

Reserved on: 06.08.2024

Pronounced on: 23.09.2024

Court No. - 17

Case :- CONTEMPT APPLICATION (CIVIL) No. - 936 of 2020

Applicant :- Prof. Ashish Wakhlu

Opposite Party :- Prof. M L Bhatt Vice Chancellor K.G.M.C. Lucknow And Ors.

Counsel for Applicant :- Aakash Prasad, Abhishek Dwivedi, Amitav Singh, Dr. V.K. Singh, Sandeep Kumar Ojha, Shubham Singh

Counsel for Opposite Party :- Abhinav Trivedi, Lalta Prasad Misra, Shubham Tripathi

Hon'ble Rajeev Singh, J.

1. Heard Shri Sandeep Dixit, learned Senior Counsel assisted by Shri Sandeep Kumar Ojha, learned for the applicant and Dr. L.P. Misra assisted by Shri Shubham Tripathi, learned counsel appearing for the respondents.

2. The instant contempt application is filed arraying nine respondents with a prayer that the order dated 20.12.2018 passed in Writ Petition (S/S) No. 35784 of 2018 and order dated 05.12.2019 passed in Writ Petition (S/S) No. 33626 of 2019 are violated by them, therefore, they may be summoned and punished under the provisions of Contempt of Courts Act.

The order dated 20.12.2018 passed in Writ Petition (S/S) No. 35784 of 2018 is as under:-

"Heard learned counsel for the parties.

The petitioner is challenging the enquiry report and the constitution of the disciplinary proceeding in Writ Petition No.29638 (S/S) of 2018, in which judgment has been reserved on 16.11.2018, which is under dictation.

On the basis of the enquiry report, the respondents have proceeded to conclude the disciplinary proceeding.

In view of the above, prima facie case has been made out for the grant of interim order.

Respondents are permitted to conclude the disciplinary proceeding, but no final order shall be passed till the delivery of the judgment in the aforesaid writ petition."

The order dated 05.12.2019 passed in Writ Petition (S/S) No. 33626 of 2019 is as under:-

"Heard Sri J.N. Mathur, learned Senior Counsel assisted by Sri Aakash Prasad, learned counsel for the petitioner and Sri Abhinav N. Trivedi who has put in appearance on behalf of respondents no. 3 to 7. Learned Chief Standing Counsel has accepted notice on behalf of opposite party no. 1 while Sri Deep Chatterjee holding brief of Sri Samir Kalia, learned counsel, has put in appearance on behalf of respondent no. 2.

This writ petition is directed against the order of suspension passed by the Vice Chancellor much after the date of issuance of charge sheet.

This Court is conscious of the fact that as many as three writ petitions filed by the petitioner are already pending before this Court. The pending writ petitions are directed against the actions for which a cause of action arose at different stages. The first writ petition i.e. Writ Petition No. 2963 (SS) of 2018 was even heard and judgement reserved but the same could not be pronounced and has been released. In yet another Writ Petition No. 3578 (SS) of 2018, this court has permitted the disciplinary proceedings to go on but taking of final decision has been stayed. The third writ petition i.e. Writ Petition No. 18642 (SS) of 2019 is directed against the charge sheet and the same continues to be pending.

In order to deal with the issue at hand, it is apt to refer to the relevant provisions of First Statutes of the University. Suspension is regulated under statute 11.06 which for ready reference is extracted below:

"11.06 (1) A teacher shall be suspended on the charges of misconduct, or being "Unbecoming" of a teacher pending an enquiry and the action to be taken as per the laid down procedure.

(2) The period of suspension shall continue until such time that action is taken against him through the laid down procedure either to punish or exonerate him.

(3) The suspension is not a punishment.

(4) A teacher on being found guilty can be given punishment commensurate to the charges levelled against him. It shall include withholding of salary increment for a varied period, withholding his promotion, his demotion, compulsory retirement and termination from

The action of suspension proceeds on the recommendations of the Disciplinary Committee as is provided under statute 11.11 of which the relevant part is extracted hereunder:

"DISCIPLINARY PROCEEDINGS

11.11.(1)

(2)

(3)

(4) The function of the Disciplinary Committee shall be as follows:

- (i) to decide any appeal preferred by an employee of the University.
- (ii) to hold enquiry into case involving disciplinary action against a teacher or the librarian of the University.
- (iii) to recommend suspension of any employee referred to in sub-clause (ii) above pending or in contemplation of enquiry against such employee.
- (iv) to exercise such other powers and perform such other functions as may, from time to time, be entrusted to it by the Executive Council.
- (5)"

It is clear that the disciplinary committee shall make a recommendation for placing a teacher under suspension keeping in mind the ingredients of statute 11.06.

In the present case, it appears that a recommendation in sealed cover was forwarded by the Disciplinary Committee both on account of misconduct and non-cooperation on the part of the petitioner in the disciplinary proceedings. The recommendation so made came up for consideration before the Executive Council which has passed a resolution on 19.10.2019 approving for placing the petitioner under suspension simply on account of his non cooperating with the enquiry. The resolution passed as contained in Annexure-38 to the writ petition gives a clear indication that it was non-cooperation on the part of the petitioner in the enquiry which has weighed for his placing under suspension.

The petitioner undisputedly is a Professor in the University. The duties attached to the post of a Professor are less in the nature of administrative duties but are largely educational. The twin functions which the petitioner is under an obligation to discharge are significant but the educational function is essential. The purpose of suspension has to take into consideration the dimension of educational role of a teacher. Charge sheet has already been issued. There does not appear to be any good reason for placing the petitioner under suspension, inasmuch as, no administrative functions are essentially attached to the working of a teacher. Even if there are any administrative functions attached, the same could be taken away but not the essential duties. The purpose of education has not to suffer. This dimension cannot be turned a blind eye while placing a teacher under suspension.

This Court would also notice that after issuance of the charge sheet on 14.6.2019, there has hardly been any progress in the disciplinary proceedings except fixation of two dates. It is submitted by the petitioner that he had duly participated in the enquiry and asking for documents or making prayer for affording reasonable opportunity cannot be taken to be non-cooperation on his part.

This Court would notice that the allegation of financial embezzlement surfaced on the basis of an audit objection which has been dropped and what is pursued by the University is a complaint lodged by a

private person i.e. one Dr. O.P. Prakash in relation where to the preliminary report according to the petitioner was never submitted.

This Court would expect that the disciplinary proceedings in the case at hand shall progress fairly and the petitioner may participate and cooperate in the same. Taking non-cooperation of the petitioner to be an unbecoming act warranting suspension, in my humble view, is arbitrary.

Having regard to the totality of the circumstances and the submissions put forth by learned counsel for the parties, this Court is of the considered opinion that the impugned order of suspension dated 19.10.2019 being, prima facie, unwarranted, is liable to be stayed. The petitioner shall, however, participate in the enquiry which is permitted to be conducted in terms of the order already passed in Writ Petition No. 3578 (SS) of 2018. Until further orders of the Court, the impugned order of suspension contained in Annexure-1 to the writ petition is stayed.

It is, however, made clear that any observation made in this order shall not have any bearing upon the enquiry proceedings.

Respondents pray for and are granted a week's time to file counter affidavit.

Rejoinder affidavit, if any, may be filed within next one week.

List immediately after expiry of the aforesaid period."

3. Learned counsel for the applicant submitted that the applicant was appointed as Assistant Professor in Department of Paediatrics Surgery in King George, Medical University, Lucknow. In terms of audit objection dated 29.08.2017, three members committee was constituted to enquire into the matter, hence, inquiry report was submitted on 25.09.2017. Thereafter, on 13.10.2017, six members Inquiry Committee was also constituted by Executive Council to enquire into the matter and to submit its report within a period of three months. On 02.08.2018, the Constitution of Inquiry Committee was communicated to all members of the Committee including the applicant vide notice dated 24.09.2018. On 04.10.2018, the Committee resolved for conducting a pre-inquiry (fact finding) before proceeding for formal regular inquiry and a questionnaire was prepared and communicated to petitioner directing him to submit his reply. In the meantime, the applicant preferred Writ Petition (S/S) No. 29638 of 2018 challenging preliminary inquiry report and notice of constitution of Disciplinary Committee dated 24.09.2018, in the said petition, judgement was reserved on 16.11.2018, but subsequently, it was released on 06.02.2019.

