The Indian Law Reports

CIVIL MISCELLANEOUS

Before Mehar Singh, C.J., and Daya Krishan Mahajan, J.

DR. BOOL CHAND,—*Petitioner*

versus

THE CHANCELLOR, KURUKSHETRA UNIVERSITY,—*Respondent.*

Civil Writ No. 739 of 1966

October 19, 1966

Kurukshetra University Act (XII of 1956)—Ss. 7 and 9—Appointment of Vice-Chancellor—Pre-requisites of such appointment—Services of Vice-Chancellor who did not disclose before his appointment that he had been compulsorily retired from Government service on charges of misconduct—Whether can be terminated by Chancellor on coming to know of the fact—Power of such termination—Whether vests in the Chancellor—Master and Servant—Whether master can dismiss his servant without giving any reasons or hearing to the servant in the absence of any contractual or statutory provision.

Held, that the whole life of a University pulsates round the Vice-Chancellor and his character and conduct necessarily affect not only the governance of the University as a whole but also those who resort to it for academic education in the formative years of their lives. They are bound to be affected by the conduct and approaches of such a high functionary of the University. It follows that a Vice-Chancellor has to be a person against whom not a thing can be said and who should be an example to the scholars having resort to the University for learning. This is a pre-requisite for the appointment of a person as Vice-Chancellor.

Held, that a Vice-Chancellor on his appointment as such is under no duty to disclose that he had earlier been compulsorily retired from Government service on charges of misconduct. His mere silence about his previous compulsory retirement cannot be characterised as a fraudulent misrepresentation to obtain the position of the Vice-Chancellor.

Held, that in spite of the fact that a person appointed as a Vice-Chancellor is not under any duty to disclose his previous compulsory retirement from

Government service on charges of misconduct at the time of his appointment, his previous misconduct is very relevant so far his holding the post is concerned. When the misconduct was such that he was not considered fit to be retained in Government service, it could not have been ignored at the time of his appointment as Vice-Chancellor, if it had been known. If the appointment is made in ignorance of this fact, it could not be ignored when the question of retaining him arose. It was a good cause on the basis of which he could never have been considered for the post of Vice-Chancellor of a University and it is good cause on the discovery of which the Chancellor was in law justified to terminate his services.

Held, that although in the Kurukshetra University Act and the Statutes framed thereunder, nothing is stated with regard to the termination of the services of a Vice-Chancellor, yet the Chancellor has the power to terminate such service under section 14 of the Punjab General Clauses Act.

Held, that in the absence of any contractual or statutory provision to the contrary, a right vests in the master to terminate the services of his servant at any time without giving him any reasons for the same, and the same rule applies to officers of local authorities who can be removed at any time without notice or hearing.

Amended Writ Petition under Articles 226/227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the orders dated the 31st March, 1966 and 8th May, 1966, respectively, passed by the respondent.

V. K. Krishna Menon with R. K. Garg, S. K. Jain, and Anand Sarup, Advocates, for the Petitioner.

Chetan Dass Dewan, Deputy Advocate-General, with Mela Ram Sharma, Advocate, for the Respondent.

ORDER

The following judgment of the Court was delivered by—

Mehar Singh, C.J.—The petitioner, Dr. Bool Chand, in this petition under Articles 226 and 227 of the Constitution, has undoubtedly had a brilliant academic career. He joined the Indian Administrative service and in the year 1961, he was serving in the Madhya Pradesh State. On October 7, 1961, the Madhya Pradesh State Government ordered an inquiry into four charges of misconduct against him. A copy of the charges is Annexure R. 1, and that of the statement of allegations connected therewith is Annexure R. 2. The Inquiry Officer in his report, copy Annexure R. 3, found

two of the four charges not proved, but the other two proved. On the findings in the report the Union Public Service Commission was consulted. In the meantime the petitioner offered to resign from the Indian Administrative Service. The Union Public Service Commission, after consideration of the report of the Inquiry Officer and the offer of resignation made by the petitioner, in its communication, copy Annexure R. 4, said that 'the Commission consider that the penalty of compulsory retirement on proportionate pension should be imposed on Dr. Bool Chand. They advise accordingly'. That was on February 15, 1963. By a notification of February 28, 1963, Annexure C, the President of India was pleased to make this order in consequence of those proceedings—

> 'The President, in consultation with the Union Public Service Commission, hereby compulsorily retires Dr. Bool Chand, an officer of the Madhya Pradesh cadre of the Indian Administrative Service, from the service with immediate effect."

On March 10, 1965, the petitioner was appointed by the Panjab University as Professor and Head of the Department of Political Science and first occupant of the Lajpat Rai Chair created in the University. In his supplementary affidavit, dated July 27, 1966, paragraph 2(ii), the petitioner has affirmed that 'the Chief Minister, Shri Ram Kishan, called the deponent on 16 June, 1965, to his office in the Punjab Civil Secretariat and asked him whether he would be willing to accept the post of Vice-Chancellor of Kurukshetra University. Two days later the deponent received the order of appointment . . . . .'. By a notification, Annexure D, of June 18, 1965, the Chancellor of Kurukshetra University, the Governor, appointed the petitioner Vice-Chancellor of Kurukshetra University. The notification reads—

> "In exercise of powers conferred by sub-clauses (vi) and (vii) of clause 4 of Schedule I to the Kurukshetra University Act, 1956, the Kulapati (Chancellor) of the Kurukshetra University is pleased to appoint Dr. Bool Chand, Professor, Panjab University, as Up-Kulapati (Vice-Chancellor) of the Kurukshetra University, vice Shri Suraj Bhan, for a period of three years from the date, he takes charge of his office. The pay and other conditions of service of Dr. Bool Chand will be the same as were of his predecessor's."

On November 10, 1965, Mr. M. C. Chagla, the Central Education Minister, wrote a letter, copy Annexure R. 8, to the Chief Minister, Punjab, and the latter says—

> "I have been informed by a Member of Parliament that Dr. Bool Chand, whom you have appointed Vice-Chancellor of the Kurukshetra University, was an officer of the Madhya Pradesh cadre of I.A.S. and was compulsorily retired from the service by the President in consultation with the U.P.S.C. on the 28th February, 1963. You know the importance I attach to appointments of Vice-Chancellors and I have stated both in Parliament and outside that the success of a University depends upon the Vice-Chancellor. I hope this information conveyed to me is not correct. if it is correct, I am sure you will look into the matter and find out how a man of this record came to be appointed the head of an institution which is supposed to not only give instruction to but also mould the character of the students studying in that institution."

It appears that the matter was raised in Parliament as to how and in what circumstances the petitioner came to be appointed Vice-Chancellor of the Kurukshetra University in spite of his having been compulsorily retired from the Indian Administrative Service. In the meantime there was change in the office of the Chancellor and the new Chancellor then started looking into the matter. On December 2, 1965, a letter, copy Annexure R. 17, was addressed in that connection to Prof. D. C. Sharma, Member Parliament, and the latter sent his reply, Annexure R. 16, dated December 9, 1965, which may be reproduced as such—

> "I thank you for your D.O. No. PA-65/14134, dated the 2nd December, 1965. It is a pity I have not been able to write to you earlier. I was a member of the Selection Committee when Dr. Bool Chand was appointed Professor of Political Science in the Punjab University. I was also present at the meeting of the Syndicate when his appointment came up for confirmation.
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> I was also present at the meeting of the Senate where his appointment was approved. I can, however, assure you that I did not know that he had been compulsorily retired from the I.A.S. cadre of the Madhya Pradesh Government in February, 1963. Nor were any members of the Selection

Committee told about it. So far as I remember, one member of the Syndicate wanted to raise this point at the meeting of the Syndicate but he was not permitted to do so by the then Vice-Chancellor. So far as I remember the same member wanted to raise this point at the meeting of the Senate, but again he was not permitted to do so. The fact of the matter is that this thing came to my knowledge later on. It was first brought to my notice by Shri Bansal and I sent his letter on to you. Then Maharaja Banu Prakash Singh, raised this point on the floor of the Lok Sabha. He also wrote a letter to the Union Home Minister of which I have sent you a copy. Even yesterday one Member of Lok Sabha referred to this charge on the floor of the House.

"I do not think any record of his compulsory retirement was kept at the time of selection for all these things came to light after he had been appointed as Vice-Chancellor. At least, speaking for myself, I can say that I was utterly ignorant about this."

On March 31, 1966, the Chancellor issued a show-cause notice, copy Annexure A, to the petitioner detailing the reasons why his services were liable to be terminated and calling upon him to show cause against the proposed action. By a contemporaneous order, copy Annexure B, of the same date, the petitioner was put under suspension pending final decision of his case. The petitioner made a somewhat lengthy reply, copy Annexure V, on April 4, 1966, to the show-cause notice stating grounds why his services as Vice-Chancellor could not be terminated. On April 18, 1966, he filed this petition under Articles 226 and 227 of the Constitution seeking to have the show-cause notice of March 31, 1966, and the order of suspension of the same date quashed. Rule *nisi* was issued to the respondent, the Chancellor on April 19, 1966, but the prayer of the petitioner for stay of the matter was not allowed. On May 8, 1966, the Chancellor passed an order, copy Annexure W, terminating the services of the petitioner as Vice-Chancellor of the Kurukshetra University.

