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KM. NEELIMA MISRA

v.

DR. HARINDER KAUR PAINTAL AND ORS.

MARCH 21, 1990

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[K. JAGANNATHA SHETTY AND V. RAMASWAMI, JJ.]

Uttar Pradesh State Universities Act, 1973: Section 31(8)(a) University—Procedure for selection of teachers—Recommendation of Selection Committee—Executive Council's disagreement with recommendation—Reference to Chancellor—Chancellor's decision final—
C *Nature and scope of Chancellor's function—Held administrative in nature—Does not require application of principle of natural justice—Section 31 confers no right to make representation to Executive Council or to the Chancellor against the recommendation of selection Committee—But eligible candidate has a right to have his case considered.*

D

Service Law—Judicial review of academic appointments—Academic appointments based on recommendations of Experts—In the absence of mala fides Court should be slow to interfere with experts opinion.

E *Administrative law—Quasi-judicial function—Administrative function—Distinction between—Power to make binding and conclusive orders—Is not by itself a decisive factor that power is judicial—Existence of other characteristics necessary.*

Constitution of India, 1950: Article 14—State action—Legislative,
F *executive or quasi-judicial—Must be guided by principle of equality.*

The appellant and the respondents applied for the post of Reader in Psychology in Lucknow University. Under the University Statute, the minimum qualification for the post was a Doctorate degree or a published work of high standard in the subject. The respondents
G **possessed Ph. D. degree, while the appellant's thesis was nearing completion.**

On the basis of her experience, performance at the interview and published work, which was found to be of high standard on the subject, the Selection Committee recommended the appellant's appointment by
H **grading her No. 1.**

By a split of the majority, the Executive Council disagreed with the recommendation of the Selection Committee on the ground that the appellant did not possess the essential qualification for the post of Reader and it preferred the appointment of respondent No. 2. A

In view of the Council's disagreement, the matter was referred to the Chancellor for his decision under Section 31(8)(a) of the U.P. State Universities Act, 1973. The Chancellor rejected the opinion of Executive Council and accepted the recommendations of the Selection Committee and directed that the appellant should be appointed as a Reader. B

Respondent No. 1 challenged the Chancellor's order by filing a writ petition in the High Court, which following its earlier Full Bench decision wherein it was held that the Chancellor must explicitly state the reasons for his decision and was enjoined by the Act to act quasi-judicially quashed the Chancellor's order with a direction to reconsider the matter. C

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In the appeal to this Court on the question of the nature ot the Chancellor's power under Section 31(8)(a) of the U.P. State Universities Act, 1973: Allowing the appeal and setting aside the order of the High Court, this Court,

HELD: 1. Three authorities are involved in the Selection of University teachers' (i) Selection Committee, (ii) Executive Council and (iii) The Chancellor. The Selection Committee for appointment of University teachers is a recommendatory body the composition of which has been prescribed under section 31(4)(a). The Executive Council is the principle executive body of the University. Subject to the provisions of the Act, it has power to appoint officers, teachers and other employees of the University. Section 31(8)(a) seems to suggest that if the Executive Council wants to agree with the recommendation and appoint candidates in the order of merits, no reasons are to be given. But if it wants to disagree with the recommendations mady by the Selection Committee, it must give reasons for disagreement. It has however, no power to override the recommendation and appoint a candidate of its own choice. It may disagree, but should give reasons for disagreement and refer the matter under section 31(8)(a) to the Chancellor. Then the decision of the Chancellor shall be binding on the Executive Council. The Chancellor is not an appellate authority in matters of appointment. His decision is called for when the Executive Council disagree with the recommendation of the Selection Commitee. What is referred to him E F G H

A under section 31(8)(a) of the Act, is therefore, not a dispute between the Selection Committee and the Executive Council on any issue. Nor it is a dispute between two rival candidates on any controversy. It is indeed a decision with regard to appointment of a particular person or persons in the light of the recommendation and opinion if any, of the two statutory authorities. [94H; 95A, D, F-G; 99F-H]

B

1.1 The power of the Chancellor under Section 31(8)(a) is purely of administrative character and is not in the nature of judicial or quasi-judicial power. No judicial or quasi-judicial duty is imposed on the Chancellor and any reference to judicial duty, seems to be irrelevant in the exercise of his function. Such a power cannot be considered as quasi-judicial power. [101F-H]

C

L.N. Mathur v. *The Chancellor, Lucknow University, Lucknow & Ors.*, A.I.R. 1986 All. 273; *Dr. U.N. Roy* v. *G.D Tapase,* [1981] UPLBEC, 309, disapproved.

