

PROFESSOR RAMESH CHANDRA

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v.

UNIVERSITY OF DELHI & ORS.

(Civil Appeal No.8224 of 2012)

B

FEBRUARY 6, 2015

[SUDHANSU JYOTI MUKHOPADHAYA, AND

C. NAGAPPAN, JJ]

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Service law: Termination of service – Respondent-University decided to punish the appellant and subsequently framed memorandum of charges – Show cause notice was issued and inquiry was conducted just to give a colour of legal procedure – Departmental inquiries conducted against the appellant were in violation of rules of natural justice – Order of termination cannot be upheld.

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Administrative law:

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Bias – Retired judge appointed as inquiry officer by respondent-University to conduct Disciplinary inquiry against the appellant – Retired judge before his appointment as judge was a lawyer of respondent-University – Held: Disciplinary authority should not engage such retired judge as inquiry officer as it may amount to bias.

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Natural justice – Held: If any person who is or was a legal practitioner, including a retired judge is appointed as Inquiry Officer in an inquiry initiated against an employee, the denial of assistance of legal practitioner to the charged employee is unfair.

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A Allowing the appeal, the Court

B HELD: 1. First charge-sheet memorandum dated 2nd November 2005. The Inquiry Officer, by its report held that the appellant had concealed the fact of his removal from the post of Vice-Chancellor, Bundelkhand University where he was on deputation with a view to mislead the Delhi University and that despite his not being Director of ACBR, he continued to describe himself as Founder Director or Director, ACBR with a view to give a misleading impression, stand proved. Thereafter the formal order of punishment was issued communicating displeasure of the Executive Council, holding the act of the appellant to be unbecoming of a teacher of the University and prohibiting the appellant from being associated with any affairs of ACBR in any capacity whatsoever. The said facts showed that the respondent first decided to punish the appellant and only thereafter memorandum of charges was framed, show-cause notice was issued and inquiry was conducted, just to give it a colour of legal procedure. There is nothing to suggest that the appellant 'wilfully' suppressed the material fact that he was removed from service before completion of term of his deputation to mislead the respondents. It is true that the appellant in normal course should have informed the Delhi University before rejoining that he has been removed from the post of Vice Chancellor, Bundelkhand University, Jhansi before the completion of his deputation period. Such action can be termed to be "dereliction of duty" but cannot be held to be misconduct for the purpose of restraining the appellant permanently from appointment to the post of Director, ACBR. It is not in dispute that the appellant was the First Director of the ACBR. Therefore, in his letter-head he

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has shown him as Founder Director of ACBR, that cannot be said to be against the Code of Conduct to hold the same as 'misconduct' on the part of the appellant. This apart, as there is no provision in the concerned statute to withhold appointment permanently, it was not open to the University to pass such order. For the said reasons, the order of punishment cannot be upheld. [Paras 12,14 - 17] [82-D, 88-E-H; 89-A-B, E-H; 90-A-E]

2. Second/third chargesheet – Memorandum dated 27th August 2007 and 16 October 2007. A fresh memorandum was issued by the University on 27th August, 2007 alleging that the appellant caused ACBR to pay an amount of Rs.16,63,284/- towards unauthorized expenditures incurred by him like telephone bills and bills of security guards and peon, during the period 1999-2005 though he was not functioning as Director of ACBR during the said period. In the memorandum dated 16th October, 2007, the appellant was imputed with the charge that by acting as a signatory who subscribed his name to the registration of ACBR as a society and by verifying the affidavit which affirmed that he has no objection towards the location of the registered office of ACBR in the University Campus, the appellant attempted to misappropriate the assets of the University. In the inquiry report, the background of appointment of the appellant since 1992 was referred, though it had no connection with charges. No such fact or evidence was brought regarding the background history of the appellant was mentioned in the (third) charge-sheet nor any such evidence is on record produced by the University. The Inquiry Officer noticed the letter of the Chancellor, Bundelkhand University dated 28th July, 2005 confirming the removal of the appellant as the Vice-Chancellor of the University though it was not part of

A the charges nor such evidence was cited in the imputed
charges or list of evidence. Influenced by the said
extraneous facts and consideration, which were not the
part of the chargesheet or the evidence cited by the
University and without intimating such facts to the
B appellant the Inquiry Officer held the appellant guilty.
[paras 18, 19, 21] [90-F-H; 91-D-F; 99-G-H; 100-A-E]

3. The original 'note' relating to engagement of a
retired Judge of the High Court for conducting inquiry
C was given by Registrar of the University. The said note
showed that a retired Judge of the Delhi High Court was
appointed as the Inquiry Officer to conduct the
Departmental Inquiry against the appellant as prior to
his elevation to High Court as a Judge, he was the
D counsel for the Delhi University. If a retired Judge of a
Court before his appointment as a Judge was a lawyer
of any of the party (Delhi University), the Disciplinary
Authority should not engage such retired Judge as an
Inquiry Officer, as the other party may allege bias
E against the Inquiry Officer and the reputation of the
Judge may be at stake. The University is directed not
to engage any retired Judge of any Court, who was
earlier a counsel of the University as an Inquiry Officer
F to hold an inquiry against any of its employee. [Paras
25, 26] [101-H; 102-A-B, E-G]

*Board of Trustees of the Port of Bombay vs. Dilipkumar
Raghvendranath Nandkarni and others, (1983) 1 SCC 124;*
G *J.K. Aggarwal v. Haryana Seeds Development Corporation,*
(1991) 2 SCC 283 – relied on.

4. If any person who is or was a legal practitioner,
including a retired Hon'ble Judge is appointed as
Inquiry Officer in an inquiry initiated against an
H employee, the denial of assistance of legal practitioner

to the charged employee would be unfair. All the Departmental inquiries conducted against the appellant were in violation of rules of natural justice. This apart as the third inquiry report is based on extraneous facts and first part of the charge held to be proved being not the part of the charges shown in the (third) chargesheet, the order of punishment cannot be upheld. Both penal memoranda dated 22nd February, 2010 and 26th March, 2010 are set aside. In effect, the appellant stands reinstated to the post of Professor but in the facts and circumstances, only 50% of back wages (salary) is allowed to appellant for the intervening period i.e. from the date of his disengagement till the date of this judgment. [Paras 30 to 32] [105-C-G]

Case Law Reference

(1983) 1 SCC 124 relied on. Para 28

(1991) 2 SCC 283 relied on. Para 29

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8224 of 2012

From the Judgment and Order dated 01.03.2012 of the High Court of Delhi at New Delhi in WPC No. 2547 of 2010

R. Venkataramani, Balaji Srinivasan, Piyush Sharma, Aljo Joseph, Prashant Chandra, Shodhan Bobey, Neelam Singh for the Appellant.

P. P. Rao, Mohinder Jit Singh Rupal, Akshat Kulshrestha, Shashank Manish for the Respondents.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. This appeal has been preferred by the appellant against the

A impugned judgment dated 1st March, 2012 passed by the High Court of Delhi at New Delhi in Writ Petition (C) No.2547 of 2010. By the impugned judgment, the High Court dismissed the writ petition, upheld Para 6 of the Annexure to Ordinance XI of University of Delhi and refused
B to interfere with the show cause notice issued on the appellant and the memorandum(s) by which the appellant was punished and removed from the service of the Delhi University.

