

(2012) 10 GUJ CK 0020

In the Gujarat High Court

Case No : Special Civil Application No. 17244 of 2011

Parimal Trivedi and Others

APPELLANT

Vs

Pradip Prajapati and Others

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164

Citation : (2013) 1 GLR 612

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : S.N. Shelat and Mrs. V.D. Nanavati, for the Appellant; Vidhi J. Bhatt, Shalin Mehta for Respondent No. 1 and Rohan Yagnik, A.G.P., for the Respondent

Judgement

K.M. Thaker, J.—The petitioners have brought under challenge order dated 13-10-2011 passed by Gujarat University Service Tribunal (hereinafter referred to as "the Tribunal") in Application No. 46 of 2011, which was filed by present respondent No. 1. The petitioners have, inter alia, prayed for below mentioned relief/direction:

17(B) Your Lordships be pleased to issue writ in the nature of certiorari or any other writ, order or direction quashing and setting aside the order dated 13-10-2011 passed in Application No. 46 of 2011.

(C) Pending, admission hearing and/or final disposal of this Special Civil Application Your Lordships be pleased to stay order dated 13-10-2011 passed in Application No. 46 of 2011.

Relevant Facts:

So as to support and justify the relief prayed for, the petitioners have stated below-mentioned facts:

1.1. The respondent No. 1 is associate professor in the petitioner No. 1-University. It appears that on 25-5-2011 certain item/article was published in

news papers and some members/officers of the University including the petitioner Nos. 1, 3 and 4 believed that the said publication was made by or at the behest of the respondent No. 1. Therefore, so as to consider the said conduct of the respondent No. 1 and to also consider as to whether appropriate action should be initiated against the respondent No. 1 or not, a joint meeting of Executive Council and Academic Council was convened on 28-5-2001. The said joint meeting took note of the publication which, essentially, was against the Vice-Chancellor and acting Registrar of petitioner No. 4-University. It is also claimed that pursuant to the discussions and deliberations in the said joint meeting, a decision to appoint Fact Finding Inquiry Committee (hereinafter referred to as "the Committee") was taken, and accordingly, the Committee was appointed to look into the said incidence. The joint meeting of the Executive Council and Academic Council considered the said publication as misconduct by present respondent No. 1. The said joint meeting noticed that the said publication was made by or at the instance of present respondent No. 1.

1.2. The decision/resolution of the joint meeting of the Executive Council and Academic Council was communicated to the respondent No. 1 on or around 31-5-2011.

1.3. The petitioners also claim that the respondent No. 1 was also placed under suspension vide Resolution passed on 28-5-2011 and that on 15-6-2011, the Committee recommended that the competent authority of the University should take appropriate action against the respondent No. 1 into the allegation about (i) plagiarism, (ii) laxity in discharging duties, and (iii) misconduct with colleagues and students.

1.4. The petitioners have further claimed that the said report of the Committee was considered by the Executive Council in its meeting held on 26-6-2011. After considering the report and recommendations by the Committee, one Shri B.P. Munshi, retired Judge, was appointed to hold the departmental inquiry into the charges against the respondent No. 1.

1.5. It is claimed that at the said stage, i.e. before the proceedings of the inquiry commenced, the respondent No. 1 preferred an application before the learned Tribunal, which was registered as Application No. 46 of 2011. In the said application, which was filed on or around 7-7-2011, the respondent No. 4 challenged the order placing him under suspension. The learned Tribunal granted interim relief in favour of the respondent No. 1 vide order dated 22-7-2011.

1.6. Aggrieved by the said interim order, the petitioner University preferred writ petition being Special Civil Application No. 10289 of 2011 wherein the Court, by order dated 29-8-2011, stayed the operation of the interim order passed by the learned Tribunal.

1.7. The petitioners have claimed that on 30-9-2011, during hearing of the said writ petition, the respondent No. 1 made a statement before the Court that during pendency of the proceedings before the learned Tribunal, he would

continue to be away from the campus of University and will only claim suspension allowance. In view of the said statement, the said petition was disposed of.

1.8. It transpires from the record that in the meanwhile, the charge-sheet dated 30-7-2011 was served against the respondent No. 1. On the other hand, the respondent-University also filed on or around 28-8-2011 its reply/written statement opposing the application filed by respondent No. 1 in the learned Tribunal.

1.9. The petitioners have claimed that subsequently, the learned Tribunal allowed the application preferred by respondent No. 1 and vide order dated 13-10-2011 set aside the Resolution dated 28-5-2011. Upon feeling aggrieved by the said order dated 13-10-2011, the petitioners have preferred present petition.

2. The petitioner No. 4 is the University and the petitioner No. 1 is a Vice-Chancellor of the petitioner No. 4-University. The petitioner No. 2 is a Registrar/In-charge of the petitioner No. 4-University whereas the petitioner No. 3 is Dean of faculty of Science in petitioner No. 4-University.

2.1. The respondent No. 1 had submitted caveat. Accordingly, he appeared, at the first hearing, after accepting advance service of the petition. The record does not reflect any order directing office to issue formal notice to the respondents and/or any order recording that the respondent No. 1 waived service of notice. The order passed on 8-2-2012 recites that:

Heard Mr. S.N. Shelat, learned Senior Counsel, with Mrs. V.D. Nanavati, learned Advocate for the petitioners, Mr. Mitul Shelat with Mr. Vidhi J. Bhatt, learned Advocate for respondent No. 1 and Mr. Rakesh R. Patel, learned Assistant Government Pleader for respondent No. 2.

It is pointed out by the learned Counsel for the respective parties that the matter was predominantly kept for final hearing. Hence, S.O. to 29-2-2012.

3. At the time of hearing of the petition pursuant to the said order dated 8-2-2012, Mr. S.N. Shelat, learned Senior Counsel, appearing with Mrs. V.D. Nanavati, learned Advocate, Mr. Shalin Mehta, learned Counsel appearing for the respondent No. 1 and learned A.G.P. for respondent Nos. 2 and 3 have jointly submitted that it is understood by all concerned parties that with consent of the parties, the petition is to be heard for final decision.

3.1. Having regard to the issues and contentions raised by the contesting parties, it appears that the petition requires consideration. Hence, Rule. Ms. V.J. Bhatt, learned Advocate, for respondent No. 1 and learned A.G.P. for the respondent Nos. 2 and 3 have waived service of process of Rule. As mentioned above, at the request of and with consent of the learned Counsel for the contesting parties and also in view of the order dated 8-2-2012, the petition is heard for final decision.

4. The respondent No. 1 has resisted the petition by filing reply-affidavit dated

30-11-2011. The parties have declared that the pleadings are complete. It is, however, necessary to note that during hearing, the petitioners tendered on 26-4-2012, further affidavit and written submissions. Therefore, on 1-5-2012, the respondent No. 1 also filed counter-affidavit dated 1-5-2012 accompanied by written submissions of respondent No. 1. The respondent No. 1 appears to have also placed on record a copy of his communication dated 1-12-2011 asking the petitioner-University to cancel the order of suspension, particularly in view of the provisions contained under Clause 18(b) of the Ordinance 172. The reply-affidavit dated 30-11-2011 is opposed by the petitioners by filing affidavit dated 16-10-2011 and in turn, the respondent No. 1 has filed affidavit dated 17-1-2012.

5. Rival Contentions:

5.1. Mr. Shelat, learned Senior Counsel for the petitioners, has submitted that the impugned order is unsustainable in law. He submitted that the learned Tribunal erred in not appreciating and holding that the joint meeting of the Executive Council and Academic Council is permissible in light of the provisions under the Gujarat University Act, 1949 (hereinafter referred to as "the Act") hence, it was legal and proper to convene joint meeting of the said Councils. He also submitted that the learned Tribunal also erred in not appreciating and holding that the delegation of Vice-Chancellor's power to a dean, i.e. respondent No. 3 herein, was legal and also permissible under the provisions of the Act.

5.2. Mr. Shelat, learned Senior Counsel, for the petitioners also submitted that the order placing respondent No. 1 under suspension is also legal as well as justified and in consonance with relevant and applicable provisions under the Act, and the learned Tribunal has erred in quashing the said order. He also contended that the learned Tribunal has erred in referring to and relying upon two previous orders passed by the learned Tribunal and the said two orders could not have been treated as precedent, more particularly when the said matters are under consideration by the High Court. He also submitted that the Resolution dated 28-5-2011 records and reflects the view/opinion of the Executive Council and Academic Council.

5.3. Mr. Shelat, learned Senior Counsel, further submitted that the Tribunal is not right in law in holding that the Resolution dated 28-5-2011 passed at the joint meeting of the Academic Council and Executive Council is not permissible in law and the Tribunal is also not right in holding that there is no provision for joint meeting under the provisions of the Gujarat University Act.

