

(1994) 07 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : C.W. No. 1424 of 1993

Dr. K.C. Malhotra

APPELLANT

Vs

The Chancellor, H.P. University, Shimla and Others

RESPONDENT

Date of Decision : 04-07-1994

Acts Referred:

Constitution of India, 1950 — Article 14
Himachal Pradesh University Act, 1970 — Section 12(5)

Citation : AIR 1995 HP 156 : (1995) 1 ShimLC 1

Hon'ble Judges : V. Ratnam, C.J.;A.L. Vaidya, J

Bench : Division Bench

Advocate : Chhalil Dass, for the Appellant; K.D. Sood, J.S. Khehr, Tejinder Dhindsa and D.C. Jishtu and Inder Singh, General, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner Dr. K. C. Malhotra joined H. P. University since its very inception and had been posted as Dean of Sciences, Dean of Students Welfare and Dean of Studies. He as appointed as an acting vice Chancellor in the University of Himachal Pradesh on 18th January, 1986 and with effect from 1st March, 1986, he was appointed as Vice Chancellor for a period of five years as was then prescribed under the Himachal Pradesh University Act (hereinafter to be called as the Act). The Act was later on amended and the term of the office of the Vice Chancellor was reduced to three years. However, the petitioner continued to have renewal of the terms as Vice Chancellor and finally on 6th July, 1991, his terms of office of Vice Chancellor was renewed for a further period of three years vide order dated 6th July, 1991 (Annexure-PA). The petitioner's three years term was to expire in July, 1994 but in the meantime on 22nd September, 1993, a notification was issued by the respondent No. 1 purporting to be in exercise of the powers vested in him u/s 12(5) of the Act, ordering removal of the petitioner from the office of the Vice Chancellor of the respondent-University. Copy of the notification is Annexure PG.

2. Dr. K. C. Malhotra, the petitioner has preferred the present writ petition for quashing the notification No. 4-5/71-GS-IV dated 22nd September, 1993 issued by Secretary to Chancellor (Annexure PG) whereby the petitioner has been removed as Vice Chancellor of H. P. University, on various grounds, as enumerated in para 15 of the petition, which for the sake of convenience and for proper appreciation of the matter under controversy, are being reproduced hereunder in verbatim:

(i) that the aforesaid notification is in-complete violation of the provisions of Section 12(5) of the Himachal Pradesh Act. Sub-section (5) of Section 12 of the Act prescribes as under:--

"if in the opinion of the Chancellor the Vice Chancellor wilfully omits or refuses to carry out the provisions of the Act or abuses the powers vested in him or if it appears to the Chancellor that the continuance of the Vice Chancellor in office is detrimental to the interests of the University, the Chancellor may, after making such enquiry as he deems proper and in consultation with the State Government, by order, remove the Vice Chancellor."

A bare perusal of the provisions of the Act clearly show that the Chancellor has to form his opinion as to the fact that Vice Chancellor has wilfully omitted or refused to carry out the provisions of the Act or abused the powers vested in him or if it appears to the Chancellor that continuance of Vice Chancellor in office is detrimental to the interests of the University, the Chancellor may, after making such enquiry as he deems proper and in consultation with the State Government, by order, remove the Vice Chancellor. The holding of an enquiry which is deemed proper by the Chancellor is a sine qua non for exercise of the powers of removal of the Vice Chancellor by the Chancellor. In this matter, the Chancellor is bound to hold an enquiry wherein such matters which require evidence to be led has to be led in the presence of the petitioner and the petitioner has to be given a chance to cross-examine the witnesses. Such enquiry has to be a reasonable enquiry in conformity with the principles of natural justice and also in conformity with the statutory provisions. The Act does not give arbitrary powers to the Chancellor not to hold an enquiry at all or to prescribe a mode which does not give reasonable opportunity to the Vice Chancellor to defend himself nor does it entirely dispense with the norms of statutory presumption and the established manner of practice of adducing evidence if the allegations or otherwise "require to be established by oral or documentary evidence. In this respect, the Vice Chancellor is also entitled to cross-examine the witnesses if the charges are of such a nature.

(ii) That petitioner maintains that no such enquiry was held nor the petitioner was informed that an inquiry was contemplated memorandum was the notice of such inquiry. Everything has been done in a camouflage manner which did not even put the petitioner on notice that an inquiry as contemplated under Sub-section (5) of Section 12 of the Himachal Pradesh University Act was being held.

(iii) that the petitioner maintains that the Memorandum was vague to the extreme. The aforesaid allegations were made in the letter dated 26-8-1993 and the same situation had been admitted in ultimate para of the D.O. letter quoted above.

(iv) that the petitioner further maintains that petitioner was called upon to give explanation to the allegations even earlier vide Annexure PD/ 1 to PD/2 and no action having been taken by the Chancellor were deemed to have been dropped by the Chancellor and, thus, it was not open for the successor Chancellor to re-open the issues without there being any averments of mistake in the earlier decisions of the Chancellors. Needless to state that previous Chancellor Sh. B. R. Bhagat had definitely come to the conclusion that the allegations made against the petitioner were not proved. Thus, his successor was not justified in re-opening the issue which has been closed once for all. The petitioner derives this information from a news item appearing in the Daily Indian Express, Chandigarh dated 30-6-1993, Copy Annexure PH.

(v) that the petitioner maintains that no proper notice of enquiry was given to the petitioner and no proper enquiry as envisaged u/s 12 (5) of the Himachal Pradesh University Act, 1970 was held.

(vi) that the petitioner further maintains that the Chancellor did not apply his mind to the explanation given by the petitioner. The orders are cryptic orders and do not mention the grounds on the basis of which the petitioner was removed. No reasons have been given by the respondent No. 1 to come to the conclusions that the petitioner was liable to be removed as Vice Chancellor within the parameter of Section 12 (5) of the Act.

(vii) that as submitted earlier, the entire procedure was violative not only of Section 12(5) of the Act, but also of the principles of natural justice and fairplay.

(viii) that petitioner further submits that the Chancellor had already made up his mind to remove the petitioner from the office of Vice Chancellorship before even considering the explanation.

(ix) Even otherwise after going through the explanation furnished by the petitioner, no reasonable person should have come to the conclusion that the petitioner was guilty of omissions or refusal to carry out the provisions of the Act or had abused the powers vested in him or that the continuance of the petitioners as Vice Chancellor in office is detrimental to the interests of the University, where the petitioner had been serving for the last more than 7 years.

