
(1992) 08 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3888 of 1991

Ashok Dhariwal

APPELLANT

Vs

University of Jodhpur

RESPONDENT

Date of Decision : 28-08-1992

Acts Referred:

Constitution of India, 1950 — Article 14
Penal Code, 1860 (IPC) — Section 302

Citation : (1992) 2 RLW 130 : (1992) 3 WLC 177 : (1992) 2 WLN 135

Hon'ble Judges : R.S. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Verma, J.—Petitioner was a permanent lecturer in Structural Engineering under University of Jodhpur-Services of the petitioner were terminated by the Registrar of Jodhpur University in pursuance of Ordinance 327(5) and a decision taken by the Syndicate of the University at its meeting held on 9th October, 1982. This was done by issuing order Annexure 9 dated 23.11.1982. By this writ petition the petitioner assails the legality and validity of Annexure 9 and contends that termination of his service is bad in law and Annexure 9 may be quashed and respondent University be directed to reinstate him with all consequential benefits.

2. The writ petition is opposed by the respondent who contends that petitioner remained wilfully absent from duty for a sufficiently long period; he did not join duty inspite of having been called upon to do so; it was the petitioner who had brought the contract of service to an end; the order Ex. 9 was only a formal way of putting seal of approval on such conduct of the petitioner and hence petitioner's termination of service was lawful and valid.

3. Here, I may briefly indicate some salient features of the case which are not in dispute. A case u/s 302 IPC was registered against the petitioner and certain other persons in Police Station, Mahamandir, Jodhpur and the police was trying to

arrest the petitioner, as would be evident from Ex. 12 placed by the petitioner on record. However, the petitioner could not be arrested for quite some time. Since the petitioner was a lecturer under the University, he submitted an application for grant of casual leave from 20.2.82 to 28.2.82.

4. It appears that petitioner moved applications from time to time for extension of the leave but the same were not granted. The case of the petitioner is that he had been keeping ill and was at Bombay in connection with treatment and he could not attend to his duties for the period 20.2.82 to 12.12.82.

5. It appears that in the meanwhile, University of Jodhpur issued a press release Annexure 3 asking the petitioner to resume duty within a period of 15 days otherwise proceedings would be taken against him. The petitioner appears to have sent reply to this press release through his Advocate vide Ex. 4. Thereafter, the University issued another notice by way of a press release dated 13.10.82 whereby the petitioner was called upon to report on duty by 20.11.82 failing which his services shall be terminated. Petitioner again appears to have replied to this notice by letter Annexure 7 and requested the University to extend his leave further. This met a dead end and the University terminated his services by issuing order Annexure 3.

6. The principal contention of Shri M. Mridul is that services of the petitioner could not have been terminated without taking necessary disciplinary proceedings. Since no proceedings were taken against the petitioner as per law, the order terminating services is bad. In this regard, he has drawn my attention to the provisions of ordinance 327(5) as also to the provisions of Appendix B issued under ordinance 320. A brief reference to the relevant provisions would be in order at this juncture. Clause 7 and 8 of this appendix read as follows:

7. The teacher may at any time terminate his/ her engagement by giving the Syndicate three months' notice in writing or by payment of an amount equal to three months' salary in lieu of the notice. Provided that the V.C. may waive the requirement of notice for its full period or part thereof.

8. The engagement of and the penalties to be imposed on the teacher shall not be determined except in the manner provided hereinafter in the Schedule II.

7. Relevant provisions of Schedule II are contained in Clause 3 which reads as follows:

3. Suspension and Termination

The Syndicate shall be entitled to suspend and/or determine the engagement of the teacher on grounds of grave misconduct and/or persistent negligence of duty, in the manner hereinafter provided:

Procedure for imposing Suspension/Termination

The Syndicate shall cause an investigation of all matters reported to it by the v.C. about the grave misconduct and/or persistent negligence of duty of the teacher

whether suspended or not. The investigation shall be done by a Committee comprising of; Two members of teaching staff nominated by the Syndicate, One non teacher member of the Senate nominated by the Syndicate. Provided that name of the persons so appointed shall be members of the Syndicate.

The Syndicate shall nominate one of teacher members to be the Chairman of the Committee.

(a) The v.C. shall frame definite charges on the basis of the allegations, on which the inquiry is proposed to be held. Such charges together with a statement of allegations on which they are based, shall be communicated to the teacher in writing and he shall be required to submit to the Committee within one month, a written statement of explanation or defence, if any, he has to offer.

