IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1 of 1999

in

SPECIAL CIVIL APPLICATIONNo 9418 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

SATISHCHANDRA BALASHANKER VORA

Appearance:

MR. R.N. RAWAL, ADDL SOLICITOR GENERAL with
MR. P.G. DESAI, GOVERNMENT PLEADER for Appellant
MR. A.H. MEHTA, for Respondent No. 1
MR DS NANAVATI for Respondent No. 3

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE A.L.DAVE

Date of decision: 31/03/99

C.A.V. JUDGEMENT (Per Patel, J.)

1. State of Gujarat being aggrieved by the order passed by learned Single Judge in Special Civil Application No. 9418 of 1998 on 30.12.1998 allowing the petition, has preferred this appeal.

2. The aforesaid Special Civil Application was filed by respondent No.1 herein [hereinafter referred to as the petitioner]. The petitioner stood dismissed from the office of the Vice Chancellor of respondent No.3 Gujarat University [hereinafter referred to as the University] as the petitioner went abroad without prior approval of the Chancellor, to attend a conference at Bangkok from 12th to 14th November 1997; The petitioner also failed to obtain political clearance from the concerned Ministry of the Government of India before proceeding abroad. It is the case of the petitioner that the petitioner was appointed as Vice Chancellor of the University by a notification of the State Government dated 27.12.1996 for a period of three years. An invitation for participating in the 4th mid-term conference organised by the International Association of Universities at Bangkok was extended which was ultimately accepted and approved by Executive Council of the University on 5.10.1997. The expenditure of Rs.53,750/- was to be made available as per the rules from the unassigned grant of the University Grants Commission. On 6th October 1997, the petitioner addressed a letter to the Chancellor intimating in this behalf and sought the permission of the Chancellor to attend the said conference and to grant him duty leave from 9.11.1997 to 18.11.1997. Along with the said letter, he requested to nominate Prof. K. S. Shastri under the provisions contained in 10 (6) (a) of the Gujarat University Act [hereinafter referred to as the Act], to perform the current duties of the Vice Chancellor during his absence. On 14.10.1997, Additional Chief Secretary addressed a letter calling for the following information for consideration of His Excellency the Governor, who is also the Chancellor of University :-

"1. Whether Prof. Vora proposes to visit Thailand on Official Passport, and if so, whether permission from competent authority has been granted?

2. Who will bear the expenditure of this tour, i.e. travel expenses, hospitality, etc. If the expenditure is to be borne by the Government, kindly clarify whether such sanction

has been accorded?

3. If the expenses on hospitality are to be borne by the host, political clearance would be required from the Government of India, Ministry of Home Affairs.

4. Special Civil Application No. 7295 of 1997 has been filed in the High Court of Gujarat by Shri M.R. Patel against the appointment of Prof. K.S. Shastri as Pro-Vice-Chancellor, Gujarat University, State Government may therefore kindly examine whether it would be advisable to grant such a permission to the Vice Chancellor when such an important matter is pending in the High Court of Gujarat and whether it would be advisable to give charge to Prof. Shastri during Prof. Vora's absence when a petition challenging the validity of appointment of Prof. Shastri is pending in the High Court."

3. On 17.10.1997, D.C. Vora, Deputy Secretary in the Education Department of the State of Gujarat, by a special messenger, forwarded a letter to the Registrar of the University with regard to queries No. 1,2 and 3 referred to hereinabove, and to reply in that behalf immediately. On 18.10.1997, the Registrar of the University replied to the aforesaid letter interalia stating that :-

"(i). The permission of the University Grants Commission has been obtained by us for participating in 4th Mid-term conference to be held at Bangkok Thailand from 12-14 November, 1997. The copy of granting permission by the University Grants Commission vide DO letter No. F-16-8/97 (TG) dated 3rd October, 1997 is enclosed for your kind perusal.

(ii). The entire 100% expenditure would be borne by the University Grants Commission under unassigned grant scheme.

(iii). Since the entire expenditure would be borne by the University Grants Commission, there appears no need to get political clearance from the Government of India, Ministry of Home Affairs. Besides this is an academic conference, and therefore, question also does not arise to get the political clearance from the Government of India, Ministry of Home Affairs." (emphasis

ours).

3.1 On 11.11.1997, Under Secretary to His Excellency the Governor addressed a letter to the Additional Chief Secretary to the Government of Gujarat, the text of which is reproduced below:-

"In continuation of this office letter No. GS XI / 4777 / 1997 dated the 7th November, 1997 on the subject mentioned above. I am directed to state that it has been clarified by the Ministry of External Affairs, Government of India that the political clearance is necessary on account of the visit of the Vice-Chancellor, Gujarat University, to attend the IAU 4th Mid term Conference at Bangkok (Thailand). It has been further clarified that the requisite proposal for the political clearance is to be routed through the Ministry of Human Resource Development, Government of India."

3.2 In this behalf, information was sought for from the Resident Commissioner, Government of Gujarat, New Delhi, who, by a fax message, after ascertaining from the Ministry of External Affairs stated that it is necessary to have political clearance on account of the visit of the Vice Chancellor to attend the said conference, which is required to be routed through the Ministry of Human Resources Development to Government of India. It transpires from the record that the petitioner, though requested for grant of leave to attend the conference, without prior permission and even without intimation, after handing over the charge to Pro-Vice-Chancellor K.S. Shastri, left for Bangkok to attend the conference. Thus he absented from 9.11.1997 to 18.11.1997.

3.3 By letter dated 31.1.1998, [page 94] the Government, being the appointing authority, decided to seek explanation of the petitioner for irregularities, such as :

(1). While the application of the petitioner for permission of the Chancellor to attend the Conference at Bangkok was under process, he proceeded abroad without permission of the Chancellor and he did not even inform the Chancellor that he is proceeding abroad.

(2). The information asked for in letter dated 17.10.1997 as to whether the petitioner proposed to visit Thailand on official passport or not has not been furnished by the petitioner.

(3). No reply has been given by the University

to letter dated 29.11.1997 intimating that as per the Ministry of External Affairs, political clearance is required by the Vice Chancellor to attend the Conference.

3.4 The State Government, viewing the aforesaid misconduct and misdemeanour seriously, called upon the petitioner to explain within 15 days of receipt of the said letter. For a pretty long period, the petitioner did not reply to the letter hence by letter dated 9th July 1998 petitioner was asked to send his explanation. He was also given an opportunity of personal hearing. However, on 24th July 1998, the petitioner submitted his explanation. This was followed by another letter from the petitioner to the Additional Chief Secretary, dated 22.8.1998. On 9.11.1998, the Government issued a notification dismissing the petitioner from the post of Vice-Chancellor. The order dismissing the petitioner speaks about the petitioner proceeding on leave without prior sanction of the Chancellor and not even informing the Chancellor before going abroad, and, non obtaining of political clearance from the respective ministry. After expressing that the explanation tendered by the petitioner was unacceptable, the petitioner was dismissed from his present post of the Vice-Chancellor with immediate effect on administrative grounds and in public interest.

