

HIGH COURT OF CHHATTISGARH, BILASPURWA No.483 of 2022

{Arising out of order dated 20-7-2022 passed by the learned Single Judge in WPS No.4373 of 2022}

1. Anil Kumar Singh

---- Appellant

Versus

1. Hidayatullah National Law University Through Its Registrar, Hidaytullah National Law University, Atal Nagar, Raipur District Raipur Chhattisgarh
2. The Vice Chancellor Hidaytullah National Law University, Atal Nagar, Raipur, District Raipur Chhattisgarh
3. The Registrar Hidaytullah National Law University, Atal Nagar, Raipur, District Raipur Chhattisgarh
4. Shri Mahendra Rathor (Retd. District Judge), Inquiry Officer HIG I, D 45, (Akash), Abhilasha Parisar, Behind Hi Tech Bus Stand, Tifra, Bilaspur Chhattisgarh
5. Dr. Avinash Samal Assistant Professor (Political Science) & Public Information Officer, Hidaytullah National Law University, Atal Nagar, Raipur District Raipur Chhattisgarh
6. Dr. Vipin Kumar Associate Professor And Dean, Irap Hidaytullah National Law University, Atal Nagar, Raipur District Raipur Chhattisgarh
7. Dr. Manish Tiwari Assistant Grade III, (Personal Assistant To V.C. Office), Hidaytullah National Law University, Atal Nagar, Raipur District Raipur Chhattisgarh

---- Respondents

WA No. 487 of 2022

{Arising out of order dated 24-8-2022 passed by the learned Single Judge in MCC No.448 of 2022 and order dated 21-7-2022 passed in WPS No.4954 of 2022}



1. Dinesh Kumar Lalwani

---- Appellant

Versus

1. Hidayatulla National Law University Through Its Registrar, Hidayatullah National Law University, Atal Nagar Raipur, District Raipur Chhattisgarh.
2. The Vice Chancellor, Hidayatulla National Law University, Atal Nagar Raipur, District Raipur Chhattisgarh.
3. The Registrar, Hidayatullah National Law University, Atal Nagar Raipur, District Raipur Chhattisgarh.

---- Respondents

WA No. 491 of 2022

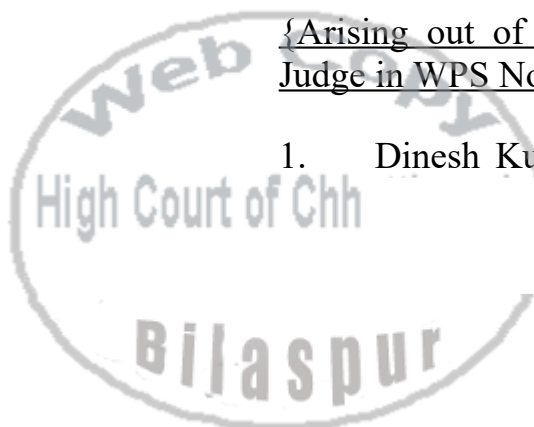
{Arising out of order dated 20-7-2022 passed by the learned Single Judge in WPS No.4383 of 2022}

1. Dinesh Kumar Lalwani

---- Appellant

Versus

1. Hidayatullah National Law University Through Its Registrar, Hidayatullah National Law University, Atal Nagar, Raipur, District Raipur Chhattisgarh.
2. The Vice Chancellor, Hidayatullah National Law University, Atal Nagar Raipur, District Raipur Chhattisgarh.
3. The Registrar, Hidayatullah National Law University, Atal Nagar Raipur, District Raipur Chhattisgarh.
4. Shri Mahendra Rathor, (Retd. District Judge), Inquiry Officer HIG-I, D-45 (Aakash), Abhilasha Parisar, Behind Hi Tech Bus Stand, Tifra, Bilaspur Chhattisgarh.
5. Dr. Avinash Samal, Assistant Professor (Political Science) And Public Information Officer Hidayatullah National Law University, Atal Nagar Raipur, District Raipur Chhattisgarh.





