-*

*(i) censure;*

*(ii) withholding of increments of promotion;*

*(iii) recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders to the Government of Assam or the Central Government or any other State Government, or any local or other authority to whom services of a Government servant had been lent;*

*(iv) reduction to a lower service, grade or post, or to a lower time-scale, or to a lower stage in a time-scale;*

*(v) compulsory retirement;*

*(vi) removal from service which shall not be a disqualification for future employment*

*(vii) dismissal from service which shall ordinarily be a disqualification for future employment;*

*....."*

**21.** Rule 9 of the said Rules is also extracted below:

**"9. Procedure for imposing penalties-** (1) *Without prejudice to the provisions of the Public Servant (Inquiry) Act, 1850, no order imposing on a Government servant any of the penalties specified in rule 7 shall be passed except after an inquiry, held as far as may be in the manner hereinafter provided.*

*(2) The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the Government servant, and he shall be required to submit, within such time as may be specified by the Disciplinary Authority, a written statement of his defence and also to state whether he desires to be heard in pension.*

*....."*





**22.** The procedure for imposing the penalties is prescribed under Rule 9 of the said Rules. Under the said Rule 9 sub-clause 10, major penalties are defined as any of the penalties as specified in Clauses (iv) to (vii) of Rule 7. Clause 9(xii) defines minor penalties as any of the penalties specified in Clauses (i) to (iii) of Rule 7.

**23.** Clause 9A provides that any orders passed by the Disciplinary Authority shall be communicated to the Government Servant and who shall be supplied of the report of the enquiry if any, held by the Disciplinary Authority and a copy of its findings on each charge. Rule 15 and 15A provides for appeals against orders imposing penalty.

**24.** Rule 17 provides for period of limitation for appeal which shall be three months from the date in which the appellant receives a copy of the order appealed against.

**25.** From a perusal of the above, it is seen that in the show cause notice which was issued on the petitioner, he was asked to show cause as to why penalty under Clauses (i) to (iii) of Rule 7 should not be imposed. It is in response to this show cause notice that the petitioner had submitted his reply and which was ultimately considered by the authority by passing impugned order removing the petitioner from service. What is also noticed from the show-cause notice itself as well as from the affidavit filed by the



respondent-College that a resolution has already been adopted vide Resolution No. 13 in the General Body meeting of the College held on 23.02.2016. The General Body meeting by the said resolution had resolved to release the petitioner from the said post and authorized the Principal to send the copy of resolution to the Director of Higher Education for taking necessary action. What is evident from a perusal of the show cause and the pleadings available on record is that the show cause was issued to the petitioner asking him to show cause why the minor penalties i.e. Clauses (i) to (iii) of Rule 7 should not be imposed. The show cause also reflects the mind of the Disciplinary Authority as well as the employer namely the LCB College that a resolution has already been adopted to release him from service.

**26.** The case projected by the department as well as by the college authorities, nowhere prescribes that pursuant to the show cause notice dated 06.06.2017 issued by the Director Higher Education, Government of Assam, asking the petitioner to show cause as to why penalties under Clauses I to III of Rule 7 of the rules of 1964 should not be imposed; have been subsequently modified or amended to include the penalties from IV to VII of the Rule 7 of the Rules of 1964. In other words the show-cause notice dated 06.06.2017 was issued by the Director of Higher Education,



Govt. of Assam for imposition of punishments which are considered to be minor penalty under the Rules of 1964 itself. In response to the said show cause notice, the petitioner responded by way of his written statement denying the charges levelled against him. The Director of Higher Education thereafter by the impugned order dated 03.10.2017 referring to the resolution adopted by the College Authorities terminated the services of the petitioner. Nowhere in the impugned order has it been specified as to why the department decided to impose major penalties when the show cause notice itself reflects the intention of the department to impose minor penalties under Rule 7 of the Rules of 1964. The resolution adopted by the college authorities and which is a part of the pleadings before this Court also does not reflect as to the procedure adopted by the college authorities in arriving at this decision as seen from the resolution.

**27.** In *Gullapalli Nageswara Rao (Supra)*, the Apex Court held that the authority conducting the hearing must decide. Any decision taken by any authority which did not conduct the hearing will be arbitrary and hit by Article 14.

**28.** In *Ambika Patra (Supra)*, a Co-ordinate Bench of this Court held that for imposition on major penalty, the procedure prescribed under Rule 9 must be followed and order of dismissal has been passed in the facts of the



case, cannot be passed merely on the issuance of charges and the replies submitted thereto by the petitioner. Under such circumstances, the Co-ordinate Bench held that the impugned order therein to be bad in law and interfered with the same.