D 2. Section 31 confers no right to make representation to the Executive Council or to the Chancellor against the recommendation of the Selection Committee. There is no provision in the Section for hearing any candidate or the Executive Council. There is also no provision for receiving evidence. The decision of the Chancellor in the exercise of this statutory function does not expressly or impliedly require the application of the principle of natural justice. [101B-D]

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Dr. G. Sarana v. *University of Lucknow and Ors.*, [1976] 3 SCC 585; held inapplicable.

R.S. Dass v. *Union of India,* [1966] (Supp.) SCC 617; referred to.

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2.1 The Chancellor, however, has to act properly for the purpose for which the power is conferred. He must take a decision in accordance with the provisions of the Act and the Statutes. He must not be guided by extraneous or irrelevant consideration. He must not act illegally, irrationally or arbitrarily. Any such illegal, irrational or arbitrary

G action or decision, whether in the nature of a legislative, administrative or quasi-judicial exercise of power is liable to be quashed being violative of Article 14 of the Constitution. [102B-C]

2.2 The order of the Chancellor impugned in this case indicates very clearly that he has considered the recommendation of the Selection

H Committee and the opinion expressed by the Executive Council. The

minimum qualification prescribed for the post is a Doctorate in the subject of study concerned or a published work of high standard in the subject. The appellant was found to have an alternate qualification though not a Doctorate in the subject. The Selection Committee has accepted the alternate qualification as sufficient and did not relax the essential qualification prescribed for the post. The Executive Council appears to have committed an error in stating that the appellant has lacked the essential qualification and the Selection Committee has relaxed the essential qualification. The Chancellor was, therefore, justified in rejecting the opinion of the Executive Council. His decision gets support from the Statute 11.01 of the First Statute of the Lucknow University. Accordingly the judgment of the High Court and the consequential order made by the Registrar of the University reverting the appellant to her substantive post of Lecturer are set aside. Her original appointment as Reader pursuant to the decision of the Chancellor shall remain undisturbed with all consequential benefits. [102E, 103B-C, G]

3. An administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice. Where there is no such obligation, the decision is called 'purely administrative' and there is no third category. [97G-H]

Ridge v. *Baldwin,* [1963] 2 All. E.R. 66; *G. Nageshwara Rao* v. *Andhra Pradesh State Transport Corporation,* [1959] 1 SCR 319; *Administrative Law by H.W.R. Wade 6th Ed.* p. 46-47, referred to.

3.1 The conclusiveness of the decision without the need for confirmation or adoption by any other authority is generally regarded as one of the features of judicial power. But the order made by a statutory authority even it is given finality does not thereby acquire judicial quality if no other characteristic of judicial power is present. Power to make orders that are binding and conclusive is not, by itself a decisive factor to hold that the power is judicial. [101E-F]

Prof. Desmith, 'Judicial Review of Administrative Action' 4th Ed., p. 82; referred to.

3.2 An administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin Maxim *audi alteram partem*. The person concerned must be informed of the case against him and the evidence in support thereof and must be given a fair opportunity to meet the case before *an adverse* decision is taken. [98G-H]

A *State of Orissa* v. *Dr. Binapani Dei & Ors.*, [1967] 2 SCR 625; *Ridge* v. *Baldwin*, [1963] 2 All. E.R. 66; referred to.

3.3 So far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly. For this concept of fairness, adjudicative settings are not necessary, nor it is necessary to have lis B *inter parties*. There need not be any struggle between two opposing parties giving rise to a 'lis'. There need not be resolution of lis inter parties. The duty to act judically or to act fairly may arise in widely different circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general C rubric of fairness in the administration. But then even such an administrative decision unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would juridically be called atleast a privilege does not involve the duty to act fairly consistance with the rules of natural justice. [99A-E]

D *Keshva Mills Co. Ltd.* v. *Union of India*, [1973] 3 SCR 22; *Mohinder Singh Gill* v. *Chief Election Commissioner*, [1978] 1 SCC 405; *Swadeshi Cotton Mills* v. *Union of India*, [1981] 1 SCC 664; *Management of M/s M.S. Nally Bharat Engineering Co. Ltd.* v. *The State of Bihar & Ors.*, Civil Appeal No. 1102 of 1990 decided on 9.2.1990; E referred to.

4. In matters of appointment in the academic field the Court generally does not interfere. The Courts should be slow to interfere with the opinion expressed by the experts in the absence of *mala fide* alleged against the experts. When appointments are based on recommendations F of experts nominated by the Universities, the High Court has got only to see whether the appointment had contravened any statutory or binding rule or ordinance. The High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation on which the Chancellor has acted. [103D-E]

G *University of Mysore & Anr.* v. *C.D. Govinda Rao*, [1964] 4 SCR 575; *Dr. J.B. Kulshreshtha & Ors.* v. *Chancellor, Allahabad University, Raj Bhavan & Ors.*, [1980] 3 SCR 902; *Dalpat Abasaheb Soluke* v. *B.S. Mahajan*, [1990] 1 SCR 305; followed.

