(1994) 09 CAL CK 0001

Calcutta High Court

Case No: None

Probodh Kumar Bhowmick		APPELLANT
	Vs	
University of Calcutta and Others Dilara Begum Vs State of West Bengal		RESPONDENT

Date of Decision: Sept. 26, 1994

Acts Referred:

- Bengal General Clauses Act, 1899 - Section 17
- Calcutta University Act, 1979 - Section 2(23), 22, 51, 52, 53
- Central Civil Services (Conduct) Rules, 1964 - Rule 3(1), 4, 4(1)
- Civil Services (Classification, Control and Appeal) Rules - Rule 49
- Constitution of India, 1950 - Article 14, 141, 226

Citation: (1994) 2 CompLJ 456

Hon'ble Judges: Satyabrata Sinha, J

Bench: Single Bench

Advocate: Saktinath Mukherjee, for the Appellant; Sadhan Roychowdhury and N.C. Roychowdhury, for the Respondent

Judgement

Satyabrata Sinha, J.

Probodh Kumar Bhowmick filed a writ application on the Original Side of this Court questioning the order of suspension dated 8.7.04 being Annexure ''I'' to the writ petition, as also a disciplinary proceedings initiated against him.

2. Dilara Begum, the petitioner in her application filed on the Appellate Side of this Court, had, inter alia prayed for a direction upon the respondents to produce her answer scripts in connection with her Part-II M. Sc. Examination in Anthropology for their re-examination as also for a direction upon Sri P.K. Bhowmick, Atul Bhowmick; Smt. Ranjana Roy, Sri Goutam Sarkar to pay compensation to her.

3. The short facts, leading to the applications, are as follows:

The petitioner, Probodh Kumar Bhowmick, (hereinafter referred to as the petitioner has been a Professor of Anthropology of the Calcutta University from 1976. He is to superannuate on 30th September, 1944. On 20th May, 1994 he received a notice issued by the Advocate on Record of Dilara Begum enclosing therewith a copy of the application under Article 226 of the Constitution of India. On 31st May, 1994, the Secretary West Bengal Legislative Assembly asked the petitioner to submit an explanation in writing relating to an alleged scurrilous remark made by him against one Dr. Motahar Hossain, M.L.A, father of Dilara Begum and also in respect of an alleged exercise of unlawful influence by the petitioner on Atul Bhowmick in respect of Anthropology Part-II Papers of the said Dilara Begum in relation to examination held in 1993. Pursuant to the said letter, the petitioner submitted a reply stating that he had not issued any such letter. No action thereafter appears to have been taken against the petitioner in the matter. On or about 3rd June, 1991 the University of Calcutta however, constituted a Committee Allegedly, the petitioner did not receive any notice in relation thereto but on 6.6.94 one Professor A.B. Banerjee, Dean of Faculty of Science, Calcutta University, requested the petitioner to appear before it and pursuant thereto the petitioner appeared before the Committee. He allegedly was furnished with a typed question, which was answered by him. The petitioner denied that he was the author of the letter in question but stated that the signature appearing therein seemed to be his. According to the petitioner he used to leave signed blank letter-heads with others and one of such blank signed letter-heads might have been used therefor. The Committee held its meeting on 10.6.94, 15 6 94, 20.6.94 and 23.6.94 on which dates the deposition of other witnesses were taken. The said Committee submitted a report on or about 8.7.94. The petitioner received an order of suspension as well as a letter intimating that a disciplinary proceeding has been initiated against him wherewith the charge-sheet and several documents including the report of the Committee was enclosed.

4. Mr. Saktinath Mukherjee, the learned Counsel appearing on behalf of the petitioner has principally raised two contentions in support of this application. The Learned Counsel, firstly, took me through the said report dated 8.7.1994 and submitted that the impugned orders being based on the findings of the Enquiry Committee are perverse. The Learned Counsel also submitted that no prima facie case warranting disciplinary action as against the petitioner has been found by the said Committee and in that view of the matter the order of suspension must be held to be illegal. Further contention of the petitioner is that the Syndicate has no power to suspend or initiate any disciplinary proceedings as against the petitioner in view of the fact that no Ordinance or Statute has been made by the Calcutta University in terms of Section 22(x) of the Calcutta University Act, (hereinafter referred to as the said Act). According to the Learned Counsel as misconduct in relation to the teachers has not been defined, the proceeding initiated against him must be held to be without and or in excess of jurisdiction and consequently the order of suspension

which has been passed in aid of the departmental proceeding. The said proceeding also the order as suspension. Both the orders are liable to be quashed.

