2024:DHC:2450

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 13.03.2024
Judgment pronounced on: 28.03.2024

\+ W.P.(C) 12834/2005 & CM APPL. 9634/2005

DR. RANGANATHA NANDYAL ....Petitioner

Versus

I.G.N.O.U. & ORS. .....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Sanjoy Ghose, Senior Advocate with Ms. Uri Mohan and Mr. Rohan Mandal, Advocates

For the Respondent : Mr. Aly Mirza, Advocate

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. The present petition has been filed under Article 226 of the Constitution of India, 1950 seeking, *inter alia*, the following prayers:

> *"A. Issue a Writ in the nature of Certiorari, or any other appropriate Writ, Order or Direction, quashing and setting aside the impugned order dated 25.07.2005 issued by the Respondent No.3*

B. Issue an appropriate Writ, Order or Direction directing that the Petitioner be restored to the post of Reader in English at the Indira Gandhi National Open University, Delhi, with all benefits and dues, without any loss of seniority or eligibility for consideration for further promotion.

C. Pass an order awarding costs of this Petition to the Petitioner and against the Respondents

D. Pass such other orders as may be appropriate in the facts and circumstances of the case."

2. It is the case of the petitioner that in March 1987, the petitioner was appointed as a Lecturer at the respondent University, and was promoted to the post of Reader with effect from 24.10.1991.

3. As per the procedure followed by the respondent university, its academic employees are asked to prepare the course modules for distribution to the students of the university. It is the case of the petitioner that he had been asked to take the responsibility of preparing a part of the course module for the M.A. in English Literature dealing with Australian Literature, titled *"Jessica Anderson: Tirra Lirra by the River",* to be distributed for the M.A. course of 2001-2002, and was asked to take on the role of the Course Coordinator (without any extra remuneration).

4. Thereafter, the petitioner completed the coordination of the contents of the said module and submitted the same to the English Department of the School of Social Humanities of the respondent University.

5. It is the case of the petitioner that after approval by the Director

of School of Humanities, the material prepared by the petitioner was printed by the respondent University and thereafter, disseminated to the students of the University.

6. The Petitioner received a letter dated 05.07.2002, issued by the Chief Vigilance Officer of the respondent University in which it was stated that it had been brought to its notice that the petitioner had indulged in the act of plagiarism in preparation of the module. The petitioner was further asked to give his comments on the issue within a period of 15 days from the receipt of the said letter.

7. It is the case of the petitioner that *vide* letter 19.07.2002, the petitioner sent his reply to the aforesaid letter. In the said reply, the petitioner pointed out that the issue of plagiarism is of an academic nature rather than of a pecuniary nature and would not come under the definition of *"misconduct",* which term, in any case, was not defined in the Statutes or the Ordinances of the respondent University. The petitioner while denying the allegations made against him also pointed out that the module prepared by the petitioner did not claim original authorship of the module. It was also pointed out by the petitioner that the material in respect of which plagiarism was alleged was not reproduced verbatim and that the petitioner had used his independent skill, labour and discretion in preparing the module. The petitioner therefore took the stand that the letter from the Chief Vigilance Officer of the respondent University was without authority.

8. On 24.07.2002, the petitioner was sent another letter asking for

clarifications in the reply made by him. In reply to the said letter, the petitioner *vide* letter dated 02.08.2002 raised the issue of the Chief Vigilance Officer's authority to call for the comments of the petitioner on the charge of plagiarism. The petitioner also pointed out that he was being selectively targeted and harassed.

9. It is the case of the petitioner that the Chief Vigilance Officer, instead of responding to the legitimate queries raised by the petitioner, *vide* letter dated 19.08.2002, decided to interpret the queries of petitioner as non-cooperation.

10. Thereafter, on 05.11.2002, the petitioner applied for leave to take up an assignment at Tiaz University, Republic of Yemen, which was initially refused, but eventually granted by the respondent University on 03.01.2003.

11. It is the case of the petitioner that sometime in the second half of October 2003, while the petitioner was in Yemen, he received a Memorandum dated 17.09.2003 issued by the respondent no.3/Vice Chancellor of the respondent University. In the said Memorandum, the petitioner was informed that an enquiry was proposed to be held against him.

12. The statement of Article of Charge framed against the petitioner is reproduced hereunder:

> *"Dr. Ranganath Nadyal, while working as Reader in English in the School of Humanities in the University, had committed an act of gross misconduct in violating the Copyright Act, 1957 and International Copyright Order, 1999 by copying the text material, verbatim, for Unit Nos. 2, 3 and 4 of Block 7b of IGNOU study*

material MEG-09 (Australian Literature) from the text books titled "A Study Guide to Jessica Anderson's 'Tirra Lirra by the River'" by Valerie McRoberts, and "Narrative in the Mirror: Jessica Anderson, Tirra Lirra by the River" by Wenche Ommundsen and Ron Vowles (A chapter in the book entitled "Mapping the Narrative Territory" published by Deakin University).