3. The petitioner has very specifically pleaded that certain interested rival groups in the University felt themselves aggrieved on some imaginary issues as the petitioner, as a Vice Chancellor, was required to take many decisions, which were not to the liking of certain persons and those persons continued to have grievances of their own inasmuch as and when a Professor or a Lecturer was not selected to a higher post or if a junior person was selected to a higher post, the

person so superseded started levelling allegations of mala fide, favouritism, violation of rules etc. against the petitioner. According to the petitioner, several memoranda which were vague were sent to the respondent No. 1 and for which the petitioner was called upon to reply from time to time, but no action was taken obviously for the reasons that the aforesaid allegations were based upon imaginary grounds. The petitioner also pleaded that ever since the then incumbent to the office of Governor, joined which is also an ex-officio Chancellor of the University of Himachal Pradesh, certain reports started appearing in the papers that a few pressure groups had been meeting the Chancellor and levelling many allegations of favouritism, corruption, violation of rules etc. and a few of the allegations were communicated to the petitioner also for his comments and he continued sending the replies thereto and many allegations were found to be imaginary and thus were dropped. The petitioner had no hesitation in pleading in very clear terms that the respondent No. 1 had already decided to remove the petitioner from the office of vice Chancellor even without asking for any explanation and certain statements appeared in the Press that the Governor had decided to remove the petitioner as would be evident from the Press report appearing in the daily Tribune dated 10th September, 1993 (copy Annexure PB). In this newspaper, it was reported that the Governor was likely to ask the petitioner to resign, though this news report was contradicted on the next date by the Chancellor stating that he had not yet applied his mind to the explanation furnished by the petitioner, but in his earlier report, he had definitely made up his mind to ask the petitioner to resign from the Vice Chancellor ship of the University. According to the petitioner on 26th August, 1993, the Secretary to the Chancellor issued a Demi Official letter No. 4-80/93-GS (copy Annexure PC), to him in which as many as eight allegations were levelled against the petitioner and the petitioner was asked to give the para wise comments- According to the said demi official letter "some of the above allegations may not be very specific but it is requested that full facts in respect of these so far as possible may be supplied for the information of the Hon'ble Governor (Chancellor) by 4th September, 1993". This letter did not give even a semblance of notice to the effect that the aforesaid letter was being treated as chargesheet for holding an inquiry as contemplated u/s 12(5) of the Act. The petitioner also alleged that he replied to the aforesaid allegations vide his letter dated 3rd September, 1993 and filed his elaborate explanation (copy Annexure PE).

4. According to the petitioner he received a message from the Secretary to the Chancellor to see the Chancellor on 21st September, 1993 at 12 noon and when he went to see the Chancellor, he was asked by the Chancellor to resign from the office, for which the petitioner refused. Thereafter, he submitted a letter dated 22nd September, 1993 (Annexure PF) to the Chancellor, wherein the petitioner had highlighted the achievements of the University during the period of his holding the office of Vice Chancellor and also requested the Chancellor to reconsider his observations, but on 22nd September, 1993 a notification, under challenge, removing the petitioner was issued.

5. All the respondents have contested the petition but main contest has been by the respondent No. 1. In order to appreciate the stand taken by the respondent No. 1, the preliminary submissions made in reply in a way cover the main defence put up on behalf of the respondent No. 1. These preliminary submissions have been under two paras, which are reproduced hereunder:--

"That the petitioner was appointed Vice Chancellor of the H.P. University on temporary basis on 17/18th January, 1986 and on regular basis on 1st March, 1986 u/s 12(I)(3) of the H.P. University Act, 1970. On the expiry of his 5 years terms as Vice Chancellor he was again appointed Vice Chancellor for a period of three years by respondent No. 1 w.e.f. 6-7-1991. The Vice Chancellor holds the office subject to the pleasure of the Chancellor. The present Chancellor took over the charge of the Chancellor of the H.P. University on 30-6-1993 (F.N.). After he had taken over charge, a large number of complaints and representations were received by him against the petitioner as Vice Chancellor of the University. He had also the occasion to go through the relevant files and the representations made to him by various cross sections of the students, staff and employees of the H.P. University. He also received information from the cross section of the University students, faculty members, employees and associations of students and teachers of the University who had been meeting him from time to time. The atmosphere in the University was deteriorating day by day. The academic studies were suffering, it was not conducive for the academic pursuit of the smooth functioning of the University. On a number of occasions there were hunger strikes, and gheraos against the petitioner's working as Vice Chancellor. There were charges of corruption, nepotism and demands for removal of the Vice Chancellor. The Vice Chancellor was totally ineffective and was unable to control and improve the deteriorating atmosphere in the H.P. University. On a number of occasions, the Vice Chancellor had been advised by the Chancellor to improve the functioning of the University and atmosphere of the campus. The situation was getting from bad to worse. The University office, record pertaining to the period of the petitioner working as Vice Chancellor, particularly during the last 2 years shows that there were many cases of administrative and financial irregularities and the large number of appointments had been made in violation of rules and procedures laid down in the University and Statute and ordinance, a number of persons had been appointed for more than 89 days without notifying the vacancies to the Employment Exchange. Number of Junior Engineers, Clerical staff, P.R.O, and Lecturers were appointed without following the norms as per the details given in Annexure R-I/1 which has resulted in considerable heart burning in the University. There were demands for the removal of the petitioner as Vice Chancellor from all the three main student unions i.e. N.S.U.I A.B.V.P. and S.F.I, who had started pasting posters on the walls and in the campus and elsewhere. Since the last week of June, 1993 there were rallies held by students and teachers and non-teaching employees. In the meantime, an organisation of the name of Vishva Vidyalaya Abhiyan Samiti had also come into being which has started Vishva Vidyalaya Bachao Abhiyan. On 23-8-1993 some students belonging

in S.F.I, started strike unto death and some students belonging to A.B.V.P. started sitting in Dharnas in front of Vice Chancellors office commencing from 24-8-1993, N.S.U.I, also launched Dharnas. On 28-8-1993 Sh. V.K. Bhatnagar, Secretary to the Governor intervened and got the hunger strike of S.F.I, called off from the students. At later phases N.S.U.I, and A.B.V.P. students who were sitting on hunger strike were also called off.

