

**(1995) 11 AP CK 0091**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Petition No. 2332 of 1992**

Dr. K.N. Srivatsava

APPELLANT

Vs

University of Hyderabad and Another

RESPONDENT

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**Date of Decision :** 10-11-1995

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Hyderabad University Act, 1974 — Section 14

**Citation :** (1996) 1 ALT 857

**Hon'ble Judges :** G. Bikshapathy, J

**Bench :** Single Bench

**Advocate :** Philkhana Rama Rao, for the Appellant; V. Raja Gopal Reddy, for the Respondent

**Final Decision :** Allowed

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## Judgement

G. Bikshapathy, J.—This Writ Petition is filed seeking a declaration that the petitioner is entitled for appointment as Dean of Physics in Respondent No. 1-University.

2. The facts lie in a short compass:

The Petitioner was appointed as Reader in Physics in May, 1978. He was promoted as Professor in January, 1986. There are seven Professors in the Department of Physics in Respondent No. 1 University. The Petitioner is No. 3 in order of seniority, after Sri G.S. Agarwal and Sri A.K. Bhatnagar. Mr. Srinivasan, Mr. Shenoy and Mr. Pathak are next to him.

3. It is the case of the petitioner that for appointment to the post of Dean, the seniority in the cadre of Professors in the respective disciplines is considered and appointments made by rotation on the basis of seniority. It is the established principle in the University from the beginning. There are no statutes prescribing the procedure, method and manner of appointment as Dean. This was also confirmed by the Vice-Chancellor in a Convocation address in 1989 for the

benefit of teaching staff. Shri Agarwal was appointed as Dean for three years from November, 1977 to November, 1980. So also M. Bhatnagar the next professor who worked for three years from November, 1980 to November, 1983 and again was appointed for another term of three years upto November, 1986. When he went on leave in January, 1986 for about five months, the Petitioner being the immediate junior in the category of Professors was appointed as Dean for the leave period. It was the petitioner's turn for regular appointment after Sri Bhatnagar. But as he went to Canada as visiting Professor, his junior Mr. Srinivasan was appointed for three years from November, 1986 to November, 1989. After the tenure of Sri Srinivasan was over, the petitioner ought to have been appointed as Dean. But, this was not done; ignoring the seniority and rotation system, the Vice-Chancellor decided to appoint Mr. Shenoy for which the petitioner protested. Against that appointment the petitioner filed W.P.No. 16635 of 1989. Though the Writ Petition was admitted, no suspension orders were passed by the Court as the incumbent had already took charge of the post. In November, 1992 the tenure of Prof. Shenoy was to expire, but before that he resigned in June, 1992. Again this time the petitioner apprehended that his junior was likely to be appointed to the post. At this point of time, the present Writ Petition was filed. When, Prof. Pathak was appointed as Dean, he was impleaded as Respondent No. 2 by orders dated: 26-3-1992. Even the three years tenure of the 2nd Respondent had expired in June, 1995. As the Writ Petition is pending and in order to safeguard the interest of the petitioner, a Miscellaneous petition was filed seeking direction not to make any further appointment pending finalisation of the writ petition. This Court by orders dated 30-5-1995 passed orders not to finalise the appointment to the post of Dean.

4. In the counter-affidavit filed on behalf of Respondent Nos. 1 and 2, reference was made to Section 14 of the University of Hyderabad Act, 1975 and statute No. 6 of the Statutes of the University. By virtue of the said provisions, the Vice-Chancellor appointed Respondent No. 2. It is denied that the rule of seniority is followed in the matter of appointment of Deans. The rotation of Professors by seniority was only a coincidental occurrence and the statute does not contemplate any such procedure. When the post of Dean fell vacant in November, 1989, the Vice-Chancellor considered the cases of all the Professors, including the petitioner and decided to appoint Sri Shenoy. It was submitted that the appointments were made by the Vice-Chancellor taking into consideration relevant aspects according to his judgment and in the interest of University. When Mr. Shenoy resigned from the post, Respondent No. 2 was appointed as Dean from February, 1992, pending regular appointment. Again in June, 1992, the second respondent was regularly appointed for three years. Regarding Convocation address by the Vice-Chancellor on 4-3-1989, the Respondents state that it was not intended to be either a policy statement or assurance as to the manner of appointment of Dean since there is no such procedure in the Act or in statutes. It was only an indication of transparency in the matter of appointment of Dean or Head of the departments. The appointment of Prof. Pathak

(Respondent No. 2) is quite legal and valid.

5. Heard Sri P. Rama Rao, learned counsel for the petitioner and Sri V. Rajagopal Reddy, learned Standing Counsel for Respondents.

