

(1976) 05 SHI CK 0017

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 139 of 1976

Dr. K.P. Pandey

APPELLANT

Vs

The Himachal Pradesh University etc.

RESPONDENT

Date of Decision : 03-05-1976

Acts Referred:

Himachal Pradesh University Act, 1970 — Section 12, 18, 21(2), 6(1), 9

Citation : (1976) 5 ILR HP 355

Hon'ble Judges : R.S. Pathak, C.J.;D.B. Lal, J

Bench : Division Bench

Advocate : H.S. Thakur, for the Appellant; B. Sita Ram, General, Inder Singh and Bhawani Singh, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, C.J.—This case arises out of certain matters concerning the Himachal Pradesh University. The Petitioner, Dr. K.P. Pandey, held the office of Head of the Department of Education, was Dean of the Faculty of Education, and therefore, member of the Executive Council. On January 5, 1976, the Registrar of the University issued three notifications. By the first notification (Annexure "E") it was declared that the Vice-Chancellor, acting under Statute 13(1)(v)(v) read with Ordinance 23.2 of the First Ordinances of the University had appointed Professor V.S. Mathur (Respondent No. 4) as Head of the Department of Education with immediate effect in place of the Petitioner. By the second notification (Annexure "E1") it was declared that Professor Mathur, as Head of the Department of Education, would hold the office of Dean, Faculty of Education in place of the Petitioner. By the third notification (Annexure E2) Professor Mathur was declared member of the Executive Council in place of the Petitioner in accordance with Statute 10(1)(ii) of the First Statutes. On January 6, 1976, the Registrar issued a notification (Annexure "K") intimating the appointment by the Vice-Chancellor of an Enquiry Committee to enquire into certain aspects pertaining to the publication and sale of a book titled "Programmed Learning",

On February 9, 1976, the Registrar sent a letter (Annexure "L") informing the Enquiry Committee of the terms of reference and the scope of enquiry (Annexure L1). By this writ petition the Petitioner prays for the quashing of Annexures E, E1, E2, K, 1 and 11.

2. The writ petition has been brought on the following averments. In September, 1971 the Petitioner was appointed to the post of Director of Correspondence Courses-cum-Professor of Education in the Himachal Pradesh University, and he joined the post on October 7, 1971. He has been holding the post since then. He was confirmed in the appointment by an order dated February 19, 1974, with effect from October 7, 1972. On March 30, 1972, he was appointed Dean of the Faculty of Education pursuant to Statute 3(1) of the First Statutes, which office he held for a period of two years. The Petitioner contends that the appointment was made on the footing that he was a Professor of Education. As Dean, the Petitioner became a member of the Executive Council. Subsequently, the Petitioner says, Professor H.C. Sinha was appointed as another Professor in the Department of Education. When the Petitioner's term as Dean was coming to a close on March 29, 1974, it was proposed that Professor Sinha should succeed him as Head of the Department and as Dean of the Faculty, but on Dr. Sinha declining it was notified on April 24, 1974, that the Petitioner had again been appointed Head and thereby Dean and would, therefore, continue as member of the Executive Council with effect from March 30, 1974. The Petitioner urges that he was entitled to continue as such until March 29, 1976. But on January 5, 1976, the notifications mentioned above were issued divesting the Petitioner of the offices of Head of the Department, Dean of the Faculty and member of the Executive Council and appointing instead Professor V.S. Mathur. The case of the Petitioner is that his term of office extended upto March 29, 1976, and it could not be terminated before that date. The Petitioner addressed a representation to the Vice-Chancellor on January 6, 1976, but apparently with no success. On the contrary, he was informed on February 26, 1976, by the Registrar that the action taken was valid and in accordance with the Statutes of the University. That is one part of this writ petition.

3. The second part of the writ petition concerns the validity of an enquiry commenced by the Vice-Chancellor, Dr. B.S. Jogi, into the publication and sale of a book "Programmed Learning", of which the Petitioner is the author. The Petitioner alleges that the Vice-Chancellor had no power to institute the enquiry and, therefore, the constitution of the Enquiry Committee, the definition of its terms of reference and scope of enquiry, and the proceedings taken by it are invalid. The validity of the enquiry is also challenged on the ground that it has been motivated by malafides on the part of the Vice-Chancellor.

