

**In The Hon'ble High Court Of Judicature At Allahabad,
Lucknow Bench, Lucknow**

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Neutral Citation No. - 2025:AHC-LKO:18010-DB

RESERVED

Judgment Reserved on: 29.11.2024

Judgment Delivered on: 01.04.2025

Court No. - 1

Case :- WRIT - A No. - 2000716 of 2009

Petitioner :- Gani Mohammad Khan S/O Wasi Mohammad Khan

**Respondent :- Integral University Lucknow Thru Registrar And
Others**

Counsel for Petitioner :- Dr. L.P. Mishra,Sharad Pathak

**Counsel for Respondent :- S.P. Shukla,Anirudha Singh,Nishant
Shukla,Noor Alam Khan,S M A Kazmi,Sandeep
Srivastava,Shubham Tripathi,Syed Aftab Ahmad,Tanveer Ahmad
Siddiqui**

Hon'ble Attau Rahman Masoodi J.

Hon'ble Subhash Vidyarthi J.

(Delivered by Hon'ble Subhash Vidyarthi J.)

1. Heard Sri. Sharad Pathak Advocate, the learned Counsel for the petitioner, Sri. Sanjay Bhasin Senior Advocate assisted by Sri. Tanveer Ahmad Siddiqui and Sri. Shubham Tripathi, the learned Counsel for Integral University Lucknow and its Chancellor and other authorities.
2. The instant Writ Petition has been filed under Article 226 of the Constitution of India seeking quashing of an order dated 27.08.2007 passed by the Vice-Chancellor, Integral University, Lucknow (which will hereinafter be referred to as 'the University') dismissing the petitioner from the service of the University under Section 19(2) and 14.06 (e) of the First Statutes, 2006 of the University and the order dated 13.10.2008 passed by the Chancellor whereby the appeal filed by the petitioner against the dismissal order dated 27.08.2007 has been dismissed.
3. The Writ Petition was filed in the year 2009 and at the time of its final hearing in the year 2024 Sri. Sanjay Bhasin Senior Advocate,

the learned Counsel for the University has raised a preliminary objection that the University is a private Institution and the Writ Petition is not maintainable against such an institution.

4. Replying to the aforesaid preliminary objection, Sri. Sharad Pathak, the learned Counsel for the petitioner has submitted that the writ petition was filed in the year 2009 and in paragraph 3, 4, 5, 6, 7 of the writ petition it has been pleaded that Integral University is 'State' within the meaning of Article 12 of the Constitution of India. In paragraph 5 of the counter affidavit of the University it has been stated that the contents of paragraph 4, 5, 6 and 7 of the writ petition do not call for reply, which amounts to admission by the University that is 'State' within the meaning of Article 12 of the Constitution of India. The objection regarding maintainability of the writ petition raised for the first time during final hearing of the writ petition after 15 years and that too, against the pleadings of the University, is not sustainable.
5. Sri Pathak has further submitted that the Integral University was created by the Integral University Act 2004 (U.P. Act No. 9 of 2004) and the authorities of the University are the statutory authorities under the Act. The Chancellor, the Vice-Chancellor and the Executive Council exercise their statutory duties under the Act. The impugned order dated 27.08.2007 mentions that it was passed in exercise of the power under Section 19(2) of the U.P. Act No. 9 of 2004 read with Item no 14.0 (e) of the First Statute of the University. Obviously the impugned dismissal order of the University has been passed in exercise of a statutory power. The Chancellor has passed the appellate order dated 13.10.2008 in exercise of statutory power conferred upon him by Section 28 (3) of the Integral University Act 2004. As the impugned dismissal order and appellate orders have been passed in exercise of statutory powers, the Writ Petition is maintainable.
6. In **Khurram Ashraf & others Vs. State of U.P. & others:** Writ Petition (S/B) 20436 of 2018 decided on 18.07.2018, a Division

Bench of this Court held that *“Integral University has been established under the mandate of the State Legislature and it is under legal duty to follow the provisions of the Act.”*

7. In **St. Mary’s Education Society v. Rajendra Prasad Bhargava:** (2023) 4 SCC 498, the Hon’ble Supreme Court referred to various precedents on the point and summed up the conclusions as follows: -

“75. We may sum up our final conclusions as under:

75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.

75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional Court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to

challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

75.4. Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether "A" or "B" is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character."

- 8. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*: (1989) 2 SCC 691, a private college established by a Trust was affiliated to a University, but the college was closed and its affiliation was surrendered. The academic staff members of the college were not paid the terminal benefits. They moved the High Court with writ petitions for following reliefs: -**

"To issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or direction or order directing the respondent trust and its trustees respondents to pay to the petitioners their due salary and allowances, the provident fund and gratuity dues in accordance with the Rules

framed by the University and pay them compensation that would be payable to them under Ordinance 120-E and they may be further directed to pay the difference of pay payable to them on the implementation of the UGC pay scales in accordance with Government Resolution as clarified by the award passed by the Chancellor.”

9. The college raised a challenge to maintainability of the Writ Petition. Rejecting the challenge, the Hon’ble Supreme Court held in **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust** (Supra) that: -

*“15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. **They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.**”*

(Emphasis added)

10. The petitioner in the present case was appointed by the University itself, which was established under the Integral University Act, 2004. Section 8 of the Integral University Act, 2004 provides for the officers of the University, which include the Chancellor and the Vice-Chancellor. Section 23 of the Act of 2004 provides for framing of the Statutes of the University for various matters specified

therein, including for making appointment of the teachers of the University and other staff, the conditions of service, the manner of termination of service and disciplinary actions.

