
(1994) 05 CAL CK 0006
In the Calcutta High Court
Case No : C.O. No. 7068 (W) of 1990

Kanti Bhusan Bhowmick

APPELLANT

Vs

Kalyani University and Others

RESPONDENT

Date of Decision : 18-05-1994

Acts Referred:

Kalyani University Act, 1981 — Section 10(6), 29(3)
Kalyani University Ordinances — Ordinance 4ESC(1), Ordinance 78(USC), Ordinance 79(USC), Ordinance 80(USC), Ordinance 83(USC)

Citation : (1994) 2 CALLT 103

Hon'ble Judges : Samaresh Banerjea, J

Bench : Single Bench

Advocate : K.K. Moitra and Arup Kumar Lahiri, for the Appellant; K.S. Roy Aloke Chakraborty and Fazlul Haque and D. Banerjee and Shyamali Kanjilal for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

Samaresh Banerjea, J.—In the instant writ application, an order dated 31.5.90 passed by the Vice Chancellor of Kalyani University discharging the writ petitioner from service is under challenge, which was passed by the Vice Chancellor in exercise of power u/s 10(6) of the Kalyani University Act, 1981 read with section 29(3) of the said Act.

2. The facts of the case, bereft of unnecessary details: as it appears from the writ petition, are the writ petitioner was appointed as University Engineer in the University of Kalyani on 14th July, 1988" on probation for one year. The University Engineer is in charge of the Works Department of the University and is whole time officer of the University. After joining the University the writ petitioner allegedly noticed various irregularities in the Works Department and received complaint of serious nature from different corners regarding conduct of the respondent No. 4 i.e., Shri D. N. Bhar, Assistant Engineer of the Works Department, the writ petitioner proceeded with the said complain and took

various steps to improve the function of the Works Department. The writ petitioner who completed one year service on 13th July, 1989 was never informed during the aforesaid period of probation any lapses and/or deficiency and after one year of service the writ petitioner was granted usual increment in the time scale of pay enjoyed by the petitioner. In July, 1989 his pay was fixed at Rs. 1660/- per month. In August, 1989 the election of a member to the Executive Council of Kalyani University was held; in the said election, the writ petitioner actively supported the candidature of a candidate from Officers' constituency, Dr. Arun Kumar Ghosh who was a rival candidate of the respondent No. 4 in the said election who was supported by the members of the Kalyani University Employees Association. On 11.8.89, a meeting of the outgoing Executive Council was held which adopted a resolution extending the period of probation of the writ petitioner for one year with effect from 14.7.89 without giving any reason. A representation was made by the writ petitioner to the Executive Council through the Vice Chancellor to reconsider the said decision which was of no avail. On the contrary, the Vice Chancellor of the said University openly demanded a suitable action to be taken against the writ petitioner and the same would be evident from the leaflet issued by the Kalyani University Employees' Association. On April 18, 1990 a purported charge-sheet was issued against the writ petitioner who was, placed under suspension. In a letter dated 30th May, 1990 the Registrar of the said University wrote to the petitioner requesting him to meet Shri R. M. Nath, D.S.P. CID at Bhawani Bhawan, Alipore Calcutta-27 on 1st June, 1990. In exercise of power u/s 10(6) of the Kalyani University the Vice Chancellor of the said University terminated the service of the petitioner which was given effect from 1st June, 1990. It is the further case of the writ petitioner that under the facts and circumstances of the case exercise of an emergency power u/s 10(6) of the Kalyani University Act was not called for and was unwarranted as there was neither an emergency nor any urgency warranting exercise of such power. It is the further contention of the writ petitioner that it is the Executive Council of the University which is the appointing authority of the petitioner and the said Executive Council is also the disciplinary authority and the Vice Chancellor had no jurisdiction to terminate the service of the writ petitioner in exercise of such emergency power. It is the further case of the writ petitioner that the impugned order was passed by the Vice Chancellor not at all in bona fide exercise of power, but for extraneous reason at the instance of the Employees' Association. The aforesaid order of termination has also been challenged by the writ petitioner on the ground that since the impugned order of termination attaches stigma to the writ petitioner, the respondents were bound to give a reasonable opportunity of hearing to the writ petitioner, but the same not having been done, principle of natural justice and the right of life of the petitioner under Article 21 of the Constitution have been violated. Such order of termination has also been challenged by the petitioner on the ground that he having completed one year probationary period and he not having been communicated with any order that his service has not been found satisfactory, after completion of one year he will be deemed to be confirmed in