The details of the charges, the statement of allegations connected therewith, the findings in the report of the Inquiry Officer, the details of the opinion given by the Union Public Service Commission, and the details of the reply rendered by the petitionr to the show-cause notice issued to him why his services as Vice-Chancellor should not be terminated have not been given earlier to avoid repetition and

for the reason that all those details, in sufficient particulars, appear in the order, copy Annexure W, of the Chancellor made on May 8, 1966, terminating the services of the petitioner. In the circumstances that order is reproduced below *in extenso*:—

"By Memorandum No. 3835, dated March 31, 1966, a notice was served on Dr. Bool Chand requiring him to show-cause as to why his services, as Vice-Chancellor of the Kurukshetra University, may not be terminated. On the same day, by a separate order, he was placed under suspension with immediate effect.

(2) After his appointment as Vice-Chancellor, Kurukshetra University, it came to notice that while Dr. Bool Chand was a member of the Indian Administrative Service and was serving in the State of Madhya Pradesh, disciplinary proceedings were started against him in respect of certain allegations of misconduct and by order No. F.7/12/62-VIC, dated February 28, 1963, the President of India, compulsorily retired him from service.

(3) From the Government of Madhya Pradesh copies of the charges which had been framed against Dr. Bool Chand, statement of allegations on which the charges were based, the inquiry report and the advice tendered by the Union Public Service Commission to Government of India, were obtained. From these copies it appeared that out of the four charges on the basis of which disciplinary proceedings were instituted, two of the charges, with the exception of a portion of charge No. 4, were held to have been proved. Those charges were as under:—

'Charge No. 3

That, while relinquishing charge of Rajgarh District, he recorded an irresponsible and malicious statement in his charge-note, dated 5th December, 1958, regarding the association of an intimate character of the Commissioner, Bhopal, with one Shri R. L. Gupta, a Pleader of Zirapur.'

'Charge No. 4

That in June, 1958, he got removed, without Government permission, a Government safe from the Rajgarh Treasury, first to his bungalow at Rajgarh and then to the residence of a friend of his at Gwalior, with an ulterior motive.'

The findings given by the Inquiry Officer were as below:—

'*Charge No.* 3.—The motive for recording the remarks which according to Dr. Bool Chand's own explanation was to bring the matter to the notice of the Chief Secretary justifies the conclusion that Dr. Bool Chand's conduct was actuated by malice. There can, therefore, be little doubt that Dr. Bool Chand's conduct offended against official propriety, decorum and discipline. In these circumstances I consider that the charge has been proved.'

'*Charge No.* 4.—Therefore, I conclude in respect of this charge that Dr. Bool Chand did remove without Government permission, the safe from the Rajgarh Treasury first to his Bungalow at Rajgarh and then to the residence of his friend at Gwalior, but I am unable to conclude that this was actuated by any ulterior motive.'

(4) The Union Public Service Commission, on being consulted by the Government of India, agreed with the findings of the Inquiry Officer. Regarding charge No. 3, the Commission observed: 'Dr. Bool Chand's conduct offended against official propriety, decorum and discipline.' In respect of charge No. 4, it was remarked by the Commission that there could be no doubt 'that he did have the Government safe removed to the house of his friend without obtaining Government's permission and that in the process exhibited utter negligence unpardonable on the part of an officer of his rank'. The President of India then passed an order compulsorily retiring Dr. Bool Chand from the Madhya Pradesh cadre of the Indian Administrative service.

(5) It was felt that in view of the antecedents of Dr. Bool Chand, in having been compulsorily retired by the President of India from the Indian Administrative Service, as a measure of punishment, and having been found in respect of one charge to have acted with malice and against official propriety, decorum and discipline and to have exhibited in a transaction which was the subject matter of another charge, utter and unpardonable negligence, his continuance as Vice-Chancellor would neither be desirable nor in public interest and would be likely to lower the reputation and prestige of the University. It further appeared

that in these circumstances it would also not be feasible for him to discharge the duties of Vice-Chancellor of the University in a manner which could inspire confidence of all concerned. The show-cause notice was accordingly served on him.

(6) Dr. Bool Chand has submitted a representation in which he has mainly urged the following points:—

(i) It is not correct to infer from the President's order that his retirement took place as a measure of punishment. According to him, his retirement was at his own request.

(ii) The advice of the Union Public Service Commission was not accepted by the President.

(iii) The final order being that of the President of India interim opinions were of no permanent significance.

(iv) Before his appointment as Lala Lajpat Rai, Professor of Political Science, the Vice-Chancellor and the members of the Syndicate and Senate of the Punjab University knew about his compulsory retirement from the I.A.S.

(v) The previous Vice-Chancellor and the members of the Punjab Cabinet knew about his compulsory retirement from the I.A.S.

(vi) He had a meritorious career.

(vii) Legally compulsory retirement carries no stigma.

(viii) The appointment as Vice-Chancellor being for a term of three years, he could not be suspended by making use of the General Clauses Act.

(ix) The issue of a show-cause notice and simultaneous ordering his suspension were not permissible and that was in contravention of the University Rules, Regulations and was also violative of fundamental rights guaranteed by the Constitution.

(7) The various pleas taken by Dr. Bool Chand have been duly considered by me, but there is no substance in any one of them.

(8) The contention that he was not compulsory retired as a measure of punishment, but on his own request is not correct. The statement of charges framed against Dr. Bool Chand, shows that disciplinary proceedings were taken against him in respect of allegations of 'grave misconduct.' By Order No. 636-3099-1(ii), dated the 7th of October, 1961, a departmental inquiry was ordered. The President of India not only agreed with the findings of the Inquiry Officer on charges Nos. 3 and 4, but was also inclined to take the view that charge No. 4 was fully proved. In this connection, letter No. 7.12.62-VIG, dated 15th September, 1962, from the Joint Secretary to the Government of India to Dr. Bool Chand is very significant and reads as under:—

'I am directed to say that the Inquiry Officer appointed to inquire into the charges framed against you has submitted his report. A copy of the report is enclosed for your information.

(2) On a careful consideration of the report and in particular of the conclusions reached by him in respect of the charges framed against you, the President agrees with the findings of the Inquiry Officer in respect of charges 1, 2 and 3. The Inquiry Officer has found in respect of Charge No. 4, that you had removed without permission of Government a safe from the Rajgarh Treasury first to your bungalow at Rajgarh and then to the residence of a friend at Gwalior. The Inquiry Officer, however, found that he was unable to conclude that this was actuated by any ulterior motive. The President has carefully considered the record of the case, the evidence and the findings of the Inquiry Officer in respect of Charge No. 4 and finds, for the reasons stated in the enclosed memorandum, that charge No. 4 is also fully proved. The President is, therefore, provisionally of the view that you are not a fit person to be retained in service and that you should be compulsorily retired therefrom. You are hereby given an opportunity of showing cause against the action proposed to be taken. Any representation which you may make in that connection will be considered by the President. Such representation, if any, should be made in writing and submitted so as to reach this

Ministry not later than fifteen days from the receipt of this letter by you.

(3) The receipt of this letter may please be acknowledged.'

(9) On being consulted the Union Public Service Commission, after giivng its findings, made a definite recommendation that the penalty of compulsory retirement on proportionate pension should be imposed on Dr. Bool Chand. The order of compulsory retirement, issued by the President of India, also refers to consultation with the Union Public Service Commission.

(10) Under rule 6 of the All-India Services (Discipline and Appeal) Rules, 1955, consultation with the Commisison is necessary before imposing on a member of the All-India Administrative Service any of the penalties specified in rule 3. Compulsory retirement is one of the penalties. There can thus to be no doubt, whatsoever, that in the case of Dr. Bool Chand, the order of compulsory retirement was passed by way of punishment and not because he had made a request for that purpose. Not mentioning in the order that the compulsory retirement was on proportionate pension did not change its character.

(11) There is also nothing to show that the advice of the Union Public Service Commission was not accepted by the President of India. As a matter of fact the sequence of events and reference in the order of compulsory retirement in consultation with the Union Public Service Commission clearly indicate that the advice of the Commission was accepted.

