VERDICTUM.IN

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:8305-DB

Reserved

Court No. - 1

(1) **Case :-** SPECIAL APPEAL No. - 332 of 2023
Appellant :- Dr. Shakuntala Mishra National Rehabilitation University Thru. Its Registrar And 3 Others
Respondent :- Dr. Rajendra Kumar Srivastava And Another
Counsel for Appellant :- Atul Kumar Dwivedi
Counsel for Respondent :- Vijay Dixit,C.S.C.

connected with

(2) **Case :-** SPECIAL APPEAL No. - 330 of 2023
Appellant :- Dr. Shakuntala Mishra National Rehabilitation University, U.P. Thru. Registrar And 3 Others
Respondent :- Alok Mishra And Another
Counsel for Appellant :- Atul Kumar Dwivedi
Counsel for Respondent :- Gaurav Mehrotra,C.S.C.

with

(3) **Case :-** SPECIAL APPEAL No. - 333 of 2023
Appellant :- Dr. Shakuntala Mishra, National Rehabilitation University Thru. Ragistrar, Lko. And Others
Respondent :- Dr. Adya Shakti Rai And Another
Counsel for Appellant :- Atul Kumar Dwivedi
Counsel for Respondent :- Gaurav Mehrotra,C.S.C.

with

(4) **Case :-** SPECIAL APPEAL No. - 334 of 2023
Appellant :- Dr. Shakuntala Mishra National Rehabilitation University Thru. Registrar And Others
Respondent :- Avanish Chandra Mishra And Another
Counsel for Appellant :- Atul Kumar Dwivedi
Counsel for Respondent :- Gaurav Mehrotra,C.S.C.

with

(5) **Case :-** SPECIAL APPEAL No. - 335 of 2023
Appellant :- Dr. Shakuntala Misra National Rehabilitation University Thru. Registrar And 3 Others
Respondent :- Vipin Kumar Pandey And Anr.
Counsel for Appellant :- Atul Kumar Dwivedi
Counsel for Respondent :- Lalta Prasad Misra,C.S.C.

with

VERDICTUM.IN

(6) **Case :-** SPECIAL APPEAL No. - 336 of 2023
Appellant :- Dr. Shakuntala Mishra National Rehabilitation University , Lko. Thru. Registrar And Others
Respondent :- Mrutyunjaya Misra And Another
Counsel for Appellant :- Atul Kumar Dwivedi
Counsel for Respondent :- Gaurav Mehrotra,C.S.C.

Hon'ble Attau Rahman Masoodi,J.
Hon'ble Om Prakash Shukla,J.

(Per Om Prakash Shukla, J.)

TABLE

A. INTRODUCTION

(1) The present bunch of Special Appeals have been filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952. The following five Special Appeals have been filed against a common judgment/order dated 08.05.2023 passed by the learned Single Judge in Writ-A Nos. 4293 of 2022, 4316 of 2022, 4310 of 2022, 4307 of 2022 and 4312 of 2022:-

(i) **Special Appeal No. 332/2023** (*Dr. Shakuntala Mishra National rehabilitation University & others V/s Dr. Rajendra Kumar Srivastava & Anr.*) ;

(ii) **Special Appeal No. 333/2023** (*Dr. Shakuntala Mishra National rehabilitation University & others Vs. Dr. Adya Shakti Rai & Others*);

VERDICTUM.IN

(iii) **Special Appeal No. 334/2023** (*Dr. Shakuntala Mishra National rehabilitation University & others V/s Avanish Chandra Mishra & Ors*);

(iv) **Special Appeal No. 335/2023** (*Dr. Shakuntala Mishra National rehabilitation University & others V/s Vipin Kumar Pandey & Ors*); and

(v) **Special Appeal No. 336/2023** (*Dr. Shakuntala Mishra National rehabilitation University & others V/s Mrutyunjaya Mishra & Ors*).

However, **Special Appeal No. 330 of 2023** (*Dr. Shakuntala Mishra National rehabilitation University & others Vs. Alok Mishra & Anr.*) although has been filed against judgment/order dated 24.05.2023 passed by the learned Single Judge in Writ-A No.7046 of 2022, but on close scrutiny of the impugned judgment/order 24.05.2023, subject matter of Special Appeal No. 330 of 2023 would reveal that the impugned judgment/order daed 24.05.2023 is wholly premised and based on the common judgment/order dated 08.03.2023 (supra). Thus, all these Special Appeals have been taken up for hearing together and are being disposed of by this common order as the issues involved are common except to the aspect pertaining to their respective educational qualifications.

(2) The precincts of these special appeals lie in the challenge laid by these individuals to the termination/cancellation of their services/selection vide order dated 06.07.2022 by the appellants/University on common grounds of lack of essential qualification at the time of their selection with regard to their educational qualifications and/or experience in the year 2014.

VERDICTUM.IN

B. FACTUAL MATRIX

(3) The facts delineated from the records would reveal that all the individual respondents are teachers having been selected in the Dr. Shakuntala Mishra National Rehabilitation University pursuant to the advertisement dated 17.02.2014. Apparently, these individuals/respondents submitted relevant documents with regard to their qualifications and experiences and also appeared before a Screening Committee, and subsequently appeared in the interview before the Selection Committee which recommended their candidature for appointment. The recommendations, thereafter, were placed before the Executive Council of the University, pursuant to which they were appointed and after being in probation, their services were confirmed and ever since then these private respondents have been continuing to render their services until their selections were cancelled by means of an order, which was impugned by these private respondents in the respective writ petitions filed before the learned Single Judge.

(4) According to the appellants/University, the orders of cancellation of selection have been passed by the Vice-Chancellor of Dr. Shakuntala Mishra National Rehabilitation University, Lucknow primarily for the reason that in the meeting of the General Body of the University, an enquiry was instituted against the previous Vice-Chancellor Dr Nishith Rai and all the charges against him were proved and he was found

VERDICTUM.IN

guilty of administrative and financial irregularities. As a consequence of that, the appellants/University after seeking legal opinion, decided that all the appointments made during Dr. Nishith Rai's tenure would be enquired on a case-to-case basis. It seems thereafter the Executive Committee of the University had appointed a three-member Committee, which has submitted its report, where it has been found that the appointments of the private respondents were made without following the rules of qualification, reservation etc. and most importantly, no approval was sought from the Visitor for appointment of the panel of experts and that these people were appointed despite the fact that they did not have the requisite qualification, experience, API score etc. which was contrary to the rules on the date of their selection.

(5) It has been further averred that the Executive Council in its 35th meeting held on 07.10.2021 decided to constitute a two member committee consisting of two retired Judges of the Hon'ble High Court to enquire into all the appointments made by the erstwhile Vice-Chancellor. The enquiry was conducted by the said Committee, who submitted their report, which was placed before the Executive Council and was duly approved in its 38th meeting. Pursuant to the aforesaid acceptance of the report, show cause notice was given to the individuals/respondents seeking their response. The response was placed before another committee consisting of a retired Hon'ble High Court Judge

VERDICTUM.IN

and subject specialist. The Committee, thereafter, made its recommendations on 9.6.2022 to the University, which was accepted by the Executive Committee. The Committee concluded that these private respondents apparently did not fulfil the prescribed qualifications on the date of the advertisement and hence their services were cancelled/ terminated. It was further provided by the University that on considering that all the private respondents have worked for a period of 6–7 years, they would be eligible to apply in the fresh advertisement which would be issued and in case they are selected, their pay and allowances would be protected. The said individuals termination/cancellation of selection letter was interdicted by the respondents/writ petitioners before the learned Single Judge, which passed a very detailed impugned judgment, discussing every aspect of the matter and concluded that the cancellation/ termination of these private respondents by the appellants/University was wrong and as such after quashing the individual impugned order of termination, also directed for reinstatement along with all consequential benefits including back wages from the date of termination vide a common impugned judgment/order dated 08.03.2023 (supra). It is this common judgment/order daed 08.03.2023 and of course, the judgment/order dated 24.05.2023 (supra) passed in the sixth special appeal, which are subject matter of these appeals.

VERDICTUM.IN

(6) Heard Shri Sudeep Seth, learned Senior Advocate assisted by Shri Atul Kumar Dwivedi, representing the appellants/ University, Shri Sandeep Dixit, learned Senior Advocate assisted by Shri Vijay Dixit, representing the private respondent in Special Appeal No. 332 of 2023, Shri Gaurav Mehrotra, learned Counsel representing the private respondent in Special Appeal Nos.330, 333, 334 and 336 of 2023 and Dr. L.P. Mishra, learned Counsel representing the private respondent in Special Appeal No. 335 of 2023 as well as learned Standing Counsel representing the State.

