
(2016) 02 JH CK 0090

In the Jharkhand High Court

Case No : W.P.(S) Nos. 6127, 6160, 6163 and 6186 of 2013

Kumar Pankaj Anand and Others

APPELLANT

Vs

Central University of Jharkhand and Others

RESPONDENT

Date of Decision : 19-02-2016

Acts Referred:

Central Universities Act, 2009 — Section 19, Section 2 (i), Section 2(f), Section 2(i),
Section 21 (2), Section 21(2), Section 26 (f), Section 26(f), Section 28, Section 33,
Section 33(2), Section 43, Section 9
Constitution of India, 1950 - Ar

Citation : (2016) 2 AIRJharR 674 : (2016) 2 JBCJ 331 : (2016) 3 JCR 553 :
(2016) 2 JLJR 387

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Indrajeet Sinha and Ajay Kr. Sah, Advocate, for the Appellant; Rahul Gupta and Niyati Sah, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Pramath Patnaik, J.—1. Since similar issues are involved in all the writ petitions and the prayer in the aforesaid writ petitions pertains to termination from services by the decision of the Executive Council of the Central University of Jharkhand, with the consent of the respective counsels these writ petitions are heard together and are being disposed of by common order/judgment.

2. In the accompanied writ applications, the petitioners have inter alia prayed for quashing the letter dated 16.09.2013 issued by the Registrar, Central University of Jharkhand pertaining to discharge the petitioners from services with effect from 14.09.2013, and for issuance of writ/directions commanding upon the respondents to forthwith reinstate the petitioners on their original posts and also for issuance of writ/direction to declare that so called notification dated 05.08.2013 issued in purported compliance of amended Statute 11 of the Central Universities Act, 2009 having no legal enforceability because of non publication of the Official Gazette as required under Section 43 of the Central Universities

Act, 2009.

3. The factual matrix, as has been delineated in the writ applications, in a nutshell, is that the petitioners were appointed to the respective posts of Deputy Registrar, Harish Mohan (in W.P.(S) No. 6186 of 2013), Executive Engineer, Kumar Pankaj Anand (in W.P.(S) No. 6127 of 2013), Section Officer, Sandeep Kumar (in W.P.(S) No. 6160 of 2013) and Medical Officer, Dr. Ishwar Chand Bidyasagar (in W.P.(S) No. 6163 of 2013) for which they had applied in pursuance to the advertisement dated 15.04.2011 floated by the Central University of Jharkhand. The petitioners after being selected received offer of appointment to the respective posts in Central University of Jharkhand vide letter dated 18.11.2011. In pursuance to the appointment order, the petitioners submitted their joining reports and all the appointments were made against the sanctioned posts by the U.G.C., and the appointment of the petitioners was subjected to University Act, Statutes, Ordinance, Rules and Regulations applicable from time to time. On perusal of the appointment letter, it is apparent that the petitioners' appointments were on probation for the period of two years which may, if needed, be extended to another year. During continuance in service, a show cause dated 07.05.2013 was served upon the petitioners, Kumar Pankaj Anand, Executive Engineer (in W.P.(S) No. 6127 of 2013) and Dr. Ishwar Chand Vidyasagar, Medical Officer (in W.P.(S) No. 6163 of 2013), alleging irregularities in reimbursement of medical bills and both were asked as to why departmental proceeding be not initiated against them for suitable actions. The petitioners in said cases filed appeal before the Executive Council stating their grievances vide representation dated 15.05.2013. But, to the utter surprise and consternation vide letter dated 16.09.2013 issued by the Registrar, Central University, Jharkhand, it has been communicated to the petitioners that University has decided to dispense with and discharge the petitioners from services with effect from 14.09.2013 which are impugned in the writ applications.

Being aggrieved by the impugned order, left with no alternative, efficacious and speedy remedy, the petitioners have approached this Court under Article 226 of the Constitution of India, invoking extraordinary jurisdiction of this Court for redressal of their grievances.

4. Before advertng to the rival contentions of the respective parties, it would be apposite to refer to relevant statutes of the Central Universities Act, 2009, which are reproduced herein below:

"Section 2 (i) of the Act, defines the word "employee" means any person appointed by the University and includes teachers and other staff of the University;

Section 26 (f) of the Act, defines the conditions of service of employees including provisions for pension, insurance, provident fund, the manner of termination of service and disciplinary action;

"23. (1) All the employees of the University, other than the teachers and other

academic staff shall, in the absence of any contract to the contrary, be governed by the terms and conditions of service and code of conduct as are specified in the Statutes, the Ordinances and the Regulations.

