

(2001) 12 AHC CK 0039
In the Allahabad High Court
Case No : C.M.W.P. No. 23118 of 2000

Ramesh Chandra and Others	Vs	APPELLANT
Vice Chancellor, University of Allahabad and Others		RESPONDENT

Date of Decision : 20-12-2001

Acts Referred:

Uttar Pradesh General Clauses Act, 1904 — Section 16
Uttar Pradesh State Universities Act, 1973 — Section 21(1)

Citation : (2002) 1 AWC 461 : (2002) 1 UPLBEC 449

Hon'ble Judges : R.P. Misra, J;G.P. Mathur, J

Bench : Division Bench

Advocate : G.K. Singh, V.K. Singh and R.N. Singh, for the Appellant; S.C., R.G. Padia and P. Padia, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—This petition under Article 226 of the Constitution has been filed for quashing the resolution dated December 7, 1999 of the Executive Council of Allahabad University, the order dated December 8, 1999 of the Registrar of the University and also the order dated January 28, 2000 of the Vice Chancellor. The parties have exchanged affidavits and with their consent, the writ petition is being disposed of finally at the admission stage.

2, The ten petitioners are employees of institute of Correspondence and Continuing Education of University of Allahabad. According to the University, some employees of the institute entered the office of the Registrar of the University on December 3, 1999 and after abusing and threatening him, lifted a chair and threw the same on him and also physically assaulted him, They also broke the telephone, furniture and the glass top of the table. Some persons present in the vicinity intervened and saved the Registrar from being assaulted further. While leaving, the said employees held out further threats. Property worth several thousand rupees was damaged in the incident. Sri A.N. Seth, the Registrar of the University then lodged a written F.I.R. of the incident at the

concerned police station on the same day. A meeting of the Executive Council of University was convened on December 7, 1999, where the report of the Registrar was considered. Taking into consideration the seriousness of the incident, a resolution was passed that 11 employees involved in the incident may be placed under suspension with immediate effect. A further resolution was passed authorising the Vice Chancellor to appoint an officer for holding an inquiry and taking appropriate action against the persons found guilty. Thereafter, a formal order of suspension was passed and was communicated to the delinquent employees on December 8, 1999. The Vice Chancellor passed an order on January 28, 2000, appointing Justice R. R. Misra, a retired Judge of Allahabad High Court, as the Enquiry Officer to hold inquiry regarding the aforesaid incident which took place in the office of the Registrar on December 3, 1999. The petitioners seek quashing of the resolution of the Executive Council directing their suspension with immediate effect, the order communicating their suspension and also the order by which the Enquiry Officer has been appointed.

3. The principal submission of Sri R.N. Singh, learned counsel for the petitioners is that under the relevant Statutes of Allahabad University, the competent authority for passing the order of suspension was the Registrar and against his decision there is a right of appeal to the Disciplinary Committee and then the matter, has to be considered by the Executive Council. The passing of the resolution by the Executive Council for suspending the petitioners, it is urged, had deprived the petitioners a forum where they could prefer an appeal and also subsequent consideration of the matter by the Executive Council and, therefore, the impugned resolution and the order of suspension is illegal. Dr. R. G. Padia, who has appeared for respondent Nos. 1 to 3 (for short University) has submitted that under the relevant statutory provisions, the power of appointment is with the Executive Council and in view of Section 16 of U.P. General Clauses Act, the said power would include the power to suspend, dismiss or remove any person who has been appointed. Therefore, the action taken by the Executive Council, which is the highest body of the University, cannot be challenged on the ground that the power of suspending an employee was also vested with a subordinate authority or some one lower in hierarchy.