C. ARGUEMENTS

(7) The impugned judgment has been attacked by the learned Senior Counsel Mr. Sudeep Seth on multiple grounds. According to him, writ petition was not maintainable on the ground of availability of suitable efficacious remedy. It has been argued that the learned Single Judge has returned an incorrect finding/reasoning relating to (i) the applicability of U.P Government Servants (Discipline and Appeal) Rules, 1999 (hereinafter referred to as "**Rules, 1999**"), (ii) decision making process of the University on the pretext that decision was taken by the Executive Council, whereas hearing was afforded by another Committee, (iii) constitution of selection committee to be in violation of Section 25 of the Dr. Shakuntala Mishra National Rehabilitation University (For Differently Abled) Uttar Pradesh Act, 2009 (hereinafter referred to as "**Act,**

VERDICTUM.IN

2009"), (iv) selection of the writ petitioners having been cancelled as they lacked essential qualification required in the advertisement, (v) merely continuation in service for 6 to 7 years would not mean that the writ petitioners fulfilled the mandatory essential qualification, (vi) contradictory stand of entertaining the writ petition although accepting the availability of statutory remedy before the Visitor, (vii) finding returned in the impugned judgment relating to lack of qualification for appointment being a misconduct, so as to apply the procedure as prescribed under the UP Government Servants (Discipline and Appeal) Rules, 1999, (viii) erroneous adjudication of the writ petition on the ground of termination from service rather than cancellation of their selection, (ix) incorrectly holding that in case of illegal selection of a candidate, charge-sheet, evidence and names of witness are required to be mentioned and detailed procedure of departmental enquiry has to be followed, (x) wrongly holding that complete enquiry report of two members committee (retired Judge of the Hon'ble High Court) was required to be given and supply of extract amounted to violation of principles of natural justice, (xi) the petitioner having been illegally appointed cannot be allowed to enjoy the status of member of the staff, so as to claim observance of the Rules, 1999 or the university statute or Article 311 of the Constitution, (xii) wrongly held that the University enquired the legality of the selection only to annul all actions of the former vice chancellor and ignored that the general Council of the

VERDICTUM.IN

university has decided to conduct the enquiry in selection on the case to case basis. (xiii) the appointment of the writ petitioners being a scam committed by the then Vice-Chancellor and the appointment of the writ petitioners being established as procured/illegal, there was no question of long period of service or absence of complaint. (xiv) Ignoring the settled law that whenever any procedural defect if found in the enquiry, liberty should be granted to the university to remove the said defect and either hold the fresh enquiry or proceed from the stage of the defect, (xv) incorrect holding in the impugned order that the defect in selection committee as being protected under section 44 of the Act, 2009, (xvi) non-appreciation of the fact that lack of essential qualification prescribed in the advertisement to not a trivial irregularity but a blatant one, which cannot be allowed to perpetuated, (xvii) failing to appreciate that not only the constitution of selection committee was in contravention of the statutory provisions even the writ petitioners did not possess the minimum qualification prescribed in the advertisement on the date of their application, (xviii) grant of all consequential benefits including back wages without appreciating that since 06/07/2022 the writ petitioners have not discharged any work in university, (xix) finding of the learned Single Judge being perverse on the aspect of qualification possessed by the individual writ petitioners.

VERDICTUM.IN

(8) Per contra, learned Counsel representing the writ petitioner/respondent in his erudite manner has premised his arguments on the point that (a) a person selected and appointed though not having some prescribed essential qualifications and having been allowed to continue in service for a long period of time have acquired such essential qualifications and as such the selection and appointment cannot be interfered with. To stregthen their submissions, they relied upon the judgment of the Apex Court rendered in **Union Public Service Commission Vs M. Sathiya Priya & Others :** (2018) 15 SCC 796, **M.V. Thimmaiah & Others Vs. Union Public Service Commission & Others :** (2008) 2 SCC 119, **Mohd. Abul Lash V/s State of U.P & Ors.** (judgment dated 07.01.2020 passed in Civil Appeal No. 37 of 2020), **Nahar Singh and Others V/s State of U.P & Ors.** (Judgment dated 14.07.2017 passed in Civil Appeal No. 3904 of 2013), **Savitri Devi & Others V/s State of U.P & Others** (Judgment dated 07.01.2020 passed in SLP (Civil) No. 14907/2009).

(9) The learned Counsel has also argued that Visitor of the University being supreme authority of the University in regard to its affairs and having held that the writ petitioner/respondent were fully eligible for appointment, the Executive Council or any other authority of the University could not hold otherwise. In this regard, they relied upon the decision of the Full Bench of

VERDICTUM.IN

this Court rendered in case of **Tara Prasad Mishra Vs. State of U.P :** 1990 Vol. II UPLBEC 905.

(10) Further argument of the writ petitioner/respondent was led by Mr. Gaurav Mehrotra, learned Counsel representing on behalf of the respondent in Special Appeal Nos. 330, 33, 334, 336 of 2023, who defended the impugned order by formulating his arguments on eight different aspects. Mr. Mehrota submitted that the learned Single Judge was absolutely right in holding that no opportunity of hearing was given and the principles of natural justice was not followed. In support of his submission, he relied upon the decision of the Apex Court rendered in the case of (i) **Nisha Devi Vs State of Himachal Pradesh & Others** : (2014) 16 SCC 392, (ii) **Mahipal Singh Tomar V/s State of U.P & Others** : (2013) 16 SCC 771, (iii) **M.P State Cooperative Bank Ltd. V/s Nanuram Yadav & Others**, (2007) 8 SCC 264.

(11) Shri Mehrotra has submitted that any action taken in deviation of principles of natural justice is non-est in the eyes of law. In support of this contention, he relied upon the judgment of the Apex Court in **State of Bihar & Others Vs. Lal Krishna Advani** : (2008) 8 SCC 361. The learned Counsel has also submitted that an adjudicatory body cannot take any decision on a material unless the person against whom it is sought to be utilized has been apprised of it and given an opportunity to

VERDICTUM.IN

respond. In this regard, he has relied on the decision of the Apex Court in **Deepak Anand Patil Vs State of Maharashtra and Others** : (2023) SCC Online SC 34.

(12) Shri Mehrotra has further stressed on the point that an authority cannot review its own order, unless the power of review is expressly conferred on it by statute under which it derives its jurisdiction. In support of this contention, he relied upon the decision of the Apex Court in **Kuntest Gupta Vs. Management of Hindu Kanya Mahavidhyalaya, Sitapur (U.P) and others :** (1987) 4 SCC 525.

(13) The learned Counsel has vociferously argued that availability of an alternate remedy is not an absolute bar for this Court to entertain a writ petition under Article 226 of the Constitution, wherein there is an apparent violation of principle of natural justice. According to the learned Counsel, in a case where the contention of a party has not been recorded or argued before the Court, then the appropriate remedy would be to file a review application before the same Court. In support of this contention, he relied upon the decision of the Apex Court in (i) **Bhavnagar University Vs Palitana Sugar Mill (Pvt.) Ltd. & Anr** : (2003) 2 SCC 111 and (ii) **Tungabhadra Industries Ltd. Vs Government of Andhra Pradesh**, AIR 1964 SC 1372. The learned Counsel on the proposition of that once a candidate has been appointed and had continued for long, even if, on

VERDICTUM.IN

question of law, the matter is decided otherwise, the appointment of such persons need not be annulled and should be protected, when there is no fraud or misrepresentation on part of the candidate.

(14) Besides the judgment already relied by Dr. L.P. Mishra, learned Counsel, Mr. Gaurav Mehrotra has also relied on the decision of the Apex Court in (i) **Dr. M.S Mudhole and another Vs S.D Halegkar and others** : (1993) 3 SCC 591, (ii) **Rekha Chaturvedi V/s university of Rajasthan and others** : 1993 Supp (3) 168, (iii) **Gujrat State Dy. Executive Engineers Association Vs State of Gujrat and others** : (1994) Supp (2) 591, (iv) **Buddhi Nath Chaudhary and others Vs Abahi Kumar and others** : (2001) 3 SCC 328, (v) **Girjesh Shrivastava Vs State of M.P and Ors.** : (2010) 10 SCC 707, (vi) **Vikas pratap Singh and Ors. Vs State of Chhattisgarh and others**, (2013) 14 SCC 494, (vii) **Md. Zamil Ahmed Vs State of Bihar and Others**, (2016) 12 SCC 342 and **Constitutional Bench Judgment of Sivanandan C.T and others Vs High Court of Kerala and others**, 2023 SCC Online SC 994.

(15) As to the proposition that in case of illegal termination, an employee is entitled for all the consequential benefits including 100% of back wages, the learned Counsel relied on the

VERDICTUM.IN

judgment of the Apex Court in **Pradeep Vs. manganese Ore (India) Limited & others :** (2022) 3 SCC 683.

D. FINDINGS & ANALYSIS

(16) Having regard to the contentions of the parties and going through the record available before us in the above-captioned special appeals, this Court, at the outset, is of the view that basically the proceedings conducted by the appellant/ University, which is the subject matter of these appeals, shows its overzealousness to annul the decision of the former Vice-Chancellor, which is writ large in the manner they have acted against the private respondent/writ petitioner, which has to be taken with a pinch of salt. The University ought to have been careful and circumspect in their approach and should have followed the procedure and norms, especially when these private respondents have been in service for more than 7/8 years and the University being an educational institution meant for higher learning which also deals with special students who require much more care, attention and sensitivity than any other University. This Court does not wish to sound sermonically, however, the fact of the matter remains that the issues, which are being agitated by the University in the present special appeal, could have been easily averted, had the appellant/ University acted without any prejudice to the rights of these private respondents.

