The Secretary vs Dr. K. Rajaram Pandian on 28 February, 2017

Author: R. Subbiah

Bench: R. Subbiah, J. Nisha Banu

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2017Reserved on : 28.02.2017

Pronounced on : 28.04.2017

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J. NISHA BANU

Writ Appeal (MD) Nos.10 of 2016 and 11 of 2016
and
WMP (MD) Nos. 43, 1244 and 1245 of 2016

W.A. (MD) No. 10 of 2016:-

The Secretary
Virudhunagar Hindu Nadars' Senthikumara
Nadar College Committee
Virudhunagar ? 626 001 .. Appellant

Versus

1. Dr. K. Rajaram Pandian

2. The State of Tamilnadu
rep. By its Secretary
Department of Higher Education
Fort St. George
Chennai ? 600 009

3. The Director
Directorate of Collegiate Education
College Road, Nungambakkam
Chennai ? 600 006

4. The Joint Director of Collegiate Education
Madurai Region
Shenoy Nagar

Madurai ? 625 020 .. Respondents

W.A. (MD) No. 11 of 2016:-

The Secretary
Virudhunagar Hindu Nadars' Senthikumara
Nadar College Committee
Virudhunagar ? 626 001 .. Appellant

Versus

1. The State of Tamilnadu
rep. By its Secretary
Department of Higher Education
Fort St. George
Chennai ? 600 009

2. The Director of Collegiate Education
Chennai ? 600 006

3. The Joint Director of Collegiate Education
Madurai Region
Shenoy Nagar
Madurai ? 625 020

4. Dr. K. Rajaram Pandian .. Respondents

WA (MD) No. 10 of 2016:- Appeal filed under Clause 15 of Letters Patent against the Order dated 27.11.2015 passed by this Court in WP (MD) No. 9780 of 2015

WA (MD) No. 11 of 2016:- Appeal filed under Clause 15 of Letters Patent against the Order dated 27.11.2015 passed by this Court in WP (MD) No. 9723 of 2015

!For Appellant : Mr. M. Vallinayagam, Senior Advocate
for Mr. D. Nallathambi
in both the Writ Appeals

^For Respondents : Mr. Issac Mohanlal, Senior Advocate
for Mr. R. Balakrishnan
for R1 in WA No. 10 of 2016
for R4 in WA No.11 of 2016

Mr. S. Chandrasekar, Government Advocate
for RR2 to 4 in WA No. 10 of 2016
for RR1 to 3 in WA No. 11 of 2016

:COMMON JUDGMENT

R. SUBBIAH, J Both these appeals are directed against the common order dated 27.11.2015 passed by the learned single Judge of this Court in WP (MD) No. 9780 of 2015 and 9723 of 2015 respectively.

2. For the sake of convenience, the parties shall be referred to as per their ranking in WA (MD) No. 10 of 2016.

3. The appellant College has filed WP (MD) No. 9723 of 2015 challenging the order dated 29.05.2015 of the Director of Collegiate Education, third respondent in WA (MD) No. 10 of 2016. By the said order dated 29.05.2015, the third respondent had set aside the order of dismissal passed by the appellant, and directed the appellant to reinstate the first respondent in service.

4. WP (MD) No. 9780 of 2015 has been filed by the first respondent ? Dr. Rajaram Pandian, praying to issue a Writ of Mandamus directing the appellant college to permit him to join duty pursuant to the order dated 29.05.2015 passed by the Director of Collegiate Education allowing his statutory appeal.

5. The learned single Judge, upon consideration of the rival submissions, passed a common order dated 27.11.2015 dismissing the writ petition filed by the appellant-College and by allowing the Writ Petition filed by the first respondent with a direction to allow the first respondent to join duty in the appellant college within a period of six weeks from the date of receipt of a copy of this order. It is this order dated 27.11.2015 of the learned single Judge which is questioned in these writ appeals by the appellant college.

6. The facts which are necessary and germane for disposal of these writ petitions are inter-twined, common and identical. Therefore, both these appeals are taken up for hearing together and are disposed of by this common Judgment.

7. The first respondent joined as a Lecturer in Adithanar College of Arts and Science, Tiruchendur in the Department of English. Thereafter, during 1998, he joined the appellant College. While the first respondent was working as Associate Professor, he received a communication during the year 2008 from Manonmaniam Sundaranar University approving him as a research guide. As a Research Guide approved by the University, the first respondent was approached by one Kavitha Rani to be her research guide for pursuing her Ph.D., The University also, by a communication dated 04.03.2009 addressed to the first respondent, indicated that the said Kavitharani had registered for Ph.D., Programme under his guidance.

8. While the facts are so as stated above, on 19.01.2010, the first respondent sent a communication to the University to discontinue his guidance to Ms. Kavitharani as she was totally indifferent in her research work lacking research potential and culture. It was also stated that the said Kavitha Rani did not contact the first respondent from 15.06.2009 till 19.01.2010. While so, on 01.02.2010, the said Kavitharani has given a complaint to the Sub-Inspector of Police, Virudhanagar Rural Police Station complaining that the first respondent has misbehaved with her, According to the complaint, the first respondent behaved with her indifferently, sent obscene sms by using fake sim card and

sexually harassed her. On the basis of such complaint given by Kavitharani, a case in Crime No. 75 of 2010 was registered against the first respondent for the offences punishable under Sections 294 (b) of IPC, Section 4 of Tamil Nadu Women Harassment Act read with Section 67 of the Information Technologies Act. On the same day, the first respondent was arrested and remanded to judicial custody

9. On the basis of the criminal case registered against the first respondent, at the instance of the said Kavitha Rani, the appellant College suspended the first respondent by an order dated 03.02.2010 and thereafter the College Committee has decided to take disciplinary action against the first respondent. Accordingly, the appellant college issued a charge memo dated 26.02.2010 to the first respondent and the charges reads as follows:-

> ?Charge No.1 : It is learnt that you, Dr. K. Rajaram Pandian misbehaved and gave sexual harassment to Tmt. S. Kavitha Rani and gave mental agony to her and thus acted in violation of the Code of Conduct.
>
> Charge No.2: Because of the news item published in the daily papers regarding the criminal case filed against you, Dr. K. Rajaram Pandian, the parents and the public are afraid of sending their girls to our College and thus their good opinion and the confident reposed in our college has been spoiled because of your involvement in the criminal case. Thus, because of your act you brought dishonour and stigma to the fame and name of our college.
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> Charge No.3:- You, Dr. K. Rajaram Pandian, functioning as a Teacher which is considered in par with the status of parents and God brought defame to the teaching profession as well as to the good name of our VHNSN College on account of your attitude of scolding and misbehave with ladies and giving harassment by sending SMS to them and thus acted in indiscipline manner and violating the code of conduct.?