5. Reliance in this connection has been placed by Mr. Mukherjee upon the cases reported in 1984 SC 504 : 1984 SC 1361 and 1985 SC 504. Alternatively, it was submitted that from the findings of the Committee it would appear that the petitioner was at best guilty of carelessness which cannot be said to be a misconduct. Reliance in this connection has been placed in the case reported in State of Punjab and Others Vs. Ram Singh Ex. Constable,

6. Mr. Roychowdhury appearing on behalf of the University and Mr. Kundu appearing on behalf of Dilara Begum. On the other hand, submitted that although no Statute or Ordinance has been fraud pursuant to the provisions of the Calcutta University Act, but keeping in: view the fact that the petitioner has committed a gross misconduct, the University has an inherent right to initiate disciplinary proceeding as against the petitioner as also put him under suspension. The Learned Counsel further submitted that u/s 17 of he Bengal General Clauses Act, power to appoint includes power to dismissal, Syndicate being the appointing authority has the right to put (he petitioner under suspension pending an enquiry

7. The learned Counsel in support of the aforementioned contention relied upon the cases reported in 1970 SC 1494 : 1977 SC 1146 : 1993 SC 1478 : 1964 SC 787 : 1968 SC 292 : 1968 SC page 800 : 1955 Pat 131 : 1972 Pat 393 and 1961 Cal 225.

8. Mr. Roy Chowdhury further submitted that, in any event, as the Syndicate has the power to make an Ordinance, it could also pass the order of suspension and initiate disciplinary proceeding as against the petitioner. It was further submitted that keeping in view the phraseology used in Section 22(ix) of the said Act, the petitioner cannot be permitted to question the order of suspension and initiation of a departmental proceeding as the petitioner was also appointed although no Ordinance has been made under the provision of the said Act.

9. Before proceeding to consider the matter, the relevant provisions of the Calcutta University Act may he noticed. The said Act has been enacted to provide for the re-constitution of the University of Calcutta and for certain matters incidental thereto and connected there with. It is not disputed that a Professor of the University is a ''Teacher'' within the meaning of Section 2(23) of the said Act. Section 22 of the Act defines powers and duties of the Syndicate subject to the provisions of the Act which includes "to appoint Teachers, Officers and employees of the University and to fix their emoluments and define their duties and other terms and conditions of service in accordance subject to the provisions and the Ordinances and to suspend, discharge or otherwise punish in accordance with the Statutes and the Ordinances such Teachers, Officers and employees."

10. Section 51 of the Act provides for the procedure for making the Statutes, whereas Section 52 lays down the procedure for making Ordinances. Clause (d) of

Section 52 provides for the manner in which the appointment of Teachers, Officers and employees of the University, their emoluments, their duties and other terms and conditions of their services and Clause (1) provides for the duties and functions of the Teachers of the University including the Heads of the Departments.

11. Section 53 lays down the procedure as to how to make an Ordinance. The first question which, therefore, arises for consideration in this application is as to whether in absence of any Ordinance the petitioners could have been placed under suspension or any disciplinary proceeding could have been initiated against him. It is not in dispute that the Syndicate, being the appointing authority, is also the competent authority to initiate a disciplinary action as against a teacher as also pass an order of suspension. It, however, appears that the power of Syndicate in that regard is to be exercised ''in accordance with the Statutes and Ordinances''. The words ''in accordance with'' normally mean "harmony", ''agreement'' etc. The said enabling provision applies to almost all the service conditions right from appointment to termination of service. As indicated hereinbefore, it is not in dispute that no such Statute or Ordinance has been made.

12. Mr. Mukherjee submitted that in absence of the misconduct being specified and. define with precession, no disciplinary proceeding can be initiated and thus any suspension which purports to be in aid of such proceeding also cannot stand The submission of Mr. Mukherjee cannot be accepted.

13. in absence of any provision of statute, an employer, in my opinion, has an inherent right to initiate a disciplinary proceeding as against its employees. It is beyond any body''s comprehension that although an employee might have committed a serious misconduct like defalcation, theft, misbehavior with a lady or similar other matter, he cannot be punished. Recently this Court has come across a case when a Reader of the University has been punished for sexually exploiting a lady research student. Misconduct is a generic term of which the instances of misconduct as may be specified by the employer are their species. Misconduct in its generic sense has been defined by various High Courts and Supreme Court from time to time as would appears from the discussions made hereinafter.

14. Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful ommission or commission whether done or omitted to be done intentionally or unintentionally. It means, "improper behaviour; intentional wrong doing on deliberate violation of a rule of standard or behaviour":

Misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law, a forbidden act. It differs from carelessness. Misconduct even if it is an offence under the Indian Penal Code is equally a misconduct.

15. Even in Industrial laws, acts of misconduct specified in standing order framed under Industrial Employment (Standing Order) Act, 1946 is not treated to be exhaustive. Various misconducts specified in Clause 14(3) of Model Standing Order are merely illustrative.