C 2. The factual matrix of the case is as follows:-

The appellant was a Professor in the University of Delhi (hereinafter referred to as the, 'University'). According to the appellant while serving in the University he wrote a
D letter dated 1st December, 1990 addressed to the Union Minister of State for Welfare requesting sanction of Rs.5 crores for starting Dr. B.R. Ambedkar Centre for Biomedical Research (hereinafter referred to as the, 'ACBR'). In response to the said letter, office of Dr. B.R.Ambedkar
E Centenary Celebration under Ministry of Welfare by letter dated 22nd January, 1991 invited the appellant to submit a detailed project report for the establishment of ACBR commemorating birth centenary of Dr. B.R. Ambedkar. On 15th March, 1991, the University forwarded the proposal
F submitted by the appellant for establishment of ACBR in the University and necessary certificate was given to the Government of India by the University, especially in respect of autonomy of the ACBR. The Central Government accepted the proposal and the Prime Minister laid down the
G foundation stone of ACBR. The Executive Council of the University vide Resolution dated 13th April, 1991 approved the project proposal for setting up ACBR and appointed a Committee to finalize the academic plan and ordinances.
H Ordinance XX of the University relates to Colleges and

Institutions maintained by the University including ACBR. A Committee under the Chairmanship of Vice-Chancellor of the University in its meeting held on 4th November, 1991 recommended the appellant's name to function as Director till a regular appointment is made. The Academic Council by its decision dated 20th December, 1991 approved the said recommendation and further recommended the Executive Council to appoint the appellant as Director till a regular appointment is made. The Executive Council vide its Resolution No.243 (1) dated 15th February, 1992 accepted and approved the recommendations of the Academic Council. Pursuant to the said Resolution, the Assistant Registrar (E-NT) issued a letter dated 30th May, 1995 informing the appellant about the decision of the Vice Chancellor, appointing him as the Director of ACBR till a regular appointment is made to the said post.

2.1) The appellant was already functioning as Professor in the Department of Chemistry, University of Delhi. He was Joint Proctor in the University between 1996 and 1999 and during this period he was a Visiting Scientist at the Rockefeller University, Cornell University - Medical College, Oxford University and several other Universities and institutes. The appellant was also functioning as Chairman of Board of Research Studies, Faculty of Science and Chairman of Publication Advisory Committee, University of Delhi during the said period.

2.2) Further case of the appellant is that he was appointed as Vice Chancellor, Bundelkhand University, Jhansi in March, 1999 and the same was informed to respondent no.3-Governing Body of ACBR. According to appellant, the Governing Body resolved that the appellant will continue as Director even after taking charge as the Vice Chancellor in another University i.e. Bundelkhand University,

A Jhansi, Uttar Pradesh. On 30th July, 1999, the Chairman of the Governing Body, ACBR informed the Vice Chancellor of the University about the said decision.

B 2.3) On 20th September, 1999, the Registrar of University notified that the Vice Chancellor had appointed Professor Vani Brahmachari as Officiating Director, ACBR during the leave period of the appellant and specified that the appellant will continue to provide Academic Leadership to the ACBR.

C 2.4) On 6th October, 2000, respondent no.3 resolved that the appellant should continue to provide help and guidance, though he was functioning as Vice Chancellor, Bundelkhand University. However, it was specified that in
D absence of the appellant, Dr. Vani Brahmachari will look after the day to day work of the office. Respondent no.3-Governing Body, ACBR vide its resolution no.6-74 dated 6th October, 2000 resolved to get the ACBR registered under
E Societies Act and then to approach the UGC and Government of India for declaring the ACBR as Institute of National importance. It was decided to prepare a draft and circulate to the members of the Governing Body to discuss the matter in the next meeting.

F 2.5) Further case of the appellant is that respondent no.3-Governing Body of ACBR vide its resolution dated 15th September, 2001 considered and approved the draft of Memorandum of Association of ACBR which was forwarded to the University for information and necessary action.

G 2.6) In February, 2005, a Search Committee for selection for the post of Vice Chancellor in University was constituted. The appellant as well as respondent no.2-Professor Deepak Pental were candidates whose names
H were initially short listed by the Search Committee. In the

meantime, the appellant was removed from the post of Vice A
Chancellor, Bundelkhand University, Jhansi, Uttar Pradesh
by order dated 16th July, 2005 fifteen days prior to the expiry
of his tenure.

2.7) The aforesaid order of removal was challenged by B
the appellant by filing Civil Miscellaneous Writ Petition
No.51370 of 2005 before the High Court of Judicature at
Allahabad. Prof. Deepak Pental was officiating as Pro-Vice
Chancellor, University of Delhi during that time. According
to the appellant, the said officiating Pro-Vice-Chancellor was C
not in the office on 18th July, 2005 and the said fact came
to his knowledge when he contacted the officiating Vice
Chancellor to inform him about his removal from the
Bundelkhand University. The appellant also informed the D
same to the Head, Department of Chemistry; Dean, Faculty
of Science, University of Delhi; Chairman, Governing Body,
ACBR and Dy. Registrar, ACBR. Further, according to the
appellant, on the same day i.e. on 18th July, 2005, he gave
his joining report to the University of Delhi but it was not E
accepted. The appellant came to know the same from the
Head of Chemistry Department who had received a letter
from the Registrar, Delhi University regarding removal of the
appellant from Bundelkhand University and hence he was
informed that his joining would be subject to the clearance F
from the Chancellor of Bundelkhand University. The
Registrar, University of Delhi wrote letters to the
Commissioner of Jhansi, who was acting Vice Chancellor
of Bundelkhand University u/s 12(10) of the U.P. State
Universities Act, 1973, the Principal Secretary to the G
Governor of Uttar Pradesh (Chancellor, Bundelkhand
University, Jhansi) and the Registrar, Bundelkhand
University requesting them to supply information regarding
curtailment of the tenure of the appellant. The Principal
Secretary to the Governor of Uttar Pradesh (Chancellor, H

A Bundelkhand University) replied to the letter on 26th July, 2005 giving details regarding removal of the appellant from the post of Vice Chancellor, Bundelkhand University. On 28th July, 2005, the Principal Secretary to the Governor of Uttar Pradesh (Chancellor, Bundelkhand University) further
B informed the Registrar, University of Delhi that as per the directions of the High Court, the appellant stood relieved from 16th July, 2005 and subsequently, the appellant was also informed vide letter dated 8th August, 2005 that since
C he was relieved from 16th July, 2005 no further action was required from Chancellor of the Bundelkhand University. The Registrar, Bundelkhand University also replied to the Registrar, University of Delhi on 2nd August, 2005 informing
D him regarding allegation against the appellant. The Secretary, UGC addressed a letter to Professor Deepak Pental on 4th August, 2005 informing him about removal of appellant from Bundelkhand University with copy to the Chancellor for information and necessary action. On 4th August, 2005 a note was endorsed by Prof. Deepak Pental
E on the letter of UGC to the effect that "summary of the charges against Prof. Ramesh Chandra needs to be made". According to the appellant, such note was given by Prof. Deepak Pental with a mala fide intention of involving
F appellant in some controversy so that his name would be dropped from the list of the Search Committee as contender for the post of Vice Chancellor, University of Delhi. The name of the appellant was dropped and on 1st September, 2005, Prof. Deepak Pental was appointed as Vice Chancellor of University of Delhi.