By indulging in an act of plagiarism for preparation of course material, Dr. Ranganath Nandyal, conducted himself in a manner unbecoming of a teacher of the University."

13. Eventually, after completion of the assignment in Yemen, the petitioner returned to India in January 2004, and joined back at the respondent University on 30.01.2004.

14. Sometime in February, 2004, the names of the Presenting Officer and the Inquiry Officer were intimated to the petitioner by the Academic Co-ordination Division of the respondent University. The actual inquiry commenced in April, 2004. On the basis of evidences and documents, the Inquiry Officer prepared and submitted his Report dated 12.08.2004 to the respondent no.3.

15. It is the case of the petitioner that the said Report states that the Inquiry Officer received a copy of the written submissions of the petitioner on 11.08.2004, i.e., a day before the Inquiry Officer wrote his comprehensive Report of 25 pages, a clear pointer to the fact that the Report had been prepared before hand, without taking into consideration the written submissions of the petitioner.

16. Thereafter, the respondent no. 4/Inquiry Officer, *vide* his letter dated 29.11.2004, forwarded a copy of his Report to the petitioner,

inviting the written submissions of the petitioner to the said Report. The petitioner thereafter submitted his response *vide* his letter dated 12.01.2005.

17. The case of the Petitioner was placed before the respondent no.2/ the Board of Management of respondent University for consideration on 23.07.2005, and the impugned order came to be passed on 25.07.2005, issued by the respondent no. 3, under the authority of the respondent no. l, whereby the petitioner had been removed from service as a Reader of the respondent University.

CONTENTIONS OF THE PETITIONER:-

18. Mr. Sanjoy Ghose, learned senior counsel at the outset submits that the only controversy to be decided is as to whether in the circumstances of the case, the punishment of dismissal from service is proportionate to the allegations proved in the inquiry proceedings. In other words, learned senior counsel restricts his arguments and relief only to the doctrine of disproportionality of punishment.

19. Learned senior counsel submits that the charge of plagiarism, even if admitted to be proved against the petitioner, the punishment imposed is harsh and disproportionate in the facts of the case. More so, in view of the fact that in similar circumstances, another similarly situated employee was let off with a mere warning for the similar or identical charge of plagiarism.

20. Learned senior counsel submits that it is an admitted fact that there was neither any complainant nor any complaint received by the

respondent in respect of the allegation of plagiarism against the petitioner. Meaning thereby, no one was hurt, cheated or deceived by the action of the petitioner. Infact, according to learned senior counsel, the respondent did not even find out as to whether the study material wherefrom the petitioner is alleged to have plagiarised, has any copyright at all. He submits that the petitioner was entrusted with preparing only the course material for which the petitioner, like similarly situated teachers of the respondent University, gathered materials from various sources and created course content.

21. Mr. Ghose, learned senior counsel further submits that the respondents were unable to establish the first imputation under the Articles of Charge regarding violation of Copyright Act, 1957 or International Copyright Order, 1999 and even the Inquiry Officer has categorically observed so. In order to support this submission, learned senior counsel read the relevant portions of the Inquiry Report. On this basis, learned senior counsel submits that when the said charge was not established, the charge of plagiarism also should fail.

22. So far as the second imputation under the Articles of Charge in respect of plagiarism is concerned, Mr. Ghose submits that the Inquiry Officer in his Report has recorded that the same was established by the respondent. According to the learned senior counsel, the penultimate paragraph of the Inquiry Report discloses that the Inquiry Officer was himself unsure as to whether "*plagiarism*" would fall within "*misconduct*" since the respondent

themselves admittedly stated that the said word was not defined in the Rules or Regulations of the IGNOU. He submits that the Inquiry Officer was also unsure as to whether the CCS (CCA) Rules, 1972 would be applicable to the disciplinary proceedings being conducted by him. Yet, the Inquiry Officer observed that the act of plagiarism has been established and would be unbecoming of a University teacher *"in the wider context*". According to learned senior counsel, the conclusions are in the nature of conjecture and surmise and cannot be sustained, much less relied upon by the Disciplinary Authority to impose the impugned punishment.

23. Learned senior counsel next strenuously contended the issue of disproportionality of the punishment and compared the alleged misconduct leveled against the petitioner with another teacher, namely, Dr. Kulshrestha. According to learned senior counsel, a written complaint was infact submitted against the said Dr. Kulshrestha for committing acts of plagiarism in respect of the course content and adopting some portions of Tax from the SOMS (School of Management Sciences) titled "Value Engineering Topic" authored by one Dr. H.V. Bhasin, Associate Professor, NITIE and incorporating the same into the study material for the Unit of Engineering Programmes. As against this, after similar procedure was followed in the case of Dr. Kulshrestha, though the finding rendered was that he had plagiarized, yet he was let off with a warning by the Competent Authority.

