
(1992) 04 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 307 of 1988

Shashi Kant Agrawal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-04-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 31B

Uttar Pradesh State Universities Act, 1973 — Section 13(1), 13(6), 28, 28(4), 28(7)

Citation : (1992) 2 AWC 708

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : A.K. Yog, for the Appellant;

Judgement

M.L. Bhat, J.—Through the medium of this writ petition the Petitioner has prayed for issuance of a writ of mandamus commanding the Respondents to grant permanent affiliation to the Economics Department in Sahu Jain College, Najibabad, district Bijnor, hereinafter referred to as "the College", A further writ of mandamus is sought directing the Respondents to pay salary to the Petitioner from July, 1987 and also future salary with all increments, allowances, perks, privileges month by month and to grant suitable directions as may be proper in the circumstances of the case. The facts relevant for determining the controversy are set out in brief.

2. The College in question is an affiliated College of the University of Rohilkhand, Bareilly, hereinafter called as "the University." The provisions of the U.P. State Universities Act, 1973 and the provisions of the U.P. Higher Education Services Commission Act, 1980 along with the U.P. Higher Education Services Commission (Removal of Difficulties) Orders are applicable to the said College and the University. The College had sought affiliation to impart education to post-graduate classes in Economics from the University, which was provisionally granted. Two posts for teaching post-graduate classes in Economics were

sanctioned by the Higher Education Director's Office. Inspection of the college is said to have been conducted on 30-5-1979 at the instance of the University for considering the grant of affiliation to the post-graduate Department in Economics in the college. Copy of its extract is Annexure 1 to the writ petition. The affiliation was sought by the College in the year 1974-75. The Management of the College had given an undertaking that the teachers would be paid salaries in the revised grade according to the directive received from the State Government from time to time. This is revealed by clause 11-A. The affiliation is said to have been made under the provisions of the Statutes, which are framed by the University. The Vice Chancellor has competence to exercise general supervision and control over the affairs of the University and its affiliated or associated colleges. The provision in this regard is contained in Section 13(1) (a) of the Universities Act. The affiliated colleges shall have to furnish such reports, returns and particulars, as may be called for by the Executive Council or the Vice Chancellor. The Executive Council of the University is empowered to inspect every affiliated college of the University and direct the affiliated college to take such action as may appear to be necessary within such period as may be specified. Under the Universities Act the privileges of affiliation of the college which fails to comply with any direction of the Executive Council or which fails to fulfil the conditions of affiliation, on the report of the management of the college and with the previous sanction of the Chancellor, can be withdrawn. The management has statutory obligation to deposit in salary payment account such portion of the amount received from students as fees as may be required and the same is a condition precedent for grant of affiliation.

3. The College is said to have been granted initially provisional affiliation in 1979 (for M. A. previous classes). From 1980 on fulfilling the conditions of affiliation the papers for affiliation were sent and the matter of affiliation was processed. On the basis of the resolution dated 14-3-1985 of the Executive Council the grant of affiliation to the college was near completion. The Petitioner is said to have been appointed on 20-12-1983 as Lecturer in Economics for M. A. post-graduate classes on adhoc basis on the basis of an advertisement issued in "Times of India" after having been duly interviewed by a validly constituted Selection Committee as contemplated under the provisions of law. The management is said to have not been inclined to retain the Petitioner and wanted to terminate his services, which led to a dispute between the management of the college and the Petitioner. The Petitioner had to file a writ petition in 1984, being writ petition No. 17059 of 1984, challenging the termination order dated 19-11-1984 as being illegal. Some interim orders were passed in the writ petition in favour of the Petitioner. The interim stay was extended from time to time. The post, against which the Petitioner was working, had received the sanction initially upto 30-6-1985. The sanction was extended for a further period subsequently. The extension granted to the post dated 11-6-1986 is reflected by Annexure 3 to the writ petition.

4. For starting post-graduate classes the number of posts of teachers in the

department have to be three and at least four in the subjects of psychology and Geography as the practicals are the part of the subjects. By a letter dated 30-7-1985 the Registrar of the University is said to have intimated the Chancellor to grant provisional affiliation to M. A. (previous) Economics classes till 30-6-1986 and had asked the College to submit certificate of deposit of prescribed admission fee of the last three years duly countersigned by the District Inspector of Schools. The said letter is said to have been forwarded by the Registrar to the principal of the College for doing the needful. The needful was the deposit of the prescribed fee of three years. A copy of this letter is Annexure 4 to the writ petition. In pursuance of this letter the amount required to be deposited in the salary payment account was credited by the management without any default. In anticipation of extension of provisional affiliation, which was received in October/November the College gave admission in respect of two subjects in July. This is illustrated by citing the example of M Com. classes in which provisional affiliation was granted after the admission in the classes was made. A true copy of the letter to this effect is contained in Annexure 5 to the writ petition.

5. To achieve the object of illegally terminating the services of the Petitioner the college management sought the M. A. Economics classes to be disaffiliated and prevented admission of the students in M. A. Economics (previous) classes so as to get rid of the Petitioner from the College. The resolution of the College dated 6-5-1986 in this regard is contained in Annexure 6 to the writ petition, which reveals that the college was insisting that unless permanent affiliation was granted and the condition of depositing 80 per cent fees received from the students was waived, the College would require services of a senior lecturer for M A. (Final) and those of the Petitioner, as temporary lecturer, were not required. The management was not willing to deposit 80 per cent of the fees received from the students. Therefore, it seems to have taken a decision to stop making admission in M.A. Economics after the final year students were relieved from the college. In the academic session 1986-87, which was to start in July, 1986 it was mentioned that admission to M. A. Economics classes would be made only after the extension of term of affiliation is granted by the University. This prevented the students from seeking admission in M A. Economics classes. In spite of the attempt of the college to dissuade the students to take admission, 57 students are said to have applied for admission in M. A. (previous) Economics classes. The college authorities are said to have thereafter issued a notice that thereafter no admission will be made for M. A. Economics Part II in the college. Some students, who had applied for admission, were forced to change the subject in the application forms. Some students are said to have made a representation to the principal of the College, a copy where of was given to the Registrar of the University. The Registrar is said to have forwarded this representation to the principal. The act of the college was resented by public, who had expressed their resentment through press. The Vice Chancellor of the University is said to have written a letter dated 25-10-1986 to the principal of the College in response to