10. On receipt of the charge memo, the first respondent filed WP (MD) Nos. 3257 and 3258 of 2010 challenging the charge memo as well as the order of suspension. Thereafter, the first respondent also sent a communication dated 10.04.2010 requesting the appellant to furnish the copies of certain documents and to postpone the enquiry till the conclusion of the criminal proceedings. However, by a communication dated 12.04.2010, the appellant college refused to defer the enquiry proceedings and called upon the first respondent to participate in the enquiry proceedings on 16.04.2010. On 15.04.2010, the first respondent sent a telegram to the appellant college to postpone the enquiry and accordingly the enquiry was postponed to 19.04.2010. Even on 19.04.2010, the first respondent did not appear for the enquiry and therefore, the enquiry committee, by a communication dated 19.04.2010 enclosed the documents marked during the course of enquiry and called upon the first respondent to attend the enquiry on 27.04.2010 and to cross-examine the witnesses examined by the appellant. Even on 27.04.2010, the first respondent did not appear for the enquiry and therefore, on 03.05.2010, the enquiry committee submitted a report to the appellant college. On receipt of the report, the appellant college issued a second show cause notice

dated 08.05.2010 to the first respondent for which an explanation dated 14.05.2010 was submitted by the first respondent denying the allegations. As the appellant college concluded that the charges framed against the appellant were proved and he was guilty of the charges, a report was sent to the Joint Director of Collegiate Education ? fourth respondent in WA (MD) No. 10 of 2016 seeking his approval. Accordingly, on 24.05.2010, approval was granted by the fourth respondent based on which the appellant passed the order dated 25.05.2010 dismissing the first respondent from service. Challenging the order of dismissal dated 25.05.2010, the first respondent filed WP (MD) No. 7137 of 2010 before this Court. In the said Writ Petition, the appellant college has filed a counter questioning the maintainability of the writ petitions as there is an appeal remedy available before the Director of Collegiate Education under Section 20 of the Tamil Nadu Private Colleges (Regulation) Act, 1976. In the meantime, during the pendency of WP (MD) No. 7137 of 2010, the investigation officer has filed a charge sheet and it was taken on file as C.C. No. 161 of 2011 by the learned Judicial Magistrate No.2, Virudhunagar.

11. On 26.06.2012, when WP (MD) No. 7137 of 2010 came up for hearing before this Court, the first respondent withdrew the writ petition with liberty to file a statutory appeal before the third respondent. Accordingly, on 14.08.2012, the first respondent filed a statutory appeal before the third respondent challenging the order of dismissal dated 25.05.2010 passed by the appellant. During the pendency of the statutory appeal, the Criminal Proceedings initiated against the first respondent was concluded and by a judgment dated 05.09.2012 passed in C.C. No. 161 of 2011, the first respondent was acquitted from all the charges. Based on the Judgment of acquittal and on perusal of the facts and circumstances of the case, the statutory appeal filed by the first respondent was allowed by the third respondent on 21.08.2013 with a directon to the appellant to reinstate him in service.

12. Aggrieved by the order dated 21.08.2013 directing reinstatement of the first respondent, the appellant college has filed WP (MD) No. 16614 of 2013 contending that the first respondent has filed the statutory appeal before the third respondent beyond the period of Limitation as contemplated under Section 39 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, while so, the third respondent ought not to have entertained the appeal. It is further contended that the third respondent is not justified in allowing the statutory appeal only on the basis of the Judgment of acquittal passed by the Criminal Court without independently considering the appeal on merits. By order dated 13.08.2014, this Court, considering the submissions of the appellant college, has allowed the writ petition by setting aside the order dated 21.08.2013 of the third respondent and remanded the matter back to the third respondent to decide the appeal afresh by framing point for determination and answer the same accordingly. After remand, the third respondent passed the order dated 29.05.2015 setting aside the order of dismissal passed by the Appellant College for the proved charges against the first respondent as disproportionate to the charges framed against him. It is this order dated 29.05.2015 of the third respondent which was challenged by the appellant college before the learned single Judge.

13. The learned single Judge, upon consideration of the rival submissions, held that though there is no bar for conducting departmental proceeding against a delinquent employee, notwithstanding the judgment of acquittal passed by the Criminal Court, the department cannot also ignore the

judgment of acquittal passed by the Criminal Court which formed the basis for initiating departmental enquiry. As regards the period of limitation for filing the statutory appeal, the learned single Judge observed that at the time of withdrawal of WP (MD).No. 7137 of 2010 by the first respondent with liberty to file a statutory appeal, the counsel for the appellant was very much available before this Court, but he has not objected for withdrawing the writ petition. Therefore, it was held that the delay in filing the statutory appeal cannot be a bar for the appellate authority to entertain the appeal preferred by the first respondent. By holding so, the learned single Judge dismissed the writ petition filed by the appellant challenging the order of reinstatement passed by the appellate authority, while allowing the writ petition filed by the first respondent for issuing a Mandamus.

