
(1989) 09 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3011 of 1989

Dr. Ram Pratap Singh

APPELLANT

Vs

Chancellor, Purvanchal University and Others

RESPONDENT

Date of Decision : 06-09-1989

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh Intermediate Education Act, 1921 — Section 16A(7)

Uttar Pradesh State Universities Act, 1973 — Section 13(6), 31(3), 35(2)

Citation : (1990) 1 AWC 138

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Advocate : R.G. Padia, for the Appellant; R.N. Singh, for the Respondent

Judgement

R.R. Misra, J.—By means of the present petition, the Petitioner seeks to quash the impugned order dated 26th December, 1988 passed by the Chancellor of the Purvanchal University (Annexure 13 to the writ petition) remanding the matter of determination of seniority between the Petitioner Dr. Ram Pratap Singh and Respondent No. 3 Sri. D.N. Srivastava.

2. Relevant facts in this regard are that Sri. Durgaji Post Graduate College, Chandesar, Azamgarh is a college imparting post graduate teaching and is duly affiliated to the Purvanchal University, Jaunpur. Before the establishment of the said Purvanchal University, the College in question was affiliated to Gorakhpur University. The said College is on the maintenance grants-in-aid list of the State Government and all its teachers and other employees are paid their salaries through the State funds in accordance with the Provisions of the U.P. State Universities Act, 1973 (hereinafter referred to as the Act).

3. Since the year 1972, the Department of Agricultural Botany where the Petitioner Dr. R.P. Singh had been teaching was raised to the level of post graduate department and classes of M. Sc. in Agricultural Botany are being undertaken by the College. Sri D.N Srivastava (Respondent No. 3) is teaching in

the Department of Agricultural Chemistry which is a Department altogether different from Agricultural Botany. The said Department of Agricultural Chemistry till today has never been raised to the status of Post Graduate Department. Admittedly by an order dated 11th August 1964 the University of Gorakhpur had passed an order approving the appointment of both, the Petitioner as well as Sri D.N. Srivastava (Respondent No. 3) as respective heads of Department concerned. Since the Department of Agricultural Botany, as stated earlier, had been made a Post Graduate Department, hence one post of a Reader had been provided by the State Government and admittedly by an order dated 21st August 1972 the Petitioner has been appointed as Reader/Head of the Department of Agricultural Botany. The Petitioner joined the said post also as such. The said appointment of the Petitioner Dr. R.P. Singh was also approved lateron by an order dated 10th July, 1973 by the Vice Chancellor of the Gorakhpur University. Accordingly the Petitioner had also been drawing his salary on the revised grade of Reader which had been made applicable in the State of U.P. since 1st January, 1973. The Petitioner has annexed to the writ petition, a copy of the order passed by the Director of Education (Higher Education) U.P., Allahabad dated 12th November 1980 fixing the salary of the Petitioner in the new scale as Reader/ Head Department of Agricultural Botany as Annexure 4 to the writ petition. Subsequently the Petitioner had also been paid arrears of salary in respect of the post of Reader by the Management after the same had been approved by the District Inspector of Schools. Factually, these facts are not in dispute between the parties.

4. Subsequently on account of the retirement of Sri. Durga Prasad Misra, one post of Principal fell vacant on 30th June 1987 in the said College. The Petitioner made a representation to the Vice Chancellor that he being the senior most and the only Reader in the whole College was entitled to be appointed as acting Principal of the College. The Vice Chancellor thereupon passed an order dated 27th September, 1987, a copy of which has been filed as Annexure 6 to the writ petition, directing the Manager to allow the Petitioner to work as acting Principal of the College. Sri. D.N. Srivastava (Respondent No. 3) had filed a representation before the Chancellor against the said order dated 27th September 1987 passed by the Vice Chancellor. In the said representation Sri. D.N. Srivastava staked his claim as senior to the Petitioner. A reply to the said representation before the Chancellor was filed by the Petitioner. In his reply the Petitioner had asserted that according to the Government Order dated 9th July, 1968 every teacher teaching in Post Graduate Department was senior to any teacher teaching in Under Graduate Department and accordingly he was senior to Sri. D.N. Srivastava. Instances were also cited in the said reply of the Petitioner as to how earlier the Chancellor had passed orders acting on the basis of the said Government Order dated 9th July 1968. By way of precedents, two decisions were enclosed by the Petitioner in his reply letter, namely one delivered by the Chancellor himself on 17th October, 1987 and the other delivered by the Vice Chancellor vide his order dated 19th September, 1987, true copies of these

orders have also been filed as Annexures 9 and 10 to the writ petition. Copies of the two relevant Government Orders dated 7th March 1968 and the classificatory Government Order dated 9th July, 1968 have been filed as Annexures 11 and 12 to the writ petition Thereupon the Chancellor passed the impugned order dated 26th December, 1988, a copy of which has been filed as Annexure 13 to the writ petition.

