
(1980) 09 MP CK 0052

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 185 of 1980

Anuradha Shomeshwar Gupta

APPELLANT

Vs

Ravishankar University, Raipur and Others

RESPONDENT

Date of Decision : 04-09-1980

Acts Referred:

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 49(4), 49(5)

Citation : (1982) JLJ 387 : (1982) MPLJ 180

Hon'ble Judges : G.L. Oza, J

Bench : Single Bench

Advocate : J.P. Sanghi, for the Appellant; A.M. Mathur, Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

G.L. Oza, J.

This petition has been filed by the petitioner against an order passed by Kuladhipati-respondent No. 3 dated 19-3-1980 and the order passed by Kulapati-respondent No. 2 dated 28-3-1980 terminating the services of the petitioner as Lecturer in Psychology.

According to the petitioner, respondent No. 1 University issued an advertisement which was Notification No. 2 of 1979 dated 19-6-1979. In this advertisement, applications were invited for several posts in various departments of the University. Applications were also invited for the post of one Lecturer in Psychology which is only relevant for the purposes of this petition. It is further alleged that in pursuance of this advertisement, the petitioner along with some others including the two interveners submitted their applications.

On 21-8-1979, the petitioner, 2 interveners and some others were interviewed by a duly constituted Selection Committee and the Selection Committee submitted its report wherein the petitioner alone was selected for appointment. This, according to the petitioner, was done in accordance with section 49(4) of the

Madhya Pradesh Vishwa Vidyalaya Adhiniyam, 1973.

The Executive Council in its meeting held on 8th September, 1979, accepted the recommendations of the Selection Committee as required u/s 49(5) of the Act and the petitioner was, therefore, appointed as a Lecturer in Psychology on probation for a period of two years in the grade of Rs. 620-1400 and in pursuance of this appointment, according to the petitioner, she joined on 10th September, 1979.

The two other candidates i.e. two interveners in this petition, who were not selected by the Selection Committee, made a representation to Kuladhipati-respondent No. 3 against the appointment of the petitioner. Kuladhipati thereupon issued a notice dated the 30th December, 1979 to the Executive Council of respondent No. 1 calling upon to show cause why the proceedings of the Executive Council dated 8-9-1979 in so far as they relate to the appointment of the petitioner be not annulled and the appointment of the petitioner be also not annulled. The notice to show cause also indicated as to why the post should not be re-advertised.

The Executive Council of the University in its meeting dated the 23rd January, 1980 considered the notice to show cause and ultimately passed a resolution explaining as to how the Executive Council accepted the recommendations of the Selection Committee.

After receipt of this reply of the Executive Council, it appears that, Kuladhipati, by the order dated 19-3-1980, annulled the proceedings of the Executive Council and also annulled the consequential appointment of the petitioner although the petitioner in her petition has only alleged that Kulapati-respondent No. 2 issued an order dated the 28th March, 1980 terminating the services of the petitioner with immediate effect and on payment of a month's salary (notice pay). The order passed by Kulapati dated the 28th March 1980 itself refers to the order passed by Kuladhipati dated the 19th March, 1980 and that order had been filed in this petition and is not in dispute.

The petitioner in this petition has challenged the order of Kuladhipati as well as that of Kulapati on the ground that:

- (i) Kuladhipati had no authority to interfere with the order passed by the Executive Council except if the proceedings of the Executive Council discloses that they are not in accordance with law or ordinance;
- (ii) that the proceedings of the Executive Council do not disclose that they were not in accordance with law;
- (iii) that without setting aside the decision of the Selection Committee, the proceedings of the Executive Council could not be set aside by Kuladhipati as u/s 49(5) of the Act. the Executive Council was bound to accept the recommendations made by the Selection Committee;

(iv) that Kuladhipati without notice to the Selection Committee could not find that the Selection Committee has not acted in accordance with law or ordinance; and

(v) the petitioner's services could not be terminated by Kuladhipati without giving her a notice to show cause.

It was contended on behalf of the petitioner that u/s 49(4), the Selection Committee was not expected to give any reasons. It was also not expected of the Selection Committee to give a list of more than one candidate and if the Selection Committee found only the petitioner fit for appointment, which indicates that all others including the interveners, who. were the candidates with a doctor's degree (Ph. D.), were not found fit, it was not necessary for the committee to specifically say that those possessing the Doctor's degree were not found suitable. According to the learned counsel, it is only on this ground that Kuladhipati has chosen to annul the proceedings of the Executive Council. It is, however, not in dispute that in accordance with Ordinance No. 4, a Doctor's degree or published research work of an equivalent high standard is an essential qualification for the post of a Lecturer in the University Teaching Department and that a candidate with a Master's degree can only be appointed as a Lecturer if the candidate possessing a Doctor's degree is either not available or is not found suitable.

