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**(1995) 05 DEL CK 0037**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 2059 of 1993

A.S. Ojha and Others

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

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**Date of Decision :** 05-05-1995

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Delhi University Act, 1922 — Section 17

**Citation :** (1995) 3 AD 109 : (1995) 58 DLT 800 : (1995) 34 DRJ 164 : (1995) LabIC 2389

**Hon'ble Judges :** Mahinder Narain, J;J.K. Mehra, J

**Bench :** Division Bench

**Advocate :** Rajiv Dhawan, Rakesh Luthra, H.S. Chandhiok, Jitendra Sharma, S. Pappu, P.K. Sharma, M.R. Krishnamurthi, V.P. Chaudhary, Rajan Sareen, A.K. Sikri and Rajender Dutt, for the Appellant;

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## Judgement

J.K. Mehra, J.

(1) The present Writ petition has been brought by some of the teachers in Desh Bandhu College, which is one of the constituent colleges of Delhi University and is one of the University maintained and run colleges. The petitioners happen to be Senior Lecturers and Readers of various departments in the same college.

(2) Respondent No. Delhi University happens to be a statutory body incorporated under the Delhi University Act of 1922 and founded by the Government. Respondent No.2, apart from being one of the officers of the University, is also the Chairman of the Executive Council, which happens to be one of the authorities of the University under the Delhi University Act. Respondent No.3 is the Union of India. Respondent No.4 is a Governing Body of Desh Bandhu College, while respondent No.5, Dr.Balbair Singh is the Principal of the said college. Prof.P.B. Mangla, respondent No.6 was at the material time the Chairman of the Governing Body of the said college.

(3) Some of the salient facts giving rise to the present petition are as under:-

(4) One Seema Singh, daughter of respondent No.5 married Mr.W.S. Hooda, since deceased (hereinafter referred to as the deceased). The deceased had earlier been married to one Mrs.Poonam Singh, also daughter of one of the University teachers. Mrs.Seema Singh married the deceased on 6th November, 1992. It is alleged that the said marriage was not approved by respondent No.5, the father of Ms. Seema Singh. On the night between 22nd and 23rd November, 1992, Mr.W.S. Hooda, was murdered in his house in Dlf Qutub Enclave, Gurgaon. It is alleged that the assailants appeared to have used a white Maruti car bearing No.DL-IC-4314, reported to have been stolen from Prashant Vihar, Delhi on 15th November, 1992. On the same day, i.e., 23rd November, 1992, Mrs.Poonam Singh, the first wife of the deceased lodged an Fir No.813 dated 23rd November, 1992, wherein it was alleged that before death, the deceased had mentioned the name of respondent No.5, Dr.Balbair Singh and his son, Mr.Atul Chaudhry as one of the persons whom he suspected to have trespassed into the house. Respondent No.5, his son and nephew-Mr.Karan Singh were arrested on 30th November, 1992. The said respondent No.5 remained in custody for 37 days and was ultimately released on bail on 7th January, 1993 where after he resumed the duties as Principal of Desh Bandhu College. His resumption of duty evoked wide criticism and resulted in a number of teachers approaching the Chairman of the Governing Body and voicing their concern on his using his discretionary power in allowing respondent No.5 to resume duties as Principal and also having granted to the said respondent 37 days" leave. They also demanded that respondent No.5 should be suspended forthwith. This matter was consequently placed before the Governing Body of the College and at its meeting on 30th January, 1993, the Governing Body approved the decision of the Chairman not to suspend the Principal after considering the following:-

