
(2012) 04 AHC CK 0227

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18772 of 2012

Vikas Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-04-2012

Acts Referred:

Citation : (2012) 8 ADJ 346 : (2012) 4 AWC 5080

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Advocate : U.N. Sharma and Jitendra Kumar, for the Appellant; V.K. Singh, K.R. Singh Jadaun, Smt. Raj Kumari and A.S.G.I., for the Respondent

Final Decision : Allowed

Judgement

Hon'ble V.K. Shukla, J.—By means of the present writ petition, the petitioner seeks a writ of certiorari for quashing the impugned order dated 2/7.4.2012 passed by the respondent No. 2 and further for a writ of mandamus directing the respondents not to interfere in the peaceful functioning of the petitioner on the post of General Secretary of the Students' Council, Banaras Hindu University, Varanasi. Brief background of the case is that Banaras Hindu University, Varanasi has been established to carry forward process of higher education by Notification No. 225 of 1916 and said University in question is one of the premier University in India running various courses. University has entrusted itself with the task of educating young men/women, a task which requires not merely imparting of information, development of academic insight and promotion of potentialities for independent research but also nurturing the whole personality of an individual and including in him/her to make responsible citizen dedicated to the Rule of law. University has constituted representative body of the students namely "Banaras Hindu University Students' Council" and said body has been constituted as substitute of the "Student Union" keeping in view of the "Lyngdoh Committee Report" and the decision of Apex Court. The objectives of aforementioned Council is to serve the basic purpose of holistic education as conceived and

enriched by the illustrious founder of the Banaras Hindu University, Pandit Madan Mohan Malviyaji. Under the aforementioned constitution prepared in respect of Students" Council of Banaras Hindu University for democratic year 2011-2012, Vice-Chancellor of Banaras Hindu University, Varanasi is Patron of the University Students" Council and duty of Patron is to take necessary steps to ensure that the Students" Council functions in accordance with this Constitution.

2. Clause 4.2 of the Students" Council deals with the membership. Clause 4.2.1 provides that every student enrolled for and attending a full time course of study in Faculty/Institute/MMV/RGSC of the University shall be members of the University Students" Council. A reasonable fee shall be charged as Membership fee from all the members. The membership fee shall be remitted alongwith the University Fee by the students at the beginning of every academic session. Clause 4.4 deals with the office bearers of the Banaras Hindu University, Students" Council and provides that the office bearers of the Banaras Hindu University, Students" Council shall be elected from among the elected representatives of Faculties to the University Students" Council. Clause 4.4.2 defines the office bearers of the Banaras Hindu University, Students" Council. Clause 4.4.3 provides that the office bearers of the Council shall be responsible for the smooth and orderly functioning of the Council. Clause 4.4. deals with composition of Faculty level Students" Council. Clause 7.1 deals with the Constitution of University Students" Council and Clause 8.1 deals with the tenure, provides that students member of the Council shall hold the office from the day of formation of the Council till the last working day of the academic calendar. Clause 11 deals with conducting election for students" Council. Clause 11.9 deals with the constitution of election committee for holding of election of Banaras Hindu University, Students" Council. And the said committee is required to oversee the election process and shall also act as Grievance Redressal cell to consider any election related grievances as per recommendation of Lyngdoh Committee. Clause 19 deals with appointment of a Tribunal which provides that the Patron may, if he considers it necessary, refer any matter concerning the Council to a Tribunal appointed by him for the purpose. The decision of the Tribunal shall be final. Clause 22 provides that the provisions of this Constitution shall have effect notwithstanding anything inconsistent therewith contained in any other rules/regulations/ constitution of the Council framed in the past.

3. The petitioner is a student of M.A. IInd year in the department of Political Science of Faculty of Social Science, Banaras Hindu University, Varanasi. Being eligible the petitioner contested the election for prescribed posts in the Students" Council of the University for the academic session 2011-2012. The petitioner got elected on different levels as provided in the Constitution of Students" Council by huge support of the students. The petitioner has been initially elected as Faculty Representative of the Faculty of Social Science and thereafter being member of the Students" Council, he contested for the post of General Secretary in the Students" Council and the petitioner has been elected on the post of General Secretary by the member of the Students" Council in October, 2011 and since

then the petitioner has been discharging his duties as General Secretary of the Students" Council.