16. In Mahendra Singh Dhantwal Vs. Hindustan Motors Ltd. and Others, a three Judge Bench of the Supreme Court observed "standing orders of a company only describe certain cases of misconduct and the same cannot be exhaustive of all the species of misconduct which a workmen may commit. Even though a given conduct may not come within the specific terms of misconduct described in the standing order, it may still be a misconduct in the special facts of a case, which it may not be possible to condone and for which the employer may take appropriate action".

17. Even in the absence of rules specifying misconduct, it would be open to the employee to consider reasonably what conduct can be properly treated as misconduct.

See W.M. Agnani v. Badri Das reported in (1963) 1 LLJ 684 .

18. In Delhi Cloth and General Mills Co Ltd. v. Its Workmen reported in (1969) 2 LLJ 755 . Shah, J. states "misconduct spreads over a wide and hazy spectrum of industrial activity; the most seriously subversive conducts rendering an employee wholly unfit for employment to mere technical default covered thereby".

19. To some extent, it is a civil crime, which is visited with civil and pecuniary consequences See Ramakant Mishra v. State of U. P., reported in 1982 Lab 1C 1790 .

20. The Supreme Court in State of Punjab and Others Vs. Ram Singh Ex. Constable, , upon which Mr. Mukherjee himself has placed reliance upon held:

5. Misconduct has been defined in Black''s Law Dictionary, Sixth Edition at Page 999 thus:

A Transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, it synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.

Misconduct in offence has been defined as:

Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly and failure to act in the face of an affirmative duty to act.

21. P. Ramanath Aiyar''s Law Lexicon, Reprint Edition 1987 at Page 821 defines ''misconduct'' thus:

The term misconduct implies a wrongful intention, and not a mere error of judgment, Misconduct is not necessarily the same thing as conduct involving moral

turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public official by which the rights of a party have been affected.

6. This it could be seen that the word ''misconduct'' though not capable of precise of definition, on reflection receives its conotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.

22. In Jagmohandas Jagjivandas Mody Vs. State of Bombay (Now Gujarat State), the remarks made by the delinquent were found to lower the reputation of the Minister and it was held to be misconduct.

23. The obligation on the part of the Syndicate to take disciplinary measure as against a delinquent teacher in accordance with the, Ordinance or Statute arises provided there exists any.

24. In absence of any rule governing the procedure in such a matter, in my considered view, the employer can take recourse to his general/inherent power to proceed against a teacher on the basis of well known arid settled grounds of misconduct. In such an event neither any case of conflict with the prescribed procedure nor ''perishing with the sword'' would arise as no procedural sword has been taken out by the employer.

25. In absence of prescribed rules, the employer is required to conduct a disciplinary proceeding by adopting a ''fair play and upon complying with the well known norms of ''audi alteram partem''.

26. ''Glaxo'' and ''Rasiklal'' (Supra) were rendered in different fact situation. In those judgments the Supreme Court mainly distinguished its earlier binding precedents of a coordinate bench. It has not, nor could it overrule the earlier binding precedents.

27. In Glaxo''s case, the Supreme Court referred to Tata Oil Mill''s case 1965 SC 155, where the term Misconduct provided "that without prejudice to the general meaning of the term ''misconduct''.

28. It is now well known that in case of conflict between two division bench decisions, the earlier will prevail.

29. In Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., a constitution bench of the Supreme Court held:

It is in order to guard against the possibility of inconsistent decisions on points of law by different division benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges.

This in principle has been followed in India by several generation of Judges.

The Supreme Court stated:

This Court also laid down in Acharya Maharajshri Narendra Prasadji Anandarasadjai Maharaj v. State of Gujarat, that even where the strength of two differing Division Benches consisted of the same number of Judges, it was not open to one Division Bench to decide the correctness or otherwise of the views of the other. The principle was reaffirmed in Union of India v. Godfrey Philips India Ltd. which noted that a Division Bench of two Judges of this Court in Jit Ram Shiv Kumar v. State of Haryana had differed from the view taken by an earlier Division Bench of two Judges in Motilal Padampat Sugar Mills v. State of U.P. on the point whether the doctrine of promissory estoppel could be defeated by invoking the defence of executive necessity, and holding that to do so was wholly unacceptable reference was made to the well accepted and desirable practice of the later bench refering the case to a larger Bench when the Learned Judges found that the situation called for such a reference.

30. ''Glaxo'' and ''Rasiklal'' cannot be said to have laid down a new ''Judge made law'' as Mr. Mukherjee would argue, as evidently the Supreme Court, itself has defined misconduct in many cases as in evident from the discussions made herein.

31. In those cases, points considered herein were not considered at all. In a case of this nature the doctrine of "state decisis" shall apply.

32. Kalra (Supra) again has been rendered by the Supreme Court in the peculiar fact of that case.

33. It is not and cannot be said to be a precedent on the point that the employer in no circumstances can proceed against its employee in absence of rule defining and/or specifying misconduct.

