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

Date of Decision: 21st May, 2026

+ W.P.(C) 2713/2024

RADHEY SHYAM MISHRA

.....Petitioner

Through: Mr. Imran Ali, Ms. Aanchal Bumb,
Mr. M.Z Khan, Advocates.

versus

UNIVERSITY OF DELHI & ORS.

.....Respondents

Through: Mr. A.P.S. Ahluwalia, Senior
Advocate with Mr. S.S. Ahluwalia,
Ms. Saniya Zehra, Advocates for R-3
& 4.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioner, Radhey Shyam Mishra, has approached this Court under Article 226 of the Constitution seeking setting aside of the order dated 3rd July, 2002, whereby his services in Mata Sundri College for Women were brought to an end. He also assails the subsequent rejection of his representation dated 29th November, 2022, which was submitted pursuant to the order dated 16th November, 2022 passed by this Court in W.P.(C) 19812/2004. Since the Petitioner has admittedly crossed the age of superannuation, the relief of reinstatement survives only in a notional sense. The real contest now concerns continuity of service, back wages and consequential retiral benefits.



2. The case turns on a decisive distinction: absence from duty is not, by itself, abandonment of service. The College invokes the rule which treats an employee as having absconded where he remains absent without prior permission for a continuous period of 90 days. The Petitioner answers that he had not walked away from service. His case is that he was suffering from mental illness, that his wife had kept the College informed of his condition, and that the College itself corresponded with her on that basis. The submission, therefore, is that the College could have scrutinized the explanation, rejected it if it was found wanting, and even proceeded departmentally for unauthorised absence. It could not, however, treat a subsisting employer-employee relationship as extinguished by a legal fiction without first addressing whether the absence was truly abandonment.

Facts

3. The Petitioner entered service in Mata Sundri College on 11th October, 1983. By communication dated 5th December, 1984, he was confirmed in his post with effect from 11th October, 1983. He was promoted from Peon to Library Attendant with effect from 1st February, 1990. By office order dated 24th November, 1999, he was transferred from the library to the administrative section with immediate effect.

4. The events which gave rise to the present dispute began in December, 2001. On 8th January, 2002, the College recorded that the Petitioner was unauthorisedly absent from duty with effect from 14th December, 2001 and directed stoppage of his salary till further orders. The next day, the Principal addressed a detailed communication to the Petitioner. It stated that he had not reported for duty since 14th December, 2001 and had given no oral or written intimation, nor any leave application. The letter also referred to his



attendance from August, 2001 onwards, stating that he had worked only for 30 days in the preceding six months. After referring to earlier warnings, reprimands and late coming, the Petitioner was directed to report for duty immediately and to show cause why his services should not be terminated after three months' notice.

5. Four days later, on 13th January, 2002, the Petitioner's wife, Mrs. Meena Mishra, wrote to the Principal stating that the Petitioner had been under treatment from 14th December, 2001, was unable to join duty, and that she was anxious both about his illness and about his employment. She requested that medical leave be granted till his recovery. The College does not contest receipt of this letter. Its objection is that the communication was inadequate: it did not disclose the nature of illness, the likely duration of absence, the name of the hospital or doctor, and it carried no medical certificate.

6. The College thereafter corresponded with Mrs. Meena Mishra. By a letter dated 4th February, 2002, issued in continuation of an earlier office letter dated 16th January, 2002, she was asked to inform the College of the hospital from which the Petitioner was receiving treatment and the expected or tentative date on which he would resume duty. The correspondence shows that the matter was not being treated, at that stage, as one of unexplained disappearance, but as one where illness was being asserted as the reason for absence and further particulars were being sought.

7. The Petitioner relies upon a further letter dated 10th June, 2002 said to have been sent by his wife. In that letter, she referred to the College letter dated 29th May, 2002 and stated that she had already sent a letter dated 15th February, 2002 explaining the illness, domestic financial problems and the



likely date of joining duty of her husband. She requested that some more time be granted, approximately up to August, 2002, and that an ex parte decision be not taken. The College disputes receipt and genuineness of this letter as well as of the alleged letter dated 15th February, 2002.

