



GAHC010087432023

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In the Gauhati High Court
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WP(C) 2214/2023

Jayanta Kumar Sarma

S/O- Late Debendra Nath Sarma, R/O- C/4, Giri Niwas, Kharguli,
P.O. Uzanbazar, P.S. Lataasil, Dist. Kamrup(M), Pin- 781004, Assam

.....**Petitioner**

VERSUS

- 1) Krishna Kanta Handique State Open University - Represented By The Registrar, H.O. Patgaon, Rani, Guwahati-781017, Dist. Kamrup (M), Assam And City Office At Nh-37, Resham Nagar, Khanapara, Guwahati-781022, Dist. Kamrup(M), Assam
- 2) The Vice Chancellor,
Krishna Kanta Handique State Open University, H.O. Patgaon, Rani, Guwahati-781017, Dist. Kamrup(M), Assam And City Office At Nh-37, Resham Nagar, Khanapara, Guwahati-781022, Dist. Kamrup(M), Assam
- 3) Board Of Management,
Krishna Kanta Handique State Open University, H.O. Patgaon, Rani, Guwahati-781017, Dist. Kamrup (M), Assam And City Office At Nh-37, Resham Nagar, Khanapara, Guwahati-781022, Dist. Kamrup (M), Assam.
- 4) The Enquiry Committee
Represented By The Chairperson, Constituted Under A Resolution Of The 69th Meeting Of Board Of Management, Held On 19.01.2023, Nh-37, Resham Nagar, Khanapara, Guwahati-



781022, Dist. Kamrup(M), Assam

5) Prof. Rajendra Prasad Das

Vide Chancellor, Krishna Kanta Handique State Open University, H.O. Patgaon, Rani, Guwahati-781017, Dist. Kamrup(M), Assam And City Office At Nh-37, Resham Nagar, Khanapara, Guwahati-781022, Dist. Kamrup(M), Assam.

6) Arupjyoti Choudhury

Krishna Kanta Handique State Open University, H.O. Patgaon, Rani, Guwahati-781017, Dist. Kamrup(M), Assam And City Office At Nh-37, Resham Nagar, Khanapara, Guwahati-781022, Dist. Kamrup(M), Assam.

7) University Grants Commission.

Bahadur Shah Zafar Marg. New Delhi-110002.

..... **Respondents**

BEFORE

HON'BLE MR. JUSTICE KARDAK ETE

Advocate for the petitioner : Mr. M.K. Choudhury
Mr. M. Sarma

Advocate for the Respondent : Mr. K.N. Choudhury
Mr. P.J. Phukan,(respondent nos. 1 to 3)
Mr. A. Chamuah (respondent no. 7)

Date of Hearing : **19.02.2024**

Date of Judgment : **15.03.2024**

JUDGMENT & ORDER (CAV)

Heard Mr. M.K. Choudhury, learned senior counsel assisted by Mr. M. Sarma, learned counsel for the petitioner. Also heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. P.J. Phukan, learned counsel for the



respondents No.1, 2 and 3 and Mr. A. Chamuah, learned counsel for the respondent No.7.

- 2.** Challenge in the present writ petition is an order No. KKHSOU/PF/08/2021/68/2369 dated 19.04.2023 passed by the Registrar of Krishna Kanta Handiqui State Open University (herein after referred to as KKHSOU) whereby, the service of the petitioner is terminated with immediate effect as Professor in the Bhupen Hazarika School of Mass Communication, KKHSOU in pursuant to the decision of 71st meeting of the Board of Management, KKKHSOU on the basis of the report submitted by the committee constituted for examination of the selection procedure and eligibility of the petitioner.
- 3.** The petitioner was employed with the Northeastern Frontier Railways for twenty-three (23) years as a Senior Publicity Inspector, Public Relations Officers before having opted for VRS.
- 4.** Vide advertisement dated 14.08.2020, the KKHSOU issued an advertisement No. R2/2020 for filling up of various post of teachers prescribing the last date for submission of online applications as on 31.08.2020, which was extended to 05.09.2020. The petitioner applied and submitted his credentials. The petitioner was called for interview on 21.12.2020 and upon further assessment by the Selection Committee held on 21.12.2020, he was selected for the post of Professor, in the Bhupen Hazarika School of Mass Communication, KKHSOU. Thereafter, the Board of Management approved the selection and appointment of the petitioner. Accordingly, the petitioner was appointed vide letter dated 24.12.2020 and he joined his service on 01.02.2021. After completion of probationary period of one (1) year, the service of the petitioner



was confirmed vide letter dated 11.03.2022 w.e.f. 01.02.2022 by the Registrar with the approval of Vice-Chancellor.

5. While the petitioner was serving as Professor, he was served with a show-cause notice dated 03.04.2023 directing the petitioner to provide his "opinion" about the findings and decision of the Enquiry Committee constituted as per the 69th Board of Management meeting held on 19.01.2023 and on the resolution of 70th meeting of the Board of Management held on 10.03.2023 for taking action against the petitioner. It is contended that the show-cause notice was only with respect to petitioner's eligibility as a Professor, Bhupen Hazarika School of Mass Communication, KKHSOU. In the show-cause notice, the report of the Enquiry Committee was annexed.

6. It is the contention of the petitioner that the resolution passed in the Board of Management held on 19.01.2023, indicates that the relevant resolution was with regard to the Selection Procedure pertaining to the selection and appointment of the petitioner, and the Enquiry Committee also was given mandate for looking into the "selection procedure". Whereas, the show-cause notice dated 03.04.2023 was in relation to the petitioner's qualifications.