(A)Whether the Principal, because of the case of alleged murder against him, would have the moral authority to control the college; (b) The past performance of Dr.Balbair Singh in relation, to college matters; (c) The fact that he had been released on bail; (d) The fact that there had been no demand by the teachers, karamcharis or students of the College for any action against him till he rejoined as Principal of the College; (e) The fact that Ordinances of the University did not furnish any definite guidelines regarding the action to be taken in the given situation and the matter of suspension was left to the discretion of the Governing Body; (f) The precedents and practices, both in the University and its colleges as well as in the Government; (g) The fact that he has already been allowed to resume duty; (h) The attitude of the University authorities; (i) In the discussion that ensued, it was also brought to the notice of the Governing Body by him that soon after the resumption of duties by Dr. Balbir Singh as the Principal of the College, he had received a joint representation addressed to the Chairman of the Governing Body, signed by some 70 teachers of the College, in which the teachers had expressed their happiness on the said resumption of duties and expressed solidarity with Dr.Balbair Singh. The legal opinion obtained by the deponent was also considered at the meeting.

(5) This issue was raised even at the meeting of University Executive Council, but the Vice-Chancellor pleaded his helplessness at the meeting in the matter apparently as he understood that he had no power to interfere in the internal matters for which Governing Body was the proper body competent to take action.

(6) On 18th February, 1993, respondent No.5, his son and nephew were committed to stand trial at the Sessions Court, Gurgaon.

(7) Certain teachers, particularly, the petitioners have challenged the decision of the Governing Body and have approached the University authorities also for immediate suspension of respondent No.5. They cited instances at the bar where members of staff of colleges including teachers were suspended for alleged offences which were less serious than murder. It may be pointed out that the said respondent No.5 w.e.f. 28th October, 1993 has proceeded on leave till the decision of the present Writ petition in terms of the statement of his counsel before this Court made on 28th October, 1993. Mr.Vats, who was on that date Vice-Principal, was directed to discharge the functions of Principal. Having thus failed to achieve the suspension of the Principal, the petitioners approached this Court seeking the following among other reliefs:-

(A) Issue a Writ in the nature of mandamus or any other appropriate writ, order or direction:-

(I) directing the respondent No.3 to initiate enquiry into the misconduct on the part of respondent No.5;

(II) directing the respondents 1, 2 & 3 to suspend the respondent No.5, Mr.Balbir Singh, pending departmental and/or criminal proceedings against him.

(8) The Writ petition has been opposed by the respondents on various grounds including the following:-

(1) That the present Writ petition is not maintainable as the petitioners have no locus standi to question what has been done bonafide by the Governing Body or its Chairman and that this is not a Writ, which would lie within the domain of public interest litigation.

(2) That the management and administration of the college is governed by the provisions contained in Ordinance XX-B of the Ordinance of the University. Under that Ordinance, the Governing Body of the College is constituted by the Executive Council of the University and its Chairman appointed by the Vice-Chancellor of the University and that the decision not to suspend respondent No.5 was taken consciously after taking all the pros and cons by the Governing Body of the said college and that the matter lay entirely in the discretion of the Governing Body of the college, which body was not bound to suspend Dr.Balbir Singh, respondent No.5.

(3) The decision of the Governing Body is not liable to be challenged in this Writ petition and that neither the Chairman of the Governing Body nor the Governing

Body were under a duty to suspend Dr. Balbir Singh or to act differently than the manner in which they have acted.

(9) The matter was heard at length. Apart from certain other objections, some of the contentions raised by the parties, particularly, respondents 3 to 6 were as under:-

1.The submission on behalf of the Respondents Nos.3 and 6 is that the word "authority", occurring in Clause (4) of Statute 11-G refers to only such authorities of the University as are mentioned in Section 17 of the Delhi University Act. It is submitted that this is entirely consistent with the scheme of the Act as also with the provisions of Statute 11G.

2.The Governing Body of a college, whether it be of a maintained college or of an affiliated or constituent college, is not an "authority" mentioned in Section 17 of the Act nor has it been declared by any Statute of the University as an "authority". Merely because the Governing Body of a college performs certain functions or exercises some powers, it would not for that reason become an authority. The Dean of Students' Welfare or the Heads of the Departments of the University also perform certain functions and exercise powers but they are neither the officers of the University nor can be characterised as authorities of the University. This is equally true of the Departments existing prior to the commencement of the Delhi University Act, 1952 and those constituted under Statute 9-B as also of various Admission Committees constituted under Ordinance II of the Ordinances of the University.

