Rajiv Gandhi Mahavidyalaya and ors. Vs. Anil Son of Dewaji Gaikwad and ors.

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Court : Mumbai

Decided On : Sep-12-2011

Judge : R. M. Savant, J.

Acts : Maharashtra Universities Act, 1994 - Section 59, 81; Maharashtra Universities Act, 1944 - Section 59; Code of Criminal Procedure (CPC) - Section 145; Indian Telegraph Act, 1885 - Section 3(6)

Appeal No. : WRIT PETITION NO.1301 OF 2011; WRIT PETITION NO.1314 OF 2011; WRIT PETITION NO.1315 OF 2011; WRIT PETITION NO.1978 OF 2011; WRIT PETITION NO.1979 OF 2011

Appellant : Rajiv Gandhi Mahavidyalaya and ors.

Respondent : Anil Son of Dewaji Gaikwad and ors.

Advocate for Pet/Ap. : Shri. Gordey

Judgement :

JUDGMENT

1. Rule in all the Petitions, with the consent of the parties made returnable forthwith and heard.

2. The above Petitions take exception to the Judgment and Orders of the College Tribunal by which the Tribunal has set aside the termination orders passed against the Respondents-Lecturers in Writ Petition Nos.1301/11, 1314/11 and 1315/11 on the ground that the enquiry held against the Respondents-Lecturers in the said Petitions has been vitiated. The Tribunal in the course of adjudication of the said proceedings has also held that prior permission of the University is not required to be taken for the termination of the Respondents, as the Respondents are not confirmed employees. The aforesaid three Petitions have been filed by the Management challenging the orders of the Tribunal in so far as it sets aside the termination orders passed against each of the Respondents on the ground that the departmental enquiry is vitiated on account of violation of the principles of natural justice. The Respondents-Lecturers have also challenged the said Judgment and Orders of the Tribunal in so far as it holds that for the termination of the said Respondents-Lecturers, prior permission of the University is not required. In so far as Writ Petition No.1301/11, which is filed by the Management, is concerned, the Cross Petition filed by the Respondent-Lecturer is Writ Petition No.1979/11 and, in so far as Writ Petition No.1314/11, which is filed by the Management, is concerned, the Cross Petition filed by the Respondent-Lecturer is Writ Petition No.1978/11. In so far as Writ Petition No.1315 of 2011 filed by the Management is concerned, there is no Cross Petition filed by the Respondent-Lecturer.

3. Since common questions of fact and law arise for consideration in the above Petitions, the same are heard together and disposed of. For the sake of convenience the parties would be referred to as per their nomenclature before the College Tribunal i.e. The Petitioners in Writ Petition No.1301/11 would be referred to as "the Management", and the Respondents- Lecturers would be referred to as "the Appellants".

4. In the light of the Judgment and Orders of the College Tribunal, which are impugned in the above Petitions, the following issues arise for consideration :-

A] Whether the Management is required to take permission of the University prior to terminating the services of the Respondents-Lecturers ?

B] Whether the departmental enquiry held against the Respondents is vitiated on account of violation of the principles of natural justice ?

5. Factual matrix involved in the above Petitions can be briefly stated thus :- The Respondent in each of the Petitions, who was the Appellant before the College Tribunal, was appointed as a lecturer in the concerned subjects. The Respondent in Writ Petition No.1315 of 2011 i.e. Rajkumar Bhagat was appointed on 25/09/1994, and the Respondents in Writ Petition Nos.1301 of 2011 and 1314 of 2011 i.e. Anil Gaikwad and Diwakar Kamble respectively were appointed on 21/09/1996. The said appointments were made pursuant to the advertisement that was issued by the Management in the local news papers advertising the posts of Lecturers in the concerned subjects. In so far as the appointment letters are concerned, the same were identical in respect of all the Appellants. The Respondent-Rashtrasant Tukdoji Maharaj Nagpur University had granted approval from the Session 1994-95 and 1996-97 onwards on ad-hoc basis to the appointments of the Appellants subject to the conditions as mentioned in the Government Resolution dated 22/12/1995 issued by the State Government. All the Appellants had continued thereafter without any intimation as regards their confirmation and had continued as such till their termination by the Management. The approval letters issued by the University were identical. It would be therefore apposite to reproduce one such approval letter in respect of Appellant-Anil Gaikwad.

To,

The Principal,

Wainganga Bahu Uddeshiya Vikas Sanstha,

Rajive Gandhi Mahavidyalaya,

Sadak-Arjuni, Distt. Bhandara.

Subject : Approval of the University for the appointment of lecturers in you college 1996-97

Ref'nce: Your letter No.RGM/SA/148/96 dated7.12.96.

Sir/Madam,

With reference to your letter cited above, I am directed to inform you that the Vice-Chancellor is pleased to approved the Selection/appointment of lecturers as mentioned below :

---------- S. Subject Name of the Nature of Nature of Remarks N. Candidate to Post the approval whom appro- whether granted val granted reserve OR Open

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1. Economics Shri Anil D. Open From the Session Gaikwad 1996-97 and onward on adhoc basis subject to condition as per G.R. dt.22.12.95

2. History Shri Diwakar S.C. From the Session M Kamble 1996-97 and Onward on adhoc Basis subject to Condition as per G.R. dt. 22.12.95. (emphasis supplied)

3. Physical Shri Jitendra- S.T. For the session Education kumar Thakur 1996-97 only Against R/C. You are also requested to note the following points while making these appoints :-

(a) Persons to whom approval is granted for the sessions 1996-97 and onwards against clear vacancy i.e. other then leave and lien vacancies may be directly appointed on probation.

(b) Posts of reserved categories against which persons from Open Category have been granted approval for the session Only, will have to be advertised next year for the category specified in column No.(4) and interview will have to be conducted for persons belonging to that category only.

Yours faithfully

Sd/-

(S.N. Wakade)

Asstt.Registara,

(College)

Nagpur University

Nagpur.

6. The cause for filing the Appeals before the College Tribunal for the Appellants had arisen on account of the termination orders issued by the Management in respect of each of the Appellants. The Appellants were separately charge sheeted in respect of various mis-conducts alleged against them. In the departmental enquiry, the Enquiry Officers were appointed who were advocates. The said Enquiry Officers were also changed on a couple of occasions. The Enquiry Officers appointed in respect of each of the Appellants submitted their reports wherein certain charges were held to be proved against the Appellants; whereas certain charges were held to be not proved or partly proved. The Appellants were asked to show cause against the said enquiry report. The reply given by the Appellants was not accepted by the Management resulting in the termination orders being passed against each of the Appellants. In so far as Appellant-Anil Gaikwad, who is the Respondent No.1 in Writ Petition No.1301/11 is concerned, the termination order is dated 13/5/2009, in respect of Appellant Diwakar Kamble, who is the Respondent No.1 in Writ Petition No.1314/11, his termination order is dated 1/6/2009 and, in respect of Appellant-Rajkumar Bhagat, who is the Respondent No.1 in Writ Petition No.1315/11, his termination order is dated 29/10/2004.

7. As indicated above, against the said termination orders, the Appellants filed Appeals before the College Tribunal under Section 59 of the Maharashtra Universities Act, 1994. The Appeal filed by Anil Gaikwad was numbered as N/18/2009, the Appeal filed by Diwakar Kamble was numbered as N/19/2009 and the Appeal filed by Rajkumar Bhagat was numbered as N/18/2004. In the said Appeals the contention of the Appellants was that they were confirmed employees as they were selected by following the due selection procedure, that is by the duly constituted Selection Committee in accordance with the Rules. It was further their

contention that since they had completed two years of service from the date of their appointments, they had become confirmed employees, and therefore, they could not be terminated without prior approval of the Respondent-University.

8. In so far as the departmental enquiry proceedings are concerned, it was the contention of the Appellants that the said proceedings were vitiated as they have been held in violation of the principles of natural justice. The grounds of challenge to the said proceedings were specifically set out in the Grounds of Appeal which were inter alia as follows :- That the charge sheet was issued by a person who was not authorized to do so. The enquiry was not conducted at a place where the Appellants were serving. That they were not paid TA/DA for coming to the place of enquiry i.e. Nagpur which was far away from the place of service. That the relevant documents were not furnished by the Management so that the Appellants could not effectively cross examine the witnesses nor could lead the evidence in defence properly. In so far as Appellant-Anil Gaikwad is concerned, it was stated that though one of the charges against him was as regards medical reimbursement for the ailment of his father, it was submitted that due to misconception, the said bill was preferred but the same was not paid.

9. In the said Appeals, reply was filed by the Management and it was inter alia contended in the said Reply that a fair opportunity was granted to the Appellants in the said departmental enquiry. The same can be seen from the fact that the Appellants were also allowed to be defended/represented by lawyers and in so far as case of the Appellants regarding confirmation is concerned, the Management contended that the Appellants are not confirmed or deemed confirmed employees, since their appointments were on ad-hoc basis. In so far as reliance on the Government Resolutions placed by the Appellants is concerned, it was the case of the Management that the said Government Resolutions do not have the effect of making the Appellants permanent employees thereby warranting permission of the University to terminate their services.

10. The Respondent-University in the said Appeals also filed its reply and it was the case of the University that the Appellants are deemed confirmed employees, and therefore, permission of the University was required. It was the stand of the

University that Statute 53 of the University is binding on the colleges which are recognized and affiliated to the University. In terms of Section 81 of the Maharashtra University Act, 1994, the Management has to comply with the provisions of the Statutes and Ordinances once they are granted recognition or affiliation, and therefore, it was the stand of the University that the services of the Appellants could not have been terminated without seeking prior permission of the University as postulated under Statute 53(5) of the Statutes.