4. In his explanation dated 24.7.1998, Mr. Vora has stated that "At least I am not aware as to what is the connotation of 'political clearance' in the context of the Vice Chancellor attending the Mid-term conference organised by the International Association of Universities for which University Grants Commission is to provide 100% assistance". Neither the funds of Gujarat University were to be utilised for the same nor any foreign agency was to provide any financial assistance. In the said letter [page 62] the petitioner further stated that "bonafide I believed that I would receive the permission in due course and thereupon I proceeded to Thailand". It appears that the petitioner insisted that it was incumbent on the part of the Vice-Chancellor to attend such conference which would be beneficial to the country and the State of Gujarat. It is further stated in the letter [page 62] that "since the inception of Gujarat University every Vice-Chancellor has gone abroad for such a purpose and never has been a question of such political clearance". The petitioner further stated in the letter that [page 63] "I had also called upon the Honourable Chancellor subsequently and I had also addressed a letter to him on 24th December, 1997 in this

regard. In the personal meeting H.E did not even touch upon the problem, leading to believe that the matter was now settled and H.E. was satisfied." In the concluding paragraph, the petitioner stated that the act of the petitioner cannot be treated as "misconduct" or "misdemeanour."

4.1 In the further explanation dated 22.8.1998 submitted by the petitioner, the petitioner contended that Vice Chancellor is not a Government servant and he cannot be treated as an ordinary Government servant. He further contended that if Vice Chancellor is treated as an ordinary Government servant, the very dignity and status of the office of the Vice Chancellor will suffer, especially when in these days the discipline amongst students and standards of education are deteriorating. He further submitted that efforts should be made by all concerned to strengthen the dignity and status of the office of Vice Chancellor and no action for the minor procedural lapses should be taken against the Vice Chancellor by the Government. The petitioner has clearly stated in this letter [page 65] that he did not obtain political clearance before proceeding to attend the conference. Thus, this is an admitted fact.

4.2 The petitioner has stated that the letter [presumably Annx. II at page 91 dated 17.10.97] was received by him few days before the date of his departure and therefore it was physically impossible for him to obtain such political clearance. The petitioner has further asserted that reading the letter, (i.e. dt. 17.10.97 page 66) implied consent was given to him to attend the conference but before proceeding he was to obtain political clearance. He further submitted that predecessors in the office of Vice Chancellor had never obtained such political clearance and even if it is assumed that such a clearance was required, the lapse was so minor which did not call for any inquiry. He further submitted in the letter that for minor lapse, there is no question of holding any inquiry and the matter is trifle, more particularly, by not obtaining political clearance no adverse consequences have ensued. He further submitted that at no point of time, he was told that he should not proceed to attend such conference and as the letter dated 6.10.1997 addressed to His Excellency the Governor was not replied, he took it for granted that the permission to leave has been granted. The petitioner, in clear terms has stated that he proceeded abroad on presumption that the permission was granted by His Excellency the Governor in view of the circumstances mentioned in the letter and in the concluding part of the

letter, requested that the file may be closed permanently and he may be informed accordingly.

5. It is averred in the petition that to the surprise of the petitioner, he received a communication dated 9.11.1998 which is in the form of a Notification issued by Deputy Secretary to Government of Gujarat, Education Department to the effect that the petitioner, during his duty, indulged in misconduct and misdemeanour unbecoming of his academic and the highest position in the University, and therefore he stood dismissed from his present post of Vice Chancellor with immediate effect on administrative grounds and in public interest. The gist of the misconduct and misdemeanour described in the said Notification are:

(1). Without prior sanction of His Excellency the Governor and even without prior intimation before going abroad, the petitioner went abroad;

(2). Political Clearance is not obtained by the petitioner before going abroad;

5.1 It is further stated in the notification that the Government vide letter No. GUJ/1097/GOVR/168-KH dated 31.1.1998 called for the explanation as to why he went abroad without prior sanction or prior intimation of His Excellency, and the petitioner submitted his explanation by letter dated 9.2.1998, which was found to be superficial, not to the point and unsatisfactory, and, therefore, the Government did not accept the explanation. The petitioner was, therefore, by letter No. GUJ-1097/GOVT/168-KH dated 9.7.1998 called upon to explain as to why action should not be taken against him under section 16 of the Bombay General Clauses Act and he was given an opportunity of hearing in person on 24.7.1998 at 12.00 Noon before the Principal Secretary (Higher and Technical Education). The petitioner, by letter dated 24.7.1998, submitted explanation repeating the earlier contentions and, therefore, the Government has not accepted that explanation. After recording the aforesaid, in the conclusive portion of the Order/Notification, it is recorded as under :-

"Shri S.B. Vora occupies the academic and the highest position of the Vice-Chancellor of the University and the social and moral responsibility to infuse the sense of discipline amongst youths rests with him. The Government has taken serious note of the abovesaid gross misconduct and disobedience and insubordination of the Government by Shri Vora. Therefore, it does not seem proper to continue Shri S.B. Vora,

Vice-Chancellor, Gujarat University, Ahmedabad on his present post. Therefore, under section 16 of the Bombay General Clauses Act, Shri S.B. Vora is dismissed from his present post of the Vice-Chancellor with immediate effect on administrative grounds and in public interest."

5.2 It is the above order that was challenged by the petitioner in the aforesaid Special Civil Application.

6. Learned Single Judge, after hearing the learned counsel and the material placed on record, by his judgment and order dated 30.12.1998, allowed the petition and gave the following directions in the penultimate paragraph of the judgment:-

"Consequently, I allow this Special Civil Application and make the Rule absolute by issuing a writ of mandamus quashing and setting aside the Notification of the State Government dated 9.11.98. The petitioner is treated to be continuing in his tenure as Vice-Chancellor as if the Notification dated 9.11.98 has never been issued at all. Respondent No.1 will pay the cost of the petition which is assessed as Rs.10,000/-.

7. Before us, in this L.P.A., learned Additional Solicitor General Mr. K.N. Rawal as well as Government Pleader Mr. P.G. Desai appeared for the State. Learned counsel Mr. Arun Mehta appeared for the petitioner who supported the order passed by the learned Single Judge. Mr. D.S. Nanavati, learned advocate appeared for the University and submitted that the University has not to say anything in the matter.

8. On behalf of the State, broadly speaking, the following arguments were advanced :-

(1). Conclusion of the learned Single Judge that principles of natural justice is violated is wrong and contrary to the evidence placed on record, and as the judgment has proceeded on the aforesaid premises, the judgment must fail.

(2). The conclusion that inquiry ought to have been held by a Judge of the high Court , according to learned Additional Solicitor General, is a classic case of judicial legislation not borne out from any provisions of law and, therefore, the decision is wrong.

(3). While exercising the powers under the Constitution, the Court is required to consider whether the process of decision making is properly followed or not, and it is highly improper to appreciate the decision as if the Court is exercising appellate power or as if the Court is deciding the impugned order sitting in appeal.

(4). Even if two views are possible, then in a matter like this, the Court need not interfere if the view taken is possible.

(5). In a matter relating to education and education policy, the Court should be slow to interfere though the Court is clothed with jurisdiction.

