

Court No. - 34**Case :-** WRIT - A No. - 15593 of 2019**Petitioner :-** Shail Kumar Chaube**Respondent :-** Banaras Hindu University, Varanasi, And 4 Others**Counsel for Petitioner :-** Udai Chandani**Counsel for Respondent :-** Krishna Raj Singh
Jadaun, Ritvik Upadhyya, Vikram D. Chauhan**Hon'ble Ajit Kumar, J.**

1. Heard Sri G.K. Singh, learned Senior Advocate assisted by Sri Udai Chandani, learned counsel for the petitioner and Sri V.K. Upadhyya, learned Senior Advocate assisted by Sri Ritvik Upadhyya, learned counsel for the Respondent-University.

2. At the very outset, learned counsel for the petitioner submits that petitioner is confining his writ petition only to the resolution adopted by the Executive Council dated 27.09.2019 and the consequential order of Registrar dated 21.10.2019.

3. Petitioner while working as a professor in the Department of Zoology Institute of Science, Banaras Hindu University was awarded with the punishment in the nature of compulsory retirement from service vide resolution adopted by the Executive Council in its meeting held on 27.09.2019 (Item No.19) and the consequential order passed by Registrar of the University dated 21.10.2019. It is this resolution of the Executive Council and the consequential order passed by the Registrar that are put to challenge before this Court in the present petition on the ground that the Executive Council being the disciplinary authority under Banaras Hindu University Act, 1915 and the statute framed thereunder exercises a *quasi* judicial power and, therefore, in the absence of any provision of law permitting it to review its decision, such review was bad for want of lawful authority. Learned Senior Advocate has also placed a judgment of this Court in the case of ***Gajadhar Prasad Mishra vs. Vice Chancellor, University of Allahabad and others: 1966 All***

4. Yet another argument has been advanced by learned Senior Advocate appearing for the petitioner that even on the principle of fraud and misrepresentation as twin factors to entitle an authority to review its decision, were also not available with the respondents so as to charge the delinquent employee with fraud and misrepresentation in obtaining such an order which has been reviewed. Learned Advocate has also relied upon two authorities of Supreme Court in the case of ***Neelima Mishra vs. Harindar Kaur Paintal: 1990 (2) SCC 746*** and ***Roop Singh Negi vs. Punjab National Bank and others: 2009 (2) SCC 570***.

5. Sri V.K. Upadhyay, learned Senior Advocate, appearing for the University has sought to urge before the Court that matter is of such gravity involving misconduct on the part of the delinquent employee that this Court may not like to exercise its discretion in equitable jurisdiction under Article 226 of the Constitution to interfere with the order of punishment of compulsory retirement. He has further urged that in the matter of imposition of penalty in the nature of compulsory retirement more especially when the petitioner has already attained the age of 58 years, would not go on to result in any irreparable loss or injury so as to lead to any miscarriage of justice. He has also argued that continuance of such teachers in faculty is against the interest of students community especially where a large number of female students are there and even otherwise it will not be conducive to the academic environment on the campus of the University to continue such an employee any further. He submits that the punishment of compulsory retirement is factored for various reasons not necessarily a punishment but in the nature of an action which discourages such conduct on the part of the faculty and non faculty members of the University from showing this kind of conduct. In respect of his argument, learned Senior advocate, Mr. Upadhya has placed reliance on authority of Supreme Court in the case of ***Apparel Export Promotion Council vs. A.K. Chopra: (1999) 1 SCC 759***.

6. Briefly stated facts of the case are that on the basis of complaint by students regarding his alleged misconduct in making vague remarks upon the students that escalated to the degrading and in the nature of undignified comments termed as vulgar in nature that taking recourse to the

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provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as 'the Act of 2013') university proceeded to hold enquiry by an internal complaint committee into the charges. The internal complaint committee after holding due enquiry, submitted its report on 21.12.2018 which was served upon the petitioner by the Registrar in his letter dated 24/25.01.2019 providing him an opportunity to prefer an appeal. Petitioner preferred an appeal on 22.02.2019 contending therein that he never misused or abused his position in any manner whatsoever while dealing with the students. The entire matter was placed before the Executive Council which considered the entire material placed before it including the enquiry report and the complaints on the basis of which the enquiry under the Special Act was initiated and after deliberating upon the findings of the complaint committee the Executive Council in its wisdom and discretion thought it more appropriate to resolve to impose penalty in the nature of 'censure' only with further direction that the petitioner may not be entrusted with any such responsibilities in future. The Executive Council also resolved to observe that a teacher must ensure a proper and appropriate behaviour. Interesting to notice here that this meeting of the Executive Council was held at Vice Chancellor Lodge, BHU on 07.06.2019 with the Vice Chancellor in chair. So it was a conscious decision taken by the Executive Council with the Vice Chancellor in chair to impose penalty in the nature of censure upon the petitioner with a further resolution not to entrust him with any such task in future. The Registrar issued a consequential order on 16.07.2019 with a further order passed on 28.08.2019 that the period between 23.10.2019 and 16.07.2019 shall be treated as a period spent on duty and accordingly allowed petitioner to draw full pay and allowances for the aforesaid period after deducting the subsistence allowance.