G 2.8) The appellant has alleged mala fide against Dr. Deepak Pental and has taken plea that Prof. Pental did not stop harassing the appellant even thereafter. He further alleged that after his removal from the Bundelkhand
H University, his joining to Delhi University was accepted w.e.f.

18th July, 2005. He also placed reliance on decision of Governing Body of ACBR wherein it was recorded that the appellant would continue to function as Acting Director (Hony.), ACBR. The said resolution of the Governing Body was forwarded to the Vice Chancellor of the University of Delhi. The Chairman of the Governing Body, ACBR wrote a letter on 23rd September, 2005 to the Vice Chancellor of Delhi University regarding its stand on the position of the appellant in ACBR. The Executive Council of the University of Delhi passed a resolution no.132 on 17th October, 2005 that the appellant will not be allowed to hold any administrative position in Delhi University henceforth and resolved to issue a show cause notice to the appellant for (a) suppressing information with regard to allegation on account of which he was removed from the post of Vice-Chancellor University at the time of his premature return to Delhi University and (b) unauthorisedly assuming the office of the Director, ACBR, Delhi University for the period from 18.7.2005 to 24.7.2005 in contravention of the statutory provisions of the University. It was also resolved that the decision, if any, taken by or at the instance of the appellant while unauthorisedly occupying the post of the Director, ACBR, or thereafter, be treated as null and void.

2.9) On 2nd November, 2005 a memorandum was issued to the appellant containing the allegations set out in the Resolution dated 17th October, 2005 and calling upon the appellant to submit his explanation.

2.10) The appellant submitted his reply on 12th December, 2005 and requested for supply of certain documents. According to him, the documents were not supplied to him.

2.11) Further case of the appellant is that the Governing Body of ACBR after considering all the communications

A from the Registrar, University of Delhi and the Executive Council Resolution No.132 dated 17th October, 2005 reiterated its earlier decision authorizing the appellant to act as Director of the ACBR and to take necessary decisions in that capacity until a regular appointment is made The
B Governing Body of ACBR further authorized the Chairman and the Director to complete all formalities for converting it into an autonomous institution so that ACBR could be converted to a deemed University and an institution of national importance by the next academic session.

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2.12) On 2nd January, 2006 the Registrar, University of Delhi issued an office order that consequent upon Dr. Vani Brahmachari proceeding on leave Dr. Daman Saluja would look after the day to day work of the office of Director, ACBR
D until further orders. On 25th January, 2006 the Registrar of the University forwarded another memorandum calling upon appellant's explanation w.r.t. memorandum dated 2nd November, 2005 within fifteen days. The appellant submitted his final reply on 8th February, 2006.

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2.13) It appears that the appellant in the meantime moved an appeal before the Executive Council against Resolution dated 17th October, 2005 but no decision appears to have been taken. The Governing Body of ACBR continued with its efforts towards registration of the Centre as a Society. On 5th September, 2006, the appellant was instructed by the Governing Body to file documents for the registration of the ACBR with the Registrar, Societies, Govt. of NCT, to file an approved affidavit stating that the ACBR
F is the legal allottee and is in possession of the property/ premises of the old USIC Building Delhi University Campus, Delhi and ACBR have no objection if the registered office of the Society is situated in the said premises.

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H 2.14) The appellant earlier moved before the High Court

in Writ Petition No.16000 of 2006 challenging the Resolution of Executive Council dated 17th October, 2005. Allegation of bias was made against Prof. Deepak Pental therein. A

2.15) On 21st March, 2007 Executive Council of the University passed a resolution to appoint a retired High Court Judge to hold an inquiry about allegation against the appellant and pending the inquiry to suspend the appellant. A memorandum dated 22nd March, 2007 was issued by the University placing the appellant under suspension and debarring his entry in the premises of the University. B C

2.16) Justice 'X' – a retired Judge of the High Court was appointed to inquire into the allegation against the appellant and vide letter dated 23rd May, 2007 he informed the appellant of his appointment and called him for the hearing on 4th June, 2007. The appellant moved before the High Court by filing writ petition praying for stay of all further proceedings against him. D

2.17) In the meantime, the High Court of Allahabad vide its judgment and order dated 11th June, 2007 in Civil Misc. Writ Petition No.51370 of 2005 quashed the order dated 16th July, 2007 passed by the Chancellor, Bundelkhand University, Jhansi regarding the removal of the appellant from the post of Vice Chancellor and held that the removal order was contrary to the provisions of the UP State Universities Act, 1973. E F

2.18) The aforesaid fact was intimated to the Vice Chancellor of University of Delhi on 16th June, 2007 with a request to withdraw the resolutions and memorandum passed against the appellant. G

2.19) A fresh memorandum was issued by the University on 27th August, 2007 alleging that the appellant H

A has misused the telephones of the ACBR during the period
1999-2005 though he was not functioning as Director during
the said period. However, the Inquiry Officer recorded that
in view of the discussions and reply submitted none of the
charges were proved and the appellant was absolved of the
B charges.

2.20) Another memorandum was issued by the
University on 16th October, 2007 imputing charges of
misconduct against the appellant and the appellant was
C asked to submit his written explanation to the said
memorandum within fifteen days.

2.21) The writ petition being W.P.C. No.16000 of 2006
preferred by the appellant challenging the Resolution dated
D 17th October, 2005 was dismissed on 11th April, 2008. In the
meantime, the appellant was informed by Justice 'X' Inquiry
Officer vide letter dated 5th May, 2008 that another inquiry
was being initiated in respect of memorandum dated 16th
October, 2007 and asked the appellant to take part in the
E inquiry. In the meantime, the prayer of the appellant for
review of the order of suspension was also rejected.
Therefore, the appellant filed Writ Petition No.4436 of 2008
challenging the resolution dated 21st March, 2007 and
memorandum dated 22nd March, 2007. The appellant being
F aggrieved by the order of learned Single Judge in W.P.C.
No.16000 of 2006 preferred LPA No.229 of 2008. The said
LPA No.229 of 2008 was heard along with Writ Petition
No.4436 of 2008 and both were dismissed by the High
Court by common judgment dated 21st May, 2009.
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2.22) The appellant challenged the aforesaid judgment
by filing the Special Leave Petition Nos.13753 and 14150
of 2009 before this Court. In the said case the appellant
alleged bias against the Vice Chancellor Prof. Deepak
H Pental in the matter of issuance of the charge sheet. This

Court initially vide order dated 18th September, 2009 directed the respondent to conclude the inquiry against the appellant within two months. The Inquiry Officer concluded the inquiry pursuant to Memorandum dated 2nd November, 2005 and submitted his report on 21st October, 2009. A copy of the inquiry report was forwarded to the appellant. According to the appellant, Inquiry Officer neither allowed oral evidences nor supplied relevant documents sought by him. The appellant submitted his reply to the said report on 28th January, 2010.