(12) In view of what has been stated above there can be no question of the findings of the Inquiry Officer and the advice tendered by the Union Public Service Commission being of no consequence. The findings of the Inquiry Officer and the advice of the Commission were not rejected by the President of India. On the other hand, the order of compulsory retirement followed disciplinary proceedings and was in pursuance of the findings of the Inquiry Officer and the recommendations of the Union Public Service Commission. The Ministry of Home Affairs has as well verified that the order of compulsory retirement was passed as a measure of punishment. The Secretary (Services),

Government of India, Ministry of Home Affairs has,—*vide* his letter No. Dy. No. 2122/S (S)/66, dated 6th May, 1966, observed as under:—

'Regarding the plea of Dr. Bool Chand, that the Government of India had not agreed with the findings of the Enquiry Officer or accepted the advice of the U.P.S.C. and his compulsory retirement was not ordered as a measure of punishment; this statement is wholly incorrect. The order of compulsory retirement was passed in pursuance of and in agreement with the advice tendered by the U.P.S.C. I am to enclose herewith a copy of the correspondence on this subject, dated 15th September, 1962, in which it was stated that the President was provisionally of the view that Dr. Bool Chand was not a fit person to be retained in service and that he should be compulsorily retired and he was given an opportunity to show cause against the action proposed to be taken. The reply to the show-cause notice was sent by him on the 24th October, 1962; the papers were then sent to the U.P.S.C. whose advice was received on the 15th February, 1963, to the effect that the penalty of compulsory retirement on proportionate pension should be imposed on Dr. Bool Chand. The final orders were issued by the President on the 28th of February, 1963.'

(13) The assertion that before his appointment as Lala Lajpat Rai, Professor of Political Science, the fact of his compulsory retirement was known to the members of the Syndicate and the Senate of the University also does not appear to be correct. Shri Dewan Chand Sharma, M. P., who is both a member of the Syndicate and the Senate, and was a member of the Selection Committee, has written a letter to the effect that he did not know that Dr. Bool Chand had been compulsorily retired from the I.A.S. cadre and that members of the Selection Committee were not told about it. There is no reason to disbelieve Shri Sharma. The record also does not show that Dr. Bool Chand's appointment as Vice-Chancellor of the Kurukshetra University was made with the knowledge that he had been so compulsorily retired. A statement giving some particulars had been furnished by him with his D.O. letter of

March 14, 1962, which was addressed to Dr. A. C. Joshi, then Vice-Chancellor of the Panjab University. That was long before he was compulsorily retired or the post of Lala Lajpat Rai, Professor of Political Science, was advertised. Obviously that statement could not refer to his compulsory retirement. When the Post of Lala Lajpat Rai, Professor of Political Science, was advertised the candidates were required to furnish full particulars. He did not furnish any fresh particulars. If he did not want to conceal his compulsory retirement, he would have brought that fact to the notice of the authorities. At the time of his appointment as Vice-Chancellor, the fact of his compulsory retirement was not known to the Chief Minister or the then Chancellor. The alleged knowledge of the fact of compulsory retirement on the part of the Chief Minister, Cabinet or the previous Chancellor is, therefore, without any basis.

(14) The academic career of Dr. Bool Chand, to which he has referred in his representation, is of no relevancy. The reason for which it was felt that his continuing as Vice-Chancellor would not be desirable or in the public interest had no connection with his academic career.

(15) The plea that compulsory retirement carries no stigma in his case is not tenable. Where the compulsory retirement of a member of the Indian Administrative Service takes place under the provisions of the All-India Services (Discipline and Appeal) Rules, 1955, it is a penalty. The cases to which reference has been made in the representation are distinguishable as none of those cases relates to an I.A.S. Officer on whom penalty of compulsory retirement may have been imposed. It cannot, therefore, be said that imposition of the penalty of compulsory retirement on Dr. Bool Chand did not imply any stigma.

(16) There is also no reason why the services of a Vice-Chancellor may not be terminated if circumstances so justify. The power to dismiss or terminate the services can be exercised by the appointing authority by virtue of the provisions of section 14 of the Punjab General Clauses Act, 1898. Under the same provision the appointing authority has as well the power of ordering suspension.

(17) No valid objection can be taken to simultaneous issue of show-cause notice and ordering suspension. Nothing has been stated in the representation as to how the issue of the show-cause notice and passing the order of suspension have contravened the Rules, Regulations or were violative of fundamental rights guaranteed by the Constitution.

(18) It is thus clear that Dr. Bool Chand had been compulsorily retired from the Indian Administrative Service, as a measure of punishment. Both the Inquiry Officer (Shri K. Radhakrishnan, President, Board of Revenue, Madhya Pradesh) and the Union Public Service Commission considered that his conduct was actuated by malice and offended against official propriety, decorum and discipline and his removing a Government-safe to the house of a friend of his was a case of utter negligence, unpardonable on the part of an officer of his rank. The Government of India did not disagree with the findings and, as mentioned earlier, imposed the penalty of compulsory retirement. With these antecedents it would not be in the public interest to retain him as Vice-Chancellor as that would lower the prestige of the University and he would not be able to discharge the duties of that responsible and high office in a manner which may inspire confidence of all concerned.

(19) After full consideration of all the aspects of the matter and the representation and in exercise of the powers conferred on me by sub-caluse (6) of clause 4, of Schedule 1 to the Kurukshetra University Act, 1956, read with section 14 of the Punjab General Clauses Act, 1898, I hereby terminate, with immediate effect, the services of Dr. Bool Chand from the office of Up-Kulapati (Vice-Chancellor) of the Kurukshetra University."

On May 17, 1966, the petitioner filed an amended petition questioning the legality and validity of the order terminating his services as Vice-Chancellor of the Kurukshetra University.

The petition is prolix and many matters have been mentioned in it to which no reference has been made during the arguments. Particularly there has been an allegation of *mala fides* levelled against the Chancellor, and because a denial has been entered in

the return by the Chancellor, this allegation has been dropped. No argument has been addressed with regard to it. Instead of giving in detail the grounds taken by the petitioner in his petition, it would be more appropriate to state the grounds that have actually been urged at the hearing by his learned counsel, for he has confind his arguments only to four grounds. Those grounds are that—

(a) there has been violation of the principles of natural justice in the termination of the services of the petitioner,

(b) the petitioner owed no legal duty or was under no legal obligation to disclose the facts and particulars because of which he was compulsorily retired under the orders of the President,

(c) extraneous matters have been made the basis of the order terminating his services, and, lastly,

(d) there is utter lack of power in the Chancellor to terminate his services as Vice-Chancellor of the Kurukshetra University.

On behalf of the respondent, the Chancellor, all these arguments have been controverted, and an additional argument has been urged that the petition of the petitioner should fail because he has not had recourse to the alternative remedy provided by section 21 of the Kurukshetra University Act, 1956 (Punjab Act 12 of 1956), hereinafter to be referred as 'the Act'.

The learned counsel for the petitioner has, apart from the four main arguments as above, also contended that the Central Education Minister has unnecessarily interfered in this case. He says that the Central Education Minister has expressed his own views on the case though he has no power in the matter nor any supervision, and that his letter savours of instructions unfavourable to the petitioner as Vice-Chancelor of the Kurukshetra University. The criticism is utterly and entirely unjustified. The matter was raised in the Parliament. The Central Education Minister then referred the matter back to the authorities in the Punjab. There has been nothing wrong in his bringing the matter to the notice of the authorities concerned. He has not tried to exercise any supervision or any power in connection with either the appointment of the petitioner or the termination of his services, nor has he in his letter

given any instructions in that respect. It is quite a wrong reading of the letter to infer all this from it. Any responsible person coming to know of a situation of the type as in this case might well have acted in the same manner in informing of the facts either to the Chancellor or to the Chief Minister, and the Central Minister of Education has done no more than to draw the attention of the authorities concerned. So that this criticism does not help any argument on the side of the petitioner.

The first argument of the learned counsel for the petitioner is that the principles of natural justice have been ignored in terminating the services of the petitioner. There are a number of aspects of this argument which the learned counsel has urged. The first aspect is that the petitioner has had no opportunity to rebut what has been stated in the letter of Professor D. C. Sharma, Member of Parliament. It is said that that letter could have been written by anybody and there is no assurance that it has in fact been written by Professor D. C. Sharma and, in any case, it is hearsay evidence and nothing more. It has been pointed out from this very letter that both in the Syndicate as also in the Senate one member did try to raise the question of compulsory retirement of the petitioner from the Indian Administrative Service but he was not permitted to do so. The petitioner has produced a copy of the letter, Annexure P. 2, dated July 20, 1966, from one Pritam Singh of Government College, Ludhiana, in which the latter says that it was he who raised the matter of his compulsory retirement in the Syndicate, and some other members and he raised it with the then Vice-Chancellor, Dr. A. C. Joshi, at the time of the meeting of the Senate. The Chancellor had made inquiries in this respect from Dr. A. C. Joshi also. At the instance of the petitioner the respondent has produced a copy of the reply of Dr. A. C. Joshi, dated December 29, 1965. In his reply Dr. A. C. Joshi, says that it did come to their notice that the petitioner had been retired from the Indian Administrative Service. But he points out that he had to handle very little money and on other consideration about his qualification and because they were not able to get a proper person to man the professorship of Political Science, so the Selection Committee recommended the name of the petitioner for appointment as a professor of Political Science in the Panjab University. Now, all these are letters not supported by affidavits. But one thing comes clear that at the time of the appointment of the petitioner as professor of Political Science in the Panjab University, the matter of his compulsory retirement from the Indian Administrative Service did crop up, but it appears to have been hushed. The learned counsel

for the petitioner has said that the letter of Prof. D. C. Sharma has been used as evidence against the petitioner at his back and that he has had no opportunity to lead any evidence to rebut what is stated in that letter. All the letters to which reference has been made above concern the matter of appointment of the petitioner as Professor of Political Science in the Punjab University. This petition is not, nor is the impugned order of the Chancellor, concerned with that stage in the career of the petitioner. It has never been stated by the petitioner that he himself ever disclosed the fact of his compulsory retirement from the Indian Administrative Service to the Selection Committee or the Syndicate or the Senate of the Panjab University But it does appear from the letter of the then Vice-Chancellor, Dr. A. C. Joshi, that there was some rumbling about this matter at the time the appointment of the petitioner to the post of Professor of Political Science in the Panjab University was considered. However, it appears further that the matter was hushed and the details do not appear to have come to the surface. Dr. Joshi, may have known more about this aspect of the career of the petitioner than the Selection Committee or the Syndicate or the Senate. In any case, that was a matter before the appointment of the petitioner as Vice-Chancellor. The question in the present petition is not whether the facts surrounding the compulsory retirement of the petitioner from the Indian Administrative Service came to light while his appointment as Professor of Political Science was considered by the Selection Committee or the Syndicate or the Senate, but the question is whether those facts and circumstances were in the knowledge of the Chancellor when appointing the petitioner as Vice-Chancellor of the Kurukshetra University? So that this argument in regard to the letter of Professor D. C. Sharma has really no bearing on the matter of controversy in this petition and is beside the point.