6. Dr. Vipin Kumar, Associate Professor & Dean IRAP Hidayatullah National Law University, Atal Nagar Raipur, District Raipur Chhattisgarh.
7. Dr. Manish Tiwari Assistant Grade-III (Personal Assistant to V.C. Office) Hidayatullah National Law University, Atal Nagar Raipur, District Raipur Chhattisgarh.

---- Respondents

For Appellants	Mr. Shashank Thakur, Advocate
For Respondent/HNLU	Mr. Amrito Das, Advocate

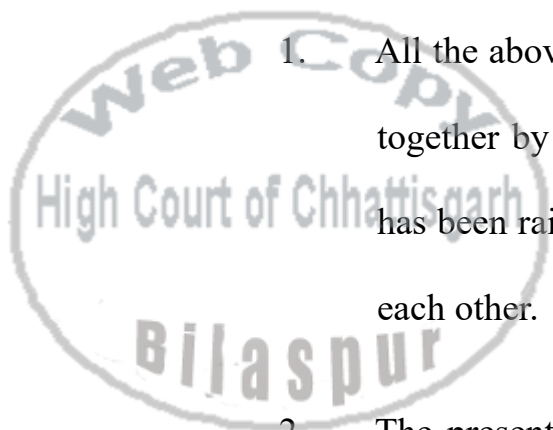
Hon'ble Mr. Justice Goutam Bhaduri &
Hon'ble Mr. Justice Radhakishan Agrawal

Order on Board

Per Goutam Bhaduri, J.

27-09-2022

1. All the above referred writ appeals heard analogously and decided together by this common order because common question of law has been raised and the grounds of challenge are overlapping with each other.
2. The present writ appeals are arising out of orders passed by the learned Single Judge in the respective writ petitions wherein the prayer to quash the disciplinary proceedings commenced against them on the basis of the authorities who are in hold of the proceedings do not have jurisdiction, were dismissed.
3. The facts of the case, in brief, are that :
 - i. appellant namely; Anil kumar Singh was appointed as Assistant Grade-I on 24.05.2007. He was placed under suspension on 06.08.2020 by the Registrar, Hidayatullah





National Law University (henceforth 'the University').

The said suspension order was revoked on 10.11.2020, as no charge sheet was issued thereafter. Again, he was placed under suspension on 11.11.2020 on the ground that the First Information Report (FIR) was lodged against him under the provisions of the Prevention of Corruption Act, 1988 and subsequently, retired Additional Superintendent of Police was appointed as Investigating Officer. The same was subject of challenge in WPS No.2008 of 2022 wherein the learned Single Judge by order dated 28.03.2022 ordered that enquiry may go on, but no final order should be passed. Subsequent thereto, the appellant filed a representation as an employee to the Executive Council (henceforth 'the EC') along with whopping number of Annexures. Pursuant thereto, the University issued a show cause notice on the ground that the Annexures which were attached were sensitive & financial documents and Anil Kumar should not have in hold of those documents. In response to the said show cause notice, the appellant submitted his reply and contended that few of the documents were obtained under the Right to Information Act, 2005 and few of the documents were obtained from his Advocate. However, being not satisfied with such reply, a charge sheet was issued to the appellant on 02.05.2022.





ii. another appellant namely; Dinesh Kumar Lalwani was appointed as P.A. to Vice Chancellor (henceforth 'the VC') on 24.05.2007. He was placed under suspension on 06.08.2020 and as on date he is under suspension. According to him, no charge sheet was served for a considerable period of time. In the meanwhile, the appellant submitted a representation raising his grievances along with several Annexures. Subsequently, a show cause notice was issued to him on the ground that along with the representation certain sensitive & financial documents were filed without disclosing the source as to how he obtained those documents, to which he submitted his reply and denied the allegations levelled against him. Being not satisfied with such reply, he too was charge sheeted on 02.05.2022.