their resolution dated 6-5-1986 that it was wrong to deprive the students from getting admission in M A Economics (previous) and it was mentioned that the resolution dated 6-5 1986 was contrary to rules. A copy of this letter is contained in Annexure 8 to the writ petition. The provisional affiliation thereafter was received after 30 6 1987 by a letter, a copy whereof is Annexure 9 to the writ petition. The Management of the College had acted malafide. It was given out by the management that since there was no permanent affiliation therefore, admission in M. A. Economics (previous) classes were not made. However admission to M Com classes were made The M.Com course has not received permanent affiliation. On the representation of the Petitioner the Vice Chancellor of the University is said to have asked the principal of the College to submit its report regarding closure of M. A. (previous) Economics classes. A copy of this letter dated 21-2-1987 is Annexure 12 to the writ petition.

6. The Petitioner's salary was also stopped from 30 6-1987, therefore, he made a number of representations, copies of three such representations are Annexures to the writ petition.

7. It is contended by the Petitioner that the subject of M.A. (previous) classes of Economics cannot be stopped by the College Management arbitrarily and illegally. The conditions of affiliation, which were initially agreed upon could not be now requested to be waived by the College. By doing so the college was forestalling the affiliation of M.A. Economics post-graduate classes. The management of the College cannot resile from its earlier stand and cannot refuse to comply with the statutory obligation cast upon it by law. The University has recommended grant of permanent affiliation to the chancellor for the post-graduate classes in Economics and till that matter was decided the college was granted provisional affiliation which could be converted into permanent affiliation after complying with some formalities, which the college refused to comply with. The question of permanent affiliation has not been decided by the Chancellor though the recommendation has already gone to him from the Vice Chancellor in this regard. The Director of Education is also said to have failed to discharge his statutory obligation in not extending the term of the post of lecturer in Economics. At one stage the Petitioner seems to have filed a contempt: petition also in which notices were issued. Thereafter the Petitioner is said to have been paid salary upto 30-6-1987 by the Deputy Director of Education by passing an, order of single operation.

8. On behalf of the Respondents No. 2 and 3 counter affidavit is filed by one Irshad Husain. It is stated that the University had recommended and forwarded to the Chancellor the resolution dated 20-2-1985 of the committee of management alongwith panel report in respect of the permanent affiliation. It is stated that the post against which the Petitioner was working was extended up to 30-6-1987 by the Director of Education. It is stated that the letter dated 30-7-1985 was actually sent by the Registrar to the College by which the information, as required by the letter of the Chancellor of the University, was

sought. It is admitted that the matter of permanent affiliation in Economics is pending before the Chancellor. Extension of temporary affiliation was granted up to 30-6-1987. In respect of other pleas of the writ petition it is stated that these either relate to the committee of management or to the other Respondents with which the University has no concern.

9. On behalf of the Respondents No. 4 and 5 one S.S. Tandon has filed counter affidavit. It is admitted that the college was not granted permanent affiliation for running post-graduate classes in Economics subject. The affiliation is said to have been granted initially on 1-7-1980, which was extended upto 30-6-1987. It is stated that thereafter no affiliation was granted. This fact is contradicted by the Petitioner in his supplementary affidavit mention where of will be made at appropriate place in this judgment. Since no post was in existence beyond 1-6-1987 the Petitioner has no right to continue in service beyond that date. The Petitioner's appointment as ad hoc lecturer on 20-12-1983 is admitted. Beyond 30-6-1987 no student was admitted to Master's Degree Course in Economics nor was affiliation extended or made permanent by the University. The Petitioner cannot, therefore, be allowed to continue. The post has ceased to exist for valid reasons and the Petitioner's services against the said post have automatically been terminated. The post of lecturer in Economics was held by the Petitioner upto 30-6-1987. Since no further extension was granted to the post, therefore, the Petitioner could not continue on the said post. The provisional affiliation granted to the College is said to be only upto 30-6-1987. (This fact, however, is contradicted by the Petitioner in his supplementary affidavit, which shall be referred to hereinafter) The Director of Education is said to have such power u/s 60C of the U.P. State Universities Act. The Petitioner's claim to his post and salary is refuted.

10. On behalf of the Respondent No 6 one Suresh Kumar Jain has filed counter affidavit. It is stated that the College is affiliated to the University. It had applied for starting M.A. Economics classes in the year 1977. The University appointed a panel to examine the necessity of starting M.A. Economics classes. The panel held inspection in 1979. The estimated income from fees to be realised from the students of the proposed M.A. (previous) Economics classes was calculated and expenditure towards salaries of Lecturers was deducted from the estimated income. On the recommendation of the University the Chancellor permitted the College to start M.A. Economics classes provisionally for two years i.e. 1980-81 and 1981-82. The provisional affiliation was renewed by the Chancellor from year to year upto 30-6-1985 without imposing any condition on the college. For the session 1980-81 there was a permanent lecturer for post-graduate classes. The Directorate of Education sanctioned two posts of Additional Economics lecturers in the year 1983-84. The salary of one of those lecturers was paid by the management upto August, 1983 from its own resources. After that they were paid their salary from the salary payment account and the college started depositing the prescribed fee income i.e. 80% in the said salary payment account from the session 1983-84. It is stated that the Chancellor of the University by his

letter dated 5-7-1985 had imposed a condition at the time of renewal of affiliation for the session 1985-86 i.e. upto January, 1986 to the effect that the college should submit a certificate of depositing the prescribed fee and income of atleast three years duly countersigned by the District Inspector of Schools. This condition was not imposed when the provisional affiliation was granted to the college for starting M.A. (previous) Economics classes in the session 1980-81. The provisional affiliation is said to have continued till 30-6-1986. As the Chancellor had imposed a new condition in his letter dated 5-7-1985, which required proof of deposit of prescribed fee and income for the period when the college was paying salary of additional lecturers from its own resources till the sanction of two posts in the year 1983-84, was received the college management considered the condition as unfair and under the condition the college management resolved on 6-5-1988 that M.A. (prev) classes in Economics will not be started unless the University agreed to give permanent affiliation without imposing any condition of depositing 80% fees charged from the students in the previous years. It was further resolved that the services of only one lecturer will be required for M.A. (Final) and the services of junior lecturer will be dispensed with. In the prospectus of the college for the session 1986-87 admission to M.A. (pre) Economics classes were made subject to the grant of affiliation, which was not received till the date of publication of the prospectus. The University did not respond to the resolution dated 6-5-1986 passed by the college till 14-8-1986. The session had started on 16-7-1986 In order to provide facilities to the students for continuing their studies in post-graduate classes, it was notified that those students who wanted to continue their studies in post- graduate classes, should change their choice from M.A. Economics to Hindi or M.A. Sociology classes under intimation to the principal.

