

(2012) 11 AHC CK 0179

In the Allahabad High Court

Case No : Writ Petition No's. 1404 (SB) and 1901 (SB) of 2009

Dr. Anurag Yadav and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-11-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227, 32

Citation : (2012) 11 ADJ 188

Hon'ble Judges : Rajiv Sharma, J;Devendra Kumar Arora, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the petitioners and the Counsel appearing for the respondents. Petitioners have preferred instant writ petitions assailing the order dated 2nd September, 2009, passed by the Registrar of Dr. Ram Manohar Lohiya Avadh University, Faizabad whereby their services have been terminated.

2. Since both the writ petitions relate to same cause of action, both the writ petitions are being decided together by a common judgment and Writ Petition No. 1404 (SB) of 2009 will be leading case.

3. Facts of the case, as emerged out from pleadings of the writ petition, are that Dr. Ram Manohar Lohiya Avadh University, Faizabad (hereinafter referred to as "University") as per advertisement dated 18.12.2004 (Annexure 7) advertised eight posts of Lecturers in various streams for selection on contractual basis. All the petitioners being eligible applied against the said posts and later on, were duly appointed vide order dated 2.9.2005 after following due procedure as prescribed for selection of regular lecturers. So far as Abhishek Singh-petitioner No. 4 of writ petition No. 1404/SB/2009 is concerned, in this regard, it is said that the University against the eight posts, only filled up six posts and issued another advertisement dated 9.11.2005 (Annexure 10) by which one post was advertised in the Mathematics and Statistics Department of the University. The

petitioner No. 4 applied against the said post and was appointed vide Appointment Letter dated 22.11.2006 (Annexure 11). The Executive Counsel of the University in its meeting held on 30.8.2005 (Annexure 9) vide resolution No. 9 granted approval for continuing the posts sanctioned under 10th Plan period and resolved that salary and allowances to the appointees on the said posts would be paid from the personal sources of the University and it was also resolved that University Grant Commission (hereinafter referred to as "UGC") may be informed accordingly.

4. All the petitioners worked continuously throughout the 10th Plan period, however, after expiry of 10th Plan Period vide order dated 7.3.2007 passed by the Registrar of the University (opposite party No. 3) they were allowed to continue as per the decision of the Executive Council of the University taken in its meeting dated 30.8.2005. In these circumstances, petitioners were allowed to work upto March, 2008 and were given all the facilities admissible to similarly situated persons.

5. On 22.6.2008, a meeting of the Executive Council of the University was held in which a proposal with regard to approve the format for signing of Bond by the appointees under 10th Five Years Plan and payment of salary to Lecturers was placed. A legal opinion sought in this context was also placed by the Vice-Chancellor wherein it was indicated that the resolution dated 30.8.2005 was contrary to the Government Order dated 15.3.2000. The Executive Council took a decision that extension of services of the persons appointed under 10th Plan Period be not extended beyond 2007-08 academic session. It was also decided that an estimate be made regarding the requirement of such posts in various departments and selections be made after approval of the State Government or on contractual basis, as per the Rules.

6. In pursuance of the said decision taken in the meeting of Executive Council of the University held on 22.6.2008 as well as on 11.7.2008, show-cause notices were issued to the petitioners on 11.7.2008 (Annexure 14) on the ground that the posts in question have not been extended beyond the period of 10th Five Years Plan and also that the petitioners have not signed the contract with the University.

7. To the aforesaid show-cause notices, petitioners submitted their reply on 21.7.2008 (Annexure 15) stating therein that they have been appointed on the basis of assurance given to the UGC by the University that it would continue with the posts on which candidates have been selected after 10th Five Year Plan period is over with the help of its own sources.

8. Being aggrieved, petitioners approached this Court by filing Writ Petition No. 1065 (SB) of 2008 challenging the said show-cause notices which was disposed of finally vide order dated 12.8.2008 with an observation that since reply submitted by the petitioners are still pending consideration before the Executive Council and until any decision is taken on the objection, no adverse orders shall

be passed. It was further observed that petitioners may file supplementary reply to the show-cause notices, if they so choose.

