

(1965) 04 PAT CK 0006

In the Patna High Court

Case No : Misc. Judl. Case No's. 1638 and 1639 of 1964

Bhutkun Jha and Another

APPELLANT

Vs

Vice-Chancellor and Others

RESPONDENT

Date of Decision : 07-04-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Specific Relief Act, 1963 — Section 14, 21

Citation : AIR 1965 Patna 417

Hon'ble Judges : R.K. Choudhary, J;G.N. Prasad, J

Bench : Division Bench

Advocate : Shreenath Singh and Madhusudan Singh, for the Appellant;
Lalnarain Sinha, Ramanand Sinha and Janardan Pd. Singh, for the Respondent

Final Decision : Allowed

Judgement

G.N. Prasad, J.—These two applications have been heard together since they arise under similar circumstances and the point involved in them is the the same. They are directed against an order of the Vice-Chancellor of the Kameshwar Singh Darbhanga Sanskrit Vish-yavidyalaya (hereinafter referred to as the "University"), which was communicated to the two petitioners by a separate letter addressed to them by the Registrar of the University on the 23rd October 1964. A copy of the letter is Annexure 13 to the writ application in M. J. C. No. 1638 and a copy of a similar letter is Annexure 14 to the writ application in M. J. C. No. 1639.

2. The Kameshwar Singh Darbhanga Sanskrit Vishvavidyalaya Act, 1960 (Bihar Act VI of 1960 hereinafter referred to as the "Act") came into force on the 18th March 1960, and in pursuance of it, the University was established on the 26th January 1961 with Mahama-hopadhya Dr. Umesh Mishra as its first Vice-chancellor. Prior to the establishment of the University, Bhutkun Jha, the petitioner in M. J. C. No. 1638, was serving on a temporary basis as a stenographer in a Government Institute, known as the Mithila Institute of Post

Graduate Studies and Research in Sanskrit Learning at Darbhanga thereafter referred to as the "Institute") and Tilleshwar Chaudhary, petitioner in M. J. C. No. 1639, was serving in the same Institute on a temporary basis as a scribe-cum-typist. Bhutkun Jha joined the Institute on 23-12-1952 and Tilleshwar Chaudhary joined it on 16-10-1954. On 31-3-1960, Tilleshwar Chaudhary was also put in charge of the library of the Institute. When the University was established, the State Government sent a telegram (vide Annexure 3 in each case) to the Director of the Institute to render all possible assistance to the Vice-Chancellor until the University Office- functioned independently. In accordance with the said direction of the State Government, both the petitioners began to work as part-time assistants in the University in addition to their duties in the Institute.

On the 28th January 1961, the State Government issued a notification u/s 46 of the Act for the purpose of removing certain difficulties in relation to the enforcement of the Act and to authorise the Vice-Chancellor of the University to exercise certain powers until the authorities and officers of the University were constituted and appointed in accordance with the provisions of the Act. A copy of the notification is Annexure 2 to each writ application, and it is in the following terms:

Government of Bihar Education Department, Notification.

Patna, the 28th January, 1961,

No. 1/U2-027/60E 321--Whereas there is no specific provision in the Kameshwar Singh Darbhanga Sanskrit Vishwavidyalaya Act, 1960 Bihar Act VI of 1960), as to the officer or authority who shall be responsible for taking necessary action for the constitution of the authorities of the University and for carrying out the purposes of the said Act until the authorities and officers of the University are constituted and appointed;

And whereas difficulties will arise unless suitable directions are issued by the State Government in this behalf;

Now, therefore, in exercise of the powers conferred by Section 46 of the said Act, the Governor of Bihar is pleased to direct as follows, namely:

1. The Vice-Chancellor shall take necessary action for the authorities of the University being constituted so that members thereof may come into office before the expiry of the period specified in paragraph 2 below.
2. The Vice-Chancellor shall, for a period of six months from file date of commencement of the said Act and with the previous approval of the Chancellor and subject to the provision of funds by the State Government or otherwise discharge all or any of the functions of the University for the purpose of carrying out the provisions of the said Act and may for that purpose exercise any powers or perform any duties which under the said Act are to be exercised or performed by any officer or authority of the University not being an officer or authority in

existence at the time when such powers are exercised or such duties are performed.

