

(2010) 10 AHC CK 0067

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29911 of 2009

Banarsi Tripathi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 32, 50
Criminal Procedure Code, 1973 (CrPC) — Section 164, 364, 49
National Commission for Backward Classes Act, 1993 — Section 10, 9, 9(1)
Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 — Section 2
Uttar Pradesh State Commission for Backward Classes Act, 1996 — Section 3, 9
Uttar Pradesh State Legislature (Delegation of Powers) Act, 1995 — Section 3
Uttar Pradesh State Universities Act, 1973 — Section 8(1)

Citation : (2011) 1 UPLBEC 390

Hon'ble Judges : Sunil Ambwani, J; Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Kashi Nath Pandey, J.—We have heard Sri Shailendra, learned Counsel for the petitioner. Learned standing counsel appears for the State respondents and Sri B.D. Madhyan, Senior Advocate, along with Smt. Sunita Agarwal and Sri Satish Madhyan appear for Deen Dayal Upadhyay University, Gorakhpur. Notices were directed to be issued to respondent No. 4 - State backward Class Commission and respondent No. 5 Dr. Devendra Patel. Office report dated 12.3.2010 indicates that notices were sent to respondent Nos. 4 and 5, on 2.2.2010; neither acknowledgement nor undelivered cover was received back. The service upon these respondents, under Chapter VIII Rule 12 of the Rules of the Court will be deemed to be sufficient.

2. The petitioner is a Professor in the Department of Sanskrit, Deen Dayal Upadhyay University, Gorakhpur (hereinafter referred to as "the University"). By this writ petition, he has challenged the order of the Executive Council of the University vide resolution dated 19.5.2009; the consequential order dated

24.05.2009, placing him under suspension; the decision of the U.P. State Backward Class Commission dated 23.12.2008, and the decision of the State Government dated 22.1.2009, implemented by the Executive Council of the University.

3. All the impugned actions have their origin in the appointment of honorarium teachers/part-time teachers in the Sanskrit Department of the University on stop gap arrangement. Where no regular appointment has been made, the University can make appointments, under the provisions of U.P. State Universities Act, 1973, on the recommendation of the Head of the Department. The Head of the Department can adopt any fair or reasonable procedure, as he may deem fit, to make recommendation for appointment of person qualified to be appointed as teachers on honorarium basis for a academic session to meet the requirement of the increased workload of teaching in the department.

4. In the academic sessions 2004-05; 2005-06 and 2006-07, the recommendations were made for appointment of teachers on honorarium, including respondent No. 5, Dr. Devendra Patel and were approved by the Vice Chancellor. For the session 2007-08, a recommendation of teachers was sent to the Vice Chancellor. On 22.1.2008, the Vice Chancellor asked the petitioner, to include the name Dr. Devendra Patel - respondent No. 5, and one more person. The petitioner in order to meet the increased workload of teaching in the department, included the names of these two persons in his recommendation. The Vice Chancellor approved the names of five persons, including the name of Dr. Devendra Patel vide his order dated 2.2.2008, to be appointed on stop gap arrangement till 31.3.2008.

5. In February 2008, only four teachers were working. Since approval of their appointment was received a little late, and the workload was reduced, it was decided that no further work will be taken from Dr. Devendra Patel.

6. Dr. Devendra Patel, made a complaint to the U.P. State Backward Class Commission (in short, the Commission), alleging that he was working continuously, but his salary bills were stopped by the petitioner, on account of prejudice shown towards him, as he belongs to a backward caste.

7. A notice was issued by the Commission to the University. The Registrar of the University submitted a reply on 21.8.2008 informing the Commission, that there were five vacant posts in Sanskrit Department. The Head of the Department recommended for taking teaching work from five persons for the session 2007-08 on honorarium basis. Out of these five, three persons in general category, and two persons in OBC category were approved for teaching work. The petitioner as the Head of the Department informed that since the work-load has reduced, and there is work available only for 72 periods, in addition, which can be performed by four teaches, and that since the four persons above Dr. Devendra Patel are more competent than him, no work be taken from Dr. Devendra Patel. The Head of the Department also did not find it proper to

forward his bills, to put financial burden on the University.