VERDICTUM.IN

(17) The learned Senior Counsel representing the appellant/ University has trained his guns on the first ground of availability of alternative remedy. The learned Senior Counsel representing the appellant has submitted that the writ petitioner had suitable, efficacious and statutory remedy and as such the writ petition field by these private respondent were not maintainable in the first place. According to him, Rules, 1999 was applicable on the appellant/University, which provides for an alternative remedy of appeal against the order of termination, however, the writ petitioners failed to avail the said remedy and further, these writ petitioners had also another alternate remedy under Section 7 of Act, 2009 before the Visitor, which was also not availed and as such the writ itself would had been dismissed on the ground of availability of equally efficacious alternative remedy.

(18) On perusal of the impugned judgment/order passed by the learned Single Judge, what we find is that the learned Single Judge has very extensively dealt with the said issue raised by the appellant/University, wherein it held at paragraphs 10 and 11 of the impugned judgment as under :-

> *"10. To consider the preliminary objection raised by the respondent with regard to the maintainability of the writ petition on the ground of availability of an efficacious alternative remedy of an appeal under the Rules of 1999, it is undisputed that the respondent University itself did not adhere/follow to the Rules of 1999 while proceeding against the petitioners. Once the proceedings have not been initiated or conducted in terms of Rule of 1999, by*

VERDICTUM.IN

the University itself then it does not lie upon them to raise an objection, that the petitioners should be required to follow the said rule. An appeal would lie under the Rules of 1999 when the proceedings are conducted under the said rules. When the proceedings are conducted under some other provision then the petitioners cannot be asked to follow the Rules of 1999 and resort to the remedy of an appeal under Rule 11 of the said rules. Learned Counsel for the respondent University fairly submitted that the proceedings against the petitioners were not conducted under the Rules of 1999, then the natural corollary would follow, and remedy of Appeal under the Rules of 1999 would not available to the petitioners and hence the preliminary objection of the respondent with regard to availability of alternative remedy in this regard fails.

11. Secondly, the law with regard to maintainability of writ petition despite existence of alternate remedy has been well settled. The High Courts can entertain a writ petition despite the existence of an adequate alternative remedy where there are allegations of breach of fundamental rights, or violations of principles of natural justice or that the order under challenge is wholly without jurisdiction. In the present case, the ground of challenge to the order of termination is that no proper opportunity of hearing was granted to the petitioners, the enquiry was done in various stages by different set of persons for which there is no provision either in the rules or the regulations of the University and apart from that the entire proceedings were vitiated by mala-fide as merely because the petitioners have been appointed under the regime of the erstwhile Vice Chancellor who is alleged to have conducted certain misconducts, as a retaliatory measure, all the appointments made under him was sought to be scrutinised. It is stated that such exercise of police power is not vested under the provisions of the act or rules of the University, and accordingly in regard to such facts writ petition under Article 226 would be maintainable."

(19) The learned Single Judge has also extensively quoted paragraph 14 to 36 of the judgment of the Apex Court passed in **Whirlpool Corporation. v. Registrar of Trade Marks :**

VERDICTUM.IN

(1998) 8 SCC 1, wherein the Apex Court taking cognizance of the phrase "any other purpose" used in Article 226 of the constitution interpreted the expansive horizon of the High Court in issuance of prerogative writs and a self-imposed restriction for the issuance of the same when an effective and efficacious remedy is available.

(20) This court finds that the learned Single Judge, after considering the submission of both the parties, returned a finding that the allegations as enumerated in the writ petitions related to the proceedings having been conducted against the writ petitioner in gross violations of principles of natural justice, as hearing was afforded by one Committee while the decision was taken by the Executive Council, which the learned Single Judge found to be contrary to all cannons of the decision-making process. The hinge of the observation by the learned Single Judge appears to be based on the fact that since the writ petitioner has been working pursuant to the selection by a duly constituted Selection Committee for last 6 to 7 years, the termination of the services, on the face of it, appeared to be illegal and arbitrary and accordingly the learned Single Judge held that the bar of alternate remedy does not operate against the writ petitioner.

(21) Herein, the appellant has merely repeated the arguments on availability of efficacious remedy and this Court does not find any ground for arriving at a different view as has been already

VERDICTUM.IN

held by the learned Single Judge. Adding to the observation as has been returned in the impugned judgment, this Court finds that in **Harbanslal Sahnia v Indian Oil Corpn. Ltd : (2003) 2 SCC 107**, the Apex Court held as herein under:

> *"In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."*

(22) Further, recently, the Apex Court in **Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority & Ors., 2023 SCC OnLine SC 95**, has held that availability of alternative remedy does not operate as an absolute bar to the maintainability of the writ petition and that the rule which requires a party to pursue the alternative remedy provided by the statute is a rule of policy for convenience and discretion rather than a rule of law. Undoubtedly, entertainability and maintainability of the writ petition are two distinct concepts. The question of entertainability is entirely within the discretion of the High Court and writ remedy is a discretionary remedy. Further, a writ petition, despite being maintainable may not be entertained by High Courts for many reasons or relief could be refused to the Petitioner despite setting up a sound legal point. Thus, the settled law is where an alternate remedy is available, the writ courts should not normally entertain a writ petition if

VERDICTUM.IN

the Petitioner has not availed the alternative remedy without examining whether an exceptional case has been made out for such entertainment.

(23) In view of the aforesaid, since this Court is of the view that on the facts of the present case, the private respondent/writ petitioner has made out an exceptional case for entertainment of his individual writ petition before this High Court, the present objection of the appellant relating to the maintainability of the writ petition is over-ruled.

(24) As to the ground agitated by the appellant/University relating to availability of alternative remedy before the Visitor is concerned, this court finds that the learned Single Judge has dealt with the said objection at paragraph 14 of the impugned judgment in the following words :-

> *"14. The other objection regarding the petitioners having an alternative remedy before the Visitor, is also bereft of merits in as much as the proceedings which are being assailed before this Court have already been subjected to the scrutiny by the Vice Chancellor at the behest of one Dr Abhay Krishna. The Visitor by means of order dated 11/03/2016 has already held that the procedure adopted by the respondent University and the constitution of the selection committee resulting in the appointment of the petitioners is valid. The order of the visitor has been challenged before this Court, and the writ petition is pending consideration. Once the order of the Visitor is already on record, no useful purpose would be served by relegating the petitioners before the Visitor on the same issue. It is also urged that the respondent University is itself opposed the decision of the Visitor, which itself cannot be appreciated. In the present case no*

VERDICTUM.IN

> *useful purpose would be served by relegating the petitioners to the remedy before the Visitor. The objection raised by the petitioners have force and the plea of dismissal on ground of availability of alternative remedy before Visitor is accordingly rejected."*

(25) This Court does not find any argument addressed by the learned Senior Counsel representing the appellant to be attractive, so as to persuade this Court to observe otherwise. Thus, this Court is not inclined to return a finding adverse to the conclusion arrived by the learnd Single Judge on the issue of maintainability of the writ petition.

(26) The next major issue raised in the above-captioned appeals is '*as to whether the services of the writ petitioner has been terminated or his appointment has been cancelled*'. Although the consequential effect of both the cancellation or termination leads to severance of the relation between the writ petitioner and the University, however, the learned Senior Counsel representing appellant has tried to draw a distinction by arguing that the said question is of great significance as an answer to the said issue would determine the applicability of the provisions of Rules, 1999 on the writ petitioner.

(27) At the very outset, this court observes that one of the star argument addressed by the learned Sennior Counsel representing the appellants/University against the maintainability of the writ petition was the existence of an

VERDICTUM.IN

alternative efficacious remedy under Rules, 1999 for the writ petitioner in the form of appeal before the Visitor. Having observed so, this Court finds that the appellants/University have themselves admitted to the applicability of the provisions of the aforesaid Rules, 1999 and have also admitted that the termination order could had been impugned in an appeal before the Visitor by the writ petitioner, which consequently also meant that the provisions of the statute of the Act, 2009 ought to have been also followed by the University in its letter and spirit. The appellants cannot pick and choose and say that certain provisions are applicable and yet another provisions are not applicable to the facts of the case.

(28) Apparently, this Court finds that the appellants/ University have adopted the Rules 1999 in its meeting dated 07.10.2021, where provision for termination is provided. Once the Rules, 1999 have been adopted by the University concerned, it was bound to follow the said Rules. It is the case of the appellants/University that the Rules,1999 would be attracted only when there are allegations of misconduct by the employee, while in the present case the entire selection was *de hors* the Rules, as the writ petitioner did not fulfil the minimum prescribed educational qualifications and hence his services were dispensed with and their selection cancelled. A further alternative argument has been addressed by the appellants/University to the effect that,

VERDICTUM.IN

whether it is cancellation or termination, in either case the writ petitioners were afforded full opportunity of hearing before cancelling their selection and consequently submitted that the enquiry proceedings as well as the order of cancellation was correct and the impugned order is liable to be set-aside.