7. In response to the show-cause notice, the petitioner vide letter dated 04.04.2023 has sought for and authenticated copies of certain documents relied on by the Enquiry Committee, before submitting his reply. The documents sought for by the petitioner were provided on 18.04.2023. It is contended that without having been afforded any opportunity to present his case before the appropriate authorities, the petitioner was served with the impugned termination order dated 19.04.2023 issued by the Registrar with the approval of

the Vice-Chancellor, KKHSOU, terminating the service of the petitioner as Professor with immediate effect.

8. It is contended that the petitioner having undergone the rigors of the selection process as mandated by the relevant provisions of the UGC Regulations, 2018 as well as the First Statutes of the KKHSOU, as well having his services confirmed after serving the probationary period of one year, was unceremoniously and unilaterally terminated from services without having been afforded any chance to present his case before the concerned authorities. It is further contended that proceedings of the Selection Committee meeting held on 21.12.2020 clearly goes to show that the Registrar and the Vice-Chancellor, KKHSOU were members present in which the petitioner was duly selected and appointed. It is also contended the process of assessment of applications was conducted by the Vice Chancellor after appointment of two outside subject experts as per First Statutes of the KKHSOU.

9. It is contended that the termination of the petitioner's service vide impugned order dated 19.04.2023 is in total violation of provisions of Krishna Kanta Handique State Open University Employees (Academic and Non-Academic) Service Condition, Conduct and Appeal Rules, 2019 (herein after referred to as Service Rules, 2019 in short).

10. It is the contention of the petitioner that the service of the petitioner was confirmed vide order dated 11.03.2022 w.e.f from 01.02.2022 and abruptly terminated from services without having been afforded a single chance of presenting his case before the authorities which is in blatant violation of the principles of natural justice and the principles of reasonableness.



11. According to the petitioner, the entire selection process pertaining to the selection and appointment of the petitioner, was undertaken by the authorities of the KKHSOU, as well as on-boarding of two subject matter experts, and the petitioner being an outsider at that relevant point in time, could not be a perpetrator of the same, if any. The Registrar, Board of Management members and the Vice-Chancellor, KKHSOU were aware of the whole process, whereby the petitioner was selected for appointment as Professor. Therefore, it is surprising as to why and how, after a period of two years from the petitioner's initial entry, the authorities including the same Board of Management and same Registrar decided to re-visit the entire selection procedure. Hence, the present writ petition challenging the impugned order of termination dated 19.04.2023.

12. Mr. M.K. Choudhury, learned Senior Counsel submits that pursuant to advertisement dated 14.08.2020 the candidature of the Petitioner was assessed by two experts empanelled by the KKHSOU, and found qualified to be recommended for interview under Clause 4.1.III.B of the UGC Regulations, 2018. Thereafter, the Registrar, vide order dated 01.12.2020, based upon the summary of the assessment of the subject matter experts, recommended the candidature of the Petitioner along with another candidate for interview to be held on 21.12.2020. Subsequently, the Selection Committee, vide order dated 21.12.2020, based upon consideration of the Academic credentials, experience in ODL, Research Publication and performance in the interview, had unanimously decided to recommend the name of the Petitioner for appointment. The Petitioner was appointed, vide letter of appointment dated 24.12.2020 as Professor, Bhupen Hazarika School of Mass Communication, KKHSOU. The said appointment letter categorically states that the period of probation of the Petitioner is one (1) year, and that the offer of appointment can be withdrawn at

any time during the probationary period. The Petitioner, after serving his probationary period was confirmed vide Office Order dated 11.03.2022 w.e.f. 01.02.2022. The Petitioner, after having served at the respondent University for two years (2) years, and 2 months, was served with a show-cause notice dated 03.04.2023 seeking the Petitioner's opinion as to his eligibility as Professor, Bhupen Hazarika School of Mass Communication, KKHSOU. On the very next day, the Petitioner preferred his reply dated 04.04.2023 seeking copies of certain documents in order to enable the Petitioner to prefer a detailed submission to the show-cause notice dated 03.04.2023. The Registrar, vide letter dated 18.04.2023 furnished the copies of documents sought for by the Petitioner. On the very next day, i.e. on 19.04.2023, the Petitioner was issued with the termination letter terminating him from his services with immediate effect.

13. Mr. M.K. Choudhury, learned Senior Counsel submits that the Petitioner was summarily dismissed from his services as a Professor, Bhupen Hazarika School of Mass Communication, KKHSOU, which is a substantive post, and in which he was confirmed after having completed his probationary period, without affording him any opportunity to defend his case before the respondent University. The Petitioner was initially assessed by the two subject matter experts (from outside the University) in compliance with the provisions of Clause B (II) of Chapter – VI of the First Statutes of the KKHSOU. This is also in compliance with Clause 4(III).B of the UGC Regulations, 2018 read with Clause 6.(V) of the said regulations. He submits that a conjoint reading of the UGC Regulations indicate that for direct recruitment under Clause 4(III).B of the UGC Regulations, 2018 require an individual having a Ph.D degree in the relevant / allied / applied disciplines, from any academic institutions/ industry, who has made significant



contribution to the knowledge in the concerned / allied / relevant discipline, supported by documentary evidence, provided he / she has ten years' experience. It is pertinent to note that the said Clause mandates, a Ph.D degree, along with ten years' experience in the concerned / allied / relevant discipline as well as significant contribution to the knowledge in the said field. As is evident from the Petitioner's application, the Petitioner satisfies all the said academic criteria along with twenty-two (22) years of service in the Northeast Frontier Railway as well as having experience of three (3) years and six (6) months as a Sub-Editor at the Sentinel, three (3) years and two (2) months as a Senior Publicity Inspector at Northeast Frontier Railway and eighteen (18) years and eleven (11) months as a Public relations Officer at Northeast Frontier Railway. This is also corroborated in the letter(s) dated 17.02.2022 and 19.09.2022, which shows that the Petitioner satisfies all the minimum educational criteria laid down in the UGC Regulations, 2018.