11. It is stated that without informing the college the University had forwarded the affiliation to the Chancellor for extending the period of provisional affiliation and it was recommended to the Chancellor that permanent affiliation be granted to the M. A. (prev) Economics classes. The College has not made any such request. The principal of the College informed the University that the condition for the grant of affiliation was not justified. This is reflected by the letter dated 15-9-1986. The College being not able to fulfil the condition of the University for the grant of permanent affiliation did not start the M. A. (prev) Economics classes, otherwise also there is a declining trend in the matter of admission in college. The students were disinterested in seeking admission in M. A, Economics. This is sought to be projected by a chart given in the counter affidavit.

12. One Atul Kumar and others are said to have filed a writ petition which came to be registered as writ petition No. 19260 of 1986 with a prayer for the grant of a writ of mandamus to the effect that they be admitted in M. A. (prev) Economics classes along with other students and the college and its staff be directed to hold the clashes of M. A. Economics and discharge their duties and so on. After filing the pleadings the writ petition was dismissed as in the opinion of

the Division Bench of this Court it was not a fit case for interference under Article 226 of Constitution. However, the Petitioner was not a party to this writ petition and the pleadings of that writ petition also seem to be different from the one, which are filed in this writ petition. It is stated that the committee of management had dispensed with the services of the Petitioner as these were not required by the college. The Petitioner had been paid full salary till the post was sanctioned. He cannot get salary after the sanction to the post has ceased. It is stated that the committee of management has abolished MA. (prev) classes in Economics and sought disaffiliation of the Economics subject. It is also stated that the college had no intention what so ever to restart the classes. Neither the University authorities nor the Chancellor had compelled the college to start the classes. The relief claimed in the writ petition with regard to the starting of M. A. classes is said to be misconceived, which cannot be granted under Article 226 of the Constitution of India. The right of the committee of management to close down M.A. Economics classes is asserted, There is no statutory obligation on the committee of management to continue M. A. Economics classes (previous). The committee of management has abolished M. A. Economic classes, therefore, there is no need of Economics teacher in the institution.

13. In reply to the counter affidavit of the Respondents the Petitioner has filed there rejoinder affidavits initially. In reply to the counter affidavit of the Respondent No. 6 it is stated that the conditions imposed by the Chancellor were later on waived for the subsequent years when the college was granted provisional affiliation. The provisional affiliation was extended upto 30-6-1988 by a letter issued by the University Inspite of affiliation for the M. A. Economics classes the committee of management chose to do away with the services of the Petitioner and circumvent the interim order of this Court in writ petition No. 17059 of 1984 filed initially by the Petitioner when the admission to M.A. Economics classes was stopped. M. Com classes were continued. Admission to M. Com. was granted in anticipation of the order of sanction from the University. The object of the committee of management is only to keep the Petitioner out of service. It is denied that the students were not available for admission to M.A. Economics classes or there was any declining trend to seek admission in M. A. Economics classes. It is stated that the services of the Petitioner could not be dispensed with without prior approval of the Commission. The resolution of the committee of management is said to be illegal and arbitrary. The Director of Education has sanctioned the post upto 30-6-1988. The power of the Chancellor to direct admission to M. A classes is pleaded and the Respondents assertion to the contrary is denied. The dispensation of the services of the Petitioner is said to be malafide The committee of management has no absolute right to close down M.A. Economics classes. The object behind their decision was to get rid of the Petitioner.

14. In reply to the counter affidavit on behalf of the Respondents No. 1, 4 and 5, the Petitioner has filed rejoinder affidavit. The affiliation of post graduate classes is said to have been extended from time to time upto 30-6-1988 (though in

another affidavit it is said to have been extended further) Since the affiliation was extended, therefore, the Director of Education was bound to sanction the post under law. The assertions set up in the counter affidavit are refuted.

15. On 27-8-1991 this Court passed an order on the application of the Petitioner, which was prayed to be treated as part of the petition. The Petitioner's contention was that during the pendency of the writ petition, the affiliation was extended by the University upto 30-6-1990 with regard to the subjects of M. A. Economics and M. Com. The order of the Registrar dated 6-10-1990 to the principal of the college was referred to a copy where of was placed on record. The services of the teachers, who were appointed on or before 3-1-1984 through a regular selection process are required to be regularised u/s 31B of the U.P. Higher Education Services Commission Act. He had prayed that he be treated a regular teacher and he be paid salary. The other side was granted an opportunity to file counter affidavit to the supplementary affidavit and interim order was not passed. However, it was directed that the petition could be decided at the admission stage itself,

16. A supplementary counter affidavit was filed by the Respondent No. 6 to the supplementary affidavit of the Petitioner. It is stated that the Petitioner had joined as temporary teacher in some other college on 22-7-1990 and was serving as a teacher there. Since 1-7-1987 till today he has not worked in the College. M.A. Economics classes have been closed. The claim of the Petitioner for payment of salary is said to be barred by time. However, it is contended that he is not entitled to any salary. Some of the paras mentioned in the counter affidavit to the main writ petition have been reproduced in the supplementary counter affidavit. It is further stated that the college did not send any candidate for examination conducted by the University for four successive years nor had ever asked for provisional affiliation. The college did not request the Director of Education to extend the post. Statute 11.29 is relied upon which says that an affiliated college shall be deemed to have been disaffiliated if it fails to send any candidate for an examination conducted by the University for three successive years. The affiliation, if any, has already come to an end. The college has stated in reply to the latter dated 30-6-1990 that there was no need for provisional affiliation to M. A. Economics classes as the classes of M. A. Economics had already been closed. The provisions of Section 31-B of the U.P., Higher Education Services Commission Act are said to be not applicable to the Petitioner's case as his services were renewed every year.