The second aspect of this argument which has been urged by the learned counsel for the petitioner is that the Chancellor has merely proceeded on conjecture in inferring from the order of the President compulsorily retiring the petitioner that that order was one of punishment so far as the petitioner is concerned. It is apparent that this approach has no basis whatsoever because the order of the President clearly says that the petitioner was compulsorily retired from the cadre of the Indian Administrative Service. In rule 3 of the All-India Services (Discipline and Appeal) Rules, 1955, which rules are applicable to the Indian Administrative Service also, there is item (v), and rule 3 with that item reads..... "The following penalties may, for good and sufficient reasons, and

as hereinafter provided, be imposed on a member of the service namely:—.... (v) compulsory retirement on proportionate pension". It is apparent that the compulsory retirement is a penalty under rule 3 and to describe it as a punishment is merely to provide a synonym for the word penalty, but what has further been urged by the learned counsel for the petitioner is that the order of the President while saying that the petitioner was compulsorily retired, does not say that he was so retired 'on proportionate pension', and from this an argument is urged that it was not a compulsory retirement under item (v) of rule 3. It has not been stated in the petition of the petitioner anywhere, but it has been stated at the bar that the petitioner was retired compulsorily under the order of the President just about a couple of months before he was to reach the age of superannuation. It is then clear that in the circumstances the question of proportionate pension could hardly arise and mere repetition of the words 'on proportionate pension' in the order was not called for when the circumstances did not admit of the same. This, however, rather goes against the petitioner because if he was so near the age of superannuation, and he had, as he says, in fact tendered his resignation and the President was taking a lenient view of the whole affair, then he should have been just allowed to retire on attaining the age of superannuation, and should not have been compulsorily retired as states the order of the President. This is a conclusive circumstance that the President imposed a penalty of compulsory retirement within the meaning of item (v) of rule 3 on the petitioner. The order of the President considered in the light of the terms of rule 3 lends every support to the conclusion reached by the Chancellor, and it is entirely wrong to say that that conclusion is conjectural. In this connection the learned counsel for the petitioner has also referred to the letter, dated May 6, 1966. of the Secretary (Services) in the Ministry of Home Affairs and has said that the gloss put on the order of the President by the Secretary could not be the basis of the conclusion reached by the Chancellor in this respect. However, an enquiry having been addressed to the Secretary, he has merely stated in his letter the actual state of facts and it is not quite clear how any such statement can possibly affect the conclusion of the Chancellor reached with regard to the order of the President in the light of rule 3.

The third aspect of this argument referred to by the learned counsel is that the Chancellor has proceeded to the conclusion that his predecessor had no knowledge of the compulsory retirement of the petitioner in the Indian Administrative Service and the circumstances surrounding that, on the basis of no evidence. He contends

that such a conclusion cannot be supported in law as every conclusion must be based on evidence. This is not correct, for the Chancellor had before him the record with regard to the appointment of the petitioner as Vice-Chancellor of the Kurukshetra University, he considered that record, and has then said in the impugned order that 'the record also does not show that Dr. Bool Chand's appointment as Vice-Chancellor of the Kurukshetra University was made with the knowledge that he had been so compulsorily retired'. So the Chancellor proceeded to this conclusion on the basis of the record concerning the appointment of the petitioner as Vice-Chancellor and that provided evidence on which the conclusion has proceeded. It has further been said by the learned counsel for the petitioner that in the show-cause notice, no reference to any such evidence has been made. It was in the reply to the show-cause notice that the petitioner alleged that not only the former Chancellor, but the Chief Minister also had knowledge about his compulsory retirement from the Indian Administrative Service. It was in the wake of such a statement that the Chancellor perused the record concerning the appointment of the petitioner as Vice-Chancellor of the Kurukshetra University, and did not find in the record the least possible indication that the fact was known either to the former Chancellor or to the Chief Minister. It has never been the case of the petitioner that he gave information about his compulsory retirement to anybody, let alone the Chief Minister or the former Chancellor. All the same he took the stand in the reply to the show-cause notice and has also taken the stand in the present petition that the former Chancellor and the Chief Minister had knowledge of this fact. He himself had not disclosed that information to them, and neither in the reply to the show-cause notice nor in the present petition does he explain how, in what manner, and under what circumstances the former Chancellor or the Chief Minister came by that knowledge. He has thrown up a bare statement in this respect without explaining how those authorities came by such knowledge. So the conclusion of the Chancellor in this respect is based on evidence, and this argument is without substance.

In the fourth place, the learned counsel has criticised the filing of affidavits by the former Chancellor and the Chief Minister denying that before the petitioner's appointment as Vice-Chancellor of the Kurukshetra University either had knowledge of the fact that he had been compulsorily retired from the Indian Administrative Service. The learned counsel has contended that this is

evidence in the shape of an explanation after the event and, therefore, it cannot be taken into consideration. In this respect he relies upon *Commissioner of Police, Bombay* v. *Gordhandas Bhanji* (1), in which their Lordships observed—"We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself." He contends that the affidavits of the former Chancellor and the Chief Minister cannot supply the want of evidence that they had no knowledge about the compulsory retirement of the petitioner. This approach is mistaken. The reason is, that those affidavits are not being used to support the impugned order of the Chancellor, but the object in the production of those affidavits is that the statement made by the petitioner in his petition that the former Chancellor and the Chief Minister knew of his compulsory retirement is not a correct statement but is in fact a deliberately incorrect statement. It has already been said that the petitioner has not explained, at any stage, how, from whom, and in what circumstances either the former Chancellor or the Chief Minister came to know of that fact. In his letter Dr. A. C. Joshi, the then Vice-Chancellor of the Panjab University, who was in the know of the antecedents of the petitioner, clearly states that nobody ever asked him anything about the petitioner at the time of his appointment as Vice-Chancellor of the Kurukshetra University. So the object of the production of those affidavits is to discredit the statement by the petitioner in his petition that his appointment as Vice-Chancellor was made with the knowledge of his compulsory retirement from the Indian Administrative Service by the former Chancellor. It has also been said for the petitioner in this respect that he was never asked to produce evidence whether the former Chancellor or the Chief Minister had knowledge of that fact, but he has referred to no evidence either in his reply to the show-cause notice or in any part of his petition. Even now he does not say what evidence he relies upon in this respect. Another matter pressed on his behalf is that he has not been given opportunity to cross-examine either the former Chancellor or the Chief Minister, but no such request has ever been made by him. It has

(1) A.I.R. 1952 S.C. 16.

also been generally urged that the petitioner was never called upon to produce evidence in support of his stand in reply to the show-cause notice, but he never made any request for production of evidence at any stage. The former Chancellor has in his affidavit affrmed in clearest terms that if he had known that the petitioner had earlier been compulsorily retired from the Indian Administrative Service, he would not have appointed him as Vice-Chancellor of Kurukshetra University. The learned counsel for the petitioner has in this connection also again referred to the letter of the former. Vice-Chancellor, Dr. A. C. Joshi, to point out that when he said to the former Chancellor that Registrar of the Panjab University had been appointed Vice-Chancellor of the Punjabi University without consulting him and at the time the examinations were going on, the former Chancellor replied that he did not remember that. The learned counsel for the petitioner urges that the affidavit of the former Chancellor should not be accepted for he could not possibly have remembered the matter. The letter of Dr. Joshi, even on the argument of the learned counsel for the petitioner, is not evidence. There is no affidavit of Dr. Joshi. There is no material on the basis of which a conclusion can be reached that the former Chancellor has not correctly affirmed the facts in his affidavit as he has done.

The last aspect of this argument that has been urged by the learned counsel for the petitioner is that the Chancellor has not applied his judicial mind in making the impugned order, but there is no basis for this statement, because the impugned order is detailed and it discusses each and every aspect of the reply made to show-cause notice by the petitioner. It has not been quite clear on what basis this statement has been made on behalf of the petitioner that the Chancellor has not applied his mind to the case while making the impugned order.

