

(2012) 03 DEL CK 0024

In the Delhi High Court

Case No : Writ Petition (C) 2547 of 2010

Prof. Ramesh Chandra

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 311

Delhi University Act, 1922 — Section 17, 18, 21, 29, 45(2)

Citation : (2012) 187 DLT 741

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : R. Vekataramani with Mr. Aljo K. Joseph and Mr. R.C. Vasudev, for the Appellant; V.P. Singh, with Mr. Mohinder Rupal and Ms. Shawana Bari, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petitioner, earlier a Professor in the respondent Delhi University, has filed this writ petition:

(i) impugning Para 6 of the Annexure (providing Form of Agreement of Service for University teachers) to Ordinance XI of the respondent No.1 Delhi University. The said Para 6 empowers the Executive Council of the University to summarily determine the engagement of a teacher on the ground of misconduct;

(ii) impugning the Resolutions dated 17.10.2005 and 21.03.2007 of the Executive Council of the University. Vide Resolution dated 17.10.2005, decision was taken, A) not to allow the petitioner to hold any administrative position in the University; B) to issue show cause notice to the petitioner for, a) at the time of re-joining Delhi University post deputation, suppressing information of his removal from the post of Vice Chancellor (VC) of Bundelkhand University, Jhansi; b) unauthorizedly assuming the office of the Director, Dr. B.R. Ambedkar Center for Biomedical Research (ACBR) during the period 18.07.2005 to 24.07.2005; and, C) to annul the decisions taken by the petitioner while unauthorizedly occupying the post of Director, ACBR. Vide Resolution dated 21.03.2007, the

Executive Council placed the petitioner under suspension pending inquiry;

(iii) impugning the memoranda dated 02.11.2005, 27.08.2007 and 16.10.2007. Vide memorandum dated 02.11.2005, the petitioner was asked to show cause as to why action in accordance with Para 6 of Annexure to Ordinance XI (supra) be not taken against him for while rejoining Delhi University concealing his removal from the post of VC of Bundelkhand University and for unauthorizedly representing himself as Director of ACBR. Vide Memorandum dated 27.08.2007, the petitioner was asked to show cause as to why action in accordance with Para 6 of Annexure to Ordinance XI (supra) be not taken against him for making the University incur expenditure in the total sum of Rs. 16,63,264/- on his telephone bills, security guards at his residence etc. during the time he was on deputation as VC of the Bundelkhand University. Vide Memorandum dated 16.10.2007, the petitioner was asked to show cause as to why action in accordance with Para 6 of Annexure to Ordinance XI (supra) be not taken against him for formation of a Society by the name of Dr. B.R. Ambedkar Centre for Biomedical Research in an attempt to usurp ACBR, an institution of the University;

(iv) impugning the inquiry proceedings held against him on the ground of being in breach of the principles of fairness and natural justice and the findings of the Inquiry Officer being beyond the scope and jurisdiction;

(v) impugning the Resolutions dated 09.02.2010 and 25.03.2010 of the Executive Council of the University whereby the petitioner was stripped of the opportunity of holding any administrative position in the University and debarred from being associated with the affairs of ACBR in any capacity whatsoever and also disengaged from the services of the University; and, (vi) seeking a direction for his restoration as the Director of the ACBR.

2. As the aforesaid description would indicate, the reliefs claimed are overlapping. The controversy can be narrowed down by recording at the outset that as far as the memorandum dated 27.08.2007 (supra) is concerned, in the inquiry in pursuance thereto by a retired Judge of this Court, vide report dated 23.02.2010, the petitioner has been absolved of the charge of having made the respondent University unauthorizedly incur the expenses of Rs. 16,63,264/- on his telephone bills and security guards at his residence while being on deputation as VC of Bundelkhand University. It was found in the inquiry report that though such expenses were incurred on telephone bills and security guards at the residence of the petitioner but it could not be established that the same though unauthorized were sanctioned by or at the instance of the petitioner. The respondent University also has not proceeded against the petitioner on the said count. The counsels also have not addressed on the said aspect. The same is thus laid to rest.