17. The Petitioner has filed a supplementary rejoinder affidavit to the supplementary counter affidavit filed by the Respondent No 6. It is stated that Annexure 13 to the writ petition would reveal that the Petitioner has sent a representation to the State Government, Director of Education, U.P. as well as the Vice Chancellor of the University for restraining the committee of management from illegally refusing admission to the students in furtherance of their malafide intention to cease classes and thereby fabricating a ground for

terminating the services of the Petitioner. Annexures 14 and 15 to the writ petition also contain the same contents. It is stated that the Petitioner has worked as temporary Assistant teacher on honorary basis from 2-7-1990 to 18-5-1991. He received only Rs. 500/- a month as honorarium. It is stated that the Petitioner has been prevented from performing his duties as lecturer in Economics in the college. No proceedings were taken for abolishing the post nor any retrenchment was made by any competent authority. The Respondent's interpretation of Statute 11.29 is said to be misconceived. The Respondent's contention that affiliation has expired on 30-6-1987 is belied by the letter dated 1-7-1991 purporting to have been sent by the Vice Chancellor of the University to the chancellor in connection with the continuation of the affiliation. It is stated that this letter carries information supplied by the Respondent No. 6 to the University. The affiliation once granted cannot be withdrawn with a mala fide intention of terminating the services of the Petitioner. The allegations made by the Respondent No. 6 are denied.

18. A preliminary objection was raised by Mr. S.P. Gupta, appearing for the Respondent No. 6. It is stated that the Petitioner has no locus standi to claim the relief of mandamus with regard to the grant of affiliation of the college. He has ceased to be a lecturer, therefore, he has nothing to do with the permanent or provisional affiliation of the college with respect to the post-graduate Economics course, It is stated that the Respondent No. 6 has no statutory obligation to start M. A. Economic classes nor is he bound to seek affiliation for the said course. The Petitioner cannot compel the Respondent No. 6 to do a thing which it is not bound to do.

19. So far as the locus standi is concerned, the Petitioner's relief of grant of affiliation to the college with regard to M. A (prev) Economics classes is interwoven with the relief which he seeks about his continuing in service and about the payment of salary to him. The Petitioner's post was sanctioned when the affiliation of the college was there in respect of M. A. Economics classes with the University. Because of discontinuance of affiliation, according to the Respondent No. 6, the Petitioner's services have been dispensed with. So the question of affiliation of the college would be an all embracing question as to whether the Petitioner has ceased to be a lecturer or is continuing to be a lecturer of post-graduate Economics course or he has any right to claim himself as lecturer for the said course If the affiliation is not granted or if it is once granted, it was ceased. This will have important and fundamental bearing on the question of Petitioner's right to continue. Therefore, the Petitioner is entitled to be heard and he has a locus standi to canvass the matter before the High Court in its writ jurisdiction under Article 226 of the Constitution The Petitioner has personal interest in the litigation. It is not a public interest litigation as was attempted to be projected. The Petitioner has definitely a personal interest in the matter and his interest is dependent on the validity or otherwise of disaffiliation, therefore, he has the interest in the prosecution of the writ petition. The locus standi theory has undergone a considerable change in recent years. The contours

of locus standi are now widened to embrace within its fold any litigation in which there is involvement of public or private interest. The individual interest of the Petitioner cannot be segregated from the public interest, which according to the Petitioner, is the grant of affiliation to the college in post-graduate Economics classes. The Petitioner could have directly challenged the action of the managing committee, which dispensed with his services. In that case also he was necessarily to show that the dispensation of the Petitioner's services were for extraneous reasons and not based on any rational ground. With the abolition of the post the Petitioner could not seek any relief unless he further shows that the abolition of the post was actuated by extraneous consideration or by the considerations which are irrelevant. In this view of the matter, it cannot be said that the Petitioner has no interest in the matter. He has a locus standi to file this writ petition and prosecute the same. After holding that the Petitioner has a locus standi to claim the relief prayed for in the writ petition let us advert to the merits of the case now. Learned Counsel for the parties were heard on merits of the writ petition.

20. Reference was made to the various provisions of the U.P. State Universities Act by the learned Counsel for the parties. Section 13(1)(a) says that the Vice Chancellor as the principal executive and academic officer shall exercise general supervision and control over the University including the constituent colleges and the institutes maintained by the University and its affiliated and associated colleges. The Vice Chancellor has a duty to ensure the faithful observance of the provisions of the Act, the Statutes and the Ordinances. Section 13 (6) deals with the emergency powers of the Vice Chancellor and the Vice Chancellor can exercise all other powers which are laid down by the Statutes and the ordinances. Section 28 of the Act deals with the constitution and function of the admission committees. Sub-section (4) of Section 28 says that the admission committee may issue any direction as respects criteria or method of admission in class, including the number of students to be admitted to constituent colleges maintained by the State Government and affiliated or associated colleges, and such directions shall be binding on such colleges. Section 37 of the Act deals with affiliation and recognition of the colleges. Section 37 (4) says that the management of an affiliated college, except as provided by the Act, shall be free to manage and control the affairs of the college and shall be responsible for its maintenance and upkeep. The principal shall be responsible for the discipline of the students and for the superintendence and control over the staff. Sub-section (5) of the section makes it obligatory for the affiliated colleges to furnish such reports and other particulars as may be called for by the University or its Executive Council. The Executive Council has a power to get an affiliated college inspected from time to time. Sub-section (8) of Section 28 reads as under:

28 (8). The privileges of affiliation of a college which fails to comply with any direction of the Executive Council under Sub-section (7) or to fulfil the conditions of affiliation may, after obtaining a report from the Management of the college and with the previous sanction of the Chancellor, be withdrawn or curtailed by

the Executive Council in accordance with the provisions of the Statutes.

