



A.F.R.

**Reserved on 16.01.2015
Delivered on 19.02.2015**

Court No. - 29

Case :- WRIT - A No. - 35877 of 2014

Petitioner :- Dr. Virendra Singh

Respondent :- Banaras Hindu University, Varanasi And 3 Others

Counsel for Petitioner :- Dr. Virendra Singh in person

Counsel for Respondent :- Ajit Kumar Singh, S.C.

Hon'ble Dilip Gupta, J.

Hon'ble Anjani Kumar Mishra, J.

The petitioner, who retired as a Dean in the Faculty of Engineering and Technology of the Banaras Hindu University, Varanasi¹ in January 2011 but who was subsequently re-employed as a Professor in the Department of Civil Engineering in the Indian Institute of Technology (Banaras Hindu University) Varanasi² upto 30 July 2014, has filed this petition to assail the order dated 26 April 2014 by which he was informed by the Institute that in view of the complaint that was received from a girl student of his Department regarding allegation of sexual misconduct and in view of the report submitted by the Women's Grievance Cell which examined the complaint, his re-employment as a Professor in the Institute stands discontinued with immediate effect.

It transpires from the records of the writ petition that after the petitioner retired as a Dean in the Faculty of Engineering and Technology of the University in the month of January 2011, he applied for re-employment. A letter dated 20 July 2012 was sent to the petitioner by the

1 the University

2 the Institute

University informing him that the Executive Council of the University in its meeting held on 29 July 2012 had been pleased to re-employ him as a Professor and that if he was willing to accept the offer, he could submit his joining report to the Director of the Institute. The petitioner accepted the terms and conditions stipulated in the order and was deputed to the Department of Civil Engineering of the Institute for a period of one year or till the post was filled up on a regular basis. Before the term of one year was come to an end on 30 July 2013, the petitioner moved an application for extension of his re-employment as a Professor. It needs to be noted that the erstwhile Institute of Technology of the University became the Indian Institute of Technology (Banaras Hindu University), Varanasi with effect from 29 June 2012 under the provisions of the Institutes of Technology (Amendment) Act, 2012. A communication dated 10/11 December 2013 was sent to the petitioner by the Institute extending his re-employment for a further period of one year with effect from 30 July 2013 on the existing terms and conditions. The term of re-employment of the petitioner as a Professor in the Institute, therefore, stood extended upto 30 July 2014.

On 18 April 2014, a girl student who was studying in Part-IV in the Department of Civil Engineering of the Institute submitted a complaint to the Director of the Institute that she had been sexually harassed by the petitioner and the complaint is as follows :-

“I wish to bring to your notice an incident of great concern and sorrow that happened on 18 April 2014 at around 5:30 pm.

I was sexually harassed by a senior professor, Virendra Singh (ex H.O.D. and ex Dean), of my department after he took me to a lonely place saying that he wanted me to have a look at the new apartment he had purchased. He first invited me to have tea with him at Vishwanath Temple and then asked me to accompany him to Lanka as he wanted to drink lassi. I tried to settle him to have his drink at the temple but he was adamant on going to Lanka. Out of respect, as he is the senior most professor of our department, I followed him dutifully to his car. On our way we met Prof. K.P. Singh. After the drink he said that he wanted to visit his newly purchased flat to check progress of its work and I had no option but to follow him.

In the lonely apartment after we passed the guards he put his arm on my shoulder. When I resisted he asked me if I wanted to see his apartment from inside. By that time I was feeling uneasy and refused the offer. After that he turned towards me in an attempt to kiss and forced me to enter the room.

Alarmed by the situation I ran away from the place. He followed me, forcefully hold my hand and shamelessly tried to persuade me to return to the apartment or least enter his car. Somehow I ran away from him and managed to inform Prof. Rajesh Kumar and Prof. P.R. Maiti, professors of my department.