4. Before examining the contentions of the learned counsel for the parties, it will be useful to briefly refer to some of the statutory provisions. Section 20 of the State Universities Act, 1973 (hereinafter referred to as the Act) gives the constitution of the Executive Council and it consists of the Vice Chancellor, who is the Chairman thereof, a pro-Vice-Chancellor, deans of two faculties, two professors, two readers, four persons of academic eminence and a member of an associated college. Sub-section (1) of Section 21 provides that the Executive Council shall be the principal executive body of the University and subject to the provisions of the Act have the powers enumerated in Clauses (i) to (xvii) thereof. Clauses (vii) and (xii) of Section 21 which have a bearing on the controversy are being reproduced below :

"(vii) to appoint officers, teachers and other employee of the University and to define their duties and the conditions of their service, and to provide for the filling of temporary casual vacancies in their posts ;

(xii) 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."

5. Statutes 2.06. 2.07. 8.10 and 8.11 which have a bearing on the controversy are being reproduced below :

"2.06 (1) Subject to the provisions of the Act and the Statutes, the Registrar shall have disciplinary control over all employees of the University, other than the following, namely :

(a) officers of the University ;

(b) teachers of the University, whether in relation to their work as teacher or while holding any remunerative office or in any other capacity, such as examiner or invigilator ;

(c) the Librarian ;

(d) other employees referred to in Section 17 ;

(e) employees in the University in the Accounts and Audit Section.

(2) The power to take disciplinary action under Clause (1) shall include the power to order dismissal, removal, reduction in rank, reversion, termination or compulsory retirement of an employee referred to in the said clause, and shall also include the power to suspend such employee pending inquiry, if any.

(3)

(omitted as not relevant).

2.07. An employee of the University aggrieved by an order referred to in Statute 2.06 may prefer an appeal (through the Registrar) to the Disciplinary Committee constituted under Statute 8.10, within fifteen days from the date of service of such order on him. The decision of the Committee on such appeal shall be final.

8.10 (1) The Executive Council shall constitute, for such terms as it thinks fit, a Disciplinary Committee in the University which shall consist of the Vice Chancellor and two other persons nominated by it :

Provided that if the Executive Council considers it expedient, it may constitute more than one such Committee to consider different cases or classes of cases.

(2) No teacher against whom any case involving disciplinary action is pending shall serve as a member of the Disciplinary Committee dealing with the case.

(3) The Executive Council may at any stage transfer any case from one

Disciplinary Committee to another Disciplinary Committee.

8.11 (1) The functions of the Disciplinary Committee shall be as follows :

(a) to decide any appeal preferred by an employee of the University under Statute 2.07 :

(b) to hold inquiry into cases involving disciplinary action against a teacher or the Librarian of the University ;

(c) to recommend suspension of any employee referred to in Sub-clause (b) above pending or in contemplation of inquiry against such employee ;

(d) to exercise such other powers and perform such other functions as may, from time to time, be entrusted to it by the Executive Council;

(2) in case of difference of opinion among members of the Committee, the decision of the majority shall prevail.

(3) The decision or the report of the Disciplinary Committee shall be laid before the Executive Council as early as possible, to enable the Executive Council to take its decision in the matter."

6. A perusal of Statute 2.06 would show that the Registrar shall have disciplinary control over a limited category of employees of the University and not over all the employees. Against an order of suspension, reversion, termination of service or compulsory retirement passed under Clause (3) of Statute 2.06, the aggrieved employee has a right to file an appeal to the Disciplinary Committee under Statute 2.07 and the decision in the appeal is final. Clause (3) of Statute 8.11 provides that the decision or the report of the Disciplinary Committee shall be placed before the Executive Council to enable it to take a decision in the matter.

7. The alleged incident leading to the suspension of the petitioners took place in the office of Sri A.N. Seth, who is the Registrar of the University. He was threatened and assaulted and the telephone and furniture was also broken. It was Sri A.N. Seth, who lodged the F.I.R. at the police station against those who had trespassed in his office and had assaulted him. He also gave a report to the Executive Council on the basis of which the impugned resolution was passed on December 7, 1999. If he had taken any action against the petitioners, the same was liable to be immediately challenged on the ground that he was personally biased and the decision to suspend had not been taken by a fair and impartial authority. The maxim *nemo debet esse iudex in propria causa* which means that no man shall be a Judge in his own cause, or the deciding authority must be impartial and without bias would have immediately come into play. Even if the Registrar would have acted fairly and objectively, the delinquent employees (petitioners) could have a feeling that the suspension order had not been passed on objective consideration and had been passed on account of personal bias. In *Meenglas Tea Estate Vs. Its Workmen*, , an inquiry against a workman on the charge of assaulting the manager was conducted by the manager himself and it