(29) In the first blush, the argument of the learned Senior Counsel representing the appellants/University seems to be very attractive, however, this Court finds that the provisions regarding power to proceed against an employee of the appellants/University can be found in the first statutes of 2009 enacted by the State Government of Uttar Pradesh in exercise of powers under sub-section (1) of Section 32 of Act, 2009 itself. Statute 9.01 is an all-inclusive clause, which says "except in the case of an appointment in a vacancy caused by the grant of leave to a teacher for a period not exceeding 10 months, teachers of the university of the University shall be appointed on a written contract in the form set out in Appendix 'A'". Thus, in case an appointment is made on vacancy caused by grant of leave to a teacher, a written contract is not needed or else it is required mandatorily that a written contract is entered between the University and the teachers of the University. Apparently a relation is established with the written contract, which can be extinguished as per the provisions prescribed under the said statute only. Further, Statute 9.04 provides that a teacher at the University may be dismissed or removed or his

VERDICTUM.IN

services terminated on one or more of the following grounds, which include wilful neglect of duty, misconduct, breach of any of the terms of the contract of service, incompetence or abolition of post. Further Statute 9.07 provides as under: -

> "9.07.(1) No order dismissing, removing or terminating the services of a teacher of the University on any grounds mentioned in clause (1) of statute 9.04 (except in case of a conviction for an offence involving moral turpitude or of abolition of post) shall be passed unless a charge of been framed against the teacher and communicated to him with the statement of the grounds on which it is proposed to take action and has been given adequate opportunity: -
>
> a- of submitting a written statement of his defence;
>
> b. of being heard in person, if he so chooses; and
>
> c- of calling and examining such witnesses in his defence as he may wish
>
> Provided that the executive Council or an officer authorised by it to conduct the enquiry, may for sufficient reason to be recorded in writing refused to call any witness.
>
> (2) the Executive Council may, at any time ordinarily within 2 months from the date of the enquiry officer report pass a resolution dismissing or removing the teacher concerned from service or terminating the services mentioned in the grounds of such dismissal, removal or termination."

(30) The aforesaid provisions contemplate a dismissal, removal or termination of service of a teacher, however, cancellation is conspicuously missing in the said provision. Since, cancellation is not defined anywhere in the Act or the statute, the meaning of

VERDICTUM.IN

the word ‘cancel” has to be construed in common parlance. In Black’s Law Dictionary, cancel has been defined to be – to obliterate, strike, or cross out; to destroy the effect of an instrument by defacing, obliterating, expunging, or erasing it. In legal context, to cancel is to render something otherwise valid as void or no longer in effect. Thus cancellation presupposes an existence of a document, a relation, an instrument or a contract. Generally, termination happens when the contract has been completed and is a bilateral phenomenon, whereas cancellation is an event which may happen unilaterally or parties have agreed that a particular breach may result in cancellation of the contract. Therefore, cancellation of contract is a sub-set of termination of contract, wherein cancellation of contract can also be used as a ground for termination of contracts. Therefore, the availability of grounds for contract termination are much more than the grounds available for cancellation of a contract. Specifically, the parties may terminate a contract upon an agreement or the contract may automatically terminate when the parties fulfil their obligations without any breach or damage. Meanwhile, the cancellation of a contract mostly is a result of the parties’ breach of the contract**.** Specifically, the parties may cancel a contract in case one party breaches the contract, which is a condition for contract cancellation as agreed upon by the parties; or seriously breaches the contractual obligations; or one party is late in the performance of the obligations, or inability to perform. Thus, the edifice of

VERDICTUM.IN

cancellation is breach on the part of either of the parties and the moment breach becomes a ground for cancellation, the same needs adjudication as per the rules and due observance of the principle of natural justice. Thus, this court finds that whether it is cancellation or termination, the same has to be pass the test of principle of natural Justice. It is settled law that even a contractual appointment cannot be terminated without affording an opportunity of hearing, if founded on allegation and/or misconduct, which casts a stigma on the employee. The Supreme Court in **K.C. Joshi v. Union of India and Others, (1985) 3 SCC 153,** held that contract of service has to be in tune with Articles 14 and 16 of the Constitution of India and if it is to be suggested that one can dismiss anyone without a semblance of inquiry or whisper of principles of natural justice, such an approach overlooks the well-settled principle that if State action affects livelihood or attaches stigma, punitive action can be taken only after an inquiry, in keeping with the principles of natural justice. In **Samsher Singh v. State of Punjab and Another, (1974) 2 SCC 831**, the Supreme Court held that form of an order is not conclusive and the Court can lift the veil in a given case to find out the actual reason and true character of the order terminating the service of an employee. Relevant part of the judgment is as follows:-

> *"80……..The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may in the facts and circumstances of*

VERDICTUM.IN

> *the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311……..”*

To the same effect is the decision of the Supreme Court in **Anoop Jaiswal v. Government of India and Another, (1984) 2 SCC 369**, where the Supreme Court held as under: -

> *“12. It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee.’’*

(31) Thus, this Court is of the view that the cancellation of the selection of the private respondent/writ petitioner is an aspect of termination only and as such the same has to be dealt as per the provisions recognised in the statutes of 2009 enacted by the state Government of Uttar Pradesh.

(32) As far as the Rules, 1999 is concerned, the Executive Council of the University in its 35th meeting held on 07.10.2021 had resolved to adopt the said Rules and the memorandum was issued on 25.10.2021 indicating the said rules having been adopted for conduct of enquiry against the officer and employees of the University. It has been the sole contention of the appellants/University that these rules were not applicable to the writ petitioner/respondent and was not required for them to

VERDICTUM.IN

be followed because there was no misconduct by the writ petitioner. A perusal of the Rules of 1999 indicates that according to Rule 6, the appointing authority of a Government servant may impose any of the penalties specified in the said rules. Section 7 provides for a detailed procedure to be followed for imposing major penalty. Major penalties include withholding of increment with little effect, reduction to a low post or grade, removal from service, dismissal from service as provided in Rule 3 while minor penalties include censure, withholding of increment etc.

(33) This Court, after considering the submissions of the parties, is in agreement with the observation of the learned Single Judge that the Rules of 1999 were applicable in the present case and were required to be followed by the respondents as in any case, whether it is cancellation or termination, the principle of natural justice has to be followed and the safe-guard mentioned in the Rules of 1999 are merely a limb of the principle of natural justice.

(34) This Court is also in agreement with the observation of the learned Single Judge relating to the perusal of the impugned order, which reveals that the Executive Committee had recommended the termination of services of the writ petitioner and the Vice-Chancellor has merely complied with the recommendation/order of the Executive Committee and had set-

VERDICTUM.IN

aside the selection of the writ petitioner. This Court finds that the learned Single Judge has given a very well-reasoned and detailed observation for treating the order impugned to be an order terminating the services of the writ petitioner and holding that the services of an employee can be terminated only as a measure of penalty as provided in the Rules of 1999, or the statutes of the University as allegedly the writ petitioner lacked the educational qualifications at the time of the selection. At this stage, it would be gain worthy to quote the observation of the learned Single Judge, while holding that the said allegation on the writ petitioner tantamount to be included in the category of misconduct entailing termination in the following words :-

> *"22. This allegation is directly attributable to the petitioners, and such conduct would be liable to be included in the category of misconduct, which would be the act of obtaining employment without being duly qualified for the same. It is the conduct of the petitioners in submitting their educational qualifications, which according to the respondents they did not fulfil the criteria as laid down in the advertisement or the guidelines published by the University Grants Commission, for which their services have been terminated. On both these counts, this Court is of the view that it was imperative that the procedure established and accepted by the respondents, which is the Rules of 1999 were to be followed, and in not doing so the respondents have acted in the most arbitrary and illegal manner, and the impugned termination is not in accordance with law.*
>
> *23. In order to impose the punishment of dismissal or removal, the Rules of 1999 will have to be followed. In order to impose major penalty facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge contained in the charge-sheet, where the proposed evidence and the*

VERDICTUM.IN

> *name of witnesses are required be mentioned. The employee is required to file his response to the charges mentioned in the charge-sheet and in case he denies the charges, the enquiry officer shall call the witnesses to the proposed the charge sheet to record oral evidence, and after recording of evidence submit his enquiry report to the disciplinary authority, who may either accept the same, or differ with the report or order re-enquiry as the case may be. In case he does not order re-enquiry, he has to give a show cause notice to the employee giving him a copy of the enquiry report, and finally conclude the proceedings either exonerating the employee or awarding punishment.*
>
> *24. The aforesaid procedure is also envisaged in Statute 9.07 of the respondent University. In the present case no charge sheet was given to the petitioner nor was any oral evidence of the prosecution recorded in presence of the petitioners and they were not handed over the relevant documents sought by them on the ground of confidentiality and even the copies of the enquiry report of the committees were never given to the petitioners and only a extract was given along with the show cause notice and, therefore, the procedure as provided in Statute 9.07 was not followed, and consequently the entire proceedings were held in violation of statutes of the University as well as in principle of natural justice."*

(35) The learned Single Judge has painstakingly examined the validity of the proceedings conducted by the University/ appellants culminating in the order of cancellation of selection of the writ petitioners to be vitiated and this court finds that no substantive grounds have been submitted or argued by the learned Counsel for the appellants/University, which would enable this Court to upset the findings arrived by the learned Single Judge in the impugned order. The learned Single Judge