Apart from this, he used to call me to his chamber very frequently, for project works, as he did to other female students of the department too. He would often ask us to visit his home in person to discuss work. On some earlier occasions when he had asked me to meet him outside the department, I had taken some friends with me to accompany us. This time he particularly asked me not to bring anyone with me saying that he did not feel comfortable in discussing his work that way. Thinking that the temple was a safe place, I agree to it. So finding me alone this time, he tried to take advantage of me.

This is a very shameful incident for our institute and extremely disturbing for me as I considered him to be my mentor. I request you to please do the needful by taking serious action against him and making sure

that nothing like this happens again with any other girl. I also request you to take care of my security.”

The complaint, which was submitted by the girl student on the same day the incident had happened, was forwarded by the Director of the Institute to the Women's Grievance Cell for making an enquiry into the conduct of the petitioner. A Committee was then constituted consisting of senior members of Departments of the Institute and the constitution of the Committee is as follows:-

1.	Prof. Rekha Srivastava, Dept. of Mathematical Sciences, IIT	Chairperson
2.	Dr. Kalpana Chaudhary, Department of Electrical Engineering, IIT	Member
3.	Dr. Medha Jha, Department of Civil Engineering, IIT	Member
4.	Smt. Swati Biswas Deputy Registrar, IIT	Member Secretary

The Committee met on 22 April 2014, 23 April 2014 and 24 April 2014. The complainant, the petitioner, Dr. Rajesh Kumar (Associate Professor in the Department of Civil Engineering), Sri Karan Modi (a student of Part-III in the Department of Civil Engineering) and Dr. P.R. Maiti (Assistant Professor in the Department of Civil Engineering) were called to appear before the Committee. The Committee recorded the statements of the aforesaid persons and gave it findings on 25 April 2014 against the petitioner on the allegation made by the girl student. The Director of the Institute, thereafter, issued the order dated 26 April 2014 for discontinuance of the re-employment of the petitioner as a Professor

in the Department of Civil Engineering of the Institute with immediate effect.

The petitioner, who appeared in person, refuted the allegation made by the girl student and submitted that the order was passed in complete breach of the principles of natural justice as no disciplinary enquiry was conducted against him. The petitioner submitted that the Committee merely recorded his statement and the statement of other persons and even the enquiry report submitted by the Committee was not supplied to him. The petitioner pointed out that the impugned order could not have been passed merely on the basis of the said report. In this connection, the petitioner placed reliance upon Statute 31(a) of the Statutes of the University as also Ordinance 23 to substantiate that his services could have been terminated only in accordance with the procedure prescribed therein which requires a detailed disciplinary enquiry to be held. The petitioner also submitted that as he had been re-employed by the University, it was not permissible for the Institute to have dispensed with his services.

Sri Ajit Kumar Singh, learned counsel appearing for the University and the Institute, however, submitted that in view of the seriousness of the allegations that had been made against the petitioner by a girl student of his Department which allegations were found to be true by the Committee consisting of Senior Professors of the Departments of the Institute, the re-employment of the petitioner as a Professor in the Department of Civil Engineering was discontinued and that in such

circumstances, a detailed enquiry was not required to be held nor a copy of the report was required to be served on the petitioner. Learned counsel also submitted that the petitioner was re-employed by the Institute by order dated 10/11 December 2013 for a further period of one year with effect from 30 July 2013 and, therefore, the contention of the petitioner that the Institute did not have the power to dispense with his services and only the University could have dispensed with his services is not correct.

We have considered the submissions advanced by the learned counsel for the parties.