4. A complaint dated 9.12.2011 was made to the respondent No. 3 alleging that the petitioner had indulged in an incident of "Maar-Peet" in the year 2010 and the petitioner, concealed this fact at the time of his nomination for the election of B.H.U. Students" Council. On receipt of such complaint, the matter was referred for enquiry to the Tribunal constituted under Clause 19 of the Constitution of Students" Council. The Tribunal called the petitioner for his explanation regarding allegation against him on 2.3.2012. The petitioner appeared before the Tribunal on the fixed date and put his defence against the charges communicated to the petitioner by the Tribunal. The petitioner submitted his explanation before the Tribunal and categorically submitted that there was no involvement of the petitioner in the alleged incident in April, 2010. Further the petitioner was merely suspended from the A.N.D. Hostel, B.H.U. by an interim measure and not as a punishment measure. The said suspension order was passed by the Dean Faculty of Social Science, B.H.U. on the request of the Chief Proctor, B.H.U., Varanasi. Thereafter on 2/7.4.2012 order impugned has been passed by the Registrar of the University declaring the petitioner disqualified for holding the post of General Secretary of the Students" Council. At this juncture present writ petition has been filed.

5. To the said writ petition, counter-affidavit has been filed contending therein that the petitioner (Vikas Singh) while he was student of B.A. IIIrd year and staying in Room No. 7, A.N.D. Hostel was suspended on account of his involvement in manhandling Bater Dabi a student of B.Sc (Ag), IIIrd Year residing in Room No. 40 of R.K. Hostel; the incident occurred on mid night of March, 28, 2010. It has also been submitted that for breaching the Hostel Rules and being involved in the act of indiscipline, Six incumbents including the petitioner were deprived of the Hostel facility. It is also stated that the act of the petitioner comes under the act of indiscipline and issues related to the misconduct of the students of the University are dealt with, in accordance with the provisions contained in the ordinances of maintenance of Discipline by the students of the University as contained in B.H.U. Calendar Part-I Volume-II Chapter VIII. The suspension of the petitioner was the direct consequence of disciplinary action as such it is punishment.

6. University has further mentioned that on the complaints dated 9.12.2011 received from the Vinai Kumar Shukla (Room No. 111) and Shri Sujit Kumar Singh (Room No. 113), Birla "B" Hostel B.H.U. against the petitioner, General Secretary, B.H.U. Students" Council 2011-2012, same proceeded to apprise that Shri Vikas Singh, General Secretary, B.H.U. Students" Council was suspended from the A.N.D. Hostel in April, 2010, on the orders of the Dean Faculty of "Social Science" in connection with the incident of "Maar-Peet" with Bata Dabi, a student of B.Sc.(Ag.) and that Vikash Singh had hidden this fact at the time of nomination for the Election of B.H.U. Students" Council. It has also been pointed

out that as per the guidelines, for the election the nomination of Vikas Singh should not have been declared valid. The Chairman students Council obtained the comments of the Chief Proctor, B.H.U. and the Head Department of Political Science, Faculty of Social Science, B.H.U. The Dean Faculty of Social Science, B.H.U. and the Deputy Registrar (Academic) B.H.U. on the basis of complaints/representation and after getting the comments requested the Vice-Chancellor (in capacity of the Parton students Council) B.H.U. to intervene in the matter. Thereafter it was resolved that in view of Clause-19 of the Constitution of the Students' Council, the matter be referred to a Tribunal to be appointed by the Parton. Consequent upon the resolution of the Committee, the patron constituted a Tribunal to inquire into the allegations made against Vikas Singh. The report of the Tribunal constituted to inquire in the allegation against Vikas Singh, General Secretary of Student's Council for the Session 2011-2012 was placed before the Committee. The Committee noted that Shri Vikas Singh was found involved in an incident of "Maar-Peet" on the University campus which is very well covered under the provisions of Clause 4.4.4. (iii) of the Ordinances relating to Students' Council. This provision, however, disqualifies only the office bearers from holding the office, and as such the petitioner (Vikas Singh) stands disqualified from holding the position of General Secretary of the Students' Council as per the provision available under Clause 4.4.4 (iii) of the Constitution of Banaras Hindu University Students' Council as enforce at present, vide order dated 2.4.2012, Shri Vikas Singh (petitioner) was directed to hand over the office of the General Secretary Students' Council to the Secretary (Academic) with immediate effect for the remaining part of the Current Academic Session as defined under Clause 9.5.2 of the Constitution of B.H.U. Students' Council as enforce. Details have also been set out that petitioner appeared before the Inquiry Committee in the past constituted under the Chairmanship of Prof. A.K. Srivastava and submitted his written statement, and the issues related to the misconduct of the student of the University which deal with the aforementioned provision contained in the Ordinances on maintenance of discipline by the students of University as contained in B.H.U. Calendar Part-I Volume-II, Chapter VIII. It has been mentioned that action has been taken strictly as per the existing Ordinances on the subject of disciplinary action.