was held that the inquiry was vitiated. In *Mineral Development Ltd. Vs. The State of Bihar and Another*, Subha Rao. J. held that the principles governing the "doctrine of bias" vis-a-vis judicial Tribunals are well settled and they are : (1) no man shall be a Judge in his own cause ; (2) justice should not only be done but manifestly and undoubtedly seen to be done. It was further held that these principles are equally applicable to the authorities, though they are not courts of justice or judicial Tribunals, who have to act Judicially in deciding the rights of others, i.e., authorities who are empowered to discharge quasi-judicial functions. We are, therefore, of the opinion that even if the Registrar had the power or authority to pass the suspension order, in the facts and circumstances of the present case, he rightly refrained from doing so and the said power of suspension was exercised by another authority which was superior to the Registrar in hierarchy.

8. The Registrar has no doubt power to suspend an employee under Clause (2) of Statute 2.06 but under this Statute, he can exercise the disciplinary control over a limited category of employees other than those who have been enumerated in Sub-clauses (a) to (e) of Clause (1). A look at the memorandum of the writ petition would show that petitioner Nos. 1 and 5 are Correspondence Officers, petitioners 2 and 3 are Assistant Directors and petitioner No. 4 is Assistant Correspondence Officer in the Institute. Obviously, they do not fall within the disciplinary control of the Registrar and, therefore, Statute 2.06 has no application to them nor the Registrar could have passed an order of suspension against them.

9. A close look of the Statutes would show that they do not lay down in any categorical terms that the disciplinary control over the employees of the University, other than those enumerated in Sub-clauses (a) to (e) of Clause (1) of Statute 2.06, is exclusively with the Registrar. They do not lay down that the power of suspension can be exercised by the Registrar alone and not by anybody else. Similarly, the Statutes do not lay down that the disciplinary action like, suspension, reversion or termination of service must necessarily be taken in a manner that an employee gets a right of appeal to the Disciplinary Committee. There is no provision in the Statutes that the proceedings must be conducted in a manner that against an order of a suspension, an employee must necessarily get a right of appeal to the Disciplinary Committee. Statute 2.07 merely provides that an employee aggrieved by an order referred to in Statute 2.06 (viz. suspension, reversion or termination of service, or compulsory retirement) may prefer an appeal to the Disciplinary Committee constituted under Statute 8.10. This only means that if such an order is passed by the Registrar, the employee concerned will have a right of appeal. Therefore, the challenge to the order of suspension on the ground that the same has been passed in pursuance of resolution of the Executive Council, which has resulted in depriving a forum of appeal, has no legs to stand.

10. Clause (vii) of Sub-section (1) of Section 21 of the Act confers power upon

the Executive Council to appoint officers, teachers and other employees of the University and to define their duties and the conditions of their service. Clause (xii) of the same sub-section confers power on the Executive Council to regulate and to enforce discipline amongst the members of the teaching, administrative and other staff of the University. The power to "enforce discipline" would include the power to take disciplinary action like suspension, reversion or termination from service. Section 16 of U.P. General Clauses Act, reads as follows :

"16. Power to appoint to include power to suspend, dismiss or otherwise terminate the tenure of office.--Where, by any Uttar Pradesh Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have the power to suspend, dismiss, remove or otherwise terminate the tenure of office of any person appointed, whether by itself or any other authority, in exercise of that power."