(b) The teacher shall, for the purpose of preparing his/her defence, be permitted to inspect and take extracts from such official record, as he/she may deem fit provided that the Committee may refuse such permission for reasons recorded in writing, when such records refer to confidential work pertaining to examination.

(c) On receipt of the written statement, or if no such statement is received within the time specified, the Committee, itself, shall on a date notified to the teacher, at least a week in advance, meet to inquire into the charges.

(d) The teacher shall for the purpose of his defence, be entitled to present his/her case to the Committee in person, or be represented by a full time teacher of the University.

(e) The Committee shall in the course of inquiry, consider such documentary evidence and take such oral evidence as may be considered relevant by it, and shall consider such evidence; documentary and/or oral as is deemed necessary by the teacher. The teacher or his/her representative appearing in person, shall be entitled to cross examine and present such witnesses as are relevant for his/her defence.

(f) At the conclusion of the inquiry the Committee shall prepare a report of the inquiry recording its findings on each of the charges together with reasons thereof; and submit it to the Syndicate.

The record of the inquiry shall include;

The charges framed against the teacher and the statement of allegations furnished to him/her under (a) above his/her written statement of defence, if any.

The oral and documentary evidence taken in the course of the inquiry.

Findings of the Committee, with reasons thereof

(g) If the Syndicate, having regard to the findings of the Committee is of the opinion that the engagement of the teacher should be terminated, it shall furnish to the teacher a copy of the complete report of the Committee and a statement of its own findings together with brief reasons for disagreement, if any, and give

him/her a notice stating the penalty proposed to be imposed on him/her and calling upon him to submit within a specified time not less than three weeks, such representation he/she deems fit; and also on the request of the teacher give him/her representative, who should be a teacher of the University, an opportunity to represent his/her case in person before the Syndicate.

(h) The termination of the engagement under these provisions, shall not, save as aforesaid, be determined by the Syndicate except by a resolution passed by a vote of not less than a two-thirds majority of the members present at the meeting, provided that the two-thirds majority is not less than a half of the total membership of the Syndicate.

(i) Notwithstanding anything stated above, the period of suspension of a teacher shall not exceed six months, at the end of which, he shall be deemed to have been reinstated. During the period of suspension, the teacher shall be entitled to 50% of his basic pay plus such dearness allowance as is admissible on that amount.

(j) Where termination is after suspension, the termination may be from the date of suspension, if the Syndicate so directs.

8. Learned Counsel for the respondents was at pains to contend that petitioner by remaining absent had abandoned his employment and thus unilaterally put an end to his service. The contention though plausible at first flush does not stand a close scrutiny and is devoid of substance. To abandon means "to give up", to relinquish. It is an intentional act with a view to give up one's rights. In the present case, the petitioner had been moving application after application for grant of leave on the ground of alleged illness. When the respondent issued Annexure 3, he immediately protested by sending notice Ex. 4. When the respondent issued press release dated 13.10.82, he countered the same by issuing Annexure 7. In these circumstances the contention of the respondent that petitioner should be deemed to have abandoned his employment does not appear to be justified. Actually, the contention deserves to be noticed only for the sake of rejection and is wholly without substance. I may varily concede that abandonment can both be explicit as also by implication. In the present case, there is neither express abandonment of employment nor circumstances warrant an inference that petitioner had abandoned his employment. An express abandonment could have been made in accordance with Clause 7 of Schedule I reproduced above. There is nothing available on record to show that there was express or implied abandonment of employment.

9. Now, I may deal with the contention of the petitioner's learned Counsel that termination of the services of the petitioner amounted to infliction of a grave and serious penalty, rather the extremest penalty and the same could not have been inflicted otherwise than by following the procedure detailed in Clause 3 of the Schedule II. A bare reading of Clause 3 of Schedule II goes to show that it lays down a complete code where determination of employment is sought on the

grounds of grave misconduct and/or persistent negligence of duty. This clause lays down in details the various steps required to be taken before employment of a teacher can be determined. The first step in this regard is that the v.C. should report the matter to the Syndicate. Upon such report, the Syndicate is empowered to get the matter investigated into. The investigation has to be done by a Committee comprising of two members of teaching staff nominated by the Syndicate and one non-teacher member of the Senate nominated by the Syndicate. The Syndicate is required to nominate one of the teacher members to be Chairman of the Committee.