2.23) On 19th December, 2009 the Inquiry Officer concluded the inquiry pursuant to memorandum dated 27th August, 2007 and 16th October, 2007 and submitted his reports, both dated 23rd February, 2010. A copy of the inquiry report pursuant to memorandum dated 16th October, 2007 was forwarded to the appellant asking him to submit his reply within twenty one days. The appellant requested the Registrar, University of Delhi to supply certain documents which were referred to by the Inquiry Officer and submitted interim reply on 18th March, 2010. Subsequently, the Executive Council passed Resolution No.281 dated 25th March, 2010 disengaging the appellant from the services with immediate effect and subsequently a memorandum dated 26th March, 2010 was issued to the said effect. The aforesaid decision was communicated to the appellant by the Registrar.

2.24) This Court on 5th April, 2010 dismissed the SLP(C) Nos.13753 of 2009 and 14150 of 2009 filed by the appellant challenging the High Court order dated 21st May, 2009 in LPA No.229 of 2008 but granted the liberty to the appellant to challenge the punitive orders. The appellant was permitted to take all the pleas taken in the SLP including the challenge to the validity and propriety of the inquiry

A proceedings conducted by the University of Delhi. Pursuant to the said order, the appellant filed Writ Petition No.2547 of 2010 before the High Court of Delhi at New Delhi which was dismissed by impugned judgment dated 1st March, 2012.

B

3. Learned counsel for the appellant submitted that there was illegality and unfairness in the initiation and conduct of inquiry in regard to the allegations which led to the removal of appellant. It was also submitted that the C Chancellor (Bundelkhand University) has not written to Delhi University suggesting action to be taken against the appellant. Despite the same, information regarding contents of charges was solicited unilaterally by the Registrar of Delhi D University based on newspaper reports and the communication dated 4th August, 2005 sent by the UGC to the Vice Chancellor of University. Learned counsel further contended that in the absence of Chancellor, Bundelkhand University suggesting action against the appellant, the UGC E need not have, even sent the above communication.

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However, the aforesaid submission cannot be accepted as it was always open to the competent authority to initiate departmental proceeding against its employee, with regard to any misconduct or dereliction of duty if found during F performance of duty while posted in the office or on deputation. In the present case, it was well within the jurisdiction of the university to initiate such a departmental inquiry when it is noticed that its employee was prematurely removed from an office to which he was deputed to on G account of certain charges against him.

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4. It was further submitted on behalf of the appellant that none of the memoranda relating to disciplinary action were ever placed before the Executive Council, therefore, H memoranda cannot be said to be charges or allegations

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considered or approved by the Executive Council (Disciplinary Authority). A

The aforesaid submission cannot be accepted in view of the stand taken by the University and the material on record. B

The counsel for the respondents was directed to produce the original record relating to all the proceedings/memoranda, all articles of charges including the office note and inquiry report. However, only the record relating to memorandum dated 16th October, 2007 has been provided. We have perused the original record produced by the respondents and find no illegality in the manner of initiation of departmental proceeding as the same was initiated as per Executive Council Resolution No. 188 dated 21st March, 2007. C D

5. It was further submitted that the appellant could not file the proper reply to all the three memoranda due to non supply of documents sought by him towards submitting an effective reply. However, such submission cannot be accepted in absence of specific pleading as to which were the documents sought for but not supplied by the respondents and how they were connected with the charges leveled against the appellant. E F

6. Another ground taken by the learned counsel for the appellant was that there were illegalities in the conduct of the inquiry. According to him the appellant requested the assistance of a legal practitioner as the presenting officer as well as the Inquiry Officer was legally qualified person regularly engaged in disciplinary proceedings but the said request was declined. It was further submitted that the appellant was not given opportunity for examination of witness and there was no legal evidence before the Inquiry G H

A Officer to bring home the charges.

We have gone through the inquiry report(s) submitted by the Inquiry Officer and other records. The aforesaid submission advanced on behalf of the appellant will be discussed at an appropriate stage.

7. With regard to appellant's allegation of mala fide against Prof. Deepak Pental, it was rightly contented on behalf of the respondents that in view of earlier decision of this Court in special leave petition preferred by the appellant and in absence of any specific evidence, plea of mala fide cannot be raised.

8. Learned counsel for the appellant further contended that the service of the appellant was terminated without providing any notice as provided for in para 6 of the Annexure to Ordinance XI which reads as follows:-

"6.(1)Notwithstanding anything hereinbefore contained, the Executive Council of the University shall be entitled summarily to determine the engagement of the teacher on the ground of misconduct in accordance with the provisions hereinafter set forth.

(2) The Vice-Chancellor may, when he deems it necessary, suspend the teacher on the ground of misconduct. When he suspends the teacher, he shall report it to the next meeting of the Executive Council.

(3) The Executive Council shall investigate all matters reported to it by the Vice-Chancellor about the misconduct of the teacher whether he has been suspended or not. The Executive Council may appoint a Committee for the purpose. The teacher

shall be notified in writing of the charges against him and shall be given not less than three weeks' time to submit his explanation in writing. A

The Executive Council or the Committee may hear the teacher and take such evidence as it may consider necessary. The Executive Council may determine the engagement of the teacher where it deems that the misconduct of the teacher deserves to be dealt within that manner, after it has considered the explanation and the evidence, if any, and/or the report of the Committee, if one has been appointed. B C

(4) Where the termination of the service on the ground of misconduct is after suspension by the Vice-Chancellor as aforesaid, the termination of service may be from the date of suspension, if the Executive Council so directs." D

9. In the present case, as noticed above, detailed procedure is followed in terms of said provision. The appellant was suspended by the Vice-Chancellor on the ground of misconduct. Notice was served upon the appellant and the Executive Council resolved to conduct an inquiry giving opportunity to the appellant to appear before the inquiry officer. Disciplinary authority terminated the service of the appellant after following all the due procedures. Therefore, the said submission as advanced on behalf of the appellant cannot be accepted. E F

10. Before the High Court and this Court, one of the pleas taken was that the charges as shown in the memoranda do not constitute any misconduct. The High Court observed that misconduct though not defined in the Act or in Ordinance XI or in the Annexure thereto, is a well G H

A understood term and paragraph 6 of Ordinance XI cannot be held to be bad and liable to be struck down merely for the reason of misconduct having not been defined.

B 11. On behalf of appellant, it was further contended that the departmental proceeding was conducted in violation of rules of natural justice and extraneous matters were taken into consideration to hold the appellant guilty. But such submission was disputed by learned Senior Counsel for the university.

C 12. Before dealing with rival contentions made by the learned counsel for the parties, we deem it proper to deal with the chargesheet – procedure followed in the departmental proceedings and order of punishment.

D **A) 1st Chargesheet - memorandum dated 2nd November, 2005** The charges levelled against the appellant can be summarized as follows:

E (i) The appellant wilfully suppressed the material fact that the appellant was removed from the post of Vice Chancellor, Bundelkhand University, Jhansi before the completion of term of his deputation, to mislead the University.