7. It transpires that upon some representation being made by the students' union, the Vice Chancellor proceeded to refer the matter back to the Executive Council for review of its decision taken in its earlier meeting regarding imposition of penalty in the nature of censure. With the approval of Vice Chancellor the Registrar informed the petitioner about the same vide letter dated 16.09.2019 asking him to remain on leave with immediate effect until the matter is reconsidered by the Executive Council under reference order of the Vice

Chancellor.

8. It is at this stage that the present petition was filed questioning the decision of the Vice Chancellor to refer the matter for reconsideration and also challenging the decision of the Executive Council dated 16.07.2019 and the consequential communication made to the petitioner on 17.07.2019. During the pendency of this petition, the Executive Council reviewed its earlier decision in its meeting held on 17.09.2019 by resolving that the petitioner shall be visited with the major penalty of compulsory retirement. This resolution adopted by the Executive Council again with the Vice Chancellor in chair, as Item No. 19. The petitioner was issued with a consequential order by the Registrar retiring him compulsorily on 21.10.2019. This resolution clearly stated the resolution of the Executive Council compulsorily retiring him was in supersession to its earlier resolution dated 16.07.2019. The petitioner amended the writ petition and challenged the resolution of the Executive Council dated 27.09.2019 as well as the consequential order passed by the Registrar dated 21.10.2019. The following admitted position emerges out in the case from the pleadings raised by the respective parties and discussions made above.

(i) Upon a proper enquiry held under the Act of 2018, the Executive Council with the Vice Chancellor in chair deliberated the entire complaint issue threadbare and the enquiry report and it is upon due consideration of the total circumspect of the case resolved to impose minor penalty of censure upon the petitioner vide resolution dated 07.06.2019, which is reproduced as under:

"ECR 99

ITEM 11

CONSIDERED the report of the Complaints Committee to inquire into the facts of the charges levelled against Prof. Shair Kumar Chaube, Department of Zoology, Institute of Science.

The Executive Council perused the report of the Complaints Committee on the complaint of 36 students of B.Sc. (hons.), Semester V Session 2018-19, Department of Zoology, Institute of Science, Banaras Hindu University against Prof. Shail Kumar Chaube, Department of Zoology, Institute of Science for their sexual harassment by Prof. Chaube which inter-alia conclude as under:

"It needs to be remembered and recorded that it was only due to the immediate initial cognizance taken by the supreme authority of the university, Hon'ble Vice-Chancellor, in this case, even when the letter was apparently unsigned, that the victimized students could take courage in their hands and appear before the committee to record

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their statements and what was revealed eventually, was not a single instance of misconduct but a series of such unworthy behaviours by the same person going continuing through a number of year."

The Executive Council also perused the representation of Prof. Shail Kumar Chaub, Department of Zoology, Institute of Science on the report of the Complaint Committee sent to him vide letter no. R/V&CS/203/2019/709 dated January 24/25, 2019 refuting the findings of the Complaint Committee and inter-alia praying the following:

"It is therefore most respectfully prayed that in the interest of justice the esteemed appellate authority may allow the present appeal and dismiss/decline the report of the Internal Complaint Committee and the suspension order of the Respondent may be revoked with immediate effect.

In the alternative it is respectfully submitted that some impartial inquiry officer may be appointed by your esteemed authority to conduct proper investigation/inquiry relating to the charges leveled against the Respondent for the proper appraisal of the case, so that a just conclusion can be drawn by your authority concerned.

It is further prayed that all the respective records consisting of documentary and electronic records may be summoned at the earliest and be kept in a safe custody till the final disposal of the present appeal from the office of Internal Complaint Committee."

After deliberating over the findings of the Complaint Committee in the matter and the points put forward in the representation of Prof. Shail Kumar Chaube thereon in detail, the Executive Council was of the opinion that a teacher must insure a proper and appropriate behavior and conduct during his interactions with the students in the classroom or outside on an educational tour to avoid giving rise to such complaints which not only spread wrong image of the Institution but also give rise to the suspicion in the mind of students and their parents. The Executive Council therefore resolved as under:

RESOLVED THAT the acts and conduct of Prof. Shail Kumar Chaube be censured and he be not entrusted with any such responsibilities in future.

RESOLVED FURTHER THAT a proper guideline on the conduct of students and teachers and stagg accompanying them on study/excursion/ visit be prepared and strictly followed by all concerned."

(ii) Upon complaint of the students' union the Vice Chancellor proceeded to refer the matter back to the Executive Council for review without putting the petitioner to notice and seeking his explanation vide resolution dated 27.09.2019, which is reproduced hereunder:

"ECR 129

ITEM 19

CONSIDERED the order of the Vice-Chancellor for placing the matter related to the complaint of students against Professor Shail Kumar Chaube, Department of Zoology, Institute of Science, BHU before the Executive Council for review of its decision in the matter.

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The Executive Council noted that some students namely Mr. Abhishek, Ms. Ranjana Saroj, Mr. Anant Shukla, Ms. Rashmi & Mr. Neeraj Rai wrote a letter dated 13.9.2019 and a joint representation date 14.9.2019 of the same nature by some other students was made to the Vice-Chancellor. The Vice-Chancellor considered the matter and found that the matter needed review and ordered on 19.9.2019 for placing the matter before Executive Council for a review.