8. The Commission did not agree with the reply. It recorded a finding that Dr. Devendra Patel had worked upto July 2007 and Prof. Banarsi Tripathi (the petitioner) did not verify his bills after December 2007, on account of which, he was not paid salary. The Commission directed an FIR to be registered against Prof. Banarsi Tripathi (the petitioner); not to appoint him in any committee including Executive Council; to take disciplinary proceeding against him; a recommendation was also made by the Commission for payment of bills of Dr. Devendra Patel with interest, and the interest to be deducted, from out of the salary of the petitioner. The Commission also recommended that Dr. Devendra Patel should also be selected and appointed for the academic year 2008-09.

9. The State Government accepted the recommendation of the Commission dated 23.12.2008. By its letter dated 22.1.2009, it directed the Vice Chancellor of the University to lodge FIR against the petitioner; take disciplinary proceeding against him; not to appoint him as Head of the Department, member of the selection committee, member of any committee of the University and member of the Executive Council. The interest payable to Dr. Devendra Patel was directed to be deducted from the salary of the petitioner and Dr. Devendra Patel was directed to be appointed as honorary teacher for the current session 2008-09.

10. The Executive Council in its meeting dated 20.3.2009 considered the matter, and decided to constitute a committee to submit a report within 15 days. The committee included Sri Ganesh Prasad Pandey as Organizer of the committee and Dr. Devendra Pratap Singh, Prof. S. Yadav, and Dr. Gopal Prasad as its members.

11. The enquiry committee heard, Dr. Devendra Patel - respondent No. 5. It did not hear the petitioner, as he could not appear before the Committee. The petitioner, however, submitted his reply dated 28.3.2009, to the committee giving detailed facts in his defence, which he had also placed before the Commission.

12. In the meantime, the Government of U.P., vide letter dated 30.3.2009 directed the Commissioner, Gorakhpur Division, Gorakhpur to make enquiries into the complaints made by Sri Devendra Pratap Singh, Member, Executive Council and Sri Rampreet Jakhmi, Vice Chairman, U.P. Bodh Shodh Sansthan, Lucknow, and directed him to complete the enquiry on the complaint of Dr. Devendra Patel u/s 8(1) of the U.P. State Universities Act, 1973.

13. The enquiry committee, constituted by the Executive Council submitted its report in two parts. The three members of the Committee, namely Dr. Devendra Pratap Singh, Prof. S. Yadav, and Dr. Gopal Prasad submitted their report dated 2.4.2009, with the findings that the petitioner was not justified in refusing to allow Dr. Devendra Patel to take classes, and had incorrectly shown reduced workload, to deprive him from teaching work. They were of the opinion that the Backward Class Commission is a constitutional authority, and has powers of Civil

Court; it will thus be appropriate to accept the recommendation of the Commission.

14. Sri Ganesh Prasad Pandey, the Organizer of the enquiry committee, however, submitted his separate report dated 6.4.2009, exonerating the petitioner from the allegations and expressed his disagreement with the recommendation of the Commission. He considered the reply submitted by the petitioner, and found that there is no reservation in the appointment of teachers on honorarium. The appointment of honorary teachers is made strictly in accordance with merits. Prof. Banarsi Tripathi - the petitioner, was not a member of the selection committee. He was also not the Head of the Department from 20.6.2007 to 19.12.2007. During that period Dr. Ashab Ali was the Chairman of the Committee. Dr. Tripathi had not forwarded the names of five teachers for appointment on honorarium, nor the Vice Chancellor had approved it. The resolution for appointment was not available. There is only one recommendation dated 1.11.2007 on record in which the need for two teachers was shown, as by that time three permanent teachers were already appointed. The four teachers namely Dr. Rajesh Misra, Dr. Lasxmi Misra, Asha Dwivedi and Pramila Singh were working since 2003-04, and all of them were senior to Dr. Devendra Patel. Dr. Tripathi resumed work as head of department on 20.11.2007; and made recommendation of the above named four teachers, all senior to Dr. Devendra Patel. The recommendation was made keeping in view the reduced workload of teaching in the department. The admission to B.A. Part-I started in November 2007, and thus notice to start classes for B.A. Part-I from 5.12.2009, was given. The complaint of Dr. Devendra Patel that he had worked from July to November 2007, was incorrect. He had made false representation only to receive salary illegally from the Government account. Dr. Devendra Patel had shown that he had worked for 18 days in December 2007, whereas he could not have taken classes for 18 days upto 19th December 2007. There was no proof that Dr. Devendra Patel was made payment upto March 2008. Dr. Devendra Patel was not included in the recommendation dated 22.1.2008 and that his contention that his name was removed and that the name of Dr. Krishna Dubey was included, is also incorrect.

