A V.C. BANARAS HINDU UNIVERSITY & ORS.

v.

SHRIKANT

MAY 12, 2006

B [S.B. SINHA AND P.P. NAOLEKAR, JJ.]

Service Law:

Banaras Hindu University Act, 1915 : Sections 10, 17and 18.

C

Abandonment of service—Misconduct—Proceeding abroad on Leave without prior sanction/permission of the competent authority—University Lecturer applied for sanction of leave as he desired to assist his wife in joining her fellowship in the United Kingdom as also to attend an academic D *meeting in Germany—Recommendations were made and forwarded by the Director of the Institute being the Head of the Department and the Competent Authority—The purpose of the lecturer's visit had been shown as "Personal & Scientific"—The lecturer left for the United Kingdom without express sanction of leave and without the permission of the Vice Chancellor—The lecturer was asked to join his duties by the Registrar of the University by* E *a notice for the alleged acts of misconduct—The lecturer sent a letter intimating the Registrar that since air reservation was not available he would report for duty by a certain date—The lecturer came back to India and submitted his joining report on that date, which was not accepted by the Registrar stating that he had abandoned his service—The Vice Chancellor* F *refused to recall his order—On challenge, the High Court granted a conditional stay order of the termination—The lecturer was allowed to join duty but was not permitted to claim his salary till the writ petition was decided—The High Court ultimately held that the order of termination was bad in law but denied the respondent his back wages—Correctness of—Held: The procedure laid down for imposition of major penalty had not been* G *followed in the instant case—The lecturer, thus, had not been proceeded against for commission of any misconduct—The University was not sure as to whether the lecturer has committed a misconduct or by leaving India without obtaining leave, he would be deemed to have abandoned his service—The lecturer's leave had been sanctioned by the Director being the* H *Head of the Department in terms of the leave rules—Back wages to the extent*

of 75% granted to the lecturer. A

The respondent was appointed as a Lecturer in the appellant-University. The respondent applied for sanction of leave from 1.3.2000 to 30.6.2000 as he desired to assist his wife in joining her fellowship in the United Kingdom as also to attend an academic meeting in Germany. Recommendations were made and forwarded on 21.2.2000 by the B Director of the Institute being the Head of the Department and the Competent Authority. The purpose of the respondent's visit had been shown as "Personal & Scientific". The respondent left for the United Kingdom without express sanction of leave and without the permission of the Vice Chancellor. The respondent was asked to join his duties by C the Registrar of the University by a notice dated 24.3.2000 for the alleged acts of misconduct. The respondent sent a letter intimating the Registrar that since air reservation was not available before 19.6.2000 he would report for duty by 21.6.2000. The respondent came back to India and submitted his joining report on 21.6.2000, which was not D accepted by the Registrar stating that he had abandoned his service from 1.3.2000. The Vice Chancellor refused to recall his order.

On challenge, the High Court granted a conditional stay order of the termination and further directed that the respondent might be allowed to join his duties but he would not claim any salary till the writ E petition was decided. The High Court dismissed the writ petition on the ground that the respondent had an alternative remedy.

The respondent made a representation before the Executive Council which adopted a resolution on 8.1.2003 although the same was confirmed later on. The High Court held that the order of termination was bad F in law but denied the respondent his back wages. Hence the appeals.

The following question arose before the Court:

Whether the Notification dated 25.3.1998 can be invoked against the respondent? G

Disposing the appeals, the Court

HELD: 1. Admittedly, the procedure laid down for imposition of major penalty had not been followed in the instant case. The respondent, H

A thus, had not been proceeded against for commission of any misconduct. [548-A]

2. A bare perusal of the Notification dated 25.3.1998 would clearly show that the Executive Council had been only considering the question of taking disciplinary action against the employees for having gone B abroad without the permission or without the sanctioned leave and those who have overstayed without the prior approval of the University. Although, leaving the institution without the prior permission of the Vice Chancellor would fall within the purview of misconduct; availing of leave undisputedly would be governed by the leave Rules framed by the C university. Proceeding on leave without the same being sanctioned or overstaying after the period of sanctioned leave is over, would undisputedly come within the purview of the term, 'misconduct'. It is, however, true that only because the action on the part of the employee to avail leave without any prior sanction thereof or overstay despite expiry of the period of leave, would amount to misconduct, the statutory D authorities would not be denuded with power to make an appropriate statute that in certain situation the employee would be deemed to have abandoned his services. However, such a provision could not be laid down by an executive direction. Matter relating to cessation of employment is governed by statute and ordinance. Any matter touching E the said subject, thus, must be provided for by a subordinate legislation, i.e., either by framing a statute or an Ordinance. There cannot be any doubt, whatsoever, that a statute could be made in the manner laid down under the Banaras Hindu University Act, 1915. From the Notification dated 25.3.1998, it appears that by reason thereof, the Executive Council did not propose to make any amendment to the existing F ordinance nor intended to lay down any new law. [548-F-H, 549-A-C]

3.1. The Notification dated 25.3.1998 was issued only by way of guidelines. It is sub-divided into two parts: whereas the first part provides for consequences of overstay without permission for more than 45 days at different points of time, the second part relates to the G employees who have overstayed without permission for more than 45 days from the date of issue of the University resolution. Only in regard to the second part, it was stated that the services of such employees "would be abandoned as per the existing rules". [549-E, F]

H 3.2. The Executive Council, the Vice Chancellor or any other

authority, who are creatures of Statutes, must act within the four-corners thereof. They were also required to follow the procedure laid down for initiation of a disciplinary proceeding against an employee. [549-H, 550-A]

4. Where a matter is covered by one or the other clauses contained in Sections 17 or 18 of the Act any modification/amendment/substitution thereof was required to be carried out strictly in the manner laid down thereunder. The Statute and the Ordinance not only deal with the manner in which the recruitment of a faculty member is to be carried out, but also lay down the terms and conditions of services, the manner, in which the proceeding for commission of misconduct by a delinquent officer was to be initiated and the punishments imposed. It was, therefore, improper on the part of the authorities including the Executive Council to create a new punishment or create a new exit door for the employees of the services of the University. It is in that sense the purported circulars issued by the Registrar in terms of the purported resolutions adopted in the meetings of the Executive Council or otherwise must be held to be *ultra vires.* [550-A-D]

State of Madhya Pradesh v. *M/s. G.S. Dall & Flour Mills,* [1992] Supp. 1 SCC 150 and *DDA* v. *Joginder S. Monga,* [2004] 2 SCC 297, referred to.