It was contended that the University was following the same practice. Before that, the Selection Committee never recorded any reason or stated in clear terms that the candidate possessed of a Doctor's degree was not suitable and according to the learned counsel that is what has been clearly stated in the resolution of the Executive Council in reply to the notice to show cause to Kuladhipati and therefore, Kuladhipati had no authority to annul the proceedings" of the Executive Council. Learned counsel placed reliance on a decision reported in *Dr. Ram Singh v. University of Saugor* 1973 MPLJ 561.

It was further contended by the learned counsel for the petitioner that in view of section 49(5) of the Act, the Executive Council had no option but to accept the recommendations of the Selection Committee even if only one name was sent up as a selected candidate. As held in the decision referred to " above, Kuladhipati could not annul the proceedings of the Executive Council without giving a notice to show cause to the Selection Committee as, if a notice is issued to the Selection Committee, then it would have been possible for the Selection Committee to place the material before Kuladhipati although the learned Advocate General appearing for Kuladhipati clearly stated that there is no record of the Selection Committee except the minutes of the Selection Committee which are filed in this petition. It was contended by the learned counsel for the petitioner that without issue of a notice to the Selection Committee, which is a body constituted under the University Act, the Selection made by it could not have been annulled.

It was also contended on behalf of the petitioner that although the petitioner was appointed on probation but the petitioner's employment could not be determined without a home show cause. It was contended that the principles of promissory estoppel would come to the rescue of the petitioner and in support of his contention, reliance was placed on a decision reported in *Bal Krishna Tiwari Vs. Registrar of Awadhesh Pratap Singh, University, Rewa and Others*, .

It was, therefore, contended by learned counsel for the petitioner that the order passed by Kuladhipati annulling the proceedings of the Executive Council and of Kulapati annulling" the appointment of the petitioner and the further direction of Kuladhipati that fresh selection may take place, be set aside.

It was also contended by the learned counsel for the petitioner that one Deshlahra, who was a member of the Court of the University and an ex-member of the Executive Council, by a representation dated 8-2-1980, drew the attention of Kuladhipati to the fact that the appointment in other departments i.e., Lecturers in the Department of Mathematics and History, who were also appointed following the same practice, should also be annulled. But according to the learned counsel for the petitioner, Kuladhipati did not take action and only said that as no representation has been received from the aggrieved person, no action was taken and in this manner, Kuladhipati has acted in a discriminatory manner.

The learned Advocate General appearing for respondents 1, 2 and 3 contended that the provisions contained in section 49(4) contemplate an investigation of the merits of each candidate including a person of distinction who may not have applied and after the investigation of the merits of the candidate, the Selection Committee is expected to assess the merits and come to a conclusion. This, according to the learned Advocate General, employs the application of mind and determination of the merits of the respective candidates and the recommendations of the Selection Committee are to be considered by the Executive Council under sub-clause (5) of section 49 of the Act. It is," therefore, clear that the application of mind and assessment of the merits of the candidates must appear in the minutes of the Selection Committee. He clearly stated that except the minutes of the Selection Committee, there is no other record to indicate how the Selection Committee considered the merits of all the candidates. It was also contended that Ordinance No. 4 provides for the necessary qualifications for appointment as a Lecturer in the University Teaching Department and what Ordinance No. 4 requires was clearly stated in the advertisement and it was clearly stated that the qualifications necessary for appointment of Lecturer are a Doctor's degree or a research work of an equivalent high standard. It was further provided that a person with Master's degree could only be considered if persons with a Doctor's degree are not available or if available are not found suitable. It is not in dispute that the two interveners were the candidates available with a Doctor's degree and therefore, it was incumbent on the Selection Committee first to consider these candidates

and the Selection Committee could consider the petitioner or other candidates with Master's degree only if it was of the opinion that these two candidates (interveners) are not suitable for appointment to the post (Lecturer in Psychology). According to the learned Advocate General, the minutes of the Selection Committee do not show that the Selection Committee followed this procedure. According to him, the minutes of the Selection Committee do not even show that this requirement of the ordinance, which was stated in the advertisement, was in the mind of the Selection Committee. From the minutes, it appears that the Selection Committee in routine interviewed all those possessed with Master's degree and those possessed with a Doctor's degree and therefore, the Selection Committee, while proceeding to select a candidate for appointment, failed to consider the requirements of Ordinance No. 4 and this recommendation of the Selection Committee was accepted by the Executive Council. According to the learned Advocate General, the Executive Council also did not notice the requirements of Ordinance No. 4 i.e. the requirement of necessary qualifications so contemplated in the advertisement itself and according to the Advocate General, therefore, as the proceedings of the Executive Council also do not disclose that this was specifically considered, it is clear that the Executive Council by its resolution accepted the recommendations of the Selection Committee which was directly contrary to Ordinance No. 4 and, therefore, Kuladhipati exercising the powers u/s 12(4)(a), had ample powers to annul the proceedings of the Executive Council and also annul the consequential action taken.

