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**(1954) 03 P&H CK 0014**

**In the Punjab And Haryana At Chandigarh**

**Case No : Civil Miscellaneous No. 3 of. 7-1-1954**

Sadhu Ram Hardwari Lal

APPELLANT

Vs

Principal, Rajindra College and Another

RESPONDENT

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**Date of Decision : 18-03-1954**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (1954) 03 P&H CK 0014**

**Hon'ble Judges : Mehar Singh, J**

**Bench : Single Bench**

**Advocate : Dalip Chand, for the Appellant; R.N. Verma, Asst. A.G., for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Mehar Singhm, J.—This is a petition under Article 226 of the Constitution.

2. The Petitioner, Sadhu Ram, was a scholar in the Ist year of the Intermediate class in the Rajindra College at Bhatinda. The letters addressed to the scholars of the College were censored, by the Principal; in the case of the boy scholars they were delivered to them in his pre-section and in the case of girl scholars they were opened by him before delivery. On 16-5-1953, the Principal round a letter addressed to a girl scholar of the College by a scholar of the 1st yea- in the Intermediate class and the Principal considered it rather objectionable letter. The letter is in these terms

My darling Namastey.

It congratulate you on your success in the first year Class. But I amja. little sorry that (you) my darling, secured low marks. Now, I can time Pay my B.C. to your parents.

Always wishing well,

Yours affectionately,

Sd/- S.R. Ist Year.

According to the Petitioner he was called by a clerk to the College Office and asked to make over his rough note-book. His note-book was taken by the Clerk, who informed him that that was done under the orders of the Principal. Upon the enquiry of the Petitioner whether he was required to stay in the office the clerk told him that he could go. The 17th of May, 1953, was a Sun-day. The "Petitioner says that a relation of his was Indisposed and so on 18-5-1953, he went to Rampura Phul to enquire about his health. When he returned to the College on 19-5-1953, he found . a notice on the College Notice Board saying that he had. been expelled from the College for a period" of two years for gross misconduct in writing a letter to a girl student.

On the next day he saw the Principal and requested him to make an enquiry into the matter and. afford him an opportunity of showing that he was not the writer of the letter, but the Principal refused his request and further informed him that he had been expelled on account of absence from the College without leave. The Petitioner then gives details of his approaches to the Registrar of the Punjab University, to the Principal again, and to the Secretary to Pepsu Government in the Education Department in order to seek redress, but was unsuccessful.

In the end he approached the Adviser to the Rajpramukh on 13-11-1953, with the request that the case be had examined by an hand-writing expert and that he was prepared to pay the fee of the expert. His request was accepted and the matter was placed before the hand-writing expert but he was not apprised of the opinion of the expert till the date of the present petition, which is 5-14954. The Petitioner, therefore, prays (a) that the, order of the principal expelling him from the College be quashed, and (b) (i) that the principal be directed to allow the Petitioner to continue his studies and attend lectures in the College, and (ii) that he be further directed inform the Punjab University authorities to same effect.

3. In the reply put in by the Advocate General on behalf the Principal, supported by the affidavit of the Principal, a slightly different version of the case has been given. It is admitted that the Principal intercepted the letter on 16-5-1953, when he read it he called the Petitioner and questioned him whether the latter was its writer. Petitioner became pale but denied having a the letter. Two leaves from his copy-were taken by the Principal in order to com-his hand-writing with the hand-writing Of the writer of the letter. The Petitioner was asked to " weit outside the office. Sometime later when the Principal again wanted to see the Petitioner, he was not to be found." A- peon of the College was sent to his place of residence on that very day bu-" reported back that the Petitioner was not avail able at his residence. The pe"on left a message for the Petitioner, that his presence was required; by the Principal, The Petitioner did not turn upon that day.

On 17-5-1953, the peon again went to his residence but did not find him. On the next day the Petitioner did not attend his class and was absent, On that day the Principal took counsel with four members of his staff and they examined the

hand-writing of the letter and. the hand writing of the Petitioner on the two leaves that had been removed from his copy-book. They came to the conclusion that the letter had been written by the Petitioner. Thereupon the Principal decided to call a meeting of the College Staff council for 19-5-1953, at 9-10. A.M. The council duly met at the appointed time and "the Principal disclosed that investigation had established the identity of the offender as one Sadhu Ram, student of 1st year class Roll No. 68." The Council after discussion decided to expel the Petitioner for two years for gross misconduct.