5. The principle of equality enshrined in Article 14 must guide H every state action, whether it be legislative, executive or quasi-judicial. [102C-D]

E.P. Royappa **v.** *State of Tamil Nadu & Anr.*, **[1974] 2 SCR 348;** *Mrs. Maneka Gandhi* **v.** *Union of India & Anr.*, **[1978] 1 SCC 248;** *Ajay Hasia & Ors.* **v.** *Khalid Mujib Sehravardi & Ors.*, **[1981] 1 SCC 722;** *Som Raj & Ors.* **v.** *State of Haryana*, **JT 1990 1 SC 286; referred to.**

5.1 In matters relating to public employment whether by promotion or direct recruitment, only requirement to be complied with is the mandate of Articles 14 and 16 of the Constitution. There shall be equality of opportunity and no discrimination only on ground of religion, race, caste, sex, dissent, place of birth or residence or any of them. The eligible candidate has a right to have his case considered in accordance with law. [100F]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1616-17 of 1990.

From the Judgment and Order dated 22.5.1989 of the Allahabad High Court in Writ Petition No. 2777/78 & dated 5.7.89 Review Petition No. 68(W)/89 in W.P. No. 2777/78.

K. Parasaran, Amitabh Misra, S. Murlidhar and M.S. Ganesh for the Appellant.

P.P. Rao, Raja Ram Aggarwal, E.C. Aggarwala, Atul Sharma, Ms. Purnima Bhatt, Mrs. Shobha Dikshit, Lokesh Kumar, R.D. Kewalramani and M.K. Garg for the Respondents.

The Judgment of the Court was delivered by

K. JAGANNATHA SHETTY, J. Special Leave granted.

The Chancellor of the Lucknow University while exercising power under Section 31(8)(a) of the Uttar Pradesh State Universities Act, 1973 ("The Act") has directed that Km. Neeliam Misra, the appellant herein should be appointed as Reader in Psychology in the University. That order has been quashed by the High Court of Allahabad, Lucknow Bench in Writ Petition No. 2777 of 1978 at the instance of Dr. Harinder Kaur Paintal, respondent (1). This appeal is from that judgment of the High Court.

A The background of the case in the barest outline may be stated as under.

The Lucknow University invited applications for appointment of Reader in Psychology from candidates who possessed the prescribed qualifications. In response to the advertisement, several candidates B filed their applications. The appellant and respondents 1 to 5 were some of them who offered themselves as candidates. The Committee which was constituted for selection of candidates called them for interview along with some others. After considering their qualifications, experience and relative performance in the interview, the Selection Committee graded them as follows:

C

> "All the candidates who appeared for the interview possess a Ph. D. degree. Km. Neelima Misra does not possess a Ph. D. degree. Her thesis is nearing completion. Her thesis work alongwith her publication were scrutinised and it was found that she satisfies the condition of published work of a D high standard in the subject, provided as an alternative to Ph. D. degree. All the candidates have a consistently good academic record and more than 54% marks in the M.A. Examinations, except Dr. C.B. Dwivedi, who has a 3rd Division in the High School, Dr. Ratan Singh who has 3rd Division in High School and B.A.
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> E
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> 2. All the candidates possess the requisite teaching experience of post graduate classes.
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> 3. And the basis of the research work, publications, experience and performance at the interview, the Committee F graded the candidates as follows:
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> 1. Ms. Neelima Misra
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> 2. Dr. (Km.) Mukta Rani Rastogi
>
> G 3. Dr. (Smt.) Harinder Kaur Paintal
>
> 4. Dr. S.N. Rai
>
> The rest of the candidates were found unsuitable. The view of the above Committee recommended that Km Neelima H Misra be appointed to the post of Reader in Psychology."

Km. Neelima Misra was found to have to her credit a published work of high standard in the subject of Psychology though she had no Ph. D. degree. Besides she was considered to be more suitable on the basis of research work, publication, experience and performance at the interview. The Selection Committee, therefore, recommended her for appointment to the post of Reader in Psychology.

That recommendation came before the Executive Council. The Executive Council, by a split majority disagreed with the recommendation and preferred the appointment of respondent (5) Dr. (Km) M.R. Rastogi. It has expressed the view that the appellant did not possess the essential qualifications prescribed for the post of Reader and therefore, not suitable for appointment. The opinion expressed by the Executive Council is as under:

> "A perusal of the bio data of Km. Neelima Misra shows that she does not possess Ph. D. degree nor has she submitted her thesis so far. Yet it is strange to say that her published work is of a high standard. Thus she does not fulfil requirement of essential qualifications and not suitable for the post.
>
> The biodata of Dr. (Km) M.R. Rastogi shows that she possesses 11 years teaching experience of post-graduate classes. She has a consistently good academic record and should be appointed Reader in Psychology as she has been graded No. 2 by the Selection Commitee. Dr. (Smt.) Harinder Kaur Paintal is a Lecturer since November 1972 and has also a consistently good academic record and is suitable for the post.
>
> As a consequence there is no question of relaxation of essential qualification as candidate of requisite merit are available."