14. Mr. Vallinayagam, learned Senior counsel appearing for the appellant assailed the common order passed by the learned single Judge by vehemently contending that the first respondent, during his employment as Associate Professor, indulged in act of sexual harassment against a research scholar. The incident was widely published in the newspapers and it had tarnished the image and reputation of the appellant College. At the instance of the victim research scholar, criminal proceedings were initiated against the first respondent. During the pendency of the criminal proceedings, the appellant college decided to proceed against the first respondent departmentally and called upon the first respondent to participate in the enquiry. The appellant has framed four charges against the first respondent and the charge memo was also served on him. However, the first respondent did not turn up for the enquiry. During the course of enquiry, the appellant College has examined the parents of the girl students before the enquiry committee and arrived at a subjective satisfaction that the first respondent was guilty of the allegations raised against him. Even though the first respondent was called upon to participate in the enquiry and to cross-examine the witnesses, he has not chosen to do so, therefore, it cannot be contended that the enquiry conducted by the appellant is a farce. In fact, the enquiry commenced on 16.04.2010 and it was adjourned to 19.04.2010. On 19.04.2010, the first respondent did not appear and on that date, two witnesses namely MW1 and 2 were examined and the enquiry proceedings were postponed to 27.04.2010. Before the next date of hearing, the enquiry proceedings along with the deposition of Mws 1 and 2 were sent to the first respondent with a request to attend the enquiry and cross-examine the witnesses. However, on 27.04.2010, the first respondent did not attend the enquiry and on that date, Mws 3, 4 and 5 were examined and the enquiry was postponed to 30.04.2010. Immediately, the deposition of the management witnesses were sent to the first respondent and he was asked to appear on 30.04.2010. On 30.04.2010 also, the first respondent did not attend the enquiry and on that date Mws 7, 8 and 9 were examined. On 30.04.2010, the enquiry proceedings were closed and a report was sent to the College committee on 03.05.2010. Taking note of the apprehensions raised by the parents of the girl students and the refusal on the part of the first respondent to participate in the enquiry, the enquiry committee has concluded the enquiry and submitted an enquiry report to the appellant college. On the basis of the report, a second show cause notice dated 08.05.2010 was issued to the first respondent for which an explanation dated 14.05.2010 was submitted by him. After considering the report of the enquiry committee, the gravity of the proved charges against the first respondent and the non-participation of the first respondent in the enquiry proceedings, the appellant has passed the order of dismissal dismissing the first respondent from service on 25.05.2010.

15. The learned Senior counsel for the appellant would further submit that challenging the order of dismissal dated 25.05.2010, the first respondent filed WP (MD) No. 7137 of 2010, however, he withdrew the writ petition with liberty to file an appeal before the appellate authority and accordingly, the writ petition was dismissed as withdrawn on 11.08.2012. According to the learned Senior counsel for the petitioner, there was no observation made by this Court in the order dated 11.08.2012 to exclude the time spent in prosecuting the writ petition while filing the statutory appeal. Therefore, the appellate authority ought not to have entertained the statutory appeal filed by the first respondent on 14.08.2012. In this regard, the learned Senior counsel for the appellant submitted that as per Section 39 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, the first respondent has to file the statutory appeal within one month from the date of receipt of the order. If for any other sufficient cause he could not file the appeal within 30 days, he can file an application stating the cause for delay in filing appeal before the third respondent and the third respondent is empowered to condone the delay not exceeding one month, if he is satisfied with the cause shown by the first respondent in the appeal. As per Section 39 of the Tamil Nadu Private Colleges (Regulations) Act, 1976, an outer time limit has been fixed for filing an appeal. After such outer time limit, if an appeal is filed, it is not maintainable. As per Section 3 of the Limitation Act, subject to the provisions contained in Section 4 to 24 (inclusive), every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. Therefore, the appeal filed after 30 days ought not to have been entertained by the third respondent. But the 30 days of limitation is subject to the provisions contained in Section 4 to 24 of the Limitation Act, 1963. When the Special Act namely the Tamil Nadu Private College (Regulations) Act, 1976 prescribes the period of limitation to file the appeal under Section 39 (1), then that is the period of limitation for filing the appeal. Further, Section 4 to 24 of the Limitation Act deals with days to be exempted, excluded and extended for calculating the period of limitation. In other words, those sections contemplated sufficient causes for condonation of delay in filing appeal and applications. In particular, Section 14 provides for exclusion of time of proceedings in Court without jurisdiction. But Sections 4 to 14 are excluded in this Special Act, then the appeal or application has to be filed within the outer time prescribed for the same. Even the highest Court of the land has no power to entertain the appeal beyond the period of limitation even for sufficient cause. The expression used in Section 29 (2) of the Limitation Act, 1963 namely ?Expressly excluded by such special or local law? has been considered in many cases. In the case between (Hukumdev vs. Lalit Narain) 1974 (Volume 2) SCC 133, the Honourable Supreme Court has taken the view that if on an examination of the relevant provisions of the special enactment and by looking into the scheme of the special law and each of the remedies provided therein, it appears that the legislature has intended it to be a complete code, then necessarily the provisions of the Limitation Act would be excluded, even in the absence of an express exclusion.

16. Further, the learned Senior counsel for the appellant relied on the decision reported in (1984) 1 MLJ 85. In the said case, the learned single Judge of this Court, while dealing with a case under the Tamil Nadu Buildings (Lease and Rent Control) Act, following the decision of the Honourable Supreme Court in (Mohammed Ashfaq vs. S.T.A.T. U.P.) reported in 1976 (4) SCC 330 held that Section 25 (2) of the Act, 18 of 1960 not only prescribes a special period of limitation for preferring revision petition to the High Court but also contains an inbuilt provisions of an extended period within which petitions beyond the period of limitation could be instituted by conferring a discretion

in the High Court to condone the delay within the prescribed period on sufficient cause being shown unlike what has been provided under Section 23 of the Act. Thus, by relying upon the above judgment, the learned Senior counsel for the appellant submitted that the Section 39 of Tamil Nadu Private Colleges (Regulations) Act is also similar to that of Section 25 (2) of the Tamil Nadu Buildings (Lease and Rent Control) Act. When that being so, the first respondent ought to have filed the appeal within one month from the date of receipt of a copy of the order of dismissal dated 25.05.2010 and for any other reason, if he filed the appeal after 30 days stating the cause for delay, the the third respondent is only empowered to condone the delay upto 30 days, if he is satisfied with the cause shown and not beyond that. In the present case, the appeal was filed by the first respondent beyond the period of limitation as contemplated under the Limitation Act. In such circumstances, according to the learned Senior counsel for the appellant, the appellate authority ought not to have entertained the statutory appeal filed by the first respondent and the order of the appellate authority setting aside the order of dismissal passed by the appellant College is vitiated by errors of law.

17. That apart, the learned Senior counsel for the appellant would contend that during the pendency of the statutory appeal before the third respondent, the criminal case filed against the first respondent ended in acquittal on 05.09.2012. While so, the appellate authority, without independently considering the statutory appeal on merits, allowed the appeal filed by the first respondent on 21.08.2013 only on the basis of Judgment of acquittal passed by the Criminal Court. Aggrieved by the order dated 21.08.2013, the appellant filed WP (MD) No. 16614 of 2013 and it was allowed by this Court on 13.08.2014 directing the appellate authority to consider the grounds raised by the appellant afresh. After remand, the appellate authority passed an order dated 29.05.2015 holding that the order of dismissal from service passed against the first respondent is disproportionate to the proved charges framed against the first respondent. At the same time, in the order dated 29.05.2015, the appellate authority has not set aside the findings factually recorded during the course of enquiry, however, the Appellate Authority set aside the order of dismissal passed against the first respondent only on the basis of Judgment of acquittal. In this context, the learned Senior counsel for the appellant relied on the decision rendered in (Deputy Inspector General of Police and another vs. S. Samuthiram) reported in (2013) 1 Supreme Court Cases 598 wherein it was held that if a delinquent employee was under suspension and the Criminal Court acquitted him of all the charges, he can be reinstated. However, when an order of dismissal was passed in the departmental enquiry by the appellant college against the first respondent and subsequent thereto if the Criminal Court renders a Judgment of acquittal, the reinstatement of the first respondent largely depends upon the provisions contained in the Service Rules governing the department and his reinstatement is not automatic.