5. In the meantime the Director of Education also came to pass an order dated 2nd September, 1988 asking the Manager/Principal of the College in question that since the Petitioner was not entitled to act as Reader in the institution, he was not entitled for payment of his salary. As a consequence thereof it was stated in the said letter of the Director of Education that the salary paid to the Petitioner for the earlier period as Reader should be recovered from him. This order of the Director of Education was passed without giving any opportunity to the Petitioner whatsoever and is under challenge in a separate writ petition pending in this Court.

6. It may also be made clear that the present writ petition is confined to the controversy between the parties relating to their seniority only and the present writ petition has got nothing to do with the appointment of an Ad hoc Principal of the College in question.

7. I have heard learned Counsel for the parties.

8. Main thrust of the submission made by the learned Counsel for the Petitioner is that the Chancellor, Purvanchal University (Respondent No. 1) has erred in law in remanding the case to the alleged Principal to decide the question of seniority between the Petitioner and Sri. D.N. Srivastava which under the law it was not open to him to do so, more particularly when the facts are not in dispute between the parties.

9. During the course of his submission, Dr. Padia, learned Counsel for the Petitioner, has relied upon Statutes 18.01 and 18.05 to 18.16 which relate to the determination of seniority of teachers of affiliated Colleges. Under Statute 18.02, it has been held that it is the duty of the Registrar to prepare and maintain, in respect of each category of teachers of the University, a complete and upto date seniority list in accordance with the provisions hereinafter appearing. Statutes 18.05 and 18.08 which related to the determination of seniority of teachers of University, have, by the provision of Statute 18.16, been made applicable to determine the seniority of the teachers and Principals of affiliated Colleges. The said Statutes are as follows:

18.05. The following rules shall be followed in determining the seniority of teachers of the University:

(a) A professor shall be deemed senior to every Reader, and a Reader shall be deemed senior to every Lecturer:

(b) In the same cadre, seniority of a teacher shall be determined according to

the length of his continuous service in a substantive capacity in such cadre:

Provided that where more than one appointments to posts in a cadre have been made at the same time, and an order of preference or merit was indicated by the Selection Committee or by the Executive Council as the case may be, the seniority of the persons so appointed shall be governed by the order so indicated.

(c) When any teacher holding substantive post in any University (other than the University of Gorakhpur) or in any constituent college or in any Institute is appointed to a post of corresponding rank or grade in the University, the period of service rendered by such teacher in that grade or rank in such University, shall be added to his length of service.

(d) When any teacher holding substantive post in any college affiliated to or associated with any university is appointed whether before or after the commencement of these statutes, as a lecturer in the University, then one-half of the period of substantive service rendered by such teacher in such college shall be added to his length of service.

(e) Service against an administrative appointment in any University or institution shall not count for the purposes of seniority.

Explanation.-In this Chapter, the expression "administrative appointment" means an appointment made under Sub-section (6) of Section 13.

(f) Continuous service in a temporary post to which a teacher is appointed after reference to a Selection Committee, if followed by his appointment in a substantive capacity to that post u/s 31(3)(b) shall count towards seniority.

18.10. The following rules shall be followed in determining the seniority of Principals and other teachers of affiliated colleges:

(a) the Principal shall be deemed senior to other teachers in the Colleges.

(b) the Principal of a post graduate college shall be deemed senior to the Principal of a Degree College.

(c) the seniority of Principals and teachers of the affiliated colleges shall be determined by the length of continuous service from the date of appointment in substantive capacity.

(d) service in each capacity (for example, as Principal or as a teacher), shall be counted from the date of taking charge pursuant to substantive appointment.

(e) service in a substantive capacity in another University or another degree or post-graduate college whether affiliated to or associated with the University or another University established by law shall be added to his length of service.

18.11. Where more than one teacher are entitled to count the same length of continuous service, the relative seniority of such teacher shall be determined as below:

(i) In the case of Principals, the length of substantive service as Lecturer shall be taken into consideration.

(ii) in the case of Lecturers, the seniority in age shall be taken into consideration.

18.12. Where the seniority of a person as Principal is to be determined for the purpose of representation or appointment as such on a University authority, the length of service only as Principal shall be taken into account.

18.13. (1) When two or more persons are appointed as teachers in the same department or in the same subject, their relative seniority shall be determined in order of preference or merit in which their names were recommended by the Selection Committee.

(2) If the seniority of two or more teachers has been determined under Clause (1), the same shall be communicated to the teachers concerned before their appointment.

18.14. All disputes regarding seniority of teachers (other than the Principal), shall be decided by the Principal of the College who shall give reasons for the decision. Any teacher aggrieved with the decision of the Principal may prefer an appeal to the Vice-Chancellor within 60 days from the date of communication of such decision to the teacher concerned. If the Vice-Chancellor disagrees with the principal, he shall give reasons for such disagreement.

18.15. All disputes regarding seniority of Principal's of affiliated colleges shall be decided by the Vice-Chancellor who shall give reasons for the decision. Any Principal aggrieved with the decision of the Vice-Chancellor may prefer an appeal to the Executive Council within sixty days from the date of communication of such decision to the Principal concerned. If the Executive Council disagrees from the Vice-Chancellor it shall give reasons for such disagreement.