4. Shri Shashank Thakur, learned counsel appearing for the appellants would submit that :

- neither the VC nor the Registrar was competent Authority to contemplate disciplinary proceedings as per the provisions of the Hidayatullah National University of Law Chhattisgarh Adhiniyam, 2003 (henceforth, 'the Act, 2003');
- Section 10 defines the Authorities of the University wherein the VC or the Registrar do not find place as an Authority;





- Section 12 defines the EC, which would be the highest body of the University; therefore, the EC would be responsible for administration, management and control of the University;
- appointment of the appellants was in accordance with the provisions of the Statute 9(2) by the EC, which empowers to create positions in Administrative, Teaching, Research, etc., therefore, it was the EC, which was empowered to take any such disciplinary action against them;
- as per Statute 13, the EC may by resolution, delegate to the VC or to a Committee, such of its powers as it may deem fit, which was not done in instant cases;
- in the minutes of the EC dated 20.12.2020, 05.06.2021 & 13.07.2021, no delegation of power was made to the VC to conduct any Departmental enquiry;
- though certain powers are given to the VC vide Statute 19(6)(7) but there powers are required to be exercised according to the Act and the Regulations and not independently;
- charge sheets were issued to the appellants starting with the opening words ‘the competent Authority proposes to hold an inquiry’ and the ‘Competent Authority’ is defined under Regulation 2(6) of Chapter I of the Hidayatullah National





Law University Staff Regulations, 2015 (henceforth 'the Regulations'), which only defines the EC, therefore, the Authority having power can only pass the order, which is absent here; and

- by placing reliance upon the decisions rendered by the Supreme Court in the matters of *Marathwada University v Seshrao Balwant Rao Chavan*¹, *Rakesh Kumar Agarwalla and Another v National Law School of India University, Bengaluru and Others*² and *Union of India and Others v B.V. Gopinath*³ and the decision of this Court in the matter of **Prof. Dr. B.K. Mehta v Pt. Ravishankar Shukla**

University & Others⁴ learned counsel would submit that when the VC was not vested with the power, the issuance of charge sheet like nature cannot be proceeded with.

5. Learned counsel appearing for the respondent/HNLU, *per contra*, would submit that :

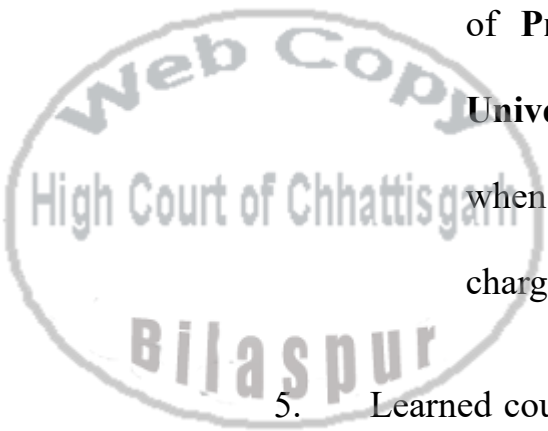
- along with representations the appellants annexed hefty number of documents, which are confidential & sensitive in nature, but source of it was not disclosed by them and hence the said act of the appellants is serious in nature;
- appellants are challenging the competency of authority issuing the charge sheet and reading of the Act would show

1 (1989) 3 SCC 132

2 (2021) 1 SCC 539

3 (2014) 1 SCC 351

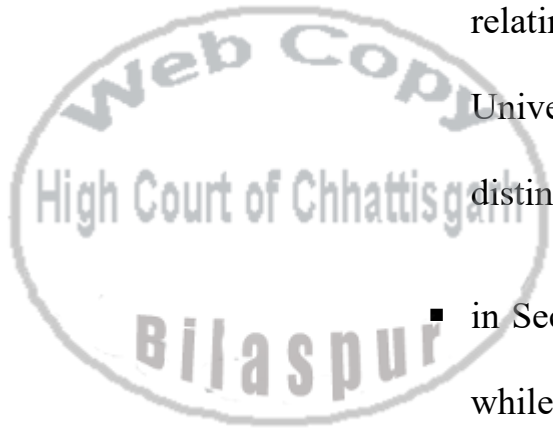
4 WP No.1730 of 2006 (decided on 1-9-2014)





that the Act has divided into Statute and Regulations, therefore, the object of the Act as per Section 5 (xii) would show that one of the criteria is to regulate and enforce discipline among the employees and as per Statute 19(7) the VC has been given the power to ensure that the provisions of the Act and the Regulations are duly observed, therefore, the object of Statute 19(7) read with Section 5(xii) is to enforce discipline in the University, which empowers the VC to take any disciplinary action against its employees;