9. In pursuance of order dated 12.8.2008, passed by this Court in Writ Petition No. 1065 (MB) of 2008, petitioners filed a supplementary reply dated 28.8.2008 (Annexure 16). The Executive Council of the University passed a resolution in its meeting held on 25.8.2008 for seeking legal opinion in the matter from the Advocate General and it was decided that the petitioners be paid salary till the matter is finalised. The learned Advocate General of the State opined that since the petitioners were appointed on contract basis upto the expiry of 10th Five Years Plan from respective dates of their joining, therefore, they do not have any legal right to continue after the end of 10th Five Years Plan, Therefore, such persons cannot continue until a decision to continue/ creation of posts is taken by the competent authority under the relevant provisions of the U.P. State Universities Act, 1973 (hereinafter referred to as "Act 1973"). The Executive Council of the University considering the legal opinion of the Advocate General passed a resolution on 11.12.2008 for referring the matter of appointments of the petitioners to the Chancellor and the same was referred to the Chancellor vide letter dated 24.12.2008 (Annexure 18).

10. The Special Secretary, Government of U.P. vide letter dated 13.2.2009 (Annexure 19) directed the University that since provisions of Government Order dated 15.3.2000 have not been complied with and as per the opinion of Additional Advocate General, an enquiry conducted by the Commissioner, suitable action may be taken against the delinquent employees and also against the appointed lecturers in accordance with law.

11. The "University" vide letter dated 3/4.3.2009 (Annexure 20) sought directions from the State Government regarding action to be taken against the delinquent employees as per the report of the Commissioner, Lucknow Division who had conducted an enquiry into some irregularities in the University and it was mentioned in the letter that since the Executive Council has resolved that erring persons may be granted an opportunity of hearing, therefore, the matter has been referred to the State Government and the State Government has not issued any direction in this regard. The University vide letter dated 18.4.2009 informed the Chancellor regarding directions of the State Government in the matter of petitioners. In pursuance of the directions of the Chancellor dated 6.7.2009, the Executive Council of the University in its meeting dated 20.8.2009 took a decision for termination of services of the petitioners and consequently, impugned termination orders have been passed on 2.9.2009 in respect of all the petitioners on similar ground. Being aggrieved from their termination from services, petitioners have approached this Court by filing instant writ petitions.

12. Submission of learned Counsel for the petitioners is that the impugned termination orders are wholly illegal and arbitrary and have been passed in violation of principles of natural justice as the same have been passed on the ground that was not mentioned in the show-cause notices. The impugned orders

of termination of the petitioners are identical and have been passed on the same ground. Further submission is that the impugned orders of termination shows that appointment of petitioners is illegal as the reservation policy was not followed. In this regard, learned counsel for the petitioners submitted that reservation as per the relevant Rules and roster of the University was followed while making appointments of the petitioners and since no posts as per roster of the University was available within the Scheduled Castes and Scheduled Tribes category, therefore, no selection was made in the said category.

13. Elaborating his submissions, learned Counsel for the petitioners submitted that Section 21(3) of the Act, 1973 provides that if the universities cannot manage their own finance and the State aid is given to the universities, then in that case, no expenditure should be done without prior approval of the State Government, whereas in the instant case the posts of the petitioners were not created by the State Government and the same were sanctioned by the UGC. As such, provisions of Section 21(3) of the Act, 1973 are not applicable in the instant case as the State is not required to incur any expenditure in respect of the said posts. The impugned orders have been passed without considering the fact that the petitioners were appointed as per sanction granted by the UGC which has issued guidelines for the said purpose i.e. for appointments to be done when financial assistance is granted by it and the same would prevail over the general provisions of the Act, 1973 for appointment of lecturers. It has been contended that the impugned orders of termination are illegal as the same have been passed under the garb of the resolution dated 11.12.2008 whereas, as a matter of fact, the resolution dated 11.12.2008 of the Executive Council was passed for referring the matter to the Chancellor. He further submitted that the financial assistance from "UGC" itself is sufficient for incurring the entire expenditure in respect of payment of salary to the petitioners after the expiry of 10th Five Year Plan period and no expenditure from the State Government is needed to be incurred in respect of payment of salary to the petitioners.