15. Sri Ganesh Prasad Pandey, the Organizer of the Enquiry Committee, further reported to the Executive Council that Dr. Devendra Patel could not explain, as to why he had submitted bill for honorarium for the month of January, February and March 2008, in advance on 16.1.2008. He was subsequently paid the amount in pursuance to the order of the Commission and the State Government dated 22.1.2009; after the present Head of the Department forwarded his bills on 3.3.2009. The Head of the Department has admitted that, in that period, only four teachers had worked. Dr. Tripathi (the petitioner) was the Head of the Department upto 2.7.2008. He did not forward the bills, of Dr. Devendra Patel, as he could not give any proof for teaching. No lecturer register was produced by him before the committee, as a proof of teaching. He had not worked from 20.12.2007 to March 2008, nor gave any application for payment for teaching

work during that period.

16. It was further reported by Sri Ganesh Prasad Pandey that Dr. Ashab Ali has also accepted that the workload was reduced. Dr. Pandey was further of the opinion that the Head of the Department is entitled to take decision on the workload, and the need of honorary teachers. There was no question of harassment or victimization of Dr. Devendra Patel.

17. In the meeting of the Executive Council dated 18.4.2009, the reports of the enquiry committee was discussed. The Executive Council decided that since separate and contradictory reports have been submitted by three Members and the Organiser of the Committee, legal opinion may be obtained in the matter before any action is taken.

18. An emergency meeting of the Executive Council was held on 19.5.2009, in which it was decided, to suspend the petitioner; lodge FIR against him; not to appoint him in any departmental committee/Executive Council and to pay salary to Dr. Devendra Patel for the bills submitted by him, and also to deduct interest, on such amount from the salary of the petitioner. It was also decided to appoint Dr. Devendra Patel from the next session on honorarium basis, giving rise to this writ petition.

19. On 17.6.2009, relying upon Judgment in Dr. Sushil Prakash Gupta v. Executive Council and Ors. 2000 (2) ESC 1387, the court stayed the suspension order. The stay application came up for hearing on 1.12.2009. By a reasoned order, the court directed that interim order will continue to operate, till further orders of this Court, and no recovery shall be made from the petitioner as directed by the Executive Council on 19.5.2009. The matter was directed to be listed for final hearing.

20. Learned Counsels for the petitioner, the University and the Standing Counsel, have addressed us on the questions as to whether, recommendation of the Commission accepted by the State Government can be a ground to suspend a confirmed Professor, serving as Head of the Department in the University, and further whether the State Government can accept recommendation of the Commission to deny appointment of a confirmed Professor/Head of the Department in any departmental committee, or as Member of the Executive Council, and to recover interest of the wages of the complainant, from his salary.

21. We are also required to consider in this case whether the Commission can entertain complaints sent to it by individuals, for oppression and victimization and to make recommendation for appointment of a honorarium teacher and to pay his salary on the ground that his bills were not verified and forwarded for payment, and to appoint him for the next session.

22. Before reviewing the powers and jurisdiction of the State Backward Class Commission, we find it appropriate to consider and decide the extent of powers of the Executive Council to suspend a confirmed teacher of the University.

23. In Dr. Sushil Prakash Gupta (Supra), a Division bench of this Court reiterated the legal position that where powers have been conferred to be exercised in a particular manner, the statutory authority must exercise the powers in the same manner. The Division Bench relied upon a Judgment of the Supreme Court in Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, the Supreme Court held as follows:

25. A century ago, in Taylor v. Taylor (1875) 1 Ch D 426 Jessel M. R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council, in AIR 1936 253 (Privy Council) and later by this Court in several cases, Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, Deep Chand Vs. The State of Rajasthan, to a Magistrate making a record under Sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies "where indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other. Maxwell's Interpretation of Statutes, 11th Edn.pp.362-363."The rule will be attracted with full force in the present case, because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the legislature to prohibit the verification of the surrender in a manner other than the one prescribed is implied in these provisions. Failure to comply with these mandatory provisions, therefore had vitiated the surrender and rendered it non est for the purpose of S. 5 (3) (b).