The Executive Council reconsidered the matter. The then Chairperson of the Internal Complaints Committee (ICC) of the University was invited in the meeting and she presented the report of the committee in the case with minute details. All aspects of the charges were inquired from her in detail and each point was clarified by her. The representations of Professor Shail Kumar Chaube to the Vice-Chancellor was also presented in the Executive Council meeting and the then Chairperson of ICC clarified on the points raised in the letter by Professor S.K. Chaube. She explained that he has given ample opportunity to defend his case and submit whatever evidences he wanted to produce before the ICC in this behalf. All such points and evidences submitted by him were considered and deliberated over by the ICC minutely before arriving at its conclusion in the matter.

After detailed deliberation in the light of the above, it was finally decided to impose the penalty of compulsory retirement on Professor S.K. Chaube as per the CCS (CCA) Rules which was considered appropriate in the case, by reviewing the earlier decision in the matter, taken vide ECR No.99 dated 07.6.2019.

RESOLVED THAT the major penalty of compulsory retirement be imposed on Professor Shail Kumar Chaube, Department of Zoology, Institute of Science, BHU as per the CCS (CCA) Rules, by reviewing the earlier decision in the matter taken vide ECR No. 99 dated 07.6.2019."

(iii) The Executive Council with the same Vice Chancellor in chair this time ignoring the suggestion of Prof. Anand Mohan Member to refer the matter for enquiry afresh proceeded to review its earlier decision and to impose major penalty of compulsory retirement.

(iv) The Executive Council did not discuss either the earlier resolution and reasons during review proceedings, nor did it refer to the contents of the letter of the Vice Chancellor by which the matter was referred to be reviewed, nor the Vice Chancellors' view has come to be discussed in the matter. It is a case of review by the Executive Council of its decision earlier taken to impose penalty of censure and replace it by major penalty of compulsory retirement and that too without any notice and opportunity of hearing to the petitioner.

9. It is upon the arguments advanced by learned Senior Advocate appearing for the respective contesting parties to this lis, I find the only issue required to be addressed is

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whether the Executive Council would have reviewed its earlier resolution and thereby could have changed the nature of penalty from minor to major. The legal proposition with regard to the power of review is that unless and until statute or the law dealing in the field provides for power of review, no judicial or quasi judicial authority can exercise this power. Power to recall an order is of course there if the order has been obtained by fraud or misrepresentation as in such event the order would be a nullity. Similar proposition would prevail in matters of exercise of administrative authority as no order can be justified based upon fraud or forgery.

10. In view of the above proposition of law *qua* power of review it is to be examined i.e. as to whether the Executive Council acting as a disciplinary authority or Vice Chancellor as such exercises a quasi judicial power or administrative power.

11. The Full Bench of this Court in the case of Gajadhar Prasad Mishra v. Vice Chancellor, University of Allahabad (*supra*) had already answered a reference that Vice Chancellor of Allahabad University while exercising functions in reflecting punishments upon students for breach of discipline would be required to perform *quasi* judicial functions. The reference before full bench was thus:

"Whether the Vice-Chancellor of the Allahabad University is required to perform quasi-judicial functions in inflicting punishments upon students for breach of discipline?"

12. Thus Full Bench of this Court very categorically held that exercising disciplinary action/power by an authority would be in the nature of a *quasi* judicial power and not a pure administrative power as it has traces of adjudication of same issue by the authority. The Full Bench relied upon the decision of the Supreme Court in the case of **Calcutta Dock Labour Board v. Jafar Imam (Civil Appeal No.560 of 1964 decided on March 22, 1965)** reported in **1965 (2) LLJ 112**. The Court vide paragraph nos.55 and 56 referred to the judgment and made analysis thereof as under:

"55. In Calcutta Dock Labour Board v. Jaffar Imam, 1965-2 Lab LJ 112: (AIR 1966 SC 282), the Supreme Court again made reference to the decision of Lord Reid in 1964 AC 40. In this case, the question that arose for consideration was whether the Calcutta Dock Labour Board, in exercising its powers to dismiss a dock worker under Clause 36 (2) of the Scheme made by the Central Government under the Dock

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Workers (Regulation of Employment) Act, 1948, was required to observe principles of natural justice or not. It may be mentioned that Clause 36(3) lays down that, before any action is taken under Clause 36 (2), the person concerned shall be given an opportunity to show cause why the proposed action should not be taken against him. Clause 36 (2) empowers the Board to take action against a registered dock worker in the reserve pool who is available for work and fails to comply with any of the provisions of the Scheme or does any act of indiscipline or misconduct and enumerates several punishments that may be inflicted. Clauses 38 and 39 provide for appeals against orders of the Board.

In this case, the Supreme Court observed:--

"There can be no doubt that when the appellant purports to exercise its authority to terminate the employment of its employees such as the respondents in the present case, it is exercising authority and power of a quasi-judicial character. In case where a statutory body or authority is empowered to terminate the employment of its employees, the said authority or body cannot be heard to say that it will exercise powers without due regard to the principles of natural justice. The nature or the character of the proceedings which such a statutory authority or body must adopt in exercising its disciplinary power for the purpose of terminating the employment of its employees, has been recently considered by this Court in several cases, vide, 1965-1 Lab LJ 433: (AIR 1965 SC 1595) and (Civil Appeal No. 764 of 1964, dated 1-3-1965: (AIR 1965 SC 1767) and it has been held that in ascertaining the nature of such proceedings with a view to decide whether the principles of natural justice ought to be followed or not, the tests laid down by Lord Reid in 1964 AC 40 are relevant in view of these decisions, Sri Sen has not disputed this position and we think, rightly."

