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**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 2765 of 2024-F**

Dr. Saba V. M. da Silva S/o late Francisco  
Xavier D' Silva 55 years of age, Resident of  
Borda, Margao, Goa

.....Petitioner.

Versus

1. State of Goa  
Through its Chief Secretary, Having its  
office at Secretariat, Alto, Porvorim-  
Goa.
2. The Director,  
Directorate of Higher Education,  
Education complex, Porvorim, Bardez,  
Goa.
3. The Goa University Through the  
Registrar University Road, Taleigao,  
Goa.
4. V.M. Salgaocar College of Law,  
Through its Officiating Principal Mr.  
Shaber Ali Miramar, Panaji, Goa.
5. VVM's Govind Ramnath Kare College  
of law, Through its Officiating  
Principal, Mrs Goretta Simoes e Morais  
Tansor Comba, Margao-Goa.
6. Vidya Vikas Mandal Through its  
Chairman Office at Shree Damodar  
Educational Complex, Tansor Comba,  
Margao, Salcete, Goa 403601. ....Respondents.

Mr Nigel Costa Frias and Ms Sonadevi Nishad, Advocates for the  
petitioner.

Ms Neehal Vernekar, Addl. Govt. Advocate for respondent nos. 1 and

2.

Ms A. Agni, Senior Advocate with Mr J. Shaikh, Advocate for respondent no. 3.

Mr R. G. Ramani, Senior Advocate with Mr P. Kakodkar, Advocate for respondent no. 4.

Mr S. Usgaonkar, Senior Advocate with Ms T. Mashelkar, Advocate for respondent nos. 5 and 6.

**CORAM:**

**M. S. KARNIK &  
NIVEDITA P. MEHTA, JJ.**

**Date:-**

**9<sup>th</sup> December 2024**

**JUDGMENT ( Nivedita P. Mehta, J ) :**

1. Rule.

2. Rule made returnable forthwith.

3. Heard finally with consent of the parties.

4. By the present petition, the petitioner is seeking to quash and set aside the report of High Level Fact Finding Committee dated 18.07.2023 with other ancillary reliefs such as quashing of charge sheet dated 13.01.2024 and suspension order dated 26.07.2023 issued to the petitioner.

*Facts*

5. The petitioner was appointed as lecturer at Govind Ramnath Kare College of Law, Margao Goa on 20.06.2001. The Petitioner has an unblemished cumulative service record of over 30 years and has served as a teaching faculty at various colleges and educational

institutions which includes a teaching experience of over 23 years. The petitioner was appointed by Goa University as Dean of the Faculty of Law w.e.f. 01.03.2020 till 27.01.2022. The respondent nos. 4 and 5 until the academic year 2019-2020 independently carried out their admission procedure for the BA LLB (integrated five year course and LLB programmes).

6. The Directorate of Higher Education in the year 2021-22 convened a meeting of Principals of respondent no.4 (V. M. Salgaonkar College of Law) and respondent no. 5 (VVM's Govind Ramnath Kare College of Law) colleges for the admission of first year of five years BA LLB programmes, since it is under the grant-in-aid pattern of the Government. These two colleges were directed to have Common Law Admission Test (Goa-CLAT or G-CLAT) which would be conducted by one college as Nodal College and it would be alternate every year. Respondent no.6 (Vaidya Vikas Mandal) offered to be the Nodal College for the Academic year 2023-24 G-CLAT for admission of first year of five-year BA LLB course. On 25<sup>th</sup> April 2023 a meeting was convened by the Assistant Director of the Directorate of Higher Education of the Law College Principals' and it was decided that unlike past years when the Nodal College prepared the results, this year the Directorate of Higher Education shall declare the results. On 14.6.2023 the Director of Higher Education declared the results of G-CLAT 2023 and informed respondent nos. 4 and 5 that

the result of UG admission to law for the year 2023-24 has been declared.

7. The son of the petitioner was a candidate at G-CLAT 2023 for the BA LLB programmes and secured third rank. The Director of Higher Education after counseling, completed the admission process after which classes began on 19.6.2023.

8. On 2.7.2023, the petitioner saw a clipping vide WhatsApp of the Gomantak (Marathi) newspaper publication wherein it was alleged that not giving weightage to the XIIth Standard performance amounted to irregularity in G-CLAT 2023 and the same was done with ulterior motive by the petitioner to favour his son.

9. On 3.7.2023 Registrar, Goa University sent an email seeking clarification and the same was responded to by the petitioner on 3.7.2023. On 4.7.2023 the Vice Chancellor instituted a High Level Fact Finding committee to look into the conduct of the G-CLAT 2023.