11. The College Tribunal considered the said Appeals and by the impugned Judgment and Orders allowed the said Appeals by inter alia recording a finding that the departmental enquiry held against the Appellants was vitiated on account of the violation of the principles of natural justice. In so far as the aspect as to whether the prior permission of the University was required or not, is concerned, the Tribunal on a consideration of the appointment letters of the Appellants, approval granted by the University; and on a consideration of three Government Resolutions being G.Rs dated 22/12/95, 22/5/98 and 18/10/01, reached a conclusion that the candidates who had not cleared NET/SET, were only granted further time to clear the same. The Tribunal also observed that though the candidates were allowed to continue till their retirement except the annual increments, they were not entitled for any other benefits; that the permanent or confirmed employees are entitled to. The Tribunal in so far as the stand of the University as regards the said aspect is concerned observed that the stand of the University could not be accepted for conferring right of permanency, and therefore, the Tribunal concluded that it was not imperative on the part of the Management to seek approval of the University as per Statute 53(5) for the termination of the Appellants. Since the said issue as to whether the prior permission of the University is required for the termination of the services of the Appellants is an contentious issue between the parties, in my view, it would be apposite to reproduce Paragraphs 42, 47, 48 and 49 of the Judgment of the Tribunal. "42 Nothing has been pointed out to show that despite these G.R., the appointee with no NET/SET clearance, were granted benefit of confirmed employee to which the confirmed employees are entitled; including that of promotion, superior scale etc. even NET/SET cleared lecturers were to get seniority over their NET/SET uncleared seniors. It is rather doubtful, whether this Tribunal under Section 59 of

the Maharashtra Universities Act, 1994 can condone anything and declare any appointee-employee as permanent or deemed confirmed employee, without such appointment in clear terms with in conformity with Statute 53 or Ordinance 24. The appointment orders of the appellants as pointed out above do not show that they were appointed on any clear permanent vacant post on probation which was continued for two years, as required for 'deemed permanency'47 As pointed out above, it does not seem that the advertisement issued by the respondent management was for filing the "vacant" post as required by explanation appearing in Statute 53 clause4. It also does not appear that the appellants were appointed as such, on probation for two years, as required by the provisions of Statute 53, already referred above. It also clearly seems that the University had granted approval for the appointments of the appellants, which was no less than "adhoc in view of G.R. Of 1995". The G.R. does stipulate that their appointments shall be subject to clearing of NET/SET, as regards the benefits arising out of permanency of the post. Latter G.R's. also show that only duration of period which was required to clearing NET/SET was extended from time to time. Although, it is contended by the respondent University that the appellants were holding eligibility criteria of qualifications at the time of appointments, granting approval as adhoc to the appointments of the appellants speaks otherwise. In my opinion, therefore, the stand of the respondent University though appears to be supporting the appellants, cannot be accepted for conferring the rights of permanency and that of confirmed employees on the appellants in terms of Statute 53 for the obvious reasons and consequences flowing for such entitlement in future. The net result would be that, I do not find that it was imperative on the part of the respondent management to seek approval of the respondent University for the termination of the appellants.48 However, by way of caution; it needs to be mentioned that as the appellants were continued in the said post for years together, without any signal from the respondents that they are treated as temporary employees for all purposes including for termination, they would be entitled to some sort of protection. It does appear that even the respondent University did not try so also the management to seek instructions either from University Grants Commission or Government as to what should be done in such matters. Therefore, only G.R's. referred above would govern the subject matter of the appointment and

termination of the appellants. Consequence of this situation would be that the appellants could not be terminated, without proper inquiries for the reasons appearing in the proforma agreement, which in the present case, is the "misconduct" and subject to the terms of agreement. But no mandate like seeking prior permission of the University for the termination as required under Statute 53 would be attracted. In such cases, the appointment of the appellants can be treated as that of quasi permanent nature, with the relevant conditions. 49 The appellants though are not entitled for the protection as in the cases of confirmed employee in pursuance to the Statute 53, they would be entitled for certain protection from termination unlike other temporary or part time or like employees. Therefore, respondents would not be entitled to terminate the appellants in the fashion, as they terminate the "purely temporary" employees."

12. It is significant to note that though the Tribunal rejected the case of the Appellants as well as University that they were permanent employees or deemed confirmed employees, the Tribunal has observed that the Appellants were entitled to some sort of protection as a logical corollary to the said finding of the Tribunal, the Tribunal held that the Appellants could not be terminated without proper enquiry being held against them. The Tribunal concluded that the appointment of the Appellants can be treated as that of "quasi permanent in nature with the relevant conditions".

13. In so far as the aspect of violation of the principles of natural justice in the matter of holding of departmental enquiries against the Appellants is concerned, the Tribunal held that the said principle was violated on account of the fact that the enquiries were held at Nagpur whereas all the three Appellants were serving at Sadak-Arjuni which is at a distance of 190-200 km and that the enquiry was held as per the convenience of the Enquiry Officer, most of the time in the evening. The Tribunal further held that in spite of the request made by the Appellant Anil Gaikwad by his applications dated 14-8-2007, 6-10-2007 for holding the enquiry at Sadak Arjuni or at a place in the vicinity, the same was not accepted by the Management. The Tribunal further held that the TA/DA was also not paid to the Appellants at the proper time and that the same was paid only after letters were addressed to the Management in that behalf. The Tribunal also recorded that the

enquiry was conducted even when one of the Appellants namely Anil Gaikwad was indisposed. The Tribunal further recorded a finding that the Appellants though they were allowed to be represented by the advocates were almost compelled to take the steps to defend themselves, even in distress. The Tribunal was therefore of the view that in the departmental enquiry held against the Appellants, the Appellants were not afforded sufficient, proper and fair opportunity. The Tribunal in so far as Appellants Anil Gaikwad and Diwakar Kamble are concerned, held that since the person who was responsible for initiation of the action, appeared as witness in the enquiry held against the said Appellants and later on was also the member of the committee which considered the reports of the Enquiry Officer, and thereafter took a decision to terminate the services of the Appellants. The said enquiry was vitiated on that ground on the application of the principle that a person cannot be a judge in his own cause. The Tribunal therefore held that the witness who was examined on behalf of the Management in the departmental proceedings had also participated in the decision making process after the Enquiry Officers' report was furnished as regards acceptance of the said report and the consequential termination of the Appellants. Though the Tribunal has not recorded in terms a finding of bias, the Tribunal has held that the termination orders of the Appellants which were based on such proceedings cannot be sustained. As indicated above, the Tribunal has set aside the termination orders passed against the Appellants on the ground of violation of the principles of natural justice.

14. Submissions on behalf of the Management by learned counsel Shri A Z Jibhkate and Shri V P Marpakwar :- The learned counsel appearing for the Management in the three Petitions filed by the Management made the following submissions in respect of the findings of the Tribunal regarding vitiation of the departmental enquiry on account of the violation of the principles of natural justice :-

(i) That the Tribunal has recorded a finding as regards violation of the principles of natural justice without recording any reason therefor, according to the learned counsel for the Management, the Tribunal has not stated as to on what basis it has reached the conclusion, that the principles of natural justice have been violated.

(ii) That the Appellants participated in the enquiry, the venue for which was at Nagpur at their own freewill and volition, and therefore, the Appellants cannot make a grievance about the same.

(iii) That the Appellants were paid TA/DA for the days when they had remained present for the enquiry. Therefore, the travel from Sadak Arjuni to Nagpur; the venue of the enquiry was taken care of and therefore no prejudice was caused to them.

(iv) That though on a few occasions there is delay in payment of TA/DA, the same could be attributed to the delay by the Appellants in complying with the requirement to claim TA/DA. However, on such compliance the TA/DA was immediately paid to them, and therefore, the Appellants cannot have a grievance on the ground that they were not paid TA/DA.

(v) That the enquiry cannot be said to be vitiated on the ground that the secretary of the Sanstha Smt.V B Karanjekar took part in the process of initiating the enquiry against the Appellants, thereafter she appeared as a witness, and she was a member to the decision making process for terminating the services of the Appellants; as she had acted in different capacities.

(vi) That the evidence of Smt.Karanjekar was only restricted to the documents which had to be got proved through her. Her evidence was not as regards the incidents on the basis of which the charge sheets were issued to the Appellants. It is in her capacity as a Secretary of the Sanstha that she had participated in the decision making process, and therefore cannot be said to be a judge in her own cause. The learned counsel for the Management Shri Jibhkate relied upon the judgment of the Division Bench of this Court reported in 1997 (3) Mh. L. J. 709 in the case of Thapar Education Society and anr. v/s. Shyam Maroti Bhasarkar and ors. in support of the said submission.

(vii) That the Tribunal ought to have spelt out as to from which stage the enquiry has been vitiated, and consequently it was necessary for the Tribunal to order remand from that stage, which in the instant case, according to the learned counsel for the Management, would be from the stage of decision making after

receipt of the report of the Enquiry Officer. The learned counsel for the Management placed reliance on the judgment of the Apex Court reported in AIR 2004 SC 4255 in the case of N.T.C. (WBAB and O) Ltd. and another v/s. Anjan K Shah and AIR 1994 SC 1074 in the case of Managing Director, ECIL, Hyderabad etc v/s. B Karunakar .

(viii) That the Tribunal erred in directing reinstatement of the Appellants. Since the Tribunal has permitted the Management to hold de novo enquiry, at the highest the Tribunal could have directed the Appellants to be notionally reinstated.

(ix) That there is no foundation in the pleadings before the College Tribunal as regards the ground of bias, and therefore, the Appellants are disentitled to urge the said ground.

15 In so far as Appellant Rajkumar Bhagat is concerned, learned counsel appearing for the Management in the said Petition Shri Marpakwar made the following additional submissions :-

(a) That the Tribunal erred in taking into consideration the factors which were applicable in the case of Anil Gaikwad and Diwakar Kamble to come to a conclusion that the enquiry is also vitiated in the case of Rajkumar Bhagat;

(b) That the case of Rajkumar Bhagat stands on a different footing from the case of other two appellants, and therefore cannot be equated.

(c) That in the case of Rajkumar Bhagat charge sheet was issued by the President of the Sanstha; that the secretary Smt.Karanjekar has not been examined as a witness in the case of Rajkumar Bhagat, and therefore the enquiry could not be said to be vitiated on the said ground;

(d) That the termination order was issued by the President, and therefore the enquiry cannot be said to be vitiated on any of the grounds which the Tribunal has found in the case of the other two Appellants.

(e) That Appellant Bhagat has been paid TA/DA which was never disputed by the counsel representing Bhagat in the enquiry or by Bhagat himself. The challenge to

the enquiry in the case of Bhagat was restricted only to the non-payment of TA/DA.