6. Both the counsel referred to various provisions of the Act and the Statutes. It is the contention of the learned counsel for the petitioner that u/s 14 - every Dean shall be appointed in such manner prescribed by the statute and perform such functions as assigned in the statute. The statutes and Ordinances are made as stipulated under Sections 25 and 26 of the Act. Under Statute No. 6, the Dean of a School shall be appointed by the Vice-Chancellor for a period of three years:

Section: 14:

DEANS OF SCHOOLS:

"Every Dean of a School shall be appointed in such manner and shall exercise such powers and perform such duties as may be prescribed by the Statutes."

STATUTES

No. 6

"Deans of Schools of Studies:

(1) Every Dean of School of Studies shall be appointed by the Vice-Chancellor from among the Professors in the School for a period of three years and he shall be eligible for reappointment.

Provided that the Dean on attaining the age of sixty years shall cease to hold office as such:

Provided further that if at any time there is no Professor in a School, the Vice-Chancellor, a Pro-Vice-Chancellor if authorised by the Vice-Chancellor in this behalf shall exercise the powers of the Dean of the School.

(2) When the office of the Dean is vacant or when the Dean is, by reason of illness, absence or any other cause, unable to perform the duties of his Office, the duties of the office shall be performed by such person as the Vice-Chancellor may appoint for the purpose.

(3) The Dean shall be the Head of the School and shall be responsible for the conduct and maintenance of the standards of teaching and research in the School. The Dean shall have such other functions as may be prescribed by the Ordinances.

(4) The Dean shall have the right to be present and to speak at any meeting of the Boards of Studies or Committees of the School, as the case may be, but shall not have the right to vote thereat unless he is a member thereof."

By a conjoint reading of the above two provisions, the learned counsel for the petitioner submits that the Vice-Chancellor is empowered to make appointment

to the post of Dean for a period of three years. The appointment shall be made from among the professors. However, he says that the mode of selection has not been stipulated. In the absence of such a stipulation, the established practice or custom should be followed by the Vice-Chancellor. Admittedly, the Vice-Chancellor himself had categorically made a statement in the Convocation speech that the Rule of seniority is being followed in the matter of appointment of Dean. Therefore, taking clue from this situation, the learned counsel says that the Vice-Chancellor is bound to respect the Rule of seniority and rotation. Secondly, he also submits that since there is no prescribed procedure for appointment of Dean, any procedure adopted by the Vice-chancellor should be fair and reasonable.

7. It is not in dispute that the petitioner is No. 3 in the seniority of Professors in Physics. The Dean of a School of Studies shall be appointed by the Vice-Chancellor. The question that arises for consideration is: what is the procedure that is expected to be followed by the Vice-Chancellor in the absence of any prescribed statute? The counter affidavit only suggests that since the Vice-Chancellor is empowered to make appointments from among the Professors, it is open to the Vice-Chancellor to select anybody, whom he thinks fit and suitable and his actions are beyond the pale of challenge. In the counter the practice of appointing the Deans in various disciplines by rotation on the basis of seniority was not denied. But, only the aid of Statute 6 has been taken to get over the rule of seniority. The University did not even quote a single instance where the Deans were appointed without reference to the seniority. Thus, it is evident that the established procedure for appointment of Deans is to follow the seniority. This procedure is further reinforced by the open declaration of the administrative policy announced by Vice-Chancellor in his Convocation address dated 4-3-1989, wherein he clearly stated that the principle of rotation of Heads and Deans is implemented strictly on the basis of the seniority. The contention in the counter that for the purpose of establishing transparency, such statement was made is clearly unacceptable. When certain established principle is made known in the interest of clean and transparent administration, there cannot be a different yardstick at the stage of implementation. That would be subversive of good administration and undermines noble academic standards which the University seeks to establish. Therefore, the University cannot go back on the statement made by the Vice-Chancellor on the ground that the Statute did not prescribe such a procedure. For that matter the statute also did not prescribe any procedure. Therefore, the Vice-Chancellor had quite correctly filled the void in the Statute by stating that Rule of rotation by seniority for the posts of Dean has been observed. By reason of invoking rule, the University accepted that the arbitrariness in administration has been reduced to a minimum, at all levels. The relevant para in the counter reads as follows: "There is also a Departmental promotion committee which meets generally once a year to recommend to the Executive Council the cases of the departmental promotions. Even the recruitment to non-teaching posts upto the highest non-gazetted level is done by

selection committee under the Chairmanship of a Dean or a Senior teacher as per the ordinances passed by the Executive Council. The Executive Council has also passed a viable promotion policy for class C and Class D employees following the norms recommended by the Joint Cadre Review Committee of the U.G.C. The principle of rotation of Heads and Deans is implemented strictly on the basis of seniority. With all these measures, arbitrariness in administration has been reduced to a minimum at all levels."