It is denied in the reply that the Petitioner was called by a clerk in the College Office or that he was told by the Principal on 19-5-1953, that he had been expelled because of absence.. The reply further says that on. 20-5-1953, the Petitioner, along with the representatives of the College Students Union, met the Principal, who showed the letter and the writings of the Petitioner on the leaves of his copy-book to the representatives of the College Students Union. The position of the Principal is that even those representatives were satisfied about the conclusion that had already been reached that it was the Petitioner who was the writer of the letter. It is then stated that the Petitioner was guilty of gross misconduct and was punished in the interest of college discipline, which action of the Principal was executive in nature and cannot be quashed by a writ of certiorari which is applicable to a case of a judicial or quasi-judicial nature.

4. The writings in the letter and on the leaves taken from the copy-book of the Petitioner were examined by the hand-writing expert and in his report, dated 11-1-1954, he has explained; the similarities in the two writings and on that basis his opinion is that the letter is written by the same hand that has written the writings on the two leaves given to him, that had been taken from the copy-book of the Petitioner. In other words, according to the opinion of the expert, the writer of the letter is the Petitioner. But it has to be remembered that this opinion was obtained months after the expulsion of the Petitioner and after the Petitioner had been making persistent efforts to establish his innocence with the authorities and had been offering to have his handwriting compared with the hand-writing in the letter by an expert.

5. The first question for consideration is the nature and the extent of the authority of a Principal in a case of this type. In Chapter 17 of the Punjab University Calendar are given rules regarding rustication and expulsion of students. The first rule says that "rustication, whenever imposed on a college student, shall, always mean the loss of one academics year in so far as his appearance at a University examination is concerned. The period of absence from the college will, however," depend upon, the time of. the year when the penalty is imposed, The student under rustication will have the .option of rejoining the class at the beginning of" the next academics year,, and it shall be obligatory on the part of the college to clear that, repeated instances of disobedience readmit him if he wishes to rejoin." any one incident of which" would, in itself, be not sufficient to justify expulsion, may, in the aggregate be sufficient to justify

such a-course." and Rule 2 provides-

A student expelled from a college may not be "readmitted into the same college, or into Anr. college with put the sanction of the Syndicate and in no case shall be allowed .to "do" so before the expiry of two academic years from the date of expulsion.

It is clear that there is marked distinction between the case, of rustication and expulsion. In the first case the period is only one academic year and at the end of. it the student can claim re-

admission in the same college as of right, but in the case of expulsion there is no such right and readmission is not to be before two years, of the date of expulsion and not without the sanction of the.. Syndicate. I consider that expulsion is then the severest form of punishment that it is possible for the head of a college to award to an erring "scholar. These rules make it clear that the head of. a college has the power of rustication or expulsion, but the rules do not state the law as regards the conditions and circumstances in which such an action may be taken by the head of the college. In Pepsu there is no statute dealing with this matter.

However, a similar question did receive consideration in - "Jang Bahadur v. Principal Mohindra" College Patiala" AIR 1951 Pepsu 59 (A), and the then learned Chief Justice held that according to the rules contained in Chapter 17 of the Calendar of the University of Punjab, the Principals of affiliated colleges have the power to impose rustication on their students for breach of discipline or other adequate reasons. In - "Halsbury's Laws of England, Second Edition, Volume 12, at Page 138 the statement of the law on the point is

Subject to the terms of the express contract, there is an implied contract that the master shall continue to educate the child so long as the child's conduct does not warrant his expulsion from the school, and expulsion must not take place except upon reasonable grounds and in the honest exercise of the schoolmaster's discretion.

And at page 141 of the same volume there is this further statement" of the principles governing this branch of the law -

A headmaster has authority to expel any pupil whose conduct is such that he could not any longer be permitted to remain without danger to the school, but such authority must be exercised honestly and reasonably, and not wantonly or capriciously. He must take into consideration the interests not only of the particular boy, but of the whole school.