4. The writ petition was filed in this Court on March 5, 1976. Despite the expeditious treatment accorded to it, because of the service of notice on the Respondents, their appearance and filing of returns, the filing of rejoinder affidavits, and, as the hearing progressed, the perusal of an enormous volume of

documentary material, the hearing of the petition could be concluded on March 25, 1976 only. In the circumstances, it has not been possible to dispose of the case before the expiry of the two years claimed by the Petitioner. The Petitioner could have filed the writ petition shortly after the related impugned orders were made on January 5, 1976, but he chose to wait for two months before filing this writ petition.

5. In regard to the first part of the writ petition, a few provisions of the relevant Acts, Statutes and Ordinances may be noticed.

6. The Himachal Pradesh University was brought in existence by the Act of 1970 of that name. It came into force with effect from July 22, 1970. Besides the traditional mode of education, the University was empowered by Section 6(1) of the Act to provide for instruction by the method of Correspondence Courses. By Section 18, the authorities of the University include the Executive Council and the Faculties. The First Statutes of the University were published on August 7, 1970. Statute 3 provides that every Head of a Department of Studies who is a Professor shall by rotation, according to seniority, for a period of two years, act as the Dean of the Faculty. Statute 10 provides for the Executive Council, and by Sub-Clause (ii) of Clause (1) thereof the Deans of all the Faculties are members of the Executive Council. Statute 13 enumerates the different Faculties of the University. One of them is the Faculty of Education. According to Statute 13 (1) (iii), each Faculty shall consist of such departments of study as may be assigned to it by the Ordinances. Statute 13(1)(v)(v) declares that each department shall have a head who may be a Professor, and if there is more than one Professor the Head of the Department shall be appointed by the Vice-Chancellor. The position then is this. If there is a single Professor in the Department, he becomes its Head. If there is more than one Professor, the Vice-Chancellor may appoint the Head. Every Head of a Department of Studies who is a Professor shall by rotation according to seniority act as Dean of Faculty for a period of two years". A Dean of the Faculty becomes a member of the Executive Council.

7. Although initially the case of the Petitioner rested on the basis that as Director of Correspondence Courses-com-Professor of Education in the Directorate of Correspondence Courses he was entitled to be considered for the office of Head of the Department of Education and, therefore, Dean of the Faculty, subsequently the basis was enlarged to the claim that the original appointment of the Petitioner consisted of an appointment to the post of Director in the Directorate of Correspondence Courses and Professor of Education in the Department of Education. The case of the Respondents, on the contrary, is that the Petitioner was appointed Director of Correspondence Courses-com-Professor of Education, which was a post in the Directorate of Correspondence Courses, and that he was never appointed to the post of Professor in the Department of Education.

8. On June 11, 1971, the Himachal Pradesh University put out an advertisement inviting applications for specified categories of posts. It is apparent from Annexure R43, a copy of the advertisement, that the categories included a post

of Professor. The posts to be filled were shown as posts in the individual departments of Economics, Physics, Mathematics, Chemistry, Political Science, English, Hindi, Sanskrit, the Agriculture Complex, Law and Correspondence Courses. The post of Director of Correspondence Courses-com-Professor of Education was shown as a post in the Directorate of Correspondence Courses. Although described as post carrying a Professor's grade and qualifications, nonetheless it was envisaged as a post in that Directorate. It was a single indivisible post, carrying with it the status of Director as well as Professor. An extract (Annexure R-29) from the prospectus for Correspondence Courses for the year 1972-73 shows that the Petitioner was treated as holding the academic and administrative post in the Directorate of Correspondence Courses.

9. In a meeting of the Executive Council dated July 21, 1971, the Executive Council approved of the creation of a number of posts in the Directorate of Correspondence Courses. They included the post designated as "Director of Correspondence Courses-com-Professor of Education". On September 5, 1971, a Selection Committee met to select candidates for the post of Director of correspondence Courses cum Professor of Education. The Petitioner was recommended for appointment to the post. On September 12, 1971, the Executive Council approved the recommendations of the Selection Committee. On September 14, 1971, the Registrar wrote to the Petitioner informing him that on the recommendations of the Selection Committee the Executive Council had appointed the Petitioner as Director of Correspondence Courses-cum-Professor of Education in the Himachal Pradesh University. It is patently clear that thereby the Petitioner was appointed to a post in the Directorate of Correspondence Courses. That it was not a post of Professor in the Department of Education appears from the following facts.