8. In the meanwhile, the College issued a notice dated 29th May, 2002, calling upon the Petitioner to report for duty within fifteen days and to face the charges framed against him, failing which an ex parte decision would be taken in accordance with rules. The precise language of this communication assumes significance because the Petitioner submits that the College itself treated the matter as one involving charges and misconduct, not as a case of severance by abandonment.

9. On 3rd July, 2002, the Petitioner's services were terminated. The Petitioner thereafter addressed a representation dated 23rd August, 2002 seeking revocation of the termination and restoration of service. In that representation, he asserted that he had been under mental depression and treatment and that he could not attend duty from 14th December, 2001 to 5th August, 2002. He stated that his wife had represented his case in his absence, and that his services had been terminated without due process and without considering his mental illness. The Respondents' case is that the medical certificate produced by the Petitioner was post-termination, was inadequate, and was unsupported by contemporaneous OPD slips, prescriptions, treatment papers or other medical record.

10. The Petitioner then pursued further representations. The record includes subsequent requests seeking permission to join duty. In one such representation dated 9th September, 2002, the Petitioner stated that he had been orally informed that, in the absence of a Governing Body, he could not



be permitted to join duty. There are also communications addressed by the employees' union requesting sympathetic reconsideration. On 28th October, 2002, the College informed the Union that the Petitioner's services had been terminated with the approval of the College Governing Body and that the matter regarding reconsideration lay in the hands of the Governing Body. The letter further stated that there was then no Governing Body and that, as soon as the Governing Body was formed, the case would be processed according to its merits and demerits.

11. The Petitioner thereafter instituted W.P.(C) 19812/2004, seeking setting aside of the termination and reinstatement with full back wages. On 16th November, 2022, this Court disposed of the writ petition. The order records that, after some arguments, counsel for the Petitioner, without pressing the matter on merits, sought a limited direction to the concerned authority to consider the Petitioner's case. The Court noticed that the University had Petitioner's request be reconsidered once the Governing Body was formed. The order further records that the Petitioner had crossed the age of superannuation.

12. The operative portion of the order dated 16th November, 2022 directed the Petitioner to file a fresh detailed representation before the Principal, Mata Sundri College for Women, within two weeks. Upon receipt, the Principal was directed to place the representation before the Governing Body of the College for consideration. The Governing Body was required to take a "reasoned decision on merits" on the very first day of convening the meeting, in accordance with law. The Court also recorded the expectation that the Governing Body would consider the matter sympathetically, as assured by senior counsel for the College.



13. Pursuant to the said order, the Petitioner submitted a representation dated 29th November, 2022 for sympathetic consideration and grant of back wages. He referred to his earlier representations and stated that his absence was on account of serious mental illness and that his wife had communicated with the College during that period.

14. The Petitioner thereafter issued a legal notice dated 5th April 2023, alleging non-compliance with the order dated 16th November 2022. In response, the College, by reply dated 26th April 2023, stated that the Governing Body, in its first meeting convened on 12th April 2023, had unanimously rejected the Petitioner's representation dated 29th November 2022. The Petitioner's grievance, however, is that neither a copy of the resolution nor any reasoned order was furnished to him. Constrained thereby, he issued a further legal notice dated 13th July 2023 specifically seeking disclosure of the Governing Body's decision. According to the Petitioner, even thereafter, no speaking or reasoned order was communicated to him.

15. The Petitioner also moved CM APPL. No. 35069/2023 in W.P.(C) 19812/2004 seeking restoration of the earlier writ petition and consideration of the case on merits. On 13th July, 2023, the application was withdrawn with liberty to seek redressal in accordance with law before the appropriate forum. The present writ petition followed.

Submissions on behalf of the Petitioner

16. Mr. Imran Ali, Counsel for the Petitioner, first meets the objection to maintainability. He submits that the order dated 16th November, 2022 cannot be read as a rejection of the Petitioner's challenge to the termination dated 3rd July, 2002. The Petitioner did not abandon the challenge on merits. The



Court accepted a limited course because the Petitioner's representation had not been considered by the Governing Body, although the College had earlier indicated that reconsideration would lie before that body. It is urged that the direction issued on 16th November, 2022 for a "reasoned decision on merits" would make little sense if the challenge on merits had already been foreclosed. The order dated 13th July, 2023, by which the Petitioner was permitted to withdraw the restoration application with liberty to seek redressal in accordance with law, is relied upon to submit that the present petition is neither barred by res judicata nor by any principle akin to constructive res judicata.