14. Learned counsel for the petitioners pointed out that some of the petitioners approached this Court for payment of their salaries as they were not paid salary after June, 2008 and this Hon"ble Court directed that persons who have been appointed similarly, shall not be treated differentially and the Review Petition preferred against the order dated 11.5.2009, passed in Writ Petition No. 666 (SB) of 2009 was dismissed but even then petitioners were denied salary.

15. Lastly, it has been submitted on behalf of the petitioners that work is available in the departments in which the petitioners were working and their services have been terminated without affording any opportunity of hearing and, as such, the impugned orders are wholly illegal and arbitrary and have been passed in breach of principles of natural justice and are also in violation of Article 14 of the Constitution of India.

16. In contrast, learned Standing Counsel appearing on behalf of opposite parties No. 2 to 5, while opposing the writ petition, submitted that the petitioners have

approached this Court directly without availing the statutory alternative remedy provided u/s 68 of the Act, 1973 which provides that if any person is aggrieved with any order/decision of any authority of the University, he may make a reference to the Chancellor, whose decision shall be final. Learned Standing Counsel submitted that the petitioners firstly should have approached the Chancellor raising their grievance but they have directly approached this Court. Thus, on the ground of availability of alternative remedy, the instant writ petition is liable to be dismissed.

17. It is further submitted that so far as petitioner's plea that alternative remedy is not efficacious remedy on the ground that Chancellor has expressed his opinion in the matter, is concerned, the same is not true. As a matter of fact, the Chancellor never adjudicated the dispute, rather when guidance was sought from the Chancellor by the University after obtaining legal opinion from the Advocate General and instructions from the State Government to take action in accordance with law against the petitioners and similarly situated three other lecturers, whose continuation was held to be illegal, the Chancellor's Special Secretary by means of letter dated 6.7.2009 (Annexure CA-1) simply advised to act in accordance with the guidelines of the State Government and the legal opinion of the Advocate General.

18. It has vehemently been argued on behalf of the respondents that the UGC vide letter dated 23.9.2004 (Annexure CA-3) provided that sanction of financial support shall be subject to the scheme being taken over by the State Government or by the Executive Council of the University after the scheme is over or alternatively the appointments shall be made on contractual basis for fixed tenure and fixed salary. In terms of the UGC scheme regarding continuation of the posts sanctioned under the Plan after its expiry, the University wrote letters to the State Government seeking sanction but the State Government did not find any justification for giving any such commitment/assurance to the UGC. However, the State Government gave liberty to the University to give commitment on its own in terms and conditions laid down in Government Order dated 15.3.2000 (Annexure CA-4).

19. Learned Standing Counsel has laid emphasis on the fact that in 10th Five Year Plan, the University has not generated any income or fund or financial resource so as to enable itself to pay salary to the petitioners and other similarly situated persons appointed under the plan for specified period. The University issued advertisement dated 18.12.2004 (Annexure CA-6) in utter violation of UGC conditions. However, it was provided that the appointment shall be made for a period of two years on contractual basis. The Executive Council of the University in its meeting dated 30.8.2005 resolved to give its commitment for constitution of the posts after expiry of the scheme provided by the UGC under the 10th Five Year Plan. Learned Standing Counsel submitted that the Executive Council could not have taken such a decision unless and until such a proposal was recommended by the Finance Committee constituted u/s 26(1) of the U.P.

State Universities Act. The Executive Council illegally overstepped its authority in making the decision without any recommendation of the Finance Committee, which is a statutory body constituted u/s 26 of the Act. The decision of continuing the posts after expiry of 10th Five year Plan was nullity & void ab initio, apart from being in violation of Section 21 (3) of the Act.

20. It has also been pointed out on behalf of the respondents that at the time of appointments of the petitioners, one Sri. B.R. Kanaujiya was Registrar of the University and his son Abhishek Singh is the petitioner No. 4 in the instant writ petition. After inquiry, Sri. Kanaujiya was placed under suspension on the ground of irregularities committed by him in the appointments of petitioners and other similarly situated persons under the 10th Five Year Plan and also on some other grounds. During selection, the rules of Reservation of S.C./S.T./OBC and disabled categories were not followed. When irregularities made in the selection of lecturers came into notice of the State Government, the State Government in exercise of the powers conferred upon it u/s 8 of the Universities Act, instituted an inquiry and as per inquiry report dated 20.11.2007 (Annexure CA-9) the appointments were found illegal and Dr. S.B. Singh, the then Vice Chancellor and Sri. B.R. Kanaujiya, the then Registrar were held liable for committing irregularities.