By order of the Governor of Bihar.

Sd. Saran Singh Secretary to Government, Bihar, Patna."

3. It appears that, thereafter, the Vice-Chancellor took steps for appointing clerks and other servants for the University and an advertisement was issued in the press, inviting applications for certain posts on purely temporary basis for the University Office. Such an advertisement is Annexures III A and III B to the counter-affidavit filed on behalf of the State of Bihar (Respondent No. 3).

In pursuance of the advertisement, both the petitioners applied for appointment under the university. Bhutkun Jha applied for the post of personal Assistant to the Vice-Chancellor and Tilkeshwar Chaudhary applied for the post of Confidential Assistant in the University. On 9-6-1961, they were both appointed by the Vice-Chancellor on a temporary basis. Tilkeshwar Chaudhary was appointed in the scale of pay of Rs. 150-8-190 EB-12-250 and Bhutkun Jha was appointed in the scale of pay of Rs. 250-10-300 EB-20-400; but they did not join their respective posts in the University until the 1st February 1963, because they entered into correspondence with the Vice-Chancellor regarding certain further facilities in regard to their conditions of service. During this interval, the petitioners also submitted two applications to the Director of the Institute. In their first application which was dated the 14th December 1962, they informed the Director that they had been offered a Job in the University which carried higher emoluments than what they were getting in the Institute and requested him to grant them leave without pay for one year with effect from the 1st January 1963. They also said in their application that in case it was not possible to accept their prayer for leave, then their application might be treated as application for resignation of their respective posts from which they might be permitted to be relieved from the said date. On the 14th December 1962 itself, the Director of the Institute forwarded their application to the Secretary to the Government of Bihar in the Education Department (Vide Annexure but no order was received from the Government upon their said application. Thereupon, on the 27th January 1963, both the petitioners submitted a second application to the Director (Vide Annexure 8) in identical terms. Therein they referred to their application dated the 14th December 1962, describing it as their "resignation petition", and to the fact that no communication had been received by them, although more than one month and a half had elapsed and their offer of appointment in the University was at a stake. So they said that if no instruction was received by them before the 1st February 1963, they would treat themselves as relieved from their service under the Institute and they would join their respective posts under the University with effect from the 1st February 1963. Both the petitioners did join their respective posts under the University on the 1st February 1963, as already stated.

On the 20th of April 1963, the Director of the Institute wrote to Tilkeshwar Chaudhary calling upon him to hand over charge of the library or the Institute to the permanent incumbent to the post of the Librarian who had come to join (Vide Annexure 9 to the writ application in M. J. C. No. 1639). Subsequently, on the 7th August 1963, the Director called upon the petitioners" to vacate the quarters which they were occupying, and this was complied with by them by 1st November 1963. Meanwhile, on the 15th October 1963, both the petitioners were confirmed in their respective posts under the University under the orders of the Vice-Chancellor in the revised pay scale which was Rs. 20040-250 in the case of Tilkeshwar Choudhary and Rs. 300-10-350 in case of Bhutkun Jha (Vide Annexure 5 to the two writ applications).

4. After all these had happened, the Deputy Secretary to the Government in the Education Department addressed a letter to the Vice-Chancellor on the 4th December 1963, in which the Vice-Chancellor was informed that the two petitioners were under the service of the Government, and as such their appointment in the service of the University was made in an illegal manner and the Vice-Chancellor was requested to intimate as to when the services of the two petitioners would be restored to the Institute (Vide Annexures 9 and 10 respectively). The Vice-Chancellor, however, on the 20th December 1963, wrote back to the Deputy Secretary that the appointment of the petitioners under the University was not illegally made, inasmuch as, their appointments had been made with the information to the Government and after selection which was approved by the Ad-Hoc Committee of the University constituted with the approval of the Chancellor to advise the Vice-Chancellor. Mention was also made of the fact that both the petitioners had submitted their letters of resignation which had been forwarded to the Government by the Director of the Institute. The petitioners had also vacated the Government quarters which they had been occupying and that the Director of the Institute had raised no objection to the petitioners taking up their appointment under the University with effect from the 1st February 1965. The Vice-Chancellor, therefore, said that the question of the reversion of the petitioners to the Institute did not arise at all and that they had since been confirmed in the University service. The reply of the Vice-Chancellor is Annexures 10 and 11 respectively. Again no action was taken by the Government for more than six months.