18 16. The provisions of Statutes 18.01, 18.02, 18.05 and 18.08 shall mutatis mutandis apply to the teachers and Principals of affiliated colleges as they apply to the teachers of the University.

10. From a perusal of the above it is clear that the seniority of teachers of the affiliated colleges shall be determined by the length of continuous service from the date of appointment in a substantive capacity and that the said service in each capacity shall be counted from the date of substantive appointment.

11. In this case it is clear that the Petitioner was appointed as a Reader against a substantive vacancy in a Post Graduate Department and the same is not the case of Sri. D.N. Srivastava (Respondent No. 3). However, under Statute 13.19 certain principles have been laid down under Government order dated 7th March, 1968 as clarified by Government Order dated 9th July 1968, a copy of which has been filed as Annexure 12 to the writ petition. Relevant portion in this Government Order reads as follows:

A teacher in a higher grade would be senior to another teacher in the lower

grade even though the latter may belong to a Post Graduate Department. If both the teachers are in the same grade the one belonging to post Graduate Department will be senior to the one belonging to the Degree Department. Again, between two teachers A and B working as Heads of Department in a Degree College A may be senior to B as he joined the College earlier, but if on a particular date and Department of both are raised to Post Graduate level and they are appointed as Reader in respective Post Graduate department, their seniority in new cadre will be determined by age only.

The seniority of a teacher of the Post Graduate Department will not depend upon whether he has been teaching Post Graduate classes or not. It will depend upon the grade in which he was appointed and the length of service.

12. The contention raised by Dr. Padia appearing for the Petitioner is that under the impugned order the Chancellor has completely ignored the said Statute as well as the principle laid down in the aforesaid Government Order dated 9th July, 1968. His contention is that the letter of the Director of Education dated 12th November 1980 (Annexure 4 to the writ petition) is relevant only for the payment of salary and is at any rate, subjudice. He has also stoutly disputed the finding of the Chancellor that the Petitioner Dr. R.P. Singh was not duly appointed Reader and that he was holding the post of a Lecturer. He further contends that on the facts of the case as they existed there is no Principal duly appointed in law and as such the remission of the case to the Principal is wholly illegal. He further strongly contends that the appointment of the Petitioner duly approved by the Vice Chancellor cannot be washed away by the impugned letter dated 12th November, 1980 of the Director of Education under which he seeks to recover the salary from the Petitioner. At any rate, he contends that the import of the said letter of the Director of Education amounts to reduction in rank as contemplated by Section 35(2) of the Act and without adopting the procedure warranted by law in regard to the same, the said letter cannot take any legal effect.

13. Having considered the matter, in my opinion whether by the aforesaid letter of the Director of Education it amounted to reduction in rank as contemplated by Section 35(2) of the Act need not detain us any further as this controversy forms subject-matter of another writ petition No. 18686 of 1968 which is still pending in this Court.

14. However, the prayer made by the learned Counsel for the Petitioner that the impugned order of remand passed by the Chancellor should be set aside and he should be directed to decide the question of seniority himself now deserves our attention.

15. The first submission made by Sri. R.N. Singh, learned Counsel appearing for Sri. D.N. Srivastava (Respondent No. 3) in this connection is that this Court should not interfere because at present Sri. Durga Prasad Dwivedi who is not a party to the writ petition is acting as Ad Hoc Principal and without impleading

him as a party to the present writ petition the Petitioner has misconducted himself in obtaining a time bound interim order dated 23rd February 1989 from this Court that the opposite parties shall not interfere with the working of the Petitioner as acting Principal of the College in question. The submissions is that since the said order had been obtained on the basis of wrong facts, the Petitioner is not entitled to the relief prayed for by him in this writ petition as his conduct disentitles him for the grant of relief in this writ petition. In support of his submission he has relied upon a number of case-law. Suffice it to say that after hearing learned Counsel for the parties at great length and since the question of appointment of the Ad hoc Principal itself is the subject-matter of another writ petition No. 24092 of 1988 pending in this Court between Dr. R.P. Singh and Dr. Durga Prasad Dwivedi and the fact that actually Sri. Durga Prasad Dwivedi is at present continuing as Ad hoc Principal of the College, I do not feel inclined to accept this contention that the present writ petition be dismissed on this ground.

16. Relying on a decision of this Court in the case of Uma Shanker v. The District Deputy Director of Consolidation, 1969 AWR 182, learned Counsel has also raised a submission that no writ lies against the remand order. However, in my opinion, whether in a particular case this Court should exercise its writ jurisdiction against a remission order depends upon the facts and circumstances of each case and no rigid rule in this regard can be laid down. Therefore, this submission raised on behalf of the opposite parties is rejected.

17. The third submission made by the learned Counsel for the opposite parties is that the Chancellor is justified in remanding the case to the Principal who is empowered to decide the seniority between the teachers under Statute 18.14. He has also stated that in pursuance of the order of the Chancellor Dr. Durga Prasad Dwivedi, the Ad hoc Principal, has also taken a decision against the Petitioner. A copy of the said order has been filed as Annexure 5 to the counter-affidavit. It may be seen that this decision of Dr. Durga Prasad Dwivedi, acting Ad hoc Principal of the College, is dated 2nd March, 1989 and has been arrived at during the pendency of writ petition No. 24092 of 1988 which was filed by the present Petitioner against Dr. Dwivedi and was entertained by this Court on 16th December, 1988 and is still pending.