11. The Integral University Act, 2004 has been repealed by the Uttar Pradesh Private Universities Act, 2019, which now governs the 41 private Universities in the State named in Schedule 2 of the Act, including Integral University.
12. The University has framed the Integral University Service Rules, 2006, which inter alia contain provisions for imposing major penalties after holding inquiry and the provision for filing appeals against the punishment orders. The orders impugned in the present Writ Petition have been passed by the Vice-Chancellor and the Chancellor of Integral University, in exercise of their statutory powers. Therefore, the Writ Petition filed challenging the legality of an order of termination of service passed by the Vice-Chancellor of the University and the order passed by the Chancellor dismissing the appeal filed against the termination order, will be maintainable in view of the principles of law laid down by the Hon'ble Supreme Court in the above mentioned judgments. Accordingly, we reject the preliminary objection raised by the learned Counsel for the University.
13. Briefly stated, facts of the case are that the petitioner was appointed as a Lecturer (Mathematics) in the University by means of an order dated 28.08.2004 and he joined his duties on 01.09.2004. On 06.12.2004, he was orally informed that his services had been terminated. On 07.12.2004, the petitioner submitted a representation to the Vice-Chancellor of the University and he gave several reminders
14. The petitioner claims that Ms. Nida Fatima - daughter of Opposite Party No.5 Professor S.W. Akhtar, who was the Vice-Chancellor of the University, was studying in First Semester of B.Tech. (Bio-Tech). The first mid-semester test of B.Tech. (Bio-Tech) was held in the month of October, 2004. The Petitioner awarded only 15 out of

30 marks to Ms. Nida Fatima whereas he was expected to award 100% marks to her. In the second mid-semester test the Petitioner gave 27 out of 30 marks to Ms. Nida Fatima. This action of Petitioner annoyed the Opposite Party No.4/5. Although the Petitioner gave only 15/30 and 27/30 marks to Ms. Nida Fatima, she has been shown to have received 50 out of 50 marks in the final results, whereas the procedure for awarding marks in the final result is that out of total of 50 marks, 20 marks are for teacher's internal assessment and 30 marks are for average of the marks obtained in two mid-semester tests. Applying this procedure Ms. Nida Fatima would have received only 41 marks out of 50 marks but she has been shown to have received 50 out of 50 marks, which is not possible.

15. On 06.12.2004 the Petitioner was restrained from discharging his duties and he was orally informed that his services had been terminated.
16. On 07.12.2004 the Petitioner gave representation to the Vice-Chancellor of the University which was followed by several reminders and ultimately he filed Writ Petition No. 438 (S/B) of 2005. On 16.03.2005, this Court directed the Counsel for the University to seek instructions in the matter and fixed 23.03.2005 as the next date.
17. On 23.03.2005 the Counsel who was appearing for the University, withdrew his power. On 24.03.2005 the University filed a short counter affidavit stating that the petitioner's services had been terminated on 29.11.2004 and approved by the Executive Council by a resolution dated 04.01.2005, which reads as follows: -

“with regard to termination of Mr. Gani Mohd. Khan, Lecturer the Controller of Examinations informed the members of the executive Council that a Lecturer of Maths named as Mr. Gani Mohd. Khan showed a very irresponsible and negligent act during mid semester examination. He made two similar papers for two separate groups whose examinations were to be conducted on two separate dates. He was warned and asked to maintain secrecy in future but again, in spite of request of his own students, not to repeat it, he repeated the same act during the Improvement Test.”

18. The petitioner claims that the contention that the University had passed a termination order on 29.11.2004 is proved to be false by the fact that University has paid salary to the Petitioner even after 29.11.2004 till 04.12.2004. It establishes that the termination order dated 29.11.2004 was ante-dated.
19. The petitioner had further submitted that the resolution dated 04.01.2005 passed by the Executive Council of the University allegedly approving the termination order dated 29.11.2004, also reveals that the termination order dated 29.11.2004 was ante-dated and forged. The resolution states that the Petitioner was given a warning for making similar question papers for two separate examinations but he repeated this mistake in the improvement tests and, therefore, his services were terminated. The dates of mid-semester examination are 18.11.2004 and 20.11.2004 and the improvement tests were held on 02.12.2004 and 03.12.2004. The improvement tests, which formed a basis for the termination order dated 29.11.2004, were held subsequently on 02.12.2004 and 03.12.2004. The termination order had apparently been passed after 03.12.2004 and it had been ante-dated.
20. The aforesaid circumstances were brought to the notice of this Court during hearing of Writ Petition No. 438 (S/B) of 2005. On 29.03.2005 the learned Counsel for the University made a statement that the termination order against the Petitioner had been withdrawn. The order dated 29.03.2005 passed by this Hon'ble High Court in Writ Petition No.438 (S/B) of 2005 is being quoted below: -

“Shri A.Z.Siddiqui appearing for the University states that at present there is no termination order against the Petitioner and he has been allowed to continue in service, therefore,, the writ petition be dismissed as infructuous. All the orders which have been passed in this regard viz. restraining the Petitioner from duty also stand withdrawn.

Shri Siddiqui further states that the Petitioner shall be paid salary regularly including the arrears i.e. from the date when he was not allowed to perform duties till the date when he has been allowed to resume his duties.

In view of the aforesaid statement the Petitioner's Counsel says that since the desired relief has been granted, the petition be dismissed as infructuous.

The writ petition is dismissed as having become infructuous."

21. Thereafter the Petitioner joined his services in April 2005, but he was not paid his salary. The Petitioner filed Contempt Petition No.215 (C) of 2005, in which notices were issued on 06.10.2005.
22. The University filed Review Petition No.175/2005 for review of the aforesaid order dated 29.03.2005. On 18.11.2005, this Court passed an order granting time to the learned Counsel for the University to seek instructions regarding the reason for not allowing the petitioner to work and for non-payment of salary to him.
23. Meanwhile the Petitioner was placed under suspension by means of an order dated 07.12.2005. He filed Writ Petition No.2089 (S/B) of 2005 challenging the suspension order and the Court passed the following interim order on 23.12.2005: -

"Having examined all the papers, we are not convinced that the emergency power vested under Section 10(3) of the Integral University Act, 2004 (U.P. Act No.9 of 2004) could have been invoked by the Vice-Chancellor while placing the Petitioner under suspension by virtue of the impugned order. The power of suspension lies with the Executive Council of the University. The Vice-Chancellor has neither enumerated in the impugned order as to what was the emergent situation acted upon by him nor the circumstances which prevented him from placing the issue of the indiscipline attributed to the Petitioner before the Executive Council.

As regards the leakage of the paper in November, 2004, it has been submitted that the Petitioner set up two papers of two different courses, but since he was not aware of the Scheme, he framed both the papers with common questions. That might be a bona fide mistake on his part as has been pressed into service.