18. The learned Senior counsel for the appellant would mainly contend that when departmental proceedings and criminal case are based on identical set of facts, there is no embargo or bar for the department to proceed with the departmental enquiry dehors the pendency of the Criminal proceedings. Even if the delinquent employee was acquitted by the criminal court, it will not have any impact on the departmental proceedings which largely depends on the proof of contravention of the service conditions. Further, there is no proof to show that the departmental proceedings have been conducted contrary to law. In fact, the first respondent was given sufficient opportunity to

defend the departmental proceedings and therefore, it cannot be called in question by the delinquent employee. In this context, the learned Senior counsel for the appellant relied on the decision of the Honourable Supreme Court in M. Paul Antony's case reported in 1999 (3) SCC 679 to contend that the order of dismissal passed against the first respondent was preceded by a valid enquiry. Further, though the Appellate Authority interfered with the quantum of punishment imposed on the first respondent, he did not interfere with the validity or otherwise of the enquiry conducted by the department. Therefore, it is contended that the subsequent order of acquittal passed by the Criminal Court will not vitiate the order of dismissal passed by the appellant College in any manner. Further, in the absence of any Service Rules governing the appellant College, the Judgment of acquittal passed against the first respondent will not render the order of dismissal passed against the first respondent vitiated. The learned Senior counsel for the appellant relied on the Division Bench Judgment of the Calcutta High Court rendered in WPST No. 20 of 2016 in the case of (The State of West Bengal vs. Ratan Sarkar) on 03.08.2016 to contend that whether an employee can be reinstated in service or not after his or her acquittal in the criminal case depends on the question whether Service Rules contain any such provision for reinstatement and the right of reinstatement is not as a matter of right. In the present case, the Service Rules governing the appellant college does not contain provisions for reinstatement of the first respondent after his dismissal from service only on the basis of subsequent acquittal in the criminal proceedings. Therefore, the appellate authority as well as the learned single Judge ought not to have placed reliance on the Judgment of acquittal passed in the criminal proceedings to interfere with the order of dismissal passed by the appellant.

19. Above all, it is submitted by the learned Senior counsel for the appellant that inspite of sufficient opportunity having been afforded, the first respondent has not chosen to participate in the enquiry and putforth his defence. The appellant, considering the gravity and nature of allegations, passed the order of dismissal which was set aside by the appellate authority and later confirmed by the learned single Judge only on the basis of the subsequent Judgment of acquittal rendered by the Criminal Court. Therefore, according to the learned Senior counsel for the appellant, the first respondent did not participate in the enquiry and it would amount to waiving his right to participate in the enquiry. In such circumstances, the first respondent is estopped from raising the plea of violation of principles of natural justice. In this context, the learned Senior counsel relied on the decision of the Supreme Court of India in the case of (Board of Directors, H.P.T.C. And another vs. K.C. Rahi) reported in (AIR 2008 SC (Suppl) 1542 wherein it was held that when the delinquent did not participate in the enquiry proceedings knowing fully well about the conduct of enquiry against him, it shall be deemed that he has waived his right to defend the proceedings against him and in such circumstances, the enquiry conducted cannot be called in question on the ground of violation of principles of natural justice.

20. Countering the submissions made by the learned Senior counsel for the appellant, Mr. Issac Mohanlal, learned Senior counsel appearing for the first respondent would contend that the enquiry conducted by the appellant college against the first respondent is farce and legally not sustainable. The first respondent, questioning the manner in which the appellant has proceeded to conduct the enquiry, has filed WP (MD) Nos. 3257 and 3258 of 2010 before this Court for issuing a Writ of Mandamus forbearing the appellant from proceeding with the enquiry. Inspite of the pendency of

the writ petitions, which was also communicated by the first respondent to the appellant college by way of a telegram, the appellant proceeded with the enquiry. According to the learned Senior counsel for the first respondent, the five member enquiry committee constituted by the appellant consists of College Committee members. In fact, the first respondent sought for re- constitution of the enquiry committee, but it was refused by the appellant. The first respondent also requested the enquiry committee to appoint independent enquiry officers other than the College Committee Members as the Principal and Secretary of the College were cited as witnesses in the departmental enquiry. It is only in such circumstances, the first respondent did not participate in the enquiry and even if he participated in the enquiry, he would not have got justice because the witnesses and the enquiry committee are all members of the College Committee and they will only support the decision to be arrived at by the College Committee. Certainly, the members of the enquiry committee will not take a decision contrary to the one taken by the College Committee. Out of five witnesses examined, one was the Principal of the College and the other was the Secretary of the College who has passed the order of dismissal against the first respondent. Therefore, according to the learned Senior counsel for the first respondent, no useful purpose could have been achieved by participation of the first respondent in the enquiry proceedings. The enquiry proceedings were conducted in a closed door for the sake of complying with the principles of natural justice when in fact, the enquiry conducted by the first respondent is in utter contradiction and violation of the principles of natural justice. Even otherwise, the enquiry committee did not go into the validity of the allegations with respect to sending obscene messages by the first respondent to the said Kavitharani on the ground that it is the subject matter of the criminal proceedings. If the charges relating to sexual harassment itself is not determined by the enquiry committee, there is nothing for the enquiry committee to decide in the enquiry conducted against the first respondent. Therefore, it is contended that the composition of the enquiry committee and the manner in which it was conducted vitiates the very order of dismissal passed against the first respondent. In this context, the learned Senior counsel for the first respondent relied on the decision in the case of (State of Uttar Pradesh vs. Saroj Kumar Sinha) reported in (2010) 2 SCC 772 wherein it was held that an enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is supposed to be a representative of the department/disciplinary authority and his function is to examine the evidence presented by the department even in the absence of delinquent officials to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case, the enquiry committee heavily relied on the statement of some of the parents/relatives of the female students either studying or working in the appellant college, who have made statement on the basis of the newspaper report. Therefore, the learned Senior counsel for the first respondent would contend that the fundamental principles required to be adhered to while conducting a departmental enquiry is conspiciously absent in the present case and therefore, he prayed for dismissal of the writ appeals.