3.Under the emergency powers of the Vice-Chancellor vis-a-vis Deshbandhu College (governed by the provisions of Ordinance XX-B of the Ordinances of the University) whatever the Executive Council can do, the Vice-Chancellor can also do in exercise of his emergency powers and report the same to the Executive Council for confirmation at its next meeting.

4.The word "authority" occurring in Clause (4) of Statute 11-G has never been interpreted by the University to include in its ambit other bodies like the Departments or the Admission Committees or Governing Bodies of the Colleges, but its meaning has been confined to authorities mentioned in Section 17 of the Act.

(10) Respondent No.5 in his reply has mainly relied upon his brilliant academic record and his achievements as Principal of this college. He has further challenged the correctness of the allegations in the F.I.R. by saying that there was no basis for suspicion of Mrs. Poonam Singh, first wife of the deceased and that the story of his jumping over the boundary wall, which is about 8 feet high and fixed on top with sharp pieces of glass embedded in the middle could not have been climbed by respondent No.5, who is 55 years of age and that even the security guard in his statement u/s 161 of Cr.P.C. did not name respondent No.5 as a person anywhere near the site of murder. He has also denied having lodged any F.I.R. with Maurice Nagar Police Station, as was being alleged by the

petitioner.

(11) He has further contended that Governing Body of its own cannot suspend Principal or a teacher without prior approval of the Vice-Chancellor and relies upon Ordinance XII.

(12) He has further alleged that all the petitioners bear grudges against him since he, as the Principal of the college, had been discharging his duties in an upright and fearless manner and had checked the undesirable activities of some of the Lecturers including their not taking classes and has named certain acts and has listed certain instances in respect of each of the petitioners, which according to the said respondent resulted in the said petitioners acquiring a bias and grudge against respondent No.5.

(13) Before dealing with the said questions, it would be appropriate to notice some of the provisions of the Delhi University Act, Statutes and Ordinances of Delhi University.

"Authorities of the University" "Sec.17. The following shall be the Authorities of the University: (i) The Court, (ii) The Executive Council, (iii) The Academic Council, (iii-a) The Finance Committee, (iv) The Faculties and (v) such other authorities as may be declared by the Statutes to be authorities of the University. 6.(1) The Executive Council shall, subject to the control of the Court, have the management and administration of the revenue and property of the University and the conduct of all administrative affairs of the University not otherwise provided for.

STATUTE 11-G. (1) The Vice-Chancellor shall be the principal Executive and Academic Officer of the University and shall take rank in the University next to the Pro. Chancellor..... (2) It shall be the duty of the Vice-Chancellor to see that the Act, the Statutes, the Ordinances and the Regulations are duly observed and he shall have all powers necessary for that purpose. (3) He shall have the power of convening meetings of the Court, the Executive Council and the Academic Council and shall perform all such acts, as may be necessary to carry out or further the provisions of the Act, the Statutes and the Ordinances. (4) If, in the opinion of the vice-Chancellor, any emergency has arisen which requires that immediate action should be taken, the Vice-Chancellor shall take such action as he deems necessary and shall report the same for confirmation at the next meeting to the authority which, in the ordinary course, would have dealt with the matter. Provided further if the action taken by the Vice-Chancellor is not approved by the authority concerned he may refer the matter to the Visitor whose decision thereon shall be final: Provided further that where any such action taken by the vice-Chancellor affects any person in the service of the University, such person shall be entitled to prefer, within thirty days from the date on which he receives notice of such action, an appeal to the Executive Council. (5) The Vice-Chancellor shall exercise general control over the affairs of the University and shall give effect to the decisions of the Authorities of the

University. (6) All powers relating to the proper maintenance of discipline, in the University shall stand vested in the Vice-Chancellor.

