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**(2003) 04 AHC CK 0009**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 18519 of 2002**

Pramod Kumar Misra

APPELLANT

Vs

Executive Council, University of Allahabad and Others

RESPONDENT

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**Date of Decision :** 22-04-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226

Uttar Pradesh State Universities Act, 1973 — Section 13, 18, 21

**Citation :** (2003) 6 AWC 5521

**Hon'ble Judges :** Vineet Saran, J

**Bench :** Single Bench

**Advocate :** A.N. Tripathi and C.N. Tripathi, for the Appellant; P.S. Baghel and R.G. Tripathi, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Vineet Saran, J.—Heard Sri A. N. Tripathi, learned Counsel appearing for the Petitioner and Sri P. S. Baghel, learned Counsel for the Respondent-University.

2. By means of this writ petition the Petitioner has challenged the order dated 27.4.2002 passed by the Registrar of the University whereby the services of the Petitioner have been terminated. A further prayer has been made for a direction to the Respondents to treat the Petitioner in continuous service and accord him all benefits in accordance with law.

3. The facts giving rise to this writ petition are that the Petitioner was a senior stenographer in the office of Registrar of the Allahabad University. On 15.6.2001, the Petitioner left the office after signing the attendance register. At about 3.00 p.m. in the day, during office hours, the Proctor of the University received a telephonic call from Superintendent of Police (City) Allahabad, that one person had been caught along with a girl student in a hotel room. Since the said person claimed to be an employee of the University, the Proctor of the University was asked to reach the spot and identify the person. Accordingly, the Proctor, accompanied by the Registrar of the University, went to the Police Station and

identified the said person to be Pramod Kumar Misra, the Petitioner herein. On the same date the Petitioner as well as the girl (who was found to be a student who had appeared in the Entrance examination of P.G.A.T. 2001) both had tendered written apologies in their own hand-writing, copy of which is on record of this writ petition.

4. Immediately on the next date i.e. 16.6.2001 the Registrar of the University suspended the Petitioner on two simple charges. Firstly that the Petitioner was in the habit of absenting himself from the office after signing the attendance register ; and secondly that he did not work in the office and remained outside during office hours.

5. Thereafter on 26.6.2001 the Vice-Chancellor of the University constituted an enquiry committee comprising of an ex-District Judge Sri Prahlad Narain as its Chairman and Dr. (Ms. ) S. Govindi as a member. After making preliminary enquiry, the Enquiry Committee submitted a comprehensive charge-sheet on 5.12.2001 framing two specific charges. Firstly, that on 15.6.2001 the Petitioner signed the attendance register and thereafter left the campus of the University ; and secondly that on the same day i.e. on 15.6.2001, during office hours, the Petitioner was found in the local "Green Hotel" along with a P.G.A.T. 2001 Entrance girl student from where the Petitioner was brought to Civil Lines Police Station, and was later on at about 3:00 p.m. identified by the then Proctor of the University Prof. Matamber Tiwari as also the then Registrar Sri S.N. Tripathi. Alongwith the charge-sheet the documents relied upon in support of the said charges had been mentioned as well as the names of the witnesses who were to be produced by the University.

6. The Petitioner was thereafter given full opportunity to participate in enquiry proceedings, which he did with the assistance of a colleague as well as his lawyer. The Petitioner also submitted his reply to the charges. His lawyer also cross-examined the witnesses. All documents in support of the charges were supplied to the Petitioner. It is noteworthy that despite opportunity having been given to the Petitioner, he did not adduce any evidence nor did he examine any witness. He himself did not have the courage to appear as a witness to refute the charges levelled against him.

7. After considering the evidence and also the reply given by the Petitioner as well as after hearing the Petitioner, the enquiry report dated 21.3.2002, was submitted to the Registrar of the University wherein the Petitioner was held guilty of both the charges. The Registrar, vide communication dated 22.3.2002 addressed to the Petitioner, furnished a copy of the enquiry report to the Petitioner with a statement that the University proposed to accept the enquiry report. An opportunity was given to the Petitioner to submit his reply within 15 days and it was mentioned that the punishment of termination of service was proposed. In response, the Petitioner submitted a detailed reply on 16.4.2002.

