

The Punjab Agricultural University, Ludhiana and others v.  
Dr. P. N. Verman (R. S. Mongia, J.)

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Gurdwara and the managing committee could utilise that amount for effecting necessary repairs to the Gurdwara building and it found that the alienation of the suit property in favour of Ajaib Singh defendant was not for legal necessity or otherwise justified as an act of good management. The first appellate Court did not advert to this evidence and hastened to hold that the Gurdwara building was in a dilapidated condition; the land in suit was not yielding any profit to the Gurdwara and the sale was effected for necessary purpose and was otherwise justified as an act of good management. The property attached to a religious institution can only be sold for an "inevitable necessity" and its alienation is for the benefit of the deity or idol and if there is no such necessity, the sale is not binding on the religious institution. The managing committee of a religious institution cannot exercise larger power of alienation than that of a shebait. The sale of the property in suit was effected neither for necessary purpose nor was it justified as an act of good management.

(8) For the reasons aforementioned, the appeal is allowed, the judgment and decree of the first appellate Court are set aside and those of the trial Court are restored. However, the parties are left to bear their own costs.

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S.C.K.

Before : J. V. Gupta, C.J. & R. S. Mongia, J.

THE PUNJAB AGRICULTURAL UNIVERSITY, LUDHIANA AND

OTHERS,—Appellants.

*versus*

DR. P. N. VERMAN,—Respondent.

Letters Patent Appeal No. 563 of 1989

8th October, 1990

*Punjab Agricultural University Act, 1961—Ss. 10(9), 12, 29 & 33—Punjab and Haryana Agricultural Universities Act, 1970 repealing the 1961 Act—Ss. 14(f), 16, 31(b) & (d) & 32, Statute 3, 4—Order of removal from service—Vice-Chancellor the appointing authority—No*

*provision of delegation of powers of the Board of Management in the 1970 Act—In absence of such provision, Statute 3 making Vice-Chancellor an appointing authority is valid—Vice-Chancellor was competent to remove petitioner from service—However, Vice-Chancellor as punishing authority taking part in proceedings for consideration of petitioner's appeal vitiates the appellate order—High Court remanding the case to the Board of Management for a fresh decision without the Vice-Chancellor participating in appeal proceedings.*

*Held*, that in the absence of a corresponding provision like S. 44 of the 1961 Act in the 1970 Act, Statute 3 cannot be held to be invalid, as the power of appointment to the Vice-Chancellor given under the Statute is clearly referable to Ss. 14(f), 31(b) & (d) as also to S. 16(1) of the 1970 Act. The marginal heading of Statute 3 which reads "Manner of appointment" is a further pointer that 'Manner of appointment' also includes as to who would be the appointing authority of teachers. The petitioner was appointed by the Vice-Chancellor after coming into force of the 1970 Act and there is no other provision than statute 3 which gives powers to the Vice-Chancellor to make appointment of all teachers. He had accepted this appointment and had worked since December, 1971. He cannot now raise the point that the Vice-Chancellor was not his appointing Authority. If he was the appointing authority, then the very appointment of the petitioner would be illegal. Hence, it has to be held that no fault can be found with the order of removal passed by the Vice-Chancellor.

(Paras 16 & 17)

*Held*, that the Vice-Chancellor, who had passed the order of removal, took part in the proceedings of the Board of Management when the petitioner's appeal was considered. Therefore, the proceedings stand vitiated. We send back the case to the Board of Management to reconsider the appeal and the Vice-Chancellor may not take part in the proceedings.

(Para 18)

*Appeal under Clause X of the Letters Patent against the order/judgment dated February 27, 1989 delivered by Hon'ble Mr. Justice Amarjeet Chaudhary in C.W.P. No. 4407 of 1987.*

H. L. Sibal, Sr. Advocate with J. S. Khehar, Advocate and H. N. S. Gill, Advocate, for the Appellants.

J. L. Gupta, Sr. Advocate with Sumant Batra and Vikrant Sharma, Advocates, for the Respondent.

The Punjab Agricultural University, Ludhiana and others v.  
Dr. P. N. Verman (R. S. Mongia, J.)

