
(1994) 09 MAD CK 0021
In the Madras High Court

Saradha Balakrishnan

APPELLANT

Vs

The Director of Collegiate Education and Another

RESPONDENT

Date of Decision : 29-09-1994

Acts Referred:

Constitution of India, 1950 — Article 235

Citation : (1995) 1 MLJ 610

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—The parties to the writ petitions are same and the questions which arise for consideration are also the same, though the

prayers are slightly different. In W.P. No. 2612 of 1986 the prayer is for issue of a certiorarified mandamus calling for the records relating to the

order in RC. No. 44076/A7/84 dated 13.3.1986 on the file of the first respondent (the Director of Collegiate Education, Madras), to quash the

same and to direct the first respondent to direct the second respondent, viz., the Secretary Seethalakshmi Achi College for Women, Pallathur, to

reinstate the petitioner as Principal with all attendant benefits. The prayer in W.P. No. 3003 of 1986 is similar excepting that it seeks to have the

consequential order of the second respondent in his proceedings No. S/85-86/65 dated 17.3.1986 to be quashed in addition to the prayers in the

other writ petition.

2. The facts leading to the filing of the two writ petitions are as follows:

The petitioner entered the service of Seethalakshmi Achi College for Women, Pallathur, hereinafter referred to as "the College", as English

Professor in 1963. She was promoted as Principal of the College in 1966. There

were some proceedings between the petitioner on the one hand and the Management on the other, which are not relevant to this case. Hence, we are not making any reference to them. On 26.6.1984 a charge memo was issued to the petitioner by the college committee giving her seven days to give her explanation. Along with it, an order of suspension was also issued to her. In the memo dated 26.6.1984 it is stated that the charge memo was placed before the college committee and initialled by the Chairman for the sake of identification containing various charges which the committee had examined in detail and found in order. The Secretary of the Colleges was authorised to appoint an Enquiry Officer to go into the charges, conduct an enquiry and present his findings before the committee for further action. The Secretary was also authorised to simultaneously suspend the petitioner from service pending enquiry considering the gravity of the charges framed against her. It is not necessary to give the details of the charges, but suffice it to point out that some of them are very grave charges. For example charge No. 1, is that the petitioner unauthorisedly brought her husband who is an officer in L.I.C. of India, Pudukottai and a police officer to the college office, after having filed a vexatious and frivolous complaint on the Secretary, totally distorting twisting and hiding facts, acts and information and actively instigating and intensely provoking the Inspector of Police, Pallattur, accompanied by a large force of constabulary, both in uniform and mufti, to act in an extremely high-handed, brazen, unwarranted, untowardly manner and attempted at peremptorily ordering the arrest of the Secretary without even giving him an elementary and basic opportunity to explain his stand. Charge No. 6 is that she demanded and received amounts of money from the Teaching Staff for the specific purpose of obtaining approval of appointment from concerned authorities. It is not necessary to refer to the other charges.

3. The petitioner challenged the validity of the charge memo as well as the order of suspension by filing a writ petition in this Court, which was taken on file as W.P. No. 6778 of 1984. The prayer in the writ petition was to quash the charge memo and the letter of the Secretary communicating the order of suspension. Though the writ petition was admitted, there was no interim order. The Secretary sent reminder to the petitioner calling for an explanation in reply to the charge memo on 7.7.1984. On

13.7.1984, the petitioner sent a letter, the exact date of which is not clear, but in the place of date what is found is ""AA-7-84"". In the letter addressed to the secretary, she has stated that the matter had gone to the court and all relevant records were handed over to the lawyer and hence, she did not reply to the secretary. She has further stated that she denied all the charges framed in the charge memo, since it was done with a vindictive attitude to mar her image which was carved through assiduours effort. Thereafter, the Secretary sent a communication to her on 10.8.1984. requesting her to appear before the enquiry committee on 22.8.1984. On the 29th of August, 1984, the college committee held a meeting and appointed a sub-committee to conduct the enquiry into the charges framed against the petitioner. The sub-committee consisted of three persons including the Secretary. The Chairman of the sub-committee was one Saradal Alagappan and the other member of the sub-committee, the representative of the University in the college committee. The resolution passed on 20.8.1984 authorised the sub-committee to conduct a personal hearing if it was desired by the petitioner in accordance with Clause 7(b) of Agreement in Form 7-A under Sub-Rule 2(1) of rule 11 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976. It was further resolved that the Secretary was authorised to inform the petitioner that the sub-committee had been constituted to conduct the enquiry and if she desired, a personal hearing, as contemplated in the aforesaid Clause, would be conducted. It was also resolved that after the personal hearing or enquiry, if conducted, the sub-committee was authorised to furnish the report of the personal hearing or enquiry to the petitioner along with its proposed punishment, giving her seven days time to submit the statement, of defence against the proposed punishment.