24. Learned senior counsel points out that this action was defended by the respondent University by filing an additional affidavit attempting to explain the discrimination in the treatment. By inviting attention of this Court to the relevant portions of the additional affidavit of the respondent, learned senior counsel submits that the defence of the respondent is twofold, one, that the plagiarism is of University's own copyrighted material and; two, that the said teacher committed such acts with respect to smaller portions in comparison. This, according to learned senior counsel, cannot be sustainable in law. In that, according to learned senior counsel, plagiarism is plagiarism, and there cannot be any question as to whether the same has been committed of the University's own copyright material or the quantum of the material plagiarized.

25. Learned senior counsel submits that in the present case, there was neither any complaint made nor any complainant and thus, is on a better footing than that of Dr. Kulshrestha's case. In fact, it was the Task Group (Academic Coordination) which gave an alleged "oral complaint" upon which the disciplinary proceedings were initiated after inquiry. He submits that the petitioner has not claimed to have published a research paper or a book which would attract either the allegation of copyright violation or plagiarism. In fact, learned senior counsel was at pains to demonstrate that the petitioner had only prepared course content for dissemination amongst the students of the University and not for sale etc. This, the petitioner had carried out

genuinely by gathering relevant material from all available sources. He submits that the Inquiry Officer as well as the Disciplinary Authority had very conveniently overlooked the acknowledgements given to the original authors in the initial chapters/units of the course material. In any case, the emphasis of learned senior counsel was only on the issue of parity and similar treatment to the petitioner as was given to Dr. Kulshrestha.

26. Learned senior counsel invites attention to the Report of the Committee which was considering the case of Dr. Kulshrestha dated 16.08.2004 to buttress his argument of parity and consequent issue of proportionality of punishment. In that, if another employee, in identical circumstances, has been imposed a punishment of warning only, why should the petitioner be discriminated against on almost identical charges. He submits that the petitioner had no *malafide* intention at all. Learned senior counsel categorically submits that out of 40 modules created by the petitioner, it is only in respect of one module that such allegations have been leveled against the petitioner. It is submitted that the petitioner had been employed with the respondent for last 14 years before the charge sheet was issued, and has an impeccable record without any blemish. In such situation, learned senior counsel submits that it would be unfair to treat the petitioner with imposition of punishment of dismissal from service, particularly in view of the treatment meted out to Dr. Kulshrestha. Learned senior counsel relies upon the judgement of the Supreme

Court in ***Naresh Chandra Bhardwaj vs. Bank of India & Ors.*** reported in **2019 (15) SCC 786**.

27. Learned senior counsel prays that the impugned order dated 25.07.2005 of the Disciplinary Authority and the chargesheet be quashed and set aside or at least the punishment be reduced to the extent done in the case of Dr. Kulshrestha.

CONTENTIONS OF THE RESPONDENT UNIVERSITY:-

28. At the outset, Mr. Aly Mirza, learned Standing Counsel for the respondent-University objected to the very maintainability of the present writ petition. He elaborates the same by referring to the fact that against the impugned order of the Disciplinary Authority, a Statutory Appeal is provided in the University Act to the Visitor (the President of India) or a nominee appointed in this regard. As such, he submits that unless the statutory remedy is exhausted, the present writ petition under Article 226 of the Constitution of India, 1950 would not lie. Further, learned counsel refers to the rejoinder of the petitioner wherein no clarification or rejoinder to this contention of the respondent has been laid. On that basis, learned counsel submits that the present petition be dismissed with exemplary costs for abusing the process of this Court.

29. Next, learned counsel refers to Rules 23 and 24 of the CCS (CCA) Rules 1972 read with Section 8 (2) of the IGNOU Act, 1985 which stipulate the powers of the Visitor, to urge that the petitioner, not having exhausted the Appellate remedy, is precluded from

challenging the impugned order passed by the Disciplinary Authority by this writ petition.

30. So far as the argument of the petitioner regarding applicability of CCS (CCA) Rules is concerned, Mr. Mirza draws attention of this Court to the Board Resolution of the year 1991 by virtue whereof, the respondent University had specifically adopted the CCS (CCA) Rules. The said Board Resolution was taken note of by this Court in its judgement dated 25.09.2006 in another writ petition bearing W.P.(C) No.1578/2006 captioned ***Dr. P. R. Ramanujam vs. Indira Gandhi National Open University and Prof. H. P. Dikshit*** reported as **2006 VIII AD (Delhi) 194**. In order to drive the point home, learned counsel refers to the counter affidavit of the respondent to submit that a specific reference has been made to the adoption of CCS (CCA) Rules by virtue of the said Resolution to which there is no opposition. Thus, according to learned counsel, the writ petition is not maintainable at all.