21. Further, according to the learned Senior counsel for the first respondent, the decision rendered in (Deputy Inspector General of Police and another vs. S. Samuthiram) reported in (2013) 1 Supreme Court Cases 598 relied on by the learned Senior counsel for the appellant arises out of a case against a Policeman who indulged in acts of eve-teasing against a women passenger in the bus stand in an inebirated condition. In that case, there were eye witnesses to the scene of occurrence and it eventually led to the dismissal of the delinquent. In that case, the Honourable Supreme Court

held that the High Court is not justified in setting aside the order of punishment imposed on the delinquent contrary to the confirmation of order of dismissal passed by the Tribunal. In the present case, the appellate authority has set aside the order of dismissal passed by the appellant College and it was affirmed by this Honourable Court in the writ petition filed by the appellant College. In any event, the facts that led to the decision rendered in Samudhiram case cannot be made applicable to this case. In that case, the departmental proceedings reached a finality, but in this case, it has not reached finality and the challenge made to the order of dismissal was pending before the appellate authority. Further, in this case, even though the complainant Kavitharani was examined before the Criminal Court as a witness, she was treated as a hostile witness by the prosecution as her deposition did not inspire the confidence of the Court. In such circumstances, the learned Senior counsel for the first respondent justified the order passed by the learned single Judge and prayed for dismissal of the writ appeals.

22. As regards the plea of limitation raised by the learned Senior Counsel for the appellant, the learned Senior counsel for the first respondent has drawn our attention to the order dated 26.06.2012 passed by this Court in WP (MD) No. 7137 of 2010 filed by the first respondent. According to the learned Senior counsel, this Court, in the order dated 26.06.2012, has categorically held that ?the permission sought for in MP (MD) No. 1 of 2012) for withdrawal of the writ petition is granted and accordingly the writ petition is dismissed as withdrawn granting such liberty to the petitioner?. Therefore, it cannot be said that the period during which the writ petiiton filed by the petitioner and pending before this Court has not been excluded for the purpose of filing a statutory appeal. In fact, immediately after the order dated 26.06.2012 was passed, the petitioner has applied for deliverance of the copy of the order and immediately after obtaining it, he has filed the statutory appeal on 14.08.2012. In fact, in the order passed by the appellate Authority, setting aside the order of dismissal passed against the first respondent, it was specifically observed that having regard to the nature of the charges levelled against the first respondent, the technicalities raised on behalf of the appellant college with respect to the plea of Limitation need not be gone into. Further, the learned single Judge, while passing the Common Order dated 27.11.2015, which are impugned in these writ appeals, has specifically pointed out that at the time when the order dated 26.06.2012 was passed by this Court permitting the first respondent to withdraw the writ petition, the counsel for the appellant was very much present but he has not raised any objection. Therefore, it is futile on the part of the appellant to contend that the first respondent ought to have filed an application for condoning the delay in filing the statutory appeal when in fact there was no delay at all. In this regard, the learned Senior counsel for the first respondent submitted that Section 14 of the Limitation Act will apply to the period spent before a wrong forum which does not have jurisdiction to try the case of like nature to entertain the matter. In support of such contention, the learned Senior counsel for first respondent relied on the decision in M.P. Steel Corporation vs. Commissioner of Central Excise) reported in (2015) 7 Supreme Court Cases 58 and in (Rameshwarlal vs. Muncipal Council, Tonk and others) (1996) 6 Supreme Court Cases 100.

23. On the above contention of the learned Senior counsel appearing for the appellant as well as the first respondent, we have heard the learned Government Advocate appearing for the official respondents.

24. We have given our anxious consideration to the rival submissions made by the counsel on either side and perused the material documents placed on record.

25. In the light of the submissions made by the counsel for both sides, the following questions arise for our consideration in these writ appeals and they are (i) Whether the first respondent, who was dismissed from service by the appellant college, preceded by an enquiry, whether the subsequent Judgment of acquittal rendered by the Criminal Court will automatically give a right to the first respondent for being reinstated in service in the absence of any Service Rule governing the appellant college

(ii) Whether the third respondent ought to have rejected the statutory appeal preferred by the first respondent on the ground of limitation and (iii) Whether the enquiry conducted by the appellant college was in accordance with the norms and in accordance with the principles of natural justice.

26. With regard to the first point, the main contention of the learned Senior counsel for the appellant is that after conducting a departmental enquiry, the appellant was dismissed from service on 25.05.2010. After his dismissal from service, charge sheet was filed in the Criminal proceedings on 25.07.2011. Thereafter, the Judgment of acquittal was passed on 05.09.2012 acquitting the first respondent of all the charges. Therefore, according to the learned counsel for the appellant, only if the Judgment of acquittal was passed by the Criminal Court prior to the order of dismissal passed in the departmental proceedings, it will have a bearing on the departmental proceedings. Whereas, in this case, after one year from the date on which the order of dismissal was passed by the Appellant college on 25.05.2010, the Judgment of acquittal was passed on 05.09.2012. In such circumstances, there was no occasion for the appellant to take note of the Judgment of acquittal at all inasmuch as it was passed subsequent to the order of dismissal passed by the appellant. In this context, the learned Senior counsel for the appellant placed heavy reliance on the judgment of the Honourable Supreme Court in the case of (Deputy Inspector General of Police and another vs. S. Samuthiram) reported in (2013) 1 Supreme Court Cases 598) to contend that mere acquittal of the first respondent in the Criminal proceedings will not have any impact on the order of dismissal passed by the appellant. Further, in the absence of any Rules governing the appellant College for reinstating him in service after his dismissal, on the basis of the Judgment of acquittal passed by the Criminal Court, the first respondent cannot be reinstated in service. In Para No.27 of the above judgment, it was held as follows:-

> ?27. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such case, the reinstatement is not automatic. There may be cases where the service rules provide that inspite of domesitc enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules.?