So far as the other incident of rampage is concerned, the name of the Petitioner was not recited in the First Information Report. Ten days after, the Registrar felt shy to disclose the name of the Petitioner as one of the miscreants having incited the students to indulge in violence.

Learned Court for the Petitioner has drawn our attention towards the Court's orders dated 23rd March, 2005 and 29th March 2005 passed in Writ Petition No.438 (SB)/2005.

On March 29, 2005, the Counsel for the University had disclosed before the Court that there was no termination order against the Petitioner, subsequently in view of this statement the writ petition was dismissed as infructuous. However, a Review Petition was filed later, which is still pending.

In the contempt proceedings, a statement was made on behalf of the University that no statement in terms of above had ever been made to the Court.

All these changing stands of the University implies mala fides on the part of the authorities including the Vice Chancellor. Since the proceedings are still pending, we are of the view that there was no emergency like situation so as to invoke the powers under Section 10(3) of the Integral University Act. The Vice-Chancellor has wrongly assumed that power without making a reference to the Executive Council. Therefore, the suspension order cannot be sustained.

In view of the above features of this case, we direct that the operation of the suspension order dated 7th December, 2005 (Annexure 1) shall remain stayed until further orders of the Court.

The University will, however, be at liberty to proceed for the valid ground against the Petitioner, in accordance with the Statutes by placing the matter before the Executive Council.

The Review Petition as also the record of the earlier writ petition may also be connected with this petition and listed along with it on the next date of hearing.

However, the above observations will not prejudice the interest of the cause of any party."

24. Thereafter payment of salary to the Petitioner was started but no increment was made in his salary. On 17.05.2006, an order was passed in Writ Petition No. 2089 (S/B) of 2005 directing the authority concerned to consider the grant of increment to the petition in accordance with the Rules notwithstanding the order dated 07.12.2005. Yet, no increment was given to the Petitioner. A charge-sheet dated 28.07.2006 was given to the Petitioner, to which he submitted a reply.

25. The inquiry officer appointed by the University was an Officer on Special Duty, who was serving in a pay scale lower than the pay scale of the Petitioner. The Petitioner filed Writ Petition No.1582 (S/B) of 2006. When the matter was taken on 17.11.2006, the learned Counsel for University made a statement for changing the inquiry officer. Thereafter Dr. V. S. Chandel was appointed as the Enquiry Officer. He was a witness in the enquiry. After realizing this illegality, Prof. V. D. Gupta was appointed as the Enquiry Officer, who was aged about 74 years.
26. A fresh charge-sheet dated 01.06.2007, which was approved by the Vice-Chancellor on 04.06.2007, was served on the Petitioner on 19.06.2007. As this charge-sheet was issued after seeing the Petitioner's reply to the previous charge-sheet dated 28.07.2006, the charges were modified suitably. Earlier Charge No.1 was regarding leakage of question paper, but in the new charge-sheet this charge was not leveled.
27. The Petitioner wrote a letter dated 26.07.2007 demanding certain documents for replying to the charge-sheet, but the complete set of the documents was not provided to him. The Petitioner gave another application dated 27.07.2007 demanding complete set of documents. The inquiry officer sent a letter dated 30.07.2007 fixing 02.08.2007 as the date for holding the inquiry, but the documents demanded were not supplied to the petitioner.
28. On 02.08.2007 the Petitioner attended the inquiry proceedings in which he again gave an application demanding the documents and he raised objections against appointment of Prof. V.D. Gupta as the Enquiry Officer. The Petitioner claims that he attended the University on the 3rd, 4th, 5th and 6th of August but neither any inquiry proceedings were held, nor was any information given to him regarding the inquiry. The petitioner has written letters stating that on 07.08.2007 to 10.08.2007, the Security Guard restrained the Petitioner from entering the University. 11.08.2007 and 12.08.2007 being Saturday and Sunday, the University was closed. On

13.08.2007 the Petitioner was allowed to enter the University and he gave an application to the Enquiry Officer stating that he was not being allowed to enter into the University between 07.08.2007 and 10.08.2007. No evidence in support of the charges was recorded on 13.08.2007 and there was no occasion for the petitioner to cross-examine any witness. No date of inquiry was fixed after 13.08.2007. The Petitioner claims that he was not given any opportunity of producing the evidence in his defence and no defence assistant was allowed him.

- 29.** On 20.08.2007, the Petitioner received a letter dated 18.08.2007 sent by the Vice-Chancellor enclosing therewith a copy of the Enquiry Report and calling for the petitioner's comments thereon latest by 20.08.2007. This letter / show cause notice dated 18.08.2007 written by the Vice-Chancellor bears a note dated 20.08.2007 written by the Enquiry Officer which reads as follows: -

“Since you did not report in the University on 18.08.07 in spite of our clear instructions to do so on 17.8.07. As a result of it, the reports have been dispatched to your home address by speed post. This is an additional copy for your immediate response, latest by 21.8.07.”

- 30.** The Vice-Chancellor has made an endorsement of “Seen & approved” besides the aforesaid note of the Enquiry Officer. The petitioner has submitted that no notice or information to appear on 18.07.2007 was served upon him. 18.08.2007 being a Saturday, the University was closed as it works on 05 days a week.
- 31.** On 21.08.2007, the petitioner sought 15 days time to submit his reply but he did not receive any response to this request and on 30.08.2007, he was served with the impugned dismissal order dated 27.08.2007.
- 32.** The Petitioner filed Writ Petition No.1195 (S/B) of 2007 against the dismissal order dated 27.08.2007, which was disposed of by this Hon'ble Court vide order dated 26.09.2007 relegating the petitioner to the alternative remedy of appeal, which was directed to be decided within three months.