5.4. Mr. Shelat, learned Senior Counsel, also submitted that Sec. 20 prescribes "power and duties of the Executive Council, which include power to appoint academic, administrative and other staff of the University, fix their emolument and define their duties and conditions of service and to take disciplinary action".

5.5. It is further contended by the petitioner University that the order of suspension is neither an order of dismissal nor of removal from service, but it is a protective action taken by the University pending departmental inquiry and the

employee under suspension continues in service subject to payment of suspension allowances.

5.6. Mr. Shelat, learned Senior Counsel, submitted that the Vice-Chancellor acted within his authority in convening the joint meeting so as to acquaint the members of Academic Council and seek their views about the alleged delinquency of respondent No. 1. The said action by the Vice-Chancellor cannot be termed as unauthorized or in breach of any provisions of the Act and that if the recommendations of the Academic Council are required to be taken into account before taking any action, then, no fault can be found in convening the joint meeting of the Academic Council and Executive Council. The learned Tribunal has passed the order without considering that the respondent No. 1 being professor at the department of the petitioner-University, the Academic Council would be concerned when action is taken or sought to be taken against an Academic officer of the University, hence, the order is rendered unsustainable. Mr. Shelat, learned Senior Counsel, further contended that even otherwise, no prejudice is caused to the respondent on account of joint meeting of Academic Council and Executive Council. With reference to the observations and findings of the learned Tribunal that there is no order of suspension, Mr. Shelat, learned Senior Counsel, submitted that the Resolution dated 28-5-2011 has to be read in the context of convening meeting regarding alleged misconduct committed by the respondent No. 1 because the resolution records that the respondent No. 1 should be suspended and an Inquiry Committee should be appointed. It is contended that in view of the said resolution, findings by the learned Tribunal are erroneous and unjustified. He also contended that the resolution of Executive Council cannot be construed and interpreted as if it is a legislative measure. Mr. Shelat, learned Senior Counsel, has submitted that the provision under Ordinance 172(18)(b) does not apply to University teacher, hence, the reliance placed on said provision is misconceived. With reference to nomination of Dr. B.V. Patel, Mr. Shelat, learned Senior Counsel, submitted that said Shri Patel was not delegated the power of Executive Council, but since allegations were raised against Vice-Chancellor and In-charge Registrar, the Executive Council considered it appropriate and necessary to nominate Shri B.V. Patel to assist the Inquiry Committee and to enter into communication on behalf of the Executive Council.

6. Per contra, Mr. Shalin Mehta, learned Counsel, for respondent No. 1 submitted that there is no provision in the Gujarat University Act, 1949 authorising a joint meeting of the Academic Council and the Executive Council for suspending a University teacher. He relied on the provision under Secs. 11(5) and 20(1)(xxix) which read thus:

11(5) The Vice-Chancellor shall give effect to the orders of the Executive Council regarding the appointment, dismissal, suspension and punishment of the persons in the service of the University or teachers of the University or regarding the recognition or withdrawal of the recognition of any such teacher and shall

exercise general control over the affairs of the University. He shall be responsible for the discipline of the University in accordance with this Act, the Statutes and Ordinances.

20.(1) Subject to such conditions as may be prescribed by or under the provisions of this Act, the Executive Council shall exercise the following powers and perform the following duties, namely:

(xxix) to appoint academic, administrative and other staff of the University, fix their emoluments, and define their duties and conditions of service and to take disciplinary action against them;

6.1. He further submitted that the power to suspend lies with the Executive Council but is to be exercised only upon the recommendation made by the Academic Council, however, in present case, the decision to suspend the respondent No. 1 was taken by the Academic Council and the Executive Council in a joint meeting. He also contended that it is only when the Academic Council recommends suspension that the role of the Executive Council comes into the picture, and that therefore, the suspension cannot be recommended by a joint session of the Academic Council and the Executive Council. Mr. Mehta, learned Counsel, claimed that in the joint meeting of the Academic Council and the Executive Council, the members of the Executive Council were able to influence the members of the Academic Council into recommending suspension of respondent No. 1 which amounts to breach of Sec. 11(5) read with Secs. 20(1) (xxix) and (3) of the Act. He also claimed that the said course of action caused serious prejudice to respondent No. 1 because in all probability members of the Academic Council would not have recommended measure of suspension. Mr. Mehta, learned Counsel for the respondent No. 1 contended that the Resolution dated 28-5-2011 passed in the joint meeting of Academic Council and the Executive Council did not resolve to suspend respondent No. 1 and that it merely resolved to constitute a fact-finding committee of three persons. The fact-finding committee gave its report only on 15-6-2011, and therefore, respondent No. 1 could not have been suspended pending such report. Mr. Mehta further submitted that the respondent No. 1 was suspended w.e.f. 31-5-2011 on a complete misreading, misinterpretation and misconstruction of the Resolution dated 28-5-2011. He also contended that the resolution passed in the meeting of 11-12-2011 by the Executive Council resolving to continue the respondent under suspension amounts to contempt. Without prejudice to the said contention, Mr. Mehta further contended that the action of continuing the respondent No. 1 under suspension beyond six months of 31-5-2011 is contrary to Ordinance 172, clause 18(b), which reads as under:

18. Suspension:

(b)(i) During the first three months of the period of suspension, the suspended teacher shall be entitled to receive 50% of the basic salary plus allowances taken together other than personal allowances, if any.

(ii) During three to six months of the period of suspension, the suspended teacher shall be entitled to receive 75% of the basic salary plus allowances taken together other than personal allowance, if any.

(iii) Where the period of suspension exceeds six months, the suspension shall be treated as cancelled and the teacher concerned shall be reinstated in his position and shall be paid the balance salary of the period under suspension.

6.2. Mr. Mehta submitted that the contention that the said Ordinance does not apply to a University teacher is misconceived and contrary to the provision and that even if it is assumed that Ordinance 172, Clause 18(b) does not apply to respondent No. 1 who is a University teacher, there is no power of suspension in any other provision of the Act or Statutes or Ordinances applicable to Gujarat University.

7. So as to support their respective submissions, the learned Counsel for the petitioner and the respondent No. 1 have relied on below-mentioned decisions:

1. Chanan Singh Vs. Registrar, Co-op. Societies, Punjab and Others, .
2. The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers" Union, .
3. V.P. Gidroniya Vs. The State of Madhya Pradesh and Another, .
4. T. Cajee Vs. U. Jormanik Siem and Another, .

8. Since, the petitioner has brought under challenge order passed by the learned Tribunal in Application No. 46 of 2011 wherein the respondent No. 1 had challenged the communication dated 31-5-2011 and the Resolution dated 28-5-2011, the proceedings of the meeting and the charge-sheet.

In the impugned decision the learned Tribunal has held that the Vice-Chancellor does not have power to convene joint meeting of the two Councils and the meeting dated 28-5-2011 was unauthorized, which could not have passed any resolution affecting service conditions of the respondent No. 1 or his recognition as University teacher.

9. Relevant Provisions:-

9.1. So as to consider the rival contentions and the impugned order of the learned Tribunal, it is necessary to take into account the relevant provisions under the Gujarat University Act, 1949 and the Statutes/Organizations framed by the University.

9.2. According to Sec. 2(12) "teachers" means professors, readers, lecturers and such other persons imparting instruction in the University, an affiliated college or recognized/approved institutions and according to Sec. 2(14) "University" means Gujarat University constituted under the Act. The University is constituted as a body corporate and comprise, inter alia, the Chancellor, Vice-Chancellor, Pro-Vice-Chancellor, the Members of the Court, the Executive Council, Academic Council

and all persons who may become such officers or members. The powers of the University are prescribed under Sec. 4 of the Act. The terms Statutes, Ordinances, Regulations and Rules are defined under Sec. 2(A) so as to mean Statutes, Ordinances, Regulations and Rules made under the Act.

9.3. Section 8 of the Act prescribes who shall be the "officers" of the University. The said Section read thus:

8. The following shall be the officers of the University, namely:-

(i) The Chancellor,

(ii) The Vice-Chancellor,

(iii) The [Pro-Vice-Chancellor],

(iv) The Deans of Faculties,

(v) The Registrar,

(v-a) [The University Librarian, and],

(vi) Such other officers in the service of the University as may be declared by the Statutes to be officers of the University.

9.4. According to Sec. 11(1), the Vice-Chancellor shall be the principal Executive and Academic Officer of the University. The said sub-sec. (1) of Sec. 11 also provides that in absence of the Chancellor, the Vice-Chancellor shall preside at the meetings of the Court and convocation of the University and he shall be ex-officio member and Chairman of the Executive Council and Academic Council. The said Section reads thus:

11. (1) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall, in the absence of the Chancellor, preside at meetings of the (Court) and any convocation of the University. He shall be ex-officio member and the Chairman of the (Executive Council) and of the Academic Council. He shall be present, with the right to speak, at any meetings of any other authority or body of the University, but shall not be entitled to vote thereat unless he is a member of that authority or body.