21. Sub-section (9) of Section 28 gives power to the Chancellor to withdraw or curtail the privileges of affiliation on the report of the Management and the Vice Chancellor, if the Management has failed to fulfil the conditions of affiliation. Section 40 of the Act lays down that the State Government has a right to cause an inspection to be made of any affiliated or associated college and the method and manner prescribed for such inspection. Section 46 of the Act prohibits taking of contribution, donation etc. either in cash or in kind except the fees at the rates laid down in the ordinances from or on behalf of any pupil as a condition for granting him admission or preventing him to continue in the said college. Among other things, Ordinances may provide the conditions in which the students shall be admitted to the examinations, degrees and diplomas of the University and the conditions for the eligibility for the award of such degrees and diplomas. This is the crux of Section 51 of the Act.

22. The Statutes framed under the Act were also referred to. Statute 11.02 provides as to how and to whom application for affiliation of a college is to be made. The other Statutes mentioned in Chapter XI of the Statutes also lay down the procedure for seeking affiliation of the college and what are the conditions to be fulfilled for such affiliation.

23. Statute 11.29 provides as to how an affiliated college is deemed to have been disaffiliated (the import of this Statute is mentioned elsewhere in the judgment), Statute 11.30 provides that the Executive Council of the University may direct a college not to admit students to a particular class if the conditions laid down for starting the class have in the opinion of the Executive Council been disregarded. The classes may, however, be restarted with the prior permission of the Executive Council when the conditions are fulfilled to its satisfaction. Under Statute 11.33 the Executive Council has to call upon a college to take certain action as may be necessary in respect of the matters relating to the conditions of affiliation.

24. Chapter XI-A of the Act deals with payment of salary to teachers and other employees of Degree Colleges. Section 60-C of the Act empowers the Deputy Director to inspect or cause to be inspected any college and obtain information and records from the management with regard to the payment of salaries to its teachers and staff. He can give direction with regard to financial matters including retrenchment of any teacher and prevent wasteful expenditure. Direction with regard to retrenchment of teachers is to be given after obtaining prior approval of the Director of Education. Section 60-D of the Act deals with the disbursement of salary and bank account etc and the method of drawal of salaries u/s 60-E of the Act the State Government is liable for payment of salaries of teachers and employees of every college due in respect of any period after March 31, 1975. It can recover any amount in respect of which any liability is incurred by it by attachment of income from the property belonging to or vested in the college as if that amount were an arrear of land revenue due from

such college. Section 60-F of the Act provides a procedure for punishment and penalties.

25. It is not denied by the Respondent No. 6 that the provisional affiliation was continued upto 30-6-1990. The Annexure SA 2 to the supplementary affidavit filed by the Petitioner would reveal that the Chancellor had extended the affiliation upto 30-6-1990 with respect of the subject of Economics in M. A. and M. Com. Information of this fact was given by the Registrar to the College on 6-10-1990. This assertion has not been denied. Among the recognised courses Economics upto post-graduate level is shown as one of the subjects. In Annexure SA 2 the college in question is shown at serial No. 28. In the University records for the courses in which the college is imparting education M. A. Economics is shown as one of the recognised subjects in Annexure SA 3 to the supplementary affidavit. In Annexure SA 4 to the supplementary affidavit post-graduate Economics course is shown to have started in the college, in 1980-81. A copy of the letter of the University dated 19-2-1986. Annexure SA 5 to the supplementary affidavit, which is a letter from the Registrar to the principal of the college, makes it clear that as soon the post of lecturer is being made permanent on receiving permanent affiliation, the incumbent holding the post shall also become permanent. The Petitioner's pay scale was fixed in the revised pay scale, which is sad to be applicable to the teachers, whose services are regularised in the college. With reference to the letters of the Director of Higher Education dated 28-2-1990 and 15-5-1991 it is canvassed that the Petitioner was treated as regularly appointed teacher against a permanent post. The affiliation of the college is said to be continued, therefore, the Petitioner is deemed to be a regularly appointed teacher So long the affiliation of the college continues, the Petitioner contends that his services will not come to an end.

26. The supplementary counter affidavit filed by the other side to the supplementary affidavit is rather very cryptic.

27 Mr. S.P. Gupta, appearing for the Respondent No. 6, has submitted that there is no statutory liability or obligation imposed on the college to get itself affiliated in any of the subjects with the University. Secondly, the University has no obligation to impose affiliation on a college in respect of any of the subjects under the Universities Act; and thirdly, the management is not under any statutory duty or obligation to start or run classes with regard to a subject which the management decides not to start or not to run. There is no statutory duty cast on the Respondent No. 6 by the Act, statutes or Ordinances passed under the Act that it must start and run classes of a subject according to the choice of the students desiring to seek admission in that subject and impart education in that subject. The college cannot be compelled under any law to admit or teach students in any subject of their desire. Some students are said to have filed a writ petition, which was dismissed by this Court, asking the college to grant admission to those students in MA. previous and that the post-graduate staff of the college, should hold the classes Section 37 of the Universities Act refers to

affiliation of the college. The affiliation is a privilege, which the University confers on a college. If the affiliation is not sought, the question of privilege would not arise. If a college is affiliated in respect of one subject it is not necessary that it should have affiliation for other subjects also. The Statutes dealing with affiliation provide complete procedure as to how a college is to seek affiliation in respect of a subject or subjects and what are the conditions for seeking affiliation to teach a subject or subjects. Statute 11.29 creates a fiction as to how disaffiliation of a college takes place—Mr. Gupta has strongly relied on the resolution of the committee of management of the college dated 16-8-1986 by which it was decided not to continue classes of Economics for MA. The college informed the University that it will not fulfil the condition of affiliation by depositing 81% of the fees for three years. The college has not been granted any permanent affiliation. The provisional affiliation has ceased to exist because the college did not want to have affiliation on the condition imposed by the University nor did they send up the students for examination conducted by the University for the last three years, therefore, the provisional affiliation, which had already ceased, could not come into operation. No relief can be granted to the Petitioner in the writ petition. The Petitioner was an ad hoc teacher for one year, then he was continuing as a teacher till the affiliation in M.A. Economics classes continued and after that he had ceased to be a teacher. The post had ceased to exist, therefore, the Petitioner could not be continued. On the abolition of the post the Petitioner's service had come to an end. The interim order obtained by the Petitioner in the earlier writ petition was to continue only till the post was in existence. Since there was no post in existence, therefore, the interim order did not give any benefit to the Petitioner. There is no prayer in the petition for continuance of the post beyond 30-6-1987 because no such relief could be granted.