The petitioner retired as a Dean in the Faculty of Engineering and Technology of the University in January 2011. He, however, submitted an application for re-employment. He was re-employed as a Professor in the Department of Civil Engineering of the Institute for a period of one year. This decision was taken by the Executive Council of the University. Though the Institute of Technology of the University became the Indian Institute of Technology (Banaras Hindu University), Varanasi in view of the provisions of the Act, the Executive Council of the University was to continue to function until the new Board was constituted for the Institute. It is for this reason that the Executive Council of the University took a decision on 29 July 2012 to depute the petitioner in the Department of Civil Engineering of the Institute for a period of one year. Subsequently, the Institute, by order dated 10/11 December 2013, extended the re-employment of the petitioner upto 30 July 2014. However, three months before the said period was to come to an end, a girl student in the

Department of Civil Engineering in which the petitioner was a Professor made a complaint dated 18 April 2014 against the petitioner regarding sexual misconduct.

The Director of the Institute placed the complaint made by the girl student before the Women's Grievance Cell for immediately making an enquiry. A Committee consisting of senior members of the Institute comprising of Prof. Rekha Srivastava (Department of Mathematical Sciences), Dr. Kalpana Chaudhary (Department of Electrical Engineering) and Mrs. Medha Jha (Department of Civil Engineering) was constituted with Smt. Swati Biswas (Deputy Registrar of the Institute) as the Member Secretary. The complainant and the petitioner were called to appear before the Committee on 22 April 2014 and their statements were recorded. Dr. Rajesh Kumar, Associate Professor in the Department of Civil Engineering and Karan Modi, a student of Part-III in the Department of Civil Engineering were also called to appear before the Committee on 23 April 2014. The statements made by them were also recorded. Dr. P.R. Maiti, Assistant Professor appeared before the Committee on 24 April 2014 and his statement was also recorded. On the basis of the statements, the Committee submitted its report to the Director of the Institute which is as follows -

“1. Miss X, IDD Part-IV, Department of Civil Engineering, IIT (BHU), received a phone call at 3.30 p.. on 18.4.2014 from Prof. Virendra Singh, ex-head, Department of Civil Engineering & ex-Dean, IT, BHU to have 'Lassi' at Lanka. Whereas Prof. Virendra Singh informed the committee that invitation was from the student and he was not sure whether he called her or the student called him. (Further as per letter dated

23.04.14 of Prof. Virendra Singh addressed to the Director, ITT (BHU) he has accepted that he phoned her if she is coming to his room to interact about the research and asked her to come alone). But Miss X insisted him to have the drink at Vishwanath Temple. After reaching Vishwanath Temple at around 5.30 p.m., Prof. Virendra Singh asked her to accompany him to Lanka for lassi. The fact is that both of them went to Lanka together in the car of Prof. Virendra Singh which has been accepted by both of them.

2. Prof. K.P. Singh, ex-Director, IT, BHU met them in Lanka where both of them were walking to have '*Lassi*'. Again this has been accepted by both of them.

3. After seeing off Prof. K.P. Singh, they drank '*Lassi*'. After drinking '*Lassi*', Prof. Virendra Singh asked the complainant to visit his flat near Samne Ghat to check the progress of work of the flat. Prof. Virendra Singh denied the fact that she accompanied him to Samne Ghat and further narrated that the complainant left him after taking '*Lassi*' in Lanka, but he accepted that from lanka he went to his brothers place which is near to his apartment alone.

4. The complainant further narrated that, "In the lonely apartment after we passed the guard he put arm on my shoulder. When I resisted he asked me if I wanted to see his apartment from inside. By that time I was feeling uneasy and refused the offer. After that he turned towards me in an attempt to kiss and forced me to enter the room". These facts were denied by Prof. V. Singh. He accepted that he went alone to his brothers house which is near to '*Ojha Apartments*'.

5. The complainant called her friend Mr. Karan Modi (her junior) IDD Part-III Department of Civil Engineering, ITT BHU after coming out of the flat and asked him to pick up her from Lanka. In the meantime, when she was walking towards Lanka from Samne Ghat, Prof. Virendra Singh called on her mobile and asked sorry for whatever happened.

6. Mr. Karan Modi picked her from Lanka and they called Ishu Bansal classmate of Miss X and all of them went to the house of Dr. Rajesh Kumar. From there, all of them went to the Department of Civil Engineering in the chamber of Prof. Rajesh Kumar.