31. Learned counsel next submits that even if the word "*plagiarism*" is not specified in the Act as "*misconduct*", but that by itself would not take the act of plagiarism out of misconduct committed by the petitioner. He submits that in a University, such acts by the Teachers would amount to misconduct even if the same is not defined or included under the rules and the University could rely upon the dictionary meaning if required. For this proposition, he relies upon the judgement of learned Division Bench of this Court in

Chukhan Singh vs. Govt of NCT of Delhi & Anr. reported in **2009 SCC OnLine Del 2556**. According to the learned counsel, any act unbecoming of a Teacher would amount to misconduct which can be taken note of and proceeded with in a disciplinary proceeding. In any case, according to the learned counsel, plagiarism cannot be an act which is in consonance with the conduct of a Teacher of the University, and as such, would be misconduct.

32. In regard to the issue of parity with the case of Dr. Kulshrestha is concerned, learned counsel submits that there is no similarity between the two. For this purpose, learned counsel had referred to the Report of the Committee dated 16.08.2004 in regard to Dr. Kulshrestha's case. According to learned counsel, this case differs substantially from that of the present petitioner. In that, Dr. Kulshrestha had copied material from the source which was under the copyright of the respondent University itself; and two, the Outsiders Committee which had generated the report itself recommended that the act of Dr. Kulshrestha was not *malafide* and he could be issued an advice to be careful in future. Following the Outsiders Committee's recommendation, the University had issued a warning to Dr. Kulshrestha and did not impose any major penalty. Whereas, according to learned counsel, the petitioner had plagiarized from material which was copyrighted outside the country without giving acknowledgements as is the natural process and kept insisting that it was genuinely his own content creation. That apart, the Inquiry

Officer found that the petitioner had infact plagiarized the contents. Learned counsel further submits that the petitioner had copied *ad verbatim* large portions from the source, which act itself was plagiarism. Thus, the case of the petitioner is not on parity or similar to that of the other employee.

33. Mr. Mirza painstakingly read through the contents of the Outsiders Committee in the present case to submit that the said Committee had carefully and minutely scrutinized the whole material before them and concluded that the petitioner had plagiarized large portions, which was unbecoming of a Teacher of the University. Thus, the respondents had proceeded in accordance with law and regulations in that regard which have not been challenged by the petitioner.

34. That apart, learned counsel invited attention of this Court to two letters issued by the Professor of English dated 25.09.2001 and 06.11.2001 to submit that upon a query as to whether necessary copyright permissions have been obtained, the petitioner by the letter dated 29.11.2001 had insisted that his compilations were genuine.

35. For the purposes of proportionality of punishment, learned counsel relies upon the judgement of the learned Division bench of this Court in ***Dr. Deepak Kem vs. Jamia Milia Islamia University & Ors.*** reported in **2012 SCC OnLine Del 1986** to submit that in a similar case, this Court had categorically held that such act of plagiarism was inexcusable and merited dismissal from service. Thus,

according to learned counsel, the petition deserves dismissal even on merits with exemplary costs.

REJOINDER OF PETITIONER:-

36. Mr. Ghose, learned senior counsel attempted to distinguish the judgement of the learned Division Bench in the case of ***Dr. Deepak Kem*** *(supra)* by submitting that the same was a case where the petitioner therein had infact published a Book which was available to the world at large whereas the petitioner had only compiled the relevant material for private/internal use of the University students and thus, would not be applicable to the present case.

37. He also submits that despite the recommendation of the Committee in Dr. Kulshrestha's case, no guidelines regarding how the respondent is to treat or deal with any alleged acts of plagiarism have been formulated till date, leaving the arena open ended, rendering actions of authorities susceptible to unilateral and arbitrary misuse.

CONCLUSION AND ANALYSIS:-

38. This Court has heard the arguments of Mr. Ghose, learned senior counsel and Mr. Mirza, learned Standing Counsel for the respondent University, perused the material on record and considered the judgements relied upon by the parties.

39. Before adverting to the arguments addressed by the counsel for the parties, it would be apposite for this Court to extract hereunder the operative portions of the Inquiry Report, based whereon, the disciplinary proceedings were initiated and the impugned order

passed:-

> *"23. Having said as above and after going through the above evidence on record relating to alleged infringement of Copyright Act, I would make the following observation:-*
>
> *a). There are large number of nuances, situations and propositions made in the Copyright Act. The niceties of these w.r.t. their application to this case are not highlighted by prosecution. No expert on Copyright Act has been cited as a witness by IGNOU nor was any examined in this inquiry. There is not opinion of any legal expert on the record of this inquiry. With due respect, the University Professors examined in this inquiry are admittedly not experts on interpretation of Copyright Act and in fact none of them has given any authoritative and acceptable version on this issue. This is a major drawback in the prosecution case.*
>
> *b). Departmental inquiries are essential fact finding exercises. In this case, by including the charge of violation of Copyright Act in the charge sheet, I am called upon to give a finding on the scrutiny, analysis and interpretation of legislation w.r.t. violation of it in the absence of any analytical evidence and further, this does not fall within the ambit of fact finding inquiry. The task is all the more difficult in the absence of any opinion guidance of any expert. From this point of view, the prosecution has failed to lead evidence.*
>
> *c). To my mind, it would be hazardous for me as Inquiring Authority to give the finding based on my own interpretation on a legal matter which may or may not be correct and which does not fall in my jurisdiction.*
>
> *d). Such an issue of violation of Copyright Act can best be decided by a court of competent jurisdiction and not in the forum of departmental inquiry. In this case, there is no complaint by the Australian author about infringement. The controversy is at best theoretical.*
>
> *e). In an assumed charge of one public servant having indulged in physical harm in a fight with another person, the Inquiry Officer can give his findings on the factual position of charge of fighting but he can not give his finding whether the action infringes on any provisions of law. In this case, I have given the finding that the charge of plagiarism is proved but I cannot give finding whether it infringes on provisions of Copyright Act/Order.*