At the conclusion of this argument, the learned counsel for the petitioner has pressed that the petitioner has not had a proper hearing before the impugned order was made, and in this respect he relies upon *Shyam Lal* v. *The State of Uttar Pradesh* (2). *The State of Uttar Pradesh* V. *Mohammad Nooh* (3), *Khem Chand* v. *The Union of India* (4) *and* Union *of India* v. *H. C. Goel* (5), but

(2) (1955) 1 S.C.R. 26.
(3) (1958) S.C.R. 595.
(4) (1958) S.C.R. 1080.
(5) A.I.R. 1964 S.C. 364.

none of the above cases is relevant in the present case because those were cases concerning contravention of Article 311 of the Constitution in regard to which a special procedure of inquiry is provided before action on the penalties as referred to in that Article is taken. The learned counsel has then referred to *Phulbari Tea Estate* v. *Its Workmen* (6), which again is not helpful to him because there also a special procedure is provided which had to be applied before action could be taken against the workmen. All these cases are really beside the point so far as the present case is concerned. In this connection the learned counsel for the petitioner has also made reference to *Ridge* v. *Baldwin* (7),which has been followed by their Lordships of the Supreme Court in *Associated Cement Companies Ltd.* v. *P. N. Sharma* (8), *Sh. Bhagwan* Vs. *Ram Chand* (9) and he has pointed out that according to those cases the necessity to follow judicial procedure and to observe the principles of natural justice flows, from the nature of the decision made or given. This is correct, but it is not quite clear how these cases advance the argument on the side of the petitioner. The petitioner had the fullest opportunity to defend himself in the departmental inquiry which culminated in his compulsory retirement. The show-cause notice only referred to two charges proved in the earlier inquiry on the basis of which the petitioner was compulsorily retired, and that fact and all the proceedings connected with it have been within the express knowledge of the petitioner. He knew the charges in that inquiry, the statement of allegations, was given the report of the Inquiry Officer, was apprised of the opinion of the Union Public Service Commission, and it was then that he was asked to show-cause notice against the proposed action of compulsory retirement in his case. He has had all the opportunity in the world to defend himself then. In reply to the show-cause notice in the present case, the petitioner never asked to produce any evidence against the proposed action. So he had ample opportunity to make his defence to what was stated in show-cause notice. The only argument that has been pressed on his side is that he was not given an opportunity to meet the averment that the former Chancellor had no knowledge of his previous compulsory retirement, but this matter has already been considered above, and it has been found that in the circumstances

(6) A.I.R. 1959 S.C. 1111.

(7) (1964) A.C. 40.

(8) A.I.R. 1965 S.C. 1595.

(9) A.I.R. 1965 S.C. 1767.

mere imputation by the Petitioner of such knowledge is not sufficient for he has not been able to substantiate that even at this late stage, whereas on the side of the respondent affidavits of the former Chancellor and of the Chief Minister have negatived such an allegation by the petitioner in his petition. Another case relied upon in this respect by the learned counsel for the petitioner is *Mafatlal Narandas Barot* v. *J. D. Rathod, Divisional Controller, State Transport Mehsara* (10), but that again was a case of termination of the services of a permanent employee of the Road Transport Corporation and that could not be done under the rules applicable without giving him an opportunity to show cause against the termination of his services. It is again not clear, how this case helps the petitioner, because in the present case all that could possibly be done in the facts and circumstances has been done to enable the petitioner to render explanation to the show-cause notice and also to enable him to take any defence that he may have wanted or may have been advised to do. The learned Deputy Advocate General has, on behalf of the respondent, in reply, in reference to *Ram Piara* v. *Municipal Committee, Hoshiarpur* (11) and *Kishori Lal Batra* v. *The Punjab State and another* (12), both cases decided by Division Benches of this Court, contended that there being no contractual or statutory provision providing for any reasons being given for the termination of the services of the petitioner, the Chancellor could remove him or terminate his services at any time. In those cases the learned judges have held that in the absence of an contractual or statutory provision to the contrary, a right vests in the master to terminate the services of his servant at any time without giving him any reasons for the same, and the same rule applies to officers of local authorities who can be removed at any time without notice or hearing. Those were two cases of local bodies and are somewhat analogous to the present case, and those cases are binding on us unless we refer the matter to a larger Bench, for which we see no reason. The reply on the side of the petitioner to this argument of the learned Deputy Advocate General is that a Vice-Chancellor of a University is not a servant of the Chancellor and there is no relationship of master and servant between the two, but the appointing authority is the Chancellor and he has also the authority to determine the conditions of service

(10) A.I.R. 1966 S.C. 1364.

(11) A.I.R. 1955 Punj. 125.

(12) A.I.R. 1958 Punj. 402.

of the Vice-Chancellor. So the dictum in those two cases applies to the present case, and the petitioner, though he has been duly heard and has had every opportunity to put up his defence, had no right to a hearing. Another case relied upon by the learned Deputy Advocate-General in this respect is *Vidyodaya University of Ceylon v. Silvoe* (13), which was a case of a Ceylon statute with provisions somewhat analogous to the provisions of the Kurukshetra University Act, 1956. In that case the services of a teacher had been terminated and he sought relief by way of writ of certiorari to quash the order on the ground, among others, that he was not heard before the order was made, and their Lordships of the Privy Council in that case held that "although the university was established and regulated by statute, that did not involve that contracts of employment made with teachers and subject to section 1(e) were other than ordinary contracts between master and servant; in the present instance the respondent was not shown to have any other status than that of a servant, and, since procedure by certiorari was not available where a master summarily terminated a servant's employment, certiorari had been wrongly granted." Their Lordships held that as there was no right of hearing provided in the statute, the teacher concerned could not claim any such right. They took into consideration the case of *Ridge* v. *Baldwin* in reaching their conclusion. Like the position of the Chancellor and the Vice-Chancellor as officers of the University under section 7 of the Act, the Ceylon statute also included the Vice-Chancellor within the scope of the term 'officer'. So this case is somewhat analogous to the present case. The consequence then is that the petitioner has had every opportunity to make his defence to the show-cause notice and, in any case, in the absence of any contract, or provision in the statute to the contrary, neither of which is the case here, the petitioner had no right of hearing.

The second argument of the learned counsel for the petitioner is that even if the ordr of compulsory retirement of the petitioner was a penalty, and it has already been shown that in fact it was a penalty, the contract of service entered into by the petitioner by accepting the office of the Vice-Chancellor is not rendered void because of his past conduct and he was under no duty or obligation to disclose his antecedents and conduct and, therefore, he cannot be said to have indulged in fraudulent concealment in this respect. The learned counsel first refers to this statement at page 216 of

(13) (1964) 3 All. E.R. 865.

Cheshire's Law of Contract, Fifth Edition,—"The general rule is that mere silence is not misrepresentation. 'The failure to disclose a material fact which might influence the mind of a prudent contractor does not give the right to avoid the contract', even though it is obvious that the contractor has a wrong impression that would be removed by disclosure. Tacit acquiescence in the self-deception of another creates no legal liability, unless it is due to active misrepresentation or to misleading conduct." The learned counsel, however, concedes that he is not relying on this statement because of any contract involved in this case, but only as a statement of a general principle which may be applied to this case. This approach is, however, of no consequence because nobody has said that the employment of the petitioner as Vice-Chancellor is void, nor has the Chancellor declared the appointment to be void. So this is not quite relevant in the present case. The learned counsel has then referred to paragraph 932 at page 485 of Halsbury's Laws of England, Third Edition, Volume 25, where it is stated that "the mere concealment at the time of the making of a contract of service of a material fact, not amounting to fraud, does not avoid the contract, and the employer is, therefore, not justified in terminating such a contract on discovering a fact which the servant was under no duty to disclose." So far as this paragraph refers to avoidance of a contract of service, nobody has, as stated, tried to say that the engagement of the petitioner as Vice-Chancellor is void. In so far as this paragraph refers to the question of termination of the service not being justified on the discovery of a fact which the servant was under no duty to disclose, it has to be considered along with paragraph 939, at page 487 of the same volume, wherein it is stated that "it is not necessary that the master, dismissing a servant for good cause, should state the ground for such dismissal; and provided good ground existed in fact, it is immaterial whether or not it was known to the employer at the time of the dismissal." So the question really is whether there is in a given case good cause for dismissal or termination of the services of a servant, and that obviously depends upon the facts and circumstances of each particular case. In this respect reliance has also been placed on *Bell* v. *Lever Brothers, Limited* (14), which was an action for recovery of compensation paid to chairman and vice-chairman of a company on subsequent discovery that they had indulged in speculation which was said to conflict with the interest

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(14) (1932) A.C. 161.

of the company, and this observation of Lord Atkin at page 227 has been particularly referred to by the learned counsel—