When there is thus disagreement with the recommendation of the Selection Committee, the matter must be referred to the Chancellor for his decision. That is the mandatory requirement of Section 31(8)(a) of the Act. Accordingly, the Executive Council referred the matter to the Chancellor. The Chancellor, however, by order dated August 16, 1978 did not approve of the Executive Council's opinion to appoint Dr. (Km) M.R. Rastogi. The Chancellor rejected the opinion of the Executive Council and accepted the recommendation of the

Selection Committee and directed that the appellant should be appointed as Reader. The Chancellor observed:

> "The Selection Committee has unanimously recommended that Km. Neelima Misra be appointed to the post of Reader in Psychology. Instead of accepting this recommendation, the Executive Council held by a majority of 6:5 votes that Kumari Neelima Misra does not fulfil the requirement of essential qualifications and is not suitable for the post. It was of opinion that Dr. (Km) M.R. Rastogi who has been graded No. 2 by the Selection Committee should be appointed and that Dr. (Smt) H.K. Paintal is also suitable for the post.
>
> Km. Neelima Misra does not possess a Doctorate in the subject of study, but the Selection Committee has recorded that her thesis alongwith her publications were scrutinised and it was found that she satisfies the condition of published work of a high standard on the subject, which is an alternative to the Doctorate degree, as provided in Statute 11.01 read with Statute 11.02 of the First Statutes of Lucknow University. Thus Km. Neelima Misra possess the essential prescribed minimum qualification. She has also been adjudged to be the most suitable candidate on the basis of research work, publications and experience and performance at interview, among all the candidates, by the Selection Committee which was in a better position to judge the merits of the suitability of the appointment.
>
> After considering all the facts and circumstances of the case, I approve the report of the Selection Committee and direct that the appointment order be issued accordingly.
>
> Sd/- G.D. Tapase,
> Chancellor"

As per the decision of the Chancellor, the appellant was appointed as Reader in Psychology.

Dr. (Smt) Harinder Kaur Paintal, respondent 1, moved the High Court under Article 226 of the Constitution challenging the Chancellor's order. The Writ Petition was filed on 17 August 1978 before the Lucknow Bench of the Allahabad High Court and it was admitted on

30 March 1979. Ten years later i.e. on 3 May 1989 the writ petition was listed for hearing before the Division Bench of the High Court. On 22 May 1989, the judgment was delivered by allowing the writ petition and quashing the Chancellor's order with a direction to reconsider the matter. It seems that learned Judges had little discretion in the matter in view of an earlier decision of the High Court on the nature and scope of the Chancellor's power under Section 31(8)(a) of the Act. In *L.N. Mathur* v. *The chancellor, Lucknow University, Lucknow & Ors.*, AIR 1986 All. 273, the Full Bench of the High Court by majority, *inter alia,* has held that the Chancellor must state explicitly the reasons for his decision. The Chancellor in order to arrive at a decision has to make a judicial approach to the question and he is enjoined by the Act to act quasi-judicially. To reach that conclusion, the Full Bench has relied upon the observations in the Division Bench judgment in *Dr. U.N. Roy* v. *His Excellency Sr. G.D. Tapase*, (The Ex-Governor, State of Uttar Pradesh), Chancellor Allahabad University (1981 UPLBEC 309.) Following those authorities, the learned Judges in the present case have set aside the Chancellor's order making some more observations:

> "When difference of opinion between the Selection Committee and Executive Council is referred to the Chancellor, his position is that of an Arbitrator and there is a sort of 'lis' before him and in case the Chancellor has to agree with the Selection Committee with which the Executive Council has differed assigning particular reason, the Chancellor has to assign reasons as to why he has agreed with the recommendation made by the Selection Committee. The dispute having been raised, was to be decided atleast like a dispute"

At this point, we may interrupt the narration and analyse Section 1 of the Act which provides procedure for selection of University eachers. Omitting unnecessary clauses, the Section reads:

> "31(1) Subject to the provisions of the Act, the teachers of the University and the teachers of an affiliated or associated college (other than a college maintained exclusively by the State Government) shall be appointed by the Executive Council or the Management of the affiliated or associated college, as the case may be, on the recommendation of a Selection Committee in the manner hereinafter provided.
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> XXXX XXXXX XXXXX

