

(1980) 04 AHC CK 0047
In the Allahabad High Court
Case No : Special Appeal No. 399 of 1975

P.C.Bagla (Post-Graduate) College, Hathras	APPELLANT
Vs	
Vice-Chancellor, Agra University and Another	RESPONDENT

Date of Decision : 09-04-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh State Universities Act, 1973 — Section 31(2)(c)

Citation : (1980) 04 AHC CK 0047

Hon'ble Judges : Yashoda Nandan, J; M.N.Shukla, J and K.N.Seth, J

Final Decision : Dismissed

Judgement

M. N. Shukla, J.

The question referred for our decision is:

"Whether a probationer is entitled to a hearing before his services are terminated during the period of probation under clause (c) of subsection (2) of Section 31 of the U. P. State Universities Act, 1973.

In a nutshell the facts are that a writ petition was filed by the appellant, namely P.C. Bagla (Post Graduate) College, Hathras, Uttar Pradesh in this Court challenging the orders of the Vice Chancellor, Agra University, Agra dated 1181973 and 15121973 refusing to accord approval to the resolution of the Committee of Management of the College to terminate the services of respondent No. 2, namely, Dr. Krishna Kumari, and directing the College to give work to her and pay her salary. The learned single Judge who dismissed the writ petition was of the view that the Management of the College was under an obligation to afford an opportunity to the respondent No.: before terminating her services. This special appeal was referred against the said order and in the appeal the above question has been referred to a full Bench.

The importunate insistence of law on an opportunity being necessarily vouchsafed to a person adversely affected by the order or action of another

authority has its genesis in the principle of natural justice, *audi alteram partem* (no decision shall be given against a person without affording him a reasonable hearing). It is axiomatic that no person should be punished or visited with evil consequences unless he is given an opportunity of showing cause. But it is well to bear in mind that "Punishment" and "evil consequences" are terms of art and every disadvantage felt or detriment suffered by a person cannot be equated with punitive action or penalty as contemplated by law. The concept is trite that there may be damage without legal injury, *damnum sine injuria* and vice versa. The doctrine, therefore, of an opportunity being given to a person ostensibly suffering loss or prejudice must be confined to cases of legal injury and not injury merely as understood in popular parlance. Likewise in the domain of employer and employee or master and servant or the rights of an incumbent of a post the injury complained of must stand the test of an invasion of one's legal rights. It is not identical with actual loss or damage; it must arise out of "action contrary to law", to use Justinian's phrase. Therefore the validity of the demand urged on behalf of a probationer or that he must be heard before his services are terminated, would depend upon the answer to the preliminary question "Has the probationer a right to hold the post?" The question was answered in the negative by the Supreme Court in the case of *Parshottam Lal Dhingra v. Union of India*, A.I.R. 1958 S.C. 36. In paragraph 11 of the Reports, S. R. Das, C.J., observed:

"An appointment to a permanent post in Government service on probation means, as in the case of a person appointed by a private employer, that the servant so appointed is taken on trial....."

"Such an employment on probation, under the ordinary law of master and servant, comes to an end if during or at the end of the probation the servant so appointed on trial is found unsuitable and his service is terminated by a notice....."

"It is therefore, quite clear that appointment to a permanent post in a Government service, either on probation or on an officiating basis, is from the very nature of such employment, itself of a transitory character and in the absence of any special contract or specific rule regulating the conditions of the service, the implied term of such appointment, under the ordinary law of master and servant, is that it is terminable at any time. In short, in the case of an appointment to a permanent post in a Government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time."

Since the probationer has no right to hold a post the termination of his employment made in accordance with the terms of the contract or rules of service does not per se amount to punishment unlike the case of a permanent and confirmed employee. It does not adversely affect him in future career and no