She narrated the whole incident in from of Prof. Rajesh Kumar and Dr. P.R. Maiti who eventually was present in the Department of Civil Engineering at that time. Dr. Rajesh Kumar informed the committee that at that time, the mental condition of the girl student was not good and she was in tremendous tension and this fact was supported by Dr. P.R. Maiti and Mr. Karan Modi also.”

It is on a consideration of the statements made by the aforesaid persons that the Committee found as a fact that the complainant and the petitioner went to Lanka to have '*Lassi*' and thereafter the petitioner took the complainant to his apartment where, according to the complainant, the sexual misconduct happened. The petitioner admitted that he went with the girl student to have '*Lassi*' at Lanka but he denied that he took the girl student to his apartment. The Committee, however, found that other factors like calling Karan Modi, the complaint to Dr. Rajesh Kumar and the timing of the incident corroborated the statement of the girl student. The Committee also found that it was most unbecoming of a Professor of the Institute to have accompanied a girl student and that too to a lonely place which indicates his bad intention. The Board of Governors, therefore, ordered that the re-employment of the petitioner as a Professor in the Department of Civil Engineering of the Institute should be discontinued with immediate effect. It is this decision that was communicated by the Institute to the petitioner.

The petitioner has refuted the allegation of sexual misconduct made by the girl student and has submitted that a false complaint had been made by the girl student because of an incident that had happened

on 12 April 2014. According to the petitioner, the complainant had earlier invited him for a cup of tea in a hotel on 12 April 2014. The petitioner accepted the invitation and during the meeting he found that the complainant and a third year student who were sitting on a bench in front of the petitioner started flirting in his presence. The petitioner claims that since he rebuked them she had filed a false complaint against him.

It is difficult to accept this submission of the petitioner. In the first instance, as is seen from the documents which have been enclosed with the counter affidavit, this incident which the petitioner claimed had happened on 12 April 2014 was brought to the notice of the Director of the Institute only on 23 April 2014 when the girl student had filed the complaint on 18 April 2014 against the petitioner. It appears that as an after thought the petitioner has so stated to make out a defence for himself.

This apart, as noticed above, the Committee which consisted of senior teachers of the Institute had arrived at a conclusion on the basis of the statements made by the complainant, two Assistant Professors teachers and a student. The complaint was submitted by the girl student to the Director of the Institute on the same date the incident had happened. She narrated the sequence of events including what had happened in the lonely apartment. Soon after the incident she also informed two other Professors of the Department. The petitioner did admit before the Committee that he knew the complainant for the last 10 months; that after taking lassi he was with the complainant in Vishwanath Temple at 5:30

p.m. where he met Professor K.P. Singh at around 5:45 p.m. Though the petitioner has denied that he went to his new flat in Lanka/Samne Ghat with the complainant after having taken lassi, but he admits that he went alone to his brother's house situated closeby in front of Ojha Apartments at around 6:15 p.m. Prof. Rajesh Kumar also gave his statement before the Committee. He stated that the complainant had contacted him on 18 April 2014 immediately after the incident that had taken place and that he had advised her to make a complaint to the appropriate authority. On a query being made as to whether the complaint made by the girl student was correct, he stated that in his opinion the complaint was correct. He also stated that the mental condition of the complainant was not good and she was in tremendous tension at the time of reporting the incident. Sri Karan Modi stated before the Committee that the complainant had told him everything about the incident that happened on 18 April 2014. He also stated that when he and the complainant were studying in the Library at about 4:30 p.m., the complainant informed him that the petitioner had asked her to accompany him for a visit to Lanka to drink lassi. He also stated that the complainant had told him that she had narrated the entire incident to Prof. Rajesh Kumar. The statement of the girl student when appreciated in the background of the statements of the two Professors and the student to whom the girl student also confided, does inspire confidence.