10. On March 21, 1971, the Executive Council considered and approved the recommendations of the Vice-Chancellor for starting and opening additional teaching departments in the University including M.Ed., M.Phil in Education and Correspondence Courses, and for the creation of additional posts in the existing departments. While additional staff was created for the existing teaching departments, the decision of the Executive Council did not extend at that time to the creation of staff for the new teaching departments opened by it. Subsequently on July 21, 1971, Shri H.D. Bhagat, formerly Principal, Government College of Education, Simla, was appointed on an honorarium of Rs. 500/- per month with effect from July 3, 1971, to look after the work relating to the Correspondence Courses of the University. Meanwhile, it appears that the University was in communication with the University Grants Commission and in this connection submitted a statement showing the number of posts, equipment, etc., required for teaching departments of the University during the years 1971-72 to 1973-74 of the Fourth Five Year Plan period. Against the post of Professor in the subject of Study, Education, it was shown that no such post existed and that one post was required during the three years under consideration. The statement was approved by the Executive Council in its

meeting of June 4, 1971. It is apparent that the post of Professor in the Department of Education was contemplated as a distinct post from that of Director, Correspondence Courses-cum-Professor of Education in the Directorate of Correspondence Courses. On August 27, 1971, an advertisement was issued calling for applications for filling the post of Professor in the Department of Education. The Selection Committee met on December 29, 1971, and decided on Dr. S.N. Mehrotra for filling the post. On December 31, 1971, the Vice-Chancellor wrote to Dr. Mehrotra intimating that he had been recommended for appointment as Professor in the Department of Education. A few days later, on January 4, 1972, Dr. Mehrotra replied to the Vice-Chancellor and indicated the terms on which he would prefer to accept the appointment. The terms of appointment were finalised by the Executive Council in its meeting of January 20, 1972. While the appointment of Dr. Mehrotra was still pending, the Registrar of the University notified on March 30, 1972, that in pursuance of Statute 3(1) of the First Statutes the Petitioner, who was described as Professor of Education, would be Dean of the Faculty of Education. It appears that until the consideration of Dr. Mehta for the post of Professor in the Department of Education no one had yet been appointed to fill that post and the functions attaching to that post were apparently performed by the Petitioner, although he was the incumbent of a post in the Directorate of Correspondence Courses, namely, Director, Correspondence Courses-cum-Professor of Education. In a sense, he was given additional charge of the separately created post of Professor in the Department of Education, and apparently for that reason was considered qualified to hold the office of Head of the Department of Education, and there fore, Dean of the Faculty of Education.

11. It appears that Dr. Mehta who had been offered the vacant post of Professor in the Department of Education ultimately declined to accept it and the post remained vacant. Thereafter, nothing appears to have been done for a considerable time to fill the vacancy in that post. Meanwhile, it is not disputed, the College of Education which was at that time being run by the Himachal Pradesh Government was taken over by the University. Five Lecturers employed therein were added towards the end of 1972 to the staff in the Department of Education in the University. The Petitioner continued to perform the duties of a Professor in that Department, for we find that when the Petitioner made a claim to rent free accommodation, the Executive Council noted on September 29, 1973:

Grant of rent free accommodation to Dr. K.P. Pandey. The Committee appreciates the fact that Dr. K.P. Pandey has to work very hard since he is carrying the burden of his office as well as of an additional Professor which post has remained unfilled so far, but the provision of rent free accommodation to him is likely to have awkward repercussion....

12. It is clear from this that the unfilled post referred to was the post of Professor in the Department of Education which remained vacant so far, and that when it is said that the Petitioner was carrying the burden of his office as well as of an additional Professor, the Executive Council intended to say that not only

was the Petitioner discharging his duties as Director, Correspondence Courses-com-Professor of Education in the Directorate of Correspondence Courses but also performing the functions of Professor in the Department of Education. By reference to the first post he could be said to be Professor of Education in the Directorate of Correspondence Courses. That was distinct from the post of Professor in the Department of Education the functions of which he also discharged but which post, as the Executive Council observed, remained unfilled. It is apparent that the Petitioner must be considered to be an incumbent of the post Director, Correspondence Courses-am-Professor of Education in the Directorate of Correspondence Courses and to have in addition performed the duties attaching to the post of Professor in the Department of Education without actually holding that post.

13. Proceedings were taken again for the appointment of a Professor in the Department of Education and on September 11, 1973, the Selection Committee considered two candidates, and of them recommended the appointment of Dr. H.C. Sinha. The Petitioner was a Member of the Selection Committee, and from what has been mentioned above he was included apparently on the basis that he was Professor and Head in the Department of Education, a description which, in our opinion, was attached to him only because de facto he was performing the functions of the post of Professor in the Department of Education. The Recommendation was accepted by the Executive Council in its meeting of September 29, 1973. Dr. Sinha was appointed and held the post of Professor in the Department of Education until July 8, 1974, when he resigned. It does appear that although the post of Professor in the Department of Education had been filled, no attempt was made to displace the Petitioner from the position of Head of the Department and therefore Dean of that Faculty, by substituting Dr. Sinha for him in those offices. But there is nothing on the record to show that the post filled by Dr. Sinha was a second post of Professor in the Department of Education.