Admittedly, there is no further promotion to the Professors in the University. Therefore, the question of preparing seniority list among the Professors as required under Statute-26 does not arise. The Seniority list is prepared for two purposes - (i) to hold an office; and (ii) to be a member of an authority of the University by rotation according to seniority. Under statute-10, the Dean of School is one of the offices of the University. Therefore, when once the Seniority list is prepared under Statute-26 in post of Professors, it has to be considered for appointment to the post of Dean.

I have also perused the relevant file placed before me. In the note files it is clearly contained that the petitioner is No. 3 in the seniority list of Professors in Physics. The matter relating to the appointment of Dean came up for consideration after the expiry of the tenure of Prof. V. Srinivasan on 20-11-1989. The Deputy Registrar in his note dated: 7-11-1989 submitted to the Vice-Chancellor stated:

"our convention has been to rotate the Deanship among the Professors of the School generally following their seniority."

Thus, it is now clear that the normal and usual procedure in appointment of Dean is by rotation on the basis of seniority.

8. I have given my anxious consideration to the above aspects. I have come to the inevitable conclusion that the Vice-Chancellor is bound to follow the Rule of seniority while considering the case for appointment of Dean under Statute-6. But at the same time, it cannot be held that the appointment is automatic when once he is found to be senior. If on consideration of his case, he is found to be not suitable, it is always open for the Vice-Chancellor to consider the next person in the seniority list.

9. It is next contended by the learned counsel Sri Pheelkhana Rama Rao that the petitioner is highly qualified and eminently a fit person for appointment as Dean. He submits that even when the regular Dean was on leave for five months, the Petitioner was asked to function as Dean. Therefore, there cannot be any negative point for the petitioner. It is submitted that action of the Vice-Chancellor in appointing the 2nd Respondent as Dean was wholly arbitrary and illegal exercise of discretion.

10. It is now well settled that the principle "Justice should not only be done, but appear to be done" is applicable even in administrative action. Otherwise, the

action is a nullity being in violation of principles of natural justice. Further the discretion vested in the Vice-Chancellor should be exercised in a fair, reasonable and un-biased manner.

It is now well settled that a discretion vested In the Authority is expected to be discharged by the said Authority in a fair, bona fide and reasonable manner keeping in view the policy of the Act or the actions contemplated under the provisions of the relevant statute. An authority can fail to apply its mind to a case and thus it fails to exercise its discretion lawfully. The discretion cannot be arbitrary, but must be limited by reason and law.

11. While dealing with a case about the powers of local authorities, Lord Macnaghten said, "it is well settled that a public body invested with statutory powers such as those conferred upon the Corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. The last proposition is involved in the second, if not in the first. *Westminster Corporation v. L & NB Railway* (1905 AC 426).

The exercise of the discretion must be reasonable and it should not be based on the whims and fancies of the authority. In the celebrated case of *Roberts v. Hopwood* 1925 A.C. 578, (the whole issue revolved round reasonableness. In that case the District Auditor had disallowed as "contrary to law" the over-generous wages paid by the Borough Council of Poplar to their employees under an Act empowering them to pay such wages as they "may think fit". What limit, should the Law set to this apparently unbounded discretion? In upholding the action of the Auditor, the House of Lords decided unanimously that the Council were not at liberty to pay more than what was reasonable in the light of rates of wages generally.

Lord Sumner said that the words "as they think fit" contained a necessary implication both of honesty and of reasonableness, and that the admitted implication as to bad faith was wide enough to include both.

What Lord Macnaghten said, Lord Sumner added:

"There are many matters which the Courts are indisposed to question. Though they are the ultimate Judges of what is lawful and what is unlawful to borough councils, they often accept the decisions of the local authority simply because they are themselves ill equipped to weigh the merits of one solution of a practical question as against another. This, ; however, is not a recognition of the absolute character of the local authority's discretion, but of the limits within which it is practicable to question it"

Lord Wrenbury, laid down as follows:

"A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so-he must in the exercise of his discretion

do not what he likes but what he ought. In other words, he must, by the use of his reason, ascertain and follow the course which reason directs. He must act reasonably."

The power of public authorities are quite different from that of private persons. The latter can act in whatever way he likes; he may act out of malice or out of a spirit of revenge. He has unfettered discretion. But a public authority cannot do any of these things; it must act reasonably and in good faith and upon lawful relevant ground of public interest.

Lord Denning MR in *Breen v. Amalgamated Engineering Union* 1971 (2) Q.B. 175, said that "the discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means, at least these two, the statutory body must be guided by relevant considerations and not be irrelevant considerations. Unless decision is influenced by extraneous considerations which ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith nevertheless, the decision will be set aside. The same principles have also been applied in India by the Supreme Court in various cases (*Padfield v. Minister of Agriculture, Fisheries & Food* 1968 A.C. 997).