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JUDGMENT

R. S. Mongia, J.

(1) The Punjab Agricultural University, Ludhiana, was constituted by the Punjab Agricultural University Act, 1961. (The Punjab Agricultural University will hereinafter be referred to as the 'University' and the Punjab Agricultural University Act, 1961, will hereinafter be referred to as '1961 Act'). Dr. Verman, writ-petitioner (now respondent in the present L.P.A.) had attained distinction in the field of Veterinary Physiology. He was appointed as Professor of Veterinary Physiology in the University by the Vice-Chancellor of the University,—*vide* order dated 14th December, 1971, a copy of which has been attached as Annexure R-2 with the written statement of the University. Dr. Verman was served with a Memorandum of charge-sheet alongwith the statement of allegations on 30th September, 1982 (Annexure P-3). The reply of Dr. Verman having not been found satisfactory, a regular departmental enquiry was held and after complying with the provisions of the Statutes for taking disciplinary action, Dr. Verman was removed from the service,—*vide* order dated 28th September, 1984, passed by the Vice-Chancellor, (a copy of which has been attached as Annexure P-8 with the writ petition). The respondent-writ-petitioner filed an appeal to the Board of Management of the University against his removal, but the same was rejected on 14th January, 1985,—*vide* order copy of which has been attached as Annexure P-11. Representation to the Chancellor of the University against the order of the Board of Management, was also filed. After granting personal hearing to Dr. Verman by the Joint Secretary to Government of Punjab, his appeal-cum-representation was rejected,—*vide* communication dated 12th April, 1987 (Annexure P-15). Dr. Verman challenged by way of writ petition the order of his removal from service dated 28th September, 1984 (Annexure P-8), the appellate order of the Board of Management dated 14th January, 1985 (Annexure P-11) as also the order of the Chancellor rejecting his appeal-cum-representation dated 12th April, 1987 (Annexure P-15). The learned Single Judge allowed the writ petition and quashed the above-said orders. Dissatisfied with the judgment of the learned Single Judge, the University has come up in the present Letters Patent Appeal.

(2) Three points were raised on behalf of the writ-petitioner before the learned Single Judge, which found favour with him.

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These were:—

1. The Appointing Authority of the petitioner being the Board of Management, therefore, the Vice-Chancellor had no jurisdiction to order removal of the petitioner from service;
2. The decision of the Board of Management was vitiated because the Vice-Chancellor had presided over the meeting of the Board of Management at the time the petitioner's appeal was considered; and
3. The punishment awarded to the writ petitioner was totally disproportionate to the gravity of the charges against the petitioner.

(3) The learned Single Judge held on the first point that it was the Board of Management, which was the appointing Authority of the writ petitioner, and, therefore, the Vice-Chancellor had no jurisdiction to order his removal and, consequently, the order of removal was bad in law. As far as the second point was concerned, the learned Single Judge held that the proceedings of the Board of Management were vitiated when it considered the appeal of the writ-petitioner, inasmuch as the Vice-Chancellor who had ordered the removal of the writ-petitioner, had presided over the proceedings of the meeting and as such had taken part in the same. On the third point, the learned Single Judge held that the punishment awarded to the petitioner was wholly disproportionate to the gravity of the charges against the petitioner.

(4) Mr. H. L. Sibal, Senior Advocate, learned counsel for the University-appellant, contended that according to the statutes of the University, the Vice-Chancellor was the appointing Authority of the writ-petitioner (now respondent) and in fact, it was the Vice-Chancellor who had appointed him as is clear from the appointment letter dated 14th December, 1971 (Annexure R-2 with the written statement). He further submitted that on facts also the Vice-Chancellor having appointed the writ-petitioner and he having accepted the appointment as far back as 1971, was estopped from raising the point that the Vice-Chancellor was not the appointing Authority. On the aspect that the proceedings of the Board of Management were vitiated when the matter regarding the appeal of Dr. Verma was considered by it, as the Vice-Chancellor who had passed the order of removal and taken part in the proceedings, the learned counsel for the appellant submitted that the matter should have been referred back to the Board of Management by the learned Single Judge to

The Punjab Agricultural University, Ludhiana and others v.  
Dr. P. N. Verman (R. S. Mongia, J.)

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be reconsidered in the absence of the Vice-Chancellor. As far as the third point regarding the quantum of punishment was concerned, the learned counsel contended that the Writ Court under Article 226 of the Constitution of India has no jurisdiction to go into the quantum of punishment. Mr. J. L. Gupta, Senior Advocate, learned counsel for Dr. Verman, on the other hand, reiterated the same submissions which had found favour with the learned Single Judge.