> "It now becomes necessary to deal with the second point of the plaintiffs—namely, that the contract of March 19, 1929, could be avoided by them in consequence of the non-disclosure by Bell of his misconduct as to the cocoa dealings. Fraudulent concealment has been negatived by the jury; this claim is based upon the contention that Bell owed a duty to Levers to disclose his misconduct, and that in default of disclosure the contract was voidable. Ordinarily the failure to disclose a material fact which might influence the mind of a prudent contractor does not give the right to avoid the contract. The principle of caveat emptor applies outside contracts of sale. There are certain contracts expressed by the law to be contracts of the utmost good faith, where material facts must be disclosed; if not, the contract is voidable. Apart from special fiduciary relationships, contracts for partnership and contracts of insurance are the leading instances. In such cases the duty does not arise out of contract; the duty of a person proposing an insurance arises before a contract is made, so of an intending partner. Unless this contract can be brought within this limited category of contracts uberrimae fidei it appears to me that this ground of defence must fail. I see nothing to differentiate this agreement from the ordinary contract of service; and I am aware of no authority which places contracts of service within the limited category I have mentioned. It seems to me clear that master and man negotiating for an agreement of service are as unfettered as in any other negotiation. Nor can I find anything in the relation of master and servant, when established, that places agreements between them within the protected category. It is said that there is a contractual duty of the servant to disclose his past faults I agree that the duty in the servant to protect his master's property may involve the duty to report a fellow servant whom he knows to be wrongfully dealing with that property. The servant owes a duty not to steal, but, having stolen, is there a superadded duty to confess that he has stolen ? I am satisfied that to imply such a duty would be a departure from the well-established usage of mankind and would be to create obligations entirely outside the normal contemplation of

the parties concerned. If a man agrees to raise his butler's wages, must the butler disclose that two years ago he received a secret commission from the wine merchant, and if the master discoveres it, can he, without dismissal or after the servant has left, avoid the agreement for the increase in salary and recover back the extra wages paid ? If he gives his cook a month's wages in lieu of notice, can he, on discovering that the cook has been pilfering the tea and sugar, claim the return of the month's wages ? I think not. He takes the risk; if he wishes to protect himself he can question his servant, and will then be protected by the truth or otherwise of the answers."

In view of the last cited case it has to be held that the petitioner was under no duty to disclose that he had earlier been compulsorily retired from the Indian Administrative Service at the time when he was appointed Vice-Chancellor of the Kurukshetra University. The learned Deputy Advocate-General has on this aspect of the argument on the side of the petitioner relied upon *G. A. Kelly Plow Co.* v. *London* (15), which is a decision of the Court of Civil Appeals of Taxes in the United States of America. In that case a deliberate and conscious misrepresentation had been made which was fraudulent conduct on the part of the servant concerned, but by mere silence of the petitioner in this case about his previous compulsory retirement, he cannot be imputed with having made a fraudulent misrepresentation to obtain the position of the Vice-Chancellor. The question, however, still remains whether, in spite of absence of such duty on the part of the petitioner, when the Chancellor came to know of the fact of his compulsory retirement after disciplinary proceedings, he was or was not in law justified in terminating the services of the petitioner ?

The third argument of the learned counsel for the petitioner is that the antecedents or previous conduct or misconduct of the petitioner which led to his compulsory retirement after disciplinary proceedings, is not germane to the question of the continuance or termination of his services. He says that it is not any disqualification in the petitioner to be appointed to the post of Vice-Chancellor of a University, nor does it lead to deprivation of his claim to be appointed to such a post. He has pressed that that is wholly extraneous to the matter connected with services of the petitioner

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(15) (1910) 125 South Western Reporter 974.

as Vice-Chancellor of the Kurukshetra University, and that neither was there any duty cast on the petitioner to disclose nor had he any opportunity to disclose the fact of his compulsory retirement. It is true that the compulsory retirement of the petitioner from the Indian Administrative Service is not a disqualification for taking up any other service, nor is he deprived of the opportunity to do so, but it has never been said by the Chancellor that the petitioner was disqualified from becoming the Vice-Chancellor of the Kurukshetra University or that he was deprived of any right to being considered for such a post. What the Chancellor has done is that he has taken the previous proved misconduct of the petitioner as a good cause for termination of his services, a cause on the basis of which, if it had been known at the time of the appointment, the petitioner would not have been appointed as Vice-Chancellor. It is not true that the petitioner had no opportunity to disclose, if he was so minded, his past conduct, because he admits that he was called by the Chief Minister and offered the office of the Vice-Chancellor of the Kurukshetra University, and that was the time when he could have made the disclosure if he wanted to do so. It has also been said that there has been tacit acquiescence on the part of the Chancellor in keeping the petitioner in the office of the Vice-Chancellor of the Kurukshetra University, but this is not based on any material, and acquiescence must, to be an inference available, arise out of some facts and circumstances. As soon as the Chancellor came to know of the antecedents of the petitioner, he proceeded to take action against him. The petitioner was compulsorily retired from the Indian Administrative Service on his having been found guilty of two charges to which detailed reference has already been made above. Those were charges of misconduct and, in the face of such proved misconduct, it can hardly be accepted from the side of the petitioner that the same is irrelevant so far as his holding the post of Vice-Chancellor is concerned. When the misconduct was such that he was not considered fit to be retained any further in the Indian Administrative Service even for a very short period so as to enable him to superannuate in the normal way, how can such a misconduct be ignored at the time of his appointment as Vice-Chancellor, or, as is the case here, the appointment having been made in ignorance of the fact by the appointing authority, the former Chancellor, how can this fact be ignored subsequently on the question of retaining the petitioner arising. It was a good cause on the basis of which the petitioner could never have been considered for the post of Vice-Chancellor of a University, and it is a good cause on the discovery

of which the Chancellor was in law justified in terminating the services of the petitioner. In the Act section 7 deals with the officers and authorities of the University and the first two officers mentioned therein are the Chancellor and the Vice-Chancellor. Section 8 provides that 'subject to the provisions of this Act, the powers and duties of the Officers of the University, the term for which they shall hold office and the filling up of casual vacancies in such offices shall be as prescribed by the Statutes'. And section 9 deals with the mode of appointment and functions of officers, other than the Chancellor, which are to be prescribed by the statutes and the Ordinances of the University. The supreme governing body of the University, according to section 10, is the Court, which has, among other powers, the power to review or annul the acts of the Executive Council and the Academic Council. The Executive Council is the executive body of the University (section 11), and its constitution and powers are prescribed by the statutes. The Academic Council has the duty of control and general regulation of and responsibility for the maintennace of standards of instruction, education, examination, discipline and health of students and for the conferment of degrees, other than honorary diplomas and certificates. According to section 14, the First Statutes of the University are set out in Schedule I to the Act. The powers and duties of the Vice-Chancellor are detailed in clause 4 of the First Statutes as in Schedule I to the Act, and that clause reads—

> "4. (i) The 'Upa-Kulapati' (Vice-Chancellor) shall be the principal executive and academic officer of the University and shall take rank next to the 'Kulapati' (Chancellor). He shall be the *ex officio* Chairman of the 'Karya-Samiti' (Executive Council), the 'Shiksha-Samiti' (Academic Council), the 'Artha-Samiti' (Finance Committee) and shall, in the absence of the 'Kulapati' (Chancellor), preside over the convocation and the meetings of the 'Samsad' (Court). He shall be entitled to be present at and to address any meeting of any authority or other body of the University.
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> (ii) It shall be the duty of the 'Upa-Kulapati' (Vice-Chancellor) to see that this Act, the Statutes, the Ordinances and the Regulations are faithfully observed. He shall have all powers necessary for the purpose.
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> (iii) The 'Upa-Kulapati' (Vice-Chancellor) shall have power to convene meetings of the 'Samsad' (Court), the 'Karya-Samiti' (Executive Council) the 'Shiksha-Samiti (Academic

Council), the 'Artha-Samiti' (Finance Committee) and may do all such acts as may be necessary to carry out the provisions of the Act, the Statutes and the Ordinances.

(iv) If, in the opinion, of the 'Upa-Kulapati' (Vice-Chancellor), an emergency has arisen, which requires that immediate action should be taken, the 'Upa-Kulapati' (Vice-Chancellor) shall take such action as he deems necessary and shall report the same for confirmation at the next succeeding meeting of the authority which, in the ordinary course, would have dealt with the matter:

Provided that if the action taken by the 'Upa-Kulapati' (Vice-Chancellor), is not approved by the authority concerned, he may refer the matter to the 'Kulapati' (Chancellor) whose decision shall be final:

Provided further that where any such action taken by the 'Upa-Kulapati' (Vice-Chancellor) affects any person or persons in the service of the University, such person or persons, shall be entitled to prefer, within thirty days from the date on which notice of such action is received, an appeal to the 'Karya-Samiti' (Executive Council).

(v) The 'Upa-Kulapati' (Vice-Chancellor) shall exercise general control over the affairs of the University and shall give effect to the decisions of the authorities of the University.

(vi) The 'Upa-Kulapati' (Vice-Chancellor) shall be appointed by the 'Kulapati' (Chancellor) on terms and conditions to be laid by the 'Kulapati' (Chancellor).