F (ii) The appellant wrote letter dated 8th August, 2005 to the Vice Chancellor in which he signed as Founder Director of ACBR knowing well that the term 'Founder Director' gave a misleading impression that he was the founder and was continuing as its Director. Further there is no such post as Founder Director

G (iii) He has written other letters that gives misleading impression about his status.

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Before dealing with the correctness of the above allegations, we would like to discuss the background events which took place prior to the issuance of the said memorandum. A

13. The Executive Council of the University of Delhi by its Resolution dated 17th October, 2005 first decided to punish the appellant for his alleged acts and to issue a show-cause notice to the appellant. This is apparent from the Resolution No.132 dated 17th October, 2005 which reads as follows: B C

“132. The Executive Council considered letters received from (a) the Principal Secretary to the Governor of Uttar Pradesh dated 26.7.2005, (b) the Registrar, Bundelkhand University, Jhansi dated 2.8.2005, and (c) the Joint Secretary, UGC dated 4.8.2005 forwarding therewith a copy of the order of the Chancellor of Bundelkhand University dated 16.7.2005 indicating removal of Prof. Ramesh Chandra from the post of the Vice-Chancellor, Bundelkhand University. After due deliberations on the above mentioned letters, the Council resolved that: D E

(i) Prof. Ramesh Chandra be not allowed to hold any administrative position in Delhi University henceforth: F

(ii) A show cause notice be issued to Prof. Ramesh Chandra for (a) suppressing information with regard to allegation on account of which he was removed from the post of Vice-Chancellor University at the time of his premature return to Delhi University and (b) unauthorisedly assuming the office of the Director, Dr. B.R. Ambedkar H

A *Centre for Bio-medical Research, Delhi University for the period from 18.7.2005 to 24.7.2005 in contravention of the statutory provisions of the University; and*

B *(iii) The decision, if any, taken by or at the instance of Prof. Ramesh Chandra, while unauthorisedly occupying the post of the Director, Dr. B.R. Ambedkar Centre for Biomedical Research, or thereafter, be treated as null and void."*

C It is only after such decision to punish the appellant the formal chargesheet was issued by memorandum dated 2nd November, 2005 as quoted hereunder:

D "UNIVERSITY OF DELHI

No. Estab. V(T)/2005/2083

November 2, 2005.

E **MEMORANDUM**

F *Whereas it is noted that Prof. Ramesh Chandra, Department of Chemistry, vide his letter dated 18th July, 2005 addressed to the Vice-Chancellor conveyed that after completing his tenure as Vice-Chancellor, Bundelkhand University, he had returned back and reported for duty as Professor in the Department of Chemistry with effect from 18.7.2005 by this statement. Prof. Ramesh Chandra willfully suppressed the material fact that*

G *he was removed from the post of Vice-Chancellor, Bundelkhand University before the completion of the term of his deputation, to mislead the University authority.*

H *And whereas Prof. Ramesh Chandra, on*

reporting for duty in the University, unauthorisedly tried to join as Director, ACBR as is evident from the notification No. ACBR/05/743 dated 18.7.2005 issued by the Deputy Registrar, ACBR which stated that Prof. Ramesh Chandra had joined back as fulltime Director of ACBR in the afternoon of 18.7.2005 after completing the tenure as Vice-Chancellor, Bundelkhand University, Jhansi. This notification (a) conveyed a misleading impression that he had joined there after completion of tenure as Vice-Chancellor of Bundelkhand University whereas he was actually removed from the post on charges of abuse of power before completion of his tenure; and (b) misleadingly referred to Establ. V(T)/99/ACBR/35657 dated 20th September, 1999 to wrongly convey that as per this order he could join as full-time Director. The Order No.Estab. (T)V/99/ACBR/35657 dated 20.9.1999 deals with appointment of Prof. Vani Brahamchari as officiating Director and specified the period of her office as the period during the leave of Prof. Ramesh Chandra and merely permitted Prof. Ramesh Chandra to provide academic leadership to ACBR. This arrangement at that point of time and consequently ATTEMPT OF Prof. Ramesh Chandra to join as Director of ACBR was ultra vires, and therefore, null and void ab initio. Then at the instance of this University's letter dated 19.7.2005 clarified that the notification for Prof. Ramesh Chandra's joining as Director stands withdrawn:

And whereas Prof. Ramesh Chandra wrote a letter dated 8.8.2005 to the Vice-Chancellor, in which he signed as Founder Director, ACBR, knowing well

A *that the term 'founder director' gave a misleading*
impression that he was the 'founder director of the
Centre or was the founder and was continuing as
its Director. When Prof. Ramesh Chandra was
B *placed in additional charge of the post of Director*
of ACBR vide letter No. Estab.III/BRAC/95 dated
30.5.2005, his substantive post was that of a
professor of Chemistry in the University. All
incumbent moves away from his substantive post
on deputation/EOL. Further, there is no such post
C *as founder director. Therefore, signing a letter*
addressed to the Vice-Chancellor on 8.8.2005 as
founder director ;was clearly to give a misleading
impression about its position in ACBR which
besides being non-existent, was neither legally
D *sustainable nor administratively proper because*
Prof. Ramesh Chandra was appointed in the
Chemistry Department of the Delhi University and
not appointed/deputed to ACBR as Professor;

E *And whereas Prof. Ramesh Chandra had further*
written letters dated 9.9.2005 and 26.9.2005 on the
letter pad of ACBR signing as Director which seeks
to convey a misleading impression about his status.
F *He wrote to the Chairman of the Governing Body,*
ACBR vide his letter dated 30.8.2005. In which he
had referred to some decisions of the governing
body to resume as Director of ACBR. This act of
Prof. Ramesh Chandra tantamount to seeking
G *perpetuation of the same misleading impression as*
indicated above.

And whereas the University had clarified the
position with regard to the post of Director, ACBR
H *vide its letter no. SPA/R2005/2007 dated 29.8.2005*

addressed to the Chairman of the Governing body of ACBR with copy to the officiating Director of ACBR in which it was clearly stated that there was no provision of retaining lien on the additional charge and that Prof. Vani Brahmachari continue to be the officiating Director until a regular director was appointed. A B

And whereas Prof. Ramesh Chandra's unauthorized and irregular attempts of usurpation to the post of Director ACBR tantamount to creation of false records and tampering with other records of ACBR which is a serious misconduct on his part. C

And whereas the above acts of Prof. Ramesh Chandra on irregularly insisting on his position as additional charge of the Director in the ACBR without having undergone the process of selection prescribed in clauses 4 of sub-heading 6 on ACBR contained in Ordinance XX tantamount to gross misconduct within the meaning of clause 6 of Annexure to Ordinance XI of the University. D E

And whereas some of the examples of misconduct on the part of Prof. Ramesh Chandra, particularly, the suppression of facts of his removal from the post of Vice Chancellor of Bundelkhand University to convey misleading impression that he repatriated from Bundelkhand University after completing his tenure and the unauthorized claim about directorship of ACBR were discussed by the Executive Council in its meeting on 17th October, 2005 and the Executive Council decided that his explanation be called for his above mentioned acts of serious misconduct; F G

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issued by memorandum dated 22nd February, 2010 communicating displeasure of the Executive Council, holding the act of the appellant to be unbecoming of a teacher of the University and prohibiting the appellant from being associated with any affairs of ACBR in any capacity whatsoever. The relevant portion of the said memorandum reads as follows:

“And, therefore, Prof. Ramesh Chandra (under suspension) is hereby communicated the displeasure of the Executive Council and that the act is unbecoming of a teacher of the University. Prof. Ramesh Chandra (under suspension) is further communicated the decision of the Executive Council that he shall not be associated with any affairs of the Dr. B.R. Ambedkar Centre for Biomedical Research in any capacity whatsoever and that he shall not be considered for any administrative position in the University. Prof. Ramesh Chandra shall continue to be under suspension till further orders.”