14. He submits that pursuant to the selection, appointment and eventual confirmation of the Petitioner as Professor, Bhupen Hazarika School of Mass Communication, KKHSOU, the same has not been put to any challenge by any participating candidate. Be that as it may, the Selection Committee has assessed the Academic qualifications of the Petitioner as well as experience in ODL, Research Publication and performance in the interview. Thus, the Petitioner's selection, appointment and confirmation as Professor was pursuant to the Rules of the KKHSOU read with the relevant provisions of the UGC Regulations, 2018. His initial appointment was also carefully assessed by the Selection Committee taking into account his academic credentials as well as other related and ancillary achievements. The Petitioner's selection and appointment is thus, legal having all necessary educational qualifications. Furthermore, it had also been

urged that the service conditions of the Petitioner was governed by the Service rules, 2019, where prior to terminating the services of the Petitioner, the procedure as laid down under Rule 90 ought to have been followed, which was given a complete go-bye in this case.

15. In support of his submissions, Mr. M.K. Choudhury, learned Senior Counsel has placed reliance on the following judgments of Hon'ble Supreme Court.

1. **UPSC v. M. Sathiya Priya**, reported in **(2018) 15 SCC 796**.
2. **K.C. Joshi v. Union of India**, reported in **(1985) 3 SCC 153**.
3. **A.P. State Federation of Coop. Spg. Mills Ltd. v. P.V. Swaminathan**, reported in **(2001) 10 SCC 83**,

16. Mr. M.K. Choudhury, having submitted above, has implored upon this court to set aside the impugned order of termination dated 19.04.2023 issued by the Registrar, KKHSOU by which the services of the Petitioner as Professor, Bhupen Hazarika School of Mass Communication, KKHSOU, has been terminated and restore the Petitioner forthwith with his entitled backwages.

17. On the other hand, Mr. K.N. Choudhury, learned Senior Counsel for the respondents No. 1, 2 and 3, submits that the entire writ petition is revolved around the eligibility aspect of the writ petitioner in terms of the advertisement No. R2/2020 dated 04.08.2020 as well as the relevant clause 4.1 (III.B) and clause 6.0(V) of the UGC Regulations on Minimum Qualifications for Appointment of Teachers, 2018. This eligibility aspect has not been explained by the writ petitioner at all from the perspective of two crystal-clear legal requirements: Firstly, the eligibility of an outstanding professional is to be supported by documentary evidence regarding significant contribution to the



knowledge in the concerned discipline; and Secondly, clear and transparent criteria and procedure” for the purpose of selecting only outstanding professionals who can contribute substantially to the university knowledge system, which criteria and procedure “the university's statutory bodies must lay down” beforehand. He submits that both the aforesaid mandatory requirements (along with “ten years' experience” after having Ph.D degree), are not complied with in the instant matter.

18. Mr. K.N. Choudhury, learned Senior Counsel, referring to the report of the committee, submits that these two glaring anomalies clear on the face of the relevant records, have also been pointed out particularly in the Report of the Committee constituted by the Board of Management, the principal executive body/authority of the University as per Section-16/17 of the KKHSOU Act, 2005

19. Mr. K.N. Choudhury, learned Senior Counsel, submits that the opinion of the petitioner has been duly sought for through a Show Cause Notice dated 03.04.2023 about the aforesaid Committee’s report as well as the Board of Management's decision (enclosing with the said Notice, the Report of the Committee), but the petitioner has not submitted any opinion even after elapsing of more than two weeks in one or other pretext and ultimately been terminated with immediate effect after long deliberations in the meetings of the Board of Management by an impugned Order dated 19.04.2023, in tune with the existing laws of the land as propounded by the Hon’ble Apex Court and this Hon’ble Court. Further, the aforesaid termination is not a penalty, which could be imposed upon a serving employee of the University for his (mis) conduct. The petitioner’s illegal appointment as well as continuation/ confirmation in the said service has been void ab-initio/non-est in law and only penalty could be imposed only upon a serving employee of the University. Therefore, he submits



that Service Rules, 2019 is not applicable.

20. He submits that in view of the above factual as well as legal matrix, the termination of the petitioner's service from the KKHSOU vide impugned order dated 19.04.2023 is legal and valid, his appointment being illegal and void since the day one of his joining the University as a Professor in Bhupen Hazarika School of Mass Communication, KKHSOU.

21. Mr. K.N Choudhury, learned Senior Counsel, in support of his submissions, has placed reliance on the following judgments of Hon'ble Supreme Court and this Court.