2. That the atmosphere of the Campus had already deteriorated to such an extent that the Executive Council Meeting scheduled for 28-8-1993 could not be held in the Campus and the said meeting was held in the Committee Room of H.P. Secretariat Building, Chhota Shimla. This was the last meeting of the Executive Council chaired by the petitioner. On 18-9-1993, the Vice Chancellor was gheraad to press the demands by the students Central Association. The Himachal Pradesh Vishva Vidayala Bachao Abhiyan had threatended to launch direct action from 3-9-1993. The H. P. Vishava Vidayala Bachao Samiti had held a rally on 15-9-1993 for removal of the petitioner on corruption and misuse of power. Traffic was disrupted for over an hour in the campus. Some of the news items are cumulatively attached as Annexure R-1/2 to the reply. It also came to the notice of the replying respondent that the conduct of the petitioner had been severely commented upon by the High Court of Himachal Pradesh in its judgment, copies of which are cumulatively attached as Annexure R-1/3, Considering all the facts and circumstances of the case, the replying respondent found that continuance of the petitioner in the office of Vice Chancellor was detrimental to the interest of the University and that he was absuing the powers vested in him and in consultation with the State Government passed an order of his removal on 22-9-1993 in accordance with law. As such the petitioner is not entitled to any relief from this Hon"ble Court and the writ petition is not maintainable. The replying respondent after making adequate enquiry into the allegations made against the petitioner and satisfying himself that the continuance of the petitioner as Vice Chancellor of the University was detrimental to the interest of the University and that he was abusing the powers vested in him, has passed the order which is legal and valid and does not warrant interference.

6. On merit, it was pleaded by the respondent No. 1 that there were a large number of complaints of misuse of power and position by the petitioner and several memoranda had been received by the respondent as to the functioning of the University under the Vice Chancellorship of the petitioner. It was also submitted that atmosphere in the University deteriorated as detailed in preliminary submissions referred to above. According to the respondent No. 1 it was wrong to say that the Chancellor had made up his mind to remove the petitioner, inasmuch as the contradiction of the news item was published in Hindi Newspaper dated 11-9-1993 (Copy Annexure R-1/4). It was also pleaded in the reply that the replying respondent was not required to issue a regular charge sheet or hold an enquiry, as was claimed by the petitioner in view of the provisions of Section 12 of the Act and scheme of the relevant statutory

provisions. The grounds enumerated in para 15 of the petition for assailing removal notification of the petitioner have been alleged to be wrong and have been denied. It has been very specifically pleaded that the order passed removing the petitioner from the post of the Vice Chancellor was legal and valid and that Respondent No. 1 after taking into consideration all the facts and circumstances was satisfied that continuance of the petitioner in the office of the Vice Chancellor was detrimental to the interests of the University, as he had abused the powers vested in him, and had ordered his removal in consultation with the State Government in accordance with law. It was further pleaded that the petitioner had tampered with the merit list and proceedings of the Recruitment and Promotion Committee for category C posts held on 10th to 12th February, 1993 and included names of certain persons in the waiting list and had given them appointment under his own orders contrary to the recommendations of the Committee. The respondent No. 1, as such prayed for dismissal of the writ petition.

7. The other contesting respondent No. 2 has also submitted reply almost on the lines of the reply put in by respondent No. 1. However, respondent No. 2, University has in very clear terms pleaded that during the last two years of the petitioner, holding the post Vice Chancellor, there have been many cases" of administrative and financial irregularities and large number of appointments were made in violation of the rules and procedure laid down under the Act. Respondent No. 3 also submitted its reply and pleaded that an enquiry was held as stipulated u/s 12(5) of the Act and after consultation with the State Government, Chancellor took action against the petitioner in a valid and legal manner. It was also alleged that there was no necessity to hold an enquiry of the type prescribed for Government servant inasmuch as it requires only an enquiry about the fact for forming an opinion by the Chancellor and thereafter taking action, on that basis, as the Chancellor deems fit and this procedure was followed by the Chancellor while passing removal order of the petitioner.

8. The present writ petition was admitted on 29th March, 1994. Along with the main writ petition, C.M.P. No. 3039 of 1993 was preferred by the petitioner whereby it was prayed that pending final disposal of the writ petition, the operation of notification dated 22nd September, 1993 (Annexure-PG) may be suspended or such other orders as this Hon'able Court may deem fit, may be passed to safeguard the interest of the petitioner. On 28th September, 1993 Sh. Chhabil Dass, learned counsel for the petitioner submitted that for the present he confines his claim for retention of the house, telephone facility and an attendant/servant/cook already provided by the University. This submission was made in CMP No. 3039/93 and the Court passed the following order:

"Since the matter is still to be examined by the Court, we think that the petitioner should continue to avail these facilities till further orders. Therefore, the petitioner would continue to enjoy the facilities of accommodation, telephone and attendant/servant/cook presently attached with him till further orders."

9. While disposing another petition, (C.M.P. No. 3305/93) preferred by the petitioner, this Court ordered that so far as the claim with respect to salary is concerned, the petitioner would be entitled to the same in case he succeeds in the writ petition. However, Sh. Chhabil Dass did not press his claim for security, as was prayed for in this petition and Court also rejected the claim for vacation of the residential accommodation, preferred by opposite side.

10. A petition (C.M.P. No. 885/94) was put in by the respondent and it was brought to the notice of the court that Dr. H.P. Dikshit, had been appointed as Vice-Chancellor by a notification dated 16th April, 1994 and that he had also assumed charge as Vice-Chancellor of the H.P. University on 6th June, 1994. This Court on 8th June, 1994 ordered that any order, that may ultimately be passed in favour of the petitioner in CWP No. 1424/93, was likely to affect the interests of Dr. H. P. Dikshit, who has now taken over as Vice-Chancellor and his presence, as a party respondent to this writ petition, would be necessary. It was then directed that Dr. H. P. Dikshit, present Vice-Chancellor of the H.P. University, be implicated as a fourth respondent in this writ petition.

11. It may be referred here that the writ petition had already been admitted and partly heard on 1st June, 1994 whereafter respondent No. 4 joined as Vice-Chancellor of the H.P. University, on the basis of the order dated 16th April, 1994, passed after the writ petition had been admitted. Any way there was no stay granted for restraining the respondents to make any appointment in place of the petitioner as Vice-Chancellor and also no stay was granted for suspending the operation of the impugned notification removing the petitioner as Vice-Chancellor.

12. Learned counsel for the petitioner Sh. Chhabil Dass vehemently stressed that order of removal of the petitioner suffers from so many legal infirmities which if taken note of will make this order unsustainable on any ground whatsoever. The points stressed by the learned counsel in support of his case are summarised hereunder:--

(i) No enquiry of any sort was made by the Chancellor u/s 12(5) of the Act, in as much as no notice of enquiry was received by the petitioner in this particular behalf.