From the aforesaid facts it is clear that the respondent first decided to punish the appellant and only thereafter memorandum of charges was framed, show-cause notice was issued and inquiry was conducted, just to give it a colour of legal procedure.

15. There is nothing on the record to suggest that the appellant ‘wilfully’ suppressed the material fact that he was removed from service before completion of term of his deputation to mislead the respondents. It is true that the appellant in normal course should have informed the Delhi University before rejoining that he has been removed from the post of Vice Chancellor, Bundelkhand University, Jhansi before the completion of his deputation period. Such action

A can be termed to be "dereliction of duty" but cannot be held to be misconduct for the purpose of restraining the appellant permanently from appointment to the post of Director, ACBR.

B 16. It is not in dispute that the appellant was the First Director of the ACBR. The same was also accepted by the Delhi University in its memorandum dated 2nd November, 2005. Therefore, in his letter-head he has shown him as Founder Director of ACBR, that cannot be said to be against
C the Code of Conduct to hold the same as 'misconduct' on the part of the appellant.

17. This apart, as there is no provision in the concerned statute to withhold appointment permanently, it was not
D open to the University to pass such order.

For the reasons aforesaid, the order of punishment contained in Memorandum dated 22nd February, 2010 cannot be upheld. The said memorandum is accordingly
E declared illegal and cannot be upheld.

B) 2nd Chargesheet – Memorandum dated 27th August, 2007:

F 18. A fresh memorandum was issued by the University on 27th August, 2007 alleging that the appellant caused ACBR to pay an amount of Rs.16,63,284/- towards unauthorized expenditures incurred by him like telephone bills and bills of security guards and peon, during the period
G 1999-2005 though he was not functioning as Director of ACBR during the said period.

The appellant denied the allegation and again retired Judge of the Delhi High Court, Justice 'X' was appointed as Inquiry Officer who by his report dated 23rd February,
H 2010 held that none of the charges against the appellant

has been proved. Relevant portion of the said inquiry report reads as follows: A

"In view of the above discussion, none of the charges against the delinquent has been proved and he is, therefore, absolved of all the charges against him leveled vide the memorandum dated 27th August, 2007. B

Justice 'X', (Retd.)

Dated: 23.02.2010

Inquiry Officer" C

C) 3rd Chargesheet – Memorandum dated 16th October, 2007:

19. In the memorandum dated 16th October, 2007 the appellant was imputed with the charge which can be summarized as follows: D

By acting as a signatory who subscribed his name to the registration of ACBR as a society and by verifying the affidavit which affirmed that he has no objection towards the location of the registered office of ACBR in the University Campus, the appellant attempted to misappropriate the assets of the University. Such act was alleged to be a misconduct. The memorandum dated 16th October, 2007 reads as follows: E F

"MEMORANDUM

Whereas it has come to the notice of the University that Prof. Ramesh Chandra is one of the signatories who subscribed their names to the proposed formation of a Society by the name "Dr. B.R. Ambedkar Centre for Biomedical Research" with the description of its office as "oldUSIC G H

A *Building Delhi University Campus, Delhi-7". As per*
the records of the Registrar of Societies Delhi this
B *society has been registered on 7.9.2006 vide*
Registration No.56511. This is in violation of rules
and regulations of the University. Dr. B.R.
C *Ambedkar Centre for Biomedical Research (ACBR)*
is an institution maintained by the University. The
University has not resolved or contemplated to form
a society out of the existing ACBR. Since the
proposal in the society registered on 7.9.2006 has
shown the existing ACBR under the University of
Delhi as its address it tantamount to
misappropriation of the assets of University
maintained institution for an unauthorized purpose.
D *Thus, such a move is fraudulent.*

And whereas Prof. Ramesh Chandra had given an
affidavit which was verified by him on 5.9.06 which
he had solemnly affirmed that

E *"I shall have no objection if the registered office of*
the society named "Dr.B.R.Ambedkar Centre for
Biomedical Research' shall be situated at my above
said premises." The building in which the ACBR of
the University of Delhi is situated is the property
F *of the University and no one has any right*
whatsoever to appropriate it for any purpose other
than what the Executive Council of the University
authorizes.

G *And whereas Prof. Ramesh Chandra had no locus*
standi to give any such affirmation still had
solemnly affirmed in the same affidavit that "ACBR
is the legal allottee and in possession of the
property bearing no. Old USIC building Delhi
H *University Campus Delhi-7" which is contrary to the*

facts. The fact is that the premises where the ACBR of the University of Delhi is presently located (i.e. old USIC building University of Delhi, Delhi-7) was not allotted by University of Delhi to the proposed society which was fraudulently registered on 7.9.2006. A B

And whereas Prof. Ramesh Chandra verified the above mentioned affidavit on 5.9.2006 saying "that the contents of the above affidavit are correct, true and to the best of my knowledge and belief nothing has been concealed therefrom". But while verifying this affidavit on 5.9.2006 he fraudulently concealed a material fact that the authorized body of the University of Delhi i.e. the Executive Council had not resolved to convert ACBR into a registered society. He also concealed the fact that he being a Professor in the Department of Chemistry had no official position to furnish such affidavit and therefore this act of Prof. Ramesh Chandra tantamount to fraudulent misrepresentation of facts with a malafide motive. C D E

And whereas the above acts of Prof. Ramesh Chandra constitute misconduct by misleading the Registrar of societies Govt. of NCT Delhi and also the general public by fraudulently attempting to convert an University of Delhi as a registered society and clandestinely declaring Dr. B.R. Ambedkar Centre for Biomedical Research as a Society and its building as its registered office which tantamounts to misappropriation of the University's property." F G

20. The appellant submitted his explanation denying the allegation and requested for supply of documents towards H

- A submitting an effective reply. But the same were not supplied. He also sought aid of a lawyer but it was also denied. Nothing is on the record to suggest that any list of witnesses or list of documentary evidence was supplied to the appellant or to the Inquiry Officer. We have gone through the original records supplied by the University. Even therein, we find no list of witnesses or list of evidence available to bring home the charges.