service and therefore, his service cannot be terminated in the manner as aforesaid without taking recourse to a regular disciplinary proceeding.

3. Mr. Lahiri appearing for the writ petitioner in support of the writ application has raised mainly three fold contentions. Firstly, it has been contended that the impugned order of termination on the face of it will indicate that the same is not at all a simple order of termination or discharge of a probationer but really an order of dismissal on the ground of misconduct and therefore such order could not have been passed without giving a reasonable opportunity of hearing to the writ petitioner and without taking recourse to a regular disciplinary proceeding. Mr. Lahiri has referred to a number of decisions of the Supreme Court and of different High Courts in support of his contention that if an order of termination attaches stigma, the same cannot be passed without giving a hearing. It has also been contended by Mr. Lahiri that the impugned order which was passed ostensibly in exercise of emergency power u/s 10(6) of the Kalyani University Act, 1981 is wholly without jurisdiction inasmuch as it will appear from the facts and circumstances of the case that the condition precedent to exercise of such power, namely existence of an urgency or emergency was absent. It was contended by Mr. Lahiri that it will appear from the said section 10(6) of the said Act that such emergency power can be exercised only when the Vice Chancellor is of the opinion that there is an urgent and emergency situation warranting exercise of such power. But in the instant case, there being neither any such emergency nor any urgency, the opinion if any of Vice Chancellor that there is emergency or urgency is wholly unwarranted and not bona fide. A number of decisions of the Supreme Court were also relied upon by Mr. Lahiri in support of his aforesaid contention. It has also been submitted by Mr. Lahiri that the writ petitioner having completed one year service satisfactorily and not having been communicated with any order before completion of such one year, that his service was, not satisfactory and also having been granted an increment, will be deemed to be confirmed and therefore the respondent cannot terminate his service in the manner as aforesaid without giving any hearing.

4. As to the contention raised on behalf of the writ petitioner that on completion of one year probationary period, the writ petitioner would be deemed to have been confirmed, he not having been communicated with any order before completion of such probationary period that his service was not satisfactory, the same is not at all tenable.

5. It is now well settled that if no such communication is made to a probationer on completion of his initial period of probation, it would be deemed that the probationary period of the probationer has been extended, unless rules provide otherwise and no further period of probation is provided for in the rules. If any authority is needed for such proposition, the decisions of the Supreme Court in the case of Sukhbans Singh Vs. State of Punjab, , the case of the Management of the Express News Papers (P) Ltd. v. Presiding Officer, Labour Court, Madurai AIR 1964 806, the case of the State of Uttar Pradesh Vs. Akbar Ali Khan, , the case

of the State of Punjab Vs. Dharam Singh, and the case of Dhanjibhai Ramjibhai Vs. State of Gujarat, and the decision of our High Court in the case of State Transport Corporation, Calcutta v. G.K. Bhattacharjee 1988(2) Cal L T 238 may be referred to.

6. In the instance case under Ordinance 4 ESC(1) of the Kalyani University, an employee of the University at the time of appointment can be put on a probation for one year which may be extended for further period not exceeding one year. Ordinance 4 ESC(2) specifically provides that on completion of the initial period of probation if no order is made within two months of completion of such period, the employee concerned shall be deemed to have been confirmed with effect from date of his appointment for one year. In the instant case, therefore the Rule itself provides when there can be deeming confirmation. In the instant case admittedly, the subsequent order of the Executive Council extending the period of probation for further period having been made on 11.8.89 i.e. within two months from completion of initial period of probation, it cannot be said that writ petitioner was deemed to have been confirmed. On the contrary" on the expiry of the initial period of probation in absence of any communication his probationary period stood extended.

