
(2009) 02 RAJ CK 0054
In the Rajasthan High Court

Dr. Karan Singh

APPELLANT

Vs

Vardhman Mahavir Open University Kota and Others

RESPONDENT

Date of Decision : 20-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2009) 02 RAJ CK 0054

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Rastogi, J.—Instant petition has been filed by petitioner assailing charge sheet dt.09/08/05 (Ann.1) and so also order dt.22/10/05 (Ann.20) inflicting penalty of removal from service w.e.f. 31/05/05, the date from which he was placed under suspension.

2. Petitioner was initially appointed as Assistant Professor vide order dt.24/01/90 and promoted as Associate Professor in May, 2000. He was also authorised as a Supervisor vide order dt.12/07/94.

3. It appears from record that certain complaints (Ann.24 to 27) were made by petitioner alongwith other Teachers to His Excellency the Chancellor of the University with regard to functioning of Vardhman Mahavir Open University while imputing allegations against Shri R.V. Vyas Acting Vice Chancellor, duly impleaded as party-respondent No. 2. Petitioner was signatory in all the complaints (supra) which the Teachers jointly made to the Chancellor.

4. For alleged misconduct, petitioner was placed under suspension vide order dt.31/05/05 but, when respondents failed to serve charge sheet upon him who was facing agony of suspension, approached this Court by way of CWP- 4657/05 which was decided vide order dt.03/08/05 with the direction to respondents to conclude inquiry within a period of one month. After order of this Court (supra), petitioner was served with memo dt.09/08/05 (Ann.1) & chargesheet imputing

four charges against him.

5. First charge imputed against petitioner was in respect of three students Sarva Shri (1) Kuldeep Sharma, (2) Arjun Singh Rajpurohit & (3) Miss Sneha Lata forwarded their forms for registration of Ph.D to the University - in process whereof, it was revealed that signatures of students were not tallied with their signatures on subsequent correspondence; as such these were presumed to be their forged signatures of petitioner who was their supervisor.

6. Charge Nos. 2 & 3 were in relation to Degree of Doctor of Philosophy awarded to certain Research Students after undergoing through process provided under Scheme circulated by the University - in course whereof, firstly it was examined by Research Board and later on evaluated by Committee constituted by Vice Chancellor - on its recommendation duly approved by Vice Chancellor and also by Academic Council which is statutory body constituted under Vardhaman Mahavir Open University Act, 1987 ("the Act, 1987"). Allegations imputed against petitioner was that certificates issued by him as Supervisor on dissertations submitted by certain Research Students to the effect that their dissertation works for Degree of Doctor of Philosophy were "original, new & relevant"; while their dissertations were as alleged to be "copied material", which was considered as gross misconduct as the consent of the petitioner recommending the copied material as "new & original" has laid down prestige & dignity of academic community including the University. Charge No. 4 was of cumulative effect of charges No. 1 to 3 imputed against petitioner.

7. It is relevant to mention that prior to the charge sheet (Ann.1) served upon petitioner, some preliminary inquiry was undertaken by respondents through Dr. A.S.Narang as Chairman and Prof. Udai Jain, as Member who was also a member of Board of Management, VMOU; during which petitioner was never called upon and PE report was submitted on 28/06/05 (Ann.R.1) - about which it came to his knowledge only when reply was filed by the University alongwith PE report, to his earlier writ petition before this Court; while in course of preliminary inquiry, opportunity of hearing was never afforded to the petitioner.

8. After charge sheet (Ann.1) dt.09/08/05 was served upon petitioner, he submitted application dt.10/08/05(Ann.4) demanding certain documents (S. No. 1 to 6) being relevant for submission of his reply in response to which petitioner was served with letter dt.12/08/05 (Ann.7) specifically denying of documents No. 2 to 6 stated in his application dt.10/08/05 being not relevant to the charge sheet and as regards document No. 1 it was stated that it can be seen and its photo copy can be obtained but since no time was left, he submitted preliminary reply to the charge sheet on 22/08/05 (Ann.5) - without taking note whereof, as alleged in instant petition, documents required were neither shown nor provided; rather vide order dt.23/08/05 (Ann.12), Inquiry & Presenting Officers were appointed. Inquiry Officer fixed the dates 14/09/05 & 15/09/05 for the Presenting Officer to produce list of documents & witnesses in support of charge-sheet. On 14/09/05, while furnishing list of his defence witnesses, again

petitioner submitted application (Ann.14) asking for the supply of certain documents, which too were not supplied by respondents and since there was no time made available, on 24/09/05 he submitted his written defence statement (Ann.15) to the charge sheet.