10. The v.C. is required to frame definite charges on the basis of allegations on which the enquiry is proposed to be held. Such charges together with a statement of allegations are required to be communicated to the teacher in writing and he is required to submit to the Committee within one month a statement of explanation of defence, if any, he has to offer. For purposes of defence the teacher has been given a right to inspect and to take extracts from relevant documents. The further and the most crucial requirement is that on receipt of the written statement of defence, or if no such written statement of defence is received within the time specified, the Committee itself shall on a date notified to the teacher, at least a week in advance, meet to enquiry into the charges. The teacher may himself or through the assistance of another full time teacher may conduct his defence. The Committee is empowered to receive both oral and documentary evidence in support of the prosecution as also defence and the delinquent teacher may cross examine witnesses of prosecution. At the conclusion of the enquiry, the Committee shall prepare a report of enquiry recording its finding on each of the charges together with reasons thereof and submit it to the Syndicate. Then comes another salutary provision. In case the Syndicate is of the opinion that the engagement of the teacher should be terminated, it shall furnish to the teacher a copy of the complete report of the Committee and a statement of its findings and give the teacher a notice stating the penalty proposed to be inflicted calling upon the teacher to submit within a specified time not less than three weeks, such representation he/she deems fit; and also on the request of the teacher give him/her or his/her representative an opportunity to represent his/her case in person before the Syndicate. It is after such an elaborate enquiry that the Syndicate may terminate the engagement of a teacher in the prescribed manner. A summary of the procedure laid down clearly shows that it is an elaborate Code in itself. In the present case admittedly this procedure was not at all followed and to my mind this has wholly vitiated the termination order. To my mind the various provisions pertaining to enquiry were mandatory and non-observance of the various provisions goes to the root of the matter.

11. Learned Counsel for the respondent made an impassioned plea that the petitioner was keeping himself absent wilfully and was not available and hence no purpose would have been served by issuing notice to him with a view to conduct enquiry and this absolved the University from adopting the detailed

procedure laid down for conducting the enquiry. I find little merit in the contention. The respondent University chose to issue notice Ex. 3 by way of a press release and the petitioner made a reply thereto by post. The respondent University similarly by another press release issued another notice dated 13.10.82 and this too had been replied to by the petitioner. Hence, the University could have issued the charges and the statement thereof to the petitioner by a similar press release and otherwise and if the petitioner would have failed to submit his written statement of his defence, it would have been at his peril. There was nothing to prevent the Syndicate of the University from constituting a Committee to enquire into the charges. Such a Committee could have, as required by Clause (c), intimated to the petitioner by a similar press release or otherwise the date fixed for enquiry and again it would have been at his own peril for the petitioner to appear or not to face the enquiry. Then the Committee could have proceeded to make an enquiry into the alleged charge of wilful absence from duty, ex-parte or otherwise and the petitioner could have no cause for complaint or grievance. After receipt of the report of the enquiry, the Syndicate could have again issued notice to the petitioner as required by Clause (g) by similar press release or other wise. If all this would have been done, the petitioner could not have complained that mandatory procedure for enquiry had not been followed and petitioner had been deprived of an opportunity of making a proper defence. In my opinion, mere alleged wilful absence did not absolve the respondent University from following the procedure laid down for holding enquiry.

12. Learned Counsel for the respondent time and again made a very impassioned plea that when the petitioner was absent from duty, enquiry could not have been proceeded with for charges of such wilful absence from duty. Really, the argument is an argument of desperation and amounts to begging the question. It is an argument in the nature of *petitio principii*. Here, I may notice that wilful absence from duty has always been considered a serious charge by the courts and it has been held in a catena of rulings that this charge deserved to be enquired into like any other serious charge and no dismissal or removal could have been made upon such a charge without enquiring into it. In *Jai Shanker Vs. State of Rajasthan*, , the regulation provided that if an employee overstayed the sanctioned leave, there shall be automatic termination without an enquiry. Hence, no enquiry was made into the charge of overstay of leave and services were dispensed with, without making an enquiry. The apex Court held that notwithstanding such a provision, an enquiry was called for and services could not have been terminated without making an enquiry. It was held that the delinquent was entitled to an opportunity of making a defence. In *Deokinandan Prasad Vs. The State of Bihar and Others*, , there was an absence from duty for a period of five years. The rule prescribed automatic termination for such absence, yet it was held that an enquiry into the charge was mandatory and an order of termination without giving opportunity of hearing to the employee was bad. A similar situation obtained in *the State of Assam v. Akshay Kumar* 1975 (2) SLR 430 and following *Jai Shanker's* case (*supra*), a view was taken that even though