It was contended by the learned Advocate General that a notice contemplated u/s 12(4) is to the officer, authority or a body of the University whose actions or proceedings are sought to be annulled. Selection Committee is not a body or an authority of the University under the Act but is only a committee to make recommendations to the Executive Council and, therefore, a notice was not at all necessary either to the Selection Committee or to the petitioner. According to him, the petitioner may be a Lecturer appointed in the University Teaching Department but is not an officer of the University whose actions or proceedings were sought to be annulled. It was further contended that a notice to show cause to the petitioner was not necessary as the petitioner was only appointed on probation and when the initial appointment has been held by Kuladhipati to be bad in law, the petitioner's services could be terminated and in lieu of a notice, a month's salary has been paid to her.

Learned counsel appearing for the two interveners contended that u/s 49(4), the Selection Committee was expected to investigate the merits of the candidates and even of some distinguished scholars in the subject, if necessary and it was expected of the Selection Committee to assess their respective merits. This contemplates an application of mind and, therefore, a reasoned report is expected from the Selection Committee. Learned Counsel placed reliance on the observations in the minority judgment reported in *Natwarsingh (Rana) v. State of M.P. and Others* 1980 MPLJ 729 : 1980 J LJ 69 FB based on the decisions reported in *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of*

India (UOI) and Another, and also in Shri Bhagwan and Another Vs. Ram Chand and Another, . It was contended by the learned counsel that the consistent view of their Lordships of the Supreme Court has been that when the proceedings of a statutory functionary are called in question about its validity, it could only be judged by reasons so mentioned. It was also contended that in H. W. R. Wade on Administrative Law, it has been observed :

The investigating body is, however, the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it if the broad grounds are given. It need not name the informants It can give the substance only. Moreover, it need not do everything itself. It can employ secretaries and assistants to do all the preliminary work and leave much to them. But, in the end, the investigating body itself must come to its own decision and make its own report.

Learned counsel also referred to a passage from de Smith's Judicial Review on Administrative Action:

Nevertheless, the committee's report must be full enough to enable all members of the deciding body to discharge their duty to decide." It was also contended by the learned counsel that, apart from the requirement of a reasoned report u/s 49(4), compliance with Ordinance No. 4 is necessary and the report of the Selection Committee does not show that the Selection Committee kept in view that it could only consider the cases of candidates with Master's degree only, if those possessed of Doctor's degree are found not suitable. He contended that the minutes of the Selection Committee do not show that this was kept in view.

It was further contended that the Selection Committee is not an authority or a body under the Act and therefore, there was no occasion for Kuladhipati to annul the proceedings of the Selection Committee. The Selection Committee's selection is only a recommendatory report to the Executive Council. The action taken on behalf of the University in appointing the petitioner is the resolution of the Executive Council and Kuladhipati, therefore, wanted to annul the resolution of the Executive Council and therefore, under the proviso the section 12(4), a notice to the Executive Council was necessary. As regards, a notice to the petitioner, it was contended that the petitioner could not be said to be an officer or authority under the University Act as is clear from section II. No action of the petitioner was sought to be annulled. The appointment of the petitioner was only a consequence of the proceedings of the Executive Council and therefore, annulment of her appointment is only a consequence of the annulment of the proceedings of the Executive Council. Thus, Kuladhipati was within his powers to do u/s 12(4)(a) of the Act and a notice to the petitioner is not at all " contemplated under these provisions. As regards the requirements of a notice to show cause on the principles of natural justice, it was contended that the petitioner's services were not terminated on any ground. It was only a consequence of her appointment having been found to be invalid and further she was only appointed as a probationer and if her services were terminated, she

could only make a grievance that she has not been given a month's notice. But in lieu of a notice, a month's salary has been paid to her. It therefore, could not be contended that any notice to show cause was necessary to be issued to the petitioner. Learned counsel contended that the question of promissory estoppel does not arise and the decisions on which the learned counsel for the petitioner placed reliance in support of his contention about notice to the petitioner are of no help as they are cases not of a probationer's services being terminated on the ground that the appointment was found to be irregular or illegal.

As regards the discrimination, the learned Advocate General as well as the learned counsel for the interveners contended that although Deshlahra may be a member of the Court or an ex-member of the Executive Council, but he could not be said to be an aggrieved person as he was not a candidate who was not selected and Kuladhipati, therefore, was right in rejecting this representation by saying that as the aggrieved, person has not approached him, he is not bound to take action; whereas in the case of the petitioner's appointment, the interveners, who were the candidates, therefore, they could not be doubted as aggrieved persons/who approached Kuladhipati with a representation. It, therefore, could not be said that Kuladhipati has arbitrarily acted in the matter of the petitioner, and thereby is guilty of discriminatory treatment.

The respondent-University i. e., Ravishankar University, Raipur is governed under the Madhya Pradesh Vishva Vidyalaya Adhiniyam, 1973. Section 49 of this Act provides for appointment to the teaching posts in the University. Sub-clause (2) of this section provides as to who will be the members of the Selection Committee. It also provides that corium of the Selection Committee shall be 4.