9. Mr. Mehta, on behalf of the respondent, submitted that in view of BOOLCHAND vs. KURUKSHETRA UNIVERSITY reported in AIR 1968 SC 292, on good grounds, services can be terminated but not otherwise. He further submitted that Vice Chancellor can be removed provided the exercise of power is for a good cause, in the interest of the University and the person is unfit to continue as Vice Chancellor, and not otherwise; The Office of the Vice Chancellor is independent and not under the control of the State Government. It was further contended that under section 10 (5) of the Act, the petitioner was appointed for a fixed term of three years and in absence of terms and conditions subject to which he was holding the office, has been determined by the State Government under sub-section 5 of Section 10 of the Act and before the expiry of the term, he cannot be removed. He further submitted that though he sought for permission for leaving the country for attending the conference, no reply was given in time, and therefore, it cannot be said that the action of the petitioner amounts to misconduct or insubordination, more particularly in the absence of any definition of misconduct in the Act. He further submitted that failure to obtain political clearance would not amount to misconduct and/or insubordination when infact such permission was not required to be obtained as host was not to bear the hospitality expenses, and in the past, Vice Chancellors proceeded abroad for attending such conference without express previous approval of the State Government or obtaining "political clearance". It was further argued on behalf of the petitioner that as the petitioner was not a Government servant, he cannot be dismissed under section 16 of the Bombay General Clauses Act by the State Government on the grounds stated in the order. It was

further argued that the grounds on which the impugned order is passed cannot reasonably and adversely affect the discipline which is required to be inculcated in the education world for which the petitioner was morally and socially responsible. It was further argued that the order terminating the services of the petitioner is arbitrary and violative of Article 14 of the Constitution of India. Mr. Mehta further submitted that the decision is vitiated inasmuch as the grounds which were never communicated to the petitioner has been taken into consideration while taking the decision.

(I). DISMISSAL TO BE PRECEDED BY INQUIRY TO BE CONDUCTED BY A SITTING OR RETIRED HIGH COURT JUDGE.

10. Learned Single Judge in paragraph 11 of the judgment held that "the Chancellor can exercise the power to dismiss the Vice Chancellor only for good cases, i.e. in the interest of the University and only when it is found, after due inquiry held in a manner consistent with the rules of natural justice, that the holder of the office is unfit to continue as Vice Chancellor". Learned Single Judge further held in the same paragraph that "It is significant to notice that the Apex Court has used the phrase "'found after due inquiry"' and not the phrase "'after giving opportunity of hearing"'. Learned Single Judge, referring to the judgment in the case of MANAGING DIRECTOR VS. UP WAREHOUSING CORPORATION reported in AIR 1980 SC 840 wherein services of an employee were terminated after enquiry, observed that the employer could not terminate the services without due inquiry in accordance with natural justice in the absence of any statutory rules and/or regulations. Learned Single Judge further pointed out that the Apex Court held that the "rules of natural justice required that the respondent should be given reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which mean and includes an opportunity to cross-examine the witnesses relied upon by the Corporation and an opportunity to lead evidence in defence of the charges as also a show cause notice for the proposed punishment". In view of this decision, learned Single Judge considered that the two notices dated 31.1.1998 and 9.7.1998 calling upon the petitioner and also giving the opportunity of personal hearing, cannot be said that the decision was taken after due inquiry. Learned Single Judge was of the opinion that if the respondents were not satisfied with the reply given by the petitioner in the instant case, they ought to have instituted an inquiry. It is at this juncture the learned Single has held [paragraph 12 of the

order] that looking to the high office of the Vice Chancellor, in all fairness, inquiry could be entrusted to a Hon'ble sitting or retired Judge of the High Court for which a request could be made by the Government to the Hon'ble Chief Justice. Thus, the learned Single Judge held that the order of dismissal being not preceded by inquiry of whatsoever nature, is exfacie illegal, void and non-est.

11. The aforesaid findings recorded by the learned Single Judge are required to be appreciated after considering the fact that the petitioner by letter dated 6th October 1997 sought permission for going abroad from 9.11.1997 to 18.11.1997. In the said letter he also requested to nominate Prof. K.S. Shastri Pro-Vice-Chancellor to perform the current duties of the office of the Vice-Chancellor during the period of his absence i.e. from 9.11.1997 to 18.11.1997. On 14.10.1997, the Chancellor addressed a letter to the Government, and soon thereafter, State Government addressed a letter on 17.10.1997 seeking certain clarifications from the Vice Chancellor about which we have referred to in the earlier part of this judgment. In reply thereto, a letter was addressed on 18.10.1997 stating that permission of the University Grants Commission has been obtained, vide letter dated 3rd October 1997 stating that entire expenses were to be borne by the University Grants Commission and there appears no need to get political clearance from the Government of India. Suffice it to say that by this letter, the petitioner disclosed his intention in unequivocal terms that as the amount was to be spent by U.G.C., there is no need to get political clearance. However, the Government, after due inquiry, pointed out that there is requirement of political clearance for Vice Chancellor while attending such conference. It was submitted before the Court that when the State Government as well as the Chancellor raised queries, it was incorrect on the part of the petitioner to presume that permission was granted. It was further submitted that the letter was addressed on 6th October 1997 which was promptly replied to. It is required to be noted that no permission was granted to go abroad and the matter being under investigation, it may take some time. It was submitted that the petitioner could have moved the High Court earlier before leaving the country but having not done so, and without prior permission of the Chancellor, and without political clearance, the petitioner left the country; the State was, therefore, justified in taking action. It was submitted that in the absence of regulation, principles of natural justice is required to

be followed. The petitioner gave replies and was also given an opportunity of personal hearing. A submission was made that the decision making process cannot be faulted with when show cause notice was given and in response to which the petitioner submitted replies and particularly when an opportunity of hearing was also given.

12. The Apex Court, in the case of A.K. KRAIPAK vs. UNION OF INDIA reported in AIR 1970 SC 150 pointed out that rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame work of the law under which the inquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case. In the instant case, there was no question of cross examination of witnesses. The facts were put before the petitioner and in reply thereto, the facts are admitted. The petitioner did not avail of the opportunity of personal hearing granted to him. We are of the opinion that when the facts are admitted, there is no question of holding an inquiry. It is admitted that the petitioner left the country without prior permission of the Chancellor and without political clearance. The opportunity of personal hearing was not availed of. Therefore, the petitioner cannot make a grievance that he was not permitted to make his submissions in support of his case. The Apex Court, in the case of CENTRAL BANK OF INDIA vs. KARUNAMOY reported in AIR 1968 SC 266 laid down that, when there is admission to insist to let in evidence, will be an empty formality.

13. The Apex Court, in the case of K.L. TRIPATHI vs. STATE BANK OF INDIA reported in AIR 1984 SC 273 pointed out in paragraphs 32 and 33 the basic concept of fair play, which reads as under :-

> "The basic concept is fair play in action administrative, judicial or quasi judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified is, in dispute, right of cross-examination must inevitably form part of

fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement.

The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specifically when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases."

13.1 In paragraph 41 of the judgment, the Apex Court further held as under :-

"It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principles of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principles, has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been

caused to the appellant by the procedure followed."

13.2 In the aforesaid case, it was manifest that absence of any denial by the officer, indeed admissions of the factual basis and nature of the examination offered by the appellant were considered by the authority to merit the imposition of the penalty of dismissal. Such a conclusion could not, in the facts and circumstances of the case, be considered to be unreasonable or one which no reasonable man could make.

13.3 Thus it is clear that when the facts are admitted and when there is no demand by the petitioner to examine the witnesses, it would be futile to say that principles of natural justice is not followed. It is required to be noted that in the case of MANAGING DIRECTOR VS. UP WAREHOUSING CORPORATION reported in AIR 1980 SC 840 (supra), the Corporation was managed by Government. Regulation 16 (m) provided an inquiry and giving of an opportunity to the employee had not come into force and it was argued that the employee had no statutory status, and had, therefore, no locus-standie to a writ petition. The other side pointed out that even in the absence of regulation 16, providing for a departmental inquiry, the employer was bound to hold an inquiry and to give, in compliance with the rules of natural justice, full and fair opportunity to the employee to defend himself and repel the charges levelled against him. It was maintained that such an opportunity was denied to him because he was not allowed to examine witnesses cited by him, in defence. [paragraph 8]. The Court pointed out in paragraph 14 as under:-

"The Court would therefore, presume the existence of a duty on the part of the dismissing authority to observe the rules of natural justice, and to act in accordance with the spirit of Regulation 16, which was then on the anvil and came into force shortly after the impugned dismissal. The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross-examine the witnesses relied upon by the appellant Corporation and an opportunity to lead evidence in defence of the charge as also a show cause notice for the proposed punishment. Such an opportunity was denied to the respondent in the instant case. Admittedly the respondent was

not allowed to lead evidence in defence. Further, he was not allowed to cross-examine certain persons whose statements were not recorded by the Enquiry Officer (opposite party No.1) in the presence of the respondent. There was controversy on this point. But it was clear to the High Court from the report of enquiry by the Opposite Party No.1 that he relied upon the reports of some persons and the statements of some other persons who were not examined by him."