there was absence from duty for more than five years, services could not have been terminated without holding a proper enquiry. In Dayal Saran Sanan Vs. Union of India (UOI) and Others, , the petitioner was on verge of retirement. He was transferred but he refused to comply and absented from duty by writing that he may be retired from certain date. The concerned authority without enquiring into the charge of wilful absence from duty struck off his name from the strength and informed the petitioner that he ceased to hold his lien on the job. The petitioner challenged this order on the ground that there was no enquiry for the charge and he could not be punished. The apex Court upheld the contention and set aside the order of forfeiture of service. In Karan Singh and Others Vs. The Union of India (UOI) and Another, the charge against the petitioners was that they participated in an illegal strike by absenting themselves and this wiped away their services automatically. It was held that notwithstanding such a provision, it was incumbent upon the respondents to have given a notice to the petitioners before passing the impugned order and since such an opportunity had not been given, the order forfeiting past service was bad. In All India Loco Running Staff Association v. Union of India 1985 RLR 297, the petitioners did not attend to duty and their services were forfeited without making any enquiry and without giving them any opportunity of hearing. It was held that the order was bad. A similar view in similar circumstances was taken in Shiv Shankar v. Union of India 1985 (2) SCC 31. Rulings can be multiplied on this score and learned Counsel for the petitioner cited many but I need not encumber this judgment by citing all such rulings because I am clearly of the view that in the present case, termination of the services of the petitioner without following the mandatory rules in this behalf was bad in law and could not be sustained, being wholly illegal.

13. I may here state that the learned Counsel for the respondent raised a contention that even though Annexure 9 purports to be an order for termination of service of the petitioner and further purports to have been passed under ordinance 327 (5), it was not such an order and it merely formalised the abandonment of the employment by the petitioner. To appreciate the argument, I may reproduce Annexure 9 in extenso. It reads thus:

University of Jodhpur (Establishment Section) No. JDR:U: ESTT November 1982 Office Order The services of Shri Ashok Dhariwal, Assistant Professor in Civil Engineering Department, who has been wilfully absenting from his duties without leave having been sanctioned to him since 20th February, 1982 and who has failed to join his duties by 10th November, 1982 inspite of the press notification issued to this effect on 13.10.1982, are hereby terminated with immediate effect.

This is in pursuance of Order 327 (5) and the decision taken by the Syndicate at its meeting held on 9th October, 1982 vide Resolution No. 73.

Sd/- REG1STRAR No. JRD : U : ESTT; 28676 November 13, 1982. Copy to:

1. The Dean, Faculty of Engineering 2. The Head, Department of Civil Engineering 3. The Finance Officer 4. Shri Ashok Dhariwal s/o Shri Kamal Dhariwal c/o Ghanchiyon-ka-Bas, Mahamandir, Jodhpur. 5. Personal File 6. Item for Syndicate. Sd/- Deputy Registrar (Estt)

A bare reading of Annexure 9 goes to show that the contention, to say the least, is wholly perverse and can not be countenanced. I have already held that the alleged theory of abandonment of employment by petitioner is inconsistent with the circumstances of the case in as much as the petitioner was moving application after application for grant of leave. This circumstance goes ill with the plea of abandonment of employment and has to be rejected.

14. Learned Counsel for respondent contended that by issuing Ex. 3 and press released dated 13.10.82 respondent has substantially complied with the principles of natural justice and the petitioner should not be permitted to urge that a proper enquiry was not made. In my opinion Ex. 3 and press release of 13.10.82 could not be a valid substitute for the definite charges to be served on the petitioner as required by Clause (a) of appendix B or for that matter a valid substitute for notice for making a defence as required by clause or for an enquiry contemplated by Clause (c) of the appendix. Nor could these two documents be a valid substitute for the report of enquiry to be supplied to the petitioner hy virtue of Clause (g) or a valid substitute for a notice to be given under the same clause by the Syndicate. An almost similar situation arose in Dinesh Chandra Sharma v. Stale of Raj. and Ors. 1990 (2) RLR 714. The contention was that notices R-6 and R-7 should be deemed to have complied with the provisions of Rule 16 of the Rajasthan Civil Services (Classification, Appeal and Control) Rules. The contention was negatived. I am clearly of the opinion that in the present case, the two documents referred to above did not substantially or otherwise comply with the requirements of the various clauses of Appendix B which were mandatory.