34. Alleged misconduct of Kalra was trivial. The report against him was found to be on ''ipso dixit''. The Supreme Court held that Rule 4(1)(i) did not specify that its violation will constitute misconduct.

35. It was stated therein that ''Rule 4 does not specify a misconduct. It was held Kalra did not commit any misconduct by violating ''Advance Rules''. The Apex Court found ''the transaction may itself provide for repayment and the consequence of failure to repay or to abide by the Rules. This has been done in this case. Any attempt to go in search of a possible other consequence of breach of contract itself appears to be arbitrary and even motivated."

36. The Supreme Court in Kalra observed "How did the question of integrity arise passes our comprehension". The Supreme Court found that Rule 4(1)(i) was not only attracted but no attempt was made to sustain it. It found the first head of charges to be an eye wash.

37. It is in that situation the Supreme Court quoted its earlier view in ''Glaxo''.

38. The Supreme Court summed up its findings in paragraph 31 of the judgment stating:

31. To sum up the order of removal passed by Disciplinary Authority is illegal and invalid for the reasons: (i) that the action is thoroughly arbitrary and is violative of Article 14. (ii) that the alleged misconduct does not constitute misconduct within the 1975 Rules, (iii) that the inquiry officer himself found that punishment was already imposed for the alleged misconduct by withholding the salary and the appellant could not be exposed to double jeopardy, and (iv) that the findings of the inquiry officer are unsupported by reasons and the order of the Disciplinary Authority as well as the Appellate Authority suffer from the same vice. Therefore, the order of removal from service as well as the appellate order are quashed and set aside.

39. Thus, the Supreme Court in ''Kalra'' did not lay down any inflixble rule that before a delinquent can be proceeded with by the employer ''Misconduct'' has to be defined with precision; otherwise the disciplinary proceeding shall fail.

40. It may be that in a given case the general power cannot be resorted to when the field is covered by a statute but the converse is not true.

41. A judgment as is well-known has to be read as a whole and reasonably. It cannot be read as a statute.

42. In General Electric Co. Vs. Renusagar Power Co., it was held:

As often enough pointed by us, words and expressions used in a judgment are not to be construed in the same manner as statutes or as word and expressions define in statute. Renusagar''s case was followed by a division bench of the Patna High Court of which I was a member in Central Coal Field Limited v. State of Bihar reported in 1993 (1) PLJR 617.

43. In the said decision it was also held:

16. It is now well known that a decision is an authority for what it decides and not what logically can be deduced thereform. It is also well sealed that a point not argued does not create a binding precedent with regard thereto.

17. In Rajeswar Prasad Mishra v. The State of West Bengal and Anr. reported in AIR 1965 SC 1887, it was held:

Article 141 empowers the Supreme Court to declare the law and not enact it. Hence the observation of the Supreme Court should not be read as statutory enactments. It is also well known that ratio of a decision is the reasons assigned therein.

Dias on ''Jurisprudence'' at page 139 observed:

''Knowing the Law:

What is ''law'' in a precedent is its ruling or ratio decidendi, which concerns future litigants as well as those involved in the instant dispute. Knowing the law in this context means knowing how to extract the ratio decidendi from cases. Statements not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. Three shades of meaning can be attached to the expression ''ratio'' decidendi''; The first, which is the translation of it is the reason for (or of) deciding''. Even a finding of fact may this sense be the ratio decidendi. Thus a judge may state a rule and then decide that the facts do not fall within it. Secondly, it may mean the rule of law preferred by the judge as the basis of his decision or thirdly, it may mean ''the rule of law which others regard as being a binding authority''.

There is a temptation to suppose that a case has one fixed ruling which is ''there'' and discoverable here and now and once and for all. This is not so, for the ratio is not only the ruling given by the deciding judge for his decision, but any one of a series of rulings as elucidated by subsequent interpretations. The pronouncement of the judge who decided the case is a necessary step towards ascertaining the ratio, but the process by no means ends there, subsequent interpretation is at least as significant sometimes more so. ''It is not sufficient'', said Jessel MR.

That the case should have been decided on a principle if that principle is not itself a right principle, or nor applicable to the case and it is for a subsequent Judge to say whether or not it is a right principle, and if not, he may himself lay down the true principle.

44. From what has been noticed hereinbefore, there cannot be any doubt that despite absence of any specific definition of misconduct as also the procedure laid down for initiation. and/or completion of the disciplinary proceedings, an employer can initiate a departmental proceeding as against the petitioner for well known grounds of misconduct and also place him under suspension.

45. In Union of India v. R.K. Desai, (1993) 2 SCC 49 the Supreme Court held that a person belonging to the Central Civil Service is not totally immune from disciplinary proceedings wherever he discharges quasi-judicial or judicial functions. The said view was reiterated by the Supreme Court in Union of India and Others Vs. K.K. Dhawan, wherein it has been held as follows:

Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with she correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not recluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a Government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great.