Statute 38 Notwithstanding anything contained in these Statutes: (i) a person who holds any post in the University or is a member of any authority or body of the University in his capacity as a member of a particular Authority or a body or as the holder of a particular appointment shall hold office so long only as he continues to be a member of that particular Authority or Body or the holder of that particular appointment, as the case may be; (ii) where a teacher of the University or the Principal of a college is placed under suspension he shall during the period of his suspension be disabled from exercising any rights, duties or privileges attached to the member of any Authority or Body of the University of which he may be a member.

Annexure to Ord.XI. 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. 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 with in 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. (4) Where the termination of the service on the ground of misconduct is alter suspension by the Vice-Chancellor as aforesaid, the termination of service may be from the dale of suspension, if the Executive Council so directs.

Ord.XII 3 A. (1) Subject to the provisions of clauses 6, 7 and 8 of the Agreement of Service, a person appointed permanently as a Principal of a College or Institution or as a teacher therein shall be entitled to be in the service of that College or Institution until he completes the age of sixty. Provided that a Principal or a teacher, as the case may he, who has completed the age of sixty years and is still in the service of the College or Institution by virtue of the provisions which were in force prior to 1-4-1975, shall continue to be in such service for the unexpired period of the extension already given to him. (2) ..... (3) ..... (4) ..... (5) ..... (6) Notwithstanding anything contained in any other Ordinance, where a Principal or a teacher is placed under suspension, with the prior approval of the Vice-Chancellor or under Ordinance XIII-A, he shall during the period of his suspension be disabled from exercising any rights, duties or

privileges attached to the membership of the Governing Body or any Committee of the College of which he may be a member. 7. Notwithstanding anything contained in this Ordinance, a teacher who is placed under suspension shall, during the period of his suspension, be entitled to only subsistence allowance in accordance with the rules applicable to Government employees.

Annexure to Ord-XII 7. The question of termination of the services of the Principal/Teacher or his suspension, shall not be decided by the College/ Institution without the prior approval of the Vice-Chancellor.

Ord.XX-B. Deshbandhu College 1. The University shall maintain and run the following College temporarily. The arrangement may be determined earlier in case alternate arrangements are made for its governance: (i) Deshbandhu College, Kalkaji, New Delhi. 2. The Executive Council shall constitute for the College, a Governing Body to administer affairs of the College, .... 3. .... 4. Subject to the general control and supervision of the Executive Council, the Governing Body shall exercise the following powers and functions: (a) ... (b) ... (c) ... (d) ... (e) to create, appoint, suspend or terminate the services of the administrative and other non- academic staff and to determine their emoluments and conditions of service; Provided that the qualifications for appointment, emoluments and conditions of service of such persons shall be in accordance with those laid down by the Executive Council for similar posts in the University; (f) to appoint the Principal and the teaching staff on the recommendations of the Selection Committee appointed for the purpose, subject to the approval of the appointment of the Principal and the recognition of the teaching staff by the Executive Council; (g) to grant leave to teachers and other staff according to the rules framed for the purpose; (h) to define the duties and responsibilities of the Principal, teaching staff and administrative staff of the College; and (i) to do such other acts as may be necessary for the exercise of the above functions.

(14) We see that wherever the intention was not to extend any provision of the Ordinances, statutes etc. to any college, specific provision excluding their applicability was made as was the case with Sherubtse College, Kanglung. (Ord.xviii-A). No such exclusion is made in the case of Deshbandhu College. The said ordinance is quoted hereunder:-

Ord.xviii-A. Sherubtse College, Kanglung Maintained by the Royal Government of Bhutan. 1. Nothing contained in Ordinance Xii or Ordinance xviii of the Ordinances of the University will apply to this College and the provisions of this Ordinance shall have over- riding effect in respect of any matter pertaining to these Ordinances. 8. The service conditions, pay scales, date of retirement etc. of the teaching and non- teaching staff shall be as prescribed by the Royal Government of Bhutan in accordance with B.C.S.R. 9. The Executive Council of the University may from time to time cause an inspection of the College to be made for the purposes of satisfying themselves that the conditions of this Ordinance and any other condition on which recognition has been given are complied with.