9. In course of inquiry, as regards Charge No. 1, statement of one student-Kuldeep Sharma (Pw3) was recorded, who only deposed that signatures on letters of correspondence are different from his earlier signatures put on his registration form of Ph.D. Other two students namely Dr. A.S.Rajpurohit & Snehlata despite their names in list of departmental witnesses, were not produced. As regards Charges No. 2 & 3, statement of B.L.KOthari, Ex-Registrar and Dr. B.K.Sharma, Director, Research Centre were recorded on behalf of department.

10. It is relevant to state that PE report made was made available but neither supporting documents on which reliance was placed upon in preliminary inquiry report was supplied to the petitioner, nor its author was produced in course of disciplinary inquiry by the presenting officer so as to afford an opportunity to the petitioner to cross examine on PE report. During disciplinary inquiry pursuant to charge-sheet(Ann.1), though petitioner submitted a list of defence witnesses & documents to which he was called upon to produce on 15/09/05 but an objection was raised that Dr. RV Vyas (respondent No. 2 herein), to whom he intended to call for as a witness, request was rejected on the premise that he was the disciplinary authority and one witness-Prof. LN Gupta felt his inability to appear and Dr. BK Sharma to whom also he intended to examine, since was already examined by Presenting Officer, finally, two witnesses Prof. M.K.Ghadolia (Dw-I) & Dr. L.R.Gurjar (DW-II) were summoned in defence evidence, during which presenting officer also cross-examined them on 15/09/05. Thereafter, the presenting officer and delinquent-petitioner were called upon to submit their written submission on 24/09/05 and taking note whereof, inquiry Officer submitted his report dt.30/09/05, which was primarily based on preliminary inquiry report held all the four charges proved against petitioner - copy whereof was supplied alongwith letter dt.03/10/05 (Ann. 16), to which petitioner submitted detailed reply (Ann.17) on 17/10/05. However, while upholding finding of inquiry officer, the respondents held the petitioner guilty of charges and finally inflicted penalty of removal from service upon petitioner vide order dt. 22/10/05 (Ann.20) - against which he preferred appeal to the Chancellor of the University but he was informed of no provision of appeal. Hence instant petition.

11. Counsel for petitioner submits that Ord. 61 & 63 of Vardhman Mahaveer Open University Kota (Service) Rules, 1987 ("Rules, 1987") which relates to Service conditions of Teaching & Non- Teaching Employees of respondent-University, under which the disciplinary inquiry has been initiated against petitioner, has not been published in any official Gazette as provided u/s 29 of the Act, 1987 - in absence whereof, very procedure adopted by respondents initiating disciplinary action against petitioner and inflicting penalty stands

vitiated. In support, Counsel placed reliance upon decisions of Apex Court in *Martin Burn Ltd. Vs. The Corporation of Calcutta*, ; *A.R. Antulay Vs. Ramdas Srinivas Nayak and Another*, ; & *J.N. Ganatra Vs. Morvi Municipality*, *Morvi*,

12. As regards merits, Counsel for petitioner submits that all the charges imputed against petitioner are relating to Research work being within exclusive domain of academic council in view of Statute-8(3)(b) of the University Statutes framed u/s 16 of the Act, 1987, duly appended as Schedule thereto; as such when the matter could be examined only through academic council, being statutory committee under the Act, 1987, very allegation under charge Nos. 2 & 3 imputed against petitioner, for which he was charged and finally punished was beyond competence of respondents and their action being in violation of provisions of the Act, 1987, the same deserves to be set aside. Counsel further submits that neither charge sheet nor order of penalty has been approved by a legally constituted Board of Management which is a final authority and a statutory body constituted in terms of Statute-7 of the University Statutes (Schedule to the Act, 1987) - in absence whereof, the charge sheet & penalty inflicted upon petitioner deserves to be set aside.