(5) To our mind, the first point referred to above is the crucial point on which the whole thing would revolve. To appreciate the respective arguments of the learned counsel for the parties, it would be necessary to notice some of the provisions of 1961 Act and the Statutes made thereunder.

(6) Section 10 of the 1961 Act gives the constitution and powers of the Board of Management. Section 10(9) of the 1961 Act lays down the powers of the Board of Management. Sub-clause (f) of sub-section (9) of section 10 gives power to the Board of Management to appoint Officers, teachers and other employees of the University in the manner prescribed. Sub-clause (f) of sub-section (9) of section 10 are quoted below:—

“Section 10(9).—The powers and duties of the Board shall be as follows:—

(a) to (e) ... ..

(f) To appoint the Officers, teachers and other employees of the University in the manner prescribed.

(g) ... ..

(7) Section 2(e) defines “prescribed” to mean prescribed by the Statutes of the University; whereas section 2(g) defines “Statutes” and “Regulations” to mean, respectively, the Statutes and Regulations of the University made under the 1961 Act.

(8) Section 12 of the 1961 Act lays down the powers and duties of the Vice-Chancellor. Sections 12(1), 12(6), 12(8) and 12(10) with which we may be concerned, are reproduced below:—

“12(1) The Vice-Chancellor shall be the principal executive and academic officer of the University and the Chairman of the Academic Council and shall, in the absence of the Chancellor preside at a convocation of the University and shall confer degrees on persons entitled to receive them.

12(6). In any emergency, which in the opinion of the Vice-Chancellor requires immediate action to be taken, he shall take such action as he deems necessary and shall at the earliest opportunity report the action taken to the officer, authority or other body for confirmation who or which in the ordinary course would have dealt with the matter, but nothing in this sub-section shall be deemed to empower the Vice-Chancellor to incur any expenditure not duly authorised and provided for in the budget.

12(8). Subject as aforesaid, the Vice-Chancellor shall give effect to the orders, of the Board regarding the appointment, suspension and dismissal of officers, teachers and other employees of the University.

12(10) The Vice-Chancellor shall exercise such other powers as may be prescribed.”

(9) Section 30 of the 1961 Act indicates as to how Statutes are to be made; whereas section 29 lays down as to what the Statutes may provide. Section 29(b) and (d) of 1961 Act, which are relevant for the purpose of this case, may be reproduced:—

“29. *Statutes.*—Subject to the provisions of this Act, the Statutes may provide for any matter and shall, in particular, provide for following.—

(a) ... ..

**The Punjab Agricultural University, Ludhiana and others v.  
Dr. P. N. Verman (R. S. Mongia, J.)**

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(b) the election, appointment and continuance in office of members of the authorities of the University and of the officers, teachers and other employees of the University including the filling up of vacancies and all other matters relating to those authorities and officers, teachers and other employees for which it may be necessary or desirable to provide:

(c) ... ..

(d) the classification and the manner of appointment of teachers."

Then comes Section 33, which authorises the Board to delegate by Statutes any of its powers to any officer or authority of the University. The said Section is quoted below:—

"33. *Delegation of Powers.*—The Board may by Statutes delegate to any officer or authority of the University any of the powers conferred on it by this Act or by the Statutes to be exercised subject to such restrictions and conditions as may be prescribed."

(10) Under the Statute making power envisaged by Section 30 read with Section 29 of the 1961 Act, Statutes were framed by the State Government. We are concerned in this case with the Statutes regarding the classification and manner of appointments. These are contained in Chapter IV of the Statutes. Statute 3 gives the manner of appointment and Statute 4(2) gives the procedure for appointment of officers and other teachers. These are reproduced below:—

"*Manner of appointment.*—

3. All appointments of teachers of the University under these Statutes shall be made by the Vice-Chancellor, strictly on merit.

4. *Appointment of Professors and other teachers of equivalent ranks.*—

(2) The procedure for the appointment of Professors and other teachers of equivalent ranks, when vacancies arise or when new posts are created, shall be as under:—

(i) The Vice-Chancellor may have the post advertised with such qualifications as have been prescribed by the

Academic Council and/or invite suggestions and recommendations from such persons, institutions/ agencies as he deems proper.