3. The same Inquiry Officer (being a retired Judge of this Court) has however in his separate report dated 24.11.2009 in pursuance to the Memorandum dated 02.11.2005 held the petitioner guilty of, at the time of rejoining (post

deputation) the respondent University on 18.07.2005 having wilfully suppressed the factum of his removal from the post of VC, Bundelkhand University and of having unauthorizedly tried to join as Director of ACBR and representing himself as Director, ACBR. The Inquiry Officer vide yet another report dated 23.02.2010 in response to memorandum dated 16.10.2007 (supra) also found the petitioner guilty of the charge of floating the Society aforesaid in an attempt to usurp the ACBR.

4. The respondent University also vide its Resolutions (supra) impugned in this petition has removed the petitioner from the services of the respondent University on the ground of having attempted to usurp the ACBR and suppression, at the time of rejoining the Delhi University, of the factum of removal from Bundelkhand University and thereafter unauthorizedly taking over charge as Director of ACBR.

5. There has been an earlier round of litigation. The petitioner had earlier filed W.P.(C) No.16000/2006 impugning the Resolution dated 17.10.2005 (supra) (also impugned in this writ petition) and seeking mandamus restoring him to the position of Director, ACBR (which relief also is claimed in this petition). The said writ petition was dismissed by a learned Single Judge of this Court vide judgment dated 11.04.2008 observing / finding / holding as under:

(i) that the petitioner even under the letter dated 30.05.1995 was not a regular appointee to the post of Director, ACBR and was merely appointed as Acting Director till such time a regular appointment was made and till 1999 when he proceeded on deputation as VC of Bundelkhand University he remained an Acting Director only of ACBR, in addition to his post as Professor of Delhi University;

(ii) that upon the petitioner in the year 1999 proceeding on deputation as VC of Bundelkhand University, one Professor Vani Bhramachari was on 20.09.1999 appointed as Officiating Director (Hony.) of ACBR "during leave period" of the petitioner and the petitioner was to "continue to provide academic leadership" to ACBR;

(iii) that though the petitioner had relied on several Resolutions of the Governing Body of ACBR providing that the petitioner, even while on deputation as VC of Bundelkhand University, would continue holding the post of Acting Director, ACBR but the said Resolution prima facie appeared to be of doubtful veracity and in any case had no sanctity inasmuch as whether the petitioner was to continue as Director, ACBR was to be decided by the Executive Council of the Delhi University and not by the Governing Body of ACBR;

(iv) that upon the petitioner returning from Bundelkhand University, the Governing Body of ACBR had issued a Notification dated 18.07.2005 to the effect that the petitioner had resumed the charge as Director, ACBR but the Delhi University vide its letter dated 19.07.2005 had directed withdrawal of the Notification dated 18.07.2005 and which was withdrawn on 25.07.2005; (v) that appointment to the post of Director, ACBR was to be made at the behest of

respondent University and not by the Governing Body of ACBR;

(vi) that the University of Delhi, when the petitioner in the year 1999 had proceeded on deputation as VC of Bundelkhand University, had never contemplated the petitioner continuing to hold charge of Acting Director of ACBR also during his tenure as VC, Bundelkhand University;

(vii) that the Governing Body of ACBR could not have acted in contravention of the Delhi University;

(viii) that the petitioner inspite of being aware in July, 2005 itself of the Delhi University being not agreeable to his assuming the post of Director, ACBR had not challenged the same;

(ix) that the allegations of the petitioner of malafide particularly against the then VC of the Delhi University had remained unsubstantiated;

(x) that during the pendency of the writ petition, when the Inquiry Officer was appointed, though the petitioner had sought stay of inquiry proceedings but no stay had been granted;

(xi) that ordinarily there could be no challenge to a mere show cause notice and the case of the petitioner there against was to be considered by the Inquiry Officer.

6. The petitioner impugned the dismissal of W.P.(C) No.16000/2006 by filing an Intra-Court appeal being LPA No.229/2008. The petitioner also filed a writ petition, being W.P.(C) No.4436/2008 impugning the Resolution dated 21.03.2007 and memoranda dated 22.03.2007, 27.08.2007 and 16.10.2007 (all of which are challenged in the present writ petition also). The said LPA and the writ petition were heard together by a Division Bench of this Court and dismissed vide separate judgments both dated 21.05.2009. It was observed/found/held by the Division Bench in the judgments:

(i) that the petitioner had not questioned the authority or competence of the VC to appoint and remove the person from the office of Director, ACBR;

(ii) that the issue whether or not the petitioner was to continue holding the charge as Acting Director was to be decided by the Executive Council or the VC of the Delhi University and not by the Governing Body of ACBR;