7. To the said counter-affidavit, rejoinder-affidavit has been filed disputing the averments mentioned in the counter-affidavit and reiterating the averments mentioned in the writ petition.

8. After pleadings mentioned above have been exchanged, thereafter present writ petition has been taken up for final hearing/disposal with the consent of the parties.

9. Sri. Jitendra Kumar, learned counsel for the petitioner contended with vehemence that in the present case following the democratic process, petitioner had earlier been elected as Member of the Students' Council, thereafter, from amongst elected representative of Faculty of the University Students' Council,

petitioner had been elected as General Secretary, and at the said point of time, no disqualification whatsoever has been pointed out. Further disqualification which has been pointed out, in no way is attracted in the fact of present case, inasmuch as, petitioner has never been punished, and in view of this, action of removing the petitioner from the post of General Secretary of Banaras Hindu University Students' Council is perse bad and contrary to the statutory provision and totally contrary to the rule of fair play, as such writ petition deserves to be allowed.

10. Countering the said submission, Sri V.K. Singh, Senior Advocate, assisted by Sri K.R. Singh Jadaun, Advocate on the other hand contended that petitioner had indulged in "Maar-Peet" in the past and had been suspended, and as per the existing Ordinances of the University which hold the field for maintaining internal discipline. Petitioner was disqualified to hold the post of General Secretary of Students' Council, inasmuch as, incumbent who intends to hold the post of General Secretary of Students' Council has to have necessarily neat and clean record and in this background this Court should not at all interfere in the matter.

11. Smt. Raj Kumari, representing, respondent No. 1 contended that it is internal matter of University.

12. After respective arguments have been advanced, provision of Students' Council of Banaras Hindu University is being looked into alongwith its objectives i.e. to serve the basic purpose of holistic education as conceived and enriched by the illustrious founder of Banaras Hindu University and further when endeavour to obtain a fine and judicious blend of curricular and extra-curricular activities and would be based on the principle of students welfare through active participation of students with democratic spirits. The Vice-Chancellor of Banaras Hindu University, Varanasi is Patron of the Students' Council and every student enrolled for and attending a full time course of study is member of the Students' Council, and member of the Students' Council elect representative of Faculty of the University and thereafter said representative further elect the Banaras Hindu University Students' Council and these office bearers are responsible for smooth working of Students' Council.

13. Relevant extract of Students' Council of Banaras Hindu University, Varanasi is being extracted below :

4.4. Office Bearers of the B.H.U. Students' Council.

4.4.1. The office bearers of the BHU Students' Council shall be elected from amongst the elected representative of Faculties to the University Students' Council.

4.4.2. The office bearers of the B.H.U. Students' Council shall comprise the following :

4.4.3. The office bearers of the Council shall be responsible for the smooth and orderly functioning of the Council.

4.4.4. Disqualifications for Office Bearers.

- i. He/she has exceeded the age of 25 years on the date of nomination.
- ii. He/she has completed more than 7 years from the 1st of July, of the calendar year of passing +2 examination to the 30th June immediately proceeding the election.
- iii. He/she has been convicted of a criminal offence including moral turpitude, or he/she has been punished by the University/College for an act which is coercive in nature and constitute a threat to life and property.
- iv. He/she has been found guilty of and punished for the use of unfair means in any examination of a University or Board.
- v. A warning issued by the University against a student will be deemed to be a punishment for the purpose of this clause.

4.4 Composition of Faculty level Students' Council

4.4.1. The Faculty/Institute/MMV/RGSC Students Council shall consist of the following.

1. The Director/Dean/Principal Coordinator -- Chairman RGSC
2. Students' Advisor (Ex. Officio) -- Vice Chairman
3. One student representative of research scholar (to be elected in the manner prescribed in Clause 7) -- Member
4. One Representative of PG Courses --do-(to be elected in the manner prescribed in Clause 7)
5. One representative of each year of UG Classes (to be elected in the manner Prescribed in Clause 7) --do-Provided, in Institute the Dean of the Faculty shall be the Co-Chairman of the Faculty Level Students' Council.

4.4.2. The Faculty representative to BHU Students Council shall be designated as the Secretary of Faculty Students; Council and shall be responsible for convening the meeting of the Council, carrying out various activities in liaison with the University Students; Council.