(4)(a)The Selection Committee for the appointment of a teacher of the University (other than the Director of an Institute and the Principal of a constituent college) shall consist of—

(i) the Vice-Chancellor who shall be the Chairman thereof,;

(ii)the head of the Department concerned:

xxx xxx xxx

(iii) in the case of a Professor or Reader, three experts, and in any other case, two experts be nominated by the Chancellor;

xxx xxx xxx

(6) No recommendation made by a Selection Committee referred to in sub-section (4) shall be considered to be valid unless one of the experts had agreed to such selection.

xxx xxx xxx

(7-A) It shall be open to the Selection Committee to recommend one or more but not more than three names for each post.

(8)(a) In the case of appointment of a teacher of the University, if the Executive Council does not agree with the recommendation made by the Selection Committee, the Executive Council shall refer the matter to the Chancellor along with the reasons of such disagreement, and his decision shall be final.

Provided that if the Executive Council does not take a decision on the recommendations of the Selection Committee within a period of four months from the date of meeting of such Committee, then also the matter shall stand referred to the Chancellor, and his decision shall be final."

Three authorities are involved in the selection of University teachers; (i) Selection Committee, (ii) Executive Council and (iii) Chancellor.

The Selection Committee for appointment of University teachers is a recommendatory body the composition of which has been prescribed under section 31(4)(a). It is a high power Committee of which the Vice-Chancellor shall be the Chairman. The Head of the department concerned shall be a member. There shall also be expert members in the particular subject. The experts shall be drawn from outside the University and the Chancellor must nominate them. In the case of appointment of Professor or Reader, there shall be three experts and in any other case two experts in the Selection Committee. In the case of selection of teachers of the University, the recommendation of the Selection Committee shall not be valid unless atleast one of the experts agrees to such selection. The Selection Committee has the liberty to recommend one or more candidates but not more than three names for each post.

The Executive Council is the principal executive body of the University whose powers and duties are provided under Section 21 of the Act. Subject to the provisions of the Act, the Executive Council has power to appoint officers, teachers and other employees of the University. The appointment shall be made on the basis of recommendation made by the Selection Committee, which means in the order of merit of candidates arranged by the Selection Committee. The Selection Committee has expert members and it has thus the expertise to judge the relative suitability of competing candidates. The Executive Council has no such experts on the subject for selection. Therefore, the Executive Council shall make appointments as per the position or ranking obtained in the recommendation, unless any other rule requires otherwise. Section 31(8)(a) seems to suggest that if the Executive Council wants to agree with the recommendation and appoint candidates in the order of merits, no reasons are to be given. But if it wants to disagree with the recommendations made by the Selection Committee, it must give reasons for disagreement. It has however, no power to override the recommendation and appoint a candidates of its own choice. It may disagree, but should give reasons for disagreement and refer the matter under section 31(8)(a) to the Chancellor. Then the decision of the Chancellor shall be binding on the Executive Council.

The nature of the Chancellor's power located under Section 31(8)(a) is now to be considered. The High Court has held that the Chancellor's power is quasi-judicial. There is a 'lis' before the Chancellor for determination and he has to decide the dispute as an arbitrator.

A The suggested analogy with the position of an arbitrator was not even supported by counsel for the respondents. The essence of the attack of Mr. Parasaran, learned counsel for the appellant is that there is no legal or equitable right of parties or any dispute relating thereto for determination by the Chancellor and therefore, there is no duty to act judicially. The Chancellor has only to consider the recommendation of the Selection Committee in the light of disagreement if any, expressed by the Executive Council and direct appointment of a candidate in the select list. The order of the Chancellor, and his function, it was argued, are purely administrative in nature. Mr. K.P. Rao for respondent (3) was indeed very fair in his submission. He did not say that there is a 'lis' before the Chancellor for determination. He urged that the Chancellor is required to exercise his powers properly and not improperly even though there is no 'lis' before him for adjudication. The argument of Mr. Agarwal for the respondent No. 5, however, ranged a good deal ıder than his counter part appears to have done in the High Court. The power of the Chancellor, he contended, is quasi-judicial and he must determine the issue that is referred to him with reasons in support of his conclusion.