17. On the merits, Mr. Ali submits that the Petitioner's absence cannot be treated as abandonment. The Petitioner was suffering from mental illness from December, 2001 and was not in a position to attend duty. His wife informed the College of the illness by letter dated 13th January, 2002. The College acknowledged that communication and corresponded with her. The letter dated 4th February, 2002, addressed by the College to the Petitioner's wife, asked her to disclose the hospital from which the Petitioner was taking treatment and the tentative date of joining duty. This correspondence, it is emphasised, is incompatible with an inference that the Petitioner had disappeared or intended to give up his employment.

18. Mr. Ali then refers to the notice dated 29th May, 2002 which directed the Petitioner to report for duty and face the charges framed against him. According to him, this notice reveals that the College treated the absence as conduct requiring an explanation and as a matter involving charges. Therefore, the College was required to disclose the charges, serve the imputations, grant a fair opportunity of defence and hold an inquiry before



imposing a consequence as grave as termination. The College could not allege misconduct while issuing the notice, and then avoid the safeguards of a disciplinary process by describing the final order as “deemed termination”.

19. Reliance is placed upon Rule 49(2)(v) of the of the University Non-Teaching Employees (Terms & Conditions of Service) Rules, 1971. It is submitted that the opening words of the rule control the deeming consequence which follows. Absence beyond 90 days does not automatically result in termination where a valid reason or unforeseen contingency is asserted. Mental illness, once brought to the College’s notice, required consideration. The College could have called for proof and rejected the explanation if found inadequate, but could not mechanically invoke the deeming fiction without first addressing the explanation offered.

20. Reliance is placed upon ***Krushnakant B. Parmar v. Union of India***,¹ to submit that unauthorised absence does not *ipso facto* amount to wilful absence or misconduct. Where absence is explained by compelling circumstances such as illness, accident or hospitalisation, the employer must examine whether the absence was wilful. Reliance is also placed upon ***L. Robert D’Souza v. Executive Engineer, Southern Railway***² and ***D.K. Yadav v. J.M.A. Industries Ltd.***,³ to submit that automatic termination or striking off from service for absence, without minimum natural justice, cannot be sustained where civil consequences follow.

21. Mr. Ali further submits that the subsequent rejection by the Governing Body does not cure the defect in the termination. The order dated 16th November, 2022 required a reasoned decision on merits. No such

¹ (2012) 3 SCC 178

² (1982) 1 SCC 645



decision was ever communicated. The College has not shown any speaking order which deals with the Petitioner's explanation, the wife's contemporaneous correspondence, the plea of mental illness, the opening words of Rule 49(2)(v), or the legal distinction between unauthorised absence and abandonment. A communication stating that the Governing Body had unanimously rejected the representation is not a compliance of the Court's direction.

22. As to relief, counsel accepts that the Petitioner has crossed the age of superannuation and that actual reinstatement is no longer possible. The prayer is therefore limited to notional continuity up to the date of superannuation, consequential fixation of pay, back wages and all retiral benefits flowing from such continuity.

Submissions on behalf of the College

23. Mr. A.P.S. Ahluwalia, Senior counsel for Respondents No. 3 and 4, raises a threshold objection to the maintainability of the petition. He submits that W.P.(C) 19812/2004 was itself directed against the termination dated 3rd July, 2002 and sought reinstatement with full back wages. The present petition, in substance, seeks the same relief. According to him, the earlier writ petition was argued at length and, at that stage, counsel for the Petitioner chose not to press the challenge on merits but sought only a limited direction for consideration of a fresh representation. The Petitioner, having elected that course, cannot now revive the original challenge by filing a second writ petition.