**29.** In *Rabindra Nath Kalita (Supra)*, another Co-ordinate Bench of this Court also held that the procedure prescribed in Rule 9 will have to be followed mandatorily. It held that before imposition of the punishment holding of an enquiry as mandated under Rule 9 is mandatory. Non-compliance of the procedure prescribed under Rule 9 would vitiate departmental proceedings drawn up against the Government Servants.

**30.** In *Greatship (India) Limited (Supra)*, which was relied upon by the learned counsel for the respondent authorities, the Apex Court held that where alternative remedy is available writ Court ought not to invoke its jurisdiction under Article 226 of the Constitution of India.

**31.** In *State of Karnataka Vs. Umesh*, reported in *2022 (6) SCC 563*, the Apex Court while considering the challenge made to the Disciplinary Proceedings summarized the principles under which exercise of judicial review is warranted for interfering in disciplinary proceedings. The Apex Court held that Court in exercise of judicial review must restrict its review to determine whether-

- (1) Rules of natural justice have been complied with;
- (2) finding of misconduct is based on some evidence;
- (3) statutory rules governing conduct of disciplinary enquiry were followed;
- (4) findings of Disciplinary Authority suffered from perversity;
- (5) Penalty disproportionate to the proved misconduct.

**32.** In *Regional Manager, UCO Bank Vs. Krishna Kumar Bharadwaj*, reported in (2022) 5 SCC 695, the Apex Court held that the power of judicial review in cases of Disciplinary Proceedings/dismissal is circumscribed by the limits of correcting errors of law or procedural errors leading to manifest injustice or violation of natural justice and is not akin to adjudication of the case on merits. Although on the facts of that case, Apex Court held that interference with dismissal order was wholly unjustified.

**33** In *Deputy General Manager (Appellate Authority) and ors Vs. Ajai Kumar Srivastava*, reported in 2021 (2) SCC 612, the Apex Court while reiterating the principles on the which interference in Disciplinary Proceedings is warranted held that examination by Court is limited to determining whether-

- (i) enquiry was held by competent authority;
- (ii) whether rules of natural justice are complied with;

(iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.

**34.** Having examined the law laid down by this Court as well as by the Apex Court, it is seen that ordinarily the power of judicial review of in respect of Disciplinary Proceedings is limited to examine whether any violation of natural justice has taken place, the procedure prescribed by the Rules have been followed and whether the conclusions arrived at has been supported by atleast some evidence

**35.** In the facts of the present case, from a bare perusal of the show cause notice, it is evident that while the authority initiated the proceedings asking the petitioner to show cause as to why punishments prescribed under Clause (i) to (iii) of Rule 7 of the Rules should not be imposed, the final order passed by the Disciplinary Authority and which is impugned in the present proceedings reveals that the Disciplinary Authority passed the order imposing the punishment of removal from service which is not included in any of the punishment prescribed under Rule 7(i) to to Rule 7(iii). In other words, the punishment imposed is from Rule 7(iv) to Rule 7(vii). The show cause notice was issued to the petitioner to show cause in respect of a punishment proposed to be imposed on the petitioner which is contemplated as minor punishment under Rule 9(xi) of the said Rules



whereas the impugned order dated 03.10.2017 which was passed by the Disciplinary Authority is imposed the punishment of dismissal from service which is a major penalty as prescribed under Rule 9(x) of the said Rules. As such on the fact of it, it appears that the order imposing punishment was imposed without following the procedure prescribed under the Discipline and Appeal Rule, 1964. There is no order or communication pointed out to the Court by the respondents or is available in the pleadings which show that the initial show cause notice was subsequently amended to impose major penalties and an opportunity to show cause was given to the petitioner. That apart, no enquiry report has been placed before this Court. It is the consistent plea of the petitioner that no enquiry report was served on the petitioner. The law in respect of the consequences that will entail upon non-furnishing of an enquiry report on the delinquent personnel is well established and is elucidated in *Managing Director, ECIL, Hyderabad Vs. B. Karunakar*, reported in *1994 Supp (2) SCC 391* and several subsequent judgments where the view expressed in *Managing Director, ECIL (Supra)* has been followed consistently. Under such circumstances, it is per se evident that the Disciplinary Proceedings conducted by the respondent authorities is totally contrary not only to the laws of natural justice but to the procedure prescribed under the Discipline



and Appeal Rules. Under such circumstances, the disciplinary proceedings cannot be held to have been conducted in terms of the procedure prescribed under the Rules of 1964 and therefore is held to be bad in law and not sustainable. The order of dismissal from service is therefore consequently held to be also bad in law. Ordinarily if the enquiry report is not served on the delinquent personnel, the matter could have been remanded back to the department to continue afresh after serving copy of the enquiry report. However, in the peculiar facts of this case, where the entire procedure prescribed under the Discipline and Appeal Rules have been flouted, it has to be held that no enquiry as contemplated under the Discipline and Appeal Rules was conducted and therefore, it will not serve any purpose to remand the matter back for continuing with the enquiry after service of the enquiry report to the petitioner.