5. Eligibility for contesting in the election.

5.1 He/she should be on roll on the date of nomination, as a regular full time student of the University.

5.2. He/she should have paid the fees due to him/her.

5.3. Under graduate students of the first year who are admitted after completing their Internship/10+2 courses, the maximum age limit for contesting in the Election shall be 22 years on the date of nomination and should have secured at least 60% marks or equivalent Grade Points at Intermediate/ plus two level just

proceeding to the admission in the program. Students of other than first year should have secured at least 60% or equivalent Grade Points in the examinations for the year preceding the election year. Provided, in Professional Courses comprising 5 years or more, where 10+2 course is the minimum requirement to seek admission, the maximum age limit for contesting the election shall be 24 years.

5.4. Under graduate students who are admitted after completing graduation programme in some other disciplines, where graduation is minimum qualification, the maximum age limit for contesting in the Election shall be 24 years on the date of nomination and should have secured at least 60% marks or equivalent Grade Points in aggregate at their graduation just preceded to the admission to the admitted programme. Students other than first year batch should have secured at least 60% marks or equivalent Grade Points in the examinations for the year preceding the election year.

5.5. For Post Graduate students the maximum age limit to contest an election shall be 26 years on the date of nomination and should have secured at least 60% marks or equivalent Grade Point in aggregate at their degree examination completed just before taking admission in the PG programme in the case of first year PG students. Students other than first year batch should have secured at least 60% marks or equivalent Grade Points in the examinations for the year preceding the election year.

5.6. For Research students including DM, MCh the maximum age limit to contest an election shall be 28 years on the date of nomination and he/she should have secured at least 60% marks or equivalent Grade Points in aggregate at the post graduate level examination.

5.7. Research Scholar contestant should not have completed his/her two year minimum residency period of Ph.D. programme.

5.8. He/she has not failed in any examination of the Banaras Hindu University and should in no event have any academic arrears.

5.9. He/she should have attained at least 75% attendance.

5.10. No disciplinary action leading to expulsion/rustication in any educational institution had been taken against him/her

5.11. The candidate should not have a previous criminal record i.e. he/she should not have been tried and / or convicted of any criminal offence or misdemeanor.

5.12. He/she was never punished for any act of violence, assaults and use of unfair.

5.13. A student will have two opportunities to contest for the post of representative/office bearers of the Faculty/University level Council.

14. Clause 4.4.4 deals with disqualification for office bearers and clearly provides that incumbent who has been punished by the University/College for an act which is coercive in nature and constitute a threat to life and property and warning has been issued by the University Authority against a student will be deemed to be a punishment for the purpose of this clause. Clause 5 deals with contesting the election and Clauses 5.10, 5.11 and 5.12 is couched in negative language by providing that no disciplinary action leading to expulsion/rustication in any educational institution had been taken against him/her and candidates should not have a previous criminal record i.e. he/she should not have been tried and/ or convicted of any criminal offence or misdemeanor. Under the Constitution of Banaras Hindu University Students' Council, grievance in respect of election is to be redressed by election committee. Clause-19 deals with the appointment of a Tribunal by providing that the Patron may, if he considers it necessary, refer any matter concerning the Council to a Tribunal appointed by him for the purpose. The decision of the Tribunal shall be final.

15. In the present case, this is accepted position that petitioner has been elected as General Secretary of Banaras Hindu University of Students' Council and thereafter, it appears that complaint had been made by inmates of A.N.D. Hostel mentioning that petitioner was suspended from the Hostel in regard to "Maar-Peet" with the students of Institute of Agriculture Science and in view of this petitioner was disqualified from contesting election of General Secretary of Banaras Hindu University Students' Council.

16. Record in question reflects that petitioner had been staying in Hostel and an incident occurred in the intervening night of 28/29.3.2010 wherein few students of A.N.D. Hostel rushed to R.K. Hostel with an intention to manhandle a student Mr. Bater Dabi, B.Sc (Agriculture) IIIrd year residing in Room No. 40. Said incident took place at the behest of Siya Ram Meena, B.A. (History Hons.) IIIrd year, day scholar. In the incident in question complicity of the petitioner, who was student of B.A. IIIrd year, Room No. 7, Pipin Kumar, B.A. IIIrd, Room No. 7, Nitin Kumar, B.A. IIIrd, Room No. 1, Satish Kumar, B.A. Ist Year, Room No. 37 and Rajneesh Pandey, B.A. IIIrd year, Room No. 71 was found and Chief Proctor asked the Dean Faculty of Social Sciences, Banaras Hindu University, Varanasi to constitute inquiry committee and till submission of the report, the above six students were required to be suspended from the Hostel immediately under intimation to his office, and papers were accordingly sent and thereafter Dean Faculty of Social Sciences proceeded to pass order immediately suspending all the six incumbents and their rooms to be got evacuated. This is also accepted position that after the said order has been passed, Inquiry Committee was constituted to look into the matter and said inquiry committee did summon the petitioner to record his statement and petitioner thereafter appeared and get his statement recorded before Prof. A.K. Srivastava and denied his complicity therein. This is also accepted position that in the said inquiry, which has been so conducted, till date no orders of punishment has been passed and this fact has been conceded at the Bar by the counsel for the University also that till date final

order had not at all been passed communicating the petitioner an out come of the inquiry report and punishment to be awarded in lieu of the said inquiry, and only this much has been contended that enquiry report had been submitted, and therein punishment of fine was recommended.