The question raised is of considerable importance and it has general application in Universities governed by similar pattern of statutory provisions. Reference may be made to some of such enactments. Section 27(4) of the Jawaharlal Nehru University Act, 1966 provides that if the Executive Council is unable to accept any recommendation made by Selection Committee, it may remit the same for reconsideration and if the difference is not resolved, it shall record its reasons and submit the case to the Visitor for orders. Similar are the provisions under the Calcutta University Act, 1979. Section 32(2) therein provides that if the Syndicate does not accept the recommendation of the Selection Committee it shall refer back the matter for reconsideration and if the Syndicate does not accept the reconsidered views, the matter shall be referred to the Chancellor whose decision shall be final. Section 57(2)(e) of the Bombay University Act, 1974 is almost parallel and it states that if the Executive Council does not choose to appoint from amongst the persons recommended by the Selection Committee, it shall for reasons recorded refer to the Chancellor whose decision shall be final. The Aligarh Muslim University Act, 1920 by Section 27(5) also provides that if the Executive Council is unable to accept the recommendations made by the Selection Committee, it shall record its reasons and submit the case to the Visitor for final orders. Section 49(2) of the M.P. Vishwavidhayalaya Adhiniyam, 1973 likewise requires where the Executive Council pro-

poses to make the appointment otherwise than in accordance with the order of merit arranged by the Select Committee it shall record its reasons and submit its proposal for sanction of the Kuladhipati.

The pattern in the Kerala University Act, 1974 is slightly different. The First Statute under that Act empowers the Syndicate to make appointments contrary to recommendation of the Committee but with the sanction of the Chancellor. The First Statute under the Delhi University Act, 1922 by clause 6 provides that the Executive Council shall appoint from time to time Professors and Readers etc. on the recommendations of the Selection Committee constituted for the purpose.

Under the Act and Statute with which we are concerned, the Executive Council has no power to ask the Selection Committee to reconsider the recommendation. It must for reasons recorded refer the matter under Section 31(8)(a) to the Chancellor for decision.

The Full Bench of the Allahabad High Court in *L.N. Mathur*, case (supra) had analysed the concept of quasi-judicial function with reference to the power of the Chancellor under Section 31(8)(a) and expressed the view that the reference to the Chancellor showed the existence of a disagreement between two University Authorities with respect to the claims of competing candidates. The Chancellor has to decide the issue by examining the reasons given by the Executive Council and the records of the candidate. The decision of the Chancellor is final and not subject to any appeal/revision and his power is quasi-judicial. The fact that the Chancellor is not required to follow any set procedure or sit in public or take evidence does not make his function administrative. Such are the reasonings for the conclusion of the High Court to hold that the Chancellor must act as a quasi-judicial authority.

We find it difficult to accept the reasoning underlying the aforesaid view. Before we consider the correctness of the proposition laid down by the High Court we must, at the expense of some space, analyse the distinctions between quasi-judicial and administrative functions. An administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice. Where there is no such obligation, the decision is called 'purely administrative' and there is no third category. This is what was meant by Lord Reid in *Ridge* v. *Baldwin*, [1963] 2 All E.R. 66, 75-76:

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> "In cases of the kind with which I have been dealing the Board of Works ..... was dealing with a single isolated case. It was not deciding, like a judge in a law suit, what were the rights of the persons before it. But it was deciding how he should be treated-something analogous to a judge's duty in imposing a penalty ....."

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> "So it was easy to say that such a body is performing a quasi-judicial task in considering and deciding such a matter and to require it to observe the essentials of all proceedings of a judicial character the principles of natural justice. Sometimes the functions of a minister or department may also be of that character and then the rules of natural justice can apply in much the same way ....."

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Subba Rao, J., as he then was, speaking for this Court in *G. Nageshwara Rao* v. *Andhra Pradesh State Transport Corporation,* [1959] 1 SCR 319 put it on a different emphasis (at 353):

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> "The concept of a quasi-judicial act implies that the act is not wholly judicial, it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power ....."

E

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
F is subject to some measure of judicial procedure, such as the principles of natural justice." (Administrative Law by H.W.R. Wade 6th Ed. p. 46-47).

An administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin Maxim *audi*
G *alteram partem.* It means that the decision maker should afford to any 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 in support thereof and must be given a fair opportunity to meet the case before an
H adverse decision is taken. *Ridge* v. *Baldwin,* (supra) and *State of*

Orissa v. *Dr. Binapani Dei & Ors.*, [1967] 2 SCR 625.

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The shift now is to a broader notion of "fairness" of "fair procedure" in the administrative action. As far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly (See: *Keshva Mills Co. Ltd.* v. *Union of India,* [1973] 3 SCR 22 at 30; *Mohinder Singh Gill* v. *Chief Election Commissioner,* [1978] 1 SCC 405 B at 434; *Swadeshi Cotton Mills* v. *Union of India,* [1981] 1 SCC 664 and *Management of M/s M.S. Nally Bharat Engineering Co. Ltd.* v. *The State of Bihar & Ors.,* Civil Appeal No. 1102 of 1990 decided on February 9, 1990. For this concept of fairness, adjudicative settings are not necessary, not it is necessary to have lis *inter partes*. There need not be any struggle between two opposing parties giving rise to a 'lis'. C There need not be resolution of lis *inter partes*. The duty to act judicially or to act fairly may arise in widely differing circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the administration. But then even such an administrative decision D unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would juridically be called atleast a privilege does not involve the duty to act fairly consistently with the rules of natural justice. We cannot discover any principle contrary to this concept.