8. After considering the enquiry report as well as the reply of the Petitioner and

also the record, the Registrar vide his order dated 27.4.2002 held that the two charges against the Petitioner had been fully proved. It was observed in the order that the witnesses, who were the Sub-Inspector and Head Constable of Police as well as the Proctor of the University, were duly cross-examined by the learned advocate appearing on behalf of the Petitioner as well as a colleague of the Petitioner but no contradiction in the statements could be pointed out. It was also stated in the impugned order that it was proved that the Petitioner, who was identified by the Proctor and the Registrar of the University, was found in a local hotel room with a girl student from whose possession an admit card of the Entrance examination was recovered in which she had appeared on the same date from 11.00 a.m. to 1.00 p.m. It was observed that Petitioner failed to adduce any evidence to refute the charges levelled against him nor did he adduce evidence to show that he was present in office on the date of the incident and had actually done any official work. Thus, the Registrar of the University held that it was established beyond doubt that the Petitioner was guilty of grave misconduct which lowered the prestige of the University, and as the incident was widely reported by the national and local Newspapers, the action of the Petitioner caused irreparable damage to the reputation of the University. After being satisfied that the Petitioner was guilty of committing grave misconduct, it was held that the services of the Petitioner be terminated with immediate effect.

9. Sri A.N. Tripathi, learned Counsel appearing for the Petitioner, submitted that u/s 21 (vii) and (xii) read with Section 18 of the U.P. State Universities Act (hereinafter referred to as the Act), the appointing authority of the Petitioner was the Executive Council and the power could not have been delegated to the Registrar of the University, who has passed the impugned order. It was thus urged that the disciplinary authority, which could take any action against the Petitioner, would be the Executive Council and no other authority. In the alternative it was argued that if the Registrar was the disciplinary authority, then he alone could have taken any action and not the officiating Registrar. It was also urged that the suspension order mentioned only two charges and if any further charges were to be added, then it was for the Registrar to have done so and not the enquiry officer. It was next submitted that the impugned order was passed by the Acting/Officiating Registrar of the University who was not competent to pass the same. Lastly it was argued on behalf of the Petitioner that the enquiry proceedings would be vitiated as most of the witnesses named in the charge-sheet were not examined and certain other witnesses who were not named therein, had been examined.

10. In support of his first submission the learned Counsel for the Petitioner has contended that Section 21 (vii) gives power to the Executive Council to appoint officers, teachers and other employees of the University and to define their duties and the conditions of their service. Sub-section (xii) gives power to regulate and enforce discipline among members of the teaching, administrative and other staff of the University in accordance with the Statutes and the Ordinances. It was thus contended that the Executive Council alone could have

passed the impugned order and not the Registrar of the University.

11. Sri P.S. Baghel, learned Counsel for the Respondent-University placed before me Chapter XVI of the Ordinances of the University which relates to the control of administrative staff wherein it has been provided that the Vice-Chancellor has the power to appoint, suspend, dismiss or otherwise punish the clerical staff of the University office and also that the Vice-Chancellor could delegate the said power to the Registrar, against which the person aggrieved was entitled to appeal to the Vice-Chancellor or the Executive Council. It was thus submitted that since such power had been delegated by the Vice-Chancellor to the Registrar it could not be argued that the Registrar of the University was not competent to take action against the Petitioner. Section 13 of the Act gives the power and duties of the Vice-Chancellor who is the principal executive and academic officer of the University and has the general power of supervision and control over the affairs of the University and under such power the Vice-Chancellor constituted the enquiry committee and also appointed the Registrar as the disciplinary authority. Thus, in my view, the first submission of the learned Counsel for the Petitioner does not have force.

12. In the alternative Sri Tripathi submitted that even though the Registrar may have been the disciplinary authority, the enquiry committee could not have framed fresh charges by the order dated 5.12.2001 which were different from the charges framed by the Registrar of the University while issuing the suspension order dated 16.6.2001. Sri Baghel in response submitted that the specific charges framed by the enquiry committee were in furtherance of the charges which had been framed against the Petitioner in the suspension order dated 16.6.2001. Since the incident had occurred on 15.6.2001 and looking to the gravity of the charges, without holding a preliminary enquiry, the specific charges could not be framed because the same would involve the reputation of a girl student as well as the employee. The charges framed initially did mention that the Petitioner was in the habit of signing the attendance register and then leaving the office and also remaining outside the office during office hours. The charges framed by the enquiry committee only specified that on 15.6.2001 the Petitioner had signed the attendance register and left the campus of the University and that on the same date, he was caught red handed with a girl student in a hotel room during office hours. In my view, this submission of the learned Counsel for the Petitioner does not have much substance because the enquiry officer had only issued the charge-sheet and framed the charges in furtherance of the charges mentioned in the suspension order. All that the enquiry committee had done was that after holding a preliminary enquiry, the specific nature of the charges had been stated along with the specific incident on which the enquiry was to be conducted. If this had not been done, it could have been argued that the charges, as initially framed, were general in nature regarding which no specific reply could be given.