f). The issue relating to Copyright Act has not been argued before me at all. As discussed above, no evidence was led in the inquiry to prove the charge. The PO is his brief has given his own views on this point. But they are not based on opinion of any expert or any precedent or any case law.

g). I am not in a position to give view in regard to alleged violation of Copyright Act. In fact I have not jurisdiction to give views on it. My finding is restricted to the fact that CO has indulged in plagiarism.

24. Whether the act of plagiarism amounts to misconduct.

It is true that the CO in his letters dated 02.08.2002 at Exb. P9 dated 29.08.2002 at Exb. P-11 to IGNOU desired to know if plagiarism was included as a misconduct as defined in the statutes of IGNOU. The CO also says that IGNOU did not give a reply to him on this point. However, the PO in his letter did dated 05.05.2004 has informed CO that no clear cut definition of the term "misconduct" has been given in the statutes of IGNOU Act. The CO in his brief therefore argues that when the term "misconduct" is not defined, how it can be said that his conduct was unbecoming of a teacher of the University in the context of plagiarism.

25. The charge sheet has been issued in exercise of powers under statute read with Rule 14 of CCS (CCA) Rules 1965 which were adopted by the University. I do not know whether Conduct Rules of Central Govt were also adopted by IGNOU. As full facts and background are not available with me, it would not be appropriate for me to attempt to give a decision on the point. It is for IGNOU authorities to consider it. But all that I will say is that the act of copying and plagiarism which is established in this case would be unbecoming of the university teacher in the wider context.

26. Findings
The charge of copying and plagiarism stands established. The charge of violating Copyright Act and International Copyright Order is one on which I am not in a position to give a view as prosecution has not led evidence and it is not in my jurisdiction for the reasons discussed in this report."

Two things emerge from the above. One, so far as the first imputation under the Articles of Charge regarding violation of Copyright Act, 1957 and International Copyright Order, 1999 is

concerned, the Inquiry Officer has not rendered any finding on facts, being a legal issue according to him; two, though the Inquiry Officer observes that he does not know whether the CCS (CCA) Rules have been adopted by the University as full facts were not placed before him coupled with the fact that "*misconduct*" has not been defined in the Statutes of IGNOU Act, 1985, however, concludes that the act of plagiarism has been established against the petitioner.

40. Keeping in view the above, this Court would now proceed to examine the matter.

41. Mr. Sanjoy Ghose, learned senior counsel appearing for the petitioner restricted his arguments only to parity and similarity of the case of the petitioner with that of Dr. Kulshrestha and the doctrine of disproportionality of punishment.

42. So far as the doctrine of proportionality of punishment in disciplinary cases is concerned, it is no more *res integra* that the same should shock the conscience of the Court or should be at such an extreme end that no prudent person would impose such punishment in view of the facts obtaining in a particular case. In the present case, Mr. Ghose, learned senior counsel was at pains to demonstrate to this Court that the punishment of dismissal was disproportionate not only in view of the facts as obtaining but also since another employee, established to have indulged in identical acts, was imposed with a penalty of a mere "*warning*".

43. To appreciate the above, it would be relevant to consider the

petitioner's case. The petitioner states that in order to create Study material or course content in his subject for further dissemination to the students of the respondent university residing in different and sometimes remote parts of the country, the petitioner had collated the study material from various sources. The topic of study for dissemination was "Australian Literature" for Master of Arts Programme in English (MEG). The allegation was that this text prepared by the petitioner was copied from two books, namely, "*A Study Guide to Jessica Anderson's 'Tirra Lirra by the River*'" by Valerie McRoberts published by Wizard Books Pvt. Ltd., Australia and "*Narrative in the Mirror: Jessica Anderson, Tirra Lirra by the River*" prepared for the Unit Team by Wenche Ommundsen and Ron Vowles (stated to be a Chapter in the book titled "*Mapping the Narrative Territory*") published by Deakin University. Thus, the case of the respondent is rested on the petitioner allegedly indulging in plagiarism of large portions from these sources into the study material prepared for the students of the University which was unethical and unbecoming of a Teacher of the University.