13. Counsel further submits that Rules have been framed by respondent University in regard to Research Degree Programme leading to Doctor of Philosophy (Ph.D.) from the step of initial registration till the award of Degree to the Research Student; for which procedure has been provided as to how application would be registered and after thesis is submitted, it would be evaluated by subject Experts being appointed by Vice Chancellor and on their unanimous decision on evaluation of Ph.D.-thesis & approval by Vice Chancellor, the Degree (Ph.D) is awarded to the student; while in the instant case, after going through complete procedure of Research Degree Programme which itself is a complete Code, the Degree (Ph.D.) was awarded to all respective Research students for whom allegations were imputed against petitioner under charge-sheet (Ann.1); and only after awarding the Degree (Ph.D.), but due to the fact that petitioner alongwith other teachers made complaint against respondent No. 2 (Vice Chancellor), as a revenge and to wreck vengeance, impugned action was taken against petitioner based on preliminary inquiry report, and despite the fact that it was observed as against other Teacher (Dr.Rameshwar Prasad Sharma) who was also a Supervisor along with petitioner, no action was taken against him. Counsel further contends that once the Degree (Ph.D) has been awarded after going through the procedure as provided under University's Rules/Regulations/Statutes, it could not have been inquired upon as a cause of misconduct by inquiry officer on evaluating the material of the Award of degree (Ph.D.) without holding any authority since the work of evaluation has to be undertaken only by the Committee of Experts being constituted by Vice Chancellor and in the facts of instant case, it was evaluated by subject experts and with their unanimous decision, it was recommended to award Degrees (Ph.D.) and after final acceptance by Vice Chancellor, Degrees were awarded to all the respective Research Students named in chargesheet; in such

circumstances, holding the petitioner guilty of alleged misconduct by initiation of disciplinary action under chargesheet (Ann.1) culminating into inflicting penalty impugned upon him are wholly arbitrary and deserves to be quashed.

14. Counsel further submits that though copy of preliminary inquiry report was made available but neither material having been noticed in course of preliminary inquiry while holding him guilty were supplied nor author of preliminary inquiry report appeared and produced by presenting officer in support of PE report in course of disciplinary inquiry - in the absence whereof, the petitioner was deprived of relevant material - on the basis whereof, preliminary inquiry was conducted holding him guilty, which alone was made the basis by inquiry officer in holding petitioner guilty during disciplinary inquiry; as such action of respondents was in clear violation of principles of natural justice.

15. In the reply filed by the respondents, while supporting the allegations imputed in the charge sheet, preliminary inquiry report, material on record relied upon by inquiry officer and disciplinary authority, respondents have inter-alia averred that initially charge sheet was issued, after having been approved by Board of Management and penalty of removal from service was also inflicted upon petitioner after being approved by the Board of Management which is the appointing authority of petitioner and as per their unanimous decision taken in 63rd meeting held on 25/10/05, petitioner was rightly punished with removal from service. It has also been averred that procedure as provided under the Act, 1987 has been completely followed; and after due compliance of principles of natural justice and having finally held guilty of misconduct, was inflicted with penalty of removal from service.

16. Counsel for respondents submits that Statute-17 of Schedule to the Act, 1987 empowers the respondents to hold inquiry and after affording reasonable opportunity to the delinquent, may pass order of penalty on the ground of misconduct and that apart, Ord.61 & 63 of Rules, 1987 lay down procedures to be followed in course of disciplinary inquiry being in consonance with Statute-17 of Schedule to the Act, 1987; in such circumstances, even if relevant Ordinance has not been published in official gazette as required u/s 29 of the Act, 1987, prejudice in no manner be said to have been caused to the petitioner.

17. I have considered rival contentions of Counsel for the parties and with their assistance, examined material on record. Before examining the controversy raised herein, it will be appropriate to take note of relevant provisions of the Act, 1987, Statutes framed thereunder and the Rules with regard to Research Programme leading to Degree (Ph.D.) as laid down by respondent-University.