24. Mr. Ahluwalia, further submits that the order dated 16th November, 2022 only required the College to consider the Petitioner's representation. It

³ (1993) 3 SCC 259



did not recognise any right in the Petitioner to have the representation accepted, nor did it reopen the termination for a fresh judicial review. The Governing Body considered the matter in its first meeting and rejected the representation after examining the Petitioner's service record. The rejection of that representation cannot be used as a device to create a fresh cause of action against an order of termination passed in 2002.

25. The College further explains the consideration of the representation after the order dated 16th November, 2022. It is submitted that no Governing Body existed when the representation dated 29th November, 2022 was received. After the Governing Body was constituted on 5th April, 2023 and approval obtained from the Vice Chancellor on 12th April, 2023, the representation was placed before its first meeting held on the same day. It considered the Petitioner's service record, including allegations of misconduct, indiscipline, insubordination, non-performance of duties and wilful unauthorised absence, and unanimously rejected the representation.

26. On merits, Mr. Ahluwalia submits that the Petitioner cannot claim the equities of a diligent employee wrongly removed from service. The record of the earlier writ petition contains several warnings, complaints and communications concerning late coming, unauthorised absence, disobedience and poor conduct. Complaints were also received from members of the staff and students. The Petitioner was shifted from the library to the administrative section because his conduct had affected the functioning of the library. It is submitted that the Governing Body was entitled to consider this history while deciding whether the case called for sympathetic indulgence.

27. Mr. Ahluwalia further submits that the decisive fact remains the



Petitioner's absence from 14th December, 2001 onwards. The College issued notices, yet the Petitioner did not report for duty. The letter dated 13th January, 2002 sent by his wife, even if received, did not mention the nature of illness, the period for which leave was required, the hospital, the treating doctor, or any medical certificate. The College sought particulars, but no satisfactory response was furnished. The later letters dated 15th February, 2002 and 10th June, 2002, now relied upon by the Petitioner, were never received by the College and their genuineness is specifically disputed.

28. The medical certificate relied upon by the Petitioner does not advance his case. It was produced only after the termination, along with the representation dated 23rd August, 2002. According to the Respondents, the certificate is dated 5th August, 2002, contains no adequate particulars, and is unsupported by OPD slips, prescriptions, treatment papers or any contemporaneous record which could establish treatment for nearly eight months. The Petitioner did not take treatment from a panel doctor or any University medical facility. The plea of mental depression remains vague and unproved.

29. It is also urged that the Petitioner never personally replied to the notices issued by the College. The communications relied upon were sent by his wife. Even if those communications are taken into account, the Petitioner did not establish that he was so incapacitated that he could not respond himself. The College cannot be expected to keep employment open indefinitely on the basis of vague letters unsupported by medical proof.

30. On this foundation, the College submits that Rule 49(2)(v) squarely applies. The Petitioner remained absent without prior permission for a continuous period far beyond 90 days. No valid reason or unforeseen



contingency was established by reliable material. He was therefore rightly treated as having absconded from duty and his services were deemed to have terminated. It is argued that no full disciplinary inquiry was necessary, because the case was not one of punitive dismissal for misconduct but one of deemed cessation under the applicable service rule.

31. The Respondents also raise the plea of delay and laches. The Petitioner was terminated on 3rd July, 2002. He sought revocation only on 23rd August, 2002 and filed W.P.(C) 19812/2004 in 2004. The present writ petition, filed after rejection of the representation, is an attempt to revive claims which are stale and which were the subject of the earlier writ proceedings.

32. Additionally, it is submitted that the Petitioner ought to have approached the Executive Council or sought review before the competent authority and, having failed to do so, cannot invoke Article 226.

33. Reliance is placed on *Meena v. T.R. Patil Vidyalaya*,⁴ to submit that where a statutory or rule-based deeming provision operates on prolonged absence, a regular disciplinary inquiry is not necessary. Reliance is also placed on *Ex Sepoy Madan Prasad v. Union of India*,⁵ to contend that habitual unauthorised absence and indiscipline may justify severe disciplinary consequences. *PHR Invent Educational Society v. UCO Bank*,⁶ is cited on the limits of writ jurisdiction, particularly where alternative remedies exist or concluded matters are sought to be reopened. *DB Corp. Ltd. v. Registrar of Newspapers*,⁷ is relied upon for the proposition that a

⁴ 2014 SCC OnLine Bom 1541

⁵ (2023) 9 SCC 100

⁶ (2024) 6 SCC 579

⁷ 2010 SCC OnLine Del 3026



disposed proceeding cannot be indirectly reopened through subsequent applications or collateral proceedings.