14. Dr. H.C. Sinha, although Professor in the Department of Education, declined on personal grounds to accept the office of Head of the Department of Education, and in the circumstances the Petitioner who had held that office as well as of Dean of the Faculty of Education was again appointed as Head of the Department and as Dean of the Faculty of Education. Thus, he was considered as a continuing Member of the Executive Council with effect from March 30, 1974. A notification to that effect was issued on April 24, 1974. Here again, the attempt was merely to continue the status quo. It was assumed that because the Petitioner had held the aforesaid offices in the immediate past, he should be appointed for a further period to the said offices. Apparently the true legal position was not appreciated that there was only one professor in the Department of Education, namely, Dr. H.C. Sinha, and he alone could hold the aforesaid offices. It is true that in the notification dated April 24, 1974, the Petitioner was described as professor of Education, but the description rested on the assumption that because the Petitioner was performing the duties and functions of a professor of Education he

was entitled to the aforesaid offices. There is no satisfactory material before us from which it can be reasonably inferred that there were two posts of professors in the Department of Education—one held by the Petitioner and the other held by Dr. H.C. Sinha.

15. Reliance has been placed by the Petitioner on the Annual Reports of the University for the years 1973-74 and 1974-75, in which the Petitioner has been described as Professor of Education and Head of the Department of Education. In the absence of any positive material showing that there were two posts of Professor in the Department of Education and that the Petitioner held one of them, the mere description of the Petitioner as Professor in the Department of Education must be taken merely as a convenient method of referring to him. A convenient or erroneous description cannot be employed for the purpose of conferring a status which, in the absence of positive material, cannot be attributed to the Petitioner. Indeed, the attempt of the Petitioner throughout has been to rely principally on such descriptive material which, in our opinion, could have had supporting value only if there was substantive material demonstrating clearly that the Petitioner occupied the post of Professor in the Department of Education. Dr. Sinha resigned subsequently and the post of Professor in the Department of Education remained vacant until it was filled by Professor V.S. Mathur consequent upon a decision of the Executive Council in its meeting of August 22, 1975.

16. The Petitioner relies on a letter dated March 21, 1976, written to him by Dr. R.K. Singh, former Vice-Chancellor of the Himachal Pradesh University. The letter was written during the pendency of this writ petition, but even if it is considered for the purpose of deciding the writ petition it does not detract from the conclusion that the post of Director of Correspondence Courses-cum-Professor of Education combined two posts in one, that so combined it must be considered a single indivisible post and that it was to such a post that the Petitioner was appointed. Dr. R.K. Singh has stated in the letter that it was intended that the Professor of Education should head the Correspondence Courses Section, and if may have been that what was intended was that a teacher holding the post of Professor of Education should be given charge of the Correspondence Courses. But what was actually achieved? By combining the two posts into one, and making it a post in the Directorate of Correspondence Courses, it could not be said that it was tantamount to a post of Professor in the Department of Education. The Petitioner has referred us to the reply of the University Registrar to what is described as the Shanta Kumar Memorandum. The Registrar said that the Petitioner was holding dual charge of Director and Professor. We are unable to gather from that that the Petitioner was actually appointed to the post of Professor in the Department of Education.

17. For the purpose of obtaining a grant-in-aid for the School of Education (as the Department of Education came to be called) it became necessary to give an over all picture of the staff position in the Department. The Petitioner, as Head,

showed only one post of Professor for the Fourth Five Year Plan period ending March 31, 1974, and that post was shown as occupied by Professor H.C. Sinha. The post sanctioned by the University Grants Commission included only one post of Professor. Annexures R-10 to R-16 conclusively establish that according to the documents submitted by the Petitioner himself the School of Education had only one post of Professor.

18. Then there is the circumstance that the Petitioner drew his salary from the Directorate of Correspondence Courses. No salary was paid to him from the School of Education. That is clear from the record before us.

19. It is contended for the Petitioner that as he was appointed Professor of Education the appointment signifies that it was made in the Department of Education. As we have already pointed out, the Petitioner was appointed to a single indivisible post and that post was created in the Directorate of Correspondence Courses. The circumstance that the words "Professor of Education" were mentioned while describing the post is a pointer merely to the character of that particular post. It was a post carrying the status of a Professor. It was a post in which the need for a person qualified as a Professor of Education was recognised thereby. It does not, and cannot, imply that the post was created in the Department of Education.