4. The orders dated 16.11.2018 and 06.02.2019 passed in Writ Petition (S/S) No. 29638 of 2018 are as under:-

The order dated 16.11.2018:

"Heard learned counsel for the petitioner, Sri V.K.Singh, Sri Sameer Kalia and Sri Abhinav Narain Trivedi for respondent Nos. 2,3 and 4.

Judgment reserved."

The order dated 06.02.2019:

"The case is released and be placed before Hon'ble the Chief Justice / Hon'ble the Senior Judge for nomination of appropriate Bench."

5. Submission of learned counsel for the applicant was that the applicant assailed the questionnaire dated 04.10.2018 prepared by Disciplinary Committee for conducting the pre-inquiry in Writ Petition (S/S) No. 35784 of 2018 on 20.12.2018. A Writ Petition (S/S) No. 29638 of 2018 was also filed challenging preliminary inquiry and constitution of Disciplinary Proceeding Committee, in which, order was reserved by the writ Court on 16.11.2018 directing conclusion of disciplinary proceeding but restrain from passing any final order till the delivery of the judgement in the Writ Petition (S/S) No. 29638 of 2018.

It has further been submitted that inquiry was proceeded by issuing notice to the applicant on 29.01.2019. Then, the applicant preferred a representation, but Disciplinary Committee resolved to formulate formal charge-sheet against the applicant. Thereafter, inquiry was proceeded by preparing the charge-sheet approved by Executive Council on 25.05.2019.

It has also been submitted that a writ petition i.e. Writ Petition (S/S) No. 18642 of 2019 was filed on 05.07.2019 by the applicant before this Court challenging the charge-sheet and the said writ petition was pending for consideration. At the same time, the applicant was placed under suspension vide order dated 19.10.2019, the said order was challenged in Writ Petition (S/S) No. 33626 of 2019, in which, suspension order was stayed by the writ Court on 05.12.2019 with the observation that the petitioner should, however, participate in the inquiry.

6. Submission of learned counsel for the applicant was that the aforesaid stay order of suspension dated 05.12.2019 was challenged by K.G.M.U. in a Special Appeal No. 29 of 2020 which was disposed of on 21.01.2020 with the observations for listing all the writ petitions of the petitioner i.e. Writ Petition (S/S) No. 29638 of 2018, Writ Petition (S/S) No. 35784 of 2018, Writ Petition (S/S) No. 18642 of 2019, and Writ Petition (S/S) No. 33626 of 2019 before the writ Court for analogous hearing; it was further observed in the said order that pleadings be exchanged between the parties within four weeks; it was next observed that the counsel for the parties to make a joint prayer before the writ Court to decide the aforesaid petitions, as early as possible, might be decided within a period of three months; till then,

the interim order passed by the writ Court regarding suspension order should remain in operation; in case the incumbent would not cooperate and tried to linger on the matter, the university would be at liberty to file an application for modification/vacation of interim order.

7. The order dated 21.01.2020 passed in Special Appeal No. 29 of 2020 is as under:-

"(1) Vakalatnama filed by Sri Aakash Prasad, Advocate on behalf of respondent No.1 is taken on record.

(2) Heard Dr. L. P. Mishra and Sri Abhinav N. Trivedi, learned Additional Chief Standing Counsel for the appellants, Sri J. N. Mathur, learned Senior Advocate assisted by Sri Dr. V. K. Singh and Sri Aakash Prasad, learned Counsel for respondent No.1, Sri Manish Mishra, learned Standing Counsel for respondent No.2 and Sri Samir Kalia, learned Counsel for respondent No.3.

(3) At the outset, learned Counsel for the respondent No.1 has raised an objection that under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952, Special Appeal against the interlocutory order dated 5.12.2019 passed in Writ Petition No. 33626 (SS) of 2019 is barred therefore it is not maintainable and is liable to be dismissed on the aforesaid ground alone.

(4) Learned Counsel for the appellants has submitted that as per main relief claimed in the writ petition, the petitioner (respondent No.1 herein) is praying for quashing of the suspension order dated 19.10.2019 and the same has been stayed by the impugned order, which has a bearing on the final adjudication of the case, therefore, the order impugned is not an interlocutory order and as such, the Special Appeal would lie. Therefore, the objection deserves to be rejected.

(5) It is well settled that the aforesaid provision bars appeals against those interim orders, which are totally interlocutory in nature, do not decide matters of moment and do not have an element of finality attached to them. Conversely, if the order vitally affects rights of the parties having bearing on the final adjudication of the case, then even though the order is interim, it cannot be termed as an interlocutory order and the appeal would lie. An appeal would also lie against those orders which cannot be undone at the time of final hearing and which have an element of finality attached to them.

(6) This Special Appeal has been filed against the interlocutory order dated 5.12.2019 passed in Writ Petition no. 33626 (SS) of 2019, Prof. Ashish Wakhlu v. State of U.P. and others, by which learned Writ Court stayed the suspension order dated 19.10.2019 on the ground of arbitrary as the same was passed taking non-cooperation of the petitioner/respondent No.1 to be an unbecoming act warranting suspension and directed him to participate in the inquiry which is permitted to be conducted in terms of order already passed in Writ Petition No. 3578 (SS) of 2018. The impugned order having bearing on a final adjudication of the case, the present appeal is maintainable.

(7) Brief facts of the case are that the respondent was appointed as Assistant Professor and is presently working as Professor in the department of Paediatrics Surgery of appellant No.1/King George's Medical University, Lucknow.

(8) In terms of the Audit objection dated 29.8.2017, a 3-member committee was constituted for enquiring into the matter, who submitted its report recommending for taking necessary action against respondent No.1 on 25.9.2017. Thereafter, on 13.10.2017, the Executive Council constituted 6-member Disciplinary Committee in terms of Statute 11.11 of KGMU to enquire into the matter as also the report of preliminary Fact Finding Enquiry Committee and to submit its report within a period of three months.

(9) On 2.8.2018, the Executive Council resolved that allegations regarding the audit objections be dropped but the other complaints received through office of Chancellor as well as other sources have significant ground for further investigation. Further, it was resolved that the Disciplinary Committee constituted in the meeting of Executive Council dated 13.10.2017 and 2.6.2018 will remain in force to investigate the matter. The constitution of Disciplinary Committee was communicated to all Members of the Committee including respondent No.1/Dr. Ashish Wakhlu vide notice dated 24.9.2018.

(10) Being aggrieved, respondent No.1 initially filed Writ Petition No.29638 (SS) of 2018 challenging the preliminary Enquiry Report and the notice of Constitution of Disciplinary Committee dated 24.9.2018, wherein judgment was reserved on 16.11.2018, but subsequently, it was released on 6.2.2019 and at present, the matter is pending.

(11) In the meantime, on 4.10.2018, the Disciplinary Committee resolved for conducting a pre-enquiry (Fact Finding) before starting formal Disciplinary Committee. Consequently, a questionnaire was prepared requiring the respondent No.1/petitioner, Mr. Vikrant Kumar and Finance Officer of the KGMU to submit their replies.

(12) Respondent No.1 assailed the said questionnaire by filing second Writ Petition no. 35784 (SS) of 2018 on 20.12.2018, learned Writ Court, taking note of the fact that the judgment in Writ Petition No. 29638 (SS) of 2018 challenging the enquiry report and the constitution of Disciplinary proceedings has been reserved on 16.11.2018, directed for conclusion of disciplinary proceedings but restrained from passing any final order.

(13) According to the appellants, Writ Petition No. 35784 (SS) of 2018 filed by the respondent No.1/petitioner has lost its efficacy for two reasons that respondent No.1/appellant never filed any reply to the questionnaire dated 1/13.12.2018 and the questionnaire was never acted upon by the Disciplinary Committee who eventually proceeded to hold a fullfledged formal disciplinary proceedings.

(14) On 29.1.2019, respondent No.1 was informed about the date, time and place of meeting of Disciplinary Committee to be held on 30.1.2019. Though respondent No.1 never appeared before the Disciplinary Committee, but he preferred a representation on

20.1.2019. On 30.1.2019, the Disciplinary Committee resolved to formulate formal chargesheet and thereafter, the next date of meeting of Disciplinary Committee be fixed.