18. Vardhman Mahaveer Open University (respondent No. 1-"University") has been created under the Act, 1987. Its teachers are covered as defined u/s 2(m). Chapter-V of the Act, 1987 lays down about authorities as defined u/s 10 of the Act, 1987. Board of Management of the University is the Principal executive body while at the same time, principal board of the University is an academic council

constituted Under Sections 11 & 12 of the Act, 1987.

19. Chapter-VI of the Act, 1987 deals with University's statutes, ordinances & regulations. u/s 16, the University has been made competent to frame its own Statutes; and accordingly framed Statutes which is appended as Schedule to the Act, 1987. Statute-7 of Schedule lays down constitution of the Board of Management and as per Statute-7(4), five members of the Board of Management shall form the quorum for a meeting of the Board. Under Statute-7(2)(b) & (d), the Board of Management can exercise powers and perform its functions to control and supervise all administrative affairs of the University and to determine terms & conditions of service of Teachers & other members of the academic staff. Statute-8 lays down constitution of academic council; and powers & functions being exercised by academic council under Statute-8 (3)(b) & (c) to give direction in the matter of evaluation & research and to consider matters of academic nature on a reference from a School of Studies, or Board of Management and to take appropriate action thereof; meaning thereby, as per provisions in regard to examination & evaluation of Research work and so also matters relating to academic nature on a reference made by the Board of Management, it is the function of academic council to take final decision. At the same time, under Statute-17 of Schedule to the Act, 1987, on the ground of misconduct, in respect of a Teacher & member of academic staff, the Board of Management is the authority competent; and in respect of an employee, the appointing authority shall have power to make an order of removal from service but only after giving a reasonable opportunity of showing cause in an inquiry.

20. In its 7th meeting of Board of Management held on 14th October, 1988 under Item No. 14, the University has framed its Ordinance with regard to service conditions of Teaching & non-teaching Employees under short-title as Vardhman Mahaveer Open University, Kota (Service) Rules, 1987. Chapter-VIII deals with conduct & discipline and its Ord.61 prescribes penalties for being imposed upon for good & sufficient reasons; while its Ord.63 lays down the procedure for imposing penalties, as being almost on same line of Statute-17 of Schedule to Act, 1987, (supra). At the same time, as regards Rules framed for Research Degree Programme leading to Doctor of Philosophy (Ph.D), complete Code is provided laying down from initial administration as per which Research Degree Programme shall be in accordance with Research Policy adopted by academic council & Research Board constituted under supervision of academic council; and certain duties have been assigned to the Research Board to perform.

21. Research Board is constituted under para 1.2.2 whereby Vice Chancellor or his/her nominee is Chairperson & other members are academicians and the report of Research Board is to be submitted to the academic council in terms of para 1.2.4; and powers vests with Vice Chancellor to exercise executive authority on behalf of the Research Board as per para 1.2.5. There is a procedure for Registration under para 2, which lays down qualifications and procedure under which student can get himself registered and it also lays down the time schedule

in which one has to furnish his thesis. Para 3 relates to Supervision - as per which every student duly registered can pursue research degree Programme only under supervisor recognized by the University. Para 4 relates to submission of Ph.D. Thesis. Para 4 & 5 relevant for the purposes read ad infra:

4. Submission of Ph.D. Thesis:

4.1. For Ph.D. Degree, a student shall be required to submit a thesis in the format as may be prescribed by the discipline and Research Board after getting "No Dues Certificate" from the concerned units of the University.

4.2. No thesis shall normally exceed eight thousand words (excluding foot notes and bibliography). It must be a piece of research work characterized either by the discovery of new facts or by a fresh interpretation of facts or theories. In either case, it should also be satisfactory as far as its literary presentation is concerned. However, in case a thesis exceeds this limit the candidate shall be required to obtain special permission of the Research Board. The candidate shall indicate summarily in approximately 2000 words how far the thesis embodies the results for his/her investigations. This summary shall be submitted in four copies alongwith the thesis and this shall also be sent to the examiners alongwith Ph.D. Thesis. The candidate shall submit his /her thesis in four copies.