(ii) In case any enquiry was conducted, it was done behind the back of the petitioner, who had been condemned un-heard the enquiry being against principles of natural justice and an order on the basis of such enquiry does not exist in the eyes of law.

(iii) It is borne out from the record that the decision to remove the petitioner had already been taken much prior to the issuance of the order to that effect in September, 1993 and the so-called enquiry conducted by the Chancellor was a camouflage for the decision earlier taken without complying with the provisions of law in this behalf and as such in this view of matter also the order of removal does not legally stand.

(iv) It was for the first time brought to the knowledge of the petitioner, as has been pleaded in the preliminary submissions put in by the respondent No. 1 in his reply, that strike, hunger strike in the University had led to the functioning of the University at a stand still, was connected, with inefficient handling of the situation by the then Vice-Chancellor (the petitioner). Admittedly, there is nothing on record to suggest that the petitioner was ever asked in this behalf by the Chancellor in any enquiry, alleged to have been conducted by the Chancellor. This ground as such could not be made the basis for the removal of the petitioner u/s 12(5) of the Act.

(v) u/s 12(5) of the Act, an elaborate enquiry was envisaged by taking evidence and affording an opportunity to the petitioner to lead his defence and cross-examine the witnesses appearing against him, in that enquiry. The purpose of Section 12(5) of the Act has been legally defeated, which aspect also makes the order of removal of the petitioner, illegal.

(vi) The order of removal of the petitioner as Vice-Chancellor is not supported by any reason whatsoever and as such it has to be ignored. The present petitioner has replied all the allegations referred to in Annexure-PC and on the basis of the reply, those circumstances enumerated in Annexure-PC could not have been made the basis for the removal order.

13. On the other hand, the respondents more particularly, the respondent No. 1 has very strongly refuted the arguments advanced on behalf of the petitioner. It has been contended that provisions of Section 12(5) of the Act empowered the Chancellor to make such an enquiry as he deemed proper and in the present case, the Chancellor conducted a discreet enquiry and was of the opinion that continuance of the petitioner as Vice-Chancellor of the H.P. University was detrimental to the interests of the University and for that purpose, the petitioner was not to be associated in such discreet enquiry under the provisions of the Act. Learned counsel's line of the argument has been that the Chancellor passed the order of removal on the basis of the fact that day-to-day working of the University came to a stand still on account of strikes and hunger strikes by the various student unions, for which the Vice-Chancellor, who happened to be the in charge of the entire affairs of the University, should be responsible, as he failed to act, which reflected his inefficiency to tackle the matter and which aspect of the case set up in the reply was not specifically denied, which amounted to an admission on the part of the petitioner and accordingly on this sole ground the removal order is not only legal, but sustainable under the provisions of the Act. In such an eventuality, according to the learned counsel, neither notice of enquiry, nor hearing of the petitioner in the said enquiry was legally essential. The arguments submitted on behalf of the respondent No. 1 can be summarised point-wise as under:--

(i) Section 12(5) of the Act did not envisage any opportunity to be afforded to the petitioner while conducting an enquiry by the Chancellor under the said provisions. Had it been the requirement of law, it would have been specifically

provided u/s 12(5) of the Act and where such a notice was required in given set of circumstances or cases, specific provisions in this behalf had already been made in the Act as is apparent from Section 9(a) and Section 44 of the Act.

(ii) Section 12(c) of the Act deals with powers and duties of the Vice-Chancellor and this provision of the Act makes the Vice-Chancellor, the principal executive and academic officer of the University, who shall exercise general supervision and control over the affairs of the University and shall be responsible for its proper and efficient functioning. In the present case, as pleaded the functioning of University, prior to the passing of the removal order of the petitioner had come to a stand still on account of strikes and hunger strikes, Bandhs etc. organised by various student unions and the Vice-Chancellor, who happened to be the petitioner at that particular time, was unable to contain all the strikes etc. and his inefficient handling of the situation affected adversely the functioning of the University. The functioning of the Vice-Chancellor reflected his inefficiency, which was writ large and it was on that account, he was removed. Moreover, this aspect of the matter had been specifically pleaded in the reply, which had not been specifically denied and under O. 8, R. 5 of the Code of Civil Procedure, this amounted to an admission on the part of the petitioner and on that score, there was no necessity to have associated the petitioner in any enquiry contemplated u/s 12(5) of the Act. It was also contended that the Vice-Chancellor was not removed for any lapse in his integrity or any violation of the financial or other rules, statutes in this behalf, but only on account of his inefficiency to handle the strikes, hunger strikes in order to continue day-to-day functioning of the University. Thus, the order on that account was valid.

(iii) It was stressed that there was nothing on record except bald allegations made by the petitioner that his removal had virtually been already decided and the proposed follow up action was a camouflage only.

(iv) u/s 12(5) of the Act, an elaborate enquiry as suggested by the petitioner was not at all requirement of law. The discretion of making such an enquiry rested with the Chancellor as under the provisions of Section 12(5) of the Act he could make such enquiry, as he deemed proper. In the present case, a discreet enquiry was conducted on the basis of which it was revealed that the petitioner's inefficiency in handling the situation had resulted in the virtual closure of the University on account of strikes and hunger strikes etc.

(v) The notification of the removal of the petitioner as Vice-Chancellor, did not contain reasons, which were included in by the actual order passed by Chancellor, in the administrative file, which has been produced for the inspection of the Court.

(vi) Order of removal has not been assailed on the basis of mala fides and therefore in the absence of such allegations or their proof, it cannot be interfered with by this court.

14. There is no doubt that in so far as reply submitted by the all respondents,

more so by respondent No. 1 was concerned, it was stated that the order of removal was passed on various grounds mentioned in the reply itself, which included corruption charges, violations in financial, administrative matters and with respect to other conduct of the petitioner in handling the day to day affairs of the University, but during the course of arguments, learned counsel for the respondent No. 1 had limited his defence to the sole ground that it was the inefficiency of the petitioner to tackle the situation arising out of strike and hunger strikes organised by various student unions, which had totally stopped the day to day functioning of the University. This aspect has been submitted, it appears, after realising that other allegations levelled against the petitioner assailing his honesty, his moral conduct, violations of various provisions of rules and statutes of the University in day-to-day functioning of the working of the University, required definite association of the petitioner, in case an enquiry was conducted in this particular behalf. Any way the fact remains that as per the learned counsel for the respondent No. 1 the matter now stands limited, pertaining to inefficient handling of the situation at that particular time by the petitioner, which had resulted total closure of the University in its day to day activities.