Mr. Mukherjee would submit that in those cases the Supreme Court was considering a matter where question arose for consideration as to whether the concerned employee can be said to have committed misconduct in terms of Civil Service Conduct Rules.

46. The submission of the learned Counsel cannot be accepted, the question which arose for consideration in those cases was as to whether the said Rules would apply to a ease where the civil servant was discharging judicial or quasi-judicial functions

Moreover, even if in that case the conduct of the delinquent officer was questioned in terms of Civil Service Conduct Rules; Rule 3(1) whereof said that every Government servant shall at all time (i) maintain absolute integrity; (ii) maintain devotion to duty; and (iii) do nothing which is unbecoming of a Government servant. Such provisions without anything more can also said to be vague as thereby it has not been defined as to what would mean by ''maintenance of absolute integrity'' or devotion to duty'' or ''not doing anything which is unbecoming of ''a Government servant''. The decision in K. K. Dhawan has also been rendered by a Three Judge Bench. It is in this situation it can safely be held that in Kalra''s case (supra) the Supreme Court never meant to lay down a law that unless misconduct is specified in minutest details, the same would not constitute misconduct and thus no disciplinary proceedings could be maintainable.

47. It may be useful to note here that the Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, held that principles of natural justices arc to be observed by a statutory authority where no rules laying down the procedure for holding departmental proceedings have been framed.

48. Moreover, in a large number cases, it has been held that order of suspension can be passed pending departmental proceedings by the employer in exercise of its inherent power, i.e in a case where there does not exit any specific rule in that regard.

49. In Gurudeva Narayan Srivastava Vs. State of Bihar and Another, , a Division Bench of Patna High Court has held as follows:

It was also argued by Mr. Baldeva Sahay that Government has no power to pass an order or ''ad interim'' suspension against the petitioner. It was conceded by the learned Counsel that there is a statutory rule expressly giving power to the Government to suspend an officer. Counsel referred in this connection to Rule 49 of the Civil Services (Classification, Control and Appeal) Rules. But the point taken by the Counsel was that the suspension contemplated in that rule was suspension of a punitive nature and there was no statutory rule or provision empowering the Government to suspend an officer pending an enquiry into the charges made against him. The argument of the Counsel was that suspension in such a case would be of a non- punitive character and Government had no power to suspend an officer in this sense. The Advocate Genera! on behalf of the State of Bihar said that he could find no provision in the Rules expressly granting power to Government to suspend an officer ''Ad interim'' pending an enquiry. But the Advocate General argued that such a power of suspension must necessarily be implied in the power of the Government to investigate into the charges made against an officer.

I shall assume in favour of the petitioner that there is no statutory rule which empowers the Government to suspend an office pending an enquiry. But 1 think

that even in the absence of a statutory rule Government have power to suspend an officer from performing the duties of his office pending an enquiry into the charges levelled against him. In this connection a distinction must be drawn between suspending the contract of service of an officer and suspending an officer from performing the duties of his office on the basis that the contract is subsisting. The suspension in the letter sense is always an implied term in every contract of service. When an officer is suspended in these sense it means that the Government merely issues a direction to the officer that so long as the contract is subsisting and till the time the officer is legally dismissed he must not do anything in the discharge of the duties of his office. In other words, the employer is regarded as issuing an order to the employee which, because the contract is subsisting, the employee must obey. This view is supported by the observation of Lord Justice Cotton in Boston Deep Sea Fishing and Ice Co. v. Ansell (1888) 39 Ch D 339 where a distinction is drawn between ''dismissal'' and ''suspension'' in a contract of service. I think therefore that the argument of Mr. Baldeva Sahay on this point is without substance and must be rejected.

Patna High Court again in the case of Acharya Prabhakar Mishra Vs. The Chancellor and Another, relying on a decision of the Supreme Court in Dr. Bool Chand Vs. The Chancellor, Kurukshetra University, held as follows:

Mr. Lal Narayan Sinha, however, fairly conceded and. in my opinion, rightly that if there was power in the Chancellor to dismiss the Vice-Chancellor under the Act, he had also the power to suspend him.

50. The aforementioned view of the Patna High Court in Gurudeva Narayan Srivastava''s case (supra) was followed by a Division Bench of this Court reported in Nrishingha Murari Chakravarty Vs. District Magistrate and Collector, Hooghly,

51. In R.P. Kapur Vs. Union of India (UOI) and Another, the Supreme Court held as follows.:

Before we investigate what rights a member of the former Secretary of State''s Services had with respect to suspension, whether, as a punishment or pending a departmental enquiry or pending criminal proceedings, we must consider what rights the Government has in the matter of suspension of one kind or the other. The general law on the subject of suspension has been laid down by this Court in two cases, namely, The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers'' Union, and T. Cajee Vs. U. Jormanik Siem and Another, These two cases lay down that it is well settled that under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term in the contract itself or a statutory provisions governing such contract. It was further held that an order of interim suspension could be passed against an employee while inquiry was pending into his conduct even

though there was no specific provision to that effect in his terms of appointment or in the rules. But in such a case he would be entitled to his remuneration for the period of his interim suspension if there is no statute or rule existing under which it could be withheld.