This statement of the law on the subject has also been accepted in this country. In - AIR 1947 193 (Bom.) Blagden J. observed at page 196:

It is perfectly true that the headmaster of a school, or the principal of a college, in the ad ministration of his establishment, has not got arbitrary or unfettered powers to expel students as and when he thinks fit, or even to do so merely

because he thinks that the interests of the institution require their expulsion. He can- "not, for example, expel a pupil merely because he dislikes his appearance, or even because he thinks, disregarding the interests of the pupil, that the school would be a better place without that pupil. He is bound to take into account the interests of the particular pupil and of the other pupils. It is also course.

Later referring to a case reported as - "Fitzgerald v. Northcole" (1865) 4 F&F 656 (C) and giving details of five instances of misconduct by the scholar as noted in that case the learned Judge again remarks that no one of those instances would in itself have been serious enough to merit summary expulsion from the school. It thus becomes clear that the authority of the head of an educational institution to expel a scholar is not unfettered or un-controlled but it is subject to the limitations (a) that he is not to exercise his power of expulsion arbitrarily and on grounds that are not reasonable, and (b) that a solitary instance of misconduct would ordinarily; not merit summary expulsion from the institution. I may add with regard to this second condition that it should depend upon the nature of the misconduct in the circumstances of a particular case because a solitary "instance of misconduct may be of such a grave and serious nature that it by itself may be a complete" justification for the expulsion of a scholar from the institution. The second limitation on the powers of a head of an educational institution must be read subject to the above rider.

6. The contentions on behalf of the Petitioner are (a) that the contents, of the letter as such do not amount to misconduct and so assuming that the Petitioner was its writer the Principal had no jurisdiction to expel him on this account, (b) that if it amounts to misconduct it is a solitary instance of the same and is not of such a grave and serious nature as to merit summary expulsion, (c) that the Principal in reaching the decision about the conduct of the scholar was acting judicially, or in any case at least quasi-judicially, and so his decision is open to consideration by this Court, and (d) that the Petitioner was condemned by the Principal unheard and that is against the principles of natural justice.

7. The reply of the learned Counsel for the State is that the contents of the letter are unexceptional evidence of the misconduct of the writer, that in the circumstances of the present day society that misconduct alone is sufficient, for the expulsion of the Petitioner, that the act of the Principal in expelling the Petitioner was not a judicial or a quasi-judicial act but that it was an executive or administrative act and the Principal not having acted in excess of his jurisdiction there is no case for the issue of a writ of certiorari, and that the Petitioner was called by the Principal on 16-5-1953, and heard on the question whether or not he had written the letter and that thus the Petitioner not having been condemned unheard there is no breach of the rules of natural justice.

8. In the Province of Bombay Vs. Kusaldas S. Advani and Others, in regard to the conditions under which a writ of certiorari will issue, it has been observed -

Slesser L. J. in his judgment ("The King v. London County Council", (19,31) 2 KB

215) at page 243 (E) separated the four conditions laid down by Atkin L., J. under which a writ of certiorari may issue. They are wherever any body of persons (1) having legal authority (2) to determine questions affecting rights of subjects and (3) having the duty to act judicially (4) act in excess of their legal authority - a writ of certiorari may issue in the present case the Principal of the College had the legal authority to determine the question affecting the right of the Petitioner to remain a scholar "the college. But it is contended/on behalf of the Respondents that the Principal had no duty to act judicially. On the question of what amounts to acting judicially or In", executive capacity in the same authority it has been held by the majority-

When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the by subjective act and the exercise of the power based thereon are alike matters of an administrative character, and are not amenable to the writ of certiorari. When the law under which the authority is making a decision, itself requires a judicial approach, decision will be quasi-Judicial.. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well recognized principles of approach are required to be followed. It is urged on behalf of the Respondents that in the present case, in the matter of expulsion the Principal was to act at his discretion and therefore in coming to the decision he was not required to follow the principles of judicial approach." It has already been shown that the authority of the head of an educational institution "is not unfettered and uncontrolled in such a case. He can only expel a scholar on reasonable grounds, and not arbitrarily. This means that he has no personal discretion in the matter and that he" must consider the question objectively and then arrive at the decision. If it was a matter for his subjective consideration the contention, would of course prevail, but as it is a matter upon which he must bring to bear his objective mind so he must come to the decision " with an approach of a judicial mind. In the same authority at pages 259 and 260 Das J. has observed-The" principles, as I apprehend them, are: (i) that if a statute empowers an authority, not having being a Court in the ordinary sense, to decide before disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other there is a prima facie, and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject; then, although- there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