evil consequences flow from it. Therefore, the principle of natural justice, namely, that of an opportunity being afforded before terminating his services is not attracted in the case of a probationer. No doubt an employer may choose to punish a probationer instead of simply terminating his employment, he may dismiss or remove the latter. That would adversely affect the employee in his career as he would be visited with evil consequences and that case would entail the necessity of a reasonable opportunity being given to him before his dismissal or removal but an innocuously worded order of termination of a probationer does not amount to punishment. There is no stigma in it. To describe a probationer as unfit or unsuitable to continue his employment does not cast an aspersion on him. See *Jagdish Mitter v The Union of India*, A.I.R 1964 S.C. 449. In such a case the Court cannot go behind the order and hold that it was punitive. In the *State of U.P. v. Ram Chandra Trivedi*, A.I.R. 1976 S.C. 2547 it was pointed out that the High Court was in error in arriving at the finding that the impugned order was passed by way of punishment by probing into the departmental correspondence that had been exchanged between the superiors of the plaintiff. The Supreme Court referred to its own observations made in an earlier case, *J.N. Saksena v. State of Madhya Pradesh*, A.I.R. 1967 S.C. 1264 that where there were no express words in the impugned order which threw a stigma on the Government servant, the Court could not delve into the Secretariat files to discover whether some kinds of stigma could be inferred on such research. In *State of Maharashtra v. Veerappa R. Saboji and another*, Civil Appeal No" 623 of 1976 decided by the Supreme Court on 6/9/1979 their Lordships refrained from seeing the original file of the Government to determine as to whether an order prima facie contained no stigma had been actually passed mala fide. The State Government refused to show the original record to the petitioner and the Supreme Court approved of this position and declined to scrutinize the original file itself. *Untwalia, J.* remarked;

"Obviously it could not be shown to him. Otherwise he could have come out with a plea, right or wrong, that the order was made against him by way of punishment. This is the delicate area where the Government and the State Counsel find themselves in a peculiar and delicate position. Mr. Phadke also informed us that the High Court file was ready with him and if we liked we may see it. On the facts and the circumstances of this case we did not think necessary to see and therefore, we did not see."

It is well settled that the power of an employer to form an opinion regarding the suitability and fitness of a probationer employee does not acquire a quasi-judicial character merely because such opinion is required to be formed by him on objective material. The point may be illustrated by taking the example of compulsory retirement which under Fundamental Rule 56 could be made if the appropriate authority was of the opinion that it was in public interest to do so. That provision was construed by the Supreme Court in *Union of India v. J.N. Sinha and another*, A.I.R. 1971 S.C. 40 and it was held that because of his compulsory retirement a Government servant did not lose any of the rights

acquired by him before retirement. Compulsory retirement involved no civil consequences and consequently according to the Supreme Court, the" High Court was in error in coming to the conclusion that the failure on the part of the concerned authority to give an opportunity of defence to the Government servant against his compulsory retirement amounted to a contravention of the principles of natural justice. It was observed in paragraph 7;

"Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights."

Two points clearly emerge from J. N. Sinha's case(supra). Firstly, whether the exercise of the power should be made in accordance with any of the principles of natural justice or not "depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred, and the effect of the exercise of that power." Secondly, if a statutory provision either specifically or by necessary implication excludes the application of the rules of natural justice, then the Court cannot ignore the mandate of the Legislature. The doctrine of natural justice cannot be invoked to supplement the statutory provision and hold that even though the law excludes it, an opportunity must be given, before termination of services. The following dictum of the Supreme Court in A. K. Kraipak and others v. Union of India and others, A.I.R. 1970 S.C. 150 was referred to with approval;

"The aim of the rules of natural justice is to secure justice or put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplement the law of the land but supplement it."

It is in the light of the above observations that the question referred to us has to be determined on the terms of clause (c) of the proviso to Section 31(2) of the U. P. State Universities Act. Section 31 (2) reads as under;

"31.

(2) The appointment of every such teacher, Director and Principal not being an appointment under subsection (3), shall in the first instance be on probation for one year which may be extended for a period not exceeding one year;

Provided that no order of termination of service during or on the expiry of the period of probation shall be passed.

(a) in the case of a teacher of the University, except by order of the Executive Council made after considering the report of the Vice Chancellor and (unless the teacher is himself the Head of the department), the Head of the Department concerned;

(b) in the case of" Principal of an affiliated or associated college, except by order of the Management, and

(c) in the case of any other teacher of an affiliated or associated college, except

by order of the management made after considering the report of the Principal and (unless such teacher is the senior most teacher of the subject), also of the seniormost teacher of the subject."