(15) Thereafter, vide notice dated 25.4.2019, respondent No.1 was informed about the date, time and place of meeting of Disciplinary Committee to be held on 26.4.2019, on which date, the chargesheet was prepared and consequently, the Disciplinary Committee resolved for placing the same before the Executive Council for its approval, which approved the chargesheet on 25.5.2019. Thereafter, the Registrar, KGMU served on respondent No.1 the chargesheet alongwith all documents enclosed therein, which was returned by the respondent No.1 on 15.6.2019 on the pretext that the complaint of the complainant, evidence and his affidavit are not enclosed with the chargesheet. After enclosing the aforesaid three documents, the chargesheet was again served on respondent No.1 on 28.6.2019.

(16) Third Writ Petition No.18642 (SS) of 2019 has been filed by respondent No.1 challenging the chargesheet on 5.7.2019 before this Court wherein counter affidavit has been filed and the said writ petition is pending consideration. However, on 20.7.2019, respondent No.1 returned the chargesheet again contending that the aforesaid three documents are not enclosed with the chargesheet. Thereafter, on 29.7.2019, the Registrar, KGMU again served the chargesheet upon respondent No.1 giving last opportunity to submit his written reply till 5.8.2019.

(17) On 6.8.2019, respondent No.1 preferred a representation indicating that no further proceedings in terms of chargesheet can be undertaken till such time Writ Petition No.18642 (SS) of 2019 challenging the chargesheet is pending consideration before this Court.

(18) On 30.8.2019, taking note of the fact that respondent No.1 has not filed written reply to the chargesheet and keeping in view the seriousness of charges, the Disciplinary Committee recommended for suspending respondent No.1 and accordingly, resolved to place the said recommendations before the Executive Council. Relevant portion of the recommendations dated 30.8.2019 read as under:-

"The duly approved Charge-Sheet by the Executive Council of the University was served upon the delinquent employee vide letter no. 3588/ yojana anu./2019 of the Registrar dated 14.06.2019. However, in-spite of the fact that the Charge-Sheet contained all requisite documents, the delinquent employee returned the same on 15.06.2019 alleging therein that the Complaint, it's evidence and the affidavit of the complainant was not enclosed with the Charge-Sheet. The documents as indicated in the delinquent employee's letter dated 15.06.2019 were duly enclosed along-with the Charge-Sheet and therefore, the same was again served on the Petitioner, vide letter no.4068/yojana anu./2019 of the Registrar dated 28.06.2019 through Registered Post. The delinquent employee returned again the same on 20.07.2019 without giving any reply to the charges, alleging therein that the evidence of the complaint was not enclosed with the Charge-Sheet only to delay the hearing of charges, in-spite of the fact that the Charge-Sheet contained all requisite documents of 200 pages. All

documents as indicated in the delinquent employee's letter dated 20.07.2019 were duly enclosed along-with the Charge-Sheet and therefore, the same was again served on the Petitioner, vide letter no.5019/yojana anu./2019 of the Registrar dated 29.07.2019 through Head of Department and Registered Post with indicating that Charge-Sheet approved by Executive Council is sent for presenting the clarification up to 05.08.2019 as third and last opportunity to react upon the Charge-Sheet otherwise it will be deemed that delinquent employee has nothing to say and final report will be submitted on the basis of available documents/ evidences to the appointing authority for further action. Delinquent employee Dr. Ashish Wakhlu again returned the same vide his letter no.295/2019/pedsurg date 06/08/2019 alleging that Charge-Sheet not approved by appointing authority i.e. Executive Council etc. while the fact is that Disciplinary Committee constituted against delinquent employee Dr. Ashish Wakhlu by the Executive Council in its meeting held on dated 13.10.2017, 02.06.2018 & 02.08.2018 and Charge-Sheet duly approved by the Executive Council under Agenda Item no.-13 in its meeting held on dated 25.05.2019 and this fact was clearly mentioned in the letter sent to him with Charge-Sheet by the Registrar of the University.

From the aforesaid facts, it is apparent that instead of cooperating with the disciplinary proceedings, the delinquent employee Dr. Ashish Wakhlu is abusing the process of law in order to stall the disciplinary proceedings which have been initiated in accordance with law and in consonance with the provisions contained in the KGMU Act of 2002 and KGMU First Statute of 2011. Delinquent employee not respecting the decision of the Appointing Authority and not responding to the Disciplinary Committee during the formal disciplinary inquiry. Delinquent employee received the Charge-Sheet and returned it every time opportunity provided to him, it appears that he is not interested in presenting his defence against the charges levelled on him. Disciplinary Committee inspected and analyzed the relevant documentary evidences presented before him that includes the minutes of meeting held on 13 & 28 May, 2017 in the Chairmanship of Vice-Chancellor, AKTU, detailed Report of Fact Finding Committee submitted on 25th September, 2017, comments of enquiry committee members on letter of complainant Dr. O. P. Prakash received from the office of the Governor/Chancellor, Report received from Finance Officer vide letter no.6260 dated 22/09/2018, documents of AIIMS Rishikesh/ AIIMS Jodhpur, letters of Audit Department and correspondences of Dr Ashish Wakhlu etc.

In view of above facts, it is clear that delinquent employee Dr. Ashish Wakhlu is not respecting the decision of his employer i.e. Executive Council of the University and not responding to the Disciplinary Committee. Delinquent employee not responding to the Disciplinary Committee, in spite of many opportunity provided to him for presenting his clarification in response to charge sheet served three times to him but he is not interested in presenting his defence against the charges levelled and returned the original charge sheet all times. Eventually he filed Writ Petition no.18642 (SS) of 2019 annexing and challenging the Charge-Sheet, wherein counter affidavit has been filed by the University but no rejoinder affidavit has been filed by Dr Ashish Wakhlu. Delinquent employee consistently non cooperating in

the conclusion of disciplinary proceedings initiated against him by the appointing authority as Hon'ble High Court also permitted to the university to conclude the disciplinary proceedings in his decision dated 20.12.2018 during the hearing of Writ Petition no.35784 (SS) of 2018.

Keeping in view the seriousness of the charges which includes Administrative and financial irregularities in nature besides non-cooperation of delinquent employee the Disciplinary Committee, hereby recommends for suspension of the delinquent employee Dr. Ashish Wakhlu.

The aforesaid recommendations be placed before the appointing authority of delinquent employee Dr. Ashish Wakhlu i.e., the Executive Council of the King George's Medical University for kind consideration."

(19) On 19.10.2019, the Executive Council resolved for placing respondent No.1 under suspension "for not co-operating to the Disciplinary Committee". It was further resolved that the delinquent employee be given an opportunity to submit explanation to the chargesheet within fifteen days and conclude the enquiry within one month. In terms of the aforesaid resolution of the the Executive Council, the Registrar vide letter dated 24.10.2019 required respondent No.1 to submit his reply to the chargesheet within fifteen days. Subsequently, on 8.11.2019, the Registrar informed the date, time and place of meeting of Disciplinary Committee to be held on 11.11.2019 to the respondent No.1.

(20) On 11.11.2019, respondent No.1 attended the proceedings of Disciplinary Committee and requested for recording the Video proceedings and demanded legal assistance during the hearing/enquiry.

(21) The documents demanded by the respondent No.1 have been supplied but no reply to the said chargesheet has been filed and the respondent No.1 filed fourth Writ Petition No.33626 (SS) 2019 challenging the communication of suspension dated 19.10.2019. On 5.12.2019, an interim order has been passed staying the suspension order dated 19.10.2019, until further orders of the Court and granted a week's time to the appellants/ respondents to file counter affidavit and respondent/petitioner was granted next one week to file rejoinder affidavit and fix the matter after expiry of two weeks.

(22) Learned Counsel for the appellants has drawn our attention towards Statute 11.06 and submitted that the suspension is not a punishment and action of suspension proceeds on the recommendations of Disciplinary Committee as per Statute 11.11 (4) (iii). He submitted that a recommendation in sealed cover was forwarded by the Disciplinary Committee both on account of misconduct and non-cooperation on the part of the respondent No.1 in the disciplinary proceedings on 30.8.2019. The recommendation so made by the Disciplinary Committee was put up for consideration before the Executive Committee which has passed a resolution on 19.10.2019 on account of his non-cooperating with the enquiry.