7. In view of such specific rule the fact, the writ petitioner was paid an increment on completion of one year is also immaterial and the same does not indicate that there was deeming confirmation of the writ petitioner.

8. As to the other contention of the petitioner that the impugned order is not a simple order of discharge of a probationer, but an order of dismissal which could not have been passed without giving any hearing and without taking any enquiry the learned Counsel appearing for the University does not claim the impugned order of termination to be a simple order of termination of a probationer during his period of probation and actually admits that the same is an order of dismissal on the ground of misconduct indicated in the impugned order of termination but he justifies the termination of the service of the petitioner in the manner as aforesaid on the ground that in exercise of emergency power of section 10(6) of the Kalyani University Act, 1981 the Vice Chancellor is fully empowered to pass any order in a matter which in his opinion is an urgent and/or emergent in nature including the order of dismissal of an employee without taking recourse to a regular disciplinary enquiry.

9. The questions therefore which have now come up for consideration before this Court in the instant writ application are whether in exercise of emergency power u/s 10(6) of the Kalyani University Act, the Vice Chancellor has the power to dismiss an employee from service without holding a regular disciplinary enquiry and whether there was such an urgent or emergent situation which warranted exercise of emergency power.

10. Before determining the said questions it is however, necessary to dispose of a preliminary point raised by the respondent. It has been submitted by the

learned Counsel appearing for the respondent University that the writ petition challenging the order of termination dated May 31, 1990 is not maintainable as the resolution of the Executive Council of the University dated June 6, 1990 approving the said order of Vice Chancellor was never challenged by the writ petitioner. It is submitted by the University that u/s 10(6) of the said Act the Vice Chancellor may take on behalf of the University such action as he may deem expedient in any matter which in his opinion is either urgent or emergent in nature, but he is required to report to the next meeting of the Executive Council which in ordinary course would have dealt with the matter and since in the instant case it is the Executive Council of the University which is the authority to terminate the service of the writ petitioner in the ordinary course, such actions taken by the Vice Chancellor were reported to the Executive Council of the University in the next meeting which by resolution dated June 6, 1990 confirmed the action of the Vice Chancellor and accordingly the aforesaid order of the Vice Chancellor merged with the aforesaid resolution of the Executive Council.

11. I am unable to accept the contention made on behalf of the University. The order passed by the Vice Chancellor dated 31st May, 1990 discharging the petitioner from service admittedly took effect from 1st June, 1990 and not from the date when such order was approved by the Executive Council. It is, therefore open to the writ petitioner to challenge the aforesaid order of the Vice Chancellor. That apart it appears it is the order of the Vice Chancellor which was communicated to the petitioner by the University and the petitioner was never communicated with the resolution of the Executive Council which approved the said order by the Vice Chancellor. The question, therefore, of challenging the aforesaid Executive Council resolution also, in my view, did not arise.

12. Mr. Karuna Sankar Roy, the learned Counsel appearing for the University has taken great pains in taking me through the impugned order of the Vice Chancellor dated 31st May, 1990 as also the various paragraphs of the affidavit-in-opposition filed by the University for the purpose of contending that there were sufficient materials before the Vice Chancellor to form an opinion u/s 10(6) of the said Act that there existed an urgent and emergent situation warranting exercise of emergency power. Mr. Roy has further submitted that while determining the question whether the Vice Chancellor formed a bona fide opinion as to the existence of urgent and emergent situation, it is not for the Court to reappraise the facts and it would be sufficient for the authority exercising emergency power to show that there were factual circumstances of the case warranting exercise of such power. Mr. Roy has relied on the decision in the case of Committee of Management Atarra Post Graduate College, Agarra Vs. The Vice Chancellor, Bundelkhand University, Jhansi and another,

13. Mr. Lahiri, on the other hand has submitted that from the allegations made in the impugned order of termination itself it would appear there were no circumstances warranting exercise of emergency power as there was no existence of emergency or urgency. It has been further submitted by Mr. Lahiri

that from the materials on record no reasonable man could come to the conclusion that exercise of emergency power u/s 10(6) of the Act was necessary or could form a bona fide opinion in that respect.