18. As a second limb of the said submission made by the opposite parties, it has been stated that since the remand order of the Chancellor has been acted upon inasmuch as in pursuance of the same the Ad hoc Principal Dr. Dwivedi had already passed an order, so now there remains nothing for adjudication or determination by this Court or for withdrawing the said order or quashing the same.

19. In reply the touchstone of the argument made by Dr. Padia, learned Counsel appearing on behalf of the Petitioner is that the order dated 2nd March 1989 passed by Dr. Dwivedi, if any, in pursuance of the impugned order of the Chancellor is, on the admitted facts of the case, not only a biased one but is of no legal consequences.

20. To dwell on these rival contentions raised in the present case, one has of necessity to examine the concept of Natural Justice under which the doctrine of Bias falls. "Natural Justice" has been "substantial justice", "the essence of justice", "fundamental justice", "universal justice", "rational justice", "fair play in action". The term "Natural Justice" has been used by English lawyers because it has close relationship with the common law and moral principles. This concept of "Natural Justice" was also known to ancient Greek, German, African and Indian jurisprudence where it was firmly believed that no man should be condemned unheard. In U.S.A. the concept of "Natural Justice" is embodied in the "due process" clause.

21. The term "Natural Justice" includes two basic principles, namely Audi alterem partem (hear the other side) and nemo debet esse iudex in propria causa (no one can be judge in his own cause). It is one of the cardinal principles of Natural Justice that both the aforesaid, two principles must be observed by persons who have the duty to act judiciously, save where their application is excluded expressly or by necessary implication (See Halsbury's Laws of England 4th Ed., Vol. 1., (Para 64)).

22. In India, the principles of "Natural Justice" are not embodied rules. What particular rule of Natural Justice, if any, should apply to a given case depends to a great extent on the facts and circumstances of that case, the framework of law under which the enquiry is held, and the constitution of tribunal appointed for the purpose (See Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, . It has also been held in the Union of India (UOI) Vs. Col. J.N. Sinha and Another, , that the rules of Natural Justice, though cannot be elevated to the position of fundamental rights, yet the court cannot ignore the same.

23. We are aware that the principles of Natural Justice have come to be recognised as being part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by the Supreme Court to the concept of equality which is the subject-matter of that Article. The above two rules of Natural Justice being not statutory rules, each of these rules yields to, and changes with, the exigencies of different situations. These rules are not cast in a rigid mould nor can they be put in legal strait jacket. They are rather flexible inasmuch as these rules can be adopted and modified by statutes also.

24. Reverting back, however, when we come to the other rule of nemo iudex in causa sua or the doctrine of bias, we find that it is no less a strong pillar than one expressed in audi alterem partem. In the meaning of the rule is that no one should be a Judge in his cause. This rule "Absence of bias" is based on the celebrated observation of Lord Hewart:

(It) is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done." (See Lord Hewart in R. Sussex Justices (1924) 1 K.B. 256 (259) approved in Franklin v. Minister of Town

Planning (1947) 2 All. E.R. 289 (H.L.)

25. Thus there is no civil consequences for an adjudicator who is biased.

26. The remedy, therefore, lies in restraining the adjudicator to act as such or in challenging his adjudication in the Court of law by appropriate writ. Lord Denning M.R. has prescribed that "if right minded persons would think that, in the circumstances, there should not sit." (See Metropolitan Properties Co. (F. G. C.) Ltd. v. Lannon (1968) 3 All. E.R. 384(310). This doctrine of bias or interest is equally applicable in England as well as in India. It applies as a vitiating element to a judicial decision, Halsbury's Laws of England 4th Ed. Vol. 1, para 67 has laid down that the principle embodied in *nemo iudex in causa sua* extends not only to Courts and tribunals but also to other bodies, including public authorities determining questions affecting the civil rights of individuals.

27. Likelihood of bias may arise in three situations:

(a) Bias of legal interest, inasmuch as that a Judge may have a bias in the subject matter which means that he is himself a party or has some direct connection with the litigation, so as to constitute a legal interest. If such a situation arises, bias must be assumed. The best illustration of legal interest is the House of Lords case of *Dimes v. Grand Junction Canal* (1852) 3 H.L.C. 759.

28. In England it has been held that the test to be specified in such a case is "Is there in the mind of the litigant a reasonable apprehension that he would not get a fair trial. But this "real likelihood" must be the apprehension of a reasonable man apprised of the facts (See *R.V. Sunderland* (1901) 2 K.B. 357 and not the suspicion of fools or capricious persons.

29. The smallest legal interest will disqualify the Judge. The question where there is a "legal interest" is a question of fact to be determined with reference to facts of each case. But a note of caution is, therefore, for a mere general interest in the "general object" to be pursued would not disqualify the Judge.