(23) Learned Counsel for the appellants has further submitted that the decision taken by the Executive Council is a collective decision consisting of several persons and the resolution passed by the Executive Council is sufficient and it is not necessary that the deliberations took place in the meeting dated 30.8.2019 should also form part of the decision. In absence of any such provision, collective decision taken by a body has been communicated to the concerned employee which has been assailed in Writ Petition no. 33626 (SS) of 2019 and the said order has been stayed and this question has been considered by a Division Bench of this Court in Writ Petition No. 1193 (SB) of 1997, Ahmad Moid v. State Public Services Tribunal through Registrar. Paragraphs 7 to 10 of the judgment are relevant which read as under:-

7. A similar argument came up for consideration before this Court in Dr. Bishambhar Dayal Gupta Vs. The Visitor/President of India, 2006 (1) AWC 608. In para 11 of the judgment, questions, which were considered by Division Bench, have been formulated as (a), (b) and (d), are reproduced as under:

"(a) Whether the orders passed by the Executive Council and the Visitor are unsustainable in the eyes of law as they do not record separate reasons.

(b) Whether it was necessary for the Executive Council to have recorded a finding of guilt in respect of the charges found proved by the Enquiry Officer in its resolution dated 16/17th May, 1989 by imposing punishment, even after the enquiry report was accepted earlier under the resolution of the Executive Council dated 28/29th March, 1989, where under the Executive Council had specifically held that the charges against the petitioner were proved and the enquiry report was accepted."

(d) Whether in the facts of the present case, this Court would exercise its jurisdiction under Article 226 of the Constitution of India in favour of the petitioner."

8. Referring to the provisions whereby decision was to be taken by Executive Council of University, the Court in paras 23, 25 and 31 held as under:

"23. From the provisions, which have been quoted herein above, it is apparently clear that the decision to dismiss a teacher of the University from service on the ground of misconduct, is to be taken after following the procedure prescribed under Clause (c) of the said statute by the Executive Council. The said Section does not require recording of reasons for such a decision. Even otherwise, where a collective decision by a body of person is required to be taken (like in the facts of the present case), it is neither practically possible nor legally required that opinion of all the members participating in the deliberations must be recorded, inasmuch as the decision of such bodies are collective in nature, and only the decision as a whole, is required to be recorded in writing and not the deliberation which had to be such a decision. The deliberations which took place in the meeting of the Executive Council, are, therefore, not necessarily to be recorded in its decision."

"25. In these circumstances, the first contention that the order of the Executive Council as well as of the Visitor, being not supported by reasons in writing is unsustainable in the eyes of law, and therefore, rejected."

"31. This Court has no hesitation to record that decision taken in the meeting of Executive Council cannot be faulted with and does not call for interference in the writ proceedings. Issue No. (b) is answered accordingly."

9. The Division Bench clearly said, when there is collective decision of a larger decision making body, consisting of several persons, unless law specifically requires, ultimate resolution passed by such Body is sufficient and it is not necessary that deliberations which took place in the meeting of Body, should also form part of the record or part of the decision. In absence of any such provision, collective decision taken by a body, in our view, has not to be assailed on the ground that decision of such collective body communicated to concerned employee is not a speaking and reasoned order.

10. In our view, where a decision is to be taken by a collective Body of an institution, whether at the first stage or appellate stage, as the case may be, it is the collective intention expressed by all those persons constituting the Body. In such circumstances, requirement of individual reasons to be given by them is neither possible nor permissible and also not required unless it is specifically provided in statute, which to the experience of the Court, we have never found where power to take a decision has been given to a Body constituting several persons. In fact, we are, clearly of the view that decision of a Body constituting several persons is open to challenge on limited grounds, i.e. quorum of meeting was not complete; there was no deliberation in meeting in respect of decision; or there is participation of disqualified person(s) in meeting; or, may be on the ground that there was no agenda for consideration of subject matter on the date of meeting. None of these grounds have been taken in the present case to assail punishment order. Therefor merely because punishment order did not contain any reason, the same cannot be said to be bad in law for the reasons we have already discussed above."

(24) Learned Counsel for the appellants has submitted that the respondent No.1/petitioner is filing writ petitions one after another in order to linger on the proceedings. Though the chargesheet has been served upon him on 24.10.2019, but till today, no reply has been filed. Since the respondent No.1 was not cooperating and the allegation is of financial embezzlement, therefore, considering the aforesaid material, collective decision has been taken on 30.8.2019. Looking to the seriousness of the charges, the Disciplinary Committee recommended for suspension and accordingly, the Executive Committee resolved for placing him under suspension.

(25) Learned Counsel for the appellants has submitted that since there is no flaw in the order as the Competent Authority invoking the provisions of Statutes 11.06 and 11.11 of KGMU passed the aforesaid suspension order and prays for setting aside the impugned order and the matter may be remitted to the learned Writ Court for deciding the matter.

(26) *Per contra*, Sri J. N. Mathur, learned Senior Advocate submitted that respondent No.1 is a reputed Pediatric Surgeon and in order to malign his reputation, proceedings have been initiated and therefore, he has no option but to challenge the same by filing writ petitions one after another. He also submitted that while staying the suspension order, it was provided that any observation made in this order shall not have any bearing upon the enquiry proceedings and therefore, in stead of setting aside the order impugned, the appellants be directed to file their counter affidavit and thereafter, the matter be decided expeditiously.

(27) In para - 9 of judgment and order dated 22.11.2013 passed in Union of India and another v. Ashok Kumar Aggarwal, the Apex Court held as under:-

"9. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong *prima facie* case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong *prima facie* case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry."

(28) The order of suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by *mala fide*, arbitrariness, or for ulterior purpose. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as which version is true when there are claims and counter claims on factual issues. The court cannot act as if it an appellate forum *de hors* the powers of judicial review.

(29) In the present case, learned Writ Court has observed that non-cooperation in the disciplinary proceedings cannot be an unbecoming act warrant suspension and therefore the suspension is arbitrary, stayed the operation of suspension order until further orders.

(30) It has also come on record that on 20.12.2018, in Writ Petition No. 35784 (SS) of 2018, taking note of the fact the judgment in Writ Petition no. 29638 (SS) of 2018 was reserved on 16.11.2018, but later on it was released on 6.2.2018, directed the appellants herein for conclusion of disciplinary proceedings, but till today, no application for modification/vacation of the said order has been filed.

(31) As the matter is pending before the learned Writ Court and number of writ petitions have been filed by the writ petitioner-respondent, therefore, we dispose of the Special Appeal in the

following manner:-

(i) List all writ petitions, namely, Writ Petition No.29638 (SS) of 2018, Writ Petition No.35784 (SS) of 2018, Writ Petition No. 18642 (SS) of 2019 and 33626 (SS) of 2019 before the learned Writ Court for analogous hearing.(

ii) Counter and rejoinder affidavits between the parties be exchanged within four weeks.

(iii) We request the learned counsel for the parties to make a joint prayer before the learned Writ Court to decide the matter expeditiously, as early as possible, maybe decided within a period of three months.

(iv) Till then, the interim order passed by the learned Writ Court shall remain in operation. If the respondent No.1 will not cooperate and tries to linger on the matter, the appellants are at liberty to file an application for modification of interim order/ vacation of interim order.

(v) It is made clear that we have not expressed any opinion on merits of the case."

8. Submission of learned counsel for the applicant was that as the applicant was dismissed from service on 10.06.2020, he preferred present contempt application on 16.06.2020. In the present case, notice was issued on 19.06.2020 to respondent nos.1 & 2.

It has further been submitted that the applicant filed Writ Petition (S/S) No. 3840 of 2021 challenging the order dated 10.06.2020 passed by Registrar of K.G.M.U., Lucknow and assailed the Agenda No. 08 of meeting dated 08.06.2020. In the said petition, vide order dated 23.02.2021, four weeks' time was granted to the University for filing counter affidavit and two weeks for rejoinder affidavit after hearing learned counsel for the parties; in the said order, it was also provided that if the University proposed to fill up the post, on which, the applicant was serving, the same should be subject to further orders of this Court.

9. The order dated 23.02.2021 passed by the writ Court in the Writ Petition (S/S) No. 3840 of 2021 is as under:-

"Heard Sri J.N. Mathur, learned Senior Advocate, assisted by Dr. V.K. Singh and Sri Aakash Prasad, learned counsel for the petitioner and Ms. Akanksha Dubey, learned counsel for opposite parties no.1 to 5 & 8.