17. The Court also proceeds to look into the Ordinances, wherein full fledged procedure has been provided for under chapter-VIII, dealing with maintenance of discipline and grievance procedure. Chapter-VIII, Part-I provides that every incumbent has to maintain good conduct and as per Part-II precise mention has been made that no student of the University shall indulge in an act of indiscipline and various in discipline has been cited therein running under head Clause A(I) (a) to Clause (W). Clause 2 deals with disciplinary action and three categories have been provided therein i.e. category (i) (ii) (iii) alongwith incumbents who are entitled to take decision and procedure part to be adhered to has also been mentioned therein. Relevant extract of the Ordinances is being extracted below:

(2) Disciplinary action" may comprise of one or more of the following:

*(a) Category I

(i) an order rustivating a student for a stated period, under intimation to other Universities in India;

(ii) an order expelling a student from the University, whether for all time to come or for a stated period, under intimation to other universities in India:

(iii) an order directing banishment of a student from a Faculty or a Hostel, whether for all time to come or for a stated period;

(iv) an order suspending a student for a period exceeding 15 days, whether from all activities of the University, Faculty or Hostel, or only from specified activities;

(v) an order directing a student to pay fine.

(b) Category-II

(i) an order suspending a student for a period not exceeding 15 days, whether from all activities of the University, Faculty or Hostel or only from specified activities;

(c) Category-III.

(i) an order directing a student to pay fine upto, but not exceeding Rs. 10/-

(ii) an order directing a student to pay fine upto, but not exceeding Rs. 50/-;

Explanation:

(a) "Rustication" means debarring the student from studying in any university, college or educational institution.

(b) "Expulsion" means debarring the student from studying in the Banaras Hindu

University.

(c) "Banishment" means debarring the student from studying in a particular department, Faculty, College or Institution or from living in a particular Hostel.

(iii) an order directing entry of adverse remarks in the character roll of a student;

(iv) an order directing a student to vacate the premises and prohibiting him from reentering the premises for a period not exceeding 3 days;

(v) an order directing a student to cease and desist from indulging in any act or acts of indiscipline;

(vi) an order warning a student.

(3) A student who has been rusticated, expelled, banished or directed to vacate the premises, shall be deemed to be a trespasser if he enters the premises without prior permission during the period of operation of the order.

(4) The disciplinary jurisdiction of various persons specified in these provisions shall extend from the date on which a candidate applies for admission or, in the case of a private or ex-student, for examination, to the date on which the student receives his degree or the date on which his migration certificate is issued, whichever is earlier.

Provided that a candidate who is not admitted into Faculty or, in the case of a private or ex-student, on examination, the jurisdiction shall not extend beyond a period of three months from the date of the rejection of his application unless he was enrolled in the University.

B. The Rector is empowered to take any disciplinary action against any student of the University in respect of any act or acts of indiscipline, whether committed within the Campus or elsewhere.

C. The Directors of Institutes, Deans of Faculties and Principals of Colleges are empowered to take any action against any student of the University in respect of any act or acts of indiscipline committed on the premises of their respective institutions and Hostels, and against any student of their respective institutions and Hostels in respect of any act or acts of indiscipline whether committed within the said premises or elsewhere.

D. The Heads of teaching departments and special centres are empowered to take any disciplinary action other than those of category I mentioned in sub-clause(a) of Clause IIA (2), against any student in respect of any act or acts of indiscipline committed within the premises or their respective institution or the vicinity thereof.

If the Head of the Department of the special centre is of the opinion that the relevant act or acts of indiscipline deserve any of the disciplinary actions mentioned in sub-clause (a) of Clause IIA(2), he shall refer the matter to the appropriate person mentioned in sub-clause C of clause 11 for necessary action

and, subject to the limitations of his powers, may take such interim disciplinary action as he deems fit and proper.

E (a) The teachers of the University are empowered to take any of the disciplinary actions of category III mentioned in sub-clause (c) of clause IIA(2) against any student of their respective departments in respect of any act or acts of indiscipline committed within their respective institutions or in the vicinity thereof.