This provision clearly shows that the authority having power to appoint an employee also possesses the power to take disciplinary action which includes the power to pass an order of suspension. This question was considered by a Constitution Bench in *R.P. Kapur Vs. Union of India (UOI)* and Another, of the reports, it was held as follows :

"The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension These general principles, in our opinion, apply with equal force in a case where the Government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of Government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in Section 16 of the General Clauses Act, No. X of 1897, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant"

11. In *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*, . It has been held that to place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere and has received statutory recognition under service rules framed by various authorities including Government of India and the State Governments. It has been further held that even in the General Clauses Act, this right is conceded to the employer by Section 16 which inter alia, provides that power to appoint

includes power to suspend. Thus, there cannot be slightest doubt that the Executive Council of the University which has the power to appoint has also the power to dismiss or suspend an employee and no exception can be taken to the resolution passed by it on December 7, 1999, for placing the petitioners under suspension.

12. The question whether the order of suspension passed by a higher authority is invalid may also be examined. It may be mentioned here that the constitutional provision relating to civil servants namely, Article 311 of the Constitution only lays down that the civil servant shall not be dismissed or removed by an authority subordinate to that by which he was appointed. Any order of dismissal or removal of a civil servant by an authority subordinate to the appointing authority is wholly invalid. In *Mahesh Prasad Vs. The State of Uttar Pradesh*, it was held that what the Constitution requires is that a person should not be removed by an authority subordinate to the one by whom he was appointed. It was also held that the constitutional provision and Railway Establishment Code cannot be read as implying that removal must be by the very same authority who made the appointment or by his direct superior and it was enough that the removing authority is of the same rank or grade, in *The state of U.P. and Others Vs. Ram Naresh Lal*, . It was held that there is nothing in the Constitution which debars the Government from conferring powers on an officer other than the appointing authority to dismiss a Government servant provided he is not subordinate in rank to the appointing authority. The contention similar to one raised here was examined in considerable detail by a Bench of three Hon'ble Judges in *Sampuran Singh Vs. State of Punjab*, . In this case, the employee was prosecuted u/s 5 (2) read with Section 5(1) (c) and (d) of the Prevention of Corruption Act, 1947, Section 6(1)(c) of the said Act provided that no Court shall take cognizance of an offence punishable with Section 5 of the Act alleged to have been committed by a public servant except with the previous sanction of the authority competent to remove him from services. The authority competent to remove the employee (Sampuran Singh) was the Chief Engineer but the sanction had been granted by the Chief Minister which amounted to sanction by the State Government which was the appellate authority under the Rules. The contention raised on behalf of the accused employee was that the authority competent to remove him from service was the Chief Engineer and as such, sanction for prosecution could be granted only by him and not by anybody else but as the sanction had been granted by the Chief Minister, the same was vitiated. What the Court said in paras 10 and 11 of the reports applies here and, therefore, they are being reproduced below :

"10. In support of his contention the counsel for the petitioner placed reliance on the following cases. To start with reference was made to AIR 1936 253 (Privy Council) , which laid down that where power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

11. There is no quarrel with the propositions of law laid down in that case, but the question for determination here is who is the sanctioning authority within the meaning of Section 6(1)(c) of the Prevention of Corruption Act, 1947. Section 6(1)(c) stipulates that the removing authority will be the sanctioning authority. In view of Article 311(1) of the Constitution the removing authority cannot be subordinate in rank to the appointing authority. By necessary implication the removing authority may be higher in rank to the appointing authority."

The Court after referring to several earlier decisions distinguished the situation where under the Statute the power for doing a particular act has been specifically conferred upon an authority and could only be exercised by that authority and by none else. However, regarding service jurisprudence and Article 311 of the Constitution, it was held in para 22 of the reports that the power to remove can be exercised by an authority higher than the appointing authority.

13. A similar contention that the exercise of power of suspension by a higher authority takes away employee's right of appeal was considered and repelled by a Division Bench in *Thimmarayappa v. State of Mysore* 1969 (2) LLJ 14, and it was held as follows :

"The order of suspension passed by an appellate authority is not illegal. In this case, the order of suspension was issued by the Government which was also an appellate authority. The order could not be challenged on the ground that it amounts to deprivation of a right of appeal, if any, he might have under the very rules."