44. So far as the petitioner is concerned, his defence with respect to the second imputation under the Articles of Charge was that the Study Material prepared by him was only for the students of IGNOU for their private use and not for sale in the open market. The purpose being, to disseminate the thoughts, ideas and information on a particular topic in distance education format to students, apart from

making rare information available to students who are residing in far flung and remote areas of the country who may not have easy or any access at all to such information. The petitioner has asserted that the said course content was neither a research paper nor a book published by the petitioner or any other entity to fall foul of the Copyright Act, 1957 or tantamount to plagiarism. Infact, the respondent is stated to have not formulated any guidelines till date on the said issue despite the recommendation of the Committee in Dr. Kulshrestha's case.

45. Since the issue needs examination regarding proportionality of punishment, the merits of whether the petitioner had indeed indulged in plagiarism or to what extent, if at all, need not be looked into.

46. The petitioner has completely relied upon the case of Dr. Kulshrestha to buttress his argument that the same respondent university in an identically placed case had imposed a punishment of "*warning*" and yet in another case, that is the petitioner's, has imposed penalty of dismissal from service. In order to appreciate this contention, it would be pertinent to extract the Committee's Report dated 16.08.2004 in the case of Dr. Kulshrestha which is as under:

> *"**REPORT OF THE COMMITTEE MET ON 16th AUGUST, 2004***
>
> ***TO VERIFY THE COMPLAINT ON PLAGIARISM***
>
> *The Vice-Chancellor has constituted a Committee comprising three outside experts to verify the complaint on plagiarism received against an academic of the University. The Members of the Committee are*
>
> *1. Prof. V. Venkaiah.*
> *Executive Director.*

GRADE,
Bhim Rao Ambedkar Open University,
Hyderabad.

2. Prof. K.G. Sharma.
Head, Civil Engg. Department,
IIT, Hauz Khas,
New Delhi.

3. Prof. J. L. Batra,
34, SFS, Rajouri Apartments,
New Delhi -110064

The above said Committee met on 16th August, 2004 at 4.30 p.m. at Vigilance Cell, Block No.13, Room No.21, IGNOU. Prof. V. Venkaiah and Prof. K.G. Sharma attended the meeting. However, Prof. J.L. Batra could not attend the meeting.

The Committee was provided with the documents/books related to the issue viz., Minutes of the Committee appointed earlier comprising of Dr. Devi singh, Director, MDI, Gurgaon, Sh. Deepak Mukhopadhyay and Prof. J.L. Batra which met on 11th October, 2003, copies of the Study Materials MS-5 (Block 5) and ET -524 / ET 534 (Block - 4) and the explanatory statements made by Dr. Manoj Kulshrestha along with annexure (a copy of the letter written by Dr. Subhasis Maji, SOET, IGNOU to the course writer to use SIMs of Management Programme as base material to develop units in the course on Principles of Engineering Management and Economics) in response to the findings of the first Committee.

The Committee examined the contents of the two IGNOU study materials viz. MS-5 (Value Engineering and Quality Assurance) and ET- 524 / ET -534 (Principles of Engineering Management & Economics and Construction Management - I) and also the explanatory letters (letters dated 26.12.2003 and 2.7.2004) of Dr. Manoj Kulshrestha. The Committee also examined the letter written by Dr. Subhasis Maji, Reader, SOET to the course writer to use SIMs of Management Programme as base material to develop units in the course on Principles of Engineering Management and Economics, which was referred to above.

The Committee after examining the documents/SIMs deliberated the issue at length and noted the following:-

1. It is quite obvious that Dr. Manoj Kulshrestha has used the material in the above said block from the Management Course material referred above.

2. No acknowledgement has been provided about the source of material used by Dr. Manoj Kulshrestha.

3. The Committee took cognizance of the explanation provided by Dr. Manoj Kulshrestha for the circumstances under which the material was used.

Recommendations:-

The committee recommends the following:-

1. *Manoj Kulshreshtha has accepted the fact that he adopted/adapted the course material of SOMS unit, the copyright of which lies with the IGNOU itself. He may be advised to be careful in future so that such lapses should not be repeated without acknowledging appropriately the copyright of the material.*
2. *In the specific circumstances of the case under consideration, the committee observes that there is no malafide intention on the part of Dr. Manoj Kulshreshtha. The committee therefore recommends that he may be exonerated from the charge of plagiarism.*
3. *IGNOU may formulate necessary policy guidelines regarding the copyright procedures, for IGNOU materials and the same may be circulated to all the Faculty Members for future guidance.*
4. *It is suggested that the Block -4 of the course ET-524/ET-534 should have a line acknowledging the source of material used from Block- 5 of MS-5. In the reprinting, the care may be taken that proper credit is acknowledged.*

Sd/- *Sd/-*

Prof. V. Venkaiah *(Prof. K.G. Sharma)"*

A perusal of the said Report brings to fore that the allegation and issue in both the cases appears to be similar if not identical. It is also clear that the Committee opined that the act appears to be

genuine and accordingly advised issuance of a "*warning*". The same appears to have been acted upon by the respondent. Whereas in the petitioner's case, the respondent has for the same "*misconduct*" imposed a major penalty of dismissal.