(b) (i) If the teacher is of the view that the relevant act or acts of indiscipline deserve any of the disciplinary actions mentioned in sub-clause(a) of clause 11A(A), he shall refer the matter to the appropriate person mentioned in sub-clause (C) of clause 11 for necessary action, and subject to the limitations of his powers, may take such interim disciplinary action as he deems fit and proper.

(ii) If the teacher is of the opinion that the relevant act or acts of indiscipline deserve any of the disciplinary actions mentioned in sub-clause (b) of clause- IIA(2), he shall refer the matter to the appropriate person mentioned in sub-clause (d) of clause II for necessary action and, subject to the limitation of his powers, may take such interim disciplinary action as he deems fit and proper.

F (a) The Administrative Wardens are empowered to take any disciplinary action, other than those of category I mentioned in sub-clause (a) of Clause 11A(2) against any student for any act or acts of indiscipline committed within or in the vicinity of their respective hostels and against any resident student of their respective hostels for any act or acts of indiscipline committed within or outside the hostel premises.

(b) If the Administrative Warden is of the opinion that the relevant act or acts of indiscipline deserve any of the disciplinary actions mentioned in sub-clause (a) of Clause 11A(2), he shall refer the matter to the appropriate person mentioned in sub-clause (C) of Clause II for necessary action and, subject to the limitations of his power, may take such interim disciplinary action as he deems fit and proper.

G (a) The wardens of the University are empowered to take any of the disciplinary actions of category III mentioned in sub-clause (c) of Clause 11A(2) against any student of their respective hostels in respect of any act or acts of indiscipline committed within their respective hostels or in the vicinity thereof.

(b) (i) If the warden is of the view that the relevant act or acts of indiscipline deserve any of the disciplinary actions mentioned in sub-clause(a) of clause 11A(2), he shall refer the matter to the appropriate person mentioned in sub-clause (C) of Clause II for necessary action and, subject to the limitations of his powers, may take such interim disciplinary action as he deems fit and proper.

(ii) If the warden is of the opinion that the relevant act or acts of indiscipline deserve any of the disciplinary actions mentioned in sub-clause (b) of Clause IIA(2), he shall refer the matter to the appropriate Administrative Warden for necessary action and subject to the limitation of his powers may take such

interim disciplinary action as he deems fit and proper.

11. The Chief Proctor is empowered to take any disciplinary action against any student of the University in respect of any act or acts of indiscipline committed in the premises not under the immediate control of Directors of Institutes, Deans of Faculties, Principals of Colleges, Administrative Warden whether with in the campus or elsewhere.

1.(1) The Proctors of the University are empowered to take any disciplinary action other than those of category "., mentioned in sub-clause (a) of Clause 2A(2) against any student of the University in respect of any act or acts of indiscipline committed in the premises" not under the immediate control of Directors of Institutes, Deans of Faculties, Principals of colleges, Administrative wardens and the Librarians within the Campus of the University or in the vicinity thereof.

(2) If the Proctor is of the opinion that the relevant act or acts of indiscipline deserve any of the disciplinary actions mentioned in sub-clause IIA (a), he shall refer the matter to the Chief Proctor for necessary action and, subject to the limitations of his powers, may take such interim disciplinary action as he deems, fit and proper.

J. (1) The Librarian and the Deputy Librarian are empowered to direct any student to vacate the Library premises and prohibit entry of any student for a period not exceeding seven days for any act or acts of indiscipline committed in the library premises.

(2) If the Librarian, whether suo motu or on the report of the subordinates, if of the opinion that the relevant act or of indiscipline deserve any further disciplinary action, he shall refer the matter to the Rector for necessary action and, subject to the limitations of his power, may take such interim disciplinary action as he deems fit and proper.

K(1)(a) The Superintendent and the Assistant Superintendents of the Hospital are empowered to fine any indoor student patient upto Rs. 50/- and 10/- respectively for nay act or acts of indiscipline committed within the hospital premises.

(b) If the Superintendent of the Hospital, whether suo motu or on the report of the subordinates is of the opinion that the relevant act or acts of indiscipline deserve any further disciplinary action, he shall report the matter to the rector for necessary action and, subject to the limitations of his powers, may take such interim disciplinary action as he deems fit and proper.

2 (b) The Superintendent of the Hospital and the Assistant Superintendents of the Hospital or the Chief Medical Officer are empowered to direct any students, not being an indoor patient or in need of immediate medical attention, to vacate the hospital or dispensary premises and to fine him upto Rs. 50/- and Rs. 10/- respectively for any act or acts of indiscipline committed within the Hospital or

dispensary premises or in the vicinity thereof.