24. The Statutes 8.10 of the First Statutes of the University of Gorakhpur provides for a Standing Disciplinary Committee. Statute 8.10 and Statute 8.11 of the First Statutes of the University of Gorakhpur, 1997 are quoted hereunder:

8.10. (1) The Executive Council shall constitute, for such term as it thinks fit, a Disciplinary Committee in the University which shall consist of the Vice-Chancellor and two other persons nominated by it.(Section 49).

Provided that if the Executive Council considers it expedient, it may constitute more than one such Committees to consider different cases or classes of cases.

(2) No teacher against whom any case involving disciplinary action is pending shall serve as a member of the Disciplinary Committee dealing with the case.

(3) The Executive Council may at any stage transfer any case from one Disciplinary Committee to another Disciplinary Committee.

8.11 (1) The functions of the Disciplinary Committee shall be as follows: (Section 49)

(a) to decide any appeal preferred by an employee of the University under Statute 2.07:

(b) to hold inquiry into cases involving disciplinary action against a teacher or the Librarian of the University:

(c) to recommend suspension of any employee referred to in sub- Clause (b) above pending or in contemplation of inquiry against such employee:

(d) to exercise such other powers and perform such other functions as may, from time to time, be entrusted to it by the Executive Council.

(2) in case of difference of opinion among members of the Committee, the decision of the majority shall prevail.

(3) The decision or the report of the Disciplinary Committee shall be laid before the Executive Council as early as possible, to enable the Executive Council to take its decision in the matter.

25. Under Statute 16.07 of the First Statute of the University, the Disciplinary Committee, referred to in Statute 8.10 may recommend the suspension of a teacher during the pendency or in contemplation of an inquiry into charges against him, on the grounds mentioned in sub Clauses (a) to (e) of Clause (1) of Statute 16.04. The order of suspension, if passed in contemplation of an enquiry shall cease at the end of four weeks of its operation unless the teacher has in the meantime been communicated of the charge or charges on which the inquiry is contemplated.

26. In *Ramesh Chandra and Others Vs. Vice Chancellor, University of Allahabad and Others*, the facts of the case were different. Some employees of the Institute of Correspondence and Continuing Education of the Allahabad University, entered into the office of the Registrar of the University. They abused and threatened him, lifted a chair and threw it on him. They also physically assaulted him; broke the telephone; furnitures and glass top of the table. Some persons who intervened were also assaulted. The Registrar lodged a written report with the police. In an emergent meeting of the Executive Council of the University held on 7.12.1999, the report of the Registrar was considered and taking into account the seriousness of the incident, a resolution was passed to place 11 employees involved in the incident, under suspension with immediate effect. The Executive Council also authorized the Vice Chancellor to appoint an officer to hold an inquiry and to take appropriate action against the persons, found guilty. In the backdrop, a Division Bench of this Court in its decision dated 20.12.2001 in *Ramesh Chandra and Ors. (Supra)* held in para 17 as follows:

17. Sri R.N. Singh has next submitted that rules laid down in *Taylor v. Taylor* 1836 LCHD 426 , that where a power is given to do a certain thing in a certain way. the thing must be done in that way or not at all and other methods of performance are necessarily forbidden has been accepted in *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*, and several other decisions of the Apex Court. Therefore, in view of Statute 2.06 (2), the order of suspension should have been passed by the Registrar. We have already

explained the correct meaning of the Statute in the earlier part of the judgment. The Statute does not say that the order of suspension with regard to the employees falling within the disciplinary control of the Registrar under Clause (1) of Statute 2.06 must necessarily be passed by the Registrar himself and not by any one else. The Statutes clearly show that such a power can also be exercised by Disciplinary Committee and Executive Council. It may be pointed out that a similar contention has been considered in para 10 of the reports in Sampuran Singh Vs. State of Punjab, which has been reproduced in the earlier part of the judgment and was not accepted by the Apex Court.