5. Evaluation & Awards

5.1 After the receipt of the thesis, alongwith necessary certificates and the requisite fee by the office of the Director (Research) the supervisor shall submit a panel of 8 experts who are entitled to be research supervisors of University, preferably Professors for appointment as examiners and certify that they have been active in the related field. The Vice-Chancellor shall ordinarily appoint two external examiners for Ph.D, thesis from the panel to whom the thesis shall be sent for evaluation. In special case, the Vice Chancellor may request the supervisor to cite some publications by the suggested examiners in the area of the research. The panel of examiners may be re-submitted on the directives of Vice Chancellor. The supervisor will also be an examiner of the thesis.

5.2 The following provisions will be applicable for evaluation of Ph.D, thesis.

5.2.1 In case all the three examiners do not unanimously recommend the award of the degree, copies of their reports will be sent to the supervisor for his/her comment(s) and the case will be considered by the Vice-Chancellor after receipt of comments.

5.2.2 In case two or all examiners disapprove the thesis it shall be rejected.

5.2.3 If one of the examiners approve the thesis and other recommends a revision and the third rejects it, the candidate shall be called upon to submit the thesis after revision in the light of the observations of the examiner.

5.2.4 In case all the three original examiners including the supervisor also approve the thesis, the candidate shall be called upon to appear for a viva-voce

examination which will be open to all interested persons and shall be considered by the Board of examiners consisting of supervisor and one of original external examiners of the thesis selected by the Vice-Chancellor. If both the viva-voce examiners (supervisor & external) are satisfied, the case shall be forwarded by Director (Research) to the Vice Chancellor for his approval and provisional certificate of Ph.D degree to the candidate.

5.2.5 In case the recommendations of the viva-voce examiners differ from that of the thesis examiners or there is a difference of opinion between the vive-voce examiners, the candidate may be asked to reappear at a second viva voce examination within six months. If the candidate fails to satisfy, the thesis will be finally rejected.

5.2.6 If the examiners recommend that the candidate be asked to revise/improve his/her, thesis the Vice Chancellor may permit the candidate to re-submit his/ her thesis on the recommendation of the supervisor.

5.2.7 In case a candidate is allowed to re-submit his/her thesis will have to be pay a fresh submission fee at the time of re-submitting his/her thesis.

5.2.8 The Vice-Chancellor shall refer the approved thesis for collective statement before taking a final decision about its publication.

5.2.9 The candidate shall not publish the thesis without seeking a formal permission to this effect from the university.

22. It is also relevant to mention out of Booklet-"A profile of Research Degree Programme" produced for perusal of this Court, in respect of Research Students named in Articles of Charge Nos. 2 & 3 for whom allegations have been levelled against petitioner; and as per which, their thesis were finally approved and duly notified for award of the Degree (Ph.D.) on respective dates mentioned ad infra:

Date of Approval			Name of Students Notification
			1. Jitendra Yadav
01/04/2003	15/04/2005	2. Sunita Yadav	09/04/2003 15/04/2005 3. Rakesh Kr
Sharma	04/06/2004 23/04/2005	4. Geeta Yadav	25/06/2004 29/04/2005 5.
Narotam	Giri	31/07/2004	29/04/2005

23. In matters of disciplinary inquiry, scope of judicial review is not totally barred and it can certainly interfere with conclusions reached, if there is no evidence to support the findings or the same is not based on the evidence adduced or that a reasonable person could not have come to those findings on the basis of evidence; certainly in that eventuality, the findings recorded by the inquiry officer would be perverse. Apex Court in Kuldeep Singh Vs. The Commissioner of Police and Others, observed as infra:

6. It is no doubt true that the High Court under Article 226 or this Court under

Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.