12. The learned counsel submits that the action of the Vice-Chancellor is arbitrary and unreasonable. The power conferred on the authority has to be exercised in a fair and reasonable manner. He cited the decision of the Supreme Court rendered in *Suman Gupta and Others Vs. State of Jammu & Kashmir and Others*, . While dealing with the matter relating to admission to Medical Colleges on nomination by the State Government to seats reserved in Medical Colleges of other States, the Supreme Court held, that no absolute power was confided in the State Government to choose the candidates. The Supreme Court observed thus:

"In matters of choosing candidates for nomination to seats reserved in Medical Colleges of other States, there is no absolute power vested in the State Govts. It is incumbent on the State Government to adopt a criterion or restrict its power by reference to norms which while designed to achieve its object, nevertheless confine the flow of that power within constitutional limits. It cannot be said that an adequate system of standards cannot be devised for that purpose. Tested on the touchstone of our constitutional values, the claim of the State Government to the content of the power assumed by it must be declared invalid.

"It cannot be contended that the selection of candidates must remain in the unlimited discretion and the uncontrolled choice of the State Government. The exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason -- relevance in relation to the object which it seeks to serve, and reason in regard to the manner in which it attempts to do so. Wherever the exercise of such power affects individual rights, there can be no greater assurance protecting its valid

exercise than its governance by these twin tests.

"It must be remembered that our entire constitutional system is founded in the Rule of Law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the bounds of reason. To contend that the choice of a candidate selected on the basis of his ability to project the culture and ethos of his home State must necessarily be left to the unfettered discretion of executive authority is to deny a fundamental principle of our constitutional life. It is true that in the realm of administrative power the element of discretion may properly find place, where the statute or the nature of the power intends so. But there is a well recognised distinction between an administrative power to be exercised within defined limits in the reasonable discretion of designated authority and the vesting of an absolute and uncontrolled power in such authority. One is power controlled by law countenanced by the Constitution, the other falls outside the Constitution altogether. Proceedings from there, it is evident that if the State Government desires to advance the objective of national integration it must adopt procedures which are reasonable and are related to the objective. In this Age of Reason, all law must measure up to that standard and necessarily so also must all executive acts."

13. In the counter-affidavit filed in the writ petition, it was only stated that the Vice-Chancellor has been vested with the power to appoint the Dean and that power has been exercised. But, however, when an application has been filed by the petitioner seeking direction not to finalise the appointment of Dean, an additional counter has been filed adverting to different set of events, justifying the rejection of the case of the petitioner. It is surprising as to how the University could take such a stand when the same situation existed at the time of filing the counter earlier. It is not their case that the events mentioned in the additional counter took place after filing of the earlier counter. Different reasons are being sought to be placed before this Court stating that the petitioner did not maintain clean record and hence his case was not considered. I asked the learned counsel for the respondent to place before the Court the relevant record as to how the Vice-Chancellor considered the case of the petitioner. The relevant files were produced with copies of a few complaints filed against the petitioner. The University gave instances of a few irregularities alleged to have been committed by the petitioner that, too, prior to 1986 right from 1982. They cannot be taken note of as none of these documents were brought to the notice of the petitioner. Therefore, they cannot be taken into consideration for the reason that the petitioner had no notice. Secondly, it is the case of the University that in spite of these reports against him, he was promoted to the post of Professor from the post of Reader. Hence, having promoted the petitioner in January, 1986, the University cannot again fall back on the alleged complaints for the purpose of denying the appointment as Dean.

In view of the legal position, as set above the University is not justified in

contending mat in view of the unclean record the petitioner's case was not considered.

14. The learned counsel for the petitioner relied on the decision rendered in Brij Mohan Singh Chopra Vs. State of Punjab, . The subject matter in that case relates to validity of the compulsory retirement of an officer who was sought to be weeded out on the alleged ground of having become dead-wood. The Supreme Court, while dealing with the case observed that: "The purpose and object of premature of compulsory retirement of Government employee is to weed out the inefficient, corrupt, dishonest or dead-wood from the Government service.

This right of the Government is well established which is generally exercised in accordance with relevant service Rules. The scope and ambit of exercise of this absolute power depends on the provisions of Rules and it is always subject to Constitutional limitations". While dealing with Rule 3 of the Punjab Civil Services (Premature Retirement) Rules, 1975, which gave power to retire an employee prematurely, the Supreme Court held: "The rule does not lay down any criteria, guidelines for the exercise of power, although public interest is specified in the rule, which means power has to be exercised in the public interest only. The public interest in relation to public administration envisages retention of honest and efficient employees in service and dispensing the services of those who are inefficient, dead-wood or corrupt and dishonest. Therefore, the rule contemplates premature retirement of the inefficient, corrupt or dead-wood which would subserve the public interest."