(2) The manner of appointment and emoluments of employees, other than the teachers and other academic staff, shall be such as may be prescribed by the Ordinances.

24. (1) Whenever, in accordance with the Statutes, any person is to hold an office or be a member of an authority of the University by rotation according to seniority, such seniority shall be determined according to the length of continuous service of such person in his grade and in accordance with such other principles as the Executive Council may, from time to time, prescribe.

(2) It shall be the duty of the Registrar to prepare and maintain in respect of each class of persons to whom the provisions of these Statutes apply, a complete and up-to-date seniority list in accordance with the provisions of clause (I).

(3) If two or more persons have equal length of continuous service in a particular grade or the relative seniority of any person or persons is otherwise in doubt, the Registrar may, on his own motion and shall, at the request of any such person, submit the matter to the Executive Council whose decision thereon shall be final.

25. (1) Where there is an allegation of misconduct against a teacher, a member of the academic staff or other employee of the University, the Vice Chancellor, in the case of the teacher or a member of the academic staff, and the authority competent to appoint (hereinafter referred to as the appointing authority) in the case of other employee may, by order in writing, place such teacher, member of the academic staff or other employee, as the case may be, under suspension and shall forthwith report to the Executive Council the circumstances in which the order was made:

Provided that the Executive Council may, if it is of the opinion, that the circumstances of the case do not warrant the suspension of the teacher or a member of the academic staff, revoke such order.

(2) Notwithstanding anything contained in the terms of the contract of appointment or of any terms and conditions of service of the employees, the Executive Council in respect of teachers and other academic staff and the appointing authority in respect of other employees, shall have the power to remove a teacher or a member of the academic staff or other employee, as the case may be, on grounds of misconduct.

(3) Save as aforesaid, the Executive Council, or as the case may be, the appointing authority, shall not be entitled to remove any teacher, member of the academic staff or other employee except for a good cause and giving three months notice or on payment of three months' salary in lieu thereof."

(4) No teacher, member of the academic staff or other employee shall be

removed under clause (2) or clause (3) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(5) The removal of a teacher, member of the academic staff or other employee shall take effect from the date on which the order of removal is made:

Provided that where the teacher, member of the academic staff or other employee is under suspension at the time of his removal, such removal shall take effect from the date on which he was placed under suspension.

(6) Notwithstanding anything contained in the foregoing provisions of this Statute, a teacher, member of the academic staff or other employee may resign-

(a) If he is a permanent employee, only after giving three months' notice in writing to the Executive Council or the appointing authority, as the case may be, or by paying three months' salary in lieu thereof;

(b) if he is not a permanent employee, only after giving one months' notice in writing to the Executive Council or, as the case may be, the appointing authority or by paying one month's salary in lieu thereof.

Provided that such resignation shall take effect only on the date on which the resignation is accepted by the Executive Council or the appointing authority, as the case may be."

5. Heard Mr. Indrajeet Sinha, learned counsel appearing for the petitioners as well as Mr. Rahul Gupta appearing for the respondents-University.

6. Mr. Indrajeet Sinha, learned counsel appearing for the petitioners submitted with vehemence that the impugned orders of removal from services have been passed in derogation of principles of natural justice, as no opportunity of hearing has been given to the petitioners to defend their cases. Learned counsel further submits that the orders of discharge is only a camouflage and in substance it is a punitive order based on finding recorded against the petitioners, which are perverse being violative of principles of natural justice. Learned counsel for the petitioners further submits that the impugned orders of discharge dated 16.09.2013 are bad in law, in view of the fact that at no point of time show cause or charge sheet was issued against the petitioners neither any departmental enquiry was ever initiated. It has further been submitted that the constitution of the Committee by the Vice Chancellor for evaluation of the performance of some of the employees itself is illegal as no Act/Statute/Ordinance of the University empowers the Vice Chancellor to constitute any such Committee and the order of discharge is not a discharge simplicitor, but punitive on account of finding arrived by the Committee behind the back of the petitioners. It has further been submitted that in view of the Statute 25 of the second schedule of the Act, it does not distinguish between permanent employee and temporary employee, so far as major punishment are concerned, therefore, procedure of full fledged departmental proceeding ought to have been initiated