9.5. So far as the issue on hand is concerned, sub-sec. (2) of Sec. 11 is also relevant. The said sub-sec. (2) read thus:

(2) The Vice-Chancellor shall have power to convene meetings of the Court, the (Executive Council) and the Academic Council. He may delegate this power to any other officer of the University.

Thus, the power to convene the meetings of the Court, Executive Council and Academic Council is conferred on the Vice-Chancellor and the power conferred on him by sub-sec. (2) of Sec. 11 can be delegated by him to any other officer (i.e. the officers who are mentioned in Sec. 8 of the Act) of the University.

9.6. Sub-sections (4)(a) and (4)(b) of Sec. 11 are also relevant. The said provisions read thus:

(4) (a) In any emergency which in the opinion of the Vice-Chancellor requires that immediate action should be taken, he shall take such action as he deems necessary and shall at the earliest opportunity thereafter furnish information regarding his action to such officer, authority or body as would have in the ordinary course dealt with the matter.

(b) When action taken by the Vice-Chancellor under this sub-section affects any person in the service of the University such person shall be entitled to prefer an appeal through the said officer, authority or body to the (Executive Council) within fifteen days from the date on which such action is communicated to him.

Sub-section (4) of Sec. 11 is the emergency clause and clause (a) of sub-sec. (4) allows the Vice-Chancellor to take such action as he thinks necessary if any emergency so requires, but it also obliges the Vice-Chancellor to immediately thereafter furnish the information regarding the action to the concerned officer or authority or body who would ordinarily deal with such matter.

Clause (b) of sub-sec. (4) of Sec. 11 provides that if such action by the Vice-Chancellor affects any person in service of the University, then he can prefer appeal to the Executive Council.

9.7. Sub-section (5) of Sec. 11 obliges the Vice-Chancellor to give effect to the orders of the Executive Council. The said sub-sec. (5) read thus:

(5) The Vice-Chancellor shall give effect to the orders of the (Executive Council) regarding the appointment, dismissal, suspension and punishment of the persons in the service of the University or teachers of the University or regarding the recognition or withdrawal of the recognition of any such teacher and shall exercise general control over the affairs of the University. He shall be responsible for the discipline of the University in accordance with this Act, the Statutes and Ordinances.

Thus, it is the duty of the Vice-Chancellor to implement and execute the decisions and orders of the Executive Council.

9.8. Section 15 prescribes the authorities of the University. The Executive Council and the Academic Council are two out of 11 authorities of the University. So far as Executive Council is concerned, relevant provisions related to the constitution of Executive Council are to be found under Sec. 19 of the Act.

9.9. According to Sec. 19(1)(i), the Vice-Chancellor is ex-officio Chairman of Executive Council. The Pro-Vice-Chancellor, Director of Higher Education, Director of Technical Education, Director of Health and Medical Services, Dean of a Faculty nominated by the Vice-Chancellor and other members from amongst Faculty, University department, affiliated colleges, etc. are other members of Executive Council. The relevant provisions under said Sec. 19 read thus:

19(1) The Executive Council shall consist of the following member, namely:--

(i) The Vice-Chancellor, Ex-Officio, Chairman;

(ii) The Pro-Vice-Chancellor, if any;

(iii) xxx xxx xxx

(iiia) xxx xxx xxx

(iiib) xxx xxx xxx

(iv) to (ix) xxx xxx xxx

(x) Two members of the Academic Council who are teachers elected by the Academic Council from amongst the members of the Court;

(xi) xxx xxx xxx

(xia) xxx xxx xxx

(xii) xxx xxx xxx

Provided that

(2) xxx xxx xxx

9.10. The Executive Council can exercise such powers and shall perform such duties as are prescribed under clause (i) to (xliii) of sub-sec. (1) of Sec. 20. For present purpose, the relevant provisions are the provisions under clause (xxix) and clause (xxx) of sub-sec. (1) of Sec. 20 of the Act. The said provisions read thus:

20. (1) Subject to such conditions as may be prescribed by or under the provisions of this Act, the Executive Council shall exercise the following powers and perform the following duties, namely:-

(xxix) to appoint academic, administrative and other staff of the University, fix their emoluments, and define their duties and conditions of service and to take disciplinary action against them:

(xxx) to recognise a member of the staff of an affiliated college or recognised or approved institution as a professor, reader, lecturer or teacher of the University and to withdraw such recognition.

9.11. According to clause (xxix) of Sec. 20(1), the power to appoint academic, administrative and other staff of the University and the power to define their conditions of service and to take disciplinary action rests with the Executive Council.

9.12. Likewise, the authority to recognise a member of staff as professor or reader or lecturer or teacher and to withdraw such recognition is also conferred on the Executive Council by clause (xxx) of Sec. 20(1) of the Act.

9.13. So far as Academic Council is concerned, the provision prescribing its composition is under Sec. 21 of the Act. Sub-section (1) of Sec. 21 reads thus:

21. (1) The Academic Council shall consist of the following members, namely:-

(i) The Vice-Chancellor, ex-officio, Chairman;

(ii) The Pro-Vice-Chancellor,

(iii) The Deans of Faculties,

(iv) to (vii) xxx xxx xxx

Provided that xxx xxx xxx

According to the said provision, the Vice-Chancellor is ex-officio Chairman of Academic Council as well. The Pro-Vice-Chancellor, the Deans of Faculties and other members mentioned under clause (iv) to clause (vii) of Sec. 21(1) are the members of Academic Council.

9.14. Sub-section (1) of Sec. 22 provides that the Academic Council shall have control and general regulation of, and it shall be responsible for, maintenance of standards of teaching and examinations. Sub-clause (i) to (xviii) of sub-sec. (2) of Sec. 22 prescribe the powers which the Academic Council can exercise and the duties which it shall perform. Clause (xvi) prescribes inter alia "to refer any academic matter to the relevant authority or body for consideration".

9.15. At this stage, it is necessary to take into account the provision contained under sub-sec. (3) of Sec. 20. The said provision under Sec. 20(3) read thus:

(3) The powers and duties under clauses (xix) to (xxi), (xxvi) to (xxx), (xxxiii) to (xxxvii), and (xl) of sub-sec. (1) shall not be exercised by the Executive Council except upon the recommendations made by the Academic Council.

9.16. According to said sub-sec. (3), the powers and duties under clauses (xix) to (xxi), (xxvi) to (xxx), (xxxiii) to (xxxvii) and (xl) of sub-sec. (1) of Sec. 20, which include the subjects of "service conditions" and "disciplinary action", cannot be exercised by the Executive Council "except upon the recommendations made by the Academic Council."

9.17. Thus, on conjoint reading of Sec. 20(1)(xxix) and (xxx), Sec. 21 and Sec. 20(3) of the Act, it emerges that the authority to define service conditions of and take any disciplinary action against member of academic staff (e.g. respondent No. 1) and/or authority to withdraw recognition of teacher of University is conferred only on Executive Council, but such action can be commenced and taken only upon recommendation by Academic Council. Meaning thereby, in the first stage, the Academic Council, in its meeting would resolve to make a particular recommendation to the Executive Council and then in second stage the "recommendation" would be formulated/framed and finalised after due deliberations and discussion amongst the members of Academic Council and then such finalised "recommendation" would be forwarded to the Executive Council

and then the Executive Council would, after having received the recommendation, take appropriate and necessary decision and action having regard to and after considering the "recommendation" made by the Academic Council. This appears to be the scheme of Secs. 20(1), 20(3) and 22 of the Act.

9.18. It is relevant to recall and to take into account that by the impugned Resolution dated 28-5-2011, which came to be passed in the joint meeting of Executive Council and Academic Council held on 28-5-2011, it was resolved and decided that, (a) the respondent No. 1 should be placed under suspension with immediate effect; and (b) a "fact-finding committee" comprising three members, (namely, Mr. Narhari Amin, Dr. Mukul Shah and Dr. Pursottam Marvaniya) may be constituted for preliminary examination of the complaints and allegations against the respondent No. 1, who should submit its report; and (c) the recognition of respondent No. 1 as teacher should be cancelled/withdrawn.

9.19. It is specific case of the petitioners, and it is rather an admitted position on part of the petitioners, that the subject-matter of the said decisions/actions fall within the scope of clauses (xxix) and (xxx) of Sec. 20(1) and the said decision and actions have been taken in exercise of powers conferred by virtue of clause (xxix) and (xxx) of Sec. 20(1) of the Act read with sub-sec. (3) of Sec. 20.