On the 8th July 1964, however, the Deputy Secretary to the Government addressed a communication to the Director of the Institute intimating to him that the application of both the petitioners submitted on the 14th December 1962 for one year's leave without pay or for resignation, in the alternative, had been rejected. A copy of the Government order was communicated to each of the two petitioners by the Director on the 14th July 1964 (Vide Annexures 11 and 12 respectively).

5. The case of the petitioners is that on the 7th September 1964, the Registrar of the University verbally informed them that their services would be reverted back

to the Institute. On hearing this, both the petitioners applied for eight days leave, and on the 11th September 1964, they both submitted a representation to Shri S. V. Sohoni, who had since succeeded Dr. Umesh Mishra as Vice-Chancellor of the University, slating that their services under the Institute had already been terminated and fresh appointments had been made in their place in the Institute, that they were holding temporary posts under the Institute and had since been appointed in the permanent cadre of the University service on a higher scale of pay and that in the circumstances they should not be reverted back to the Institute, but should be allowed to continue in the University service. On the 23rd October 1964, however, the petitioners were informed by the Registrar (Vide Annexures 13 and 14 respectively) that the Vice-Chancellor had been pleased to reject their application and that their services "are being treated as having been returned to the Mithila Research Institute Darbhanga with effect from 8th September 1964". It is the validity of this order of the Vice-Chancellor which is under challenge in these two writ applications. The petitioners in both the cases pray that the order of the Vice-Chancellor be quashed by issue of an appropriate writ under Articles 226 and 227 of the Constitution.

6. In pursuance of the rule which was issued by this Court, the respondents have appeared and shown cause through their respective counsel. Two counter-affidavits have also been filed on behalf of the Vice-Chancellor and the Registrar of the University (Respondents 1 and 2). A counter-affidavit has also been filed on behalf of the State of Bihar (Respondent No. 3). The stand taken on behalf of the respondents is two-fold; (i) that the petitioners were not legally appointed in the service of the University because they were in Government service and they had submitted their applications to the Vice-Chancellor direct, and not through the proper channel, meaning thereby that their applications had not been forwarded to the University by the Head of their Department, and as such they had joined the service of the University without the permission of the Government, and, (ii) that the appointment of the petitioners was made by the Vice-Chancellor in excess of the power of appointment which had been conferred upon him under the Act and the notification (Annexure 2) dated the 28th January 1961, which was issued u/s 46 of the Act. It was pointed out that by virtue of Section 10(6) of the Act, the Vice-Chancellor had the power to make appointments to posts within the sanctioned grades and scales of pay and within the sanctioned strength of the clerical staff and other servants of the University "subject to the provisions of this Act, the Statutes, the Ordinances and the Regulations". One of the matters to be provided for in the Statutes to be framed in accordance with Section 25 of the Act was "the number, qualifications, grades, pay and conditions of: service of teachers and other servants of the University including the creation of new posts, after considering the recommendations of the Academic Council and the Syndicate in the case of posts of teachers and the recommendations of the Syndicate in the case of other servants of the University". But pending the constitution of Academic Council, Syndicate and other authorities of the University, the State Government had made an interim

arrangement under Sections 46 and 47 of the Act by issuing the notification (Annexure 2), wherein the Vice-Chancellor was empowered for a period of six months and with the previous approval of the Chancellor and subject to the provision of funds by the State Government or otherwise to discharge all or any of the functions of the University for the purpose of carrying out the provisions of the Act and to exercise and perform all such powers and duties which under the Act were to be exercised or performed by any officer or authority of the University. By virtue of this notification, the Vice Chancellor could have appointed the petitioners and laid down their conditions of service and grades and scales of pay only with the previous approval of the Chancellor and subject to the provision of funds by the State Government. But, it is urged, these requirements were not fulfilled in the case of the petitioners. . The argument on behalf of the respondents, therefore, is that the petitioners are not entitled to invoke the writ jurisdiction of this Court because to allow their application would be tantamount to restore an illegality and to uphold their appointment which was invalid at the inception.