24. In *Lalit Popli Vs. Canara Bank and Others*, Apex Court considered that while exercising jurisdiction Under Article 226 of the Constitution, this Court should not act as an appellate authority. It has been observed:

17. While exercising jurisdiction under Article 226 of the Constitution, the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

25. In this view of matter (*supra*), ordinarily this Court would not have interfered in the findings of fact recorded in domestic inquiry, but if finding of guilt is based on no evidence or the findings recorded were such which could not have been reached by ordinary prudent man, certainly it would be perverse finding and amenable to judicial review Under Article 226 of the Constitution. Adverting to facts on merits of the case, petitioner was appointed as Research Supervisor duly recognised by the University and as per Scheme, referred to (*supra*), Research work is totally within exclusive domain of the academic council in view of Statute-8(3)(b) of Schedule to the Act, 1987 and as regards matters of academic nature, the Board of Management is also supposed to make a Reference for taking proper action thereof to the academic council in terms of Statute 8(3)(c).

26. In instant case, after petitioner submitted certificates to the effect that dissertation & thesis presented by research students named in the charge sheet were "original & new", which as alleged by respondents in Articles of Charges No. 2 & 3 (Ann.1) were "copied material"; it was enclosed with their Ph.D.- thesis in terms of para 4 of Research Degree Programme Rules; and both their thesis alongwith certificates attached to it were placed for evaluation before the Committee of experts constituted by Vice Chancellor in terms of para 5.1 of Research Degree Programme Rules; and only on unanimous recommendations by Examiners being subject-experts, were considered for approval by Vice Chancellor; and only after having undergone *vivo voce* test, upon its final recommendations, their thesis were duly approved in terms of the Scheme (*supra*).

27. At the stage of Evaluation or subsequent thereto, the authority being an

expert never raised objection in regard to any of Research students whose thesis/ dissertations were being evaluated. Since the Research Board also functions under supervision of Academic council, final decision in matters of research is of academic council. There is no material having come on record to show that academic council at any stage has recorded adverse comments with regard to either of research students whose thesis upon being examined, evaluated and finally approved & notified for award of the degree (Ph.D.) in their favour.

28. But for alleged misconduct, preliminary inquiry officer on his personal evaluation, that too without affording opportunity of hearing to the petitioner, held charge Nos. 2 & 3 as proved; inasmuch as copy of preliminary inquiry report was belatedly made available but without any supporting material thereto on which PE report was based. That apart, during disciplinary inquiry, inquiry officer recorded his finding totally based on what has been arrived at by preliminary inquiry officer despite the fact that the material on which PE report was based and taken note of during disciplinary inquiry was neither supplied to the petitioner nor produced alongwith list of documents & witnesses nor even the author of PE report was produced by presenting officer so as to confirm the findings recorded against petitioner nor the petitioner was afforded an opportunity to cross examine in regard to PE report. Since there was no independent material other than preliminary inquiry report on record - on the basis whereof, he could have been held guilty, which certainly has caused prejudice to him and action of respondents was in utter violation of principles of natural justice.

29. Charge No. 1 is that signatures on Registration forms were forged. Before inquiry officer, out of three students named in Charge No. 1, only one (Kuldeep Sharma)(Pw3) appeared; and in the finding recorded with regard to charge No. 1, his statement (Pw3) taken note of by the inquiry officer is reproduced *ad infra* : (iii) That Shri Kuldeep Sharma who appeared for hearing has himself admitted that the signatures on the letters of correspondence are different from his earlier signature put on the registration form for Ph.D.-programme."

30. Thus, he only deposed that signatures on the letters of correspondence are different from his earlier signature put on the registration form for Ph.D.-programme.

31. This Court fails to appreciate that on what premise/basis, inquiry officer recorded finding of guilt holding signatures to be forged and imputed the petitioner for the same. There is no material whatsoever on record, by which an inference can be drawn about charge No. 1 being found proved. If at all signatures on registration form were different or forged and petitioner was responsible, it could have been taken note of only by obtaining proper report of handwriting expert; while inquiry officer, himself, recorded the finding of guilt holding signatures on registration forms as forged, for which petitioner has been imputed as responsible without any supporting material brought by presenting officer on record.