4. On 25.8.1984 a communication was sent to the petitioner informing her of the resolution of the college committee extending her period of suspension and also the appointment of the sub-committee. The first respondent passed an order on 27.8.1984 extending the period of suspension as required by the Act. The petitioner filed on 28.8.1984 W.P. No. 8679 of 1984 for issue of a writ of mandamus forbearing the Secretary from keeping her under suspension. She also obtained an order of interim injunction. On the same day, the order of extension of suspension passed by

the first respondent was communicated to her. She filed W.P. No. 8884 of 1984 on 3.9.1984 challenging the order of the first respondent

extending the suspension. On 4.9.1984, an order was passed by this Court in the application for injunction and the application for vacating the

injunction filed by the Secretary to run the college with the assistance of other staff members. An appeal was filed by the petitioner against the said

order, which was dismissed on 7.9.1984. On 12.9.1984, the petitioner was informed of the date of enquiry as 19.9.1984 and she was requested

to appear before the sub-committee on that date. On 14.9.1984, the three writ petitions, W.P. Nos. 6778 of 1984, 8884 of 1984 and 8679 of

1984 were dismissed by a common order by a learned single Judge of this Court. It is to be noted here that no argument was advanced before the

said learned single Judge as against the validity of the charge memo, though it was challenged in the first writ petition W.P. No. 6778 of 1984. The

entire argument related to the extension of the period of suspension by the first respondent and the learned Judge found against the contentions of

the petitioner. Ultimately, the learned Judge dismissed all the three writ petitions.

5. The petitioner sent a telegram on 18.9.1984, requesting the Secretary to see her letter dated 18.9.1984. On the same day, the Secretary sent a

reply telegram stating that her letter dated 18.9.1984 was not received by him and, therefore, nothing could be considered. On 19.9.1984 she did

not appear before the sub-committee for enquiry and the same was adjourned to 20.9.1984. She was requested to appear on that day for the

enquiry. On that date also, she did not appear and she was set ex parte by the sub-committee. The sub-committee met on 28.9.1984 and

29.9.1984 and examined witnesses. After completing the enquiry, the sub-committee gave its findings on 3.10.1984. All the charges framed

against the petitioner were found against her. The sub-committee directed the secretary to send a copy of the report to the petitioner and call upon

her to submit her statement of defence to the proposed punishment in accordance with the resolution of the college committee at its meeting held

on 20.8.1984.

6. In the last paragraph of the report, the sub-committee made a record as follows:

We may also mention that Mr. O.A.A. Ananthapadmanabhan Chettiar, who was

nominated to the sub-committee did not participate in its

deliberations from the beginning till the end since he had to present the case of the management, and that the report of enquiry is given by only the

two undersigned and Mr. O.A.A. Ananthapadmanabhan Chettiar is not a party to this report.

The report was signed only by the two members other than the Secretary.

7. On 13.10.1984, the petitioner sent a communication to the Secretary expressing her regret that she could not make herself a willing party to the

report of the sub-committee as the report was one sided and arbitrary and it was made after having set her ex pane. She also stated that she

intended to take up the matter before the appropriate authorities and the charges framed against her were all false and she was not liable for any

punishment whatever. The college committee met on 16.10.1984. After considering the report and also the evidence and the materials on record,

the College committee passed the following resolution:

The members of the committee considered the report of enquiry dated 3.10.1984 giving out the finding and setting out the proposed punishment

and the statement of defence dated 13.10.1984 received from Mrs. Sarada Balakrishnan by the Secretary On 15.10.1984. Mrs. G. Saroja

Subbaraj, after going through all the proceedings of the sub-committee; all the marked and unmarked exhibits, depositions, of M.W.1 to M.W.9,

3.10.1984 report of findings and proposed punishment, Secretary's covering letter dated 7.10.1984 addressed to Mrs. Sarada Balakrishnan and

her reply of statement of defence dated 13.10.1984, though well aware of the genuineness of all the facts of the matter under enquiry, expressed

her desire to refrain from exercising her right to vote in this matter, as she felt delicate to do so.

The other eight members, thereafter, unanimously resolved that the report of the enquiry dated 3.10.1984, conducted by the sub-committee in the

matter of the charge memo dated 26.6.1984 against Mrs. Sarada Balakrishnan, setting out the findings and also the proposed punishment be and is

hereby accepted and adopted and,

Further resolved that, in view of the grave and serious misconduct committed by Mrs. Sarada Balakrishnan, proved at the enquiry held by the sub-

committee and accepted and adopted by the committee, Mrs. Sarada

Balakrishnan be dismissed from service forthwith and that the Secretary be and is hereby authorised to make an application the Director of Collegiate Education, Madras seeking his prior approval for the abovesaid

dismissal and on receipt of such approval to communicate the same to Mrs. Sarada Balakrishnan.