14. This question has also been examined by a Full Bench of Andhra Pradesh High Court in *M. Nagalakshmiah v. State of Andhra Pradesh* 1973 LabIC 656 . This was a case where order of suspension had been passed by way of penalty. Rule 20 of Andhra Pradesh Civil Services (C.C. and A) Rules, provided for an appeal against the order of suspension passed under Rule 13. Under the Rule, the Director of Agriculture had the power to pass the order of suspension against the employee but the said order was passed by the Government. It was held that the Government as higher authority can also impose the penalty of suspension under Rule 13. In *Mritunjai Singh Vs. State of U.P. and Others*, , the employee was an overseer in Irrigation Department and was governed by Rule 1A of Punishment and Appeal Rules for subordinate services. He was placed under suspension by an order of the Addl. Chief Engineer passed in compliance with the order of the Government suspending him. The appointing authority of the petitioner was Chief Engineer. The question for consideration was whether in view of Rule 1A which provided for the suspension order to be passed by the appointing authority or by officer next lower authority to whom the power may have been delegated, the order of suspension passed by the State Government could be said to be a valid order. After considering the law on the subject, it was held as follows in para 12 of the reports :

"It would thus appear that every contract of employment gives the power to the

employer to suspend an employee This power is no less in the case of Government than in the case of any private employer and under this power there seems to be no reason why the Government may not suspend an employee of theirs when they may have made a rule also to the effect that an appointing authority would suspend their employee. By making such a rule the power which is inherent under the contract of service cannot be taken away. Under Article 309, no doubt the Governor or such person as he may direct can make rule regulating the recruitment and the conditions of service of persons appointed to such services and posts in connection with the affairs of the State and this rule will have statutory force but this does not take away their power to suspend an employee of theirs which is inherent in every employer. In this view of the matter, therefore, in my opinion the suspension order passed in this case by the Government was a valid order in spite of the provisions contained in Rule 1A."

15. in *Kamlesh Kumar Chaurasia v. The Governor* 1991 AWC 466 : 1992 ALR 522 , the appointing authority of the delinquent employee was Joint Director of Medical and Health but he had been placed under suspension by the Chief Secretary to U.P. Government, who was higher in rank to the Joint Director. The challenge to the order of suspension on the ground that the same was not passed by the authority contemplated under the relevant service rules but had been passed by a higher authority was repelled on the ground that the higher authority was also competent to pass such order. Similar view has recently been taken by a learned single Judge of our Court in *Lallan Prasad Vs. State of U.P. and others*, . where the ratio of *Kamlesh Kumar Chaurasia* (supra) was approved.

16. The problem can be examined from another angle. Trial of cases before the regular courts, civil or criminal, are strictly governed by the jurisdiction conferred and exercised by the Court. It is well-settled that a decree passed by a Court having no Jurisdiction is nullity and this can be shown at any stage, even in execution proceedings. *Kiran Singh and Others Vs. Chaman Paswan and Others*, . Section 15. C.P.C. lays down that every suit shall be instituted in the Court of the lowest grade competent to try it. If a civil suit, which on account of its pecuniary Jurisdiction is cognizable by a Civil Judge (Jr. Div.), is tried by an Additional District Judge, will the decree be set aside on the ground that an appeal lay to such a Court. The trial of suit in such a manner deprives the aggrieved party of a right of appeal at the District level and the right of second appeal to the High Court is also lost. Similarly, if a criminal case which in view of First Schedule to the Code of Criminal Procedure is cognizable by a Magistrate is tried by the Sessions Judge, will the conviction of the accused be set aside on the ground that he has lost a right of appeal at the District level and also a right of revision u/s 401 to the High Court. It has never been held that a decision of a case by a higher Court to which under the Statute an appeal lay is illegal or is contrary to the Statute nor the decision can be set aside on the aforesaid ground. The question of jurisdiction in administrative or quasi-judicial matters can never be placed on a pedestal higher than that before the regular Courts which are strictly governed by and exercise powers circumscribed by the jurisdiction conferred

upon them. Therefore, the contention of the petitioners that the impugned suspension order is vitiated on account of the fact that the same was passed by a higher authority which deprived them of a right of appeal has absolutely no merit and must be rejected.