5. Even otherwise, the said purported Notification dated 25.3.1998 does not and/or cannot create a new misconduct and/or provide for a legal fiction providing that the employee would be deemed to have abandoned his service. The said Notification was issued for laying down certain guidelines and, thus, by reason thereof no independent misconduct could be created. The purpose of issuing the said circular evidently was to lay down broad guidelines in regard to the quantum of punishment which should be imposed, as would be evident from the fact that Section (A) thereof deals with the cases of those employees who had gone abroad without prior permission (which itself is a misconduct) and overstaying the leave for more than 45 days. The quantum of punishment has been specified for commission of misconduct for the first, the second, the third and the fourth time. [551-B-D]

6. Section (B) of the Notification deals with the cases of those employees, who have overstayed abroad without prior permission for,

more than 45 days from the date of issue of the notice by the University, their services would be treated to be abandoned as per the existing rules. The said Notification is vague and obscure. It does not take into consideration the situation where a person may leave the campus without obtaining leave. If a person commits the same misconduct by staying within India although no leave has been obtained he would not come within the purview thereof but only if he goes abroad and overstays, the circular letter would come into play, which would mean that for initial stay he had the requisite permission and only in case of overstay he would be held to have not obtained any prior permission, and only in such an event, he would come within the purview of the said provision. In terms of the said Notification no legal fiction is created. Even otherwise, no legal fiction in law can be created by an administrative order. The circular letter states that the services of such employees would be abandoned as per existing rules, which would mean that there existed provisions in the rules laying down the condition as to when a person would be deemed to have abandoned the services. Admittedly, no such rule exists. [551-D-H]

7. It is not disputed that *ex-post facto* permission could also have been granted. Moreover, the office memo does not in any way deal with the respondent's contention that he should have been granted leave. It is not known why the respondent's application for grant of leave had not been favourably considered by the Vice Chancellor. The Vice Chancellor clearly framed an opinion that the respondent has not obeyed his directions and he had not seriously taken note of his order. The notice, thus, speaks of misconduct. [553-F-H]

8. The Statute and the Ordinance postulate that an order of termination of services could be passed only by the Executive Council and that too in the event two-third of the Members were present and voted in support thereof. Therefore, the Vice Chancellor had no say in the matter. He was merely a member of the Executive Council. He, thus, could not have initiated any proceeding and imposed any punishment on the respondent. [555-E, F]

9. It is not possible to appreciate as to why, despite the High Court's order, the Executive Council could not dispose of the matter quickly. Why the matter had not been brought on the agenda by the

Vice Chancellor at the first opportune moment and why the matter had to be adjourned again and again has not been explained. It may be that when the matter was brought on the agenda of the Executive Council, it purported to have approved the orders of the Vice Chancellor that the respondent would be deemed to have abandoned his service with effect from 1.3.2000, but the same did not receive the seal of finality as the minutes of the meeting had not been approved. [555-F-H, 556-A] A B

10. Moreover, on a bare perusal of the impugned order, it would appear that the Vice Chancellor of the University did not refer to the provisions of the Notifications issued from time to time which would clearly go to show that the University was not sure as to whether the respondent has committed a misconduct or by leaving India without obtaining leave, he would be deemed to have abandoned his service. [556-A, B] C

11.1. Although laying down a provision providing for deemed abandonment from service may be permissible in law, it is not disputed that an action taken thereunder must be fair and reasonable so as to satisfy the requirements of Article 14 of the Constitution of India. If the action taken by the authority is found to be illogical in nature and, therefore, violative of Article 14 of the Constitution the same cannot be sustained. Statutory authority may pass an order which may otherwise be *bona fide*, but the same cannot be exercised in an unfair or unreasonable manner. The Respondent has shown before this Court that his leave had been sanctioned by the Director being the Head of the Department in terms of the leave rules. It was the Director/Head of the Department who could sanction the leave. Even the matter relating to grant of permission for his going abroad had been recommended by the Director. The respondent states and it had not been controverted that some other doctor was given the charge of his duties. It has been indicated sufficiently that the Vice Chancellor posed unto himself a wrong question. A wrong question leads to a wrong answer. When the statutory authority exercises its statutory powers either in ignorance of the procedure prescribed in law or while deciding the matter takes into consideration irrelevant or extraneous matters not germane therefor, he misdirects himself in law. In such an event, an order of the statutory authority must be held to be vitiated in law. It suffers from an error of law. [556-C, D, E, F] D E F G H

A **11.2. Such an error of law is capable of being rectified by judicial review. Reasonableness in the order and/or fairness in the procedure indisputably can also be gone into by the writ Court. [556-G]**

K.I. Shepherd **v.** *Union of India,* **AIR (1988) SC 686,** *Assam Sillimanite Ltd.* **v.** *Union of India,* **[1990] 3 SCC 182;** *H.L. Trehan* **v.** *Union of India,* B **AIR (1989) SC 568;** *D. K. Yadav* **v.** *JMA Industries Ltd.,* **[1993] 3 SCC 259 and** *Scooters India Ltd.* **v.** *M. Mohammad Yaqub,* **[2001] 1 SCC 611, relied on.**

Jai Shanker **v.** *State of Rajasthan,* **AIR (1966) SC 492 and** *Deokinandan* C *Prasad* **v.** *State of Bihar,* **AIR (1971) SC 1409;** *Uptron India Ltd.* **v.** *Shammi Bhan,* **[1998] 6 SCC 538;** *Punjab & Sind Bank* **v.** *Sakkattar Singh,* **[2001] 1 SCC 214;** *Lakshmi Precision Screws Ltd.* **v.** *Ram Bhagat,* **[2001] 6 SCC 552 and** *Viveka Nand Sethi* **v.** *Chairman, J&K Bank Ltd.,* **[2005] 5 SCC 337, referred to.**

D *Aligarh Muslim University* **v.** *Mansoor Ali Khan,* **[2000] 7 SCC 529, held inapplicable.**

Sobhana Das Gupta **v.** *State of Bihar,* **(1974) PLJR 382 (Pat), approved**

E **12. As the initial order passed by the Vice Chancellor was wholly without jurisdiction, the same was a nullity and, thus, the purported approval thereof by the Executive Council would not cure the defect. [559-H, 560-A]**

F **13. Although the conduct of the University is deplorable having regard to the fact the respondent has suffered a lot and has not been allowed to join his duties for a long time and keeping in view the facts and circumstances of this case, his back wages should be restricted to 75%. [564-E, F]**

G CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4147 of 2003.