8. On 17.10.1984 the Secretary made an application to the first respondent for approving of the proposed punishment of dismissal to be given to

the petitioner. The first respondent passed an order on 18.1.1985 refusing to grant permission or approval of the proposed punishment. There was

an appeal by the Secretary to the Minister on 1.2.1985. The Secretary also filed a Writ petition in this Court in W. P. No. 741 of 1985 challenging

the order of the first respondent dated 18.1.1985. The petitioner contested the maintainability of the writ petition and also sought to support the

order of the first respondent on its merits. The matter was heard by a learned single judge of this Court and disposed of by order dated

30.10.1985. The writ petition was allowed by the learned single Judge and the order of the first respondent was quashed. This Court directed the

first respondent to restore the application filed by the Secretary u/s 19(2) of the Act and proceed to dispose of the same afresh on or before

31.12.1985 after giving an opportunity to the petitioner as well as the second respondent therein, who are respectively the second respondent and

the petitioner herein. The court also said that till the application was so disposed of, the Secretary shall pay the petitioner herein her salary as per

the orders of the court in W.A. Nos. 208 and 209 of 1985.

9. Pursuant to the said order, the first respondent heard the parties and passed an order on 13.3.1986 granting approval of the proposed

punishment to the petitioner. It is that order which is challenged in W.P. No. 2612 of 1986.

10. Consequent to the order of the first respondent dated 13.3.1986, the college committee passed a resolution dismissing the petitioner from

service and that was communicated by the Secretary under No. S/85-86/65 dated 17.3.1986. It is in challenge of that communication W.P. No.

3003 of 1986 has been filed.

11. In these petitions, learned Senior Counsel appearing for the petitioner has raised the following contentions.

(1) The entire proceedings relating to the enquiry against the petitioner, the finding of the sub-committee against her and the consequent orders

passed thereon are null and void in view of the fact that the college committee had no power whatever to delegate its functions to any other body.

Under the provisions of the Tamil Nadu Private Colleges (Regulation) Act; 1976 and the Tamil Nadu Private Colleges (Regulation) Rules, 1976

hereinafter referred to as the Act and "the Rules" respectively it is the college committee which has to conduct any disciplinary enquiry against the

petitioner and give its finding and also pass final orders. Inasmuch as the Committee has abdicated its functions by appointing a sub-committee to

enquire against the petitioner, the entire enquiry is vitiated. It is also submitted that even the framing of charges is done by the Secretary and not by

the college committee which itself would vitiate the charges.

(2) The sub-committee appointed by the college committee consisted of three members, but one of them did not function as such and did not take

part in the enquiry. He acted as if he represented the Management, in other words, he was the prosecutor. In such a situation, the vacancy in the

committee ought to have been filled up by the college committee and the enquiry held by two of the members of the sub-committee is wholly

invalid.

(3) The first respondent has not considered any of the objections raised by the petitioner as to the validity of the enquiry or the orders passed by

the college committee: nor has he considered the question of mala fide alleged by the petitioner against the authorities including the Secretary.

Hence, the order of the first respondent is vitiated and deserves to be quashed.

(4) The resolutions passed at the meeting dated 20.8.1984 by the college committee would themselves show that it is a clear case of bias on the

part of the college committee and the Secretary of the College and the entire enquiry is vitiated thereby.

(5) The resolutions passed on 16.10.1984 would show that the college committee has not considered any of the relevant matters and simply

accepted the findings given by the sub-committee and, therefore, it is not valid.

(6) the final communication regarding the punishment of dismissal meted out to the petitioner was not sent by the college committee as it was sent

by the Secretary and it is not valid.

(7) The punishment of dismissal from service is wholly disproportionate to the misconduct of the petitioner now found to have been proved by the

sub-committee, and even if the petitioner is guilty of such misconduct, she should not have been dismissed from service.

12. It is not necessary for us to set out the contentions of the Senior Counsel for the respondents as they are all in support of the orders passed by

the first respondent and the college committee and only in answer to the contentions raised by the senior counsel for the petitioner. In the course of

discussion of the various contentions raised by the petitioner, the arguments of the senior counsel for the respondents will be considered.

13. In order to consider the first contention that the college committee is not entitled to delegate its power to any other body for the purpose of

holding the disciplinary enquiry, it is necessary to refer to the relevant provisions in the Act and the Rules, Section 14(1)(c) of the Act provides that

subject to the provisions of the Act and the Rules made thereunder, the college committee shall have the function to take disciplinary action against

teachers and other persons of the private college. Rules 8 and 9 of the Rules deal with the constitution of Committee and the appointment of the

Secretary of the Committee. Rule 9(3) of the Rules provides that the Secretary shall function for and on behalf of the committee and the

educational agency. Rule 9(4) is to the effect that the Secretary shall act according to the resolutions passed at the meeting of the committee, Form

7-A in the Forms prescribed under Sub-rule 2(i) of Rule 11 of the Rules, contains the form of agreement to be executed by the college committee

of a college in respect of permanent teachers, Clause 7 of the said Form is in the following terms:

7. (a) That the college committee shall not dismiss, remove or reduce in rank or terminate the services of the said teacher without informing him/her

in writing of the grounds on which they intend to take action and shall follow the following procedure before taking any final decision regarding the

punishment to be imposed on him/her and giving him/her in writing reasonable time to send his/her explanation to the college committee.