13.4 Thus, in the absence of procedure prescribed for conducting the inquiry against the delinquent, the principles of natural justice must be followed and opportunity must be given to the delinquent.

13.5 In the UP WAREHOUSING CORPN. case (Supra) opportunity to lead evidence in defence as also a show cause notice for the proposed punishment was denied. The employee was not allowed to lead evidence in defence and he was not allowed to cross examine certain persons who were relied upon. In the instant case, it is clear that as observed in the case of K.L. TRIPATHI (supra), the concept of fair play in action which depends upon the particular lis, has been followed. In the instant case, there is no question of credibility of a person who has testified or has given some information or the version or the statement of the person who has testified. The question of cross-examination will arise in such eventuality. In the instant case, the question of facts are admitted, as per the petitioner's letters dated 24.7.1998 and 22.8.1998, such as :-

(1). He proceeded to Thailand with the bonafide belief that he would receive the permission in due course. [Thus, it is admitted that he proceeded to Thailand without permission.]

(2). He did not obtain political clearance before proceedings to attend the conference. [Thus, it is also admitted that he went abroad without political clearance.]

13.6 Thus, in the instant case, in the absence of rules, on question of facts, when the petitioner was questioned and he has answered and his explanation was not found to be acceptable, then in the absence of statement of any person on which reliance is placed, and in the absence of making a demand for examining the witnesses in defence the question of prejudice does not

arise, more particularly when opportunity of hearing was given to the petitioner.

14. In the case of B.C. CHATURVEDI VS. UNION OF INDIA reported in AIR 1996 SC 484, the Apex Court pointed out as under in paragraphs 12, 13, and 25.

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of the facts. Where appeal is presented, the appellate authority has co-extensive power to

reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel (1964) 4 SCR 718 : (AIR) 1964 SC 364) this Court held at page 728 (of SCR) : (at p 369 of AIR) that if the conclusion upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

25. No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restrains inherent in exercising power of judicial review. It is because of this that substitution of High Court's view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law makers do desire application of judicial mind to the question of even proportionality of punishment/penalty. I have said so because the Industrial Disputes Act, 1947 was amended to insert section 11A in it to confer this power even on a Labour Court/Industrial Tribunal. It may be that this power was conferred on these adjudicating authorities because of the prevalence of unfair labour practice or victimisation by the management. Even so, the power under Section 11.A is available to be exercised, even if there be no victimisation or taking recourse to unfair labour practice. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to Government employees or employees of the public corporations. I have said so because if need for adopting a strict attitude qua the public servants, discipline has to be maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference, as the appellate/revisional authority is known to have taken a different view on the question of sentence only rarely. I would, therefore, think that but for the self-imposed limitation while exercising power under Article 226 of the

> Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionality of punishment/penalty. But then, while seized with this question as a writ court interference is permissible only when the punishment/penalty is shockingly disproportionate." [emphasis ours].

15. Relying on the judgment in the case of KESAVA MILLS CO. LTD. VS. UNION OF INDIA reported in AIR 1973 SC 389, Mr. Rawal, learned Additional Solicitor General submitted that the Apex Court considered a question that it was not competent for the Government of India to proceed under Sec. 18.A of the Industries (Development and Regulation) Act 1951 against the Company without supplying beforehand a copy of the report of the Investigating Committee to the Company and whether the impugned order must be struck down on that ground? The Apex Court pointed out that the requirement of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject matter that is being dealt with and so forth. The Apex Court further held that there may be certain cases where unless the report is given the party concerned cannot make any effective representation about the action that Government takes or proposes to take on the basis of that report. The Court further held that whether the report should be furnished or not must therefore depend in every individual case, on the merits of that case. In that case, it was also contended by the appellants that they should have been given further hearing by the Government before they took the final decision of taking over their undertaking under Sec.18.A of the IDR Act and that in any event they should have been supplied with a copy of the report of the Investigating Committee. The Apex Court held that the Company was given all reasonable opportunity of being heard. The Court further held that non-supply of copy of the report of the Investigating Committee has not caused any prejudice whatsoever to the appellants.

16. Mr. Rawal further submitted that the State has followed the principles of natural justice by calling upon the petitioner by issuing show cause notice, and as the petitioner failed to submit satisfactory explanation, he was again called upon to give explanation. Mr. Rawal further submitted that even an opportunity of personal hearing was afforded to the petitioner, which he has not availed of. In the absence of any regulation for conducting an inquiry, if this procedure is followed, according to Mr. Rawal, it cannot be said that the

principles of natural justice have not been followed.

17. It was submitted before us that the principles of natural justice is required to be followed. What is contemplated is a fair hearing and the decision is reached after considering all the pros and cons. In the case of OSSEIN & GELATINE MFGRS. ASSOCN. OF INDIA v. MODI ALKALIES & CHEMICALS LTD reported in AIR 1990 SC 1744, it was submitted that even if the order has been passed by an officer different from the one who heard the parties, if no prejudice is caused, order is not vitiated. The Apex Court held that the proceedings were not in the nature of formal judicial hearings. They were in the nature of meetings and full minutes were recorded of all the points discussed at each meeting. If the order summaries and deals with all important objections of the parties, then the circumstances that one officer heard and other officer decided the matter would not make any difference. This decision was pointed out only with a view to see that on the record whatever was placed has been considered by the authority taking a decision in the matter. In the instant case, no officer is statutorily designated. However, records which is placed before us clearly indicates full details; replies have been considered which are reflected in the order, and, therefore, it is contended that no prejudice has been caused to the petitioner.

18. In view of what we have discussed hereinabove, it is very clear that the petitioner was served with a show cause notice dated 31.1.1998 and thereafter again on 9.7.1998, and an opportunity of hearing in person before the Principal Secretary on 24.7.1998 was also offered to him. Considering the reply, when the facts are admitted, and the explanation is not found to be plausible, in our opinion, there is no question of holding further inquiry. Learned Single Judge has opined that inquiry should have been entrusted to a Honourable Sitting Judge or a retired Judge, which finds no support from the statute or from the principles enunciated by the Honourable Supreme Court. The decision is taken by the State Government, the appointing authority, and, therefore, we are not in agreement with the views expressed by the learned Single Judge that the order of dismissal being not preceded by enquiry of whatsoever nature, is illegal, void and non-est.

(II). EFFECT OF CONSIDERING MATERIAL NOT DISCLOSED:

19. However, Mr. Mehta drew our attention to the affidavit filed by one D.C. Vora on 24.11.1998 on behalf

of the respondent No.1 wherein it has been specifically stated that : [page 76] :

"It is not correct to say that the petitioner has been discharging duty as Vice Chancellor effectively and efficiently. I submit that there are many instances of misdemeanour and the impugned notice, which specifies the culmination of all misdeeds on the part of the petitioner, is only one of the instance of his misdemeanour."