- Statute 19(7)(c) also purport that the VC has all powers relating to the proper maintenance of discipline in the University, therefore, the power under Statute 19(7) is distinct and independent;
- in Section 10 the word ‘authority’ has been used, therefore, while interpreting the word ‘competent authority’ under the Regulation it cannot be read in isolation against the Statute 19 (7) and the Act;
- as per Section 17 of the Act, 2003 the Regulations have been framed, so when the Act and Statute has given power Regulations cannot be read in conflict to the Statute and will not override it.
- Referring to Regulation 37, learned counsel would submit that the EC would be the appellate authority against any





finding of the Enquiry Officer, therefore, the proposition that EC alone was authorised to take such disciplinary measure would be a wrong; and

- the appellants have participated in the disciplinary proceedings and the evidence on behalf of the prosecution has already been concluded, therefore, at the late stage the interference on the ground that the VC did not have the authority would completely jeopardize the interest.

6. We have heard learned counsel for the parties at length and perused the documents.

7. The main issue which is raised before this Court about the power to issue the charge sheet dated 2-5-2022. Memorandum of chargesheet (Annexure-P/1 in WPS No.4373 of 2022; page 42) starts with word that the *Competent Authority proposes* to hold an enquiry against Shri Anil Kumar Singh, Assistant Grade-I under Regulation 36 of the Hidayatullah National Law University Staff Regulations, 2015. The said chargesheet is signed by the Registrar.

8. The 'Authorities of the University' and the 'Executive Council' are defined under Sections 10 & 12 of the Act, 2003, respectively.

The same are quoted below for ready reference :

10. Authorities of the University.-- The following shall be the authorities of the University, namely:-



1. The General Council;
2. The Executive Council;
3. The Academic Council;
4. The Finance Committee; and
5. Such other authorities as may be prescribed by the Regulations.

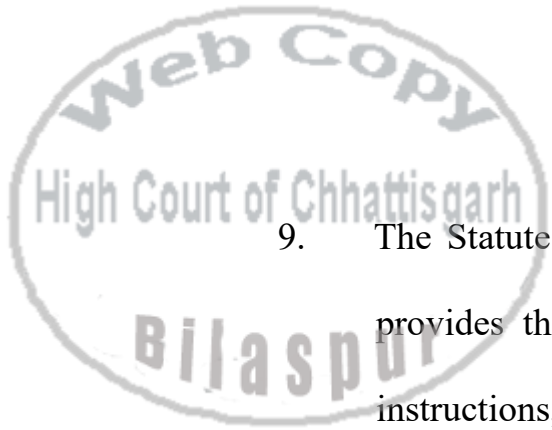
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12. The Executive Council.--(1) The General Council shall be highest executive body of the University.

(2) The administration, management and control of the University shall vest in the Executive Council, which shall control and administer the property and funds of the University.

(3) The composition of the Executive Council shall be such as is specified in the Schedule.

9. The Statute which is framed under Section 15 of the Act, 2003 provides that the Statutes of the University shall contain such instructions, directions, procedures and details as are necessary to be laid down under and in accordance with the provisions of this Act. Statute 9 speaks about powers and functions of the EC and Statute 9(2) purport that the EC shall have power to create positions in administrative, teaching, research and subordinate management staff, on tenure and non tenure basis on such terms and conditions as may be determined by Regulations and to appoint personnel in such posts in such manner as may be determined under Regulations. It also purport that the EC may also delegate such functions to the VC in such manner as may be





stipulated in the regulation. Statute 9 (2) is quoted below for ready reference :