Sub-clause (4) of this section prescribes the functions of the Selection Committee and it provides:

The committee shall investigate the merits of the various candidates, including any eminent person distinguished in scholarship who may not have applied, and shall recommend to the Executive Council the names, if any, of persons whom it considers suitable for the posts arranged in order of merits:

Provided that no recommendation shall be made unless at least two experts nominated under clauses (iii) and (iv) of sub-section (2) are present in the meeting in which such recommendation is to be decided upon.

The language of this sub-section shows that this committee is expected to investigate the merits of various candidates including some eminent persons distinguished in scholarship who may not have applied. This language, therefore, indicates that the committee is expected to investigate the merits of the candidates and then to assess the relative merits and make a recommendation to the Executive Council of the names of persons whom it considers suitable for the post and it is contemplated that a list will be arranged in order of merit. The question as to whether sending of one name alone would fulfill the requirement has been the subject-matter of decision of this Court in a case reported in Dr,

Ram Singh v. University of Saugar (Supra) but in that decision, the scope of investigation and assessment has not been considered. It is apparent that when the committee is to make a recommendation to a body, which has to take a final decision and the recommendation is the result of investigation and assessment of merits, it is expected of the recommendatory committee to indicate the process that was employed and the facts that were found. In any event, it is, expected of the recommendatory committee to submit its report in a manner in which it will be clear to the body to which the recommendations are, made that the committee has applied its mind to the respective merits of the candidates. The passage quoted from Wade's Administrative Law referred to by the learned counsel for the, interveners is a passage from the decision of Lord Denning who has summed up the procedure in the case of an investigating body in the words contained in that passage and this is what has been observed by their Lordships of the Supreme Court as early as in Lala Shri Bhagwan v. Ramchand (supra) :

An obligation to act judicially may, in some cases, be inferred from the scheme of the relevant statute and its material provisions. In such a case, it is easy to hold that the authority or body must act in accordance with the principles of natural justice before exercising its jurisdiction and its powers; but it is not necessary that the obligation to follow the principles of natural justice must be expressly imposed on such an authority or body. If it appears that the authority or body has been given power to determine questions, affecting the rights of citizens, the very nature of the power would inevitably impose the limitation that the power should be exercised in conformity with the principles of natural justice. Whether or not such an authority or body is a tribunal, would depend upon the nature of the power conferred on the authority or body, the nature of the rights of citizens, the decision of which falls within the jurisdiction of the said authority or body, and other relevant circumstances. This question has been considered by this Court on several occasions. In the Associated Cement Companies Ltd., Bhupendra Cement Works, Surajpur v. P. N. Sharma Civil Appeal No. 44 of 1964, decided on 9-12-1964, both aspects of this matter have been elaborately examined and it has been held adopting the view expressed by the House of Lords in Ridge v. Baldwin 1964 AC 40, that the extent of the area where the principles of natural justice have to be followed and judicial approach has to be adopted, must depend primarily on the nature of the jurisdiction and the power conferred on any authority or body by statutory provisions to deal with the questions affecting the rights of citizens." Similarly, in The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, , it was observed:

...It is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-Judicial functions will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring

reasons to be given in support of an order is, like the principles of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

Similar observations were also made in *M/s Mohabir Prasad Santosh Kumar v. State of U.P.*:-

...Opportunity to a party interested in the dispute to present his case on question of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them, and adjudication by a reasoned judgment upon a finding of the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him it must appear that he has reached a conclusion which is according to law and just and for ensuring that end he must record the ultimate mental process leading from the dispute to its solution. Satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appeal to the authority. Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, Whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just.

It, therefore, cannot be doubted that when a recommendatory body has to investigate and assess the merits and submit a report, it is necessary that the report must be self-contained on the basis of which the body, which has ultimately to take a decision, may come to a conclusion. The minutes of the Selection Committee in this case reads:

Minutes of the Meeting of the selection committee for the appointment to the post of lecturer in psychology held on 21-8-1979 at 2 P. M. in the Kulpati's Chamber.

Members present :-

Shri K.P, Chaube, Kulpati.

Prof. M. Krishnan, Mysore.

(B)

Prof. A.S. Patel, Ahmedabad.

Prof. H.S. Asthana, Sagar.

Prof. A.K.P. Sinha, R. S. University, Raipur.

A I R 1970 S C 1302.

(2) Seven applications were invited for the interview. The following appeared before the committee.

(i) Ku. Anuradha Gupta.

(ii) Dr. Smt. Bina Pathak.

(iii) Dr. O.P. Verma.

(iv) Shri Pradeep Kumar Khatri.

(v) K. Kalpana Naik.

(3) The committee recommends the appointment of Ku. Anuradha Gupta as Lecturer after assessing the performance of candidate at the interview.

Sd/- K.P. Chaube 21-8-1979

Sd/- B. Krishnan 21-8-1979

Sd/- A.S. Patel 21-8-1979

Sd/- H.S. Asthana 21-8-1979.