The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the Government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of Government must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him.

The same view has been reiterated in Balvantray Ratilal Patel Vs. The State of Maharashtra, in the following terms:

The general principle therefore is that an employer can suspend an employee pending an enquiry into his misconduct and the only question that can arise in such suspension will relate to payment during the period of such suspension. If there is no express term relating to payment during such suspension or if there is no statutory provision in any enactment or rule the employee is entitled to his full remuneration for the period of his interim suspension.

Supreme Court further observed:

On general principles therefore the Government, like any other employer, would have a right to suspend a public servant in one or two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. The Government may also proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit.

Yet again in V.P. Gidroniya Vs. The State of Madhya Pradesh and Another, the Supreme Court after reviewing its earlier decision observed as follows:

It is now well settled that the power to suspend, in the sense of a right to forbid an employee to work, is not an implied term in an ordinary contract betweem master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itseif. Ordinarily, therefore, the absence of such a power either as an express term in the contract or in the rules framed under some statute would mean that an employer would have no power to suspend an employee of his and even if he does so in the sense that he forbids the employee to work, he will have to pay the employee''s wages during the period of suspension''.

The aforementioned decision of the Supreme Court has been followed in The Vice-chancellor, Jammu University and Another Vs. Dushiant Kumar Rampal, in the following terms:

It well, therefore, be seen that where there is power conferred on the employer either by an express term in the contract or by the rules governing the terms and conditions of service to suspend an employee, the order of suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the employee is not bound to render service and the employer is not bound to pay. In such a case the employee would not be entitled to receive any payment at all from the employer unless the contract of employment or the rules governing the terms and conditions of service provide for payment of some subsistence allowance.

52. The aforementioned decisions, therefore, clearly lay down that an interim suspension pending a departmental proceeding is permissible but in such an event the employer has to pay to the concerned employee his full wages.

53. Let me now consider the other submission of Mr. Mukherjee that the impugned orders are perverse. Mr. Mukherjee submitted that keeping in view the fact that the disciplinary proceedings have been initiated and an order of suspension had been passed on the basis of the report submitted by the Committee and as the said Committee did not find the petitioner prima facie guilty of the charges levelled against him, the impugned orders are nonest in the eye of law.

54. The Committee, inter alia, found as follows:

(i) Dr. Motahar Hossain produced a document claiming to be the original of the undated letter alleged to have been written by the petitioner, but declined to divulge how the letter came into his possession and refused to part with the letter, but allowed the committee to have a xerox copy.

(ii) It is not possible to confirm whether the letter was written by the petitioner or not.

(iii) Persons who appeared before the committee stated that the petitioner was in the habit of leaving signed blanksheets with the Departmental colleagues, students

for various reasons.

(iv) Whoever was the author of the letter had prior knowledge of marks obtained by Dilara. The letter was carefully drafted and prepared by a person after gathering all detailed information about marks awarded in order to defame the University and to create undue pressure on the University to reconsider Dilara''s result.

(v) The Committee could not arrive at a finding whether the letter was written before or after publication of results.

(vi) Dr. Bhattacharjee''s statement regarding attendance percentage of Dilara appeared excessive compared to poor attendance of Dilara in classes taken by other teachers. Only owing to unusually high record of attendance in Dr. Bhattacharjee''s classes Dilara could qualify to appear at the M. Sc. Part II Examination, 1993. Dr. Bhattacharjee showed unusual interest in the performance of Dilara. Action of Dr. Bhattacharjee found to be improper.

(vii) Dilara Begum was irregular in attending classes.

55. The said Committee was appointed, inter alia, for finding out the irregularities in the matter of awarding of marks to Dilara Begum. The Committee was not constituted for holding a preliminary enquiry as to whether the petitioner is guilty or not. It is true that the impugned order has been passed on the basis of the report of the Committee but that does not mean that the disciplinary authority was bound by the recommendations of the said Committee. It is evident from the said report that the Committee on same points could not arise at positive findings. The University in this situation might have considered expedient to hold a detailed enquiry. The disciplinary authority, therefore, in my opinion, could proceed to hold a disciplinary proceeding on prima facie satisfying itself that there are materials as against the petitioner for proceeding against him departmentally. Moreover, at this stage, in my opinion, it is neither practicable nor justifiable to hold that no prima facie charge against the petitioner have been made out. Such a finding has to be arrived at by the disciplinary authority upon consideration of the materials brought on records in the said disciplinary proceedings. It is now well known that although this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, has a power to quash a notice to show cause, but prudence demands that even jurisdictional facts be decided by the Tribunal itself at the first instance.
56. In Management of Express Newspapers (Private) Ltd. v. The Workers and Ors. reported in 1963 SC 569, the Supreme Court held as follows:

The High Court undoubtedly has jurisdiction to ask the Industrial Tribunal to stay its hands and to embark upon the preliminary enquiry itself. The jurisdiction of the High Court to adopt this course cannot be, and is indeed not disputed. But would it be proper for the High Court to adopt such a course unless the ends of justice seem to make is necessary to do so? Normally, the questions of fact, though they may be

jurisdictional facts the decision of which depends upon the appreciation of evidence, should be left to be tried by the Special Tribunals constituted for that purpose. If and after the Special Tribunals try the preliminary issue in respect of such jurisdictional facts, it would be open to the aggrieved party to take that matter before the High Court by a writ petition and ask for an appropriate writ. Speaking generally, it would not be proper or appropriate that the initial jurisdiction of the Special Tribunal to deal with these jurisdictional facts should be circumvented and the decision of such a preliminary issue brought before a High Court is its writ jurisdiction. We wish to point out that in making these observations, we do not propose to lay down any fixed or inflexible rule; whether or not even the preliminary facts should be tried by a High Court in a writ petition, must naturally depend upon the circumstances of each case and upon the nature of the preliminary issue raised between the parties. Having regard to the circumstances of the present dispute, we think the Court of Appeal was right in taking the view that the preliminary issue should more appropriately be dealt with by the Tribunal. The Appeal Court has made it clear that any party who feels aggrieved by the finding of the Tribunal on this preliminary issue may move the High Court in accordance with law. Therefore we are not prepared to accept Mr. Sastri''s argument that the Appeal Court was wrong in reversing the conclusion of the trial Judge in so far as the Trial Judge proceeded to deal with the question as to whether the action of the appellant was a closure or a lockout.

57. In State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, the Supreme Court observed as follows:

When a show cause notice is issued to a Govt. servant under a statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter could be taken Interference by the Court before that stage would be premature.

In Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, it was held that even in a domestic enquiry if another view is possible, the Court in exercise of its jurisdiction under Article 226 of the Constitution of India, shall not interfere. Even after a domestic enquiry is held, this Court has a limited role to play under Article 226 of the Constitution of India and this in my opinion, it will not be proper to interfere therewith at the stage of show cause itself.

58. At this juncture another submission of Mr. Mukherjee can be noticed. It was submitted by the Learned Counsel on the basis of a decision of the Supreme Court

reported in State of Punjab and Others Vs. Ram Singh Ex. Constable, that mere negligence is not a misconduct. That may be so but the petitioner, in this case, has been charge-sheeted in relation to the two distinct charges, which are as follows:

ARTICLE OF CHARGE NO. 1 : In that while acting as a Professor of the Anthropology Department, University of Calcutta, Prof. P.K. Bhowmick engaged himself in acts subversive of discipline and derogatory to the prestige and image of the institution in that Prof. P.K. Bhowmick tried to influence Dr. Atul Bhowmick, Reader, Department of Museology, Calcutta University, unduly so that one Dilara Begum (Roll Cal Anthrop. No. 17/92 was awarded low marks at the M. Sc. Part-II Examination, 1993.

ARTICLE OF CHARGE NO. II: In that while acting as a Professor of the Anthropology Department has unauthorized used sealed pad of the University in a manner detrimental to the interest of the University.

59. In Union of India (UOI) and Others Vs. Upendra Singh, the Supreme Court referring to its earlier decisions including Dhawan (Supra) has held:

6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges The tribunal cannot take over the functions of disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no Jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which arc repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal v. Gopi Nath and Sons. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J, affirmed the principle thus: (SCC p. 317. para 8). Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.''

7. Now, if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is understandable how can that be done by the tribunal at the stage of framing of charges? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but mainly on the basis of the material produced by the respondent before it, as we shall presently indicate.

60. Whether the petitioner has committed any misconduct alleged against him or not would be a matter which would fall for consideration of the disciplinary authority.

61. Further, although ''carelessness'' itself may not be a misconduct, the charges against the petitioner are otherwise. By reason of such acts of misconduct, if so proved as against the petitioner, the disciplinary authority may come to the conclusion that by reason thereof the petitioner has allowed others to lower down the mage of the University. It is partinent to note that in Kalra''s case itself the Supreme Court despite arriving at a finding that the delinquent did not commit any misconduct within the meaning of the rules and moreover the action of the respondent was arbitrary and unfair, held that his conduct in not utilising the amount of loan in the manner laid down in the rules was improper and upon such finding directed payment of only 50% of the back wages for the period of his unemployment.