17. Sri R. N. Singh has next submitted that rules laid down in *Taylor v. Taylor* 1836 LCHD 426 , that where a power is given to do a certain thing in a certain way. the thing must be done in that way or not at all and other methods of performance are necessarily forbidden has been accepted in *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*, , and several other decisions of the Apex Court. Therefore, in view of Statute 2.06 (2), the order of suspension should have been passed by the Registrar. We have already explained the correct meaning of the Statute in the earlier part of the judgment. The Statute does not say that the order of suspension with regard to the employees falling within the disciplinary control of the Registrar under Clause (1) of Statute 2.06 must necessarily be passed by the Registrar himself and not by any one else. The Statutes clearly show that such a power can also be exercised by Disciplinary Committee and Executive Council. It may be pointed out that a similar contention has been considered in para 10 of the reports in *Sampuran Singh Vs. State of Punjab*, , which has been reproduced in the earlier part of the judgment and was not accepted by the Apex Court.

18. Learned counsel for the petitioners has placed strong reliance on a decision of the Apex Court in *Surjit Gosh v. Chairman and Managing Director, United Commercial Bank and Ors.* 1995(1) UPLBEC 566, wherein the order of dismissal passed by an authority who was the appellate authority under the regulations was set aside on the ground that the employee was deprived of an opportunity to file an appeal had the order been passed by the disciplinary authority. This decision has been rendered by a Bench of two Hon''ble Judges. The judgment does not show that the attention of the Bench was drawn to the earlier judgments, which had been rendered by larger Benches. With profound respects, we are of the opinion that the earlier decisions rendered in *R.P. Kapur v. Union of India* (supra), which is by a Constitution Bench and *Sampuran Singh v. State of Punjab* (supra), which is by a Bench of three Hon''ble Judges are binding on us. They clearly lay down that an order passed by a higher or appellate authority does not vitiate the dismissal or suspension order.

19. We are further of the opinion that the ratio of *Surjit Singh* (supra), may not be strictly applicable here as in the said case a punishment of dismissal had been imposed upon the employee which obviously has very serious consequences as the employee is thrown out of employment and being an order of dismissal it weighs seriously against him in getting another job. In the case in hand, no punishment has been imposed upon the petitioners but they have been placed under suspension. Suspension literally means "the act of debarring for a time from a function or privilege". It is a temporary deprivation of office but by reason of suspension the person suspended does not lose his office nor does he suffer

any degradation. He only ceases to exercise the powers and to discharge the duties for the time being. An order of suspension is not an order imposing punishment. It is an order made against him before he is found guilty to ensure smooth disposal of the proceedings initiated against him. Therefore, the effect of deprivation of a right of appeal cannot have the same impact as it will have in a case of dismissal from service.

20. Sri R.N. Singh has next submitted that under Statute 2.06 (2), the order of suspension can only be passed pending inquiry and as in the present case, no inquiry was pending against the petitioners on the date when the suspension order was passed, the same is illegal. In support of this submission reliance is placed on a Division Bench decision of our Court in *Nurul Hassan v. Senior Superintendent of Police* 1985 UPLBEC 1329, wherein, it was held that under U.P. Police Regulations, the power of suspension could only be exercised during the pendency of an inquiry and not in contemplation thereof in view of the expression "during departmental inquiry" or "during the judicial inquiry" used in para 496 of the Regulations. In our opinion, the contention raised is wholly misconceived. The order of suspension has not been passed by the Registrar and, therefore, Clause (2) of Statute 2.06 has no application here. Clause (1) of Statute 8.10 provides that the Executive Council shall constitute a Disciplinary Committee which shall consist of the Vice-Chancellor and two other persons nominated by him. Clause (1) of Statute 8.11 gives the functions of the Disciplinary Committee and Sub-clause (c) empowers the Disciplinary Committee to recommend suspension pending or in contemplation of inquiry of an employee against whom it is holding enquiry. The decision on the report of the Disciplinary Committee has to be taken by the Executive Council. This Statute clearly shows that the Executive Council can exercise power of suspension in contemplation of inquiry. Therefore, the order of suspension passed against the petitioners cannot be struck down on the ground that on the date when the order was passed no inquiry was pending against them. That apart, even before the present writ petition was filed charge-sheet had been served upon the petitioners by the Enquiry Officer and it cannot be contended now that no inquiry is pending.