9.20. In this view of the matter, i.e. when admittedly the said decisions/actions, are taken in exercise of powers conferred under clause (xxix) and (xxx) of sub-sec. (1) of Sec. 20 read with Sec. 20(3) of the Act, and when the said decisions are said to have been taken during joint meeting of the Executive Council and Academic Council, it becomes relevant and necessary to examine as to whether the Vice-Chancellor has any power conferred by the Act to convene joint meeting of the said two Councils or not and whether joint meeting for such purpose could have been held and whether said decisions and actions could have been taken in and by joint meeting of two Councils.

10. Re: Joint Meeting:-

10.1. The Vice-Chancellor's decision and action of convening and holding joint meeting of the said two Councils has given rise to one of the major contentions by respondent viz. the Vice-chancellor does not have any authority in law to convene joint meeting of the said two Councils of the University and the business conducted during the joint meeting i.e. the proceedings and the decisions taken and resolutions passed in the joint meeting are unauthorised, incompetent and bad in law.

10.2. If the decision to convene joint meeting and the joint meeting of the said two Councils are found to be unauthorised, then, all consequential and subsequent actions viz. the entire proceedings of said joint meeting and the business transacted in and by the said meeting including the resolutions passed during the meeting would also be unauthorised, unconstitutional and bad in law and they would fall.

11. At first blush, the contention of the petitioners that in view of conjoint reading of Secs. 11(2)(a) and (b), 11(4), 11(5), 19(1), 21(1) and 20(3) the Vice-Chancellor can convene joint meetings of Executive Council and Academic Council sounds interesting, however, on closer scrutiny of the aforesaid provisions, it appears that the petitioners are reading certain power or authority in favour of the Vice-Chancellor, which is actually not conferred on him.

12. It further appears that the petitioners are also assuming certain aspects and eventualities which are not provided for by the Legislature and are not contemplated by the existing provisions under the Act or University's Statutes and Ordinances.

13. On consideration of the relevant provisions under the Act and University's statutes and ordinances, it appears that the Legislature has not conferred such power on the Vice-Chancellor and/or on the two Councils to hold, or to meet in, joint meeting and/or to take any decision and pass any resolution in joint meeting in connection with the matters mentioned in clauses referred to in Sec. 20(3) of the Act.

13.1. Sub-section (2) of Sec. 11 confers power on the Vice-Chancellor to convene meetings of (a) the Court; (b) the Executive Council; and (c) the Academic Council. However, the said provision does not expressly provide for, or contemplate, joint meeting of Academic and Executive Councils.

13.2. On the contrary, conjoint reading of relevant provisions makes it clear that the Legislature has made provision for express separation of respective powers and duties of the three authorities of the University and the provisions also indicate Legislature's intention to maintain separation and independence in functioning of all authorities viz. the Court, the Executive Council and the Academic Council.

13.3. There is nothing in the provisions to suggest that joint meeting of the two Councils is provided for or contemplated under the Act - particularly in connection with the subjects falling within purview of the clauses referred to in Sec. 20(3) and/or to suggest that Legislature has conferred power on Vice-Chancellor to convene joint meeting of the said two Councils in connection with the subjects mentioned in the clauses covered under Sec. 20(3) of the Act.

13.4. The provisions clarify that the Executive Council and Academic Council have to act separately and independently, more particularly in connection with the matters related to clauses referred to in Sec. 20(3) which include clause (xxix) and clause (xxx).

13.5. If the Legislature had intended that joint meetings/sessions of the said two Councils can be convened and if the Legislature had intended to confer such power on the Vice-Chancellor then, the Legislature would have expressly made such provision and sub-sec. (2) of Sec. 11 would have been framed accordingly or there would be clear indication to such effect.

13.6. On consideration of relevant provisions, it comes out that the Legislature has consciously omitted such provision and has consciously not conferred such power on the Vice-Chancellor, more particularly in connection with the matters mentioned in clauses referred to in Sec. 20(3) of the Act; or on the two Councils to meet in joint meeting and to take any joint decision and pass any joint resolution in connection with the matters mentioned in clauses referred to in Sec. 20(3) of the Act.

13.7. The omission is conscious and intentional. The Legislature is assumed to be conscious about the requirements and the Legislature makes provision for all eventualities and requirements. The Legislature cannot be assumed to be oblivious about the omission.

13.8. Actually, on examination of University's Statutes and Ordinances, it emerges that while framing the Statutes and Ordinance, the University also was conscious and aware about this aspect and this position, and that therefore, University also has not made provision, under its ordinance and/or statute, for joint meeting of Academic and Executive Council (particularly in respect of the matters mentioned under Sec. 20(3) of the Act) and under Statutes 79 to 82 and Statutes 91 to 94 the University has prescribed different and separate procedure and requirements, including different quorum for meetings of Academic and Executive Council.

13.9. The provision under Statute 79 to Statute 94 under Chapter III of Statutes of the University provide assistance in explaining and clarifying this aspect. Statute 79, Statute 81 and Statute 82 under Chapter III of the Statutes of the Universities are relevant so far as Executive Council and the procedure prescribed for its meetings are concerned. The said provisions read thus:

Statute 79:

The Executive Council shall meet ordinarily once a month, and at other times when convened by the Vice-Chancellor, or, in his absence by the Pro-Vice-Chancellor, or in the absence of both, by the senior member amongst the members of the Executive Council.

Statute 81:

Eight members shall constitute a quorum for a meeting of the Executive Council and all questions shall be decided by a majority of votes of the members present.

Statute 82:

The Vice-Chancellor, or, in his absence, the Pro-Vice-Chancellor, or in the absence of both, the senior member of the Executive Council shall preside at all meetings of the Executive Council. The Chairman at such meeting, shall have a vote, and in the case of equality of votes, a second or casting vote.

It is provided that the Executive Council shall ordinarily meet once a month and quorum for meeting shall comprise 8 members of Executive Council and in

absence of Vice-Chancellor and Pro-Vice-Chancellor, Senior member of Executive Council shall preside over the meeting of the Executive Council.

13.10. So far as the Academic Council and the procedure prescribed for its meetings are concerned, the relevant provision is made under Statute 91 to Statute 94 under Chapter III of the Statutes of the University. Statutes 91, 93 and 94 are relevant for the purpose on hand. The said provisions read thus:

Statute 91:

For the purpose of election of five representatives of University Professors and Heads of University departments elected by them amongst themselves as members of the Academic Council as required by Sec. 21(a)(iv), the Registrar shall maintain an Electoral Roll of the University Professors and Heads of University departments and the election shall be held in accordance with Statutes 158, 159 and 160.

Statute 93:

The Academic Council will meet ordinarily once in three months and at other time when convened by the Vice-Chancellor, or, in his absence, by the Pro-Vice-Chancellor, or, in the absence of both, by the senior member of the Court on the Academic Council. The Vice-Chancellor, or in his absence the Pro-Vice-Chancellor, or in the absence of both, the senior member of the Court, shall preside at all meetings of the Academic Council.

Statute 94:

Fifteen members shall constitute a quorum for a meeting of the Academic Council and all questions shall be decided by a majority of votes of the members present at a meeting. The Chairman at such meetings shall have a vote, and in the case of an equality of votes, a second or casting vote.

13.11. With reference to Academic Council, it is provided that the meeting of Academic Council shall be held once in three months and in absence of Vice-Chancellor and Pro-Vice-Chancellor, a senior member of the Court (and not a senior member of Executive Council, as in case of Executive Council) shall preside over the meeting and 15 members of the Academic Council shall comprise quorum for meeting of Academic Council.

13.12. Accordingly, at every stage and for all purposes, different and separate requirements and procedure are consciously prescribed in connection with the two Councils and for holding meetings of said two Councils. The said provisions under University's Statutes neither prescribe nor contemplate joint meetings of the Academic Council and Executive Council. Such authority or power in hands of the Vice-Chancellor is not implied also.

14. Besides the aforesaid provisions, the language under Sec. 20(3) is also clear indication of Legislature's intention that the power to hold joint meetings of the said two Councils in connection with the matters mentioned in the clauses

referred under sub-sec. (3) of Sec. 20 of the Act is not conferred on the Vice-Chancellor and exercise of such power is neither prescribed nor permitted and not contemplated. Likewise, joint meeting of the two Councils is also not provided for or contemplated or is rather ruled out in connection with the matters covered under Sec. 20(3) of the Act.

In this view of the matter, the petitioners' contentions on this count can not be accepted.

15. The petitioner's contention and defence with reference to the joint meeting of the two Councils and the Vice-Chancellor's power to convene such joint meeting of the two Councils overlook the real substance of, and primary requirement under, sub-sec. (3) of Sec. 20 of the Act.