15. I may here state that the respondent was entitled to make an exparte enquiry in accordance with the various clauses of the appendix B if the petitioner chose not to participate in such an enquiry and then the action of the respondent would have been wholly unassailable. A Division Bench ruling of this Court is Shyam Sunder Sharma v. Union of India 1964 RLW 613 is a direct authority for the proposition. Learned Counsel for the respondent submitted that the then counsel for the respondent had opined that no enquiry was required in the circumstances of the case and an enquiry could not have served any useful purpose. In my opinion, if the respondent acted on such an erroneous advice and did not hold any enquiry in the matter, then they must thank themselves and their learned the then advocate who tendered such an opinion.

16. Learned Counsel for respondent then relied upon Haripada Moitra Vs. President, Calcutta Improvement Tribunal, and Ram Shubbag Ram v. Deputy Superintendent of Police 1966 (12) FLR 49 to say that no useful purpose could have been served by making an enquiry into the charge if wilful absence from

duty when it was apparent that petitioner had failed to join duty inspite of notice served on him. I have carefully gone through both the rulings and I find that these rulings do not assist respondent in any manner. In the Calcutta case a regular disciplinary enquiry was being held and the employee deliberately did not participate in the enquiry on the basis of advice tendered to him. It was in these circumstances that such conduct went against the plea that he had no opportunity to defend himself. The ruling has hardly any application to the facts of the case. I have already observed earlier that had the respondent held a proper enquiry and then the petitioner would have stayed away from such enquiry, it would have been at his own peril and then no blame could be put at the feet of the respondent. In the present case no enquiry whatever was made. In Allahabad case, the change of absence from duty was admitted after a proper charge sheet had been served. However, some pleas were taken which were held to be irrelevant. The Court also held that the pleas were irrelevant. Upon such view of the matter, the Court declined to interfere with the order of dismissal. I may state that in this case a specific charge had been made and the same had been admitted with certain extenuating pleas which were held to be irrelevant. It was in these circumstances and specially keeping in view the fact that delinquent official was a police employee and had committed an offence by over staying of leave, that the Court declined to intervene. The ruling has obviously no application to the facts of the present case.

17. Learned Counsel for the respondent then took the plea that petitioner's conduct in absenting himself from duty for a long period should disentitle him from seeking relief from this Court. It is really a matter to be enquired into if the absence was wilful. Now, the respondent without making an enquiry into the charge can not be permitted to say that petitioner wilfully absented from duty. It would be judging the issue even though the respondent chose not to enquire into the matter.

18. Shri L.M. Lodha, learned Counsel for the respondent urged that the relationship between the petitioner and the University is contractual and, therefore, the University of Jodhpur is not amenable to writ jurisdiction of the Court. As against this, Shri M. Mridul, learned Counsel for the petitioner submitted that University is an instrumentality of the State and illegal termination of services of the petitioner would fall within the jurisdiction of this Court. I have considered this matter carefully, In Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, the apex Court said:

It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of Governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. See Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, . In Col. A.S. Sangwan

v. Union of India 1981 SCC (L & S) 378 while the discretion to change the policy in exercise of the executive power, when not trammelled by the statute or rules, was held to be wide, it was emphasized as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone, irrespective of the field of activity of the State, has long been settled later

It is not too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.

...Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that "be you ever so high, the laws are above you. This is what men in power must remember always.

Conferment of the power together with the discretion which goes with it to enable proper exercise of the power is coupled with the duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred, which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual. All persons entrusted with any such power have to bear in mind its necessary concomitant which alone justifies conferment of power under the rule of law....