27. The decisions of this Court in Dr. Sushil Prakash Gupta (Supra) and Ramesh Chandra and Ors. (supra) were given in respect of different class of employee of the University. The decision in Dr. Sushil Prakash Gupta relates to a teacher, to which Statute 16.07 read with Statue 8.10 is applicable, whereas the decision in the case of Ramesh Chandra (Supra) was in respect of employees of the University for which Statute 2.06, giving disciplinary powers to the Registrar was applicable.

28. In the present case, the Executive Council has not referred the matter to the disciplinary committee. The Executive Council constituted an enquiry committee of which the members and the Organizer, have given contradictory reports. The Executive Council thereafter sought legal opinion, and has suspended the petitioner. Since the matter was not referred to the disciplinary committee, and no charge sheet has been served upon the petitioner, though a decision to that effect was taken in the same resolution of the Executive Council dated 19.5.2009, to take disciplinary action against the petitioner, the decision of the Executive Council to suspend the petitioner, suffers from incurable error of law and cannot be sustained.

29. It is submitted by learned Counsel for the petitioner that the U.P. State Commission for Backward Classes is established under the U.P. State Commission for Backward Classes Act, 1996, made in exercise of powers conferred by Section 3 of the Uttar Pradesh State Legislature (Delegation of Powers) Act, 1995 by the State Legislature to the President. The Commission does not have authority to entertain individual complaints, to make recommendations, and issue directions in respect of redressing individual grievances of the members of backward classes, and to recommend for punishment against confirmed employees of the University.

30. In order to appreciate the submission, it is necessary to examine the constitutional scheme of establishment of the Commission for Backward Classes and the state legislation.

31. Appendix V, to the Constitution of India, includes the National Commission for Backward Classes Act, 1993 (Act 27 of 1993) w.e.f. 2.4.1993. The Act provides for establishment of a National Commission for Backward Classes other than the Scheduled Castes and the Scheduled Tribes, and to provide for matters

connected therewith or incidental thereto. The functions and powers of the Commission have been provided u/s 9 of the Act as follows:

Chapter III Functions and Powers of the Commission

9. (1) The Commission shall examine requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the Central Government as it deems appropriate.

(2) The advice of the Commission shall ordinarily be binding upon the Central Government.

32. The National Commission has all the powers, u/s 10 of the Act 27 of 1993, while performing its functions under Sub-section (1) of Section 9, of a civil court trying a suit and in particular, in respect of the matter of summoning and enforcing the attendance of any person from any part of India and examining him on oath; requiring the discovery and production of any document; receiving evidence on affidavits; requisitioning any public record or copy thereof from any court or office; issuing commissions for the examination of witnesses and documents; and any other matter which may be prescribed.

33. The Legislature of the State of U.P., authorized the President of India, in exercise of the powers conferred on to it vide Section 3 of the Uttar Pradesh State Legislature (delegation of Powers) Act, 1995, to enact the U.P. State Commission for Backward Classes Act, 1996, to constitute a Commission for the State of Uttar Pradesh for Backward Classes other than the Scheduled Castes and the Scheduled Tribes, and to provide for matters connected therewith or incidental thereto.

34. Section 9 of the State Act gives to the State Commission, wider powers as compared to powers by Section 9 of the Central Act to the National Commission. Section 9 of the State Act provides as follows:

Chapter III Functions and Powers of the Commission

9. Functions of the Commission - (1) The Commission shall perform all or any of the following functions, namely -

(a) the Commission shall examine requests for inclusion of any class of citizens as a Backward Class in the Schedule and hear complaints of wrong inclusion or non-inclusion of any Backward Class in the Schedule and tender such advice to the State Government as it deems appropriate;

(b) to investigate and monitor all matters relating to the safeguards provided for the Backward Classes under any law for the time being in force or under any order of the State Government and to evaluate the working of such safeguards;

(c) to enquire into specific complaints with respect to the deprivation of rights and safeguards of the backward Classes;

(d) to participate and advise on the planning process of socio-economic development of the backward Classes and to evaluate the progress of their development

(e) to present to the State Government annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards

(f) to make in such reports recommendations, as to the measures that should be taken by the State government or the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the backward Classes; and

(g) to discharge such other function in relation to the protection, welfare, development and advancement of the backward Classes as may be referred to it by the State Government.