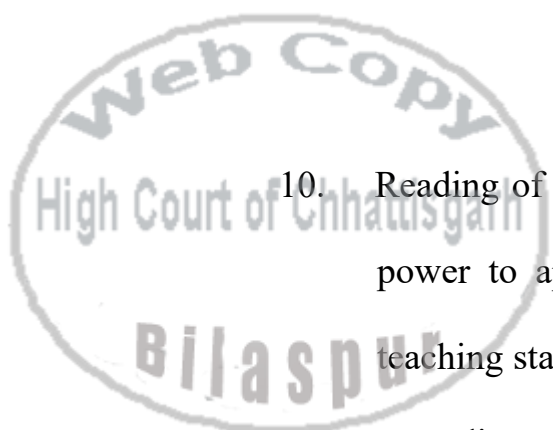
9. Powers and Functions of the Executive Council.--Without prejudice to the provisions contained in Section 5, the Executive Council shall have the following powers and functions, namely:-

xxx xxx xxx

(2) to create positions in administrative, teaching, research and subordinate management staff, on tenure and non tenure basis on such terms and conditions as may be determined by Regulations and to appoint personnel in such posts in such manner as may be determined under Regulations; the Executive Council may also delegate such functions to the Vice-Chancellor in such manner as may be stipulated in the regulation;

10. Reading of the aforesaid Statute would show that the EC has the power to appoint different management & administrative staff, teaching staff, etc. and may also delegate such functions to the VC according to the Regulations. It is not in dispute that the appellants were appointed by the EC.

11. Statute 13 purport about delegation of powers by EC. It provides that the EC may by resolution, delegate to the VC or to a Committee, such of its powers as it may deem fit, subject to the condition that the action taken by the VC of such Committee in the exercise of the powers so delegated shall be reported at the next meeting of the EC. Perusal of Statute 13 would show that albeit the power to delegate was given, but certain rider was





imposed to reciprocate in turn by the VC. In the case at hand, there is no dispute that no power was delegated to the VC by the EC.

12. The question crops up as to when there is no delegation of power to the VC by the EC whether the power exercised by the VC in issuance of show cause notice and contemplation of the disciplinary proceedings would be saved as per Statute 19(6)(7). For the sake of brevity, relevant Statute is quoted below :

19. Appointment and the powers of the Vice Chancellor.--

xxx xxx xxx

(6) The Vice Chancellor shall be the Chief Executive and Academic Head of the University and subject to the specific and general directions of the Executive Council, he shall exercise all powers of the Executive Council in the management and administration of the University;

(7) The Vice-Chancellor shall,--

(a) Ensure that the provisions of this Act and the Regulations are duly observed, and he shall have all powers as are necessary for that purpose.

(b) Convene the meetings of the General Council, the Executive Council and the Academic Council; and shall perform all other acts, as may be necessary to give effect to the provisions of this Act;

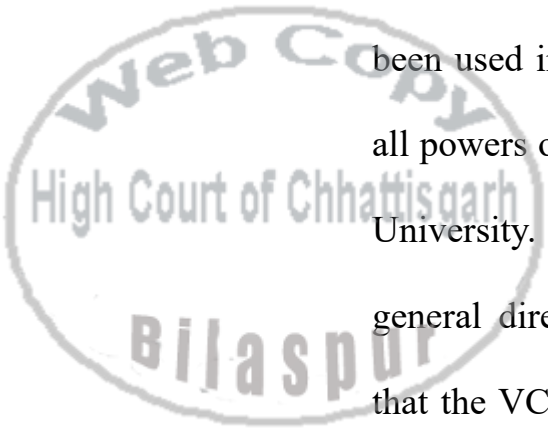
(c) Have all powers relating to the proper maintenance of discipline in the University; and





(d) If, in the opinion of the Vice Chancellor, any emergency has arisen, which requires that immediate action be taken, he shall take such action as he deems necessary and shall report the same for confirmation to the next meeting of the authority which in the ordinary course, would have dealt with the matter.

13. Bare perusal of Statute 19(6) shows that the VC shall be the Chief Executive and Academic Head of the University and subject to the specific and general directions of the EC, meaning thereby the power of VC would be as per the directions and instructions issued by the EC. Thereafter, the punctuation mark ‘comma’ has been used in the Statute and provides that he (VC) shall exercise all powers of the EC in the management and administration of the University. So the powers of VC are subject to the specific or general direction by the EC. Likewise, Statute 19(7)(a) purport that the VC shall ensure that the provisions of “ this Act and the Regulations are duly observed” and he shall have all powers as are necessary for that purpose.
14. Section 5 of the Act, 2003 speaks about the powers and functions of the “University”. Section 5 (xii) prescribes criteria to regulate and enforce discipline among the employees of the University and to take such disciplinary measures as may be deemed necessary. Section 5(xli) further gives powers and functions to delegate all or any of its powers to the VC of the University or any committee or any sub-committee or to any one or more members of its body or





its officers. Section 5(xii) & (xli) of the Act, 2003 are quoted below for ready reference :