33. The Petitioner filed his appeal before the Chancellor of the University on 04.10.2007.
34. The Vice-Chancellor has also been impleaded in his personal capacity as the opposite party no. 5 and in his personal counter affidavit he has stated that his daughter Ms. Nida Fatima is an extremely brilliant student with consistent bright record in academy. Scoring 50 out of 50 in sessional (Mathematics) is neither unusual nor unprecedented and many other bright students were awarded similar marks. However, there is no denial of the plea taken in the Writ Petition that although the Petitioner had given only 15/30 and 27/30 marks to Ms. Nida Fatima, she has been shown to have received 50 out of 50 marks in the final results, whereas the procedure for awarding marks in final result is that out of total of 50 marks, 20 marks are for teacher's internal assessment and 30 marks are for average of the marks obtained in two mid-semester tests. Applying this procedure Ms. Nida Fatima would have received only 41 marks out of 50 marks but she has been shown to have received 50 out of 50 marks, which is not possible.
35. The petitioner has pleaded that the enquiry officer did not hold any enquiry and he did not record statements of any witnesses in support of the charges leveled against the petitioner. In para 36 of the counter affidavit filed by the University it has been stated that witnesses / evidence were produced by the Presenting Officer on 13.08.2007 and although the petitioner had appeared before the enquiry officer on the aforesaid date, he did not cooperate in the enquiry. It has been stated in paragraph 38 of the counter affidavit that as the petitioner did not want to produce any evidence / witness, the recording of evidence came to an end on 13.08.2007 and the enquiry officer gave his report on 18.08.2007. However, copies of none of the statements recorded during enquiry proceedings on 13.08.2007 has been annexed with the counter affidavit.
36. The petitioner has assailed the validity of the impugned dismissal order on the ground that it has been passed without providing

sufficient opportunity to the Petitioner for replying to the charge-sheet and that no date, time and place was fixed for inquiry and no evidence was led by the University in support of the charges.

37. The petitioner has pleaded in Paragraph 43, 44, 45 of the writ petition that he was not allowed to enter the University from 07.08.2007 till 10.08.2007. Reply to those paragraphs has been given in Paragraphs 35 and 36 of the counter affidavit wherein the aforesaid plea has not been specifically denied.
38. The enquiry officer is said to have submitted the enquiry report to the Vice-Chancellor on 18.08.2007 and on the same date the Vice-Chancellor issued a notice to the Petitioner asking him to cause notice within 48 hours i.e. by 20.08.2007.
39. The enquiry officer, Shri V.D. Gupta had submitted his report to the Vice-Chancellor on 18.08.2007, yet he wrote the following note on the show cause notice on 20.08.2007: -

“Mr. Gani Mohd Khan

Since you did not report in the University on 18.8.07 inspite of out clear instructions to do so on 17.8.07. As a result of which, the reports have been dispatched to your home address by speed post. This is an additional copy for your immediate response, latest by 21.8.07.

Sd.

V.D. Gupta 20.8.07”

40. This action of writing a note dated 20.08.2007 by the enquiry officer on the show cause notice dated 18.08.2007 indicates that the enquiry report was in possession of the enquiry officer till 20.08.2007 and it has not been given to the Vice-Chancellor on 18.08.2007 as alleged.
41. The enquiry report was given to the Petitioner on 20.08.2007 and he was required to submit his reply by 21.08.2007. On 21.08.2007 the Petitioner sought 15 days time to reply to the show cause notice but no order was passed on this application and the impugned order of dismissal was passed on 27.08.2007.
42. The Learned Counsel for the University has produced the original record relating to the dispute involved in the present Writ Petition

and we have perused the same. The record is in five volumes. One file is titled 'Confidential File Regarding Enquiry of Incident Dated 14.05.2005'. It contains a letter dated 31.05.2005 sent by Dr. Riyaz Ahmed Khan, Enquiry Officer and Assistant Professor, to the Registrar of the University stating that he had completed the enquiry regarding the incident that took place on 14.05.2005 regarding indiscipline act and damage caused by some of the faculty members and students. The letter is accompanied by the enquiry report running in six sheets. The enquiry proceedings contain notices sent by the Enquiry Officer to various students, teachers and other persons and their statements recorded by the Enquiry Officer on various dates prior to preparation of the Enquiry Report. The Enquiry Officer held Shri Muzaffar Hussain Khan, Lecturer, Department of Mechanical Engineering guilty of certain charges. The petitioner was also held guilty of the following charges: -

- "i. Disobedience of orders.*
- ii. Creating hindrance in normal functioning of the University.*
- iii. He has done conspiracy to disturb the University's peaceful atmosphere with unlawful activities.*
- iv. Instigating, encouraging the students for rampage in the University by pelting stones and breaking University property.*
- v. Making University to suffer lacks of rupees.*
- vi. Denied to appear before the Enquiry Officer."*

- 43.** The Enquiry Officer mentioned the names of 11 other Lecturers/Senior Lecturers/Assistant Professors, who were found guilty of helping the petitioner and Shri Muzaffar Hussain Khan - directly or indirectly.
- 44.** Although the Enquiry Officer has held the petitioner guilty of having denied to appear before him, the first statement annexed with the report is of the petitioner himself and it is recorded therein that the petitioner had appeared before the Enquiry Officer at 03:30 PM on 24.05.2005 and had given his statement, wherein he had expressed ignorance about the incident.

45. The second folder contains a dispatch register and newspapers wherein certain notices were published.
46. The third folder contains a preliminary enquiry report dated 06.12.2005 submitted by Shri Rizwan Beig, Senior Lecturer/Enquiry Officer regarding leakage of examination papers during the first semester of the session 2004-05.
47. The fourth folder contains a copy of the enquiry report dated 18.08.2007 submitted by Prof. V. D. Gupta, Enquiry Officer, copies of certain statements recorded on various dates in the month of May, 2007, a copy of the statements of imputations against the petitioner prepared by the Enquiry Officer on 01.06.2007, which was approved by the Vice Chancellor of the University on 04.06.2007, a letter dated 01.06.2007 issued by the Enquiry Officer to the petitioner asking him to submit a written statement of his defense within 10 days, a letter dated 08.06.2007 written by the petitioner to the Dean, Faculty of Applied Sciences stating that the University has sanctioned two weeks summer vacation to all the teaching staff and he should also be permitted to avail the said leave with effect from 18.06.2007 to 01.07.2007 and reminders to the same effect sent on 14.06.2007, 19.06.2007, 21.06.2007 and 22.06.2007. A letter dated 26.07.2007 sent by the petitioner to the Enquiry Officer is also available on record wherein he has demanded 13 documents to enable him to defend the charges levelled against him.
48. Certain documents were provided to the petitioner but on 27.07.2007, he wrote another letter to the Enquiry Officer stating that the documents provided to him were not complete and he demanded some further documents mentioned in the letter. The petitioner sought 15 days' time for preparing his reply to the charges after the documents were provided to him. On 30.07.2007, the Enquiry Officer sent a letter to the petitioner stating that the petitioner had already been provided all the relevant material and that the petitioner's demand for irrelevant material shall be treated as

dilatory tactics adopted by him. The petitioner was directed to be present to face the Enquiry proceedings at 11:30 AM on 02.08.2007 in the office of the Registrar of the University. On 01.08.2007, the petitioner again wrote a letter to the Enquiry Officer stating that enquiry proceedings can only be started after the petitioner was given an adequate opportunity to submit his reply and he again demanded certain documents and sought time to submit his reply.