(2) The State Government shall cause the reports of the Commission to be laid before each House of the State Legislature along with it memorandum explaining the action taken or proposed to be taken on the recommendations and the reason for the non-acceptance, if any, of any such recommendations.

35. Section 10 of the State Act, is pari materia with Section 10 of the Central Act with regard to powers of the Commission of a Civil Court, while performing the functions assigned to it under Sections 9(1) of the State Act.

36. Section 9(1)(a) of the State Act is couched in the same language as Section 9(1) of the Central Act, except that the word "wrong inclusion" in place of "over-inclusion". The word more or less carry the same meaning. The State Act provides for further powers to the Commission u/s 9(1) (b), (c), (d), (e) and (f). The Commission may also discharge such other function under Clause (g) in relation to protection, welfare, development and advancement of the Backward Classes as may be referred to it by the State Government. Sub-clause (b) provide for investigation and monitoring of all matters relating to safeguards provided for backward class under any law for the time being enforced or under the orders of the State Government. Sub-clause (c) provides for enquiry into specified complaints with respect to deprivation of rights and safeguards of the backward classes. Both these sub-clauses provide for class action in respect of safeguards provided for backwardness under any law and in respect of deprivation of their rights. The investigation and enquiry referred to in the sub-clauses are not provided to be made in respect of any complaint relating to enforcement of the rights of any individual. The word "backward classes" has to be read in the context of the complaints of deprivation of rights and safeguards of group of persons. The Commission can inquire into violation of their rights, and submit its report to the State Government, which shall cause the report to be laid before each house of the State Legislature along with a memorandum explaining action taken or proposed to be taken and the reasons for the non-acceptance, if any of any such recommendation. The powers enumerated in Section 9(1) are not to be exercised in respect of complaints of any individuals

regarding enforcement of their rights. The deprivation of the rights and safeguards of backward classes do not include an individual complaint of enforcement of any right, and would certainly not include a recommendation or direction to the Court to give payment of salary, appointment, to lodge first information report against any person or to punish a person. It would definitely not include a direction not to appoint a person as Head of the Department or a members of any statutory committee.

37. The Backward Classes are defined in Section 2(a) of the State Act as follows:

(a) "Backward Classes" means such classes of citizens as are defined in Clause (b) of Section 2 of the Uttar Pradesh Public Services Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994 as amended from time to time.

38. The object and purpose of establishing the Backward Classes Commission at the Centre and in the State is to examine the requests for inclusion of any class of citizens as a backward class in the lists, and hear complaints of over-inclusion or under-inclusion of any backward class in such lists, and tender such advice to the Government as it deems appropriate. The State Act has extended the functions of State Commission to investigate and monitor all the matters relating to the safeguards provided for the Backward Classes under any law or under any order of the State Government, and to evaluate the working of such safeguards. Section 9 of the State Act further provides to enquire into specific complaints with respect to the deprivation of rights and safeguards of the Backward Classes, to participate and advise on the planning process of socio-economic development of the Backward Classes and to evaluate the progress of their development. The State Commission is also empowered to present to the State Government annually upon the working of those safeguards. The functions enumerated under sub Clauses (f) and (g) of Section 9 of the State Act include the powers to make such reports and recommendations, as to the measures that should be taken by the State Government or the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Backward Classes, and to discharge such other function in relation to the protection, welfare, development and advancement of the Backward Classes as may be referred to it by the State Government.

39. The individuals belonging to Backward Classes like all other citizens of the country have the rights, under various statutes and also under Article 226 and a fundamental right under Article 32 of the Constitution of India to raise their grievances and to seek relief from Courts.