47. In response to this issue raised by the petitioner, the respondent in its reply dated 11.05.2015 stated as under:

> *4. Be that as it may, it is submitted that the facts of the case pertaining to Dr. Kulshreshth and the petitioner are totally different. In so far as the case of the petitioner is concerned, he has been found to have adopted some portions of the tax from the SOMS Unit (School of Management Sciences) titled "Value Engineering Topic" authoured by Dr. H.V. Bhasin, Associate Prof. NITIE and incorporating the same in the study material of the respondent university for the unit of Engineering Programmes. In so far as the case of Dr. Kulshreshth is concerned, the charge against him was of having copied IGNOU's own study material for which the university had copy right to make / author study material for the units of SOMS. Dr. Kulshreshth did not, at any point of time, by his actions, render the respondent university open to a suit for copyright violation by a third party. At best, the allegations against was of having committed impropriety by using IGNOU's own copyrighted material for coming up with new material.*
>
> *5. Another difference between the case of the petitioner and that of Dr. Kulshreshth is that the quantum of text copied by Dr. Kulshreshth was far less as opposed to in the case of the petitioner alongwith his contributions, Dr. Kulshreshth had included some portions of the unit written by the Dr. Bhasin after putting them in shape. In fact this formed less then one fourth the contents of the SOET Unit."*

From the above, it is manifest that the respondent has tried to downplay the identical act of Dr. Kulshrestha on two grounds. One, that Dr. Kulshrestha copied some portions of tax from the School of Management Sciences authored by one Dr. H.V. Bhasin, Associate

Professor, NITIE for which the respondent University had the copyrights and as such, his actions did not render the University at any point of time open to a suit of copyright violation; and two, that the quantum of work copied by Dr. Kulshrestha was far less than that done by the petitioner.

48. In the considered view of this Court, the aforesaid explanation is flawed and untenable in law. This is for the reason that plagiarism by any stretch of imagination would remain plagiarism, irrespective of where the material has been copied from and the quantum of such material copied would not have any bearing or impact on the alleged misconduct of plagiarism itself. The mere fact that one employee committed acts of plagiarism from books or material upon which the respondent itself had copyright of or small quantum of such act would be wholly irrelevant to the issue of plagiarism itself. Viewed from this angle, the explanation offered by the respondent is unjust and unfair and is rejected by this Court. In other words, what the respondent proposes is that a person accused of theft of a lesser amount from his own employer ought to be considered leniently in comparison to another employee who commits theft of a larger amount. Theft would remain theft, irrespective of the quantum or place of occurrence.

49. In support of the above, this Court draws strength from the judgement of the Supreme Court in ***Naresh Chandra Bhardwaj's*** case (*supra*) which reiterates that the Courts ordinarily would not interfere in the punishment imposed unless the same is grossly

disproportionate or shocks the conscience of the Court. In particular, the observations in paras 5 and 6 of the said judgement would be applicable to the present case. The same are extracted hereunder:

> *"5. It is trite to say that the domain of the courts on the issue of quantum of punishment is very limited. It is the disciplinary authority or the appellate authority, which decides the nature of punishment keeping in mind the seriousness of the misconduct committed. This would not imply that if the punishment is so disproportionate that it shocks the conscience of the court the courts are denuded of the authority to interfere with the same. Normally even in such cases it may be appropriate to remit the matter back for consideration by the disciplinary/appellate authority. However, one other cause for interference can be where the plea raised is of parity in punishment but then the prerequisite would be that the parity has to be in the nature of charges made and held against the delinquent employee and the conduct of the employee post the incident. It is the latter aspect which is sought to be advanced by the learned counsel for the appellant by relying upon the judgment in Rajendra Yadav v. State of M.P., (2013) 3 SCC 73. On this very aspect the learned counsel for the respondents drew out attention to a subsequent judgment in Lucknow Kshetriya Gramin Bank v. Rajendra Singh, (2013) 12 SCC 372 which had taken note of the earlier judgment referred to aforesaid.*
>
> *6. There is really no difference in the proposition, which is sought to be propounded except that in the latter judgment the principles have been succinctly summarised in the last paragraph of the judgment, which read as under:*
> *"19. The principles discussed above can be summed up and summarised as follows:*
> *19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.*
> *19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.*
> *19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the*

court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable."