30. If we advert to England Law, we find that in the case of *R.V. Liverpool City Justices, ex p. Topping* (1983) 1 WLR 119, Acknor L.J. after reviewing the leading authorities on the question of bias has laid down the same test for bias:

The test for bias should be whether a reasonable and fair minded person who knows all the relevant facts has a reasonable suspicion that a fair trial for the applicant is not possible.

The court is obliged to look on the question of bias from any of the following four premises, coupled with the likelihood of bias (a) The individual affected merely suspects bias; (b) the court *ex post facto* suspects bias (c) the reasonable man suspects bias; (d) the justice suspects bias.

31. If a suitor can establish before the court that there is a real likelihood in the circumstances of the case that the adjudicator will be biased, the said plea of bias is to be entertained by the court and then it will not be necessary to

establish further the presence of actual bias of the adjudicator. Alternatively, as held in the case of *Metropolitan Properties Co. (P.G.C.) Ltd. v. Lannon* (1960) 3 All. ER 304 (314) Edmund Davies L.J. has held that disqualification exists even in the absence of a real likelihood of bias if a reasonable man would reasonably suspect bias. In the case of *Hannam v. Bredford City Council*, (1970) 2 All. ER 690, it has been held that "of the two tests "real likelihood" of bias and "reasonable suspicion" of bias, the latter test is preferable."

Second kind of bias is pecuniary interest in the cause, howsoever slight will disqualify the Judge.

The third kind of bias is personal bias towards a party. The causes which may lead to personal bias cannot be exhaustive and include (a) Relationship, (b) Personal Friendship, (c) Professional or employment relationship, (d) Personal hostility, (e) Having acted as a witness against the party aggrieved in the same inquiry etc. This personal hostility to a party may be as a result of events happening either before or during the trial. But as I have already cautioned above, this principle would come into operation only whenever there is a "real likelihood of bias."

32. In the United States, it has similarly been held in the case of *National Labour Board v. Phelpa*, (1943) 136 F. 562 :

A fair trial by an unbiased and non-partisan trier of facts is of the essence of the adjudicatory process as well when the judging is done by an administrative functionary as when it is done in a court by a judge.

33. At this stage I am tempted to point out that bias is different from malafide. In the former, real or actual bias need not be proved. All that is necessary is that likelihood of bias is required to be established by a party alleging bias of an adjudicator. But in the case of mala fide all the particulars are necessary to be specifically pleaded and proved. The test to be applied in the case of malafide action is whether the action taken was for some ulterior purpose or for some purpose other than the object for which the law was enacted.

34. In India the principle governing the "doctrine of bias" has been adverted to in a large number of decisions of the Supreme Court.

35. In the case of *State of U.P. v. Mohammad Nooh*, AIR 1958 SC 86 at page 91 of the report, Hon"ble S.R. Das, C.J. has observed:

The salient facts being thus admitted there can be no scope from the conclusion that Sri. B.N. Bhalla should not have presided over the trial any longer. The point in issue was whether Shariful Hasan was friendly relationship with the Respondent... Sri. B.N. Bhalla gave evidence that Mohammad Khalil had in his presence admitted this friendship of Shariful Hasan with the Respondent,

It is suggested that there might have been other evidence establishing the friendship between Shariful Hasan and the Respondent and that the evidence of

Sri. B.N. Bhalla might not have been relied on or might not have been the deciding factor. There is nothing on the record before us to support this suggestion. But assuming that Sri. B.N. Bhalla did not rely on his own evidence "in preference to that of Mohammad Khalil-a fact which is hard to believe, especially in the face of his own affidavit quoted above- the Act of Sri. B.N. Bhalla in having his own testimony recorded in the case indubitably evidences a state of mind which clearly discloses considerable bias against the Respondent. If it shocks our notions of judicial propriety and fair play, as indeed it does, it was bound to make a deeper impression on the mind of the Respondent as to the unreality and futility of the proceedings conducted in this fashion. We find ourselves in agreement with the High Court that the rules of natural justice were completely discarded and all canons of fair play were grievously violated by Shri B.N. Bhalla continuing to preside over the trial. Decision arrived at by such process and order founded on such decision cannot possibly be regarded as valid or binding.

36. In the case of Mineral Development Ltd. v. State of Bihar AIR 1960 SC 468 , in paragraph 10, relying on an earlier decision of the Supreme Court itself in the case of Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, , it has been observed:

The principles governing the "doctrine of bias" vis-a-vis judicial tribunals are well-settled and they are:

(i)no man shall be a judge in his own cause ;

(ii)justice should not only be done but manifestly and undoubtedly seem to be done. The two maxims yield the result that if a member of a judicial body is "subject to a bias (whether financial or other) in favour of, or against, any party to a dispute, or is in such a position that a bias must be assumed to exist, he ought not take part in the decision or sit on the tribunal; and that "any direct pecuniary interest, however small, in the subject-matter of inquiry will disqualify a judge, and any interest, though not pecuniary, will have the same effect, if it is sufficiently substantial to create a reasonable suspicion of bias". The said principles are equally applicable to authorities, though they are not courts of justice or judicial tribunals, who have to act judicially in deciding the rights of others, i.e. authorities who are empowered to discharge quasi-judicial functions.