(b) After considering his/her explanation the college committee shall communicate to him/ her its finding and, if so desired by the said teacher,

conduct a personal hearing or enquiry, wherein he/she shall be given the opportunity to examine or cross-examine or any of the witnesses and also

produce witnesses.

(c) After the conduct of the personal hearing or enquiry by the college committee the report of such personal hearing or enquiry shall be furnished

to the said teacher and a notice shall be issued to him/her setting out the proposed punishment and he/she shall be given a reasonable time to

submit the statement of defence against the proposed punishment.

(d) After the receipt of the statement of defence from him/her and after taking it into consideration, the college committee shall inform him/her in

writing about its final decision.

Section 19(1) of the Act provides that no teacher or other person employed in any private college shall be dismissed, removed or reduced in rank

nor shall his appointment be otherwise terminated except with the prior approval of the competent authority. Sub-section (2) is to the effect that if a

proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher or other person employed in any private

college is communicated to the competent authority, the latter shall, if it is satisfied that there are adequate and reasonable grounds for such

proposal, approve the same.

14. It is contended by learned Counsel for the petitioner that under Clause 7 of the Agreement in Form 7-A, it is only the college committee which

is bound to hold the disciplinary enquiry from the beginning to the end. The clause does not contemplate any part of the enquiry being handed over

to any other authority or any other body by the college committee. Hence, according to him, it is the college committee which has to conduct the

entire enquiry including the framing of charges, examination of the witnesses, personal hearing and arriving at findings on the charges framed. In

support of this contention, learned Counsel places reliance on the judgment of a Division Bench of this Court in P. Kasilingam Vs. Bharathiar

University and Others, . On the facts of the case, the Division Bench found that there was no delegation by the Governing counsel to the Chairman,

who passed the orders in the disciplinary proceedings in that case. After arriving at that finding, the Division Bench went on to consider the

question whether the functions of the college committee in the matter of disciplinary enquiry could be delegated to any other body. The Division

Bench said:

In the instant case, even this sort of discussion by the governing council had not taken place nor it had ever delegated its power to Chairman. The grant-in-aid Code is formulated by the State and applicable to all Colleges, and when the intention is that the application of mind of the collective body is required in respect of disciplinary matters to safeguard the rights of staff members and institution, the theory that any person or body could delegate his power in the absence of prohibition under the Rules, can have no applicability. It is not unknown to find in representative bodies, certain personalities elected as Chairman and then secure a resolution delegating the powers of the Governing Body in him and thereafter he wields power to the detriment of the council and the staff members, whose prospects are to depend on collective decision. The intention to constitute a Governing council consisting of 14 persons under Article 9 composed of authorities and persons like Director of Technical Education, a nominee of the Central Government, a nominee of the University, a representative of the All India Council for Technical Education, etc., has to result in an effective body continuing to function not only to the benefit of the institution but to those who serve in the institution. By passing one resolution, delegating their powers in disciplinary matters to the Chairman, they cannot thereafter reduce their existence in the council as non est. Knowing quite well how the councils will function, the Grant-in-aid Code had been formulated by the State to keep the council a live body wherein every member will have to involve himself in the decision process, and particularly in disciplinary matters. Hence, the contention of Mr. Subramaniam, learned Counsel for the College that the council could delegate the power to the Chairman to initiate proceedings is not acceptable as could be presently shown, it had exercised such a power in the case of another employee of the College. It had not passed any all-pervasive resolution hitherto being fully aware as to what would happen in future to the representative body.

... ..

Therefore, these resolutions go to show that the Governing Council had never conferred upon the Chairman any general power relating to disciplinary proceedings, being well aware that the intent and purport of the Grant-in-Aid Code is that there should be a collective application

of mind in disciplinary matters, and the concept of delegation is alien to the intention of the Code.

... ..

It would certainly lead to a disarmous system if the governing council under the Grant-in-Aid Code is to delegate its power to the Chairman and he

in turn is to delegate its function to the Principal. That would virtually be rewriting the Grant-in-Aid Code according to the whims and fancies of

each Council functioning in different colleges all over the State. Regarding the resolution dated 24th September, 1988 is concerned, there could be

no ratification of an illegal act.

... ..

Therefore, for all the reasons above stated, it is held that it is only the Governing council under the Grant-in-Aid Code which could initiate

disciplinary proceedings and take the final decision thereon by looking into the merits of the matter. Form 7-A framed under Rule 11(2) of the

Rules framed under the Act stipulates how it has to conduct disciplinary proceedings. As to whether on certain complaints received or certain

circumstances arising, there is a need to initiate disciplinary proceedings or not, and whether they would entail imposing of major punishments is an

aspect which has to be exclusively decided upon only by the Governing Council, and it cannot delegate the function of initiation of disciplinary

proceedings to the Chairman of the Council or to anybody else. It has to abide by the special procedure as framed in Grant-in-Aid Code. It is

well-known principle that special excludes general.