prior to discharge of the petitioners. It has further been submitted that the notification dated 05.08.2013 was issued in purported compliance of amended Statute 11 of the Central Universities Act, 2009, has no legal enforceability, since the same has not been published in the official Gazette as required under Section 43 of the Central Universities Act, 2009. It has further been submitted that the order of discharge is harsh and excessive in nature and Clause 8 of OC-9 itself is void to the extent that the Ordinance is in derogation with Statute 25 of the Second Schedule of the Act and as such an Ordinance which is in derogation with the parent Act cannot be allowed to sustain in the eye of law.

7. During course of argument, Mr. Indrajeet Sinha, learned counsel appearing for the petitioners has advanced his argument on three broad issues:

"(I) Petitioners have statutory status of "employee" in terms of Section 2(i) of the Act and there is no conception of "probationer" or "confirmed employee" or "un-confirmed employee" under the scheme of the Act. Hence the petitioners cannot be treated as "probationers" and their services could not have been dispensed with without following the procedure prescribed in Clause 2 to 5 of Statute 25. The condition of "probation" made through lower hierarchy of subordinate legislations i.e. Ordinance OC-9 and Regulation RA-4 and implanted in the appointment letter dated 18.11.2011 are violative to Section 2(i) and Section 26(f) of the Act, and hence need to be declared ultra vires.

(II) The second limb of the submission of the learned counsel for the petitioners is that even if the petitioners are treated as "probationer", no provision exists to discharge a probationer, without giving a reasonable opportunity of showing cause against the action proposed to be taken in regard to them in the Act and Statutes, Ordinances & Regulations made thereunder, nor does it exist in appointment letter dated 18.11.2011, hence impugned discharge order dated 16.09.2013 needs to be quashed. Moreover, the power of EC, the creature of the Act, cannot travel beyond the limits prescribed by the Act. Moreover, the discharge of the petitioners was not termination simpliciter, but the termination was punitive on the basis of the inquiry made against the petitioners behind their back which is violative of Clause 2 and 4 of Statute 25. Even otherwise, the committee constituted by the Vice Chancellor to conduct the enquiry was illegal, as Vice Chancellor has no powers to constitute a Committee and any committee of general or special purpose can only be constituted by Authorities in terms of Statute 21(1). Hence, the decision taken by 2nd EC on the basis of report of an illegal Committee regarding termination/discharge of the petitioners is to be declared void ab initio.

(III) The 2nd Executive Council (EC), which passed resolution to terminate the services of the petitioners is invalid due to the fact that the amended Statute 11, by which 2nd EC has been constituted, is invalid due to the fact, it has been made in violation to clause of Section 21 (2) of the Act and by committing fraud upon the Visitor."

8. Learned counsel for the petitioners refers to Section 2(i) of the Act defines- "employee" means any person appointed by the University and includes teachers and other staff of the University. Learned counsel for the petitioner submits that the definition of "employees" is so crystal clear, leaving no room of ambiguity, so the petitioners come within the definition of the employees of the Universities. There is absolutely no distinction between a temporary and the probationer as per the said definition. In support of the same, learned counsel for the petitioners has referred to paragraph 9 of the judgment of Delhi High Court dated 25.09.2006 in WP(C) No. 1578/2006 in Dr. P.R. Ramanujam v. IGNOU & Ors.

"9. For the following reasons, I clap no importance to these arguments. Section 2(f) of the Act defines the word "employee".

"(f) "Employee" means any person appointed by the University, and includes teachers and other academic staff of the University"

(Emphasis supplied)

The above said definition is comprehensive and complete. It is clearer than crystal that a Director is an employee of the IGNOU. This definition leaves no room for ambiguity. No separate definition of an officer finds any place in the said Act. The petition has failed to show that he was not appointed by the University. What one can garner from the above detailed provisions of law is that neither the Act nor the statute nor the ordinance makes any distinction between an officer or a director or an employee. The Legislature in their wisdom did not create any difference. If the intent of the Legislature was otherwise it would have made the distinction. The officer is inclusive of the word employee. It was not specifically mentioned that the employee should exclude an officer or director."