Issue notice to opposite parties no.6 & 7 returnable at an early date.

Steps within a week.

Office to proceed accordingly.

By means of this petition, the petitioner has assailed the order dated 10.6.2020 passed by the Registrar, K.G.M.U., Lucknow dispensing with the petitioner from service. This order appears to be a removal order. The petitioner has also assailed Agenda No.8 of meeting dated 8.6.2020 vide which such impugned order has been passed.

Learned counsel for the petitioner has contended that the impugned order has been passed in a haste manner without following the orders being passed by this Court on 20.12.2018 in Writ Petition No.35784 (S/S) of 2018, whereby this Court has permitted the opposite parties to conclude the disciplinary proceedings against the petitioner restraining that no final order shall be passed till delivery of judgment as judgment was reserved by the Court. Sri Mathur has further drawn attention of this Court towards Annexure No.69 to the writ petition, which is an order dated 5.12.2019 passed by this Court in Writ Petition No.33626 (S/S) of 2019, whereby the suspension order of the petitioner was stayed, however, the departmental enquiry was permitted to be concluded. Further, Annexure No.78 to the writ petition is a judgment and order dated 21.1.2020 passed by the Division Bench in Special Appeal No.29 of 2020, whereby the Division Bench disposed of the said special appeal observing that the pending writ petitions of the petitioner be heard after exchange of affidavits and till then, the interim order passed by the learned Single Judge shall remain in operation. The Division Bench has, however, observed that if the petitioner does not cooperate and tries to linger the matter, the respondents should be at liberty to file an application for vacation of interim order/ modification of interim order. As per Sri Mathur, learned Senior Advocate, application for vacation of interim order has been filed but no order has been passed on the said application. He has also informed that when the direction of this Court has not been followed, contempt petition bearing No.936 of 2020 has been filed by the petitioner and the same is pending consideration before the contempt court. As per Sri J.N. Mathur, if the opposite parties were adamant to pass any coercive order/ punishment order against the petitioner, the same could have been passed after following the due procedure of law, more particularly following the directions of this Court. Sri Mathur has submitted with vehemence that none of the directions of this Court has been followed, neither the direction of Single Judge nor the protection being extended by the Division Bench in special appeal. Even the formal order of removal has not been served upon the petitioner and when the petitioner came to know about such order through press note, he preferred an application for getting the order impugned, thereafter such order has been served upon the petitioner. This all show the colourable exercise of powers of the authority concerned.

Matter requires consideration.

Learned counsel for the K.G.M.U. prays for and is granted four weeks' time to file counter affidavit. Rejoinder affidavit, if any, may be filed within a period of two weeks.

List this petition on 6th April, 2021 as fresh.

It is, however, provided that in the meantime, if the opposite parties proposed to fill up the post on which the petitioner was serving, the

same shall be subject to the further orders of this Court.

When the case is next listed, name of Ms. Akanksha Dubey shall be printed in the cause list as counsel for opposite parties no.1 to 5 & 8."

10. It is evident from the pleadings that the dismissal order was passed on 10.06.2020 during tenure of respondent nos.1 and 2, namely, Prof. M.L. Bhatt, the then Vice Chancellor and Mr. Ashutosh Kumar Dwivedi, Registrar. However, by the time, they were replaced by Lieutenant General, Dr. Bipin Puri as Vice Chancellor, K.G.M.U., Lucknow, who was impleaded as respondent no.10 and notice was issued to him on 08.02.2022.

The order dated 08.02.2022 passed by this Court in the present case is as under:-

"Order on C.M. Application No.60693 of 2020 for impleadment.

1. Heard Sri J. N. Mathur, Senior Advocate assisted by Sri Aakash Prasad and Dr. V. K. Singh for the applicant, who presses application for impleadment of Lt. Gen. (Dr.) Bipin Puri, Vice Chancellor, King George Medical University, Lucknow.

2. He submits that the present incumbent has taken over the charge of the post of Vice Chancellor, King George Medical University, Lucknow. The cause shown is sufficient. The application for impleadment is allowed. Two days' time is allowed to the applicant to make necessary incorporation in the memo of the petition.

Order on memo of the petition.

1. It has been submitted on behalf of the applicant that the order of the writ Court was apprised to the newly impleaded respondent but despite knowledge of the order of this Court the same has not been complied with.

2. Having heard counsel for the applicant and perusing the record, I am satisfied that a case is made out under Rule 5 of Chapter XXXV-E of the Allahabad High Court Rules, 1952 (Rules framed under Section 23 of the Contempt of Courts Act, 1971) requiring to call upon contemnor opposite party Lt. Gen. (Dr.) Bipin Puri, Vice Chancellor, King George Medical University, Lucknow to submit his reply in person or through counsel to the following charge:-

"Why contemnor opposite party Lt. Gen. (Dr.) Bipin Puri, Vice Chancellor, King George Medical University, Lucknow be not punished for willful and deliberate disobedience of the judgment and order dated 20.12.2018 passed in writ petition No.35784 (S/S) of 2018 (Prof. Ashish Wakhlu Vs. Hon'ble Chancellor, K.G.M.U., Lucknow and others) and order dated 5.12.2019 passed in writ petition No.33626 (S/S) of 2019 (Prof. Ashish Wakhlu Vs. State of U.P. and others) ?"

3. Steps be taken within one week.

4. Notices be issued fixing 7.3.2022.

5. List on 7.3.2022."

11. Submission of learned counsel for the applicant was that the order dated 08.02.2022 (supra) was challenged by prof. Lt. Gen. (retired) Dr. Bipin Puri before Hon. Supreme Court in Special Leave to Appeal (C) No. 6899-6900 of 2022, which was converted in Civil Appeal No. 5455-5456 of 2022 and the aforesaid appeal was dismissed on 24.04.2024.

12. The order dated 24.04.2024 passed by Hon'ble Apex Court in Civil Appeal No. 5455-5456 of 2022 is as under:-

"1. We are not inclined to interfere with the impugned judgments and orders passed by the High Court. The appeals are, accordingly, dismissed.

2. Pending application(s), if any, shall stand disposed of."

13. Submission of learned counsel for the applicant was that in the meantime, Prof. Sonia Nityanand resumed charge of Vice Chancellor of K.G.M.U. and the application for impleadment was filed with the request for impleadment of the new Vice Chancellor along with other members of the Executive Council and the said application was allowed on 08.05.2024, on which date, notices were issued to them.

14. The order dated 08.05.2024 passed by this Court in the present case is as under:-

"(Order on Impleadment Application i.e. I.A./26/2024)

1. Heard Shri Sandeep Dixit, learned Senior Advocate assisted by Shri Sandeep Kumar Ojha, learned counsel for the applicant.

2. This is an application filed for seeking impleadment.

3. Cause shown in the affidavit filed in support of the impleadment application is sufficient.

4. Accordingly, the impleadment application is allowed.

5. Learned counsel for the applicant is permitted to carry out necessary impleadment, forthwith.

(Order on Contempt Application)

1. Let notice be issued to newly impleaded respondents i.e. respondent nos. 11 to 23 within a week to show cause as to why they should not be punished for wilful disobedience of the directions of this Court, returnable within two weeks failing which the charges may be framed after summoning the contemnors.

2. Office is directed to send a copy of this order along with the notice.

3. List this case on 09.07.2024 within top ten cases."

15. Next, it was submitted by learned counsel for the applicant that the order dated 08.05.2024 was challenged before the Division Bench in Special Appeal No. 125 of 2024. In the said appeal, the contempt proceeding was kept in abeyance on 27.05.2024 by the Division Bench and the order was kept reserved. Thereafter, aforesaid special appeal was disposed of on 30.05.2024 with liberty to respondent no.11 and others to move an application for discharge of notices and a request was also made by the Division Bench to the Contempt Court to consider relevant aspects of the matter as to whether the persons were liable to be proceeded under the Act, 1971 and the inherent powers of the High Court for having committed civil contempt; it was further observed in the said order that all pleas were open for being raised before the Contempt Judge and they were open for being considered by the Contempt Court.

16. The orders dated 27.05.2024 and 30.05.2024 passed by the Division Bench in Special Appeal No. 125 of 2024 are as under:-

Order dated 27.05.2024:

"1. Supplementary affidavit filed today on behalf of appellants is taken on record.