These minutes, as admittedly there is no record of the Selection Committee, clearly goes to show that they do not indicate as to how the relevant merits were investigated and assessed. From these proceedings (minutes) of the Selection Committee, what only appears is that the petitioner is selected. Much emphasis was led by the learned counsel for the petitioner on the sentence i.e. the last sentence of these minutes "after assessing the performance of candidates at the interview." This sentence does not at all indicate the manner in which the merits were assessed and they were investigated. Apart from the wider question about the requirements u/s 49(4), as discussed above, the ground on which Kuladhipati has annulled the proceedings of the Executive Council is that Ordinance No. 4 was not complied with and it is clear from the minutes quoted above of the "Selection Committee that the. requirements of the Ordinance, which were also the requirements of the advertisement that a Master's degree candidates could only be considered if candidates holding a Doctor's degree are not found suitable, were not at all before the Selection Committee. There is nothing in these minutes to indicate that the Selection Committee realised that it has to first come to a conclusion that those having a Doctor's degree are not suitable and it is only after having come to this conclusion that it could consider the persons having a Master" degree for selection. Learned counsel for the petitioner could not refer to any specific words in the minutes of the Selection Committee which could justify that the Selection Committee had reviewed the requirements of Ordinance No. 4 or the requirements of the advertisement. The minutes only show that the Selection Committee interviewed the candidate without bothering

about the requirements and the educational qualifications, as prescribed in Ordinance No. 4 and in the advertisement as well. It was contended by the learned counsel for the petitioner that as the petitioner alone was selected, it automatically meant that the two interveners, who possessed the Doctor's degree, were not found suitable but the minutes of the Selection Committee show that the petitioner was No. 1 in the candidates for interview. Admittedly, the petitioner could not have been considered unless the Selection Committee came to the conclusion that the two interveners, who were holding the Doctor's degree, were not suitable. This could not in any manner be spelled out from the minutes of the Selection Committee and even the learned counsel for the petitioner could not refer to any specific words in these minutes which would indicate that this question about first considering whether the persons holding a Doctor's degree were not suitable could be spelled out. Thus, even if the wider question as to whether u/s 49(4) of the Act, the report of the Selection Committee should indicate some material to show that the individual merits were investigated and assessed, is not gone into; still it could not be doubted that from the minutes of the Selection Committee, it is clear that it did not consider Ordinance No. 4 or the advertisement which was the requirement of the Ordinance for selection of a candidate and that the Selection Committee did not take notice of the fact that it could only consider the case of a candidate having a Master's degree only under special circumstances i. e. when candidates holding Doctor's degree are not available or, as in the present case, available, but are not found suitable. It is, therefore, clear that this report of the Selection Committee when was accepted by the Executive Council, it also did not consider that as this report does not show compliance with Ordinance No. 4 and the conditions of the advertisement, it could not have been accepted. But the Executive Council also without taking notice of Ordinance No. 4 and the conditions of the advertisement accepted this recommendation and therefore, the appointment made by the Executive Council of the petitioner, after accepting the recommendation of the Selection Committee, is in contravention of Ordinance No. 4.

When this matter was brought to the notice of Kuladhipati by the two interveners, Kuladhipati issued a notice to show cause to the Executive Council and in this notice to show cause, Kuladhipati specifically drew attention of the Executive Council to this aspect of the matter as is clear from paragraph 2 of the notice which reads:-

It is seen from the provisions of the revised Ordinance No. 4 that a Doctor's degree or published research work of equivalent high standard is an essential qualification for the post of Lecturer in the University Teaching Department. Further a candidate with Master's degree can also be appointed as a Lecturer if a candidate possessing a Doctor's degree or a qualification, of a published research work of equivalent high standard is not available or is not considered suitable. It is seen from the proceedings that candidates possessing Doctor's degree were available and they were interviewed by the Selection Committee.

The Selection Committee had not opined that the candidates possessing Ph. D. degree interviewed by it were considered unsuitable for the post of a Lecturer in Psychology." And to this, the Executive Council in its reply said :

...In the recruitment of Lecturer, so far the Selection Committee has not been recording the unsuitability of Ph. D. holding candidates in view of the provision of section 49(4) of the M. P. Vishwa Vidyalaya Adhiniyam. From the notice of the Kuladhipati, it appears that it was obligatory for the Selection Committee to record the unsuitability of Ph D. holding candidates. The Executive Council feels that in view of the opinion of the Kuladhipati, the Kuladhipati may take any action that he deems fit. The Executive Council shall require the Selection Committee in future to record its definite findings if it considers the Ph. D. holding candidates unsuitable for appointment to the post of Lecturers." This reply clearly shows that the Executive Council had to accept that unsuitability of Ph. D. holding candidates is not recorded in view of section 49(4). But it further stated that in view of the opinion of the Kuladhipati in future it shall be followed. In fact, the real question was not a question of mere recording the resolution of the Executive Council. The reply to the notice does not disclose that in fact, the suitability of the candidates holding a Doctor's degree was first considered and it is only after that they were found not suitable, the other candidates were considered. This, in fact, was done by the Selection Committee and is not what has been stated by the Executive Council in its reply to the notice. Apparently, it could not be stated, as there is nothing in the minutes of the Selection Committee to indicate that in fact this was done. As discussed earlier, it appears that the Selection Committee lost sight of the fact that this was the requirement of Ordinance No. 4 which was clearly stated in the advertisement and it is, therefore, on this ground that Kuladhipati decided to annul the proceedings of the Executive Council as also annul the consequential appointment.