15. The submissions put forth as referred to above, by the learned counsel for the parties, have to be scrutinised in the background of the circumstances present in this case and in the context of various provisions of the Act and general provisions of law applicable to such type of cases.

16. The main stress on behalf of the petitioner has been that even if the order of removal is being now supported on the sole ground that the Chancellor, after enquiry was of the opinion that on account of strikes etc, the functioning of the University came to stand still and petitioner as Vice-Chancellor failed to act to contain the situation, which, reflected his, inefficiency and his continuance as Vice-Chancellor as such, would be detrimental to the interests of the University, that order being the result of an enquiry, not legally made u/s 12(5) of the Act, cannot be sustained under law. An enquiry u/s 12(5) of the Act without associating the petitioner in that enquiry, is no enquiry at all in the eyes of law. Admittedly, no notice of enquiry even in this regard was given to the petitioner and he was condemned un-heard, which makes the enquiry one against principles of natural justice and any order passed on the basis of such an enquiry, adversely affecting the career of the petitioner, has to be ignored and does not carry any legal weight whatsoever.

17. Whether the work and conduct of an employee is open to question on the ground of complaints made by others or on the ground of doubts entertained bona fide by the authority himself the standard of satisfaction of the authority need not differ in the two types of situations. The satisfaction has to be objective and the objectivity is impaired, if everything is to be left to the authority alone and the employee is denied the occasion to rebut or refuse the notions prevailing against him. If the discretion to use the power is held in trust on behalf of others

or for the advantage or disadvantage of any person, the benevolence of the authority that he may give a chance to the employee to explain anything against him, is surrounded by the imperative of a must. The contention here is not whether the petitioner has or has not the right to hold the post of Vice-Chancellor, but whether under principles of natural justice, he has the legal or vested or constitutional right to an opportunity of being heard before being ousted from office. It includes an opportunity extended to the employee to speak his mind in dislodging the grounds proposed for termination of his service. Termination on the supposed grounds of negligence, misconduct or lack of integrity is nothing short of a measure, corrective or retributive and in that case, it would be simply shocking, if the Employee suspected to be negligent or even Inefficient or otherwise given to other lapses or vices, was not afforded an opportunity to explain away the stigma attributed to him. Even in cases of supposed inefficiency of an employee, there is the fallibility of human judgment and fluctuating standards of individual judgments. In order to avoid all these things, the principles of natural justice have to be taken note of and complied to meet his ground of removal.

18. There are two principles which govern natural justice. The first principle is that no body shall act as a Judge in his own cause. The principle corresponds to the Latin maxim "Nemo debet esse iudex in propria causa." The principle means that justice should not only be done, but should manifestly appear to be done. Obviously, justice appears to be done, only when the dispenser of justice is a detached person, free from bias. He should neither be a party directed to the subject matter of dispute nor should he be interested in that indirectly by a predisposition in favour of or against the parties.

19. It is not very material as to what law is made applicable, but it is significant in what manner, the concerned authority ascertained the facts, for the application of that law. The dispenser of justice, being a third person, has to ascertain facts by seeing things and by hearing, interrogating parties.

20. The second principle of natural justice recognised from immemorial past and observed through ages is this : Nobody shall be condemned unheard. This corresponds to the Latin maxim "Audi alteram partem". It means, hear the other party before a conclusion is arrived at against him.

21. In the present case, the first principle, in a way, is not involved at all. Under the provisions of the Act, it is the Chancellor, who has to pass appropriate orders and there is no specific circumstance brought on record, showing the bias of the Chancellor in passing such an order.

22. Where an action to be taken falls in an administrative capacity, it does not mean that the authority has not to observe "ordinary rules of fair play. The fair play requires, in every enquiry, a notice, of hearing to the person against whom enquiry is being conducted or who would be adversely or otherwise affected by the result of such enquiry. Even where, the giving of notice cannot be insisted,

on the plea that the statute under which powers are exercised, has provided for none (as argued in this case), the omission to give the notice is a circumstance, which has to be taken into consideration, in deciding whether the powers have been exercised, reasonably and in good faith. The presumption is that the Legislature intended to respect the rules of natural justice, and that if they were intended to be abrogated, then, the provision in that regard must be clear and express. It appears to us that there is no basis whatever to say that the Legislature ever abrogated these rules expressly or did away with the requirement of a fair opportunity and hearing to a Vice-Chancellor, prior to his removal.

23. The real controversy between the parties revolves around the interpretation of Section 12(5) of the Act which runs as under:--

"If in the opinion of the Chancellor, the Vice-Chancellor wilfully omits or refuses to carry out the provisions of the Act or abuses the powers vested in him or if it appears to the Chancellor that the continuance of the Vice-Chancellor in office is detrimental to the interests of the University, the Chancellor may, after making such enquiry as he deems proper and in consultation with the State Government by order remove the Vice-Chancellor."

24. It has been submitted on behalf of the respondent No. 1 that the aforesaid provisions of law nowhere envisaged any notice of enquiry to be served upon the Vice-Chancellor or the Vice-Chancellor was to be associated and heard in such an enquiry. It is not so simple a matter as has been contended by the learned counsel for respondent No. 1.

25. There is no doubt, as has been referred by the learned counsel, that u/s 9(A) of the Act, which deals with powers of the Chancellor to annul proceedings or decisions of the University and its bodies, the Chancellor before making any order, under the aforesaid provisions of the Act has been required to call upon the University or the officer to show cause why such an order should not be made and if any cause is shown within the period specified by him in this behalf shall consider the same. Again, it has been provided u/s 44 of the Act, the Chancellor is empowered to remove from membership and withdraw degrees, diplomas etc. and under the said provision, the Chancellor can exercise such a power against member or the person concerned, who shall be afforded reasonable opportunity of making a representation against the proposed action. It was, therefore, contended that while an opportunity of being heard has been specifically contemplated in certain circumstances under the Act, as has been provided u/s 9(A) and Section 44 of the Act, referred to above, Section 12(5) does not contain a provision affording an opportunity to the Vice-Chancellor or for issue of any notice of enquiry to him or of his being heard in such an enquiry contemplated u/s 12(5) of the Act and the action of the Chancellor, in not associating the petitioner in such an enquiry, cannot be said to be against the provisions of the Act.