56. This case lays down firstly, that, in taking disciplinary action against a dock worker, the Board has to act quasi judicially and, secondly, that, in determining whether an authority has to follow principles of natural Justice, the tests laid down by Lord Reid in 1964 AC 40 are relevant. There can be no doubt that from the nature of the power conferred upon an administrative body it can be inferred that it is required to observe principles of natural justice. Lord Hodson has observed in 1964 AC 40 that where a statute confers power to take action against a subject for misconduct, the authority exercising the power must observe principles of natural justice otherwise it will result in denial of justice. It is well settled that even where a statutory authority acts in a purely administrative capacity, it must act fairly; and when its action is likely to seriously affect the rights of others. it must observe principles of natural justice. But merely because an authority must observe principles of natural justice, it does not necessarily follow that it has to act quasi judicially also. In this reference, we have not to decide whether the Vice Chancellor has to observe principles of natural justice or not but whether he is required to act quasi judicially. The decision of the Supreme Court in this case, in my opinion, does not lay down that simply because an authority is empowered to take disciplinary action, it must necessarily act quasi judicially. That an

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authority, which is empowered to decide some question of fact and whose decision seriously affects the rights of the subject, is not necessarily required to act quasi judicially also appears from another line of decisions of the Supreme Court. In Champaklal Chimanlal Shah v. The Union of India, AIR 1964 SC 1854, it has been held that the Government may, on a report of bad work or misconduct, hold a preliminary inquiry to satisfy itself that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post. Now, in such cases, the Government has to decide whether the employee is guilty of bad work or misconduct and then to take action against him which may seriously affect him, in this case and other cases, the Supreme Court has held that the Government need not give the employee an opportunity of being heard before an order terminating his service or reverting him is passed. It could not, therefore, possibly be argued that the Government was, in such cases, required to act quasi judicially, even though it had to decide a question of fact and to take action which affected the employee."

13. Ultimately the ratio laid down by the Court was in paragraph no.60 for arriving at a conclusion which runs as under:

"It is contended by the appellant that the nature of the functions exercised by the Vice-Chancellor, when taking disciplinary proceedings against a student, is identical to those exercised by the Examinations Committee taking action against an examinee and, since the Supreme Court has held that the Examinations Committee must act quasi-judicially, it must also be held that the Vice-Chancellor must equally act quasi-judicially. I am unable to agree with this. Wanchoo, J. has approved of the tests laid down by S. R. Das, J. In Advani's case, 1950 SCR 621: (AIR 1950 SC 222) and he has applied those tests to the facts of the case before him. He has not laid down any new general principle or test different from or inconsistent with that laid down and followed in the earlier decisions of the Supreme Court. This decision cannot be read as laying down a rule of law that, even where the statute or rules made thereunder do not cast a duty upon an authority to act quasi-judicially, such a duty can be inferred merely from the nature of the powers conferred upon the authority. In the facts and circumstances of that case the Supreme Court was of the view that the Examinations Committee was required to act quasi-judicially. The question cannot be decided merely on the basis of similarity of functions of the Examinations Committee and of the Vice-Chancellor but it has to be decided on the basis of the statutes and rules governing the powers of these two authorities. The provisions of the regulations made under the Intermediate Education Act regarding exercise of powers by the Examinations Committee are different from those of the Allahabad University Act and the statutes made thereunder relating to the exercise of powers by the Vice-Chancellor.

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The regulations cast a duty upon the Examinations Committee to take action against an examinee if it finds that certain facts specified in R. 1(1) are established. The Examinations Committee has to determine these facts objectively upon materials placed before it. The nature of the action that may be taken is also specified. On the other hand, the Allahabad University Act and the statutes made thereunder leave the matter of taking disciplinary action against a student entirely to the discretion of the Vice-Chancellor. He is not required to find whether any specified facts are established or not. Even where certain facts are established, no duty is cast upon the Vice-Chancellor to take disciplinary action. The discretion of the Vice-Chancellor is not fettered even in respect of the nature of the disciplinary action which may be taken. Therefore, the decision of the Supreme Court holding that the Examinations Committee was required to act quasi-judicially is not applicable to the present case in view of the very different provisions of the Act and the statutes which govern the exercise of powers by the Vice-Chancellor. The facts that the Vice-Chancellor may take assistance of the Proctor and of the Dean of the Students Welfare in the exercise of his disciplinary authority and that the Vice-Chancellor is required by the statutes to consult the Dean of the Students Welfare before taking disciplinary action against a student cannot have any bearing on the question whether the power is to be exercised by him quasi-judicially or not."

14. Emphasizing upon the principle behind *quasi* judicial power and administrative power, learned Senior Advocate has asserted that the test is to see whether there is an obligation to adopt quasi judicial approach is cast upon authority or not. It is submitted that this would be necessary ingredient for exercise of power where the justice so requires and if there is no such obligation then the order would be purely administrative. He submits that where the order requires to be passed not upon any administrative policy but to adjudicate upon an issue to evaluate the evidence to arrive at a conclusion would have traces of quasi judicial power. In Neelima Mishra's case, Supreme Court has considered this aspect of the matter vide paragraph nos. 21 and 22 thus:

"21. Prof. Wade says "A judicial decision is made according to law. An administrative decision is made according to administrative policy. A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. A quasi-judicial decision is, therefore, an administrative decision which is subject to some measure of judicial procedure, such as the principles of natural justice."