(15) The case of the petitioners in response to the preliminary objection is that the petitioners, who are the teachers in the College, are vitally interested in welfare of the students and the teachers and they are very much concerned about the image and reputation of the college and disciplined working of the said institution. Mr. Dhawan has in extenso referred to various provisions of the Delhi University Act, its statutes and ordinances. The question of locus standi of the petitioners is closely connected with the second question as to whether the petition is in the nature of the public interest litigation and this court is competent to entertain the same and to issue appropriate directions to the respondents or any one of them.

(16) The opposition to the locus standi or maintainability has come mainly from counsel for the governing body and the Chairman of the Governing Body of the College who has laid lot of emphasis on the personal grouses that the petitioners could be having against the respondent No.5 on account of the respondent's instance to impose discipline and adherence to the rules.

(17) That the question which has arisen in the present case is in the nature of public interest litigation could not be seriously challenged. Counsel for the petitioner strongly contended that they are very much entitled to institute the present petition as they are vitally interested and concerned in the good image, reputation and discipline and the smooth working of the college apart from the watching the welfare of the students at large. It may be noticed that all the petitioners are members of the staff of the college. Mr. Rajiv Dhawan, apart from other authorities had laid lot of stress on the decision in the case of Associated Provincial Picture Houses, Ltd Vs. Wednesbury Corporation reported as 1947(2) All England Law Reports 680 wherein Lord Greene, while dealing with the impugned judgment had referred to the terms "reasonable" and "public interest" and had opined that if the condition imposed by the local authority is one which no reasonable authority acting within the four corners of their jurisdiction could have decided to impose that would be unreasonable and that could have jurisdiction to see if all that an authority should look into whether it has properly taken into consideration is a matter of public interest.

(18) In the case of Janata Dal Vs. H.S. Chowdhary, reported as Air 1993 Sc 893, the Hon'ble Supreme Court has laid down as follows:-

"THAT requirement of locus standi of a party to a litigation is mandatory because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold. In order to counter, a departure from the strict rules of locus standi, as applicable to a person in private action is recognised in relation to public interest litigation and it has broadened and liberalised the rule of standing and thereby permitted a member of public having no personal gain or oblique motive to approach the Court for enforcement of the constitutional or legal rights of social or economical disadvantaged persons, who are unable to enter the portals of the Courts for judicial redress on account of poverty or total ignorance

of fundamental rights. No precise and inflexible working definition has been evolved in respect of locus standi of an individual seeking judicial remedy and various activities in the field of public interest litigation."

(19) There may be numerous circumstances justifying the entertaining of public interest litigation, but an exhaustive list of such situations is not possible. Mr. Chaudhary had cited the case of Delhi High Court in Major Y.K. Bammi Vs. Jawaharlal Nehru University and another, wherein this Court after relying upon the cases of Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, and Ashok Chand Singhvi Vs. University of Jodhpur and Others, and of this Court in the case of Kanishka Aggarwal Vs. University of Delhi and others, , had accepted the writ after feeling satisfied that the candidate did not commit any fraud and she was an innocent party all along. The directions given by the Supreme Court in the case of Jawaharlal Nehru University and another Vs. Maj. General Y.M. Bammi and another, are in the following words:-

"If the Academic Council can find a way, it would enable the candidate to retain the benefit of her selection to the course in Japan. We direct , Academic Council to consider this aspect and take a view which may appear to it to be just in special facts and circumstances of this case. We make it clear that any decision that the University may take pursuant to this direction will not be a precedent."