- (ii) After having advertised the post and received the applications and/or after having obtained the suggestions or recommendations from appropriate persons, institutions and agencies, the Vice-Chancellor may either submit a single recommendation for the approval of the Board of Management or appoint a selection committee to make recommendations.
- (iii) ... ..
- (iv) ... ..
- (v) The Chairman of the Committee with the help of a Screening Committee appointed by him shall scrutinize all the applications, suggestions and recommendations received and prepare a list of the candidates who shall be either called for interview or considered in absentia. He may also include in such a list a person/persons who have not applied or have not been recommended by the persons, institutions and agencies to whom the matter had been referred.
- (vi) After interviewing the candidates or considering them in absentia, as the case may be, the committee shall recommend to the Vice-Chancellor, as far as possible, at least three persons in order of preference.
- (vii) After receiving the recommendations of the selection committee the Vice-Chancellor may, if he considers it necessary, request the Committee, to consider additional names or to review or re-consider its recommendations. He may also, if he considers it necessary, himself interview persons recommended by the committee and/or others whom he considers to be suitable.
- (viii) The Vice-Chancellor shall then submit a single recommendation for the approval of the Board of Management. Where the Vice-Chancellor finds it necessary to recommend a person other than the person/persons recommended by the Selection committee, he shall state his reasons for doing so.



**The Punjab Agricultural University, Ludhiana and others v.  
Dr. P. N. Verman (R. S. Mongia, J.)**

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- (ix) If the Board does not approve the recommendation, the Vice-Chancellor shall in due course submit another recommendation."

At this stage it would be relevant to mention that to provide for the establishment of two independent Agricultural Universities one each in the States of Punjab and Haryana in place of Punjab Agricultural University, Ludhiana, constituted under the 1961 Act, the Punjab and Haryana Agricultural Universities Act, 1970 was enacted (hereinafter called the 1970 Act), which came into force on 2nd February, 1970. The 1970 Act repealed the 1961 Act. Except for the fact that the 1970 Act provided for the constitution of two separate Agricultural Universities in the States of Punjab and Haryana, otherwise 1970 Act is just *pari materia* with the 1961 Act. The corresponding Sections of the 1970 Act as compared to the provisions of the 1961 Act, which have been referred to or quoted above, are as follows:—

| 1961 Act.  | 1970 Act.             |
|--|-----------------------|
| 2(e)<br>(Meaning of "Prescribed")                              | 2(i)                  |
| 2(g)<br>(Meaning of "Statutes" and<br>"Regulations")           | 2(j)                  |
| Section 10(9)(f)<br>(Constitution and powers of the<br>Board). | Section 14(f)         |
| Section 12<br>(Powers and duties of the Vice-<br>Chancellor).  | Section 16            |
| Section 29(b) and (d)<br>(Statutes to provide for).            | Section 31(b) and (d) |
| Section 30<br>(Statutes how made).                             | Section 32            |

It may be highlighted here that there is no corresponding Section in the 1970 Act to Section 33 of the 1961 Act regarding the powers of the Board to delegate its powers.

(11) Section 32(1) of the 1970 Act provides that the Statutes which had already been made under Section 30 of the 1961 Act and were in force immediately before the commencement of the 1970 Act shall in so far as they are not inconsistent with the provisions of the 1970 Act, would be considered as the first Statutes of the respective Agricultural Universities in Punjab and Haryana. Section 32(1) of the 1970 Act is quoted below:—

“32(1) The Statutes made by the existing University under section 30 of the Punjab Agricultural University Act, 1961, and in force immediately before the commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, and subject to such adaptations and modifications as may be notified by the appropriate Government, be the first Statutes of a corresponding University”.

To support the argument that it is the Vice-Chancellor who was the appointing authority of the writ-petitioner (now respondent) and, consequently, he had the jurisdiction to pass the order of punishment (Annexure P-8), the learned counsel for the appellant drew our attention to Section 14(f) of the 1970 Act (which is exactly the same as Section 10(9)(f) of the 1961 Act) and contended that the Board has the power to appoint Officers, teachers and other employees of the University in the prescribed manner and ‘prescribed manner’ meant as prescribed by the Statutes (Refer to Section 2(i) of the 1970 Act). According to the learned counsel, the manner has been prescribed by Statute 3, which has already been quoted above, which in unambiguous terms says that all appointment of teachers of the University shall be made by the Vice-Chancellor. Statute 4(2), quoted above, lays down the procedure which the Vice-Chancellor has to follow before making the appointment under Statute 3. Since in the present case, according to the learned counsel, the Vice-Chancellor, who was the appointing Authority had made the appointment of the writ-petitioner, the said Authority had the power to impose punishment also.