27. The learned Senior counsel for appellant also placed reliance on the decision of the Honourable Supreme Court in (State Bank of Bikaner & Jaipur vs. Nemi Chand Nalwaya) reported in 2011 4 Law Weekly 769 to contend that this Court, in exercise of its power under Article 226 of The Constitution of India, cannot interfere with an order of dismissal preceded by a valid enquiry, unless it is noticed that such enquiry is perverse and contrary to the evidence available on record.

28. The learned Senior counsel appearing for the appellant college also placed reliance on the judgment of the Division Bench of the Calcutta High Court in WPST No. 20 of 2016 in the case of (The State of West Bengal vs. Ratan Sarkar) on 03.08.2016, mentioned supra, to contend that in the absence of any Service Rule, the first respondent cannot be reinstated in service after his dismissal from service dehors the judgment of acquittal subsequently passed by the Criminal Court.

29. We have carefully perused the judgments relied on by the learned Senior counsel for the appellant in support of his contentions. In all these cases, we find that the order of dismissal has reached a finality and in such event, it was held that reinstatement of the delinquent employee is not automatic and it depends on the availability of provisions in the Service Rule. However, we find that in the present case, the order of dismissal passed by the appellant college as against the first respondent has not reached a finality. The first respondent has successfully subjected it to challenge before this Court and when it was pointed out that he has an alternative remedy of filing an appeal, he withdrew the writ petition with liberty to file a statutory appeal before the third respondent. Accordingly the first respondent has filed an appeal before the third respondent and during the pendency of such appeal, the judgment of acquittal was passed by the Criminal Court. Ultimately, the statutory appeal was allowed by the appellate authority by directing the appellant to reinstate the first respondent in such service. In such event, inasmuch as the order of dismissal has not become final, the subsequent judgment of acquittal passed by the Criminal Court will have a bearing and impact on the order of dismissal passed by the appellant college. Therefore, whether there is a provision in the Service Rules or not, it will not be a bar for reinstating a dismissed employee in service inasmuch as the order of dismissal merged with the order of appellate authority. Hence, the submission made by the learned Senior counsel for the appellant, relying upon the judgments of Samuthiram case mentioned supra cannot be made applicable considering the factual aspects of this case. In that caes, the order of dismissal passed against the deliquent has reached the finality.

30. The next submission of the learned Senior counsel for the appellant is with regard to the delay in filing the statutory appeal by the first respondent before the appellate authority as against the order of dismissal dated 25.05.2010. According to the learned Senior counsel for the appellant, the order of dismissal was passed on 25.05.2010 and it was received by the first respondent on the next day i.e., 26.05.2010. The first respondent ought to have filed the statutory appeal within 30

> days as contemplated under Section 39 of the Tamil Nadu Private Colleges (Regulation) Act, 1976. However, the first respondent filed WP (MD) No.7137 of 2010 before this Court. Subsequently, on 26.06.2012, the first respondent withdrew the writ petition and filed the statutory appeal on 14.08.2012 without even an application to condone the delay. Even though Section 14 of the Limitation Act provides for exclusion of time spent in the Court which does not have jurisdiction, the first respondent has not sought the permission of this Court to exclude the time spent before this Court, while withdrawing the writ petition and therefore, the appellate authority ought not to have entertained his statutory appeal in the absence of an application for condoning the delay. Thus, at the time of filing such appeal, the period spent before this Court was not specifically excluded by this Court. Further, according to the learned Senior counsel for the appellant, as per Section 39 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, the first respondent has to file the statutory appeal within one month from the date of receipt of the order. If for any other sufficient cause he could not file the appeal within 30 days, he can file an application stating the cause for delay in filing appeal before the third respondent and the third respondent is empowered to condone the delay not exceeding one month, if he is satisfied with the cause shown by the first respondent in the appeal. Further, Sections 4 to 24 of the Limitation Act deal with days to be exempted, excluded and extended for calculating the period of limitation. In other words, those sections contemplated sufficient causes for condonation of delay in filing appeal and applications. In particular, Section 14 provides for exclusion of time for proceedings in Court without jurisdiction. But Sections 4 to 14 are excluded in this Special Act, then the appeal or application has to be filed within the time prescribed for the same. Even the highest Court of the land has no power to entertain the appeal beyond the outer time limit fixed to file an appeal even if sufficient cause is shown.

Therefore, even the time spent by the first respondent in prosecuting the WP (MD) No. 7137 of 2010 challenging the order of dismissal passed by the appellant shall not be or cannot be excluded for calculating the period of limitation for filing the appeal before the third respondent. In this context, the learned Senior counsel for the appellant relied on the decision of the Honourable Supreme Court in Hukumdev case mentioned supra and (Mohammed Ashfaq vs. S.T.A.T., U.P.) reported in 1976 (4) SCC 330 to contend that even if sufficient cause is shown for condoning the delay, if the delay is more than the period prescribed, the revisioning authority has no discretion to extend the period. Further, it was held that this unmistakably shows that legislature had deliberately excluded the application of Section 4 to 14 of the Limitation Act.

31. On the contrary, the learned Senior counsel appearing for the first respondent placed reliance on the decision of the Honourable Supreme Court in the case of (M.P. Steel Corporation vs. Commissioner of Central Excise) reported in (2015) 7 Supreme Court Cases 58 wherein it was held that in Para No.35 and 43 as follows:-

> ?35. This Judgment is in line with a large number of authorities which have held that Section 14 should be liberally construed to advance the cause of justice ? see Sakthi

Tubes Limited vs. State of Bihar (2009) 1 SCC 786 and the judgments cited therein. Obviously, the context of Section 14 would require that the term ?Court? be liberally construed to include within it quasi-judicial tribunals as well. This is for the very good reason that the principle of Section 14 is that whenever a person bona fide prosecutes with due diligence another proceeding, which proves to be abortive because it is without jurisdiciton, or otherwise, no decision could be rendered on merits, the time taken in such proceeding ought to be excluded as otherwise the person who has approached the Court in such proceeding would be penalised for no fault of his own. This judgment does not further the case of Shri. Viswanathan in any way. The question that has to be answered in this case is whether suits, appeals or applications referred to by the Limitation Act are to be filed in Courts. This has nothing to do with ?Civil Proceedings? referred to in Section 14 which may be filed before other Courts or authorities which ultimately do not answer the case before them on merits but throw the case out on some technical ground. Obviously, the word ?Court? in Section 14 takes its colour from the preceding words ?Civil Proceedings?. Civil proceedings are of many kinds and need not be confined to suits, appeals or applications which are made only in Courts stricto sensu. This is made even more clear by the explicit language of Section 14 by which a civil proceeding can even be a revision which may be to a quasi-judicial tribunal under a particular statute.