Thereafter the deponent has described the following circumstances:-

(1). The petitioner failed to supply supplementary information when question was asked in the legislative assembly with respect to leakage of examination question papers.
(2). When the Police (CID) was investigating, it was reported by the Police to the State Government that the University did not disclose the name of the Press where the question papers of the examination were printed.
(3). For Post Graduate examination Centre at Bhuj, despite the letter written to the University, no reply was submitted though six reminders were sent to the Registrar and Vice Chancellor.
(4). Strike was organised in the interest of Prof. K.S. Shastri (Pro Vice Chancellor) by his supporters against whom a complaint under the Atrocities Act was filed, and despite requisition of information, the same was not supplied by the Vice Chancellor.
(5). When the petitioner left, he not only failed to have permission of the Chancellor but unilaterally gave the charge of his office to Pro Vice Chancellor without obtaining the orders of the Chancellor as to whom he should handover the charge.

19.1 Mr. Mehta very strongly submitted that in the instant case, for the first time, in the affidavit, the aforesaid facts are placed on record. These facts were taken into consideration while passing the order.

20. Mr. Mehta pointed out from letter dated 4.9.1998 which is placed on record that the letter clearly reveals that the Registrar conveyed the information about the strike, the call of which was given by Pro Vice Chancellor Shri K.S. Shastri. The Government was informed on phone on 3.9.1998 about the same. Thereafter

report was also forwarded to the Government on 4.9.1998.

21. Petitioner in his affidavit dated 25.11.1998 denied the contentions raised by the respondent No.1 in the affidavit and pointed out in detail that looking to set up, leakage of question papers may be at one stage or the other, which is required to be inquired. In the affidavit, there was no mention about the subject, the class or the year for which there was leakage of question paper. Petitioner pointed out that he had to play no role in that matter. He also stated on oath that it is not true that he has not disclosed the name of the press to DIG Shri Pande who was investigating the matter, Interestingly, in further affidavit on behalf of the respondent it was pointed out that the leakage of the paper was with respect to F.Y. B. Com Statistics question paper and T.Y. B. Com. question paper about which by letter dated 25.6.1998 information was called for. Specific questions were asked but no reply to that letter dated 25.6.1998 has been given. The Vice Chancellor is given the entire freedom in the management and administration of the University and he stand for the commitment of the university to scholarship and pursuit of truth and can ensure that the executive wing of the university is used to assist the academic community in all its activities. The petitioner has given illustration that if a Mamlatdar in a remote town of the State of Gujarat accepts bribe, can it be held that the Chief Minister, Chief Secretary and perhaps His Excellency the Governor who are the heads of the administration are guilty of misconduct or misdemeanour. In the affidavit in reply, the petitioner was only required to meet with the allegations made in the affidavit. From giving this illustration, perhaps, the petitioner wants to suggests that higher officers cannot be held responsible for the act or omission on the part of his subordinate. However, the petitioner has forgotten that the illustration he has given is of accepting a bribe by an individual who is committing a crime for which offender is to be punished. It is an act in contravention of law which is made punishable and the person who contravens is to be punished, and not others; However, so far as the administration of University is concerned, he was in charge of the entire administration. It is for the concerned Head of the Institute to see that there is no leakage of the papers, and if there is a leakage then there is proper investigation or proper assistance is rendered to the agency investigating. What action is taken by the Vice Chancellor is relevant. Anyhow, these questions are disputed before us, as on behalf of the State it is submitted that the petitioner

has not rendered any assistance while on behalf of the petitioner, it is specifically disclosed that name of the Press was disclosed to DIG Mr. Pande. Affidavit of Mr. Pande having not been filed, it would not be proper to say that the information was not disclosed. Under the circumstances, it could be safely said that the allegation that the University did not disclose the name of the Press where the question papers of the examination were printed cannot be said to have been proved. Though this was not the subject matter of charge and the petitioner was not informed about this aspect, the same was considered by the State Government against the petitioner.

22. About the examination centre for P.G. students at Bhuj, Gujarat University, by letters from 1991 to 1996, it has been repeatedly informed that the demand for grant of P.G. Examination Centre at Bhuj cannot be accepted. It was pointed out that for the subject matter of giving centre for P.G. examination at Bhuj, a writ petition was filed being Spl. C.A. No. 2388/98 wherein affidavit filed by the petitioner was considered giving the details as to why separate examination centre is not provided at Bhuj. It was pointed out to the Court hearing the matter that under section 39 of the Gujarat University Act, "within the University Area, all Post Graduate instruction, teaching and training shall be conducted by the University or by such affiliated colleges or institutions and in such subjects as may be prescribed by the Statutes", and there are as many as 110 PG Centres at various places within the area of the Gujarat University. It was pointed out that when only limited number of students are available, then it would be difficult for the University to conduct the examination at various centres and such centre would be expensive for the University also. Petition for directing the University to give Center at Bhuj has been rejected by the Division Bench, considering the several factors pointed out as to why centre is not being provided. Before us it was also argued that it is not for the government to give directions to have PG Examination centre at Bhuj. At the most there may be request for consideration of the subject but it is for the University to take a decision whether to give a centre or not. Since long there is a consistent approach of the University not to grant Post Graduate Examination centre at Bhuj.

23. So far as handing over the charge to Pro Vice Chancellor is concerned, one has to look at the provisions in the Act. Section 12 (5) of the Act reads

as under:-

"The Pro Vice Chancellor shall, in the absence of the Vice Chancellor, or in the event of his being unable to perform the duties of his office, exercise all the rights and powers and discharge all the functions and duties of the Vice-Chancellor."

23.1 Thus, primafacie it appears that Pro Vice Chancellor was Vice Chancellor for two terms, yet in the absence of Vice Chancellor, he has to perform duties of Vice Chancellor including of exercising all the rights and powers.

23.2 Section 10 (6) (a) and (b) of the Act are also relevant in this regard, which reads as under:-

(a). During the leave or absence of the Vice Chancellor, or,

(b). In the event of a permanent vacancy in the office of the Vice Chancellor, until an appointment is made under sub-section (1) to that office, the Pro-Vice-Chancellor and in the absence of the Pro-Vice-Chancellor, one of the Deans nominated by the Chancellor for that purpose shall carry on the current duties of the Vice Chancellor.

23.3 From reading the section, it appears that the petitioner must have interpreted that in his absence, Pro Vice Chancellor shall carry on the current duties of the Vice Chancellor. That was a temporary arrangement under the statute itself. It was submitted before us by the appellant, State, that Vice Chancellor, as per sub-section (4) of section 10 of the Act, can hold the office for a term of three years only and shall be eligible for reappointment for a further period of three years. On this premises, it was submitted that the Pro Vice Chancellor having held the office for a total period of six years, he was not entitled to hold the office of the Vice Chancellor. If the petitioner has interpreted the section, it cannot be said that he has misinterpreted and we are not called upon to give correct interpretation of sub-sections (4) and (6) of section 10 of the Act but we are only deciding whether in the facts of the case, can it be said that the petitioner was not justified in handing over the charge in view of section 10 (6) of the Act to Pro Vice Chancellor? In our opinion, it cannot be said that he has committed such a flagrant error which

could be taken a note of, without calling for explanation.

24. Mr. Mehta submitted that no material was placed i.e. in the nature of information received from Delhi, the same was not supplied to the petitioner and yet the reliance is placed on the same. It may be stated that it was merely a message indicating that political clearance is required. From the very beginning there was insistence on the part of the State Government about political clearance.