15.1. The said provision under Sec. 20(3) of the Act prescribes that the powers or duties of the Executive Council under clause (xix) to (xxi); (xxvi) to (xxx), (xxxiii) to (xxxvii) and (xl) shall not be exercised by the Executive Council except upon "recommendation" by the Academic Council.

15.2. Hence, "recommendation" by Academic Council is sine qua non for exercising Executive Council's power under clauses mentioned in sub-sec. (3) of Sec. 20 of the Act, more particularly clause (xxix) and clause (xxx) of Sec. 20(3) of the Act.

15.3. In the said sub-sec. (3) of Sec. 20 and in the family of relevant provisions what is vital and material is the word "recommendation" and it is the said term "recommendation" which declares and amplifies the intention of Legislature.

15.4. The Legislature has consciously used the words "upon recommendation made by", which more than emphatically establish the requirement of separate meeting and rule out the possibility or option of joint meeting of two Councils or of convening and holding joint meeting and they also rule out the scope for the contention that joint meeting of the two Councils in connection with the matters covered under clauses mentioned in Sec. 20(3) of the Act is permissible or contemplated and/or that power to convene and hold joint meetings in connection with matters under Sec. 20(3) of the Act vests in or is conferred on the Vice-Chancellor.

15.5. The provision requiring the Academic Council to make "recommendation" postulates and requires that the Academic Council must independently and without participation of or without consultation with or without influence of any other body (i.e. the Court of the Senate or even the Executive Council) consider, and deliberate on, any issue in its separate meeting (which should be convened and conducted in accordance with the provisions contained under Statutes 91, 93 and 94) and after independent, unbiased and uninfluenced deliberations make "recommendation" to the Executive Council.

15.6. When a body or a person is conferred with the right to make "recommendation" it would follow that "recommendation" can be and should be

made after independently considering and examining particular issue with reference to which the body or the person proposes to (or is required to) make any recommendation and the said process i.e. the process of formulating and finalising "recommendation" should not be undertaken jointly and/or in consultation with or as a result of/after discussions with the body or the person who has to receive such recommendation (i.e. to whom such recommendation is to be made).

Thus, the recommendation should not only be made without any outside influence and without any bias but it should necessarily precede the decision i.e. the "recommendation" shall be made before the body (whose decision or action are made subject to or dependent upon recommendation of other body or person or authority) begins its decision-making process.

15.7. In the event of joint meeting of the two Councils, what would ensue would be merely "joint discussion" and "joint decision" but not independent "recommendation" (uninfluenced by presence and views of those who are not members of Academic Council) of Academic Council. So as to avoid such eventuality and to guard against such anomalous situation, the Legislature advisedly did not provide for joint meeting of the said two bodies/authorities.

15.8. By selection and use of the word "recommendation", the Legislature made its intention clear that it has advisedly not made any provision for joint meeting of the said two authorities, more particularly in connection with the subjects covered under the clauses of Sec. 20(1) mentioned in Sec. 20(3) of the Act.

15.9. Therefore, when the Legislature has prescribed the requirement of "recommendation" in connection with the matters covered under the clauses mentioned in Sec. 20(3) then, it cannot be made during the joint meeting of the body or authority who is authorised to make recommendation and the body or authority who is obliged to receive the recommendation.

15.10. The recommendation by the Academic Council should precede the decision making process by the Executive Council so that the Executive Council can take any decision or action against any member of Academic staff of the University (regarding any matter falling under the said two clauses) after considering the recommendation by the Academic Council.

15.11. If joint meeting of the body authorised to make recommendation and the body who has to receive the recommendation are held, then, the purity and transparency of making "recommendation" cannot be maintained.

15.12. A joint meeting of Executive Council and Academic Council would frustrate the requirement of the provision contained under sub-sec. (3) of Sec. 20 of the Act and its real object would be lost and destructed.

16. The object of the said provision under sub-sec. (3) of Sec. 20 is to ensure independent deliberation by the two bodies and also to ensure that any scope of bias on part of either Academic Council or on part of Executive Council against

any member of Academic staff of the University is completely eliminated. The other object of Legislature behind separating the process of taking decision about action against any member of Academic staff of University under clause (xxix) and/or (xxx) of Sec. 20 of the Act from the meeting of Academic Council appears to ensure that the process of discussion and deliberation in the process of making recommendation by Academic Council is not influenced or affected, in any manner, by the views and considerations of the Executive Council.

17. In present case, even according to the petitioners, the action against the respondent No. 1 is initiated in connection with matters related to the subject within purview of clause (xxix) and clause (xxx) of sub-sec. (1) of Sec. 20 and the said action is taken by the Executive Council in exercise of the power vested in it by virtue of said clause (xxix) and clause (xxx) of Sec. 20 read with sub-sec. (3) of Sec. 20 of the Act. Thus, the said action could not have been initiated and the powers under clauses (xxix) and/or (xxx) could not have been exercised by Executive Council without "recommendation" of the Academic Council.

18. It is trite law that when a particular thing is required to be done and performed in particular and prescribed manner, then it should be done and performed in only that manner and not in any other manner otherwise it should not be done at all. It is relevant to note that the Hon''ble Apex Court in case of Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, , has observed in Para 40 of the said decision that:

40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of Statute. They must act within the four corners thereof.

(Emphasis supplied)

At this stage, reference can also be made to the decision by Hon''ble Apex Court in case of Ram Phal Kundu Vs. Kamal Sharma, , wherein the Hon''ble Apex Court has observed in Para 12 that:

12. Paras 13 and 13A of the Symbols Order lay down the mechanism for ascertaining when a candidate shall be deemed to be set up by a political party and also the procedure for substitution of a candidate. The opening part of Para 13 says in unequivocal terms that for the purpose of an election for any Parliamentary or Assembly Constituency a candidate shall be deemed to be set up by a political party if and only if the conditions mentioned in sub-paragraphs (a) to (e) are satisfied. Para 13A lays down the procedure for substitution of a candidate and also the requirements of a revised notice in Form B. The second proviso to this paragraph takes care of a situation where more than one notice in Form B is received by the Returning Officer and the political party fails to indicate in such notices in Form B that the earlier notice or notices have been rescinded. Thus, Paras 13 and 13A are exhaustive and lay down the complete procedure for

determining whether a candidate has been set up by a political party. The Rule laid down in *Taylor v. Taylor*, 1876 (1) Ch. D 426 that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden was adopted for the first time in India by the Judicial Committee of the Privy Council in AIR 1936 253 (Privy Council). The question for consideration was whether the oral evidence of a Magistrate regarding the confession made by an accused, which had not been recorded in accordance with the statutory provisions viz. Sec. 164, Cr.P.C. would be admissible. The First Class Magistrate made rough notes of the confessional statements of the accused which he made on the spot, and thereafter, he prepared a memo from the rough notes which was put in evidence. The Magistrate also gave oral evidence of the confession made to him by the accused. The procedure of recording confession in accordance with Sec. 164, Cr.P.C. had not been followed. It was held that Sec. 164, Cr.P.C. having made specific provision for recording of the confession, oral evidence of the Magistrate and the memorandum made by him could not be taken into consideration and had to be rejected. In *State of Uttar Pradesh Vs. Singhara Singh and Others*, a Second Class, Magistrate not specially empowered, had recorded confessional statement of the accused under Sec. 164, Cr.P.C. The said confession being inadmissible, the prosecution sought to prove the same by the oral evidence of the Magistrate, who deposed about the statement given by the accused. Relying upon the rule laid down in *Taylor v. Taylor*, 1876 (1) Ch. D 426 and AIR 1936 253 (Privy Council) it was held that Sec. 164, Cr.P.C. which conferred on a Magistrate the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him. This principle has been approved by this Court in a series of decisions and the latest being by a Constitution Bench in *Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others*, (Para 27). Applying the said principle, we are of the opinion that the question as to who shall be deemed to have been set up by a political party has to be determined strictly in accordance with Paras 13 and 13A of the Symbols Order and extrinsic evidence cannot be looked into for this purpose unless it is pleaded that the signature of the authorised person on Form B had been obtained from him under threat or by playing fraud upon him. Where signature is obtained under threat or by playing fraud, it will be a nullity in the eyes of law and the document would be void.