In Avadhesh Pratap Singh Vs. State of Uttar Pradesh and Others, it has been held -

The term "judicial" does not necessarily mean acts of a Judge or legal tribunal sitting for the termination of matters of law, but for the " " purpose of this question a judicial act seems to be an act done by competent authority, upon consideration of facts and circumstances and imposing liability or affecting the rights of Ors. \_A quasi-judicial act requires that a decision is to be given not arbitrarily or in the. mere discretion of ;an authority but according to the facts and circumstances of the case, as deter mined upon an enquiry held by the authority her giving an opportunity to the party to be affected of being heard and whenever necessary leading evidence in support of his contentions. The essential.difference between an administrative or executive, act on, the one hand and "a judicial and- quasi-judicial act: on the other is that while in the former case, the authority vested with the power to give a decision affecting the rights; of Ors. , may be bound to enter upon an enquiry, he is not bound to give a decision as a result of the enquiry, but may act in his discretion; in utter disregard of the result of the enquiry, in the latter case, such authority is bound by law to act on the facts and circumstances, as deter mined upon the enquiry, in which a person to be affected is given full. opportunity to place his case before the. authority even though the decision of such authority, whether right or wrong, may be final and may not be liable to be challenged in a court of law.

When the right to fee affected is a natural or common law right of a person, there is a presumption that an authority vested with the power to affect such right must act quasi-judicially.

It has been shown that in the present case the Principal had no authority to give an arbitrary decision. He had to take into consideration the facts and circumstances of the case and then arrive at a decision whether or not the scholar had committed misconduct. It cannot be said that if he had reached the decision in this manner that the scholar had not committed mis conduct he could still ignore the result of the enquiry and arbitrarily expel the scholar. There fore in arriving at the decision, upon consideration of the facts and circumstances of the case that the scholar had or had not committed mis conduct, the Principal must be taken to have been acting at least quasi-judicially. In - "Royal Aquarium and Summar and Winter Garden Society Ltd. v. Parkinson", (1892) 1 QB 431 at p. 452 (G), the following observation has been made-,

The word "judicial" has two meanings. It may refer to the discharge of duties exercisable by a judge, or by justices in court, or to administrative duties which need not be performed in court, but in respect of which it is necessary to bring to bear a judicial mind - that is, a mind to determine what is fair and just in respect of the matters under consideration.

In reaching the conclusion that the Petitioner had committed misconduct the Principal had to act reasonably and thus in a fair and just manner. That being so he was acting quasi-judicially if not strictly judicially. He had to reach the conclusion about the offence of the Petitioner and then to decide what punishment to award. When the case is to receive such consideration then the

authority acts judicially and this view; is supported by - Dipa Pal Vs. University of Calcutta, in which at page 597 it has further been observed that

when the authorities are conducting enquiries or investigations into cases of misconduct of . the candidates they are exercising quasi-judicial functions.

9. It has been explained that the Petitioner had a right to continue as a scholar in the college and he could only, be expelled on reasonable grounds. Once that right of his under the law is affected by a decision of the Principal about, his misconduct there is a presumption,V that the authority vested in the Principal to affect such right of the Petitioner must be exercised quasi- judicially.

10. The conclusion, therefore, is that the Principal having the power to expel the Petitioner under the law could only do so on reasonable grounds and not arbitrarily or at his --personal discretion. In arriving at a finding that the grounds were reasonable for the punishment he was" expected to act in a just and fair manner upon consideration of the facts and the circumstances of the case. That, being so, he was acting quasi-judicially in reaching the conclusion that the Petitioner had committed misconduct in waiting the letter in question. To admit thao in making that decision he was only acting in an administrative or executive capacity would be to say that he had authority to act arbitrarily and upon his sole and personal discretion. Thus this contention on behalf of the Respondents. fails; and it is found, that in the present case the Principal acted quasi-judicially in arriving at a finding that the Petitioner had committed mis-conduct.