25. In the instant case, we find that Mr. D.C. Vora has filed an affidavit indicating that other circumstances which were never communicated to the petitioner have been taken into consideration. In paragraph 7 of the affidavit [page 129] sworn by Mr. D.C. Vora on 2.12.1998, it is stated as under :-

> "I submit that the State Government has taken into consideration the totality of behaviour of non-co-operation by the petitioner. .... I deny that the impugned order of termination of the term of the petitioner is based upon alleged materials which were not communicated to the petitioner as alleged."

25.1 These two sentences are self-contradictory. The order dismissing the petitioner [page 70] states that only two circumstances have been taken into consideration. The first is going abroad without prior sanction of the Chancellor, and the second is non-obtaining of political clearance from the respective ministry of the Government of India. Perusing the order it is clear that no other circumstances were taken into consideration for dismissing the petitioner. However, the affidavit states that the State Government has taken into consideration the totality of behaviour of non-co-operation by the petitioner. Thus it is clear that material which was never communicated to the petitioner has been taken into consideration. The deponent has also given certain instances in the affidavit. Therefore, it is clear that material which was never communicated to the petitioner was taken into consideration and the petitioner was kept in dark qua such material, and no opportunity was given to him in that behalf. If the order was passed ONLY on the grounds mentioned in the show cause notice, the matter would be different. In this regard, on behalf of the State the following observations made by the Apex Court in the judgment in the case of STATE OF MAHARASHTRA vs. B.K.

TAKKAMORE reported in AIR 1967 SC 1353, were pressed into service to canvass the argument that exclusion of the irrelevant or non-existent grounds could not have affected the ultimate decision:-

"The principle underlying these decisions appears to be this. An administrative or quasi-judicial order based on several grounds, all taken together cannot be sustained if it be found that some of the grounds are non-existent or irrelevant, and there is nothing to show that the authority would have passed the order on the basis of the other relevant existing grounds. On the other hand, an order based on several grounds some of which are found to be non-existent or irrelevant, can be sustained if the court is satisfied that the authority would have passed the order on the basis of the other relevant and existing grounds, and the exclusion of the irrelevant or non-existent grounds could not have affected the ultimate opinion or decision."

25.2 In the instant case, in view of the affidavits filed on behalf of the parties, it is not possible to say that the grounds were irrelevant or non-existing grounds. The affidavit justifies that various circumstances were taken into consideration. If that be so, the aforesaid decision of the Apex Court would not be of any help to the appellant. In the instant case, it can be said that the material which was not conveyed to the petitioner and his explanation was not called for has been taken into consideration while passing the order. Considering the decisions referred hereinabove, the order of dismissal cannot be sustained as the order is passed not only on the questions raised but the foundation of the order consist of various other circumstances for which explanation of the petitioner was not called for. Thus, this order is passed in gross violation of the principles of natural justice as extraenous factors have been taken into consideration keeping in mind the affidavit filed by Mr. D.C. Vora. Therefore, the order dated 9.11.1998 is vitiated on this ground.

(III). POSITION OF VICE CHANCELLOR IN THE ACADEMIC WORLD.

26. The position of a Vice Chancellor in the academic world is also required to be considered in the instant case. Powers conferred upon the Vice Chancellor are coupled with the duty. In a hierarchy, the higher the officer, the more the responsibilities, and ofcourse in a

disciplined manner. In the case of MARATHWADA UNIVERSITY vs. S.B.R. CHAVAN reported in AIR 1989 SC 1582, in paragraph 16, the Apex Court quoted the following part from the report of the Education Commission, 1971 :-

"The person who is expected, above all, to embody the spirit of academic freedom and the principles of good management in a university is the Vice-Chancellor. He stands for the commitment of the university to scholarship and pursuit of truth and can ensure that the executive wing of the university is used to assist the academic community in all its activities. His selection should, therefore, be governed by this overall consideration."

26.1 In paragraph 17 of the judgment, the Supreme Court has quoted the following excerpt from Dr. A.H. Homadi's wise, little study about the role of the Vice-Chancellor in the University administration in developing countries:-

"The President or the Vice-Chancellor.

The President must be willing to accept a definition of educational leadership that brings about change to the academic life of the institution. He must be fired by a deep concern for education. He should instill a spirit and keenness about growth and development in such a way that the professoriate feels that their goals are interlinked with those of the University, that their success depends upon the success of the University. The professors should be given detailed information about the jobs that they have to perform and their good performance should be given due recognition by administration leadership. Even such small encouragement will boost their morale to greater heights. The President should have faith in his own abilities as well as on the abilities of other professors and administrators and should provide guidelines about the kind of efforts he would like his professors and administrators to make, setting an example by his own actions and exercises. The negative force of fear, when used and no one denies that an element of hard headedness is some times required as a persuasive inducement to professors and administrators of university should be employed judiciously. Under no circumstances should the apathy and belligerence of the professors and administrators be aroused.

These call for strong but sympathetic leadership in the President."

26.2 One has to remember that Teacher is always considered as a guardian. Children/students are very close to Teachers. A Teacher of a primary school, or secondary school or any teacher engaged in educating students in High School, College or University is in a noble vocation. A teacher educates children; he moulds their character, builds their personality and makes them fit to become responsible citizens. Children/students learn from their educational leaders, may be a Teacher, Principal, Professor, Dean or Vice-Chancellor.

26.3 Thus, a Vice Chancellor is expected to be an example to others, more particularly to the students who are thousands in number. A student should not carry an impression that if the Vice Chancellor can commit a breach, then what is wrong if a student commits a breach or violates discipline. Students will follow their teachers, professors and deans, and the Vice Chancellor is in the position of educational leadership of the academic life. Therefore, it is expected that a Vice Chancellor must strictly act in such a way which would be an example to others. In the instant case, had he not gone to Bangkok for conference and lateron if it was found that political clearance was not required, it could have been a better example to the students that as permission was not granted, despite non-requirement of political clearance, he has strictly followed the discipline by not going abroad. The students will carry a good impression that their Vice Chancellor has even forgone a trip abroad because he was communicated that political clearance is not granted.

IV. POLITICAL CLEARANCE.

27. About the political clearance, learned Single Judge held as under in paragraph 14 of the judgment:-

"It is admitted fact that till the present controversy was raised, no Vice Chancellor of Gujarat University or any other University in the State of Gujarat ever obtained 'political clearance' from the Ministry of Foreign Affairs. It is ofcourse true that this cannot be just a reason for not obtaining the political clearance, but this fact fairly establishes that in the University circle, this requirement was not known. It further appears that even the Chancellor and the State Government were also not

knowing the actual requirement of the "political clearance".