Points for determination

34. On the pleadings and submissions, the following questions arise for consideration:

(i) Whether the present writ petition is barred by principles of res judicata, constructive res judicata, waiver, or finality arising from the order dated 16th November, 2022 passed in W.P.(C) 19812/2004.

(ii) Whether the subsequent order dated 13th July, 2023, granting liberty to the Petitioner to seek redressal in accordance with law, preserves the Petitioner's right to challenge the rejection of his representation and, to the necessary extent, the foundational termination.

(iii) Whether the Petitioner's absence from duty from 14th December, 2001 could lawfully be treated as abandonment or absconding under Rule 49(2)(v), in the face of the wife's contemporaneous correspondence and the College's own response seeking medical particulars and the tentative date of joining.

(iv) Whether the termination dated 3rd July, 2002 was, in substance, a punitive action founded on alleged misconduct, unauthorised absence and past conduct, thereby requiring observance of natural justice and disciplinary procedure.

(v) Whether the Governing Body's rejection of the representation dated 29th November, 2022 satisfies the requirement of a reasoned decision on merits as directed by this Court on 16th November, 2022.

(vi) If the impugned action is found unsustainable, what relief should be granted, particularly when the Petitioner has already crossed the age of



superannuation.

Discussion and reasons

Maintainability and finality

35. The College’s preliminary objection may be dealt with first. The order dated 16th November, 2022 cannot be read as an adjudication sustaining the termination dated 3rd July, 2002. The order records that counsel for the Petitioner, without pressing the matter on merits at that stage, sought a limited direction. It also records that the College opposed the matter on merits. However, the Court did not decide the validity of the termination. It did not reject the Petitioner’s challenge founded on want of inquiry or breach of natural justice. Nor did it decide whether Rule 49(2)(v) had been lawfully invoked.

36. The Petitioner relied upon the College’s communication dated 28th October, 2002, in which it had been stated that reconsideration of his case would lie before the Governing Body and that, once the Governing Body was constituted, the matter would be processed on its “merits and demerits”. It was in that setting that this Court directed the Petitioner to file a fresh representation and required the Principal to place it before the Governing Body.

37. The College’s present submission, if accepted, would make the direction dated 16th November, 2022 self-defeating. The Governing Body was directed to take a “reasoned decision on merits”. If the merits of the Petitioner’s challenge had already stood concluded against him, there was nothing left for the Governing Body to decide on merits. The words “without pressing the matter on merits” must therefore be read in their setting. They mean that the Court was not invited to decide the merits then,



because the Petitioner accepted the intermediate course of consideration by the Governing Body. They cannot be converted into abandonment of the challenge to termination.

38. The order dated 13th July, 2023 reinforces this conclusion. While permitting withdrawal of the restoration application, this Court granted liberty to the Petitioner to seek redressal in accordance with law. Had the challenge already stood foreclosed, such liberty would have carried little meaning. The objection founded on res judicata or constructive res judicata is accordingly rejected.

39. At the same time, the procedural history cannot be ignored. Since the rejection of the Petitioner's representation turns on the validity of the termination dated 3rd July, 2002, this Court must examine the legality of that action to the limited extent necessary for deciding the present challenge.

Validity of the termination dated 3rd July, 2002

40. The next question is whether the Petitioner's absence could lawfully be treated as abandonment. It is necessary to begin with the applicable rule.

Rule 49(2)(v), as relied upon by the Respondents, reads:

"Except for valid reasons and/or unforeseen contingencies, no employee shall be absent from duty without prior permission. Where an employee absents himself from duty without prior permission for a continuous period of 90 days, he shall be treated as absconding from duty and his service be deemed as 'terminated'."