15. The judgment of the Division Bench was challenged before the Supreme Court of India in SLP Civil) No, 5693 of 1989. The Order of the

Supreme Court on that petition is reported at page 86 of the same Law Report. Though the SLP was dismissed, the question whether any part of

the disciplinary enquiry could be delegated by the Governing Council to any other body or person was left open. The Supreme Court said:

We have heard Sri U.R. Lalit, Senior Advocate for the petitioner. P. Kasilingam, respondent No. 1 presented his case in person. On a

consideration of the matter, we think we should decline to interfere with the judgment of the High Court.

2. However, Sri U.R. Lalit, Senior Advocate submitted that certain observations in

the judgment as to the lack of the power in the governing council to ratify the action of the principal may not be supportable and at all events unnecessary to support the conclusion reached and that, therefore, those observations may be deleted. We think we should accept the submissions and the question of correctness of those observations is left open. Sri Lalit also said that the management should be free to initiate fresh disciplinary proceedings. The High Court at paragraph 14 of the appellate Judgment has reserved this liberty. It is, however, made clear that nothing in the order of the High Court nor the dismissal of this petition here should come in the way of either the principal or the governing council, within respective fields of their powers, to initiate such fresh proceedings as they may consider appropriate in regard to the misconduct attributed to the first respondent.

16. In view of the judgment of the Supreme Court the observations made by the Division Bench on the question whether there can be a delegation by the college committee or governing council in a disciplinary enquiry do not bind us. In fact, those observations are obiter dicta inasmuch as a factual finding was given in that case that the governing council had not passed any resolution delegating its authority to the Chairman. The Division Bench need not have gone into the question unnecessarily in that case.

17. Unfettered by the observations made by the Division Bench, if we consider the question on the basis of the fundamental principles of law and the judgments of the Supreme Court, it would be seen that there is no merit in the contention, advanced by learned senior counsel for the petitioner. Clause 7 in the agreement in Form 7-A would only mean that the disciplinary authority is the college committee of the college. The procedure to be followed by the college committee in holding a disciplinary enquiry is set out in the clause in order that the principles of natural justice are satisfied. The clause only points out that reasonable opportunity should be given to the person concerned to examine or cross-examine any of the witnesses and also produce witnesses. It is the college committee which has to apply its mind to the charges framed and evidence on record and come to a final decision. Nothing in the clause prohibits the appointment of any person or body to conduct or hold the enquiry. As there is no express prohibition, the normal rule applicable to such cases will

come into play.

18. Learned senior counsel for the petitioner refers to the ruling in P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and

others, , wherein the proposition laid down is that in the absence of any rule prescribed or framed as to who shall initiate the departmental

proceeding, it cannot be urged that it is only the appointing authority and no officer subordinate to such authority can initiate the departmental

proceeding. Though this rule as such does not help the petitioner, it is referred to contending that in the present case, the rule is prescribed in

Clause 7 of the agreement in Form 7-A and that there cannot be any action by any authority other than the college committee. The ruling has no

bearing in the present case.

19. In Pradyat Kumar Bose Vs. The Hon"ble The Chief Justice of Calcutta High Court, , the question arose whether the Chief Justice of the High

Court can delegate to another Judge an enquiry of charges against a member of the High Court. Answering the question in the affirmative, the

Supreme Court said:

The first objection that has been urged is that even if the Chief Justice had the power to dismiss, he was not, ""in exercise of that power, competent

to delegate to another Judge the enquiry into the charges but should have made the enquiry himself. This contention proceeds on a

misapprehension of the nature of the power. As pointed out in "Barnard v. National Dock Labour Board (1953) 2 Q.B. 18 , it is true that ""no

judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication. ""But the exercise of the power to

appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power. It is nonetheless so, by reason of the fact that an

opportunity to show cause and an enquiry simulating judicial standards have to precede the exercise thereof.

It is well-recognized that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a

responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be

delegated except where the law specifically so provides is the ultimate responsibility for the exercise of such power. As pointed out by the house of

Lords in *Board of Education v. Rice* 1911 A.C. 179 (C), a functionary who has to decide an administrative matter, of the nature ""involved in this

case, can obtain the material on which he is to act in such manner as may be feasible and convenient, provided only the affected party ""has a fair

opportunity to correct or contradict any relevant and prejudicial material."" The following passage from the speech of Lord Chancellor in *Local*

Government Board v. Arlidge, 1915 A.C. 120 , is apposite and instructive.

My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been

entrusted. The result of its inquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be

reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of

the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his

department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials

vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly.