7. As to the first point raised on behalf of the respondents, the reply of Mr. Shreenarh Singh, who appeared on behalf of the petitioners, is that the University, as a statutory body, was not bound by the Conduct Rules applicable to Government servants and it was free to appoint the petitioners in the service of the University for which the petitioners had been found suitable by the Vice-Chancellor in consultation with the Ad-Hoc Committee which had been constituted to advise him, and the fact that the petitioners had not submitted their applications to the Vice-Chancellor through their Departmental Heads, was no concern of the University, although on account of such omission, the petitioners might have rendered themselves liable for departmental action by the Government. That was entirely a matter between the petitioners and the Government and it had nothing to do with the power of the Vice-Chancellor to appoint the petitioners in the service of the University. Therefore, it is urged, that the appointment of the petitioners in the University service was not rendered invalid on the first ground put forward on behalf of the respondents.

In this connection it was also pointed out that before the petitioners had actually joined their services under the University, they had brought the relevant facts to the notice of the Director of the Institute where they had been serving and had also submitted a formal letter of resignation which had been forwarded to the Government by the Director on the 14th December 1962. They had repeated their prayer for being relieved from Government service on the 27th January 1963. and when no orders were received from the Government, then the petitioners took it that the Government had no objection to their joining the University service. The petitioners were in temporary service under the Institute and, therefore it was requisite that necessary order upon their letter of resignation should have been passed within a reasonable time, and since no order was passed upon their representation by the Government until as late as the 8th July 1964, the petitioners had every reason to believe that the

Government had accepted their resignation, and they were confirmed in their said belief when they were called upon in August 1963 to vacate the quarters which they had been occupying. By passing this order, the Director or the Institute had conveyed to the petitioners that they were no longer in the service of the Government. In the case of petitioner Tilkeshwar Chaudhary, this belief was further confirmed by the earlier action of the Director in asking him to hand over charge of the library to the permanent incumbent to the post of the Librarian of the Institute. It was, after all these events had happened, that the petitioners were confirmed in their appointment in the University service on the 15th August 1963.

In my opinion, the contentions of Mr. Shreenath Singh in answer to the first point raised on behalf of the respondents are well founded and must be accepted as correct. There can be no doubt that the Director of the Institute was aware of the whole position and there is nothing to show that he had ever objected to the petitioners joining the service of the University. No such objection was raised by him when he had forwarded the petitioners' application to the Government on the 14th December 1962. He also raised no objection to the petitioners formally leaving the service of the institute when they filed their second application to him on 27-1-1963. On the contrary, he had passed orders on the 20th April 1963 and 7th August 1963 which were consistent with the fact that their temporary appointment under the Government had been terminated. One of the facts which the petitioners stated in their representation (Annexures 12 and 13 respectively) to the new Vice-Chancellor was that fresh appointments had been made in the Institute in their place, and this fact has not been controverted in any of the counter-affidavits filed on behalf of the respondents. From these circumstances, it must be held that the authorities concerned had impliedly accepted the resignation of the petitioners from their service under the Institute long before the order of the Government dated the 8th July 1964 was passed. In the circumstances, that order of the Government was wholly, ineffective, and their appointment in the University and their subsequent confirmation to their respective posts cannot be said to be initially bad. The first ground put forward on behalf of the respondents must, therefore, be overruled.

8. I now turn to the second ground put forward on behalf of the respondents for saying that the petitioners were not legally appointed in the service of the University. The Vice-Chancellor's power in the matter is undoubtedly controlled by Section 10(6) of the Act. By virtue of that provision, he had to act in accordance with the statutes which were to be framed in due course. But in the intervening period, his powers of making appointments could be exercised subject to the other provisions of the Act. Sections 46 and 47 of the Act are relevant in this context.