41. The College reads the latter part of Rule 49(2)(v) as if the completion of 90 days' absence, by itself, brings the employment to an end. That reading gives insufficient weight to the opening words of the rule. The rule does not say that every absence beyond 90 days, whatever its cause, must result in deemed termination. It begins with the words "Except for valid reasons and/or unforeseen contingencies". The provision, therefore, requires



the authority to ask whether the absence was truly without justification. Where illness is placed before the employer as the cause of absence, the employer may test that explanation, call for proof, and reject it if the material is found wanting. It cannot bypass that enquiry altogether and allow the deeming consequence to operate as a mechanical end of service.

42. The record does not bear out a case of silent desertion. By January, 2002, the College knew that illness was being put forward as the reason for the Petitioner's absence. Mrs. Meena Mishra's letter dated 13th January, 2002 stated that the Petitioner was under treatment from 14th December, 2001 and sought medical leave till his recovery. The College thereafter wrote to her and asked for particulars of the hospital and the expected date of joining. The explanation may have been incomplete and required proof, but it was not non-existent. Once the College chose to engage with that explanation, it could not later treat the case as if the Petitioner had disappeared without contact, communication or cause.

43. The College is, however, justified in contending that the Petitioner's medical material is not entirely satisfactory. The letter dated 13th January, 2002 neither enclosed a medical certificate nor disclosed the nature of the illness. The alleged letters dated 15th February, 2002 and 10th June, 2002 are disputed. The medical certificate relied upon by the Petitioner was produced only after the termination. OPD slips, prescriptions, review records and treatment papers have not been placed on record. These omissions weaken the Petitioner's explanation and must weigh while moulding relief.

44. That said, insufficiency of medical proof is not the same as abandonment of service. Abandonment is a matter of intention. Absence may, in a proper case, supply evidence of that intention. Long and wholly



unexplained absence may justify an inference that the employee has chosen not to return. But where the employer has contemporaneous notice that illness is being asserted, and where the employer itself asks for medical particulars and the expected date of joining, the inference cannot be drawn without first examining the explanation. The correspondence may not have conclusively proved illness, but it warranted consideration of the explanation rather than automatic termination.

45. The notice dated 29th May, 2002 also assumes significance. It called upon the Petitioner to report for duty and face the “charges framed” against him. This suggests that the College was treating the matter as one involving allegations of misconduct rather than a mere operation of a deeming clause. If charges had been framed, they required disclosure. If the proposed action was founded on unauthorised absence, past indiscipline, misbehaviour or poor service record, the College had to proceed through the disciplinary route. The College could have proceeded against the Petitioner for unauthorised absence, tested the medical explanation and considered his past record in accordance with law. It could not, however, rely upon allegations of misconduct while dispensing with the procedural safeguards such action attracts.

46. The Respondents’ own pleadings reinforce this conclusion. The College states that the Governing Body considered the Petitioner’s acts of misconduct and misbehaviour, indiscipline, disobedience, insubordination, non-performance of duties, and wilful and deliberate absence. This indicates an assessment of conduct and not a neutral application of a deeming rule. Once such material is used to sustain the termination of service, the action assumes a punitive colour. The employer cannot rely on allegations of



misconduct while avoiding the fair procedure such action requires by describing it as a deemed termination.

47. The legal distinction between unauthorised absence and abandonment is settled. In *Krushnakant B.*, the Supreme Court held that absence from duty, though unauthorised, does not by itself establish wilfulness. The authority must examine whether the absence was deliberate or whether it arose from compelling circumstances. Illness, accident and hospitalisation were specifically noticed as circumstances which may prevent an employee from reporting for duty and which, if established, would take the case outside wilful absence.

48. *D.K. Yadav* lends support to the requirement of minimum procedural fairness where a deeming provision results in cessation of service carrying civil consequences. Rule 49(2)(v) expressly carves out an exception for “valid reasons and/or unforeseen contingencies”. Once illness was asserted as the explanation for absence, and particulars were sought by the College on that footing, the deeming consequence could not be invoked without meaningful consideration of whether the asserted explanation brought the case within the exception. To hold otherwise would render the qualifying words in the rule otiose.

49. These authorities do not leave the employer powerless. An employee who remains absent without justification may be proceeded against, a medical explanation may be analysed and rejected if not found credible, and the past service record may be considered where the rules so permit. However, before bringing service to an end on the footing of wilful abandonment, the employer must apply its mind to whether the explanation offered displaces such an inference and whether the case is one of



misconduct requiring disciplinary action. This exercise was not undertaken before the Petitioner's service was brought to an end.