62. Mr. Mukherjee further submitted that the letter dated 6.6.94 shows that the enquiry related to M Sc. part II Examination, 1992-93. The Controller of Examination was part of the said committee. The Controller of examination is the only person other than the Tabulator, who would know of marks awarded by two examiners prior to sending the answer scripts to the third examiner, yet he was allowed to participate in the meetings of the Committee which gives rise to reasonable apprehension of likelihood of bias. The allegations against the Controller of Examination are general and vague in nature.

63. In my opinion, it is not possible to make a roving enquiry on such allegation at this stage.

64. However, so far as the order of suspension dated 8.7.94 as contained in Annexure ''I'' to the writ application is concerned, in my opinion, the same has unjustifiably been passed as against the petitioner.

65. The petitioner was not a Member of the Board of Examination. He did not scrutinise the answer scripts of Dilara Begum. The purported letter written by the petitioner to Atul Bhowmick, as it appears from the report of the Committee, did not reach his hands. The said letter curiously was produced from the custody of the father of Miss. Dilara Begum. No actual damage was, thus, caused to Ms. Dilara Begum even if it be assumed that the petitioner was the author of the said letter.

66. The Committee has, prima facie, arrived at a finding that the petitioner has only shown extreme callousness in keeping blank signed letterheads with the students and others, but such a conduct on the part of the petitioner has no direct nexus with the job entrusted to him, i.e., teaching to the students. Ultimately it may be held that the petitioner was an innocent victim or he has been more sinned against them sinning. In fact, from one of the documents annexed with the charge-sheet, it appears that an anonymous writer has showered praises on the petitioner From the impugned order of suspension it does not appear that the Syndicate has taken into consideration ail the aforementioned relevant facts.

67. Although an order of suspension is an administrative order but keeping in view the fact that the same has been passed as against the petitioner at the fag end of his carror as he is going to superannuate on 7.9.94, without considering the aforementioned relevant facts the same cannot be sustained. The Supreme Court has recently in State of Orissa Vs. Bimal Kumar Mohanty, has observed as follows:

13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary. Authority should consider the above aspects and decide whether it is, expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behaif. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing of the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also

should keep in mind public interest of the impact of the delinquent''s continuance in office while facing departmental inquiry or trial of a criminal charge.

68. Moreover it is to be borne in mind that although the order of suspension is administrative in nature, such an order should not ordinarily be passed on a highly placed officer on trivial charges. See Vidya Bhushan Singh Vs. The State of Bihar and others,

69. It is also well known that if an authority passes an order without posing unto himself the right question and without trying to acquaint himself with the relevant fact, the same would amount to misdirection in law. (See State v. Tameside) 1976 (3) AER 665. The aforementioned decision has been quoted with approval by a Division Bench of the Patna High Court in Dr. Shyamanand Singh v. State of Bihar reported in 1978 PLJR 588 in a case involving an order of suspension The High Court recently in U.S. Singh v. Coal India Ltd. reported in 1993(2) CLJ 275 has categorically held that an order of suspension must not arbitrarily be passed.

70. For the reasons aforementioned, in my opinion, the order of suspension passed as against the petitioner should be quashed.

71. So far as the writ application of Dilara Begum is concerned the same, in my opinion, has become infructuous. The said petitioner has filed a writ application, inter alia, for issuance of a writ of or in the nature of Mandamus directing the respondents to get her answer scripts scrutinised by some other experts. The matter has already received consideration at the hands of the Committee, which has, as noticed hereinbefore, already recommended that the answer scripts of the said petitioner, which had been examined by Dr. Atul Bhowmick, be examined by an Examiner outside the State of West Bengal and who may be appointed without reference to the Department of Anthropology, Calcutta University and the said answer scripts be sent under the Controller''s Code in place of usual roll numbers.

72. In this view of the matter, no further relief can be granted to the said petitioner.

73. Although Miss Dilara Begum was allowed to intervene in the writ petition filed by Dr. Probodh Kumar Bhowmick. in my opinion, she is not a necessary party in the said writ petition inasmuch as in the departmental enquiry as against Dr. Bhowmick she may be cited as an witness.

74. Dilara Begum''s writ application is, therefore, directed to be dismissed.

75. In the peculiar facts and circumstances of the case and particularly in view of the fact that Dr. Bhowmick was to superannuate in September, 1994, in my opinion, it is highly desirable that the learned Vice Chancellor of the University of Calcutta, should take appropriate steps for conclusion of the departmental enquiry at an early date and preferably within one month from the date of communication of this order, in accordance with law.

76. This application is, therefore, allowed in part in directions and observations made hereinbefore.

77. In the facts and circumstances of the case, there will be no order as to costs.

All parties concerned shall be at liberty to act on a signed xerox copy of this judgment on the usual undertaking.