



2026:AHC:142042-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 31741 of 2014

Dr Tanzeem Fatima

.....Petitioner(s)

Versus

Aligarh Muslim University Thru Vice Chancellor
And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Arvind Srivastava
Counsel for Respondent(s)	: Ikram Ahmad, S.C., Shashank Shekhar Singh

Court No. - 29

HON'BLE ARINDAM SINHA, J.

HON'BLE SATYA VEER SINGH, J.

(Per : Arindam Sinha, J.)

1. Mr. Arvind Srivastava, learned advocate appears on behalf of petitioner and submits, challenge of his client is against her termination of service as member of faculty in the University, both on facts as well as provision in statute 40(3)(b) being ultra virus article 14 in the Constitution. Mr. C. B. Yadav, learned senior advocate appears on behalf of the University.

2. The allegedly offending provision in the statute is reproduced below.

"Statute 40(3)(b)- The determination of a teacher's employment shall require a two-third majority of the members of the Executive Council present and voting."

We have ascertained, there was disciplinary proceeding initiated against petitioner. First show cause notice was served, memorandum of charges and inquiry followed. Multiple inquiry reports came to be. The Executive Council (EC) accepted the reports. Second show cause notice was issued, after which ultimately there was decision taken on majority of the members present and voting, for terminating petitioner. In between there was interference by the writ Court in setting aside earlier decision taken by the EC, to restore the matter to it. On restoration, once again the EC by impugned resolution dated 19th May, 2014 reiterated its earlier decision to terminate.

3. On earlier occasion of hearing we had made query to Mr. Srivastava for his client to elect on a course of action, either to challenge the termination as to be decided by the learned single Judge under the roster nomination or to prosecute the vires challenge, to be heard by us. In this context reproduced below are paragraphs 3 and 4 of order dated 1st April. 2026.

"3. On query regarding whether Mr. Srivastava, would urge before us (Division Bench) only the vires challenge as we will not go into the facts, Mr. Srivastava reiterates that his client's challenge to this Court is both on facts and in law, urging the provision to be ultra virus. He submits further, the offending provision does not allow scope for the employee being heard on a decision of termination taken by two-thirds majority. It follows, the provision also does not, therefore, require reason(s) being given for the decision taken.

4. Our, prima facie appreciation is that when an issue is to be decided by them who can vote, such a decision necessarily will not carry reasons. It will carry the result of whether the motion is carried or rejected. In petitioner's case the motion was for termination. The minutes stating the resolution says, the motion was carried by two-thirds majority, as required by the allegedly offending rule."

4. Mr. Srivastava relies on his client's already allowed and disposed of amendment application dated 21st May, 2018. He submits, the allowed amendment grounds 91(H) and 91(I) are is client's ground for the vires challenge. The grounds are reproduced below.

"91. (H). That the provision of Statute 40(b) framed under the Aligarh Muslim University Act (Act XL of 1920) being silent on the aspect of giving opportunity of hearing to the diliquent employee/petitioner and hearing him or her before passing any resolution for passing an order of punishment against the employee Which has Civil Consequences. The provisions of Statute 40(b) framed under Aligarh Muslim University Act (Act XL of 1920) suffers from the vice of arbitrariness and violates the provision of the Article 14 of the Constitution of India. A true copy of the Provision of Statute 40(b) is annexed as Annexure No.11 to this writ petition.

91. (I). That the provision of statute 40 (b) of the statutes framed under the Aligarh Muslim University Act (Act XL of 1920) having not directed the Executive Council for giving reasons for passing the resolution/order determining the employment of the teacher working in the Institution which is an order having civil consequences and non providing reasons

amount to an arbitrary exercise of power, the provisions of the statute 40(b) framed under the Aligarh Muslim University Act (Act XL of 1920) are manifestly arbitrary, unreasonable, irrational violating the provisions of Article 14 of the Constitution of India."

He lays emphasis that the offending statute is arbitrary. It was resorted to for purpose of dismissing his client from service by members of the EC, who had earlier made a show by issuing purported show cause notice and went through the motions to effectively deny petitioner opportunity of hearing. Subsequent thereto, her dismissal riding on 2/3rd majority vote, without agenda or discussion is the result of arbitrary framing of the offending provision in the statute. There be interference.

5. Mr. Yadav submits, the statute stood created by Act of Parliament through Aligarh Muslim University Act XL of 1920. Several amending Acts followed thereafter. He lays emphasis that petitioner was given every opportunity of defending her position. It is only after the exercise was duly completed that the matter of her dismissal/removal was placed before the EC, for vote thereon as required by Statute 40(3)(a). No interference is warranted.

6. He relies on judgment of the Supreme Court in **State of A.P. vs. Mcdowell and Co.** reported in (1996) 3 SCC 709 (para 43). He submits, law declared was, vires challenge can be upheld by Court on two grounds and two grounds alone. They are lack of legislative competence and violation of any of the fundamental rights guaranteed in part III of the Constitution or of any other constitutional provision. There is no third ground. A passage from relied upon paragraph is reproduced below.

*"43. No enactment can be struck down by just saying that it is arbitrary** or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds, viz., (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality and (iii) procedural impropriety."*

7. Mr. Srivastava in reply relies on **judgment dated 10th March, 2026** of the Supreme Court in **Civil Appeal no. 13581 of 2025 (Anurag Krishna Sinha vs. State of Bihar and Ors.**, paragraph 31 (Manupatra) reproduced below.