9. Learned counsel for the petitioners submits that being the "employees" of the University the petitioners could only be terminated in the manner prescribed at Clause 2 to 5 of Statute 25 read with Section 26(f) of the Act. Learned counsel for the petitioners submits that in the instant case petitioners have been removed from services without giving three months" notice or on payment of three months" salary in lieu thereof, which is in the teeth of Statute 25(3) and without giving reasonable opportunity of showing cause against the action proposed to be taken is violation of Statute 25(4) and the discharge orders have been issued on 16.09.2013 which has been ante dated effective w.e.f. 14.09.2013, which is in violation of Statute 25 (5) of the Act. Learned counsel for the petitioners refers to Section 21(2) of the Act which limits the powers and functions of EC to be prescribed by the Statutes. Statute 12 prescribes that EC has no powers to discharge the probationer/employee without following the procedure prescribed at Clause 2 to 5 of the Statute 25. Learned counsel for the petitioners submits that as per Section 9 of the Act whereas Statute 21(1) authorizes only the authorities of the University (Section 19 of the Act defines authorities) to constitute any standing or special Committee. Hence, the

constitution of the Committee by VC is illegal. V.C., who constitutes the illegal Committee, participates in the Committee by giving aid and advice to the Committee and then after, he chairs the meeting of EC dated 14.09.2013 which passes the resolution of discharge of the petitioners on the basis of report of the Committee, which indicates the biasness of the VC towards the petitioners. It has further been submitted that the Committee was not constituted for limited purpose of deciding the suitability of a probationer, but for the purpose of the complaint being made as against the petitioners, which conducted inquiry behind the back of the petitioners. The report resulted into stigmatic observation of EC that "to continue with such probationers may not be safe for the University or may not be conducive to the overall academic and/or administrative atmosphere of the University." Hence the termination claimed to be termination simpliciter was a camouflage for the real intention of the respondents. Therefore, such stigmatic resolution amounts to termination punitive behind the back in violation to Statute 25(2) read with 25(4) and 25(5). Learned counsel further submits that once the petitioners were appointed to the posts, they acquired a status and their right and no longer determined by consent of both parties but by Statute or Statutory Rules. Hence, the provisions of Act & Statutes shall prevail over extraneous conditions implanted in the offer of appointment.

In support of the contention, learned counsel for the petitioner has referred to:

"(i) , (2010) 8 SCC 220 (para 37, 40, 41, 45 and 46).

(ii) (2013) 11 SCR 395 (para 28 and 29).

(iii) , (2012) 7 SCC 683 (para 13 and 37)."

10. Per contra, counter affidavits have been filed on behalf of the respondents controverting the averments made in the writ applications. In the counter affidavits, it has been inter alia stated that the Clause of probation period is not void or bad in law. It is incorrect to say that in terms of the Recruitment Rules (RA-4) or Clause 2 under Section OC-9 of the Ordinance, the probation period should be one year only. The petitioners have made an absurd claim to the contrary while at the same time quoting the relevant provision which clearly provides the period of two years. It is interesting to see that the petitioners joined in pursuance of their appointment stipulating the probation period and the so called objection by them was made on 13.08.2013 just before the scheduled completion of two years of probation period. It has been further stated that no expressed provision is required, in the appointment letter or the Act/Statute/Rules for dispensing with services of a probationer, at any time or for discharging them without opportunity of hearing. It has been further submitted that second E.C of the University consists of 10 members and not 11 as suggested by the petitioners. As would be apparent from the notification dated 05.08.2013, the position of "Pro-Vice Chancellor(s) has been distinguished from this, the position of "two members of the Court" has not been qualified with any such expression. Therefore, termination of the petitioners was merely a discharge not removal as

would be reflected from the resolution of the Executive Council taken in its 14th meeting dated 14.09.2013. The Council considered that the employees should be protected from any jeopardy to their prospects of employment elsewhere, in different walks of life. Expressly the Council had tried to balance between compassion on one hand and the interest of University on the other. Thus, no departmental proceeding was initiated and no inquiry was made into correctness of the complaints/allegations. This is a case where the considerations which weighed with the Council were, at the most, merely "motive" and not "foundation" behind the decision to discharge the probationers. Viewed from this angle, it is not correct to say that report of the Committee was the basis of the decision, and the copy of the Agenda Item No. EC 2013/14/036 containing the resolution of the Executive Council in its meeting dated 14.09.2013 has been annexed as Annexure-A to the counter affidavit. It has been further submitted that there is no requirement of hearing of an employees during his performance evaluation, if any. There is no application of the principles of natural justice, and there is no question of violation thereof. It is an ordinary administrative matter in service. In any case, as submitted earlier, no prejudice has been caused to the petitioners as the Committee's report has not acted as the foundation for discharge of the petitioners. The observation of the Hon'ble Apex Court in the case of Mathew P. Thomas v. Kerla State Civil Supply Corporation Ltd. and Others reported in , (2003) 3 SCC 263, in paragraph 10, has been extracted below:

"10. Paras 1 to 3 of the show- cause notice reflect about the unsatisfactory performance of the duty of the appellant. Paras 4 and 5 of the show-cause notice were not taken into consideration in passing the order of termination of services as is evident from the termination order although reference is made to the show-cause notice. The last para of the show-cause notice also indicates that the action was proposed in terms of clause 2 of the order of appointment, namely, terminating the services during probationary period. The order of termination of services refers to the relevant clause in the order of appointment and explanation given by the appellant to the show-cause notice. The last paragraph of the said order shows that his explanation was found unsatisfactory. The appellant had wrongfully recommended acceptance of bad stock not once but several times; as such it was held that his services have been unsatisfactory. Hence, the order of termination was passed. From this order of termination, it is clear that the respondents did not rely on paras 4 and 5 of the show-cause notice. The Division Bench in the impugned Judgment, after perusal of the files observed that the appointing authority had abandoned those charges and concentrated only on the lapses committed by the appellant in wrongfully recommending acceptance of bad stock. We have no good reason to differ with this finding recorded by the Division Bench after perusal of the relevant files and records. Even otherwise, paras 4 and 5 of the show cause notice stand withdrawn as per the direction given by the High Court. This being the position, no prejudice is caused to the appellant to complain that the High Court has exceeded its power of judicial review when such a deletion of paras 4 and 5 from

the show-cause notice is to the benefit and advantage of the appellant. This also protects the appellant from any adverse effect when he seeks employment elsewhere and the prospective employer may not have any ground to take an adverse view of the alleged misconduct contained in paras 4 and 5 of the show-cause notice."

11. It has further been submitted that the petitioners' case are very much of discharge simplicitor. It is not punitive. There is no stigma attached to their termination order. The impugned letter of termination merely says, "the University has decided to dispense with your services and accordingly you are discharged from the services of the Central University of Jharkhand, Ranchi." This is non stigmatic as it could be. In that regard, observations of the Hon'ble Apex Court rendered in the case of Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences & Anr. reported in [, (2002) 1 SCC 520] has been referred to:

"33. It was finally argued by the appellant that the intention of the respondents to punish him was clear from the following statement in the affidavit filed on their behalf.

It is important to mention herein that even honesty and integrity of the petitioner was also under cloud as he took undue favours by misusing his position from the suppliers and maligned the reputation of the institute."

34. That an affidavit cannot be relied on to improve or supplement an order has been held by a Constitution Bench in Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi.

"...when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise...."

35. Equally an order which is otherwise valid cannot be invalidated by reason of any statement in any affidavit seeking to justify the order. This is also what was held in State of Uttar Pradesh v. Kaushal Kumar Shukla (supra):

"The allegations made against the respondent contained in the counter affidavit by way of a defence filed on behalf of the appellants also do not change the nature and character of the order of termination."

12. It has further been submitted that the resolution of the Executive Council speaks for itself. The expressions used are "the working, conduct and performance" being "not satisfactory and not up to the mark" and that he is not "suitable to continue". The Council seems to have taken the most reasonable and balanced view and decided not to go for any regular departmental proceeding "as any adverse decision therein might jeopardize their prospects of employment elsewhere, in different walks of life too." On the point of stigma, decision of Hon'ble Apex Court reported in [, (1999) 3 SCC 60] (Dipti Prakash Bannerjee's v. Satyendra Nath Bose National Centre for Basic Sciences), in paragraph 19 and

20, as extracted below:

"19. As to in what circumstances an order of termination of a probationer can be said to be punitive or not depends upon whether certain allegations which are the cause of the termination are the motive or foundation....