(iii) that as per Ordinance XX of the Delhi University, the Governing Body of ACBR was to function and manage its affairs under the control and supervision of the Executive Council of the University of Delhi and not in opposition thereto;

(iv) the submission of the petitioner that there could be no collateral challenge to the Governing Body Resolutions or that the Governing Body of ACBR had the authority to enable the petitioner to continue to function as Director, ACBR had no merit. That though the petitioner had challenged his removal from the post of VC, Bundelkhand University by filing a writ petition in the Allahabad High Court

and which writ petition had since been allowed but the same was of no avail since the charge against the petitioner was of having at the time of rejoining the Delhi University suppressed the factum of his removal from the post of VC, Bundelkhand University and which suppression remained unaffected by subsequent judgment of the Allahabad High Court allowing his challenge to the said removal. The decision of the Allahabad High Court absolving him of the charge on which he had been removed from Bundelkhand University did not absolve the petitioner from the factum of not disclosing to the respondent Delhi University that he had been so removed prematurely from the post of VC, Bundelkhand University; (v) the charge against the petitioner contained in the Memorandum dated 02.11.2005 of upon return from Bundelkhand University unauthorizedly usurping the post of Director, ACBR was prima facie made out and thus the initiation of inquiry proceedings against the petitioner could not held to be bad;

(vi) no grounds had been set out by the petitioner for seeking the quashing of the Resolution dated 17.10.2005;

(vii) that prima facie the charge against the petitioner of having attempted to usurp ACBR by unauthorizedly forming the Society aforesaid tantamount to misappropriation of the assets of the University maintained institution for a purpose other than one authorized by the Executive Council of the Delhi University and constituted a ground and sufficient reason to hold the inquiry;

(viii) that the petitioner had no lien to the post of Acting Director, ACBR since it was merely an officiating assignment which came to an end on the appointment of Professor Vani Brahmachari to the said post;

(ix) that there was no jurisdictional error in Resolution dated 21.03.2007 or steps in pursuance thereto of suspension of the petitioner;

(x) that the petitioner in the writ petition was also not entitled to any relief for the reason of having suppressed the filing of earlier writ petition being W.P.(C) No.2796/2007 also impugning the Resolution dated 21.03.2007 and Memorandum dated 22.03.2007 and which writ petition was withdrawn on 24.09.2007.

7. The petitioner preferred SLP (C) No.13753/2009 and SLP (C) No.14150/2009 before the Apex Court impugning the dismissal of the LPA and the writ petition (supra). The said SLPs were dismissed by the Supreme Court vide order dated 05.04.2010 as under:

Special leave petitions are dismissed reserving liberty to challenge the termination. All contentions and question of law are left open. We are sure that if and when the petitioner challenges the termination, it will be disposed of expeditiously.

8. It is the case of the petitioner, that since during the pendency of the SLPs, there was no stay of the inquiry proceedings and which had concluded and order

of termination of his services had been passed by the respondent Delhi University, the SLPs aforesaid were dismissed reserving the liberty to the petitioner to challenge the termination and leaving all the contentions and questions of law raised in the SLPs open.

9. The respondent Delhi University in its counter affidavit to the present writ petition has inter alia taken a plea that in view of the judgments dated 21.05.2009 in LPA No.229/2008 and W.P.(C) No.4436/2008 earlier preferred by the petitioner, the petitioner cannot in this writ petition raise issues regarding the illegality of initiation of inquiry against him and the present writ petition is to be thus confined to the challenge if any to the inquiry proceedings and of the action taken by the respondent University in furtherance thereto.

10. The petitioner however controverts the said position and contends that in view of the order dated 05.04.2010 (supra) of the Supreme Court leaving all contentions and question of law open, the judgments dated 21.05.2009 in LPA No.229/2008 and W.P.(C) No.4436/2008 earlier preferred by the petitioner cannot be said to have attained finality and it is open to the petitioner to re-agitate even those issues decided against him in the said judgments.

11. The petitioner filed IA No.10/2010 in SLP (C) No.14150/2009 (supra) seeking clarification / modification of the order dated 05.04.2010. The petitioner in the said application sought clarification / modification from the Supreme Court that he is entitled to in this writ petition re-agitate matters which stand concluded by the judgments dated 21.05.2009 in LPA No.229/2008 and W.P.(C) No.4436/2008 (supra). The said application of the petitioner was however dismissed by the Supreme Court on 20.08.2010 vide order as under:

"I.A. No.10 of 2010 is dismissed."