22. An administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin Maxim audi alteram partem. It means that the decision maker should afford to any

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party to a dispute an opportunity to present his case. A large number of authorities are on this point and we will not travel over the field of authorities. What is now not in dispute is that the person concerned must be informed of the case against him and the evidence support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken."

15. In the case of **Roop Singh Negi v. Punjab National Bank and others:(2009) 2 SCC 570**, the Court had relied upon its earlier judgment in the case of *Moni Shankar v. Union of India* wherein the departmental proceedings was held to be *quasi* judicial one. Vide paragraph nos. 17 and 18 the Court referred to the two judgments that are reproduced hereunder:

"17. The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

18. In *Narinder Mohan Arya vs. United India Insurance Co. Ltd. & ors.* (*supra*), whereupon both the learned counsel relied upon, this Court held:

*"26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the Enquiry Officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. [See *State of Assam and Anr. v. Mahendra Kumar Das and Ors.* [(1970) 1 SCC 709] (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice [See *Khem Chand v. Union of India and Ors.* (1958 SCR 1080) and *State of Uttar Pradesh v. Om Prakash Gupta* (1969) 3 SCC 775]. (3) Exercise of discretionary power involve two elements (i) Objective*

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and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. [See *K.L. Tripathi v. State of Bank of India and Ors.* (1984) 1 SCC 43]. (4) It is not possible to lay down any rigid rules of the principles of natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis. [See *Sawai Singh v. State of Rajasthan* (1986) 3 SCC 454] (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. [See *Director (Inspection & quality Control) Export Inspection Council of India and Ors. v. Kalyan Kumar Mitra and Ors.* 1987 (2) Cal. LJ 344. (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances.”

16. The Court also referred to another judgment in the case of ***M.V. Bijlani v. Union of India: (2006) 5 SCC 88*** in which the Court held that the enquiry officer performed a quasi judicial function and the Court in another judgment of Jasbir Singh did not approve decision of the disciplinary authority which was not couched with the reasons. The Court held that a decision to be arrived at must be based upon some evidence which is legally admissible. Vide paragraph nos.21 and 22, the Court held thus:

"Yet again in M.V. Bijlani vs. Union of India & ors. (2006) 5 SCC 88, this Court held:

"...Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

16. Yet again in *Jasbir Singh vs. Punjab & Sind Bank & ors.* [(2007) 1 SCC 566], this court followed *Narinder Mohan Arya vs. United India Insurance Co. Ltd. & ors.* (supra), stating:

"12. In a case of this nature, therefore, the High Court should have applied its mind to the fact of the matter with reference to the materials brought on records. It failed to do so."

17. Thus it is clear that the Executive Council being a

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disciplinary authority in the case in hand was performing a quasi judicial function while deliberating upon an enquiry report and adopting a resolution to impose punishment upon the petitioner under the relevant Act and rules.

18. It is admitted to the parties that University being Central University has approved CCS (Classification, Control and Appeal) Rules, 1965 (CCS Rules) that provide for different penalties, both minor and major. Vide paragraph 8 of the counter affidavit it has been stated that '*the disciplinary proceeding was initiated under Rule 14 of CCS(CCA) Rules, 1965 against the petitioner*'. Rule 11 prescribes minor as well as major penalties. Vide Clause VII of Rule 11, compulsory retirement has been prescribed as major penalty.

19. Now coming to Rule 14 of CCS Rules that lays down procedure for imposition of major penalty upon the employees, it provides for a detailed enquiry to be held evaluating both oral and documentary evidence led before the enquiry officer and pursuant to the enquiry report led before the disciplinary authority, it is to take action thereupon to punish or not to punish the delinquent employee.

20. Rule 15 of CCS Rules provides procedure for taking action on the enquiry report which prescribes opportunity of representation being afforded to the delinquent employee in respect of the proposed action and then Rule 17 thereof prescribes for communication of the order/decision taken by the disciplinary authority in the matter.

21. I do not see any provision contained under the CCS Rules that provides for review of the decision taken by the disciplinary authority *suo moto* as has been done in the present case. Thus the disciplinary authority in the matter of imposition of punishment after due enquiry held, in the absence of provision to review its decision and to change penalty from minor to major cannot be justified and deserves to be quashed.

22. Before testing the resolutions in question passed by the Executive Council, it is also necessary here to refer to the relevant provisions of the Banaras Hindu University Act, 1915 (hereinafter referred to as 'University's Act, 1915') and the statute framed thereunder. Section 6 of the University's Act 1915 which provides for different Officers of the University runs as under:

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"6. The following shall be the officers of the University, namely :-

- (a) The Chancellor
- (b) The Vice-Chancellor**
- (c) The Rector
- (d) The Registrar
- (e) The Finance Officer
- (f) The Deans of Faculties
- (g) The Dean of Students
- (h) The Librarian
- (i) The Chief Proctor

(j) such other persons in the service of the University as may be declared by the Statutes to be the officers of the University."