In this regard, we need to remind ourselves of the observations that were made by the Supreme Court in **Apparel Export Promotion**

Council Vs. A.K. Chopra³ that in a case involving charge of sexual harassment, the Courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities. The statement of the victim has to be appreciated in the background of the entire case, and when the evidence of the victim inspires confidence, the Courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity and sympathy is wholly misplaced and mercy has no relevance. The observations of the Supreme Court are as follows:-

“..... In the instant case, the behavior of respondent did not cease to be outrageous for want of an actual assault or touch by the superior officer. In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or the dictionary meaning of the expression "molestation". They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaced and mercy has no relevance.....”

It is, in such circumstances, not possible for the Court to conclude that the findings recorded by the Committee of senior teachers of the Institute are perverse.

The issue, however, that also arises for consideration is whether in the facts and circumstances of the case, it was necessary for the Institute

3 (1999) 1 SCC 759

to have held a detailed disciplinary enquiry against the petitioner before discontinuing his re-employment.

It is trite that the rules of 'natural justice' are not embodied rules and they cannot be put into a strait-jacket formula. The underlying principles of natural justice is to check arbitrary exercise of power and, therefore, the principle implies a duty to act fairly. It is not possible to lay down a rigid rule as to when the principles of natural justice would apply as the requirements of natural justice must depend on the facts and circumstances of the case, the nature of the enquiry, the subject-matter to be dealt with. The Supreme Court in **State of Punjab Vs. Jagir Singh**⁴ and **Karnataka SRTC Vs. S.G. Kotturappa**⁵ has held that the principles of natural justice are required to be complied with having regard to the fact situation obtaining therein and cannot be applied in a vacuum without reference to the relevant facts and circumstance of the case.

In **Hira Nath Mishra & Ors. Vs. The Principal, Rajendra Medical College, Ranchi & Anr.**⁶ the Supreme Court examined at length the application of principles of natural justice in the context of an order that was passed by the Principal of a College expelling certain male students against whom the girls had made a complaint that they had entered the compound of the girls' hostel without clothes and had tried to pull the hand of one of the girls. The Principal of the College, when the complaint was filed by 36 girl students, entrusted the enquiry to a three member Committee consisting of teachers of the College. The Committee

4 (2004) 8 SCC 129

5 (2005) 3 SCC 409

6 (1973) 1 SCC 805

directed the four male students to appear in connection with the enquiry and were asked to write down whatever they had to say. The girl students, who were parties to the complaint, also gave their statements before the Enquiry Committee. The statements of the girl students had not been recorded in the presence of the male students. After making the necessary enquiry, the Committee found that the male students were guilty of grave misconduct and recommended that they should be expelled. Acting on this report, the Principal passed the order of expulsion. The Supreme Court held that in such circumstances, the requirement of natural justice was fulfilled and the relevant observations are as follows:-

“10. **We think that under the circumstances of the case the requirements of natural justice were fulfilled.** The learned Counsel for the respondents made available to us the report of the Committee just to show how meticulous the members of the Committee were to see that no injustice was done. **The Committee on a careful consideration of the material before them came to the conclusion that the three appellants and Upendra had taken part in the night raid on the girls Hostel. The report was confidentially sent to the Principal. The very reasons for which the girls were not examined in the presence of the appellants, prevailed on the authorities not to give a copy of the report to them. It would have been unwise to do so. Taking all the circumstances into account it is not possible to say that rules of natural justice had not been followed.** In *Board of Education v. Rice* 1911 AC 179 Lord Loreburn laid down that in disposing of a question, which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on everyone who decided anything. He did not think that the Board was bound to treat such a question as though it were a trial. The Board need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who

were parties in the controversy to correct or contradict any relevant statement prejudicial to their view. More recently in *Russell v. Duke of Norfolk* 1949 1 All ER 109 Tucker, L.J. observed: "There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case." More recently in *Byrne v. Kinematograph Renters Society Ltd.* 1958 2 All ER 579 Harman, J. observed "what, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more".