2. Heard Dr. L.P. Mishra along with Shri Shubham Tripathi, learned Counsel for the appellants and Shri Sandeep Dixit, learned Senior Counsel along with Shri Sandeep Kumar Ojha for the respondents.

3. Judgment reserved.

4. Considering the important jurisdictional issues involved not only regarding the Contempt Court but also regarding this appeal before us, it is provided that till the delivery of judgment, contempt proceedings as against the appellants shall remain in abeyance, however, they may continue with regard to the other opposite parties in the contempt petition."

Order dated 30.05.2024:

"(1) Heard Dr. L.P. Mishra, learned Senior Counsel assisted by Sri Shubham Tripathi, learned counsel for the appellants and Sri Sandeep Dixit, learned Senior Counsel assisted by Sri Sandeep Kumar Ojha, learned counsel for the respondent.

(2) This is an appeal by the Vice-Chancellor and Members of the Executive Council of King George's Medical University, Lucknow under Chapter VIII Rule V of the Allahabad High Court Rules, 1952 challenging an order passed by the Contempt Court on 08.05.2024 in Contempt Application (Civil) No.963 of 2020 [Prof. Ashish Wakhlu vs. Prof. M.L. Bhatt Vice-Chancellor, K.G.M.C., Lucknow & Ors.] In fact

an application filed by the respondent for impleadment of the appellants herein has been allowed and then notices have been issued to them. The said impugned order reads as under:-

"(Order on Impleadment Application i.e. I.A./26/2024)

- 1. Heard Shri Sandeep Dixit, learned Senior Advocate assisted by Shri Sandeep Kumar Ojha, learned counsel for the applicant.*
- 2. This is an application filed for seeking impleadment.*
- 3. Cause shown in the affidavit filed in support of the impleadment application is sufficient.*
- 4. Accordingly, the impleadment application is allowed.*
- 5. Learned counsel for the applicant is permitted to carry out necessary impleadment, forthwith.*

(Order on Contempt Application)

- 1. Let notice be issued to newly impleaded respondents i.e. respondent nos. 11 to 23 within a week to show cause as to why they should not be punished for wilfull disobedience of the directions of this Court, returnable within two weeks failing which the charges may be framed after summoning the contemnors.*
- 2. Office is directed to send a copy of this order along with the notice.*
- 3. List this case on 09.07.2024 within top ten cases. "*

(3) The contention of learned counsel for the appellant is that jurisdictional facts which have to necessarily preexist the issuance of any notice in a contempt proceedings were absolutely absent in the case at hand yet learned Single Judge without satisfying himself, prima facie, about any civil contempt having been committed by the appellants has not only allowed the application for impleadment but also issued notice to them for showing the cause as to why they should not be punished for willful disobedience of this Court, failing which, charges may be framed after summoning the contemnors. The contention is that the contempt petition was filed in the year 2020 alleging that the Executive Council of the University by passing a Resolution dated 08.06.2020 had violated an interim order passed on 01.12.2018 in Writ Petition No.35784 (S/S) of 2018 filed by the respondent. The appellants whose impleadment has been allowed and notices have been issued by the impugned order were not Members of the Executive Council on 08.06.2020. In fact, appellant no.1 has been appointed as Vice-Chancellor much later, that is, in August, 2023. The other appellants have become Members of the Executive Council much after 08.06.2020 and none of these appellants had any role to play in the passing of the Resolution dated 08.06.2020 which according to the respondent was contemptuous. In fact, in the affidavit in support of the application for impleadment, there is no averment whatsoever as to how the appellants herein had committed civil contempt but ignoring all these facts and without recording any prima facie satisfaction, the Contempt Court has passed the impugned order

in the absence of jurisdictional facts which would give jurisdiction to the learned Single Judge to initiate contempt proceedings against the appellants and in the absence of any prima facie satisfaction recorded by the Contempt Court regarding existence of such jurisdictional facts. The contempt Court has, thus, committed a jurisdictional error.

(4) The submission was that contempt proceedings are quasi criminal in nature and the standard of proof is beyond reasonable doubt. These are very harsh proceedings and therefore, their initiation should not be a casual act as has happened in this case. This was not a case where proceedings could have been initiated against the appellants without even recording any satisfaction as to how, even prima facie, they have committed any civil contempt. In the facts of the case, apparently, no contempt has been committed by them as they were not part of the Executive Council when the Resolution dated 08.06.2020 was passed.

(5) It was also submitted that, in fact, the Resolution dated 08.06.2020 has been challenged by the respondent by means of a separate Writ Petition bearing No.3840 (S/S) of 2021 along with a challenge to the order terminating his services dated 10.06.2020 but there is no interim order therein. Now, by impleadment of the appellants, the respondent veritably wants to arm twist them and secure his reinstatement in contempt proceedings, thereby, seeking relief which he has not yet got in the writ proceedings. In any case, so far as contempt by the appellant is concerned, even prima facie, the same is not made out by any stretch of imagination.

(6) In fact, learned counsel for the respondent submitted that on 06.05.2024 an application was submitted before the Vice-Chancellor i.e. appellant no.1. On the aforesaid application, the Vice-Chancellor informed the respondent on 06.05.2024 itself that the above matter will be placed before the Executive Council of the University at the earliest since it is the appointing authority. But on that very date i.e. on 06.05.2024, the respondent filed the application for impleadment which was allowed within three days i.e. on 08.05.2024. The respondent acted in haste just as the order impugned was passed.

(7) It was further submitted that as far as dismissal of Civil Appeal No (S).5455-5456/2022 on 24.04.2024, the same was filed by Prof. Lt. General (Retd.) Dr. Bipin Puri & Anr. and the said appeal does not decide any issue qua the appellants herein, at best, the said order would bind the appellants of the said appeal who were the other opposite parties in the contempt proceedings and the said order cannot be used against the appellants to make a case for contempt which has to be considered independently especially as contempt proceedings are against the person who is alleged to have committed the contempt.

(8) It was also contented that it is not a case where some direction was issued and it remained uncomplied and in the meantime, the person holding the post demitted office as, in such case one who succeeds will be bound to comply the said order but it is a case where contempt alleged is against certain Members of the Executive Council who had passed the Resolution dated 08.06.2020 which according to the respondent is in the teeth of the interim order passed by this Court

in a writ petition which is still pending wherein a stay vacation application is also pending. Now, in this scenario, as none of the appellants were Members of the Executive Council at the relevant time when the Resolution dated 08.06.2020 was passed nor did they have any role to play in that regard, on the face of it, they could not have been subjected to the rigour of contempt proceedings. None of this has been seen and a jurisdictional error has committed in passing the impugned order. It was contended that the right course for the contempt court was to issue notice on the impleadment application to the proposed opposite parties/ alleged contemnors whereupon the correct facts would have been placed before the Contempt Court and this situation would have been avoided. The appellants have been subjected to initiation of contempt proceedings unjustifiably.

(9) On the other hand, Sri Sandeep Dixit, learned counsel for the respondent submitted that the special appeal itself is not maintainable as the impugned order did not qualify within the meaning of the term 'judgment' used in Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952. He placed reliance on a Supreme Court's judgment rendered in the case of 'Midnapore Peoples' Coop. Bank Ltd. & Ors. vs. Chunilal Nanda & Ors.' reported in (2006) 5 SCC 399 and certain other decisions. His submission was that the appellants were under an obligation to rectify the contempt already committed by the predecessors and not having done so they are liable to be prosecuted for contempt. We pointedly asked Sri Dixit to point out any order of the writ court in any of the writ petitions pending between the parties wherein the Resolution dated 08.06.2020 or the order terminating the services of the respondent on 10.08.2020 may have been stayed or for that matter any direction may have been issued to the University to reinstate the respondent or for that matter to withdraw the Resolution dated 08.06.2020 and the order of termination from service, he could not point out any such order.

(10) He referred to the earlier proceedings before the Contempt Court wherein an application for deferment of hearing by the earlier Vice-Chancellors was rejected against which a Special Leave Petition bearing No.6899-6900 of 2022 was filed after framing of charge on 08.02.2022 by the then Vice-Chancellor and others and though, initially interim orders were passed by Hon'ble the Supreme Court but ultimately, the special leave petition after being converted into Civil Appeal No(s).5455-5456/2022 was dismissed. This aspect of the matter has already been addressed by Dr. L.P. Mishra, learned counsel appearing for the appellants as noticed earlier.