43. Merely because Parson Tools (CST vs. Parson Tools and Plants (1975) 4 SCC 22 also dealt with a provision in a tax statute does not make the ratio of the said decision apply to a completely differently worded tax statute with a much shorter period of limitation - Section 128 of the Customs Act. Also, the principle of Section 14 would apply not merely in condoning delay within the outer period prescribed for condonation but would apply dehors such period for the reason pointed out in Consolidated Engg (2008) 2 SCC 169, above, being the difference between exclusion of a certain period altogether under Section 14 principles and condoning delay. As has been pointe dout in the said judgment, when a certain period is excluded by applying the principles contained in Seciton 14, there is no delay to be attributed to the appellant and the limitation period provided by the statute concerned continues to be the stated period and not more than the stated period. We conclude, therefore, that the principle of Section 14 which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately end without a decision on the merits of the case.

32. The learned Senior counsel for the first respondent also relied on the decision of the Honourable Supreme Court in the case of (Rameshwarlal vs. Municipal Council Tonk and others) reported in (1996) 6 Supreme Court Cases 100 wherein in Para No.3, it was held as follows:-

?3. Normally for application of Section 14, the Court dealing with the matter in the first instance, which is the subject matter of the issue in the later case, must be found

> to have lack of jurisdiction or other cause of like nature to entertain the matter. However, since the High Court expressly declined to grant relief relegating the petitioner to a suit in the civil court, the petitioner cannot be remediless. Accordingly, the time taken in prosecuting the proceedings before the High Court and this Court, obviously pursued diligently and bonafide, needs to be excluded. The petitioner is permitted to issue notice to the Municipality within four weeks from today. After expiry thereof, he could file suit within two months thereafter. The trial Court would consider and dispose of the matter in accordance with law on merits.?

33. By placing reliance on the above decisions, the learned Senior counsel for the first respondent would submit that the petitioner has bonafidely filed the writ petition before this Court and the time spent in prosecuting the writ petition has to be excluded by applying the principles of Section 14 of the Limitation Act. Further, this Court also, in the order dated 26.06.2012 passed in WP (MD) No. 7137 of 2010 granted liberty to file a statutory appeal. Therefore, he would contend that rejecting the appeal on the ground of limitation to file the statutory appeal will not arise in this case or on that ground, the first respondent cannot be deprived from challenging the order of dismissal passed against him.

34. In our considered opinion, when the order of dismissal was challenged by the first respondent within the period of limitation before the Court of first instance, which is later found to have lack of jurisdiction or the cause of like nature to entertain the matter, then there cannot be any impediment to exclude the period where time was spent by the first respondent in the said Court, by applying the provision of Section 14 of the Limitation Act, because a party cannot be derived of his right of seeking a remedy, especially when the said party has chosen to approach the Court of first instance within the period of limitation and obtain leave from the said Court to file an appeal before the appropriate forum. Further, on perusal of the above judgments, we are of the view that even if there is an outer time limit fixed for filing an appeal or application, the period spent in the forum which does not have jurisdiction or any other forum has to be excluded by applying the principles of Section 14 of the Limitation Act. In this regard, the Honourable Supreme Court held in 1996 (6) SCC 100 found that the petitioner therein was denied salary and therefore he filed writ petition. The writ petition was heard by the learned single Judge of the High Court and it was dismissed and the said order was confirmed by the Division Bench of the High Court against which the appeal was filed. When the question of limitation was argued, the Honourable Supreme Court held that in the first instance, there was no delay or lack of jurisdiction to file the writ petiton before the High Court and therefore, the writ petition was maintainable. In this case also, the first respondent has alternative remedy and therefore when he filed the writ petition this Court directed him to exhaust the alternative remedy available to him by giving liberty. Therefore, in our considered opinion, to meet the ends of justice, by applying the principles enunciated under Section 14 of the Limitation Act, the period spent by the first respondent in prosecuting WP (MD) No. 7137 of 2010 can be excluded, particularly when the first respondent had approached immediately after the order of dismissal was passed by filing WP (MD) No. 7137 of 2010 without any delay. In such circumstances, we hold that the appellate authority is right in entertaining the statutory appeal preferred by the first respondent and we do not find any infirmity in the same.

35. Now, coming to the merits of the case, the learned Senior counsel for the appellant submitted that the third respondent, being the appellate authority, while passing the order dated 29.05.2015, did not set aside the findings as regards the validity of the enquiry conducted by the appellant. The third respondent, in his order dated 29.05.2015 has set aside only the punishment of dismissal from service on the ground that it is disproportionate to the proved charges. Therefore, the findings recorded in the enquiry against the first respondent still holds good. Therefore, the order of dismissal passed by the appellant college as against the first respondent has to be confirmed.

36. Countering the submissions of the learned senior counsel for the appellant, it is contended by the learned Senior counsel for the first respondent that though the third respondent did not set aside the findings recorded in the enquiry, since there is a favourable order passed to reinstate the first respondent, the first respondent can question the valididty of the enquiry conducted by the appellant college in this writ petition. The learned Senior counsel for the first respondent also submitted that the enquiry was conducted by the enquiry committee in violation of principles of natural justice. It is mainly contended that the charge memo dated 26.02.2010 was issued by the appellant college without any resolution being passed by the college committee. In this regard, the learned Senior counsel for the first respondent invited the attention of this Court to the charge memo dated 26.02.2010 to contend that no reference was made in the charge memo with respect to any resolution passed by the college committee. The Secretary of the appellant alone is not competent to initiate departmental proceedings against the first respondent. As the Secretary is not the competent authority to intiiate the departmental proceedings, the entire enquiry proceedings are vitiated. It is further submitted that there is no date and place mentioned in the charge memo and the charge memo was vague. It is further submitted that the appellant purposely omitted to give the list of witnesses in the charge memo. It is his further contention that in the enquiry notice dated 08.04.2010, the Secretary and the Principal of the appellant college were cited as witnesses. As the Secretary is the head of the management and Principal is the academic head, naturally, the enquiry officers, who are also college committee members will be influenced. In such circumstances, the first respondent, on 10.04.2010, requested to have the enquiry after the outcome of the criminal case, but his request was rejected. Further, on 19.04.2010, the first respondent requested for appointment of a retired Distict Judge to conduct the enquiry as the Secretary and Principal were shown as witnesses, but the said request was also rejected on 20.04.2010 without assigning any proper reasons. Inspite of such objection, one Mr. Raja was appointed as Presenting Officer, however, he did not conduct the chief examination. On the other hand, the enquiry Officers have conducted the chief examination and put leading questions to the witnesses indicating clearly that they have not merely acted as inquiry officer but went beyond their limits and as such they played the role of Prosecutors. The dual role the enquiry officers played in the enquiry proceedings would definitely demonstrate that they were biased and not fair. Therefore, the conduct of the enquiry by the Inquiry Officer as if they were Presenting Officer is clearly opposed to the maxim 'fair play in action' and opposed to rules of natural justice. In this regard, the learned Senior counsel for the first respondent relied on the decision in Mani Shankar vs. Union of India (2008) (3) Supreme Court Cases 484 wherein it was held that the examination-in-chief was conducted by the enquiry officer himself. When the proceeding was for imposition of a major penalty, the presenting officer, who must have been engaged by the department, did not examine the witness and it is beyond any comprehension. Therefore, it was held that the entire enquiry proceedings are vitiated.