Under Section 47, the first appointment of the University staff could be made by the State Government itself. u/s 46, however, it was open to the State Government to take necessary steps for the purpose of removing any difficulty in

relation to the enforcement of the Act and in the appointment or constitution of any officer or authority of the University. It was in exercise of this power that the State Government had issued the notification (Annexure 2) conferring upon the Vice-Chancellor certain powers which under the Act, he could only have been in a position to exercise under the statutes, ordinances and Regulations. In the matter of making appointments of the University staff, the Vice-Chancellor had to act with the previous approval of the Chancellor and subject to the provision of funds by the State Government. If, therefore, the appointment of the petitioners had been made without the previous approval of the Chancellor and without provision of funds by the State Government, then there can be no doubt that the Vice-Chancellor had appointed them in excess of his powers under the law. Unfortunately, this ground was not put forward on behalf of the respondents until this matter was brought to this Court. The order of the State Government dated the 8th July 1964 does not indicate that the Vice-Chancellor had appointed the petitioners without taking the approval of the Chancellor and without provision of funds having been made by the State Government. The impugned order of the Vice-Chancellor also does not indicate that it was on this ground that he had rejected the representation which the petitioners had made to him and had directed their services to be restored to the Institute. It is contended by the learned counsel on behalf of the petitioners that if the necessary opportunity had been afforded to them, then they might have shown that their appointment was made by the former Vice-Chancellor in accordance with the powers conferred upon him by the notification (Annexure 2).

In this connection Mr. Shreenath Singh drew our attention to the fact that in the letter to the Government dated the 20th December 1963 (Annexures 10 and 11 respectively), the Vice-Chancellor had stated that the advertisement for the appointment of the University staff had been made after information had been given to the Government and that "their selection was also approved by the Ad Hoc Committee of the University, which was approved by the Chancellor to advise the Vice-Chancellor". Our attention has also been drawn to a letter dated the 22nd April 1963 which the Chancellor appears to have written to the Vice-Chancellor with reference to an advertisement proposed to be issued calling for applications for the posts of Registrar, etc. That letter is Annexure 15 to the supplementary affidavit sworn by the petitioner in M. J. C. No. 1639 of 1964. The following is an extract from the said letter:

"I have had a discussion with the Assistant Director of Education (Sanskrit) of the Government. He pointed out to me that a skeleton staff has been approved by the Government for the University. A copy of the statement showing the strength of staff sanctioned and other details is enclosed herewith. Please prune your present establishment in the light of the skeleton staff provided, subject to such modifications as may be necessary. Let there be an attempt, as far as possible to the establishment consistent with efficiency.

Please modify the budget for the year 1963-64 in accordance with the skeleton

staff as finally fixed.

Please also prepare an account of the arrears due to the staff on the old scale up to date, so that all the arrears may be cleared off."

We were also referred to a letter dated the 8th July 1961, which the Deputy Secretary of the Education Department appears to have written to the Accountant-General of Bihar. A copy of that letter is Annexure "X" to the supplementary affidavit sworn by the Registrar of the University and filed in M. J. C. No. 1638 of 1964. A perusal of that letter shows that the State Government had sanctioned an ad hoc grant of Rs. 50,000/- to the University for the Financial year 1961-62 "for defraying its expenses as detailed in the enclosed statements". The statements attached to the said letter show that provision was made for paying salary to the members of the staff of the University including a librarian, a Head Clerk, two stenographers and seven assistants on certain scales of pay mentioned therein.

It is, therefore, contended on behalf of the petitioners that before terminating their services under the University, the Vice-Chancellor ought to have afforded them an opportunity to show that they had been duly appointed by the Vice-Chancellor within the limits of the power conferred upon him by the notification (Annexure 2). Since, however, no such opportunity was given to the petitioners, the grievance of the petitioners is that there has been a contravention of the rule of natural justice in their case. In my opinion, there is force in this contention of the learned counsel and it seems to me that the impugned order of the Vice-Chancellor is fit to be quashed on this ground.