1. **Gambhirdan K. Gadhvi v. State of Gujarat and Ors., (2022) 5 SCC 179.**
2. **National Spot Exchange Limited-vs-Mr. Anil Kohli, (2022) 11 SCC 761.**
3. **West Bengal Central School Service Commission & Ors.-vs- Abdul Halim & Ors., (2019) 18 SCC 39.**
4. **Union of India & Anr.-vs- Tulsiram Patel, (1985) 3 SCC 398.**
5. **State of M.P.-vs-ShyamaPardhi & Ors., (1996) 7 SCC 118.**
6. **Mohd. Satraj-vs-State of U.P., (2006) 2 SCC 315.**
7. **Ashok Kumar Sonkar-vs- Union of India and Ors., (2007) 4 SCC 54.**
8. **State of Orissa & Anr.-vs-Mamata Mohanty, (2011) 3 SCC 436.**
9. **State of Orissa & Anr.-vs-Mamata Mohanty, (2011) 3 SCC 436.**
10. **Kime Bobby & Anr.-vs- Gauhati High Court & Anr., 2021 (3) GLT 33.**



22. Due consideration has been extended to the rival submissions advanced by the learned counsel for the parties and also examined the materials available on record including the record produced by the learned counsel for the respondents.

23. Pursuant to the advertisement dated 14.08.2020, issued by the Registrar, KKSOU, the petitioner applied for the post of Professor in Bhupen Hazarika School of Mass Communication and the candidature of the petitioner was assessed by two experts empanelled by KKSOU. It is projected that petitioner having been found qualified recommended for interview as per clause 4.1.III.B of the UGC Regulations, 2018. Accordingly, vide order dated 01.02.2020 based upon the summary of the assessment of the subject experts, recommended the candidature of the petitioner along with other candidate for interview, which was held on 21.12.2020. The Selection Committee vide order dated 21.12.2020 after consideration of the academic credentials etc, and performance of the interview, the name of the petitioner was recommended for appointment as Professor in Bhupen Hazarika School of Mass Communication, KKHSOU. Accordingly, the petitioner was appointed vide appointment order dated 24.12.2020 as Professor. He joined his service on 01.01.2021. The petitioner after completion of his probation period was confirmed in his service as Professor vide order dated 11.03.2022 w.e.f. 01.02.2022.

24. While the petitioner was serving after confirmation, a show-cause notice dated 03.04.2023 was served seeking the petitioner's opinion as to his eligibility as Professor Bhupen Hazarika School of Mass Communication, KKHSOU. On receipt of the show-cause notice vide letter dated 04.04.2023, the petitioner had sought for copies of certain documents in order to enable him to submit a detail reply to the said show-cause notice. The Registrar vide letter dated



18.04.2023 furnished the copies of documents sought for by the petitioner. Thereafter, on the very next day, vide impugned order dated 19.04.2023, the service of the petitioner was terminated with immediate effect.

25. On consideration of the above events, it appears that the petitioner was summarily dismissed/terminated from service as a Professor, a substantive post, in which he was serving. The service of the petitioner was confirmed vide order dated 11.03.2022 w.e.f. 01.02.2022 after having been completed his probation period in a substantive/regular post.

26. The issues involved in the present proceeding are as to whether the respondent University has followed the procedural requirement of service rules/law before impugned action of termination of service of the petitioner was issued and/or as to whether the cardinal principle of natural justice i.e. an opportunity being heard has been followed or not. And/ or as to whether the termination of the petitioner is valid as the petitioner lacks eligibility qualification and due to improper selection process wherein the principle of natural justice and the Service Rules, 2019 have no application.

27. To appropriately analyse the issues involved in the present proceedings, I deem it apposite to refer to the rules applicable as framed by the respondent authority regulating the service conditions and conduct of the employee of the KKHSOU employees.

28. In exercise of powers under section 24 of the KKHSOU Act, 2005, the Board of Management has framed the regulation/rules relating to the condition of service of the teachers/employees of the KKHSOU and also the requirement and other allied matters relating to their services called Krishna Kanta Handique State Open University Employees (Academic and Non Academic) Service

Conditions Conduct Appeal Rules, 2019 (in short the Service Rules, 2019).

29. Rule 88 provides for nature of penalties, which are as follows:-

NATURE OF PENALTIES:

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on an employee, namely:

- (i) Censure;
- (ii) Withholding of increments or promotion
- (iii) Recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders to the University;
- (iv) Reduction to a lower service, grade or post, or to a lower time-scale, or to lower stage in a time-scale;
- (v) Compulsory retirement;
- (vi) Removal from service, which shall not be a disqualification for future employment;
- (vii) Dismissal from service, which shall ordinarily be a disqualification for future employment.

Explanation -

The following shall not amount to a penalty within the meaning of this rule: -

- (a) Withholding of increments of a Government servant for failure to pass a departmental examination or successfully undergo training prescribed in accordance with the rule or orders governing the service of post or the terms of his appointment.
- (b) Stoppage of an employee at an efficiency bar in the time scale on the ground of his unfitness to cross the bar;
- (c) Non-promotion whether on a substantive or officiating capacity of an employee, after due consideration of his case to a Service, grade or post for promotion to which he is eligible;
- (d) Reversion to lower service, grade or post of an employee officiating in higher Service, grade or post on the ground that he is considered, after trial, to be unsuitable for such higher service, grade or post or on administrative grounds unconnected with his conduct;
- (e) Reversion to his/her permanent service, the employee appointed on probation to another service, grade or post during or at the end of the period of probation in accordance with the terms of his/her appointment or the rules and orders governing probation;
- (f) Termination of the Service of-

- i) An Employee appointed on probation, during or at the end of the period on probation, in accordance with the terms of his appointment or the rules and orders governing probation; or
- (ii) An employee under an agreement in accordance with the terms of such agreement;
- (ii) An employee whose term of appointment provides for the termination of service by either party giving notice for specified period; a
- (iv) An employee in whose case the appointment is stated to be expressly on temporary basis and to have been sanctioned until further orders and its is also provided that his services may be terminated at any time without notice.