On a plain reading of the above section we are of the opinion that there is nothing in its language to invest the exercise of such power with quasijudicial character. Learned Counsel for the respondents laid great stress on the use of the word "consider" in clause (c) of the proviso to the above section. It was contended that the requirement to consider the report of the Principal or the seniormost teacher of the subject was indicative of the nature of the duty which the Management was required to discharge i. e, to afford an opportunity of hearing to the respondent No. 2. In this connection reliance was placed on a judgment of Asthana, J. in *Dr, Vidya Niwas Misra v. University of Gorakhpur and others*, A.I.R. 1967 All. 426 which was affirmed by a Division Bench of this Court in Special Appeal No. 623 of 1966 connected with Special Appeal No. 626 of 1966 decided on 1131968, reported in 1969 Labour and Industrial cases, Volume 2, page 874, the *University of Gorakhpur and others v. Dr. Vidya Niwas Misra* The learned Single Judge based his decision on the use of the word "consider" which, according to him, implied that the Management was required to act judicially while exercising its power under Section 31 (2) (c). There is no warrant for such assumption. The word "consider" is not necessarily indicative of an intention that the authority is required to act judicially. It merely postulate active application of the mind to the facts of the case. It is the context and the significance of the exercise of the power which shall determine whether the authority is required to act objectively or subjective. The literal meaning of the word "consider" is "to think about or deliberate upon, to examine mentally." In Webster's New International Dictionary, "the following meanings are noted;

"Consider:to reflect on; to think about with a degree of care or caution, reflect, deliberate, ponder e. g." When I came to consider his conduct, I realised that he was guilty of a confusion"T.S. Eliot."

In *Radheyshayam Khare and another v. The State of Madhya Pradesh and others*, A.I.R. 1959 S.C. 107 Section 53A of the C. P. and Berar Municipalities Act which used the word "considers" came in for interpretation and it was held that it negated any judicial or quasijudicial process or even an objective approach. It was held to be indicative of a purely subjective determination and the taking of a policy decision. The view was that the matter had to be considered from the point of view of expediency and exigencies of the case and that the Municipal Committee was not under a duty to act judicially in determining it. With great respect to the learned Judges who decided it we are unable to agree with the view expressed in the judgment of the Special Appeal arising out of the case of *Dr. Vidya Niwas Misra*. The judgment in the appeal reported in 1979 Labour and Industrial cases (supra) rested on the combined effect of Section 28 of the Gorakhpur University Act and Statute 10 made thereunder. Obviously its reasonings cannot be extended to the words of Section 31 (2) of the U. P. State

of Universities Act read with the relevant statutes 30(7) and (8). There is no similarity of language between Section 28 of the Gorakhpur University Act and Section 31 (2) (c) of the U. P. State Universities Act. Statute 10 in Chapter XIII of the Gorakhpur University Act was in the following terms;

"The Executive Council shall, within six months of the date on which the probationary period of a teacher expires, examine his case, and if the work and conduct are found satisfactory confirm him or otherwise pass such orders as it deems fit."

The above Statute used the expression "examine his case." The word "examine" connotes a duty to investigate, to seek to ascertain or to determine. This implies a quasijudicial approach, for determination itself suggests the concept of hearing the other side before something is determined. The word "examine" has significantly not been used in Section 31 (2) of the U. P. State Universities Act. Even otherwise that judgment appears to be of doubtful correctness.

If we may say so with respect, the basic fallacy in the Division Bench decision in the case of *The University of Gorakhpur and others v. Dr. Vidya Niwas Misra* (supra), lies in holding that there is a "lies" involved in considering the reports of the Vice Chancellor, the Head of the Department and the Dean as prescribed by Section 28 of the Gorakhpur University Act, before refusing to confirm a probationer. It is commonplace that questions of policy or expediency may also be taken into account before coming to a decision as to whether a probationer should be confirmed or not. The "lies" may arise where there is a stigma or where there is a right to hold the post but where the report is to be considered only for judging the suitability of a probationer, no opportunity is required in law to be given to him. The determination of the employment of a probationer on account of unsuitability does not amount to a stigma or punishment. The contrary assumption on which the Division Bench decision is based runs counter to the repeated pronouncements of the Supreme Court in the various cases to which we have already adverted. The consensus of the judicial opinion on this point is represented by *Samsher Singh v. State of Punjab* and another, A.I.R. 1974 S.C. 2192 in which all the earlier cases were noticed. Paragraph 64 of the judgment reads as under:

"Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any Rules governing a probationer in this respect the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged. No punishment is involved in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an enquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on

the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of Article 311 (2) he can claim protection. In *State of Bihar v. Gopi Kishore Prasad*, A.I.R. 1960 S.C. 689 it was said that if the Government proceeded against the probationer in the direct way without casting any aspersion on his honesty or competence, his discharge would not have the effect of removal by way of punishment, Instead of taking the easy, course, the Government choss the more difficult one of starting proceedings against him and branding him as a dishonest and incompetent officer."

The appellant, however, referred us to another Division Bench decision of this Court which is directly in point, namely, the case of *Meerut University and other v. Dr. H. K. Srivastava*. Special Appeal No. 334 of 1975 decided on 23/3/1976 In that case the provisions of Section 31 (2) (c) of the U. P. Universities Act were construed and it was held that the word "consider" occurring therein could not always be regarded as requiring the giving of an opportunity of hearing. After illustrating the proposition by referring to subsection (3) of Section 16 (a) of the Maintenance of Internal Security Act, 1961 which provided;

"When making an order of detention under this Act against any person (including a foreigner) after the commencement of the maintenance of Internal Security (Amendment) Ordinance, 1975 the Central Government or the State Government or as the case may be the officer making the order of detention shall consider whether the de mention of such person under this Act is necessary for dealing effectively with the emergency and on such consideration, the Central Government or as the case may be, the State Government or the Officer is satisfied that it is necessary to detain such person for effectively dealing with emergency hat Government or officer may make a declaration to that effect and campmate a copy of the declaration to the person concerned."

The Bench commented:

"It surely cannot be contended that the use of the word "consider" this provision requires an opportunity of hearing being given to the person detained Therefore, it must depend upon the context of each provision whether the word "consider" implies the giving of a hearing

In the case of *Meerut University and others v. Dr. H K Srivastava* (supra), the entire scheme of subsection (2) of Section 31 of the U P state Universities Act, 1973 was examined and the conclusion was" reached that a right to hearing could not be spelt out of these provisions merely because of the use of the words "after considering" therein. We respectfully endorse this opinion and are inclined to hold that a contrary predation would lead to glaringly anomalous results. The proviso to Section 31 (1) (2) fully supports such inference. Clause (a) of the proviso deals with the case of a teacher of a University. It empowers of Executive Council to terminate the services of a probationer after considering the report of the Vice Chancellor. Clause (b) provides that the services of f Principal of an

affiliated or associated college, who is on probation may be terminated by the Management. This does not use the word "consider" and it is, therefore, manifest that in the case of a Principal of an attached college no opportunity of hearing need be given if the Management decide, to terminate his services either during or on the expiry of the period of probation. Clause (c) deals with the case of other teachers of affiliated or other colleges. This clause says that the services can be determined by the Management after considering the report of the Principal and of the seniormost teacher. The contention of the respondent No. 2 is that since clause (c) requires Management to consider the report of the Principal and the other teacher, an opportunity of hearing has to be given in the case of such probationer before his services are terminated during or on the expiry of the period of probation. This would clearly result in a very anomalous position inasmuch as a teacher will have to be given a hearing but a Principal need not be given a hearing on the termination of his probation. If the Legislature had intended the giving of a hearing to a probationer, it would not have provided for it in cases covered by clauses (a) and (c) only and not in cases covered by clause CM. Therefore, the context in which the word "consider" has been used in State 31 (2) (c) does not imply that hearing must be given to the probationer before terminating his services.

Learned counsel for the respondents relied on certain observations of the Supreme Court in *The Divisional Personnel Officer, Southern Railway and another v. T.R. Challappan* A.I.R. 1975 S.C. 2216, in support of his submission that the word "consider" necessarily implies giving of an opportunity of hearing. That, case, however, is clearly distinguishable. Therein Rule 14 of the Railway Servants' (Discipline and Appeal) Rules, 1968 came in for consideration. The Rule provided;

"Notwithstanding anything contained in Rules 9 and 13 where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit."