14. In my view, while determining the question whether there was an emergent or urgent situation which calls for exercise of emergency power and whether any bona fide opinion has been formed as to the existence of emergency or urgency, the writ Court cannot reappraise the facts on the basis of which the authority concerned formed an opinion nor the Court would substitute its own satisfaction for that of the authority concerned, but the Court may examine the materials before the authority concerned on which such opinion has been formed to find out whether on such materials or facts any reasonable man bona fide can form an opinion as to the existence of emergency and urgency.

15. If the materials or facts which have been referred to by the Vice Chancellor in the impugned order of termination for forming an opinion as to the existence of emergency and urgency are now examined in the aforesaid light, in my view, the same justified the formation of the opinion of the Vice Chancellor that an urgent or emergent situation existed calling for exercise of emergency power. Some of the allegations in the impugned order of termination are really serious in nature and any prudent man on such material can feel that there is an urgent and emergent situation calling for exercise of emergency power. In my view, the allegations as to the Transformer having put on a direct connection with 11,000 volts of electric high tension line, after disjoining the OCB from the series circuit, which came to light on May 16, 1990 which allegedly kept the University perched on the brink of disaster ; the issue of the order dated May 21, 1990 of the writ petitioner directing inter alia that none of the staff of the Works Department should involve themselves in any work which was not approved by the writ petitioner, which allegedly expressed the height of the insolence and impertinence of the writ petitioner and reflected his anti University activities; alleged open non compliance of the orders of the Vice Chancellor ; the allegation regarding functions of the Works Department virtually coming to a standstill which allegedly threatened Laboratories having sophisticated instrument with waste and deterioration etc. are not only serious in nature but on the same any reasonable and prudent man would be of the opinion that an emergent and urgent situation has arisen because of such alleged activities of the petitioner calling for emergent action.

16. I am, therefore of the view that the opinion of the Vice Chancellor that an emergent and urgent situation did exist warranting exercise of emergency power u/s 10(6) of the said Act is bona fide and valid.

17. The only question therefore now left to be decided is whether the service of the petitioner could have been dispensed with in the manner as aforesaid without holding any regular disciplinary proceeding and without giving the petitioner a reasonable opportunity of hearing.

18. Although it will appear that in the impugned order it has been stated inter alia the petitioner's service during the period of probation having been found unsatisfactory he has been discharged from the present probationer employment, examination of the entire order leaves no manner of doubt that it is not an order of termination of the probationer simpliciter but dismissal of the probationer from service on the ground of serious misconduct. It will appear from the said order that a number of serious allegations of misconduct have been made against the writ petitioner and accordingly there cannot be any doubt that such order of termination even though was passed during the period of probation, the same attaches stigma to the writ petitioner's service career.

19. Mr. Roy, learned Counsel for the University also does not dispute the fact that the said order of termination is really termination of the probationer on the ground of serious misconduct.

20. That being the position, the service of the petitioner could not have been dispensed with in the manner as aforesaid without giving any reasonable opportunity of hearing of the petitioner and without holding a regular disciplinary enquiry.