- (Retd.)Justice 'X' who was again appointed as the Inquiry Officer with regard to said charges, submitted a report dated 23rd February, 2010, holding that the acts of the appellant giving an affidavit that he had no objection towards the registration of the ACBR as a Society situated at the said premises, and getting the Society registered without the approval of the University of Delhi, are clearly the acts of misconduct. The relevant extract of the inquiry report dated 23rd February, 2010 (relating to the third chargesheet) reads as follows:

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- F "The delinquent in the year 1992 was working as UGC Research Scientist attached to the Department of Chemistry, University of Delhi. The Executive Council of the University of Delhi in its meeting held on 15th February, 1992 approved the setting up of B.R.Ambedkar Centre for Bio-medical Research (in short referred to as ACBR) and the delinquent while working as UGC Research Scientist was allowed to function as officiating Director of ACBR vide order dated 30th May, 1995 till regular appointment of the Director of the Centre was made. With effect from 25th June, 1996 the delinquent is serving as Professor in the Department of Chemistry, University of Delhi, even
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after his appointment as Professor in the Department of Chemistry, he continued to work as Director, ACBR till he was relieved from the post of Professor in Chemistry to take up the appointment of Vice-Chancellor, Bundelkhand University, Jhansi on 31st July, 1999. On his appointment as Vice-Chancellor, Bundelkhand University, the delinquent sought extraordinary leave with a lien in his substantive post of Professor, Department of Chemistry to enable him to join as Vice-Chancellor, Bundelkhand University and his request was allowed by the Executive Council of the University. On his taking over as Vice-Chancellor, Bundelkhand University, the University of Delhi vide notification dated 20th September, 1999 appointed Prof. Vani Brahmachari as the Officiating Director, ACBR.

In accordance with his request dated 26th July, 2002 the extraordinary leave of the delinquent was converted into deputation service. The period of deputation was to expire on 31st July 2005. On 13th July, 2005, however, the delinquent came back and wrote a letter to the University that after completing his tenure as Vice-Chancellor, he had returned back and reported for duty as Professor, Department of Chemistry, University of Delhi. It appears that on 18th July, 2005 itself, a news item appeared in the newspaper according to which the delinquent was removed as Vice-Chancellor, Bundelkhand University and the Registrar, Delhi University, therefore, on the same day, wrote a letter to the Commissioner, Jhansi and Principal Secretary to the Governor of Uttar Pradesh regarding the authenticity of the newspaper report.

A It is the case of the University that though the delinquent had joined his substantive post as Professor, Department of Chemistry but he tried to clandestinely work as full time Director, ACBR under the garb of notification dated 18th July, 2005 of ACBR issued under the signatures of the Deputy Registrar of the said Centre. On coming to know of the notification, a note was put up by the Registrar to the Acting Vice-Chancellor about the same and on the same day, the Registrar asked the Deputy Registrar, ACBR to withdraw the notification dated 18th July, 2005 whereby the delinquent was asked to work as Director, ACBR. In the meantime, Principal Secretary to the Governor of Uttar Pradesh vide letter dated 26th July, 2005 informed the University confirming the removal of the delinquent as Vice-Chancellor in pursuance of the order dated 16th July, 2005 passed by the Governor of Uttar Pradesh in his capacity as Chancellor, Bundelkhand University. This was pursuant to some departmental proceedings initiated against the delinquent for his having allegedly committed financial irregularities etc. during his tenure as Vice-Chancellor, Bundelkhand University. The aforesaid acts of delinquent in not informing the University that he was removed as Vice-Chancellor, Bundelkhand University and his allegedly usurping the post of Director, ACBR were considered to be acts of misconduct by the University and memorandum dated 2nd November, 2005 was, accordingly, issued to him to show cause why disciplinary proceedings be not initiated against him. Not being satisfied with the reply of the delinquent, the University decided to hold an inquiry and

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appointed the undersigned as the Inquiry Officer. In the said inquiry it was held that the delinquent had concealed the fact of his removal from the post of Vice-Chancellor, Bundelkhand University with a view to mislead the University and that despite his not being Director, ACBR, he continued to describe as founder Director or Director, ACBR with a view to give a misleading impression.”

X X X X X

“By their unauthorized acts, the Governing Body as well as the delinquent had illegally attempted to convert a University-maintained institution into a registered society and its building as registered office of the society. Out of the signatories to the memorandum of association of the society, it is only the delinquent who is under the employment of the University and disciplinary proceedings can, therefore, be initiated only against the delinquent. In any case it cannot be the defence of the delinquent that no action can be initiated against him as no action is taken against other signatories to the memorandum of association of the society. It is only the delinquent who has given a wrong affidavit with a view to mislead the authorities. The delinquent knowing fully that he was not the Director, ACBR at the relevant time as he was not appointed to the said post in accordance with Ordinance XX of the Ordinances of the University of Delhi and there were already incumbents on the post, there was no occasion for him to describe himself as Director, ACBR. It was totally illegal and unjustified on his part to get a society registered even on the basis of the resolutions of the Governing Body and describe the building where

A *ACBR is located as his office as his office and to convert it into the registered office of the society. The delinquent could not, in any manner, give an affidavit that he had no objection if the registered office of the society is situate at the premises*

B *where ACBR was located. The delinquent was only a Professor in the Department of Chemistry and he was not authorised to give any such affidavit by the University or even by the Governing Body to depose that the premises*

C *where the registered office was proposed to be situated was "his premises", I am, therefore, firmly of the opinion that all these acts of the delinquent giving an affidavit that he had no objection if the registered office the society was situated at the*

D *said premises and getting the society registered without the approval of the University of Delhi are clearly the acts of misconduct. Charges against the delinquent stand proved."*

E After supplying a copy of the inquiry report to the appellant for his response, the University issued impugned memorandum dated 26th March, 2010 holding that the charges against the appellant are grave and the same are

F in a way an attempt to challenge the powers of the Executive Council with regard to the general control and supervision of the ACBR, as an institution established and managed by the University of Delhi under Ordinance XX(6) of the University. It was further held that such acts amounts

G to gross misconduct on the part of the appellant and the same is unbecoming of a teacher of the University and thereby disengaged the appellant, with immediate effect, in terms of Para 6 of Annexure to Ordinance XI of the University. Relevant portion of the order of punishment and

H memorandum dated 26th March, 2010 reads as follows:

“And whereas the Council, vide its above resolution, noted that the charges leveled against Prof. Ramesh Chandra are grave and the same are in a way an attempt to challenge the powers of the Executive Council with regard to the general control and supervision of the Dr.B.R.Ambedkar Centre for Biomedical Research, as an institution established and manage-University of Delhi under Ordinance XX(6) of the University, are acts of gross misconduct on his part and unbecoming of a teacher of the University.

And whereas the Executive Council further resolved that the services of Prof. Ramesh Chandra (under suspension), as Professor in the Department of Chemistry be disengaged, with immediate effect, in terms of clause 6 of Annexure to Ordinance XI of the University for his grave misconduct.

And therefore, the services of Prof. Ramesh Chandra (under suspension) as Professor in the Department of Chemistry, University of Delhi stand disengaged, with immediate effect, in terms of clause 6 of Annexure to Ordinance XI of the University.

A copy of the Executive Council Resolution No.281 dated 25.3.2010 is enclosed herewith.

Encl: As above(2 pages). Registrar.”

21. In the inquiry report, the background of appointment of the appellant since 1992 has been referred, though it had no connection with charges. No such fact or evidence was brought regarding the background history of

A the appellant was mentioned in the (third) chargesheet nor any such evidence is on record produced by the University.