(Emphasis supplied)

Similarly, in the decision in case of *Union of India (UOI) and Another Vs. Shardinu*, the Hon'ble Apex Court has observed in Para 20 that:

20. As against this, learned Senior Counsel for the respondent, Mr. Gupta has strenuously urged before us that in case of statutory appointment there is no scope to cut short except to terminate the services of the incumbent in the manner provided under the Act. In this connection, our attention was invited to a

decision of this Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, wherein the Constitution Bench held that the termination of service of an incumbent by the Corporation created by Statute without complying with the regulations framed by the Corporation cannot be made. The reason was that the termination contravened the provisions contained in the Regulations. In short, when the appointment is made, the service conditions are laid down. The termination of such appointment could only be made in the manner provided in the Statute and by no other way. Once the regulations have been framed and detailed procedure laid down therein, then in that case if the services of an incumbent are required to be terminated then that can only be done in the manner provided and none else. Similar view has been taken in the case of State of Kerala Vs. Mathai Verghese and Others, . Therefore, in this background, we are of opinion that the submission of learned Additional Solicitor General cannot be sustained.

(Emphasis supplied)

Even with reference to the procedure for recording a confession laid down in the Code of Criminal Procedure, the Hon"ble Apex Court in case of State of Uttar Pradesh Vs. Singhara Singh and Others, , more particularly in Para 8 of the said decision observed thus:

8.Its result is that if a Statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Sec. 164....

(Emphasis supplied)

18.1. In this view of the matter, power which is not conferred by law cannot be read into the said provisions, particularly in sub-sec. (2) of Sec. 11 more so, in face of the object of and mandate of sub-sec. (3) of Sec. 20 of the Act. In present case provisions under Secs. 11(2), 19, 20(1), 20(3) and 22 read with Statutes 79, 81, 82, 91, 93 and 94 prescribe the procedure for holding meetings of the two Councils and for taking action against member of Academic staff, particularly in the matters covered under clauses mentioned in Sec. 20(3), and that therefore, the action could not have been taken in any other manner or by following any other procedure.

19. In view of the forgoing discussion and reasons, the petitioners" contention and submission that joint meeting of the two Councils can be held and/or that the Vice-Chancellor has power and authority in law to convene and conduct joint meeting/session of the said two Councils in connection with the matters covered

under clauses mentioned in Sec. 20(3) of the Act, is not sustainable. The relevant provisions do not admit such possibility or eventuality. Therefore, the said contention cannot be accepted.

20. The above-referred provisions and the scheme under the Act and the Statutes and Ordinance bring out and clarify that the Act does not prescribe or contemplate joint meeting of Academic and Executive Councils and any power to convene joint meeting of said two authorities of the University is not conferred on Vice-Chancellor or on any officer of University. Thus, it follows that the joint meeting convened and held by Vice-Chancellor on 28-5-2011 was unauthorised and also that the Vice-Chancellor acted (in convening joint meeting of the two Councils) without authority in law.

20.1. Therefore, as a corollary, it would also follow that the joint meeting of the two Councils and the proceedings of the said meeting are unauthorised and the business conducted in and by the said joint meeting, including the resolutions passed during the said meeting, do not have force of law and they could not have been and/or cannot be enforced or acted upon and they are not sustainable. Consequently, the resolution passed in the joint meeting held on 28-5-2011 and the actions taken pursuant to and on the strength of the resolution passed during said meeting held on 28-5-2011 are without force of law and without authority in law and the challenge against the learned Tribunal's decision whereby the resolution and the actions have been, though for different reasons, but rightly set aside, does not deserve to be and cannot be accepted and the said decision, to that extent, does not deserve to be disturbed.

21. The petitioners have also defended the action of convening and holding joint meeting of the two Councils on the ground that any prejudice is not caused to the respondent No. 1 on account of the joint meeting of the two Councils.

21.1. Actually, when the proceedings, decision and action are found to be without authority in law, the said objection pales into insignificance. However, on this count, it is necessary to note that when statutory body is required to make unbiased recommendation to another statutory body, then, not only such recommendation should be free of bias and influence of any nature and in any form, but it should also appear to be unbiased and uninfluenced.

21.2. Besides this, sub-sec. (3) of Sec. 20 of the Act confers a right on member of Academic staff that the Academic Council shall independently consider as to whether recommendation should be made to Executive Council or not and if it should be made then what should be the recommendation.

21.3. The said Section provides for two-tier-consideration of an issue i.e. consideration at two stages and by two authorities/bodies (Academic and Executive Councils). This way the Legislature has provided protection to member of Academic staff in connection with his/her service conditions and he/she is assured that the two Councils shall independently consider any issue related to service conditions of any member of Academic staff.

21.4. This is a substantial right conferred by the Act and cannot be diluted by the Vice-Chancellor.

21.5. A joint meeting would compromise the said provision and protection under sub-sec. (3) of Sec. 20 of the Act and the right to expect and receive independent consideration of an issue by two Councils would stand diluted. Denial of such opportunity and right would amount to prejudice.

21.6. In present case, in view of the fact that the impugned resolution is passed and impugned decision and actions have been taken in joint meeting of the two Councils, the respondent No. 1 has reason to believe that the view of the Academic Council or its agreement could have been influenced by and could have been biased on account of presence of members of Executive Council.

21.7. Therefore, the contention that any prejudice is not caused to the respondent No. 1, cannot be accepted.

22. When the Court comes to the conclusion that the Vice-Chancellor's decision and action of convening and holding joint meeting of the Executive Council and Academic Council was unauthorised and contrary to relevant provisions since the provisions under the Act or University's Statutes and Ordinance do not provide for, or contemplate, joint meeting of the said two authorities/bodies, then, the said meeting and the proceedings of the said meeting as well as the business conducted during the said joint meeting including the resolutions passed during the said joint meeting would fall and they are rendered unsustainable, unauthorised and incompetent and the actions taken pursuant to or on the basis and on strength of or in furtherance of such decisions/resolution, i.e. placing the respondent under suspension and withdrawing the recognition as University teacher would also fall and cannot survive, and that therefore, the petitioner's contentions in support and defence of the decision and action of convening joint meeting and in support and defence of the resolution and the aforesaid actions taken pursuant to the resolution passed in such meeting cannot be and are not accepted. The petition, on that count and to that extent, fails and is not accepted.

22.1. In that event, it is, as such, not necessary to examine the petitioner's case against the learned Tribunal's findings as regards the other contentions or objections that, (a) in view of the provisions contained under Clause 18 of Ordinance 172, the continuation of suspension beyond period of 6 months is unjustified and unauthorised as well as the contention that (b) the power of Registrar could not have been delegated to the Dean of Science Faculty and the communication by respondent No. 4 and the objection that (c) withdrawal of recognition as University teacher, are therefore, unauthorised; because when the joint meeting is held to be unauthorised, the said aspects would automatically fall and would not survive. However, despite its decision regarding the meeting the learned Tribunal pronounced its decision as regards said aspects as well and the said part of learned Tribunal's decision is challenged by the petitioners, therefore, it is necessary to briefly deal with the said aspects.

23. The respondent No. 1 raised objection against the delegation of Registrar's power to a Dean claiming, inter alia, that the order dated 31-5-2011 placing the respondent No. 1 under suspension was conveyed in the first instance, by Registrar in-charge i.e. the respondent No. 3 and then it was forwarded by respondent No. 4 i.e. Dean of Science Faculty vide order dated 31-5-2011 under his signature, however, since only Registrar of the University can conduct official correspondence of Executive Council, the actions by the respondent No. 4 are unauthorised in view of clause (c) of Statute 133.

23.1. On this count, it is noticed from the record that in view of the allegations by the respondent No. 1 against the Vice-Chancellor as well as against the Registrar, it was resolved considering it necessary and appropriate to keep the Vice-Chancellor and the Registrar out of the entire process and proceedings, and that therefore, the authority to take necessary actions and steps should be assigned to some other officer. Hence, the Executive Council itself assigned the said function to the Dean of Faculty of Science.

23.2. Thus, when, for reasons recorded by the Executive Council, and more particularly out of necessity, if the responsibility of taking necessary steps and actions in connection with the resolution/decision of the Executive Council is assigned by the Executive Council to the Dean of Science Faculty then merely because the resolution and the decision of the Executive Council was forwarded and conveyed to the respondent by Dean of Science Faculty under his signature, the said action cannot be said to be unauthorised and it would not vitiate and invalidate the resolution.

23.3. On this count, the submission of the petitioners that the conclusion and decision of the learned Tribunal holding that the respondent No. 4 could not have communicated and forwarded the decision and resolution of the Executive Council to the respondent No. 1 as the said power is conferred only on Registrar and there is no provision for delegation of Registrar's power to a Dean of any Faculty, is incorrect, is justified and has to be accepted and the learned Tribunal's decision to that extent cannot be sustained. However, it is clarified that since the meeting in which such decision (i.e. to authorise respondent No. 4 to take necessary actions) was taken and resolution was passed, is found to be unauthorised, entire business transacted in the said meeting would also fall and would not survive. Therefore, the said decision and actions taken on the basis of said decision would, in any case, fall and they would, otherwise also, not survive.