The High Level Fact Finding committee recorded statements of the staff members and ~~also of Vice Chancellor.~~ **that of the petitioner.** The High Level Fact Finding committee prepared a report dated 18.7.2023 wherein it was concluded that the petitioner did not follow well established procedure for preparing merit list for admission for BA LLB of 5 years course and he deviated from the well-established procedure of giving equal weight age to the marks secured at qualifying examination and

Corrections  
carried out as  
per order dated  
17.12.2024.  
Sd/-  
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the entrance examination. The petitioner was subsequently suspended vide suspension letter dated 26.07.2024. Charge sheet with major penalties under section 14 of Central Civil Services (Classification, Control, Appeals) Rules 1965 (“CCS, Rules, 1965” for short) is issued to the petitioner. Inquiry is in progress.

**10.** Respondents were put to notice and the interim reply was filed on behalf of the respondent no. 6 wherein it is contended that petitioner did not disclose to the higher authorities regarding his son having applied for admission to law programmes and that he was one of the candidates for G-CLAT 2023, where the petitioner was conducting entrance examination as officiating principal of Govind Ramnath Kare College of Law.

**11.** It is the contention of respondent no. 6 that the petitioner was in a position of clear conflict of interest and therefore proprietary required him to recuse him from the entire G-CLAT 2023 process. Respondent no. 6 says that petitioner’s son who had applied for admission at Govind Ramnath Kare College of Law and answered G-CLAT examination 2023 secured first rank in the said college and in the overall State of Goa he secured third rank. On the basis of the report submitted by the High Level Fact Finding Committee charge-sheet was issued to the petitioner for major penalties dated 13.1.2024 in terms of Rule 14 of the CCS Rules, 1965.

12. Petitioner submitted his reply to the said charge-sheet. Respondent no.6 decided to conduct inquiry in the said allegations/charges and same was initiated as per Rule 14 of the said CCS Rules, 1965.

***Contention of parties***

13. Mr Costa Frias, learned counsel for the petitioner argued that the main grievance of the petitioner is that High Level Fact Finding Committee report is likely to be relied upon by the respondent no. 6 during the course of inquiry which is impermissible in law. Learned counsel for the petitioner relied on the judgment of the Supreme Court in the case of ***Satyendra Singh Vs State of Uttar Pradesh and another***,<sup>1</sup> in support of his submissions.

14. Mr Usgaonkar, learned Senior Advocate for the respondent nos. 5 and 6 submitted that report of the High Level Fact Finding Committee dated 18.7.2023 cannot be totally discarded as statements of various witnesses, including that of the petitioner have been recorded by the High Level Fact Finding Committee. Further, the voluntary statements given by the said witnesses, including that of the Petitioner, in the said Inquiry before High Level Fact Finding Committee, are relevant and will be required to be considered by the Inquiry Officer in the present inquiry. Further, High Level Fact

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1 2024 SCC Online SC 3325

Finding Committee had directed the Respondent No.6 to hold disciplinary Inquiry against the Petitioner on the basis of various documents produced before them, which documents/records are relevant and forms the basis and can be used in the Inquiry, which is presently being conducted against the Petitioner under the CCS Rules, 1965. In any event, the exact role of petitioner in the holding of GCLAT 2023 and various acts, deeds performed by him came to light only after the conclusion of the Inquiry by the High Level Fact Finding Committee and hence the records of the High Level Fact Finding Committee cannot be discarded totally.

15. In support of his submissions, learned Senior Advocate for the respondent nos.5 and 6 relied on the judgments of Hon'ble Supreme Court in the case of *Krishna Chandra Tandon Vs the Union of India*,<sup>2</sup> and *Vijay Kumar Nigam(Dead) through LRS Vs State of M.P. and others*<sup>3</sup>.

### ***Analysis and Conclusion***

16. In our opinion the general rule is well established that in a fact finding inquiry there is no person who is in the position of an accused or a defendant. The purpose of the inquiry is only to gather material for information. If the material so gathered discloses a prima facie case against a person only then disciplinary inquiry is necessitated

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<sup>2</sup> 1974 SCC 374

<sup>3</sup> (1996)11 SCC 599

against such person. The High Level Fact Finding committee report can be used as the basis to initiate a disciplinary inquiry where the committee's findings provide sufficient ground to suspect misconduct and the report is considered as preliminary steps to gather information before formally charging any individual with disciplinary violations.