26. Section 12(5) of the Act, empowers the Chancellor, after making such an enquiry as he deems proper and in-consultation with the State Government, by order, remove the Vice-Chancellor. There is no doubt that the Chancellor has wide discretion to make such an enquiry as he deems proper. The enquiry is to be made in case Vice-Chancellor wilfully omits or refuses to carry out the provisions of the Act or abuses the powers vested in him or the continuance of the Vice-Chancellor in office is detrimental to the interests of the University. The option lies with the Chancellor as to the type of enquiry to be made. An enquiry could be elaborate, after examining the witnesses on both sides and affording an opportunity of being heard and allowing them to cross-examine the witnesses produced against them and then come to a conclusion on the basis of the evidence let in during the enquiry. An enquiry could also be in a summary manner it could be open or confidential, or of any other type, but should not be arbitrary in nature. The exercise of an option in selecting the type of enquiry to be made, will, depend upon the subject matter of the enquiry and also the impact and effect of the enquiry. In this case, its effect is so severe it has resulted : in the removal of Vice-Chancellor and in such a case, the type of enquiry to be made should not be cryptic in nature and any short cuts in making such an enquiry should be also avoided. Under the provisions of Section 12(5) of the Act, when it is provided that the Chancellor could make such enquiry as he deems proper, it only means that he can select the type of enquiry he has to make. There is nothing in Sub-sec. (5) of Section 12 of the Act to indicate that the Chancellor has been empowered to do away with the principles of natural justice, while conducting such an enquiry. The enquiry may be of any type referred to above. An enquiry in its legal parlance means to investigate the truth and such investigation would be incomplete and illegal without associating the aggrieved party for the removal of whom such an enquiry has been contemplated.

27. The word "inquiry" connotes act of seeking truth, information or knowledge about something. It is although synonymous with inquisition/investigation, probe or inquest, yet it acquires a definite meaning in the context in which it is used. This is dictionary meaning of "inquiry".

28. Needless to say, under the provisions of the University statute, ordinarily an officer of the University cannot be removed, without being afforded an opportunity of being heard and especially the delinquent officer is to be heard for the commission of alleged lapses on the basis of which he is proposed to be removed. The petitioner was appointed in the year 1986 and all of a sudden, on account of some strike in the University, he has been removed without being heard. Strikes, hunger strikes are the result of unionism and a mode of showing protest against the authorities in support of their demands. A Vice-Chancellor, without being asked and without being heard regarding those strikes etc. stated to effect adversely the functioning of the University, Has been sacked unceremoniously without following the legal procedure, more so, the principles of natural justice. Unionism has been accepted in our Constitution and sometimes strikes has been held to be a legal manner of showing protest. Simply because

the petitioner at the relevant time happened to be the Vice-Chancellor of University, responsible for its day to day activities, he has been dubbed inefficient in not handling the strike in an effective manner, without being asked anything regarding the same. In such a case, it will not, in our view, reflect his inefficiency at all, especially when he had not been afforded any opportunity whatsoever, admittedly, to explain, what he did or did not or anything in this particular behalf.

29. The contention by the respondent No. 1, that the inefficiency of the petitioner in not tackling the strike problem properly stood admitted, by not specifically denying the same, cannot be accepted. The rejoinder submitted to the preliminary submissions of respondent No. 1 makes the matter crystal clear as to whether those allegations made by the respondent No. 1 in the preliminary submissions have been specifically denied or not. The allegations made in the preliminary submissions in paras 1 and 2 have been replied in detail in the rejoinder, which need not be reproduced. The allegations of the respondent No. 1 have been specifically dealt with. It has been pleaded that vague allegations have been made in the preliminary submissions, as no details have been given nor any particulars mentioned. According to the petitioner, sweeping statements made by the respondent No. 1 had no bearing at all. It was also pleaded that it was only the respondent No. 1 when he took over charge as the Chancellor that he politicised the office of Chancellor and acted on ex parts complaints without verifying the same and without asking the petitioner to show cause against the allegations made in the preliminary submissions. It was alleged that N.S.U.I, and A.B.V.P. had given in writing that they had no grievance against the petitioner as Vice-Chancellor.

30. While going through the rejoinder submitted by the petitioner, it cannot be made put at all that he had admitted the strike in the University to be the result of his inefficient handling of the situation, but on the other hand he has been categorical in pleading that if his performance was so poor from the outset, he would not have got various extensions in the post of Vice-Chancellor.

31. On the basis of the aforesaid facts, it cannot be said on any ground whatsoever that the facts alleged by the respondent No. 1 in the preliminary submissions were not specifically replied, which amounted to admissions. Any way, the fact remains that even for this alleged lapse on the part of the petitioner, he was not at all asked to explain his conduct. It would be rather going too far to make petitioner's inefficiency as the cause for continuance of the strike etc. More so, when the petitioner has not been afforded any opportunity whatsoever to explain his conduct in this particular regard.

32. We have inspected the administrative file and the various notings contained in the file. The letter as Annexure-PC has been referred in the noting and reply submitted by the petitioner also have been pointed out. All those allegations have been strongly refuted by the petitioner. These aspects of the case do not require to be discussed, as they pertained to the functioning of the Vice-

Chancellor and his violating various rules, statutes, and which aspect of the matter even as per the learned counsel for the respondent No. I has not been made the basis for his removal and this matter has already been dealt with earlier.

33. The Chancellor after going through the various nothings in the administrative file passed the following orders on 15th September, 1993:

"I have gone through the various complaints and representations against the present Vice-Chancellor of Himachal Pradesh University. I have also gone through the relevant files and considered the note of the Secretary;

I made discreet enquiries from a cross-section of University students, faculty members, employees and various associations of students and teachers of the University, who met me in the recent past. It is no secret that atmosphere in the University is, totally, vitiated. The atmosphere is neither conducive for the academic pursuits nor for the smooth day-to day functioning of the University. The University is ridden with hunger strikes, agitations and gheraos etc. The teaching in the University came to stand still for considerable period. My enquiries reveal that the Vice-Chancellor is totally ineffective and not able to control and improve the deteriorating atmosphere in the University.

In these circumstances and after considering all the material, relevant facts as revealed in my discreet enquiries, it is with great reluctance but, in the interest of University, I form an opinion that the continuation of the present Vice-Chancellor in office is not only non-conducive for the academics in the University but also detrimental to the interests of the students and the University as a whole. The Vice-Chancellor, therefore, will have to be removed in terms of Section 12(5) of the Himachal Pradesh University Act, 1970. However, State Government may also be consulted in terms of the above referred provision."