24. Re: Right to suspend:

24.1. So far as the next contention against continued period of suspension of the respondent No. 1 is concerned, it is claimed that in view of the provisions under Ordinance 172, Clause 18(b), his suspension beyond 6 months is contrary to the said provision, and therefore, unauthorised. Per contra, the petitioners have submitted that the provision under Ordinance 172, Clause 18(b) does not apply to the respondent No. 1 inasmuch as the said provision is applicable to the

teachers of affiliated colleges and recognised institutions and not to the teachers of the petitioner-University.

24.2. In response to the said submission, the respondent No. 1 would contend that in that event, there is no provision authorising the petitioner University to place any teacher of University under suspension, and that therefore, suspension of the respondent No. 1 is, from inception, unauthorised and bad in law. The said submission is countered by petitioners with the claim that the University has adopted relevant provisions under Gujarat Civil Services Rules for the said purpose.

24.3. As mentioned earlier, since this Court has reached the conclusion that the action of convening joint meeting of two Councils was unauthorised and incompetent, all actions, decisions, resolutions, the meeting as well as the proceedings of the meeting and the business transacted during and by the said meeting including the impugned resolution and the decision to place the respondent No. 1 under suspension and withdrawing his recognition would also fall as they also do not have force and support of law.

24.4. So far as the issue about the petitioner's power or right to suspend the respondent No. 1 and/or legality of the suspension are concerned, it is relevant to refer to the observations by the Hon'ble Apex Court in the case of *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union*, wherein the Hon'ble Apex Court observed that:

10. The first question, therefore, that falls for consideration is the extent of the power of the employer to suspend an employee under the ordinary law of master and servant. It is now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a Statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the Statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

(Emphasis supplied)

It emerges from the said observation that the power to forbid an employee to work should be available to the employer either by virtue of contract of employment or under the Statute and if the employer suspends an employee, in absence of such power, then, he would be obliged to pay full wages to his employee during the period of suspension.

24.5. The said issue was subsequently considered by the Hon''ble Apex Court in case between T. Cajee Vs. U. Jormanik Siem and Another, wherein the above-referred decision in the case of The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers'' Union, is further explained by the Hon''ble Apex Court with the observations that:

10.But it does not follow from this that the appointment or removal of a chief is a Legislative act or that no appointment or removal can be made without there being first a law to that effect. The High Court also seems to have thought that as there was no provision in the Sixth Schedule in terms of Arts. 73 and 162 of the Constitution, the administrative power of the District Council would not extend to the subject enumerated in Paragraph 3(1), Now Para 2(4) provides that the administration of an autonomous district shall vest in the District Council, and this in our opinion, is comprehensive enough to include all such executive powers as are necessary to be exercised for the purposes of the administration of the district. It is true that where executive power impinges upon the rights of citizens it will have to be backed by an appropriate law; but where executive power is concerned only with the personnel of the administration it is not necessary - even though it may be desirable - that there must be laws, rules or regulations governing the appointment of those who would carry on the administration under the control of the District Council. But from this it does not follow that till the regulations were made or the laws were passed, there could be no appointment or dismissal of the personnel of the administration. In our opinion, the authorities concerned would at all relevant times have the power to appoint or remove administrative personnel under the general power of administration vested in them by the Sixth Schedule. The view, therefore, taken by the High Court that there could be no appointment or removal by the District Council without a law having been first passed in that behalf under Para 3(1)(g) cannot be sustained.

14. It is urged on the basis of these observations that in any case the respondent could not be suspended. Suspension is of two kinds. In the first place, suspension may be as a punishment, but the present is not a case of this kind of suspension; in the second place interim suspension may be made pending inquiry into a case where removal is the result sought. It was this type of interim suspension which was dealt with in the case of The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers'' Union, , and it was pointed out that without an express term in the contract or without some provision of a Statute or the rules there could not be interim suspension in the sense that the master could withhold the wages of the servant. Bui that case did not lay down that the master could not forbid the servant from working while he was inquiring into his conduct with a view to removing him from service. It was specifically said there that if the master does so namely, forbids the servant to work and thus in fact suspends him as an interim measure he will have to pay the wages during the period of interim suspension. These wages or payment for the work done or emolument of the office held could not be withheld in whole or in pan

unless there is power to make an order of interim suspension either in the contract of employment or in the statute or the rules framed thereunder. The effect of that decision is that in the absence of such power the master can pass an order of interim suspension but he will have to pay the servant according to the terms of contract between them. In the present case, the terms and conditions communicated to the respondent do not indicate an express term giving power to the District Council to make an order of interim suspension while inquiring into the conduct of the respondent with a view to his ultimate removal. No Statute or rules framed thereunder have been brought to our notice which authorised interim suspension having the effect of withholding remuneration in whole or in part. In the circumstances, therefore, though an order of interim suspension could be made against the respondent while inquiry into his conduct with a view to his ultimate removal is going on, his remuneration according to the terms and conditions communicated to him cannot be withheld unless there is some statute or rules framed thereunder which would justify the withholding of the whole or part of the remuneration. So far, therefore, as there is no Statute or rule thereunder the remuneration cannot be withheld from the respondent even though an order of interim suspension, in the sense he is told not to do the work of his office, may be made against him. The order of interim suspension, therefore, passed in this case on July 7. 1959, would be valid subject of course to the respondent being paid the full remuneration unless the District Council can legitimately withhold the whole or part of it under some Statute or rules framed thereunder, there being undoubtedly no express contract to that effect in this case.

(Emphasis supplied)

Thus, the right to stop the employee from discharging his duties is not an implied term in ordinary contract between the employer and employee and such power should be available to the employer either under the Statute governing the contract or by way of an express term in the employment contract.

24.6. In case of V.P. Gidroniya Vs. The State of Madhya Pradesh and Another, the Hon''ble Apex Court considered the decisions in case of Management of Hotel Imperial (supra) and in case of T. Cajee, (supra) and explained the right to suspend an employee and consequence of suspending an employee in different situation-circumstances. The Hon''ble Apex Court observed that:

7. The legal position as regards a master''s right to place his servants under suspension is now well settled by the decisions of this Court. In The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers'' Union, , the question whether a master could suspend his servant during the pendency of an enquiry came up for consideration by this Court. Therein this Court observed that it was well settled that under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term in the contract itself or a statutory provision governing

such contract. It was further observed therein that ordinarily in the absence of such a power either in express terms in the contract or under the rules framed under some Statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay the wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the Statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relationship of master and the servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

8. The same view was reiterated by this Court in *T. Cajee Vs. U. Jormanik Siem and Another*, . The rule laid down in the above decisions was followed by this Court in *R.P. Kapur Vs. Union of India (UOI) and Another*, . The law on the subject was exhaustively reviewed in *Balvantray Ratilal Patel Vs. The State of Maharashtra*, . Therein the legal position was stated as thus: The general principle is that an employer can suspend an employee of his pending an enquiry into his misconduct and the only question that can arise in such a suspension will relate to the payment of his wages during the period of such suspension. It is now well settled that the power to suspend, in the sense of a right to forbid a employee to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a Statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such a power either as an express term in the contract or in the rules framed under some Statute would mean that an employer would have no power to suspend an employee of his even if he does so in the sense that he forbids the employee to work, he will have to pay the employee's wages during the period of suspension. Where, however, there is power to suspend either in the contract of employment or in the Statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. It is equally well settled that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even though there is no such term in the contract of employment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no Statute or rule under which, it could be withheld. The distinction between suspending the contract of a service of a servant and suspending him from performing the duties of his office on the basis that the contract is subsisting is important. The suspension in the latter case is always an implied term in every contract of service. When an employee is suspended in this sense, it means that the employer merely issues a direction to him that he should not do the service required of him during a particular period. In other words, the employer is regarded as issuing an order to the employee which because the contract is subsisting, the employee must obey.

(Emphasis supplied)

25. In light of the position explained by the Apex Court, it becomes necessary to ascertain whether there is any provision either in its regulation or under respondent's employment contract which confers power on the University to place the respondent No. 1 under suspension, or not. By virtue of its defence that the provision under Clause 18(b) of Ordinance 172 is not applicable in case of respondent No. 1, the University itself has admitted, which establishes the fact, that under the Statutes or under the Ordinance or under employment contract, there is no provision conferring power on the petitioner-University or its authorities/officers to suspend member of Academic staff of the University. Any provision conferring such power is not shown from the Act or Ordinance or Statute. It is not even the case of the University that such power flows from employment contract of respondent No. 1. However, the petitioner University has taken recourse under resolution adopting the provisions under the Gujarat Civil Services Rules so far as the power to suspend an employee is concerned.