VERDICTUM.IN

recorded that apparently there were several allegations against former Vice-Chancellor, against whom action was taken after enquiry was instituted. Apparently, the Executive Council decided to initiate an enquiry against the former Vice-Chancellor in its 35th meeting held on 07.10.2021 and constituted a Committee consisting of 2 retired Hon'ble High Court Judges. Thus, as rightly held in the impugned order, as far as the present bunch of matters are concerned, the entire controversy has its roots in the resolution passed by the General Body of the University on 25/01/2019, wherein in the said meeting an enquiry report against the former Vice-Chancellor Dr Nishith Rai conducted by Justice (Retd.) Shailendra Saxena was considered. In the said meeting, while accepting the said enquiry report, the General body also resolved that action would be taken with regard to all the irregularities including technical, administrative or financial committed by the former Vice Chancellor after seeking legal opinion. Thus, the General Body of the University in its meeting held on 16/09/2021 decided to enquire into the appointments made by the former Vice-Chancellor, in pursuance to which the Executive Council in its 35th meeting dated 17/10/2021 had resolved to have the matter relating to the appointments inquired by a committee consisting of 2 former judges of the Hon'ble High Court and accordingly a committee consisting of Justice (Retd) S.V.S Rathore and Justice (Retd) Pratyush Kumar was constituted for the purpose. The General body in its resolution dated

VERDICTUM.IN

16.09.2021 had limited the scope of enquiry only to the procedure followed in making the appointments to the academic and non-academic posts.

(36) Apparently, it is available from records that the aforesaid Committee was of the opinion that according to clause (iv) (a) of section 25, three experts had to be nominated by the Visitor on the recommendation by the Academic Council approved by the Executive Council, and this condition can be dispensed with only where the Academic Council and Executive Council have not been constituted. However, the Enquiry Committee arrived at a decision that at the time of appointment of the Expert Panel, the Executive Committee and the Executive Council had been constituted and consequently the Vice-Chancellor could not have exercised his power as provided in the proviso to Section 25(iv)(a) of the Act, 2009. Although, the said Committee noted that according to Section 44 of the Act, 2009, the proceedings of any authority, committee or body of the University shall not be invalidated merely for the reason that the General Council, Executive Council, Academic Council or any other authority or body of the University was not duly constituted or there was defect in its constitution or re-constitution, however the Committee came to a conclusion that appointments to the teaching post in pursuance to the advertisement nos. 17 of 2014 and 19 of 2015 were not in consonance with the statutory provisions, as the selection

VERDICTUM.IN

committee was constituted without taking approval of the Academic Council and held that constitution of the Selection Committee was illegal. This court finds that the aforesaid contradictory stand taken by the Committee was surely uncalled of, especially when the protection of Section 44 of the Act, 2009 was available to the Vice-Chancellor.

(37) Thus, this Court is of the view that the sole ground for observing that the appointments pursuant to the advertisement Nos 17 of 2014 and 19 of 2015 were not in consonance with the statutory provisions was that the selection committee was constituted without taking approval of the Academic council. This Court finds that the learned Single Judge has also considered this aspect in the impugned judgement, which related to whether the Selection Committee was duly constituted or not. The learned Single judge has observed that the said aspect had been duly scrutinised by the Visitor vide order dated 11.03.2016 while deciding a complaint made by one unsuccessful candidate namely Dr. Abhay Krishna, wherein one of the grounds of the complaint was that the Selection Committee was constituted by the Vice-Chancellor without referring the same to the Executive Council in terms of Section 25 (2) (A) (iv) (a) of the Act, 2009. Thus, the learned Single Judge has recorded that the said contention and non-compliance of the statutory provisions was duly considered by the Visitor, who dismissed the complaint of the said unsuccessful candidate

VERDICTUM.IN

Dr. Abhay Krishna on the ground of availability of section 44(1) of the Act. Therefore, the learned Single Judge concluded that since the Visitor is the highest authority of the University and once a decision has been rendered by the Visitor, that decision was binding on the University and in any view of the matter, the decision of the Visitor cannot be reviewed by any other authority subordinate to Visitor either by the General Body or the Vice Chancellor.

(38) The learned Single Judge has gone on to hold that the order of the Visitor was undoubtedly binding upon the University, and only with a view to unsettle the order of the Visitor, the University resorted to the adventure of constituting a committee consisting of 2 former judges of the High Court, who in turn recorded a finding that the selection committee was not duly constituted, which was accepted by the University. This Court finds that the learned Single Judge in these peculiar facts has rightly concluded that the procedure adopted by the University was illegal, arbitrary and malafidely done only with the intention to override the decision of the visitor and the manner in which the University has proceeded in the matter clearly indicated that to achieve their objectives, and to annul all the actions of the former Vice-Chancellor, they chose not to follow the rules and basic principles which guide their actions.

VERDICTUM.IN

(39) This Court finds that there could not be any doubt about the manner in which the committee consisting of 2 former judges of this court came to be formed, however the fact of the matter remains that the constitution of the committee by the University is not an issue in the present bunch of matters, rather the actions taken by the said committee, which has taken the centre stage of relevance is the issue, in as much as the recommendation of the Inquiry Committee were placed before the Executive Council which duly considered and accepted the said recommendations in its 38th Meeting dated 19.04.2022 and also further stated that appointments made during the tenure of former Vice Chancellor Sri Nishith Rai suffer from various illegalities, however it was decided that persons who were not holding requisite qualifications at the relevant time be asked to submit their response and the said response be placed before the two members Committed consisting of a retired High Court Judge and subject Specialist and only then final decision would be taken regarding their selection. Accordingly, show cause notices were given to the writ petitioners on 22.04.2022. It is noted that some of the writ petitioners responded to the notice while the others sought copies of relevant documents and also the entire report of the Enquiry Committee. In any case, the response submitted to the show cause notice dated 22.04.2022 were considered by a committee consisting of Justice Harsh Kumar, retired High Court Judge as well as Subject Expert and after consideration of the response to the show cause notice

VERDICTUM.IN

submitted by the petitioners, the said Committee submitted its report on 09.06.2022, which was placed before and considered by the Executive Council in its 39th Meeting held on 13.06.2022, who decided to accept the recommendations made by the said Enquiry Committee and a decision was taken to terminate the services of the petitioners. It was further resolved that order would be communicated by the Vice Chancellor of the University and accordingly selection of the petitioners has been cancelled by means of impugned order dated 06.07.2022, which was challenged by the Writ petitioners before the Ld. Single Judge on various grounds.

(40) The learned Single Judge noting that no charge-sheet was ever given to the writ petitioners and only show cause notices were issued to them on two occasions i.e. on 21.1.2021 and 22.4.2022 where they had submitted reply, but again the copy of the inquiry report was never given to them and as such observed that in absence of charges being framed against the petitioners, they were unable to adequately defend themselves which was in gross violation of provisions of Statute 9.07 of the respondent-University. Accordingly, the learned Single Judge concluded that by not following the mandate provided in Statute 9.07, the respondents have acted in most arbitrary and illegal manner and termination of services of writ petitioners were not sustainable in law and deserved to be set aside. The learned Single Judge also noted that merely only extract of the

VERDICTUM.IN

enquiry report was supplied to the writ petitioners and although on a direction of the said court, the University provided a copy of the enquiry report to the writ petitioner, however the learned Single Judge, noting the judgment passed in the case of **Mahipal Singh Tomar v. State of U.P. :** (2013) 16 SCC 771 concluded that non-supply of entire enquiry report to the writ petitioner has prejudiced his defence and consequently, vitiated the entire proceedings, which were conducted in gross violation of principles of natural justice and thus the court concluded that the proceedings were arbitrary, illegal and liable to be quashed.

(41) The learned Single Judge went on to observe that the procedure followed for conducting enquiry cannot be sustained as apparently the procedure which has been followed for cancellation of selection of the writ petitioners is not prescribed in the Act of 1999 or in the Statute framed by the University which in fact provide for the procedure to be followed wherever the services of a teacher are to be removed/dismissed. It was observed that once a procedure has been duly adopted which provides for termination of services of teachers, then, the University was under mandate to follow the said procedure. Thus, the learned Single Judge observed at paragraph-52 of the impugned judgment as follows:

> *"……Firstly, entire proceedings are de-horse the prescribed procedure and therefore same could not be validated or sustained. Secondly, it is noticed that to proceed against an employee is right of the employer whenever there are allegations of misconduct of breach of contract of*

VERDICTUM.IN

> *employment. To make an enquiry into the matter and enquiry officer can be appointed, but after receiving the enquiry report the essential aspect of decision making cannot be delegated to any other authority. In the present case, response received to the show cause notice were directed to be placed before a Committee which consisted a former Judge of this Court and a Subject Specialist. They looked into the response as to whether the petitioners fulfilled all the qualifications prescribed and its recommendations were placed before the Executive Council which had duly accepted the same. This delegation of power of looking into the response to the show cause notice, and affording personal hearing is essential feature of the enquiry conducted against a delinquent employee and such a procedure which has been followed in the present case is neither been provided in any Rule, Statute or Act, could not have been delegated to an outside agency. Needless to say, hearing is to be afforded before an authority who has to take a decision on the matter. In case hearing is done by one authority and the order is passed by another, the hearing in such a case becomes illusionary and merely camouflage with regard to following the principles of natural justice. The hearing was afforded by the committee, while the decision was to be taken by the Executive Council before whom no hearing took place, and consequently the proceedings were held in violation of principles of natural justice. Even the procedure followed was arbitrary and not prescribed and accordingly entire proceedings are illegal and arbitrary and violative of natural justice and liable to be quashed on this ground alone."*