9. Mr. Lalnaraiu Sinha has, however, urged that the petitioners are not entitled to invoke the rule of natural justice since there is no provision in the law governing the case of the petitioners for adopting a judicial or quasi-judicial procedure in the matter of termination of their services under the University. I am, however, unable to accept the contention of Mr. Lalnarain Sinha, because It is well established as a matter of law that even in a case of this description, a notice is necessary to be given by the authority to a person who is prejudicially affected by the order which is to be ultimately made. As a matter of necessary legal implication the Vice-Chancellor was bound to act in accordance with the principles of natural justice. Reference may be made in this connection to Ram Kripalu Mishra Vs. University of Bihar and Others, which is a Bench decision of this Court. That was a case of a University Lecturer whose services were dispensed with without any notice to him before the dismissal order was passed. It was urged that Section 4 of Bihar Act XIII of 1962 does not expressly show that notice must be given to the teacher who is to be affected prejudicially by the order, of the Chancellor. Their Lordships held:

"It is true that Section 4 of Bihar Act XIII of 1962 does not expressly say that notice must be given to the teacher who is to be affected prejudicially by the order of the Chancellor, but it is well established as a matter of law that in a case

of this description a notice is necessary to be given by the authority to a person who is prejudicially affected by the order which is to be ultimately made. As a matter of necessary legal implication the Chancellor is bound to act in accordance with natural justice before exercise of the statutory power conferred by Section 4 of the statute."

In support of their decision, their Lordships relied upon a number of English cases on the point and quashed the order of the Chancellor. The same principle must be applied to the present case.

10. Mr. Lalnarain Sinha then contended that the order of the Vice-Chancellor ought not to be interfered with by this Court because to do so would amount to directing the specific performance of a contract of personal service between a master and a servant which is directly prohibited by Section 21 (b) of the Old Specific Relief Act, corresponding to Section 14(b) of the new Specific Relief Act, 1963. In my judgment, this contention is not fit to prevail. The relief which the petitioners seek in these cases is not based upon their contract of personal service under the University. What the petitioners complain is that their service under the University has been terminated without complying with the principles of natural justice. In other words, the case of the petitioners is that the Vice-Chancellor's order, which is under challenge, is void and non-existent in the eye of law and, therefore, the petitioners seek a declaration to that effect. In giving to the petitioners the declaration which they seek, the Court is not called upon to examine the terms and conditions of the contract of service between the petitioners and the University, The Court is only concerned with the question - whether the order of dismissal is, valid or invalid. If the Court finds that the order of dismissal is invalid, then it has only to make a declaration to that effect. Such a declaration does not, in my opinion, amount to passing a decree for specific performance of a contract of personal service. The question of specific performance, of a contract of personal service would have arisen if it were found that: there has been, in fact, an order of dismissal. But in these cases, the conclusion to which I have arrived is that there has been no dismissal of the petitioners from service on account of the fact that the principles of natural justice had not been complied with, and as a consequence the impugned order is, void, and, therefore, non-existent in the eye of law. In such cases, a distinction must be drawn between a dismissal which is wrongful and a purported dismissal which is void. Where the dismissal is alleged to be wrongful, the Court has to examine the terms and conditions of the contract of service entered into between the master and the servant. In such a case, the question of specific performance of the contract of personal service might be involved. But a case of an order of dismissal, which is void, stands on a different footing, and the Court has to make a declaration to that effect without reference to the terms and conditions of the contract of personal service entered in to between the parties.

The law on the subject has been explained by their Lordships of the Supreme Court in *S.R. Tewari Vs. District Board Agra and Another*, in the following terms:

"Under the common law the Court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ. But this rule is subject to certain well-recognized exceptions. It is open to the Courts in an appropriate case to declare that a public servant who is dismissed from service in contravention of Article 311 continues to remain in service, even though by so doing the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly under the Industrial law, jurisdiction of the labour and industrial tribunals to compel the employer to employ a worker, whom he does not desire to employ, is recognized. The Courts are also invested with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of a mandatory obligation imposed by statute, even if by making the declaration the body is compelled to do something which it does not desire to do. It must be pointed that the powers of a statutory body are always subject to the statute which has constituted it, and must be exercised consistently with the statute, and the Courts have, in appropriate cases, the power to declare an action of the body illegal or ultra vires, even if the action relates to determination of employment of a servant."

In the instant cases, we are concerned with the powers of a statutory body which have to be exercised in accordance with the relevant statute, supplemented by the well-established rules of natural justice. Therefore, it is open to this Court in exercise of its writ jurisdiction to declare the statutory obligations of the statutory body, even though the effect of such a declaration might be that the petitioners would be deemed to have continued in the service of the University.