(b) If the Superintendent of the Hospital, or the Chief Medical Officer, whether suo-motu or on the report of subordinates, is of the opinion that the relevant act or acts of indiscipline deserve any further disciplinary action he shall report the matter to the Rector for necessary action and, subject to the limitations of his powers, may take such interim disciplinary action as he deems fit and proper.

(L) (1) The Secretary of different Athletic Associations, Chairman of various games committees and Instructors in Physical Education are empowered to direct any student to vacate the play ground, to prohibit entry of any student on the play ground for a period not exceeding seven days and to fine any student upto Rs. 25/- for any act or acts of indiscipline committed on the play ground or in the vicinity thereof.

(2) If the Secretary of any Athletic Association whether suo-motu or on the reports of others, is of the opinion that the relevant act or acts of indiscipline deserve further disciplinary action, he shall report the matter to the Rector for necessary action and, subject to the limitations of his powers, may take such interim disciplinary action as he deems fit and proper.

(M) (1)(a) Every person empowered to take disciplinary action may, if in his opinion circumstances so demand, direct the erring student to cease and desist from indulging in the relevant act or acts of indiscipline and warn him that if he does not obey the directions, disciplinary action will be taken against him.

(b) If, notwithstanding the aforesaid warning, the erring student continues to indulge in the act or acts of indiscipline, the person empowered to take disciplinary action may, within the limitation of his powers, take such action as he deems fit and proper.

Provided that, if in the opinion of the person authorized to take disciplinary action, the relevant act or acts of indiscipline deserve disciplinary action which he is not empowered to take, he shall refer the matter to appropriate person and, subject to the limitation of his powers, may take such interim disciplinary action as he deems fit and proper.

(c) Except as aforesaid, disciplinary action may not be taken without serving a show-cause notice on the erring student and without giving him a hearing in person.

(2) It shall be the duty of the person empowered to take disciplinary action to maintain discipline among the students and, if they fail to do so, appropriate persons shall report the matter to their immediate superior officer or authority for necessary action.

(3) Wherever a superior officer has initiated disciplinary proceedings, persons subordinate to him shall not initiate any further proceeding in the matter; or if, they have already initiated proceedings, such proceeding shall be suspended and

the matter reported to the concern officer together with all relevant materials.

(1) Where two or more persons have concurrent jurisdiction, and one of them has already initiated disciplinary proceedings, other persons shall not initiate further proceeding in the same matter and shall submit their report together with all the materials to the person who first initiated the proceeding.

(5)(a) Nothing in these provisions shall be deemed to affect the power of the concerned person to review his orders or to suspend the operation of a disciplinary action taken by him until the erring student commits another act of indiscipline.

(b) Nothing in these provisions shall be deemed to affect the plenary powers relating to discipline and disciplinary action in relation to students vested in the Vice-Chancellor under sub-clause (1) of Clause 60 of the statutes of the University, the powers relating to maintenance of discipline conferred on the Principals of Colleges, Heads of Special Centres, Directors of Institutes, Dean of Faculties and Head of Teaching departments in the University under sub-clause 4 of clause 60 of the Statutes of the University, and the powers of disciplinary action which these and other persons or authorities may otherwise enjoy.

(c) Nothing in these provisions shall be deemed to affect the power of appropriate authorities, bodies of persons to withdraw a degree, diploma, certificate, scholarship, free ship, financial aid, medal or any other recognition; award, assistance or facility granted to a students, and the concerned authorities, bodies or persons may take such action, whether in addition to the disciplinary action taken under these provisions or otherwise, as it deemed fit and proper.

18. The provision quoted above would go to show that disciplinary action is to be taken by serving show-cause notice to the erring students and by giving him opportunity of hearing in person. The prelude to Chapter VIII is very categorical, that students good conduct should be encouraged and indiscipline must be curbed to achieve the aforesaid goal. It also proceeds to mention, that adequate grievance machinery tends to avoid harbouring of a sense of injustice, whether real or imaginary, frustration and malice amongst students, and as adequate grievance machinery tends to avoid harbouring of sense of injustice, whether real or imaginary frustration and malice amongst students, and in order to ensure a streamlined decision making process, delineating responsibilities, jurisdiction and procedure, leading to quick, effective and final decision, the provision quoted above have been enforced.