21. The University Ordinances relating to the Admission of Students of the University and the Colleges affiliated to or recognised by it and their enrolment (hereinafter referred to as the Ordinance) inter alia lay down in the manner in which an employee of the University may be dismissed from service. The Ordinance 78 (USC) provides when an employee shall be guilty of misconduct. The Ordinance 79 (USC) provides disciplinary action, including imposition of penalties, may be taken against an employee for misconduct or for any other conduct unbecoming of an employee of the University. The Ordinance 80 (USC) indicates the nature of penalties; under Clause (h) of the said Ordinance an employee can be dismissed from service. The Ordinance 83 (USC) provides; procedure to be followed for imposition of the aforesaid penalties. It is provided therein inter alia that the nature of the allegations shall be communicated to the employee concerned and he shall be given a minimum period of two weeks, from the date of receipt of the communication by him, to submit his explanation along with relevant documentary evidence. Upon receipt of his explanation, or on the expiry of the period of two weeks given for submission of explanation, the authority concerned, may, after necessary examination of relevant facts and circumstances, either drop the case, or decide to impose upon the employee concerned any one or more of the penalties mentioned in the Ordinance. In the event, it is decided to initiate a disciplinary proceeding against an employee in the case of penalties mentioned in Clause (e) to (h) of Ord. 80 (USC) the ground shall be drawn in the form of a definite charge which would be communicated to the employee concerned together with a statement of allegations and the employee on whom the charge sheet has been served will be given an opportunity to put in a written statement in his defence. It is further provided therein that in the event, if it is decided to proceed further a formal enquiry shall

be held and an Enquiry Officer would be appointed for the purpose. The Clause (2) of the Ordinance 83 (USC) specifically provides that in such enquiry principles of natural justice shall be observed and the employee concerned should be given an adequate opportunity defend the charge. The Ordinance 84 (USC) provides that these Ordinances relating to Discipline and appeal are subject to the provisions of section 32 of the Act.

22. Nowhere it has been provided either in the Act or in the said Ordinances that procedure for holding enquiry against the delinquent employee for imposition of penalty can be dispensed with in case of an emergency.

23. Learned Counsel appearing for the University further submits that in exercise of emergency power u/s 10(6) of the Kalyani University Act the Vice Chancellor is empowered to make such action as he may deem expedient in any matter which, in his opinion is either urgent or of an emergent nature and the same also empowers him to, take a disciplinary action against the delinquent employee. It is further submitted by Mr. Roy since in an urgent or emergent situation u/s 10(6) of the Act the Vice Chancellor being empowered to take such action as he may deem expedient, he has, also the jurisdiction to dismiss an employee without holding a regular disciplinary enquiry. Since an urgent and emergent situation warrants immediate action, lengthy process of holding a regular enquiry would frustrate the very purpose of exercising emergency power. It is the further submission of Mr. Roy that the number of decisions referred to by Mr. Lahiri, in support of his contention that the service of an employee cannot be dispensed with without holding any enquiry when the order attaches stigma are of no assistance in the instant case, inasmuch as in none of those cases the relevant order was passed in an emergency situation in exercise of emergency power.

24. Mr. Roy has further submitted that the fact even the Executive Council, which is the appointing and disciplinary authority of the writ petitioner could not have terminated the service of the writ petitioner without holding a disciplinary enquiry does not prevent the Vice Chancellor to dismiss an employee without holding enquiry in case of urgency or emergency in exercise of his emergency power.

25. In support of his aforesaid contention Mr. Roy has relied on the decision of the Supreme Court in the case of the Marathwada University v. Seshrao Balwant Rao Chavan reported in AIR 1989 1582 and also in the case of Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others, and also the Division Bench decision of this Court in the case of Kalipada Banerjee and Another Vs. State of West Bengal and Others,

26. I am unable to accept the aforesaid contention of Mr. Roy namely that in case of emergent and urgent situation the Vice Chancellor is empowered to dismiss an employee even without holding a disciplinary enquiry, as contemplated in Ordinance 83, in exercise of his power u/s 10(6) of the Kalyani University Act.

27. In my view, the decision of the Division Bench of our Court in the case of

Kalipada Banerjee v. State of West Bengal (supra) does not support the aforesaid contention of Mr. Roy.