In that case the question for consideration was whether in dismissing a railway servant after his conviction any opportunity of hearing was required to be given to him or not. The Supreme Court observed:

"The rulemaking authority deliberately used the word "consider" and not "determine" because the word "determine" has a much wider scope. The word "consider" merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words, the term "consider" postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved

person."

The learned Judges who decided the case of Meerut University and others v. Dr. H. K. Srivastava (*supra*), interpreted the above observations of the Supreme Court in these words;

"We do not think that the Supreme Court in this case intended to lay down a general rule that wherever the word "consider" is used an opportunity of hearing must be given to the person concerned."

Obviously the Supreme Court decision was rendered in a case of infliction of penalty which was required to be done only after a consideration of all the circumstances of the case some of which might, for ought we know, be in the exclusive knowledge of the Railway servant. On the other hand, clause (2) of the proviso to Section 31 of the U. P. State Universities Act does not deal with infliction of penalty. It only provides for termination of services of an employee during or on the expiry of the period of probation. We may only briefly refer to some other authorities cited at the Bar on behalf of the respondents, though they do not at all advance their case. Thus, e. g. strong reliance was placed on Ghanshyam Das Gupta and others v. Board of High School and Intermediate Education U. P. Allahabad A.I.R. 1956 All. 539, in which C. B. Agarwala, J. remarked:

"Nevertheless, the charge of malpractice and use of unfair means at the examination cannot be adequately "considered" without calling for an explanation from the examinees concerned." (emphasis is ours).

That again was a case of infliction of penalty i. e. cancellation of the examination of certain examinees found guilty of malpractice and use of unfair means. As such, has no relevance to the point which arises for consideration in the case in hand. The case, reported in Board of High School and Intermediate Education U. P. Allahabad v, Ghanshyam Das Gupta and others A.I.R. 1962 S.C. 1110, arose out of A.I.R. 1956 Allahabad 539 and is distinguishable on similar grounds. The case of Ridge v. Baldwin and others (1963) 2 A. E. L. R. 66, was also a case of dismissal of a Chief Constable which was held to be null and void for the reason that where the power was to be exercised on the ground of negligence which required to be proved the relevant committee were bound to observe the principles of natural justice. The case of A. K. Kraipak and others(*supra*), also cannot be of any assistance to the respondents as it merely enunciated the general tests for determining whether a certain power was an administrative or quasijudicial power. Likewise, the dictum in the Purtabpur Company Ltd. v. Cane Commissioner of Bihar and others, A.I.C 1970 S.C. 1896 cannot be applied to the facts of the present case which are distinct and in which there is no "lie". The Supreme Court case arose under the Sugarcane (Control) Order, 1966. There was a clear "lie" between the parties and the authorities had taken out from the reserved area some of the villages initially reserved for the appellant and the contest of the respondent was that those villages should be reserved for it and

not for the appellant. The decision of the State of Gujarat and another v. Patel Chatwbhai Narainbhai and others, A.I.R. 1975 S.C. 629 also rested on fundamentally different grounds as it was a case of land acquisition and hence for interpreting Rule 4 of the Land Acquisition (Companies) Rules, 1963 it was held that the owners of land were entitled to be heard at such an enquiry for the purpose of proving or disproving the reasonable efforts of the company to secure such land by negotiation. The case of an owner being deprived of his property has no party with the termination of service of a probationer, who has, if we may say so at the risk of repetition, no right to hold the post. The case of State of Gujarat and others v. Ambalal Haiderbhai etc., A.I.R. 1976 S.C. 2002 also dealt with the nature of enquiry under Rule 4 of the Land Acquisition (Companies) Rules, 1963 and has nothing in common with the nature of the action taking against a probationer under Section 31 (2) (c) of the U. P. Universities Act.

It is right, however, that we should notice another argument advanced on behalf of the appellant which was founded on the legislative history of the U. P. State Universities Act. The U. P. State Universities Ordinance 1 of 1973 was enacted on 1361973 by which Section 31 (2) clause (c) was introduced. The Ordinance was replaced by U. P. State Universities Act (Act 10 of 1973) which was a President's Act. It was followed by the U. P. State Universities (Reenactment and Amendment) Act, No. 28 of 1974 which came into effect on 2591974. The U. P. Education Laws Amendment Ordinance (No. 36 of 1976) thereafter came into force on 28121976 by which the second proviso to Section 31 (2) was added which required that the termination of services of a probationer could be made only after he had been afforded an opportunity of explanation. This was followed by U. P. Education Laws Amendment Act (No. 5 of 1977), which came into effect on 2831977. The second proviso added in 1977 runs as follows:

"Provided further that no such order of termination shall be passed except after notice to the teacher concerned giving him an opportunity of explanation in respect of the grounds on which his previous services are proposed to be terminated."