(42) This Court finds that the learned Single Judge has very objectively dealt with the aspect of termination of the writ petitioner and no ground has been urged in the appeals, which could lead to upsetting the conclusion arrived by the learned Single Judge. Further, this Court finds that the writ petitioner was recruited in the year 2015 and he has been continuing on

VERDICTUM.IN

the said post for the last 7-8 years till the passing of the order impugned issued by the appellant cancelling his selection. Besides the fact that the selection of the writ petitioner was made by a duly constituted Committee consisting of subject specialist from various fields and after examining the qualifications of the writ petitioner and recommendations having been duly accepted by the University, it is noted that the entire matter could not have been reviewed by the University after such along lapse of time, especially when there is no allegation of fraud, suppression of material facts or misrepresentation on these writ petitioner. It can be profitably noted that these writ petitioners have not only completed more than one year in probation but their services were also confirmed by the University. This Court finds that the said analogy drawn by the learned Single Judge is also in conformity to the Act of 2009, which also indicates that once selection has been made by a duly constituted selection committee then even if there is any lacunae, the same deserves to be ignored and the selections made are to be preserved and protected to that effect as per section 44 of the Act, 2009.

(43) This Court finds that the fate of the writ petitioners are hanging fire between the cross-fire between the erstwhile Vice-Chancellor and the current Vice-Chancellor. Merely because the present administration of the University was adamant to inquire into the appointments made during the regime of former

VERDICTUM.IN

Vice-Chancellor against whom there were several allegations, cannot be the main consideration for proceeding against the teachers appointed during the tenure of former Vice Chancellor. Although, the learned Single Judge has relied on two judgments to fortify the aforesaid proposition of law, this Court would quote only one judgement passed by the Apex Court in the case of **Md. Zamil Ahmed v. State of Bihar** : (2016) 12 SCC 342, which clinches the issue in hand. In the said judgement, it has been held as under: -

> *"15. In these circumstances, we are of the view that there was no justification on the part of the State to wake up after the lapse of 15 years and terminate the services of the appellant on such ground. In any case, we are of the view that whether it was a conscious decision of the State to give appointment to the appellant as we have held above or a case of mistake on the part of the State in giving appointment to the appellant which now as per the State was contrary to the policy as held by the learned Single Judge, the State by their own conduct having condoned their lapse due to passage of time of 15 years, it was too late on the part of the State to have raised such ground for cancelling the appellant's appointment and terminating his services. It was more so because the appellant was not responsible for making any false declaration nor he suppressed any material fact for securing the appointment. The State was, therefore, not entitled to take advantage of their own mistake if they felt it to be so. The position would have been different if the appellant had committed some kind of fraud or manipulation or suppression of material fact for securing the appointment. As mentioned above such was not the case of the State."*

(44) This Court finds that all set and done, besides the aforesaid facts, the most crucial and significant issue for determination in this bunch of petitions is as to whether the writ petitioners did

VERDICTUM.IN

actually fulfil the minimum eligibility qualifications for recruitment to various posts to which they were appointed as it has been submitted by the learned Counsel for the appellants/University that in case these writ petitioners did not fulfil the essential qualification itself, it would have been empty formality to give them due opportunity of hearing, and consequently even if there is some infraction of the principle of natural justice the same would not vitiate the impugned order of termination.

(45) This Court finds that the learned Single Judge has not only scanned through the various qualifications possessed by these writ petitioners, but has in a very objective manner dealt with the allegation of not possessing the essential qualification in the impugned order. It is available from the records that as far as the case of Dr. Rajendra Kumar Srivastava (Appeal No. 332/2023) is concerned, the learned Single Judge has dealt with the said aspect of essential qualification at paragraph No 64 of the impugned judgment. This Court finds that the essential controversy with Dr. Rajendra Kumar Srivastava was as to whether M.Sc. in Computer Science was equivalent to MCA or not, so as to be qualified for appointment to the post of professor in Computer Science in the University. The learned Single Judge has while recording the fact that the contention of the writ petitioner was although recorded in the impugned order but the said contention was rejected by virtue of a cryptic order

VERDICTUM.IN

without assigning any reasons and without any application of mind by the authority, tasked onto itself to examine the said allegation and went on to hold that a perusal of the clarifications notification dated 01/06/2016 issued by the AICTE does not leave any room for doubt about the equivalence of MCA with a M.Sc computer science. The learned Single Judge went on to observe that as the notification issued by the AICTE was only a clarification, it would relate back to date of initial prescription of the qualifications. Further, not only has the AICTE issued the clarification, but even prior to the same the Indian Institute of Technology Madras recognised the said equivalence when they had published an advertisement for recruitment in the year 2013-2014 was also observed by the learned Single Judge, while dealing with the said aspect of equivalence between MSc and MCA. The learned Single Judge also recorded that the said aspect of the matter was also considered by the Apex Court in the case of **Saurabh Pal Vs The Chancellor, Veer Bahadur and others** (Appeal (Civil) 596 of 2008 decided on 22/01/2008). Thus, the learned Single Judge held as follows:

> *"65. The above judgements clearly resolve the dispute that M.Sc. has been held to be equivalent to M.Sc. Computer Science much prior to issuing of the clarification by the AICTE in 2016 as noticed by the Hon'ble Supreme Court. It indicates that the petitioner was fully eligible and qualified for being appointed on the post of Professor in Computer Science and fulfilled all the eligibility conditions in this regard. The*

VERDICTUM.IN

> *respondents have acted in most illegal and arbitrary manner and did not even consider the contention of the petitioner when he responded to the show cause notice issued by the University.*
>
> *66. The procedure adopted by the respondents, as well as the decision making process adopted by them where the personal hearing was given by the committee and the decision taken by the executive Council indicates that proper or opportunity of hearing was not given to the petitioners before passing of the impugned order of termination. This aspect of the matter would have been duly considered by the selection committee at the time of selection of the petitioner, and that is why an expert members of the panel is included as per the norms prescribed by the UGC, but the enquiry committee did not have any expert member and therefore could not appreciate the stand taken by the petitioner. It is in this regard the Supreme Court has also held in the case of Basavaiah (Dr.) v. Dr. H.L. Ramesh, (2010) 8 SCC 372…"*

(46) Thus, the learned Single Judge arrived at a conclusion at paragraph-67 that the writ petitioner/Dr. Rajendra Kumar Srivastava was fully qualified for being appointed and did not lack any qualification as alleged and as such set-aside the impugned order of cancellation of his selection. This Court is in full agreement to the said observation of the learned Single Judge. The grounds taken by the learned Senior Counsel for the appellant/University relating to M.Sc. Computer Science being not equivalent to MCA at the time of selection and it came to be recognized as equivalent vide notification dated 09/06/2016 is concerned, the same has been already dealt with the learned Single Judge, who has returned a finding not only on the basis of the said AICTE Notification but also on the basis of the

VERDICTUM.IN

judgment of the Apex Court **Saurabh Pal Vs The Chancellor, Veer Bahadur and others** (supra). In any case, it is not a case that the writ petitioner has misrepresented, or committed any fraud or suppressed any facts. The aforesaid fact of possessing M.Sc. in Computer Science was very well in the knowledge of the University and therefore after 7/8 years, they cannot now be permitted to turn back and cancel the selection of the writ petitioner on the ground of lack of requisite experience. Further, as per the own contention of the University, the writ petitioner came to be recognised to be possessing a degree equivalent to MCA in 06/01/2016, when the regulation was notified in the Gazette of India. Therefore, to contend at this belated stage of after 7/8 years, would be a misnomer in the eyes of law. In the case of **Mohd. Abul Lash Vs. State of U.P. and others (supra)**, the Apex Court, while considering a case where a person was not qualified at the time of appointment, but he acquired the requisite qualification later on, refused to interfere with the appointment and set aside the judgment and order dated 19.12.2014 passed by a Division Bench of this Court in Special Appeal (Defective) No.701 of 2014. In another case of **Nahar Singh and others Vs. State of U.P. and others (supra)** and **Savitri Devi and others Vs. State of U.P. and others (supra)**, the Apex Court in Civil Appeal No.3904 of 2013 held that once a person has continued in service for a long period, his continuance should not be disturbed. Thus, this Court does

VERDICTUM.IN

not find any infirmity in the case of Dr. Rajendra Kumar Srivastava.