28. The learned Counsel for both the parties have relied on Section 37 of the Universities Act. Section 37 (2), (8) and (9) of the Act are relevant for our purpose. Under Sub-section (2) of Section 37 of the Act previous sanction of the Chancellor to admit any college, which fulfils the conditions of affiliation is necessary. Under Sub-section (8) of Section 37 of the Act the privileges of affiliation of a college, which fails to comply with any direction of the Executive Council under Sub-section (7) of the section, or to fulfil the conditions of affiliation, the affiliation may be withdrawn or curtailed with the previous sanction of the Chancellor after obtaining a report from the management of the college—The withdrawal of affiliation is to be done by the Executive Council in accordance with the provisions of the Statutes with previous sanction of the Chancellor. Sub-section (9) of Section 37 of the Act lays down that notwithstanding anything contained in sub sections (2) and (8) of Section 37 of the Act if the management of an affiliated college fails to fulfil the conditions of affiliation, the Chancellor may, after obtaining a report from the management and the Vice Chancellor, withdraw and curtail the privileges of affiliation. There is nothing in the Universities Act which recognises provisional or temporary affiliation. If once

affiliation is granted, the same can be withdrawn or curtailed only with the previous sanction of the Vice Chancellor by the Executive Council in the manner and on the grounds mentioned in various clauses of Section 37 of the Act. The power to grant affiliation vests with the Chancellor. Therefore, he alone is empowered to grant sanction for its disaffiliation or for the curtailment of affiliation.

29. The provisional affiliation, therefore, seems to be a misnomer. The University has got the report prepared in terms of the Universities Act for giving affiliation to the college in the Economics subject for post-graduate classes and that affiliation continued for some years. Therefore it was said that 80% of the fees collected from the students be deposited for three years during which affiliation had continued. However, the college did not comply with this direction. In respect of other subjects also this condition was imposed by the University on the college. In so far as M. Com is concerned, the college did not raise any objection for complying with the condition of depositing 80% of the fees towards the salary account of the teachers but in respect of the Economics subject they passed a resolution that the condition imposed by the University for deposit of 80% of the fees collected from the students cannot be fulfilled and stopped admitting students in M.A. (prev) Economics classes. From a reading of Section 37 of the Act it would become manifestly clear that the college could be disaffiliated only with the previous sanction of the Chancellor if there was a report from the management of the college or the Vice Chancellor, as the case may be. The Respondents cannot invoke the deeming provisions of Statute 11.29 at this stage because when the resolution was passed by the college in 1986, Statute 11.29 had no application. The M.A. Economics (pre) had continued admittedly upto June, 1987. Therefore, during the subsistence of affiliation Statute 11,29 could not be involved. The said Statute comes into play if the affiliated college fails to send up any candidate for examination conducted by the University for three successive years. This would mean that the failure of the college for three successive years to send up candidates for examination must have happened prior to the coming into effect of Statute 11.29. For invoking Statute 11.29 there is a condition precedent of failure of the college to send up students for examination for three successive years, which must be anterior to the coming into force of deeming provision. Therefore, obviously Statute 11.29 has no application because the college had not failed to send up candidates for examination for three years when the college stopped admitting students for M.A. (prev) Economics classes after passing the resolution on which the Respondent No. 6 relies now.

30. It is true that the college is an autonomous body. It has certain privileges. But once it has applied for affiliation for the Economics postgraduate subject, the question, that needs consideration, is whether it could of its own prevent the students from seeking admission and bring disaffiliation of the college in M. A. Economics without complying with Section 37 of the Universities Act. Section 37 of the Universities Act empowers the college to submit a report or any request to

the Chancellor that it would not like to have affiliation in a particular subject with the University. But unless that request is sanctioned, the college will not be deemed to have been disaffiliated merely because the management has desired to stop admission in the class for which affiliation was granted, though provisionally. The affiliation by the University is granted after a certain procedure is followed. Disaffiliation or curtailment of affiliation takes place when the procedure laid down under the provisions of the Universities Act and the Statutes are followed. Disaffiliation or curtailment of affiliation cannot be done at the sweet-will of the college. The absolute power for bringing into effect disaffiliation of a college with respect of a particular subject is not to be exercised in such a manner as if the college is not accountable to anyone and it can disregard its duties at any time at its sweet-will and caprice in respect of imparting education in any subject for which it is granted affiliation or permission by the University under a procedure established by law. It can undo affiliation whether permanent, temporary or provisional (though the Act. does not recognise temporary or provisional affiliation) only after following the procedure and not at its sweet-will. There has to be a report, which is to be supported by the report of the Academic Council or the Vice Chancellor to enable the Chancellor to apply his mind with regard to the grant of sanction for disaffiliation of a college in respect of a particular subject. Under our system the contention of the Respondent No. 6 that it can undo the affiliation at its sweet-will appears to smack of arrogance. To college is autonomous to manage the affairs of the institution is not at all eroded but it has to impart education in accordance with the said rules, procedure and according to the norms laid down by the State. The grant of affiliation under the Universities Act and the power given to the Chancellor to grant affiliation or to disaffiliate a college has a purpose. It is a collective thinking of so many functionaries which can bring affiliation if it is warranted and in the like manner it is again collective thinking, which can undo the affiliation if it has become redundant.

31. The college does not seem to be justified in laying down a condition that they will not deposit 80% of the fees in the payment of salary account and, therefore they would not like to have affiliation in post-graduate Economics subject. In M. Com subject this condition is, as not objected to by the Respondent No. 6. in respect of M.A. Economics alone the Respondent No. 6 has taken the objection for not depositing 80% of the fees. This seems to be an excuse for achieving disaffiliation otherwise than in accordance with law.