Section 12(4)(a) and (b), under which Kuladhipati acted, provides :

(4) The Kuladhipati may, by an order in writing, annul-

(a) any proceedings of any office, authority, Committee or body of the University, constituted by or under this Act, which is not in conformity with this Act, the Statutes, Ordinances or the Regulations, or

(b) any proceedings of any authority, Committee or other body which has been referred to him by the Kulpati under sub-section (7) of section 15, if he is satisfied that such proceedings are prejudicial to the interests of the University :

Provided that before making such order he shall call upon the officer, authority, committee or body concerned to show cause why such an order should not be made and if any cause is shown within the time specified by him in this behalf he shall consider the same.

Sub-clause (a) of this section clearly provides that if the proceedings of any officer, authority, committee or body of the University constituted by or under

this Act is not in conformity with the Act, Statute or Ordinances or the Regulations, Kuladhipati, by an order in writing, can annul these proceedings. The proviso to this section requires that before passing an order, Kuladhipati shall call upon the officer, authority, committee or body concerned to show cause why such order be not made and it is not in dispute that Kuladhipati issued a notice to show cause to the Executive Council and the Executive Council submitted its reply, the relevant part of which has been quoted above and it was not contended that so far as the Executive Council is Concerned, there was any defect of procedure followed by Kuladhipati. The grievance made by the learned counsel for the petitioner was that no notice was issued to the Selection Committee and that a notice was not issued to the petitioner. It was contended by the learned counsel that the authority, committee or body used in section 12(4)(a) will cover the case of the Selection Committee as it is a committee constituted u/s 49. Apparently the Selection Committee within the meaning of language used in section 49 could not be said to be an authority, committee or body of the University. The Selection Committee under the scheme of section 49 is only a recommendatory committee which is constituted temporarily for conduct of a selection vis-a-vis particular advertisement for a particular post. It is also clear that the functions of the Selection Committee are over as soon as it submits its report to the Executive Council and it is the Executive Council, which is a body of the University, which takes decision. It was contended by the learned counsel that in view of section 49(5), the Executive Council was bound to follow the decision of the Selection Committee and therefore, so long as the decision of the Selection Committee was not set aside or annulled, the Executive Council was bound to accept it.

Section 49(5) provides:

Out of the persons so recommended under sub-section (4), the Executive Council shall make the final decision:

Provided that where the Executive Council proposes to make the appointment otherwise than in accordance with the order of merit arranged by the committee, the Executive Council shall record its reasons in writing and submit its proposal for sanction of the Kuladhipati.

This sub-clause indicates that the Executive Council will make the final selection out of the persons recommended by the Selection Committee under sub-clause (4) and the only rider put in the proviso is that if the Executive Council proposes to make the appointment otherwise than in accordance with the merit list prepared by the Selection Committee, it is expected to give reasons and it has to submit its proposal for sanction to the Kuladhipati. In the decision reported in *Das Ram Singh v. University of Sagar* (supra), on which reliance has been placed, it was observed:

...But we are not inclined to accept the argument of the learned counsel for the petitioner that the Executive Council in every case is bound to accept the

recommendation of the Selection Committee when only one name is recommended and that it is bound to make the appointment as recommended. It has to be taken notice of that the Executive Council is the executive authority of the University in whom all the powers of the University, not otherwise specifically provided for, are vested. It is quite possible that by the time the recommendations of the Selection Committee reach the Executive Council it may not be advisable to fill up the post advertised for various administrative reasons, e.g. lack of funds or want of students. If an honest administrative decision is taken not to appoint a person recommended in our opinion, the Executive Council and the University cannot be compelled to accept the recommendation of the Selection Committee and to make the appointment.

It is, therefore, clear that even this decision does not lay down that the Executive Council is bound to accept the recommendations of the Selection Committee. In the circumstances of the present case, it could not be doubted that if it had come to the notice of the Executive Council that the Selection Committee did not observe Ordinance No. 4 pertaining to the requirement of educational qualification as was clearly indicated in the advertisement, the Executive Council itself might have chosen not to accept the recommendations of the Selection Committee and it could not be argued that the Executive Council has committed any mistake. It is, therefore, clear that in view of the scheme of the Act and the scheme of section 49, the contention that the Executive Council was bound to accept the recommendations of the Selection Committee cannot be accepted. As discussed earlier, the Selection Committee does not appear to be a committee under the Act or a committee or body of the University but it is only a recommendatory committee appointed in accordance with section 49 for the purpose of selection of a particular post and thus, it could not be said that the Executive Council's decision could not be annulled unless the Selection Committee is noticed and its decision is annulled. This contention advanced by the learned counsel for the petitioner, therefore, could not be accepted.