The contention of the appellant was that the case of the University of Gorakhpur v. Dr. Vidya Niwas Misra (supra), had been decided on 1131968 and the amendment byway of the addition of the second proviso was introduced in 1976 and retained by the U. P. Act No. 5 of 1977, therefore, it must be presumed that the Legislature accepted the interpretation given to Section 31(2) (c) in the division Bench case of The University of Gorakhpur and others v. Dr. Vidya Niwas Misra(supra). Reliance was placed for this proposition on the well known passage in the decision of Lord Buckmaster in Barras v. Aberdeen Steam Trawling and Fishing Co. Ltd. (1963) Appeal Cases 402 citing James L.J. in Re Cathcart Ex. P. Campbell, (1870) 5 Ch. App. 703 at p. 706.

"Where once certain words in an Act of Parliament have received a judicial construction in one of the Superior Courts, and the Legislature has repeated them without alteration in a subsequent statute, I conceive that the Legislature

must be taken to have used them according to the meaning which a Court of competent jurisdiction has given to them."

We may, however, point out that the rule of statutory adoption of a judicial interpretation cannot be stretched too far, as it is subject to obvious limitations. Even if the case of *Barras v. Aberdeen Steam Trawling and Fishing Company Limited* (supra), Lord Macmillan in his judgment after accepting the principle enunciated by Viscount Buckmaster hastened to qualify the dictum by observing:

"Where a judicial interpretation is well settled and well recognized the rule ought doubtless to receive effect but it must, I think, be a question of circumstances whether Parliament is to be presumed to have tacitly given statutory authority, say, to a single judgment of a competent Court so as to render that judgment, however obviously wrong, unexaminable in this House."

He added:

"I find it rather a strain to have to believe that the reputed omniscience of Parliament extends to every decision of the Courts. What if the interpretative decision has never been reported?"

Where necessary, the Courts have never felt any compunction in overruling an earlier decision, even though the legislature by a later enactment has adopted a language which lends support to the earlier judicial interpretation. In fact, in a subsequent judgment rendered by Lord Macmillan himself the limitations of the doctrine of confirmation of judicial interpretation by reenacting legislation were explicitly reiterated. In *Robinson Brothers (Brewers) Ltd. v. Houghton and ChesterLeStreet Assessment Committee* (1938) 2 A. E. L. R. 79, he observed:

"I recognise that, where a term or expression which has an established judicial connotation occurs in a statute, Parliament may well be taken to have employed in conformity with this usage, but it would be reducing the doctrine to an absurdity to hold that Parliament, in repeating in the Act of 1925 the general terms used in the Act of 1836 to define annual value, thereby gave Parliamentary sanction to every one of the innumerable and not always consistent decisions on the subject of the hypothetical tenant and the rent which he may be reasonably expected to pay."

The rule is well established that a Court is not prevented from overruling an earlier erroneous decision and placing a different construction on the words of a statute, even though the same words were reenacted by the legislature. In *Royal Crown Derby Porcelain Co. Ltd. v. Russell* (1949) A. E. L. R. 749, Denning, L. J. expressed himself rather strongly and observed:

"I do not believe that whenever Parliament reenacts a provision of statute it thereby gives statutory authority to every erroneous interpretation which has been put on it. The true view is that the Court will be slow to overrule a previous decision on the interpretation of a statute when it has long been acted on, and it will be more than usually slow to do so when Parliament has, since the decision,

reenacted the statute in the same terms, but if a decision is, in fact, shown to be erroneous there is no rule of law which prevents it being overruled."

To the same effect are the observations in *Dun v. Dun and another*, (1959) 2 All England Law Reports 134 and *Re Yeovil Glove Co. Ltd.*, (1964) 2 A. E. L. R. 849.