The Supreme Court further held: "It is now well settled that while considering the question of premature retirement it may be desirable to make an overall assessment of the Government servant's record, but while doing that, more value should be attached to the confidential reports pertaining to the years immediately preceding such consideration. It is possible that a new entrant to a service may have committed mistakes and for that reason he may have earned adverse entries and if those entries of early years of service are taken into consideration for prematurely retiring a Government employee then perhaps no employee would be safe even though he may have brilliant record of service in later years." Thus, the Supreme Court said that old and stale entries should not be taken into account while considering the question of premature retirement; instead; the entries of recent past - say 5 to 10 years should be considered in forming the requisite opinion. With regard to communication of this adverse entry, the Supreme Court said that when an adverse entry is awarded it must be communicated to him. The object and purpose of underlying the communication is to afford an opportunity to the employee to improve his work and conduct and to make representation to the authority concerned against those entries. If such a representation is made it is imperative that the authority should consider the representation with a view to determine as to whether the contents of the adverse entries are justified or not. Making of a representation is a valuable right

to a Government employee and if the representation is not considered, it is bound to affect his career for grant of increment, promotion etc.

15. In *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, , the Supreme Court evolved the following principles on the subject of compulsory retirement :

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of any misbehaviour,

(ii) The order has to be passed by the Government on forming the opinion that it is in public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or the Supreme Court would not examine the matters as an appellate Court, they may interfere if they are satisfied that the order is passed (a) *mala fide* or (b) it is based on no evidence or (c) it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The Government (or the Review Committee as the case may be) shall have to consider the entire record of service before taking a decision in the matter, attaching more importance to record of and performance during later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a Government Servant is promoted to a higher post notwithstanding the adverse remarks such remarks lose their sting, more so if the promotion is based upon merit and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it, uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference. Interference is permissible only on the grounds of mentioned in item(iii) above.

In *Amar Kant Choudhary Vs. State of Bihar and Others*, , the Supreme Court emphasized that adverse report in a confidential roll cannot be acted upon to deny promotional opportunities, unless it is communicated to the person concerned, so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Basing on the said observation of the Supreme Court in the said case, it was held in *Brij Mohan Singh Chopra case* (2 *supra*) that same consideration must apply to a case where adverse entries are taken into account in retiring an employee prematurely from service.

In a recent Judgment of the Supreme Court rendered in *S. Ramachandra Raju v. State of Orissa* 1994 (69) FLR 832, held that: "though the order of compulsory retirement is not a punishment and the Government employee is entitled to draw

all retiral benefits, including pension, the Government must exercise its power only in the public interest to effectuate the efficiency of the service. The dead wood need to be removed to augment efficiency. Integrity in public service need to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence."

Again the same was reiterated by the Supreme Court in *K. Kanda Swamy v. Union of India* JT 1995 (7) 80. Though the Supreme Court laid down the above principle while dealing with a case of compulsory retirement, however, it is made clear by the Supreme Court that the same principle would also apply in cases of promotion etc.

In my considered opinion, the same principle will also apply while dealing with a case of appointment of the post of Dean from among the posts of Professors. It is not a case of maintaining confidential/character roll of the Professors. When the alleged complaints are made basis for ignoring the case, it is all the more necessary that the petitioner is kept informed of such adverse comments. While dealing with the time limit within what time the adverse remarks have to be communicated, the Supreme Court observed in *BaiKunta Nath Das* (3 supra): "It is unlikely that adverse remarks over a number of years remain uncommunicated and yet they are made the primary basis of action. Such an unlikely situation, if indeed present, may be indicative of malice in law. We may mention in this connection that the remedy provided under Article 226 of the Constitution of India is no less an important safeguard. Even with its well known constraints, the remedy is an effective check against mala fide pervasive or arbitrary action." It would not be open for the authority to consider the alleged blames on the petitioner, without putting him on notice and hearing him on those issues.

16. Admittedly, in the instant case, the petitioner was not furnished with the complaints alleged to have been made against him. Therefore, taking into consideration, such complaints, while making appointment to the post of Dean is absolutely illegal and arbitrary.

17. It is to be noted that in the counter filed by the University, at the first instance, it has not placed any material to sustain rejection of the case of the petitioner for appointment to the post of Dean. However, in the additional counter, at a latter stage, some of the events which go against the interest of the petitioner are being alleged. It is objected by the learned counsel for the petitioner that these contentions cannot be raised at a latter stage, when the University did not choose to include those allegations in the earlier counter-affidavit and it cannot file at a subsequent stage unless, the events are taken place subsequent to the filing of the writ petition.