34. The Chancellor made a reference that his enquiry revealed that Vice-Chancellor was totally ineffective and not able to control and improve the deteriorating atmosphere in the University. It is really strange to note that the Chancellor came to such a conclusion without any opportunity having been afforded to the petitioner to defend himself for the lapses being attributed to him. There is nothing in the order of the Chancellor itself as to what were those specific instances which were the -basis of discreet enquiry conducted by him, which reflected ineffective control of the Vice-Chancellor over the day-to-day activities of the University. Atmosphere in the University, might have been affected by strike and hunger strike but, would it mean that it was due to inefficiency of the Vice-Chancellor? At least the Vice-Chancellor should have been given a word to explain his conduct, in case, his inefficiency, in a way, was responsible for such a situation in the University. The satiss faction of the Chancellor should have been arrived at after hearing the petitioner. If the procedure adopted in this case, which is quite alien to the principles of natural justice, is followed to sack an officer of the status of the Vice-Chancellor, the

office of the Vice-Chancellor would be rendered more insecure than a daily wage employee, whose rights under various laws to remain in service or to be terminated from service, in accordance with procedure of law, have been well recognised.

35. u/s 12(5) of the Act, the Chancellor can by order remove the Vice-Chancellor after making such enquiry as he deems proper and in consultation with the State Government. At the time when the alleged enquiry was conducted by the Chancellor and when the impugned order was passed, the State of Himachal Pradesh was under President's Rule and the Governor was discharging the function of the State being the executive head also. The Governor was the Chancellor also. The file was sent to the Secretary Education. The opinion of the Governor for removal of the Vice-Chancellor was endorsed by the Secretary.

36. It may be pointed out here that Mr. P. P. Shrivastava, Advisor to the Governor at that particular time was holding charge of Education Department. The file was put up before him on 20th September, 1993 after the Secretary, Education had agreed with the opinion formed by the Chancellor. The Advisor made the following note :

"I have not had the time to study this file and am unable to comment on merits. His Excellency may take the appropriate decision on merits. The elections have been announced. That aspect may also please be kept in view."

His Excellency the Governor signed the file on that very day i.e. on 20th September, 1993.

37. Thereafter as is revealed from the administrative file, the Vice-Chancellor, that is the present petitioner, was called-on 21st Sept. 1993 by the Chancellor, who advised the Vice Chancellor to resign so that extreme step of removal was avoided and as the Vice Chancellor was not willing to resign, therefore, notification for his removal was approved and accordingly issued. The notification was issued on 22nd Sept. 1993. Thereafter, as per order of the Chancellor, Secretary Education was appointed in place of the petitioner as acting Vice Chancellor.

38. The aforesaid circumstance, if taken note of whether amounted to the passing of the order of removal in-consultation with the State Government or not, is not at all essential to be gone into in the present writ petition, especially when the order of removal even if held to have been passed with the consultation of the State Government cannot stand legal scrutiny on the sole ground of having been passed against the principles of natural justice.

39. The learned counsel for the parties have relied upon certain decided case law in support of their respective submissions. Those rulings are being referred herein below: D.K. Yadav Vs. J.M.A. Industries Ltd., was a case under the Labour Law. The following observations in this case made by the Apex Court are much relevant.

"The procedure prescribed for depriving a person of livelihood would be liable to be tested on the anvil of Article 14. The procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. The principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable, and not arbitrary, fanciful or oppressive.

Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice." Krishna Swami Vs. Union of India and another, has been cited on behalf of the petitioner to find support for the arguments that the order of the present nature which is being assailed in the present petition, in order to be a valid has to be based with reasons. In this behalf, the following observations made in para 47 of the aforesaid ruling, according to the petitioner are noteworthy. (Para 46 at p 1424 of AIR).

"In this light the question emerges whether the decision of the Speaker to admit the motion to remove the Judge moved by requisite number of members of the House of People is amenable to judicial review. Undoubtedly, in a parliamentary democracy governed by rule of law, any action, decision or order of any statutory/ public authority functionary must be founded upon reasons stated in the order or starting from the record. Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21."

In the present case, there is no doubt that the impugned order does not carry any reasons in support thereof, but from the administrative file, as has been referred to above, some reasons have come forth in support of the passing of the order of removal. There were other cases also cited by the learned counsel for the petitioner, pertaining to the principles of natural justice. The reference to these citations is not essential in the present circumstances.

40. On the other hand, learned counsel for the respondent No. 1 has tried to find

support to the submissions put forth by him by citing various precedents.

41. In Union of India (UOI) Vs. Col. J.N. Sinha and Another, : Union of India (UOI) Vs. Col. J.N. Sinha and Another, it has been held that where the rule does not provide an opportunity to show cause, in such case application of rules of natural justice was not necessary.

42. The ratio of the aforesaid citation is not at all applicable to the facts of the present case. The case Union of India (UOI) Vs. Col. J.N. Sinha and Another, was a case where the delinquent officer was compulsorily retired by the Government of India under Fundamental Rule 560). That Rule runs as under.

"Notwithstanding anything contained in this Rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice.

(i) If he is in Class (I) or Class (II) service or post the age limit for the purpose of direct recruitment to which is below 35 years, after he has attained the age of 50 years.

(ii) In any other case after he has attained the age of 55 years.

Provided that nothing in this Clause shall apply to a Government servant referred to in Clause (e) who entered Government service on or before 23rd July, 1966 and to a Government servant referred to in Clause (f)".

43. On the basis of the aforesaid rule, the delinquent officer was compulsorily retired in the public interest. There was nothing in the Rule itself that a show cause notice, before passing order of retirement, was compulsorily to be issued to the concerned officer, as the object is to eliminate dead wood in public interest. This is definitely on a different footing than the present case. In the present case, removal of the Vice Chancellor is to be ordered on a satisfaction arrived at on an enquiry pertaining to the alleged lapses referred u/s 12(5) of the Act, alleged to have been committed by the Vice Chancellor. Enquiry in the absence of the person, who is being condemned, cannot be said to be fair in nature. This aspect of the matter has already been discussed in the judgment. Thus, no support can be found from the aforesaid case in favour of the respondents.

44. In Union of India and Another Vs. Tulsiram Patel and Others, paras 97 and 98 are relevant, which are being reproduced here under:--

"Though the two rules of natural justice, namely, *nemo judex in causa sua* and *audi alteram partem*, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are none the less not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor

can they be put in a legal strait-jacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules and also by the constitution of the Tribunal which has to decide a particular matter and the rules by which such Tribunal is governed. There is no difference in this respect between the law in England and in India. It is unnecessary to refer to various English decisions which have held so"

"The House of Lords and this court have repeatedly emphasised that the ordinary principles of natural justice must be kept flexible and must be adapted to the, circumstance prevailing in any particular case. One of the most important of these circumstances, as has been said throughout the argument, is, of course, the provisions of the statute in question....."