13. With regard to the next submission of the learned Counsel for the Petitioner

that the impugned order was passed by the acting/officiating Registrar who was not competent to pass the same even if the Registrar was the competent authority, learned Counsel for the Petitioner has submitted that the appointment of the officiating Registrar could not have been made under the emergency powers of the Vice-Chancellor given u/s 13 (6) of the Act. Sri Baghel, learned Counsel for the Respondent, submitted that under the Act, in the absence of the Registrar, the Vice-Chancellor was empowered to appoint any teacher or an officer of the University to officiate as Registrar and as such, the appointment of the officiating Registrar was justified. It was further submitted that the officiating Registrar had all the powers of the Registrar and was empowered to pass all such orders, which the Registrar was competent and authorized to pass. Considering the submissions made by the parties, I am of the opinion that the authority of the officiating Registrar in passing the impugned order was fully justified.

14. Learned Counsel for the Respondent also submitted that the Petitioner has neither stated in the writ petition nor has it been argued on his behalf that any prejudice has been caused to him in the conduct of the enquiry. Further, in the absence of the Petitioner not having been able to point out that the enquiry was not conducted fairly, the same cannot be challenged on the ground of violation of the principles of natural justice. Sri Baghel pointed out that Prof. Matamber Tiwari had been named in the charge-sheet. The Sub-Inspector and other officials of Mahila Police Station had also been mentioned by their designation. The word "Mahila" was later on deleted as it had been wrongly added by inadvertence. As such, in my opinion the Sub-Inspector and the Head Constable of Police who had been examined had actually been named in the charge-sheet by their designation. Thus, the contention of the Petitioner that the witnesses who were not named in the charge-sheet and had been examined also does not have force.

15. Having heard learned Counsel for the parties and on perusal of the record, in my opinion, the impugned order terminating the services of the Petitioner is fully justified. In view of the discussions made above, there has been no violation of the principles of natural justice in the conduct of the enquiry nor can it be said that any prejudice has been caused to the Petitioner. The enquiry cannot be vitiated merely on the ground of technicalities. The Hon'ble Supreme Court in its decision rendered in Bank of India and Another Vs. Degala Suryanarayana, , has held that strict rules of evidence are not applicable to departmental enquiry proceedings and the only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. The Apex Court in U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, , has observed that an enquiry proceeding is not held as if it is a trial in a criminal case or as if it is a civil suit. The rules of natural justice require that a party against whom an allegation is being enquired into has a right of hearing. What rules of natural justice are to be followed in a particular case

depends on the circumstances of the case and the provisions of law under which the charges are to be enquired into. In the present case, the Petitioner was given sufficient opportunity of hearing. He had filed a detailed reply to the show cause notice as well as cross-examined the witnesses. Adequate opportunity of personal hearing as well as through counsel was afforded to the Petitioner. Thus, it cannot be said that there was any violation of principles of natural justice. The Enquiry Officer had taken evidence in accordance with law, after affording adequate opportunity to the Petitioner. The finding of fact arrived at in the departmental enquiry proceeding is normally not to be interfered with by this Court in its writ jurisdiction except in a case of mala fide or perversity. As already discussed above, there is no allegation that the enquiry was not conducted fairly and thus I find no reason to interfere with the findings arrived at by the Enquiry Officer. The Court exercising power under Article 226 of the Constitution of India is not sitting in appeal over the enquiry report or the order passed in pursuance thereof. If it is found that the enquiry has been conducted fairly without there being any prejudice caused to the employee, on mere technicalities, this Court would refrain from interfering with the impugned order while exercising its discretionary power under writ jurisdiction.

16. In the end, learned Counsel for the Petitioner urged that the quantum of punishment awarded by terminating the services of the Petitioner was disproportionate to the charge of misconduct levelled against him. It was submitted that since it was a solitary instance in which the Petitioner had been found guilty of misconduct, a lesser punishment ought to have been awarded and not the ultimate punishment of termination of service. In my view, one solitary instance of misconduct of a grave nature, as in the present case, would be sufficient for terminating the services of an employee. The Respondent is an educational institution and in case if an employee was found guilty of the charge of having been found in a hotel room, during office hours, with a girl student, the punishment by way of terminating his services is wholly justified. Such conduct of an employee is a blot on the reputation of the educational institution. If such employee is permitted to continue in service, the guardian and parents of the students, specially girl students, would lose faith in the management of the educational institution and may even refrain from sending their wards to such institutions. Thus, this submission of the learned Counsel for the Petitioner also does not have any force.

17. In the result, this writ petition is dismissed. However, there shall be no order as to cost.