12. In the aforesaid state of affairs, it is the contention of the senior counsel for the respondent University that the matters which stand concluded vide judgments dated 21.05.2009 in LPA No.229/2008 and W.P.(C) No.4436/2008 (supra) cannot be re-agitated by the petitioner at least before this Court and the challenge in the present petition is to be confined only to the inquiry proceedings and to the decision in pursuance thereto of dismissal of the petitioner from service and to the vires of para 6 of Annexure to Ordinance XI (supra). The senior counsel for the petitioner, though has controverted the said position but faintly.

13. We are of the view that upon the dismissal of the SLPs preferred by the petitioner against the judgments dated 21.05.2009 in LPA No.229/2008 and W.P.(C) No.4436/2008 earlier preferred by the petitioner reserving liberty to the petitioner to challenge the termination, the petitioner is not entitled to re-agitate the matters which stand concluded in the said judgments and the challenge if any in this writ petition can be to termination proceedings insofar as lacuna if any in the inquiry proceedings and illegality if any in the order in pursuance thereto. We are further of the opinion that the observation of the Supreme Court

in the order dated 05.04.2010 that "all contentions and question of law are left open" does not amount to giving liberty to the petitioner to re-agitate before this Court the matters which stood concluded vide judgments dated 21.05.2009 in LPA No.229/2008 and W.P.(C) No.4436/2008 and only meant that the same were open for consideration by the Supreme Court itself if need for the petitioner to urge the same arises from challenge to termination proceedings. This is abundantly clear from the dismissal by the Supreme Court of the clarification application preferred by the petitioner. Had the Supreme Court intended to grant liberty to the petitioner to re-agitate the challenges earlier decided against him, in the challenge to the order of termination, the Supreme Court would have set aside the judgments of this Court and / or remanded the matter to this Court. On the contrary, the Supreme Court chose to dismiss the SLPs and which has the effect of the judgments of this Court attaining finality and it is now not open to this Bench to reconsider the matters already decided.

14. We in this writ petition are thus not concerned with the validity of the initiation of the disciplinary proceedings / inquiry against the petitioner and other matters aforesaid which stand concluded vide judgments of this Court in the earlier round of litigation. Of course the question of vires of Para 6 of Annexure to Ordinance XI and owing whereto this writ petition is before this Bench instead of before a Single Judge of this Court, will also have to be adjudicated.

15. The senior counsel for the respondent University has next contended that the present writ petition is replete with the same averments as in the earlier round of litigation and there is hardly any challenge in the present writ petition to the inquiry proceedings. Attention is invited to Para 79 of the writ petition where the petitioner has pleaded that the Inquiry Officer "did not allow oral evidences and most of the relevant documents required were not provided and legal defence assistance was not allowed." He contends that the same cannot be said to be a sufficient plea to challenge the inquiry proceedings inasmuch as neither is it pleaded as to what oral evidences would have been led and as to how it would have swayed the report of the inquiry and what other documents were not supplied to the petitioner. It is highlighted, as also apparent from the reports of the Inquiry Officer that the petitioner fully participated in the inquiry proceedings.

16. The senior counsel for the respondent University on the challenge by the petitioner to the vires of Para 6 of Annexure to Ordinance XI has contended that notwithstanding the show cause notices in the earlier round of litigation having been for action under the said provision only, the petitioner at that time did not challenge the vires of the said provision. It is also contended that the petitioner has no cause of action for the said challenge.

17. We will first take up the challenge to the vires of Para 6 of Annexure to Ordinance XI (supra).

18. The petitioner has challenged the vires of the same averring that the same does not provide any guidelines or safeguards in protection of principles of

natural justice; the same confers unguided and unchannelized powers in the VC or the Executive Council in the matter of initiation of and conduct of disciplinary proceedings against teaching staff; that the same are sketchy and capable of being used in an arbitrary manner; that proceedings to hold a person guilty of misconduct on general concepts are unfair and arbitrary - reliance is placed on A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., ; that the proceedings against him are in violation of Para 7 of the Annexure to Ordinance XI.

19. Paragraphs 6 & 7 of the Annexure to the Ordinance XI are as under:

6.(1) Notwithstanding anything hereinbefore contained, the Executive Council of the University shall be entitled summarily to determine the engagement of the teacher on the ground of misconduct in accordance with the provisions hereinafter set forth.