"The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the Constitution of the Tribunal and the rules under which it functions."

"What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

45. On the basis of the aforesaid observations made by the Apex Court of India, it was contended on behalf of the respondent that it is for the court to find out whether principles of natural justice was necessary to be followed in a given case. There is absolutely no dispute with regard to this proposition, in so far as the facts of the present case are concerned. It has been dealt with in detail earlier that compliance of principles of natural justice in the present case was most essential and mandatory in nature inasmuch as an officer of the status of Vice Chancellor is being sacked without being associated in an enquiry alleged to have been held concerning his conduct and efficiency etc.

46. In Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , has been cited with the sole purpose that principles of natural justice, in given conditions, can be waived. It has been held in this reported case that principles of natural justice or holding of an enquiry is neither a universal principle of justice nor inflexible dogma. According to their Lordships, the principles of natural justice are not incapable of exclusion in a given situation. For example, Article 311(2) of the Constitution which essentially embodies the concept of natural justice, itself contemplates that there may be situations which warrant or permit, the non-applicability of the principles underlying Article 311(2) of the Constitution. Reference has been made to the second proviso to Article 311 of the Constitution.

47. There is absolutely no dispute in regard to the aforesaid proposition of law which is reflected in the provision of Article 311 of the Constitution of India. In the present case, there is no such provision u/s 12(5) of the Act or any where in the Act, that an enquiry for removal of the Vice Chancellor could be conducted behind his back and without hearing him with reference to the specific lapses on his part. u/s 12(5) of the Act, an enquiry has to be conducted by the Chancellor and by implications or otherwise, it" cannot be, inferred from the proviso of Section 12(5) of the Act that such in enquiry has to be conducted behind the back of the Vice Chancellor. The ratio of the stores aid ruling is not applicable to the facts of the present case.

48. Allied Motors (P.) Ltd. Vs. Commissioner of Income Tax, Delhi, has been cited to find support for the arguments advanced by the respondents that satisfaction of Chancellor has to be subjective in nature and to pass an order of removal, principles of natural justice are not required to be complied with. It has been held in this case that the satisfaction of the President to exercise that power under Article 356 of the Constitution of India has to be subjective satisfaction and cannot be tested by reference to any objective tests. It has been held that it was deliberately and advisedly subjective because the matter in respect to which he is to be satisfied is of such a nature that its decision must necessarily be left to the executive branch of the Government.

49. There is absolutely no dispute regarding the aforesaid proposition of law. The same standard of satisfaction, as provided under Article 356, for the subjective satisfaction of the President, cannot be compared to the opinion to be formed by the Chancellor, u/s 12(5) of the Act after holding an enquiry and after consultation with the State Government for removal of the Vice Chancellor. In a recent case decided by Apex Court S.R. Bommai and others Vs. Union of India and others etc. etc., the President's powers under Article 356 were under reference. It has been held by their Lordships that satisfaction of the President under Article 356(1) of the Constitution of India is subjective and principles of natural justice need not be observed in reaching that satisfaction but, satisfaction must be based on objective material. It has been further held that the power conferred by Article 356 is of extraordinary nature to be exercised in grave emergencies and, therefore, the exercise of such power cannot be equated to the power exercised in administrative law field and cannot, therefore, be tested by the same yardstick.

50. On the basis of the aforesaid observations, the ratio cannot be applied to the facts of the present case, which has to be considered in the background of the provisions of the Act and general principles of natural justice.

51. Thus, the cumulative effect of the above discussion comes out to this: that an officer of the rank of the Vice Chancellor of the University is being sacked on mere accusations of inefficiency which caused virtual closure of academic activities" of the University on account of strike etc., without being heard, and without being asked for any explanation. It is really a queer type of procedure,

alien to the process of law, more so, strange to the principles of natural justice and fair play. Under the provision of Section 12(5) of the Act, sole option with the Chancellor was the type of enquiry to be made by him. The provision nowhere authorised Chancellor to do away with the principles of fair play in conducting an enquiry of the present nature. The word Enquiry implies to investigate the matter from various sources in order to find the truth and the person being affected by such an enquiry, on the basis of fair play, definitely required to be heard, especially when it is that person's conduct and efficiency and other capabilities, which were the subject matter of the enquiry. He has to be given a chance to explain, if lapses have been found against him.

52. On the technicalities of the pleading-drafting, support is sought in favour of the validity of the impugned order and that too by petitioner's implied admission the pleading having not been specifically denied. The reply to the main petition was filed during these proceedings, which contained those allegations and admission on behalf of the petitioner is being inferred, for not specifically denying those allegations. This aspect of the matter has been referred in detail earlier. However, it may be pointed out that there was nothing to suggest that the petitioner in any manner admitted his inefficiency to be the cause of strike etc. in the University, either in the rejoinder or before passing of the impugned order. There could not be any admission on behalf of the petitioner, as he was not at all asked orally or in writing in this particular behalf, before passing of his removal order. In this background also, plea of admission, raised on the basis of Order 8, Rule 5 of the Code of Civil Procedure, loses all significance.

53. In view of the foregoing reasons, the impugned order being result of enquiry conducted against principles of natural justice, cannot be allowed legally to continue. It has to be struck down and quashed on this sole score. The present writ petition accordingly is allowed and the impugned order Annexure PG is quashed and as a consequence thereof, the present petitioner continues to hold -- the post of Vice Chancellor for the full term of three years. He shall be entitled to all the monetary and other benefits including salary etc. for the period he has not been paid such benefits.

54. It has been referred earlier that respondent No. 4 was appointed as Vice Chancellor in April, 1994, who joined on 6th June, 1994. As there was no stay order to bar such an appointment, the appointment of respondent No. 4 and his joining the post of Vice Chancellor and acting in that capacity upto today would all be valid, but on the passing of the present judgment respondent No. 4 ceases to be the Vice Chancellor of H.P. University, till three years terms of the petitioner expires and thereafter respondent No. 4 may continue to hold that post. It has been so ordered in order to avoid any complications which may arise by allowing the present petition.

55. The petitioner shall be entitled to the costs from the respondents, which is assessed at Rs. 3,000/-.