18. The learned counsel relies on the decision of the Supreme Court rendered in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, . In the said case, the Supreme Court held that: "When a statutory

functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional "grounds later brought out. Thus, the learned counsel relying on the said decision submits that the action once illegal cannot be validated at a later stage by the University by submitting fresh additional grounds. Moreover, the petitioner had never been put on notice about this ground. Having considered the issue at length, it is now made clear by the Supreme Court that any adverse entries or any irregular action committed by the employee cannot be taken into consideration to his detriment without putting him on notice. Admittedly, in this case the record did not reveal that this complaints have been communicated to the petitioner and his explanation was called for. Consequently it is not open to the respondent No. 1 to come out with such additional material in the subsequent counter to sustain the illegal action of the Vice-Chancellor. Under these circumstances, I am of the view that the complaints alleged to have been made against the petitioner cannot be taken into consideration for rejecting his case for appointment to the post of Dean.

19. The learned counsel for the respondents also states that the post of Dean is not promotional post nor does it carry any higher emoluments and therefore the petitioner cannot make any grievance, if his case was not considered for the post of Dean. This contention is opposed by the learned counsel for the petitioner stating that the said post is of higher status and the nature of responsibilities attached to the post are quite different. He relies on the decision of the Supreme Court rendered in Vice-Chancellor, L.N. Mithila University Vs. Dayanand Jha, . In the said case, the petitioner was sought to be transferred from the post of Reader to the post of Principal. The two posts carry same scale of pay, but the duties and responsibilities are different. The Supreme Court held that the post of Principal undoubtedly has higher duties and responsibilities. The post of Reader cannot therefore be regarded as an equivalent post as mat of Principal in the legal sense. The Supreme Court further observed that the true criterion for equivalence therefore is the status and the nature and responsibility of the duties attached to the two posts. Although the two posts of Principal and Reader carried the same scale of pay, the post of Principal undoubtedly has higher duties and responsibilities.

In the instant case the post of Dean is not of equal status, but it is of higher status, as Dean is appointed from among the Professors. It is a post of superior status with higher responsibilities. As Dean he is head of the institution of School (sic.) Physics. He enjoys the status next only to the Pro-chancellor. Thus, it cannot be said that since the post of Dean does not carry higher scale of pay and it is not a promotion post, the petitioner cannot make any grievance. I accordingly reject the contention of the learned counsel for the respondents and I hold that the petitioner is entitled to be considered for appointment to the post of Dean.

20. Whether the Vice-Chancellor had in fact considered the so-called complaints and whether the action smacks of arbitrariness can be only established from the perusal of the records. I have carefully gone through the records.

The note-file in the principal file is an important document. It is a main artery which acts as a catalyst to the main file a principal guiding factor to the decision making authority. Supply of incorrect and wrong information in the notes produces equally illegal and arbitrary orders. That is what exactly happened in this case. More-over I find that not only incorrect information was fed but some notings were inserted with an intention to thwart the claim of the petitioner. Prof. Srinivasan was appointed as Dean from 21-11-1986 to 20-11-1989, as the petitioner was on foreign assignment. When his tenure was about to expire, the office prepared a note on 29-9-1989 by the Assistant Registrar. He gave the list of Professors with dates which is extracted below:

The following is the list of Professors in the School of Physics in order of Seniority.

| Name                   | Date      | of | joining             | as        | S.No.<br>Professor |
|------------------------|-----------|----|---------------------|-----------|--------------------|
| 1.                     |           |    |                     |           |                    |
| Prof. G.S. Agarwal     | 3-3-1977  | 2. | Prof. A.K. Batnagar | 3-5-1977  | 3.                 |
| Prof. K.N. Shrivastava | 2-1-1986  | 4. | Prof. V. Srinivasan | 1-10-1986 | 5.                 |
| Prof. S.R. Shnony      | 1-10-1986 | 6. | Prof. A.P. Pathak   | 25-6-1987 | 7.                 |
| Prof. S.N. Kaul        | 4-7-1987  |    |                     |           |                    |

The Vice-Chancellor endorsed on 30-3-1989 to the effect that the file may be submitted 15 days before the expiry of the tenure of the existing Dean. While putting the file, a note was prepared on 6-11-1989. The relevant portion is extracted below.

?3. As per the statutes-Clause 6(1) every Dean of the School shall be appointed by the Vice-Chancellor from among the Professors of the School and he shall be eligible for appointment.

Prof. V. Srinivasan's term of appointment as Dean will expire on 20-11-1989. As per the provisions of statute he is eligible for re-appointment.

Prof. K.N. Srinivastava in his letter dated: 3-11-1989 stated that he be appointed as Dean in view of his seniority.