28. In the aforesaid case of Kalipada Banerjee v. State of West Bengal (supra) the Division Bench had no occasion to consider as to whether the Vice Chancellor of the Calcutta University in exercise of his emergency power u/s 9(6) of the Calcutta University Act was empowered to dismiss an employee without holding any disciplinary enquiry. The issue before the Division Bench in the aforesaid case was whether the Vice Chancellor in exercise of such emergency power had the jurisdiction to create a temporary post and transfer an employee to meet emergent situation without approval of the State Government and it was held by the Division Bench that the Vice Chancellor had the jurisdiction to create such post without approval of the State Government and to make such transfer and one of the reasons for which the Division Bench was of such view was that u/s 4(13) of the Calcutta University Act, the University is empowered to create post without approval of the State Government. It was further held by the Division Bench that emergency power exercised by the Vice Chancellor u/s 9(6) of the said Act is an independent power of the Vice Chancellor and the same is exercised by him not as a delegate or on behalf of the senate.

29. That apart the aforesaid decision of the Division Bench is also of no help in the instant case as the power to create post and to transfer an employee is an administrative power whereas the power to take disciplinary actions, against an employee and to dismiss him on the ground of misconduct is a quasi judicial power exercised by the disciplinary authority affecting the livelihood of an "employee.

30. The decision of the Supreme Court in the case of Marathwada University v. Seshrao Balwant Rao Chavan (supra) also is not an authority for the proposition put forward by Mr. Roy that Vice Chancellor in exercise of emergency power has the jurisdiction to dismiss an employee even dispensing with the requirement of holding a disciplinary enquiry and without giving an opportunity of hearing to the delinquent. In paragraph 18 of the said decision, which is very much relied upon by Mr. Roy, the Supreme Court merely interpreted the general power of the Vice Chancellor under the relevant Act of the said University and also incidentally referred to emergency power of the Vice Chancellor u/s 11(4) of the Marathwada University Act. The observation of the Supreme Court in the said paragraph while interpreting such emergency power to the effect "this power is essential for him to maintain domestic discipline for the academic and non-academic affairs" very much relied upon by Mr. Roy, in my view again is not the authority for the proposition that the Vice Chancellor in exercising such emergency power can dispense with the requirement of holding a disciplinary enquiry while taking disciplinary action against an employee or dismissing him from service.

31. Supreme Court in the said case was never called upon to decide such question nor the same was an issue before the Supreme Court.

32. On the contrary in paragraph 19 of the self same decision the Supreme Court rejected the contention of the Counsel for the appellant that the express power of the Vice Chancellor to regulate the work and conduct of the Officers of the University employees include the power to take disciplinary action against officers, on the ground the power to regulate, the Work and conduct of officers cannot include the power to take disciplinary action for their removal and as the said Act conferred the power to appoint officers on the Executive Council which includes the power to remove, it is futile to contend that the Vice Chancellor can exercise that power which is conferred on the Executive Council as it is well settled principle of law, when the act prescribed particular body to exercise the power, it must be exercised by other unless it is delegated.

33. As it has been held by the Supreme Court in the case of Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., that the judgment has to be read as a whole and the observations in the judgment have to be considered in the light of the questions which were before the Court and the decision of the Court takes its colour on the questions involved in the case and the context in which it was rendered and in applying the decision to a later case the Court is not to pick up an word or sentence of the Supreme Court judgment de hors the context of the questions under consideration by the Supreme Court.

34. The aforesaid principle as laid down by the Supreme Court would be applicable not only in the case of Marathwada University v. Seshrao Balwant Rao Chavan (supra) but also to the Division Bench decision of this Court in the case of Kalipada Banerjee and Anr. v. State of West Bengal (supra).

35. The principle of audi alteram has now been recognised as one of the basic ingredients of rule of law and has been extended even to administrative action which visits a person with civil and adverse consequences. Such principle therefore will apply with greater force in the matter of disciplinary action against an employee when the disciplinary authority exercises quasi judicial power.