(20) In other words the interest of community cannot be lost sight of and if there is any such complaint the matter is brought up before the court, in our opinion, that would fall within the domain of public interest litigation. He has also drawn support for his argument that the court would be within its powers to examine as to whether the actions of the governing body sub-serve the public interest or completely ignore that aspect. Mr. Dhawan argued that it is only the material which was before the authority, i.e. the governing body In the present case which should be looked into and no other material and relied upon Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , which was a case dealing with law relating to elections. He has also referred to the cases of Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others, and the case of The Vice-chancellor, Jammu University and Another Vs. Dushiant Kumar Rampal, to argue that court not only has a power of judicial review, but a duty is cast upon it to examine as to whether the decisions of the University are subject to rules of prudence and restraint. It was pointed out that Section 13(4) of the Jammu University Act is para materia with that of the Delhi University statute and contended that wherever public duty is involved, the performance thereof is subject to judicial review and the court is fully empowered to issue mandamus and he stated that the duty cast upon the governing body of the college is in the nature of the public duty. These arguments were reiterated by the counsel for the petitioner when counsel for respondents 3 and 6 argued that the governing body of the college did not possess any power to suspend the teaching staff nor was it an "authority" under the Delhi University Act. Mr. Choudhary also contended that

merely because of the exercise of some power, it would not for that reason alone become an "authority".

(21) Mr. Chaudhary contended that teaching community constitute a noble class in itself and that omitting the power to suspend teaching staff from the powers of the Governing Body under Ordinance Xxb is a conscious omission. He stated it is open to the law making body to provide that different terms and conditions of service would be applicable to the teachers of the University and the colleges than those applicable to the non-academic staff of the university and the colleges and from that view, the distinction in the conditions of service between the teaching and non-teaching staff could not be described as discrimination.

(22) Mr. Chaudhary further contended that enabling or permissive power of suspension is like such other powers as are usually conferred by law on statutory authorities or bodies in matters relating to employment, some of these powers relate to transfer of an employee, grant of leave, re-employment, and extension of service after superannuation. He argued that unless there is a clear obligation to act or not to act in a given situation, the exercise or non-exercise of the implied power of the enabling powers cannot be questioned since it is a case of discretion implicate and not of exercise of a discretionary power coupled with duty. According to him, unless there is a breach of legal requirements, non-exercise of powers could not be questioned either by employee or any other person. He further contended that the exercise or precise of discretion in respect of an enabling power could be questioned if at all only by the persons whose rights are affected thereby and that too on a limited ground. He states that no right of the petitioners had been invaded or infringed and that in the context of the present case, the petition instituted does not fall within the ambit of public interest. Mr. Chaudhary reiterated that the present petition has been instituted by some disgruntled teachers who bear a grouse against the principal and is in the nature of a litigation for settling their personal scores with the principal of the college. Reference was made by Mr. Chaudhary to various provisions including those of Ordinance XX-B to state that there existed no power to suspend the principal. This assertion in the face of a clear admission by respondent No.5 in his own counter affidavit that the governing body had the power to suspend cannot be accepted as well founded. In any event, even if no specific clause in Ordinance XX-B provides for suspension of the teaching staff, that power could be read into the residuary clause and in any event, the said power did exist in Executive council under whose general supervision and control the Governing Body of the College has to act. It is also not disputed that power to suspend is provided in the service contract which is in line with Annexure to Ordinance XII.

(23) In the light of this discussion we are of the opinion that the petition is maintainable and to the extent it concerns the welfare of staff and students and general good of the society, and it falls in the domain of public interest litigation. Some of other rulings in this behalf cited by Hochtief Gammon Vs. State of Orissa and Others, . J.R. Raghupathy and Others Vs. State of A.P. and Others, ,

Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, and Commissioner of Police, Bombay Vs. Gordhandas Bhanji, . A reference, for authority of the Executive Council, he made to Statute 11-G, 38, Ordinance Xi, Xii, Clauses 6 and 7 and also to clause 4 of Ordinance XX-B which are reproduced herein above. That the only restriction on the exercise of power to suspend being subject to approval of such action by the Vice-Chancellor.