16. Submissions on behalf of the Appellants by learned senior counsel Shri A M Gordey in support of the finding recorded by the Tribunal as regards violation of principles of natural justice :-

(A) It is well settled that a fair and proper opportunity is to be given to a delinquent in the departmental enquiry so that justice is not only seen to be done but also done. The enquiry in the instant case was held at Nagpur, where as the Appellants were working at Sadak Arjuni, and therefore entailed a travel of 190-200 km on the days of the enquiry, the same therefore had an effect of impinging upon the right to have a fair opportunity as the Appellants were always under pressure to attend the enquiry at Nagpur which was mostly kept in the evening;

(B) That the Appellants had addressed letters from time to time by which they had asked for a change in the venue of the enquiry. The said letters were dated 3/3/2007, 25/4/2007 which were exhibited in the Enquiry Proceedings as also the letter dated 13/8/2008 which was not exhibited;

(C) That the Appellants were per force required to make an application for TA/DA and then only they were paid the same. The Management was obligated to provide all the facilities since the enquiry was being held at Nagpur. However, the TA/DA was paid to the Appellants and in the case of Appellant Anil Gaikwad after about 48 days of the enquiry, and therefore the same had the effect of impinging upon the right of the Appellants to a fair opportunity as they were under the pressure to make their own arrangement;

(D) That the TA/DA was paid by the Management when the enquiry proceedings had reached the stage of submission of the Enquiry Officers' report i.e. on 29/9/2009 whereas the enquiry had commenced in the year 2007, and therefore the said fact impinged upon the factum of whether fair opportunity was granted to the Appellants;

(E) That one of the Appellants was indisposed and advised rest from 24/5/2007 to 26/7/2007. The enquiry proceedings were still held during the said period. That this is a classic case where there can be a ground for reasonable presumption of bias.

(F) That the secretary of the Sanstha Smt.Karanjekar had participated in the decision making process of initiating the enquiry against all the Appellants. She thereafter had appeared as a witness and she had finally participated in the decision making process relating to termination of the services of the Appellants, the enquiry proceedings were therefore vitiated on the ground of apprehended bias on the part of Smt.Karanjekar.

(G) The learned senior counsel appearing for the Appellants would contend that the test of bias is not whether a litigant could reasonably apprehend that a bias attributable to a member might have operated against him in the final decision. The test also would be as to what would be the impression of a reasonable or common man. The answer obviously according to the learned senior counsel would be that considering the aforesaid facts there is a cause for reasonable apprehension that the decision making process was not free from bias on account of participation of the secretary of the sanstha Smt.Karanjekar. To buttress the said submission, the learned senior counsel placed reliance on the judgment of the Apex Court reported in AIR 1957 SC 425 in the matter of Manak Lal v/s. Dr.Prem Chand Singhvi and others as also a judgment of a Division Bench of this Court reported in 1997 (3) Mh. L.J. 235 in the matter of Kashiram Rajaram Kathane v/s. Bhartiya R B Damle Gram Sudhar Tatha Shikshan Prasar Society and ors.

(H) That the aforesaid facts ex facie demonstrate that the secretary Smt.Karanjekar had acted as a judge in her own cause as she had participated in the decision making process of initiating the enquiry against the Appellants, she thereafter had deposed as a witness and lastly participated in the decision making process relating to the termination of the services of the Appellants.

(I) It is submitted by the learned senior counsel for the Appellants that the departmental enquiry proceedings are by nature quasi judicial, and therefore have

to be free from bias or apprehended bias. Reliance was placed by the learned senior counsel on the following Judgments (1) AIR 1958 SC 86 in the case of State of U.P. v/s. Mohammad Nooh and (2) 1975 LAB.I.C 3 in the case of Dr. Madan Gopal Gupta v/s. The Agra University, through its Vice-Chancellor, Agra and ors. in support of the said submission.

(J) That though it was the case of the Management that the secretary Smt.Karanjekar was required to depose only as regards the documents pertinently nothing was brought on record as regards the documents. The learned Senior counsel therefore submitted that though no interference is called for with the impugned judgment and orders on the aspect of the vitiation of the enquiry proceedings on account of the violation of principles of natural justice, this Court ought to interfere with the said part of the order wherein the Tribunal has held that prior permission of the University was not required for terminating the services of the Appellants. The learned counsel Shri A P Raghute appearing for Appellant-Rajkumar Bhagat in Writ Petition No.1315 of 2011 adopted the submissions of Shri A M Gordey the learned senior counsel appearing for the Appellants in other two Writ Petitions. However, additionally he contended that the ground of non payment of TA/DA has been specifically taken in the Appeal filed before the College Tribunal filed by the said Appellant-Rajkumar Bhagat. The learned counsel Shri J B Jaiswal appearing for the Rashtrasant Tukdoji Maharaj, Nagpur University, also adopted the submissions of Shri A M Gordey, the learned senior counsel appearing for the Appellants Anil Gaikwad and Diwakar Kamble. However, additionally he drew my attention to the reply filed by the University before the College Tribunal.

17. Submissions of the learned counsel for the Management Shri Marpakwar on the issue whether the prior permission of the University is required for termination of the services of the Appellants :-

a] That the Appellants have been appointed on ad hoc basis and subject to the G.R. dated 22/12/1995 and since the Appellants do not possess qualification of NET/SET, they cannot be said to be permanent employees or deemed confirmed employees;

b] That the appointment of the Appellants was not in terms of Rule 38 of Ordinance 24 as the appointment of the Appellants was not made by the Governing Body of the College but the foundation society, and therefore, the appointment of the Appellants, being temporary, the Appellants were not entitled to the protection of Statute 53 (5);

c] That merely because the Appellants have continued for number of years as lecturers, would not confer them the benefit of regularization or permanency. The learned counsel for the Management Shri Marpakwar placed reliance on the judgment of the Division Bench of this Court reported in 2009(2) Bom.C.R. 463 in the case of Urmila Pravinchandra Malaviya v/s. State of Maharashtra and ors, wherein the judgment of the Apex Court reported in AIR 1995 SC 974 is referred to, it has been held by the Division Bench that continuous service for number of years would not confer benefits of permanency;

d] That no exception could be taken to the finding of the Tribunal that the Appellants are quasi permanent employees and as such no prior permission of the University to their termination is required though enquiry would have to held against them;

e] That the agreement as contemplated in Clause 38 of Ordinance 24 is not applicable to the facts of the Appellants' case as the Appellants have not been appointed by the Governing Body or the Local Management Committee but have been appointed by the Foundation Society;

f] That though reliance was sought to be placed by the Appellants on the three Government Resolutions dated 22/12/1995, 22/5/1998 & 18/10/2001, the said resolutions only extend the period of acquiring the qualification of NET/SET but do not have effect of regularization/confirmation of the services of the Appellants so as to afford them protection of Statute 53(5);

18. Submissions of the learned senior counsel for the Appellants Shri A M Gordey on the issue whether the prior permission of the University is required for termination of the services of the Appellants :-

i] That the Tribunal after recording a finding that the Appellants are "quasi permanent employees" and therefore a procedure would have to be followed by the Management of holding an enquiry against the Appellants in respect of the charges against them, has thereafter misdirected itself by holding that prior permission/sanction of the University as contemplated by Statute 53(5) need not be taken in the case of the Appellants.

ii] That the Appellants having been appointed by following the procedure of issuing an advertisement, selecting them by the duly constituted selection committee, and thereafter appointed, and having continued for almost 13/14 years, were entitled to be a declaration of being deemed confirmed employees and regularization of their services;

iii] That it is nobody's case that the Appellants were not appointed in a clear vacancy and by following the procedure. The Management cannot therefore be now allowed to take technical pleas so as to deny the Appellants' benefit of being confirmed employees;

iv] That the approval granted by the University in case of each of the Appellants being subject to Government Resolution dated 22/12/1995. The said G.R. and the subsequent G.Rs. modifying/suspending the said G.R., have become part of the said approval granted by the University;

v] That in terms of the said G.Rs., protection has been granted to the Appellants for termination of their services even though the Appellants might have not attained the qualification of NET/SET as what can be denied to the Appellants in terms of the GR are the promotion and higher pay scale, but the GR in terms grants protection, from being terminated on the ground that the Appellants do not possess qualification of NET/SET meaning thereby that the Appellants are entitled to confirmation in their services and would be entitled to the benefit to the extent mentioned in the said GR.

vi] That the fact that the agreement in question is not executed in terms of the Schedule A to the said Ordinance 24 would not impinge upon the appointment of the Appellants and it would have to be held that the Appellants have been validly

appointed, and are entitled to the benefit of regular confirmed employees. Reliance is placed by the learned senior counsel on the judgment of the Full Bench of this Court reported in 1981 Mah L J 332 in the matter of Premlata Sudhakar Sathe v/s Governing Body of G S Tompe College.

vii] That since the protection has been granted in respect of the services of the Appellants in terms of the three Government Resolutions, the services of the Appellants cannot be terminated without taking prior permission of the University under Statute 53(5) as the same would be in breach of protection granted to the Appellants in terms of the said Government Resolutions. CONSIDERATION :-

19. Having heard the learned counsel for the parties at length, in my view, out of the two issues which arise for consideration in the above Petitions, it would be appropriate to first deal with the issue as to whether prior permission of the university is required for terminating the services of the Appellants. It would therefore be apposite to reproduce the relevant paras of Statute 53. Paras 4 and 5 of the Statute 53 are relevant on this issue and the same are reproduced herein under:-

"4 A Teacher shall subject to the procedure of Selection and Appointment, be appointed in a clear vacancy in the first instance on probation for two years (24 months) from the date of his appointment, at the end of which he shall be confirmed, on the expiry of which he shall either be confirmed or his services dispensed with, provided that notice of such confirmation or termination on services shall be given at least one month before the due date, in the absence of which it shall be construed that he has completed the period of probation satisfactorily and that he is deemed to be confirmed in service. Provided that if any teacher already in service has completed two years of service temporary/probation in a clear vacancy, he will be deemed to be a confirmed teacher. Explanation : It is here by clarified that a clear vacancy means a vacancy which is not in a lien vacancy or leave vacancy and that the vacancy/post is in vogue in the Institution for not less than four years.