37. The learned Senior counsel for the first respondent further contended that the Principal S. Manickavel and Secretary T.J. Jeyakumar were examined as Mws 4 and 5. The Secretary as well as the Principal who tendered evidence against the first respondent participated in the College Committee meeting held on 17.05.2010 where the first respondent was decided to be dismissed from service. Therefore, he would contend that the entire enquiry proceedings was vitiated and it is opposed to the principles of natural justice.

38. By way of reply, the learned Senior counsel for the appellant submits that it is incorrect on the part of the learned Senior counsel for the first respondent to contend that the disciplinary proceedings initiated is without any resolution. It is submitted by the learned Senior counsel for the appellant that the copy of the resolution was marked as Ex.P16 on the side of the Management. We have also perused the resolution and found that a valid resolution was passed by the College Committee to initiate disciplinary action against the first respondent. Further, the copy of the resolution was also sent to the first respondent by a communication dated 19.02.2010. Therefore, we are not inclined to accept the submission of the learned Senior counsel for the first respondent that the charge memo was issued without any resolution by the college committee.

39. With regard to the submission of the learned Senior counsel for first respondent that the management purposely omitted to indicate the list of witnesses in the charge memo, it is submitted by the learned Senior counsel for appellant that charge memo was issued on 28.02.2010 for which first respondent submitted his explanation on 31.03.2010. The explanation of the first respondent was placed before the College committee in the meeting held on 01.04.2010. The committee did not accept the explanation offered by the first respondent. Since the first respondent sought for an oral enquiry, a five members Committee was constituted and College Committee has given full power to the Enquiry Committee to conduct the enquiry on the charges framed against first respondent. Thereafter, the convenor of the enquiry committee sent the first notice of enquiry on 08.04.2010 and it contains the list of witnesses to be examined on the side of the management. Thereafter, the first respondent, on 10.04.2010, requested to have the enquiry after the outcome of the criminal case, but his request was rejected. Therefore, the contention of the learned Senior counsel for the first respondent that the list of witness was not furnished by the appellant cannot be accepted.

40. With regard to the submissions made by the Counsel for the first respondent that his request for replacing the enquiry officer by a Retired Judge as enquiry officer on the ground that 4 out of 5 members of the enquiry committee are college committee members and 2 witnesses in the enquiry namely the Secretary and the Principal are also College committee members, it is replied by the learned Senior counsel for the appellant that all the five Members of the Enquiry Committee are Members of the College Committee. The first respondent did not state in his letter that the witnesses of the Secretary and the Principal would influence the Enquiry Committee members and it is only an after-thought. The first respondent only wanted to replace the Enquiry Committee because it comprises the members of the College committee. According to the learned Senior Counsel for the appellant, there is no prohibition to constitute a sub-committee by the College committee to hold the enquiry as held by the Full Bench of this Court in (Valliappan K.M. vs. Joint Director of School Education) 2006 (4) CTC 471. In the instant case, the College committee has conducted the enquiry in accordance with law. In fact, only in the meeting held on 08.05.2010, the College committee had

discussed the enquiry report and the findings and to take the decision after deliberation regarding the penalty to be imposed. Therefore, as per the decision of the Full Bench of this Court in Valliyappan vs Joint Director of School Education only if the members who gave evidence and participated in the enquiry sat in the committee while deciding about the guilt of the concerned employee and while considering the question of punishment, it amounts to violation of principles of natural justice.

41. As regards the submission of the learned Senior counsel for the first respondent that the Secretary and Principal of the appellate College have tendered evidence and therefore the enquiry is vitiated, it is replied by the learned Senior counsel for the appellant that the members of the enquiry committee did not participate while deciding about the guilt of the first respondent and while considering the question of quantum of punishment.

42. In the above circumstances, we are of the opinion that absolutely there is no violation of principles of natural justice in conducting the enquiry. In fact, several opportunities were given to the first respondent to participate in the enquiry but he has not chosen to appear in the enquiry to cross-examine the witnesses. Therefore, the enquiry was validly conducted and it is not against the principles of natural justice. The finding of the enquiry committee has also not been set aside by the appellate authority but only based on the subsequent judgment of acquittal, the statutory appeal was allowed by the appellate authority by concluding that the punishment of dismissal is disproportionate to the proved charges. As far as the Judgment of Criminal Court is concerned, the judgment of acquittal was passed since the witnesses have turned hostile. Therefore, we are of the opinion that the order of reinstatement passed by the appellate authority and confirmed by the learned single Judge have to be set aside and accordingly they are set aside. However, considering the factual aspect and in the light of the Judgment of the Apex Court reported in 2016 (6) SCC 303, (Delhi Police Vs. Sat Narayan Kaushik), we are inclined to modify the punishment of dismissal imposed against the first respondent into one of compulsory retirement.

43. In the result, the Common Order dated 27.11.2015 passed by the learned single Judge in WP (MD) No. 9780 of 2015 and 9723 of 2015 are set aside and the order of dismissal passed against the first respondent is modified into one of compulsory retirement. No costs. Consequently, connected miscellaneous petitions are closed.

To

1. The State of Tamilnadu rep. By its Secretary Department of Higher Education Fort St. George Chennai ? 600 009

2. The Director Directorate of Collegiate Education College Road, Nungambakkam Chennai ? 600 006

3. The Joint Director of Collegiate Education Madurai Region Shenoy Nagar Madurai ? 625 020.