27.1 After observing this, the learned Single Judge held that " .... the Government thought that the political clearance was necessary only in a case where hospitality is by the host". Learned Single Judge, considering a letter addressed by University on 18.10.1997 conveying that 100% expenditure would be borne by the University Grants Commission, expressed the opinion that the petitioner could be under bonafide understanding that a political clearance is required only when he is accepting the hospitality of the host country. It is clear that on record, material has been placed to show that for a subsequent visit, proposed by the petitioner for attending a conference of Vice-Chancellors at Ottawa, Canada, permission was not granted (page 58) and he did not visit. The appellant has placed on record at page 98, a letter dated 9.7.1998 granting 'political clearance' to Dr. V.S. Patel, Vice-Chancellor of Sardar Patel University, Vidyanagar, Gujarat, to attend the conference at Ottawa from 16.8.1998 to 22.8.1998 and to visit Universities in U.S.A. during 11.7.1998 to 31.8.1998. Reading the letter, it is very clear that on 7.7.98 the concerned Department was moved and on 9.7.1998, the Ministry of External Affairs indicated that it has no objection to grant clearance from political angle. Thus, within two days, 'political clearance' was granted. Had the petitioner waited, he would have got the reply and within a short time, clearance also, if there was no objection. Now, when latest technologies for communication and transmission of correspondence being available, it is not proper to say that there was no time. We are of the view that the petitioner was made aware about the political clearance soon after he addressed a letter. It seems that he was of the view that clearance is not required because the University Grants Commission has permitted him to go at 100% of the expenditure to be met with by the University Grants Commission and it was an academic conference. The petitioner could not have taken for granted that no political clearance is required. When a person is visiting another country either at the cost of the public exchequer or at the cost of the country which is the host, the Government of India has to see whether there would be any objection or not in view of bilateral relations prevailing between the two countries. The Government may like to examine it before using the funds. As no material is placed before us to show that funds have been granted to other Vice Chancellors subject to a condition of clearance, we cannot hold that there is

violation of Article 14 of the Constitution in insisting for political clearance from the petitioner.

27.2 Thus, the petitioner absented himself and did not obtain political clearance. This aspect is also admitted. Merely because in the University circle this requirement was not known, is no ground for not obtaining of poliitical clearance. To say that the Chancellor and the State Government did not know the actual requirement of political clearance is not correct as in the reply, the petitioner was asked about the political clearance. It is the petitioner who took it for granted that the same is not required. Learned Single Judge has rightly said that till the present controversy was raised, no Vice-Chancellor obtained political clearance and that cannot be said to be a just reason for not obtaining the political clearance.

(V). MISCONDUCT:

28. The question to be examined is: whether leaving the country without permission and/or without political clearance can be said to be a misconduct or not. Learned Single Judge has quoted a passage from the judgment of the Apex Court in the case of STATE OF PUNJAB vs. RAMSINGH reported in AIR 1992 SC 2188, which we also reproduce below:-

> "The word 'misconduct' though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, wilful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty, the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

28.1 In paragraph 4 of the aforesaid judgment of STATE

OF PUNJAB, (supra) the Apex Court has quoted the definition of 'misconduct' in Black's Law Dictionary, Sixth Edition at page 999, as under :-

> "A transgression of some established and definite rule of action forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."

Misconduct in office has been defined as:

> "Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

29. In the instant case, learned Single Judge proceeded on the assumption that it is a case of error of judgment as the petitioner, after informing the Chancellor if without waiting for the approval left for attending the conference, which in his judgment was more important, cannot be construed even as negligence or carelessness. According to learned Single Judge, "such a bonafide error cannot be construed as misconduct. The same reasoning applies in the case of obtaining political approval from the Ministry of Foreign Affairs". In view of this the learned Single Judge held that the impugned order of dismissal is ex-facie illegal as it is not at all case of misconduct or misdemeanour.

30. Mr. Mehta, learned advocate submitted that as pointed out by the Apex Court, a Vice Chancellor can be removed from his post only if he has become physically decrepit, mentally infirm or grossly immoral. He further submitted that even if it is taken for granted that the petitioner left without permission, it cannot be said to be an act grossly immoral. The Apex Court in the case of BOOL CHAND VS. KUREKSHETRA UNIVERSITY reported in AIR 1968 SC 292 pointed out as under in paragraph 8 of the judgment:-

> "It is true, the office of the Vice-Chancellor of a University is one of great responsibility and carries with it considerable prestige and authority. But we are unable to hold that a person appointed a Vice-Chancellor is entitled to

continue in office for the full period of his appointment even if it turns out that he is physically decrepit, mentally infirm or grossly immoral. Absence of a provision setting up procedure for determining the employment of the Vice-Chancellor in the Act or the Statutes or Ordinances does not, in our judgment, lead to the inference that the tenure of office of Vice-Chancellor is not liable to be determined."

30.1 At the same time, the Court pointed out in paragraph 21 as under :-

"In the very scheme of our educational set-up at the University level, the post of Vice-Chancellor is of very great importance, and if the Chancellor was of the view after making due enquiry that a person of the antecedents of the appellant was unfit to continue as Vice-Chancellor, it would be impossible, unless the plea that the Chancellor acted maliciously or for a collateral purpose is made out, for the High Court to declare that order ineffective."

30.2 The appellant in that case was an I.A.S. Officer and inquiry was held against him on charges of gross misconduct and indiscipline in respect of his conduct when he was Collector of District Rajgarh, and ultimately by order of the President of India, he was compulsorily retired from IAS in 1963. Thereafter he was appointed as a Professor and Head of the Department of Political Science in Punjab University. Soon thereafter he was appointed as Vice Chancellor in the Kurekhetra University by an order of the Chancellor of the University. Successor of the Chancellor who appointed Dr. Bool Chand, the appellant, suspended Dr. Bool Chand from the office and by another order, the Chancellor issued a notice requiring Dr. Bool Chand to show cause why his services as Vice Chancellor may not be terminated. It is under this circumstances the Court pointed out that the Court is not able to hold that a person appointed as a Vice Chancellor is entitled to continue even if it turns out that he is grossly immoral. The Apex Court has not suggested that the Vice Chancellor can be removed only if he is grossly immoral. In the case of Bool Chand, at the time of his appointment as Vice Chancellor, the fact of his compulsory retirement was not known to the Chief Minister or the then Chancellor. In paragraph 13 of the order, the Chancellor observed as under :-

"At the time of his appointment as

Vice-Chancellor, the fact of his compulsory retirement was not known to the Chief Minister or the then Chancellor. The alleged knowledge of the fact of compulsory retirement on the part of the Chief Minister, Cabinet or the previous Chancellor is, therefore, without any basis."

30.3 Thus, the Chancellor dismissed the services of the Vice Chancellor. The Apex Court pointed in paragraph 17 of the judgment that :-

"The Chancellor, Sardar Singh, was, in our judgment, under no obligation, unless moved by the appellant, to hold such enquiry. It was for the appellant to take up the defence that Mr. Hafiz Mohd. Ibrahim was informed of the order of the President and take steps to prove that fact. He did not take up that defence and he cannot now seek to make out the case that the order was vitiated because the Chancellor Sardar Ujjal Singh did not make an enquiry which the Chancellor was never asked to make".

31. In the instant case, when the petitioner was required to obtain leave for attending the conference, his attending the conference without prior leave of the Chancellor, would certainly amount to an improper behaviour. It cannot be said that it was a mere error of judgment. Error of judgment would come into play if the person is required to select one out of the two or several permissible modes, and not otherwise. It is also required to be noted that the petitioner being Vice Chancellor, was aware that in the High Court, proceedings were initiated against the appointment of Prof. K.S. Shastri as Pro Vice Chancellor. He was also required to consider that when such an important matter is pending in the High Court, it would not have been proper for him to leave the station and to give charge to Prof. Shastri. This aspect appears to have been not considered at all. In our opinion, cases of public servants of different classes and different grades cannot be considered on the same line so far as misconduct is concerned. Non-attending to a duty in a given case may not be considered as a serious matter so as to take action, but in a given case, looking to the nature of the duty which is to be discharged if a person is absent without obtaining prior permission, it has to be viewed seriously. Even a Doctor remaining absent from duties in a hospital under normal circumstances and under an emergent situation such as a natural calamity has to be viewed with various grades of seriousness. If a public

servant in discharge of his duties does not come in contact with public at large remains absent has to be viewed from a different angle than a public servant who has to be in regular touch with the public at large remains absent, because in the later case several persons are likely to be affected, and, therefore, the later is to be viewed seriously. Therefore, in our opinion attending a conference at Bangkok without prior approval of the Chancellor would amount to misconduct.