32. At the same time, charge No. 4 is in the nature of collective alleged misconduct based on charge Nos. 1 to 3. There is no material having come on record by which any inference can be drawn in regard to these charges so as to hold them proved against petitioner; as such the finding of charge No. 4 is totally perverse. Contention urged by Counsel for petitioner about Ordinance of the University (Rules, 1987) allegedly being not published in Official gazette as required u/s 29 of the Act, 1987, is not of any substance for the reason that Statute-17 of the Schedule to the Act, 1987, empowers the authority to regulate disciplinary action against members of academic staff & employee of the University; who, after affording opportunity of hearing, can be removed from service. Ord.61 of Rules, 1987 lays down nature of penalties while Ord.63 provides procedure almost in self-same line as that of Statute-17 of Schedule to the Act, 1987. Even if Reference has been made of Ord.63 of the University (Rules, 1987) in the charge sheet (Ann.1), that will be of no significance; since powers are vested with the Board of Management under Statute-17 of Schedule to the Act, 1987, which has a statutory force. Judgments on which Counsel has placed reliance are of no assistance in the facts of instant case as taken note of (supra).

33. Submission made by Counsel for petitioner in respect of constitution of the Board of Management while passing order impugned inflicting penalty upon him, is of no substance. Proceedings of the Board of Management were placed before this Court and not at the stage when charge was served, even while inflicting penalty upon petitioner, the Board of Management was duly constituted as provided under the Act, 1987, which is the appointing authority of petitioner and only after its final approval, the order impugned was passed.

34. In instant case, this Court is of the considered opinion that findings recorded by inquiry officer are vitiated for the reason of fact that they are not supported by evidence on record and are wholly perverse. It also appears from the record that entire gamut initiated after complaints (Ann.24 to 27) were made against Vice Chancellor (respondent) - in counter thereto, the record was scrutinized to find out mistake, for which preliminary inquiry was conducted against petitioner by Dr. AS Narang and one of members of Board of Management, Prof. Udai Jain, who submitted their PE report on 26th & 28th June, 2005 where petitioner was never called upon in course of preliminary inquiry and the finding was recorded by preliminary inquiry officers without affording him an opportunity of hearing which has certainly caused prejudice to him as the very finding has been utilised by disciplinary inquiry officer holding him guilty. Mere supply of preliminary inquiry report would not be sufficient for delinquent to come with defence unless supporting material on which preliminary inquiry report was prepared, was made available to him and atleast the person who has inquired upon and recorded a finding in course of preliminary inquiry ought to have been summoned in evidence so as to afford opportunity to delinquent to cross examine him. In absence whereof, the finding recorded by disciplinary inquiry officer based on such preliminary inquiry report has certainly caused prejudice to the petitioner

and their action was in violation of principles of natural justice. Moreover, as per scheme of Rules (supra), after certificate is furnished by supervisor, the research work is to be examined at various levels and particularly for evaluation by experts committee duly nominated by Vice Chancellor and on their unanimous decision, it has to be considered by Vice Chancellor and after it, stands approved and research student is called for vivo voce test and undergoing through process, thesis is finally approved and accordingly Degree of philosophy was awarded. But at no stage, neither evaluation committee nor Vice Chancellor at a later stage, when research student was called for vivo voce test or at any stage thereafter, objection was raised regarding research work furnished by research student and even the Research Board evaluated the work & approved it. Even academic council which is a statutory body of experts has never raised any objection about thesis work in question which was certified by petitioner being original & new - in absence whereof, taking extracts from the book obtained by preliminary inquiry officer who was not an expert, recorded finding of certificate furnished by petitioner as false without obtaining opinion from academic council which is a statutory authority, in such circumstances, holding petitioner guilty of misconduct recorded by inquiry officer duly upheld by disciplinary authority appears to be wholly perverse, which in ordinary prudence cannot be supported. In the opinion of this Court, action of respondents based on perverse finding was wholly arbitrary and inflicting penalty of removal from service in no manner can be said to be legally sustainable.

35. Consequently, writ petition succeeds and is hereby allowed and the order dt.22/10/05 (Ann.20) inflicting penalty of removal from service is hereby quashed & set aside. Respondents are directed to reinstate the petitioner with consequential benefits within two months. No order as to costs.