11. But that still leaves the question of the extent of the jurisdiction exercised by the Principal in the present case. If he has not exceeded his jurisdiction in expelling the Petitioner, a writ of certiorari will still not issue. It has been pointed out that (a) the Principal must act on reasonable grounds in expelling a scholar and (b) a solitary instance of indiscipline will not merit expulsion except in case of extreme seriousness and gross misconduct. The learned Counsel for the Petitioner argues that in the present case, assuming that the letter was written by the Petitioner, there was nothing in the .letter upon which a decision could be found- ed that the Petitioner had committed misconduct in writing it. In the circumstances of the present-day society In this part of the country communications between boys and girls are not looked upon with favour and are in fact frowned upon and seriously objected to by the parents of both the boys . and the girls. Writing a letter to a girl student even in the same class in such circumstances must cause some kind of a fur ore not only in the class to which the boy and the girl belong but even in the institution. More than this, this type of act is likely to affect adversely the reputation of the girl and also the reputation of the institution in which the girl is a scholar. In the present case the Principal appears to have been affected by two considerations in arriving at the conclusion that the letter must be considered an act of misconduct on the part of the pt"Jtioner and they are (a) the mere fact of addressing a letter by a boy to a girl class-mate and (b) the contents of the letter itself in which twice the words used are "my darling." I consider that the Principal was right in taking the letter

and the contents of the letter " as something that was interference with the discipline in the college and he reached the correct conclusion that the writer of the letter had committed a breach of discipline" in writing It. There is no indication of the relations between the boy and the girl in this case and more "particularly whether the families of the two were socially in contact. If the families of the boy and the girl were socially on visiting terms,. it would not have been necessary for the boy to write a letter of this kind, for in that event he could very, well have personally conversed with the girl, So I am not impressed by the contention on he half of the Petitioner that the fact of the writing, of the letter and its contents do not amount, to misconduct on the part of the writer. " But, at the same time, it is not the type of misconduct which is an exception to the general consideration that a single instance of breach of discipline does not merit expulsion. Although in the letter a reference is made to the girl but no offensive suggestion has been made and what the writer says is that he congratulates the, girl on having passed the examination but was sorry that she did not obtain high marks. There is no suggestion of objectionable nature in the letter itself. The Principal appears to have been obsess- ed by the fact that the conduct of the writer was likely to have considerable effect upon the discipline of the college and thus he awarded the, extreme punishment of expulsion in all probability not necessarily believing that that extreme punishment was deserved by the merits of the case but as a measure of deterrence to other students to refrain from similar acts.

1 consider that the Principal had no Justification to make this as a case of a lesson to the whole college and thus award the extreme punishment of expulsion to the Petitioner. This, in my, opinion, is not a case of exceptional nature involving misconduct of very serious and gross type as to have merited the extreme punishment that has been awarded to the Petitioner. Assuming for the moment that the Petitioner was the writer of the letter, the expulsion of the Petitioner had to,be on reasonable grounds and the question is whether it can be said that expulsion on a ground as in the present case is reasonable? Judicial, opinion does not appear to think that it is so. This has already been explained above. If thus the Principal has not acted on reasonable grounds" in expelling the Petitioner, then it would appear to be obviously a case in which he" exceeded his jurisdiction in doing so.

12. Another question for consideration is whether the Petitioner was given adequate... opportunity of being heard before he was condemned by the Principal. It is true that the Principal did, call the Petitioner in his office, and in this respect the statement of the Principal in his affidavit must be accepted as against the statement of the Petitioner that he was called by the clerk only, and question him whether he was the writer of the letter.