21. Lastly, learned Standing Counsel has asserted that the petitioners cannot claim the benefit of the principles of legitimate expectation because they were fully aware of the fact that their appointments were for a fixed term i.e. co-terminus with the expiry of the plan. Even if the Executive Council had given its commitment earlier, it had decided subsequently to terminate their services, but ultimately it decided to bear the burden of payment of their salaries, but they were neither given annual increments except for one year at the initial stage nor they were ever enrolled as a subscriber for the G.P.F. Or C.P.F. schemes nor brought under the G.P.F. or C.P.F. Schemes, as such, no P.F. deduction was ever made. Moreover, petitioners were also aware of the fact that the State Government had been getting serious complaints that the appointments were illegal and, on inquiry made by the State Government the appointments were found to be irregular and illegal.

22. Thus, the gist of submissions of learned Standing Counsel is that appointments of the petitioners were made on contract basis for a specific period and after expiry of the period of 10th Five Year Plan, their services could not be continued without prior approval of the State Government and without the posts having been created with the approval of the State Government. As the State Government did not accord approval for creation of posts, there was no option with the University but to terminate the services of the petitioners.

23. We have heard learned counsel for the parties and perused the record.

24. Admittedly, petitioners are aggrieved against the resolution/decision of Executive Council dated 20.8.2009 and the consequential order dated 2.9.2009.

Section 68 of the U.P. State Universities Act, 1973 provides the remedy of making reference against the impugned decision of Executive Council as well as consequential order. Section 68 of the U.P. State Universities Act reads as under :

68. Reference to the Chancellor.--If any question arises whether any person has been duly elected or appointed as, or is entitled to be, member of any authority or other body of the University, or whether any decision of any authority or officer of the University (including any question as to the validity of a Statute, Ordinance or Regulation, not being a Statute or Ordinance made or approved by the State Government or by the Chancellor) is in conformity with this Act or the Statutes or the Ordinance made thereunder, the matter shall be referred to the Chancellor and the decision of the Chancellor thereon shall be final :

Provided that no reference under this section shall be made-

(a) more than three months after the date when the question could have been raised for the first time;

(b) by any person other than an authority or officer of the University or a person aggrieved :

Provided further that the Chancellor may in exceptional circumstances-

(a) act suo motu or entertain a reference after the expiry of the period mentioned in the preceding proviso;

(b) where the matter referred relates to a dispute about the election, and the eligibility of the person so elected is in doubt, pass such orders of stay as he thinks just and expedient;

25. Thus, from the perusal of the aforesaid provision, it is imminently clear that the aggrieved person has a right to make representation u/s 68 of the Universities Act to the Chancellor, who has ample powers to decide whether any decision taken by any authority or officer is in conformity with the relevant provisions or not.

26. Now, we would like to deal the objections raised by the University's Counsel regarding non-exhaustion of alternative remedy by the petitioners. In this context, we may observe that the existence of alternative remedy is not an absolute bar, is a legal proposition, which has been propounded by the Apex Court and this Court in series of cases. It would be useful to refer the decisions rendered by the Apex Court in this regard.

27. In *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes*, , the Apex Court adverted to the rule of self-imposed restraint that writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed:

The High Court does not therefore act as a Court of appeal against the decision of a Court or tribunal, to correct errors of fact, and does not by assuming

jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved Petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

28. In *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, , the Apex Court while examining the question of availability of alternative remedy observed as under:

It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Company v. Hawkesford* : 141 ER 486 in the following passage:

... There are three classes of cases in which a liability may be established founded upon a statute.....Hut there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.....The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* : (1918-19) All ER Rep. 61 (HL) and has been reaffirmed by the Privy Council in AIR 1940 105 (Privy Council) . It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.