(2) The Vice-Chancellor may, when he deems it necessary, suspend the teacher on the ground of misconduct. When he suspends the teacher, he shall report it to the next meeting of the Executive Council.

(3) The Executive Council shall investigate all matters reported to it by the Vice-Chancellor about the misconduct of the teacher whether he has been suspended or not. The Executive Council may appoint a Committee for the purpose. The teacher shall be notified in writing of the charges against him and shall be given not less than three week"s time to submit his explanation in writing. The Executive Council or the Committee may hear the teacher and take such evidence as it may consider necessary. The Executive Council may determine the engagement of the teacher where it deems that the misconduct of the teacher deserves to be dealt with in that manner, after it has considered the explanation and the evidence, if any, and / or the report of the Committee, if one has been appointed.

(4) Where the termination of the service on the ground of misconduct is after suspension by the Vice-Chancellor as aforesaid, the termination of service may be from the date of suspension, if the Executive Council so directs.

7. The engagement under these provisions shall not, save as aforesaid be determined by the Executive Council except by a resolution passed by a vote of not less than a two-thirds majority of the members present at the meeting, provided that the two thirds majority is not less than half the total number of members of the Executive Council. The resolution shall state the reasons for the termination. Before a resolution, under this clause is passed the Executive Council shall give notice to the teacher of the proposal to determine the engagement and not less than three weeks" time to make such representation as the teacher may like to make. Every resolution terminating the service under this clause shall be passed only after consideration of representation, if any, of the teacher. The teacher whose services are terminated under this clause shall be given not less than three months" notice from the date on which he is notified of

the resolution of the termination of service or not less than three months" salary in lieu of notice."

20. The respondent University in its counter affidavit has pleaded that Paras 6 & 7 (supra) are independent of each other and operate in different fields which are mutually exclusive; while termination of service on the ground of misconduct is covered by Para 6, termination of service for reasons unconnected with misconduct is dealt with in Para 7 as is apparent from the words "save as aforesaid" in the opening sentence of Para 7; that the petitioner's engagement having been determined on the ground of misconduct after due inquiry, he cannot rely on Para 7 at all; that the petitioner at the time of joining the services of the respondent University having entered into an agreement as per Annexure to Ordinance XI, cannot now wriggle out of the same; that the petitioner had been in service of the respondent University since 1996 and cannot now challenge the terms of the agreement; that Article 311 of the Constitution of India is not applicable to the respondent University or to the employees of the respondent University and the petitioner cannot now claim any parity therewith.

21. The petitioner in his rejoinder has further pleaded that Para 6 of the Annexure (supra) does not prescribe any procedure for conducting inquiry against any teacher or any procedure for disengagement of service; that most of the other Central Universities in the absence of their own conduct rules in the case of teachers have adopted the Central Civil Services (Classification, Control & Appeal) Rules, 1965 of the Government of India; that since the respondent University does not possess any Conduct Rules for its teachers and since it is following the Government of India Rules for payment of Subsistence Allowance, it ought to implement CCS (CCA) Rules also; that Para 6 (supra) is violative of Article 14 of the Constitution of India inasmuch as it does not provide for a reasonable opportunity to the concerned teacher for defending himself / herself in accordance with the principles of natural justice.

22. The senior counsel for the petitioner during the hearing has relied on Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, in support of the argument of the need to minimize the scope of arbitrary use of power. In the written arguments, it is also contended that Annexure to Ordinance XI is discriminatory inasmuch as the same places a University appointed teacher disadvantageously in comparison to College appointed teachers who enjoy the benefit of Section 45(2) of the Delhi University Act, 1922 providing for arbitration of the disputes and appeal there against and which is not available to University appointed teachers.

23. We may record that the petitioner neither in the writ petition nor in the rejoinder has challenged the entire Annexure to Ordinance XI; what is challenged therein is only the vires of Para 6 thereof. In fact the learned senior counsel for the petitioner during the oral submissions before us also did not challenge the vires to the entire Annexure to Ordinance XI. Similarly no challenge in the writ petition is to be found to Para 6 also on the ground of the same being

discriminatory vis-?-vis the College appointed teachers. No oral arguments also in this regard were addressed and the said arguments have been smuggled into the summary in brief handed over to us. The written arguments cannot be used to smuggle in new pleas not contained in the pleadings and not addressed at the time of hearing. We are thus not inclined to entertain the same. The Apex Court in *Kamakshi Builders Vs. Ambedkar Educational Society and Others*, refused to look into a plea even as to lack of jurisdiction raised for the first time in the written submissions.