20. This Court in that connection referred to the principles laid down by Krishna Iyer, J. in *Gujarat Steel Tube v. Gujarat Steel Tubes Mazdoor Sangh*. As to "foundation", it was said by Krishna Iyer, J. as follows:

"A termination effected because the master is satisfied of the misconduct and of the desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case, the grounds are recorded in different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the inquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service, the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used."

13. It has further been submitted that the Clause 25 of the 1st Statutes contained in the 2nd Schedule of the Act, pertains to removal, which is not relevant as the petitioners' termination is not removal, rather it is simplicitor discharge of a probationer. Hence, there is no question of statutory violation or non-compliance of principles of natural justice. Moreover, their suitability has to be tested for the job includes their performance, conduct, discipline, temperament, sincerity, punctuality, competence and so on and the decisions of the Hon'ble Supreme Court upholding discharge of a probationer are illustrative of these parameters; including the cases of *Chaitanya Prakash* [, (2010) 2 SCC 623] dealing with unsatisfactory work and use of intemperate language; *Kamal Nayan Mishra* [, (2010) 2 SCC 169] for unsatisfactory service and furnishing wrong information on appointment worthiness; *Sharad v. State of Maharashtra* [, (2009) 3 SCC 673] for failure to pass departmental rules; *Kunwar Arun Kumar* [, (1997) 2 SCC 191]; and *State of Punjab v. Rajesh* [, (2006) 12 SCC 418] on absenteeism; *Government of Council of Kidwai Memorial Institute of Oncology* [, (1992) 4 SCC 719] and *State of Maharashtra v. Sukhwinder* [, (2005) 5 SCC 569] on complaints about some action or inaction relevant for judging one's performance, etc.

As a corollary, to discontinue with the services of a probationer not found to be suitable in this trial is the very purpose of probation.

14. It has further been submitted that there has been no removal and as such the allegation of removal without complete quorum is baseless. The presence of five members was sufficient to constitute quorum, even otherwise. The provision relating to quorum of Executive Council, as contained in Clause-11 of the 1st Statute originally framed stood amended duly upon assent of the Visitor and its

publication in official Gazette on 01.07.2013. With this amendment the requirement of quorum became "50% of the total number of existing members". Correspondingly, the 2nd Executive Council was constituted on 05.08.2013. Thus, out of total 8 existing members, 5 being present, the Executive Council could validly act and the notification dated 01.07.2013 has been annexed as Annexure-B, notification dated 05.08.2013 as Annexure-C and the 1st E.C's constitution by MHRD dated 30.04.2009 as Annexure-D to the counter affidavit. It has further been submitted that the petitioners have suppressed the existence of an efficacious alternative remedy. There is no provision for reference to a Tribunal of Arbitration for such grievances. This Arbitration is provided in Section 33(2) of the Act, which covers any dispute arising out of the contract between the University and the employee. It may be clarified at this juncture that after a matter stands decided by the Arbitral Tribunal, the proviso to Sub-Section (3) of Section 33 provides for an exception in the nature of proceeding under Article 32 or 226 of the Constitution. Reading the main text of Sub Section (3), it seems that the writ remedy is intended to apply on the matter already decided by the Tribunal which is clear from the words used as "provided that nothing in this Sub Section shall preclude." The said Sub section (3) prohibits a suit to challenge a matter already decided by the Arbitral Tribunal. Further, it is submitted that such provision about jurisdiction of the writ Courts does not cause exclusion of judicial review under Article 226 rather the issue is the desirability of entertaining or not entertaining the writ petition in view of the existence of alternative remedy of Arbitration and the Arbitration contemplated herein is statutory.

15. To buttress his submissions learned counsel for the respondents-University, Mr. Rahul Gupta, submits that the petitioners are bound by the terms of letter of appointment and they could not have challenged the terms of the letter of appointment subsequently. Since the petitioners have been discharged simplicitor without any stigma in probation period and, therefore, the holding of an inquiry was not obligatory, in view of the decisions of the Hon"ble Apex Court reported in:

"(i) , (2005) 7 SCC 447 (Rajasthan SRTC Corpn. & Ors. v. Zakir Hussain) (Para 26 to 29)

(ii) , (2010) 2 SCC 623 (Chaitanya Prakash & Anr. v. H. Omkarappa) (Para 6 & 15)

(iii) , (1999) 2 SCC 21 (Radhey Shyam Gupta v. U.P. State Agro Industries Corporation Ltd. & Anr.) (Para 27, 34 and 35)."