30. Rule 90 provides the procedure for imposing penalty as follows:-

PROCEDURE FOR IMPOSING PENALTIES:

No order imposing on any of the penalties specified in rule 88 shall be passed except after an inquiry held, as far as may be, in the manner hereinafter provided.

II) The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be hold. Such charges together with a statement of the allegations on which they are based shall be communicated in writing to the employee, and he shall be required to submit, within such time, as may be specified, by the Disciplinary Authority, a written statement of his defence and also to state whether he desires to be heard in person.

III) At the time of delivering the charges, the Disciplinary Authority shall invariably furnish to the employee a list of documents and witnesses by which each article of charges is proposed to be sustained.

Explanation -

In this sub-rule 90. II) the expression "the Disciplinary Authority" shall include the authority competent under these rules to impose upon the employee any of the penalties specified in rule 88,

- i) The employee concern shall, for the purpose of preparing his defence, be permitted to inspect and take extracts from such records relevant for the purpose of enquiry.
- ii) Permission may be refused, if for reasons to be recorded in writing, in the opinion of the Disciplinary Authority, such records are not relevant for the purpose of enquiry or it may go against the interest of the University if he/she is allowed access thereto;

Provided that when an employee is permitted to inspect and take extracts from official records due caution shall be taken against tempering removal or destruction of records.

IV) On receipt of the written statement of defence, or if no such statement is received-within

the time specified, the Disciplinary Authority may itself inquire into such of the charge as are not admitted or, if it considers it necessary so to do, may appoint for the purpose a Board of inquiry or an inquiring Officer.

V) The Disciplinary Authority may nominate any person to present the case in support of the charges before the inquiring Authority. The employee may present his case with the assistance of any other employee approved by the Disciplinary Authority, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority, having regards to the circumstances of the case so permits.

VI) The inquiring Authority shall, in the course of the enquiry consider such documentary evidence and take such oral evidence as may be relevant or material in regards to the charges. The employee shall be entitled to cross-examine witnesses examined in support of the charges and to give evidence in person and to adduce documentary and oral evidence in his/her defence. The person presenting the case in support of the charges shall be entitled to cross-examine the employee and the witnesses or to admit any document in evidence on the ground that his evidence or such document is not relevant or material, it shall record its reasons in writing.

VII) At the conclusion of the inquiry, the inquiring Authority shall prepare a report of the enquiry, recording its findings on each of the charges together with reasons therefore.

Explanations:

If in the opinion of the Inquiring Authority the proceedings of the enquiry establish any article of charge different from the original article of the charge, it may record its findings on such article of charge.

Provided, that the findings on such article of charge shall not be recorded unless the employee has either admitted the facts on which such article of charge is based or has a reasonable opportunity of defending himself against such article of charge.

VII) The record of the inquiry shall include -

i) The charges framed against the employee and the statement of allegations furnished to him under sub-rule. 90. II);

ii) His written statement of defence, if any;

(iii) The oral evidence taken in the course of the enquiry;

iv) The documentary evidence considered in the course of the inquiry;

v) The orders, if any, made by the Disciplinary Authority and the inquiring Authority in regard

to the inquiry; and

vi) A report setting out the finding on each charge and the reasons therefore,

vii) The Disciplinary Authority shall, if it is not the inquiring Authority; consider the record of the inquiry and record its finding on each charge.

31. Rule 91 provides for major penalties as under:-

If the Disciplinary Authority having regard to its findings on the charges and on the basis of evidence adduced during the inquiry, is of the opinion that any of the penalties specified in Clauses (iv) to (vii) of rule 88 should be imposed on the employee it shall make an order imposing such penalty and it shall not be necessary to give the employee any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Board of Management the record of the inquiry shall be forwarded by the Disciplinary authority to the Board of Management for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the employee.

32. On the bare reading of the above provisions of rules, the nature of penalties which may be imposed on an employee are Censure, Withholding of increments or promotion, Recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders to the University, Reduction to a lower service, grade or post, or to a lower time-scale, or to lower stage in a time-scale, Compulsory retirement, Removal from service, which shall not be a disqualification for future employment; and Dismissal from service, which shall ordinarily be a disqualification for future employment. As per the explanation, inter-alia, termination of the Service of an employee appointed on probation, during or at the end of the period on probation, in accordance with the terms of his appointment or the rules and orders governing probation shall not amount to penalty within the meaning of the rules. The above rules provide for procedure for imposing of penalties that no order for imposing any of the

penalties specified in Rule-88 shall be passed except after an enquiry is held. The disciplinary authority shall framed definite charges on the basis of allegations on which the enquiry is proposed to be held. Such charges together with the statement of allegations on which they are based shall be communicated in writing to the employee and he shall be required to submit within such time as may be specified by the disciplinary authority, a written statement of his defence and also to whether he desires to be heard in person. It further provides that at the time of delivery of charges, the disciplinary authority shall invariably furnished to the employee a list of documents and a witnesses by which each articles of charges is proposed to be suspended.

33. Rule 94 of the Service Rules, 2019 provides for special procedure in certain cases. On perusal of the said rule, the present case of termination of the service of the petitioner, in my considered view would not fall under the said rule.