5. Powers and Functions of the University.--The powers and functions of the University shall be,--

xxx xxx xxx

(xii) to regulate and enforce discipline among the employees of the University and to take such disciplinary measures as may be deemed necessary;

xxx xxx xxx

(xli) to delegate all or any of its powers to the Vice-Chancellor of the University or any committee or any sub-committee or to any one or more members of its body or its officers; and

15. The 'University' has been defied under Section 2(xii), which reads thus :

2. Definitions.-- In this Act, unless the context otherwise requires,--

xxx xxx xxx

(xii) "University" means the "The National University of Law, Chhattisgarh" established under Section 3;

16. Section 3 speaks about 'Establishment and incorporation of the National University of Law, Chhattisgarh'. The same is quoted below for ready reference :

3. Establishment and incorporation of the National University of Law, Chhattisgarh.--(1) With effect from such date as the State Government may by notification appoint, there shall be established, in the State of Chhattisgarh, a





University by the name of Hidayatullah National University of Law, Chhattisgarh which shall consist of the Chancellor, Vice chancellor, the General Council, the Executive Council, the Academic Council and the Registrar; the capital expenditure for the establishment of the University shall be borne by the State Government.

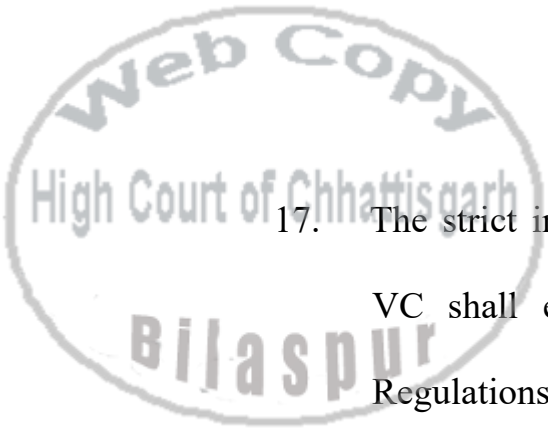
(2) The University shall be a body corporate by the name aforesaid, having perpetual succession and common seal with power, subject to the provisions of this Act, to acquire and hold property, to contract and shall, by the said name, sue and be sued.

(3) In all suits and other legal proceedings by or against the University, the pleadings shall be signed and verified by the Registrar and all processes in such suits and proceedings shall be issued to, and served on, the Registrar.

(4) The headquarters of the University shall be in Raipur district.

17. The strict interpretation of Statute 19(6)(7) would show that the VC shall ensure that the provisions of “the Act” and “the Regulations” are required to be duly observed, and he shall have all powers to the proper maintenance of discipline in the University.

18. Section 5 of the Act, 2003 defined the ‘powers and functions of the University’ and VC is not included in it. So the VC is required to follow the Act of 2003 and the University cannot be synonym to VC as they are distinctly been shown in the Act. The memorandum of chargesheet starts with the words ‘**The Competent Authority Proposes....**’. The word ‘competent authority’ is defined in Regulation 2(6) of the Regulations, 2015.





The Regulation defines that 'Competent Authority' in relation to exercise of any power, means the Executive Council or any authority to which the power is delegated by or under these Regulations. In the case in hand, there is no delegation of power to the VC to conduct departmental enquiry against the appellants. When the appointment of the appellants was made as per Statute 9(2) by EC it would be the EC at first hand to proceed with any disciplinary proceedings. The competent authority as per Regulation denotes that it is the EC. In absence of any delegation of power to the VC, he could not have contemplated the disciplinary proceedings in the name of the competent authority, which never existed and usurpt such power.

19. The submission of the respondents that according to the Regulations, the EC would be the appellate authority against any penalty imposed. We are unable to agree with such interpretation that in such case the VC would be the only competent authority to exercise power to initiate disciplinary proceeding as against the Regulation 2(6) of the Regulations, 2015.