It was next contended by the learned counsel for the petitioner that as the petitioner is an officer of the University, proviso to section 12(4)(a) requires a notice to show cause to even an officer and in absence of a notice to show cause issued to the petitioner, the proceedings of the Executive Council and the consequential annulment of the petitioner's appointment is bad in law. Section 12(4)(a) talks of officer, authority, committee or body of the University constituted by or under the Act. Section 11 provides as to who will be the officers of the University. Admittedly, the petitioner does not fall within the category of officers enumerated in section 11. Sub-clause (6) of section II talks of such officers in the service of the University as may be declared by the statutes to be the officers of the University and it is not the contention of the learned counsel for the petitioner that under any statute, a Lecturer in the Teaching Department of the University has been declared to be an officer of the University. Apparently, therefore, the contention advanced by the learned counsel for the petitioner that in view of the proviso to sub-clause (4) of section 12, a notice to the petitioner

was necessary cannot be accepted.

It was contended by the learned counsel that apart from the provisions of section 12(4), by annulment of the proceedings of the Executive Council by Kuladhipati, services of the petitioner have been terminated by Orders of Kulapati dated 28-3-1980 and before passing this order of termination, no notice to show cause was issued to the petitioner. Learned counsel placed reliance on the decisions reported in *The University of Gorakhpur and others v. Dr. Vidya Nivas Mishra* 1969 Lab. IC 874, *Dr. S.N. Prasad v. Chancellor, Allahabad University* 1971 ALJ 274 and *B.K. Gupta v. Chancellor, Lucknow* 1962 ALJ 289. Learned counsel for the petitioner did not refer to any rules to indicate that when the services of the petitioner were terminated on the ground that initial appointment has been held to be irregular or illegal by Kuladhipati, still a notice to show cause was necessary especially when the petitioner's appointment was wholly as probationer. It is also not contended by the learned counsel for the petitioner that the provisions of Article 311(2) of the Constitution will be applicable. It was contended neither with reference to Article 311, nor with reference to any rule that as the services are being terminated, the principles of natural justice demand that a notice to show cause should have been issued to the petitioner. Apparently, the petitioner was appointed as a probationer and during the period of probation at any time she could be asked to go and this was not contested by the learned counsel for the petitioner. What the learned counsel contended was that in such circumstances if her services were not found suitable, her services could be terminated at any moment. But as according to him, this termination is not on that ground but on the ground that as the initial appointment was irregular, a notice to show cause was necessary. Apparently, this contention is without substance and cannot be accepted. The cases on which reliance has been placed also do not help the petitioner. In the decision reported in *B.K. Gupta v. Chancellor, Lucknow* (supra), the appointment of a Professor was in question and their Lordships were examining the scope of section 39 under which the Chancellor acted. In fact, the provisions of section 39 of the Lucknow University Act are not so worded on section 1.2 (4) (a) of the present Act and as no notice to show cause was issued to any one who could justify the constitution of the Selection Committee, which was found to be not properly constituted, their Lordships on a concession made by the Advocate General observed that the principles of natural justice required that as the petitioner in that case is a professor, he ought to have been given a notice so that he could get an opportunity to justify the constitution of the Selection Committee. It, therefore, could not be said to be a precedent in view of the specific provision contained in the M. P. Vishwa Vidyalyaya Act as it stands. Another decision on which reliance was placed is the decision reported in *Dr. S.N. Prasad v. Chancellor, Allahabad University* (supra). This decision in no case considered the question of a notice to a person appointed on probation and, therefore, is of no help to the petitioner. In a Division Bench decision of this Court reported in *Shivnarayan v. Vice-Chancellor Sagar University* 1960 MPLJ 545 : 1960 JLJ397, the rights of a probationer came

up for consideration and it was observed:

In our opinion, there is no force in any of the contentions advanced by the learned counsel for the applicant. It is now well-settled that the appointment to a permanent post in Government service either on probation or on officiating basis is of transitory character and that an implied term of any such appointment is that it is terminable at any time. The probationary period of service is intended to be a period for testing the capacity, conduct and character of the appointee in order to determine his suitability for the post. It is common experience that a person who has done exceptionally well in examinations, or even those who by education and experience has potential capacity, to perform satisfactorily the duties of an appointment, are found wanting during the probationary period and do not come upto the fitness and capacity that is required for the efficient discharge of duties of the particular post to which he has been appointed. The object of probationary period is to give time to the appointing authority to decide finally about the merit and fitness of the candidate before confirmation, after which the termination of his services is made subject to certain restrictions. The termination of a probationer's services before the expiry of the period of probation is but a graceful method of terminating the employment of an unsatisfactory appointee. In such a case, the appointing authority is not required to give any reasons for the termination of the probationers services. It is entirely in the judgment and discretion of the appointing authority to determine whether the probationer is or is not fit for permanent employment.