34. On careful perusal of the records, it transpires that on the basis of the letter dated 10.11.2022 filed by one Professor, Mr. S. Baruah, Housing Colony, Chandmari addressed to the then Hon'ble Governor, Assam, wherein, an action has been sought to be taken against the appointment of the petitioner as Professor during 2021 by Dr. Kandarpa Das, the then Vice Chancellor of KKHSOU, the University authority constituted a committee to enquire into the allegation against the petitioner. Accordingly, the committee has submitted its report on 06.03.2023, whereby, the committee concluded that the petitioner Dr. Jayanta Kumar Sharma did not fulfil the eligibility condition for appointment to the post of Professor at the time of his selection. The committee also observed that there is deviation in the selection procedure and lacked transparency, which requires checks and balances so that such instances do not occur in future.

35. It is also revealed from the record that the University Grants Commission,



distance education Bureau, has from time to time written a letter to the Registrar, KKHSOU for taking immediate action against the unqualified professor appointed during 2021 by Dr. Kandarpa Das, the then Vice Chancellor of KKHSOU.

36. The report was placed before the Board of Management of KKHSOU and was deliberated on the report. The Board of Management resolved that the action as per the committee report which concluded that Dr. Jayanta Kumar Das, the petitioner, did not fulfil the eligibility conditions to the post of Professor at the time of his selection be taken. Thereafter, the Registrar vide reference letter No. KKHSOU/PF/08 dated 03.04.2023 was issued directing the petitioner to place his opinion about the decision of the committee and the Board of Management within 10(ten) days from the date of the issue of the letter, wherein, the report of the committee was enclosed. As noted above, the petitioner filed an application on receipt of such show-case notice on 04.03.2023, wherein, the petitioner has sought for authenticated original documents as there have been references to a number of annexures in the said report, which have been furnished to him. The petitioner has also sought for resolution of the Board of Management as the Board has resolved that the action should be taken against him based on the recommendation of the committee report, so as to enable him to prepare and submit a detailed reply. The Registrar vide dated 18.04.2023, has furnished the copies of the documents to the petitioner. On receipt of such documents the petitioner has sought for two weeks time to submit his reply as he need to go through the documents afresh. The records further reveals that the Board of Management, KKHSOU, held its meeting on 09.04.2023, wherein, the Registrar has informed the Board of Management that in response to the show-cause notice, the petitioner has



asked for authenticated copies of documents and the annexures of committees report, which was furnished and the petitioner has sought for further two weeks time to prepare his reply to the show-cause notice. It is also revealed that the Registrar had informed the Board of Management that as per the service rules, a number of steps are to be involved in the process which requires time. The UGC on the other hand, in its last letter dated 27.10.2023 has suggested that the action against the petitioner should be taken within a period of seven days. The members of the Board of Management suggested that there is no point in giving him two weeks time and immediate action should be taken and the petitioner be removed from his service as Professor with immediate effect. It further suggested that the decision should be reported to the UGC and office of the Hon'ble Chancellor for necessary information.

37. Having considered the action and the proceedings by the respondent University, it transpires that the decision to remove the petitioner from his service appears to have been taken primarily on the basis of the Committee report as well as the pressure from University Grants Commission.

38. On perusal of the report of the committee, it appears that the petitioner did not fulfil the eligibility conditions for appointment to the post of Professor at the time of the selection and there were deviations in the selection procedures and lacked transparency which required enough checks and balances so that it does not occur in future. However, such findings and conclusion are being rebutted by the petitioner by demonstrating that he is eligible in all aspect by contending that he was allowed to appear in the selection process on being recommended by two outside subject experts for the purpose as per the First Statutes of KKHSOU and UGC Regulations. Therefore, if one accept the findings of committee report, it may not be wrong in agreeing with the submissions of



the learned senior counsel Mr. K. N. Choudhury for the respondent University to the effect that since the petitioner lacks basic eligibility qualifications for appointment to the post of Professor at the time of selection and the selection process lacks transparency and such consequential appointment to the ineligible candidate is void ab-initio. However, the issues to be considered in the present proceedings, as noted above, are as to whether the respondent authority has followed the procedural requirements as prescribed under the service rules, 2019 and the cardinal principal of natural justice i.e. an opportunity of being heard or not and/or as to whether the impugned termination order is valid as the provisions of service Rules, 2019 and principle of natural justice have no application or not. Thus, I deem it appropriate to consider the same.

39. Having considered the materials placed on record, it is noticed that the impugned termination order dated 19.04.2023 has been issued primarily based on the enquiry report submitted by the committee constituted pursuant to the complaint against the petitioner without giving an opportunity of hearing to the petitioner. The respondent University has not followed the provisions of the service Rules, 2019, much less the minimum procedural requirements of law, except the issuance of show cause notice dated 03.04.2023. The Board of Management despite being informed of the applicability of the provisions of Service Rules, 2019 thought it fit to resort to short cut method by concluding that there is no point giving further time to the petitioner and according to them, the enquiry committee has clearly concluded that petitioner did not fulfil the eligibility conditions for appointment to the post of Professor at the time of selection and appears to have acted on the pressure of the UGC, which in my considered opinion, is in total violation of procedural requirements prescribed under the service rules, 2019 which expressly provides the cardinal principal of



natural justice in it.