11. Rules of natural justice cannot remain the same applying to all conditions. We know of statutes in India like the Goonda Acts which permit evidence being collected behind the back of the goonda and the goonda being merely asked to represent against the main charges arising out of the evidence collected. Care is taken to see that the witnesses who gave statements would not be identified. In such cases there is no question of the witnesses being called and the goonda being given an opportunity to cross-examine the witnesses. The reason is obvious. No witness will come forward to give evidence in the presence of the goonda. However unsavory the procedure may appear to a judicial mind, these are facts of life which are to be faced. **The girls who were molested that night would not have come forward to give evidence in any regular enquiry and if a strict enquiry like the one conducted in a court of law were to be imposed in such matters, the girls would have had to go under the constant fear of molestation by the male students who were capable of such indecencies. Under the circumstances the course followed by the Principal was a wise one. The Committee whose**

integrity could not be impeached, collected and sifted the evidence given by the girls. Thereafter the students definitely named by the girls were informed about the complaint against them and the charge. They were given an opportunity to state their case. We do not think that the facts and circumstances of this case require anything more to be done."

(emphasis supplied)

In **Avinash Nagra Vs. Novodaya Vidyalaya Samiti & Ors.**⁷, the Supreme Court also observed that in the facts and circumstance of the case, the conduct of the appellant was unbecoming that of a teacher and held that dispensing with a regular enquiry under the rules and denial of cross-examination was legal and not vitiated by violation of the principles of natural justice. It was found that the appellant, who was a Post Graduate teacher, went to the girls' hostel at 10:00 p.m. in the night and made sexual advances to a girl and when she ran away from his presence, he pursued her to the room where she locked herself. A report was submitted to the Director who found the appellant not worthy to be a teacher in the Institution. It is in this context that the Supreme Court observed that dispensing with a regular enquiry and denial of cross-examination did not vitiate the enquiry on the ground of violation of principles of natural justice. The observations are as follows:-

“12. **Therefore, greater responsibility is thrust on the management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in disciplined and dedicated pursuit of excellence.**

The teacher who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/her character and conduct should be more like Rishi and as *loco parentis* and such is the

7 (1997) 2 SCC 534

duty, responsibility and charge expected of a teacher. The question arises: whether the conduct of the appellant is befitting with such higher responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to the full-fledged enquiry as demanded by him? The fallen standard of the appellant is the tip of the iceberg in the discipline of teaching, a noble and learned profession; it is for each teacher and collectively their body to stem the root to sustain the faith of the society reposed in them. Enquiry is not a panacea but a nail on the coffin. It is self-inspection and correction that is supreme.

..... **Under those circumstances, the conduct of the appellant is unbecoming of a teacher much less a *loco parentis* and, therefore, dispensing with regular enquiry under the rules and denial of cross-examination are legal and not vitiated by violation of the principles of natural justice.**”

(emphasis supplied)

In **Apparel Export Promotion Council** (supra), the Supreme Court also explained what constitutes sexual harassment and that it is incompatible with the dignity and honour of a female and needs to be eliminated. The Supreme Court also pointed that there can be no compromise on such violations and any sympathy shown in such cases would have a demoralizing effect on women. Though the observations were made in connection with sexual harassment to a woman at work place, they would equally apply to sexual misconduct by teachers. The observations of the Supreme Court are as follows:-

“25. An analysis of the above definition shows that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably

interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her.

26. There is no gainsaying that each incident of sexual harassment at the place of work results in violation of the Fundamental Right to Gender Equality and the Right to Life and Liberty - the two most precious Fundamental Rights guaranteed by the Constitution of India. As early as in 1993 at the ILO Seminar held at Manila, it was recognized that sexual harassment of women at the work place was a form of 'gender discrimination against women'. In our opinion, the contents of the fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such violations, admits of no debate.