5 Termination of the services of any teacher shall Take place only in accordance with the provisions of the college code ordinance (No.24) and contract appended

thereto. Provided that, in case of a teacher, who is already confirmed prior to the commencement of this Statute or in case of a teacher covered by para 4 above, no notice of termination shall be issued or termination made effective, without the prior approval of the Executive Council of Nagpur University."As can be seen, Para 5 of Statute 53 inter alia provides that in case of a teacher covered by Para 4 of the said Statute, no notice of termination shall be issued or termination made effective, without the prior approval of the Executive Council. A teacher covered by Para 4 of the said Statute, is a teacher who is appointed in a clear vacancy on probation for two years from the date of his appointment on the expiry of which he should either be confirmed or his services dispensed with, provided that notice of such confirmation or termination of services shall be given at least one month before the due date, in the absence of which it shall be construed that he has completed the period of probation satisfactorily and that he is deemed to be confirmed in service. It would also be relevant to note that the Proviso to the said Para 4 provides that if a teacher who was already in service and has completed two years service temporary/probation in a clear vacancy, he would be deemed to be a confirmed teacher.

20. It would also be apposite to reproduce the relevant extract of Ordinance 24. Rules 8 and 9 of the Ordinance 24 are relevant on this issue and the same are reproduced herein under :-

"8 After confirmation the services of the party of the first part can be terminated only on the following grounds :-

(a) Willful and persistent neglect of duty,

(b) Misconduct,

(c) Breach of any of the terms of the contract,

(d) Physical or mental unfitness,

(e) Incompetence

(f) Abolition of the posts. Provided firstly, that the plea of incompetence shall not be used against the party of the first part after he has served the part of the second part for five years or more. Provided secondly, the services of the party of the first part shall not be terminated under clause (c) or (f) without the previous approval of Nagpur University.

9. Except when termination of service has taken place under sub-clause (a) or (b) of clause (8), neither the party of the first part nor the party of the second part shall terminate this agreement except by giving to the other party three calendar months notice in writing or by paying to the other party a sum equivalent to thrice the monthly salary, which the part of the first part is then earning. Notice period of termination of service by or of the staff on temporary or probationary appointment should be restricted to one month only" Ordinance 24 therefore provides that the appointment of a teacher of a College other than temporary for a period not exceeding one academic year shall be made by governing body of the college after inviting applications. Services of a confirmed teacher can only be terminated on the ground mentioned in Para-8 of the said Ordinance. The said Para also provides that the services of a confirmed teacher cannot be done away without previous approval of the Nagpur University. Rigours of the said provisions i.e. Statute 53 and Ordinance 24 would, therefore, have to be followed in the case of a confirmed teacher.

21. It is in the context of the aforesaid provisions that the appointments of all the Appellants would have to be seen. There is no dispute that the Management at the relevant time had issued an advertisement in the local news papers "Lokmat" and "Loksatta" inviting applications for the posts of lecturers in the subjects mentioned in the said advertisement. The Appellants had applied for their respective subjects pursuant to the said advertisement. There is also no dispute that the Management had constituted a Selection Committee for carrying out selection pursuant to the said advertisement. The Appellants had appeared before the said Selection Committee at the relevant time and the said Selection Committee had found them fit for appointment and had accordingly selected them. The Management thereafter had issued appointment orders which inter alia stated that they had been appointed for the concerned academic session on wards on ad hoc basis. It

is an undisputed position that the proposal for approval of the Appellants was forwarded to the University by the Management. The University had approved the appointments of the Appellants for the concerned academic sessions onwards and subject to the Government Resolution dated 22/12/1995. It is significant to note that the advertisement did not mention that the posts which were advertised were temporary or were not clear vacancies. It is also not the case of the Management that the appointments of the Appellants were made in the posts which were not clear vacancies. A clear vacancy means a vacancy which is not in a lien vacancy or leave vacancy. The advertisement was issued by the Management only because the vacancies were clear vacancies. It is required to be borne in mind that the Appellants had continued in the said posts for a period of 13 to 14 years prior to their termination, without Management intimating them that their appointments were temporary. At the same time, it is also required to be borne in mind that the Management had allowed the position to continue without issuing letters of confirmation to the Appellants. Having regard to Statute 53 and especially Para 4 thereof, the Appellants are entitled to contend that they have become deemed confirmed employees by operation of the said Statute 53(4). Since in the approval letters, it is mentioned that the appointments of the Appellants are subject to Government Resolution dated 22/12/1995. The impact of the said Government Resolution dated 22/12/1995 and the subsequent Government Resolutions dated 22/05/1998 and 18/10/2001 on the appointments of the Appellants would be considered a bit later.

22. Suffice it to say that it does not behove the Management to take a stand that it has taken, that since appointments of the Appellants were not made by the governing body, the said appointments were not in accord with Clause 38 of Ordinance 24 and therefore the Appellants having not been appointed as per the said Ordinance, cannot lay a claim to deemed confirmation or permanency. In the said context it would be relevant to refer to the judgment of the Full Bench of this Court in Premlata's case (supra). In the said case, the appointment of the teacher concerned was made by the Governing Body initially for a temporary period and thereafter on probation. However, the agreement in Schedule-A to the said Ordinance was not executed by the Management. The Management raised a plea that the teacher was not entitled to the rights mentioned in the Schedule as the

agreement prescribed in Schedule-A had not been executed. Negativing the said contention of the Management, the Full Bench of this Court answered the reference by holding that non-execution of the agreement would not vitiate the appointment as the matter was more of substance than of form. Para 6 of the said judgment is material which is reproduced herein under :-

"6 It is needless to say that the College Code was framed by the University to protect teachers from unscrupulous Managements from terminating their services or making appointments at their whims. The intention behind the framing of the College Code is to provide for better conditions of service to the teachers in the affiliated colleges and also to provide protection against unscrupulous removal, termination and dismissal from service. If that is the intention behind the framing of the College Code, then the provisions of Chapter-V relating to the selection and appointment of teachers will have to be construed in this background. Article 33 of the College Code deals with the appointment of teachers and provides for the procedure to be followed for such appointments. By sub-article (2) of the said Article it is provided that such teachers shall be appointed on a written contract in the form prescribed in Schedule-A. The phraseology used in sub-Article (2) clearly indicates that the appointment is not contemplated in any other manner except on a written contract in the form prescribed in Schedule-A. It is not open to the parties to vary the terms of this written contract to the disadvantage of teacher. Thus, in substance, form prescribed in Schedule-A is a statutory form of contract and is a part and parcel of Chapter-V of the College Code itself. If that is so, then mere non- execution of the contract cannot vitiate the appointment, nor can it affect the enforceability or the binding nature of the contract itself. When applications are invited by the Management for appointment of a teacher as per the provisions of Article 38 of the College Code, it can safely be presumed that the Management intends to make the appointment of teacher subject to the terms and conditions incorporated in the form prescribed by Schedule-A. Article 38(2) makes it clear that such teacher can only be appointed on a written contract in the form prescribed in Schedule-A. The word "shall" is indicative of this intention. Similarly, a candidate who offers himself for appointment as a teacher on probation is also presumed to do so with the requisite knowledge of his rights and liabilities incorporated in the form of written contract prescribed in Schedule-A. If this is so,

then the execution of a written contract is nothing but a mere formality. Normally a dispute or fight between an individual teacher and the Management is unequal in nature. In these circumstances, an unscrupulous employer cannot be permitted to take advantage of his own wrong of not getting a written contract duly executed, nor a teacher can avoid his responsibility under the said contract only because he has not signed the written contract. This is case where a form of contract is prescribed by the statute and the rights and liabilities flow from this statutory contract itself. Article 38(2) will have to be read together with Schedule-A which forms a part and parcel of the said Article of the College Code. The provisions of the College Code cannot be read in isolation divorced from the Schedule- A. The parties cannot be permitted to evade their liability under this statutory contract only because the ministerial act of signing the contract was not carried out. It is the substance of the matter which should take precedence over mere form. It is well settled that a construction should be put on such provisions of law which will suppress the mischief and advance the remedy. It must be so construed as to defeat all attempts of evasion or to avoid the obligations flowing from it even indirectly or in the circuitous manner. A construction will have to be preferred which will help avoiding injustice and absurdity and a construction which will help the party to escape from the obligation or will enable him to defeat the statute or to impair the obligation of the contract by his own act or otherwise will be profited by his own wrong will have to be avoided. If two interpretations are possible, then the one which will suppress the mischief and advance the remedy will have to be preferred. The execution of the written contract is contemplated after following the procedure for selecting a candidate for appointment. After the appointment letter is issued a written contract would be executed. If this is so, the execution of a written contract is followed by the initial appointment of the teacher after following the procedure prescribed by Articles 38 and 39 of the College Code. If no option is left to the Management in the matter of appointment, then, in our opinion, the ministerial act or a formality of non-execution of the contract cannot change the substance of the contractual obligation or liabilities. By the College Code itself, a statutory form of agreement is prescribed. This means that the terms and conditions of the contract are also prescribed by the statute itself. In view of this, the execution of the written contract is a mere formality and not the substance of

the matter. Any infirmity or formal defect in the actual execution of the contract cannot vitiate the contract itself, nor can it rob the parties of the rights and obligations flowing from the statutory contract. In the present case, it is an admitted position that the appointment of the petitioner was not made on a temporary basis but she was appointed on probation. This being the position, the form prescribed in Schedule-A was applicable to the appointment of the petitioner and, therefore, the terms and conditions incorporated in the written contract prescribed in Schedule-A automatically become applicable to her as soon as she is appointed on probation as per the provisions of Chapter V of the College Code. This is the net result of the appointment made under Articles 38 and 39 of Chapter V of the College Code. Though it is better that a written contract should be executed by the parties in the form prescribed in Schedule-A, in our opinion, mere non-execution of the written contract cannot vitiate the appointment, nor it can rob the teacher of his rights under the agreement prescribed in Schedule-A itself. Therefore, the question referred to this Full Bench is answered in the affirmative. As a necessary consequence of this, the matter will have to be placed now before the Division Bench for disposal of the written petition in accordance with law. Costs of this reference will be costs in the cause and in the discretion of the Division Bench."

23. It would be pertinent to note that the tribunal considering the manner in which the Appellants were appointed, approval granted by the University and the continuation of all the Appellants for a period of 13 to 14 years, has termed the Appellants as "quasi permanent employees" and has in terms observed that the Appellants because of being quasi permanent employees, would be entitled to some sort of protection. However, the Tribunal thereafter considering the fact that the Appellants were claiming deemed confirmation/permanency which declaration the Tribunal thought it could not give in an appeal filed under Section 59 of the Maharashtra Universities Act, 1944 and also on the interpretation of three Government Resolutions dated 22/12/1995, 22/05/1998 and 18/10/2001 which it felt did not grant exemption from passing NET/SET. The Tribunal held that though the Management would be obliged to hold an enquiry against the Appellants in respect of the misconduct alleged against them, the prior permission of the University for terminating their services was not required.