40. It is also noticed that the respondent authority supplied the documents sought by the petitioner responding to letter of petitioner dated 04.04.2023. The documents were furnished to the petitioner on 18.04.2023 and the impugned termination order was issued on 19.04.2023. In my considered view, the respondent University has acted in haste which is absolutely arbitrary and bad in law. The petitioner ought to have been given a reasonable opportunity to submit his reply in view of the fact that the enquiry was conducted behind the back of the petitioner. This Court, even for a moment, is not suggesting that no enquiry can be conducted, but after the enquiry the petitioner ought to have been provided reasonable opportunity to place his case which is a procedural requirement as expressly prescribed under the Service rules, 2019 by following the cardinal principle of an opportunity of being heard. This being the position, the respondent University has violated the prescribed procedural requirement with all impunity as the petitioner is a confirmed/regular employee to which the Service Rules, 2019 is applicable.

41. Now, this court would proceed to refer and consider the case laws relied by the parties.

42. In the matter of **M. Sathiya Priya,(Supra)** the Hon'ble Supreme Court has held that it is the settled legal position that the courts have to show deference and consideration to the recommendations of an Expert Committee consisting of members with expertise in the field, if malice or arbitrariness in the Committee's decision is not forthcoming. The doctrine of fairness, evolved in administrative law, was not supposed to convert tribunals and courts into appellate authorities over the decision of experts. The constraints—self-imposed, undoubtedly—of writ jurisdiction still remain. Ignoring them would lead to confusion and

uncertainty. The jurisdiction may become rudderless.

43. The Hon'ble Supreme Court in the matter of **K.C. Joshi (Supra)** has held that employee cannot be dismissed without a semblance of an enquiry or without whisper of the principles of natural justice, then such an approach overlooks the well-established principle that where State action affects livelihood or attaches stigma, the punitive action can be taken after holding an enquiry according to the principles of natural justice. In other words, an unbiased Judge, and an opportunity to controvert the allegation and to clear oneself are the minimum principles of natural justice which must inform such drastic power of dismissal affecting livelihood of an employee. Ordinarily, where the order of termination of service is shown to be bad and illegal, the necessary declaration must follow that the employee continues to be in an uninterrupted service and he is entitled to full back wages.

44. In the case of **P.V. Swaminathan (Supra)** it is held that the legal position is fairly well settled that an order of termination of a temporary employee or a probationer or even a tenure employee, simpliciter without casting any stigma may not be interfered with by the court. But the court is not debarred from looking at the attendant circumstances, namely, the circumstances prior to the issuance of order of termination to find out whether the alleged inefficiency really was the motive for the order of termination or formed the foundation for the same order. If the court comes to a conclusion that the order was, in fact, the motive, then obviously the order would not be interfered with, but if the court comes to a conclusion that the so-called inefficiency was the real foundation for passing of order of termination, then obviously such an order would be held to be penal in nature and must be interfered with since the appropriate procedure has not been followed. If an allegation of arbitrariness is



made in assailing an order of termination, it will be open for the employer to indicate how and what was the motive for passing the order of termination, and it is in that sense in the counter-affidavit it can be indicated that the unsuitability of the person was the reason for which the employer acted in accordance with the terms of employment and it never wanted to punish the employee.

45. In the case of **Gambhirdan K. Gadhvi (Supra)**, the Hon'ble Supreme Court has held that UGC Regulations are mandatory and would apply to all the universities having statutory force.

46. In the case of **National Spot Exchange Limited-vs-Mr. Anil Kohli (Supra)** the Hon'ble Supreme Court has referred the earlier cases wherein it is observed that the law prevails over equity if there is a conflict. It is observed further that equity can only supplement the law and not supplant it. Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law. What is administered in Courts is justice according to law, and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law. Equity and law are twin brothers and law should be applied and interpreted equitably, but equity cannot override written or settled law. Equitable considerations have no place where the statute contained express provisions. It is now well settled that when there is a conflict between law and equity the former shall prevail.

47. In the case of **West Bengal Central School Service Commission & Ors.-vs- Abdul Halim (Supra)** it is held by the Hon'ble Supreme Court that it is well settled that the High Court in exercise of jurisdiction under Article 226 of the Constitution of India does not sit in appeal over an administrative decision. The Court might only examine the decision-making process to ascertain whether



there was such infirmity in the decision-making process, which vitiates the decision and calls for intervention under Article 226 of the Constitution of India. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the Writ Court by issuance of Writ of Certiorari. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a Writ Court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The Writ Court does not interfere, because a decision is not perfect.



48. In the case of **Tulsiram Patel's case (Supra)**, the Hon'ble Supreme Court has referred that in **Maneka Gandhi case** and in **Liberty Oil Mills v. Union of India** the right to make a representation after an action was taken was held to be a sufficient remedy, and an appeal is a much wider and more effective remedy than a right of making a representation. Further, it has also been held therein that if the contention of the petitioner that in all cases there must be a right of hearing before an order is made to a person's prejudice were correct, the result would be startling and anomalous. For instance, in spite of Articles 21 and 22 no person can be taken in preventive detention unless he has been first given an opportunity of showing cause against the proposed action. Results such as these would make a mockery of the provisions of the Constitution.

49. In the case of **Shyama Pardhi (Supra)** the Hon'ble Supreme Court, on the admitted facts of that case, has held that since prescribed qualifications had not been satisfied, the initial selection is per se illegal. The question or violation of the principles of natural justice does not arise.