(11) In response, learned counsel for the appellants submitted that the respondent is resorting to arm-twisting measures by filing an application for impleadment with intent to intimidate the Members of the Executive Council and brow beat them into doing something and granting such relief to him which in fact he has not been able to secure through the process of law in the writ petition wherein the Resolution dated 08.06.2020 and the order of termination of his service has been challenged. According to him, the impugned order amounts to an interim judgment as it virtually decides the jurisdiction of the Contempt Court to proceed and initiate the contempt proceedings against the appellants, therefore, the appeal is maintainable.

(12) We have heard learned counsel for the parties and perused the records.

(13) The power to punish for contempt is vested in the High Court as an inherent power and it flows from a constitutional provision contained in Article 215 of the Constitution of India by virtue of which it is a court of record having plenary powers including the power to punish for its contempt. The Contempt of Courts Act, 1971 does not supersede or abrogate the inherent powers vested in it under Article 215 of the Constitution of India and legal position in this regard is well settled. Reference may be made to a decision reported in (1997) 3 SCC 11 'High Court of Judicature at Allahabad Through its Registrar vs. Raj Kishore Yadav and Ors' in this regard wherein vires contained in Chapter XXXV-E of the Allahabad High Court Rules, 1952 pertaining to contempt proceedings were under challenge. The said Chapter of the Rules, 1952 contains rules framed under Section 23 of the Contempt of Courts Act, 1971. But before referring to the said Rules, we may refer to the definition of 'civil contempt' contained in Section 2 (a) and (b) of the Contempt of Courts Act, 1971 which reads as under:-

"(a) "contempt of court" means civil contempt or criminal contempt;

(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;"

(14) As per Rule 1 of Chapter XXXV-E of the Rules, 1952, the Rules contained in the said Chapter shall govern presentation and hearing of Contempt of Court cases coming to the High Court under the Contempt of Courts Act, 1971. The impugned order has been passed in proceedings for civil contempt and there is no dispute about it. In this context, Rule 5 of Chapter-XXXV-E of the Rules, 1952 is relevant which reads as under:-

"5. Issuance of notice :- Such allegations contained in the petition as appears to the Court to make out a prima facie case of contempt of Court against the person concerned, shall be reduced into charge or charges by the Court against such person, and notice shall be issued only with respect to those charges :

Provided that the Court shall not issue notice if more than a year has elapsed from the alleged act of contempt of court. "

(15) On a bare reading of Rule 5, it is evident that there have to be allegations contained in the petition making out a prima facie case of contempt of court against the person concerned, meaning thereby, the person who is arrayed as an opposite party. This condition is also required to be satisfied in the case of an impleadment application if it is to be allowed because there have to be allegations in the application for impleadment making out a prima facie case for contempt of court against the proposed party only then it can be allowed.

(16) Rule 5 further provides that if there are such allegations in the contempt petition the same shall be reduced into charge or charges by

the Court against such person, and notice shall be issued only with respect to those charges. Some flexibility in the procedure to be followed in this regard may be permissible but it has to be in consonance with the principles of natural justice and fairness keeping in mind the rigor of the proceedings. But existence of jurisdictional facts and prerequisites and due and proper application of mind to the same is a sine qua non at the stage of issuance of notice under Rule 5.

(17) In the case at hand apart from impleadment of the appellants being allowed as opposite parties/ alleged contemnors, the writ court has also issued notice for initiation of contempt proceedings.

(18) As per Rule 5, the Court has to be prima facie satisfied about contempt having been committed by alleged contemnors. It is then required to issue notice on such satisfaction.

(19) In this context, the contention of learned counsel for the appellants is that on a bare reading of the affidavit in support of the application for impleadment, no allegation as to how the appellants herein have committed any civil contempt is made out. He further contended that no satisfaction was arrived at nor recorded as is required at the time of issuance of notice as per Rule 5.

(20) We have also perused the affidavit in support of the application for impleadment. Without expressing any conclusive opinion on the issue, we do not find any such specific allegation as to how the appellants have committed willful contempt of the interim order dated 01.12.2018 passed in the concerned writ petition. We have also quoted the order passed by the Contempt Court. We say no more at this stage as the contempt proceedings are still pending and the application for impleadment has already been allowed and notices issued to the appellant.

(21) There are certain jurisdictional facts/ prerequisites which must exist prior to initiation of contempt proceedings against a person by issuance of notice in terms of Rule 5 of Chapter-XXXV-E of the Rules, 1952 as already discussed. They can be summarized as under:-

(a) There has to be an order of a Court or an undertaking before it whether it be the High Court or the subordinate court for proceedings under the Act, 1971 as contemplated in Section 2(b) of the said Act.

(b) Such order should have been communicated to the alleged contemnor calling upon him to comply the same.

(c) There has to be some action or inaction or undertaking which may amount to willful disobedience or flouting of such order or undertaking so as to constitute civil contempt.

(d) There have to be allegations in the contempt petition or in an application for impleadment mentioning the existence of aforesaid jurisdictional facts/prerequisites making out a prima facie case of deliberate and willful disobedience or violation of the order or undertaking by the alleged contemnors/opposite parties or proposed opposite parties.

(e) The contempt court has to arrive at a prima facie satisfaction about existence of the aforesaid jurisdictional facts/ prerequisites making out a prima facie case of contempt of court by the concerned persons, before issuing notice.

(22) Only on the aforesaid satisfaction, notices have to be issued to the alleged contemnors in terms of Rule 5 of Chapter-XXXV-E of the Rules, 1952. Same analogy applies while considering and allowing an application for impleadment in pending contempt proceedings.

(23) Issuance of notice in a contempt matter is not a causal or routine procedure. It requires due and proper application of mind to the aforesaid facts and issues. We must keep in mind that contempt proceedings are quasi criminal in nature and the standard of proof is beyond reasonable doubt. These proceedings carry a rigor much more than any other judicial proceedings for adjudication of disputes. These proceedings are in exercise of powers of the High Court to punish for its contempt and that of the subordinate courts. Therefore, they should be exercised with circumspection and due and proper application of mind even at the stage of initiation of such proceedings.

(24) This apart, ordinarily, when an application for impleadment is filed in a pending contempt proceedings, practice has been to issue notice to the proposed opposite party before considering it so that they may have an opportunity to inform the contempt court about the correct facts, unless from the facts placed and documents annexed, an exceptional case is made out, prima facie. This is a time tested procedure and a procedural requirement which should ordinarily be adhered.

(25) This appeal raises important questions as to initiation of such proceedings and whether, at least in the facts of this case. There are jurisdictional issues involved, whether the jurisdictional facts/prerequisites for initiation of such proceedings against the appellants did exist or they did not, and whether the Contempt Court without due and proper application of mind not only allowed the application for impleadment without notice to the proposed opposite parties but even issued the contempt notices which are impugned herein. We were tempted to enter into and adjudicate these important issues raised by the appellants and the respondent but considering the fact that contempt proceedings are still pending and the appellants have an opportunity to seek discharge of the notices issued to them taking all such pleas as have been raised herein, we are of the opinion that it is the Contempt Court itself which should first take a call on these issues and thereafter, if the occasion so arises we can consider the same at the appropriate stage as per law.

(26) In these circumstances, we find it appropriate to request the Contempt Judge to kindly consider the pleas of the appellants on an application for discharge being moved by them and take a considered decision in this regard as per law. If after such decision is taken on the question as to whether the appellants are liable to be proceeded for contempt of court in the facts of the case, the appellants still have a cause, they can avail the remedies prescribed in law.

(27) We accordingly dispose of this appeal with liberty to the

appellants to move an application for discharge of notices issued to them to which respondent shall have a right to respond and we request the Contempt Judge to consider relevant aspects of the matter as to whether the appellants are liable to be proceeded under the Act, 1971 and the inherent powers of the High Court for having committed civil contempt.

(28) All pleas are open for being raised before the Contempt Judge and they are open for being considered by the Contempt Court.

(29) This order shall be placed before the learned Contempt Court."

17. Submission of learned counsel for the applicant was that the aforesaid order dated 30.05.2024 was challenged in Special Leave to Appeal (C) No. 14479 of 2024 which was dismissed on 19.07.2024, by which, it was clarified that while considering the application for discharge, if so filed, or while deciding the contempt petition, the observations made in the impugned order would not influence learned Single Judge.