From a survey of the above authorities, it is clear that on an application of the above test regarding "bias", the authority deciding the dispute between the parties must be one without bias. The test is whether a litigant could reasonably apprehend that bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal-See J. Mohapatra and Co. and Another Vs. State of Orissa and Another, ; Union of India and Another Vs. Tulsiram Patel and Others, ; E.P. Royappa Vs. State of Tamil Nadu and Another, .

37. In the case of Secretary to Government Transport Department Madras v.

Munuswamy Mudaliar 1988 (Suppl.) SCC 651, the test for bias as laid down is whether a reasonable intelligent man fully apprised of all the circumstances, would feel a serious apprehension of bias. Vague suspicions of whimsical, capricious and unreasonable people should not be made the standard to regulate normal human conduct.

38. But at the same time, the same Bench in International Airports Authority of India Vs. K.D. Bali and Anr, has held that "there must be reasonableness of the apprehension of bias in the mind of the party. The purity of administration requires that the party to the proceedings should not have apprehension that the authority is biased and is likely to decide against the party. But we agree with the learned Judge of the High Court that it is equally true that it is not every suspicion felt by a party which must lead to the conclusion that the authority hearing the proceedings is biased."

39. Thus for an adjudication in the case of quasi-judicial proceedings, the authorities empowered to decide a dispute between the parties must be one, without bias towards one party or the other in the dispute. In case of any doubt the test is not whether in fact a bias has affected the judgment. On the other hand, the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. This is also the view taken by the Supreme Court in the case of Manak Lal Vs. Dr. Prem Chand, . This test of "reasonable suspicion" was also applied by the Supreme Court in yet another case of G. Sarana Vs. University of Lucknow and Others, and it was held that his bias was likely to operate in subtle manner. It may be made clear that bias may sometime operate consciously or unconsciously towards one side or other in the dispute. But the said test has not got to be misunderstood when the Judges during the course of hearing, often express opinions tentatively formed because such expression of opinion does not mean that the case has been pre-judged. At times Judges are apt to express opinions one way or the other necessary to point out the fallacy underlying in an argument but it cannot be said that such an expression of opinion creates any apprehension in the mind of a lawyer or litigant. In my opinion, there must be a reasonable likelihood of bias and mere suspicion of bias is not sufficient and for deciding the question of bias human probabilities and ordinary course of conduct must be taken into consideration as held by the Supreme Court in the famous case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, .

40. Applying the test regarding bias enunciated above, on the admitted facts of the case, I find that it was not open to the Chancellor to have remitted the case for determination of seniority to the Ad hoc Principal by the impugned order more so when there is a dispute between the parties as to who is the Ad hoc Principal of the College and rival contentions have been raised as to who is the rightful Principal of the College under the law and as to whether during the pendency of writ petition No. 24092 of 1988 it was proper for Dr. Durga Prasad

Dwivedi to have decided the question of seniority. This Court is always cautious that orders are passed by the authorities concerned without any bias and in case this Court finds that remittance of the matter of seniority for decision to Dr. Dwivedi as aforesaid by the Chancellor was not proper and the Court also concludes that the Petitioner must be having and did have a reasonable apprehension that the order passed by Dr. Dwivedi would be a biased one, then in consonance with the principles laid down in the above test regarding bias, to my mind, the impugned order passed by the Chancellor remitting the matter in dispute to Dr. Dwivedi for adjudication and the consequential order dated 2nd March, 1989, copy of which has been filed as Annexure CA-5 to the Counter Affidavit, is bad in law and is liable to be set aside. Further, the said order is also an ex-parte one. In my opinion, the said order has got no legal value whatsoever and is, therefore, hereby set aside.

41. Faced with the submission of Dr. Padia, learned Counsel for the Petitioner, that on the facts of this case the Petitioner could have reasonable apprehension in his mind that the order dated 2nd March, 1989 passed by Dr. Dwivedi could be a biased one, Sri. R.N. Singh, learned Counsel for the opposite parties, resorted to another plank in his submission. He urged that since under the Statute of the University enumerated above it is the Principal who is the proper person to determine the seniority of the Petitioner, the said order dated 2nd March, 1989 passed by Dr. Dwivedi determining the seniority of the Petitioner is liable to be defended on the doctrine of necessity which is an exception to the general rule that an adjudicator who is biased or prejudiced must disqualify himself from participating in the proceedings. The purport of this Rule of Necessity is that the disqualifications of an adjudicator on account of bias will not be permitted to destroy the order passed by the Tribunal which could have been passed only by that Tribunal. In support of his submission, Sri. R.N. Singh, learned Counsel for the opposite parties, has also relied upon two cases of this Court in *Brindaban v. State of Uttar Pradesh* 1973 ALJ 80 and *Anjuman Islah Muslim Rajput Kamsar-O-Bar Dildarnagar v. Deputy Director (Education) Vth Region Varanasi*, 1986 UP LB EC 627 : 1986 E C 331.