The Petitioner having given a denial, he was asked to wait, but he absented himself and did not turn up until 19-5-1953. The conduct of the Petitioner in thus leaving the office of the Principal and absenting himself on 18-5-1953, are

circumstances which could of course be taken into consideration by the Principal, but it is clear that the Principal himself was not satisfied, when he called the Petitioner, whether it was in fact the Petitioner who was the author of the letter. What prevailed with the Principal in crystallization of his opinion were the facts that the Petitioner became pale when questioned, that he absented himself from the college, and that in his opinion and that of some members of his staff the handwriting in the letter and on the leaves taken from the copy-book of the Petitioner resembled. It was probably after the Petitioner had absented himself, that the Principal reached "some definite conclusion about the conduct of the Petitioner.

It was when the allegation against the Petitioner had crystallised into a clear charge to which the Petitioner may have been expected to give a reply that the stage arrived when he was to be Given opportunity being heard against such could be condemned. Earliar question of some suspicion which have crystallized into some definite charge against the Petitioner. If in the begin principal did question the Petitioner when he was the author of the letter, I do that that was giving the Petitioner opportunity of being heard against allegation against him. When the allegation against the Petitioner crystallized, the principal proceeded to a decosopm om jos ansemce amd a;sp tp award punishment in his absence.

The learned Counsel for the state has contended that the Petitioner having absented himself, was under no duty to wait for him . But it has to be remembered that the letter was intercepted on 16th May, and at this stage there is no reason to include that the statement of the Petitioner in his affidavit that he had gone to enquire about the health of a relation on 18th is unfounded.

In these circumstances it is clear that the decision arrived at against the Petitioner was in his Arrived at against the Petitioner was in his and he had no opportunity of being heard before the decision was reached. It is not denied that this is contrary to the accepted principles justice. Now, the question is whether the head of an educational institution in reach decision in this manner against a scholar who has had no opportunity of being heard can be said to have acted on reasonable grounds in awarding punishment on the basis of such a decision and to my mind the answer is quite simple and that is that he cannot be said to have acted reasonably in not only reaching the decision but also in awarding the punishment.

13. So the consequence is that the principal was not justified in expelling the Petitioner on the solitary instance of misconduct in the present case, assuming that the Petitioner wrote the letter, and that the Principal did not act in a reasonable manner but rather acted contrary to the principals of natural justice in condemning the Petitioner unheard. In thus dealing with the case and ordering expulsion of the Petitioner the Principal not having acted on reasonable grounds did exceed his authority to expel the Petitioner. In this view the order of expulsion of the Petitioner is able to be quashed by the issue of a writ of certiorari.

14. In this case there has been no allegation on the part of the Petitioner questioning the good faith of the principal, but all that has been urged, is that he did not come to appreciate that acting as he did he was acting quasi-judicially and in doing so he was not hearing the case before giving a decision against him. The learned Counsel for the State has referred *Miss Shibani Bose Vs. Promotha Nath Banerjee and Others*, and has pointed out, the words of the learned judge, that So long as persons or bodies entrusted with certain jurisdiction strictly confine themselves within the limits of their jurisdiction the Courts will not interfere. Matters of college discipline are entirely internal affairs of the college concerned. Whether there has been any breach of such discipline or not is a matter of decision of the College Authorities. Such matters cannot be enquired into by the Court and are outside the purview of the Court, Strong reasons of sense and convenience dictate that these questions should not be brought under the jurisdiction of the courts of law.

These observations of the learned Judge must be taken in the light of the facts of the case which was a case under the Calcutta University Regulations and Section 33 (3), chapter 23, page 90, of the Regulation provided that a Principal may for breach of college discipline, expel a student". In this case the authorities were acting under a specific statutory Regulation and if they did not exceed the powers given by the Regulation the observations of the learned Judge aptly applied to the case. In the present case upon consideration of the general law it has been found that the Principal though quite in good faith did exceed his jurisdiction in awarding the type of punishment he did and in giving decision against the Petitioner without giving him an opportunity of being heard. No such factors were under consideration in the said authority and so it does not help to advance the case on behalf of the Respondents.

15. In the view taken above, this petition succeeds and a writ of, certiorari, will issue quashing the order, dated 19-5-1953, of the Principal expelling the Petitioner "from the Rajendra College at is directed to admit the pursue his course of study in the normal way. In the circumstances of the case the parties are left to their own costs.