29. In *Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others*, , it has been observed by the Apex Court that:

So far as the jurisdiction of the High Court under Article 226 or for that matter, the jurisdiction of this Court under Article 32 is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.

30. In the case of *L. Chandra Kumar Vs. Union of India and others*, , a seven Judges Constitution Bench of Hon"ble Supreme Court held as under :

Though judicial review in the basic feature of the Constitution, the vesting of power of judicial review in an alternative institutional mechanism, after taking it

away from the High Courts, would not do violence to the basic structure so long as it was ensured that the alternative mechanism was an effective and real substitute for the High Court.

31. In the case of *Karnataka Chemical Industries and Others Vs. Union of India and Others*, , it was held that:

When there is no challenge to the validity of any statutory provision, we see no reason as to why a writ petition should have been filed by passing the alternative remedy which is provided under the statute. On the short ground, we dismiss this appeal, vacate the interim orders, direct the payment of the balance amount of duty alongwith interest @ 15% per annum with yearly rests, It will be open to the appellant to avail of such statutory remedy as may be available to it. If an appeal is filed within four weeks from today, the Department will take a lenient view in condoning the delay.

32. In the case of *Central Coalfields Ltd. Vs. State of Jharkhand and Others*, , it has been held that:

If there is statutory alternative remedy available to a person under an statute itself, in that case the writ petition should not be entertained under Article 226 of the Constitution of India and the petitioner is directed to avail the alternative statutory remedy.

33. In the case of *Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others*, , the Hon''ble Supreme Court on the question of alternative remedy/exhaustion of remedies held that Articles 226/227 not available if an efficacious alternative remedy is available to aggrieved person. Relevant paragraphs 23 and 24 of said judgment read as under:

23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants u/s 17 of the Act. It is well-settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if any efficacious alternative remedy is available to any aggrieved person. (See *Sadhana Lodh v. National Insurance Co. Ltd.*, *Surya Dev Rai v. Ram Chander Rai* and *SBI v. Allied Chemical Laboratories*).

24. In *City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Others*, , this Court had observed that: (SCC p. 175, para 30)

30. The Court while exercising its jurisdiction under Article 226 is duty bound to consider whether:

(a) adjudication of the writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

- (d) the person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

34. Recently, the Hon"ble Supreme Court in Civil Appeal No. 10706 of 2011 (Nivedita Sharma v. Cellular Operators Assn. of India and others) decided on 7.12.2011, considered the question of alternative remedy/exhaustion of remedies and has held that Articles 226/227 are not available if an efficacious alternative remedy is available to aggrieved person. The relevant paragraphs of the aforesaid judgment reads as under:

We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation L. Chandra Kumar Vs. Union of India and others, . However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

35. This Court in the case of Dr. S.P. Kaushik v. Visitor, S.G.P.G.I. Uttar Pradesh, Raj Bhawan, Lucknow and others, (1996) 3 UPLBEC 1843, while dealing with the provisions of Section 68 of the Universities Act and Section 36 of the SGPGI Act, observed in paras-8, 9, 10, 11 and 12 as under :

8. In the case of Management Committee, Atarra Post Graduate College Vs. Vice Chancellor, Bundelkhand University, Jhansi and Another, , a Division Bench consisting of Hon"ble Mr. Justice S. Ranganathan, J.S. Verma, and M. Fatima Beevi indicated;

In our opinion it is not for this Court to appraise the factual circumstances and come to a conclusion whether the order of the Vice-Chancellor is correct or not, particularly when it is open to the aggrieved party, u/s 68 of the U.P. State University Act to have a reference made to the Chancellor of the University who has ample powers to decide whether any decision taken by any authority or officer is in conformity with the statutes and Ordinances of the University."

It was further indicated:

Normally a reference u/s 68 of the U.P. State Universities Act is to be made within three months of the order by the aggrieved person. But, in this case, though the Vice-Chancellor has passed what purported to be an order, there was some misapprehension as to whether it was an order or only a report pursuant to the interim order of this Court. In view of this the Committee of Management has not so far filed any reference to the Chancellor. We are of the opinion that, in the circumstances, the delay in seeking a reference should be condoned and that the Chancellor may entertain a reference from the Committee of Management, if such reference is preferred within a period of 15 days from today. Having regard to the fact that this matter has been pending for a very long time, we hope that the Chancellor will be able to dispose of the reference within two months from today.