(Emphasis added)

23. Section 7 (c)(1) provides the Vice Chancellor to be Principle Executive and Academic Officer of the University and Section 7 (c)(2) provides him to be *ex officio* Chairman of the Executive Council. Section 7(c)(3) vests general power of Superintendence with the Vice Chancellor and Section 7(c)(5) vest with the Vice Chancellor an extra ordinary power to take action in any emergency which may ex post facto be approved by the authority namely, the Executive Council or the Visitor as the case may be. Relevant Section 7 (c)(1)(2)(3) and (5) are reproduced hereunder:

"7C. Powers and duties of Vice-Chancellor

(1) *The Vice-Chancellor who shall be the principal executive and academic officer of the University, shall take rank next to the Chancellor and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of its authorities.*

(2) *The Vice-Chancellor shall be the ex-officio Chairman of the Executive Council, the Academic Council, and the Finance Committee and shall, in the absence of the Chancellor, preside at any convocation of the University for conferring degrees and also at any meeting of the Court; he shall be entitled to be present at and to address any meeting of any authority or board or a committee of the University but shall not be entitled to vote there at unless he is a member of such authority or board or committee.*

(3) It shall be the duty of the Vice-Chancellor to see that the provisions of this Act, the Statutes, the Ordinances and the Regulations are duly observed.

(5) *If, in the opinion of the Vice-Chancellor, any emergency has arisen which requires immediate action to be taken, the Vice-Chancellor shall take such action as he deems necessary and shall report the same for approval at the next meeting to the authority which, in the ordinary course, would have dealt with the matter :*

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Provided that, if the action taken by the Vice-Chancellor is not approved by the authority concerned, he may refer the matter to the Visitor, whose decision thereon shall be final:

Provided further that, where any such action taken by the Vice-Chancellor affects any person in the service of the University, such person shall be entitled to prefer, within thirty days from the date on which he receives notice of such action, an appeal to the executive Council."

(Emphasis added)

24. Section 8A provides for various authorities of the University which includes Executive Council. Section 8A is reproduced hereunder:

"The following shall be the authorities of the University, namely:

(a) The Court,

(b) The Executive Council,

(c) The Academic Council,

(d) (Omitted)

(e) The Finance Committee,

(f) The Faculties,

(g) such other authorities as may be declared by the Statutes to be the authorities of the University."

(Emphasis added)

25. Section 10 (1) gives all the administrative powers relating to management and administration of the properties of the University and administrative affairs of the University as a chief executive body of the University and further Section 10 (2) provides that the Executive Council shall exercise such powers and perform such duties as may be conferred upon it by the statutes or the ordinances. Section 10 (1) and (2) are reproduced hereunder:

"10. (1) The Executive Council shall, subject to the control of the Visitor, be the executive body of the University and shall have charge of the management and administration of the revenue and property of the University and the conduct

of all administrative affairs of the University not otherwise provided for.

(2) Subject to the provisions of this Act, the Executive Council shall exercise such other powers and perform such other duties as may be conferred or imposed on it by the Statutes or the Ordinances."

26. Section 16 (b)(1) provides for conditions of service of officers and teachers of the University. However, the provisions deal with only the contract of employment between the teacher/employees with the University and any dispute being raised, the same would be adjudicated by the Tribunal of arbitration whose decisions would be final.

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27. Section 18 (1) of the Universities Act provides for framing of the ordinances in relation to various matters including the emoluments and terms and conditions of service of the employees of the University. Section 18 (1) (k) is reproduced hereunder:

"18.(1) Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely :-

.....

(k) the emoluments and terms and conditions of service of employees of the University;"

28. Section 19 (1) of the Act also authorizes University to make regulations consistent with the Act, Statutes and Ordinances in respect of all such matters which are covered by the Act, Statutes or the Ordinances. Statute 31 of the Act of 1915 vests final power with the executive council of the University to remove a teacher on the ground of misconduct. It also provides the procedure as per which the power is to be exercised. Statute 31 is reproduced hereunder:

"31. Removal of Teachers

(a) Where there is an allegation of misconduct against a teacher, the Vice-Chancellor may, if he thinks fit, by order in writing, place the teacher under suspension and shall forthwith report to the Executive Council the circumstances in which the order was made :

Provided that the Executive Council may, if it is of the opinion, that the circumstances of the case do not warrant the suspension of the teacher, revoke that order.

(b) Notwithstanding anything contained in the terms of his contract of service or of his appointment, the Executive Council shall be entitled to remove a teacher on the ground of misconduct.

(c) Save as aforesaid, the Executive Council shall not be entitled to remove a teacher except for good cause and after giving three months' notice in writing or payment of three months' salary in lieu of notice.

(d) No teacher shall be removed under clause (b) or under clause (c) until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(e) The removal of a teacher shall require a two-thirds majority of the members of the Executive Council present and voting.

(f) The removal of a teacher shall take effect from the date on which the order of removal is made : Provided that where a teacher is under suspension at the time of his removal, the removal shall take effect on the date on which he was placed under suspension.

(g) Notwithstanding anything contained in the Statutes, the employees of the University, being a teacher shall be entitled to resign :

(i) in the case of the permanent teacher only after giving three months' notice in writing to the appointing authority or paying to the University

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three months' salary in lieu thereof.

(ii) in any other case, only after giving one months' notice in writing to the appointing authority or paying to the University one months' salary in lieu thereof."

(Emphasis added)

29. Upon bare reading of the provisions as contained under Statute 31, I find that suspension power of the Vice Chancellor is subject to ratification by the Executive Council under Clause (a). Clause (b) provides power with the Executive Council to remove a teacher on the ground of misconduct.