16. Learned counsel for the respondents-University further submits that the petitioners have entered into the services of the University as a probationer and during the probation period cannot their rights, akin to a permanent employee and the whole purpose of keeping an employee in probation is to judge the suitability of a person to the post for which they have been appointed. It is the employer's prerogative to judge and decide as to whether a probationer is fit for

the post for which he has been appointed. The Ordinance formulated by the Central University of Jharkhand in terms of Section 28 of the Central University Act 2009 read with Clause 23(1) or (2) of the statute clearly defines the probation. It says that on successful completion of their probation period, they shall be confirmed as per criteria laid down by Government of India. In the instant case since the petitioners services have been discharged during the probation period, they cannot be said to have successfully completed their probation period. In this respect, learned counsel for the University has referred to the decision of the Hon''ble Apex Court reported in , (1992) 4 SCC 719 (Governing Council of Kidwai Memorial Institute of Oncology, Bangalore v. Dr. Pandurang Godwalkar & Anr.) (Para 5 to 9)

17. Learned counsel for the respondents-University further submits that the petitioners though have relied Statute 23 and 25, as referred to above. But, from perusal of the said Statute, it transpires that the said Statute does not say anything about the probationer. It is submitted that Statute 25 is not applicable in case of simplicitor discharge of a probationer during his probation period. The whole purpose of probation would be redundant. If the argument of the petitioner is accepted then it would create an anomalous situation. Despite the employer finding the probationer as not suitable for the post, the employer would not have any option remove him in terms of Statute 25. It is further submits that it is settled law that a person cannot be permitted to blow hot and cold and fast and loose or approbate and reprobate. Where one knowingly accepts the benefits of a contract or conveyance or an order, an order is stopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity. In this respect, learned counsel for the respondents-University has referred to the decision of the Hon''ble Apex Court reported in , (2011)10 SCC 420 (Cauvery Coffee Traders, Mangalore v. Hornor Resources (International) Company Ltd. Learned counsel for the respondents-University further submits that the petitioners having accepted the terms of letter of appointment and having entered into service on the said basis where it is clearly mentioned that the appointment is on probation for two years cannot turn around and say that they are permanent employee.

18. As against the submission of learned counsel for the respondents-University, Mr. Indrajeet Sinha, learned counsel appearing for the petitioners submits that the judgment cited by the respondent-University reported in (1999) 2 SCC 22, (Radhe Shyam Gupta v. UP State Agro Industries), , (2002) 1 SCC 520 (Pavenendra Narayan Verma v. Sanjay Gandhi PGIMS & Anr.) and , (2010)2 SCC 623 (Chaitanya Prakesh v. H Omkarappa) are distinct from the present case as specific provision existed there about the discharge simplicitor of the probationer from the services in the Rules/appointment letter and/or by paying one month's salary but in the instant case no such provision exists in the Act/Statutes or in the Ordinance OC-9/Regulation RA-4 or in the appointment letter.

19. After hearing learned counsel for the respective parties at length and having

given my anxious consideration to the documents on records I am of the considered view that the discharge of the petitioners from services by the respondents-University vide impugned order dated 16.09.2013 with retrospective effect from 14.09.2013 by paying one month's salary in lieu of notice period sans legal permissibility due to the following facts, reasons and Judicial pronouncements:

"(I) In the instant case, admittedly all the petitioners were appointed in the year 2011 in pursuance to advertisement by the respondents-University and the appointments of the petitioners were subject to the Central University Act, 2009 and statute and other rules applicable to the University. Though the word probation of two years exists in Clause-7 but the appointment and service conditions are subject to the University Act, Statutes, Ordinance, Rules and Regulations applicable from time to time as mentioned in Clause-9 of the appointment letter, therefore, whatever may be the nomenclature of the appointment, the services of the petitioner is guided by the aforesaid Clause-9 of appointment letter. During their continuance, show cause notices were served upon alleging irregularities and discrepancies and lack of bona fide reimbursement of medical bills to the petitioners Kumar Pankaj Anand, Executive Engineer (in W.P.(S) No. 6127 of 2013) and Dr. Ishwar Chand Vidyasagar, Medical Officer (in W.P.(S) No. 6163 of 2013) and were directed to submit show cause as to why departmental proceeding be not initiated against them for suitable action. On receipt of the show cause, the aforesaid petitioners submitted their appeal before the Executive Council but no correspondence was ever made nor there was any initiation of departmental proceeding but all of a sudden like a bolt from blue letter dated 16.09.2013 issued by the Central University, Jharkhand, has been communicated to the petitioners that the University have decided to dispense with and discharge the petitioners from University w.e.f. 14.09.2013. The Services of the petitioners have been dispensed with without following the bare minimum necessity of principles of natural justice or the principles of audi alteram partem. The action of the respondents-University in dispensing the services of the petitioners without complying the principles of natural justice is legally unsustainable, sans all canons of natural justice.