To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his

efficiency. Unlike a Judge in a court he is not only at liberty but is compelled to rely on the assistance of his staff.

In view of the above clear statement of the law the objection to the validity of the dismissal on the ground that the delegation of the enquiry

amounts to the delegation of the power itself is without any substance and must be rejected.

20. The question was again considered in *State of Uttar Pradesh v. Batuk Deo Pali Tripathi* 1978 All. L.J. 477. The contention before the court

was that the constitution of administrative committees for the purpose of dealing with matters which the High Court is bound to deal with under

Article 235 of the Constitution of India would itself be bad and it is the entire High Court which should exercise the powers vested in it under

Article 235 of the Constitution. Rejecting the said contention the Supreme Court said:

The relevant part of Article 235 of the Constitution provides that the control over District Courts and Courts subordinate thereto shall be vested in the High Court. Since Article 216 provides that every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. Article 235 has to be construed to mean that the control over District Courts and courts subordinate thereto is vested in the entire body of Judges who together constitute the High Court and not in the Chief Justice as representing the High Court or an Administrative Judge or a smaller body of Judges acting as an Administrative Committee. But though the control over subordinate courts is vested institutionally in the High Courts by Article 235, it does not follow that the High Courts have no power to prescribe the manner in which that control may in practice be exercised. In fact, the very circumstances that the power of control, which comprehends matters of a wide-ranging variety, vests in the entire body of Judges makes it imperative that rules must be framed to make the exercise of control feasible, convenient and effective. The seeds of the jurisdiction to frame rules regulating the manner in which the control over subordinate courts is to be exercised are thus to be found in the very nature of the power and in the fact that the power vests in the entire body of Judges. The High Court has, therefore, the power under Article 235 itself to frame rules for regulating the manner in which the control vested in it may be exercised. The power to do a thing necessarily carries with it the power to regulate the manner in which the things may be done. It is an incident of the power itself and indeed, without it, the exercise of the power may in practice be fraught with difficulties which will frustrate, rather than further the object of the power. It is undoubtedly true that the rules framed for prescribing the manner in which a power may be exercised have to be truly regulatory in character. The reason is that under the guise of framing rules, the essence of the power cannot be permitted to be diluted. But that is a separate matter which we will consider later. The limited object of the present discussion is to show that High Courts possess the power under Article 235 to prescribe the manner in which the control over subordinate courts vested in them by that article may be exercised. That explains why the Allahabad High Court framed Rules of 1952 not only in the exercise of power possessed by it under Article 235, but in the exercise of all other powers enabling it in that

behalf. One of such powers is to be found in Article 235 itself and therefore the abstract power of the High Court to frame the impugned rules cannot be doubted and must be conceded.

... ..

Having given our close and, anxious consideration to that question, we regret that we are unable to share the view of the majority of the High Court

Full Bench that by leaving the decision of the question of the respondent's compulsory retirement to the administrative committee, the court had abdicated its constitutional function.

... ..

Here, the decision to compulsorily retire the respondent was taken by the Judges of the High Court itself, though not by all. If some but not all

Judges of the High Court participate in a decision relating to a matter which falls within the High Courts' controlling jurisdiction over subordinate

courts, the High Court does not efface itself by surrendering its power to an extraneous authority. The procedure adopted by the High Court under

its Rules is not subversive of the independence of the subordinate judiciary which is what Article 235 recognises and seeks to achieve. The true

question then for decision is not the one by which the majority of the Full Bench felt oppressed but simply whether the procedure prescribed by the

High Court Rules is in any other manner inconsistent with the terms of Article 235 of the Constitution.

... ..

16. For answering this question it is necessary in the first place to bear in mind that the power of control over the subordinate courts which is

vested in the High Courts comprises such numerous matters. Often involving consideration of details of the minutest nature, that if the whole High

Court is required to consider every one of those matters the exercise of control instead of becoming effective will tend to cause delay and

confusion in the administration of justice in the State. A construction which will frustrate the very object of the salient provisions contained in Article

235 ought, insofar as possible, to be avoided. The control vested in the High Courts by that article comprehends, according to our decisions, a

large variety of matters like transfers subsequent postings, leave, promotions other than initial promotions, imposition of minor penalties which do

not fall within Article 311, decisions regarding compulsory retirements, recommendations for imposition of major penalties which fall within Article 311, entries in character rolls and so forth. If every Judge is to be associated personally and directly with the decision on every one of these matters, several important matters pertaining to the High Court's administrative affairs will pile into arrears like court arrears. In fact, it is no exaggeration to say that the control will be better and more effectively exercised if a smaller committee of Judges has the authority of the court to consider the manifold matters falling within the purview of Article 235. Bearing in mind therefore the nature of the power which that article confers on the High Courts, we are of the opinion that it is wrong to characterise as "delegation" the process whereby the entire High Court authorises a Judge or some of the Judges of the Court to act on authorisation effectuates the purpose of Article 235 and indeed without it the control vested in the High Courts over the subordinate courts will tend gradually to become lax and ineffective. Administrative functions are only a part, though an important part, of the High Court's constitutional functions. Judicial functions ought to occupy and do in fact consume the best part of a Judge's time. For balancing these two-fold functions it is inevitable that the administrative duties should be left to be discharged by some on behalf of all the judges. Judicial functions brook no such sharing of responsibilities by any instrumentality.