B The Inquiry Officer noticed the letter of the Principal Secretary of the Governor of Uttar Pradesh (Chancellor, Bundelkhand University) dated 28th July, 2005 confirming the removal of the appellant as the Vice-Chancellor of the University and the order dated 16th July, 2005 passed by the Governor of U.P. in his capacity of Chancellor, Bundelkhand University though it was not part of the charges nor such evidence was cited in the imputed charges or list of evidence.

C Similarly, though the memorandum dated 2nd November, 2005 or allegation levelled therein was not the part of the third chargesheet nor cited as evidence by the University, the same were also relied upon.

D Influenced by the aforesaid extraneous facts and consideration, which are not the part of the chargesheet or the evidence cited by the University and without intimating such facts to the appellant the Inquiry Officer held the appellant guilty.

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F 22. It appears from the record that the ACBR was established within the premises of Delhi University on an initiative by the Central Government according to the proposal submitted by the appellant. The appellant being Director of ACBR, acted in terms of decision of Governing
G Body of ACBR, towards making the ACBR autonomous within the premises of University. In view of clash of interest between the officials of the University and the ACBR, one or other action appears to have been taken against the
H appellant, as apparent from the memorandum of

punishment dated 26th March, 2010, as quoted below: A

“And whereas the Council, vide its above resolution, noted that the charges leveled against Prof. Ramesh Chandra are grave and the same are in a way an attempt to challenge the powers of the Executive Council with regard to the general control and supervision of the Dr.B.R.Ambedkar Centre for Biomedical Research, as an institution established and manage-University of Delhi under Ordinance XX(6) of the University, are acts of gross misconduct on his part and unbecoming of a teacher of the University.” B C

23. We are not concerned about the bias as alleged against the 2nd respondent- Prof. Deepak Pantal, Ex-Vice Chancellor as it was not accepted in the first round of litigation. D

However, action of the University can be held to be mala fide and illegal for the reasons as detailed below. E

24. Though there was no allegation leveled against the appellant in the (third) chargesheet that he attempted to challenge the powers of the Executive Council with regard to the general control and supervision of the ACBR, as an institution established and managed by the University of Delhi but such charge was held to be proved by memorandum dated 26th March, 2010, as noticed and quoted above. F

25. Further one ‘note’ given by the Registrar and approved by the Vice-Chancellor in regard to the departmental inquiry being relevant, it is desirable to refer and discuss the same. G

The original ‘note’ relating to engagement of a retired H

A Judge of the High Court for conducting inquiry was given by Registrar of the University on 3rd April, 2007. From the said note dated 3rd April, 2007 as approved by the Vice-Chancellor, we find that Justice 'X' a retired Judge of the Delhi High Court was appointed as the Inquiry Officer to
B conduct the Departmental Inquiry against the appellant as prior to his elevation to High Court as a Judge, he was the counsel for the Delhi University. The relevant portion of the note reads as follows:

C *"Justice 'X' (name changed), retired Judge of Delhi High Court had, prior to the elevation to High Court as a Judge, handled Delhi University cases. He is well versed with the Delhi University Acts, Statutes and Ordinances."*

D It was in this background the University decided to engage him as Inquiry Officer.

E 26. We are of the opinion that if an Hon'ble retired Judge of a Court before his appointment as a Judge was a lawyer of any of the party (Delhi University herein), the Disciplinary Authority should not engage such retired Judge as an Inquiry Officer, as the other party may allege bias against the Inquiry Officer and the reputation of the Hon'ble
F Judge may be at stake.

G The University is directed not to engage any Hon'ble retired Judge of any Court, who was earlier a counsel of the University as an Inquiry Officer to hold an inquiry against any of its employee.

H 27. The Inquiry Officer herein being a retired Judge of the High Court is a person of vast legal acumen and experience. The Presenting Officer also would be a person who had sufficient experience in presenting case before

Inquiry Officer. In this background, it is also required to consider whether an application of a delinquent employee seeking permission to be represented through a legally trained and qualified lawyer should be allowed or not. A

28. In *Board of Trustees of the Port of Bombay vs. Dilipkumar Raghvendranath Nandkarni and others*, (1983) 1 SCC 124, this Court observed: B

“10.....Now if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the Enquiry Officer whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner..... C D

12.....In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated.....” E F

29. In *J.K. Aggarwal v. Haryana Seeds Development Corporation*, (1991) 2 SCC 283, this Court held that the denial of the assistance of a legal practitioner in inquiry proceedings would be unfair. This Court held as follows: G

“8. It would appear that in the inquiry, the H

A respondent-Corporation was represented by its
Personnel and Administration Manager who is
stated to be a man of law. The rule itself
recognises that where the charges are so serious
as to entail a dismissal from service the inquiry
authority may permit the services of a lawyer. This
rule vests a discretion. In the matter of exercise
of this discretion one of the relevant factors is
whether there is likelihood of the combat being
unequal entailing a miscarriage or failure of justice
and a denial of a real and reasonable opportunity
for defence by reasons of the appellant being
pitted against a presenting officer who is trained
in law. Legal Adviser and a lawyer are for this
purpose somewhat liberally construed and must
include "whoever assists or advises on facts and
in law must be deemed to be in the position of a
legal adviser". In the last analysis, a decision has
to be reached on a case to case basis on the
situational particularities and the special
requirements of justice of the case. It is
unnecessary, therefore, to go into the larger
question "whether as a sequel to an adverse
verdict in a domestic enquiry serious civil and
pecuniary consequences are likely to ensue, in
order to enable the person so likely to suffer such
consequences with a view to giving him a
reasonable opportunity to defend himself, on his
request, should be permitted to appear through a
legal practitioner" which was kept open in Board
of Trustees of the Port of Bombay v. Dilipkumar⁸.
However, it was held in that case (**SCC p. 132,
para 12**)

H "... In our view we have reached a stage in our

onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated....”

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30. In view of the law laid down by this Court, we are of the view that if any person who is or was a legal practitioner, including a retired Hon'ble Judge is appointed as Inquiry Officer in an inquiry initiated against an employee, the denial of assistance of legal practitioner to the charged employee would be unfair.

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31. For the reasons aforesaid, we hold that all the Departmental inquiries conducted against the appellant were in violation of rules of natural justice. This apart as the third inquiry report is based on extraneous facts and first part of the charge held to be proved in memorandum dated 26th March, 2010 being not the part of the charges shown in the (third) chargesheet, the order of punishment, including Resolution by memorandum dated 26th March, 2010 cannot be upheld.

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32. For the reasons aforesaid, we set aside both penal memoranda dated 22nd February, 2010 and 26th March, 2010. In effect, the appellant stands reinstated to the post of Professor but in the facts and circumstances, we allow only 50% of back wages (salary) to appellant for the intervening period i.e. from the date of his disengagement till the date of this judgment. However, the aforesaid period shall be treated 'on duty' for all purposes including seniority, increment, fixation of pay, retrial benefits, etc. The respondents are directed to pay the appellant arrears within

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A two months, failing which they shall be liable to pay interest @ 6% from the date of this judgment.

33. The appeal is allowed with aforesaid observations and directions. No costs.

B

Devika Gujral

Appeal allowed.