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In the light of these considerations, we revert to the central issue, that is with regard to the nature of the Chancellor's power under Section 31(8)(a). It may be noted that the Chancellor is one of the three authorities in the Statutory Scheme for selecting and appointing the best among the eligible candidates in the academic field. The Chancellor is not an appellate authority in matters of appointment. He F is asked to take a decision, because the Executive Council who is the appointing authority has no power to reject the recommendation of the Selection Committee and take a decision deviating therefrom. The Chancellor's decision is called for when the Executive Council disagree with the recommendation of the Selection Committee. What is referred to the Chancellor under Section 31(8)(a) of the Act, is therefore, G not a dispute between the Selection Committee and the Executive Council on any issue. Nor it is a dispute between two rival candidates on any controversy. What is referred to the Chancellor is the recommendation of the Selection Committee with the opinion, if any, recorded thereon by the Executive Council. In fact, even without any opinion of the Executive Council, the matter stands automatically H

remitted to the Chancellor if the Executive Council delays its decision on the recommendation of the Selection Committee. The proviso to Section 31(8)(a) provides for this contingency. It reads:

> "Section 31(8)(a) xxxxx xxxxx
>
> *Proviso*: Provided that if the Executive Council does not take a decision on the recommendation of the Selection Committee within a period of four months from the date of the meeting of such Committee, then also the matter shall stand referred to the Chancellor, and his decision shall be final."

The matter thus goes to the Chancellor for decision since the Executive Council could not take a decision on the recommendation of the Selection Committee. The Chancellor in the circumstances has to examine whether the recommendation of the Selection Committee should be accepted or not. If any opinion by way of disagreement has been recorded by the Executive Council on that recommendation, the Chancellor has also to consider it. He must take a decision as to who should be appointed. It is indeed a decision with regard to appointment of a particular person or persons in the light of the recommendation and opinion if any, of the two statutory authorities. Such a decision appears to be of an administrative character much the same way as the decision of the Executive Council with regard to appointment.

In matters relating to public employment whether by promotion or direct recruitment, only requirement to be complied with is the mandate of Articles 14 and 16 of the Constitution. There shall be equality of opportunity and no discrimination only on ground of religion, race, caste, sex, dissent, place of birth or residence or any of them. The eligible candidate has a right to have his case considered in accordance with law. In the instant case, that requirement has been complied with by the Selection Committee. There is no further right with the candidates to make representation to the Executive Council and much less to the Chancellor. Reference however, was made to the observation of this Court in *Dr. G. Sarana* v. *University of Lucknow and Ors.*, [1976] 3 SCC 585 at 592. While dismissing the writ petition challenging the recommendation made by the Selection Committee of the Lucknow University for appointment of a candidate as Professor, it was observed that "the aggrieved candidate has remedy by way of representation to the Executive Council and an application for re-

ference under Section 68 of the Act to the Chancellor". We have carefully perused the decision and that observation. We find that it is of little assistance to the present case. We are concerned with the scope of Section 31(8)(a) of the Act which was not considered in that case. Apart from that, Section 31 confers no such right to make representation to the Executive Council or to the Chancellor against the recommendation of the Selection Committee. There is no provision in the Section for hearing any candidate or the Executive Council. There is also no provision for receiving evidence. The material in respect of every candidate has already been collected and collated by the Selection Committee. Every material is on the record and the Chancellor has no power to take further evidence. The Chancellor is authorised to take a decision and he must take it on the available records since the Executive Council has not taken a decision on the recommendation of the Selection Committee. The decision of the Chancellor in the exercise of this Statutory function does not, in our opinion, expressly or impliedly require the application of the principles of natural justice. See also the observations of K.N. Singh, J., in *R.S. Dass* v. *Union of India*, [1966] Suppl. SCC 617 at 633.

It has been argued that the order of the Chancellor becomes final and binding which is one of the features of judicial power. It is true that the conclusiveness of the decision without the need for confirmation or adoption by any other authority is generally regarded as one of the features of judicial power. But it must be added that the order made by a statutory authority even it is given finality does not thereby acquire judicial quality if no other characteristic of judicial power is present. Power to make orders that are binding and conclusive is not, by itself a decisive factor to hold that the power is judicial. Prof. De Smith makes a similar point in his book 'Judicial Review of Administrative Action' (4th Edition p. 82).