**36.** Having carefully perused the provisions of the Rules of 1964 as well as the pleadings on record, it is seen that for a major penalty to be inflicted like termination from service, the provisions prescribed under Rule 9 must be mandatorily followed. In the facts of the present proceedings, the petitioner was put to notice by the show cause notice issued by the department as to why penalties under Clauses I to III of Rules 7 ought not to be inflicted and which are construed to be minor penalties under Rule 11





of the 1964. However, subsequently, by the impugned order dated 03.10.2017, the petitioner was terminated and which is shown as a major penalty under clauses IV to VII of Rule 7 of the Rules of 1964. For imposition of such major penalties, the procedure prescribed under the Rules of 1964 is well defined. The affidavit filed by the Director of Higher Education had referred to some enquiry being conducted by the Department with an Enquiry Officer. However, no such enquiry report etc has been furnished before the Court even along with the pleadings filed.

**37.** Under such circumstances, this Court is of the considered view that the manner in which the termination of the petitioner was effected is completely opposed and contrary to the provisions prescribed under the Rules of 1964. Besides the fact that the show cause notice was issued requiring the petitioner to show cause as to why the penalties under Clauses I to III of Rule 7 which are minor penalties in nature ought not to be imposed, the authority upon consideration of the show cause reply instead imposed the major penalties prescribed under Clause IV to Clause VII of Rule 7 of the Rules of 1964.

**38.** In so far as the objections raised by the respondents that there is a statutory remedy prescribed under the statute and that the petitioner ought to have been relegated to prefer an appeal before the appellate



authority, the same cannot be accepted inasmuch as the entire proceedings which was conducted against the petitioner being contrary to the basic principles of natural justice as well as to the procedure prescribed under the Discipline and Appeal Rules, no fruitful purpose will be served by relegating the petitioner to prefer an appeal before the statutory appellate authority prescribed under the Discipline and Appeal Rules, 1964. Where the Court has concluded that the entire proceedings have been conducted in violation of natural justice as well as to the procedure prescribed under Rules of 1964, the bar of alternative remedy will not preclude the writ Court from interfering with such proceedings. Reference in this regard may be made to the *Commissioner of Income Tax Vs. Chhabil Dass Agarwal*, reported in *2014(1) SCC 603*.

**39.** The impugned order dated 03.10.2017 will have to be held to be bad in law and the same calls for interference by this Court. Although it is seen from the pleadings that the department conducted some enquiry, no enquiry report was served upon the petitioner or produce before the Court even pleadings being filed on behalf of the department or by the college. The college authority have maintained their stand that they have offered all help including release of his regular salary only on humanitarian ground. Such averment in the pleadings revealed that the college authorities do not



dispute the submissions of the learned counsel for the petitioner that he was suffering from severe ailments and which required long term medical care and hospitalization. If that be so then the petitioner ought to have been suitably put to notice and proper enquiry ought to have been initiated before the resolution was adopted by the college authorities leading to termination of the petitioner. At the cost of repetition, it is stated that the petitioner was not a temporary employment or in contractual employment. The petitioner was regularized in service and therefore, where the department and the college authorities have proceed against him in terms of the provisions of the Rules of 1964, there is no scope for conducting the procedure prescribed under the Rules of 1964 in a perfunctory manner. The procedure prescribed must be rigorously followed by the department as it entails civil consequences.

**40.** In view of such discussions, as held above, the impugned order dated 03.10.2017 is interfered with and set aside. The department may proceed with the enquiry on the basis of the show-cause notice if they are unsatisfied with the replies given by the petitioner though his show cause reply. In such an event, the department will have to initiate departmental proceedings as per the procedure prescribed under the Rules of 1964 and pass such order as deemed fit and proper. In view of the interference of



the impugned termination order dated 03.10.2017 the petitioner will be entitled to be reinstated in his post as bearer (Mali) under the LCB College, Maligaon

**41.** In so far as the arrear pay and back-wages are concerned , the petitioner is entitled to back wages and arrear pay till the date of his termination.

**42.** The enquiry if proceeded against the petitioner by the department shall be completed within a period of 3 months from the date of receipt of the certified copy of this order

**43.** The writ petition stands allowed in terms of the above, no order as to costs.

**JUDGE**

**Comparing Assistant**