9. This Court in the matter of academic body like University, has been consistently of the view that such matters should be referred to the Chancellor u/s 68 of the Act. In the case of Dr. Dara Ram Sharma v. The Vice-Chancellor, Meerut University and others, 1982 UPLBEC 144, a Division Bench of the Court indicated :

Section 68 of the Act entitled a person who is aggrieved by the decision of an authority or officer of the University to file a representation before the Chancellor. It further provides that the decision given by the Chancellor on such a reference shall be final. Section 9 enumerates the various officers of the University. The Vice-Chancellor is one of the officer of the University as defined in the Act. Consequently a person aggrieved by the decision of the Vice-Chancellor can file a representation u/s 68 of the Act. In this view of the matter the petitioner, who is aggrieved by the order of the Vice-Chancellor holding him unqualified for the post of Reader and approving Dr. Y.M. Sharma's representation before the Chancellor. Therefore, the petitioner had an effective alternative remedy.

10. In the case of Managing Committee, R.P. Degree College, Kamalganj, Farrukhabad v. The Vice-Chancellor, Kanpur University, Kalyanpur, Kanpur and others, 1980 UPLBEC 270, a Division Bench of this Court indicated :

The provision contained in Section 68 of the U.P. State Universities Act is mandatory. The decision of the Vice-Chancellor refusing to approve the resolution of the Managing Committee is a decision of an authority of the University. A reference against that decision would therefore, lie to the Chancellor. Consequently it cannot be against that the petitioner had effective alternative remedy u/s 68 of the U.P. State Universities Act. The petitioner could not bypass that remedy and come direct to High Court.

11. In the case of Dr. Nand Kumar Singh v. Banaras Hindu University, 1990 (1) UPLBEC 215 , a Division Bench of this Court observed:

Section 5(7) of the Act empowers the visitor to set aside any order or proceedings of the University on facts and as well as law and there is no

limitation on the power of the visitor. This provision provides an efficacious alternative remedy to a person who is aggrieved by this decision of the University. A Division bench of this Court in *Promod Pathak v. Vice-Chancellor, BHU*, 1985 UPLBEC 634, has held that Section 5(7) of the Act provides an alternative remedy before the visitor, who is aggrieved by the decision of the Executive Council. Hence, the petitioner should approach the visitor first before coming to this Court.

12. In the case of *Dr. Promod Kumar Srivastava v. Dr. Pankaj Kumar and others* in W.P. No. 23 (S.B) of 1992 (unreported) a Division Bench of the Allahabad High Court at Lucknow observed:

We may also point out that clause (a) of the second proviso to Section 68 of the State Universities Act empowers the Chancellor to act suo motu as well in the matter. We therefore, find that it will be no hurdle, rather it will be made open to the Chancellor, while considering the question of minimum qualifications of opposite party No. 1 to consider about the validity of his appointment on the post of Reader as well. The Chancellor may naturally consider all points raised in the representation preferred by the petitioner including the one, as raised by the petitioner that opposite party No. 1 was not entitled to be appointed to the post of Reader once he had earlier declined to join on that post.

36. Thus, by a series of decisions it has been settled that the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ, if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power, if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

37. It may be noted that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the extraordinary jurisdiction of the High Court to issue a prerogative writ as the writ jurisdiction is meant for doing justice between the parties where it cannot be done in any other forum. In view of the aforesaid situation, without entering into the merit of the submissions advanced by Shri Raghvendra Kumar Singh, learned Senior Advocate for the petitioners, Dr. L.P. Mishra learned counsel for the opposite parties No. 2 to 5 as well as learned Standing Counsel, we dismiss both the writ petitions only on the ground of availability of alternative remedy. It is clarified that we have not touched the merits of the case. However, it is provided that in case petitioners invoke the jurisdiction of the Chancellor u/s 68 of the U.P. State Universities Act, the Chancellor shall consider and make an earnest endeavour to decide the matter expeditiously, say within a period of three months, if possible, from the date of presentation of the representation.