20. From the material on the record, the only reasonable inference, it seems to us, is that the Petitioner was appointed to the post of Director, Correspondence Courses-cum-Professor of Education, which was a post in the Directorate of Correspondence Courses, that from the outset he was entrusted with the task of teaching the M.Ed. and B.Ed. classes and he continued to do so during those periods when there was no Professor in the Department of Education and perhaps also when an incumbent to that post was actually appointed. The arrangement under which the Petitioner functioned in the Department of Education can at best be described as a loose arrangement which had the virtue of maintaining a continuity of teaching in the Department of Education by a teacher of competence and acknowledged worth. But that, as we have said, does not lead to the necessary conclusion that he was ever appointed to the post of Professor in the Department of education. To conduce to that conclusion, material more definite and more positive is required.

21. Reference has been made on behalf of the Petitioner to the fact that he was a member of successive Selection Committees constituted for recommending persons for appointment to posts in the Department of Education. It is pointed out that Statute 17(2) indicates that one of the members of such Selection Committee shall be the Head of the Department concerned if he is a Professor. In our opinion, this circumstance does not take the case of the Petitioner any further because, as has been mentioned already, the Petitioner was treated as Head of the Department of Education on the assumption that he could fill that office inasmuch as he was performing the functions of a Professor in the Department. There could be no doubt that the Petitioner enjoys the status of a

Professor of Education but that status flows to him from a post in the Directorate of Correspondence Courses and not from a post in the Department of Education.

22. On January 5, 1976, the University issued a notification declaring that as Professor V.S. Mathur had been appointed Professor of Education in the Department of Education he was appointed as Head of the Department of Education in place of the Petitioner who was henceforth to function as Director of Correspondence Courses-cum-Professor of Education in the Directorate of Correspondence Courses. The position was set in its true context by this notification. The notification does refer to Statute 13(1)(v)(v) read with Ordinance 23.2, and Ordinance 23.2 refers to a situation where there are two or more Professors in a Department. In our opinion, reference to Ordinance 23.2 represents a misunderstanding of the true position. There was only one Professor in the Department of Education, and that was Professor Mathur. The notification dated January 5, 1976, declaring that Professor Mathur, Head of the Department of Education, would hold the office of Dean of the Faculty of Education, reflects what must be regarded as his true status. So also does the third notification of January 5, 1976. It declares Professor Mathur to be a member of the Executive Council. The effect of those notifications was to take away from the Petitioner the functions performed by him so far in relation to the Department of Education and to vest them entirely in Professor Mathur. The Petitioner had no legal right to insist on continuing in the exercise of those functions. He had been exercising them merely because it was considered convenient, because no person had been appointed to the post of Professor in the Department of Education and when the post was filled because the existing incumbent had declined to accept the relevant offices. There was, in our opinion, an apparent lack of appreciation of the true legal reality. Whatever the reason, the Petitioner did not acquire a vested right to the exercise of those functions. With the appointment of Professor V.S. Mathur, the Petitioner was obliged in law, when required to do so, to vacate those functions. They were now rightly assumed by Professor Mathur.

23. On January 6, 1976, the Petitioner addressed a representation to the Chancellor contending that the impugned notifications replacing him by Professor Mathur were invalid. It is not known what transpired thereafter on the representation, but we find a letter dated February 26, 1976, from the Registrar to the Petitioner in which reference was made to his representation to the Chancellor and it was affirmed that the notifications were valid. The Petitioner contends that the impugned notifications were premature and that the question whether he could be replaced by Professor Mathur should have been referred to the Chancellor for decision u/s 45 of the Himachal Pradesh University Act. Section 45 provides that if any question arises whether any person has been duly appointed or elected as, or is entitled to be, a member of any authority or other body of the University, the matter shall be referred to the Chancellor whose decision thereon shall be final. It seems to us that on the facts of the present case the dispute could be said to have arisen only after the impugned notifications were made. The act of declaring Professor Mathur Head of the

Department of Education, Dean of that Faculty and, therefore, member of the Executive Council constituted the foundation of the dispute. No dispute can be said to have arisen before that. If the Petitioner can take advantage of Section 45 at all, it is for the purpose of questioning the impugned notifications before the Chancellor. But the Petitioner cannot legitimately contend that before the issue of the impugned notifications the question should have been referred to the Chancellor u/s 45 whether the Petitioner or Professor Mathur was entitled to the offices in question.