49. On 02.08.2007, the petitioner wrote a letter to the Enquiry Officer stating that the Enquiry Officer was aged above 74 years and he had passed the age of superannuation i.e. 62 years. Even re-employment of a superannuated teacher was permissible upto the age of 65 years only. The petitioner submitted that as per item No. 12.11 (b) (i) of Integral University Service Rules, a retired teacher could not be a Member of any statutory body or any other body or Committee and, therefore, he could not be an Enquiry Officer or a Member of an Enquiry Committee.
50. However, enquiry proceedings were held on 02.08.2007 and it was attended by the Enquiry Officer, the Registrar and the Presenting Officer. It is recorded in the minutes of the enquiry proceedings that the petitioner was also present throughout the proceedings but he refused to sign the minutes of the proceedings. The petitioner denied all the allegations levelled against him. The next meeting for enquiry was scheduled for 11:30 AM on 03.08.2007. In the minutes of the enquiry proceedings held on 03.08.2007, it is recorded that at the very beginning, the petitioner refused to sign any paper and he said that he did not recognize the Investigating Officer. He asserted that he would take part in the proceedings only if all the papers demanded by him were provided to him. At this, the meeting with the petitioner was ended and it was decided that the proceedings will be held ex-parte. It was also decided that the petitioner be provided the remaining pages of Service Regulations (from title page to page no.16) as demanded by him. It is recorded in the minutes of the

enquiry proceedings held on 06.08.2007 that the petitioner was asked to co-operate with the Enquiry Officer and sign the previous minutes of the enquiry but he refused to sign the same. It was decided to provide a copy of the University Ordinance to the petitioner. A photocopy of a letter dated 07.08.2007 sent by the petitioner to the Vice Chancellor of the University is also available on record wherein he stated that he was not allowed to enter the Campus of the University when he reached there at 08:50 AM on 07.08.2007. He has sent a similar letter to the Enquiry Officer also wherein he has inserted in his hand-writing that as the security guard had restrained him from entering the University, he was compelled to sent the letter through post. A similar letter was sent by the petitioner to the Vice-Chancellor of the University on 08.08.2007 also.

- 51.** A notice was published on 08.08.2007 in the newspaper for holding the enquiry against the petitioner at 11:30 AM on 10.08.2007 and the proceedings of the aforesaid enquiry are available on record wherein only this much is recorded that the petitioner did not appear before the Enquiry Officer. However, the Enquiry Officer did not fix any further date for the enquiry. On 13.08.2007, the petitioner wrote a letter to the Vice-Chancellor of the University stating that he had come to know that he has been summoned by the Enquiry Officer on 13.08.2007. He had come to the University in furtherance of the order passed by the Enquiry Officer. His presence should be recorded. On 16.08.2007, the Enquiry Officer wrote a letter to the petitioner stating that his allegation that he was not allowed to enter the University, is fabricated and he was warned not to indulge in such false accusations.
- 52.** On 18.08.2007, the Enquiry Officer submitted an enquiry report wherein he reproduced the charges leveled against the petitioner, which were as follows: -

“1.Mr. Gani Mohammad Khan set the same question paper for two examinations which were held on different dates and he

knew it well. One was for Biotechnology and the other for B-Pharm Ist year students. He repeated this practice for these two disciplines again in the make-up examination in spite of warning. Mr. Gani Mohammad Khan thus destroyed the whole sanctity of examination system. It is a very irresponsible and unethical act and shows his disrespect for the examinations. His action tantamounts to leakage of question papers.

2. Mr. Gani Mohammad Khan adopted a short-cut method of teaching by confining himself to only solved problems in the text book. This is very much unlike a University teacher and deprives a student of richness and enlightenment so integral to education.

3. Mr. Gani Mohammad Khan in connivance with Mr. Muzaffar Husain Khan, the then Lecturer, Department of Mechanical Engineering conspired and manipulated an ugly incident on 14.5.2005 in the University campus by provoking, students who indulged in rowdism and stone-pelting. This resulted in considerable damage to the University's property.

4. Even though no punch-card was issued to Mr. Gani Mohammad Khan yet in collusion with Mr. Muzaffar Husain Khan, he instigated the employees and teachers to disobey the orders pertaining to punching card for registering their attendance. On this day the visit of the Hon'ble Governor, His Excellency Dr.A.R. Kidwai was scheduled in the University. This disrupted the University's functioning and peaceful environment. Mr. Gani Mohammad Khan is responsible for it."

53. The enquiry officer recorded that the petitioner was provided the entire material and he was given opportunity to submit his defense but he did not co-operate in the enquiry and he did not put up any defence. Therefore, he is guilty of the charges levelled against him.
54. A copy of the Resolution passed in the 11th meeting of Executive Council of the Integral University, Lucknow held on 25.08.2007, is also available in this volume. The Resolution passed in respect of the aforesaid agenda is as follows: -

**"RESOLUTION PASSED IN THE ELEVENTH MEETING
OF EXECUTIVE COUNCIL OF INTEGRAL UNIVERSITY,
LUCKNOW HELD ON 25.08.2007**

Agenda No.5:

(i)- Status of enquiry proceedings against Mr. Gani Mohammad Khan, Lecturer in the Department of Mathematics.

(ii)- Decision regarding his probation, which is going to be expired on 26.08.2007.

Under this Agenda the Enquiry Report was put up before the members of the Executive Council after Prof. V.D. Gupta had left the Conference Room. The Council after indepth discussion RESOLVED that Mr. Gani Mohammad Khan be dismissed from the services with immediate effect, while Mr. Gani Mohmmad Khan is still on probation and his probation period is going to expire on 26.08.2007.”