42. No doubt the bias of an adjudicator has got to be tolerated under certain circumstances which serve an exception to the Rule of Bias. We are aware that these exceptions to the Rule of Bias arise from:

- (a) Specific provisions in certain enactments and statutory rules permitting a limited toleration of bias ;
- (b) the doctrine of necessity ;
- (c) certain classes of contempt of court ; and
- (d) contempt of Parliament or a State Legislature.

43. From what has been stated above that doctrine of necessity is no doubt one of the exceptions to the Rule of Bias. Elaborating this submission D. Smith in his

book on Judicial Review of Administrative Action, Fourth Edition, at page 276 had observed:

An adjudicator who is subject to disqualification at Common Law may be required to sit if there is no other competent tribunal or if a forum cannot be formed without him. Here, the doctrine of necessity is applied to prevent a failure of justice. So, if proceedings were brought against all the superior judges, they would have to sit as Judges in their own cause. Similarly, a judge may be obliged to hear a case in which he has a pecuniary interest.

44. In India also we have an interesting case where a limited degree of toleration of bias under the rule of necessity arose when a judge of a superior Court appeared as a witness in a subordinate Court. One Man Mohan Das was accused of assaulting Hon. Mr. Justice A.N. Grover with a knife on March 13, 1968 when the latter was sitting with the Chief Justice on the Bench of the Supreme Court. On 27th July, 1968 the then Chief Justice of India, the Hon'ble Sri. M. Hidayatullah and Hon'ble Mr. Justice A.N. Grover of the Supreme Court gave evidence of the said incident before Sri. G.C. Jain, Assistant Sessions Judge, Delhi. On these facts it sounded incongruous that an Assistant Sessions Judge should be called upon to pronounce upon the weight of the evidence of the Chief Justice of India and a Judge of the Supreme Court, although it could be taken that the Assistant Sessions Judge was in no way to be swayed by the status of the said high dignitaries. But the situation could not be helped because under the criminal law it was only the Assistant Sessions Judge who had exclusive jurisdiction to try the case and, therefore, the rule of necessity came into play.

45. In the case of *King v. Justices of Essex*, 5 Maule and S. 513, the House of Lords also recognised the doctrine of necessity as an exception to the rule that no man shall be a judge in his own cause.

46. Similarly, this doctrine of necessity was held applicable by the Supreme Court in the case of *J. Mohapatra and Co. and Another Vs. State of Orissa and Another*, . Explaining the rule of exception embodied in the doctrine of necessity, the Supreme Court at page 112 (para 12) has stated thus:

An adjudicator who is subject to disqualification on the ground of bias or interest in the matter which he has to decide, may be required to adjudicate if there is no other person competent or authorised to adjudicate or if quorum cannot be formed without him or if no other competent tribunal can be constituted. In such cases the principle of natural justice would have to give way to necessity for otherwise there would be no means for deciding the matter and the machinery of justice or administration would break down.

47. There is yet another case of *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, worth noticing. This was a case of the selection of the Petitioner to the post in Haryana Civil Services (Executive) and other Allied Services by the Haryana Public Service Commission. It was urged in this case on behalf of the Petitioner that two of the selected candidates were related to one

member of the said Public Service Commission. Question arose as to what extent exception of the doctrine of necessity is to be extended. It was held by the Supreme Court that when in the process of taking decision in respect of several persons by an administrative body, if there is a real likelihood of bias on the part of a member of that body in respect of even a single person, that member should withdraw from the entire process. But if the body is constitutional authority like Public Service Commission, the concerned member need withdraw only partially in respect of the person against whom the likelihood of bias arises.

48. Thus, where the jurisdiction is exclusive and there is no legal provision for calling a substitute, the doctrine of bias must yield to the demand of necessity. Various illustrations in this regard also exist. It is well-known that participation of Judges on the administrative side on matters relating to the business of the Court and the subordinate judiciary, does not disqualify them from hearing the matter on the judicial side, although it is of paramount importance that occasions of conflict between interest and duty are avoided. Similarly, if an action were brought against all Judges of a Court in a matter over which that Court has exclusive jurisdiction, or where a Judge commits a person for contempt of court, the case of necessity has got to be heard by the Judges/Judge of that Court.

49. In the case of *Anjuman Islah Muslim Rajput Kamsar-O-Bar Dildarnagar* (supra) what had happened was that the District Inspector of Schools had referred the case u/s 16-A(7) of the U.P. Intermediate Education Act to the Deputy Director of Education v. Region, Varanasi for deciding the controversy arising out of the rival claimants. As is apparent from para 16 of the report of the said case, one of the arguments advanced was that in the circumstances of that case, the rule of necessity required that the case was transferred to some other Regional Deputy Director of Education. This submission for applying the rule of necessity was held by the Division Bench to be based on misconception on the ground that the rule of necessity does not empower a statutory authority to transfer a case pending before an officer subordinate to him to another officer if such other officer was in law not authorised to decide the matter. Thus ultimately it was held that such a transfer of the case to another Deputy Director who could have no jurisdiction over the case could not be upheld on the basis of Rule of Necessity inasmuch as such a transfer would have been invalid and the Rule of Necessity could not come to the rescue to save it. This decision, therefore, cited on behalf of the opposite parties is of no help to the opposite parties because the transfer of a case pending in one court to another although the latter had no jurisdiction to entertain it and decide the same, cannot be defended on the basis of Rule of Necessity. Obviously this situation does not operate in the present case.