From the Judgment and Order dated 25.3.2003 of the High Court of H Judicature at Allahabad in C.M.W.P. No. 44540/2001.

Rakesh Dwivedi, Jaideep Gupta, Sr. advs., Lakshmi Raman Singh, B.B. Singh, Ms. Vimla Sinha, Chandra Prakash, Alisheh Chaudhary, Gaurav Bhatia, Saad Shervani, Adarsh Upadhyay, Piyush Vats, Ajit Kumar Singh, Ms. Suruchi Aggarwal, Ayushya Kumar, Advs., with them for the appearing parties.

The Judgment of the Court was delivered by

S.B. SINHA, J. : Banaras Hindu University was constituted under the Banaras Hindu University Act No. XVI of 1915. ('the Act'). The Act contains constitution of various bodies functioning thereunder. Section 10 of the Act, *inter alia*, provides for constitution of an Executive Council as an executive body to be in-charge of the management and administration of the revenue and property of the University and conduct of all administrative affairs thereof, not otherwise provided for.

Section 17 of the Act lays down the mode and manner in which the Statutes of the University are to be framed subject to the provisions of the Act which includes all appointments, powers, duties and affairs of the University. Section 18 of the Act provides for ordinance making power in respect of the matters enumerated thereunder, which would be subject to the provisions of Section under the Statute.

Dr. Shrikant, the Respondent herein, was appointed as Lecturer in Ophthalmology, Institute of Medical Sciences, Banaras Hindu University, Varanasi. His wife was also employed in the said University. She applied for and was awarded a Commonwealth Fellowship in United Kingdom with effect from 1.3.2000 to 28.2.2001. For this purpose, she made an application for sanction of substantial leave. The Respondent desired to assist his wife in joining her fellowship as also to attend the Retina meeting from 7th to 9th April, 2000 at Frankfurt, Germany as well as the Annual Congress of Royal College of Ophthalmology at Harrowgate, United Kingdom from 23-24th May, 2000. He, therefore, applied for the following categories of leave :

"(i) Compensatory leave 1.3.2000 to 30.4.2000 (i.e. Leave in lieu of duties performed on off-days, holidays and vacations)

(ii) Summer vacation leave - 1.5.2000 to 9.6.2000

A (iii) Compensatory leave 10.6.2000 to 30.6.2000 (i.e. Leave in lieu of duties performed on off-days, holidays and vacations)"

Recommendations were made and forwarded on 21.2.2000 by the Director of the Institute being the Head of the Department, who was the only competent authority under Ordinance No. 43 E of the Ordinance of the B University with the following endorsements:

"(i) the information given above has been checked from the document/records and found correct.

C (ii) The examination, teaching and other allied works of the department will not suffer and leave is recommended."

The purpose of the Respondent's visit had been shown as "Personal & Scientific". Charge was handed over by the Respondent to Dr. O.P. Maurya. D The application filed by the wife of the Respondent was sanctioned on 28.2.2000. Respondent and his wife left for United Kingdom without express sanction of leave and without the permission of the Vice Chancellor. The Respondent was asked to join his duties by the Registrar of the University by a notice dated 24.3.2000 with a further direction to show cause as to why action be not taken against him for his alleged acts of misconduct. E According to the Respondent, he received the said letter only on or about 31.3.2000. He replied thereto on 12.4.2000. However, the University by an order dated 18.4.2000 asked the Respondent to submit his reply again by 5.5.2000 failing which he would be deemed to have abandoned his service with effect from 1.3.2000. By another Office Memo dated 4.5.2000, the F Respondent was asked to join his duties by 17.5.2000, *inter alia*, on the premise that his earlier reply had not been found to be satisfactory. It was stated therein that he would be deemed to have abandoned his services with effect from 1.3.2000 if he does not respond to the said notice, *inter alia*, on the premise that the Respondent had failed to comply with the orders requiring him to report back to his post, the service of the Respondent was G terminated by an order dated 3.5.2000 passed by the Vice Chancellor of the University with effect from 1.3.2000. An office memo was prepared in relation thereto on or about 20/22.5.2000, which was received by the Respondent on 31.5.2000. The Respondent sent a letter intimating the Registrar that on account of peak summer season, Air reservation was not H available before 19.6.2000 and he would report for duty by 21.6.2000. The

Respondent came back to India and submitted his joining report on 21.6.2000, which was not accepted by the Registrar stating that he had abandoned his service from 1.3.2000 and the Institute had already taken a decision in that behalf.

The Respondent filed a writ petition before the High Court of Allahabad, which was disposed of by an order dated 14.7.2000 directing the Vice Chancellor of the University to consider the said representation sympathetically and for a period of six weeks the impugned order dated 20/22.5.2000 was stayed. Pursuant to and in furtherance of the said direction, the Respondent filed a representation explaining the circumstances under which he had to remain absent from his duties. He was given a personal hearing. However, by an order dated 7.8.2000, the Vice Chancellor refused to recall his order and opined that the Respondent had gone abroad in a pre-planned manner. A second writ petition was filed by the Respondent assailing the said order dated 7.8.2000 and 20/22.5.2000. An interim order was passed therein on 31.8.2000 by the High Court granting a conditional stay of the order of termination directing that the Respondent may be allowed to join his duties but he would not claim any salary till the writ petition was decided. The said writ petition was dismissed by an order dated 15.2.2001 on the premise that the Respondent can avail an alternative remedy by making a representation to the Executive Council of the University. The Respondent filed a representation pursuant thereto before the Executive Council on 15.3.2001. However, the matter was not placed before the Executive Council for a long time and ultimately he filed a Contempt Petition.

It is not in dispute that the Executive Council adopted a resolution on 8.1.2003 although the same was confirmed later on.

By reason of the impugned judgment, the High Court allowed the writ petition in part directing that the order of termination of the Respondent was bad in law but denied him the back wages. Both the parties are, thus, before us.

Before we advert to the rival contentions raised before us, we may notice some of the notifications issued by the Executive Council of the University. The Executive Council purported to be taking note of the rampant practice by the faculty members availing leave including leave for going abroad without prior sanction/permission of the competent authority,

A in violation of the provisions of the leave rules and instructions issued from time to time took a decision that the Head of the Department should not allow the faculty Members to avail leave without prior sanction and permission of the Vice Chancellor irrespective of the nature of leave applied for (including vacations), failing which the same would be considered as "misconduct" and
B action shall be initiated as per rules.