(47) Similarly, it is available from the records that as far as the case of Vipin Kumar Pandey (Special Appeal No. 335/2023) is concerned, the learned Single Judge has dealt with the said aspect of essential qualification at paragraph No 68 of the impugned judgment. This Court finds that the controversy with Vipin Kumar Pandey was that he had applied for the post of Assistant Professor (English) and the only ground on which the services of the selection of the petitioner was cancelled is that while offering his candidature details given in regard to API score indicated that he did not have score of 300 as prescribed under the UGC Regulations. The allegation was that the writ petitioner claimed API score of 304.5 points under category III by awarding 50 points in category III sec IIIE (i) whereas a maximum of 30 points can be claimed under that section, and hence the petitioner came down to 284.5 which is less than the minimum required API score as per the stand of the university. This court finds that the Ld. Single Judge after dealing with the concept and calculation of API as applicable in the present case, returned a finding as follows:

> *"……The petitioner had produced articles authored by an prior to the date of advertisement which were duly accepted by the selection committee. The panel of experts constituting the selection committee are the best to judge the qualifications of a candidate, who after due examination found the petitioner was*

VERDICTUM.IN

> *fully qualified to be selected. There are no allegations of malafidely or bias against the panel of experts, hence their decision could not have been substituted by another body lacking the minimum/basic expertise in the matter. This Court is of the considered view that the petitioner fulfilled all the qualifications and the decision of the respondents' authorities to the contrary is arbitrary, illegal and is liable to be set-aside."*

(48) The only ground taken by the appellants/University in the appeals seeking interdiction of the aforesaid judgment is that the writ petitioner did not append the documents to get the minimum API score of 300 points on the last date of submission of application form on 22/03/2014 nor did the said writ petitioner could produce any documentary evidence to prove that any document/publication had been produced before the selection committee to get the minimum API score of 300 points. This Court finds that at serial No.21 of the general Instruction issued by the university it was specifically provided that final decision in regard to eligibility of the candidate shall be that of the appointing authority/ administration of the university and the same shall be binding on the candidates. Further, it has been specifically averred by the writ petitioner in his petition that while appearing before the selection committee, he submitted his additional API score together with evidences in the prescribed format and claimed 40 additional points which were not claimed by him while submitting his application form and as such he claimed the fulfilment of minimum score of 300 points. It had also been contended in the writ petition that the

VERDICTUM.IN

selection committee after being fully satisfied with the API score as also the educational qualification and other requisite conditions selected and appointed him as associate professor in English and also attached the said requisite document as annexure 8 to the writ petition. This Court finds that there is no contrary averment to the said factual matrix of the writ petitioner. Thus, this Court besides being in absolute agreement with the observation of the learned Single judge also conclude that the writ petitioner had the requisite API on the date of selection and as such the learned Single Judge has rightly held that he fulfilled all the qualifications and found the decision of the Appellant/University to be arbitrary, illegal and liable to be set-aside.

(49) Further, it is also available from the records that as far as the case of Dr. Adya Shakti Rai (Special Appeal No. 333/2023) is concerned, the learned Single Judge has dealt with the said aspect of essential qualification at paragraph No 69 of the impugned judgment. This Court finds that the essential controversy with Dr. Adya Shakti Rai was that she had applied for the post of Associate Professor in Department of Visual Impairment, Faculty of Special Education, which required 5 years of experience. The allegation against Dr. Adya Shakti Rai is that she only had experience of 4 years and 7 months, although she had been working on the post of Lecturer/Asst. professor in the Department of Visual Impairment since 2009 in

VERDICTUM.IN

the appellants/University itself. This Court finds that the learned Single Judge after appreciating the facts of the said case, returned a finding as follows:

> *"(iv). Considering the rival contentions, it is noticed that the petitioner was appointed on the post of Assistant Professor in Department of visual impairment in the faculty of special education in their 2009, and at completed 4 years and 7 months of the said post, when she applied for the post of Associate Professor in the year 2014. Even though at the time of her appointment there was shortfall of certain period of experience, but admittedly she has been working of the said post for last 7 years and there are no complaints against, and she even fulfils all the requisite qualifications as on date. This court has also considered the fact that on 2 previous occasions the respondent University had advertised the post for appointment to the post of Associate Professor, but no applications were received, which clearly indicates that firstly, there were very few people taking up the said course and due to the paucity of individuals of the required academic qualifications, and secondly, that the approval given by the Rehabilitation Council of India was subject to appointment of adequate faculty. The respondent University more because of their immediate requirement appointed the petitioner on the post of Associate Professor appointed her to the said post after duly considering her experience. It is not a case that the petitioner has misrepresented, as even an application forms clearly indicates that she has experience of four years and seven months on the post of Assistant Professor. They cannot now be permitted to turn back and cancel the selection of the petitioner on the ground of lack of requisite experience. In the case of Mohd. Abul Lash Vs. State of U.P. and others, the Hon'ble Apex Court while considering a case where a person was not qualified at the time of appointment, but he acquired the requisite qualification later on, refused to interfere with the appointment and set aside the judgment and order dated 19.12.2014 passed by a Division Bench of this Court in*

VERDICTUM.IN

> *Special Appeal (Defective) No.701 of 2014. In another case of Nahar Singh and others Vs. State of U.P. and others and Savitri Devi and others Vs. State of U.P. and others, Hon'ble Supreme Court in Civil Appeal No.3904 of 2013 held that once a person has continued in service for a long period, his continuance should not be disturbed. Following the aforesaid ratio of law laid down by Supreme Court a Division Bench of this Court in Special Appeal No.313 of 2015 had held that after long continuance in service, the appointment of a person to his service should not be disturbed.*

(50) The only ground taken by the appellants is that the writ petitioner has herself mentioned in the application form that she had 4 years and 7 months as experience in place of the required 5 years at the time of Application and as such it has been argued that since the requisite experience was not available to the writ petitioner on the date of application, the order of the University cancelling her selection was right in the eyes of law. This Court finds that the said issue stands settled by the Apex Court in the case of **Mohd. Abul Lash Vs. State of U.P.** (supra), wherein the Apex Court held as herein below:

> *"…..Though the appellant was not qualified at the time of appointment, he acquired the requisite qualification later. He cannot be said to be ineligible to hold the post of Assistant teacher. Taking into account the fact that he has been working continuously since the date of appointment i.e 1995, we are inclined to grant relief to the appellant as prayed for in the writ petition in the peculiar facts and circumstances of this case".*

(51) This Court is of the view that the post of Associate Professor Department of Visual Impairment, Faculty of Special Education remained vacant in the year 2010 as no one applied and

VERDICTUM.IN

similarly the said post remained vacant in 2012, wherein again no candidates applied. Dr. Adya Shakti Rai was already working in the Department of Visual Impairment, Faculty of Special Education of the appellant/University and had experience of 4 years and 7 months. It is not the case of the University that she supressed her actual experience, rather it is the other way round and inspite of the said declaration, Dr. Adya Shakti Rai was selected for the said post, apparently as permission of the Rehabilitation Council of India was subject to appointment of adequate faculty by the University. It seems the University has after giving consideration to various factors has duly selected Dr. Adya Shakti and now merely there is a change in guard/ Vice Chancellor, her selection is sought to be cancelled on the ground that she as a shortfall of five months of experience at the time of her selection. Evidently, Dr. Adya Shakti has been continuously working on the said post for the last 7/8 years and there had been no complaint nor it is the case of the University that Dr. Adya Shakri is inefficient. Having said so, this court does not find any cogent and plausible grounds to differ from the reasoning appended by the learned Single Judge in granting relief to the said Dr. Adya Shakti. The learned Single Judge has rightly held that the impugned order cancelling her selection and terminating the services to be illegal and arbitrary and liable to be set-aside.

VERDICTUM.IN

(52) As to the case of Dr. Mrityunjay Mishra (Appeal No. 336/2023) is concerned, the Ld. Single Judge has dealt with the said aspect of essential qualification at paragraph No 70 of the impugned judgment. This court finds that the main controversy with Dr. Mrityunjay Mishra was that he had applied for the post of Associate Professor in Department of Hearing Impairment, Faculty of Special Education, which required 5 years of experience. The Allegation against Dr. Mrityunjay Mishra is that he only had experience of 4 years and 7 months, although he had been working on the post of Lecturer/Asst. professor in the Department of Hearing Impairment since 2009 in the Appellant University itself and prior to his joining the Appellant University in 2009, he was working as Course Coordinator, a post which is equivalent to the post of Lecturer, in Research Education and Audiology Development Society, which is a society registered under the Societies Registration Act, 1860 and recognized by Rehabilitation Council of India from 15.9.2003 to 24.8.2009. This Court finds that the learned Single Judge after appreciating the facts of the said case, returned a finding as follows:

> *"72. Considering the aforesaid facts this Court is of the considered opinion that the period the petitioner worked i.e. from 2003 to 2009 as Post Coordinator in READS is required to be counted as his experience as Lecture. The panel of experts having examined the said issue found the petitioner to be possessing the requisite experience. It is not subsequently open for a body not having requisite qualification or expertise in the subject to test the validity of the decision taken by expert body/selection*

VERDICTUM.IN

> *committee and also considering the fact that on the date of passing of the impugned order the petitioner has the requisite qualifications there was no occasion for the respondent-university to have terminated his services after 7 years of his working in the respondent university as Associate Professor."*