36. That apart right to life guaranteed under Article 21 of the Constitution of a Citizen has now been held by the Supreme Court also to include the right to livelihood. Such right of the petitioner therefore can be taken away by the University Authorities under Article 21 of the Constitution only by procedures prescribed in law, which in the instant case is the relevant Ordinances of the University which permits the imposition of major penalty like dismissal or removal only after holding the regular disciplinary enquiry and after giving a reasonable opportunity of hearing to the employee concerned. It is therefore inconceivable to such a fundamental right of the petitioner can be taken away on the ground of emergency of urgency by dismissing him even denying him the minimum opportunity to be heard. There is nothing u/s 10(6) of the Kalyani University Act which in my view, empowers the Vice Chancellor to dismiss an employee without holding any disciplinary enquiry and without giving an opportunity of hearing to the employee concerned. The power of the Vice Chancellor u/s 10(6) of the said Act to take such action as he may deem

expedient in any manner which is in his opinion either urgent or emergent in nature, in my view, although may empower the Vice Chancellor to take disciplinary action against an employee concerned, the same certainly does not empower him to take disciplinary action dispensing with the requirements of holding a disciplinary enquiry as provided for in the relevant provision of the Ordinance of the University. The power to take such action as the Vice Chancellor may deem expedient in any manner, is not a power to act in any manner the Vice Chancellor likes and de hors the provision of the Act and the Rules.

37. Had it been the intention of the legislature that in exercise of emergency power of the Vice Chancellor while taking disciplinary action against an employee is also entitled to dispense with the requirement for holding disciplinary enquiry, the same could have been provided for by the legislatures, as it has been specifically provided in some other legislations and in the Constitution itself.

38. I am, therefore, not prepared to accept the aforesaid interpretation of section 10(6) of the said Act as made by Mr. Roy.

39. I am of the view that even though the Vice Chancellor in exercise of his emergency power u/s 10(6) of the said Act will be entitled to take disciplinary action against an employee of the University, although he is not empowered to do so under normal circumstances, the requirement of holding disciplinary enquiry and giving an opportunity of hearing to the employee concerned before removing or dismissing him or for imposition in major penalty, cannot be dispensed with. He can take disciplinary action only after following the procedure prescribed in the said Ordinance.

40. The impugned order of the Vice Chancellor therefore terminating the service of the petitioner, which admittedly attaches stigma to his service career without holding disciplinary enquiry and without giving an opportunity of hearing, is without jurisdiction and cannot be sustained.

41. I am unable to accept the contention of Mr. Roy that resorting to a regular disciplinary enquiry, in emergent situation would have caused delay to the prejudice of the interest of the University since emergent or urgent situation warranted exercise of emergency power of the Vice Chancellor and to take disciplinary action against the petitioner. The Vice Chancellor in exercise of such power could have easily put the writ petitioner under suspension pending enquiry and thereafter could have held a disciplinary enquiry. It is not understood what prevented the Vice Chancellor from putting the petitioner under suspension although it appears from the nature of the allegations made in the impugned order itself that alleged in disciplined conduct of the writ petitioner and his alleged defiant attitude was continuing for quite some time.

42. In the result, the writ application is allowed. The impugned order dated 31st May, 1990 discharging the writ petitioner from service is set aside. The writ petitioner would be deemed to be in service from the date of passing of the impugned order of termination. But under the facts and circumstances of the

case, I direct that the petitioner will be entitled to 50% of his salary and allowances which would have been paid to him had he not been discharged from service.

43. The University however will hold a disciplinary enquiry against the petitioner after framing charges and following the procedure in terms of Ordinance 83(USC) of the University Ordinances and such disciplinary enquiry should be disposed of as expeditiously as possible and the petitioner shall co-operate with such disciplinary enquiry in all respect. The 50% of arrear salary as aforesaid shall be paid to the petitioner within two months from the date. There will be no order as to costs.

44. Let copy of this order be given to the learned Advocates appearing for the respective parties by given on usual undertaking.