Yet again the Executive Council considered the question of taking disciplinary action against the employees for having gone abroad without the permission/sanctioned leave and for taking action against those who have overstayed without the prior approval and without the prior permission of
C the University. In order to curb the said practice, the University decided that services of those employees, who overstayed without prior permission for more than 45 days from the date of issue of the notice by the University, would be "abandoned as per existing rules" (sic for deemed to be abandoned).

D Mr. Dwivedi, learned counsel appearing on behalf of the Appellant submitted that the University, having regard to the provisions contained in Section 10 as also the Ordinance making power, could have passed an execution instruction creating a legal fiction that any member of faculty who wants to go abroad without the permission of the Vice Chancellor or without obtaining leave would be deemed to have abandoned his service. It was
E further submitted that having regard to the fact that the High Court had directed the Executive Council to dispose of the Respondent's representation which having been done by resolution dated 9.1.2003 and the same having been confirmed on 23.3.2003 and the same having not been challenged by the writ petitioners, the impugned judgment cannot be sustained. It was next
F contended that the High Court admittedly proceeded on the basis that the Respondent is guilty of misconduct and in that view of the matter, no direction for his reinstatement in services without back wages could have been issued and, therefore, it was necessary for it to arrive at a finding that the punishment awarded by the University was shockingly disproportionate. In any event, the High Court should have remitted the matter back to the
G disciplinary authority for imposing appropriate punishment on the Respondent.

Mr. Jaideep Gupta, learned senior counsel appearing for the Respondent, on the other hand, submitted that the University admittedly did not proceed on the basis that the Respondent committed an act of misconduct. The
H question, according to Mr. Gupta, on the aforementioned premise is as to

whether the circulars dated 5/10,1990 and 25.03.1998 on the basis whereof the Respondent has been held to have abandoned his services are valid in law and whether the post-decisional hearing given to the Respondent pursuant to the direction of the Court can be said to be fair and reasonable. A

According to the learned counsel, by reason of the impugned circulars, the Vice Chancellor had not been conferred with the power to declare the services of an employee of the University have been abandoned. The circulars are invalid beyond the Statute making power under the Act. Even if it be held that the said circulars were valid in law the principles of natural justice were required to be complied with. Determination of the matter fairly and in good faith was furthermore a pre-condition for exercise of such power; but as would appear from the fact of the present case, the Respondent cannot be said to have been fairly dealt with by the statutory authorities. B C

The University is a creature of the said Act. It can make statutes and ordinances by way of subordinate legislation to deal with the subjects enumerated therein. Statute 20 provides for the "Penalties and Disciplinary Authorities". It covers minor and major penalties. Statute 21 lays down power upon the authorities to impose major penalties. In terms of Statute 21.1, the Executive Council is competent to impose any of the penalties specified in Rule 20 on an employee. Statute 22 directs a disciplinary authority to institute disciplinary proceedings against any employee on whom the disciplinary authority was competent to impose under those rules; Statute 23 lays down the procedure for imposing penalties. Statute 23.1 provides that "no order imposing any of the penalties specified in clauses (v) to (ix) of rule 20 shall be made except after an enquiry held as may be in the manner provided in the said rule and rule 24. Statute 31 provides that for pressing allegations of misconduct against a teacher, he may be placed under suspension. However, Clause (b) of Statute 31 provides "Notwithstanding anything contained in the terms of his contract or service or of his appointment, the Executive council shall be entitled to remove a teacher on the ground of misconduct". D E F G

Ordinance 10.1 provides as under:

> "10.1. Removal of employees of the University shall be regulated as per Statute 31 for teaching staff and Statute 32 for all employees of the University other than teachers." H

A Admittedly, the procedure laid down for imposition of major penalty had not been followed in the instant case. The Respondent, thus, had not been proceeded against for commission of any misconduct. The sole question, which, therefore, arises is as to whether in the facts and circumstances of this case, the notification could be invoked against the Respondent.

B Although in the application for grant of special leave to appeal, it is stated that various circulars/letters were issued upon adopting resolutions by the Executive Council but before us only two notifications have been produced. The first one was issued on 5-10/9/1990 whereby and whereunder the existing Clause of 10.5 of the Ordinance stood amended in the following C terms:

> "10.5. Whenever a teaching/Non-teaching employee fails to return to the University within forty five days of the expiry of leave duly granted to him, his services shall be deemed to have been D abandoned by him from the date the leave expires.
>
> Provided that the Executive Council on good cause being shown by the concerned employee may waive the abandonment on such terms as the Council may decide."

E We have noticed hereinbefore that a notification was issued on 25.3.1998. The said notification was purported to have been in terms of a resolution adopted by the Executive Council in its meeting held on August 13-14 & October 12-15, 1997 (E.C.R. No.514, Corrected under E.C.R. No.577 of February 28 - March 1 & 2, 1998). The resolution of the F Executive Council had not been produced before us. However, a bare perusal of the said purported notification dated 25.3.1998 would clearly show that the Executive Council had in the said meeting been only considering the question of taking disciplinary action against the employees for having gone abroad without the permission or without the sanctioned leave and those who have overstayed without the prior approval of the G University. Although, leaving the institution without the prior permission of the Vice Chancellor would fall within the purview of misconduct; availing of leave undisputedly would be governed by the leave Rules framed by the University. Proceeding on leave without the same being sanctioned or overstaying after the period of sanctioned leave is over, would undisputedly H come within the purview of the term 'misconduct'. It is, however, true that

only because the action on the part of the employee to avail leave without any prior sanction thereof or overstay despite expiry of the period of leave, would amount to misconduct, the statutory authorities would not be denuded with power to make an appropriate statute that in certain situation the employee would be deemed to have abandoned his services. However, such a provision could not be laid down by an executive direction. Matter relating to cessation of employment is governed statute and ordinance. Any matter touching the said subject, thus, must be provided for by a subordinate legislation, i.e., either by framing a statute or an Ordinance. There cannot be any doubt whatsoever that a statute could only be made in the manner laid down under the Act. From the notification dated 25.3.1998, it appears that by reason thereof, the Executive Council did not propose to make any amendment to the existing ordinance nor intended to lay down any new law. Those matters, which are enumerated in Sections 17 and 18 of the Act, could be dealt with only in the manner laid down thereunder. It is not disputed that the matters relating to terms and conditions of services, as also disciplinary action, are governed by the statute/Ordinance. In fact, no provision relating to abandonment of service has been inserted in the ordinance as had been done by way of Clause 10.5 in terms of notification dated 5-10/September 1990. It, however, stands admitted that the said ordinance is not attracted in the instant case.