30. However Clause (c) provides that such power would be exercised only for a good cause. Clause (c) vest with the power of the Executive Council to remove a teacher for good cause with three month's notice or payment of three months salary in advance.

31. Clause (d) very specifically provides that power under Clause (b) and (c) would be exercised after giving reasonable opportunity of show cause in respect of the proposed action to be taken by the Executive Council.

32. Clause (e) provides that 2/3rd majority of the members present and voting in the Executive Council will be necessary to adopt a resolution in regard to removal.

33. Similarly clause (g) entitles a teacher to submit his voluntary resignation with three months' notice in advance or payment of three month's salary in lieu thereof.

34. In case of permanent teacher and in case of any other teacher only one month's notice or salary thereof would be sufficient to render voluntary resignation. Thus it is clear that whenever the University proposes to remove a person from employment on the ground of misconduct, he would be entitled to opportunity of show cause in respect to the decision taken. On the question of punishment to a teacher for misconduct, it is stated that the provisions as contained under Central Civil Services Rules would apply.

35. Now coming to the facts of this case I find that when the first resolution was adopted by the Executive Council with Vice Chancellor in chair, the University threadbare discussed

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the complaints committee report on the complaint of 36 students and also the representation of professor Salil Kumar Chaube (petitioner) in the matter of complaint and then after holding due deliberation to which the Vice Chancellor himself was a party resolved that a teacher must ensure a proper and appropriate behavior and conduct during his interactions with the students in the classroom or even outside on an educational tour to avoid giving rise to such complaints and thus thought it more appropriate in its wisdom to impose a minor penalty of censure and further to relieve him from any such responsibilities in future like taking tour of the students outside. But soon after the petitioner was reinstated revoking the suspension order or holding him entitled for salary etc. under the order issued on behalf of the University on 28/29 August, 2019 upon some complaint of the University students' union the Vice Chancellor proceeded to refer the matter to the Executive Council back for a review. The order issued by the Registrar does mention the decision taken by the Vice Chancellor as an executive head of the University but does not mention as to why and under what considerations the Vice Chancellor decided to refer the matter to the Executive Council for review. The order passed by the Registrar dated 16.09.2010 is reproduced hereunder:

"This is in continuation to this office order No. R/V & CS/2019/203/1171-1181 dated 16-07-2019 whereby the penalty 'Censure' was imposed upon you as per decision of the Executive Council vide ECR No.99 dated 07.06.2019.

On reconsideration of the aforesaid decision with regards to the nature of the charges, it has been decided to review the matter. This issue is therefore being referred to the Executive Council for the review of the decision.

In view of the above, I am directed to inform you that till the time the matter is reconsidered by the Executive Council you shall remain on leave with immediate effect.

This issues under the approval of the Vice Chancellor."

36. From the recitals contained in the letter/order of the Registrar directing the petitioner to proceed on leave vide letter dated 16.09.2019 does not ask the petitioner to furnish any explanation or representation in that regard. As a matter of fact this order of the Registrar was not preceded with any notice much less a show cause notice to the petitioner.

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37. Again I find that the resolution adopted by the Executive Council was again chaired by the same Vice Chancellor on 27.09.2019 but it does not discuss the reasons for which it had earlier taken stand were not sufficient and warranted a review, nor does the resolution discuss the letter of the Vice Chancellor or reasons assigned therein for review of the earlier resolution. The Executive Council has not even issued a notice much less a show cause as required under Statute 31 (d) or under the CCS Rules before firing him by way of compulsory retirement from the University. The entire counter affidavit is silent about that and therefore, in my considered view resolution adopted by the Executive Council now impugned in the present writ petition is liable to be quashed on this ground alone.

38. Here it is pertinent to notice that petitioner was not compulsorily retired for any such reason that he had become deadwood and University did not want to continue him on some report of expert Committee that his services were no more required, instead, here is a case where an employee is being fired by way of compulsory retirement for a misconduct, a disciplinary action for being indicted in enquiry and by way of major penalty under CCS Rules. So notice of proposed punishment was a must.

39. Coming to the main argument advanced by learned Senior Advocate for the petitioner that the Executive Council being the disciplinary authority exercised quasi judicial function and, therefore, in the absence of any provision under the Act or the Statute of the University could not have reviewed its decision, I proceed to find answer to this from two angles:

(A) Whether the Executive Council exercises quasi judicial function and so in the absence of provision could not have reviewed its earlier resolution.

(B) Even assuming that power was administrative in nature or exercised of it to review its decision was in the interest of the institution as the earlier resolution suffered from vice of due application of mind to the records available before it.

40. In so far as point A is concerned, the legal proposition as has emerged out from the judgments cited hereinabove in this judgment, the Executive Council admittedly being the disciplinary authority under the relevant statute and having

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also the power to rectify the Act of the Vice Chancellor, in the matter of suspension, the Executive Council would be taken to be the sole disciplinary authority to be exercising quasi judicial function. Neither the provisions contained under the Universities Act, 2015 nor the relevant provisions contained under the statute of the University discussed above do provide any power with the Executive Council to review its decision taken under Statute 31 nor does the Vice Chancellor can be said to be enjoying any such power over and above the power already exercised by the Executive Council.

41. I may hasten to add here that original Act, 1915 did not provide for compulsory retirement by way of punishment and if taken it as removal as the same has been imposed in the instant case, it must have preceded with proper notice. However, that stage is gone. Since there is no power available to review a penalty imposed, it was beyond competence of Executive Council of the University to have resisted its penalty.