24. In our judgment the three notifications of January 5, 1976, challenged by the Petitioner cannot be successfully assailed on the grounds taken by him.

25. A point was raised by learned Counsel for the Respondents that the dispute whether the Petitioner is a Professor in the Department of Education is not justiciable in this writ petition inasmuch as the appointment was not made by the Himachal Pradesh University Act but under the Act. As we are of opinion that the question whether the Petitioner is a Professor in the Department of Education must be decided against the Petitioner, we need not enter into the point of justiciability of that issue.

26. The second part of the writ petition is concerned with the enquiry in the matter of the publication and sale of the book, "Programmed Learning". On January 6, 1976, the Registrar of the University issued a notification declaring that the Vice-Chancellor had appointed an Enquiry Committee to enquire into certain aspects pertaining to the publication and sale of the aforesaid book. The Deputy Registrar, Shri G.C. Kaushal, was appointed to provide the Committee with secretarial assistance. On February 9, 1976, the Registrar conveyed to the Committee its terms of reference and scope of enquiry.

27. The case of the Petitioner is that the Vice-Chancellor had no power to institute the enquiry mentioned above and, he alleges, the enquiry is directed against him personally by reason of the Vice-Chancellor's malafide. According to the Petitioner, the Vice-Chancellor, Dr. B.S. Jogi, is motivated against him because he, the Petitioner, was also under consideration for appointment to the office of Vice-Chancellor. In support of the allegation of malafide, the Petitioner has alleged that Shri G.C. Kaushal had reason to be inimical to him and he was appointed to assist the Committee, and he points to the further circumstance that the Vice-Chancellor was unduly interfering in the management and control of the Directorate of Correspondence Courses which had originally been entrusted entirely to the Petitioner.

28. It appears from the material on the record that Shri Shanta Kumar, M.L.A., had submitted a memorandum to the Chancellor making a number of allegations in regard to the affairs of the University, and these included the printing and publication of the book "Programmed Learning". The memorandum was handed over to the Chancellor who passed it on to the Vice-Chancellor and desired that the matter may be taken up by the Executive Council of the University. There is

no, dispute that the Executive Council constituted a Committee to examine the charges made by Shri Shanta Kumar in the memorandum. The Committee consisted of Shri Tej Singh Vaidya, retired District and Sessions Judge, Mandi, Dr. V.V. John, former Vice-Chancellor of Jodhpur University and Fellow, Indian Institute of Advanced Study, Simla, and Shri T.S. Negi, who was appointed convener of the Committee. The Committee was popularly known as the Negi Committee. After investigating the charges made by Shri Shanta Kumar, it submitted its report. At page 296 of the report, the Committee referred to the use of a printing press of Meerut for printing the publication. The Committee found prima facie that the choice of the Press at Meerut was not irregular, but it left the matter to the findings of the Audit Report. On page 304 of the report the Committee noted that the allegation had been denied that the book "Programmed Learning" was in fact a private publication of the Petitioner and that he had made money out of it, but it observed that it was a serious charge on which the final results of Audit should be awaited. The Executive Council, in its meeting of July 7, 1974, decided that the report of the Negi Committee should be studied by the University authorities and the action taken on it should be reported to the Executive Council. In May, 1973 the University had already requested the Accountant General, Himachal Pradesh and Chandigarh, to conduct a special audit of the accounts of the Directorate of Correspondence Courses. By a letter dated October 1/6, 1975, the Accountant General informed the Vice-Chancellor, Dr. B.S. Jogi, that during the course of audit certain aspects pertaining to the publication and sale of the book "Programmed Learning" were noticed and, enclosing a copy of the note in that regard, he observed that the Vice-Chancellor would possibly like to have the matter investigated. The note referred to various features of the printing and publication of the book, the number of copies printed, the price of the book, the amount of paper consumed in printing, the high cost of binding and the abnormal freight paid for transport of the printing books. It was in these circumstances that on January 6, 1976, the Enquiry Committee was constituted and the terms of reference and scope of enquiry were determined.