(II) No terms and conditions in the appointment order or relevant statute under the University gives unbridled, uncandised and absolute power to the University to dispense with services of the employee without affording reasonable opportunity of hearing. That the impugned order of discharge by the University on the face of it appears to be termination simplicitor or innocuous but the said termination of the discharge order has been passed on the basis of inquiry conducted into the allegations made against the petitioners behind their back as evident from Annexure-A to the counter affidavit. Therefore, the impugned order of discharge is a punitive and stigmatic one so regular departmental inquiry or full dressed inquiry ought to have been initiated against the petitioners by the University as contemplated under the Statute, same having not been done, the impugned order is rendered vulnerable to judicial scrutiny. Moreover, the

impugned letter of communication dated 16.09.2013 indicates that the discharge of the petitioners from services have been made basing on the decisions which has been taken on the report of the Evaluation Committee, but the report of the said Evaluation Committee have never been made available to the petitioners prior to their discharge from the services.

(III) Section 2(i) of the Act defines "employee" means any person appointed by the University includes teachers and other staffs of the University. The definition is comprehensive, complete and clear leaving no room of ambiguity. There is no separate definition of probationers in the Act, therefore, there is absolutely no distinction between an officer or an employee or a probationer. As per Statute 25 read with Section 26 (f) of the Act, the services of the employees can only be terminated in the manner prescribed at Clause-2 to 5. Either in case of a termination simplicitor or termination punitive as per the Statute without giving reasonable opportunity of showing cause action against proposed punishment to be taken, the services of the employees can be terminated for good cause only after giving three months" notice or on payment of three months" salary in lieu, therefore, there has been violation of Statute 25 (3), (4) and (5) of the University Act. Moreover, on perusal of the Statute 12, the powers of Executive Council have been prescribed. Executive Council has no power to discharge the probationer/employee without following the procedure prescribed at Clause 2 to 5 of Statute 25 since the powers of Executive Council being a creature of the Act cannot travel beyond the limits prescribed by the Act.

(IV) Assuming that the petitioners were probationers and the discharge order was passed by the order of a report of a committee constituted by Vice Chancellor for the purpose of (1) Assessment of performance of services (2) Complaints being made against them. The Vice Chancellor as per Section 9 of the Act defines VC is the Officer of the University. Statute 21(1) authorizes only the authority of the University to constitute any Standing or Special Committee but in the instant case the Committee was constituted by the VC which is in derogation of statutory provision basing on the report of the said Committee. The impugned action has been taken by the University which smacks colourable exercise of power. Moreover, the Committee which was constituted not for the only purpose of judging the suitability of probationers but was also to inquire into the complaints made against the petitioners. The inquiry which was conducted, submitted stigmatic observations that "to continue with such probationers may not be safe for the University or may not be conducive to the overall academic and/or administrative atmosphere of the University." Therefore, the termination though couched in a very innocuous term was only a subterfuge, hence the inquiry was the basis and forms the foundation of the discharge order. Therefore, the said stigmatic observation by the Executive Council has visited the petitioners with evil/civil consequences in derogation of Statute 25(2) read with Statute 25(4) and 25(5) of the Act."

20. On cumulative effect of the facts and judicial pronouncements and as logical

sequitur to the reasons made in the foregoing paragraphs, the impugned order of discharge dated 16.09.2013 passed by the respondents-University being illegal are quashed and set aside and the respondents are directed to forthwith reinstate the petitioners on their respective posts. However, liberty is reserved to respondents to initiate de novo proceeding/action, if so legally advised, in accordance with Statute and law of the Central University Act and other relevant provisions of the University Act.

21. With the aforesaid direction, all the writ applications stand, disposed of.