24. In my view, the issue has to be looked at from a slightly different angle than the one looked at by the Tribunal. The question is not as to whether the Appellants are to be granted declaration of being deemed confirmed employees but as to whether for their termination, prior permission of the University is required. It cannot be gainsaid that the Statutes and the Ordinances are issued by the University from time to time to regulate and protect the services of the teachers of the Universities and the affiliated colleges. It is in the said context that the case of the Appellants would have to be considered. The Tribunal therefore considering the facts and circumstances of the case of the Appellants, in one way rightly came to the conclusion that the Appellants were "quasi permanent employees". However, the Tribunal denied the benefits of the protection under Statute 53(5) to the Appellants on the ground that the three Government Resolutions on which much store has been laid on behalf of the Appellants do not exempt the Appellants from the qualification of NET/SET and, therefore, since the Appellants do not possess the said qualification, they are not qualified to hold the post of lecturer and though some protection is granted to them by the said Government Resolutions, they are not entitled to the protection of Statute 53(5).

25. It is of some significance to note that the University before the Tribunal took a stand that its prior permission is required for termination of the services of the Appellants. The said stand of the University appears to be a considered stand, based on Statute 53 and having regard to the manner in which the services of a confirmed employees are required to be terminated, for which a particular mechanism has been provided which inter alia governs the manner in which the permission is required to be sought by the affiliated colleges or institutions and also provides the manner in which the power is to be exercised by the University. It is also of some significance to note that though the Management is refusing to accept the Appellants as confirmed employees, it has chosen to follow a course of action viz. holding of an enquiry against the Appellants which course of action is contemplated in respect of a confirmed employee. Since the approval granted by the University to the appointments of the Appellants have been circumscribed by the Government Resolution dated 22/12/1995, it would be relevant to note the purport and intent of the said Government Resolution dated 22/12/1995 and also the subsequent Government Resolutions dated 22/05/1998 and 18/10/2001.

(Translated versions from the impugned Judgment are reproduced herein under) In so far as Government Resolution dated 22/12/1995 is concerned, clause 7 of the same is material and the same is reproduced herein under :-

"7 The Govt. has seriously considered this question and accordingly orders as under :

(A) By this order the cut-off date i.e. 31.3.1996, for passing NET/SET Examination is revoked/withdrawn.

(B) Those Lecturers who have been appointed on or after 19/9/91 and have not passed NET/SET Exam. Or have not passed M.Phil, Examination by 31.12.1993 or have not submitted their Ph.D Thesis by 31.12.93, shall be required to pass NET/SET Examination.

(C) If those candidates who have required qualification, (NET/SET) are not available and those candidates who have the above stated other qualifications, are re-appointed or are required to be appointed such appointments shall be considered as Ad- hoc appointments. Even it such appointments are Ad- hoc, their appointments shall not be cancelled for no passing NET/SET Examination. But such lecturers should not be given annual increments till they pass NET/SET Exam., whenever they pass NET/SET Examination, the withheld increments shall be given. But they shall not be entitled to any arrears thereof. Similarly those Lecturers who are appointed as Ad-hoc, they shall not be considered for Higher Grade or Selection Grade. Their Seniority or Selection grade will be counted from the date on which they pass the NET/SET Examination, so also those Lecturers who pass NET/SET Examination, earlier, they shall be senior in the seniority than others. All non-Agricultural Universities are directed to bring to all colleges in their jurisdiction the above said orders and take the responsibility of proper implementation of the same. Whenever candidates of backwards classes are not available for reserved post of the said classes, non- backward class candidates are appointed. Such appointments are governed by Govt. Resolution Dt. 19/1/1995. The sum and substance of the said Government Resolution is that the last date for passing NET/SET Examination i.e. 31/3/1996 was revoked/withdrawn and the earlier appointees were directed to clear NET/SET Examination. However,

what is significant to note from the point of view of the present Petition is that the NET/SET uncleared candidates were allowed to continue in service but subject to the condition of sub-clause (c) of clause 7 of the said Government Resolution. The next in line is the Government Resolution dated 22/05/1998. The relevant portion of the said Government Resolution reads as follows :- "University Grants Commission has made it compulsory to have passed the necessary qualifying examination (NET/SET Examination) for being appointed to the Post of Lecturer in the Universities and Colleges affiliated thereto. Since the candidates possessing these qualifications are not available, therefore, those candidates who do not possess the qualification of NET/SET, are appointed with a condition that they will achieve the said qualification. By the Government Resolution dated 22.12.1995 bearing No.1794/7985, orders were given that such appointments have been considered as ad-hoc appointments, similarly such lecturers will not be given any increments in their pay scale till they qualify the NET/SET Examination.

2. In this regard after considering, the Government has resolved that such above said lecturers by way of a concession the restrainment as the increments in their pay scale shall be entitled to the same with effect from 1.4.1998. The fixation of their salaries shall be fixed as if their pay scale was never restrained before 1.4.1998 and they shall be entitled for further increments with effect from 1.4.1998. Similarly even if these Lecturers do not qualify the requirement of NET/SET after the above said date, their annual increments will not be restrained/stopped. Those lecturers of whom their increments were strained shall not be entitled to any arrears towards payment of higher pay scale of the period before 1.4.1998.

3. Though the concession of granting annual increments will not mean that the qualification of NET/SET has not been relaxed to the Ad-hoc appointees." By the said Government Resolution the lecturers who had not cleared NET/SET were held to be entitled for annual increments. However, their services were not to be treated as regularized and they were asked to attain those qualifications later. The last in line is the Government Resolution dated 18/10/2001.The said Government Resolution is the defining Government Resolution in so far as the issue as to whether prior permission of the University is required for the termination of the services of the Appellants. The said Government Resolution dated 18/10/2001

reads as under :- "INTRODUCTION The University Grants Commission has issued a Notification on 19.9.1991 whereby prescribing the qualifications for appointment to the post of Lecturers in subjects of Arts, Science, Commerce, Law, Education, Sociology, Physical Education and Foreign Languages, whether in Government or Non-Govt. colleges, which are as under :-

(A) Candidate must have passed the Post Graduate Examination with minimum 55% marks in the said subject and must also have good academic record.

(B) He must have also passed the National Education Test (N.E.T.) of University Grants Commission or such State Lever examination (i.e. S.E.T) recognized by University Grants Commission.

2. Those lecturers who are appointed after 19-09-1991, are required to acquire the above qualification as required by the Regulation of 1991 of University of Grants Commission.

3. As per the recommendation of the University Grants Commission, Lecturers of Universities and Colleges affiliated there to have been extended the pay scale as per Vth Pay Commission by Government Resolution dated 11.12.1999. Therefore for appointment to the post of Lecturer the candidate is required to qualify the N.E.T./S.E.T. Examination.

4. The University Grants Commission by its Regulation 2000 issued under the Notification dated 4.4.2000 has included the above educational qualification. By Government Resolution Dt.16.6.2000 the above regulations are applicable to all the Universities and Colleges. By the said order, it is also informed to all Universities and Colleges that hereafter i.e. 4.4.2000 candidates not having the required qualification should not be appointed in any of the colleges or Universities in the State, if such appointments are made, the same will not be recognised and no grant will be given to the same. Similarly all those appointments which are after 4.4.2000, the same should be immediately cancelled.

5. The candidates who have been appointed as per the recommendation of the prescribed Selection Committee during the period of 19.9.1991 to 11.12.1999 on

the post of College Lecturer, their appointments have been retained by the State Government from time to time. GOVERNMENT RESOLUTION : There are around 6000 NET/SET Lecturers, in the State who are appointed in Universities and Colleges between 19.9.1991 to 11.12.1999. Taking into consideration the said situation, so also the fact that such lecturers have completed 7 to 8 years service and many public representatives have time and again made endeavours, therefore, taking into consideration the changes which have been made in the Government Resolutions and the fact the students should not face a loss due to not having Lecturers and for these reasons the State has taken a policy decision as regards the non NET/SET Lecturers appointed in the State after 19.9.1991, which is as under :-

1. The Government Resolution Dt.22.12.1995 of Higher and Technical Education and Department of Service Planning bearing N.NGC-1714/7945/Uni.Edn-4 stands repealed.

2. Those lecturers are appointed in Colleges or Institutions, whether Grant-in-aid or non-granted, between the period 19.9.1991 to 11.12.1999 and who have been selected by then Selection Committees, their services shall not be discontinued on following conditions :-

(A) Those Lecturers (Non.NET/SET) were appointed during the above said period will be required to pass the NET/SET Examination by December, 2003.

(B) If during the above said & required period those Lecturers who do not pass the NET/SET examination, they shall not be entitled to any monetary gain like promotion, Higher Grade, Selection Grade but they will be entitled to increments in salary. They, in such conditions shall be entitled to the pay scale of Rs. 4000-13,500/- till their retirement.

(C) Whether these Non-NET/SET Lecturers pass NET/SET examination, they shall be entitled to seniority in Higher Grade/Selection Grade so also names of such lecturers shall be included in the List of Seniority as per rules.

(D) The Services of Lecturers in Colleges owned by the Government shall be continued as per the understanding with Maharashtra Public Service Commission.

(E) These facilities shall not be entitled to the non NET/SET Lecturers who have came into services after 11.12.1999. So also their services are directed to be discontinued before completion of their period of probation.

3. As the Regulation 2000 of the University Grants Commission issued under the Notification of 4.4.2000 the educational qualifications are included. By Govt. Resolution dated 16.6.2000 these conditions are made applicable to all Universities and Colleges. It is hereby informed that after 4.4.2000 no Lecturer, who is not having required qualification/eligibility, should be appointed so also if appointed the same shall not be recognised and no grant therefore will be given. So also any such appointments are made after 4.4.2000 they should be immediately cancelled. These orders are applicable to all colleges and if action is not taken in the above said manner, it will be the sole responsibility of the said college/University.