21. The same reasoning will apply to the present case. If the college committee is to consider the entire matter, it will be defeating the very purpose of the rules on enquiry. In our opinion, the college committee is, therefore, entitled to nominate a sub committee for the purpose of conducting the enquiry. It is a general principle of law that in any disciplinary matter, the disciplinary authority is entitled to nominate an enquiry officer, who will only record the evidence and submit his finding. Such finding is certainly not binding on the disciplinary authority. It is for the disciplinary authority to go into the evidence and other materials collected by the enquiry officer and come to a conclusion on its own. This position has been recognised by the Supreme Court in *Union of India v. H.C. Goel* AIR 1984 S.C. 364 : (1964) 1 S.C.W.R. 28. The contention in that case was that the report of the enquiry officer was in favour of the delinquent officer and that should have been accepted by the disciplinary authority. That

contention was rejected and the court held that the report of the enquiry officer is only to help the disciplinary authority to consider the matter and

come to a conclusion and there is no rule that it should be accepted. It is for the disciplinary authority to decide whether the report should be

accepted or not.

22. Even in the case of Batuk Deo Pati Tripathi's case 1978 All L.J. 477, the principle is reiterated. Pointing out that the Administrative Judge or

the administrative committee which holds the enquiry in the disciplinary matter is a mere instrumentality through which the entire court acts for the

more convenient transaction of its business, the assumed basis of the arrangement being that such instrumentalities will only act in furtherance of the

broad policies evolved from time to time by the High Court as a whole. The court held that the provision in the Constitution itself enabled and

empowered the High Court to authorise such Administrative Judge or administrative committee to hold the enquiry. Even in Clause 7 of the

agreement, it has got an inbuilt implied authorisation to nominate an enquiry officer or a sub-committee to hold the enquiry for the purpose of

collecting the relevant materials and placing the same before the college committee.

23. Learned Senior Counsel for the petitioner places reliance on a judgment of the Madhya Pradesh High Court in Shardul Singh Vs. The State of

Madhya Pradesh and Others, . In that case, the disciplinary action was taken by a subordinate authority without any authorisation therefor. He

framed the charges on his own and held the enquiry against the petitioner therein. The court held, that the entire enquiry was invalid and also

observed that there was no power vested with the disciplinary authority to delegate its functions in the absence of any statutory provisions therefor.

We have already referred to the judgment of the Supreme Court in Batuk Deo Pati Tripathi's case 1978 All. L.J. 477. The judgment of the

Madhya Pradesh High Court in the above case was long prior to the judgment of the Supreme Court in Batuk Deo Pali Tripathi 's case 1978

All.L.J. 477. There is no need to say anything else.

24. Factually, there is no basis in the contention that the charges are framed by the Secretary and not by the college committee as such. We have

already pointed out while narrating the committee and initialled by the Chairman

for the sake of identification containing various charges are framed by the committee itself and not by any other authority. Nor is there any substance in the contention that it is the Secretary who has called for" explanation from the. petitioner. The Secretary has taken care to mention in his communication that it is the college committee which had framed the charges and had decided to call for an explanation from the petitioner. In the circumstances, we are of the view that there is no question of any abdication of its functions by the college committee or delegation of its powers by the college committee in any other body or authority.

25. The next contention that one member of the sub committee did not function as such and hence the entire enquiry is vitiated is without any merit. No doubt one of the members nominated by the college committee has not functioned as a member of the enquiry committee. But, that will not in any way vitiate the enquiry itself. The said member, who is the Secretary of the College found that it was necessary for him to represent the management and act as a presentation officer and, therefore, he could not function as a member of the committee. The purpose of the. nomination of the sub-committee is only to gather the evidence available and give a finding so as to place before the college committee which would in turn consider the entire material and decide the case. As rightly pointed out by learned Senior Counsel for the respondent, the question to be considered in these matters is whether there has been fair play and whether there is any violation of the principles of natural justice. The petitioner has been given ample opportunity to appear at the enquiry and place the evidence in her support on record. She was also permitted to cross-examine the witnesses examined on behalf of the management. She did not choose to avail that opportunity and she remained ex pane. The sub-committee, after recording the entire evidence, gave a detailed report by considering all the materials available with it. The said report was placed before the college committee. In fact, the first argument of learned Senior Counsel for the petitioner is that the college committee should consider all the materials and come to a conclusion. That has been done in this case as a tact and, therefore, the mere fact that one of the members of the sub-committee had not functioned as such, will not vitiate the enquiry.