We, therefore, are required only to consider as to whether the notification dated 25.3.1998 is attracted in this case. The said notification was issued only by way of guidelines. It is sub-divided into two parts; whereas the first part provides for consequences of overstay without permission for more than 45 days at different points of time, the second part relates to the employees who have overstayed without permission for more than 45 days from the date of issue of the University resolution. Only in regard to the second part, it was stated that the services of such employees "would be abandoned as per the existing rules".

The expression 'existing rules' indisputably would mean the procedure laid down under the rules, i.e., in terms of the provisions of the Statute or Ordinance, which as indicated hereinbefore lay down matters relating to initiation of disciplinary action against the employees.

The Executive Council, the Vice Chancellor or any other authority, who are creatures of Statutes, must act within the four-corners thereof. They were

A also required to follow the procedure laid down for initiation of a disciplinary proceeding against an employee.

Where a matter is covered by one or other clauses contained in Section 17 or 18 of the Act any modification/amendment/substitution thereof was required to be carried out strictly in the manner laid down thereunder. We have noticed hereinbefore that the Statute and the Ordinance not only deal with the manner in which the recruitment of a faculty member is to be carried out, but also lay down the terms and conditions of services, the manner, in which the proceeding for commission of misconduct by a delinquent officer, was to be initiated and the punishments imposed. It was, therefore, improper on the part of the authorities including the Executive Council to create a new punishment or create a new exit door for the employees to throw him out of the services of the University. It is in that sense the purported circulars issued by the Registrar in terms of the purported resolutions adopted in the meetings of the Executive Council or otherwise must be held to be *ultra vires*. It will bear repetition to state what can be the subject matters of the executive instructions issued under Section 10 of the Act must be those in respect whereof no specific provision exists in the Act, e.g., Sections 17 and 18 of the Act.

In *State of Madhya Pradesh & Anr.* v. *M/s. G.S. Dall & Flour Mills*, [1992] Supp. 1 SCC 150, a three-judge Bench of this Court opined:-

> "...The contention that "instructions" could not override the effect of the statutory notification was repelled by the court on the ground that the validity and effectiveness of the instructions can be supported by reference to Article 162 of the Constitution as filling up a lack of guidelines in the notification."

In *DDA and Ors.* v. *Joginder S. Monga and Ors.*, [2004] 2 SCC 297, this Court categorically held:

> "It is not a case where a conflict has arisen between a statute or a statutory rule on the one hand and an executive instruction, on the other. Only in a case where a conflict arises between a statute and an executive instruction, indisputably, the former will prevail over the latter."

It was further noticed:

> "Executive instructions can supplement a statute or cover areas to which the statute does not extend. But they cannot run contrary to statutory provisions or whittle down their effect."

Even otherwise, the said purported notification dated 25.3.1998 does not and/or cannot create a new misconduct and/or provide for a legal fiction providing that the employee would be deemed to have abandoned his service. The said notification was issued for laying down certain guidelines and, thus, by reason thereof no independent misconduct could be created. The purpose for issuing the said circular evidently was to lay down broad guidelines in regard to the quantum of punishment which should be imposed, as would be evident from the fact that Section (A) thereof deals with the cases of those employees who had gone abroad without prior permission (which itself is a misconduct) and overstaying the leave for more than 45 days. The quantum of punishment has been specified for commission of misconduct for the first, the second, the third and the fourth time.

Section (B) thereof deals with the cases of those employees, who have overstayed abroad without prior permission for more than 45 days from the date of issue of the notice by the University, their services would be treated to be abandoned as per the existing rules. The said notification is vague and obscure. It does not take into consideration the situation where a person may leave the campus without obtaining leave. If a person commits the same misconduct by staying within India, although no leave has been obtained, he would not come within the purview thereof but only if he goes abroad and overstays, the circular letter would come into play, which would mean that for initial stay he had the requisite permission and only in case of overstay he would be held to have not obtained any prior permission, and only in such an event, he would come within the purview of the said provision. In terms of the said notification no legal fiction is created. Even otherwise, no legal fiction in law can be created by an administrative order. The circular letter states that the services of such employees would be abandoned as per existing rules, which would mean that there existed provisions in the rules laying down the condition as to when a person would be deemed to have abandoned the services. Admittedly, no such rule exists.

A Section (A) of the said notification, as noticed hereinbefore, speaks of imposition of punishment which *ex-facie* would mean imposition of punishment upon following the existing rules. Section (B) of the said circular cannot, thus, be given different meaning particularly when it speaks of procedure laid down as per the existing rules.

B In any view of the matter in terms of the said notification dated 25.3.1998, no authority has been conferred upon the Vice Chancellor to take such a decision. Significantly, even in the office orders dated 30/31.7.1997, 24.3.2000 issued to the Respondent, it was clearly stated that the Respondent had committed a misconduct by violating the University Rules. By reason C of the said notices, the Respondent had been asked to show cause as to why action should not been taken against him for his alleged acts of misconduct. The Respondent in response to the said notices submitted his reply which might or might not have been accepted, but by reason thereof, the Vice Chancellor of the University could not have taken a different stand while D issuing office memo dated 18.4.2000 so as to say that 'he would be deemed to have abandoned his services w.e.f. 1.3.2000.

It is significant to note that a copy of the said letter was forwarded to the Respondent at the address of his wife. According to the Respondent, he did not receive the letter before 31.5.2000 but we are not concerned E therewith.

Yet again, the Vice Chancellor, by office memo dated 4.5.2000, stated :

F "AND WHEREAS, the aforesaid Dr. Shri Kant in the above mentioned communication finally prays for submission to avail summer vacation and assures to join immediately thereafter.

AND WHEREAS, all the above facts show that the aforesaid Dr. Shri Kant has admittedly unauthorisedly proceeded on leave G without any sanction and also without permission of the competent authority, which is against the University rules and directives issued by the University to regulate foreign visits.

AND WHEREAS the aforesaid Dr. Shri Kant has not seriously H taken note of my earlier order and failed to resume duty in Institute

of Medical Sciences, Banaras Hindu University till the date.