4. These orders are issued after having arrived to an agreement of the Finance Department vide their informal Communication No.685/2000/Finance-5 dated 18.10.2001. In the name and by the order of His Excellency the Governor of Maharashtra." As can be seen by the said Government Resolution, the teachers who had not cleared NET/SET Examination were granted time up to December 2003 to clear the same. It is significant to note that such teachers were entitled to continue till their retirement and were entitled to annual increments. However, they were not entitled to any benefits like promotion, Higher Grade, Selection Grade. But they were entitled to the pay scale of Rs.4000-13,500/- till their retirement. It is specifically directed by the said Government Resolution that the candidates who have been appointed after 11.12.1999 and who had not cleared NET/SET, their services should be terminated. The said Government Resolution therefore carved out two categories i.e. the candidates appointed between 19.9.1991 and 11.12.1999 and the candidates appointed thereafter. In so far as the candidates appointed between 19.9.1991 and 11.12.1999 are concerned, they were allowed to continue till their retirement and were also entitled to annual increments.

However, the candidates appointed after 11.12.1999 were directed to be terminated.

26. Hence what flows from the said Government Resolution dated 18/10/2011 is that the teachers who were appointed between 19.9.1991 and 11.12.1999 should not be terminated on account of the fact that they have not cleared NET/SET. It is made clear by the said Government Resolution that the said teachers would not be entitled to promotion, Higher Grade/Selection Grade. However, their services were protected till their retirement. Therefore the dis-entitlement of the candidates who had not cleared NET/SET was clearly spelt out by the said Government Resolution. Hence in so far as teachers appointed between 19.9.1991 and 11.12.1999 a separate class has been carved out by the said Government Resolution who would continue in service up to the date of retirement. True it is, that the said Government Resolution does not exempt the teacher from the qualification of NET/SET but the consequences of the same have also been provided in the said Government Resolution dated. Once a teacher is granted protection till his date of retirement, in my view, it would be a contradiction of sorts if the services of the said teacher are allowed to be terminated without prior permission of the University as required under Statute 53(5). It would lead to an anomalous situation wherein on the one hand the State Government deems it fit to protect the services of a teacher till his or her retirement despite the lack of NET/SET, and on the other hand on an interpretation of Statute 53, the Management is free to terminate the services without prior permission, if it so chooses. In my view therefore it would be a travesty if in the case of the Appellants who have continued for 13 to 14 years the protection envisaged under Statute 53(5) is not granted.

27. The Tribunal, as can be seen from a reading of the impugned judgment and order, was carried away by the fact that if a declaration is issued that the Appellants are deemed confirmed employees, they would be entitled to the benefits that a confirmed employee would be entitled to. In my view, the Tribunal has totally missed the grain for the chaff inasmuch as the Tribunal failed to see and appreciate that even if the protection of Statute 53(5) was to be granted to the Appellants, the Appellants would not be entitled to the benefits that are available to

a confirmed employee having NET/SET qualification, at the highest they would be entitled to only the benefits mentioned in the said Government Resolution dated 18/10/2001. The Tribunal though convinced that the Appellants were entitled to some protection and in fact termed them as quasi permanent employees left it as it were at the half way house, without affording them the protection of Statute 53(3). In my view, considering the manner of appointment of the Appellants, their continuation for more than 13 to 14 years, and in the light of the protection granted by the said Government Resolutions, the Appellants were entitled to the protection of Statute 53(5) viz. that the Management ought to obtain the prior permission of the University for terminating their services. However, in so far as benefits which the Appellants would be entitled to, the same are crystallized and would be as per the Government Resolution dated 18/10/2001. Reliance was sought to be placed by the learned counsel Shri Marpakwar on the judgment of a Division Bench of this Court reported in 2009(2) Bom. C.R. 463 in the case of Urmila Pravinchandra Malaviya v/s. State of Maharashtra and ors wherein the judgment of the Apex Court reported in AIR 1995 SC 974 is referred to, the Division Bench has held that mere continuance in service for a long duration would not confer benefits of permanency on an employee, in the facts of the present case the said reliance is misplaced. In the present case, it is required to be noted that all the Appellants have been selected after following the procedure for the same i.e. by issuance of an advertisement, selection by duly constituted selection committee and approval of the University subject to Government Resolution dated 22/12/1995. Hence, as rightly contended by the learned senior counsel Shri Gordey appearing for the Appellants that the approval to the appointment of the Appellants is circumscribed by the said Government Resolution dated 22/12/1995 and the subsequent Government Resolutions that were issued governing the field. By Government Resolution dated 22/05/1998 the dis- entitlement of the teachers who had not cleared NET/SET for annual increments was removed and by subsequent Government Resolution dated 18/10/2001 their services were protected inasmuch as they were not to be terminated on account of lack of NET/SET but were allowed to continue till their retirement. Hence continuation of the Appellants was on account of the protection granted to them by the Government Resolutions and was not on account of what can be said to be fortuitous circumstances. The Appellants

were therefore entitled to nurture a claim to deemed confirmation based on their continuation in service for 13 to 14 years. Issue of violation of the principles of natural justice :-

28. Now coming to the issue of violation of the principles of natural justice. It is trite that a delinquent has to be given fair opportunity in the departmental enquiry proceedings conducted against him/her. The term "fair opportunity" would take within its fold various aspects and is not necessarily to be restricted to what takes place in the enquiry itself. The fact as to the venue where the enquiry was to be held, whether proper arrangements had been made to facilitate attendance of the delinquent would also lie within the parameters of the term "fair opportunity"

29. In the instant case, it would be relevant to note that the college wherein the Appellants are working was at Sadak Arjuni whereas the enquiry was conducted at Nagpur. The distance between Sadak Arjuni and Nagpur is nearly 190-200 kms. In spite of the request from the Appellants Anil Gaikwad and Diwakar Kamble for change of venue, same was not considered. The enquiry was held at Nagpur and concluded there. It is further required to be noted that the enquiry was held in the evening, therefore, the predicament of the Appellants can well be imagined as they had to rush from Sadak Arjuni to Nagpur a travel which took them to 3 to 4 hours, attend the enquiry and go back to Sadak Arjuni. This is in so far as the venue is concerned. In so far as payment of TA/DA is concerned, though the Appellants were entitled to the payment of TA/DA as per rules, the same was not paid to them promptly. In fact all the Appellants were paid TA/DA after they were forced to address letters in that behalf. In fact, Appellant Anil Gaikwad was paid TA/DA for 48 sittings of the enquiry in the year 2009 when the enquiry in fact had commenced in the year 2007. Similar was the case with the other Appellants. The question therefore that begs an answer is to whether in the light of the aforesaid aspects a fair opportunity can be said to be given to the Appellants. The answer has to be an obvious "No". As rightly contended by the learned Senior Counsel Shri Gordey, the aforesaid two aspects impinge upon the aspect of a fair opportunity. It is further required to be noted that in so far as Appellant Anil Gaikwad is concerned, the enquiry was held on the days when he was indisposed and when he had asked for postponement of the enquiry on the said days,

however, he was cross examined on the said days without granting adjournment. The said fact epitomizes the manner in which the enquiry was conducted against the Appellants. In my view, the Tribunal was right in coming to the conclusion that the enquiry was vitiated on the aforesaid ground.

30. The defining infirmity or flaw, as can be seen, in the enquiry is on account of bias. This ground is applicable to the Appellants Anil Gaikwad and Diwakar Kamble. The cause for same has arisen on account of participation of the Secretary of the society Smt.Karanjekar in the decision making process, regarding initiation of enquiry against the said Appellants, appearing as a witness and participation in the decision making process relating to termination of the Appellants. Before proceeding further in the matter, it would be relevant to refer to the judgment of the Apex Court reported in AIR 1970 SC 150 in the A.K.Kraipak and others v/s. Union of India and others wherein the Apex Court has held that in an administrative inquiries as well as quasi judicial inquiries adherence to the principles of natural justice is a sine quo non. Para 20 of the said judgment is relevant which is reproduced herein under :-

"20 The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to

administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi judicial in character. Arriving at a just decision is the aim of both quasi judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court inSuresh Koshy George v. The University of Kerala and Ors.(1) the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made beforea court that some principle of natural justice had been contravened the court has to decide whether the observance of that was necessary for a just decision on the facts of that case"

31. As indicated above, the said ground of bias is invocable in the case of Appellants Anil Gaikwad and Diwakar Kamble in whose enquiry the secretary Smt.Karanjekar took part in the decision making process and also appeared as a witness in the enquiry held against them.

32. The test of bias is as to the impression a reasonable man would have in the facts and circumstances of the present case. It is not necessary that bias must actually be proved, it would be enough under law that there is a reasonable likelihood of bias. The facts as aforesaid wherein Smt.Karanjekar had appeared in the decision making process as well as a witness cannot inspire the confidence of a man of ordinary prudence that justice has been done to him, as the present case exemplifies a case where a person can be said to have acted as a judge in her own cause. In my view, in the facts of the present case, the answer has to be an emphatic "yes" in favour of bias. In my view, the learned counsel for the Management Shri Jibhkate sought to trivialize the issue by contending that Smt.Karanjekar had acted in different capacities in the said enquiry inasmuch as a witness she has only deposed as regards the documents, whereas she has participated in the decision making process as a Secretary. It is on the said basis, the learned counsel for the Management Shri Jibhkate sought to contend that the

enquiry cannot be said to be vitiated on the said ground. In my view, the said contention of Shri Jibhkate can only be stated to be rejected in view of the well settled principle applicable to the manner in which the departmental enquiries are to be conducted. The reliance placed by the learned counsel on the Judgment of a Division Bench of this Court in the Shyam Maroti Bhasarkar's case (Supra) is also misplaced, as the facts are clearly distinguishable. In the said case two teachers had allegedly induced a girl of unsound mind from her house in the night hours to come out with them without permission of her parents and indulged in illegitimate physical intimacy with her before she was kidnapped by some unsocial elements. An enquiry was held in the said charge. The Enquiry Committee constituted recorded a finding that the incident as alleged was fully proved and delinquents were guilty of misconduct there being no reasonable explanation given by them. The School Tribunal however set aside the finding of the Enquiry Committee by discarding credible evidence and voluminous material available on record and by giving extremely brittle finding as regards the incident. It is in the said facts that the Division Bench of this Court had set aside the Judgment and Order of the School Tribunal. However, in the instant case, there is no dispute as regards the role played by the Secretary Smt. Karanjekar in the process of initiating enquiry, appearing as a witness and thereafter taking part in the final decision making process, to terminate the services of the Appellants, and therefore, the said Judgment would have no application in the facts of the present case. As regards the contention of the learned counsel appearing for the Management Shri Jibhkate that in the absence of pleadings in respect of the ground of bias in the appeals filed before the College Tribunal, the Appellants are dis-entitled to urge the said ground. In my view, the said contention is bereft of any merit. The College Tribunal constituted under Section 59 of the Maharashtra Universities Act is a Tribunal of limited jurisdiction constituted to consider the grievances of the teachers in respect of the matters mentioned in the said Section 59. Whilst considering the matter, it is obliged to consider the matters incidental thereto. Since the Appellants were challenging their termination orders in the said Appeals, which orders were issued pursuant to the departmental enquiries held , the Tribunal was obliged to consider whether the principles of natural justice were adhered to in the departmental enquiries held against the Appellants. This was all the more necessitated in view

of the fact that in so far as the Appellants Anil Gaikwad and Diwakar Kamble are concerned, specific challenge to the termination orders on the ground of violation of the principles of natural justice is taken, though there is no specific ground relating to bias, a Tribunal of limited jurisdiction established to consider the grievances of the teachers, could not have shut its eyes to the grievous violation of the principles of natural justice on account of the role of the Secretary Smt.Karanjekar in the said enquiry. Though, as mentioned herein above, a specific ground has not been taken as regards bias, the ground of the violation of the principles of natural justice has been taken. In view of the fact that strict rules of pleadings would not be applicable to the proceedings before the College Tribunal, in my view, the Tribunal had not committed any illegality in considering the aspect of violation of the principles of natural justice in all its contours, in so far as enquiries against the Appellants were concerned.