32. The Director of Higher Education has not continued the post of lecturer beyond a certain date. It is stated on behalf of the Director that since the college was disaffiliated, therefore, there was no need to sanction the post. The sanctioning or not sanctioning the post is, therefore, made dependent by the Director on the question of affiliation or disaffiliation of the college in respect of the economics subject. This assertion may not be incorrect but from the record it appears that the affiliation has continued up to June, 1990. The management has not requested for sanctioning the post, therefore, the Director of Higher

Education seems to have been handicapped to sanction the post. It was necessary for the Respondent No. 6 to make a request for sanctioning the post, which was held by the Petitioner. Since they were under the impression that the Petitioner's post has been abolished because they have brought disaffiliation into being of their own, therefore, they have not requested for sanctioning of the post and have treated the Petitioner to have ceased to hold the post with effect from a certain date.

33. From a reading of the affidavit of the University it is revealed that the University has not refused the grant of affiliation. The papers are still pending with the University and they have not sanctioned disaffiliation also. The University is considering the request of the college itself. Under the mistaken notion of law it seems to have granted provisional affiliation which, according to it, could be converted into permanent affiliation only if the college fulfilled certain conditions with respect to deposit of 80% of the fees etc The University's case is that the Chancellor has not at all sanctioned disaffiliation or curtailment of affiliation. If that be so, the affiliation granted to the college in respect of Economics subject cannot be said to have come to an end. The resolution of the college that it is not ready to comply with the condition of affiliation proposed by the University also does not appear to be fair.

34. The Petitioner's contention is that the Respondent No. 6 has a malafide intention and because of the ill-will it has passed the resolution to get rid of the Petitioner. However, that cannot be presumed by this Court. It seems that it is a case of mutual error of the University and the Respondent No. 6. The University's error is that it has styled the affiliation granted by it in 1980-81 with regard to M.A. Economics as provisional affiliation and the college's error is that it has treated itself to be an autonomous body and competent to bring into existence disaffiliation without sanction of the Chancellor. The approach adopted by the University as also by the college appears to be contrary to law in respect of grant of affiliation and in respect of the so called disaffiliation.

35. It is true that the writ petition filed by the students had been dismissed. The dismissal of that writ petition will not affect the Petitioner inasmuch as he was not a party to the writ petition. The prayer in that writ petition was for grant of admission in a subject which the Respondent No. 6 did not teach. Therefore, on entirely different premises the writ petition, unconnected with the claim of the Petitioner, was dismissed. That will not affect the right of the Petitioner in this writ petition to enforce his own right by a separate writ petition. The Petitioner has an independent right which does not flow from the right agitated by the students in the previous writ petition. He had not had the occasion to contest that writ petition nor did he file his counter affidavit in that writ petition. Therefore, any order passed in that writ petition will be per incuriam between the parties to that writ petition and not binding on the Petitioner.

36. Mr. Gupta next contended that the post was abolished, therefore, the Petitioner has no right to claim the post. Mr. Gupta has relied on the case of

Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain (1976) 2 SCC 58 In this case a contract of personal service. was held to be not specifically enforceable and the court could not give a declaration that the contract subsists and the employee even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule was, however, made subject to three exceptions -(i) where a public servant was sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker was sought to be reinstated on being dismissed under the Industrial law; and (iii) where a statutory body acted in breach or violation of the mandatory provisions of the statute.

37. It is contended by Mr. Gupta that since the post will be deemed to have been abolished because no sanction was received from the Director of Higher Education, therefore, the Petitioner will be deemed to have ceased to be the holder of the post of lecturer on adhoc basis. The proposition that when the post was abolished and the holder of the post has no right to claim reinstatement to that post may not be disputed, but we are concerned with a case where sanction to the post has not been granted despite the fact that the affiliation was continued by the University upto 30-6-1990. The document in this regard attached to the supplementary affidavit filed by the Petitioner has not been disputed. It is, however, stated that the college did not ask for any affiliation. However, the fact remains that the affiliation continued upto June, 1990. Therefore, it will not be a case where the post was abolished in accordance with law or by a valid order The college has treated the post to be abolished, therefore, it did not pray for its continuance. That being so, the principle enunciated in the authorities submitted by Mr. S.P. Gupta would not be applicable to the facts of the case The continuance of the Petitioner would depend on the affiliation of the college in respect of M. A. Economics subject, one of the conditions of affiliation, was to create certain post in Economics subject and against one of the newly created post, the Petitioner was appointed on adhoc basis by a selection committee and his appointment was sanctioned by the State Government through one of its functionaries. Therefore, it is not a case of personal service and termination of service contract. There is no termination of the Petitioner's service in the first place and if the termination is there, that is based on misconception of the Respondents. The misconception is a writ large on the face of the record because the college has treated M. A. Economics subject disaffiliated and the Director of Higher Education has not been requested to sanction the post. The result is that admission to M. A. Economics subject is stopped and the Petitioner is rendered jobless.

38. It is true that the college has no obligation to seek affiliation nor was any statutory duty cast on the college to have sought affiliation in post-graduate Economics subject. But once affiliation was prayed for and it was approved and sanctioned, even if provisionally or temporarily, it could not be said that the Respondent No. 6 at its sweet-will could undo by itself the affiliation of the

college. The well settled principle is that if a thing is required to be done in a particular manner, that thing has to be done in that manner and in no other manner. If the Respondent No. 6 intended to undo the affiliation of the college, it was necessary for them to seek the sanction of the Chancellor in this regard. The provision contained in Section 37 of the Act is meant to be obeyed and it is not correct to say that in disregard of Section 37 of the Universities Act the college could stop granting admission in M. A. Economics previous classes and treat the college to be disaffiliated.

39. I have held that the Petitioner has a locus standi to maintain this writ petition. Therefore, the cases cited by Mr. A. K. Yog need not be discussed on this aspect of the matter.

40. It is necessary to mention here that every action of the Respondent No. 6 must be subject to the rule of law and must be informed by reason. The Respondent No. 6 as an instrumentality of the State has a public duty to make its activities subservient to the purpose for which it has come into existence. It is the public interest which is to be served by the Respondent No. 6. Its policy or action must satisfy the test of reasonableness if it claims to be constitutionally valid. This principle is enunciated by the Supreme Court in the case of *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, .