40. When the statute includes an explicit function, we must follow and understand that function in the same light and purpose. These functions are restricted to the enumerated functions with the conditions that the Commission shall perform all or any of the functions. The doctrine of "noscitur a sociis", used to interpret statutes provides that, an ambiguous term may be given more

precise content by the neighboring words with which it is associated, can be used here to interpret the scope and content of functions of the Commission u/s 9(1) (c). All the functions under Sub-sections (1)(a), (b), and (d) to (g), are class actions. Section 9(1)(c), also talks of rights and safeguard of backward classes, and not of an individual belonging to backward class. The Commission, in our considered opinion therefore, does not have power to investigate, monitor or advise the State Government in respect of any functions other than the functions enumerated in Section 9. Basically the functions of the Central Commission and State Commission is to look into the wrong inclusion or non-inclusion of any Backward Class in the Schedule, and such class action relating to the Backward Classes, which are necessary for protecting their rights given under any law, for their protection, welfare and socio-economic development. The individual complaints regarding non fulfillment of any right guaranteed under Constitution by any law are required to be investigated and redressed in accordance with the process prescribed for adjudication by the courts of law and not by the Commission.

41. The Commission for the purpose of dealing with the complaints, is not a Court or Tribunal, to adjudicate such complaints. The powers of the Commission u/s 10 of the Act or in respect of investigation and enquiry into a class action, is for the purpose of recommendation, and not for deciding any issue brought before it. The Commission has not been established to substitute the courts of law nor can be clothed with powers of imposing penalties and punishment, separated and given to courts under Article 50 of the Constitution of India.

42. The service conditions of the government servants, employees of any Corporations, Government Societies, Public Sector Undertakings, Local Bodies, or Universities are governed by statutory rules, regulations, statutes, ordinances and government orders. The State Commission is not empowered and authorised to direct any action to be taken against any employee, on the pretext of oppression, victimization, or protection of the rights of persons of Backward Classes. Any such recommendation will be wholly illegal and will be overreaching the jurisdiction conferred on the Commission. The State Government in such case will act beyond its executive powers and duties to recommend action against individuals.

43. This Court has held in the matter of individual complaint, like in the present case, that the State Commission does not have power to issue directions violating statutory service conditions and directing exercise of discretionary powers by the executive authorities against their employees. In *Mata Deen v. State of U.P. and Ors.* 2005 (6) AWC 5249, a learned Single Judge has held that the Commission has no power to interfere in the service conditions relating to a Government servant nor has any power to issue any directions to the District Magistrate for the reinstatement of a Government employee.

44. In the present case, the State Commission enquired into an individual complaint of Dr. Devendra Patel and recommended to the State Government for

registering an FIR against Prof. Banarsi Tripathi (the petitioner), to take disciplinary proceeding against him, not to allow him to function as Head of the Department in the University, not to make him as member of any committee including Executive Council, to pay the bills of Dr. Devendra Patel with interest, of which interest was to deducted from the salary of the petitioner, and also to appoint Dr. Devendra Patel as honorary teacher for the session 2008-09. We are of the opinion that all these directions given by the State Commission are beyond the scope of the functions of the Commission u/s 9 of the State Act. The Commission has no authority to direct FIR to be registered against a person, to punish him by directing that he should not be appointed as Head of the Department or member of any committee of the University and to recover interest of salary of the complaint from his pay. The Commission also did not have jurisdiction to direct or to even to recommend appointment of Dr. Devendra Patel. All the directions of the Commission are beyond the jurisdiction entrusted to it and are liable to be set aside. The Commission has not been entrusted with any adjudicatory power, or the power to initiate or to recommend disciplinary action and to punish any employee of the University.

45. The writ petition is allowed. The resolution of the Executive Council dated 19.5.2009, and consequential order dated 24.5.2009 of suspension are set aside. We also set aside the entire enquiry proceedings initiated in pursuance to the recommendation of the State Backward Class Commission, and consequential directions of the State Government. The recommendation of the State Backward Class Commission dated 23.12.2008 and the order of the State Government dated 22.1.2009, are set aside. The direction of the State Government to lodge a report with the police dated 22.1.2009, and the compliance made by Officiating Registrar of the University dated 25.5.2009, addressed to Incharge Police Station Cantt. Gorakhpur shall not be acted upon. The petitioner will be entitled to the cost of Rs. 10,000/- (ten thousand) each from the State Government and the University.