(53) This Court notes that the writ petitioner, who was already working in the appellants/University since the year 2009, when he was appointed on the post of Assistant Professor/Lecturer, in the department of Hearing Impairment, and as per the career progression scheme of the Rehabilitation council of India, the writ petitioner would have already been appointed on the post of Associate Professor, after rendering five years of satisfactory service on the post of lecturer in the year 2014 itself. The only ground taken by the Appellant is that the writ petitioner has himself mentioned in the application form that he had 4 years and 7 months as experience in place of the required 5 years at the time of application and as such it has been argued that since the requisite experience was not available to the writ petitioner on the date of application, the order of the University cancelling his selection was right in the eyes of law. This Court finds that the said issue stands settled by the Apex Court in the case of **Mohd. Abul Lash Vs. State of U.P.** (supra) and as such this Court is of the view that the writ petitioner had joined the appellants/university in the year 2009 itself i.e the year of establishment of the University and all the records were lying in the custody of the University. It is not the case of the University

VERDICTUM.IN

that there is a challenge to his candidature from any third person, or that he supressed any material from the selection committee. Apparently, his selection is sought to be cancelled on the ground that he has a shortfall of five months of experience at the time of his selection. Evidently, Dr. Mrityunjay Mishra has been continuously working on the said post for the last 7/8 years and there had been no complaint nor it is the case of the University that he is inefficient. Dr. Misha had been working in the university for the last 13/14 years, initially as lecturer and then as associate professor. Having said so, this court does not find any grounds to differ from the reasoning returned by the learned Single Judge in granting relief to the said Dr. Mrityunjay Mishra and as such the present Appeal filed by the University fails as being without any substance.

(54) As far as the facts of Avanish Chandra Mishra (Special Appeal No. 334/2023) is concerned, the learned Single Judge has dealt with the said aspect of essential qualification at paragraph No 73 of the impugned judgment. This court finds that the controversy with Avanish Chandra Mishra was that he had applied for the post of Professor in Department of History which required 10 years of teaching experience in University/college, and/or experience in research at the University/national level institution, including experience of guiding candidates for research at doctoral level. The

VERDICTUM.IN

Allegation against Avanish Chandra Mishra is that although he worked on the post of Associate Professor from 01/01/2004 till 15/01/2014, which is a period of 10 years at Jagatguru Rambadrachara Handicapped University, Chitrakoot on permanent basis, however the controversy stems out from the fact that Avanish Chandra Mishra while working as Associate Professor in the Jagatguru Rambadrachara Handicapped University, Chitrakoot, he was also given additional charge for the post of Registrar. The Appellant/ university has cancelled the appointment of the petitioner on the ground that when the petitioner worked on the post of Registrar, he could not have been involved in teaching and the period for which he worked as registrar should be deducted from his teaching experience. This court finds that the learned Single Judge has dealt with each & every contention raised by the University before the learned Single Judge and after appreciating the facts of the said case and both on the ground of being merely a registrar with additional charge and no material to substantiate that Avanish Chandra Mishra functioned as a whole time registrar as well as on the ground relating to publication of research papers as per the UGC norms has returned a finding as follows:

> *"77. From the aforesaid discussions it is clear that the petitioner was fully qualified, his qualifications were duly looked into by the selection committee recommended his candidature for appointment to the post of Professor in History. There is no reason for a review of his qualifications after a period of 7 years, in absence of any allegations of fraud and misconduct have been having been committed by the petitioner, the cancellation of*

VERDICTUM.IN

> *his selection is clearly illegal and arbitrary and libel to be set aside."*

(55) As regards the other deficiency pointed out, this Court notes that the learned Single Judge also returned a clear and reasoned finding that the research papers authored by Avanish Chandra Mishra, which have been accepted for publication were required to be considered, which although were duly taken into account by the Selection Committee but arbitrarily not considered by the inquiry committee and consequently there was no infirmity/deficiency in the qualification of the petitioner. Even the API score was wrongly calculated as Avanish Chandra Mishra possessed 469.5 API marks and the said score was calculated as per the UGC Regulation, 2010 as could be also found in the writ petition itself annexed along with the present Appeal. This court finds that besides repeating the same ground in the present Appeal, there are no new grounds which have been agitated by the Appellant/university in the present Appeal. Very recently the Constitution Bench of the Apex Court in a recent Judgment dated 12.07.2023 reported in 2023 SCC Online SC 994 in Re: ***Sivanandan C.T and others V/s High court of Kerala and Ors.***, which was a matter relating to selection of Judicial officer in the state of Kerala, the Apex Court in the said judgment although held that the procedure adopted was arbitrary for selections but refused to unseat these candidates on the ground of public interest, who had been working for more than 06 years. This Court finds that the said

VERDICTUM.IN

Avanish Chandra Mishra had been working for more than 08 years and there had been no complaint relating to his inefficiency, nor there is any allegation of fraud or misrepresentation on his part. Thus, this Court is not inclined to disturb and unsettle the findings already arrived by the learned Single Judge.

(56) Further, as far as the case of Alok Mishra (Special Appeal No. 330/2023) is concerned, this court finds that although the order impugned in the present Appeal is not a part of the common order dated 08/05/2023, however it is seen that the impugned order passed in Alok Mishra case heavily relies on the common order dated 08/05/2023. Moreover, as to the fact of Alok Mishra is concerned, it is available from records that the controversy was relating to having eight years of legal practise as a registered Advocate in the High Court to be appointed as Law officer of the University. According to the University Alok Mishra did not have the said requisite experience nor did he annex a copy of the experience certificate while filling the application form. This Court finds that the learned Single Judge vide the impugned order dated 24.05.2023, has specifically dealt with the said controversy and returned a finding on facts in the following words:

> *"4. The Counsel for the petitioner draws my attention to the registration of the petitioner with the Bar council, being of the year 2003. He also places reliance on a certificate issued by a senior Advocate of this court, the said certificate relied*

VERDICTUM.IN

> *upon by the petitioner, has not been denied in the counter affidavit nor is the same said to be a forged and fabricated document.*
>
> *5. In view thereof, I have also perused the records and I am of the view that the petitioner possesses the minimum qualification. The other grounds on which the judgment has been delivered in the case of Dr. Rajendra Kumar Srivastava (supra) are squarely applicable to the facts of the present case."*

(57) This Court finds that merely general grounds have been agitated by the appellants in the appeals, which have already been dealt with this court in the aforesaid paragraphs. Thus, this Court does not find any plausible grounds agitated by the appellants/University to have any substance and as such this court is not inclined to interfere with the impugned judgment passed by the learned Single Judge.

(58) The next issue raised by the learned Counsel for the appellants is related to grant of consequential relief including back wages to the writ petitioner/private respondents by the learned Single Judge. This Court finds that the learned Single judge has returned a finding that the private respondent/writ petitioner was not at fault and yet he was visited with illegal termination merely because there had been selected during the tenure of a Vice Chancellor, against whom certain allegations have been made. Besides the fact that no charges-sheet or inquiry was conducted as has been envisaged under the relevant rules of the University, the principle of Natural Justice was also not followed by the University while passing the termination order.

VERDICTUM.IN

Since, this Court has upheld the findings of the learned Single Judge and has found the said to have been passed on sound legal principles, this Court does not find any reasons as to why the consequential relief, including back wages should not be granted to private respondent. The Apex Court in the case of **Pradeep vs Manganese Ore (India) Limited and others**; (2022) 3 SCC 683 has held at paragraph 12 of the said judgment, which reads as under:

> *"12. It is, undoubtedly, true when the question arises as to whether the back wages is to be given and as to what is to be the extent of back wages, these are matters which will depend on the facts of the case as noted in Deepali Gundu Surwase [Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324 : (2014) 2 SCC (L&S) 184] . In a case where it is found that the employee was not at all at fault and yet, he was visited with illegal termination or termination which is actually activised by malice, it may be unfair to deny him the fruits of the employment which he would have enjoyed but for the illegal/malafide termination. The effort of the Court must be to then to restore the status quo in the manner which is appropriate in the facts of each case. The nature of the charges, the exact reason for the termination as evaluated and, of course, the question as to whether the employee was gainfully employed would be matters which will enter into the consideration by the Court."*

(59) Thus, this Court is of the view that once a selection is duly made, then in case there is any shortcomings in the said selection which is of such a nature that the same cannot be condoned, action has to be taken expeditiously. In the present case, there is no allegation that the writ petitioner/private respondent had misrepresented about their educational

VERDICTUM.IN

qualifications or their experience or where in any manner misconducted themselves in obtaining selection in the University. In absence of any fraud or misrepresentation having been committed by the writ petitioner/private respondent, the selection cannot be cancelled after long period of seven years.

E. CONCLUSION

(60) For all the aforesaid reasons, this Court is not inclined to interfere in the findings arrived by the learned Single Judge in the impugned common judgment/order dated 08/05/2023 passed in Writ-A Nos. 4293, 4316, 4310, 4307, 4312 of 2022 and the impugned judgement/order dated 24.05.2023 passed in Writ-A No.7046 of 2022.

(61) As a sequel to above, all the above-captioned appeals are **dismissed**. However, in the aforesaid facts and circumstances, there shall be no orders as to cost.

(Om Prakash Shukla, J.) **(Attau Rahman Masoodi, J.)**

Order Date : 30th January, 2024
Ajit/-