50. As regards the other case of *Brindaban v. State of Uttar Pradesh* (supra) relied upon by the learned Counsel for the opposite parties, I find that in this case also it had been held that the Rule of necessity is not applicable where alternative authority can be found to conduct the proceedings. The facts of this case are that under the Police Regulations normally it is the Superintendent of

Police of the district who was empowered to punish a Head Constable subordinate to him. But the Court proceeded to consider that under another Regulation 490(13) and (14) of the Police Regulations there is power in the higher authorities to withdraw the proceedings from the Superintendent of Police and either conduct them themselves or to transfer them to the Superintendent of Police of another district. It was already found in that case by this Court that the Superintendent of Police was biased against the Petitioner. On these facts in that case the Court held as follows:

Therefore, it cannot be said that of necessity, the proceedings had to be conducted by the Superintendent of Police Jalaun. The Petitioner has applied for transfer of the proceedings and the proceedings could have been transferred to the Superintendent of Police of some other district. In this situation the Rule of necessity is not applicable to the present case. Therefore, on account of bias of the Superintendent of Police Jalaun the entire proceedings must be held to be vitiated.

The writ petition is accordingly allowed. The order passed by the Superintendent of Police, Jalaun dismissing the Petitioner from service as well as the orders dismissing the Petitioner's appeal and revision, are quashed.

This principle of alternative remedy based on the Rule of Necessity also stands affirmed by the following observations made at page 163 in Administrative Law Treatise by Kenneth Culp Davis Volume 2:

The Rule of necessity is held inapplicable when a way can be found to provide a qualified tribunal, as by excluding from the tribunal the disqualified members, by appointing a tribunal with a different membership by counting only the votes of (sic) to another tribunal already available.

51. From the above discussion it could be concluded that on the facts of the present case, no assistance can be derived by the opposite parties by relying on the above decision also although it relates to the doctrine of necessity. In my opinion there was, on the facts of this case, while passing the impugned remand order an option with the Chancellor to have remitted the case to the Vice-Chancellor for adjudication instead of to Dr. Dwivedi. If as I have held earlier that the order dated 2nd March 1989 passed by Dr. Dwivedi is of no legal value, in this perspective, therefore, the only alternative left now is to remit the matter for decision to the Vice Chancellor. Doing so, in my opinion, will be in consonance with justice and fair play. More so when, on the facts of this case, admittedly we also find, that the order passed by the Vice-Chancellor was passed in favour of the Petitioner without giving any opportunity to Dr. D.N. Srivastava, opposite party and was in violation of Principles of Natural Justice in so far as Dr. D.N. Srivastava is concerned. There is still one more additional reason for remitting the case to the Vice-Chancellor inasmuch as the Court will lean in favour of directing the Vice-Chancellor to decide the dispute so that the losing party may have at least one more chance of adjudication by way of representation to the

Chancellor against the findings of fact arrived at by the Vice-Chancellor.

52. Before giving effect to what I have stated above, I also find that there are some infirmities in the impugned remand order of the Chancellor and on the facts of this case justice and fair play requires that while remitting the case back to the Vice-Chancellor as aforesaid, certain findings recorded in the impugned order of the Chancellor be also set aside. Adverting to the same, I find that in the impugned order of the Chancellor there is no reference in the same of any of the Government Orders dated 7th March, 1968 and 9th July, 1968 which set out the principle for determination of seniority. The impugned order also does not take into consideration that on an earlier occasion for the purposes of seniority he had taken into consideration the principle evolved in the said Government Order dated 9th July, 1968 which has been completely ignored to be stated for consideration in the aforesaid impugned order. These matters deserve to be considered now by the Vice Chancellor.

53. I also find that one of the points of crucial issue between the parties is as to whether the Petitioner was holding the post of a lecturer or not. In my opinion, it was not open to the Chancellor to have recorded a finding on the disputed question of fact himself and then remitted the case back to the authorities below for determination.

54. In view of the discussion made above, it is held that the impugned order of the Chancellor suffers from infirmities stated above and is hereby interfered with to the limited extent that the following findings recorded in the impugned order are set aside for determination afresh by the Vice-Chancellor:

(A)that Sri. R.P. Singh was not duly appointed Reader.

(B)that he is holding the post of lecturer.

55. In the result, the writ petition succeeds and is allowed in part. The order dated 2nd March, 1989 passed by Dr. Dwivedi is set aside in toto. The impugned order passed by the Vice-Chancellor is set aside with the directions and observations made above. On the facts of this case, the case is remitted back to the Vice-Chancellor for determination afresh of the matter regarding seniority between the parties in dispute. Parties will bear their own costs.