17. The Apex Court in ***Satyendra Singh Vs State of Uttar Pradesh and another***, (supra) in paragraph 16 which reads thus:-

“16 *In the case of Nirmala J. Jhala 14, this Court held that evidence recorded in a preliminary inquiry cannot be used for a regular inquiry as the delinquent is not associated with it and the opportunity to cross-examine persons examined in preliminary inquiry is not given. Relevant extract thereof reads as under: —*

“42. *A Constitution Bench of this Court in Amalendu Ghosh v. North Eastern Railway [AIR 1960 SC 992], held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a*



*view as to whether a regular disciplinary proceeding against the delinquent is required to be held.*

*43. Similarly in Champaklal Chimanlal Shah v. Union of India [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under : (AIR p. 1862, para 12)*

*“12. ... There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article [nor prior to that].”*

44. *In Narayan Dattatraya Ramteerthakhar v. State of Maharashtra [(1997) 1 SCC 299 : 1997 SCC (L&S) 152 : AIR 1997 SC 2148] this Court dealt with the issue and held as under:*

*“... a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence.”*

45. *In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.”*

*( emphasis supplied)*

18. However, the delinquent must be given a fair opportunity to defend himself during the subsequent inquiry process. The fact

finding report cannot be the basis on which the Inquiry Officer can conclude his findings during the course of the proceedings. The inquiry will have to be held in accordance with procedure laid down after considering all the material placed before the Inquiry Officer in the course of disciplinary inquiry proceedings.

19. In the case of **Krishna Chandra Tandon** (supra), paragraph 22 reads thus:-

*“22. Next it was contended that the Commissioner had unjustifiably made a finding which was contrary to the one made by the Enquiry Officer in the case of the assessment of the firm of Girdhari Lal Manoharlal, Ferozabad. The charge in this connection was that the appellant had failed to take action against the assessee for escaped income for earlier years. The Enquiry Officer thought that there were no grounds to hold that the appellant had erred in not taking action. The Commissioner came to a contrary conclusion. Now, there is no doubt at all that the Commissioner is not bound by the findings of the Enquiry Officer. See Union of India v. H.C. Goel [AIR 1964 SC 364 : (1964) 4 SCR 718 : (1964) 1 Lab LJ 38] . He was the punishing authority. He had to consider the evidence before him and though he had to consider the Enquiry Officer's report he was not bound by the latter's findings. What is further contended, however, is that in the*

*notice to show cause, dated May 5, 1955 the Commissioner had stated that he had concurred with the findings of the Enquiry Officer which would mean that he had also concurred with the above finding of the Enquiry Officer in this respect. Reading the show-cause notice one feels no doubt that what the Commissioner meant to say in the notice was that he had provisionally concurred with the findings of the Enquiry Officer. If it was not so, there would have been really no point in asking the appellant to show cause. Indeed if by reason of such concurrence the appellant had omitted to give his explanation on the point, there might have been some prejudice. It is not shown that there had been any prejudice in fact. But assuming that there was this slight deviation, it amounts to nothing significant, because on the main two points considered in connection with the assessment of Girdharlal, namely, (1) that the appellant had not imposed a penalty although the returns for two years had not been filed within the time allowed and (2) that the appellant had failed to add as profits cash deposits amounting to about Rs 2 lakhs, both the CIT and the Enquiry Officer were at one.”*

**20.** The said judgment is distinguishable on facts as it deals with a full-fledged departmental inquiry which was initiated against the delinquent employee and was not in the context of a fact finding inquiry.

**21.** In the case of *Vijay Kumar Nigam* (supra) the challenge of the petitioner was to the non-supply of the report of preliminary inquiry thereby violating the principles of natural justice and in these facts the Hon'ble Supreme Court opined that non-supply of preliminary enquiry report does not violate principle of natural justice as the preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation for passing the order of dismissal against the employee. The judgment supports the view expressed by us.

**22.** Moreover the report cannot be used as evidence against the petitioner in departmental inquiry which is initiated against him. After the initiation of the inquiry the same will be required to be conducted by examining the necessary witnesses of both sides considering the documentary evidence on record and on application of principles of fair play and justice.

**23.** Considering the nature of charges levelled against the petitioner, at this stage, we are not inclined to entertain the other reliefs prayed for in this petition.

24. So far as quashing of the suspension is concerned, we are not inclined to interfere at this stage. It is open for the petitioner to approach this Court at a later stage depending upon the progress of the inquiry. It is made clear that we have not expressed any opinion on the merits of the charges.

25. A request is made by learned counsel for the petitioner for expediting the inquiry. Mr Usgaonkar, learned Senior Counsel for the respondent nos.5 and 6 on instructions makes a statement that the inquiry will be completed as expeditiously as possible and every possible endeavour will be made to conclude the same within a period of four months from today.

26. It is made clear that the petitioner must cooperate with the inquiry and shall not ask for unnecessary adjournment.

27. Rule is partly made absolute in the above terms.

28. Writ Petition stands disposed of. No cost.

**NIVEDITA P. MEHTA, J.**

**M. S. KARNIK, J.**