(12) On the other hand, Mr. J. L. Gupta, Senior Advocate, learned counsel for Dr. Verma contended that Statute 3 was inconsistent with the provisions of the 1970 Act and therefore, *ultra vires* of the Act. Only those Statutes were saved under Section 32(1) of the 1970 Act, which were not inconsistent with the said Act. The learned counsel went on to submit that as long as there

The Punjab Agricultural University, Ludhiana and others v.  
Dr. P. N. Verman (R. S. Mongia, J.)

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was Section 33 in the 1961 Act, Statute 3 was good as the Board of Management had the power to delegate any of its powers to any authority by making Statutes. Since the power under Section 10(9)(f) of the 1961 Act (corresponding to Section 14(f) of the 1970 Act), vested in the Board of Management, it could only be exercised by the Vice-Chancellor under a Statute if there was a section empowering delegation of powers. Since there was no corresponding provision to Section 33 of the 1961 Act in the 1970 Act, no resort could be had to Statute 3 after the enforcement of the 1970 Act, i.e. 2nd February, 1980. According to the learned counsel after 2nd February, 1980, all appointments of teachers of the University had to be made by the Board of Management and not by the Vice-Chancellor.

(13) The above arguments of the learned counsel for Dr. Verman had prevailed before the learned Single Judge. Before the learned Single Judge the University counsel had sought to rely on an unreported Division Bench judgment of this Court in C.W.P. No. 1087 of 1969 (*Dr. I. S. Yadava v. Punjab Agricultural University, Ludhiana and others*) decided on 15th July, 1969, to contend that it was the Vice-Chancellor who was the appointing authority of the writ-petitioner. The Division Bench, after quoting the provisions of Section 33 of the 1961 Act, held as under:—

“Reading this provision alongwith section 10 sub-clause 9(f), it is patent that the manner prescribed therein implies the manner which is so prescribed by the statutes framed thereunder. In this regard the crucial provision to our mind is rule 3 in Chapter IV of the statutes referred to above which is in no uncertain terms.

“3. All appointments of teachers of the University shall be made by the Vice-Chancellor strictly on merit”.

On a consideration of all these provisions which have to be read together, we are of the view that the appointing authority of the petitioner under the Act and the statutes, is the Vice-Chancellor as specifically laid in rule 3 above said. To our mind, rule 4 which follows rule 3 prescribed merely the manner and mode of selection preceding such appointment by the Vice-Chancellor as is envisaged by rule 3. It is significant to note that nowhere in the statutes and particularly in rule 4, (viii) and (ix) it has been

mentioned that the Board of Management shall make the appointment. In fact rule 4, sub-clause (ix) clearly envisages only the non-approval of the recommendation by the Vice-Chancellor in which case the latter shall be obliged to make another recommendation in due course. The mere prior approval of the Board which is specified in the rules, does not, in our view, make the Board of Management the appointing authority in face of the clear and categorical provisions of rule 3."

(14) The learned Single Judge held that the above conclusion of the Division Bench could only hold good in the presence of Section 33 of the 1961 Act and since there was no corresponding provision in the 1970 Act, the interpretation of the Division Bench would not hold good in the present case, as admittedly the appointment of the writ-petitioner was made after the enforcement of the 1970 Act.

(15) The whole controversy, therefore, rests on the fact whether in absence of provision like Section 33 of the 1961 Act in the 1970 Act, Statute 3 is good or whether it is inconsistent with the provisions of the 1970 Act. Mr. H. L. Sibal, learned counsel for the University, submitted that firstly Statute 3 which gives power to the Vice-Chancellor to make all appointments of teachers, is referable to Section 14(f) of the 1970 Act, which says that the Board of Management shall appoint teachers in the prescribed manner and since it has been prescribed by the Statute (Statute 3) that the Vice-Chancellor shall be the appointing authority of all teachers, the Vice-Chancellor and not the Board of Management would be the appointing authority of the teachers. Further he submitted that under Section 31(b) of the 1970 Act (corresponding to Section 29(b) of the 1961 Act) the Statutes are to provide for the appointment and continuance in office of University teachers and other employees. Further also, under Section 31(d) of the 1970 Act (corresponding to Section 29(d) of the 1961 Act) the Statutes are to provide for the classification and manner of appointment of teachers. According to the learned counsel, even under Section 16(10) of the 1970 Act (corresponding to Section 12(10) of the 1961 Act), the Vice-Chancellor was to exercise such other powers which may be prescribed. According to the contention of the learned counsel, Statute 3 even in the absence of Section 33 was good and not inconsistent with the provisions of the 1970 Act, inasmuch as the same was referable to the above-mentioned sections of the 1970 Act. On the other hand,

The Punjab Agricultural University, Ludhiana and others v.  
Dr. P. N. Verman (R. S. Mongia, J.)