55. The original register containing the minutes of Executive Council meetings held on 16.04.2004 onwards, has also been produced before this Court. It contains minutes of the 11th meeting of the Executive Council held on 25.05.2007. All the persons who had attended the meeting, had put their signatures on the attendance sheet but the resolutions have been prepared by the Member Secretary and it has been signed on each page by Shri S. W. Akhtar as the Chairperson. No other member has signed the minutes of meeting. The Resolution passed on Agenda No.5 contained in the register is as follows:-

“Agenda No.5:

(i)- Status of enquiry proceedings against Mr. Gani Mohammad Khan, Lecturer in the Department of Mathematics.

(ii)- Decision regarding his probation, which is going to be expired on 26.08.2007.

Before putting the Enquiry Report of Mr. Gani Mohd. Khan before the members of the Executive Council, Prof. V.D. Gupta had left the Conference Room. The Council, after indepth discussion decided that Mr. Gani Mohammad Khan be dismissed from the services with immediate effect, while Mr. Gani Mohammad Khan is still on probation. His probation period is going to expire on 26.08.2007.”

56. A bare perusal of the aforesaid Resolution indicates that it is worded differently from a copy of the resolution that is available in the folder regarding enquiry held by the Enquiry Officer against the petitioner, although the substance of both the resolutions is the same.

57. The dismissal order states that the petitioner's services have been discharged during his probation period. A perusal of the dismissal order shows that the petitioner has been dismissed after in depth discussion on an enquiry report in which he has been held guilty of certain charges. Therefore, this is not a termination simplicitor of a probationer and it is a dismissal by way of punishment, after the petitioner was held guilty in an enquiry.
58. In **Samsher Singh v. State of Punjab**: (1974) 2 SCC 831, a Bench consisting of seven Hon'ble Judges of the Supreme Court held that: -

*“62. The position of a probationer was considered by this Court in Purshottam Lal Dhingra v. Union of India [AIR 1958 SC 36]. Das, C.J. speaking for the Court said that where a person is appointed to a permanent post in Government service on probation the termination of his service during or at the end of the period of probation will not ordinarily and by itself be a punishment because the Government servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private employer is entitled to do so. Such a termination does not operate as a forfeiture of any right of a servant to hold the post, for he has no such right. Obviously such a termination cannot be a dismissal, removal or reduction in rank by way of punishment. There are, however, two important observations of Das, C.J. in Dhingra case. One is that if a right exists under a contract or Service Rules to terminate the service the motive operating on the mind of the Government is wholly irrelevant. The other is that **if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and violates Article 311 of the Constitution.** The reasoning why motive is said to be irrelevant is that it inheres in the state of mind which is not discernible. On the other hand, if termination is founded on misconduct it is objective and is manifest.*

* * *

64. Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any rules governing a probationer in this respect the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged. No

*punishment is involved in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. **If, on the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of Article 311(2) he can claim protection.** In *Gopi Kishore Prasad v. Union of India* [AIR 1960 SC 689] it was said that if the Government proceeded against the probationer in the direct way without casting any aspersion on his honesty or competence, his discharge would not have the effect of removal by way of punishment. Instead of taking the easy course, the Government chose the more difficult one of starting proceedings against him and branding him as a dishonest and incompetent officer.*

* * *

*66. If the facts and circumstances of the case indicate that the substance of the order is that the termination is by way of punishment then a probationer is entitled to attract Article 311. The substance of the order and not the form would be decisive (see *K.H. Phadnis v. State of Maharashtra* (1971) 1 SCC 790).*

*67. An order terminating the services of a temporary servant or probationer under the Rules of Employment and without anything more will not attract Article 311. Where a departmental enquiry is contemplated and if an enquiry is not in fact proceeded with, Article 311 will not be attracted unless it can be shown that the order though unexceptionable in form is made following a report based on misconduct (see *State of Bihar v. Shiva Bhikshuk Mishra* (1970) 2 SCC 871).”*

59. As the petitioner has been dismissed for the reason that he has been held guilty of certain charges in an enquiry, the dismissal is by way of punishment on the basis of guilt established in the enquiry report and it is not a discharge simplicitor of a probationer.
60. Prof. V. D. Gupta, who was appointed as the Enquiry Officer in the final enquiry, framed charges against the petitioner on 01.06.2007. No witness was examined after framing of the charges in the final enquiry so as to prove the charges. In the final enquiry report dated

18.08.2007, the Enquiry Officer has held the petitioner guilty of the charges merely because he could not prove himself innocent.

61. A person cannot be held guilty in any enquiry proceeding merely because he failed to prove his innocence. On the contrary, guilt of the person is to be established by leading evidence in support of the charges, which was not done in the present case as no statements were recorded by the Enquiry Officer in the final enquiry report. It is only when the employer discharges the initial burden to prove the charges by leading evidence in support thereof, that the employee is required to lead evidence in his defence.
62. In **State of U.P. v. Saroj Kumar Sinha**: (2010) 2 SCC 772, the Hon'ble Supreme Court held that even if the delinquent employee fails to appear in enquiry proceedings to defend himself, it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge. The Hon'ble Supreme Court further held that: -

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.”

63. The petitioner could have been dismissed from service on the ground of misconduct only after the misconduct was proved by leading

evidence in support of the charges in the enquiry proceedings and after providing adequate opportunity to him to adduce evidence to controvert the charges and evidence led in support thereof. The finding of the Enquiry Officer that the petitioner is guilty of the charges as he failed to establish his innocence although no evidence has been adduced before the enquiry officer to prove the guilt of the petitioner, is perverse.

64. For the foregoing reasons, we are of the considered view that the impugned order of dismissal of the petitioner is unsustainable in law.
65. So far as the confirmation of the dismissal order in appeal before the Chancellor of the University is concerned, the Chancellor had sent a letter dated 12/20.12.2007 to the petitioner stating that: -

“Please refer to your Appeal dated 04.10.2007 against your dismissal in accordance with the decision of the Executive Council of Integral University.

After going through your Appeal and the Enquiry Report, before I reach to a conclusion and take final decision, please clarify the following points: -

(i) Reasonable time you would need to present your case before Enquiry Officer.

(ii) Please give names and status of the evidences you want to produce for cross-examination with full justification.