.....

28. The observations made by the High Court to the effect that since the respondent did not "actually molest" Miss X but only "tried to molest" her and, therefore, his removal from service was not warranted rebel against realism and lose their sanctity and credibility. The High Court overlooked the ground realities and ignored the fact that the conduct of the respondent against his junior female employee, Miss X, was wholly against moral sanctions, decency and was offensive to her modesty. Reduction of punishment in a case like this is bound to have demoralizing effect on the women employees and is a retrograde step. There was no justification for the High Court to interfere with the punishment imposed by the departmental authorities. The act of the respondent was unbecoming of good conduct and behavior expected from a superior officer and undoubtedly amounted to sexual harassment of Miss X and the punishment imposed by the appellant was, thus commensurate with the gravity of his objectionable behavior and did not warrant any interference by the High Court in exercise of its power of judicial review."

What has been emphasised by the Supreme Court in the aforesaid decisions is that rules of 'natural justice' cannot remain the same under all conditions and that girls, in cases of sexual harassment, may not give evidence if a regular enquiry is held. Under such circumstance, the Committee of teachers that is constituted can record statements and no opportunity of cross-examination is required to be given nor a copy of the enquiry report is required to be supplied. The dispensation of a regular enquiry, therefore, under such circumstance does not result in violation of the principles of natural justice.

It is, therefore, not possible to accept the contention of the petitioner that a detailed disciplinary enquiry was required to be conducted. The petitioner was aware of the allegation that had been made against him as is clear from the reply that he had submitted and had been given an ample opportunity to state his defence when he appeared before the Committee. The petitioner gave his statement before the Committee which constituted of three senior teachers of the Institute. The Committee also recorded the statements of the complainant and the other persons to whom the complainant had narrated the incident soon after it happened. The witnesses included Dr. Rajesh Kumar, Associate Professor and Dr. P.R. Maiti to whom the complainant had narrated the whole incident soon after it happened. The complaint was also filed by the complainant on the same day i.e. 18 April 2014.

In **Hira Nath Mishra** (supra), the Supreme Court observed that the responsibility of an Institution towards its girl students was very great and it was not necessary to hold a detailed enquiry in matters relating to a complaint made by girl students regarding sexual misconduct. The Enquiry Committee that had been constituted by the Principal of the Institute also consisted of three teachers of the College which had recorded the statements and thereafter had submitted its report to the Principal who passed the order expelling the male students. The Supreme Court observed that in cases where girl students are involved, it is not necessary to hold a detailed enquiry or provide an opportunity to cross examine the witnesses. The Supreme Court also observed that in such circumstances it was not necessary to serve a copy of the enquiry report to the male students against whom the allegations had been made by the girl students. This is also what was observed subsequently by the Supreme Court in **Avinash Nagra** (supra). It is, therefore, not possible to accept the contention of the petitioner that the principles of natural justice have been violated in any manner.

The contention of the petitioner that the Institute did not have the authority to discontinue the re-employment of the petitioner and the University alone could have dispensed with his services cannot also be accepted. As noticed above, the erstwhile Institute of Technology of the University became the Indian Institute of Technology (Banaras Hindu University) with effect from 29 June 2012 under the provisions of the Institutes of Technology (Amendment) Act, 2012. It was the Institute that

granted him re-employment by letter dated 10/11 December 2013 for a further period of one year with effect from 30 July 2013. The Institute alone and not the University, therefore, could have dispensed with his services, which it did.

Thus, for all the reasons stated above, the order passed by the Chairperson of the Board of Directors of the Institute to discontinue the re-employment of the petitioner as a Professor in the Department of Civil Engineering of the Institute does not suffer from any illegality so as to call for interference of the Court under Article 226 of the Constitution.

The writ petition is, accordingly, dismissed.

Date:19.02.2015

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(Dilip Gupta, J.)

(Anjani Kumar Mishra, J.)