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Mr. J. L. Gupta, learned counsel for Dr. Verman, submitted that section 14(f) of the 1970 Act (corresponding to section 10(9)(f) of the 1961 Act) specifically lays down that the Board of Management is the appointing authority and it is only that the manner has to be prescribed by the Statute, i.e. the method as to how the appointments are to be made by the Board of Management, and, therefore, in absence of corresponding provision like Section 33 in the 1970 Act, Statute 3 was inconsistent with the said Act.

(16) After hearing the learned counsel for the parties at length, we are of the view that there is considerable force in the arguments of the learned counsel for the appellants. Even in the absence of a corresponding provision like Section 33 of the 1961 Act in the 1970 Act, Statute 3 cannot be held to be invalid, as the power of appointment to the Vice-Chancellor given under the Statute is clearly referable to Section 14(f), 31(b) and (d) as also to Section 16(1) of the 1970 Act.

(17) The marginal heading of Statute 3 which reads "Manner of appointment" is a further pointer that 'Manner of appointment' also includes as to who would be the appointing authority of teachers. To our mind, the learned Single Judge was not correct in so far as he held that the power under Statute 3 by the Vice-Chancellor could only be exercised as long as Section 33 of the 1961 Act existed. Apart from that, we are of the view that the writ-petitioner (now respondent) was appointed by the Vice-Chancellor after coming into force of the 1970 Act, and, there is no other provision than Statute 3 which gives powers to the Vice-Chancellor to make appointment of all teachers. He had accepted this appointment and had worked since December, 1971. He cannot now raise the point that the Vice-Chancellor was not his appointing Authority. If he was not the appointing authority, then the very appointment of the writ petitioner would be illegal. Not only that the writ-petitioner's appointment would become illegal, but all appointments which have always been made by the Vice-Chancellor would become illegal. The learned counsel for the appellants submitted at the bar that from the very inception of the University till date all appointments of teachers have been made by the Vice-Chancellor. If we were to hold that the Vice-Chancellor is not the appointing authority it may lead to chaos as all appointments may become irregular and illegal. The writ-petitioner was appointed by the Vice-Chancellor and it is he who had passed the order of his

removal. Consequently, we hold that no fault can be found with the order of removal dated 28th September, 1984 (Annexure P-8). We reverse the finding of the learned Single Judge to that extent.

(18) As far as the other point is concerned that the proceedings of the Board of Management were vitiated when it considered the appeal of the writ-petitioner, inasmuch as the Vice-Chancellor, who had passed the order of removal, took part in the proceedings, we hold that the findings of the learned Single Judge are well founded. In fact, this matter is covered by a Division Bench Judgment of this Court in *Dr. K. N. Garg v. Maharishi Dayanand University and others* (1). We are inclined to send back the case to the Board of Management to reconsider the appeal of the writ petitioner (now respondent) where the Vice-Chancellor who had passed the order of removal of the writ-petitioner may not take part in the proceedings.

(19) As far as the question of quantum of punishment is concerned, we are not going into that matter as we are remanding the case to the Board of Management to consider the appeal of Dr. Verma on merit and it would be open to the Board of Management to consider the question of quantum of punishment, taking into consideration the observations of the learned Single Judge. For the view we are taking, the order of the Chancellor dated 12th April, 1987 (Annexure P-15), which was passed on the representation-cum-appeal of Dr. Verma also stands quashed.

(20) In the result, the appeal is partly accepted to the extent that the order of removal of Dr. Verma dated 28th September, 1984 (Annexure P-8), is held to be valid, the order of the Board of Management dated 14th January, 1985 (Annexure P-11), is held to be bad and the case is remanded back to the Board of Management to decide the appeal of Dr. Verma afresh where the Vice-Chancellor who had passed the order of removal of Dr. Verma would not take part. The appeal be decided as early as possible, preferably within three months from the receipt of this decision. The order of the Chancellor dated 12th April, 1987 (Annexure P-15) passed on the representation-cum-appeal stands quashed. We leave the parties to bear their own costs.

R.N.R.

(1) 1980(1) S.L.R. 234.