18. The order dated 19.07.2024 passed in Special Leave to Appeal (C) No. 14479 of 2024 is as under:-

"1. We are not inclined to entertain the present petition. The special leave petition is, accordingly, dismissed.

2. However, we clarify that while considering the application for discharge, if so filed, or while deciding the contempt petition the observations made in the impugned order would not influence the learned Single Judge.

3. Pending application(s), if any, shall stand disposed of."

19. Submission of learned counsel for the applicant was that in identical set of facts, charge was framed against respondent no.10 - Dr. Bipin Puri, the then vice Chancellor, K.G.M.U., vide order dated 08.02.2022 which was upheld by Hon'ble Apex Court by dismissing the Civil Appeal No. 5455-5456 of 2022 on 24.04.2024, therefore, there is no ground for discharge of respondent nos.11 to 23. The respondent nos.11 to 23 are only authority for compliance by rectification order.

It has further been submitted that proper representation was also given to the new incumbents and in the minutes of the meeting of Executive Council dated 15.06.2024, it was not stated that the Council has no power to review its decision rather the Council might resolve to file discharge before Hon'ble Court, therefore, discharge application was liable to be rejected and respondent nos.11 to 23 might be punished for willful disobedience of the order passed by the writ Court.

20. Relying on the decision of Hon'ble Apex Court passed in the cases of *Kunhayammed and others vs. State of Kerala and Another*

reported in (2000) 6 SCC 359 and in the case of **Khoday Distilleries Ltd. and others vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.** reported in (2019) 4 SCC 376, learned counsel for the applicant submitted that once leave to appeal has been granted and appellate jurisdiction of Hon'ble Supreme Court has been invoked, the order passed in the appeal would attract the doctrine of merger.

21. Dr. L.P. Misra, learned counsel for the respondents submitted that it was undisputed fact that on 16.11.2018, the judgement was reserved in Writ Petition (S/S) No. 29638 of 2018, thereafter, Writ Petition No. 35784 of 2018 was preferred, in which, interim order was passed till the delivery of the judgement in the Writ Petition (S/S) No. 29638 of 2018. But in place of delivery of judgement in Writ Petition No. 29638 (S/S) No. 2018, it was released on 06.02.2019 and order was passed for placing it before the Hon'ble Chief Justice/Senior Judge for its nomination before appropriate Bench, in such case, the order dated 20.12.2018 would not be in operation.

It has further been submitted that the applicant was placed under suspension and suspension order was challenged in Writ Petition No. 33626 of 2019. The suspension order was stayed on 05.12.2019 and the aforesaid order related to suspension was also challenged in Special Appeal No. 29 of 2020, but the said petition was disposed of on 21.01.2020 with the observation that party to make endeavour to get decision in all four petitions. The charge-sheet was also challenged in Writ Petition (S/S) No. 18642 of 2019, but no protection was granted and the said matter was pending. In the meantime, inquiry was concluded and order dated 10.06.2020 was passed on the basis of Agenda No. 08 of meeting of Executive Council held on 08.06.2020, which was also challenged in Writ Petition (S/S) No. 3840 of 2021, the said petition was pending. Liberty was granted by the writ Court and it was ordered by the writ Court on 23.02.2021 that in case any appointment was made on the said post, same should be subject to further order of the Court.

It has next been submitted that respondent nos.11 to 23 resumed the post after about four years from the date of passing a dismissal order of the applicant. Therefore, it was not a case of willful disobedience of the Court's order.

It has also been submitted that the stay vacation application was pending along with dismissal of Writ Petition (S/S) No. 35784 of 2018 since February, 2020.

Learned counsel for the respondents has relied on the decisions of Hon'ble Apex Court passed in the cases of **Kuntesh Gupta Dr. (Smt.) vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and others** reported in AIR 1987 SC 2186 and **Dr. Rajendra Bahadur Singh and others vs. State of U.P.** reported in (2021) SCC OnLine

All 469.

He further relied on the decisions of Hon'ble Apex Court passed in the cases of ***State of Jammu and Kashmir and Mohd. Yaqoob Khan and others*** reported in ***(1992) 4 SCC 167*** and ***Vinay Kumar Pandey vs. Committee of Management, Shri Gandhi Inter College and another*** reported in ***Civil Appeal Nos. 4007-4008 of 2020*** and submitted that in case the stay vacation application was pending for disposal, till then no contempt proceeding could not be initiated.

He next relied on the decision of Hon'ble Apex Court passed in the case of ***Niaz Mohammad and others vs. State of Haryana and others*** reported in ***(1994) 6 SCC 332*** and submitted that for ensuring the contempt proceeding, the contempt should be deliberate and intentional. But in the present case, there was no such intention of the respondents/applicants of discharge application.

He next submitted that principal of Res Judicata will not apply in the present case. In case two views/ interpretation of the order is possible, a party who acted on the basis of one such view/interpretation could not be held to have willfully disobeyed the order, as such the contempt proceedings would not maintainable.

Again relying on the decision of Hon'ble Apex Court passed in the case of ***Union of India vs. Pramod Gupta and others*** reported in ***(2005) 12 SCC 1***, learned counsel for the respondents submitted that contempt jurisdiction could not be invoked as a measure of 'arm twisting'.

Lastly, relying on the decision of Hon'ble Apex Court passed in the case of ***Dr. U.N. Bora, Ex. Chief Executive Officer and others vs. Assam Roller Flour Mills Association and another*** reported in ***(2022) 1 SCC 101***, learned counsel for the respondents requested that discharge application might be allowed by discharging respondent nos.11 to 23.

22. Considering the submissions of learned counsel for the parties and going through the pleadings as well as judgments relied by learned counsel for the parties, it is evident from the record that the matter was referred to disciplinary committee which decided to ensure preliminary inquiry. The said preliminary inquiry report was challenged in Writ Petition (S/S) No. 29638 of 2018, in the said petition, judgement was reserved on 16.11.2018. Thereafter, the questionnaire dated 04.10.2018 was prepared by disciplinary committee for conducting pre-inquiry, which was challenged in Writ Petition (S/S) No. 35784 of 2018, in which, vide order dated 20.12.2018, it was observed that no final order should be passed till delivery of judgement in the Writ Petition (S/S) No. 29638 of 2018. In place of delivery of judgement in the said petition, it was released on

06.02.2019.

As once Writ Petition (S/S) No. 29638 of 2018 has been listed for hearing again, the order dated 20.12.2018 passed in Writ Petition (S/S) No. 35784 of 2018 will not be effective.

It is further evident that the petitioner was kept under suspension and the suspension order was challenged, which was stayed by the writ Court in Writ Petition (S/S) No. 33626 of 2019 on 05.12.2019 with the observation that the petitioner should cooperate in the proceeding. The said order of the writ Court was challenged in Special Appeal No. 29 of 2020 by K.G.M.U., which was disposed of on 21.01.2020 with the observation that all the pending petitions i.e. Writ Petition (S/S) No. 29638 of 2018, Writ Petition (S/S) No. 35784 of 2018, Writ Petition (S/S) No. 18642 of 2019 and Writ Petition (S/S) No. 33626 of 2019 be decided.

It is undisputed fact that a writ petition i.e. Writ Petition (S/S) No. 18642 of 2019 was filed on 05.07.2019 by the applicant before this Court challenging the charge-sheet and the said writ petition was pending for consideration. Thereafter, as the applicant was dismissed from service on 10.06.2020, he preferred present contempt application on 16.06.2020 and notice was issued.

Further, the order of dismissal dated 10.06.2020 was also challenged in Writ Petition (S/S) No. 3840 of 2021, in which, order dated 23.02.2021 was passed with the observation that if any appointment was made on the post, on which, the applicant was serving, the same should be subject to further order of this Court.

It is observed by this Court that the order dated 20.12.2018 passed in Writ Petition (S/S) No. 35784 of 2018 is diluted after passing the order dated 06.02.2019 in Writ Petition (S/S) No. 29638 of 2018.

It is also evident from the record that five petitions of the applicant/petitioner are still pending including the removal order.

23. In such circumstances, this Court is of the view that no contempt is made out.

24. Accordingly, the contempt application is ***dismissed***.

Order Date :- 23.9.2024

Arpan