Reliance was placed in this decision on a decision of the Supreme Court and it was further observed:

This principle has been laid down by the Supreme Court in *P.L. Dhingra v. Union of India* (supra), at page 42 it has been pointed out by the Supreme Court that a servant on probation means that a servant so appointed has been taken on trial, and if the period of probation is unspecified, his services may be ended by a notice if the servant is found unsuitable. It was further said in that case (at page 48):

Thus where a person is appointed to a permanent post in a Government service on probation, the termination of his service during or at the end of the period of probation will not ordinarily and by itself be a punishment, for the Government servant so appointed has no right to continue to hold such a post any more than the servant employed on probation by a private employer is entitled to do. Such a termination does not operate as a forfeiture of any right of the servant to hold the post, for he has no such right and obviously cannot be a dismissal, removal or reduction in rank by way of punishment.

The decision in *Dhingra's* case (supra) came up for consideration before the Supreme Court in *State of Bihar v. G.K. Prasad* C.A. No. 488 of 1957. In that case, the effect of the observations of the Supreme Court in *Dhingra's* case (supra) on the question of termination of service or discharge of a probationary

public servant was stated thus.

I. Appointment to a post on probation gives to the person so appointed no right to the post and his service may be terminated without taking recourse to the proceedings laid down in the relevant rules for dismissing a public servant or removing him from service.

The termination of employment of a person holding a post on probation without any enquiry whatsoever cannot be said to deprive him of any right to a post and is, therefore, no punishment.

But, if, instead of terminating such a person's service without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct or in efficiency, or for some similar reason, the termination of service is by way of punishment, because it puts a stigma on his competence and thus affects his future career. In such a case, he is entitled to the protection of Article 311(2) of the Constitution.

In the last mentioned case, if the probationer is discharged on any one of these grounds without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge, it will amount to a removal from service within the meaning of Article 311(2) of the Constitution and will, therefore, be liable to be struck down.

But, if the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, the probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was temporarily holding on account of his misconduct, or inefficiency, or some such cause.

It is thus, plain from these observations of the Supreme Court that the probationer's service can be terminated at any time before the expiry of the period of probation without holding any enquiry and on the ground of his unfitness for service, and that such a removal cannot give the probationer any cause of action. It is only if the appointing authority wants to have an objective determination about the probationer's misconduct or inefficiency and chooses to hold an enquiry into the probationer's misconduct or inefficiency or for some other similar reason that it is necessary to hold a proper enquiry and to give a reasonable opportunity to the probationer to show cause against his discharge. It is at the option of the appointing authority whether to hold or not an enquiry. The probationer cannot insist that the appointing authority should hold an enquiry and give him an opportunity to controvert the grounds on which his services are intended to be terminated.

It is, therefore, clear that so far as the petitioner is concerned, as she was only appointed on probation, she can make no grievance that a notice to show cause was not given to her, and as the termination order shows that a month's salary

in lieu of a notice was ordered to be paid to the petitioner, the contention raised by the learned counsel for the petitioner that a notice was necessary to be issued to the petitioner cannot be accepted.

It was contended by the learned counsel for the petitioner that the interveners in their application have made an allegation that the petitioner happens to be daughter of one of the Deputy Registrars of the University and" this, according to the learned counsel, is only alleged to create prejudice. However, it is not disputed that this fact alleged by the interveners is not correct. But it could not be contended that this allegation had anything to do with the decision of Kuladhipati and it is not alleged nor contended that the action of Kuladhipati was because of such allegation. Consequently, this is of no consequence so far as this petition is concerned. It was also contended that one Deshlahra has made a representation to Kuladhipati that irregularity as has been made in the appointment of the petitioner has also been made in the cases of appointments to the Departments of Mathematics and History and Kuladhipati has not taken any action holding that the aggrieved persons have not approached him. It Was contended that the action of Kuladhipati, therefore, is discriminatory. It is not in dispute that Shree Deshlahra, who is alleged to be a member of the Court and an ex-member of the Executive Council, has made a representation, but it is not suggested that he is an aggrieved person. The reason stated by Kuladhipati is that he cannot take action on anybody's representation unless the aggrieved person has approached him and this view taken by Kuladhipati could not be said to be improper or not in accordance with the statutes. Apparently, therefore, on this ground, it could not be said that Kuladhipati is guilty of discrimination. It is not the case of the petitioner that under similar circumstances, the aggrieved persons, who were candidates but could not, be selected in these two departments in identical circumstances, made representations. In fact, we do not know what happened in the matter of selection of those two departments as we have no material except what is. stated in the representation which has been filed by the petitioner along with the petition. Apparently, therefore, on such a mere allegation, it could not be decided that the action of Kuladhipati is in any manner discriminatory.

In the light of the discussion made above, therefore, the action taken by Kuladhipati in annulling the proceedings of the Executive Council and the consequential annulment of the appointment of the petitioner could not be said to be, in any manner, beyond the scope of authority or without jurisdiction. As discussed earlier, it could not be contended that Kuladhipati has committed any error of law

The petition is, therefore, without any substance and is hereby dismissed. In the circumstances of the case, parties are directed to bear their own costs. The amount of security shall be refunded to the petitioner.