24. We are even otherwise not impressed with the challenge made out to Para 6 of the Annexure to Ordinance XI. There is also some merit of the plea of the respondent University that the petitioner having agreed to employment in the respondent University on the terms contained therein is not entitled to challenge the same. A Division Bench of this Court in *Shital Prasad Tyagi Vs. The Principal, Central Institute of Education, Delhi* ILR (1969) I Delhi 1184 held that Ordinance XI incorporates the requisite safeguards to ensure a good standard of education and teaching in the University and a lecturer in the University having been informed at the time of appointment that the service was not a government service cannot avail of protection of Article 311 of the Constitution. Another Full Bench of this Court in *Dr. Mohd. Khan Durrany Vs. The Principal, Shivaji College* ILR (1970) II Delhi 414 held that the appointment of a lecturer, in that case in a College functioning under the Delhi University is dominantly contractual and the teachers do not hold a statutory office and have not been given a legislative status; termination of their service in contravention of model conditions of service cannot be said to be violation of mandatory statutory obligation and the remedy for such wrongful termination is therefore, by way of damages and not by way of reinstatement.

25. What we find in the present case is that the grounds on which the vires of Para 6 (supra) is challenged are factually not established. Though Para 6(1) uses the expression "summarily determine the engagement of the teacher on the ground of misconduct" but the same has to be "in accordance with the provisions hereinafter set forth". Sub-Paras (2) to (4) of Para 6 provide for investigation of misconduct, appointment of a Committee for the purpose of the said investigation, notifying the delinquent teacher in writing of the charges against him / her; providing of not less than three weeks' time to submit the explanation and to hear the teacher and take such evidence as may be necessary and taking of decision of determination of engagement only after considering such explanation and evidences.

26. We thus find that the procedure prescribed in Para 6 cannot be said to be violative of the principles of natural justice or unfair. Para 6 confers the powers of determination of engagement of teacher on the ground of misconduct on the Executive Council. The Executive Council, u/s 21 of the Act is the executive body of the University, empowered u/s 29 to make new or additional Statutes and to amend or repeal the Statutes of the University. In the hierarchy of the authorities

of the University prescribed in Section 17 of the Act, the Executive Council is next only to the Court which is the supreme authority of the University. As per Statute 5 of the University, the Executive Council comprises of Vice Chancellor, Pro-Vice-Chancellor, Dean of Colleges, Director (South Campus), Director (Campus of Open Learning), Treasurer, Proctor, three Deans, three Principals, four Elected Representatives from amongst Members of the Court of the University, two elected representatives from amongst the teachers of the University, two persons nominated by the Visitor to the University and one person to be nominated by the Chancellor of the University. As per Statute 6, the Executive Council has the management, administration of the revenue and property of the University including the powers of appointment of teachers of the University. It would thus be seen that the Executive Council is the apex executive body of the University which has exercised the power of the appointment of the petitioner. It thus cannot be said that Para 6 (supra) has vested the power of termination in a junior / menial body / person.

27. It is the settled position in law that mere possibility of misuse cannot be a ground for challenging the vires of the provision. The Supreme Court in *D.K. Trivedi and Sons and Others Vs. State of Gujarat and Others*, held that where a statute confers discretionary powers upon the Executive or an administrative authority, the validity or Constitutionality of such power cannot be judged on the assumption that the Executive or such authority will act in an arbitrary manner in the exercise of discretion conferred upon it; if the Executive or the administrative authority acts in an arbitrary manner its action will be bad in law and liable to be struck down but the possibility of abuse of power or arbitrary exercise of power cannot invalidate the statute conferring the power or the power which has been conferred by it. Similarly in *Organo Chemical Industries and Another Vs. Union of India (UOI) and Others*, also it was observed that the bogie of absence of guidelines and the consequential possibility of authority running berserk does not frighten - what is not explicit may still be implicit. *Delhi Transport Corporation (supra)* relied on by the petitioner does not negate the said proposition. The provision for termination of service for consideration in that case was without holding any inquiry and found to be violative of rules of natural justice. It was for this reason that it was struck down as providing unguided, unrestricted and arbitrary power of termination. It is not so in the present case. Para 6 of Ordinance XI provides for termination only in case of misconduct and provides for a proper inquiry complying with the principles of natural justice.