(24) In the light of the aforesaid case law. it has been contended that it is not only the implied power of the authority to suspend a teacher including principal where serious offence is involved, but it was the duty of the authority to do so. A reference be made to the case of Niranjana Singh and Another Vs. Prabhakar Rajaram Kharote and Others, .

(25) The question whether there is any prima facie case against respondent No.5 could be examined by applying the principles laid down by Hon'ble Supreme Court in the case of J.P. Sharma Vs. Vinod Kumar Jain and Others, wherein the Hon'ble Supreme Court has laid down that taking all the allegations in the complaint to be true without adding or subtracting anything at this stage, it cannot be said that no prima facie case for trial had been made out. In such circumstances, the Hon'ble Supreme Court had reversed the decision of this Court quashing the Fir and laid down that the question at this stage is not whether there was any truth in the allegations made, but the question is whether on the basis of the allegations, a cognizable offence or offence has been alleged to have been committed. The truth or otherwise of the allegation made in the complaint would be investigated at the time of trial. In the present case, not only judicial mind has already applied itself after the accused, respondent No.5 was taken into custody, and further he has already been committed along with all the accused in the case to stand trial for an offence as serious as murder. In that view of the matter, it cannot be said that prima facie there is no case against respondent No.5 because the truth or otherwise of the allegations is still to be proved or disproved at the trial of the case.

(26) Another case, which was cited at the Bar was that of Corporation of the City of Nagpur Vs. Ram Chander G. Modak. This was cited only to support the argument that even if the respondent No.5 is acquitted ultimately, the employer would still retain a right to conduct departmental enquiry and take appropriate disciplinary action if one was called for. We need not go into this question at this stage.

(27) Mr. Sharma appearing for the University also took up the argument that the Executive council had no jurisdiction in the matter of disciplinary action on the teachers, but in the face of the clear provisions in Ordinance XX-B and other provisions quoted hereinabove from the calendar of Delhi University, he has not been able to satisfy us that in Clause (4) of Ordinance XX-B words "Subject to the general control and supervision of the executive council the governing body shall exercise the following powers and function" did not mean that the powers of

the Executive Council were in any way more limited than the Governing Body because if a narrow view is to be taken as was being advocated by Mr. Chaudhary, then the Governing Body has no power to suspend a teacher and if Mr. Sharma's argument is to be accepted, then even the Executive Council which has constituted the Governing Body would have only the power to exercise general supervision and control on Governing Body which would not include power to suspension is, however, admitted that contract of service of respondent No.5 is also in terms of Annexure to Ordinance XII. Mr. Sharma has not been able to satisfy us on the scope of article 11 of Statute 11-G. Clause 7 referred to in the form of Agreement of Service for College Teachers which is Annexure to Ordinance XII. reads as under:-

"7. The question of termination of the services of the Principal/Teacher or his suspension, shall not be decided by the College/Institution without the prior approval of the Vice-Chancellor."

(28) The only restriction under the form of agreement for service provided in Annexure to Ordinance XII being that his suspension shall not be affected by the college or institution without prior approval of the Vice-Chancellor. Thus, except for that restriction to our mind, there appears to be no impediment in the way of the Governing Body or Executive Council from suspending a teacher including the Principal.