Thus, we have no hesitation in concluding that merely because in 1976⁷⁷ the Legislature intervened after the decision in the case of *Meerut University and others v. Dr. H. K. Srivastava* (supra), which was decided on 23³¹1976 and the second proviso was added to Section 31(2) (c) of the U. P. Universities Act the Courts are precluded from overruling the decision reported in 1969 *Labour and Industrial Cases*, Volume 2, page 874. In our opinion that judgment was erroneous and must not be approved.

It is also clear that the appellant cannot derive any advantage from the subsequent amendment in the shape of the additional of a second proviso to Section 31 (2) of the U. P. State Universities Act because in any case the amendment will not have a retrospective effect. The offending resolution terminating the services of the respondent No. 2 was passed in the year 1973 whereas the amendment was introduced in 1976⁷⁷. This difficulty was sought to be overcome by the appellant by arguing that the U. P. Education Laws Amendment Ordinance, 1975 (U. P. Ordinance No. 36 of 1976) and U. P. Education Laws Amendment Ordinance, 1977 (U. P. Ordinance No. 5 of 1977) mentioned above were declaratory in nature and would, therefore, have a retrospective effect. Reference was made to a passage in Maxwell "On the Interpretation of Statutes Twelfth Edition, page 224 and the cases cited therein. It was stated;

"If a statute is in its nature a declaratory Act the argument that it is not to be construed so as to take away previously vested rights is inapplicable."

We were also referred to the observations of Khanna, J. in *Thiru Manickam v. State of Tamil Nadu* A.I.R. 1977 S.C. 518, which are as under:

"An Amendment which is by way of clarification of an earlier ambiguous provision, can be useful aid in construing the earlier provision, even though such amendment is not given retrospective effect.

and the following passage from Grais on Statute Law (Sixth Edition), page 147 which reads as under:

".....in *Cape Brandy Syndicate v. Inland Revenue Commissioner* (1921)2 K.B. 403 at p. 414, Lord Sterndale N. R. said;

I think it is clearly established in *Alt. Gen. v. Clarkson* (supra) that subsequent legislation may be looked at in order to see the proper construction to be put upon an earlier Act where that earlier Act is ambiguous. I quite agree that subsequent legislation if it proceeded on an erroneous construction of previous legislation, cannot alter that previous legislation, but if thereby any ambiguity in

the earlier legislation, then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier."

We are of the opinion that the above authorities do not apply to the instant case. The rule of interpretation urged by the respondents applies only where ambiguous words or words of doubtful meaning have been interpreted by the Courts and these very words are later used by the Legislature in making enactments in "pari materia". If the words are not ambiguous and there is no doubt about their meaning, the aforesaid rule would not be attracted. It is significant that the 1977 amendment came in the shape of a proviso to the main clause, which did not suffer from any ambiguity. The termination of a petitioner's services without giving him an opportunity of hearing would have been perfectly within the ambit of the main clause prior to the addition of the second proviso. No provision for giving an opportunity existed at all and hence it became necessary to add the distinct proviso and thereby carve out an exception to the main rule. This is explicit from the Statement of Objects and Reasons contained as a Prefatory Note to the U. P. Education Laws Amendment Act, 1977. It reads;

"With a view to removing certain difficulties experienced in the working of the provisions of the Uttar Pradesh State Universities Act, 1973, it has been considered expedient to make, inter alia, the following amendments in the aforesaid Act.

It has been provided that where the services of a teacher on probation are to be terminated he should be given an opportunity of explanation in respect of the grounds on which such action is proposed to be taken."

The amendment was, therefore, remedial and not declaratory. It was made not to dissipate any "mist or shadow" or "the soft penumbra of incertitude" but to blaze a new trail. The second proviso engrafted an exception to the unqualified rule as it formerly existed. Hence, the proviso must be interpreted to be an innovation." The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except, out of the preceding portion of the enactment or to qualify something enacted therein, which but for the proviso would be within it." (Grais on Statute Law, Sixth Edition, page 217). See *Kedarnath Jute Manufacturing Co. Ltd. v. The Commercial Tax Officer and others*. A.I.R. 1966 S.C. 12 It follows that the Amendment to the second proviso cannot be given a retrospective effect. See *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha*. A.I.R. 1961 S.C. 1596 If the intention of the Legislature had been to give an opportunity to a probationer before terminating his services, it could have stated so in the substantive part of the section itself. Even the proviso to Section 31(2) of the U. P. Universities Act merely used the word "consider" which we have already interpreted. Where the Legislature wants an opportunity to be given to a probationer it expressly provides for it e. g. Rule 55B of the Orissa Civil Services Classification, Control and Appeal) Rules which in so far as it was material was as under:

"Where it is proposed to terminate the employment of a probationer, whether during or at the end of the period of probation, for any specific fault or on account of his unsuitability for the service, the probationer shall be appraised of the grounds of such proposal and given an opportunity to show cause against it, before orders are passed by the authority competent to terminate the employment.

Generally under the law and under the various departmental and service rules the tradition has been not to confer on a probationer a status which would entitle him to a hearing before his services are terminated. The essence of probation is to put a person on mere trial in order to gauge his suitability before making him an integral part of service or employment for good. To take an illustration, the rule that no opportunity need be given to a probationer before terminating his services was explicitly embodied in the explanation (a) to Rule 49 of the U. P. Civil Services (Classification, Control and Appeal) Rule 1930. It read as under:

"ExplanationThe discharge

(a) of a person appointed on probation during or at the end of the period of the probation, in accordance with the terms of the appointment and rules governing the probationary service, or.....does not amount to removal or dismissal within the meaning of this rule or Rule 55."

Similarly Rule 55 of the aforesaid Rules expressly provided in subrule (3).

"(3) This rule shall also not apply where it is proposed to terminate the employment of either a temporary Government servant or of probationer whether during or at the end of the period of probation. In such cases a simple notice of termination, which is in the case of a temporary Government servant, must conform to the conditions of his service, will be sufficient."

The omission to provide in Section 31 (2) (c) for an opportunity to the probationer is indicative of the intention of the legislature not to entitle him to such opportunity. It is a well settled principle of interpretation that where there are expressions which might have been used to convey a certain intention, but one of these expressions will convey that intention more clearly than the other, it is proper to conclude that, if the Legislature used that one of the two expressions which would convey the intention less clearly, it did not intend to convey that intention at all. See *Polester and Co. Ltd. Etc. v. Addl. Commissioner of Sales Tax, New Delhi*, A.I.R. 1978 S.C. 897. In fact, the amendment by adding the second proviso recognised the fact that the unamended provision could not bear the interpretation which commended itself to the Division Bench in the case of *The University of Gorakhpur and others v. Dr. Vidya Niwas Misra* (supra). We are unable to accept the contention that the second proviso was added in 1976 to Section 31(2)(c) in order to give statutory recognition to the judicial interpretation of the unamended provision as it stood earlier and that by adding the second proviso to Section 31 (2) (c) the Legislature intended that the language employed earlier in that provision prior to the amendment should be

given the same meaning as judicially attributed to it in the case of *The University of Gorakhpur and others v. Dr. Vidya Niwas Misra* (supra). The observations of the Privy Council in the case of *Bharat Insurance Co. Ltd. v. Incometax Commissioner Punjab, Lahore*, AIR 1934 P. C. 45 are very pertinent on this point. The Privy Council observed:

"An alteration by the Legislature of the law as settled by the decisions of the Court does not raise any inference that those decisions were wrong or even that those who had proposed the alteration were of that opinion."

It was also faintly argued that the second proviso added in 1976 to Section 31 (2) (c) related to a matter of procedural law and would therefore have retrospective effect. In our opinion the above dictum cannot be too widely stated. As a general rule an amended law relating to procedure operates retrospectively. But there is another equally important principle, viz. that a statute should not be so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force. (See; *In re a Debtor* (32), and *In re Vernazza* (33). In the instant case the termination of the services of the respondent No. 2 concluded the transaction. The termination order was passed by the Management on 26/7/1973 and it became an accomplished fact long before the addition of the proviso and we are only concerned with the question as to whether the termination of the services of the probationary teacher was valid at the time when it was due.

Therefore, we would answer the reference by saying that in our opinion a probationer is not entitled to a hearing before his services are terminated during the period of probation under clause (c) of subsection (2) of Section 31 of the U. P. State Universities Act, 1973.