NOW, THEREFORE, I, Y.C. Simhadri, Vice Chancellor, Banaras Hindu University, after considering the entire matter in details and on merit along with the reply of the aforesaid Dr. Shri Kant, Reader, Department of Ophthalmology, Banaras Hindu University dated 12.4.2000, hereby pass the following orders:

(A) That the aforesaid Dr. Shri Kant be clearly informed that his explanation received vide letter dated 12.4.2000, has been found highly unsatisfactory.

(B) That he be given the last and final opportunity to resume his duties in Institute of Medical Sciences, BHU on or before 17th May, 2000. This is notwithstanding the fact that my earlier orders dated 23.3.2000 directing him to report for duty immediately, have not been complied by him.

(C) That he be further informed that in case he does not report for duty on or before 17th May, 2000, it would be presumed that he is no more interested in the University service and his services shall be deemed to have been abandoned by him with effect from 1st March, 2000 without any further notice in the matter."

In the said notice evidently the Vice Chancellor was not correct when he stated that the Respondent had admittedly proceeded on leave unauthorizedly. He may, however, be correct that the Respondent had left without the permission of the competent authority.

It is not disputed that *ex-post facto* permission could also have been granted. Moreover, the said office memo does not in any way deal with the Respondent's contention that he should have been granted leave. Why the Respondent's application for grant of leave had not been favourably considered by the Vice Chancellor, is not known. The Vice Chancellor clearly framed an opinion that the Respondent has not obeyed his directions and he had not seriously taken note of his order. The notice, thus, speaks of a misconduct.

A It is furthermore evident that the Vice Chancellor in his notice clearly demonstrated that he had made up his mind. He apparently had arrived at a conclusion that the Respondent had committed misconduct and thus, it has to be informed that his notice was issued by way of mere formality.

In the office memo dated 20/22.5.2000, the Vice Chancellor reiterates
B that the Respondent would be deemed to have abandoned his services and while doing so, his explanation has been found to be unsatisfactory. The Respondent was found to have not complied with his earlier direction but then again he was given an opportunity to resume his duty on or before 17.5.2000 and despite the same he did not join his duties. He had gone to
C the extent of saying that the Respondent must have planned his visit much in advance.

Yet again the copies of the said Memos were sent to the Respondent's permanent address or at the address of his wife.

D We may, at this juncture, notice the office memo dated 7.8.2000. The Respondent appeared to have been called upon to produce certain documents, which are as follows:

"1. Copies of documents in support of his having attended
E scientific deliberations during the period of his stay abroad.

2. The details of the institutions/country and the date of his visit to these institutions.

F 3. The certificate of having attended Frankfurt Retina Meeting on 12th April, 2000.

4. Certificate of having attended the Annual Congress of Royal College of Ophthalmologists at Harrogate, U.K. along with the details of his registration, remittance of
G registration fee etc.

5. Copies of documents in support of his working as Honorary Fellow along with the offer of the institution received from the Institution concerned and your
H acceptance thereto.

6. Photostat copy of his passport (all pages). A

7. Any other relevant documents, if considered necessary by him, in support of the facts mentioned in his representation dated 21st July, 2000."

B

The Respondent had produced the documents specified at Sr. Nos.1, 3, 4 and 6. So far as the document specified at Sr. No.5 is concerned, the Respondent did not say that he had held any honorary position or was working in the said capacity as such. The Respondent before us had made an endeavour to tell his part of the story. We are, however, not concerned therewith, as we are satisfied that from a perusal of said Office Memo dated C 7.8.2000, it is evident that the Vice Chancellor had exceeded his jurisdiction in entering into the said question. An enquiry was, thus, purported to have been initiated against the Respondent by the said authority not for the purpose of finding out as to whether he had any justification for leaving his place of work without obtaining the sanction/permission but as if he had D otherwise committed a grave misconduct. If he had committed misconduct, indisputably, a disciplinary proceeding should have been initiated against him. If no disciplinary proceeding was initiated against him, the question of imposition of any punishment would not arise. The Vice Chancellor was also not authorized therefor as it was the Executive council alone who could initiate a departmental proceeding. E

The Statute and the Ordinance postulate that an order of termination of services could be passed only by the Executive Council and that too in the event two-third of the Members were present and voted in support thereof. Therefore, the Vice Chancellor had no say in the matter. He was F merely a member of the Executive Council. He, thus, could not have initiated any proceeding and imposed any punishment on the Respondent.

We furthermore fail to appreciate as to why, despite the High Court's order, the Executive Council could not dispose of the matter quickly. Why G the matter had not been brought on the agenda by the Vice Chancellor at the first opportune moment and why the matter had to be adjourned again and again has not been explained. It may be that when the matter was brought on the agenda of the Executive Council on 8.9.2003, it purported to have approved the orders of the Vice Chancellor that the Respondent would be deemed to have abandoned his service with effect from 1.3.2000, H

A but the same did not receive the seal of finality as the minutes of the meeting had not been approved.

Moreover, a bare perusal of the impugned orders, it would appear that the Vice Chancellor of the University did not refer to the provisions of the
B notifications issued from time to time which would clearly go to show that the University was not sure as to whether the Respondent has committed a misconduct or by leaving India without obtaining leave, he would be deemed to have abandoned his service.

Although, laying down a provision providing for deemed abandonment
C from service may be permissible in law, it is not disputed that an action taken thereunder must be fair and reasonable so as to satisfy the requirements of Article 14 of the Constitution of India. If the action taken by the authority is found to be illogical in nature and, therefore, violative of Article 14 of the Constitution, the same cannot be sustained. Statutory authority may pass
D an order which may otherwise be *bona fide*, but the same cannot be exercised in an unfair or unreasonable manner. The Respondent has shown before us that his leave had been sanctioned by the Director being the Head of the Department in terms of the leave rules. It was the Director/Head of the Department who could sanction the leave. Even the matter relating to grant
E of permission for his going abroad had been recommended by the Director. The Respondent states and it had not been controverted that some other doctor was given the charge of his duties. We have indicated sufficiently that the Vice Chancellor posed unto himself a wrong question. A wrong question leads to a wrong answer. When the statutory authority exercises its statutory powers either in ignorance of the procedure prescribed in law or while
F deciding the matter takes into consideration irrelevant or extraneous matters not germane therefor, he misdirects himself in law. In such an event, an order of the statutory authority must be held to be vitiated in law. It suffers from an error of law.

G Such an error of law is capable of being rectified by judicial review. Reasonableness in the order and/or fairness in the procedure indisputably can also be gone into by the writ Court.