32. Learned Single Judge has observed that as a letter was received by the Chancellor dated 6.10.1997 wherein the petitioner requested him to grant duty leave for the period from 9.11.1997 to 18.11.1997, it cannot be said at all that he left the country without informing the Chancellor. We fail to understand how the Chancellor would know if on 6.10.1998 a letter seeking permission is written and, therefore, the petitioner will leave on 9.11.1997? Before leaving, it was the duty of the petitioner atleast to convey information that he was leaving, which he has not done.

33. It is required to be noted that an employee is under an obligation not to absent himself from work without good cause during the time of which he is required to be at work by the term of his contract of service. Even in industrial matters, absence without leave is considered as a misconduct, warranting disciplinary punishment. In some of the cases, even if the workmen is not absent from the employees business premises but is only absent without permission from the specific place of duty where the work is required to be done, is also considered to be an act of misconduct. Even industrial organisations are also including the absence from duty without leave as an act of misconduct in their Standing Orders. An employee is obliged to attend the duty unless he is permitted to be on leave. He cannot take it for granted that he has given an application, and, therefore, it is to be presumed that the application has been granted. No one can claim leave of absence as a matter of right and remain absent without leave. That will constitute to a violation of discipline. We may also say that the mere fact that the Vice Chancellor had applied for leave would not be a good defence when the leave was not granted by the Chancellor. The Court shall take a note of the circumstances such as absence without leave and of circumstances beyond control such as employee's or his family member's sudden or serious illness, which is required to be taken into consideration. The person who remained absent will have to show that his absence was justified.

34. We are not referring to the quantum of punishment in the cases of misconduct of absence from duty without leave, as the same would depend upon facts of each case. Remaining absent without leave for a day or two may be considered as a circumstances for lenient penalty depending upon the facts and circumstances of the case, but remaining absent continuously cannot be considered as a circumstance to impose a very lenient punishment.

35. In view of what we have stated hereinabove, in the instant case, it cannot be said that remaining absent without leave would not amount to misconduct; It does amount to "misconduct".

36. Considering the aforesaid we hold that:

(1). the services of a Vice Chancellor can be terminated by the State before expiry of the three years.

(2). The words 'misconduct' and misdemeanour are not capable of precise definition, but its reflection receive its connotation from the context, and its effect on the discipline and the nature of the duty. Its ambit has to be construed with reference to the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. There is no question of insubordination in the instant case inasmuch as there is no explicit order which the petitioner has disobeyed.

(3). The conduct of the petitioner in proceeding to attend the conference without obtaining political clearance and without permission of the Chancellor, is a misconduct and misdemeanour.

37. Learned Single Judge held [para 17] that it would be disproportionate and unreasonable exercise of powers if dismissal is ordered when circumstances does not call for such extreme harsh action. According to learned Single Judge, leaving the country by an officer of the status of Vice Chancellor on official tour for attending a conference, in the interest of the university, after informing the Chancellor but before his approval and further leaving the country without obtaining political clearance from the Ministry of Foreign Affairs in a circumstance when none was very clear about the requirement of political clearance from the Ministry of Foreign Affairs, the decision to dismiss the Vice Chancellor can by no standard be said to be a rational act. According to learned Single Judge, the act was so outrageous that it amounts to excessive use of power

amounting to illegal, irrational and malafide exercise of power, and the doctrine of proportionality is relevant and has to be applied.

38. In the instant case, a person who is expected to be followed by other persons, viz. students and the staff of the university, if in defiance of discipline, without leave being sanctioned, leaves, it would have great adverse effect on others, and the same appears to have been not considered by the petitioner at all. If a good teacher teaches discipline to the students and if he himself commits breach of the discipline, can it be said that the act of breach is not rational? We are of the view that in the matter pertaining to institutes where discipline is expected, indiscipline is to be seriously viewed. Admittedly, there was no approval for leaving the country. About political clearance, the petitioner has presumed that the same is not required in the instant case. In his own words in the affidavit, he has taken it for granted that "there appears to be no need to get political clearance from the Government of India, Ministry of External Affairs", and he left the country without such political clearance or approval from the Chancellor. Simply because in past other Vice Chancellors have left without political clearance, cannot be taken into consideration as a defence because we do not know what conditions were mentioned while permitting predecessors in office of the petitioner to leave the country. As no material is placed before us to show that funds have been granted to other Vice Chancellors subject to a condition of clearance, we cannot hold that there is violation of Article 14 of the Constitution in insisting for political clearance from the petitioner. If requirement of political clearance was there and one acted in breach, that would not give permission to others to commit the breach.

39. Apex Court in the case of B.C. CHATURVEDI (supra) pointed out that the Court/Tribunal in its power of judicial review does not act as an appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The disciplinary authority is the sole Judge of the facts. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. While exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restrains inherent in exercise of powers of judicial review. It is because of this that substitution of the High Court's view regarding appropriate punishment is not permissible.

40. In view of the aforesaid principle enunciated by the Apex Court not in one case but in several other cases, the order passed by authority, if is in accordance with law, i.e. after following the due procedure, the Court has not to sit in appeal and it is not permissible to substitute an order of punishment which may be appropriate according to the Court/Tribunal hearing a petition under Article 226 of the Constitution of India. However, Court/Tribunal would be justified in quashing an order if the authority held the proceedings in a manner inconsistent with the rules of natural justice. For the reasons recorded under caption "effect of considering the material not disclosed", we are of the view that the impugned order of dismissal must be quashed, but not on the grounds on which the learned Single Judge quashed the order. This is a case of not giving fair opportunity and violation of principles of natural justice, as behind the back of the petitioner, material has been considered.

41. We do not agree with all the reasons given by the learned Single Judge in allowing the petition. However, we allow the petition on the ground that material foreign to the show cause notice and not communicated to the petitioner has been taken into consideration in arriving at the decision, and, therefore, the impugned dismissal order dated 9.11.1998 is vitiated. We confirm the order allowing the petition on the aforesaid ground and not on all the grounds recorded by the learned Single Judge.

42. In the result, we dismiss this appeal with cost. Interim order passed by learned vacation Judge while admitting this appeal stands vacated in view of the final order passed in this appeal. The appeal stands dismissed accordingly.

FURTHER ORAL ORDER:

After the pronouncement of the judgment, on behalf of the State, Mr. P.G. Desai, learned Government Pleader requested the Court to direct the parties to maintain statusquo. Mr. Mehta, learned counsel appearing for the petitioner strongly objected to it. Mr. Desai submitted that the Court has come to conclusion that the act of the petitioner amounts to a misconduct, but merely because some foreign material is taken into consideration, the dismissal order, according to the State, is not vitiated, and, therefore, the State would like to approach the higher forum. It is required to be noted that if the cause would have been breach of trust or misappropriation of funds belonging to public exchequer, this Court would have taken a serious view of

the matter, but in the instant case, the misconduct is of leaving the country without permission of the Chancellor and political clearance. We are of the view that as the State has not taken care to provide an opportunity to the petitioner to defend his case, the State has no case. Therefore, this request must be rejected.

(B.C. PATEL, J)

(A.L. DAVE, J.)

csm./ --------