(iii) A list of documents required by you, which has relevance with the Charge-sheet and has not been provided to you so far, should be given with full justification.

(iv) Please not that the above facilities provided to you do not in any way prejudice the decision of the Executive Counsel.”

66. The petitioner sent a letter dated 03.01.2008 in reply to the aforesaid letter stating that he would need a month's time to present his case, after the Enquiry Officer completes the enquiry, i.e. after conclusion of evidence in support of the charges. He would give the particulars of his evidence after production of evidence by the University. He would need copies of the question paper and result of make-up examination for M.A.-101, B.T.-102 and PHAR-111M and a copy of the result of 1st and 2nd mid-term result of Civil Engineering.

67. The Chancellor sent a letter dated 21.01.2008 stating that he had not meant to conduct any fresh enquiry, he had only meant to give the petitioner an opportunity to submit his reply to the Enquiry Report and he granted two weeks time to the petitioner for this purpose. The Chancellor further wrote that if necessary, he would get the comments from the Enquiry Officer at his own level. He directed the petitioner to give the names of his witnesses within three days. However, the Chancellor had asked in his letter about the time the petitioner would need to present his case before Enquiry Officer, which is unambiguous and which clearly means that the Chancellor meant to get an enquiry held by the Enquiry Officer, although it was not within the scope of the appellate powers.
68. The petitioner sent a letter dated 05.02.2008 to the Chancellor stating that although the onus to prove the allegations lied on the University, it had not examined any witness during the enquiry proceedings. Therefore, the petitioner was not required to produce any witness. However, as the University wanted to rely upon the statement of Sri. D. K. Singh, Security-in-charge, he should be called as a witness. He further stated that although copies of the statements of certain persons had been supplied to him, none of them had been examined as a witness in the enquiry proceedings. He further stated that he wanted to give a questionnaire to seven persons who were authorities / officers / teachers / employees of the Universities and to 18 students of the University. The petitioner gave a point wise reply to all the charges leveled against him.
69. The Chancellor wrote a letter dated 04.03.2008 to the petitioner stating that he may inspect the documents relating to enquiry in the Chancellor's office. The request for being provided with copies of the documents demanded was turned down.
70. The petitioner met the Chancellor on 11.02.2008 and he claims that the Chancellor stated that he did not know anything about the Appeal filed by the Petitioner nor he had got any concern with the affairs of the University. Therefore, the Petitioner should contact the Vice-

Chancellor of the University who is the only responsible person for the affairs of the University. The Chancellor gave a note in Urdu language stating that “बराये करम आप यूनिवर्सिटी में, वहां के अस्ल जिम्मेदार आली जनाब वी०सी० साहब से मिलें”, which means that the petitioner should meet the Vice-chancellor, who is in fact responsible for the affairs of the University.

71. The Chancellor wrote another letter dated 22.04.2008 stating that the petitioner was not cooperating in disposal of his appeal and requiring him to be present for personal hearing on 04.05.2008.
72. The Petitioner claims that he went to the Office of the Chancellor on 04.05.2008. At that point of time the Enquiry Officer Prof. V. D. Gupta and the Presenting Officer Rizwan Beg, both were present. The Chancellor, who was present there, did not put any question to the Petitioner, rather the Enquiry Officer asked some questions from the Petitioner and thereafter he was asked to leave. The Petitioner was also required to sign certain documents but when he demanded a copy of the minutes of the proceedings, the Enquiry Officer declined the same. On the next day the Petitioner went to the Chancellor and requested for early disposal of the Appeal then the Chancellor said that he did not know anything about the Appeal. He advised the Petitioner to contact the Registrar of the University and he wrote a letter to the Register in his own hand writing in Urdu Script, Hindi Transliteration of which is as follows: -

“मोहतरम गरामी जनाब रजिस्ट्रार साहब जादा मजदहू इंटीग्रल यूनिवर्सिटी लखनऊ
अस्सलामवालेकुम बरहमतुल्लाह व बरकात।
उम्मीद है मिजाज गरामी बखेर हो।
जनाब गनी अहमद साहब के वारे में जो मुनासिब फैसला हुआ हो उसकी खबर इनको जवानी फिर
बजरिये तहरीर या सिर्फ बजरिये तहरीर दे दी जाये।ताकि हो एकसु होकर अपना वक्त गुजारे उनकी
मुलाकात आली जनाब वी०सी० साहब से भी करा दें और जो मुनासिब सुरतेहाल हो उसकी इत्तेला
उनको देने का इंतजाम करा दें।
खुदा करें मिजाज बखेर हो वस्सलाम.
5 मई 2008.

मुखलिस,
सैय्यदुररहमानआजमी
ह०अपठनीय।”

73. The Petitioner claims to have gone to the office of the Registrar of the University but he was only told that whatever will be decided, the same shall be communicated to him. On 16.06.2008 the

Petitioner again went to the Office of the Chancellor, who wrote a letter in Urdu language to the Vice-Chancellor of the University, which is transliterated in Devnagri script as follows: -

“बा सिलसिला जनाब गनी अहमद साहब,
बा खिदमत गरामी आली जनाब वाइस चांसलर साहब जादा मजदहुम
इंटीग्रल यूनिवर्सिटी लखनऊ।
मुर्सल सैदुररहमानआजमी।
मोहतरम आली जनाब वाइस चांसलर साहब जादा मजदहुम इंटीग्रल यूनिवर्सिटी, लखनऊ।
अस्सलाम वालेकुम व रहमतुल्लाह व बरकात मिजाज आली
जनाब गनी मोहम्मद साहब के बारे में जो फैसला हुआ उसकी इत्तेला उनको नहीं हुई है जैसा कि उनका बयान
है उम्मीद है कि तस्रीह ब एहसान का मामला फ़रमाया होगा।
खुदा करे मिजाज आली बख़ैर हो
आपका
सईदुररहमान आजमी।
16 जून 2008 ईसवी

74. The petitioner contacted the Chancellor on 17.06.2008 and 26.07.2008 also and the Chancellor again wrote letters to the Vice-Chancellor in Urdu language, which are being reproduced in Devnagri script as follows: -