50. *T.R. Patil Vidyalaya* is distinguishable as it turned on a materially different rule and factual setting. In that case, the deeming fiction of abandonment operated only after a continuous absence exceeding three years and the total failure of the employee to respond to repeated notices. Conversely, Rule 49(2)(v) expressly preserves cases involving "valid reasons and/or unforeseen contingencies". The Petitioner contemporaneously asserted a serious mental illness, a fact the College acknowledged by seeking medical particulars, yet the College proceeded to terminate him without considering that explanation. Furthermore, the notice dated 29th May, 2002, explicitly referred to "charges framed," contradicting the Respondents' current reliance on an automatic deeming fiction.

51. *Ex Sepoy Madan Prasad v. Union of India* also does not carry the Respondents far. That case arose in the context of the Armed Forces, where disciplinary standards are especially stringent. The employee had a history of punishments, no acceptable medical record, and had pleaded guilty before the Summary Court Martial. The present case concerns a non-teaching employee of a college. The proposition that habitual unauthorised absence may invite serious consequences is unexceptionable. The present case, however, turns on the distinct question, i.e., whether Rule 49(2)(v) was lawfully invoked in the facts at hand.

52. *PHR Invent Educational Society* is relied upon to contend that the Petitioner ought to have availed the statutory remedy of appeal/review before the competent authority. That objection does not merit acceptance in the facts of the present case, particularly when the earlier writ petition was



entertained and disposed of with a direction for reconsideration by the Governing Body, followed by liberty to seek redressal in accordance with law after rejection of the representation. *DB Corp. Ltd.*, relied upon to contend that concluded proceedings cannot be reopened through collateral means, is equally inapposite. The earlier writ petition was not dismissed on merits. The present petition arises from the subsequent rejection of the Petitioner's representation and does not amount to reopening a concluded adjudication.

53. There is a further difficulty with the decision said to have been taken pursuant to the order dated 16th November, 2022. This Court had required a "reasoned decision on merits". The College asserts that such a decision was taken. What has, however, been communicated to the Petitioner and placed before this Court substantially comprises the reply dated 26th April, 2023 issued through counsel for the College, together with the justification set out in the counter-affidavit. A reasoned decision cannot ordinarily be reconstructed through later pleadings; it must substantially emerge from the decision-making process itself. During the course of hearing, Mr. Ahluwalia clarifies that a formal decision of the Governing Body exists in the College records. The Petitioner maintains that no copy thereof was ever furnished to him and certainly, no such decision has been placed on record.

54. Be that as it may, the controversy before the Governing Body necessarily involved material questions, including the applicability of Rule 49(2)(v) in light of the explanation of illness, the effect of the contemporaneous correspondence from the Petitioner's wife, and the relevance of the Petitioner's service record to the action ultimately taken. Thus, even proceeding on the assumption that the reply dated 26th April,



2023 and the justification in the counter-affidavit substantially reflect the basis of that decision, the material placed before this Court does not adequately disclose engagement with the issues arising from the Petitioner's representation or the basis on which the competing contentions came to be resolved. Judged on that standard, the Court's direction dated 16th November, 2022 was not complied with in substance.

55. Ordinarily, this conclusion may have led to a remand to the Governing Body. The Court does not consider that course either necessary or just in the present case. The termination is of 2002. The earlier writ petition was filed in 2004. The Petitioner has crossed the age of superannuation. The Governing Body was given an opportunity to consider the matter after the order dated 16th November, 2022. A further remand would only extend a dispute which has already outlived the Petitioner's tenure in service. The record is sufficient for this Court to decide whether the termination can stand. In the opinion of the Court, it cannot.

56. The termination dated 3rd July, 2002 is therefore unsustainable. The infirmity is threefold. First, Rule 49(2)(v) could not operate mechanically, for the rule itself makes room for valid reasons and unforeseen contingencies. Secondly, the correspondence on record made it unsafe to infer that the Petitioner intended to abandon service. Thirdly, the College's reliance on past misconduct, indiscipline and the Petitioner's service record gave the action a punitive character in substance. Fair procedure could not, therefore, be avoided by describing the result as deemed termination.