In our view, bringing the State activity, in contractual matters also within the purview of judicial review is inevitable and is a logical corollary to the stage already reached in the decisions of this Court so far. Having fortunately reached this point, we should not now turn back or take a turn in a different direction or merely stop there. In our opinion, two recent decisions in *Dwarkanadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, and *Mahabir Auto Stores JT 1990 (1) SC 363* also lead in the same, direction without saying so in clear terms. This appears to be also the trend of the recent English decisions. It is in consonance with our commitment to openness which implies scrutiny of every State action to provide an effective check against arbitrariness and abuse of power. We would much rather be wrong in saying so rather than be wrong in not saying so. Non-arbitrariness, being a necessary concomitant of rule of law, it is imperative that all actions of every public functionary, in whatever sphere, must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of all

power must be for public good instead of being an abuse of the power.

In view of the clear and categorical statement of law re-produced above, I am of the opinion that this Court can scan the illegal action of the respondent and the petitioner cannot be non-suited on the ground that the terms and conditions of the services of the petitioner were not expressed by way of statutory rules, but the same had been engrafted in the form of written agreement and he was required to sign a contract form. It cannot be gainsaid that every State action must be informed by reason and must not be arbitrary. The rule of law contemplates governance by laws. I have already discussed above, that the action of the University in not following the basic and elementary procedure prior to termination of services of the petitioner is unreasonable and arbitrary and is, therefore, amenable to the writ jurisdiction of this Court. The matter is covered squarely by a single Bench decision of this Court rendered in *Dr. G.K. Lohra v. The University of Jodhpur* and Anr. S.B. Civil Writ Petition No. 461/1983 decided on 27.3.1992 by brother Balia, J. I have read the judgment of my learned brother and I am in entire agreement with him. The illegal termination of services of the petitioner is very much amenable to the writ jurisdiction of this Court and the respondent cannot escape its liability by saying that relationship between the petitioner and the respondent was contractual and was not statutory. There is no dispute before me that termination of services of the petitioner was on account of alleged wilful absence from duty and such termination was brought about without affording an opportunity to the petitioner as envisaged by the University Handbook. The act was clearly in breach of elementary principles of natural justice also and, therefore, cannot be countenanced.

19. Here, I may mention that even though matter pertained to absence from duty in the year 1982 and the services were terminated on 13.11.1982, the writ was filed on 9.8.1991. It has been pointed out that a writ petition had, been filed earlier in 1983 (S.B. Civil Writ Petition No. 591 of 1983) but this Court declined to proceed with the same as the petitioner had been facing a criminal trial, reference to which has been made in para 3 of the judgment. In view of this fact, I find that there has been no delay by the petitioner in coming to this Court.

20. Learned Counsel for the respondent prayed that if the order of termination of the services of the petitioner is set aside, the respondent should now be permitted to hold an enquiry in the matter of wilful absence from duty. Shri M. Mridul seriously opposes the request and submits that petitioner had been ill from 22.2.82 to 5.1.83 when the petitioner surrendered himself before police. He was treated by different doctors at different Hospitals. Some of the doctors may have retired by now or may have left the hospitals concerned. If an enquiry is now allowed to be made, the petitioner would be seriously prejudiced in his defence and respondent should not be allowed to enquire into the matter now after almost a decade is over. This argument could not be controverted on behalf of the respondents. I find that in the circumstances of the case, it would be

unjust to petitioner to allow the respondent now to make an enquiry into the alleged absence from duty. However, one aspect of the case may be noticed. The petitioner claimed to be ill from 22.2.82 to 5.1.83. Thereafter, he was in custody till his eventual acquittal in the criminal case. Obviously, he was not available for teaching in the University for the period, he remained incarcerated. For this period, he cannot be entitled to any back wages on the principle "No work, no pay", like wise, if the petitioner has been under gainful employment, he would not be entitled to salary for such period. He would, of course, be entitled to grant of leave for such nature and for periods, as may be admissible to him for the period of absence from duty beginning with 22.2.82 to 5.1.83.

21. No other point was urged before me.

22. In the above premises, I accept the writ petition and set aside and quash the termination order dated 13th November, 1982 and direct that he be reinstated forthwith in continuity of past services with all consequential benefits except that he shall not be entitled to any salary for the period, he remained incarcerated during pendency of criminal case; further, he shall not be entitled to salary for the period, he remained gainfully employee, which fact the respondent may determine after making such enquiry as it deems proper, but after giving due opportunity of hearing to the petitioner on this aspect. Petitioner's applications for leave shall also be decided in accordance with Rules and in accordance with his entitlement. All this may be done expeditiously. His other arrears of salary, if any, may be paid to him within a period of three months from today. In the circumstances of the case, parties are left to bear their own costs.