33. Though the ground of bias on account of participation of Smt.Karanjekar is restricted to the case of Appellants Anil Gaikwad and Diwakar Kamble, as she has not appeared as a witness in the case of Appellant Rajkumar Bhagat. In my view, the same would hardly make a difference as the enquiry stands vitiated on the grounds referred to in the earlier part of this Judgment viz. venue at which the enquiry was held and non-payment of TA/DA at the appropriate time to the Appellants. The said two factors, as held herein above, impinge upon the aspect of fair opportunity in so far as all the Appellants are concerned.

34. Now coming to the contention of Shri Jibhkate that though the Tribunal has held that the enquiry is vitiated, the Tribunal has not spelt out as to from which stage the enquiry is so vitiated, which according to the learned counsel Shri Jibhkate, the Tribunal was bound to do. This, according to him, was necessary as the Management should be in a position to know as to from which stage de novo enquiry is to be commenced. The learned counsel for the Management Shri Jibhkate in support of the said submission relied upon the judgment of the Constitution Bench of the Apex Court in the case of Karunakar (Supra) and the Judgment of the Apex Court in the case of NTC (WBAB and O) (supra). In both the cases, the issue was as regards the non- furnishing of the enquiry report to the delinquent employee. The Apex Court in the facts of the said cases held that since

denial of the report of enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice. The delinquent employee will therefore be entitled to the copy of the report even if statutory rules do not permit furnishing of report or is silent on the subject. The enquiry was therefore set aside to that extent and was directed to be recommenced from the stage of furnishing enquiry report to the delinquent in the said cases. The relevant extract from Karnunakar's case (Supra) is Para 7(v) which is reproduced herein in under :-

"7(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice. Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and Tribunal should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after

hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Courts/Tribunals find that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Courts/Tribunals sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employees under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position of law." However, in the instant case, the secretary Smt.Karanjekar had admittedly taken part in the decision making process relating to initiation of the enquiry against the Appellants. Thereafter she appeared as a witness in the enquiry against the Appellants Anil Gaikwad and Diwakar Kamble and has thereafter participated in the decision making process relating to the termination of the

Appellants. Her presence as such is looming large at every stage of the enquiry against the Appellants Anil Gaikwad and Diwakar Kamble, and therefore, it is not possible to severe the enquiry into two parts and direct the enquiry to recommence from a part from which it can be said to be vitiated. The role of the secretary Smt.Karanjekar in respect of the said two Appellants therefore permeates the entire enquiry proceedings and the enquiry against the said two Appellants Anil Gaikwad and Diwakar Kamble is therefore vitiated in its entirety, and therefore, finding of the Tribunal directing de novo enquiry against the said two Appellants cannot be faulted with. As regards the test of "bias" a useful reference could be made to the judgments of the Apex Court in Manak Lal's case (supra) and Mohammad Nooh's case (supra) as also the judgment of the Division Bench of this Court in Kashiram Kathane's case (Supra). In Manak Lal's case, (supra) the Bar Council had constituted a Tribunal to conduct an enquiry into the alleged misconduct of the Appellant Manak Lal who was an advocate of the of Rajasthan High Court. The Tribunal comprised of one `C' who was the Chairman. The said `C' had appeared on behalf of the opposite parties in proceedings under Section 145 of the Criminal Procedure Code. The Appellant Manak Lal had appeared for the applicants in the said proceedings out of which the proceedings arose. In the facts of the said case the Apex Court held that the test of bias always is and must be whether a litigant could reasonably apprehend that bias attributed to a member of the tribunal might have operated against him in the final decision of the Tribunal. In the case of Mohammad Nooh (supra) the facts were that in the departmental enquiry against a constable which enquiry was being conducted by Deputy Superintendent of Police, to contradict the testimony of the prosecution witnesses, the Deputy Superintendent of Police, who conducted the enquiry, himself gave testimony. The Apex Court held that this was a grievous violation of principles of justice. The act of the Presiding Officer in having his own testimony recorded in the case indubitably evidences a state of mind which clearly discloses considerable bias against the constable. The Apex Court further held that it is shocking to the notions of judicial propriety and fair play. Relevant Para is Para 7 of the said judgment which is reproduced herein under :- It will be recalled that the forged letter of December 8, 1947, was suspected to have been manufactured or sent by or at the instance of the respondent to further his interest. The case

against the respondent was that the offending letter had been typed by one Shariful Hasan, the typist attached to the office of the Superintendent of Police, Fatehpur, and, therefore, it was essential for the department to establish that the respondent was in friendly relations with Shariful Hasan who was said to have typed the letter. Apparently in some preliminary enquiry and in the presence of Shri B. N. Bhalla one Mohammad Khalil, a Head Constable, had spoken about Shariful Hasan being very friendly with the respondent. But while giving his evidence at the departmental trial the said Mohammad Khalil denied having made any such statement. In the circumstances it became necessary to contradict him by the testimony of Shri B. N. Bhalla in whose presence that witness had, on a previous occasion, stated that Shariful Hasan was very friendly with the respondent. Accordingly Shri B. N. Bhalla had his testimony recorded by a Deputy Superintendent of Police. This was done at two stages, namely, once before the charges were framed and again after the framing of the charges. The respondent's grievance is that Shri 'B. N. Bhalla, who had thus become a witness in the case, ought not to have further continued to act as the presiding officer and that his continuing to do so vitiated the trial and his order was a nullity. That Shri B. N.Bhalla had his own testimony recorded in the case is not denied. Indeed the appellant State, in opposition to the respondent's writ application, filed an affidavit affirmed by Shri B. N. Bhalla, paragraph 8 of which runs as follows:

" 8. That the deponent gave his first statement on 13th October, 1948, which was recorded by Shri Mohammad Sadiq, Deputy Superintendent of Police before the charge and the second statement on 25th October, 1948, which was recorded by another Deputy Superintendent of Police after the charge. One Head Constable, Mohammad Khalil, who was prosecution witness in the case, when cross-examined denied to have said that the applicant and Shariful Hasan were on friendly terms. He turned hostile and it became necessary for the deponent to depose about certain facts which had happened in his presence and which belied the testimony of Mohammad Khalil - " The salient facts being thus admitted there can be no escape from the conclusion that Shri B. N. Bhalla should not have presided over the trial any longer. The point in issue was whether Shariful Hasan was in friendly relationship with the respondent. Mohammad Khalil had in his evidence at the trial denied having made any statement to this effect. Shri B. N.

Bhalla gave evidence that Mohammad Khalil had in his presence admitted this friendship of Shariful Hasan with the respondent. Which of the two witnesses, Mohammad Khalil and Shri B. N. Bhalla, was to be believed was the duty of the person presiding over the trial to determine. Shri B. N.Bhalla was obviously most ill suited to undertake that task. Having pitted his evidence against that of Mohammad Khalil Shri B. N. Bhalla vacated the Judge's seat and entered the arena as a witness. The two roles could not obviously be played by one and the same person. lndeed Shri B. N. Bhalla himself realised it and accordingly bad his own evidence recorded on both the occasions by other high officers. It is futile to expect that he could, in the circumstances, hold the scale even. it is suggested that there might have been other evidence establishing the friendship between Shariful Hasan and the respondent and that the evidence of Shri B. N. Bhalla might not have been relied on or might Dot have been the deciding factor.There is nothing on the record before us to support this suggestion. But assuming that Shri B. N. Bhalla did not rely on his own evidence in preference to that of Mohammad Khalil-a fact which is hard to believe, especially in the face of his own affidavit quoted above-the act of Shri B. N. Bhalla in having his own testimony recorded in the case indubitably evidences a state of mind which clearly discloses considerable bias against the respondent. If it shocks our notions of judicial propriety and fair-play, as indeed it does, it was bound to make a deeper impression on the mind of the respondent as to the Unreality and futility of the proceedings Conducted in this fashion. We find ourselves in agreement with the High Court that the rules of natural justice were completely discarded and all canons of fair-play were grievously violated by Shri B.N.Bhalla continuing to preside over the trial. Decision arrived at by such process and order founded on such decision cannot possibly be regarded as valid or binding." In Kashiram Kathane's case, (supra) enquiry was held against the Head Master on certain allegations of misconduct. His explanation was called by the President of the Society and as his explanation was found not acceptable, it was decided to hold an enquiry. The president was one of the three members constituting the Enquiry Committee. The president had deposed as a witness in the said enquiry. The enquiry was found to be vitiated on the said ground. Para 5 of the said Judgment is material and is reproduced herein under :-