26. The next contention of learned Senior Counsel is that the first respondent

has not considered any of the objections raised by the petitioner to the validity of the enquiry or the orders passed by the college committee; nor has he considered the question of mala fide alleged by the petitioner against the authorities. We are unable to accept the contention in view of the fact that the order of the first respondent shows that only two contentions were urged before him. The first contention was that sufficient opportunity was not given to the petitioner in the course of enquiry and the second was that the Secretary had not acted in accordance with the decision of the college Committee. Both the contentions are referred to by the first respondent in his order expressly and he deals with them. He has rejected both the contentions and accepted the proposal given by the college committee. No other contention would appear to have been urged before the first respondent. It is significant to note that these contentions now urged before us were never raised by the petitioner at any earlier stage in spite of the fact that the petitioner had filed as many as eight writ petitions in this Court starting from 1984, the first of them being W.P. No. 5305 of 1984. As pointed out earlier, in W.P. No. 6778 of 1984, the validity of the charge memo was questioned and a prayer was made to quash the same. But, no argument was advanced at the hearing against it. A learned single Judge of this Court dismissed the writ petition and the matter was not taken it further. That order having become final already, it is not open to the petitioner now to raise contentions against the validity of the charge memo or the initiation of enquiry by the college committee. It is also to be noted that in none of the affidavits filed in these writ petitions, any allegation is made that the first respondent has omitted to consider certain matters which were argued before him.

27. The next contention is that the resolutions passed on 20.8.1984 show that the college committee was prejudiced and biased against the petitioner herein. Reliance is placed on the resolution whereby the college committee authorised the sub-committee to furnish the report of the personal hearing or enquiry to the petitioner along with its proposed punishment, giving her seven days time to submit the Statement of defence against the proposed punishment. It is contended that the usual procedure is for the enquiry committee to submit its report to the Disciplinary Authority which had to consider the acceptability of the same before issuing the

notice to the delinquent officer and calling upon the said person to give his/ her statement in defence. It is contended by learned senior counsel that the mere fact that the college committee had already directed the sub-committee to forward its report to the petitioner and called upon her to submit her defence against the proposed punishment would show that the matter has been pre-judged. We are unable to accept this agreement. The college committee has obviously chosen to save time and directed the sub-committee itself to forward the report to the petitioner along with its proposed punishment, before they are considered by the college committee. Ultimately, the report of the sub-committee as well as the representation made by the petitioner on 13.10.1984 were considered by the college committee besides the other materials on record and a conclusion was arrived at. Hence, the college committee had not pre-judged the issue. The ultimate conclusion is arrived at by the college committee only at the end after looking into all the materials.

28. Learned Senior Counsel for the petitioner draws our attention to the judgment of the Supreme Court in Registrar, High Court of Registrar, High Court of Madras Vs. R. Rajiah, . There was an order of compulsory retirement passed against the concerned official by the Government based on the decision of a review committee or an administrative committee. It is seen from the facts that the decision of review committee was not placed before the Full Court and approved by the Full Court. Instead, it was straightaway communicated to the Government on the basis of which the order of compulsory retirement was made. The Supreme Court held that inasmuch as the Full Court had not considered the decision of the review committee, it could not be taken as a decision of the High Court and, therefore, the order of compulsory retirement was invalid. The ruling will have no bearing in the present case, as we have found now that the report of the sub-committee was placed before the college committee and all the materials on record were considered by the said committee. Hence, the fifth contention of learned Counsel is unsustainable.

29. There is no merit in the contention that the notice was not given by the college committee or the final order was not communicated by the college committee. It is seen from the record that it is the college committee which passed the final order and directed the Secretary to

communicate the same to the petitioner. In fact, the Secretary has taken care to mention that he is communicating the decision of the college committee. Hence, there is no merit in this contention.

30. The next contention that the punishment awarded to the petitioner is wholly disproportionate to the misconduct found against her. This

objection was not raised at any stage previously. Even in the affidavit filed in the writ petition, this contention was not raised. For the first time in the

course of arguments this is urged. There is no merit in this contention. We have already referred to the fact that some of the charges framed against

the petitioner are very grave and they are found against the petitioner. In those circumstances, we are of the view that the punishment awarded to

the petitioner is in no way disproportionate to the misconduct found against her.

31. In the result, all the contentions urged-by the petitioner are negated. There is no merit whatever in these two writ petitions. They are hereby dismissed.

32. We are of the view that the petitioner must be made to pay the costs of the second respondent having regard to the fact that these are the 7th

and 8th writ petitions filed by the petitioner in this Court. The petitioner has chosen to drag the institution to this Court unnecessarily in this matter

while at the same time she had not in any manner co-operated with the authorities in the holding of enquiry. Hence, the petitioner is directed to pay

costs to the second respondent in these writ petitions. One set. Counsel's fee Rs. 3,000.