Taking all these factors into consideration, we would sum up our opinion in this way. The power of the Chancellor under Section 31(8)(a) is purely of administrative character and is not in the nature of judicial or quasi-judicial power. No judicial or quasi-judicial duty is imposed on the Chancellor and any reference to judicial duty, seems to be irrelevant in the exercise of his function. The function of the Chancellor is to consider and direct appointment of a candidate on the basis of the relative performance assessed by the Expert Selection Committee and in the light of the opinion, if any, expressed by the Executive Council. His decision nonetheless is a decision on the recommendation of the Selection Committee. Such a power cannot be considered as a quasi-judicial power. And we see nothing in that to justify our thinking

A that it must conform to the principles of natural justice. The contention urged to the contrary is, therefore, unacceptable to us. We also do not agree with the contrary view taken by the High Court in the Full Bench decision in *L.N. Mathur,* case (supra).

B The Chancellor, however, has to act properly for the purpose for which the power is conferred. He must take a decision in accordance with the provisions of the Act and the Statutes. He must not be guided by extraneous or irrelevant consideration. He must not act illegally, irrationally or arbitrarily. Any such illegal, irrational or arbitrary action or decision, whether in the nature of a legislative, administrative or quasi-judicial exercise of power is liable to be quashed being violative of Article 14 of the Constitution. As stated in *E.P. Royappa*
C v. *State of Tamil Nadu & Anr.,* [1974] 2 SCR 348 "equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other to the whim and caprice of an absolute monarch". The principle of equality enshrined in Article 14 must guide every state action, whether it be legislative executive, or quasi-
D judicial. See *Mrs. Maneka Gandhi* v. *Union of India & Anr.,* [1978] 1 SCC 248 at 283-84; *Ajay Hasia & Ors.* v. *Khalid Mujib Sehravardi & Ors.,* [1981] 1 SCC 722 at 740-41 and *Som Raj & Ors.* v. *State of Haryana,* JT 1990 1 SC 286 at 290.

The order of the Chancellor impugned in this case indicates very clearly that he has considered the recommendation of the Selection
E Committee and the opinion expressed by the Executive Council. He has stated and in our opinion, very rightly that the appellant possesses the prescribed qualification for appointment as Reader. The decision of the Chancellor gets support from the Statute 11.01 of the First Statute. The Statute 11.01 is in these terms:

F "11.01. (1) In the case of the Faculties of Arts, Commerce and Science, the following shall be the minimum qualifications for the post of Lecturer in the University, namely—

(a) a Doctorate in the subject of study concerned or a published work of a high standard in that subject; and

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(b) Consistently good academic record (that is to say, the overall record of all assessment throughout the academic career of a candidate), with first class of high second class (that is to say, with an aggregate of more than 54% marks Master's Degree in the subject concerned or equivalent
H Degree of a foreign University in such subject.)

(2) Where the selection committee is of the opinion that the research work of a candidate, as evidenced either by his thesis or by his published work, is of a very high standard, it may relax any of the qualifications specified in sub-clause (b) of clause (1)." A

The minimum qualification prescribed for the post is a Doctorate in the subject of study concerned or a published work of high standard in the subject. The appellant then was found to have an alternate qualification though not a Doctorate in the subject. The Selection Committee has accepted the alternate qualification as sufficient and did not relax the essential qualification prescribed for the post. The Executive Council appears to have committed an error in stating that the appellant has lacked the essential qualification and the Selection Committee has relaxed the essential qualification. The Chancellor was, therefore, justified in rejecting the opinion of the Executive Council. B C

It is not unimportant to point out that in matters of appointment in the academic field the Court generally does not interfere. In the *University of Mysore & Anr.* v. *C.D. Govind Rao,* [1964] 4 SCR 575, this Court observed that the Courts should be slow to interfere with the opinion expressed by the experts in the absence of *mala fide* alleged against the experts. When appointments based on recommendations of experts nominated by the Universities, the High Court has got only to see whether the appointment had contravened any statutory or binding rule or ordinance. The High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation on which the Chancellor has acted. See also the decisions in *Dr. J.P. Kulshreshtha & Ors.* v. *Chancellor, Allahabad University, Raj Bhavan & Ors.,* [1980] 3 SCR 902 at 912 and *Dalpat Abasahed Solunke* v. *B.S. Mahajan,* [1990] 1 SCR 305 at 309-310. D E F

In the result, the appeals are allowed, the judgment of the High Court is set aside. We also set aside the consequential order dated June 16, 1989 made by the Registrar of the University reverting the appellant to her substantive post of Lecturer in Psychology. Needless to state that her original appointment as Reader pursuant to the decision of the Chancellor shall remain undisturbed with all the consequential benefits. G

In the circumstances of the case, however, we make no order as to costs.

T.N.A. Appeals allowed. H