11. Mr. Lalnarain Sinha has, however, relied upon *S.B. Dutt Vs. University of Delhi*, . That was a case of a university professor, who was involved in a number of disputes with the University. By an agreement arrived at in October 1950, the parties referred their mutual grievances for investigation by Sir S. Vardachariar and Bakshi Sir Tek Chand agreeing to accept their decision as final and binding. The decision of Sir S. Vardachariar and Bakshi Sir Tek Chand went substantially against the professor. Thereupon, the professor took a proceeding u/s 33 of the Arbitration Act, 1940 for setting aside the decision of Sir S. Vardachariar and Bakshi Sir Tek Chand on the ground that there was no arbitration agreement and hence the two referees had no jurisdiction to act or to make an award. During the pendency of that proceeding, the University terminated the professor's service in view of the findings of the two referees against him. About a year thereafter, the professor's application u/s 33 was dismissed by the subordinate Judge, Delhi, and the professor preferred an appeal to the High Court, which also was unsuccessful. Thereafter, the professor commenced on another arbitration proceeding under the provision of Section 45 of the Delhi University Act and nominated the late professor M. N. Saha, the celebrated scientist, as an arbitrator and called upon the University to nominate another arbitrator. The University, however, declined to nominate another arbitrator on its behalf, and the result was that Professor Saha acted as the sole arbitrator despite the University's objection to his jurisdiction to act as such, and made an award

which was in favour of the professor. In the award, the finding given was that the professor had been wrongfully dismissed, that his dismissal was ultra vires, mala fide and had no effect on his status and that he still continued to be a professor of the University. This award was sought to be made a rule of the court. The University took various objections to the award, but the Subordinate Judge overruled them and passed a decree making the award a rule of the Court. In appeal, however, the High Court set aside the decree, holding that it was not open to the arbitrator to grant the professor a declaration that he was still a professor in the University, inasmuch as such a declaration amounted to a specific enforcement of a contract of personal service which was forbidden by Section 21 of the Specific Relief Act and, therefore, the award disclosed an error on the face of it. This decision of the High Court was upheld by the Supreme Court with the following observation;

"We are in entire agreement with the view expressed by the High Court. There is no doubt that a contract of personal service cannot be specifically enforced. Section 21 Clause (b) of the Specific Relief Act, 1877, and the second illustration under this clause given in the section makes it so clear that further elaboration of the point is not required. It seems to us that the present award does purport to enforce a contract of personal service when it states that the dismissal of the appellant "has no effect on his status" and "he still continues to be a professor of the University".

This case, however, is of no assistance to Mr. Lalnarain Sinha because the order of dismissal which the University had passed in pursuance of the report of Sir S. Vardachariar and Bakshi Sir Tek Chand was not found to be void or without jurisdiction. The parties had agreed to accept their decision as final and binding and it was, therefore, not a case in which the order of dismissal could be said to be non-existent in the eye of law, either on the ground of breach of any statutory obligation on the part of the University or of non-observance of any mandatory rule or principle of law.

In the instant cases, as I have indicated, there has been a breach of the principles of natural justice on account of which the action of the Vice-Chancellor has been rendered invalid and the purported order of dismissal of the petitioners service under the University is void and of no effect whatsoever. The case of the petitioners is not based on a contract of personal service and, therefore, there is no bar to making a declaration which the petitioners seek, namely, that their purported dismissal is void and inoperative and they continue to be in service of the University. I would, therefore, reject the contention of Mr. Lalnarain Sinha based upon the prohibition contained in Section 14(b) of the Specific Relief Act 1963.

12. For the reasons set forth above, I am of the opinion that the petitioners have made out a case for issue of a writ of certiorari against the Vice-Chancellor and the Registrar of the University (Respondents 1 and 2) in both the cases. Acting in exercise of the powers conferred upon this Court under Article 226 of the

Constitution, I, therefore, direct that a writ of certiorari will issue quashing the order of the Vice-Chancellor contained in Annexure 13 to the writ application in M. J. C. No. 1638 of 1964 and in Annexure 14 to the writ application in M. J. C. No. 1639 of 1964.

13. In the result, both the applications are allowed but there will be no order as to costs.

Choudhary, J.

14. I agree.