"5. For incurring disqualification, it is not necessary that bias must actually be proved. It would be enough, under law, that there is reasonable likelihood of bias. As regards this aspect, in the decision inState of U.P v. Mohammad Nooh, A.I.R.1958 S.C. 76 Supreme Court held that the fact that the act of the Presiding Officer in having his own testimony recorded in the case indubitably would evidence a state of mind which would disclose a considerable bias against the delinquent. In that decision, the Supreme Court quashed the order of dismissal holding inter-alia that the rules of natural justice were grossly violated. This position has been reiterated in the decision in Rattan Lal's case, AIR 1993 SC 2155, referred earlier. The Supreme Court has laid down that the test is not whether in fact, bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done. In that case, the Supreme Court states as regards bias in departmental enquiry- where a member of the Inquiry Committee appeared as a witness against the delinquent, the bias of that member percolates throughout the enquiry proceedings. So the findings given by the committee on the remaining charges also gets vitiated. The learned Counsel Shri Mardikar referred us to the decision inTata Cellular v. Union of India,(1994) 6 SCC 651, to maintain that mere participation by giving evidence cannot vitiate the enquiry proceedings. The said decision concerned the acceptance of tender, and the grievance projected in that was the son of one of the members of the recommending authority was an employee of that tenderer, but the acceptance of the tender was found to be not vitiated as the concerned member was only a recommending authority and not a decision making authority, though he participated in the decision making process in view of section 3(6) of Indian Telegraph Act, 1885 as the same was necessary. On the facts of that case it was held that the acceptance of the tender was not vitiated. (emphasis supplied)

35. A useful reference could also be made to the Judgment of a Learned Single Judge of the Allahabad High Court in Dr. Madan Gopal Gupta's case (Supra). As can be seen, the facts in the said case are closer to the facts of the present case. In the said case, serious charges of corruption, misconduct and inefficiency were

levied against the Petitioner, who was the Registrar of the University. The Enquiry Committee appointed by the Executive Council had investigated those charges, recorded the evidence and submitted its finding to the Executive Council. The Executive Council, under the Agra University Act, was the appointing authority and as such it was the punishing authority also. In the enquiry held against the Petitioner, the members of the Executive Council had given evidence before the Enquiry Committee, and the question was, therefore, whether they could take part in the meeting of Executive Council to decide upon the punishment. It is in the said context that the learned Single Judge held that the Executive Council, being a quasi judicial body, was required to perform its duties in accordance with the principles of natural justice in a judicial manner. Participation of the members, who deposed against the Petitioner in the proceedings of the Executive Council was therefore bound to vitiate its decision. Paras 17 and 18 of the said Judgment are material which are reproduced herein under :-

17. Once Sri Shital Prasad and Sri N L Varshney appeared as witnesses to support the charges against the petitioner, it is difficult to accept the contention that even thereafter they remained impartial, independent and unbiased. How could they be expected to be impartial and open minded so as to consider the charges objectively unaffected by their own opinion and prejudice against the petitioner at the meeting of the Executive Council on 27th September 1970. Both the persons had made their statements against the petitioner which had been relied upon by the Enquiry Committee in holding the charges proved. Both the persons made their deposition against the petitioner because they believed that their version was correct. They could not be expected to judge their own testimony in an objective manner as any other person could do. It is difficult to accept that their belief was not carried into their mind at the time when they were considering the charges against the petitioner in the meeting of the Executive Council. Both Sri Shital Prasad and Sri N.L.Varshney were placed in a situation where there was conflict between their duty to act as impartial and unbiased members of the quasi judicial body and their own belief which they had already expressed before the Enquiry Committee. In that conflict it was quite natural and according to normal human conduct and behaviour that both the persons must give preference to their own belief and knowledge. In the circumstances, I am not prepared to accept the

contention that even though Shri Shital Prasad and Sri N.L.Varshney had appeared as witnesses against the petitioner, they remained free from bias and that they had a free and open mind to judge the charges in an unbiased manner."

18. It is well settled that every judicial or quasi- judicial authority re-quired to act judicially must act impartially free from any bias. A biased judge is disqualified to determine disputes before him. The same principle would apply to a statutory authority required to act judicially. Bias vitiates judicial as well quasi judicial decisions. The question then arises whether the members of the Executive Council were discharging any quasi-judicial functions at the meeting held on 27th October, 1970. As already discussed, the Executive Council was the appointing authority and as such it was the punishing authority also. There were serious charges of corruption, misconduct and inefficiency against the petitioner. The Enquiry Committee had investigated those charges, recorded evidence and submitted its finding to the Executive Council. The Petitioner had denied those charges and he had refuted the findings recorded by the Enquiry committee in his reply to the show cause notice. The Executive Council was thus required to determine as to whether the version given by the Petitioner was correct or the findings recorded by the Enquiry Committee that the charges were proved against the Petitioner were correct. The members of the Executive Council were required to consider and decide, the charges against the petitioner in an objective manner. In that situation the members of the Executive Council were under a duty to act judicially even though the Act and the Statutes did not expressly require the members of the Executive Council to act judicially. There is no doubt that many of the powers of the Executive Council are of administrative nature but in considering charges the Executive Council was required to decide the matters judicially. Therefore while considering the charges and recording findings against the petitioner the Executive Council was a quasi judicial body required to perform its duties in accordance with the principles of natural justice, in a judicial manner. No doubt the members of a quasi judicial authority like that of the Executive Council were not Judges in the ordinary sense of that term but as they were required to act judicially, they were under a duty to consider and decide the charges in an objective manner, unaffected by any prejudice or bias. The doctrine of bias as applicable to Courts and Judges is equally applicable to quasi judicial bodies also.

See Manak Lal V . Dr.Prem Chand (AIR 1957 SC 425). The principle that he who hears and decides questions judicially must be an impartial person free from any bias against the parties before him is a salient principle of natural justice. There can be no dispute that principles of natural justice apply to quasi judicial authorities and the doctrine of bias was applicable to the Executive Council also. The members of the Executive Council were therefore required to be free from bias while considering and deciding the charges against the petitioner. Participating of the Execution Council was bound to vitiate its decision."

36. In so far as Appellant Rajkumar Bhagat is concerned, the finding of the Tribunal that the enquiry against him is also vitiated for the same reasons and the grounds as the other two Appellants, does not appear to be correct. The Tribunal it seems mechanically applied the infirmities or illegalities found in the enquiries in respect of the two other Appellants to the enquiry held against Appellant Rajkumar Bhagat. It is an admitted position that in the case of Appellant Bhagat, the secretary Smt.Karanjekar had not appeared as a witness and the same is the most defining factor between the case of Appellant Bhagat and other two Appellants Anil Gaikwad and Diwakar Kamble.

37. In the case of Appellant-Rajkumar Bhagat though the ground of non-payment of TA/DA at the appropriate time is available, however, the said ground in my view cannot be such as to set aside the entire enquiry proceedings against him only on the said ground. The evidence recorded in the enquiry against him wherein the secretary Smt.Karanjekar had no role to play, therefore, cannot be discarded on the said ground. Therefore, in so far as Appellant Rajkumar Bhagat is concerned, it would be just and proper to set aside the enquiry proceedings from the stage at which decision was taken to terminate the services of Appellant Bhagat by setting aside the said decision of the Management and directing the Management to take a de novo decision as to whether the services of the said Appellant Bhagat are required to be terminated or not on the basis of the material on record including the representations of the Appellant Bhagat against the enquiry report.

38. A contention was also raised by the learned counsel for the Management Shri Jibhkate that the Tribunal has erred in reinstating the Appellants, though it directed

a de-novo enquiry to be held against them and what the Tribunal should have directed is their notional reinstatement, in my view the said contention is bereft of any merit. It is pertinent to note that the Appellants were not suspended during the course of enquiry, and were paid the salary to which they were entitled to. If the Management had not chosen to suspend the Appellants then, it does not befit it to now contend that there should have been a notional reinstatement. The direction of the Tribunal as regards reinstatement of the Appellants as also payment of back wages to the extent mentioned in the operative part of the order therefore calls for no interference. CONCLUSION :

39. In the light of the forgoing discussion it is held as under :-

(A) The Management would be obligated to take prior permission of Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur in terms of Statute 53(5) in the event it wants to terminate the services of all the Appellants which includes the Appellant Rajkumar Bhagat as he is similarly situated as the other two Appellants Anil Gaikwad and Diwakar Kamble being appointed between the period 19/9/1991 and 11/12/1999.

(B) Though the Appellants have been granted benefit of protection under Statute 53(5), which is otherwise available to a confirmed employee, it is made clear that they would not be entitled to the other benefits which a confirmed employee is entitled to and the benefits that they would be entitled to would be only restricted to those which are mentioned in the Government Resolution dated 18/10/2001. This would be restricted in the special facts and circumstances of the cases of the Appellants who have been appointed between the period 19/9/1991 and 11/12/1999;

(C) That the Judgment and Order of the Tribunal setting aside the enquiry against the Appellants Anil Gaikwad and Diwakar Kamble is confirmed. De novo enquiry would therefore have to be held against the said Appellants;

(D) That the Judgment and Order of the Tribunal setting aside the enquiry against the Appellant Rajkumar Bhagat is modified to the extent that enquiry against the said Appellant Rajkumar Bhagat is set aside only from the last stage i.e. from the

stage at which decision was taken to terminate his services and the Management resultantly is directed to take de novo decision as regards the termination of the services of the said Appellant Rajkumar Bhagat;

(E) In the event the Appellants acquire the qualification of NET/SET or the University Grants Commission exempts the Appellants from the qualification of NET/SET, the Appellants would then be entitled to all the benefits that a confirmed employee is entitled to.

(F) The consequence of the above is that the Writ Petitions filed by the Appellants Anil Gaikwad and Diwakar Kamble being Writ Petition Nos.1979 of 2011 and 1978 of 2011 are allowed to the aforesaid extent. The impugned judgment to the said extent is set aside. Rule is accordingly made absolute in the said Petitions to the said extent. It is clarified that the directions in the operative part of the impugned judgment and order regarding reinstatement of the Appellants as well as back wages is not interfered with.

(G) Petition filed by the Management being Writ Petition No. 1315 of 2011 against Rajkumar Bhagat is partly allowed to the extent mentioned in clause (D) herein above. The impugned judgment to the said extent is set aside. Rule is accordingly made absolute in the said Petition to the said extent. It is clarified that the directions in the operative part of the impugned judgment and order regarding reinstatement of the said Appellant as well as back wages is not interfered with.

(H) In so far as Petitions filed by the Management being Writ Petition Nos.1301 of 2011 and 1314 of 2011 are concerned, the same are dismissed. Rule discharged.

(I) Parties to bear their respective costs.