28. We are also in agreement with the plea of the respondent University that Paras 6 & 7 of Annexure to Ordinance XI operate in different fields. Para 7 is intended to provide security of tenure to teachers of the University by providing for termination of their engagement on other grounds even if not found to have mis-conducted themselves, by providing for the same being possible only vide a resolution passed by a vote of not less than two-thirds majority of the members present at the meeting being not less than half of the total members of the Executive Council. On the contrary, such condition of Resolution passed by a vote

of not less than two-thirds majority of the members of the Executive Council is conspicuously absent from Para 6. Else Statute 5 (4) provides for seven members Executive Council forming a quorum.

29. Misconduct though not defined in the Act or in Ordinance XI or in the Annexure thereto, is a well understood term and Para 6 (supra) cannot be held to be bad and liable to be struck down merely for the reason of "misconduct" having not been defined. Para 6 having provided for termination of engagement of the teacher on the ground of misconduct and having vested the power thereunder in the Executive Council, it is obvious that the "misconduct" for which such powers can be exercised cannot be trivial and has to be of the nature and gravity so as to invite the extreme punishment of determination of engagement. The Apex Court in *State of Punjab and Others Vs. Ram Singh Ex. Constable*, was also faced with a Rule where misconduct was not defined. It was however held that the ambit of the word misconduct has to be construed with reference to the subject matter and the context wherein the term occurs regard being had to the scope of the statute and the public purpose it seeks to serve. Similarly in *Caltex India Limited Vs. Presiding Officer, Labour Court and Others*, also, failure to define misconduct was held not to invalidate the provision on the ground of excessive delegation. As far back as in *W.M. Agnani Vs. Badri Das* (1963) 1 LLJ 684 also it was observed that what conduct can be considered as misconduct has to be dealt with reasonably and in accordance with common sense and depends upon the circumstances of each case. Reference in this regard can also be made to observations in *Union of India Vs. Annam Ramalingam and Others*, though not in the context of misconduct. As far as the reliance by the petitioner on *A.L. Kalra* (supra) is concerned, the Supreme Court in *Secretary to Government and Others Vs. A.C.J. Britto*, held that *A.L. Kalra* cannot be held as laying down that it is obligatory on the employer to specify and define with precision misconduct. Moreover, all decisions of the Executive Council u/s 18 of the Act and Statute 6 can be reviewed by the Court of the University (and which opportunity the petitioner availed but the Court refused to interfere) and are subject to judicial review of this Court and thus for this reason also it cannot be said that Para 6 (supra) is arbitrary or liable to be set aside / quashed on this ground.

30. As far as the facts of the present case are concerned, the senior counsel for the petitioner has been unable to show any violation of procedure in the inquiry proceeding. Rather the report of the inquiry on Memorandum dated 27.08.2007 of the petitioner being guilty of misappropriation of Rs. 16,63,264/- is in favour of the petitioner. The petitioner has been unable to establish any case of any defect or violation of principles of natural justice in the inquiry.

31. Moreover, we are of the view that the facts are not really in dispute. The penalty of determination of engagement has been imposed on the petitioner finding the petitioner guilty of:

(i) not informing the respondent University at the time of rejoining (post deputation) in the year 2005, of his removal from the post of VC of the

Bundelkhand University;

(ii) having thereafter on his own and / or in collusion with the Governing Body of ACBR taken over as the Director of ACBR and acted so without the respondent University having allowed so;

(iii) having formed a Society to usurp the ACBR.

32. The explanation of the petitioner for his aforesaid action is:

(i) having orally informed of his removal as Vice Chancellor of Bundelkhand University;

(ii) that he had got the Society registered as an agent of the Governing Body of ACBR;

(iii) that the respondent University had never objected to the Resolutions of the Governing Body of ACBR;

(iv) that two members of the Executive Council were also in the Governing Body of ACBR;

(v) it thus could not be said that the actions of the Governing Body of ACBR were behind the back of the respondent University;

(vi) that the formation of the Society was in consonance with the thought at the time of setting up of ACBR of the same ultimately becoming an autonomous body / University / deemed University; (vii) that no action has been taken against the other members of the Governing Body of ACBR.