The appointment of Dean of the School is not according to seniority as per the provisions in the Statute. The Vice-Chancellor shall appoint Dean from among the Professors in the concerned School."

On the said noting the Deputy Registrar (Admn.) on 7-11-1989 endorsed as follows:

"May kindly see the list of Professors on Pn.

V.C. may kindly consider appointment of a Professor of the School as Dean to

succeed Prof. Srinivasan or his reappointment for a term of 3 years as per statute. It is not the practice to appoint a Dean based on his or his application. Our convention has been to rotate the Deanship among Professors of the School generally following their seniority. Accordingly the professor next in seniority in the School is Prof. S.R. Shenoy."

21. It is seen in this connection that the application of the petitioner dated 3-11-1989 was already pending, being a senior he is claiming the post of Dean as he could not get the post during 1986, as he was away from the country. But curiously, the note was put-up as if Prof. Shenoy is the next available senior. No mention was made about the petitioner who did not get the chance in 1986. The most important note of the Deputy Registrar (Admn.) is dated: 16-11-1989 which is extracted below:

"It may be pointed out that Prof. K.N. Shirivastava has filed a writ petition in the High Court making some false allegations against the University. There were some previous complaints also."

It is visible to the naked eye that the sentence "The were some previous complaints also." has been added subsequently. It is obviously inserted at a later date. A comparison of flow of writing is dearly visible to the viewer. It is very unfortunate that the Deputy Registrar (Admn.) whose name I could only decipher as "NAMBIAR" has manipulated the record to sustain the illegal action. I am very much distressed the way in which the records are built up. The Vice-Chancellor on 19-11-1989 simply endorsed as "Prof. S.R. Shenoy". There is no discussion of the points in issue. He did not record any reasons. Obviously he was swayed away by the noting that Prof. Shenoy is the next Officer available, that the petitioner made false allegations against the University. That happened in 1989; the petitioner was over-looked.

22. During the period of the Deanship of Prof. Shenoy, when he went on vacation from 10-12-1991 to 31-12-1991. The question of in charge arrangements came up for consideration. The note by the same Deputy Registrar is completely one sided, it is re-produced:

"Discussed with Prof. Shenoy

Prof. Shenoy is availing the winter vacation. He has suggested that the senior Professor - Prof. Pathak may be made in-charge Dean during his absence as the School has to be placed under the charge of some one in his absence for signing students Fellowships, bills for scrutiny purposes etc. Prof. Shenoy has plans to visit Bombay and Madras during the vacations. Prof. Pathak will be available during the vacation.

V. C. May kindly agree."

On the said noting, the Vice-Chancellor indicated as to why the petitioner should not be posted as in-charge Dean. He endorsed as "Why not Professor Shrivastav?" sd/-11-12-1991."

Against this suggestion, a note was again put-up the Deputy Registrar on 12-12-1991 which is as follows:

"A writ is filed by Prof. K.N. Srivastava against the appointment of Prof. Shenoy as Dean is pending in the High Court. Our defence that he was not considered suitable by the V.C. may be weakened if he is appointed now. If we have no reservation on this count, he can be considered for Deanship for a full term in the next vacancy.

For the present, the Deans recommendation may be considered, as we do not also know whether Prof. K.N.S. will be available during the vacation."

The Vice-Chancellor says" Yes, Prof. Pathak" sd/-13-12-1991. Again Prof. Shenoy tendered his resignation, which was accepted with effect from 17-2-1992.

The note was put-up on 4-2-1992. The relevant para relating to the petitioner is extracted:

"Prof. K.N. Shrivastava already filed a writ petition against the appointment of Prof. Shenoy as Dean of the School and the matter is pending in the A.P. High Court."

Prof. Pathak was made in-charge pending regular appointment. However, on 3-6-1992 it appears that the Vice-Chancellor desired that Prof. Pathak to be regular Dean. The noting of the Registrar is as follows:

"Prof. V. Ramakrishna, Dean Incharge, Sarojini Naidu School of Arts, Fine Arts and Communication would be availing Sabbatical Leave from July,1992. When discussed, Vice-Chancellor desired Prof. Lakshama Goud, Professor in Paiting be appointed as Dean Incharge of the school under Statute 6(2) of the Statutes of the University w.e.f. 15-6-1992.

The Vice-Chancellor also desired that the appointment of Prof. A.P. Pathak, Dean Incharge of the School of Physics be regularised and he may be appointed as regular Dean of the School of Physics w.e.f. 5-6-1992 under Statute 6(1) of the Statutes of the University.

Formal orders may kindly be passed so that action be taken on the above.

"X" & "Y" Yes. sd/-4-5-92 sd/- Vice-Chancellor REGISTRAR

Thereafter the term of Prof. Pathak also expired on 4-6-1995. It appears that there is a change in position. The Former Deputy Registrar and Vice-Chancellor are not there in 1995. The matter is under consideration and this Court granted direction not to finalise the appointment of Dean pending futher orders.