(29) Thus, the contention of the respondents that the Governing Body cannot exercise the power to suspension of a teacher is without any substance and is rejected. It further to be noticed that the Executive Council under Statute 6 has the power, subject to the control of the court, for the management and administration of the revenue and property of the University and the conduct of all administrative affairs of the University not otherwise provided for and under Statute 6(2), the Executive Council is specifically empowered to appoint, inter alia, principals of colleges and institutions established the University. Mr. Sharma tried to draw distinction that the University managed colleges such as the college in question are not covered by the powers vested in the Executive Council under Statute 6. Assuming that it is so, still, we are of the opinion that the Executive Council has the overall administrative control of the college which includes even the disciplinary jurisdiction apart from exercising general control and supervision over the working of the Governing Body of the college under Ordinance XX-B. We are also unable to accept the plea that no writ petition can lie against the governing Body which is constituted by Executive Council under Ordinance XX-B of the University and is vested with powers and duties specified therein although under the supervision and control of Executive Council.

(30) In the light of the above discussion, we hold that the teachers, who are the petitioners in the present case, are vitally interested in the welfare of the students and also the institution, i.e., the College and as such, they have locus standi to present the present petition, and that the present petition is in the nature of public interest litigation. We further hold that this Court has jurisdiction

to entertain the present Writ Petition and issue appropriate writ/directions to the respondents or any one of them.

(31) Although Mr. Chaudhary argued very vigorously that the Governing Body had no power to impose suspension on respondent No.5, Mr. Sharma appearing for the University did not challenge existence of such power in the Governing Body. Respondent No.5 has also not taken any plea of non-existence of such power in the Governing Body. In fact, Mr. Sharma contended that the Executive Council had no such power. We are not in agreement with the said contentions and in the light of the aforesaid discussions and various provisions, referred to hereinabove of the University Act, statutes and Ordinances, we hold that the Governing Body of the College and failing that, the Executive Council has the power to impose suspension on respondent No.5 although such action has to be approved by the Vice-Chancellor.

(32) We also hold that the Executive Council is an "Authority" u/s 17 of Delhi University Act and Governing Body which is constituted under Ordinance XX-B and is vested with powers of administering the college has all the trappings of an "authority" as understood under Article 12 of the Constitution of India. For that reason, the present petition is maintainable against this respondent also.

(33) Coming to the last question raised, a lot of stress has been laid by Mr. Chaudhary on the various considerations, which were weighing with the Governing Body in reaching the decision of not suspending respondent No.5; have been duly examined by us. What the Governing Body failed to consider was whether it would be in the interest of the students and the college staff to have a person heading the institution, who is carrying the charge of murder. We must not forget that we are dealing with an educational institution imparting education to young persons of impressionable age. For that reason also we have to be very careful in the choice of persons heading such institutions for they are to set the example of character and behavior for the students. Mr. Chaudhary has described, and rightly so, the teachers as a class of noble persons. It is, Therefore, very important that the teaching community continues to retain a clear image of unblemished character. A charge of murder by no means can sustain such an image unless the accused is able to earn a clean acquittal.

(34) In our opinion, it is neither in the interest of the students nor the institution to have a person who is an undertrial, or who is an accused in a murder case, to continue to head the institution, until his acquittal. Petitioners have cited instances where teachers were suspended for their involvement in comparatively less grave offences. The Governing Body has clearly committed a grave and serious error in ignoring this appeal.

(35) We do not think it would be right for this court to sit limply by and be a mute witness to the degeneration or destruction of institutions painstakingly created by the Constitution or Statutes - in this case an educational institution run and maintained by University of Delhi, because someone or a body of

persons, in this case its Governing Body, cannot see their way to prevent damage being caused to the image of the institution in or to ensure that healthy and untainted educational environments are maintained in the college, and that it is not headed by a person who is an undertrial or accused of a serious crime like murder. We have no doubt that in the present case, the Governing Body has misdirected and misguided itself in ignoring the considerations stated hereinabove.

(36) Accordingly we make the rule nisi absolute, and quash the decision of the governing body dated 30.1.1993 not to suspend the Respondent No. 5 and direct respondents 2 and 3 to suspend Respondent No.5 Dr. Balbir Singh pending the proceedings against him. In the circumstances of the case, there will be no order as to costs.