19. In the present case question is as to whether letter which has been so issued on 30.3.2010 and 5.4.2010 can be treated ipso facto as a punishment order. Letter dated 5.4.2010 has been perused and said letter in question reflects that Chief Proctor of the University had in clear cut terms directed on 30.3.2010 to constitute inquiry committee and till submission of report, six students should be suspended form the Hostel immediately, and based on the said report dated

30.3.2010, petitioner and five others had been suspended from the Hostel. This is also accepted position that before proceeding to pass the order dated 5.4.2010, at no point of time, any show-cause notice had been given to the petitioner and reason is obvious that said order had been passed as an interim measure till inquiry committee is constituted and till report in question is submitted. Letter dated 30.3.2010 read with letter dated 5.4.2010 of Dean Faculty of Social Science clearly substantiates the factum that it was an interim measure provided for to keep the students away from the hostel, pending constitution of the inquiry committee and pending submission of the report.

20. Ordinances governing maintenance of discipline and grievance procedure, no where subscribes, passing of such an order, which on the face of it is an interim measure, to be treated as final order of punishment. The scheme of things provided for too deals with situation to take interim disciplinary action, as authorities, in their wisdom deem fit and proper, and disciplinary action resulting in punishment, has to be preceded by issuance of show-cause notice on the erring student and by providing opportunity of hearing. These pre-conditions have been imposed, as they are essential elements of natural justice, to be adhered before proceeding to impose punishment which is the one of the end result of enquiry.

21. Punishment is the penalty for transgressing the law. The ordinary dictionary meaning of the word punish is "to cause the offended to suffer for the offence" or "to inflict penalty on the offender" or "to inflict penalty for the offence". Any action of authorities to the detriment of students interest would not be punishment so long as his complicity is not found in the enquiry held, and appropriate punishment commensurate to his misconduct is not awarded by the authorities concerned, and this may be also true that after misconduct stands substantiated on the plea of proportionality at the point of time awarding punishment, the impact of interim measure taken, can also be taken note of.

22. Disqualification strikes at the very root of candidates qualification and renders him/her unable to occupy the post/ office, and prevents him/her to occupy the seat.

23. Said provisions have to be strictly construed and cannot be permitted to be overstretched i.e. by adding disqualification otherwise not provided for.

24. In the present case factual situation as is emerging that full fledged procedure has been provided for before punishment can be awarded by competent authority and as per the same, before proceeding to impose punishment, show-cause notice has to be given and not only this opportunity of personal hearing has to be given. In the present case pending enquiry till report was submitted, petitioner was suspended from hostel. Inquiry Committee had been constituted with Prof A.K. Srivastava and petitioner had been summoned and he gave his statement on 26.4.2010 and thereafter inquiry report it has been alleged had been submitted and this much has been accepted that till date

no order of punishment has been passed. Once such is the factual situation that by way of interim measure, order of suspension from the hostel has been passed and at no point of time punishment order has been passed, then to say that order of suspension be accepted as punishment cannot be accepted. Apex Court, in the case of *Laxmi Devi v. Sugar Mills*, AIR 1957 SC 82, took the view, that any action of the employer to the detriment of workmen's interest would not be punishment, so long offence was not found to have been committed by workmen. This suspension order, therefore, could not be punishment.

25. Here also disqualification has been attributed, taking shelter of Clause 4.4.4 (iii) wherein an incumbent would incur disqualification if he/she has been punished by the University by for an act which is coercive in nature and constitute a threat to life and property. For disqualifying a candidate, under this head, there has to be an order of punishment, in consonance with ordinances. Suspension comprehends both type of suspension (i) suspension by way of punishment (ii) suspension pending disciplinary action. Ordinances obligates the authorities to issue show-cause notice and afford opportunity of hearing before proceeding to award punishment in final form. Here the case in hand is falling under the second head, where suspension from hostel has been ordered pending enquiry. Cases falling under second head, cannot be treated and accepted as punishment, until and unless the proceedings are brought to its logical conclusion, by passing some order in black and white either of exonerating of the charge or awarding commensurate punishment in lieu of charge being proved. Petitioner till date has not been punished as per the Ordinances, then in such a situation to say that petitioner was disqualified from contesting election of the General Secretary of the Students' Council, cannot be approved of in the fact of the present case. Counter-affidavit filed on behalf of the University acquiesces to this fact that at no point of time after inquiry report had been submitted any further orders have been passed imposing punishment. Once till date this is accepted position that on the report of the inquiry officer, no order of punishment has been passed and the letters dated 30.3.2010 and 5.4.2010 were only by way of interim measure, then in such a situation in the fact of the present case, disqualification cannot be said to have been attracted. Action taken by the Banaras Hindu University cannot be approved of in the facts of case. Consequently, order dated 2/ 7.4.2012 is hereby quashed and set aside and respondents are directed to permit the petitioner to function on the post of General Secretary of Students' Council of the Banaras Hindu University, Varanasi.

With these observations and directions writ petition is allowed.