(vii) The 'Upa-Kulapati' (Vice-Chancellor) shall hold office ordinarily for a period of three years which term may be renewed.

(viii) In the case of a casual vacancy in the office of the 'Upa-Kulapati' (Vice-Chancellor) the 'Kulapati' (Chancellor), until the appointment of a new 'Upa-Kulapati' (Vice-Chancellor), may make a temporary appointment."

The Vice-Chancellor has, in substance, the governing control of the University subject of course to the limitations in the Act and the Statutes. He is responsible in regard to all aspects of the management of the University. This includes his being an *ex officio* chairman

not only of the Executive Council and the Academic Council but also of the Finance Committee. It is apparent that the whole life of the University must pulsate round the Vice-Chancellor and his character and conduct must necessarily affect not only the governance of the University as a whole but also those who have resort to it for academic education in the formative years of their lives. They are bound to be affected by the conduct and approaches of such a high functionary of the University. It follows that a Vice-Chancellor has to be a person against whom not a thing can be said and who should be an example to the scholars having resort to the University for learning.. This is a pre-requisite for the appointment of a person as Vice-Chancellor. In the case of the petitioner, the reason why he was compulsorily retired was the findings that he had maliciously made allegations against his superior offending against official propriety, decorum and discipline, and in the removal of a safe from the Government Treasury to his own custody, he had acted with utter negligence, unpardonable on the part of an officer of the rank that he was occupying. With such antecedents there can be no two opinions that the Chancellor could not possibly continue the petitioner as Vice-Chancellor and thus leave in his hands the practical day-to-day functioning of the University and lay scholars of the University open to influences that may, in view of his past conduct, reasonably be expected to emanate from him. So, although compulsory retirement is a penalty according to rule 3 of the 1955 Rules but it does not as such bar re-employment and yet in the case of appointments like that of a Vice-Chancellor of a University, it is a conclusive factor dissuading the appointing authority not to make the appointment and particularly in a case like the present where serious charges of misconduct were proved which led to that penalty. The argument of the learned counsel for the petitioner cannot be accepted that this is a consideration which is not germane and not relevant to the question whether the Chancellor should or should not have allowed the petitioner to continue as Vice-Chancellor after it had come to his knowledge that the petitioner had been compulsorily retired from the Indian Administrative Service. It is not an extraneous matter as the learned counsel for the petitioner contends. it is a matter which has a direct bearing on the very appropriate governance of a University. and the Chancellor could not possibly choose to sit by and wait until three years' term of the petitioner came to an end. The third contention of the learned counsel for the petitioner thus cannot be accepted.

There then remains the last argument on the side of the petitioner that the Chancellor has no power to terminate the services

of the petitioner. It has already been pointed out that according to section 9 of the Act the appointment of officers, including the Vice-Chancellor of the University, are to be made in accordance with the Statutes and Ordinances made under the Act. The First Statutes are given in Schedule I to the Act and clause 4 from it has already been reproduced. According to sub-clauses (vi) and (vii), the Chancellor has the power to appoint a Vice-Chancellor, and ordinarily a Vice-Chancellor is to hold office for a period of three years, which term may be renewed. In the case of the petitioner, as is apparent from the order of appointment, Annexure D, the appointment was 'for a period of three years', in other words, it was an appointment for a fixed term of three years. No conditions are attached to the appointment in the order. Neither in the Act nor in the First Statutes in Schedule I to the Act anything is stated with regard to the termination of the services of a Vice-Chancellor. The Chancellor has, however, terminated the services of the petitioner relying on the power taken from section 14 of the Punjab General Clauses Act, 1898 (Punjab Act I of 1898), which section reads—

> "14. Where, by any Punjab Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed (whether by itself or any other authority) by it in exercise of that power."

The learned counsel for the petitioner says that this section is not attracted to the interpretation of the Act and particularly to the termination of the services of the petitioner. In support of this his first argument is that section 14 of the aforesaid Act only deals with power to suspend or dismiss, and he says that power to dismiss does not include power to terminate services. His position is that the word 'dismiss' as used in that section is used as a punishment, and, within the scope of that word, termination of services does not come. Support in this respect is sought from *S. R. Tewari* v. *The District Board, Agra* (16), which was a case of termination of services of an engineer of the District Board of Agra. The learned counsel relies on this observation of their Lordship—"We are however unable to agree with the High Court that the expression 'dismissal' in the fourth proviso to section 82 (U. P. District Boards Act) includes termination of employment simpliciter. In the law relating to master

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(16) A.I.R. 1964 S.C. 1680.

and servant the expression 'dismissal' has acquired a limited meaning—determination of employment as a method of punishment for misconduct or other cause." This observation of their Lordships has to be considered along with the facts and circumstances of the case and the statutory powers under which the services of the engineer were terminated by the District Board. There was one power under section 82 to dismiss a Government servant as a punishment and there was another power to terminate his services on a certain period of notice. Their Lordships point out that the rule made under the statutes with which that case was concerned dealt with the conditions under which an officer or servant may be dismissed (dismissal being by way of punishment) and also under which termination of his employment may take place. So there was a separate provision for dismissal of an officer or servant of the District Board as punishment and there was another provision under which his employment could be determined or terminated subject to the conditions provided. It was in this context that their Lordships were making the observation upon which reliance has been placed by the learned counsel for the petitioner. In reply, the case relied upon by the learned Deputy Advocate-General—*Lekhraj Sathramdas Lalyani* v. *N. M. Shah, Deputy Custodian-cum-Managing Officer Bombay* (17), is a case directly in point in which their Lordships considered the applicability of section 16 of the General Clauses Act, 1897, a section exactly parallel to section 14 of Punjab Act 1 of 1898. In that case the Government servant concerned was appointed Manager of two firms by the Deputy Custodian and there was no express provision for termination of his services. The Deputy Custodian proceeded to do so under powers in section 16 of the General Clauses Act, 1897. Their Lordships, after reproducing section 16 of the said Act, and considering the argument that the Custodian had no power to terminate the services of the particular Government servant, held that "it is manifest that the management of the appellant with regard to the business concerns can lawfully be terminated by the Deputy Custodian by virtue of section 10(2)(b) of the 1950 Act read with section 16 of the General Clauses Act. The principle underlying the section is that the power to terminate is a necessary adjunct of the power of appointment and is exercised as an incident to or consequence of that power". This case on facts is exactly parallel to the present case and termination of services in that case was held by their Lordships to have been within the scope of the word 'dismiss' as used in section 16 of the General

(17) A.I.R. 1966 S.C. 234.

Clauses Act, 1897, and exactly the same is the position with regard to the meaning and scope of that word in section 14 of Punjab Act 1 of 1898. The second contention of the learned counsel for the petitioner in this respect is that section 14 of Punjab Act 1 of 1898 only concerns 'any Punjab Act', and he says that the First Statutes as in Schedule I to the Act are not 'Punjab Act'. Sub-section (1) of section 14 of the Act says that (on the commencement of this Act, the Statutes (Vidhi) of the University shall be those as set out in the Schedule I', and subsequent sub-sections give power to the Court of the University to make new or additional statutes or to amend or repeal the statutes in the manner provided in the very section, that is to say section 14. The argument of the learned counsel for the petitioner is that statutes are only made by the Court of the University and can be alterd also by the same body, and so they are not part of the Act as the 'Punjab Act' as that expression is used in section 14 of Punjab Act 1 of 1898. In support of this argument the learned counsel has made reference to *Rajnarain Singh* v. *The Chairman, Patna Administration Committee, Patna* (18) at page 298, proposition (5), which reads—"where the authorisation was to repeal laws already in force in the area and either substitute nothing in their places or substitute other laws, Central or Provincial, with or without modification", this was held to be *ultra vires*. Whether the power given to the Court of the University to make new or additional statutes or to amend or repeal the statutes under sub-section (2) of section 14 of the Act is *ultra vires* or not, is not a question that arises for consideration in the present case. This citation does not support the argument of the learned counsel that the First Statutes of Schedule I to the Act are not as much a part of the Act as any other provision in the main body of the Act. The learned Deputy Advocate-General has drawn attention to this statement at page 208 of Craies on Statute Law, Fifth Edition,—"To some Acts of Parliament schedules are attached. These may be merely forms or examples of the way in which an enactment is intended to be carried out or may contain provisions important in themselves..... A schedule in an Act is a mere question of drafting, a mere question of words. The schedule is as much a part of the statute, and is as much an enactment, as any other part, ..." He has also referred to the dictum of Sinha J., in *Union of India* v. *Satyendra Nath Banerjee* (19), in which the learned Judge held that "where the

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(18) (1955) 1 S.C.R. 290.
(19) A.I.R. 1955 Cal. 581.