बा सिलसिला जनाब गनी अहमद साहब
बा खिदमत गरामी आली जनाब वाइस चांसलर साहब जादा मजदहुम
इंटीग्रल यूनिवर्सिटी लखनऊ।
मुर्सल सईदुररहमान आजमी।
आली जनाब वाइस चांसलर साहब जादा मजदहुम
इंटीग्रल यूनिवर्सिटी लखनऊ
अस्सलाम वालेकुम व रहमतुल्लाह व बर्कात मिजाजअली।
गनीअहमद बार-बार आते हैं कि उनको फैसले के बारे में कोई इत्तेला नहीं मिली। बेहतर होता अगर आज
जिमेदार हजरात को ऑर्डर मरहमत फरमादें कि वो उनको फैसले की इत्तेला कर दें जो 4 मई 2008
इसवी को उनके बारे में हुआ था। कल भी ये खत लिखवा कर ले गए थे मगर बारिश में उसके भीग जाने
का जिक्र किया। यह दूसरा खत है. खुदा करे मिजाज गरामी बख़ैर हो। वसलाम.
सुखलिस
सईदुररहमानआजमी
27 जून 2008 ईसवी
व I खिदमत जनाब डॉक्टर इरफ़ान अली साहबजादा मजद्व रजिस्ट्रार इंटेग्रल यूनिवर्सिटी लखनऊ।
सईदुररहमानआजमी।
ह०अपठनीय।”.

* * *

बिस्मिल्लाहहिररहमानिररहीम।
मोहरतम गिरामी जनाब रजिस्ट्रार साहबजादामाजदा इंटीग्रल यूनिवर्सिटी, कुर्सी रोड, लखनऊ।
अस्सलामअल्लेकुम ब रहमतउल्लाह वकरकात।
जनाब गनी अहमद साहब के सिलसिले में 4 मई 2008 इसवी को मीटिंग हुई थी ये कहते थे कि हम अभी
तक किसी फैसले से बाखबर नहीं, अगर कोई कानूनी रुकावट ना हो तो इनको फैसले से आगाह करना
मुनासिब हो
खुदा करे मिजाज आली बख़ैर हो
वसलाम...
आपका मुखलिस

सईदुररहमानआजमी।
ह०अपठनीय।”
26 जुलाई सन 2008 ईसवी।

75. The petitioner has contended that the Chancellor was not conversant with English language. In the counter affidavit filed on behalf of the University it has been stated that the Chancellor is an international scholar and delivers lectures in different countries throughout the globe. He is quite thorough in English language and is also supported by a Secretariat and other supporting staff to help him in discharge of his duties as Chancellor of the University. It has been stated that the letters written by the Chancellor in Urdu language asking the Vice-Chancellor to inform the petitioner about his appeal appear to have been written in some other context, but that other context has not been disclosed in the counter affidavit.
76. The Chancellor has been impleaded in his personal capacity also as the opposite party no. 3 and he has filed a separate counter affidavit stating that he had written the letters mentioned in the Writ Petition to instruct the office to provide copies of the information regarding earlier stages of the proceedings and those had nothing to do with consideration of the appeal. However, the letters were written after filing of the appeal against the dismissal order and the letters repetitively direct the Vice-Chancellor / Registrar of the University to inform the petitioner about the decision taken in his matter. The only matter in which a decision was pending, was the appeal filed before the Chancellor. Therefore, the letters written by the Chancellor indicate that the Chancellor had no concern with the appeal and it was decided without application of mind by the Chancellor.
77. The Chancellor has stated in his counter affidavit that the allegations regarding his being not acquainted with English language are not correct and he has a very well equipped Secretariat fully proficient in English Language to provide due assistance to him. However, he has not stated that he is well versed with English language, in which the appellate order has been passed, although all the other

communication made by the Chancellor is in Urdu language. Although in the counter affidavit of the University it has been stated that the Chancellor is quite thorough in English language, the Chancellor himself has not stated so in his counter affidavit. This also establishes that the appellate order has not been passed by the Chancellor himself.

78. Therefore, the appellate order confirming the dismissal order is also not sustainable in law and the same is liable to be quashed.
79. After hearing the learned Counsel, this Court had initially passed the following interim order on 04.10.2010: -

“From a perusal of the impugned order, it appears that the Chancellor has upheld the punishment not on the basis of the material referred by the enquiry officer but on the basis of other material which does not seem to be part of the enquiry report.

Accordingly, we stay further operation of the impugned order dated 13.10.2008(Annexure-1) till the next date of listing. The respondents shall restore the petitioner in service and pay salary henceforth. However, it shall be open for the respondents either to take work or not to take work.”

80. The petitioner was paid salary in compliance of the aforesaid interim order, but he was not allowed to join his duties. Moreover, he was not given any increment in salary. The Writ Petition was dismissed in default on 01.05.2014. It was restored on 22.07.2014 by the following order: -

“This is an application to recall the order dated 01.05.2014 whereby this writ petition was dismissed for non prosecution. It is supported with an affidavit.

The reasons given for non appearance of learned Counsel for the petitioner on 01.05.2014 is sufficient. The application is allowed. The order dated 01.05.2014 dismissing the writ petition for non prosecution is recalled. The writ petition is restored to its original number.”

The order did not expressly state anything regarding revival of the interim order dated 04.10.2010 and no salary has been paid to the petitioner since dismissal of the Writ Petition.

81. Having held that the impugned order of dismissal is unsustainable in law, and initially an interim order was passed directing that the petitioner will be paid salary.
82. Accordingly, the Writ Petition is **allowed**. The order dated 27.08.2007 passed by the Vice-Chancellor, Integral University, Lucknow dismissing the petitioner from the service of the University and the order dated 13.10.2008 passed by the Chancellor whereby the appeal filed by the petitioner against the dismissal order dated 27.08.2007 has been dismissed, are **quashed**.
83. As a consequence of quashing of the termination order, services of the petitioner stand restored and the petitioner would be entitled to all consequential benefits, including payment of the entire back wages. Keeping in view the peculiar facts and circumstances of the case, it is ordered that the University will pay Rs.50,000/- to the petitioner towards costs of the Writ Petition.
84. Let the original records produced by the learned Counsel for the University be returned to him forthwith.

[Subhash Vidyarthi J.] [Attau Rahman Masoodi J.]

Order Date: 01.04.2025

Amit/-