We may notice a similar provision being clause 76 of the Bihar Services
H Code, which reads as under:

"Unless the State Government, in view of the special circumstances of the case, shall otherwise determine, a government servant, after five years' continuous absence from duty, elsewhere than on foreign service in India, whether with or without leave ceases to be in Government employ." A

B

The validity of the said Rule came up for consideration before the Patna High Court in *Sobhana Das Gupta* v. *The State of Bihar & Anr.*, (1974) PLJR 382, wherein the said Rule was struck down relying on *Jai Shanker* v. *State of Rajasthan,* AIR (1966) SC 492 and *Deokinandan Prasad* v. *State of Bihar*, AIR (1971) SC 1409 stating :

C

"I may first refer to the decision of the Supreme Court in the case of *Jai Shanker* v. *State of Rajasthan,* AIR (1966) SC 492. Regulation 13 of Jodhpur Service Regulation fell to be considered in that case. The aforesaid regulation was:

D

"An individual who absents himself without permission for one month or longer after the end of his leave should be considered to have sacrificed his appointment and may only be reinstated with the sanction of the competent authority."

Considering this regulation Hidayatullah, J. observed: E

"Whichever way one looks at the matter, the order of the Government involves a termination of the service when the incumbent is willing to serve. The Regulation involves a punishment for overstaying one's leave and the burden is thrown on the incumbent F to secure reinstatement by showing cause. It is true that the Government may visit the punishment of discharge or removal from service on a person who has absented himself by overstaying his leave, but we do not think that Government can order a person to be discharged from service without at least telling him that they G propose to remove him and giving him an opportunity of showing cause why he should not be removed. If this is done the incumbent will be entitled to move against the punishment for if his plea succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the H

A person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Article 311. A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it. To give no opportunity is to go against Article 311 and this is what has happened here".

B

It may be mentioned that this case arose out of a suit where a declaration was sought that the termination of the service of the plaintiff was illegal.

C

In the case of *Deokinandan Prasad* v. *State of Bihar,* AIR (1971) SC 1409 the true effect of the decision in *Jai Shanker's* case was considered. A reference was also made to Rule 76 of the Bihar Service Code. In this context it was observed:

D

"A contention has been taken by the petitioner that the order dated August 5, 1966 is an order removing him from service and it has been passed in violation of Article 311 of the Constitution, According to the respondents there is no violation of Article 311. On the other hand, there is an automatic termination of the petitioner's employment under Rule 76 of the Service Code. It may not be necessary to investigate this aspect further because on facts we have found that Rule 76 of the Service Code has no application. Even if it is a question of automatic termination of service for being continuously absent for over a period of five years, Article 311 applies to such cases as is laid down by this Court in [1966] 1 SCR 825 = AIR (1966) SC 492. In that decision this Court had to consider Regulation No. 13 of the Jodhpur Service Regulations which is as follows:

E

F

'An individual who absents himself without permission or who remains absent without permission for one month or longer after the end of his leave should be considered to have sacrificed his appointment and may only be reinstated with the sanction of the competent authority.'

G

It was contended on behalf of the State of Rajasthan that the above regulation operated automatically and there was no question of

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removal from service because the officer ceased to be in the service after the period mentioned in the regulation. This Court rejected, the said contention and held that an opportunity must be given to a person against whom such an order was proposed to be passed, no matter how the regulation described it. It was further held to give no opportunity is to go against Article 311 and this is what has happened here." A B

Therein, the law was laid down in the following terms :

"The consideration on these two cases makes it clear that in the circumstance as in the present case, treating the petitioner to have ceased to be in Government employ amounts to her removal, and further that the said removal without giving her an opportunity is to go against Article 311 of the Constitution. In the circumstances of the present case, violation of Article 311 of the Constitution is writ large. There can, therefore be no doubt that the order under Annexure 2 is illegal, and the petitioner cannot be deemed to have ceased to be in Government employ on the basis of the said order or on the basis of Rule 76 of the Service Code." C D

The Respondent herein had filed four writ petitions. Some interim orders were also passed in his favour. He did not get the benefit of any of the said orders. In his fourth writ petition, the Executive Council was directed to consider his case. It did not do so for more than two years. Why despite the High Court's order, the Vice Chancellor failed to place the matter before the Executive Council is not disclosed. The resolution of the Executive Council dated 8/9th January, 2003 was also not final. The same was placed before the High Court by way of a supplementary counter-affidavit only on 23.3.2003 whereas the matter was heard much prior thereto and the judgment was reserved. Judgment was delivered on 25th March, 2003 which again go to show that an attempt had been made by the University to stall the proceedings before the High Court. Before us only the University has taken a stand that even the Executive Council had put its seal by way of approval of the order of the Vice Chancellor. E F G

As the initial order passed by the Vice Chancellor was wholly without jurisdiction, the same was a nullity and, thus, the purported approval thereof, H

A by the Executive Council would not cure the defect.

Even if we do not take into consideration the legality, reasonableness or otherwise of the resolution of the Executive Committee, it is clear that so far as the order passed by the Vice Chancellor is concerned, he failed to consider the question as to whether the Appellant was otherwise entitled to
B leave.

The Vice Chancellor appears to have made up his mind to impose the punishment of dismissal on the Respondent herein. A post decisional hearing given by the High Court was illusory in this case.

C In *K.I. Shephard & Ors. etc. etc.* v. *Union of India & Ors.*, AIR (1988) SC 686, this Court held :

> "...It is common experience that once a decision has been taken, there is tendency to uphold it and a representation may not really
D yield any fruitful purpose."

[See also *Assam Sillimanite Ltd.* v. *Union of India,* [1990] 3 SCC 182 and *H.L.Trehan* v. *Union of India,* AIR (1989) SC 568.]

We have noticed hereinbefore that the nature of leave, *inter alia*, was
E compensatory one. Although it cannot be claimed as a matter of right but an employee who had worked during summer vacation would have a legitimate expectation that he can avail the same. He was also entitled to be granted detention leave, unless there exists a just reason to refuse the same. We have noticed hereinbefore that the Head of the Department granted the leave and made recommendation for grant of permission. The
F Vice Chancellor even did not consider the same.

An order passed by a statutory authority, particularly when by reason whereof a citizen of India would be visited with civil or evil consequences must meet the test of reasonableness. Such a test of reasonableness vis-a-
G vis the principle of natural justice may now be considered in the light of the decisions of this Court.