41. The Respondent No 6 has treated that the college is disaffiliated so far as the M.A. Economics subject is concerned. On that basis it has not made recommendation for sanction of the post held by the Petitioner and on the other hand has treated the Petitioner as relieved. This conception of the Respondent No 6 does not appear to be correct. This attitude of the college- seems to be inconsistent with the fair play and equity. However, this Court will not make a declaration to the effect that the college is affiliated with regard to the post-graduate Economics subject or the Petitioner continues to hold the post. The Petitioner's holding of the post was subject to the post being sanctioned by the Director of Higher Education. It in turn was dependent on the affiliation of the college being continued in respect of M. A. Economics subject. The treatment meted out to the question of affiliation and the Petitioner's post has been indifferent. The Respondents No. 4, 5 and 6 seem to have overlooked the affiliation which the Respondents No. 2 and 3 say is continuing. The said affiliation had remained on paper only. No student was admitted to M. A. (previous) Economics nor was the teacher's post sanctioned for M. A. Economics. Without admitting the students to M. A. Economics it cannot be said that the college had failed to send the students for examination. Therefore the deeming provision also cannot help the Respondents to claim that the college in respect of the M. A. Economics has been disaffiliated.

42. The resolution of the college says that it did not want affiliation in M. A. Economics subject on the condition that 80% of the fees collected from the students by the Respondent No. 6 was required to be deposited in the salary account by the Respondent No. 2 and 3. The refusal of the college to deposit

80% of the fees in the salary account as required by the Respondents No 2 and 3 does not seem to have been actuated in good faith. If the Respondent No. 6 had agreed to the condition of deposit of 80% fees in respect of M.Com: subject why did it refuse to comply with the similar condition in respect of M. A. Economics subject. The Respondent No. 6 has not explained this successfully in the counter affidavit. If the Respondent No had treated the college affiliated in Economics subject its natural corollary was that the Petitioner would have continued as lecturer to teach post graduate students in M. A. Economics Perhaps with a view to dispensing with the services of the Petitioner the resolution was passed by the Respondent No 6 refusing to continue the affiliation of the college on the flimsy ground that it did not want to abide by the condition of deposit of 80% fee in the salary account. On principle, the condition of deposit of 90% fee in the salary account does not appear to be unreasonable or uncalled for as concluded by the Respondent No. 6 The refusal on the part of the Respondent No. 6 to deposit the said percentage of fee does not seem to be well intentioned In the process the Petitioner has become a casualty.

43. Unto June, 1990 cejure affiliation has continued There has been to defacto affiliation The affiliation has remained on paper only and it has not been translated into reality after 1987 Therefore, it is difficult for this Court to grant a declaration to the Petitioner that he is in continuous service because his continuous service is to depend on the post being sanctioned by the Respondents No. 4 and 5, which has not been sanctioned. Without the post being sanctioned the Petitioner cannot be taken into service. The sanctioning of post is sine qua non with the question of affiliation. Therefore, both these things are to be considered together and cannot be taken in isolation. The papers regarding continuation of affiliation are pending before the Chancellor according to the assertions made in the counter affidavit by the Respondents No. 2 and 3. Therefore, some comprehensive directions are required to be issued to achieve the desired result of the discussion made on facts in this judgment.

44. The college has a duty to impart education. It cannot on flimsy grounds refuse to admit M. A. Economics students and put an end to the affiliation in disregard of the provisions of Section 37 of the University Act. This Court is not helpless in issuing directions to do substantial justice to the parties consistent with the guarantees contained in the constitutional provisions and in the Statutes. The Respondent No. 6 has to respond to the realities of the situation and it cannot treat the college disaffiliated on any flimsy ground.

45. This Court is reluctant to direct at this stage to take the Petitioner in service and pay him salary from July,1987 onwards with all increments and allowances for the reason which are obvious. However, the relief cannot be refused to the Petitioner merely because he has treated himself to be in service and claims the salary against the post. The relief, which is to be granted in this petition, is therefore to be moulded, which would conform to the realities of situation and to the provisions of law

46. For the reasons stated above, this writ petition succeeds and is allowed to the extent indicated below:

(a) That by a writ of mandamus the Respondents No 2 and 3 are directed to decide the question of continuation of affiliation of the college with regard to M. A. Economics subject within two months from the date a certified copy of this judgment is presented before them by the Petitioner;

(b) That disaffiliation of the college in M. A. Economics set up by the Respondent No. 6 is not valid and is against the provisions of Section 37 of the Universities Act. The result is that the resolution of the college contained in Annexures to the writ petition where by it has refused to comply with the directions of the Respondents No. 2 and 3 with regard to the deposit of 80 percent of the fees collected from the students as tuition fee shall be treated as non-est;

(c) If the Chancellor continues affiliation to the college in the Economics subject for M. A classes the Respondents No. 4 and 5 are directed to sanction the post of lecturer in M. A. Economics subject, which was discontinued with effect from June, 1987. The Respondent No. 6 shall take necessary steps in this regard and the sanctioning of the post shall be achieved within 15 days from the date of the order of the Chancellor continuing affiliation to the college in M. A. Economics subject;

(d) The Petitioner shall be considered for appointment as lecturer on adhoc basis against the post on the same terms and conditions on which he had held the post initially. If appointed, he shall be paid salary according to the Rules in the same manner in which he was getting it previously;

(e) The continuation of the affiliation of the college in M A. Economics shall be on the same lines and on the same conditions on which the affiliation of the college is granted in M. Com subject. If the affiliation of the college is continued by the Chancellor the College shall proceed with the admission of the students to M. A. (prev) Economics and shall also impart education to the admitted students and send up the students for examination conducted by the University; and

(f) while considering the question of continuing the affiliation of the college with regard to M. A. Economics subject the Respondents No 2 and 3 shall consider all the relevant papers and the report of the Committee, which was set up in 1979 and other relevant considerations thereafter such as availability of students for being admitted to M. A. Economics and convenience and inconvenience of the populace by granting or refusing to grant the affiliation in M. A. Economics subject.

47. In the peculiar circumstances of the case, there shall be no order as to costs.