50. In the case of **Mohd. Satraj (supra)**, the Hon'ble Supreme Court has laid down that there can be a certain situation in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution. For example, where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. In **Aligarh Muslim University v. Mansoor Ali Khan** this Court considered the question whether on the facts of the case the employee can invoke the principle of natural justice and whether it is a case where, even if notice has been given, result would not have been different and whether it could be said that no prejudice was caused to him, if on the admitted or proved facts grant of an opportunity would not have made any difference. In **M.C. Mehta v. Union of India**, the exceptions laid down in **S.L. Kapoor case** and

sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non-est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin.

38. The concept of adverse possession of lien on post or holding over are not applicable in service jurisprudence. Therefore, continuation of a person wrongly appointed on post does not create any right in his favour.

*40. In **Pramod Kumar v. U.P. Secondary Education Services Commission** this Court examined the issue as to whether a person lacking eligibility can be appointed and if so, whether such irregularity/illegality can be cured/condoned. After considering the provisions of the U.P. Secondary Education Services Commission Rules, 1983 and the U.P. Intermediate Education Act, 1921, this Court came to a conclusion that lacking eligibility as per the rules/advertisement cannot be cured at any stage and making appointment of such a person tantamounts to an illegality and not an irregularity, and thus cannot be cured. A person lacking the eligibility cannot approach the court for the reason that he does not have a right which can be forced through court.*

*41. This Court in **Pramod Kamar** further held as under: (SCC p. 160, para-18)*

“18. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularised, particularly, when the statute in no unmistakable term says so. Only an irregularity can be.”

53. The Hon'ble Supreme Court in **Arvind kumar T. Tiwari (supra)** has held that any appointment made in contravention of the statutory requirement i.e., eligibility, cannot be approved and once an appointment is bad at its inception, the same cannot be preserved, or protected, merely because a person has been employed for a long time. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere

irregularity. Such a person cannot approach the Court for any relief for the reason that he does not have a right which can be enforced through Court.

54. In the case of **Kime Bobby (supra)**, a Division Bench of this Court has relied on the case of **Inderpreet Singh Kahlon & Ors. Vs. State of Punjab & Ors.**, reported in (2006) 11 SCC 356, wherein the Hon'ble Apex Court has held that when an appointment has been made not in terms of the Rules, but in view of the commission of illegality in the selection process involved, the same would be void and a nullity, as it would be in violation of Article 14 & 16 of the Constitution and the case of **State of Gujarat & Ors. Vs. Arvind kumar T. Tiwari & Anr.**, reported in (2012) 9 SCC 545, wherein the Apex Court has held that a person who does not possess the requisite qualification cannot even apply for recruitment, for the reason that his appointment would be contrary to the statutory rules, and would therefore, be void in law. The Apex Court further held that lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to a serious illegality and not mere irregularity. Such a person cannot approach the Court for any relief as he does not have a right that can be enforced through Court. And held that if appointment is made of an ineligible candidate, the appointment being illegal and void, was rightly terminated without any need of a departmental proceeding.

55. I have perused the case laws relied on by the learned counsel for the parties herein referred to above. There cannot be any quarrel to the above propositions of law. On careful consideration, I find that the case laws referred to above have been decided on its facts which are different from the facts and the circumstances of the present case.

56. Reverting back to the present case, as noted above, it is noticed that the impugned termination order dated 19.04.2023 has been issued primarily based



on the enquiry report submitted by the committee constituted pursuant to the complaint against the petitioner without giving an opportunity of hearing to the petitioner. The respondent University has not followed the provisions of the service Rules, 2019, much less the minimum procedural requirements of law, except the show cause notice dated 03.04.2023. The Board of Management despite being informed of the applicability of the provisions of Service Rules, 2019 thought it fit to resort to short cut method by concluding that there is no point giving further time to the petitioner and appears to have acted on the pressure of the UGC, which in my considered opinion, is in total violation of procedural requirements prescribed under the service rules, 2019 which expressly provides the cardinal principal of natural justice.

57. Having considered the materials on record and in the light of above discussions, I hold that the Service Rules, 2019 would be applicable which has not be adhered to at all by the respondent University. Therefore, the termination of the service of the petitioner is in total violation of procedural requirements prescribed under the service rules, 2019 which expressly provides the cardinal principle of natural justice. The petitioner is entitled to an opportunity of hearing in terms of the service Rules, 2019. The procedures are clearly prescribed under rule 90 of the Service rules, 2019 and same has been violated with all impunity and the petitioner, a confirmed/regular employee has been terminated, illegally. The non-compliance of the mandate of Rule-90 of the Service Rules, 2019, is an infirmity which goes to the root of the matter and without more, vitiates the action of the respondent university.

58. In view of the discussions made herein above, I am of the considered view that the impugned termination order dated 19.04.2023 has been issued without following the principle of natural justice, which is otherwise expressly provided



under the service rules, 2019 and without any reference to the said provision of rules. Thus, the impugned order dated 19.04.2023 cannot be sustained.

59. Accordingly, the impugned termination order dated 19.04.2023 issued by the Registrar, KKHSOU, terminating the service of the petitioner as Professor in the Bhupen Hazarika School of Mass Communication, KKHSOU is hereby set aside and quashed. Consequently, the petitioner, namely, Jayanta Kumar Sarma be reinstated forthwith as Professor in the Bhupen Hazarika School of Mass Communication, KKHSOU with all consequential benefits. However, the respondent University is at liberty to proceed with the departmental proceedings against the petitioner strictly in terms of the service Rules, 2019.

60. The writ petition stands allowed and disposed of. No order as to costs.

JUDGE

Comparing Assistant