The question came up for consideration before a three-Judge Bench decision of this Court, in *D.K. Yadav* v. *JMA Industries Ltd.*, [1993] 3 SCC 259, wherein emphasizing the requirements to comply with the principles of
H natural justice while terminating the services of the employees on the

touchstone of Article 21 of the Constitution of India; it was held that not only the procedure prescribed for depriving a person of his livelihood must meet the challenge of Article 14 but also the law which will liable to be decided on the anvil thereof. A

Here again, this Court opined that Article 14 requires that the procedure adopted must be just, fair and reasonable. It was furthermore held : B

> "Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness." C D

This Court opined that right to life enshrined under Article 21 would include the right to livelihood and thus before any action putting an end to the tenure of an employee is taken, fair play requires that reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. E

In *Uptron India Ltd.* v. *Shammi Bhan & Anr.,* [1998] 6 SCC 538, this Court was considering the validity of the provisions of the Standing Orders of the company containing a clause that services of the workmen would be liable for automatic termination. This Court opined that if prior to resorting thereto an opportunity of hearing is not granted, such a provision would be bad in law. F

The said legal position was reiterated in *Scooters India Ltd.* v. *M. Mohammad Yaqub & Anr.,* [2001] 1 SCC 61, where again requirement to comply with the principles of natural justice was highlighted. G

The matter may, however, be different in a case where despite having been given an opportunity of hearing, explanation regarding his unauthorized absence is not forthcoming or despite giving him an opportunity to join his duty, he fails to do so, as was the case in *Punjab & Sind Bank & Ors.* v. *Sakattar Singh,* [2001] 1 SCC 214. H

A In *Lakshmi Precision Screws Ltd.* v. *Ram Bhagat,* [2002] 6 SCC 552, a Division Bench of this Court was considering clause 9(f)(ii) of the Standing Orders which reads as under :

> "9.(f) Any workman who,
>
> B * * *
>
> (ii) absents himself for ten consecutive working days without leave shall be deemed to have left the firm's service without notice, thereby terminating his service."

C The workman therein offered an explanation and having regard thereto, the Labour Court came to the conclusion that the action of the management in terminating the services of the workman therein was not justified. When the matter reached this Court, it was opined:-

> D "Let us, therefore, analyse as to whether this particular Standing Order in fact warrants a conclusion without anything further on record or to put it differently does it survive on its own and that being a part of the contract of employment ought to govern the situation as is covered in the contextual facts."

E Referring to the decisions noticed by us hereinbefore, it was held :

> "It is thus in this context one ought to read the doctrine of natural justice being an inbuilt requirement on the Standing Orders. Significantly, the facts depict that the respondent workman remained F absent from duty from 13.10.1990 and it is within a period of four days that a letter was sent to the workman informing him that since he was absenting himself from duty without authorized leave he was advised to report back within 48 hours and also to tender his explanation for his absence, otherwise his disinterestedness would thus be presumed."
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> G

The well settled principle of law as regards necessity to comply with the principles of natural justice was again reiterated, stating:-

> "Arbitrariness is an antithesis to rule of law, equity, fair play H and justice — contract of employment there may be but it cannot

be devoid of the basic principles of the concept of justice. Justice-oriented approach as is the present trend in Indian jurisprudence shall have to read as an inbuilt requirement of the basic of concept of justice, to wit, the doctrine of natural justice, fairness, equality and rule of law."

A provision relating to abandonment of service came up for consideration yet again in *Viveka Nand Sethi* v. *Chairman, J&K Bank Ltd. & Ors.*, [2005] 5 SCC 337 before a Division Bench of this Court. This Court opined that although in a case of that nature, principles of natural justice were required to be complied with, a full-fledged departmental enquiry may not be necessary, holding :

"A limited enquiry as to whether the employee concerned had sufficient explanation for not reporting to duties after the period of leave had expired or failure on his part on being asked so to do, in our considered view, amounts to sufficient compliance with the requirements of the principles of natural justice."

Mr. Dwivedi placed strong reliance upon the decision of this Court in *Aligarh Muslim University* v. *Mansoor Ali Khan,* [2000] 7 SCC 529. In that case, interpretation of Rule 5(8)(ii) came up for consideration which is in the following term :

"Rule 5(8)(ii) An officer or other employee who absents himself without leave or remains absent without leave after the expiry of the leave granted to him, shall, if he is permitted to rejoin duty, be entitled to no leave allowance or salary for the period of such absence and such period will be debited against his leave account as leave without pay unless his leave is extended by the authority empowered to grant the leave. Wilful absence from duty after the expiry of leave may be treated as misconduct for the purpose of clause 12 of Chapter IV of the Executive Ordinances of AMU and para 10 of Chapter IX of Regulations of the Executive Council."

It was held that a show cause notice and reply would be necessary. If no show cause notice had been given, this Court held that the principles of natural justice would be held to be complied with.

A This Court, however, in the special facts and circumstances of this case and particularly in view of the fact that admittedly leave was initially granted for a period of two years and an application for extension thereof was made by the Respondent therein for a further period of three years which was acceded to only for one year, this Court opined that on the admitted facts, the absence of a notice to show cause would not make any difference as the B employee admittedly continuing to live in Libya, the extension of leave sought for was bound to be refused.

The parties in this case proceeded on the basis that it was not a case of misconduct. The High Court, therefore, in our opinion, wrongly arrived C at the conclusion that the Respondent was guilty of misconduct. In that view of the matter, it is also not necessary for us to advert to the question as to whether in the facts and circumstances of this case, the High Court could have directed modification in the quantum of punishment without arriving at a finding that the same was shockingly disproportionate to the gravity of the charges made against the Respondent herein.

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The fact situation obtaining in this case is entirely different. Not only the Respondent made all attempts to join his duties, but, the situation prevented him from doing so beyond his control. Furthermore, in this case, the Vice Chancellor had no jurisdiction at all. Even the notification dated E 25.03.1998 had no application.

For the reasons abovementioned, we do not find any merit in the appeal filed by the University. However, so far as appeal of the Respondent is concerned, although the conduct of the University is deplorable having regard to the fact that the Respondent has suffered a lot and has not been F allowed to join his duties for a long time and keeping in view the facts and circumstances of this case, we are of the opinion that his back wages should be restricted to 75%. The Respondent shall also be entitled to costs of the appeal. Counsel's fee is assessed at Rs.10,000.

In the result, Civil Appeal No. 4147 of 2003 is dismissed whereas Civil G Appeal No. 248 of 2004 is allowed in part.

V.S.S. Appeals disposed of.