29. The first question is whether the Vice-Chancellor had the authority to institute this enquiry and constitute the Enquiry Committee. It is apparent from the material contained in the Negi Enquiry Report, the note sent by the Accountant General to the Vice-Chancellor, the terms of reference of the Enquiry Committee and the scope of the enquiry that among other things the enquiry involves an investigation into the conduct of the Petitioner. It is true that the enquiry is not directed against the Petitioner personally in the sense that it is not an enquiry into any specific charge framed against the Petitioner with the immediate object of taking action against him; nevertheless, it is an enquiry into his actions involved in and associated with the publication and sale of the book "Programmed Learning", and there can be no doubt that the enquiry can result in findings which could seriously reflect on the conduct of the Petitioner. Although that may rest in the domain of possibility only, the Court must take all

possibilities into consideration both in favour of and against the Petitioner. Without sitting in judgment on the probabilities of the situation, we must take note that the enquiry has the potential of doing serious injury to the Petitioner. It is said that the enquiry in its scope travels beyond the Petitioner to other persons also. While that may be so, for the perspective from which this matter must, in our view, be looked at, it is sufficient that it involves the Petitioner.

30. By Section 21(2) of the Act, the Executive Council has been given statutory charge of the general management and administration, including the revenue and property of the University. Plainly, the matters in regard to which the enquiry has been instituted are matters falling within this responsibility of the Executive Council. Added to that is Ordinance 35.7 which declares that for the appointment, suspension, removal from office, fixing of salary, control or any other kind of matter, the competent authority, in the case of employees of categories "A" and "B" that is teachers of the University, or persons recognised as teachers by the Academic Council, and Senior Administrative Officers, shall be the Executive Council. The Petitioner, as Director and Professor, occupied the status both of Administrator and teacher. The Vice Chancellor has been given power in respect of employees of category "C" only, that is ministerial and other staff in the any scale with a minimum pay of Rs. 110/- or above per month and not included in categories "A" and "B". The words "or any other kind of matter" in Ordinance 35.7 have the widest amplitude. By that provision the Executive Council alone has been vested with power in respect of all matters concerning persons falling in categories "A" and "B", the protection afforded to such persons, by making them answerable to the Executive Council alone cannot be whittled down by so construing Ordinance 35.7 that it results an area of action against such persons being accessible to the power of the Vice-Chancellor. The entire sphere of action in respect of such persons, be it in the nature of a fact finding enquiry only or in the nature of punitive action on charges approved, must be determined in its essentials by the Executive Council and not by the Vice-Chancellor. Such essentials include the question whether an enquiry should be instituted or not, and if so who should be members of the Enquiry Committee and what should be the terms of reference and the scope of enquiry. The discretion in such matters can be exercised by the Executive Council only. Our attention has been drawn to the resolution of the Executive Council of July 14, 1974, where, on receipt of the Negi Enquiry Report the Executive Council decided "that the observations and recommendations of the Committee be studied by the University authorities with the carefulness they merit and action taken reported to the Executive Council in due course". Admittedly, the language is wide and can be construed as permitting a fact finding enquiry by some other authority with the function of decision thereon being retained by the Executive Council. But if the resolution is so construed, it seems to us in danger of being declared invalid so far as it permits the instant enquiry. It would amount to an uncontrolled delegation by the Executive Council of the power and responsibility entrusted to it by Section 21(2) read with Ordinance 35.7, inasmuch as the enquiry amounts

to an investigation into the conduct of a teacher and administrator with possibly serious consequences to him. We are of opinion that the resolution of the Executive Council should be construed in a manner that its validity can be upheld. We would hold that the action taken by the Vice-Chancellor was not contemplated and permitted by the Chancellor/Executive Council within the terms of its resolution. Had there been material on the record to show that the Executive Council had the instant enquiry in mind and had consciously left the matter entirely to the Vice-Chancellor occasion might have arisen for examining the validity of the Executive Council's resolution. The essential features to which we have referred cannot be left to the decision making of a delegate. The impugned action of the Vice-Chancellor, to our mind, must be taken to fall outside the scope of the Executive Council's resolution.

31. Learned Counsel for the Vice Chancellor has referred to Section 12 of the Act in support of the validity of Vice-Chancellors action. Section 12 merely designates the Vice-Chancellor as the principal executive and academic officer of the University. Nowhere does it empower the Vice-Chancellor to institute an enquiry of the nature we have before us. Nor can the action be justified on the basis of Statute 2. The powers and duties of the Vice-Chancellor enumerated therein do not envisage the institution of such an enquiry.