"31. The application of this doctrine to legislative action was reiterated in A.P. Dairy Development Corporation Federation v. B. Narasimha Reddy MANU/SC/1020/2011 : 2011:INSC:635: (2011)9 SCC 286. In paragraph 29, this Court observed:

*29. It is a settled legal proposition that Article 14 of the Constitution strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. This doctrine of arbitrariness is not restricted only to executive actions, but also applies to the legislature. Thus, a party has to satisfy that the action was reasonable, not done in unreasonable manner or capriciously or at pleasure without adequate determining principle, rational, and has been done according to reason or judgment, and certainly does not depend on the will alone. **However, the action of the legislature, violative of Article 14 of the Constitution, should ordinarily be manifestly arbitrary.** There must be a case of substantive unreasonableness in the statute itself for declaring the act ultra vires Article 14 of the Constitution."*

(emphasis supplied)

8. It is necessary for us to reproduce below entirety of Statute 40.

"40. Removal of members and employees (1) A member of the Court, Executive Council or Academic Council may be removed by a resolution of the Court, Executive Council or Academic Council, as the case may be, passed by a majority of not less than two thirds of its members on either of the following grounds, namely:-

(i) such member has become incapable of performing his duties.

(ii) such member has been convicted by a court of an offence which, in the opinion of the Court of the University, Executive Council or Academic Council, as the case may be, involves moral turpitude.

(2) Notwithstanding anything contained to the contrary in the terms of his

contract of service or of his appointment, any officer of the University, salaried or otherwise, may be removed from their offices by the authority which is competent to fill the vacancy on either of the following grounds namely:-

(i) the officer has become incapable of performing his duties;

(ii) the officer has been convicted by a court of an offence which, in the opinion of the Court of the University, Executive Council or Academic Council, as the case may be, involves moral turpitude.

Provided that nothing in this clause shall be deemed to effect any rights accruing to an officer appointed on contract in accordance with the terms of such contract.

(3) (a) Notwithstanding anything contained in the terms of the contract of service of a teacher, the Executive Council shall be entitled to dismiss a teacher on grounds of misconduct after following the procedure specified in clause (c), but save as aforesaid, the Executive Council shall not be entitled to determine the employment of a teacher save for good cause and after giving three months notice in writing or payment of three months'salary in lieu of such notice.

(b) The determination of a teacher's employment shall require a two-third majority of the members of the Executive Council present and voting.

(c) The Vice-Chancellor may suspend a teacher against whom any misconduct is alleged and shall report the case to the next meeting of the Executive Council, but before any orders for dismissal are passed, the teacher shall be informed of the allegations made against him and shall be given a reasonable opportunity to make such representation to the Executive Council or to any committee thereof appointed for the purpose, as he may desire to make; and further, he shall be entitled to claim the benefit of due enquiry, with full opportunity to inspect evidence and cross-examine witnesses, and offer his own evidence and witnesses, before the Executive Council or before a person or persons appointed by it to conduct the enquiry.

(d) Any dismissal on the ground of misconduct shall take effect on the date on which the teacher was first suspended.

(e) Before a notice is given or payment is made to the teacher under sub-clause (a), he shall be informed by the Executive Council of the cause of the action proposed to be taken against him and shall be given a

reasonable opportunity of making such representations to the Executive Council or to any committee thereof appointed for the purpose, as he may desire to make.

(f) Notwithstanding anything contained in the Statutes, the teacher may at any time require his employment to be terminated by giving the Executive Council three month's notice in writing."

9. Perusal of above extracted statute reveals that clause 3 (a) prevails over following sub-clause (b). Said prevailing sub-clause requires, in case of dismissal of a teacher, the EC being entitled to dismiss on grounds of misconduct, after following procedure specified in clause (c). The sub-clause goes on to say, save as aforesaid the EC shall not be entitled to determine the employment of a teacher, save for good cause and after giving three months notice in writing or payment of three months' salaries in lieu of such proceeding. The saving does not apply to petitioner's case because she was not dismissed on notice served with severance pay. There was show cause notice issued and charges levelled against her, resulting in the charge proved. Then the matter was placed before the EC, for vote. Sub-clause (c) provides, inter-alia, the procedure to ensure reasonable opportunity to make such representation to the EC or to any Committee appointed for the purpose and to claim benefit of due inquiry with full opportunity to inspect the evidence, cross examine witnesses and offer own evidence and witnesses before the Inquiring Authority.

10. In view of aforesaid, contention of sub-clause (b) under clause 3 in statute 40 being unconstitutional as offending article 14, cannot be upheld. Article 14 in the Constitution is reproduced below.

"14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

In **Mcdowell** (supra), the Supreme Court said that merely alleging unconstitutionality on arbitrariness cannot be basis for challenge to a legislative Act. We find, the statute came to be by operation of provision in section 28 of the Act. We have already elaborated on entirety of statute 40, for us to appreciate that a teacher is afforded reasonable opportunity of defending allegation against her conduct and only after the procedure of inquiry is duly completed can the matter of her removal be placed before the EC for vote, requiring 2/3rd majority. There appears to be sufficient check to

prevent arbitrariness as opposed to the provision itself being arbitrary as contended. We are minded to think **Anurag Krishna Sinha** (supra) supports contention of Mr. Yadav inasmuch as it was said that the action of the legislature, violative of article 14 of the Constitution, should ordinarily be manifestly arbitrary. This we have not found as manifest in statute 40.

11. At this stage Mr. Srivastava submits, there remains to be adjudicated his client's challenge based on the facts. For the purpose petitioner may file fresh writ petition disclosing this petition and subsequent pleadings filed therein, with prayer confined to the challenge based on facts. This, if done by 27th August, 2026, petitioner may plead exclusion of time taken on adjudication of this writ petition, to account for the delay and seek early adjudication.

12. The writ petition is **disposed of** as above.

July 14, 2026
sailesh

(Arindam Sinha,J.)

(Satya Veer Singh,J.)