42. Thus, no reference could have been made by the Vice Chancellor to the Executive Council to review its decision already taken under Statute 31 of the statutes and I do not see any such power being vested with the Vice Chancellor under Section 7(c) of the Universities Act, 2015. As *ex officio* Chairman of the Executive Council the only duty of the Vice Chancellor is to see that provisions of the Act, the statutes and the ordinances and regulations are duly observed in discharge of function by the Executive Council and to convene its meeting only for carrying out the provisions of the Act, Statute and the Ordinances.

43. In the circumstances, therefore the very letter of the Registrar referring the matter to the Executive Council for review was *per se* bad for want of lawful authority as no such provision as contained under the entire University Act and the first statute of the University which may have required its performance and for which the Vice Chancellor can be said to have been compelled to make such reference on a mere letter of the students union. In the circumstances, therefore, the Executive Council's decision being final under statute 31, there being no power to reconsider or revisit the decision the Executive Council having exercise quasi judicial function in imposing penalty may be minor in nature it could not have reviewed its decision by convening another

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meeting. Thus, the impugned resolution adopted by the University dated 27.09.2019 and the consequential order passed by the Registrar with the approval of the Vice Chancellor dated 21.10.2019 is liable to be quashed. Point 'A' thus stands answered accordingly.

44. Coming to point 'B' on the score of exercise of administrative power or the power in larger public interest or in the interest of the institution, in my considered view such a power could have been exercised only in the event the earlier resolution passed by the University was based upon any mis-representation or forgery in the documents. The deliberations of the Executive Council in its meeting held on 27.09.2023 do not refer to any such mis-representation or fraud committed at the end of any authority or person which could be said to have misled it earlier in inflicting minor punishment and, therefore, the conclusion drawn by it and the decision arrived by it was void and so warranted reconsideration or review. The deliberations in the earlier meeting are more exhaustive touching the complaints etc. and the findings of the complaint committee whereas the second resolution which was again chaired by the same Vice Chancellor does not discuss at all any such thing.

45. As a matter of fact while the Executive Council was deliberating upon the reference of the Vice Chancellor for review, it was required to discuss threadbare as to why the earlier decision taken by it to impose penalty of '*censure*' was bad and why the petitioner deserved major penalty. Even the letter of the Vice Chancellor has not been brought on record in the counter affidavit by which the reference for review was made. This letter also does not find reference in the order of the Registrar dated 16.09.2019 according to which the matter was to be placed before the Executive Council for review of its earlier decision. The question could be whether this power could be exercised by the Executive Council *suo moto*, in my considered view such a power is not vested with the Executive Council for the purposes of review of nature of penalty. Once the penalty has been imposed by the disciplinary authority in administrative law, such a penalty can be altered or modified only in appeal or revision by the higher authority. The service jurisprudence does not vest any power with the disciplinary authority to keep on changing the nature of penalty *suo moto*, more especially when the matter becomes *subjudice* before a

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Court of law as has been in the case in hand. The present writ petition was pending when the Executive Council proceeded to review its earlier decision.

46. The decision cited by Mr. Upadhyaya on the question of interference by this Court in the matter of sexual harassment, looking to the exceptional cases of misconduct for which the special law has been enacted, suffice it to say that Court would certainly be not interfering in the matter of nature of penalty or quantum of punishment. There is no quarrel about the principle that the Courts or Tribunal would not become the disciplinary authority to embark upon an enquiry into the sufficiency of evidence so as to judge the nature of penalty. It is, of course, the sole discretion of the disciplinary authority to decide in the given facts and circumstances and the material before it what kind of penalty should be imposed.

47. Mr. Upadhyaya is right in arguing that the power of judicial review cannot be stretched to test the quantum of punishment and only thing that has to be examined, is the decision making process and compliance with the principles of natural justice and fairness etc. The Court would certainly not be substituting its opinion or view over and above opinion of the disciplinary authority. However, I find this case to be one where the power did not lay with the authority to review a punishment and, therefore, the decision taken by the Executive Council was per se bad. Once the proposition of law has been laid down by this Court that a disciplinary authority exercises a quasi judicial function in the matter of disciplinary proceedings and imposition of penalty, any attempt to circumvent the proposition by such authority would certainly lead to miscarriage of justice. Wherever there is miscarriage of justice, the power of Judicial Review would intervene and the Court would ensure that no authority exercises any power in the name of statute which does not vest in it any such power especially in the circumstances where such exercise of power results in adverse civil consequences. This is one such case. Point 'B' is decided accordingly.

48. In view of the above, writ petition succeeds and is **allowed**. The resolution adopted by the Executive Council dated 27.09.2019 is hereby quashed. The consequential order to the resolution passed by the Registrar dated 21.10.2019 is also hereby quashed.

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49. Petitioner shall be reinstated in service and shall be paid salary regularly including the entire arrears of salary for the period he has remained out of job for the impugned resolution adopted by the Executive Council and the consequential order passed by the Registrar.

50. However, since there is no challenge to the earlier resolution adopted by the University dated 07.06.2019, the same shall stand and so also the consequential order passed by the Registrar dated 16.07.2019 shall stand and shall be implemented accordingly.

51. There will be no order as to cost.

Order Date :- 12.3.2024/Deepika