32. We are also not impressed by the submission of learned Counsel for the Vice-Chancellor that the present enquiry can be justified u/s 9 of the Act. u/s 9 the Chancellor is empowered to cause an enquiry to be made in respect of any matter connected with the administration and finances of the University or an institution maintained by it. Sub-section (1) provides that the Chancellor may cause such enquiry to be made in the like manner as an inspection, and an inspection may be made by such person or persons as the Chancellor may direct. It is then for the Chancellor to constitute the person or persons who will make the enquiry. The Enquiry Committee constituted by the Vice-Chancellor is not an Enquiry Committee constituted by the Chancellor. Sub-section (2) provides that the Chancellor shall give notice to the University of his intention to cause an enquiry to be made. There is no evidence that the Chancellor has given any such notice. Sub-section (3) provides that the result of the enquiry must be communicated to the Chancellor, and that the result will be communicated by him to the Vice-Chancellor together with his views thereon and the advice regarding the action to be taken. There is no material on the record to show that this is what is contemplated by the Enquiry Committee which has been set up. It seems clear to us the enquiry proceedings cannot be justified u/s 9 of the Act. It is true that the memorandum prepared by Shri Shanta Kumar was submitted to the Chancellor and that he handed it over to the Vice-Chancellor and desired that the matter be taken up by the Executive Council. That cannot be considered as action taken by the Chancellor u/s 9 of the Act. As we have pointed out, none of the requirements of Section 9 are satisfied by the enquiry in question before us.

33. We are of opinion that the institution of the enquiry by the Vice-Chancellor,

the constitution of the Enquiry Committee, the definition of its terms of reference and of the scope of enquiry fall outside the powers of the Vice-Chancellor and, therefore, they are, together with the proceedings taken by the Enquiry Committee contrary to law and invalid.

34. The additional ground taken by the Petitioner against enquiry is that the Vice-Chancellor was motivated malafide against the Petitioner in instituting it. We are not satisfied that the material on the record can reasonably lead to a finding of malafide. On the contrary, had we come to the view that the Vice-Chancellor did enjoy power to institute the enquiry he would have been held justified in doing so. The several indications, to which reference has been made above, point to that inference. The observations of the Negi Committee and of the Accountant General constitute some of the material in that regard.

35. In the course of arguments, learned Counsel for the Petitioner complained that Dr. R.N. Singh, Professor and Head of the Department of Commerce and Business Administration has been appointed to look after arrangement in respect of the contact programme of the M.Com. Correspondence Course students, and, it is said, this amounts to an unwarranted interference with the function of the Petitioner in the Directorate of Correspondence Courses. This is cited as an instance of the mala-fides of the Vice-Chancellor. We cannot agree. Looked at purely from the stand point of the charge of malafide in fact, there is no substance in the plea. There is enough material on the record to show that Dr. R.N. Singh had already been associated with the contact programme by the Petitioner himself. On December 17, 1975 (Annexure T-4) the Petitioner had asked Dr. R.N. Singh to suggest a panel of teachers for the contact programme in the Part I and Part II courses for the M. A. Degree. It is also not free from doubt that the Vice-Chancellor did not enjoy in law the power to so appoint Dr. R.N. Singh Under Ordinance 4.5. the Vice-Chancellor is empowered to issue such directions as may be necessary for the proper functioning of the Directorate of Correspondence Courses. We are also unable to accept the contention of learned Counsel for the Petitioner that Dr. T.S. Sodhi could not be appointed as Deputy Director, Correspondence Courses. The appointment cannot be cited as an instance of malafides. In regard to the appointment of Shri G.C. Kaushal to give secretarial help during the enquiry, it is plain that as Deputy Registrar he would be in a fitting position to extend such help.

36. Nothing on the record persuades us to the conclusion that the appointments, of which the Petitioner complains, were motivated by malafides on the part of the Vice-Chancellor. To establish the charge of malafides, the material must be such as to drive the Court necessarily to the inference that even though the act was within the letter, the spirit behind it was motivated by malice.

37. Learned Counsel for the Respondents has urged that in order to challenge the acts of Dr. B.S. Jogi on the ground of malafides the Petitioner should have impleaded him by name in the array of Respondents. Reliance has been placed on B.B. Dutta v. the Union of India and Anr. 1972 S.L.R. 731 In the present case,

however, Dr. B.S. Jogi has filed his affidavit and has had ample opportunity to meet the allegations of malafides. No prejudice has been suffered by him by the omission of the Petitioner to implead him by name.

38. On the aforesaid considerations, we allow the writ petition in so far only that the institution of the enquiry into the publication and sale of the book titled "programmed Learning", the constitution of the Enquiry Committee to conduct that enquiry, the definition of its terms of reference and scope of enquiry as well as the Proceedings taken by the said Enquiry Committee are quashed. The relief claimed by the Petitioner against the notifications of January 5, 1976, is refused. In the circumstances, the parties will bear their own costs.