(emphasis supplied)"

Though in the above judgement, the issue of parity was in respect of co-delinquents, however, the ratio laid down with respect to proportionality on the basis of parity/similarity in charges leveled would, in the opinion of this Court, be applicable to the present facts too. The fact that in the present case, two teachers of the same university for identical allegations have been imposed two different punishments, in that "*warning*" in one case and "*dismissal from service*" in the other is, to say the least, shocking to the conscience of this Court. This Court is fortified in its view by the judgement of the Supreme Court in ***Life Insurance Corporation of India & Ors. Vs. Triveni Sharan Mishra*** reported in **(2014) 10 SCC 346**.

50. In view of the above, this Court is of the considered opinion that the petitioner has been able to show disproportionality in punishment imposed upon him.

51. So far as the issue of lack of jurisdiction for entertaining the present writ petition is concerned, Mr. Mirza had relied upon sub-section (2) of Section 8 of the IGNOU Act, 1985 to submit that it provides for a Statutory Appeal against the orders of the Disciplinary Authority which the petitioner failed to avail of. In order to appreciate the said submission, it is felt necessary to quote Section 8 of the IGNOU Act, 1985 which is as under:

> *"8. (1) The President of India shall be the Visitor of the University.*
>
> *(2) Subject to the provisions of sub-sections (3) and (4), the Visitor shall have the right to cause an inspection to be made, by such person or persons as he may direct, of the University, its buildings, laboratories and equipment, and of any College, Regional Centre, a Study Centre and also of the examination, instruction and other work conducted or done by the University, and to cause an inquiry to be made in like manner in respect of any matter connected with the administration and finances of the University.*
>
> *(3) The Visitor shall, in every case, give notice to the University of his intention to cause an inspection or inquire to be made and the University shall, on receipt of such notice, have the right to make, within thirty days from the date of receipt of the notice or such other period as the Visitor may determine, such representations to him as it may consider necessary.*
>
> *(4) After considering the representations, if any, made by the University, the Visitor may cause to be made such inspection or inquiry as is referred to in sub-section (2).*
>
> *(5) Where an inspection or inquiry has been caused to be made by the Visitor, the University shall be entitled to appoint a representative who shall have the right to appear in person and to be heard on such*

inspection or inquiry.

(6) The Visitor may address the Vice-Chancellor with reference to the results of such inspection or inquiry together with such views and advice with regard to the action to be taken thereon as the Visitor may be pleased to officer and on receipt of the address made by the Visitor, the Vice-Chancellor shall communicate forthwith to the Board of Management the results of the inspection or inquiry and the views of the Visitor and the advice tendered by him upon the action to be taken thereon.

(7) The Board of Management shall communicate through the Vice-Chancellor to the Visitor such action, if any, as it proposes to take or has been taken by it upon the results of such inspection or inquiry.

(8) Where the Board of Management does not within a reasonable time, take action to the satisfaction of the Visitor, the Visitor may, after considering any explanation furnished or representation made by the Board of Management, issue such directions as he may think fit and the Board of Management shall be bound to comply with such directions.

(9) Without prejudice to the foregoing provisions of this section, the Visitor may, by an order in writing, annual any proceedings of the University which is not in conformity with this Act, the Statutes or the Ordinances. Provided that before making any such order, he shall call upon the University to show cause why such an order should not be made and, if any cause is shown within a reasonable time, he shall consider the same.

(10) The Visitor shall have such other powers as may be specified by the Statutes."

The language employed in sub-section (2) of Section 8 of the IGNOU Act, 1985 does not clearly stipulate that an employee has a Statutory Appeal available to challenge the order passed by the Disciplinary Authority. The language to the mind of this Court is not couched in a manner so as to clothe it with the necessary concomitants to conclude that the said provisions stipulate a Statutory

Appeal against the Disciplinary Authority's order in disciplinary matters. The language makes it clear that the Visitor has powers which can be exercised also in administrative and financial matters of the University. Other than that, no specific or particular power has been bestowed upon the Visitor as a statutory Appellate Authority to the Disciplinary Authority in matters of disciplinary proceedings involving employees of the University. It may be a different matter that the Visitor or his nominee may be treated as an Appellate Authority, however, no material to reach or differ from such view has been placed on record by the respondent University.

52. In that view of the above analysis, this Court is of the considered opinion that a petition under Article 226 of the Constitution of India, 1950 is not completely barred. Since this Court has not examined the matter on merits or on findings of the Inquiry Officer, the judgements relied upon by the respondent need not be examined in detail.

53. Keeping in view the above observations and analysis, this Court is of the considered opinion that the present petition calls for remand to the Disciplinary Authority (Board of Management of the respondent University) for *de novo* consideration only in respect of the proportionality of punishment imposed, keeping in view the similar case of Dr. Kulshrestha and for passing a suitable order thereon. An opportunity of hearing may be granted to the petitioner to the aforesaid extent only. The said exercise be carried out within a

period of 8 weeks from today. Needless to state that the order passed thereon be furnished to the petitioner within 1 week thereafter.

54. The present writ petition is allowed in part with the aforesaid limited directions with no order as to costs.

TUSHAR RAO GEDELA, J.

MARCH 28, 2024/rl