57. The remaining question is relief. The Petitioner presses for full back wages. That relief does not follow automatically merely because the termination is found unsustainable. The Court must have regard to the nature



of the illegality, the length of time that has passed, the fact that the employee did not actually work, the extent to which the employer was at fault, the conduct of the employee, and the overall balance of equities. The relief flowing from an illegal termination is not automatic and must be fashioned having regard to the facts and equities of the particular case. Monetary consequences, including back wages, depend upon a contextual assessment rather than a rigid rule.⁸

58. The Petitioner did not work after 2002. He had remained absent from 14th December, 2001 onwards. His medical documents, as noticed above, are not satisfactory in all respects. It would therefore be unjust to direct the College to pay full wages for the entire remaining period of service as if the Petitioner had actually discharged duties. Equally, the College cannot be permitted to retain the advantage of a legally unsustainable termination which deprived the Petitioner of a fair determination of his explanation and, in consequence, of continuity and retiral benefits. The relief must therefore lie between these two positions.

59. The period from 14th December, 2001 till 23rd August, 2002 must be treated separately. That is the period during which the Petitioner claims to have been under treatment and unable to attend duty. Since he did not work during that period, it would be appropriate to direct that the said period be adjusted against leave of the kind due. If no leave is available, the period shall be treated as extraordinary leave without pay.

60. A different consideration applies after 23rd August, 2002. On that date, the Petitioner sought revocation of the termination and restoration to service. He asserted that he was fit to resume duty. The College did not

⁸ *U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey*, (2006) 1 SCC 479



permit him to rejoin. The consequences of the unlawful termination must therefore begin from that point. Yet, having regard to the facts that the Petitioner did not actually render service thereafter, the medical explanation is not free from doubt, and the past record projected by the College cannot be wholly ignored while moulding relief, full back wages would be excessive. In the facts of the case, award of 25% back wages from 23rd August, 2002 till the actual date on which the Petitioner would have superannuated would meet the ends of justice.

61. There is some discrepancy in the record on the date of superannuation. The order dated 16th November, 2022 records the same as January, 2022, whereas the present writ petition and the Petitioner's representation state that he superannuated in January, 2020. It is unnecessary to resolve that discrepancy in this judgment. The benefits shall be computed up to the actual date on which the Petitioner would have superannuated in accordance with his service record.

Relief

62. For the reasons stated above, the writ petition is allowed in the following terms:

- (i) The termination order dated 3rd July, 2002 is set aside.
- (ii) The rejection of the Petitioner's representation dated 29th November, 2022, as communicated through the reply dated 26th April, 2023 and defended in these proceedings, is also set aside.
- (iii) The Petitioner shall be treated as having continued in service notionally from the date of termination till the actual date on which he would have superannuated in accordance with his service record.
- (iv) The period from 14th December, 2001 till 23rd August, 2002 shall be



adjusted against leave of the kind due. If no leave is available, the said period shall be treated as extraordinary leave without pay.

(v) For the period from 23rd August, 2002 till the date of superannuation, the Petitioner shall be entitled to 25% back wages, to be computed after notional fixation of pay.

(vi) The Petitioner shall be entitled to notional continuity for the limited purpose of fixation of pay, qualifying service, pensionary benefits, gratuity and all other retiral or terminal benefits admissible under the applicable rules.

(vii) The Respondents shall compute and release the monetary and retiral benefits flowing from this judgment within twelve weeks.

(viii) If the amounts are not released within the said period, the unpaid amount shall carry simple interest at 6% per annum from the expiry of twelve weeks till the date of payment.

63. It is clarified that the Petitioner shall not be entitled to actual reinstatement, having crossed the age of superannuation. It is also clarified that, except to the extent of 25% back wages directed above, the Petitioner shall not be entitled to salary for the period during which he did not actually work.

64. The writ petition is disposed of in the above terms. Pending applications, if any, stand disposed of.

SANJEEV NARULA, J

MAY 21, 2026/ab