33. A perusal however of the reports of the Inquiry Officer shows:

(i) that the petitioner on 18.07.2005 wrote a letter to the respondent University that after completing his tenure as VC of Bundelkhand University, he had returned back and reported for duty as Professor. The petitioner in the said letter did not disclose the factum of his removal from the said post and concealed the same;

(ii) that the petitioner simultaneously on 18.07.2005 itself also got the Deputy Registrar, ACBR to issue a Notification of the petitioner having joined back as full time Director in the afternoon of 18.07.2005 when there was no such sanction from the respondent University and when till then he had not even been allowed to join back his substantive post of Professor in the respondent University;

(iii) the petitioner has throughout also set up a false case of his having been allowed to remain as the Acting Director of ACBR even during the time when he was on deputation as VC of Bundelkhand University when as per the Notification dated 20.09.1999, the petitioner during the said time was merely to provide academic leadership to ACBR.

(iv) the petitioner wrote a letter dated 08.08.2005 to the VC signing the same as

Founder Director, ACBR when neither he was at any time conferred the post of Founder Director nor was on that date the Director of ACBR and which charge he was earlier merely holding additionally and which also he had ceased to hold on going on deputation as aforesaid;

(v) that the aforesaid amounted to usurpation of the post of Director, ACBR;

(vi) that the claim of the petitioner that ACBR was his brainchild and not of the respondent University was false;

(vii) that the claim of the petitioner that the memorandum issued to him were not at the instance of the Executive Council was false in view of the Resolutions of the Executive Council including of appointment of a retired Judge to enquire into the charges of misconduct;

(viii) that the version of the petitioner of having orally informed the VC, Delhi University of his removal from the post of VC, Bundelkhand University was not established;

(ix) that merely because the idea of setting up of ACBR was conceived by the petitioner and he was actively involved in setting up thereof does not allow him to proclaim himself as the Founder Director of ACBR or to contend that he cannot be removed from the said post;

(x) that the petitioner in spite of knowledge of objection having been taken by the respondent University to his taking over as Director of ACBR on 18.07.2005 continued to unauthorizedly represent himself as Director of ACBR and was not justified in describing himself so;

(xi) that his action of so describing himself as Director of ACBR was misleading;

(xii) that the case of the petitioner during the inquiry proceedings of having held the post of Acting Director, ACBR while holding the post of VC, Bundelkhand University itself was a misconduct;

(xiii) that the effort of the petitioner of hiving off ACBR from being a University maintained Institute to an independent body was also without authority of the respondent University;

(xiv) that the petitioner had illegally attempted to convert a University maintained institution into a registered society and the University building as registered office of the Society;

(xv) that out of the signatories to the Memorandum of Association of the Society only the petitioner was in the employment of the University and therefore the proceedings could be initiated only against the petitioner;

(xvi) that the action of the petitioner of describing himself as Director of ACBR while forming the Society, when he was then not even a Director of ACBR amounted to misconduct;

(xvii) that the petitioner had attempted to describe the property of the University where the ACBR was situated as his own and given an affidavit of "No Objection" for registered office of the Society at the said premises describing the said premises as his own.

34. We are of the view that the actions aforesaid of the petitioner which are not disputed; of attempting to rejoin the Delhi University by concealing the factum of his removal from Bundelkhand University; of attempting to thereafter take over as Director of ACBR; of while being VC of Budelkhand University continuing to claim himself to be Acting or Honorary Director of ACBR and of availing the amenities of telephone and security guards at his residence at the expense of ACBR (even though the charge of sanctioning the said expenditure was not established); on taking steps without authority of University with respect to ACBR and to convert the same into an independent Society from being an institution of the Delhi University definitely fall within the definition of "misconduct" and were grave enough for the action taken by the respondent University of terminating the engagement of the petitioner and to not call for any interference in exercise of powers of judicial review. This Court is not sitting in appeal over the disciplinary action of the respondent University and is only to satisfy itself whether sufficient material for forming an opinion exists or not and whether the punishment is proportionate to the misconduct proved. We are satisfied on both counts.

35. The petitioner in the written arguments has taken several other grounds as to the irregularity of the action against him viz. of the action being at the instance of the VC and not at the instance of the Executive Council. However, in view of the findings in the earlier round of litigation and which have been held to be not open for reconsideration by this Court and even otherwise, we are unable to find any such case to have been made out.

36. The writ petition accordingly fails. We refrain from imposing any costs.