20. It is the trite proposition that when a specific authority as per Statute becomes appellate authority in case of necessity and when there is no substitution is possible, natural justice then has to give way to the necessity; for otherwise there would be no means of deciding and machinery of justice or administration will break-down. So simply because EC is appellate authority there cannot be



implied vesting of power to VC to initiate departmental enquiry against the appellants can be presumed.

21. The Supreme Court in *Secretary, Ministry of Defence v Prabhash Chandra Mirdha*⁵, held that no writ petition lies against the charge sheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party “unless the same has been issued by a person having no jurisdiction/competence to do so”. Here in the instant case, the competency of issuance of charge sheet in the name of Competent Authority by the Registrar is in question. There is nothing on record to show that any delegation of disciplinary proceedings *qua* the appellants was given in favour of the VC. So the reliance placed by learned Single judge cannot be given a way to issue.

22. The Supreme Court in *Marathwada University* (supra) has observed that power of the VC to regulate the work and conduct of officers cannot include the power to take disciplinary action for their removal and when the Act confers power to appoint officers on the EC and it generally includes the power to remove.

23. As per Regulation 36 the “Competent Authority” may, for good and sufficient reasons, impose on an employee the penalty of removal from service. Regulation 36 is quoted below for ready reference :

5 (2012) 11 SCC 565



36. (1) The competent authority may, for good and sufficient reasons, impose on an employee the following penalties:-

(a) Censure.

(b) Recovery from his/her pay of the whole or part of any pecuniary loss caused by him/her to the University by negligence or breach of orders.

(c) Withholding of increment of pay.

(d) Reduction to lower time scale of pay, grade or post.

(e) Compulsory Retirement.

(f) Removal from service.

(g) Dismissal from service which shall ordinarily be a disqualification for future employment in the University.



(2) The competent authority may institute disciplinary proceeding against an employee of the University.

(3) No order imposing any of the penalties specified in subparagraph (1) shall be made except in accordance with the procedure for imposing penalties as prescribed by Government of Chhattisgarh and in force at the time when the competent authority orders an inquiry against the employee concerned.

24. Therefore, Statute 19(7)(c) has to be read in harmony with Regulation 36, wherein the word 'Competent Authority', is used for EC. So the authority of Competent authority cannot be shelved and crisis may not abate until any delegation is made by the EC.



25. It is the trite law that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated.
26. For the reasons stated hereinabove and applying the well settled principles of law, all the writ appeals are allowed. The orders passed by the learned Single Judge in writ petitions are set aside and the charge sheets dated 2-5-2022 issued by the University in respect of the appellants are quashed. Consequences will follow.
27. It is made clear that this order will not preclude the University to take any action in accordance with law.

28. There shall be no order as to cost(s).

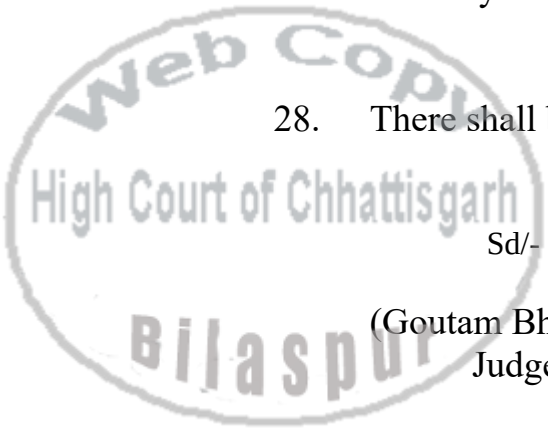
Sd/-

(Goutam Bhaduri)
Judge

Gowri

Sd/-

(Radhakishan Agrawal)
Judge





HEAD NOTE

When the Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated.

जब अधिनियम यह विहित करता है कि शक्ति का प्रयोग विशिष्ट निकाय द्वारा किया जाए, तब उस शक्ति का प्रयोग उसी निकाय द्वारा किया जाएगा। ऐसी शक्ति का प्रयोग अन्य निकाय द्वारा तब तक नहीं किया जाएगा जब तक उसे वह शक्ति प्रत्यायोजित न कर दिया जाए।