25.1. It is claimed that the University has adopted relevant provisions under the Gujarat Civil Services Rules which confer authority to suspend an employee. The petitioner has not been able to dispute or disprove the said assertion. Therefore, the Court has proceeded on the premise that the relevant provisions related to subject of suspension contained under the Gujarat Civil Services Rules, are adopted by the petitioner-University, and therefore, such powers are available to the petitioner-University.

25.2. In this view of the matter, it would be relevant to take into account the provisions contained under Rule 5 of Part-II of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971, which reads thus:

5. Suspension:

(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered by Government in that behalf may place a Government servant under suspension:

(a) Where a disciplinary proceeding against him is contemplated or is pending:

Provided that, where a Government servant against whom disciplinary proceeding is contemplated is suspended, such suspension shall not be valid unless before the expiry of a period of ninety days from which the Government servant was suspended, disciplinary proceeding is initiated against him:

Provided further that the Government or any other authority empowered by the Government by special or general order may at any time before the expiry of the said period of ninety days and after considering the special circumstances for not initiating disciplinary proceedings, to be recorded in writing extend the period of suspension beyond the period of ninety days without disciplinary proceeding being initiated:

Provided also that such extension of suspension shall not be for a period of ninety days at a time.

(b) Where a case against him in respect of any criminal office.....

Provided that

(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority-

(a) with effect from the date of his detention.....

(b) with effect from the date of his conviction.....

Explanation:- xxx xxx xxx

(2A) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from @ the effective date of suspension. After such review, the competent authority may pass an order either extending or revoking the suspension. The subsequent reviews shall be made before expiry of the extended period of suspension. The extension of suspension shall not be for a period exceeding one hundred and eighty days, at a time.

*(...) an order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule, shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.

+ Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days period in such case will be counted from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is latter.

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

25.3. On plain reading of the said provision, it comes out that powers to suspend an employee pending departmental proceedings or even when such proceedings are contemplated, are conferred on and are available to the employer in view of the said provision. Therefore, when the petitioner-University is said to have adopted the said provision, the said power would also be available to the petitioner-University. The said provision also provides the rate at which the employee under suspension would be paid his salary/suspension allowance during the period he remains under suspension.

25.4. In light of the fact that the petitioner-University has adopted relevant provisions under G.C.S.R., the conclusion of the learned Tribunal that the petitioner-University has no authority to place the respondent No. 1 under suspension cannot be sustained. However, the Court would hasten to add that since the said power has not been exercised in accordance with law i.e. in accordance with the provisions contained under sub-sec. (3) of Sec. 20 read with Sec. 20(1) and clauses (xxix) and (xxx) of Sec. 20(1), the decision and action of placing the respondent No. 1 under suspension is rendered illegal and unauthorised. Therefore, the said decision and action of placing the respondent No. 1 under suspension should fall, not for want of power, but on account of irregular and arbitrary exercise of power, which is impermissible in view of the provisions contained under sub-sec. (3) of Sec. 20 of the Act. Since, the meeting wherein the resolution placing the respondent No. 1 under suspension was unauthorised, the resolutions passed in the meeting and the actions taken on strength of or as result of the resolutions, would, otherwise also, automatically fall and they cannot survive. Thus, the action of placing respondent No. 1 under suspension falls and does not survive. Hence, the petition seeking decision and declaration that the said action may be declared legal cannot be accepted and entertained.

26. The petitioners have also challenged the conclusion by the learned Tribunal that there is no order of suspension. It is claimed by the petitioners that the resolution passed in the joint meeting held on 28-5-2011 is very clear and the Tribunal is in error in holding that any resolution to place respondent No. 1 under suspension was not passed in the said meeting.

26.1. On this count, the learned Tribunal failed to appreciate that it is one thing to contend that joint meeting could not have been convened and such resolution could not have been passed in joint meeting, and another to contend that any resolution to place respondent No. 1 under suspension was not passed in the meeting. The two aspects are distinct. Likewise, it is one thing to contend that the resolution (placing the respondent No. 1 under suspension) in question is not legal but is unauthorised, and another to hold that resolution placing respondent No. 1 under suspension was not passed at all in the said joint meeting.

26.2. Having regard to the text of the resolution passed in the joint meeting held on 28-5-2011, as well as its object and its effect, it cannot be said that any resolution to place the respondent No. 1 under suspension was not passed by the said joint meeting held on 28-5-2011.

26.3. A resolution passed by the Council cannot be construed and interpreted like the provisions under any Statute. Such resolutions have to be examined and understood in view of the purpose of the meeting and the object of the resolution.

From the agenda of the meeting reading with sub-para (4) of Para 3 of resolution, it becomes clear that the decisions covered under clauses (1) to (4) of Para 3 of the resolution, were unanimously taken in the meeting. True, it is that

the said joint meeting itself, and the proceedings of the meeting are, for the foregoing reasons, not sustainable. However, the said illegality cannot lead to conclusion that such resolution was not passed at all but at the same time, the said illegality would lead to the conclusion that the resolution stands vitiated and is rendered unsustainable. Therefore, while the learned Tribunal is right and justified in holding that the petitioner's decision and action of placing the respondent No. 1 under suspension is not legal and just, but the conclusion and observations by the learned Tribunal that any resolution to suspend the respondent No. 1 was not passed at all is contrary to record.

27. Learned Tribunal has, in the impugned order dated 13-10-2011, held that, (a) there is no provision in the Act or Statute or Ordinance conferring powers on the Registrar/In-charge Registrar or Vice-Chancellor to call and hold joint meeting of Executive Council and Academic Council, especially to consider the subject-matter of conditions of service of the University employee or withdrawal of recognition as teacher; and (b) upon reading the contents of the resolution, it does not appear that it was resolved to suspend the applicant (i.e. present respondent No. 1) and that nowhere in the resolution it is stated that "it is resolved to suspend the applicant", and that therefore, the communication dated 31-5-2011 by Dr. B.V. Patel that the applicant is put under suspension, cannot be sustained; and (c) there is no provision in view of which Vice-Chancellor or Registrar can confer or delegate their duty to anyone else, and that therefore, authorisation in favour of Dr. B.V. Patel cannot be sustained.

27.1. The learned Tribunal has, having reached such conclusion, quashed the resolution No. 2 dated 28-5-2011 and the communication dated 31-5-2011 by Dr. B.V. Patel is declared illegal and has directed the Vice-Chancellor, In-charge Registrar and the University to permit the respondent No. 1 to resume his duties.

27.2. As regards the authority to convene and hold joint meeting of Academic Council and Executive Council, more particularly in connection with the matters covered under Clauses mentioned in sub-sec. (3) of Sec. 20, learned Tribunal has, though for different reasons, reached correct conclusion in holding that such power is not conferred on Vice-Chancellor. In light of the relevant provisions under the Act, Statute and Ordinance of the University, it has emerged that the Vice-Chancellor or any other authority does not have any power conferred by the Act to convene joint meeting of the Academic Council and Executive Council in connection with the matters falling within clause of Sec. 20(1) which are mentioned in sub-sec. (3) of Sec. 20. Therefore, the said conclusion and the direction to permit the respondent to resume his duties cannot be faulted and is not disturbed. To that extent, the petition fails and it cannot be accepted and is not accepted. Since, for the foregoing reasons, the joint meeting held on 28-5-2011 is held and declared unauthorised, the proceedings of the meeting and the business transacted in and by the said meeting, including the resolutions passed in joint meeting also become unauthorised. Consequently, the respondent's suspension and withdrawal of the recognition as teacher would also

fall and cannot survive and/or cannot be sustained.

27.3. The observations and findings by the learned Tribunal as regards the authorisation in favour of Dr. B.V. Patel and the observations and conclusion that the resolution No. 2 dated 28-5-2011 does not contain decision to place the respondent No. 1 under suspension are erroneous, however, since the joint meeting itself, wherein the resolution (including the resolution placing the respondent under suspension and the resolution to authorise Dr. B.V. Patel) came to be passed was convened and held without authority in law, the said decisions and actions by the petitioners automatically fall and otherwise also, they could not have been enforced and/or could not have been acted upon and/or cannot be allowed to continue.

In view of the foregoing discussion and for the reasons recorded in present order, the petition fails and is not accepted. The joint meeting held on 28-5-2011, the proceedings of the said joint meeting and the business transacted by and in the said joint meeting, including the resolution in question, are without authority and force of law, incompetent and void. Consequently, the challenge against the learned Tribunal's decision in connection with the actions taken pursuant to and on the strength of the said resolution cannot be accepted and sustained.

In the result, the learned Tribunal's decision against University's decision and action of placing the respondent No. 1 under suspension and withdrawing his recognition as teacher of the University is not disturbed and the petition is not accepted. Accordingly, the petition stands disposed of. Rule is discharged.