Rules concerned are in the original schedule to an Act, then they are part of a legislative enactment in every sense of the word and in such a case the principle that applies is that the later provision shall be effective." So that this part of the argument of the learned counsel for the petitioner cannot possibly be accepted. Another reason that has been advanced by the learned counsel for the petitioner is that in clause 4 (vii) of the First Statutes in Schedule I to the Act a different intention appears militating against the attraction of the power under section 14 of Punjab Act 1 of 1898 to those provisions because sub-clause (vii) says that the Vice-Chancellor shall hold office ordinarily for a period of three years which term may be renewed. The learned counsel stresses that this sub-clause provides for appointment of a Vice-Chancellor for a fixed period of three years and that being so, here is a clear different intention showing that section 14 of Punjab Act I of 1898 shall not be attracted because the appointment being for a fixed period, the services cannot be terminated earlier to the expiry of that period. The learned counsel says that the word 'ordinarily' in sub-clause (vii) has reference only to the question of renewal of the further term and not to the limitation of the term of three years. If this argument were to prevail, it would mean that a Vice-Chancellor cannot be appointed for a period less than three years, but this is not justified by the language of sub-clause (vii) of clause 4 of the First Statutes in Schedule I to the Act. The word 'ordinarily' in the context means that the normal appointment will be for three years, but there may be cases in which it may be for a period of less than three years. So no different intention appears either in the First Statutes or any other part of the Act which leads to the conclusion that the power under section 14 of Punjab Act 1 of 1898 is not attracted to appointments made under the provisions of the Act and particularly to the appointment of a Vice-Chancellor. The learned counsel for the petitioner has also drawn attention to the order of appointment of the petitioner in which the term of his appointment is for three years. Surely that order cannot be read as of any assistance within the meaning and scope of sub-clause (vii) of clause 4 of First Statutes in Schedule I to the Act. The learned Deputy Advocate-General has referred to *S. R. Tewari's case* and the following observation of their Lordships to show that the power of appointment carries with it the power of termination of services—"Power to appoint ordinarily carries with it the power to terminate appointment, and a power to terminate may in the absence of restrictions express or implied be exercised, subject to the conditions prescribed in that behalf, by the authority

Competent to appoint." He also refers to the observation of their Lordships already cited in *Lekhraj Sathramdas Lalyani's case,* but that observation has been made in relation to section 16 of the General Clauses Act, 1897, a section parallel to section 14 of Punjab Act 1 of 1898. In this respect the observations of their Lordships of the Federal Court in *Kutoor Vengayil Ravarappan Nayanar* v. *Kutoor Vengayil Valia Madhavi Amma* (20) at page 669, after reproduction of section 16 of the General Clauses Act, 1897, may be referred to with advantage as explaining the position in law—

> "The statute has codified the well understood rule of general law as stated by Woodroffe on Receivers, Fourth Edition, that the power to terminate flows naturally and as a necessary sequence from the power to create. In other words, it is a necessary adjunct of the power of appointment and is exercised as an incident to, or consequence of, that power; the authority to call such officer into being necessarily implies the authority to terminate his functions when their exercise is no longer necessary, or to remove the incumbent for an abuse of those functions or for other causes shown."

So there is no substance in the argument of the learned counsel for the petitioner that section 14 of Punjab Act 1 of 1898 is not attracted to this case.

There remains then for consideration the argument of the learned Deputy Advocate-General, on the side of the respondent, the Chancellor, based on section 21(b) of the Act, which reads—

> "21(b) Any dispute, arising out of a contract between the University and any of its officers or teachers, shall, at the request of the teacher or officer concerned, be referred to a Tribunal of Arbitration, consisting of one member, appointed by the 'Karya-Samiti' (Executive Council), one member, nominated by the officer or teacher concerned and one referee, a nominee of the 'Kulapati' (Chancellor). The decision of the Tribunal shall be final, and no suit shall lie in any Civil Court in respect of the matter decided by the Tribunal."

Admittedly the petitioner as Vice-Chancellor of the University is an officer of it under section 7 of the Act and so, within the scope of

(20) (1949) Federal Court Reports 667.

section 21(b), on his behalf it has been said that the petitioner has entered into no written contract of service with the Chancellor or anybody else. This is only true if one single formal document is concerned, but there is the order of appointment of the petitioner as Vice-Chancellor in writing and he admits in his petition that pursuant to that order he took charge of the office of the Vice-Chancellor. This completed a written contract of service as Vice-Chancellor so far as he is concerned. So the argument of the learned counsel for the petitioner that section 21(b) of the Act is not attracted because there is no written contract of service so far as the petitioner is concerned cannot prevail. It is then said that the final arbiter is the referee and he is appointed by the Chancellor, who in this case is the authority terminating the services of the petitioner. This means, according to the learned counsel for the petitioner, that a nominee of the Chancellor will adjudicate upon the act of the Chancellor himself. This, it is said, militates against the principles of natural justice and is contrary to any conception of law, but it is settled that in relation to departmental contracts, a clause providing for arbitration by an officer of the Department is not invalid or void in law merely because arbitration has to be done by the officer of the Government, and the decision of the referee in section 21(b) of the Act is not anywise substantially different. Admittedly the petitioner has not had recourse to the remedy under section 21(b). It is contended by the learned counsel for him that that is neither a proper nor an adequate remedy in the case of the petitioner because he is not merely concerned with claiming any damages for breach of contract, but he challenges the legality of the Act of the Chancellor in terminating his services and putting an end to his statutory tenure under the provisions of the Act. There is support in this approach in the observation of their Lordships of the Supreme Court in *S. R. Tewari's case*, in which, at page 1682, paragraph 5, after making reference to some of the cases cited before their Lordships, the observation proceeds—

> "In our judgment none of these cases can be used to support the view that the High Court has no power to declare the statutory obligations of a statutory body. Under the common law the Court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ. But this rule is subject to certain well-recognised exceptions. It is open to the Courts in an appropriate case to declare that a public servant who is dismissed from service in contravention of Article 311 continues to remain in service, even though by

> so doing the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly under the industrial law jurisdiction of the labour and industrial tribunals to compel the employer to employ a worker, whom he does not desire to employ, is recognised. The Courts are also invested with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of a mandatory obligation imposed by statute, even if by making the declaration the body is compelled to do something which it does not desire to do."

So, while the petitioner may have had recourse to the remedy under section 21(b), this Court is not barred from considering his case in so far as it has been urged that the termination of his services has been contrary to the statutory provisions in the Act and the First Statutes in Schedule I thereto.

The appointment of the petitioner was for a term of three years, hence for a fixed period. Ordinarily his services could not be dispensed with before the expiry of that term, but that could be done for a good cause, and in this case there has been a good cause for the Chancellor to have terminated the services of the petitioner as soon as he came to know of the compulsory retirement of the petitioner from the Indian Administrative Service and the basis on which order in that behalf was made. The argument of the learned counsel that this was something antecedent to the appointment of the petitioner as Vice-Chancellor and, therefore, an extraneous or irrelevant matter, cannot be accepted in this case because for a high post like that of Vice-Chancellor of a University the incumbency of the holder of the office has far-reaching consequences not only in regard to the fate of the institution itself but also in regard to the education and development of the youth going to that institution. They cannot be exposed to influences which will affect them throughout their lives, for the manner in which a University is run and the ideas and concepts with which it is run have immediate impact upon the students having resort to it. The appointment of the petitioner, in the circumstances, was very unfortunate and the Chancellor was in all probability led into making this on an irresponsible recommendation. It is due to this difficulty, which was caused by such irresponsible approach to appointment to such a high office, that subsequently it became necessary for the Chancellor for the time being to relieve the situation by taking a step, which, though he could take in law, should ordinarily not be taken, and

such a consequence can only be avoided if care is initially taken in the making of such appointments.

The petition fails and is dismissed, but in the circumstances of the case, there is no order in regard to costs.

K.S.K.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and Prem Chand Pandit, JJ.

BHARAT INDU,—*Petitioner*

versus

THE PUNJAB UNIVERSITY AND ANOTHER,—*Respondents*

Civil Writ No. 379 of 966

October 27, 1966

Punjab University Act (VII of 1947)—S. 31—Punjab University Calendar, Volume 1—Regulation 19—Proceedings before Standing Committee—Whether quasi-judicial—Rules of natural justice—Applicability of—Nature and extent stated—Such proceedings—Whether analogous to proceedings in Court—Show-cause notice to the candidate—Whether must be given by Standing Committee— Appointment of Assistant Registrar to collect evidence—Whether without jurisdiction nullifying subsequent proceedings— Standing Committee—Whether should examine witnesses in case of conflict.

Held, that it is no doubt true that the University authorities, when dealing with cases of misconduct and use of unfair means in connection with an examination, perform quasi-judicial functions. But Regulation 19 of the Punjab University Calendar, Volume I, does not suggest that show-cause notice to the candidate concerned must also necessarily be given by the Standing Committee appointed by the Syndicate of the University in which the Executive Government of the University vests. The expressions "rule of natural justice" and "quasi-judicial" are both lacking in precision. The rules of natural justice, however, are not exactly those of Courts of justice. They are rather those desiderata which are regarded as essential in contradistinction from the many extra-precautions helpful to justice, but not indispensable to it, which, by those rules of evidence and procedure, the Courts have made obligatory in actual trials before themselves. The broad fundamental principal of natural justice is that a man has a right to be heard. This is only fair play in action, its essential requisites being at least to include that before some one is condemned, he has to