21. The petitioners have also challenged the order dated January 28, 2000 of the Vice-Chancellor by which Hon"ble Justice R.R. Misra (Retd.) has been appointed as the Enquiry Officer. The only ground urged by the learned counsel for the petitioners for assailing the said order is that the Enquiry Officer will be paid some remuneration by the University and, therefore, he is likely to be biased in favour of the University and would not act fairly. It is urged that some member of the staff of the University should have been appointed as the Enquiry Officer. We are unable to accept the contention raised that merely because some remuneration will be paid by the University to the Enquiry Officer, he would not act fairly or would be biased in favour of the University. On a question being put by the Court regarding the quantum of remuneration, learned counsel for the University could not give the exact figure but said that it would be a small amount. There is nothing illegal or unethical for an Enquiry Officer to charge

some remuneration as he has to devote time and energy while conducting an inquiry. We don't think that payment of a small amount to an Enquiry Officer can be ground to hold that the inquiry would not be fair or impartial. It may also be pointed out that there is no clear averments in the writ petition regarding the alleged bias of the Enquiry Officer nor he has been made a party to the writ petition.

22. Sri R. N. Singh has lastly submitted that the petitioners are being paid their half salary by way of suspension allowance, which is not permissible under the rules. The contention is that rules are silent, the petitioners are entitled to their full salary even during the period of suspension. It may be stated at the very outset that the suspension order dated December 8, 1999, clearly mentions that the petitioners will be scheduled to suspension allowance according to Rules. If the petitioners are not being paid the suspension allowances what they are entitled to under the Rules, they can certainly claim the balance but the suspension order cannot be faulted on that ground. There is no prayer for payment of any balance of the suspension allowance in the writ petition. Dr. R.G. Padia, learned counsel for the University has drawn attention of the Court to Service Rules for Non-teaching Employees printed at page 1140 of the Calendar of the University of Allahabad. Towards the end of Chapter I, two notes are given, and note (2) at page 1143 says that in case there are matters in which the Rules are silent, the parallel provisions of U.P. State Government Rules shall be applicable. Learned counsel has thus submitted that since the Statutes are silent about the quantum of subsistence allowance, the parallel provisions of U.P. Government Rules will apply and therefore, the payment of half salary as subsistence allowance is perfectly valid. The application of these rules has been challenged from the side of the petitioners on the ground that the same have not been enforced so far. A supplementary counter-affidavit has been filed on behalf of the University on December 11, 2001, wherein, it is averred that the rules were enforced on November 26, 1979 and a copy of the order passed by the Vice Chancellor in that regard has also been filed. The order clearly mentions that the Government Rules are applicable to all non-teaching staff, Dr. Padia has also made a statement that ever since the order of the Vice Chancellor was passed 22 years back in 1979 these rules are being followed. It is, therefore, not possible to hold that the said rules are not applicable or would not govern the matter.

23. Before parting with the case, we would like to observe that the Enquiry Officer served a charge-sheet dated April 24, 2000, upon the petitioners. The petitioners have not yet given reply to the charges nor the inquiry has proceeded further. This is probably for the reason that in the writ petition a specific prayer has been made for quashing of the order of the Vice Chancellor dated January 28, 2000, by which the Enquiry Officer was appointed. The Enquiry Officer probably thought it prudent not to proceed with the inquiry till the matter was decided. In our opinion, the inquiry should not be delayed any further. It is accordingly directed that the inquiry instituted against the petitioners shall be held expeditiously and endeavour shall be made to conclude the same within

three months. It is needless to observe that this will also depend upon the attitude of the petitioners. It is expected that they will co-operate with the inquiry and will not put unnecessary obstacles so that the same is concluded within the aforesaid period.

24. No other point was urged.

25. For the reasons mentioned above, the writ petition is dismissed. No costs.