Thus, it is seen mat at no point of time of Vice-Chancellor had considered the matter independently. The notings only created impact on his decisions. Virtually the Vice-Chancellor in 1989 took into consideration the noting that the petitioner made false allegation, and mat influenced his decision Further even the noting dated: 12-12-1991 that:

"a writ filed by Prof. K.N. Shrivastava against the appointment of Prof. Shenoy as Dean is pending in the High Court. Our defence that he was not considered suitable by the V.C. may be weakened, if he is appointed now."

itself furnishes the answer.

Thus what emerges from the note-file is that the Petitioner had filed Writ petitions, and therefore, his case should not be considered, otherwise it weakens the stand of University. This is the only factor for over-looking the case of Petitioner. In order to buttress this action, additional counter was filed alleging complaints against the petitioner in some previous years. Thus, I find total lack of fairness in action with abundance of malice and arbitrariness.

23. The University is an institution of higher learnings. It should demonstrate transparency in its affairs both academic and administrative. The teaching staff normally do not divert their attention towards their services as their concern is on research and improvement of educational standards.

Therefore, it is all the more necessary that the administration must act in a fair and reasonable manner. The Act reposed great faith in the Vice-Chancellor and vested in him the power to appointment Deans, The discretion should be exercised in a fair and bona fide manner untravelled and uninfluenced by the opinions of the lower echelons of the administration., The Supreme Court also in number of cases held that "there should be least interference in the administration of University, both in academic and non-academic sides. But it becomes necessary to invoke the legal radiology to identify the malfunctioning area".

In the instant case, the Vice-Chancellor failed to exercise his discretion under statute 6(1) in fair and just manner. The Petitioner was denied of his appointment for two consecutive terms. The humiliation and agony of the petitioner, who is a senior Professor cannot be compensated retrospectively. I, therefore, record my dissatisfaction and distress at the way in which the petitioner was meted a raw deal. It is hoped that the authorities will set right the position and pave way for better relations with the teaching staff and thus achieve excellence in higher education and research.

24. Lastly, the learned counsel for the Respondents submits that this Court could not issue Writ of Mandamus to direct a public Authority to exercise its discretion in a particular manner. I am afraid, it is too late in the day to take "shelter under such a contention, Under Article 226 of the Constitution, every High Court has the power to issue to any person or authority, including in appropriate cases, any government throughout the territories in relation to which it exercises jurisdiction, directions, orders, or Writs including Writs in the nature of habeas corpus, mandamus, quo warranto and certiorari or any of them for the enforcement of the Fundamental Rights conferred by Part in of the Constitution or for any other purpose the Supreme Court in Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, , had clearly pointed out that

Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only to the power to issue prerogative writs as understood in England, such " wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country". The same view was also expressed by the Supreme Court in *Hochtief Gammon Vs. State of Orissa and Others*, , wherein it was laid down that the powers of the courts in relation to the orders of the Government or an Officer of the Government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases, where such power is exercised or refusal to be exercised on irrelevant considerations or on erraneous grounds or mala fide and in such a case a party would be entitled to move the High Court for a Writ of Mandamus. In *Padfield v. Minister of Agriculture, Fisheries & Food* 1968 A.C. 997, tike House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture to appoint a committee of investigation, so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister's discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus.

In Halsbury's Laws of England II Edition Volume-I para 89, it is stated:

"the purpose of an order of Mandamus is to remedied defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases, where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, that mode of redress is less convenient, beneficial and effectual"

25. This Court in exercise of its jurisdiction under Article 226 can compel the performance in a proper and lawful manner of the discretion conferred upon the public authority or the Government in order to prevent injustice to the concerned parties. This Court may also itself pass an order or give direction which the Government or public authority should have passed or given properly and lawfully exercising its discretion.

26. In view of the above discussion, I find that the Vice-Chancellor, who is vested with the power of appointment under Statute 6(1) has exercised the discretion vested in him improperly. Thus it is open for this Court to give directions which the authority should have given. However, keeping the status of the office of Vice-Chancellor and the autonamy which the University enjoys, I am not inclined to grant positive directions but leave it to the authority to exercise the discretion and consider the matter in a proper and reasonable manner. As on the date, the post of Dean is kept vacant by virtue of the orders passed by this Court and therefore an appropriate decision must be taken expeditiously.

27. For these reasons, the Writ Petition is allowed and the 1st respondent is directed to consider the case of the petitioner for appointment to the post of Dean keeping in view the observations made by this Court supra within a period of four weeks from the date of receipt of the copy of this order. There shall be no order as to costs.